Transnational Perspectives on Transformations in State and Society | 4

Veronica Federico | Christian Lahusen [eds.]

Solidarity as a Public Virtue?

Law and Public Policies in the European Union

Nomos

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Transnational Perspectives on Transformations in State and Society

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Volume 4

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Introduction

Christian Lahusen and Veronica Federico

Solidarity is an intensively discussed topic within the European Union (EU). This is not at all surprising considering we are living in times of crisis. Difficulties accumulate, if we think about the economic recession that has gripped the union since 2008 and the increased immigration of refugees and asylum seekers since the summer of 2015. With regard to both of these situations, the European Union has seen the need to develop policies that meet the challenges of these crises, and accordingly, various programmes have been launched in these fields (e.g. the European Financial Stability Facility, the Stability and Growth Pact, border patrol operations, relocation and resettlement programmes, the EU-Turkey agreements). However, many of these policies fall short of public expectations, particularly where the principle of solidarity is concerned. National governments have been reluctant to sign agreements requiring more intense cooperation, joint responsibility and burden sharing. Governments' propensity to defend national interests has inspired this reluctance. However, this hesitancy also seems to stem from the EU's institutional and legal architecture because the principle of solidarity is legally enshrined in a rather unbalanced manner. On the one hand, solidarity is only weakly developed within European law, whereas on the other hand, it has found a much wider and diverse application at the national level, thus inhibiting coordination and harmonisation. The situation, however, is changing. In fact, the various EU crises seem to have provoked considerable alternations in both respects. Apparently, the crises have stepped up the pressure on EU institutions and on national governments to promote cooperation and solidarity among member states, whereas legislators at both the national and the EU level seem to marginalise the role of solidarity in many countries. This is especially true if we factor in austerity measures and welfare state retrenchment policies. These observations reveal that solidarity is a highly contested and dynamic field of political action and policy-making. Given this field's relevance, it seems important to devote our attention to European solidarity in its various manifestations.

The goal of this collective volume is to broaden our knowledge of European solidarity along these lines. Of particular interest is understanding how solidarity is embedded within the institutional, political and legal architectures of the EU and its member states. For this purpose, this book examines solidarity's role as a legal principle and as a component of public policies in eight European countries—Denmark, France, Germany, Greece, Italy, Poland, Switzerland and the UK—and within the EU's institutional fabric. This spectrum of cases reflects more than just the need to consider the situations of countries that the economic and immigration crises have affected in different ways. These nation states also have various legal and political systems that impact how authorities, on the one hand, and citizens and organisations, on the other, have reacted to these crises. These countries present a diverse constitutional organisation of the state because they were explicitly selected to encompass a wide spectrum of variability while remaining in the general frame of contemporary Western liberal democracies. They mirror the diversity of European landscapes in terms of the state's structure, the system of government, rights enforcement and litigation, the political system and the cultural and socio-economic background, while allowing, at the same time, for a systematic comparison. *Suffice* to recall that the countries to be studied conform to a combination of 'the most similar' and 'the most dissimilar' case-study selection. The cleavage between the sole country belonging to the common law system (the UK) and the others, characterised by civil law systems, is nuanced and, at the same time, enriched and made more complex by how it intertwines with other cleavages: centralised versus federal states; symmetric versus asymmetric decentralisation (or devolution); constitutional monarchies versus republics; parliamentarian (in various typologies) versus semi-presidential (in various typologies) and directorial systems of government; diffuse versus centralised (with the presence of a constitutional court) systems of judicial review. Seven countries are EU member states, so they relate to the EU legal framework and to crisis-driven European measures. However, the inclusion of Switzerland allows for considering the situation in a country that, although it is not a part of the EU, is closely associated with it in many areas of regulation while also being characterised by a peculiar system of government, federal system, society structure and socio-economic background. Moreover, diverse mechanisms of rights enforcement and litigation among countries (some countries heavily rely on the activism of the ombudsman and of administrative justice, for instance) add further complexity to the analysis of the constitu-

tional and legal frameworks relevant for the discussion of solidarity as a legal concept.

Diversity is also a keyword in the discussion of political systems, counting two-party systems, pluri-party systems, multi-party systems, and fragmented-party systems. Diversity is a keyword in the discussion of the democratic model as well: majoritarian and consensus democracies, along with semi-direct and consociational ones. The countries' socio-economic backgrounds are nothing short of diversity, as Denmark, France, Germany, Greece, Italy, Poland, Switzerland and the UK encompass the full range, with Greece representing the most deprived landscape and Denmark holding the most privileged position. Noteworthy is the fact that other variables, such as levels of corruption, clientelism, religions' influence, and income and wealth distribution strongly contribute to defining diversity in our case study.

Due to the diversity of cases outlined so far, we have meticulously sifted through legal systems in search of the fields in which solidarity is applied, with special attention given to the research policy areas of disability, unemployment, immigration and asylum. In particular, we have highlighted when solidarity is explicitly mentioned in constitutions, laws, and court decisions, as well as when connected principles (equality, social justice, human dignity, etc.) are either included in the legal text or more broadly when they underpin norms and jurisprudence.

This collective volume builds on research conducted within the framework of an international research consortium that the EU funded through its Horizon2020 programme. This project was committed to the systematic, interdisciplinary and praxis-oriented analysis of European solidarity in times of crisis.[1] These general objectives were broken down into various

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1 The project has the title "European paths to transnational solidarity at times of crisis: Conditions, forms, role models and policy responses" (TransSOL). It has received funding from the EU's Horizon 2020 research and innovation programme under grant agreement No 649435. The TransSOL consortium is coordinated by the University of Siegen (Christian Lahusen), and it is formed, additionally, by the Glasgow Caledonian University (Simone Baglioni), European Alternatives e.V. Berlin (Daphne Büllesbach), the Sciences Po Paris (Manlio Cinalli), the University of Florence (Carlo Fusaro and Veronica Federico), the University of Geneva (Marco Giugni), the University of Sheffield (Maria Grasso), the University of Crete (Maria Kousis), the University of Siegen (Christian Lahusen), European Alternatives Ltd. LBG UK (Lorenzo Marsili), the University of Warsaw (Maria Theiss) and the University of Copenhagen (Hans-Jörg Trenz).

work packages that paid special attention to various aspects of the overarching topic. Among others, TransSOL was particularly interested in monitoring and analyzing the levels and forms of solidarity practices and attitudes among European citizens and civil society organisations. Various research packages were developed and implemented with these objectives (e.g. an individual opinion poll, various organisational surveys, a media content analysis), from which this book took inspiration as well.

The findings presented in this book stem from original research work that all teams of the European consortium conducted. The joint effort was devoted to gathering information on the political, legal and institutional contexts of transnational solidarity. This information has been retrieved via a combination of the desk research of various sources (e.g. legal and policy documents, national and EU case law, scientific literature), information requests to relevant institutions and semi-structured interviews with legal and policy experts and academics, which were conducted in July and October 2015. Additionally, the national chapters of this book benefitted from insights generated via an organisational survey, which was devoted to monitoring, analysing and assessing the innovative practices of transnational solidarity in response to the crises. Among other tasks, this work package consisted of a series of qualitative interviews with representatives of grassroots/informal solidarity organisations, associations and movements active in the three fields of analysis (unemployment, disability and immigration and asylum). Thirty interviews were conducted in each country from August to October 2016. Information gathered through interviews does not intend to be representative and exhaustive; rather, it offers multiple and partial views on the relevance of the legal and policy frameworks, on the most critical aspects of law enforcement and on the soundness of the policy and legal frameworks to meet vulnerable people's expectations. In other words, these data provide further insights to complement the analysis of the role of the law, not just as it exists in legal text and in cases but rather as it is actually applied in society.

The main focus of this book is a systematic mapping exercise of the position and role of solidarity in member countries' legal systems and at the EU level. Given the considerable changes in this field during the past years, which makes it difficult for research to keep track of developments, we see the merit of providing with this volume a broad overview and description of the current situation in our eight countries. The terrain of our analysis has been the national legal systems in its three crucial dimensions: (a) the constitution and its values; (b) the legislation, focusing main-

ly on framework laws; and (c) the case law, especially constitutional courts or supreme court jurisprudence. This three-dimensional approach allows one to consider both the legal contexts that preexisted the crises and the crisis-driven reforms.

Solidarity: An Evocative Concept

Solidarity is a deeply evocative concept, connected in everyone's imagination with positive attitudes of openness, generosity and cooperation. In scholarly writing, the usage of the concept has been more focused and narrow, even though the scientific literature has addressed a variety of aspects, thus mirroring the various disciplines involved in its analysis (e.g. philosophy, legal studies, political science, sociology, psychology). A closer look at the extensive literature reveals that we can extract a number of conceptual assumptions and empirical issues that will help to prepare the ground for our own analyses. In general, we can draw three general lessons from scholarly writing: First, solidarity is a relationship of support tied to (informal or formal) rights and obligations; second, solidarity might have universalist orientations but is most of the time conditional; and third, solidarity is institutionalised at several interdependent levels of aggregation.

First, solidarity refers to a human relationship focused on the (mutual) support of others. This general conceptualisation, however, is far from satisfactory, as other concepts also refer to similar relationships: empathy and care, charitable and humanitarian actions, philanthropy and altruism. In fact, many definitions make explicit use of these concepts, suggesting that solidarity is closely linked to and maybe identical to them. Often, solidarity is defined in relation to one of these concepts. 'Solidarity', for instance, is defined as the attitudes and practices geared towards helping others who are struggling or are in need (e.g. Stjernø 2012, 2), be that via personal contributions or through the active support of others' activities—such as the humanitarian aid of civil society organisations or the state's re-distributional public policies (Svallfors 1997; Fong 2001; Amat and Wibbels 2009; Rehm et al. 2012). However, what, then, is the specificity of solidarity when compared with the other concepts? A close look at the literature reveals that most scholars agree on the specification that solidarity is a relationship of support tied to group-related rights, responsibilities and obligations. This relationship of support can be linked to informal groups,

whose survival is dependent on their members' activities. Along this line of reasoning, group solidarity emerges from—and depends on—exchange relations among their members (Hechter 1987; Widegren 1997). A similar observation can be made with regard to more formal groups, such as nation-states, because here, we are speaking of entities that require social integration and solidarity. In these cases, solidarity is tied to citizenship and thus to formalised rights and obligations (Turner 1990; Blais 2007; Apostoli 2012; Supiot 2015). Along these lines of reasoning, we find a number of authors who argued that the promotion of European solidarity is thus dependent on the emergence and enactment of European citizenship (e.g., Balibar, 2004 and 2014; Jacobs 2007; Dobson 2012; Guild et al. 2013; Isin and Saward 2013). In this sense, we can summarize that solidarity is not an individual act of (unilateral) help, empathy and care but rather an activity or disposition of support that is intimately linked to shared norms, rights and obligations. Groups might expect from their members that they act in solidarity with others, even though these expectations can remain implicit and informal. At the level of nation-states, solidarity might be voluntary, but in many cases, it is also obligatory if we think of redistributive policies that are financed via taxes and contributions. Hence, in many instances, political, institutional and legal matters highly permeate solidarity. This also means that an analysis of existing legislations will tell us a great deal about the extent to which—and how—solidarity is introduced and enacted within the EU and its member states.

Second, scholarly debates have underlined that solidarity is an idea and value that combines universalism and particularism at the same time. Solidarity can be tied to abstract communities (i.e. humankind) and thus be associated with a universal understanding of generalised support (Brunkhorst 1997 and 2005; Balibar 2004). In empirical research, this solidarity approach is measured in terms of the generalised, civic dispositions of help not restricted to any specific group or conditionality (Amat and Wibbels 2009; Fong 2001; Rehm et al. 2012; Svallfors 1997). However, more often than not, solidarity is tightly associated with particularism, once relations of support are tied back to certain groups, and once solidarity is made conditional on group membership, mutual contributions and/or exchange relations. Empirical studies on informal groups have corroborated this finding (Hechter 1987), but similar conclusions have been drawn by scholars interested in the extent to which citizens support institutionalised solidarity, for example, in the form of social policies. In this respect, the readiness to support institutionalised solidarity seems to be patterned

by the assumed 'neediness' or 'deservingness', the social or spatial proximity of the targeted group (Oorschot 2000 and 2006; Blekesaune and Quadagno 2003; Brooks and Manza 2007; Stegmueller et al. 2012). According to these studies, elderly and disabled people are considered to be the most deserving, followed by unemployed people, with immigrants as the least deserving (Oorschot 2006). These differentiations do not only apply to social groups within a society but also to other countries as survey-based analyses have indicated (Lengfeld et al. 2015). What we learn from these studies is that solidarity is highly conditional, and this means that an analysis of solidarity always requires a comparison of issue fields and target groups.

Third, solidarity is erected and enacted at various levels of social aggregation, namely the level of individuals (interpersonal social solidarity – micro level), the level of the organisation (civil society –meso level) and the level of the state (welfare regimes – macro level). Various strands of research have dealt with these different levels of aggregation. The study of social solidarity has mainly looked at the dispositions and activities of individuals in support of others, both within smaller groups and/or extended communities (Hechter 1987, Widegren 1997; Oorschot et al. 2006; Delhey 2007). Studies of civil society or social movements have extended the focus of analysis towards solidarity within organisational fields, arguing that civic organisations are an important collective means of mobilising, organising and perpetuating solidarity in terms of binding norms, commitments and behaviours (Smith 2002; Balme and Chabanet 2008; della Porta and Caiani 2011; Baglioni and Giugni 2014). Finally, we have an extensive field of research devoted to institutionalised forms of solidarity. These scholars have indicated that solidarity is built into constitutions (Brunkhorst 2005; Ross and Borgmann-Prebil 2010; Bellamy et al. 2006; Dalessio 2013; Rodotà 2014) but also into policy fields and/or specific policies, as research on welfare states and social policies has argued (Esping-Andersen et al. 2002; de Bùrca 2005; Morel et al. 2012).

The differentiation of solidarity along various levels of aggregation is important for better understanding the complexity of the topic. In fact, solidarity is not only enacted at the micro, meso and macro levels at the same time—through informal citizens' networks, civil societies or welfare states. These various levels are also highly interdependent. Individual dispositions and practices of support for others might be promoted or inhibited, for instance, via the (un)availability of civic organisations and social movements, and/or through the (un)availability of political, institutional or

legal opportunities for civic engagement and volunteering. At the same time, the legitimacy and functionality of the welfare state are conditional on public support through elections as well as on the payment of taxes and contributions. At the same time, they are also conditional on the active participation of its citizens through civil society organisations and social movements in terms of political advocacy and/or service delivery.

The research of the TransSOL project condensed in this book is embedded into these debates and in the evidence generated via previous studies. The national case studies embrace the conviction of scholarly writing that it is necessary to do justice to the specificity of solidarity when compared with other concepts, such as help and care, philanthropy and empathy. Consequently, our analyses call attention to a number of specificities of solidarity. First, if solidarity is tied to rules, rights and obligations, then a careful analysis of institutionalised solidarity in the public domain is of the utmost importance. It will demonstrate to us which social and civic entitlements, rights and obligations are prominent and/or marginal in the political and legal domains of our various countries. Second, the aspect of conditionality is most often than not part of the application and enactment of solidarity in empirical reality. For this purpose, the analysis cannot be restricted to an inquiry into the role of solidarity as a general principle of human conduct, political regulation and public law. It also has to consider the role of solidarity in specific policy domains. This means we can learn much about solidarity as a legal principle and political norm once we compare various policy domains—in our case, the fields of unemployment, disabilities and migration/refugees. Third, solidarity is a highly contentious principle, as nation-states, corporate actors and individual citizens will have different views about the scope and orientation of solidarity and thus about the group of people to consider, the range of rights and obligations to stipulate, and the breath and length of support measures. Countries and policy domains do diverge in the type of conditionality they specify and in how they have tried to agree on diverging interests and views. Finally, although this book is mainly focused on the institutionalisation of solidarity within legal systems and political institutions (e.g. constitutions, policy-field-specific legislation and case laws), our analyses are guided by the conviction that a proper understanding of institutionalised solidarity at the state level requires a more ample framework of analysis that takes both the socio-economic context and the views and reactions of citizens and civic groups into consideration.

The Socio-Economic Context and the Crisis

Before we move to a description and analysis of solidarity as a legal principle and reference point of public policies, we wish to delineate the socio-economic context of the eight countries under analysis, as well as the impact of the various crises that have been felt in Europe since 2008. This contextual information is important for better understanding and assessing the role and position of solidarity within the legal systems and public policies of the eight countries. On the one hand, it is necessary to provide a picture of the socio-economic situation in these countries to identify the societal grievances and cleavages (e.g. poverty, inequalities or exclusion) to which solidarity as a legal and political principle responds and/or might need to react. On the other hand, we wish to provide information on institutional and political indicators that reveal the level and extent of redistributive social policies in these countries, as a proxy of what the principle of solidarity entails in terms of public policies.

The data we have assembled from various compendia and statistical databases (see WP1-Dataset: http://transsol.eu/outputs/data/) largely confirm two main findings from previous research: European countries diverge considerably with regard to societal cleavages and redistributive policies addressing these problems; at the same time, the various crises affecting the EU since 2008 are increasing the differences and inequalities among the countries. In fact, research has corroborated the considerable differences among European countries pertaining to economic wealth and societal grievances. Inequalities in terms of economic wealth (countries and regions) and income distribution (households) have long been known to exist when comparing European countries from the richer northern regions, those less well-off nations in the South, and the Eastern European accession countries (Brandolini and Smeeding 2006; Beckfield 2006; Allmendinger and Driesch 2014). Differences in social inequalities (e.g. poverty rates or income differentials) were determined based on various factors, such as labour markets and employment patterns, industrial structures, research and development, education and vocational skills, or the spatial location within Europe. However, social policies also have their effects when considering redistribution programmes' ability to decrease the risk of poverty, compensate for the loss of income and provide assistance through services (Caminada and Goudswaar 2009). Here, research has developed impressive insights into various welfare regimes marked by varying degrees of social security coverage, marked by the generosity of social

benefits and governed by the rationale of institutions such as the state, the market, the family and civic associations (Esping-Andersen 1990 and 1996; Pierson 1994; Castels 2004). Mainly, research distinguishes among a benevolent and universal Scandinavian/Nordic model; a moderately generous, conservative and neo-corporatist continental model; and a residual and familialistic Southern model (Esping-Andersen 1996, Gallie and Paugam 2000; Cinalli and Giugni 2010).

These realities, however, have evolved across time. Research has confirmed, for instance, that economic and social inequalities among countries and regions have decreased since the 1990s (Heidenreich and Wunder 2007; Geppert and Stephan 2008)—before the outbreak of the Great Recession in 2008. However, the situation since then has been different because economic and social inequalities among countries (and among regions within countries) are on the rise again. With regard to labour markets, studies converge in identifying a gradual 'dualisation' between insiders and outsiders (Boeri 2011; Emmenegger et al. 2012; Barbieri and Cutuli 2016; Heidenreich 2016). This corresponds with increasing levels of poverty, material deprivation and socio-economic segregation (Bárcena-Martin et al. 2014; Marcińczak et al. 2015).

Data available through Organisation for Economic Co-operation and Development (OECD)–compendia and Eurostat statistics corroborate these developments. Overall, this demonstrates that the EU has experienced a sharp decrease in its economy, thus pushing the European economy into a recession. The following graph summarizes the situation across countries with regard to two indicators that mirror the development of the economy and public finances. Denmark, France, Germany, Greece, Italy, Poland, Switzerland and the UK present very diverse socio-economic backgrounds, with Greece representing the most deprived landscape and Switzerland holding the most privileged position (see gross domestic product [GDP] per capita). The economic crisis has evidently exerted a strong impact on the socio-economic structures of the studied countries. Looking at growth in GDP between 2010 and 2013, we can say that the crisis has not notably affected economic growth in Poland and Switzerland, and it has had a temporary impact on the economy in countries such as Germany, France, Denmark and the UK (Figure 1). The crisis has led to a considerable recession mainly in Italy and, above all, in Greece. In addition, in Italy and Greece, the economic crisis was accompanied by a debt crisis, which pushed governments to undertake severe retrenchment pol-

icies and austerity measures. In 2016, government debt was still at 181% of GDP in Greece and 155% of GDP in Italy (Figure 2).

Figure 1

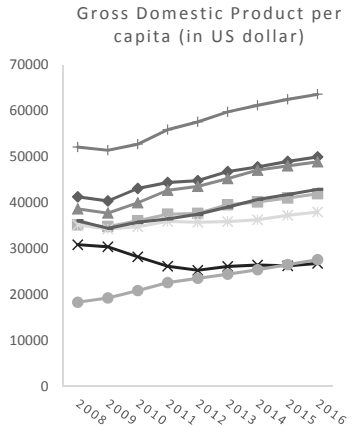
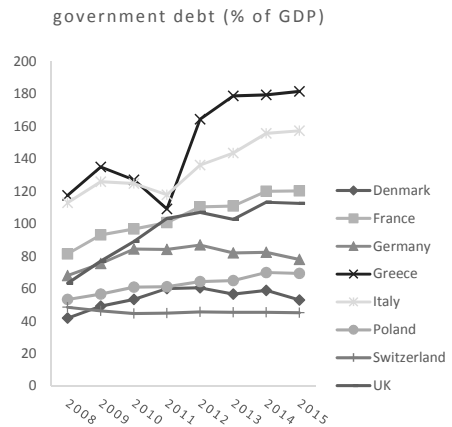


Figure 2



Source: OECD and Eurostat statistics

The financial and economic crisis has also hit hard on the social structures of EU countries, bringing economic grievances and poverty back onto the political agenda. These developments have also affected the welfare state, which has had problems with addressing the population's various needs due to increasing the numbers of beneficiaries and limited public funding. Figure 3 provides empirical indications for this development. It indicates that the proportion of people in the population who live under economic strain (i.e. the percentage of households acknowledging that making ends meet is difficult) is particularly prominent in Greece, followed by Italy and Poland. In Greece, 24.2% of households were already facing economic difficulties in 2010, but the datum worsened during the crisis, reaching its peak in 2013-14, when almost 40% of households suffered under the economic strain. Interestingly, however, except for the period of peak crisis in 2013, in Italy, the percentage has diminished, reaching its lowest level in 2016 (which nonetheless remained high at 10.8%). A similar observation can be made for Poland. In Germany, Denmark and France, economic strain remains low, even though all three countries experienced minimal increases in the number of households making ends meet with difficulty during the crisis, with this number decreasing in recent years.

The same trend applies in the UK, where variations were stark. In 2010, only 3.9% of Swiss households were experiencing economic strain, and this percentage diminished during the crisis (although not linearly), reaching its lowest rate (2.8%) in 2016. The Polish case is particularly interesting: While presenting the third-highest rate of economic strain in 2010 (14.1%), it experienced a marked decrease and attained an 8.4% rate in 2016.

Figure 3

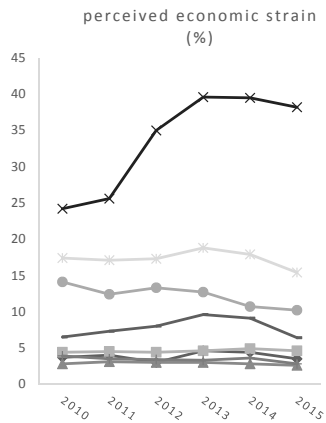
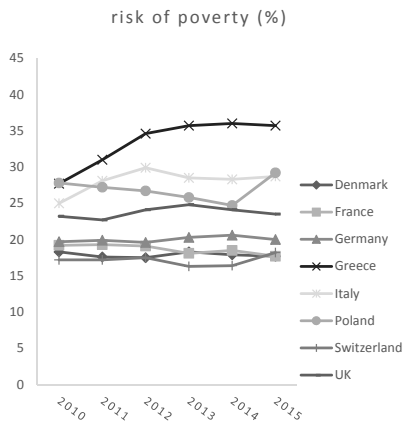


Figure 4



Source: OECD and Eurostat statistics

A similar picture is drawn when we considering the rates of risk of poverty, which correspond to the percentage of people with incomes below a threshold of 60% of the national median equivalised disposable income, including social transfers (Figure 4). This percentage is high in all of our countries, with the most alarming percentage being in Greece, where up to 36% of the population was at risk of poverty in 2014. After Greece, the countries most severely hit by the risk of poverty and social exclusion are Italy (where the crisis increased the percentage of the population at risk), Poland (characterised by a decreasing trend) and the UK (where, similarly to Italy, the crisis increased the percentage of the population at risk). It is interesting to note that the objective and subjective measures do not correspond everywhere. The subjective feeling of economic strain corresponds closely to the relative income situations of households in Greece, also across time, whereas the levels of subjective deprivation are much lower

in the other countries, as one would assume when looking at the statistical measure of the households' income situations. Here, the share of people feeling deprived is still considerable, but people tend to perceive their situations as less troublesome as the statistical threshold suggests.

Overall, the data corroborate the fact that the economic and financial crisis has had considerable effects on economic wealth, public finances and social grievances. This is clearly evidenced if we focus more closely on the three target groups in which our study is mainly interested: the unemployed, people with disabilities and refugees and migrants. Official statistics demonstrate that the number of people affected by vulnerability in these areas is considerable in all countries, and it has tended to increase since 2008. Figures 5 and 6 disclose these developments for the number of jobless people and people with disabilities suffering severe material deprivation. In all countries, unemployment among the general population has been on the rise since the outbreak of the economic crisis in 2009, even though the effect was rather short term in Germany and Switzerland. Unemployment rates have increased steadily since 2008 for most countries and climaxed in Denmark and the UK in 2011, in Greece and Poland in 2013, and in Italy and France in 2014 and 2015 respectively. More recently, unemployment decreased in this second group of countries as well, namely from 2014 in Poland and Greece, from 2015 in Italy and from 2016 in France. However, in 2016, it remained higher than in 2010 in Italy (11.7%), in France (10.1%) and in Greece (23.6%), whereas in Poland, it was lower (6.2%).

Financial hardships have not only impacted the jobless population but also people with disabilities, even though the experiences within the eight countries are quite different. The percentage of people with disabilities who indicated being exposed to severe material deprivation is highest in Greece, Poland and Italy, and it is lowest in Switzerland and Denmark. The economic and financial crisis has affected the disabled population particularly in Greece, Italy and the UK, as the proportion of those suffering deprivation has increased dramatically; in Denmark a regression can be reported for the years after 2012. In contrast to these countries, the situation has improved in Poland, France and Switzerland given that the number of people acknowledging living in precarious conditions has decreased significantly.

Figure 5

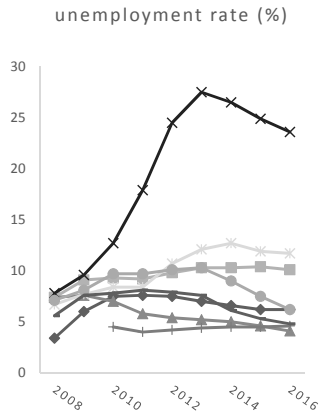
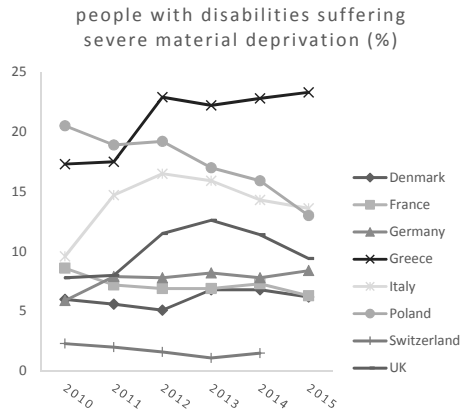


Figure 6



Source: Eurostat statistics

In the field of migration and asylum, the statistical data reveal considerable changes over time, particularly towards the end of our period of analysis. In fact, a total of 3.8 million people immigrated to one of the EU's 28 member states in 2014.[2] Inflows of the foreign population continued to increase in 2015 but not everywhere or to the same extent across European countries. Among the countries under our analysis, Germany reported the largest total number of immigrants (around 1.5 million) in 2015, followed by the UK (631,452), France (363,869) and Italy (280,078). Regarding asylum statistics, we look at first-time asylum applicants in Figure 7, thus discounting repeat applicants in this country. The number of first-time asylum applicants in Germany increased from 442,000 in 2015 to 722,000 in 2016. Greece and Italy also reported large increases (both in excess of 30,000 additional first-time asylum applicants) between 2015 and 2016. In relative terms, the largest increase in the number of first-time applicants was recorded in Greece (more than four times as high). By contrast, Denmark reported less than half the number of first-time asylum applicants in 2016 as in 2015. Germany's share of the EU total increased from 35% in 2015 to 60% in 2016, whereas other EU countries displaying noteworthy increases in their share of the EU total included Italy (up 3.4 percentage

2 See http://ec.europa.eu/eurostat/statisticsexplained/index.php/Migration_and_migrant_population_statistics.

points to 10.1%) and Greece (up 3.2 percentage points to 4.1%). However, we need to contextualize these figures by relating them to the sizes of the countries' populations. As Figure 8 reveals, we see that the number of overall asylum applications per 100 inhabitants increased not only in Germany but also in Switzerland, Denmark, Italy and Greece in 2015. For the countries that our study did not cover, a large proportion of asylum applicants were also counted for 2015 in Hungary, Sweden, Austria and Norway. Overall, we thus see that the deteriorating situations in the bordering regions of Europe stemming from war, persecution and poverty have had strong repercussions for many European countries, thus challenging the little-developed ability of the EU and its member states to find common policy solutions.

Figure 7

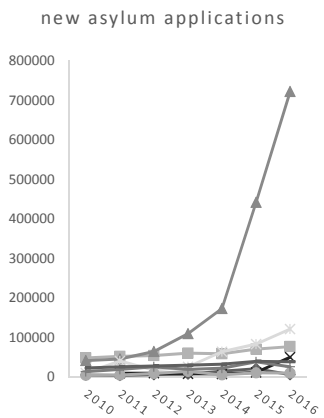
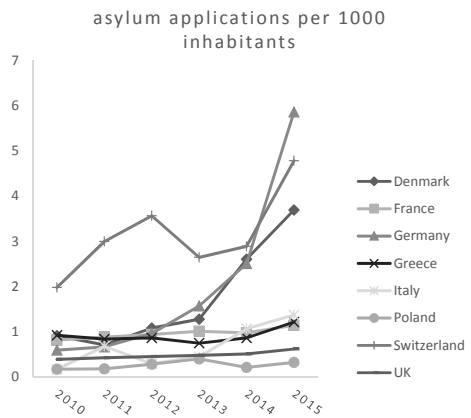


Figure 8



Source: OECD Database on International Migration; Eurostat Database on asylum and general population (own calculations)

In addition, all of these developments have had repercussions for the welfare state because the financial and economic crisis has dampened the state's ability to respond to the growing social problems, particularly among the most-deprived population groups. To provide a concise picture of these repercussions is not an easy task given the variety of welfare regimes and programmes in Europe. In general lines, studies have talked about a gradual retrenchment of the welfare state since the 1990s (Pierson 1994 and 1996; Bonoli et al. 2000; Ebbinghaus 2015). This does not mean

that redistributive policies are generally on the retreat. On the contrary, social expenditure has been increasing in most countries, either following and reflecting economic growth in terms of GDP rates, and/or as a reaction to economic downturns and the subsequent rise of social benefits to compensate for market inequalities (Kenworthy and Pontusson 2005). However, a general trend exists to privilege in-kind benefits rather than cash benefits, to compensate for fewer market forces and to lower the effects on the reduction of social inequalities (Elsässer et al. 2015). Particularly since the Great Recession, we have seen welfare state reforms governed primarily by efficiency and austerity concerns (Kersbergen et al. 2014; Hermann 2014), and we have also witnessed major cutbacks in these countries particularly affected by the economic crisis and the agenda of EU-austerity policies (Zartaloudis 2014).

The statistics corroborate this uneven development across European nations. As revealed in Figures 9 and 10, we see that social expenditures diverge considerably. When considering expenditure per capita, it is Denmark, Switzerland, Germany and France that present the highest amounts of public funds devoted to social protection. Poland and Greece are at the other end of the group, with the lowest per capita rates of our eight countries. Expenditures have increased per capita in most countries, except for Greece, where they have decreased since 2009, and in Italy, where they remain stable since 2010. This development is echoed largely by the total social expenditure amounts, measured in terms of shares of the GDP. In all countries, the public funds invested in social policies increased between 2008 and 2010 as a reaction to the crisis and the growing need for assistance for the rising rate of unemployed and poor people. Since then, social expenditures have increased in most countries in absolute terms, but they have developed in parallel to the growth of the economy, thus maintaining a stable share of the GDP across time. Only Greece has experienced a notable welfare retrenchment since 2012.

Figure 9

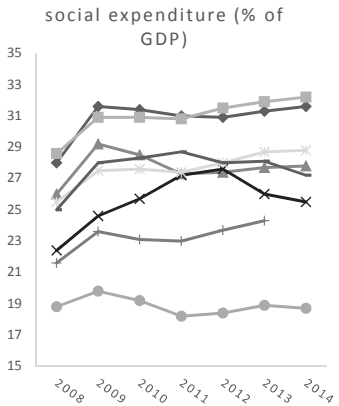
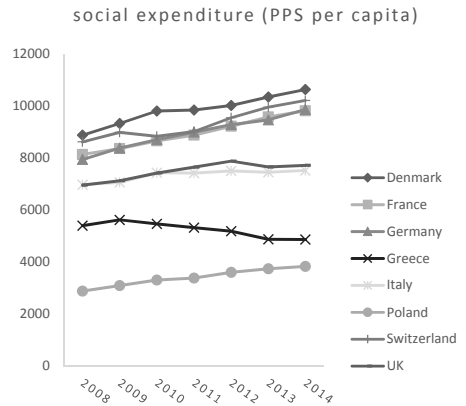


Figure 10



Source: Eurostat statistics

Solidarity as Public Virtue? The Structure of the Volume

Solidarity is necessary now more than ever in Europe in its multiple dimensions and at the various levels of analysis as the data discussed above make palpable. Beginning in 2008, European countries had to struggle with a serious economic recession, growing public deficits, rising unemployment rates and material deprivations, human tragedies of war and forced migration. In all of these areas, governments and EU institutions were called to act in solidarity within deprived groups in desperate need of help as well as with other member states struggling with the consequences of these crises. The aim of the following chapters is to monitor, analyse and evaluate the policy responses to these challenges. They reveal that these crises have affected diversely the eight countries included in this study and also that the countries have responded differently to the problems. The book moves from Denmark, Germany and Switzerland, where the effects of the crisis, as well as the related legal and policy changes, have been moderate, to Greece, at the far end of the spectrum, where the crisis hit hard and crisis-driven reforms have been severe and radical, the book illustrates the legal and policy responses to the economic and migrant crisis at both the EU and nation states levels. In the three policy domains of unemployment, disability and immigration and asylum solidarity

however, crisis-driven legislation and policies are hardly inspired by solidarity. And this is the product of a precise political orientation, as at both national and European level solidarity is a basic principle decision-makers could have turned to. This juxtaposition is the object of the volume's enquiry.

The book is structured in a way to provide a systematic map of solidarity as a legal and political principle and of its critical enforcement in three crucial policy domains. It consists of three main parts. In Part I we try to understand what solidarity means in Denmark, France, Germany, Greece, Italy, Poland, Switzerland and the U.K. Moreover, we show whether the constitutional and legal systems mirror this specific meaning of solidarity and which different notions of solidarity they advance. In these cases, we inquire about the "transformative" purpose of the constitutional and legal system, analysing the most critical aspects of the process of social change through legislation. Finally, we ask if constitutions and laws remain "laws in the books" with little, or no adherence at all to the socio-political and cultural reality or if they translate into "law in action", becoming crucial instrument for the promotion of solidarity.

The second part of this book is devoted to the discussion of EU legal framework and case-law. It highlights the critical implication of the principle of solidarity during the crisis and provides a general overview of the EU legal framework and its direct enforcement through selected case-law. A particular emphasis is placed on the fields of unemployment, immigration/asylum, and disability.

The third part moves back to the eight countries. It focuses on the fundamental principles and legislation in the areas of unemployment, immigration/asylum, and disability during the crisis, with a critical analysis of the effective enforcement of the regulation and legislation. Special attention is paid to constitutional case-law and current political debates, and their impact on the level of rights' guarantee and enforcement. We question whether the legal and policy framework in the three areas of vulnerability can find any anchoring the principle of solidarity, and if and how solidarity has played a role during the crisis to mitigate or to strengthen crisis-driven legislation in the countries where such measures have been adopted. It thus studies the direct and indirect effects of the legal and political context on European solidarity. The aim is to provide a more precise analysis of the institutional and normative framework in reaction to the crisis in these three policy domains.

The book concludes with a comparative discussion of the findings of the three central parts pinpointing the arduous enforcement of solidarity as a legal and political paradigm in hard times. Other principles and values primed over solidarity: the rule of the market, economic and fiscal stability and solvency, security. Even the Courts, that in some countries proved to be quite effective in the protection of solidarity as constitutional paradigm against new retrenchment, austerity and anti-immigration legislation and policies, have not represented a very strong bulwark. Moreover, also at the European level, the jurisprudence of the Court of Justice has recently marked a trend reversal, opting for a restrictive interpretation of the solidaristic approach of social benefits. But no jurisprudence, no policy, no legislation can not be reversed once again. Solidarity remains strongly rooted at the constitutional level and as founding principle of the EU, a disposable value for future application.

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Part I:

Solidarity as a Legal and Constitutional Principle in European Countries

Denmark

Deniz Neriman Duru, Thomas Spejlborg Sejersen and Hans-Jörg Trenz

Introduction: Solidarity in the Danish Welfare State

Since the Nineteenth Century, the Danish Welfare State has been grounded in the so-called 'Danish ethos of solidarity', which reflects the idea of a unified society that aspires for equality among its citizens and attributes a strong role to the state to redistribute income and provide social security for everyone. In the process of establishing the Danish Welfare State according to the universalistic principle of inclusion, has become embedded and is rarely contested. The term solidarity is therefore rarely used in explicit terms in legal texts and documents, while its meaning is contained in the notion of 'welfare'. In recent years, these founding principles of the Danish Welfare State have become increasingly challenged and replaced by a more libertarian, individualistic approach to solidarity.

In this chapter, we first trace the origins of the Danish Welfare State, going back to the Constitutional Act of Denmark from 1849 (*Grundloven*).[1] We then explore the recent transformation of the Danish welfare regime, which needs to be understood partly as a response to globalisation and liberal European market integration, and partly in relation to the realignment of the solidarity principle to respond to the changing demands of various groups within society. The welfare state is thus adjusted to meet new transnational challenges and adapt national law and policies to European standards, but it also faces various domestic pressures: First of all, the ethos of solidarity is questioned by rising costs of welfare services and a tax burden that many Danish citizens consider as excessive. Secondly, it is challenged by growing social inequality and a growing population of people under risk of social exclusion. Thirdly, the ethos faces the challenge of cultural diversification and increasing controversies over the extension of welfare state services to different categories of immi-

1 The Constitutional Act of Denmark: http://www.ft.dk/Dokumenter/Publikationer/Engelsk/~/media/PDF/publikationer/English/The_Constitutional_Act_Of_Denmark_2013.pdf.ashx.

grants (EU and non-EU citizens and refugees). Lastly, it is challenged by the ongoing economic and financial crisis and the need to secure the competitiveness of the Danish economy on the global market. Although the majority of Danes continue to uphold their belief in this ethos of solidarity, there is a growing gap between principle and practice, which is also the background of this chapter.

Solidarity: From the Danish Constitution to the Danish Welfare State

The Principle of Solidarity in the Constitutional Act of Denmark from 1849 (Grundloven)

The foundation of modern Denmark as a constitutional monarchy goes back to the Nineteenth Century. The division of powers, legal protection and civic and political rights of its citizens were first formulated in The Constitutional Act of Denmark (*Grundloven*), which was passed on June 5th, 1849. As one of the oldest constitutions still in place in Europe, *Grundloven* establishes the tripartition of power and contains the most fundamental provisions of Danish society dealing with matters such as "*democracy, free choices, legal protection by independent courts and laws aimed to protect civic and personal rights, the freedom of speech, and the rights to unite and associate*" (Christensen et al. 2012, 19). Most importantly for our purpose, *Grundloven* lays the foundations for solidarity in Article 75 (2):

> "Any person unable to support himself or his family shall, when no other person is responsible for his or their maintenance, be entitled to receive public assistance, provided that he shall comply with the obligations imposed by statute in such respect".

Grundloven has been revised several times – in 1866, 1915, 1929 – latest on June 5th, 1953 (Christensen et al. 2012, 19). However, in contrast to the other European countries (e.g. Germany and Italy), *Grundloven* has more of a symbolical value than practical relevance in jurisdiction, what Christensen et al. (2012, 34) refer to as, "*Grundloven* regulates the frame, not the entire picture". In the absence of a Constitutional High Court, case law that explicitly refers to constitutional provisions is limited. Solidarity is thus put into practice mainly through state intervention and negotiations and is rarely enforced by law. Before we turn to the constitutional provisions of solidarity and related case law of solidarity, we consider the emer-

gence of the welfare state and the socio-cultural background of solidarity in Denmark.

The Emergence of the Danish Welfare State

The infrastructures of the Danish Welfare State are said to have developed since 1870, more forcefully in the 1920s, and up until the Oil Crisis in 1974 (Kærgård 2002; Kærgård 2006). This development has been facilitated by a number of smaller and bigger reforms, through collective agreements (*overenskomster*) between the trade unions and employer associations. These are mediated by political parties and the government (Christiansen and Petersen 2001). In the tradition of Danish consociationalism, major welfare policy reforms do not divide the political forces, but are carried by broad legislative coalitions that seek agreement among all partners involved (Christoffersen et al. 2014, 144). These particular features of consociational democracy further explain the low-key role played by Danish jurisdiction, which is often not needed for conflict settlement.

Esping-Andersen (1990) classifies the Danish Welfare State within the Social Democratic Nordic Welfare Model, where a strong state builds on the principles of universalism by providing tax-financed benefits and services. Traditionally, solidarity has a high value in the small and egalitarian Scandinavian societies and can rely on the homogenous composition of the populations in terms of ethnic, religious and linguistic unity (Stjernø 2004, 109). The expansion of social rights was further backed by the strong role played by the Social Democratic Parties, who formed the government over most of the Twentieth Century and entered close coalitions with the trade unions. In the following, we outline the emergence of the Danish Welfare State in the ways in which the state, over time and through successive policy and legislative changes, has provided social security to e.g. workers, women, the sick and the disabled.

At the beginning of the Twentieth Century, the trade unions' unemployment funds were recognised by the state, which supplemented their financing (Christiansen and Petersen 2001, 179). Along with this early social legislation, the employer associations and national trade unions built a model for negotiation and conflict resolution based on an autonomous labour market with the active consent of the state (ibid, 180). In the 1920s and 1930s, the Social Democrats had significant support from the labour movement and the farmers. In 1930, the Social Reform Bill was passed,

which was considered as revolutionary at that time as it provided social security to all citizens regardless of their gender, class and/or social needs (ibid, 182). These principles established in the interwar period still form the basis of today's welfare state in Denmark. Its golden era, however, was the period between 1950 and 1973, when economic growth and flourishing industries led to a surplus that was taxed and redistributed (ibid, 184-186.). In this period, the Danish Welfare State became more inclusive, particularly encouraging female labour market participation. Gender equality was enhanced in 1925 by important changes in family law: the man was no longer the head of the family.[2] In the 1960s, family reforms such as financial support for single mothers, and the provision of public daycare for children, aimed to free house-bound women from domestic duties and encouraged them to enter the labour market (ibid, 186). This resulted in an increase in female labour participation to 75%, which was only a few percent lower than the participation of men (ibid, 186). Another important reform of the 1970s was related to healthcare, which from then on was provided through a universal welfare state system funded by taxes and replacing the old sickness insurance funds (ibid, 190).

The Oil Crisis in 1973, followed by an increase in unemployment, low growth and inflation, gave way to the retrenchment of the welfare state. Among these new restrictions, a reform of 1993 aimed at the 'activation' and 'self-empowerment' of unemployed, investing in skills training, but also narrowing down the eligibility criteria for unemployment benefits and shortening the period one could receive benefits (ibid. 194-195).

The Socio-Cultural Dimensions of Solidarity: High Levels of Taxes, Trust and Voluntarism

The Moral Dimension of Solidarity

The Danish ethos of solidarityis deeply engrained in national history and was first formulated in the mid-nineteenth century by the influential protestant moral philosopher N.F.S. Grundtvig and his vision to build a community of solidarity and responsibility, in his own words, a country in which "few have too much and fewer too little" (Einhorn and Logue 2003,

2 See Pedersen (1971) for changes regarding family law.

192). As part of this protestant tradition, the ethos of solidarity is often moralised in public discourse, emphasising the responsibility of the individual towards the community and blaming the abuses of single beneficiaries or groups who are perceived as relying excessively on welfare services. There is an emphasis on citizens' reciprocal obligations and on values that all Danes share in principle and in practice. At the same time, it is seen as the state´s responsibility to make the necessary efforts to provide the necessary material conditions for everyone to conduct a life with dignity.

This moral dimension of solidarity is still upheld in current public discourse on Danish national identity. In a recent survey, commissioned by the Ministry of Culture, Danes voted on a cultural canon listing the 10 most important values for 'Tomorrow's Society of Denmark'. The welfare stateis praised as one of the core values as well as volunteer work and trust as others. As the canon states: "Citizens of Denmark enjoy great protection against social and physical risks. The Danish people benefit from a large number of public aid".[3] This is meant to defend, in particular, the universal and tax funded welfare state system, which is seen as superior to the insurance-based welfare system in other parts of Europe. In the description of the canon, explicit reference is made to the principle of solidarity. The excerpt reads as follows:

> In the long term, such awareness can spark a better general education, sense of self and solidarity – and prepare the ground for better integration – including non-ethnic Danish citizens. The Minister for Culture would also like to see the canon process result in material/content that can inspire teaching in primary and lower secondary schools, upper secondary schools and adult education schools, the citizenship test and maybe UNESCO's list of intangible cultural heritage. The purpose of the canon is also to make it clearer what creates our national identity and cohesion, to give us all a better sense of self and general education, create solidarity and make us a people of increased cultural awareness and common cultural experience.[4]

3 See https://www.danmarkskanon.dk/om-danmarkskanonen/english/ (last accessed 15.12.2016.).

4 See https://www.danmarkskanon.dk/om-danmarkskanonen/english/ (last accessed 15.12.2016.).

Redistribution through Taxing and High Levels of Trust

An important pillar of solidarity in Denmark is the fiscal system and its schemes of redistribution. Like other Scandinavian countries, Denmark is distinguished by heavy income taxes that are meant to protect the low-income population and in turn facilitate a more equal income distribution. Denmark is estimated to be one of the heaviest taxed countries in the world: Marginal income taxes are a fraction over 60 % for half of the population; the value added tax is 25 % (with few exceptions); cars are taxed with an additional 120 % (Christoffersen et al. 2014). According to Christoffersen et al. (2014, 40): "Denmark's pretax inequality is generally very similar to the EU-15 average but then redistribution heavily reduces inequality."

Redistribution by taxing is the most important instrument of the state to guarantee cohesion in Denmark, alongside the constitutional and social rights of its citizens.[5] As part of these redistribution schemes, Denmark grants, for instance, free education and educational grants that cover living costs of all Danish (and EU) students. Around 300,000 Danes benefit from this type of educational support with the annual budget amounting to one per cent of the Danish gross national expenditure (Uddannelses- og Forskningsministeriet 2016). Denmark further grants healthcare to all citizens, financed through local taxation. It is interesting to note that redistribution through taxes is rarely framed explicitly as a solidarity issue, as this can be found, for instance, in legal texts and documents in Germany. One reason for this might be that reciprocal solidarity through taxation is much less contested in Denmark since the principle of equal distribution of wealth is widely accepted and questions of redistribution between regions or municipalities rarely arise.

One could also argue that the Danish Welfare State and the high level of taxes can only be sustained by a correspondingly high level of trust between the population and its public institutions. And according to Christoffersen et al. (2014, 139, 174-177), this is the case in Denmark. Denmark, as shown in ESS surveys, places a high level of trust, in generic terms, in its fellow citizens, its institutions and its rule of law. And for several consecutive years, Denmark has been ranked as the world's least

5 As stipulated by § 75 and 76 in Grundloven, these are mainly the right to work, the right to social security and the right to education.

corrupt and most transparent country.[6] This is enforced by the fact that Denmark is a homogenous and small country with what could be termed "a tribal mind" (Olwig and Paerregaard 2011).

Volunteering in Denmark

On the official website of Denmark, volunteering is described as one of the corner-stones of the Danish society, and volunteerism, trust and social welfare are represented as complementary.[7] Here as well, no explicit references to the principle of solidarity are made, but the meaning of reciprocal solidarity comprises the general notion of welfare. While the welfare state provides the structural and economic basis for social care, such as taking care of elderly people, the volunteers contribute to the social aspect of the same case. This entails e.g. voluntary organisations such as *Ældre Sagen* that coordinate the so-called "besøgsvenner" – people who visit and spend time with the elderly.[8]

Most of the voluntary organisations are in the field of arts, sports and hobbies. In the European Value Survey 2008 survey, 74.8% of Danes reported being a member of a voluntary association (Christoffersen et al. 2014, 168). This is related, for instance, to the high level of individual resources (educational level and income) that have a strong positive effect on membership in voluntary associations (Christoffersen et al. 2014, 170). Social cohesion and trust is thus enhanced by the dense network of voluntary associations, and Denmark can be said to have a strong and well-functioning civil society. In Denmark as in other Nordic countries, we find strong overlaps between the public and the voluntary sector.

Apart from these voluntary civic networks, the high working ethos helps to sustain the welfare state structure. This is reflected in high levels of trade union membership. The great majority of employers in Denmark are organised into trade unions, which do not only play an important role

6 See http://www.transparencyinternational.eu/.
7 http://denmark.dk/en/practical-info/work-in-denmark/volunteer-work-in-denmark.
8 https://www.aeldresagen.dk/viden-og-raadgivning/hjaelp-og-stoette/aktiviteter/aktiviteter/besoegsven.

as a social partner, but are also essential for salary negotiations and the administration of unemployment funds.[9]

In conclusion, the welfare state can be said to form part of the national identity in Denmark (Jöhncke 2011). The high taxes are returned to the people as free education, child, unemployment and sickness benefits, maternity and paternity leave (supporting both partners for up to a year), free and comprehensive healthcare, pensions, and cultural activities in the form of public libraries, theatre, radio and television. Esping-Andersen (1990, 23-25) states that the Danish Welfare State does not abolish class, but it creates across-class solidarity. A strong welfare system does, for instance, not lead to marginalisation of a group of welfare-dependent people, who are permanently excluded from the labour market. On the contrary, social security, as provided by the welfare state, has always correlated with a high participation of labour in Denmark.

The Constitutional Entrenchment of Solidarity: Case Law and Administration

The Constitutional Entitlement to Public Assistance and Relevant Case Law

In *Grundloven*, the articles concerning personal, political and human rights are defined as "inviolable" (§ 71 (1)) and mainly formulated in Chapter VIII (§ 71-79). Traditionally, these articles have been separated into three sections: the civic rights (§ 71-73), the social rights (§ 74-76) and the political rights (§ 77-79) (Christensen et al. 2012, 263). Here, we will focus on the social rights (§ 74-76) and specifically on § 75 (2) – the entitlement to public assistance when needed.[10] It is the legislative power which is responsible for enforcing § 75 (2) and providing the relevant social legislation to protect those who are entitled to assistance because they are "unable to support himself and his family" (Christensen et al. 2012, 383; § 75 (2)). This entitlement for assistance is not further specified, but

9 Christoffersen et al. (2014, 169) speaks of a more or less gentle pressure to join a trade union.

10 The other articles in the social rights-section include the right to work (§ 74 (1)) and the right to free education (§ 76).

is normally referred to as "a deserved subsistence level" (Rytter 2012, 376).

The courts have not paid § 75 (2) much attention for two reasons: first because the entitlement of public, social assistance is considered a self-evident and well-functioning condition in Denmark, and secondly because the direction in which the article has been written is somewhat general (as exemplified above): it simply leaves plenty of room for interpretation by the legislators (Christensen et al. 2012, 263). Examples of interpretation of the entrenchment of the § 75 (2) do, however, exist and here, we will discuss two recent cases from The Supreme Court: Aktiveringstilbud-sagen (U 2006.770 H) and Starthjælp-sagen (U 2012.1761 H).[11]

In Aktiveringstilbud-sagen, the Supreme Court ruled in a case between J and the Municipality of Køge. J had not received basic welfare assistance over a period of two months, because he had refused to participate in an obligatory work offer provided by the municipality. This, he claimed, was unconstitutional in relation to § 75 (2). The Supreme Court ruled in favour of the municipality, because J had not acted according to the aforementioned "obligations imposed by statute". Had he done so, he would have received a reasonable welfare assistance exceeding his subsistence level. Thus, the municipality did not act counter to § 75 (2) in *Grundloven* according to the Supreme Court (Christensen et al. 2012, 385).

In Starthjælp-sagen, the Supreme Court ruled in a case between A and the Municipality of Egedal. A argued that the municipality had acted counter to § 75 (2) in *Grundloven* because they had provided him with a type of welfare benefits (*Starthjælp* – starting allowance) – due to the fact that he was a refugee – that was substantially lower than other welfare benefits (here, specifically *Kontanthjælp* – social assistance). The Supreme Court ruled that under this specific circumstance, the Municipality of Egedal had not acted counter to § 75 (2) in *Grundloven*. The Court, however, qualified that disabled citizens (including A) are entitled to receive social benefits according to their deserved subsistence level – and that citizens can ask courts for clarification of their status (Christensen et al. 2012, 384-85; Starthjælp-sagen). This revoked the earlier interpretation that citizens were thought unable to invoke the social right of § 75 (2) before the courts (Christensen et al. 2012, 383). Still, the constitutional pro-

11 These cases translate into The Work Offer-Case and The Social Welfare Scheme for Immigrants-Case.

tection can be considered as weak, since no citizen has yet been able to prove in a specific case that the public has acted unconstitutionally in relation to § 75 (2). According to Peter Germer (2007, 328), this could change: If the impact of international human rights in the jurisdiction increases, people who are struck "disproportionately hard by legislative and socio-political entrenchments" would have the possibility to claim these rights specifically before the courts.

Solidarity as Municipal Self-Determination under Governmental Control

In this section, we first outline the territorial-administrative structure of Denmark in order to explain how solidarity is ingrained in the system, especially in the ways in which municipalities are constitutionally responsible for the distribution of the welfare services. *Grundloven* (§ 28) states that 'Denmark proper' consists of 3 parts: South Denmark, Greenland and the Faroe Islands. These three parts are semi-independent, thus not claiming to constitute a federal union that is based on redistribution and solidarity. Today, Greenland and the Faroe Islands have home rule; only some sectors like foreign and defence policy remain under the Danish government's responsibility (Christoffersen et al. 2014, 153). Both Greenland and the Faroe Islands are dependent on financial aid from South Denmark, which are subject to inter-regional negotiations. The system of annual financial aid that is established by the central government needs to be negotiated in terms of recognising at the same time the autonomy of Greenland and the Faroe Islands and the historical responsibility of Denmark towards its formerly dependent colonies. The administrative structure of South Denmark consists of three layers: a central government; 5 regions; and 98 municipalities. As Denmark is a highly centralised state, the regions and the municipalities have limited autonomy. The regions are mainly concerned with administering the hospital system; they have no tax authority but are financed through grants from the central government and payments from the municipalities.

The municipalitiesare conceived more as 'units of administration' and less as 'units of self-governance', but, in contrast to the regions, they have their own sources of tax income. Municipalities receive the main bulk of income taxes plus income from various other taxes (e.g. private property). These taxes vary but inequality of income across the municipalities is equalised (called 'Mellemkommunal udligning'), which implies that

wealthier municipalities have to subsidise the less wealthy ones (Christoffersen et al. 2014, 153-154). Even though the Danish constitution (§ 82) guarantees the right of the municipalities to manage their own affairs under state supervision, their autonomy is nevertheless restricted in practice. Solidarity in the form of municipal self-determination is thus balanced by vertical controls from central government. The law that was meant to define the sphere of autonomy of the municipalities has never been passed and hence the precise limits of municipal autonomy have never been formally established (ibid, 153).

The main task of the municipalities is to administer welfare services. In accordance with the strong egalitarian orientation of the Danish Welfare State, administrative autonomy of the municipalities in providing welfare services is limited. Christoffersen et al. (ibid.) report that most social transfers are given as a fixed amount of money, which is determined and regulated by law and "national minimum standards and national requirements". In all these redistributive decisions, the central government maintains a high level of control over the Danish municipalities, whose competencies can be delegated, but also withdrawn. In practice, the limits of the responsibilities of the municipalities are based on precedence and have changed considerably over time (ibid.). As Christoffersen et al. (ibid.) conclude: "The principle of subsidiarity definitely does not apply in the Danish case. While the principle of "municipal self-determination" is a forceful political battle cry regularly sounded when relationships between central government and the municipalities become strained, it has in fact very little judicial content." Every year, the central government and the association of Danish municipalities negotiate and agree on the municipal spending and taxing (Christoffersen et al. 2014, 156).

The volunteer sector often supports municipalities in the implementation of social welfare, such as providing day care, low-cost meals, rehabilitation, work integration and training. There is no legislation for cooperatives or social cooperatives in Denmark, so the social enterprises mostly define themselves as 'self-owning institutions' and adopt the legal status of cultural, educational, environmental and social institutions/organisations. As non-profit, voluntary assoications, their revenye typically comes

from a variety of sources. [12] Some also function in the form of associations and foundations and adopt the third-sector oriented-legal form (Hulgård 2006). Their legal framework is thus in between the public and the third-sector. Traditionally, there have been very close ties between voluntary associations and the municipal system. This close cooperation has however been affected by the municipal reform of 2008 when the number of municipalities in Denmark was reduced substantially (271 municipalities were amalgamated into 98 new and larger entities). This has increased geographical distance between local municipalities and voluntary associations, and made it less likely that local politicians or officials in larger municipalities have personal contact with and knowledge of smaller voluntary associations in the municipality (Levinsen et al. 2012, 398).

Labour and Social Rights

The Constitutional Act of Denmark only introduces the main principles for the regulation of labour, but states no specific provisions that regulate the rights of workers. There is no general statute regarding working conditions and industrial relations in Danish law (Hasselbalch 2005, 36). In the Constitution § 75(1) states that every citizen who is capable of working, is given the opportunity to work in order to sustain itself, with the condition that the labour is for the public good. Freedom of association provisions (§ 78) and freedom of demonstration rights (§ 79) make it possible for citizens to initiate trade union movements (Hasselbalch 2005). Unlike other European countries (e.g. France and Italy), the freedom to strike is not guaranteed in the constitution and Denmark has no special social or labour law courts (like, for instance, Germany). Cases affecting the social rights of the citizens (welfare, pensions or family related issues) are instead typically dealt with by the office of the *Ombudsmand* and by *Ankestyrelsen*. These social appeal boards were established as independent bodies by the

12 The main source of incomeof Danish voluntary associations comes from public funding, provided by municipality funds (Social- og Integrationsministeriet 2013, 28). Voluntary associations (charitable and/or non-profit) are in principle not liable to pay taxes. If a non-governmental association has an annual turnover of less than 50,000 DKK (roughly 6700 Euro), they are not liable to pay VAT (25%) either. See http://frivillighed.dk/guides/skat-og-foreninger http://frivillighed.dk/guides/moms-og-foreninger (last accessed 1.12.2017.).

Ministry of Social Affairs to deal with complaints and appeals brought forward by citizens or associations who claim that their rights have been violated by public or private authorities.[13] Other appeal boards exist that comprise different jurisdiction, e.g. in the field of education or immigration. The decisions of these appeal boards are legally binding and they can also decide to refer cases to the court, even to the European Court of Justice.

The aforementioned high participation in the labour market and a low unemployment rate contribute to the accumulation of taxes, which are distributed mainly in three forms of cash benefits for people with labour and/or social challenges: *starthjælp* (starting allowance), *kontanthjælp* (social assistance) and *dagpenge* (unemployment benefit). The logic behind these cash benefits is based on solidarity and residency (Pedersen 2016). If the person has been a resident in Denmark for 7 years, s/he is entitled to *kontanthjælp* benefits, if a spouse is not able to support them. If the person has been a resident for a less time, s/he gets *starthjælp*, which is lower.[14] The unemployment insurance fund is voluntary, but as the unemployment benefits are strongly subsidised by the government, most Danes are members of unemployment insurance funds (the so-called "A-kasser", see Christoffersen et al. 2014, 193). This insurance then allows them to receive up to two years of unemployment benefit.

Social security benefits and social services are as mentioned in section 1.2. financed by general taxation and their administration lies with the Ministry of Social Affairs. The Danish Welfare State and labour system is based on the 'flexicurity model', which allows the Danish labour market a 'hire and fire policy' that is safeguarded by the existing schemes of unemployment benefits. At the same time, welfare support is increasingly coupled with restrictive demands, which stipulate that recipients must make constant efforts to escape their situation of need. Long-term unemployment therefore remains exceptional. Also, the trade unions have adapted to the Danish flexicurity model and the need to keep the labour market dynamic. They support, for instance, short-term employment or short periods of notice (knowing that this can be advantageous for the employment of

13 See: http://www.udln.dk/da/GlobalMenu/english/Information_for_Applicants.aspx .

14 See European Commission 2013. http://ec.europa.eu/employment_social/empl_portal/SSRinEU/Your%20social%20security%20rights%20in%20Denmark_en.pdf See also part 1.3 of this chapter.

young people) or they help employees to negotiate flexible-time contracts, with working hours adapted to individual needs or wishes. Another Danish particularity is the so-called 'flex-jobs' for people with partial work capacities (e.g. disabled people). In these cases, up to two thirds of the salaries are subsidized by the welfare state (Bengtsson 2009). This principle of flexicurity is uncontroversial and accepted by all major parties. It is also supported by the two main organisations – The Danish Confederation of Trade Unions (LO) and The Confederation of Danish Employers (DA). These organisations, in cooperation with the Ministry of Employment have also jointly contributed to the development of the common principles of flexicurity in the EU.

The adaptation of the traditional welfare state regime to the need of flexible labour markets and liberal market economies has thus been rather smooth. On the one hand, Denmark has established one of the most developed welfare states in the world. This is maintained by heavy taxes and government expenditure which are higher than anywhere else in Europe. On the other hand, throughout the last 20 years, Denmark has very successfully defended its competitiveness on the international market (ranked 9th place in Global competitiveness report in 2010, see Christoffersen et al. 2014, 21). Denmark has liberalised the market and capitalist entrepreneurship has been allowed to expand with few state-owned enterprises, free trade and a flexible labour market. This is why Danish high-ranking politicians confidently promote Danish flexicurity as an archetypal model for the rest of Europe.[15]

Conclusion

The principle of solidarity is rooted in The Constitutional Act of Denmark from 1849 (*Grundloven)* granting public assistance for those in need. Over the years, the Danish ethos of solidarity has facilitated the establishment of a strong welfare system based on universal access to state-funded services. Denmark, like other Nordic countries, has a universal social-democratic welfare state tradition, where the welfare state and civil society are closely related. General trust in institutions, the Danish work ethic and

15 See the report of the Economic Council of the Labour Movement prepared by Lykketoft (2009).

volunteerism and last but not least high taxation contribute to the maintenance of the welfare state and its relative stability over time. Comparatively high levels of social security and standards of protection for vulnerable groups have been established through negotiations between the social partners and the state. This type of partnership model also accounts for a particular mode of conflict solution mainly through self-steering mediating bodies and administrative appeal boards and only occasionally through the courts.

Denmark, while being rooted in the same tradition as other Nordic countries, has nevertheless moved away from a traditional Scandinavian model in the important sense of having developed the flexicurity model, which is combined with a system of earning access rights to welfare benefits. This has laid the ground for an increasing emphasis on individual initiative, responsibility and merit. The flexicurity model has combined neoliberal and communitarian elements, and allowed the Danish government to insist on a more exclusive principle restricting services over time, e.g. for the unemployed and the immigrants. In light of these restrictions, the Danish Welfare State has been through a long phase of reconstruction and has adapted to an open European labour market. This is based on the assumption that high quality services are still available for those in need but that the number of recipients of these services is kept low. We thus observe a slow but steady transformation of the Danish Welfare State from the universalistic and inclusive model of high protection to the liberal model of subsidiarity, relying increasingly on market dynamics and providing only for the basic needs of its citizens.

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France

Manlio Cinalli and Carlo de Nuzzo

Introduction: Solidarity as a Fundamental Value

'Solidarity' has a central place in French politics. This complex notion has entered a large number of policies and provisions, such as new family arrangements beyond traditional marriage (*Pacte Civil de Solidarité*), income policies (*Revenu de Solidarité Active*), housing (*Fonds de Solidarité pour le Logement*), and fiscal policies (*Impôt de Solidarité*). Indeed, the concept of solidarity has become entwined with so many different meanings such as brotherhood, social justice, or community. Yet, beyond the popularity of its label, the fact is that solidarity is facing a very difficult time in France regarding its substance and scope. In particular, the economic crisis has followed in the wake of an even stronger rise of widespread neo-liberal opposition against social aid and welfare expenses. Major politicians, as well as many economists and prominent corporations, have thus put the finger on the obsolete French welfare state. Its generous social protection, in their argument, is the ultimate cause for falling competition and profit on the French market and globally. Within this context, the attack against solidarity has gone as far as forcing into the broader public debate a mischievous confusion between solidarity and parasitic assistentialism.[1]

In this chapter, however, we will also see that solidarity can remain a relatively widespread value and practice even in this constraining context, for example, through the social action of associations and activists that nurture solidarity more informally and through bottom-up agencies, rather than more formally or through top-down policies. Most crucially, solidarity is a key notion that crisscrosses the long historical experience of France, and hence, shows some strong resilience among actors in general. Solidarity has been flagged during the occasion of the Revolutionary birthday of

1 In the words of President Sarkozy in his letter to French electors "*nous avons consacré des milliards à maintenir des gens dans l'assistanat*".

the *Republique*, with some major thinkers famously framing the concept of solidarity as an undisputed Republican principle. Solidarity has a long history that finds its maturity in more recent history. Thus, Labour and Christian movements have reworked the notion of solidarity according to their own political understandings, and have left an enduring legacy that has nurtured the political tradition of the European welfare state. This paper will also show that this long historical trajectory developed as a succession of steps that were tightly intertwined with each other. Here suffice it to mention that the emphasis being put on notions such as redistribution (most strongly in the labour movement) and subsidiarity (most strongly held in the Christian movement) can be linked to much earlier developments, well before mass politics become dominant.

This chapter will examine some crucial dimensions for contemporary thinking and practices of solidarity, focusing in particular on the distinction between a more individual and a more collective perspective, as well as between solidarity in private and public law. For example, in private law, solidarity is often cast as a constraint when it comes to relationships between individuals, one that is completely detached from morality, often resulting from a contract, and therefore, the outcome of an explicit intention. By contrast, we will treat solidarity in public law as a bond of mutual assistance that refers to the notion of national solidarity; a special characteristic of French Republicanism is the strong association between solidarity and the French people (the nation). Not surprisingly, then, this paper will put emphasis on solidarity as a fundamental basis of law, which may still have a key role for the future of French politics. Suffice it to say that still today, during an era of profound socio-economic crises and political contrasts, solidarity could continue to provide, just as in the past, the main mechanism that helps to reconcile individual freedom with justice more broadly (La Rosa 2011). At a time when many French citizens, and Europeans more broadly, cannot decide between defending public services or getting rid of them, the concept of solidarity is of pivotal importance not only for the framework of the state and its relations with society, but also for rethinking the major neoliberal assumptions of individualism and autonomy.

The Long-Term Socio-Cultural Dimensions of Solidarity

A full engagement with the concept of solidarity in France requires us to look at the long-term continuous re-elaborations of this notion. Solidarity is symbiotically intertwined with the notion of 'fraternity', this latter being one of the three main pillars of French Republicanism together with 'Freedom' and 'Equality'. It is noticeable, then, that under Revolution, the National Assembly set up a committee for the extinction of poverty. This latter explicitly condemned the indifference of previous monarchy vis-à-vis poverty and misery, while at the same time introducing the right to assistance complementary to work.[2] Yet it should be emphasised that fraternity, with all its implications, was included in the official dogma of Republicanism only with some delay, as late as 1848, with the formulation of the Constitution. At this time, the "social question" emerged with force in political debate. The worst outcomes of industrialisation were starkly apparent to everybody, for example in terms of hunger, disease, and inhuman deprivation among the most vulnerable groups such as children, the sick and the poor. Indeed, new provisions emerged to establish some minimal protection of children on the labour market in terms of minimum age, working times, and school attendance.

Afterwards, the tight relations between solidarity and the French revolutionary roots were explicated once and for all by Léon Bourgeois, who famously framed the concept of solidarity as an undisputed Republican principle. [3] The full engagement of Bourgeois with solidarity has thus opened space for a number of questions, inquiring into solidarity as a guide for public action, as moral duty of mutual aid, or as a laicisation of

2 Cf. the Law 19 March 1793, which says that "Tout homme a droit à sa subsistance par le travail s'il est valide; par des secours gratuits s'il est hors d'état de travailler. Le soin de pourvoir à la subsistance du pauvre est une dette nationale". Similary, Article 21 of the Declaration of the Rights of Man and Citizen of 1793 states that "Les secours publics sont une dette sacrée. La société doit la subsistance aux citoyens malheureux, soit en leur procurant du travail, soit en assurant les moyens d'exister à ceux qui sont hors d'état de travailler".

3 "*Le mot de solidarité est partout aujourd'hui. Est-il plein de sens ou vide de contenu? Quelle est la portée, quelles sont les conséquences de cette idée?*". Cf. Bourgeois 2008.

charity.[4] The pre-existing idea of mutual solidarity among all human beings acquired a new stronger force as social action to counter-balance the otherwise uncontrolled market processes. It is not surprising then, that all these discussions on solidarity and the role of the state have brought about a new wave of social policies at the end of the XIXth century, dealing with abused children, the sick, the old, and the poor. Since then, solidarity could be developed in a way not only to describe the objective reality of human interdependence with its psychological and moral consequences, but also to underscore an altruistic ideal to replace Christian charity. The goal has been that of nurturing an institutional doctrine both scientific and practical, capable of producing political legislation and acquiring full centrality within French thinking.[5]

As a consequence, a new obligation has appeared, previously unknown: the strict duty of each individual towards the community, or social solidarityIt was this commitment that guaranteed the Republican affiliation of people coming from different political experiences, including French Socialists. The French approach has thus seen solidarity as growing through social action organised by the state. The state could be seen as being at the service of society, as the source of "public service" through its own institutions and decision-making (Duguit 1913, 15).[6] In fact, the concept of solidarity conciliated the ideas of freedom and equality, allowing for internal contradiction that had brought about the failure of Second Republic to be overcome.[7] It has thus provided essential components of French political mytho-motricity, that is a "*idée force*" that goes beyond the political divisions and the different republics that have followed up to the present

4 Léon Bourgeois had an outstanding political career, covering various positions such as President of the Council, Minister of Public Education, Minister of War, and First President of the Society of Nations. He won the Nobel Peace Prize and pushed for policy reforms such as the law of 1898 on accidents at work, and the 1901 law on the right of associationism. See also Berstein 2006.

5 Cf. work by H. Marion [1880] 1896, who has referred to the concepts of social debt (*la dette sociale*).

6 'the notion of public service covers any activity that those who govern must execute, regulate and control, because the proper carrying out of these activities is essential for the realisation and development of social interdependence, while being of such a nature that it can only properly be carried out through the intervention of the authorities.' Duguit 1913.

7 In the words of Jean-Fabien Spitz "le solidarisme est donc à nouveau une tentative spécifiquement républicaine pour harmoniser dans un seul ensemble les notions apparemment contradictoires de justice et de liberté" (2005 :180).

day (Agulhon 1993).[8] By the time the Third Republic consolidated at the beginning of the XXth century, solidarity was part of its "*philosophie officielle*" (Bouglé 1907).[9] The long process of political rethinking of solidarity in terms of state-driven action had translated into the implementation of many social policies in a large volume of issue-fields ranging from health and safety to pension schemes.

This state-driven practice of solidarity was stressed even further over the following decades. First with the consolidation of the welfare state in the aftermath of WWII, and then throughout thirty years of steep economic growth and social appeasement under the "*Trentes Gloriouses*", which opened up even further the boundaries of the French Republic (Cinalli 2017). Since the end of the *Trentes Gloriouses*, however, the idea of solidarity in public and political life has met with growing discussion, resistance, and confrontation, while continually being enriched by the many objections made to it. Of course, some opposition pre-existed the post-WWII welfare state, and is mostly linked to specific historical periods. Other opposition, however, is especially characteristic of stronger processes of individualism of contemporary times, based on a stronger mobilisation of ideologies of individual freedom and autonomy, which have tended to mistake the notion of solidarity with unrelated practices such as "assistentialism", "paternalism", "parasitism", and so forth.

More space is thus opened to inquire into how much solidarity is still a useful notion to understand and intervene in contemporary politics. Is, for example, the Republican state still a strong enough force to intervene in the redistribution of wealth in the name of solidarity, going as far as impinging on increasingly stronger creeds in freedom and autonomy of individuals? How can social solidarity and individual responsibility be reconciled in an era where the political force of autonomy and freedom seem capable of shaking off the collective 'chains' of social responsibility?

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8 Pour Maurice Agulhon: « *Fait-on agir les peuples et les sociétés sans une éducation de la cohérence? C'est à dire sans un minimum de mythologie collective? Probablement pas!*», 1993 :8.

9 On the importance of the philosophical paradigm of solidarism as a pillar of official Third Republic doctrine, see: Hayward, 1961.

The Socio-Cultural Dimensions of Subsidiarity Principle

In spite of its long-term development and continuous re-elaborations, the concept of solidarity nowadays is often used in a restricted sense in administrative, legislative and governmental vocabulary. Sometimes it loses connection with its original meaning to such an extent that it excludes the idea of mutuality, and the broader principle of subsidiarity.[10] This latter was theorised by philosophers of antiquity (Aristotle) and the Middle Ages (Thomas Aquinas), but also by jurists and thinkers of the *Ancient Régime* (Johannes Althusius), as well as by thinkers affiliated to the Roman Church. Later, subsidiarity came to be conceived as a fully-fledged theoretical construct in the nineteenth century, at the same time as the concept of solidarity was developed. This combination of solidarity and subsidiarity was itself the legacy of the distinct emphasis that Catholicism kept on Christian charity. Suffice it to remember that in previous centuries the Protestant social doctrine had called for the 'sovereignty of the social spheres', thus opposing the Catholic ideas about "higher" spheres in relation to other "inferior" spheres. While the principle of subsidiarity was based on a creed in collaboration, which aimed at a harmonious participation in all social sectors only in view of the good of the person, the sovereignty of social spheres supported the independence of the social sectors as absolute value. Accordingly, there was less space for the state to support the intermediate bodies, as it was instead invoked by the principle of subsidiarity. This also revealed the difference between an individual action of charity and larger public decision such as redistribution and solidarity policies.

France has thus maintained the traditional meaning of Catholic charity, which has been combined with much of the solidarism. French theorists of solidarism like Bourgeois have been crucial to reinstate that social progress should be achieved through collaboration between the classes, deepening a vision that came to combine doctrinal developments in the Catholic Church with the dominant egalitarian aspirations of pre-Marxist socialism (in particular, Saint-Simon's thought). In particular, the birth of the principle of subsidiarity can be considered to be in line with the princi-

10 Stretching the definition of the word can go as far as referring to the word ‘solidarity’ as compulsory levies without compensation, which does not allow taxable persons to benefit directly from a solidarity mechanism. For example, the ‘solidarity tax’ on wealth is no more solidarity-based than many other taxes.

ple of social organisation, as expressly stated in the social doctrine of the Catholic Church in the 1891 *Rerum Novarum* encyclical. By virtue of that principle, the "superior" social bodies must stand in support, of *subsidium*, of the "minor" ones, without having the monopoly of carrying out social utility functions. In this way, the social intermediary bodies were no longer hindered by a system in which the right of initiative is exclusively in the hands of the "superior social orders".

Since its earliest days then, subsidiarity has been characterised by positive and progressive implications, in terms of economic, institutional, and legislative support provided to smaller social entities. This also meant that the state had decided to refrain from certain sectors in order not to hinder actors that could fulfil a particular need better than the state itself. Indeed, many aggregations of men and women may have something valuable to offer on the basis of their superior knowledge of peripheral realities compared to distant central administrators. Most crucially, the social doctrine of the Catholic Church has mixed the principle of subsidiarity together with a symmetrical principle of solidarity, so as to match human and Christian virtues with the aim of weakening social conflict and promoting union across interests, classes, and social divisions.

Solidarity as the Source of Different Types of Legislation

State-sponsored aid stressed the importance of solidarity with the passage between the XIX and the XX century. The law of 15 July 1893 established free medical assistance; the law of 9 April 1898 facilitated workers' compensation claims; the law of 27 June 1904 set up a childbirth assistance programme; and on 14 July 1905, an assistance programme for elderly and disabled persons was initiated. All these legal references to solidarity came together at the same time when there was the acknowledgement of freedom of association in 1901. This latter freedom made concrete a Revolutionary principle, providing the possibility for French citizens to set up associations in order to work towards a collective end. This vast programme built on solidarity also provided the bedrock on which a new social-democratic *entente* could be built in the aftermath of two World Wars. Thus, in the Preamble to the Constitution of 27 October 1948, the 12th article already declared that "The Nation proclaims the solidarity and equality of all French people in bearing the burden resulting from national calamities". Afterwards, the rebirth of the Republic for the fifth time in

1958 placed solidarity at the core of its Constitutional letter. In its first article, the French Constitution of 4 October 1958 thus stated that "The Republic […] is based on the equality and solidarity of all the peoples that compose it".

Subsequently, in line with the broader European post-WWII trust in welfare, solidarity has been a crucial cement of the *Trentes Glorieuses*. This has stood out as the basis on which citizenship, in line with a stronger belief in redistribution, can be refound. The point of arrival of this long-term process can be seen in the 1980s, at the time when the Socialists obtained full executive and legislative hegemony under the leadership of President Mitterrand. Under this hegemony, which lasted until the early 2000s, the government finalised a number of policies and specific provisions that drew heavily upon the notion of solidarity. Accordingly, the 'Ministry of national solidarity' was set up, together with a number of '*Directions départementales de la Solidarité*' at the sub-national level. One may also refer to the explicit rationale on the occasion of measures against '*Pauvreté-Précarité*', the institution of the '*Revenu minimum d'insertion*', the *Allocation Personnalisée d'Autonomie*, as well as the 'law for the renovation of socio-medical action'.

Drawing on a mixed tradition of solidarity and subsidiarity, France today allows for a dual application of solidarity (public and private) that is reflected in legislation. Thus, in the juridical field, solidarity corresponds to different notions in public and private law respectively. Starting with the latter, in family law, solidarity is "an imperative to provide mutual help, which creates a reciprocal obligation between close family members to offer each other assistance and help'. Solidarity in this way is "a moral bond, […] a sense of family which unites relatives around their common values (family name, honour, traditions)". While the foundation of solidarity in family law is not based on free will, in the private law managing the relationship between individuals outside the family the meaning of solidarity is rather a constraint completely detached from morality, often resulting from a contract and therefore the outcome of an explicit intention. In fact, in the civil code it is defined as follows by Art. 1200: "Debtors are in a relationship of solidarity when they all share the same constraints, in such a way that each one can be liable to satisfy all of them, and that a payment on the part of any of them also frees all the others from their obligations to the creditor".

As regards public law, solidarity is understood as a bond of mutual assistance that takes the general form of national solidarity. A special trait of

French Republicanism is the strong association that exists between solidarity and the nation. In the French spirit, tolerance and respect are more important for peaceful coexistence than having "common values" or than the creation of a "common project". In particular, the coexistence among individuals turns out to be the first concern of living together. This means that national solidarity is a guarantee of assistance between members of the same community. Not surprisingly then, this deep linkage between solidarity and the nation can entail an "*impôt de solidarité*" (solidarity taxan exceptional tax intended to help the State to face a crisis situation, as with the 1945 "*impôt de solidarité nationale*" (national solidarity tax). It can also be used to finance a sector of the economy particularly affected by an economic downturn, as was the case with the "*impôt sécheresse*" (drought tax) of 1976, or even to shore up a social system in deficit or to help a specific category of the population, as with the "*journée de solidarité*" (solidarity day). This latter was instituted by the law of 30 June 2004, Art. 2 and then renewed in the *Loi Travail* of 2016, implying the work of an additional day (seven hours) of solidarity by the employees without additional compensation.

Consequently, the Constitutional Council has referred many times to the notion of solidarityIn its jurisprudence, the term solidarity has a plurality of meanings. The Constitutional Council uses the terms "*mécanisme*" (mechanism) of solidarity, "*principe de solidarité*" (principle of solidarity), "*exigence de solidarité*" (solidarity requirement), "*objectif de solidarité*" (solidarity objective), sometimes relying on several of them in the same decision. It is therefore not a monovalent concept. The privileged applications of these notions obviously lie in the domain of social systems, spanning the routes that individuals make across their life, for example in and out of the labour market. Thus, in its decision of 16 January 1986, the Constitutional Council ruled, with regard to the "*Sécurité sociale*", that it was the responsibility of the legislator to encourage solidarity between people in employment, the unemployed and those who were retired, and that it was also the responsibility of the legislator to ensure that the finances of the "*Sécurité sociale*" were well-balanced enough to allow its institutions to fulfil their role.

The overarching effect of this ubiquitous space of existence for solidarity, across public policies and jurisprudence, is evident when considering that solidarity is taken as a key mechanism that is capable of readdressing potential failures of redistribution. This is the background behind, for instance, the 1988 "*revenu minimum d'insertion*" and more recently of the

"*revenu de solidarité active*" introduced by the law of 21 August 2007 and generalised in 2008. In establishing these social systems, the legislature expressly and concretely referred to the principles of solidarity. Another example refers to the limitations of pension schemes: they incorporate various channels of redistribution, such as between generations and within a single generation. There are transfers between different schemes as well as mechanisms put in place to coordinate them. But the place of solidarity is still strong in the provisions that allow for payment of benefits to all seniors, having or not having been in employment

Promoting Civic Solidarity: The Legal Foundations of Voluntary Associations

The increasing role of association brings our focus back to the principle subsidiarity. Since the 1980s, the principle of subsidiarity in France has taken multiple steps forward (van den Bergh et al. 1995), allowing non-profit organisations to multiply in the past four decades in every field of public interest. This process has also matched the unstoppable retrenchment of public welfare, which has come under the attack of right-wing politics and has been legitimated more broadly by a general mistrust in politics and public action. Indeed, it was probably the reaction to this powerful attack against public welfare that has paved the way to new approaches to restore the lost force of solidarity. Various solidarity actions, by now more informal and driven from the bottom-up, could thus emerge, including different initiatives such as the *Téléthon*, *Sidaction*, 'food banks', *Restos du cœur*, as well 'micro-solidarity aids' and the development of the *économie sociale et solidaire*.

In particular, subsidiarity has especially gained a new interest owing to the process of Europeanisation and with it, some growing criticism for the welfare state. Subsidiarity fits the ambition of adapting more flexibly to the needs of the market as concerns autonomy, freedom, and self-enterprise. The strongest point consists of furthering collaboration between plurality and unity. By acknowledging the complementarity between the centre and the periphery, or otherwise the unitary State and a pluralist civil society, a renewed emphasis on subsidiarity is in line with the development of better governance that are adaptive to the devolution of competencies across various complementary levels of decision-making (Blanc 2015, 91). The underlying assumption is that when the common good is the in-

tent of all, then it can be constructed only through the cooperation of all actors participating in the construction of equality (Million-Delsol 1992 and 1993). The main assumption is that any actor may take a stand on favour of the general interest, and this regardless of its particular across the private/public divide and the specific interest which it may pursue.

Mechanisms of subsidiarity can be highly beneficial for associationism and volunteering. As regards associationism, it implies a "convention according to which two or more individuals choose to share their knowledge and to coordinate their activities, on a permanent basis, to a non-lucrative end. Its validity is subject to the same general legal principles that apply to contracts and to obligations".[11] This type of simple ruling has had a positive impact on fostering the number and the development of associations (Archambault et al. 1999). Today there are an estimated 1.3 million active associations in France and, each year, 70,000 new associations are created.[12] Accordingly, associations have been considered to have the best resources to deal with the limitations, weaknesses and shortcomings of public interventions, following the increasing disengagement of the State and the rise of many private actors across different territorial levels. As regards volunteering, the prevailing definition in France refers to both terms of "*bénévolat*" and, "*volontariat*". *Bénévolat* refers to the free commitment of individual citizens for non-remunerated activities, outside the normal framework of family, school, professional or legal relations and obligations. *Volontariat* is closer to the notion of voluntary service. It is a commitment of a more formal nature (for example, through the structures of a non-profit organisation); it has a specific duration, and some form of professional training is usually involved. *Volontariat*, however, is associated with a specific set of 'difficulties'. These include the right (or not) of volunteers to receive certain indemnities and advantages during the period of their commitment, and certain forms of social protection such as for example pension rights etc. This means that only certain forms of *volontariat* are currently recognised and covered by the French legislation on volunteering.

Associationism and volunteering illustrate well the idea that Republican democracy is not only a 'form of government' but also a 'form of organi-

11 https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006069570&dateTexte=vig.

12 http://www.associations.gouv.fr/la-france-associative-en-mouvement-2016-est-paru.html.

sation for the whole society", or "a welfare state based on universal freedom and solidarity (Bourgeois 2008). Associations stand together according to their political, sectorial, or statutory affinities, in order to act collectively and nurture processes of citizens' awareness through volunteering. In particular, associations have become an important interlocutor of the State for socio-economic development, which has reinforced a long-lasting co-operation between non-profit organisations and public authorities, especially in employment policy, as well as in health and social activities. Thus, associations have helped the State's employment policy by running job-training programmes for unskilled workers (paid for by public funding). With the establishment of the CNVA, the associative sector had to develop a united stance on important issues, and to suggest concrete proposals on issues such as tax regulations, volunteering, and public funding.[13] In the words of Patrick Kanner (ministre de la Ville, de la Jeunesse et des Sports): "*Je considère avant tout qu'il m'appartient de dire haut et fort que les associations sont une richesse pour la France. [...] Certaines rendent la vie plus supportable par des actions de solidarité; d'autres la rendent plus joyeuse, plus épanouissante, à travers leur engagement pour la culture, le sport, le jeu, l'éducation. Ce qui est accompli quotidiennement par les associations n'est pas mesuré et n'est tout simplement pas quantifiable, mais j'ai une certitude : ça compte*".[14]

Conclusions

The largely historical contextualisation of this chapter has been useful to demonstrate that solidarity has its origins far back in time, at least as far

13 Volunteering across Europe, SPES, 2006.

14 "I feel that what I need to do first of all is to proclaim loud and clear that associations represent a great source of riches for France […] Some make life more bearable through practical actions of solidarity; others make life more joyful, more fulfilling, by promoting culture, sports, play, education. No-one measures what is achieved every day by associations because their action is not quantifiable, but of one thing I am sure: they make a difference".
http://www.associationmodeemploi.fr/PAR_TPL_IDENTIFIANT/23847/TPL_CODE/TPL_REV_ARTSEC_FICHE/PAG_TITLE/%AB+Je+me+sens+%E0+ma+place+en+tant+que+ministre+en+charge+de+la+Vie+associative+parce+que+ce+parcours+est+le+mien+%BB%2C+Patrick+Kanner%2C+ministre+de+la+Ville%2C+de+la+Jeunesse+et+des+Sports/2465-les-articles-de-presse.htm.

back as the French Revolution. Since then, the main question has been how individual independence can go together with collective enterprise. This tension has been played within a broader dialectical relationship between the political sphere and French society. The treatment of a long-term idea of solidarity has also been useful to compensate for the isolating nature of processes of individualisation that make people lonely, unable to voice their concerns collectively and consistently across historical time. In fact, the passage to general interest, which is so crucial under the French Republican framework, is only possible for a citizen inserted into a collective dimension, which at the same time acknowledges its own individuality. In addition, a diachronic perspective makes it possible to assess whether the law institutionalises a moral consciousness. The issue at stake is not the establishment of a new morality, but the sturdy foundation for positive legislations. The bond of solidarity is presented as a universal bond that dominates other community attachments in French society, but at the same time can only be formulated adequately in the political sphere, freed from its traditional ties with theological and metaphysical approaches.

A vast intellectual elaboration around the theme of solidarity has accompanied its actual practice in France. This chapter has presented Léon Bourgeois as one of the main founding fathers of French solidarity. Bourgeois embodied in his own person both intellectual reflection and government action concerning solidarity. Yet we have seen that the concept of solidarity continued to grow in the wake of Bourgeois' innovations, thereby permeating the political thinking even before words such as welfare and redistribution were taken as the basis of post-WWII reconstruction. Thus the *Dictionnaire encyclopédique Quillet*, in its 1938 edition, notes that solidarism is a: "social and ethical system founded on solidarity".[15] Even if solidarism suffers the extraordinary decline of radicalism with the Third Republic, the political developments that followed the Second World War show that solidarism has continued to be more than ever present in political discourse, together with the system of values that implies.

This resilience of solidarity under a progressive liberalising regime has been possible due to the equilibrium that the solidarity doctrine had maintained between its collective nature and its own strictly individualistic ba-

15 Dictionnaire encyclopédique Quillet, "solidarisme", p 4446.

sis. By granting preeminence to the individual person, the liberalising developments (soon organised into a consistent neo-liberal project) have allowed for the original re-appropriation of contractual individualism. Liberal ideology is hegemonic today, but a resilient legacy of solidarism maintains the truth of a radical individualism rethought in the light of the whole social body. Put simply, the idea of solidarity has maintained its original ambition to overcome the liberal limits, by showing how liberty can generate positive obligations that preserve this freedom. In this sense, solidarity is still at the roots of a democratic-liberal synthesis, in spite of the difficulties met in terms of its practical applications as regards the distribution of obligations between individual citizens and the collective State (Blais 2007).

Having outlined the historical and intellectual complexities of the concept of solidarity this chapter has also analysed the mode of operation of the principle of solidarity in French institutions. Solidarity has indeed led to concrete norms applicable to society. It has been working in terms of genuine legal principles, in the same way as other major principles of the French Republic such as freedom and equality. At the state level, the practical implementation of the principle of solidarity translates into the principle of subsidiarity: the "superior" social bodies must stand in support, of subsidium, to the "minor" ones, without having the monopoly of carrying out social utility functions. The final step is indeed played by the association subsidiarity, that is to say, the key mechanism through which active solidarity is put in place day by day. Associative subsidiarity is not only an *ad hoc* response to a shortage of resources, but it is supposed to cope with inequalities by fostering a citizenship of action (Million-Delsol 1993). With it, civil society: "*à gagné de nouveaux galons*" (Blanc 2015, 94). This type of stimulus for a citizenship in action is possibly the strongest counter-force that can be detected nowadays, at a time when neo-liberal ideologies are most vigorously eroding the appeal of solidarity vis-à-vis self-pleasing ideas of a boundless freedom and autonomy.

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Germany

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Introduction

In German Constitutional Basic Law, there is no explicit reference to the term "solidarity", however, the principle of solidarity can be derived from a broad range of constitutional rights and principles (Piazolo 2004, 163; Volkmann 1998, 299). Germany is a republic based on popular sovereignty and a representative democracy in which the "election of Parliament is the central act for the legitimation of state power" (Heun 2011, 12).[1] At the same time, Germany is a constitutional state. Hence, it is characterised by the rule of law, the supremacy of the basic rights and the protection of individual autonomy against the unlimited interference of the state, the separation of powers into the legislative, executive and judicial branches of government, the judicial independence and the control of the Federal Constitutional Court over the compliance with the constitution (cf. Hartmann n.d.). Moreover, the German constitution codifies the social welfare state principle (Art. 20 para. 1 and 28 para. GG) that guarantees a minimum of social welfare and a universal subsistence minimum. Furthermore, the constitution stipulates the principle of federalism (Art. 20 para. 1, Art 30 and Art 79 para. 3 GG). This means that Germany is a federal state where powers are divided and shared between the central state and the 16 federal states. Interestingly, while in the federal constitution (Basic Law) there is no explicit reference to the solidarity principle, the picture is more complex at the level of the federal states. Similar to the Basic Law, the constitutions of the former West German federal states do not explicitly mention solidarity. In comparison, solidarity is directly referred to or equivalently addressed as a basic principle of state action in the constitutional preambles of the new, East German federal states; sometimes as ab-

1 Going beyond the rulership through mechanisms of representative democracy, the Basic Law comprises elements of direct democracy, yet mostly for the sub-national levels rather than for the national, central state.

stract expectation and sometimes as concrete obligation of the respective federal state (Piazolo 2004, 170-172).[2]

The German Basic Law (GG) is headed by a catalogue of basic rights, the so-called Bill of Rights. The most important element is the protection of human dignity (Art. 1 GG). The inviolable right to lead a dignified life is the supreme principle of the Basic Law to which all other rights and principles are subordinated. The "German people therefore acknowledge inviolable and inalienable human rights as the basis of every community, of peace and of justice in the world." (Art. 1 para. 2 GG). The fundamental rights that are enshrined in the Bill of Rights are subjective individual rights that guarantee individual freedoms and protect any individual citizen against an encroachment by the state. In fact, already the first article of the Basic Law (Art. 1 para. 3 GG) stipulates that all constitutional basic rights are binding with immediate validity for any state power, including all legislative, executive, and judicial organs at federal, federal state or local level. This also implies that individual citizens can claim these basic rights before court. Moreover, they may enforce them by means of a constitutional complaint before the Federal Constitutional Court if they think there is an infringement of these rights by the state (Hartmann n.d.; Heun 2011, 191-192). Some basic rights are universal rights, e.g. human dignity, free development of one's personality, life and physical integrity, equality and non-discrimination, religious freedom and freedom of speech (Art. 2-6 GG). Others are assigned exclusively to Germans, e.g. freedom of assembly and association, freedom of movement, occupational freedom and civil rights (Art. 8; 9; 11; 12; 33 GG).

2 The preamble of Brandenburg's constitution states, for instance, "We, the citizens of the federal state of Brandenburg have freely adopted this constitution, in the spirit of the tradition of law, tolerance and solidarity […], inspired by the intention to ensure human dignity and freedom, to organise the community life in social justice, to promote the welfare of everybody …". Similarly, but without an explicit reference to solidarity, the constitution of the free state of Thuringia declares in its preamble "to respect the freedom and dignity of the individual and to organise the community life in social justice". In the same spirit, the preambles of the constitutions of Mecklenburg-Vorpommern and Sachsen-Anhalt stipulate to ensure human dignity and freedom and "to create a socially just community", or, "the foundations for a social and just community life". The constitution of the free state of Saxony is led by the intention "to serve justice" and the constitution of Berlin by the intention "to serve the spirit of social progress and peace".

The Bill of Rights of the German Basic Law is also defined by the fact that the basic individual freedom and equality rights have a dogmatic structure (Heun 2011, 192). Human dignity is the leading and overarching principle of the Bill of Rights and constitutes the only absolute norm. The subsequent freedoms are not absolute, but conditional on restrictions (constitutional proviso, simple or qualified proviso of legality) because individual freedoms require reconciliation with conflicting or competing freedoms and rights of others (ibid., 192-193). On the other hand, the Basic Law envisages a special protection in that it imposes additional restrictions on the legislator that may prevent him from restricting fundamental rights without limitations ("restrictions of restrictions"). Since the fundamental rights are directly binding for any state action, any encroachment on these freedoms and protection rights requires special justification. Legislation that aims to restrict fundamental rights is limited and made conditional particularly through the principle of proportionality, i.e. state intervention is only acceptable if the protected rights or legal principles outweigh the basic rights to be restricted by it (ibid., 194-195).

Moreover, it is generally recognised nowadays that going beyond their nature as subjective freedoms, negative protection and "defensive rights" against the state, the basic rights involve a positive dimension as "objective principles for policymaking" and state action (Grimm 1985; Hesse 1999; Heun 2011, 200). From this perspective, the state is not only required to respect individual freedoms, but also to ensure their minimal material preconditions through policymaking so that everybody may have equal opportunities to enjoy the constitutionally granted freedoms. Hence, in this materialist understanding of the state of law, basic rights grant freedom not only from the state but also within the state; and equality not only before the law, but also through the law (Hesse 1999, 127-136). However, in contrast to their character as negative protection and defensive rights, these "objective principles" are under proviso of the available resources and the existing possibilities. What is more, these principles are directed towards the state and state action, but do not constitute individual rights and entitlements that could be directly claimed by individual citizens. Moreover, the minimal preconditions and the specific content of this positive dimension are to be specified through policymaking and legislation (Grimm 1985). On the other hand, since the 1970s, there has been a repeated welfare state debate about the question on how far basic rights are to be interpreted as affirmative individual participation rights (ibid.; Heun 2011, 200). While the answer to this question is controversial, there is

general agreement that the right to human dignity and the welfare state principle of the Basic Law (Art. 2 para. 1 GG) oblige the state to guarantee a social welfare minimum and, hence, entitle each citizen to the provision of a material minimum needed to cover daily subsistence (Heun 2011, 200). This has repeatedly been confirmed by the Constitutional Court of Justice, for instance, very prominently in its recent verdict on the minimal provision of social "Hartz IV" benefits (BVerfG, Judgement of the First Senate of 09 Feb., 2010 – 1 BvL 1/09 – "Hartz IV-judgement") and of asylum seeker benefits (BVerfG, Judgement of the First Senate of 18 July, 2012 – 1 BvL 10/10).

The Socio-Cultural Dimensions of Solidarity

In Germany, social solidarityis based on various pillars. The welfare state constitutes the first pillar. The German welfare system stands in the tradition of the conservative-corporatist model of welfare states (Esping-Anderson 1990) and has been shaped by the Bismarckian social insurance system (cf. also Leibfried 1992). Following this tradition, the system is strongly based on insurance benefits. Social entitlements and benefits are dependent on previous contributions and on occupational status. This means the German welfare state provides a relatively high level of protection against market forces and income maintenance benefits, preventing the risk of income loss for the insiders of the stratified social insurance systems (Esping-Anderson 1990, 27). By comparison, outsiders of the insurance systems are excluded from the respective insurance benefits. Hence, in the social insurance systems, solidarity is confined to rather narrow solidarity communities (Arts and Gelissen 2002, 142). In addition to the social insurance systems, different types of social aid are granted to people in need, but often in the form of means-tested benefits. In this welfare system, redistribution is relatively weak, while differences in status groups are maintained. In other words, the entitlement to social protection and the chances to benefit from the welfare state are substantially predefined by ones position on the labour market. In this respect, the German welfare state is shaped by a dualistic, exclusive, segmented system.

A second key pillar of social solidarityare the six federal non-statutory social welfare organisations. Based on different world views, beliefs and religions, these voluntary, non-profit welfare umbrella organisations play a key role in the delivery of social services for everyone in need, be it the

elderly, sick, disabled, job- or homeless people, children, families and women or refugees. In so doing, they operate as independent social welfare providers alongside the public and commercial service providers. With their decentralised structure, they provide services and facilities at regional and local levels throughout Germany and are thus an important pillar of the German social welfare state (BAGFW 2017).

Thirdly, the family plays a relevant role for solidarity. It is seen as the first resort when it comes to the provision of means-tested social aid and certain care benefits. According to Esping-Anderson, the conservative-corporatist welfare regime is geared to preserve traditional familyhood and follows the principle of subsidiarity (Esping-Anderson 1990, 27). Following this logic, the state intervenes only when the family is not or no longer able to provide the necessary care to its members. In this tradition, motherhood is typically promoted by family benefits. In contrast, care and family services exist only to a moderate extent (ibid.). However, this characterisation holds true for Germany only to some extent. In fact, with the large increase in female employment, care has been increasingly handed over to professional providers. The more recent welfare state literature thus rightly emphasises that in Germany, care is widely furnished by public and non-governmental welfare service providers (Art and Gelissen 2002, 147; Schiefer et al. 2012, 55). Overall, familialism and the role of the family as the first locus of solidarity are considerably less pronounced in comparison with the Mediterranean regime. This resonates with empirical surveys underlining that the German population has high expectations with regard to the responsibilities of the state and the supply and care systems for the provision of welfare (Schiefer et al. 2012, 54). For instance, Allbus surveys show that a vast majority of respondents is of the opinion that the state must ensure a good livelihood, also in the event of illness, hardship, unemployment and old age (Allbus 1994: West 87% – East 97; Allbus 2004: West 82% – East 92%; Allbus 2014: West 89% – East 91%, source: Statistisches Bundesamt (ed.) Datenreport 2006, 649, Tab. 4; Datenreport 2016, 413, Fig. 4).

Despite the orientation towards state responsibility for welfare provision, volunteerism is strongly established in German society and has continually increased in recent years. It is thus a further important pillar of social solidarity.According to the German Volunteers' Survey 2014, 43.6 percent of the population aged 14 or older engages in volunteering activities outside their own family, kinship or professional environment (Simonson/Ziegelmann/Vogel/Tesch-Römer 2017, 21). Compared to statistics

from 1999, this is an increase of almost ten percent. What is more, there has been a pronounced growth in volunteering particularly since 2009 (ibid.). The motives of volunteers show that volunteerism in Germany is grounded in a widespread sense of social responsibility and solidarity (Schiefer et al. 2012, 55). In 2014, more than 80 percent fully agreed or rather agreed (57.2% and 23.8%, respectively) that their voluntary engagement is motivated by the aim to play a part in shaping society at least to a small degree (Müller/Hameister/Lux 2017,: 417and 427). Moreover, for 60 percent of all respondents, it is very or quite important to help socially disadvantaged people or marginalised social groups (Huxhold/Müller 2017, 488f.). In a European-wide comparison, volunteerism is remarkably widespread in German society. Following the Special Eurobarometer Survey on Volunteering and Intergenerational Solidarity in 2011, 34 percent of Germans engaged in voluntary activities, thus exceeding the European average by ten percent (24%) (Special Eurobarometer Survey 75.2: 7 – QA15).

Typically, volunteering takes place in public and in organised, collective forms (Vogel/Tesch-Römer/Simonson 2017, 285). Indeed, the rich landscape of non-profit associations and charities offers widespread opportunities for voluntary engagement in Germany. Yet, volunteering is only one aspect of social solidarity. Additionally, informal and private help for others (non-family members) in one's direct social environment is also a relevant dimension of social solidarity (ibid., 285-286). Such private forms of help may include assistance with shopping or gardening, looking after neighbours' children or keeping the elderly company, etc. According to the German Volunteers' Survey 2014, 40.2 percent of the population aged 14 or older provides informal help in their social environment. This means that informal, private support is almost as widespread as volunteering (43.6 %) (Vogel/Tesch-Römer/Simonson 2017, 289). Interestingly, there are some overlaps between these two dimensions of social solidarity (20.5 % do both volunteering and informal help). Nevertheless, both of them are important dimensions of social solidarity independently of each other (23.1 % do only volunteering; 19.7 % provide only informal help). Overall, almost two-thirds of the German (14+) population contribute to formal and/or informal social solidarity (ibid., 191).

A further dimension of social solidarity is the willingness to donate. According to TNS Infratest Deutscher Spendenmonitor 2015, the quota of donations was relatively stable at around 40 percent over the period 1995 to 2015. Other studies confirm that the readiness to donate and the amount

of donations are relatively high in this country (Schiefer et al. 2012, 56). This is believed to be promoted by the fact the German fiscal law grants tax deductions on donations for donors (see below).

Finally, the European Values Study of 2008 shows that in Germany, a majority (52.6 %) is concerned about the living conditions of other people (not family members). What is more, Germans are somewhat more considerate towards others' welfare than the European average (about 45%) (own calculations based on the EVS 2008; Schiefer et al. 2012, 59). All in all, solidarity is widely reflected in citizens' general disposition and behaviour. In this respect it seems that solidarity from below represents an important pillar of social solidarity in Germany.

The Constitutional and Legal Entrenchment of Solidarity

Despite the fact that the German Basic Law makes no explicit reference to "solidarity is implicitly entrenched in various constitutional rights and principles (Piazolo 2004, 163; Volkmann 1998, 299). To start with, there is broad consensus that the solidarity principle is enshrined in the constitutional vision of humanity, fundamental rights, the welfare state principle, the orientation towards the common good and the institutional framework of the federal state (Hilpold 2007; Piazolo 2004, 156-176; Volkmann 1998; Voßkuhle 2015).

First of all, legal scholars highlight the fact that the German Basic Law is based on the idea of solidary human beings (e.g. Piazolo 2004, 159-160; Volkmann 1998, 219-229). The constitutional vision of man is characterised by the fact that human dignity constitutes the fundamental norm of the Basic Law (Art. 1 para. 1 GG). At first sight, human dignity seems to give priority to individual autonomy and individual freedom (Piazolo 2004, 159-160; Volkmann 1998, 221). Yet, the Federal Court of Justice has clarified right from the beginning that these norms are inextricably linked to the interrelatedness of the single members of society, their mutual recognition and their integration into a social community (ibid.). In its judgement of 20th July 1954, the Federal Court of Justice declared that:

> "*The idea of man of the Basic Law is not one of an isolated sovereign individual; rather, the Basic Law has decided the individual-community tension in favour of community relatedness and community connectedness of the single person, without though infringing its own value."* (BVerfGE 4, 7 <15-16>, source: Piazolo 2004, 160).

This position has been corroborated and further clarified in later judgements, for instance in 1977 when the Federal Court of Justice highlighted that:

> "*Respect and protection of human dignity belong to the constitutional principles of the Basic Law. The free human personality and its dignity are the highest legal values within the constitutional order. […] This is based on the vision of man as a spiritual and moral being that is made to determine for itself and to develop itself in freedom. The Basic Law does not understand this freedom as the freedom of an isolated and autocratic individual, but of a community-related and community-bound individual. Due to this communal connectedness [freedom] cannot in principle be unlimited. The individual must accept the limits to its freedom of action that the legislator draws in order to maintain and promote social coexistence within the limits of the […] generally reasonable*." (BVerfGE 45, 187 <227-228>, cf. also Piazolo 2004, 160; Volkmann 1998, 225; Voßkuhle 2015, 12).

Hence, human dignity implies a mutual constitutive relationship between individual autonomy and the solidary community (Piazolo 2004, 160-161; Volkmann 1998, 222-226). In this respect, it is interesting to note that the Federal Court of Justice does not directly speak of the solidarity principle, but of the embeddedness of individuals within a social community (hence pointing to the social nature of humankind). Instead, it is the legal scholarship that derives the solidarity principles from the constitutional vision of man and the related judgements (e.g. Piazolo 2004; Volkmann 1998).

Secondly, solidarity is implicitly enshrined in a number of basic constitutional rights. Initially, the focus of the Basic Law was on individual freedom. Nevertheless, legal experts understand the framework of the basic constitutional rights as an order that aims at a "balance between autonomy and solidarity" (Piazolo 2004, 161). Basic rights that imply a community and solidarity dimension are, for instance, the "protection of marriage and family" together with the "right of mothers to protection and care by the community" (Art. 6 GG), "freedom of assembly" (Art. 8 GG), "freedom of association and coalition-building" (Art. 9 GG), the requirement that private property use must likewise consider the common good (Art. 14 para. 2 GG), and the reciprocity principle according to which "everybody has the right to a free development of his personality as far as he or she does not infringe on the rights of others" (Art. 2 para. 1 GG) (Piazolo 2004, 161-162; Volkmann 1998, 278-279).

Many of these individual basic rights typically require joint exercise and solidary cooperation (Volkmann 1998, 237). Furthermore, the Basic Law includes general solidarity-related rights and duties that apply equally

to all its citizens and are necessary for a functioning community, for instance the duty to pay taxes or the right to assume honorary positions (Piazolo 2004, 161). In fact, solidarity is also implicitly expressed in the norm that "every German […] has the same civic rights and duties" (Art. 33 para 1 GG) (Piazolo 2004, 161-162). Moreover, based on the right to human dignity (Art. 1 GG) and the welfare state principle (Art. 20 para. 1 GG), the right to social security and the guarantee of a minimum subsistence to secure a life in human dignity were derived and consolidated as basic constitutional rights in the process of constitutional jurisdiction (e.g. BVerwGE 1, 159 <161-162>; 25, 307 <317-318>; BVerfGE 68, 193 BVerfGE 87, 153; BVerfGE 125, 175; sources: Piazolo 2004, 160; Volkmann 1998, 226; Voßkuhle 2015, 12). These rights are considered a crucial dimension of solidarity in that they stipulate mutual support and "standing by each other" in society (Piazolo 2004, 164; also Depenheuer 2009, 103-104). In addition, the principle of intergenerational solidarity is derived from the constitutional requirement to preserve the natural living conditions (Art. 20a GG) and the recently introduced debt ceiling (Art. 109 para. 3, 1; Art. 115 GG) (Voßkuhle 2015, 12; also Piazolo 2004, 163).

Overall, in the German constitutional order the principle of solidarity can be identified in a range of basic rights, even if solidarity is not explicitly mentioned. However, experts tend to agree that the solidarity principle does not go beyond the validity of the single regulations and hence it does not constitute a general, overriding constitutional principle or programme. Moreover, the duty of each individual citizen to show solidarity finds its limits in the constitutional individual freedom and autonomy rights (e.g. Haversath 2012, 12; Piazolo 2004, 163). In this sense, legal scholars have come to the conclusion that the Basic Law does not foresee that collective principles like solidarity leverage diffuse collective interests at the expense of individual interests: "Where the solidarity principle is covered by basic rights, it is obsolete; […] where it shall work as a title for intervention or a priority clause, it is dangerous or even harmful" (Haversath 2012, 12).

Thirdly, going beyond the constitutional basic rights, solidarity is expressed in the fact that the Basic Law defines Germany as a social welfare state (Art. 20 para. 1; Art. 28 para.1 GG). In contrast to the basic rights, the welfare state principle does not constitute individual rights or duties; rather, it is directed towards the state. In this respect, solidarity among citizens is mediated through the state (Piazolo 2004, 164-165). Due to the ab-

stract character of this constitutional norm, the welfare state principle needed further legislative concretisation and codification, particularly in the Social Code (Heun 2011, 45). In addition, it was specified and strengthened by constitutional jurisdiction. The Federal Court of Justice already stated at an early stage that the legislator is "constitutionally obliged to take social action" and characterised the welfare state principle as a "constitutional principle" against the negative impact of the unlimited use of individual freedom (BVerfGE 1, 97 <105>, source: Volkmann 1998, 333). In addition, it emphasised that state intervention and legislative acts intended to realise social welfare are legitimate because of the constitutional "requirements of social solidarity […] [and] mutual consideration" (BVerfGE 35, 348 <356>, source: Piazolo 2004, 163). According to the Federal Court of Justice, the welfare state principle implies the obligation of the state to ensure social justice and to mitigate and balance social differences in society (BVerfGE 22, 180 <204>, source: Volkmann 1998, 333). Moreover, the state is required to protect its citizens against social risks such as unemployment, illness, invalidity, old age or poverty. Furthermore, the state is required to regulate and structure responsibility in solidarity and mutual consideration within the various solidarity communities and society as a whole, and to define their relations towards self-responsibility and subsidiarity (Depenheuer 2009, 2-18; Kreikebohm 2010, 8; Piazolo 2004, 163-164; Volkmann 1998, 332-334; Zacher 1977; 2004; 2013).

The constitution grants solidarity in particular within the legally institutionalised solidarity communities. This primarily refers to the various statutory social insurance systems where solidarity among the contributing members is a means to ensure social security (Depenheuer 2009; Piazolo 2004, 164). In fact, the solidarity principle is the "essential characteristic of the social insurance law" and "constitutes the legal foundations of social insurance" (Piazolo 2004, 164, also Depenheuer 209, 21, 100-101, 105, 118). In this respect, the Federal Court of Justice has explicitly emphasised that the statutory social insurance providers are organised according to the solidarity principle (Piazolo 2004, 164). Moreover, in various judgements the Court made particular reference to the public pension and health insurance. For instance, it stated that the statutory pension insurance is typically characterised by the "principles of solidarity, social equity and the intergenerational contract" (BVerfGE 76, 256 <127>) and "fundamentally based on the idea of solidarity among its members and social balance" (ibid. <129>). Moreover, "since the very beginning, it involves a

certain amount of social care. […] The approximately equal welfare promotion of all members of the solidarity community, with special consideration of those in need, is paramount to the statutory pension insurance. The pension contributions guarantee a solidarity-based and -secured old-age protection" (ibid.). In a similar vein, the Federal Court of Justice has characterised the statutory health insurance as "solidarity community" (e.g. BVerfG 1 BvL 4/96 <33>; 1 BvL 16/96 <66>, <80>) that involves "solidary redistribution" (1 BvL 16/96 <83>). Furthermore, it highlighted solidarity as a main principle due to which, for instance, elderly and health-impaired persons are granted insurance protection at a socially reasonable contribution rate without any individual risk check (e.g. BvL 4/96 <37>).

Moving beyond the Basic Law and the jurisdiction of the Federal Court of Justice, the principle of social solidarity and the solidarity communities are furthermore stipulated and specified in the social law (e.g. Depenheuer 2009; Voßkuhle 2015, 14). The German Social Security Code governs in detail how the constitutional welfare state principle and the solidarity principle are to be implemented in the different areas of social risk, i.e. it defines provisions for unemployment, illness, disability, old age, motherhood, etc. Moreover, the sectorally structured statutory social insurance systems are organised as solidarity communities of its members. As regards health insurance, for instance, the solidarity principle and the solidarity communities are particularly highlighted in Article 1 of Book Five of the Social Code and in specific reform laws, such as the "law to strengthen solidarity in the statutory health insurance system" of 1998 (BGBl I No. 85, 28 Dec 1998, 3853).

According to the Basic Law, social law is subject to the concurrent legislation principle. This means that the federal states have the power to legislate social matters "so long as and to the extent that the Federation has not exercised its legislative power by enacting a law" (Art. 72 para 1 Basic Law). Yet, in practice, there has been a process of continuous concentration of social policy competencies in the hands of the Federal Government. Unitarisation took place against the backdrop of a basic conflict between the aims of the social welfare state and federalism (Stoy 2015, 80). While the latter promotes the principle of federal pluralism, the purpose of the social welfare state is to promote equality and solidarity. A federal organisation of social policy would undermine equality and solidarity as it opens the door to regional differences at the level of social protection and regarding expenses for citizens. Thus, over the years, the Federal Govern-

ment has increasingly regulated on social policy matters in order to grant its citizens equal social rights and to ensure a cross-regional burden-sharing throughout the country (Stoy 2015, 80-81). This trend was also supported by the Basic Law which entitles the Federation to intervene as legislator "if and to the extent that the establishment of equivalent living conditions throughout the federal territory […] renders federal regulation necessary in the national interest" (Art. 72 para 2 Basis Law).

Solidarity is also reflected in recent social reforms and policy measures. For instance, social law explicitly promotes volunteering and, thus, solidarity behaviour of civil society. In particular, since 2011 special rules apply to volunteers working in the framework of the Federal Volunteer Service, the Voluntary Social Year and the Voluntary Ecological Year. Despite their marginal employment and salary, volunteers working in these programmes for at least one year are granted access to the unemployment insurance scheme, to which their employers pay the respective contributions. Accordingly, they are entitled to unemployment benefits. Due to the marginal salary, these income based benefits are calculated either on the grounds of previous employment, if applicable, or with respect to an achievable future salary. In addition, in contrast to other volunteers, those volunteers employed in the Federal Volunteer Service, Voluntary Social Year and Voluntary Ecological Year programmes have full access to the statutory health and long-term care insurance schemes (BGBl. I No. 19, 687-693; Art. 27; Art. 130; Art. 344 of Book Three Social Code; Art. 7; Art. 10 of Book Five Social Code).

A major reform step towards more social justice and fairness is the step-wise introduction of a nationwide statutory minimum wage since January 2015. Even though the law itself makes no explicit reference to solidarity, the introduction of the general statutory minimum wage was promoted particularly by the unions as an important means to foster social solidarity. This policy change already had its origins in the pre-crisis period and was prepared over a long period through continuous reform efforts and sectoral agreements between the various social partners. From January 2015 onwards, employees have the legally enshrined right to the general, cross-sectoral minimum wage, initially set at 8.50 € an hour, and since January 2017, 8.84 € an hour (BMAS 2015b, 53; 2017; Minimum Wage Act). A crucial aim of the minimum wage is to protect employees from unfair and unreasonably low wages (which typically are not subject to social insurance contributions) and to improve the income and living conditions of the so-called "working poor" of the low-wage sectors who are of-

ten forced to claim additional SGB II benefits or to accept several jobs in tandem in order to cover their living expenses. Hence, the minimum wage represents a novel instrument to foster social equality and fairness (BMAS 2017).

Moreover, the extension of short-term allowances during the peak of the economic recession in Germany can be regarded as a means to promote social solidarity. Basically, the German social law and the employment promotion policies under Book III of the Social Code involve the possibility to grant wage replacement benefits in the form of a short-term allowance. These are wage compensations based on the amount of pay loss if an employer needs to reduce working hours temporarily because of economic problems related to structural and cyclical reasons or unavoidable events. In that case a short-term allowance is paid by the local employment agency in order to keep the respective workers in employment, to stabilise employment relations, to stabilise the workers' income and purchasing power and to enable the employer to maintain its qualified and experienced personnel (BMAS 2015a, 71; BMAS 2015b, 27). Normally, the maximum allowance time is six months (Art. 104 SGB III). The short-term allowance scheme was deemed particularly important during the global economic crisis, during which Germany was mostly affected in its first phase. In the context of two subsequent economic stimulus packages agreed upon in 2008 and 2009, the government amended the respective law by ministerial order and extended the maximum allowance period first to 18 and then to 24 months. Moreover, the threshold of the required share of affected workers was relaxed which particularly helped small- and medium-sized businesses and their workers. In addition, access to the scheme was opened up to temporary workers. Overall, this instrument was an important measure that protected workers and supported employers during the economic crisis in Germany; it maintained employment levels and hence avoided a rise in unemployment rates despite the economic recession. Together with other measures from the economic stimulus packages, such as the car scrappage bonus, tax relief on income and corporation taxes for craftsmen and household services, higher child benefits and higher public spending on infrastructure, the extension and relaxation of the short-time allowance scheme helped to maintain income levels, employment and purchasing power in Germany, and thus absorb much of the economic shockwave. On the one hand, it provided a cushion against negative effects in times of economic crisis, while on the other hand, allowing the German economy to return quickly to production and economic

strength as soon as global market demands started to re-increase. This is emblematic for the German response to the crisis: it reacted to the economic downturn mostly in the form of short-term interventions geared to stimulate and stabilise the economy, while it barely introduced new crisis-driven long-term policy changes. This is illustrated by the short-term allowance as it was not implemented as a new instrument, but meant a modification of an existing scheme (Giesen 2013; Schnitzler 2013).

Moving beyond social law, the solidarity is variously reflected in tax law. To start with, there are legal provisions geared to promote the work of charitable non-profit organisations and volunteering at both institutional and individual levels. At institutional level, registered non-profit associations with a recognised public benefit status are granted tax exemptions or relief in terms of corporation tax, business tax, VAT, inheritance and gift tax and land tax and land transfer tax. Non-profit associations are entitled to corporation and business tax exemptions if they can demonstrate that they exist for charitable public benefit purposes, benevolent purposes or church-related purposes (Art. 52-54 Fiscal Code). Associations involving a taxable economic business are excluded from corporation tax exemption, unless annual revenues remain under the threshold of 35,000€ (incl. VAT). As regards VAT, non-profit associations enjoy tax exemption for donations, membership fees and subsidies (idealistic area of activity). Furthermore, a reduced VAT rate (7% instead of 16%) applies to non-profit associations serving directly and exclusively charitable, benevolent or religious purposes, and to certain activities and fields related to the realisation of these purposes (economic area of activity serving directly tax-exempt purposes, e.g. presentations, courses, events) (Strecker 2002, 139-144). In addition, associations are exempted from VAT if their turnover does not exceed 17,500€ in the previous year and remains under 50,000€ in the current year (Art. 19 Value Added Law). Furthermore, charitable non-profit associations are exempted from inheritance and gift tax (Art. 13 para. 1, 16b Inheritance and Gift Tax Law) and from land and land transfer tax (Art. 3 Land Tax Law) if these assets are directly and exclusively dedicated to and used for charitable, benevolent or religious purposes.

On an individual level, charitable non-profit organisations are promoted by means of tax deductions on donations for donors and membership fees. Donations and membership fees to a charitable non-profit organisation that aim to support tax privileged purposes, i.e. charitable, benevolent or religious purposes, are deductible as special expenditures by up to 20 per-

cent of the taxable annual income or by 0.4 percent of all taxable revenues and the salaries and wages paid in the respective calendar year (Art. 10b Income Tax Law). Until 2009, these income tax advantages were only granted if the receiving institution was based on German territory. However, according to a verdict of the European Court of Justice in January 2009, this rule was in conflict with the right to free capital movement and, hence, fiscal deduction of donations needed to be extended to eligible recipients within the entire European Union and in countries associated with the European Economic Area. The necessary changes in Article 10 of the Income Tax Law were implemented in Germany by a reform law in April 2010 (BGBl. I No. 15, 14 Apr. 2010, 386-397).

Moreover, in September 2015 the Federal Ministry of Finance, together with the supreme Länder finance authorities, introduced special simplifications in tax law and fiscal relief that aim to promote civic refugee help initiatives. In this context, tax deductions on donations for donors are now fostered by a simplified donation proof. In addition, working time committed to refugee help and in-kind benefits to refugees are recognised as donations and thus as deductible special expenditures. Moreover, donation campaigns for refugee help are promoted by a simplified tax procedure granting fiscal advantages in terms of corporate and gift tax even to those charitable non-profit organisations which do not exist for refugee help or similar purposes according to its statute. These fiscal relaxations are in place from 1 August 2015 until 31 December 2018 (BMF 2015; 2016).

Finally, the Basic Law stipulates solidarity in financial relations within German federalism.[3] On the one hand, this involves horizontal redistribution of tax revenues between the 16 federal states, based on the so-called "Länder fiscal equalisation scheme" (Art. 107 para. 2 GG). This horizontal fiscal equalisation rests on the idea that financially strong federal states show solidarity and help financially weaker states in order to contribute to equivalent living conditions in the whole country. On the other hand, "Länder fiscal equalisation" also has a vertical dimension in that the central state may redistribute tax revenues and provide financial support to economically weak federal states (ibid.). The principle of financial solidar-

3 Some experts argue, though, that financial equalisation is not so much a form of solidaritybut rather a reflection of the principle of federal loyalty. Moreover, financial equalisation systems, particularly the top-down ones, were mainly a compensation for the missing revenue raising powers of the federal states (Voßkuhle 2015: 11-12).

ity and fiscal equalisation was also implemented by the solidarity surcharge that had been imposed on income tax liability after German reunification in order to support the new federal states of East Germany (Piazolo 2004, 166; Voßkuhle 2015, 12).

Conclusions and Outlook

Overall, the solidarity is not explicitly entrenched, but rather implicit in the German constitution and legislation. The constitutional Basic Law does not directly refer to solidarity. Moreover, it puts a strong emphasis on individual autonomy and freedom (not least as a reaction to past experience with the Nazi regime). Nevertheless, the Federal Court of Justice and particularly legal scholars have derived the solidarity principle from various basic rights and constitutional principles. It is widely agreed that the solidarity principle is reflected in the constitutional vision of man, the fundamental rights, the welfare state principle, the constitutional orientation towards the common good and the institutional framework of the federal state. In particular, legal experts argue that the Basic Law is grounded on a solidaristic view of mankind (e.g., Piazolo 2004; Volkmann 1998). Following the Federal Court of Justice, human dignity as the fundamental constitutional norm is not granted to isolated individuals, but to human beings who are members of a social community and whose individual freedom is limited through their social embeddedness and interconnectedness. In this sense, the constitutional vision of man draws attention to the community dimension of social solidarity. At the same time, the constitution also comprises basic rights and principles in which solidarity in favour of the individual finds expression. This is, for instance, reflected in the welfare state principle and in the right to social security and a decent minimum standard of living (Voßkuhle 2015, 12).

In addition to notions of solidarity addressing the relations between society members and their rights and duties, the idea of solidarity is also reflected in the federal system of the state and in the relations between the national state and the single federal states (e.g. through the Länder fiscal equalisation scheme). Moving beyond the constitution, the solidarity principle is – again implicitly rather than expressly – reflected in various laws and policy instruments (e.g. in social and tax law). All in all, no coherent understanding of solidarity can be derived from the German constitution and legislation. Instead, different notions and aspects of solidarity appear

across the different constitutional rights, principles and legal regulations. This complexity is enhanced by the fact that the lack of an explicit entrenchment requires legal interpretation and deduction of solidarity accounts. Furthermore, legal experts underline that there is no general constitutional or legal solidarity principle that would go beyond the sum of the single and selective solidarity-related rights and regulations (e.g. Haversatz 2012). Interestingly, the picture changes somewhat at the level of the federal states. Here, it is striking that the constitutions of the former East German federal states directly address solidarity or refer to it in an equivalent way as a basic constitutional principle (mostly by subscribing to the objective of a community of social peace and justice).

The federal structure also has implications for the way explicit and implicit references to solidarity are implemented. In fact, the impact of the solidarity principle is not just a matter of constitutional and legal regulation, but also of implementation, and in Germany, the implementation of national legislation is largely shaped by the principle of federalism. Typically, federal laws are executed by the 16 federal states in their own right (Art. 83 Basic Law). Execution of federal laws by the central Federal Government is restricted to exceptional cases defined by the Basic Law. Moreover, the execution of federal law by the single federal states implies that they establish the necessary administrative bodies and regulate all related administrative procedures (Art. 84 para 1 Basic Law). The executive competences of the federal states constitute an important pillar of their autonomy because they enable them to shape policies and to exercise influence (Stoy 2015, 85). Consequently, there is a variety of administrative procedures that reflect the preferences of the different regional governments to some extent. What is more, this complexity is further enhanced by the prominent role of the local communities. In the organisation of the state system, local communities belong to the federal states and cannot be directly addressed by the Federation with executive tasks. Instead, they must be commissioned by their federal state. In practice, this is very often the case. In fact, according to estimates, between 75 and 80 percent of federal laws are executed by local administrations (Stoy 2015, 85). Hence, the implementation of federal law may vary considerably across Germany depending on the local administrative practices and regional administrative regulations.

Yet, the influence of the federal states differs across the issue fields. In the area of social policy, for instance, the executive power of the federal states is limited. Here, all public contribution-based social insurance sys-

tems (e.g. pensions, unemploymentinsurance) are administered in the form of "federal corporations under public law" (Art. 87 para 2 Basic Law). Overall, these contribution-based social benefits make up 60 percent of social expenditure in Germany (BMAS 2016, 9) which means that the larger share is administered by national institutions. In comparison, all other federal social policy regulations, including tax based social benefit schemes, fall under the administrative authority of the federals states (e.g. social aid, parental allowance and care allowance) (Stoy 2015, 85).

However, the Basic Law foresees certain limits and controls of regional administrative autonomy and heterogeneity. For reasons of coherence, the Federal Government may issue general administrative rules, provided that they attain the consent of the Bundesrat (in which each federal state has a vote) (Art. 84 para 2). In addition, the Federal Government has to exercise oversight to guarantee that the federal states execute federal laws in compliance with the law (Art. 84 para 3).

Despite the lack of explicit references in the constitution and legislation, solidarity is well entrenched in Germany society. A major pillar of solidarity is the German welfare state. It provides people in need with a broad range of social services and facilities. Here, a particular characteristic of Germany is that the welfare system can rely on the coexistence of statutory, public and non-statutory, independent non-profit service providers. Moreover, volunteerism is well established in society. Almost half of the adult population actively volunteers for a social cause, and almost two-thirds engage in volunteering and/or informal help in their social environment. The important role of volunteerism is reflected and supported by the rich landscape of non-profit associations and charity organisations in Germany.

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Greece

Maria M. Mexi

Introduction

Since 2008 Greece has been experiencing an unprecedented economic crisis. The deep recession and the harsh austerity policies implemented since then have influenced all aspects of social life, as large parts of the population have suffered great loss of income, while Greek youth have witnessed one crisis after another from rising unemployment, poverty, insecurity, fear and anger to pessimism regarding the future. One of the most crucial effects of Greece's economic crisis has been the enormous economic and social class re-ranking of large parts of the population (going from middle to lower class), which—besides its socio-economic importance – has had significant implications for the Greek society at a cognitive level. Almost two generations of Greeks have been raised with the perception that political corruption, patronage and clientelism should not only be tolerated, but rewarded. However, the economic crisis gradually made Greek citizens realize that the misuse of resources by politicians and systemic corruption were the main causes of the country's economic failure and the reason behind the implementation a harsh austerity programme which was not going to end soon. One major effect of the above situation was disappointment, recognition of parties' and politicians' unreliability and lack of trust. Other "side-effects" have to do with the rise, as Alevizou (2015) points out, of "new ecologies of (alternative) political creativity and civic agency. These have been channelled by larger, but also smaller-scale mobilisations, local assemblies as well as grass-roots and solidarity initiatives, nurturing a culture that desires social change". Yet, while informal, community-based acts of solidarity have been rising, there is evidence that other forms of solidarity, enshrined in the Constitution and fulfilled through the functioning of a social welfare state, have suffered certain setbacks amid austerity backlash.

This chapter is divided into three parts.[1] The first section offers an overview of the socio-cultural foundations of solidarity capturing the rising forms of civic engagement and social solidarity as a result of the State's inefficiency to address mounting social needs. The second section looks at the constitutional entrenchment of the principle of solidarity and its use by the domestic courts in the framework of recent austerity measures. The last section deals with the ways 'solidarity' is applied to different legislative fields and its implications for vulnerable groups, while drawing an agenda for future research.

Solidarity Action and Civil Society

The Greek economy entered into a recession in 2008. Since then, Greece has negotiated three bailout memoranda of understanding with its creditors (known as "The Troika", namely, the European Central Bank, the European Union, and the International Monetary Fund) which prescribed a serious of harsh austerity measures involving salary and wage cuts, reductions in social spending, flexibilization of the labour market and privatization of public entities and services (Zografakis and Spathis 2011). The combined effects of the recession and the austerity measures applied over the early crisis years[2] can be summarized as follows:

- Between 2008 and 2012, the average total income of wage-dependent households fell by 13.5 percent. The reductions were higher for low income households (2,604 to 8,782 euros in 2008) ranging between 16.4 percent and 34.6 percent vis-à-vis the middle- (11,000 and 14,000 euros) and high-income households that experienced reductions between 9.3 percent and 11.7 percent.

- Between 2008 (2nd quarter) and 2014 (2nd quarter), the unemployment rate increased from 7.3 percent to 26.6 percent. The "new" generation of unemployed persons were previously dependent employees (743,000) and previously self-employed persons (355,000) in various sectors such as construction, agriculture, tourism and other commercial and business activities).

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1 Special thanks to Professor Maria Kousis and Stella Zambarloukou for their insightful comments on earlier outputs of the research.

2 For a detailed analysis see Giannitsis and Zografakis (2015, 37-38, 42).

- Between 2008 and 2014 (2nd quarter), the number of employees in low-paid part-time or temporary employment increased by 30.3 percent between 2008 and 2014 (2nd quarter), while underemployment increased by 144,400 persons (15–74 years old).

- Between 2009 and 2013, public employees and employees in public utilities saw their salaries cut by 8.0 percent and 25.2 percent respectively. Also, the salaries of employees in the non-banking sector were reduced by 19.1 percent.

- Between 2008 and 2014, the rate of youth unemployment (15–29 years-old) increased from 15.5 percent to 44.3 percent.

- Between 2009 and 2013, extreme poverty significantly increased from 2 percent to 14 percent. Overall, as Giannitsis and Zografakis (2015, 65) emphatically point out: "the enormous economic and social re-ranking of broader parts of population within such a short period, which besides its economic importance has also serious social and political implications. Pauperization much more than inequality is the most radical outcome caused by the current crisis in Greece".

Besides its immediate social impacts, the economic crisis soon came to be seen as a crisis of the political system, the pathologies of which – as Lyrintzis (2011, 2) writes – extend "back to the past decades and have to do with much discussed questions as the fiscal profligacy of the Greek state, clientelism and corruption, the populist practices of the Greek political parties, the inefficiency of the state machine and last but not least with the institutional and political problems within the EU and the euro–zone". The economic crisis was however a turning point not only for coming to realise the pathologies embedded in the Greek political culture, but also for associational activity and civic engagement, which up to that point was generally considered feeble and largely atrophic.

There is a general consensus among the academic community that in the period from the establishment of a democratic political system following the collapse of the military dictatorship in 1974 and up to the 2008 economic crisis, civil society in Greece was weak (Mouzelis and Pagoulatos 2003; Sotiropoulos and Karmagioli 2006; Huliaras 2014; Sotiropoulos 2014; Sotiropoulos and Bourikos 2014a, 2014b). Traditionally, Greek people have been characterised by low levels of attachment to civil society organizations (CSO), revealing – as (Sotiropoulos and Karmagioli 2006, 64) write:

> …an overall picture of apathy and disengagement of Greeks from civil society. Only a limited segment of citizens is involved in civil society activities.

> The majority of Greeks do not participate in non-partisan political activities, nor engage in any voluntary work..... The depth of citizen commitment is not at all encouraging, in terms of the amount of time and investment the average individual is prepared to make. Certain groups, such as the poor, socially marginalised and young people are less well represented and involved in civil society than would be hoped.

This tendency has been confirmed in several studies conducted in the 90s and the 2000s. Characteristically, a pan-European study conducted in 2010 revealed that, while 22 percent of Europeans were involved in voluntary activities in Greece, the respective number went down to less than 10 percent (European Commission 2010a, 61). As for youth, Greek young people seem to maintain a strong interdependence with their families but not with society at large. As a 2012 survey conducted by the Greek General Secretariat of Youth shows, 81.1 percent of young Greeks (who took part in the survey) had never taken part in civil society activities; it is noteworthy that only 3.2 percent had taken part in activities of a charity or philanthropic organisation action, and only 5 percent in activities of a trade union and a political party. In general, in Hadjiyanni's words (cited in Huliaras 2014, 4): "Every social scientist studying civil society in Greece or documenting and measuring social capital at the societal level […] agrees that [Greek] civil society is cachectic, atrophic or fragile".

Throughout the literature, the factors identified as having prevented the creation of a strong civil society can be seen to vary. For some, party patronage and clientelism – that are inherent in the Greek political system, as discussed above – have put limits on the development of a strong civil society sphere. Sotiropoulos and Karamagioli (2006, 23) argue that:

> .. Greek parties have managed to mobilise citizens in a way, and to an extent, that no other non-state organisation has been able to do since Greece's transition to democracy in 1974... interest groups and some CSOs, such as peace organisations and women's movements, used to be dependent on political parties for personnel, infrastructure and other resources. … participation in elections, which is one possible way to legitimise existing political parties in modern democracies, has been consistently very high. Over the last 25 years the two strongest political parties, the conservative New Democracy (ND) and the socialist Panhellenic Socialist Movement (PASOK), have shared about 75-80% of the vote between them. As in most democratic societies, parties have collected, articulated and channelled the demands of society towards the Greek state, as no CSO has been able to do. While the Greek system of government is definitely democratic, the state's control over CSOs is quite high.

In the same vein, Mouzelis and Pagoulatos (2002, 7) stress:

> All through the late 1980s, political parties competed for the control of organised groups and trade unions. Later, as additional civic, non-governmental organisations timidly began to emerge, political parties continued to pursue the colonisation of the associational sphere. Thus, over the post-authoritarian period, the balance between the party system and civil society was skewed at the latter's expense.

Due to the adverse socio-economic effects of the crisis, voluntary participation in alternative, formal and informal, solidarity-driven initiatives, actions, groups and organisations was increased. Journalists and scholars (Bourikos 2013; Douzinas 2013; Huliaras 2014; Pantazidou 2013; Sotiropoulos and Bourikos 2014a, 2014b; Kousis et al 2016; Simiti 2017) intensely talk about a rise of citizen groups which cooperate, organise and manage many activities, such as alternative exchange networks, local economies, social clinics and other informal groups and networks. According to Kousis and Paschou (2017, 140), these emerging solidarity groups and networks have been described in the literature[3] as:

> …diverse repertoires of citizens' direct solidarity actions and aims, with economic as well as a socio-political transformative capacity, which are alternative to the mainstream/dominant capitalist economy, or aim at building autonomous communities. They usually flourish during hard economic times marked by austerity policies, multiple, compound inequalities, governance problems, the weakening of social policies, as well as the depletion of labour and social welfare rights.

Their emergence, as recent evidence suggests, is noticeable not only in Greece but also in those South European countries harder hit by the crisis (Spain, Italy). In these crisis-hit countries, social and solidarity structures, exchanges and networks aim at strengthening community practices to

3 In fact, there is rich literature addressing the potential of the emerging social and solidarityeconomy in both developed and developing countries, involving an array of grassroots exchanges and networks that address unmet needs (such as food e.g. Lambie-Mumford 2012; Sonnino and Griggs-Trevarthen 2012; Phillips 2012; health e.g. Stuckler and McKee 2011; and education for citizens e.g. Conill et al. 2012), mobilising unused resources, engaging in collective provisioning, democratic self-management, and managing common pool resources (Laville 2010; Dacheux and Goujon 2011). In Greece, social and solidarity economy constitutes an emerging area of research. Petropoulou (2013) studied its theoretical origins and a first typology and evaluation have been advanced by Greek scholars (Kavoulakos, Gritzas and Amanatidou 2012).

meet basic needs such as food, shelter, health and education, change lifestyles towards more sustainable forms of consumption and production, and/or develop new artistic expression (LIVEWHAT Integrated Report 2016).

Parallel to the bottom-up rise of solidarity economy are the efforts of the Greek governments to give a boost to the social economy and social entrepreneurship initiatives. To this end, the Issuing of Law 4019/2011 on "Social Economy and Social Entrepreneurship" has allowed the recognition of the Social Cooperative Enterprise (Koin.S.Ep.), as a new legal entity and has resulted in the creation of the "Special Service for Social Inclusion and Social Economy" (EY KEKO). EY KEKO is commissioned with the coordination of policies and the implementation of activities with a view to enabling the Greek Social Economy, "eco-system". The same law established the "Registry Department of Social Economy" within the Ministry of Labour Social Protection Directorate. Furthermore, EY KEKO elaborated the content of the Ministerial Decision 2.2250 / no. 4.105 (Official Gazette 221/2012) regarding the operation of the Registry of Social Economy. It is probably too early to draw conclusions about the sustainability of emerging social economy and solidarity organisations, groups and networks. What is clear, nevertheless, is that new forms and understanding of solidarity, activism and engagement, neither linked to nor dependent on the State, have been on the rise since the onset of the Greek economic crisis, breaking away from established patterns of civil society development and old realities.

Solidarity, Austerity and the Ambivalence of Litigation

Apart from being a feature of the recent growth of Greek civil society, "solidarity" has also been enshrined in the Greek Constitution. In particular, the principle of solidarity is enshrined in article 25, paragraph 4 of the Greek Constitution where it is stated that every adult citizen has the right to participate in the social, economic, and political life of the country. The State and all its agents are directed to ensure that individual rights and liberties are exercised fully. The State may, for its part, call on all citizens "to fulfill the duty of social and national solidarity" (in Greek: *"Το Κράτος δικαιούται να αξιώνει από όλους τους πολίτες την εκπλήρωση του χρέους της κοινωνικής και εθνικής αλληλεγγύης"*). Interestingly, the constitutional enforcement of solidarity is enshrined in the very same constitutional pro-

vision granting "rights of man as an individual and as a member of the society" (art. 25 para.1), which means that the notion of solidarity in Greece is directly connected to the protection of fundamental rights with the overarching goal of "the achievement of social progress in freedom and justice" (para. 2). In more concrete terms, the principle of solidarity has traditionally been strongly associated with the Greek welfare state (guaranteed by article 25 of the Constitution aforementioned) and particularly the public pension system. As Symenonidis et al. (2014, 38) writes:

> After the Second World War, a key contributor to the Greek pension system became the principle of social solidarity, which can be witnessed through the social security bills No. 1846/1951 and No. 2698/1953 concerning the establishment of minimum pension income and No. 4169/1961, according to which farmers were covered through a compulsory scheme funded only through general taxation and not through contributions... After the restoration of democracy in 1975 till today, the principle of solidarity elements commanded further an important position in the Greek public pension system providing generous funding processes and universal coverage. The State guarantees a fixed amount, not equivalent to contributions paid, and the pension levels are not dependent on the range of insured persons or on the amount of contributions....

Over the early crisis years, domestic courts have generally demonstrated an ambivalent attitude towards the ways in which solidarity as well as human dignity and decent living, are safeguarded through the pension reforms implemented as part of the state's fiscal adjustment efforts. For instance, the Athens Lawyers Bar, the Public Service Trade Union Confederation (ADEDY), the Panhellenic Federation of Public Service Pensioners, the journalists' union ESIEA, the Technical Chamber of Greece, and the academic personnel of the Faculty of Social Sciences of the University of Crete, together with other associations and individual complainants, brought before the Council of State (CS) the reductions in public wages, pensions and other benefits (case 668/2012). As Psychogiopoulou (2014, 10) notes:

> Noting that the disputed pension cuts formed part of a broader programme aimed at tackling the state's pressing economic needs and at strengthening its financial stability in the long-term, the CS held that the measures were justified by a legitimate aim in the public interest, that is, the state of necessity facing the Greek economy and the need to improve the state's economic and financial situation in the future. Moreover, the measures reflected the 'common' interest of the Member States of the Eurozone to ensure, in line with EU requirements, fiscal discipline and the stability of the euro area. After finding that the pension changes contributed to immediate cuts in public spending and

> that therefore they were necessary to attain the objective pursued, the court rejected the argument put forward by the complainants that the legislator should have considered alternative, less burdensome measures to cope with the fiscal and economic challenges facing the country. Besides the pension reductions at issue, broader efforts for fiscal adjustment and economic consolidation were made through a range of fiscal, financial and structural measures. Similarly, the CS did not accept the claim that the disputed measures were disproportionate on account of the fact that they were not purely provisional: the aim they pursued was not merely to remedy the immediate acute budgetary problems of the country but also to strengthen its finances in the long term. Further, a fair balance had been struck between the demands of the general interest and the requirement to protect pensioners' fundamental rights. The pension cuts had not entailed a total deprivation of pensioners' entitlements, resulting in the impairment of the essence of their rights, and they had been designed with due attention given to the needs of vulnerable groups.

With regard to other cases of similar pension cuts that followed, Psychogiopoulou (2014, 10-11) observes:

> …the CS confirmed the compatibility of the measures enacted also with Articles 4(1), 4(5), and 22(5) of the Constitution on equality, the obligation of Greek citizens to contribute without distinction to public charges in accordance with their means, and the state's obligation to provide for a social security system.[4] Taking note of the fact that the disputed provisions eliminated seasonal bonuses for pensioners below 60 years and maintained reduced seasonal bonuses for pensioners above 60 years, the CS held that the criterion of age was not an arbitrary criterion leading to discriminatory treatment. On the contrary, it was an objective criterion, justified first, by the need to protect older pensioners and second, by the fact that a broader pension reform increasing existing age limits for retirement was under preparation[5].

Over the years that followed, though, the judicial stance was altered with the Court of auditors (CA) ascertaining that:

> …the ECHR and the Greek Constitution did not safeguard a right to a pension of a particular amount and accepted that under severe economic conditions, the legislator could adopt restrictive measures to decrease public spending. In doing so, however, due respect for the requirements of Articles 2 and 4(5) Const. should be ensured, so as to preserve adequate living conditions, especially for vulnerable groups, and guarantee a fair distribution of the ensuing

4 Council of State, Cases no. 1285/2012, 2 April 2012; and 1286/2012, 2 April 2012. See also Council of State, Case no. 1283/2012, 2 April 2012; and 1284/2012, 2 April 2012.

5 Law 3863/2010, adopted following the disputed pension cuts, had indeed carried out such a reform, providing for a gradual increase of the retirement age to 60 years (with 40 years of insurance) or 65 years.

economic burden on citizens. According to the CA, in a relatively limited period of time, the Greek legislator had adopted numerous acts to reduce pension and related benefits.[6] This, in conjunction with repeated legislative action to reduce public wages, amounted to pensioners' and public employees' discriminatory treatment, in breach of Articles 2 and 4 of the Constitution, as well as Article 25(1) of the Constitution on the principle of proportionality and Article 25(4) Const. on the state's right to claim fulfillment of a duty to social and national solidarity by *all* citizens. Further, the draft law raised serious concerns with respect to its compatibility with Article 22(4) Const. on the state's duty to provide for a social security system. A similar line of reasoning was followed by the CA in delivering an opinion on yet another pension-related bill in 2013[7] (ibid., 12).

It should be stressed that the failure of early litigation in domestic courts can be primarily attributed to the fact that the disputed measures, forming part of the state's first attempts to reduce public spending, were held not to have deprived pensioners of essential means of subsistence to such an extent as to nullify their individual rights. By contrast, the Court of Auditors building on the notion of the "cumulative" effect of the various measures taken in terms of degrading living conditions, several times held that pension cuts were unconstitutional mainly because these added to a number of earlier cuts in pensions and other social benefits. The ambivalence of up to date litigation should be understood in its historical socio-cultural context. All the above mentioned decisions dealt with the first attempts of the Greek state to curb public expenditure through reductions in pensions and social benefits amid austerity backlash, which upset Greeks' old-standing understandings of the welfare state and prevailing conceptions of solidarity as a value and a guiding principle for public policy. Hence, the crisis has raised many questions about solidarity as a moral foundation of public policy and as "the institutional responsibility of the whole polity for a certain contribution to the corporeal needs of the individuals" (Tsoukalas 1998, 1).

6 Laws 3845/2020, 3865/2010, 3986/2011, 4002/2011, 4024/2011 and 4051/2012.

7 Court of Auditors, Proceedings of the 2nd special session of the plenary, 27 February 2013.

The Limits of Solidarity in Practice

The question of whether solidarity constitutes a guiding feature of decision-making among the Greek political elites has arisen many times in public discourse. Very often clientelism and patronage has been seen to have mediated the allocation of resources and subsidies. Along these lines Zambeta (2014, 72) argues that traditionally "...the state, instead of providing for institutional solidarity by guaranteeing quality social services, has acted as an employer promising work placement to the citizenry in the public sector. On the other hand, state bureaucracy has imposed central control to all aspects of public policy encouraging inertia on the part of the civil society". More recently, recession, fiscal consolidation, and austerity seem to have further affected the normative foundation and practical exercise of solidarity and the social welfare state, though the latter are clearly defined in the Constitution as a duty of the Greek state towards its citizens.

Since the onset of the Greek crisis, successive economic adjustment measures have impacted living conditions, and in certain cases violated human rights legally protected at the domestic, European and international levels (Lumina 2013). Indicatively, these measure are:

- Measures affecting the right to work and unemployment risk. Post-2010 austerity reforms severely undermined the realisation of the right to work by shortening notice periods for dismissals and deregulating the system of collective bargaining, and by imposing successive wage cuts and tax increases that lead to the erosion of labour standards and massive lay-offs. Also, by reducing minimum wages, social allowances and unemployment benefits, labour market precariousness intensified (FIDH/HLHR 2014). In the public administration, legislation decreased wage costs and numbers of civil servants.[8] Government-decreed compulsory work affected a number of different categories of employees.[9] Also, the crisis disproportionately impacted women and migrants, increasing involuntary work[10] and unfair dismissals due to pregnancy. Conflicts rose in the informal sector employing, in exploitative and unprotected labour conditions, many of

8 Laws 3863/2010, 3979/2011, 3986/2011, 3996/2011, 4019/2011, 4024/2011, and 4052/2012.

9 Truck drivers (2010), municipal workers (2011), underground railway employees (2013), shipyard workers (2013), teachers (2013), and electricity workers (2014).

10 61% of part-timers did not choose this status, an increase of 16% (see ETUI 2013).

the irregular immigrants (see A/HRC/23/46/Add.5, para. 4). Note that the right to work is recognized in the Constitution[11] as well as in the regional and international instruments to which Greece is a party. This fundamental right has been most affected by recent legislative and policy changes. The right implies that the State must protect workers from being unfairly deprived of their employment and ensure equal access to employment. The State must take the necessary steps to create jobs and not set obstacles to a person's opportunity to earn their living (obligation to respect); ensure the best possible working conditions for employees and prevent this opportunity from being destroyed by third parties (obligation to protect); and provide the conditions to earn one's living to anyone who lacks this opportunity (obligation to fulfil) (European Parliament 2015, 62). The two Economic Adjustment Programmes, though, entailed a policy of internal devaluation and a series of wage and labour reforms aimed at reducing wage and non-wage costs that helped to curb undue wage pressures.[12] Thus, post-2010 reforms violated standards endorsed in treaties to which Greece is party.[13]

- Measures affecting the right to social security. The right to social security is guaranteed in the Constitution (Article 22§ 5), UDHR (Articles 22, 25), ICESCR (Articles 9, 10), CEDAW (Articles 11, 13, 14), CRC (Articles 18, 23, 26), CERD (Articles 2, 5), and ESC (Articles 8(1), 12, 14, 16, 17). It affords protection to the most vulnerable members of society, guaranteeing to all the minimum goods and services required for a life in dignity (FIDH/HLHR 2014). It is violated by recent measures for pension cuts that entail "a significant degradation of the standard of living and the living conditions of many of the pensioners concerned". [14]

- Measures affecting the right to social protection. The right to social security is enshrined in the Constitution (article 22§ 5), Universal Declaration of Human Rights (articles 22, 25), International Covenant on Econo-

11 Under Article 22(1) the State protects the right to work and creates conditions of employment for all citizens.

12 See European Commission 2010b. The Economic Adjustment Programme for Greece, OP 61. The same demands were regularly repeated and specified as appropriate in the successive reviews of the Programmes.

13 E.g. the right to fair remuneration in article 4(1) of the ESC. See Complaint No. 66/2011, Decision on Merits, 23.5.2013.

14 Law 4046/2012 applied the Second Memorandum (p.684: "First as a prior action we will enact legislation to close small earmarked funds in non-priority social expenditures (OEK, OEE)").

mic, Social and Cultural Rights (articles 9, 10), Convention on the Elimination of Discrimination Against Women (articles 11, 13, 14), Convention on the Rights of the Child (articles 18, 23, 26), Committee on the Elimination of Racial Discrimination (articles 2, 5), and European Social Charter (articles 8(1), 12, 14, 16, 17). It affords protection to the most vulnerable members of society, guaranteeing to all the minimum goods and services required for a life in dignity. Yet, the two Economic Adjustment Programmes imposed social spending cuts affecting pensions, work and social benefits (OECD 2013), thereby entailing "a significant degradation of the standard of living and the living conditions of many of the pensioners concerned."[15]

- Measures affecting protection against discrimination. Workers under 25 years in the labour market were excluded from the legally protected minimum salary (European Social Charter 2014, 31). Xenophobia against migrants increased (Racist Violence Recording Network 2013; Muiznieks 2013). According to UN Human Rights Council (2013), the systematic detaining of all irregular immigrants became official policy. Cutbacks were introduced in social services due which have had "detrimental effects on women in all spheres of life" (UN CEDAW 2013), affecting especially female economic autonomy and discrimination in employment, sexual and reproductive rights (Law 90380/5383/738/2012) and protection from violence.

Against this background, the Greek Ombudsman (2012, 4) has warned about the consequences of rising pauperization, by emphatically noting that "the drastic adjustments imposed on the Greek economy and society as a whole, have had dramatic consequences on citizens, while vulnerable groups multiply". Similar warnings have been echoed by the National Human Rights Commission, drawing attention to a "rapid deterioration of living standards coupled with the dismantling of the welfare state and the adoption of measures incompatible with social justice which are undermining social cohesion and democracy" (Greek National Commission for Human Rights 2011).

15 European Committee of Social Rights 2013. Federation of Employed Pensioners of Greece (IKA-ETAM) v. Greece, Complaint No. 76/2012. Decision on merits, 7 December 2012, para. 78.

Conclusion

Recent developments are quite revealing as to Greece's shifting social realities and new understandings of micro- and macro-level forms of solidarity De Beer's (2005) distinction between "individual" (micro-level) and "institutional" (macro-level) solidarity may be informative in this context. Individual solidarity refers to situations in which single persons decide to contribute to the well-being of others; institutional solidarity refers to types of solidarity that have been institutionalised in the form, for instance, of the modern welfare state and social protection systems. The Greek case as presented in this chapter provides support for the claim that there is a link between austerity and the erosion of institutional solidarity underpinning many post-war arrangements that have created the Greek modern social welfare state and economy. The adverse effects of this linkage have been more painful for vulnerable groups undermining a set of values such as social justice and equity and the moral foundations of public policy-making. Moreover, solidarity as a normative foundation of the Greek welfare state has been challenged by the ambivalent judicial stance over reductions in pensions and social benefits amid austerity backlash.

As a result of the State's failure to provide citizens in need with adequate social policies and services, there is evidence – as we have seen – testifying to the (re-)generation of civil society. Emerging solidarity initiatives and grassroots groups mainly, embodying what Harvey (2000) describes as ‘‘new spaces of hope". These new forms of micro-level solidarity are increasingly functioning as "shadow welfare state. They seem to be filling in historically established "solidarity gaps" in clientelism-driven social welfare provision that have been further intensified by recent policy choices.[16] This undoubtedly calls for a rethinking of the relationship between macro-level solidarity and micro-level acts of solidarity (that is, be-

16 As Gianitsis and Zografakis righty remark (2015, 13): "the deterioration of the pension system during the crisis and the cuts in pensions have... been a result of domestic political choices that have burdened the pension system, even amid the crisis... the governments facilitated the retirement of large numbers of people who are expected to shift the higher cost to existing pensioners, pushing down the level of pensions. Thus, this mechanism is used as a substitute of social policy and expresses a policy of solidarity the cost of which now falls upon the pensioners themselves, thereby undermining the entire social security system. However, given that solidarity means support to those in need from those who are better-off and not from other weaker groups, it is highly questionable if a policy which forces the

tween public actors and services and civil society and solidarity actors are also on the frontline in the development of responses to urgent and pressing social needs) and its effects on citizens' resilience in times of crisis (Kousis et al. 2015). An examination of this relationship may allow for a better understanding of the possible synergies between citizens' solidarity initiatives and state mechanisms and their potential impact.

Ultimately, a major question that arises from the Greek evidence is whether austerity significantly undermines the objective of the EU 2020 Strategy to build a sustainable and inclusive (therefore, solidarity based) economy. Undoubtedly, the crisis has prompted major policy rethinking across Europe, as tensions emerging from the clash between Europe's social aspirations (as set out in the Treaties) and European economic governance, are exerting dangerous downwards pressure on labour and social rights. Overall, we might ask whether welfare retrenchment and austerity policies do not contradict the place that the European Social Model should have in European construction. Admittedly, a fuller picture could be drawn, if the effects of the crisis and austerity in Greece are studied on a comparative basis that is, by contrasting choices of solidarity notions and crisis management policies across countries. It seems though that a hard look at the failings of the recent past is necessary in order to render new understandings about (transnational and national forms of) solidarity in the future.

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weaker groups to redistribute among them a meagre income and aggravates the huge deadlocks of a bankrupt system and the prospects of this part of society can qualify as "solidarity policy".".

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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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Poland

Janina Petelczyc

Introduction

The principle of "solidarity" is vivid yet quite ambivalent among Polish people due to complicated socio-cultural antecedents. Even though "solidarity" as a value is very often discussed in public debates, its meaning is not very clear and depends on the discussant's intention. The "Solidarity trade union movement, which has dominated the discourse on "solidarity" for years, has exerted a strong influence on the people, while neoliberal policies implemented after 1989 have digressed far from this principle. The new Polish Constitution was introduced in 1997, later than in other countries of the region, when social enthusiasm after the fall of the communist system was less robust. The principle of "solidarity" appears in the Constitution only once (on its own, not in relation to other principles), in the preamble, but not of a legally binding character. It is less often evoked by the Constitutional Court than other values (Stefaniuk 2003/2004). Thus, the meaning of "solidarity" in Poland is strongly anchored in specific socio-cultural background and the legacy of the "Solidarity" movement during communist times. The Constitution of the Republic of Poland (Konstytucja Rzeczypospolitej Polskiej), 2 April 1997, defines the political system in Poland. According to Art. 2 of the Constitution, Poland is a democratic state ruled by law, implementing the principles of social justice.

Polish constitutionalists (Winczorek 2000; Sokolewicz 1998; Jędrzejowska 2011) enumerate more than twenty basic principles of the Polish Constitution, among which are "democracy based on the rule of law", "social justice" (Art. 2) and "common good", as Art. 1 states "*The Republic of Poland shall be the common good for all its citizens"*. The other values explicitly indicated in the Polish Constitution are "freedom and human rights" (Art. 5), political pluralism (Art. 11 and Art. 13) and "social pluralism and civil society" (Art. 12) as well as "decentralisation of public power", "self-governing" (Art. 15-17) and "subsidiarity" (in the Preamble). Art. 32 in Chapter II of the Polish Constitution states that *"All per-*

sons shall be equal before the law. All persons shall have the right to equal treatment by public authorities", a strong emphasis on constitutional value of equality.

The relatively late arrival of the Polish Consititution caused a general lack of interest surrounding basic law, and now this act is often questioned. In May 2017, President Andrzej Duda announced that he wanted a national debate on Poland's Constitution. He wanted to change Poland's Constitution and called for a referendum on it. Therefore, the future of the Polish Constitution and embeddedness of different values, including "solidarity", is uncertain.

Cultural Context: Remarks on "Solidarity" in the Polish Public Discourse

Poland is a country in which "solidarity" is primarily associated with the "Solidarity" social movement which had a substantial influence on political change and democratisation. Thus, "solidarity" as a value cannot be interpreted without acknowledging the importance of the trade unions and the social movement which had a strong impact on the transformation of the political system in 1989. During manifestation of the "Solidarity" trade union at the beginning of 1980, "there is no freedom without solidarity" (*nie ma wolności bez solidarności*) was often heard. The stance of "Solidarity" was supported by the Catholic Church, which was also a very important actor of the anti-Communist opposition. In particular, Pope John Paul II significantly contributed to the existence of "solidarity" in public discourse, saying: "*there is no freedom without solidarity*" in his speech during his pilgrimage to Poland in 1987. Given the political context, this was a clear reference to the solidarity action against the regime in general and to the labour union's "*Solidarność*". The pope paraphrased his words on "solidarity" during his latter pilgrimages to Poland. This narrative created some links in Poland between "solidarity" and the Catholic Church pedagogy. Kubik states that: *"Every analysis of the phenomenon of Solidarity which does not include the role of Polish Catholicism and the Polish Pope is highly incomplete"* (Kubik 1994). What seems particularly important in this context is the influence of Catholic social teaching on the official programme of "Solidarity" (Brzechczyn 2011).

Although "Solidarity" as a movement and as a value were very important during the fall of the communist regime, the subsequent transformation period is often perceived as the "defeat" of "Solidarity". The move-

ment failed to independently create a self-governing republic in 1989, and its defeat was even harder in 2001. Economic and political order in Poland started to differ significantly from what the opposition to the communist era had hoped (Shields 2003). There are different explanations for this discrepancy. One of them points to the role of the debate which was initiated in Poland by economists from the liberal school in the late 70s and that had continued to develop. It emphasised that the system was bankrupt and needed deep, massive changes toward a market-driven, entrepreneurial economy. This narrative strongly shaped a liberal intellectual climate in Poland (Walicki 1988). Moreover, many academics, including a group of persons later involved in politics, obtained grants to Western universities, influenced by neoliberal ideology (Zubek 1997). Thus, the country of "solidarity" implemented so-called "shock therapy" involving the fundamental role of individual freedom as well as in the fields of social policy and economics. Poland has become a state implementing neoliberalism, which could be defined as an ideology that prefers market-based solutions to almost all social phenomena (Duménil and Lévy 2005). In international comparisons, the Polish model of social policy is often classified as minimalistic, liberal or hybrid, with certain privileged groups in the labour market. Social and labour market policies after the transformation in 1989 did not always reflect the declared ideological affiliations of the political parties. Neoliberal changes were introduced during social democratic governments as well as Christian democratic ones (Szelewa 2014; Cerami 2008). Moreover, according to some scholars, the EU has exported a more "market-radical" variant of neoliberalism to its new member states (Bohle 2006), so that the Polish model may be called "flexi-insecurity" (Meardi 2012).

Although the Catholic Church remains important in the public sphere, the impact of neoliberalism in Poland has not been its central theme. Societal values, especially concerning family life and sexual ethics, have become a core interest of the Catholic Church in Poland, its teaching and societal position (Haynes 2009). The level of declared religiosity continues to be stable in the last few decades. According to the last census in 2011, 87.58% of people declared themselves as Catholics (GUS 2013). Nevertheless, the knowledge of the social teachings of the church is not much in evidence in Polish society with three-quarters of Catholics declaring that they have never read papal encyclical (CBOS 2010). It is not surprising that declarations of Poles often diverge from the principles of the social doctrine of the Church. For example, when asked about attitudes to immi-

gration, only about 30% of the Polish public think that it could make a positive difference to the economy; a similar proportion feels that it could enrich the cultural life of the country. Poland is the most nationally homogenous country in the European Union and the majority of the Polish public do not see immigration as a positive influence. In turn, when asked about a series of different groups as potential neighbours, half of the Polish public would rather not have people with a criminal record and Roma (about 55%), or Muslims and left-wing extremists, e.g., communists (50%). A large number of people would not like to live next door to homosexuals (40%) followed by people with AIDS (33.5%), immigrants (20%) or Jews (19%). This contributes to the picture of a relatively intolerant Polish public (LIVEWHAT 2016). Another study shows that Poland, together with Lithuania, Venezuela, Bulgaria and Estonia, has the lowest level of empathy among 63 countries. The study measured the locals' compassion for others and their tendency to imagine another person's point of view (Chopik, O'Brien and Konrath 2016).

Nevertheless, the notion of "solidarity" is present in public discourse. It has been used by politicians over subsequent decades, usually to contrast the standpoint of somewhat traditional, catholic and poorer parts of Polish society with the richer more liberal and allegedly success-oriented citizens. For example, in 2005, the parliamentary election campaign was focused on a slogan formulated by a right-wing political party, the Law and Justice party. The slogan came to define the discursive disagreement of "solidarity Poland" versus "liberal Poland". In his expose in 2007, Prime Minister Donald Tusk was explicit, stating:

> *We have been talking about the false alternative (...) in which freedom is contrasted with solidarity (...) in 1980 our dream came true — the dream of freedom and solidarity back in one house (...) this government and this coalition is for the sake of freedom and solidarity, in the future no one dares to contradict freedom and solidarity (...).*

This discursive opposition has, however, been used during the ensuing years. On the one hand, it has brought to the debate the question of state functionality and its role towards the most vulnerable groups. On the other hand, the notion of "solidarity has been used in a populist way — to disregard ruling party policies as allegedly promoting elitist interests.

At present, it seems that the principle of "solidarity may be under threat. On one hand, since the Law and Justice party (*Prawo i Sprawiedliwość, PiS*) won the parliamentary election in 2015, the new government has implemented the values of solidarity (i.e., by introducing generous

family benefits and lowering the retirement age). On the other hand, bearing in mind that the principle of "solidarity" is not directly entrenched in the Polish Constitution, the constitutional crisis related to the functioning of the Constitutional Court, which should be an independent constitutional organ of the state, may constitute a real threat to this (and other important) principle(s). Poland has been going through this crisis since 2015. The Constitutional Court's main task is to supervise the compliance of statutory law with the Constitution of the Republic of Poland and international agreements. It adjudicates on disputes over the powers of central constitutional bodies and on compliance with the Constitution of the aims and activities of political parties. It also resolves constitutional complaints. But after winning the election, the new president of Poland refused to swear into office the judges appointed to the Constitutional Court by the previous parliament. In December 2015, the newly elected parliament appointed five new judges to the Constitutional Court. Parliament did not wait for the Tribunal's ruling on whether the initially appointed judges had been appointed based on law in compliance with the Polish Constitution. The rule was that election by the previous parliament of all five judges at once was partially unconstitutional (it allowed for the appointment of three judges whose tenures expired in November 2015).[1] This judgement of the Constitutional Court was not published by the Prime Minister (who is obliged to publish it immediately) until after two weeks, because the Chief of the Chancellery of the Prime Minister sent a letter to the President of the Constitutional Court in which she noted that the judgement was invalid. Furthermore, in reaction to the judgement, at the end of 2015, Parliament adopted the new Act on the Constitutional Court, which might in fact block the work of this court. On 9 March 2016, the Court delivered its judgement in which it pronounced the Act amending the Act on the Constitutional Court as unconstitutional.[2]

The representatives of the government did not accept this judgement, which was not published. The Act on the Constitutional Court of 2015 lost its binding force with the entry into force of the new Act on the Constitutional Court of July 2016. The Constitutional Court found its provisions unconstitutional, but this judgement of the Constitutional Court of 11 August 2016 also has not been published (Szuleka, Wolny and Szwed 2016).

1 Judgement of the Constitutional Tribunal of 3 December 2015, K 34/15.
2 Judgement of the Constitutional Tribunal of 9 March 2016, K 47/15.

The Constitutional Court crisis provoked controversy in Poland and abroad and may be seen as a threat to the realisation of constitutional principles — including the "solidarity principle.

In conclusion, "solidarity" has always been a relevant principle in Polish discourse, especially during times of political transition, due to the importance of the trade union movement as well as the Catholic Church's influence. However, after 1989, the dominance of neoliberal policies, with less Church focus on social teachings, and growing political divisions in the country have resulted in the emergence of an opaque definition of solidarity. Moreover, the fact that this principle is not entrenched in the Polish Constitution (to be developed in the next part of this chapter) may be problematic for its interpretation. In this context, the threat of the Constitutional Court, as a separate power, is a great menace to this principle in the future.

The Constitutional Entrenchment of "Solidarity"

The Constitution of the Republic of Poland of 2 April 1997[3] in its main text does not refer to the "solidarity principle explicitly. Thus, the literature on "solidarity" in the Polish Constitution (Pułło 2015; Piechowiak 2012) is scarce. However, "solidarity" is mentioned in the Preamble, which means that it should be considered as one of the first in the hierarchy of constitutional principles of Poland. In the Preamble, "obligation of solidarity" is considered as one of the three universal values, next to "inherent dignity of the person" and "right to freedom".

> *We call upon all those who will apply this Constitution for the good of the Third Republic to do so paying respect to the inherent dignity of the person, his or her right to freedom, the obligation* of solidarity with *others, and respect for these principles as the unshakeable foundation of the Republic of Poland.*

In the Constitution, "solidarity is a universal value and should be respected both by the authorities and citizens. But it remains very general and for this reason it is considered rather as an interpretative directive rather than as an intrinsic principle of law (Pułło 2015).

3 The English version is available here: http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm.

Indirectly, this rule may be inferred from other principles laid down in the main text of the Constitution. "Solidarity is mentioned in Art. 20 as one of the elements characterising the social market economy:

> The social market economy is the basis of the economic system of Poland which is based on freedom of economic activity, private ownership, solidarity dialogue and cooperation between social partners.

But "solidarity in Art. 20 of the Constitution is understood in a narrower sense, in particular as far as it addresses these principles, which are: social partners (i.e., trade unions), employers' organisations and the authorities of the state when the state is also the employer.

The Constitution was adopted by the Polish National Assembly on 2 April 1997, by a vote of 451 to 40. It was late compared to constitutions adopted in the other Central and Eastern European countries: Bulgaria, Romania and Slovenia in 1991 and the Czech Republic and Slovakia in 1992. The constitution making process was drawn out, and belated adoption ended in a general lack of interest surrounding basic law. It was approved in the referendum, but with a low turnout only 42.9% of eligible voters participated in voting (Flanz and Blaunstein 1997). Probably it would have received speedier societal approbation and would have been met with more enthusiasm had it been adopted in 1989 or 1990 (Cholewiński 1998). But the significance of Catholic social teaching was still strong and influenced the authors of the Constitution.

Thus, the "value" of "solidarity even if not directly expressed, remains important in Polish basic law and could be understood better through this perspective (Pułło 2015). In the Catholic social teaching the principle of "solidarity" is generally considered as one of the three basic social and ethical values. The notion of "solidarity" is compatible with common commitment, common action and mutual support. The principle of "solidarity" as stated in Catholic social teaching and the Preamble of the Polish Constitution indicates that people who cannot help themselves should not be left alone and that people should support each other to lead a dignified life (Pułło 2015). In this context, "solidarity" could not exist without "responsibility" for others. It should be noted that in the Polish Preamble, there is an "obligation of solidarity with others". And as it is stated in the encyclical *Sollicitudo rei socialis* promulgated by Pope John Paul II on 30 December 1987, "solidarity" should be understood as:

> *... a firm and persevering determination to commit oneself to the common good; that is to say to the good of all and of each individual, because we are all really responsible for all.*

However, this constitutional "obligation of solidarity from the Preamble remains a civic obligation of individuals. It does not guarantee a right to claim the "solidarity" of others through law and the state. Thus, in the next sections of this chapter, we will present values that are related to "solidarity" and its understanding, even if that "solidarity" is not directly mentioned, or if it is only evoked in interpretation of the courts or scholars.

Solidarity and the Common Good

"Common good" is a principle expressed in the first article of the Polish Constitution: *"The Republic of Poland shall be the common good of all its citizens"*.

As constitutionalists state, it is a value largely unspecified unless contextualised (Jędrzejowska 2011). In some interpretations the principle of "common good" means mutual obligations of the citizen and the state (Piechowiak 2012); an obligation of the citizen to show concern for the state (understood as "common good") and the state to show concern for the citizen. The citizens' obligations toward the state are confirmed in Art. 82 of the Constitution "*Loyalty to the Republic of Poland, as well as concern for the common good, shall be the duty of every Polish citizen*".

The aforementioned mutuality requires a shared responsibility and cooperation of all, including public institutions for the "common good". Any value to be acknowledged as a "common good" must be socially acceptable (Gołebiowska 2015). Therefore, as Gołębiowska states, in order to enable all citizens to properly contribute to the development of the "common good", the state and its agents must ensure respect for the dignity of each person and realisation of other principles, such as: equality, social justice and solidarity. There is no "common good" without "solidarity". A state is an association based on "solidarity" and mutual dependence (Gołębiewska 2015).

The Polish Constitutional Court finds "common good" synonymous with public interest (of all people) (Complak 2007). In its judgements, the Constitutional Court often refers to the "common good" when it wants to limit some individual rights or to choose between common good and particular interest of some groups. These principles are the basis for the obli-

gation of the legislature in the field of social policy to give priority to "common good" over individual good and before any other particular good. In this context, common good is connected to Art. 20 addressing the social market economy and obligation of "solidarity" in the cooperation and coexistence of social partners.[4]

Solidarity and Social Justice

"Solidarity" can also be extracted as an essential element of the principle of social justice, which can be found in Art. 2 of the Polish Constitution, which states that *"The Republic of Poland shall be a democratic state ruled by law and implementing the principles of social justice"*.

As the Constitutional Court in Poland explains in its judgements, constitutional values are derived from the social philosophy known as *social solidarity*. The Court emphasises that the principle of social "solidarity" requires that the burden of an economic crisis shall be imposed on all social groups and that "solidarity" is the source of a redistributive function of social justice[5]. Complementary to that, during economic prosperity, all social groups should benefit.

According to the judgements of the Constitutional Court, the concept of social justice is associated with other constitutional principles like *"equality before law, social solidarity, minimum social security and providing basic living conditions for people who are out of work"*[6].

The principle of social justice applies — on the one hand — to social relations between different social groups, and — on the other hand — to relations between these social groups and the state. According to the opinion of the Constitutional Court, the principle of "solidarity" as an element of social justice reflects the balance in social relations. It also helps to avoid the creation of unwarranted criteria privileges for certain groups of citizens based on nonobjective requirements", and criteria privileges for certain groups of citizens[7].

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4 Judgement of the Constitutional Tribunal SK 11/98, K 17/00, K 47/00 and SK 23/01.

5 Judgement of the Constitutional Tribunal, P 11/12.

6 Judgement of the Constitutional Tribunal of 23 Jun 2013, P 11/12.

7 Judgement of the Constitutional Tribunal of 14 April 2000, K 8/98.

The principle of social justice in the context of "solidarity" was the basis of various rulings of the Constitutional Court. For instance, in the judgement (P 11/12) of 25 June 2013, the Court decided that the requirement of an actual stay in the territory of Poland as a necessary condition for entitlement to a social pension (*renta socjalna*) is incompatible with the Polish Constitution. The social pension is funded from a public budget and granted to adults who have been recognised as totally unable to work due to impairment of bodily functions which occurred before reaching the age of 18 years, or during the course of studies at school or any higher education institution before reaching the age of 25 years, or during the course of doctoral studies or post-graduate programmes. According to the Court, the right to a social pension is the expression of the principle of social "solidarity", which is not derived directly from the Constitution, but from "social solidarity philosophy" to which the Constitutional Court often refers (Lach 2006). Social "solidarity" is therefore seen as the basis for the public welfare state, including the public system of social assistance and social insurance. The essence of this principle manifests itself mainly in breaking a link (the equivalency) between contributions paid and the amount of benefit received. The problem was whether the required condition of an actual stay in the territory of Poland, next to the requirement of residency in the territory of Poland, which are the necessary conditions to qualify for the social pension, do not limit the constitutional right to social security. The Court answered that the abovementioned obligations are:

> *… contrary to the principle of social justice, because they exclude persons entitled to the social pension from an equitable distribution of social benefits financed by the state budget solely on the grounds of an arbitrary, unjustified and anachronistic condition like an actual stay in the territory of Poland.*

Another judgement that could be presented in this context is ruling K 43/12[8] on raising and equalising the retirement age.[9] The principle of social "solidarity" has become a justification for this judgement. The Court ruled that the higher retirement age was justified by such principles as:

8 Judgement of the Constitutional Tribunal of 7 May 2014, K 43/12.

9 According to the amendment of 2012 of the Act on pensions from the Social Insurance Fund, the retirement age was 67 for both men and women. From 1 January 2013, it has gradually been extended. This age would be finally fixed at 67 for men in 2020 and for women in 2040 (when it would be equal for both genders). But the reform was reversed in 2016 by the new government.

- Justice (all subsequent generations of the insured shall equally bear the cost of retirements);
- Social solidarity;
- Sustainability of public finances.

The Court also argued, in the context of retirement age reforms in Poland, that the fundamental value and principle is the "solidarity" of insured persons. As one can see, the Polish Constitutional Court often refers to the principle of "social solidarity" in rulings concerning social justice. However, social justice is clearly embedded in the Polish Constitutional legislation; social "solidarity" is only a default principle and is still not fully recognised and given intrinsic normative meaning (Pułło 2015).

Solidarity and Social Security

Solidarity is a conjectural value on which, according to scholars, social security is based. According to some, it is even its "key element" (van Praag and Konijn 1983). "Solidarity" refers to the situation in which all (or specified groups of) people share risks by mutual contributions. Thus, members of the community bear social risks (old age, illness, unemployment, etc.) by mutual support. It could also be interpreted as a fundamental obligation towards the poor and/or vulnerable groups (van Vugt and Peet 2000).

Social security is guaranteed in the Polish Constitution (e.g., in the Art. 67).

1. *A citizen shall have the right to social security whenever incapacitated for work by reason of sickness or invalidism as well as having attained retirement age. The scope and forms of social security shall be specified by statute.*
2. *A citizen who is involuntarily without work and with no other means of support, shall have the right to social security, the scope of which shall be specified by statute.*

In its rulings, the Constitutional Court often refers both to "social security" and "solidarity" as principal values such as in the judgement of 19 December 2012 (K 9/12), when the Court ruled that the episodic regulations, which in 2012 suspended the "Swiss indexation" based on a defined percentage rate and introduced the "quota indexation" of pensions, are in accordance with the Polish Constitution. In 2012, indexation consisted of

adding an indexation amount of 71 PLN to the amount of the received benefit. Previously, all pension benefits were indexed in accordance with changes both in wages and prices. This meant that the pensions lower than 1480 PLN increased more than if they were indexed on a basis of a defined percentage rate. On the other hand, pensioners receiving pensions higher than 1480 PLN received less than they would normally receive under the previous system.

The Constitutional Court underlined that progressive income inequality among society members forced the legislature to seek an optimum benefit indexation mechanism in 2012. The Court concluded that by introducing the ad hoc indexation of pensions in 2012, the legislature did not violate the essence of the constitutional right to social security. Moreover, this action was justified by the constitutional principle of sustainability of public finances and social solidarity.

Solidarity and Sustainable Development

Another value closely related to "solidarity" in the Polish constitution is sustainable development, which could be interpreted also as "intergeneratioal solidarity". In this context, "solidarity" is understood as existing relations between the younger and older generations (also those who live now and will live in the future) in the field of social security as well as protection of natural and cultural heritage in order to ensure all generations a life of dignity. According to Art. 5 of the Constitution.

> *The Republic of Poland shall safeguard the independence and integrity of its territory and ensure the freedoms and rights of persons and citizens, the security of the citizens, safeguard the national heritage and shall ensure the protection of the natural environment pursuant to the principles of sustainable development.*

From the fact that there is an appeal to the principle of sustainable development in the first chapter of the Constitution (which is a chapter of principles), it can be concluded that the state and its citizens have certain obligations towards future generations and should be in "solidarity" with them while making law. This is emphasised directly in Art. 74, paragraph 1, which states *"Public authorities shall pursue policies ensuring the ecological security of current and future generations"*, and paragraph 2, which states *"Protection of the environment shall be the duty of public authorities"*.

This is a difficult obligation, one in need of finding solutions favourable both to economic development and the environment in accordance with the principle of proportionality and social market economy (Pułło 2015). This part of the constitutional provisions meets numerous obstacles due to, for example, logging in ancient forests (Errikson 2016) or the highest levels of pollution in the European Union (Boren 2015).

Solidarity in Development Cooperation

In the field of developmental aid, the Polish parliament issued a law on "development cooperation" (Ustawa o współpracy rozwojowej) on 1 Oct 2011 (Dz. U. from 2011, no. 234/1386). The law regulates the mechanisms of cooperation with and assistance to developing countries (i.e., beneficiaries listed by the OECD, including the countries of the "Eastern Partnership"). It regulates the mechanisms of financial help and administrative cooperation whereas under the term of "developmental cooperation" it is understood as

> *… an array of activities held by government administrative agencies in order to grant developmental assistance to developing countries and/or their societies, according to the principle of international solidarity (….)* (Article 2.1.)

But, as Grupa Zagranica states:

> *We failed to create an effective programme of Polish bilateral development aid with the objectives and results, adapted to the needs of our priority countries and harmonised with actions of other donors. There is an urgent need to elaborate realistic plans that will significantly increase both the volume and quality of Polish development aid.* (Polish Development Cooperation 2012)

The volume of Polish development aid still remains at a very low level. The total value of Polish development aid in 2015 accounted for 0.1 % of GDP. This level has remained practically unchanged for years (OECD 2015).

Solidarity in Social Dialogue

During the economic crisis, the Polish government was accused by trade unions of not being truly engaged in social dialogue (Gardawski 2014). The social dialogue in Poland was broken in June 2013 when the trade unions left deliberations with social partners in protest against planned

changes in the labour law in Poland, which envisaged, for example, the introduction of flexible working hours and extension of the settlement period from 4 to 12 months. The trade unions have found that social dialogue between the government, employers and trade unions is a sham, because the unions' demands are not taken into account (Gardawski 2014). However, by leaving the Tripartite Commission for Social Dialogue trade unions have taken away the possibility of any impact on politics.

The new Council of Social Dialogue replaced the existing Tripartite Commission for Social Dialogue (*Komisja Trójstronna ds. Społeczno-Gospodarczych*) and is expected to successfully deal with the social dialogue crisis in Poland.

The Council of Social Dialogue is to implement "*the principle of participation and social "solidarity" in employment, improve the quality and effectiveness of implementing the socio-economic strategy and build around them favourable conditions of cooperation between social partners in Poland — trade unions, organisations of employers and the government*."

Solidarity and Protection of Foreigners

A discourse on immigration has been present in the public media since the refugee influx into the EU in 2015. Apart from the EU-wide reasons, three country-specific arguments have been raised against accepting the refugees: a) necessity to help "hungry Polish children" of poor families first, b) necessity to support Polish citizens living in Ukraine since the second World War in readiness for their return to the homeland first, c) the issue of refugees is primarily a problem of Germany, to which Poland need not be in solidarity since Germany abused Polish security when cooperating with Russia on the gas pipe investment, Nord Stream. Anti-refugee arguments were particularly offensive during the electoral campaign in 2015; the Law and Justice leader claimed refugees might bring "protozoans and parasites" to Poland. Simultaneously, a bottom-up civic movement supporting refugees coming to Poland has been organising country-wide marches with the motto "welcome to Poland. Religion is important in the framing of migration problems in Poland. Poland is a homogeneous country in terms of religion (more than 87% are Catholics). Only 0.07% of the citizens in the 2011 census declared themselves to be members of Islamic communities (Main Statistic Office 2013). The ethnic and

religious homogeneity of Polish society could be the reason why, although Poles' attitudes towards immigrants is improving, there is still a large percentage of citizens who disapprove of immigration. According to the Public Opinion Research Centre (CBOS) survey, 53% of respondents claim that Poland should not accept any refugees and 63% are against refugees from Africa and the Near East. Forty-one percent are in favour of accepting refugees but most of them claim that the refugees should stay in Poland only until they are able to return to their countries of origin. Only 4% believe that there are not enough immigrants in the country, which is particularly interesting in the country with the smallest rate of immigrants among all EU Member States (CBOS 2016).

Despite this, the principle of "solidarityis enumerated in the amendment of the act granting protection to foreigners within the territory of the Republic of Poland from 2015. It has changed the definition of relocation of a foreigner, stating that

> *relocation is the moving of a foreigner who has applied for international protection at the territory of a given member state (...) or displacement of a foreigner having international protection from the other EU member states to the territory of the Republic of Poland, based on the responsibility and solidarity of the EU member states* (Art 2, 9 d).

Conclusion

The notion of "solidarity" is very vivid in the Polish discourse and legal system. It has deep historical roots in the "Solidarity" trade union movement as well as Catholic social teaching, both of which have helped in the democratisation of the country. However, after this transition, Polish policies have been dominated by neoliberal discourse and solutions. For this reason, the Polish welfare state could be called "flexi-insecurity", which is far away from solidarity. Moreover, the Polish Constitution was adopted nearly a decade after 1989, in 1997, when public enthusiasm had dwindled. The principle of "solidarity" does not appear in its first chapter, which contains the main principles, but it is in the preamble. It is one of the most important and universal values that should be taken into account when applying the Constitution, but its character is not clear nor binding.

Despite this, "solidarity" is a part of other main principles of the Polish system, like social dialogue, common good or social justice. The Polish Constitutional Court moves in line with the philosophy known as "social

solidarity" and emphasises this principle in many cases even though it is not derived from the Constitution directly. Polish constitutionalists state that "solidarity" is not fully recognised by courts, and it is an intrinsic constitutional norm. However, they divide the main principles into two groups: those bound with traditional canon of Constitutional matters and those that are becoming a part of this canon right now. "Solidarity" is in the second group.

So, "solidarityis a principle which causes many paradoxes in Poland. On one hand, the "obligation of solidarity" written in the preamble of the Polish Constitution suggests that it is one of the principles that forms the basis of the state system. On the other hand, Polish constitutionalists show that the principle of "solidarity" inscribed in the Polish Constitution is rather a "general idea", impossible to define, unclear, with a non-binding character. The Constitutional Court often refers to "solidarity", especially "the social solidarity" principle, but rather as the part of other principles. Moreover, in this time of crisis of the functioning of the Constitutional Court, it is unclear and difficult to foresee how it will adjudicate in the future, under political pressure.

The second paradox is that Poland, the country of the "Solidarity movement that helped to overthrow communism, has implemented since 1989 rather neoliberal political and economic solutions, based more on individualism than on social solidarity.

Finally, as a Catholic country where almost 90% of citizens declare themselves as Catholic, Poland is also one of the countries with the lowest levels of empathy and tolerance, both of which are imperative for "solidarity to thrive.

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Switzerland

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Introduction

The Swiss ethos for solidarity strongly refers to social cohesion inside the various territorial levels of the nation-state. Swiss federalism accommodates diversity and autonomy as the mechanism that accounts for the political and social equilibrium between the shared-rule at federal level and the self-rule at the cantonal level. The relationships vis-a-vis solidarity and federalism are subject to the cultural and territorial complexity of the State, which ascribe a core set of values and duties that stronghold cantons and citizens' peaceful coexistence and well-being. This chapter analyses how solidarity is conveyed implicitly and explicitly within the Swiss legal system, focusing on the direct impact of federalism and diversity on institutional solidarity schemes.

Solidarity as a Fundamental Constitutional and Federal Principle

The Swiss Constitution of 1999 (Cst.)[1] is a socio-political agreement that frames the basic rules for the democratic building of the Swiss society and

1 The Swiss Constitution (Cst.) is the fundamental law of the legal order of the State, which defines the structure and the organisation of the State and embodies the rights and guarantees of the citizens. The Swiss Constitution is part of the new wave of recent western constitutions, which reflects changes on decentralisation, deregulation, human rights and judicial review (Church 2011). It comprises a preamble, 6-title and 197-article. The Preamble contains the axiological dimension of the constitution as a set of ultimate values that provide an ethical and moral foundation to the everyday societal construction. The dogmatic dimension of the Swiss constitution comprises Titles I and II which define the fundamental rights, duties and constitutional guarantees of the citizens and cantons, in addition to the characterisation of the state. Title I designates cantons and the Swiss people as sovereign, while the Title II defines the fundamental rights, political and social rights. The organic dimension of the Swiss Constitution is very extensive. It covers more than two thirds of the constitutional text. Within Titles III – VI the relations between the

for the peaceful coexistence between the various territorial entities of the Federal State and its citizens, within the formula of *"diversity in unit"*. The preamble of the 1999 Swiss Constitution recognises the principle of solidarity as one of the fundamental values that governs Swiss society. Furthermore, it defines the Swiss State's spirit as one in solidarity and openness towards the world, embedded in pivotal values such as diversity, sustainability, democracy and mutual consideration. However, the solidarity principle is only literally stated within the axiological framework of the constitutional order, as a fundamental constitutive value of the declaration of intentions that guides the legal order.

> *"In the name of Almighty God!*
> *The Swiss People and the Cantons, mindful of their responsibility towards creation, resolved to renew their alliance so as to strengthen liberty, democracy, independence and peace in a* ***spirit of solidarity and openness towards the world****, determined to live together with* ***mutual consideration and respect for their diversity, conscious of their common achievements and their responsibility towards future generations****, and in the knowledge that* ***only those who use their freedom remain free****, and that the strength of a people is measured by the* ***well-being of its weakest members****, adopt the following Constitution*" Swiss Cst. 1999 Preamble

In order to grasp the embeddedness of the solidarity principle in the Swiss legal system, one must untangle the relationships and tensions inside the Federal State; the quest for equilibrium between self-rule (autonomy of the cantons and municipalities), shared-rule (consensual power of the Confederation) and solidarity. In this sense the Confederation exists as a horizontal sociopolitical partnership of informal and dense networks (Kriesi and Trechsel 2008; Fleiner 2002). The association between federalism and solidarity translates into the principles that govern the cooperation between the Confederation and the cantons grounded upon diversity (Cst. Art. 2), subsidiarity (Cst. Art. 5a and Art. 43a), equalisation of financial resources and burdens (Cst. Art. 135) and social rights and objectives

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State authorities are defined, determining as well the structure of the separation of powers and their competences. Therefore the organic part of the Swiss constitution contains the political, socio-economical and judicial structure of the State, as well as the mechanisms of control. In general terms, the Swiss Constitution is a written constitution, considered extensive (197-article) and not rigid. It does not require a special procedure for its reform (Art. 193 and 194). It is also considered an inclusive and consensual constitution, as the result of the compromise reached between the political forces, cantons and citizens.

(Cst. Art. 12 and Art. 41). The Constitution also states individual and collective responsibility (Cst. Art. 6) as core values of participation to civil life and society depending on each person's abilities.

In particular, Cst. Art. 2 requires the federal government to foster the cantonal diversity of the country and manage multicultural pressures caused by migration (Fleiner 2009). It also defines, as part of the role of the State to promote a common welfare, foreseeing some degree of solidarity and social cohesion between citizens and cantons. Correspondingly, the Cst. Art. 5a establishes the basic guidelines for these relations through the principle of subsidiarity, as the mechanism to foster internal cooperation and solidarity. In addition, within the 2004 federal financial reform, the principle of subsidiarity also accompanied Articles 44 and 135 allowing through the federal government an equalisation of financial resources and burdens, to enhance internal cohesion and to reduce inequalities between cantons, and citizens that benefit from collective services. In this manner, the legal system also recognises the State and cantonal duty to ensure every person access to social security (Art. 41). The bulk of this chapter attempts to capture, in more detail, the relationships between federalism and solidarity, which requires taking into consideration the Swiss socio-cultural background on the one hand, and the federal and cantonal legal systems, on the other.

The Socio-Cultural Dimensions of Solidarity

In terms of solidarity Switzerland reveals a tremendous challenge. The political and territorial complexity of the Swiss State is translated into the development of the nation-state building and the social security system. Largely, the idea of solidarity in Switzerland could be associated with the social cohesion inside the various territorial levels of the nation-state. Solidarity is first conceived as a process of creation of collective conscience, fulfilling a function of social integration; secondly as partial socialisation of social risks, under the principle of decommodification; and thirdly as individual acts of solidarity –like volunteering.

Since the ratification of the Constitution of 1848, Switzerland's cultural identity has been forged on the principle of linguistic and religious diversity which were the most salient cleavages within Swiss society. 'Switzerland came into existence as a classic Nation of Will across strong cultural differences' (Klöti et al. 2007, 798). The first federal Constitution repre-

sents compromise between the victorious Radicals and the vanquished Catholic conservative. Swiss federalism developed out of various forms of organisational tissue: rural corporations, small liberal democracies, aristocratic or economic oligarchies. The constituted system was a composite state of sovereign cantons, where religion constituted the salient issue for the formation of the Swiss nation (Kriesi and Trechsel 2008, 6-7). In the Swiss case, the territorial autonomy of the different cultural communities translates into various levels of collective belonging, which impacts the political and social structures of the national community. At the federal level, the nationhood sentiment vehiculates a civic-nationalism based upon the political will of Cantons and citizens linked through a common set of fundamental political principles and institutions –federalism, direct democracy and neutrality- which relates to the French republican model, as civic-political community (Kriesi and Wisler 1999; Kriesi and Trechsel 2008). On the contrary at the cantonal level, social cohesion is structured upon a sentiment of ethnic and cultural homogeneity within groups. This ethnic conception of citizenship and cultural monism relates to the previous German ethnic model of citizenship. However, in the case of Switzerland the ethnic conception of citizenship forges a segmented cultural state which needs to accommodate traditional diversities (Fleiner 2002). As described by Hanspeter Kriesi (2008):

> *"The multicultural Swiss nation is in fact composed of diverse ethnic groups, each relatively homogeneous, within itself. Switzerland constitutes a successful federation of 'nations' [...] Within a common procedural framework, the different constituent cultures of the Swiss nation lived their own way of life and tended to ignore one another."*

These various conceptions of nationhood belonging have forged the Swiss citizenship model and nourish the liberal conceptions of the federal State role of the Swiss citizens. Through citizenship, the legal bond establishes relationships of mutual responsibility between individuals, cantons and the State. The bonds of citizenship in Switzerland are the result of horizontal and vertical collaborations: as loyalties between cantons, between individuals inside the cantons and between the different territorial levels. Currently, every Swiss citizen has a three–fold citizenship: communal, cantonal, and federal which are the entitlement of individuals with full political and civic membership/integration (Cst. Art. 37). The acquisition of Swiss citizenship is very restrictive. It is based upon an assimilationist conception of integration into the three territorial levels of citizenship, and precedes full incorporation of migrants into the community (Froidevaux 1997, 51).

In addition, with respect to the role of government in society, various polls have shown that most Swiss people consider that it should be limited. A weak central power enhances and preserves both strong diversity and cultural and political autonomy through all the different administrative levels (Fleiner 2002; Armingeon 2001). Likewise, the Swiss welfare State's scope and structure of the social schemes are similar to the continental insurance–based model of social security contributions but it combines residual liberal traits when issuing social assistance programmes (Armingeon 2001). The schemes are mostly regulated at federal level but their implementation takes place at cantonal level, which varies importantly from canton to canton. The impact of federalism, direct democracy and diversity results in a complex social-liberal welfare State model at different stages where complementary measures to personal responsibility and private initiative are ensured by the cantons and the Confederation (Cst. Art. 41).

Lastly, when referring to individual citizens' acts, the Swiss legal system does not imply or bind individuals to act in solidarity toward each other. Individualistic acts of solidarity are then conceived as forms of volunteering, as prosocial behaviours based on norms of reciprocity and altruistic solidarity. The 2014 Swiss Volunteering Survey showed that at least 33% of the resident population in Switzerland aged 15 and older was involved in at least one form of formal or informal voluntary work. Volunteering has been defined as 'any activity in which time is given freely to benefit another person, group or organisation' (Gundelach et al. 2010; Wilson 2000, 215). Volunteering as a form of social capital benefits a large share of the society (Putman 2000). It is associated with altruistic and charitable engagement to support others' well-being. In Switzerland, volunteering rates vary substantially between linguistic regions. Through the empirical assessment based on 60 communes sample in Switzerland, Freitag (2014) analysed the impact of the linguistic cultures on the individual volunteering behaviours and the existence of regional volunteering cultures. As shown by the analysis the various patterns and manifestations of direct democracy in the cantons impact the type of organisations within the civil society (Baglioni, 2004). It also confirmed that the propensity to volunteer is highest in the German-speaking part of Switzerland, followed by the French- and Italian-speaking regions; and that French-speaking Swiss exhibited the highest propensity for volunteering behaviour. Volunteering produces sustained social and community involvement enhancing social networks based on relationships of trust and reciprocity. Interesting-

ly, in Switzerland, densities of these networks differ substantially through linguistic and cultural regions.

The Constitutional Entrenchment of Solidarity within Swiss Federalism

The Swiss Confederation has three political levels and a non-centralised separation of powers; these enhance various forms of vertical and horizontal cooperation between the different administrative levels. The Swiss bottom-up federalism is embedded in the principles of autonomy, democracy and diversity. Cantonal sovereignty is explicitly guaranteed under Cst. Art. 3. Cantonal sovereignty is such that cantons can determine the scope of direct democracy granted to their citizens, and decide their official languages and religions in accordance with the Federal Constitution Principles (Fleiner 2009). In addition, the Constitution also guarantees communal autonomy (Art. 50) accommodating as well communal diversity and autonomy. The Swiss Confederation (federal level) is responsible when empowered by the Federal Constitution, as in policy areas that directly affect national sovereignty (military, monetary policy or external relations) and which need special coordination, or to establish a framework legislation (social security, environment, energy and infrastructure). The cantons retain the powers related to culture, education, language, religion and social policies (health and social services). The communes on the other hand, have exclusive powers concerning the provision of local services (construction and maintenance of roads, local gas supply, electricity and water and so forth).

Swiss federalism accommodates diversity and autonomy through democratic participation of cultural communities in the decision-making process. They contribute as sovereign units enacting in solidarity to compromise at the federal and cantonal level. Compromise is key for consensual building of the Swiss democracy which legitimates shared-rule between units and guarantees self-rule within the units. The Swiss Constitutional Preamble stipulates that *'only those who use their freedom remain free, and that the strength of a people is measured by the well-being of its weakest members'* which suggests that through democratic consensus-oriented processes, individuals optimise their individual liberty through their participation in the community and contribute to the common welfare of the State, of the community, and of their fellow citizens.

However, in a composite federal State the equilibrium between diversity, autonomy and solidarity is not a simple one. The Swiss federal State needs to accommodate individual liberties respecting the autonomy and diversity of the different communities. The sense of universality tied to all human beings, in which equality is the prevailing assumption within the socio-political organisation, does not entirely fit with composite nations, united in diversity (Fleiner 1995 and 2002). Moreover, modern constitutionalism situates fundamental human rights at the core of the legal system. These rights are based on Karol Wojtyła's personalist principle – which locates human beings' welfare as the goal of social order. This conception based on the centrality of the person, whose rights' entitlements are core to preserve human dignity and bounded in solidarity, eclipse the purely citizenship container of rights. In addition, it also centers the person's entitlement of rights within an optic of equal opportunities between individuals, underscoring the responsibility and social duty to overcome social inequalities. Still, in the Swiss case, the latent tensions between individual and collective rights translate into diverse living conditions between cantonal populations. The centralisation and fiscal equalisation measures designed to overcome these inequalities are considered a threat to autonomy and diversity. 'Equality of community may often even have priority over equality of individuals' (Fleiner 2002, 118; Fleiner and Basta 2009). For instance, Cst. Art. 128-9 cantonal fiscal autonomy preserved in the constitution limit individual rights and impact solidarity between fellow citizens. As a consequence, the constitutional individual rights embedded in solidarity, like Cst. Art. 7 on human dignity, Cst. Art. 8 on equality before the law and Cst. Art. 12 on the right to assistance, are first dependent on individual responsibility and on equality between cantons (Cst. Art. 6; for social objectives, see Art. 41§ 4.), by means of contribution to collective responsibility and fulfillment of the community. Such a subsidiary conception of state intervention to individual rights impacts heavily on the scope of the Swiss welfare system.

> *'Cst. Art. 6 Individual and collective responsibility: All individuals shall take responsibility for themselves and shall, according to their abilities, contribute to achieving the tasks of the state and society.'*
> *'Cst. Art. 41 Social objectives: 1 The Confederation and the Cantons shall, as a complement to personal responsibility and private initiative, endeavour to ensure that: a. every person has access to social security; […]4 No direct right to state benefits may be established on the basis of these social objectives.*

To fully appreciate the relationships vis-a-vis solidarity and federalism, detailed attention must be given to the political and social compromises between shared-rule and self-rule, and to the cooperation principles structuring those equilibriums.

Solidarity between Shared-Rule and Self-Rule

The legitimacy of the Swiss federalism is based on the constitution-making power instituted as shared-sovereignty and the constitutional autonomy kept by the cantons and municipalities as self-rule (Fleiner 2002, 99). Federalism is the structural principle that operates on this equilibrium. The Swiss Federal shared-rule assumes equal sovereignty between cantons even if this might result in an asymmetrical electoral system (Stauffer et al. 2005; Fleiner 2002). At the federal level, solidarity exists as a minimal consensus upon the political values that hold the state together. At cantonal and municipal levels, solidarity accounts for the respect for diversity and independence. The federal government has to foster mutual understanding among the communities and solidaristic partnerships.

> *The Confederation with regard to its legislation and administration, has to take cantonal particularities into account and, at the same time, provide the largest possible autonomy to the cantons (Cst. Art. 46§ 2). The Confederation has to respect cantonal independence and self-rule (Cst. Art. 47), but also has to decide at which moment some federal regulations need to be issued for the sake of uniformity (Cst. Art. 42§ 2)* (Fleiner 2002)

The practical result of the Swiss bottom-up federalism is the binding solidarity between the territorial units and the State. These partnerships are not grounded in a melting-pot logic but in a common political will of reciprocity and respect of diversity (Kriesi and Trechsel 2008; Fleiner 2009). The compromise between the various administrative levels enhances cooperation between the social actors and maximises social cohesion, through collective and individual responsibility. Some of the tools to establish a dense network of solidaristic collaboration inside the federal State correspond to:

- Cst. Art. 43a on the duties of the cantons and the principle of allocation of tasks; Cst. Art. 44 on the principles of cooperation between the Confederation and the cantons; Cst. Art. 45 on cantonal participation in federal decision-making; Cst. Art. 47 on the autonomy of the cantons and Cst. Art. 48 on intercantonal agreements. These legal tools stipu-

late that the Confederation only undertakes tasks it is appointed to perform, creating space for co-decision making, networks of assistance and mutual support between the various levels. In particular, it settles the principles for intercantonal agreements embedded in solidarity and cantonal responsibility.

One of the major legislative changes in Swiss constitutionalism was the 2004 adoption by referendum of the Cst. Art. 135 on the equalisation of financial resources and burdens. This article targeted the reduction of cantonal inequalities but not the equality of financial resources between cantons. It built intercantonal fiscal solidarity. The principal aim of the Cst. Art. 135 is to mitigate the differences between the cantons in terms of their financial capacity, setting a minimum ensured financial resource level per capita of 85% of the Swiss average. Enrooted in this reform is the expansion of the shared-rule power of the federal State, which was complemented by the self-rule power through the introduction of the principle of subsidiarity (Cst. Art. 5a). Under the principle of subsidiarity, nothing that can be done at a lower political level should be done at a higher political level. In Switzerland, the principle of subsidiarity is intimately linked to federalism: it holds that political issues should be dealt with at a local level –canton or town—wherever possible. The confederation or higher level is appealed to as a last resort. (Federal Finance Administration – FFA 2017).

Solidarity and the Swiss Welfare System

Like in most west European countries the Swiss social security legislation includes a set of policy technologies aimed at reducing selected social risks, consistent with ILO's Convention No. 102[2] which are the means directed to exercise institutional solidarity.

A core, yet uncodified, principle underlying the social security system as a whole, solidarity is not literally stated in legal provisions. It can be discerned from the various mechanisms used by the legislative body to enforce social security benefits and guarantee a certain redistribution (Greber et al. 2010). In particular, vertical (income-based) and horizontal (risk-

2 Military duty being compulsory for male citizens, a specific social insurance has been enacted to cover any health issue related to a period of service. Military insurance is not discussed in this contribution.

based) solidarity is embedded in mechanisms such as universal protection, mandatory insurance, capped benefits, uncapped contributions, (in)direct taxation, etc. Social security thus differs from private insurance, where benefits are directly and solely dependent on contributions of the insured person (principle of individual equivalence; Greber 1980).

The principal social scheme of the Swiss social security system is structured in three pillars. It is a threefold system of public, occupational and private insurance, where each pillar constitutes protection for the loss of income. It especially grants old age pensions to people of retirement age, survivors' pensions to spouses or dependent children of a deceased insured person and disability pensions to insured persons whose capacity to work is seriously impaired. Old-age and survivors' insurance (OASI) and disability insurance (DI) jointly constitute the first pillar, which intends to grant pensions to cover basic living costs. The first pillar is compulsory for all residents and/or workers in Switzerland, including the self-employed and people without gainful employment. The second pillar is obligatory only for salaried workers. Together, the first and second pillars must enable the insured person to maintain an appropriate standard of living. When they do not do so, there are supplementary benefits (CP) to top-up income to the minimum required level. The third pillar is an optional individual provision to meet further needs in other forms of savings offering tax benefits[3]

The Swiss legislation aimed at promoting institutional solidarity is very particular for it has been shaped by the strong cantonal autonomy, federalism and decentralisation of the State power. There is no comprehensive code on social security but distinct insurance laws, usually covering several contingencies and granting various benefits in cash and/or in kind. Each regime institutes distinct enforcement bodies at cantonal level, which are supervised by specific federal organisations. Despite the increasing power of the central structure, the keen impact of federalism and direct democracy have enhanced a mille-feuille security system.

Table 1 below, shows how the political values of federalism, diversity and democracy have affected the adoption of social schemes. Due to the consensus-oriented, compromise-seeking activity of the legislative body

3 Optional and private insurances are not discussed in this contribution, which focuses on selected social risks featured in ILO's C-102.

(Fleiner 2009), a maximum elapse of 106 years for the enactment of the compulsory health insurance law is observable.

The Swiss welfare State is considered liberal with a moderate decommodification but with a high generosity index, close to the one of Sweden (Scruggs and Allan 2006, 67). Mainly, Switzerland has been classified as a "welfare laggard" State because its redistribution system is poorly developed at the federal level (Esping-Andersen 1990). However, under the recent Swiss Constitution, the federal role has been reinforced. With regard to the legislation framework on solidarity, it is strongly dependent on *executive federalism*: the federal State regulates the bulk of the social insurance legislation on old-age, unemployment, disability and accident but their implementation is dependent on cantons (Kriesi 1998; Bertozzi and Bonoli 2003, 21). The *executive federalism* "is a process by which federal legislation is implemented by the cantons, and is thus re-appropriated and re-translated by actors at cantonal level" (Battaglini and Giraud 2003, 303). Together with the cantonal implementations of the social security system, the Swiss welfare State is then well developed and similar to the continental welfare models (Bertozzi and Bonoli 2003; Armingeon 2001).

Since the late 1970s, the Swiss welfare state has experienced a massive growth placing it close to the characteristics of the average OECD welfare state. The institutionalisation of the Swiss social security system has been strongly conceived within a labour insurance base scheme. Benefits are related to contributions moderated by solidary redistribution and oriented toward a family recipient model led by a male bread-winner. In addition, it combines limited universalistic policies while it keeps strong liberal traits (e.g. the administration of several of the social schemes is governed by private competition) (Armingeon 2001). To this day, "Switzerland has not yet decided on universality" (Greber 1984, 445).

Social legislation in Switzerland comprises federal mandatory and optional insurances and social aid legislations. The social security system is structured into a ten-branch scheme at federal level, complemented at cantonal level by the social aid legislations and complementary provisions, which are mainly cantonal responsibility and subject to limited federal uniformity beyond core concepts (for an example, see discussion about family allowances on this same chapter). Table 2 illustrates the competence distribution of some of these schemes between the cantons and the Confederation.

Table 1: Constitutional decision of enactment of national social security schemes

SOCIAL SECURITY SCHEMES	**Year of** Constitutional Decision	**Year of** Enactment	**Time** Elapsed (years)	**Law**
Health insurance	1890	1914	24	LAMA (revoked in 1995)
Health insurance (compulsory)	1890	1996	106	LAMal – Loi fédérale du 18 mars 1994 sur l'assurance-maladie, RS 832.10
Accident insurance	1890	1918	28	LAA – Loi fédérale du 20 mars 1981 sur l'assurance-accidents, RS 832.20
Pensions (1st pillar)	1925	1948	23	LAVS – Loi fédérale du 20 décembre1946 sur l'assurance-vieillesse et survivants, RS 831.10 (*OASI*)
Invalidity insurance	1925	1960	35	LAI – Loi fédérale du 19 juin 1959 sur l'assurance-invalidité, RS 831.20 (*DI*)
Family allowances	1945	1953 *2009	8 64	LFA – Loi fédérale du 20 juin 1952 sur les allocations familiales dans l'agriculture, RS 836.1 *LAFam – Loi fédérale du 24 mars 2006 sur les allocations familiales, RS 836.2
Maternity insurance	1945	2005	60	LAPG – Loi fédérale du 25 septembre 1952 sur les allocations pour perte de gain en cas de service et de maternité, RS 834.1
Pensions (2nd pillar)	1972	1985	13	LPP – Loi fédérale du 25 juin 1982 sur la prévoyance professionnelle vieillesse, survivants et invalidité, RS 831.40
Unemployment insurance (compulsory)	1976	1984	8	LACI – Loi fédérale du 25 juin 1982 sur l'assurance-chômage obligatoire et l'indemnité en cas d'insolvabilité, RS 837.0

Source: Bonoli 2006 'Politique sociale', in U. Klöti (ed.), Handbuch Politisches System der Schweiz. Band 4. Politikbereiche (NZZ: 2006), pp. 798

Table 2: Social policy in Switzerland: Distribution of competences

Programmes	Kind of programme	legislation	funding	implementation
Old-Age and Survivors' Insurance (OASI)	Universal coverage	F	F/*	F/C
Disability insurance (DI)	Universal coverage	F	F/*	F/C
Complementary provisions (CP)	According to income	F	F/C	C
Unemployment insurance (LACI)	Social insurance	F	F/C/*	F/C
Accident insurance (LAA)	Social insurance	F	*/**	F
Health care (AMal)	Universal coverage	F	**/C	C
Family allowances (LFA and LAFam)	Social insurance	F/C	F/C/ ***	F/C
Maternity allowance (LAPG)	Social insurance	F/C	*	F/C
Unemployment assistance	According to income	C	C	C
Social aid	According to income	C	C	C

* Social contributions of employers and employees, at least in equal amount

** Premiums paid by the insured person

*** Premiums paid by employers and self-employed workers

Source: adapted from Bertozzi and Bonoli (2003)

We shall discuss some of the protection regimes and illustrate how solidarity has shaped some of their legal provisions.

Old-Age Benefit

In the first pillar (Old-Age and Survivors' Insurance, OASI), benefits are based on a contract between generations. Current pensions are primarily financed by contributions made by the so-called active generations (employees and employers, at equal percentage, Cst. Art. 112§ 3 let. a, OASI Art. 102§ 1 let. a; Baumann 2008). These active generations will then in turn benefit from contributions made by younger generations. Historically, until the 19th century, this kind of solidarity was dependent on family religious institutions and charitable organisations through local solidarity funds. The federal State did provide a restrictive and rudimentary system

of public assistance only for the very poor (Federal Social Insurance Office 2015). But in 1880s, mass pauperisation of the industrial proletariat made the creation of a national insurance system necessary. However, every attempt failed until 1946, when OASI, which is currently in force, was finally enacted.

OASI-based benefits are also financed up to 25% by federal public contributions, primarily based on taxes on tobacco, distilled beverages, gaming and VAT (cf. Cst. Art. 112§ 5, OASI Art. 102 ff). Through consumption of various goods and services, consumers are thus acting in solidarity with beneficiaries.

Solidarity claimed in the OASI is not only dependent on generations (horizontal solidarity), but also on economic criteria (vertical solidarity). Insured persons pay contributions of a certain percentage of their overall yearly income, while pensions are capped at a maximal amount. For salaried workers, contributions are paid evenly by employers and employees. The calculation of individual old-age pensions depends on various factors, including the medium insured income the insured person earned during the total period subject to contribution. As of early 2017[4], the age giving a right to old-age pension is 65-year old for men and 64-year old for women. Full pensions require men and women to have respectively fulfilled 44 and 43 years of contributions. When such years are lacking, partial pensions, expressed in terms of a percentage of full pensions, are served. The lowest full annuity is CHF 1,175 a month (for an annual income up to CHF 14,100) and the highest, at CHF 2,350 per month (for an annual income of CHF 84,600 and above).

For married couples or same-sex registered partners, joint pensions are capped at 150% of the maximal single full annuity (OASI Art. 35). In setting a fixed minimal vital amount granted to any insured person and capping pensions, solidarity with the less fortunate is a strong feature of OASI (Message of the Federal Council, 10 November 1971, Federal Sheet No 51, December 24 1971, FF 1971 II 1609: 1625; Greber 1984).

For dependent workers earning at least CHF 21,150 per year, Occupational Benefits Insurance (LPP) is mandatory (LPP Art. 2). Self-employed workers and workers with lesser income can take out an optional insurance governed by the same set of rules. Since LPP only sets guidelines

4 An overall review of the pension system, including a uniform pension-opening age at 65, will be submitted to the Swiss people's vote in September 2017

and rules meant to harmonise the minimal mandatory regime, more favourable regulations can be enacted in execution of the law (public-sector statutes, specific branches, specific employer or even specific categories of employees of the same employer). According to Cst. Art. 113, the occupational benefits (2nd pillar) combined with OASI (1st pillar) must enable the insured person to maintain an appropriate standard of living. Both pillars aim at covering 60% of the insured person's previous income.

Contributions, set as a percentage of the insured salary, are borne by the employer and the employee, at least to an equal amount. Annuities are directly related to the amount contributed in the insured person's account. Thus, while solidarity is a strong guide in OASI, the principle of individual equivalence, or reciprocity, governs in LPP (Message of the Federal Council, 10 November 1971, Federal Sheet No 51 of December 24 1971, FF 1971 II 1609: 1625; Riemer-Kafka 2007).

Social Security in Case of Invalidity

Disability insurance (DI) and OASI were initially meant to be a single insurance (Valterio 2011). Together, they form the first pillar of contingency planning at federal level. Thus, they share the same scope of coverage (compulsory for all residents and/or workers in Switzerland), follow the same protection purposes (guarantee basic needs) and obey the same rules in terms of funding schemes.

While OASI covers the contingencies of old-age and death, DI ensures protection in cases of invalidity. Under Swiss law, "disability/invalidity" is an economic notion; for insured persons who were professionally active, disability is understood as a permanent or lasting loss of all or part of the insured's earning capacity in suitable professional fields, when such loss subsists after treatment or rehabilitation measures (Federal Law on the General Part of Social Insurances Art. 7 and 8§ 1 [LPGA; RS 830.1]). For the ones without financially-compensated professional activity, disability is evaluated in terms of hindrance to the fulfillment of the insured person's usual activities (LPGA Art. 7 and 8§ 3). Minors are considered to have a disability condition when damage to their health will most probably lead to earning incapacity (LPGA Art. 7 and 8§ 2).

DI first aims at preventing, reducing or suppressing disability by means of rehabilitation measures (DI Art. 1a let. a). Second, it pursues compensa-

tion of financial prejudice due to invalidity through cash benefits (DI Art. 1§a let. b).

The Disability Insurance has undergone three major changes since its creation in 1959, restricting its criteria. The 1959 law on disability defined invalidity as "the diminution of earning capacity presumed to be permanent or long-term, resulting from an impairment of physical or mental health from a congenital infirmity, illness or accident" (DI, former Art. 4). In respect to the major changes since 1959, three moments are fundamental for the law enforcement and development: first of all the fifth revision of DI introduced a new definition of invalidity, which is objectively measured by the competent authority ("il n'y a incapacité de gain que si [l'atteinte à la santé] n'est pas objectivement surmountable" [LPGA Art. 7§ 2]) and foresees an income for the insured depending on this assessment.

In addition, the fifth modification of the DI provided prevention and support to people suffering from disability in order to prevent appearance of psychological risk factors linked to the health condition or disability (Geisen et al. 2008; Guggisberg et al. 2008). The sixth (DI 6a and 6b) modification of DI introduced the argument 'poorly used working capacity' of the people living with disability (Bieri and Gysin 2011; Probst et al. 2015, 111-112). It also appended a periodic review of rents, including the ones which had been permanently granted until then (DI Art. 8a). The paradigm shifted from "compensation rents" to working "readaptation rent" (Probst et al. 2015, 112). In other words, disability is now considered systematically as reversible and the insurance aims to restore or improve the earning capacity.

DI annuities are only served to the insured hindered at 40% of their earning capacity or higher and in terms of quarters of rent depending on the hindrance assessment (1/4 rent for invalidity between 40 and 49.9%, 1/2 rent between 50 and 59.9%, 3/4 rent between 60 and 69.9%, full rent at 70% and higher; DI Art. 28§ 2). As of 2016, 241,000 rents were served, 90% of which were sickness-caused and mostly for psychological or back-related health injuries; a striking 42% of requests are denied (Dossier assurances sociales 2017).

Federal government funding (46%) and uncapped social insurance contributions are the main financing sources of the DI. In this scheme, solidarity is expressed both horizontally and vertically, the latter through taxation (general resources of the State) and individual contributions (Greber 1984). Disability benefits are also insured in the 2nd pillar scheme and in accident insurance.

Solidarity and Mutuality: Swiss Mandatory Healthcare Scheme

In the Swiss healthcare system (Federal Law on Health Insurance [LAMal; RS 832.10]), horizontal solidarity is very pronounced, for it is based on universal coverage of all residents, which can be extended to specific categories of workers residing beyond national territory (LAMal Art. 3).

Healthcare is primarily governed by the principle of mutuality; similar premiums are paid by each insured person within the same canton, irrespective of their income or access to benefits, and similar legally registered benefits are covered (Greber 1984; Baumann 2008). Contributions are computed based only on the place of residence and not on socio-economic indicators except for age and sex (Dispositions Transitoires de la Modification du 21 décembre 2007 – Compensation des risques). Basically, the insured person covers health expenses up to personal excess (set by default at CHF 300.-/yr) and a 10% share of all expenses beyond excess, up to CHF 700.-/yr (LAMal 64§ 2).

Nevertheless, the Federal Court has affirmed that solidarity balances the principle of reciprocity inherent in mutuality (ATF 116 V 345, c. 5b). Thus, solidarity occurs in different forms in healthcare and certain groups of insured persons benefit from particular conditions. For example, children (under 18) are freed from excess, their share amounts to CHF 350.-/yr (LAMal Art. 64§ 4) and they pay lower premiums (LAMal Art. 61§ 3). Pregnancy and maternity-related expenses are free of shares (LAMal 64§ 7). Moreover, LAMal Art. 65 states that cantons subsidise premiums for low-income insured persons and hospital expenses are partly covered by cantonal subsidies as well (Baumann 2008).

The Swiss healthcare system is semi-private, since the insured persons can freely choose their insurer from a list of licensed companies (LAMal Art. 4§ 1). This basic insurance notably covers treatments performed by a doctor and prescribed medicines, hospital treatment costs on a general ward, maternity costs, and other benefits under certain conditions – vaccinations, health examinations, etc. – (LAMal Art. 25). Most strikingly, dental care is not covered under basic insurance conditions, except when caused by specific situations (LAMal 31). Furthermore, optional supplementary insurances allow the insured person to receive benefits that are not covered in the basic insurance scheme (e.g. the supplementary insurance for hospitalisation benefits insured access to private clinics and private services in public hospitals).

Switzerland, most strikingly, knows no general social scheme for income compensation in case of illness (Dupont 2014). Income coverage under such contingencies is ruled by labour law, which illustrates solidarity between employers and employees.

Notable exceptions have been enacted for sick unemployed insured persons in Cantons of Vaud and Geneva, who are covered thanks to special contributions debited to daily allowances. Beneficiaries in these cantons are thus the most protected persons by public legislation in Switzerland in the event of illness. Public sector workers are also protected by law for their work conditions are set in statutes.

Article 324a of the Code of Obligations (CO; RS 220), mandates the employer "pay the employee his salary where the employee is prevented from working by personal circumstances for which he is not at fault, such as illness, accident, legal obligations or public duties" (Livewhat 2014, 405). Employers can decide to pay on their own or opt for a private insurance scheme whose contributions are at least equally financed.

In the event of an accident, social security protection differs depending on the existence and nature of the insured person's work relationship. Federal Law on Accidents (LAA; RS 832.20) is only compulsory for salaried workers and unemployed workers covered under LACI (LAA Art. 1a). Optional insurance is available to self-employed workers (LAA Art. 4), while people without paid professional activity are covered by LAMal (see 2.7.5.3). LAA triggers benefits in kind (most notably medical treatment) and in cash, such as daily allowances.

Coverage and contributions also depend on the material characteristics of the contingency, for the LAA covers employment-related accidents, non-occupational accidents and employment-related illnesses (LAA Art. 6). Part-time workers are only covered for non-occupational accidents when they work 8 hours per week or above for the same employer (LAA Art. 8§ 2,). As for funding, employment-related illnesses contributions are fully settled by the employer, non-occupational accidents contributions by the insured person, and employment-related accidents contributions are equally funded by both parties (Frésard-Fellay et al. 2015).

In this insurance scheme, reciprocity between contributions and benefits is strongly implemented. Insured income determines the compensation amount to be paid, and premiums are related both to insured income and risks incurred by specific employers (LAA Art. 15 and 92). Solidarity

traits are nonetheless present, since premium amounts cannot be influenced by gender for non-occupational accidents, although statistically, men are more prone to be subjected to this contingency (Baumann 2008). Likewise, medical treatment is provided irrespective of the amount of contributions paid (Baumann 2008).

In conclusion, workers are treated in a very different manner depending on the contingency that occurred, whether in cases of illnesses or different types of accidents and assimilated illnesses.

Solidarity towards Families: Complementary and Survivor Rents, Maternity and Family Allowances

Solidarity expressed to families by single or childless insured persons (Greber 1984) is crucial to several protection regimes and types of benefit. It materialises in the entitlement to additional benefits for the insured person's family members without any additional contributions having to be paid to access benefits.

For example, when elderly insured persons reach pensionable age, they are entitled to complementary annuities, set as percentages of the amount of the main rent, for their dependent children, until they attain the age of majority or 25 if they are still enrolled as students or apprentices (OASI Art. 22 and 25; LPP Art. 17). The same conditions apply in the case of orphan pensions, both under the first and the second pillar (OASI Art. 25; LPP Art. 22§ 3).

Since DI and OASI were meant to be a single insurance when the constitutional mandate was enacted, similar benefits are guaranteed in cases of invalidity (see DI Art. 35 ff, which refer to the OASI). Moreover, in the first pillar (OASI/DI), fixed enhancements are added to the yearly insured income when the insured exercised parental authority over children or took care of family members under certain conditions (yearly amount of CHF 42,300; 2OASI art. 29^{sexies} and 29^{septies}; DI art. 36§ 2). In addition to orphans' annuities, survivors' rents are allowed to widows, widowers and surviving same-sex registered partners in the event of death of the insured.

In the first pillar, men and women are not subject to the same eligibility requirements. Married women whose spouse is deceased are entitled to a widow's pension if they have children. If they do not have children, they are eligible if they are 45+ years old and were married for at least five years before the death of their spouse. Under specific conditions, a pen-

sion is also provided for divorcees whose ex-spouse has died (OASI Art. 24a). Eligibility for men is focused on children: "men whose spouse or ex-spouse has died are entitled to a widower's pension if they have children under 18. The right to the widower's pension ends when the youngest child reaches the age of 18". (OASI Art. 24§ 2). Widows are granted lifetime annuities except in the event of remarriage.

In the 2nd pillar, widows, widowers and surviving same-sex partners are all entitled to pensions based on the same conditions; they should have at least one dependent child or be 45+ years old and have been married for five years or more (LPP Art. 19, 20 and 22§ 2). When none of these conditions are fulfilled, benefits are served as a single allowance of triple the amount of a yearly annuity (LPP Art. 19§ 2). Other beneficiaries, notably common-law partners, can be instituted through regulation by the pension funds in accordance with the federal statute (LPP Art. 20a).

Cst. Art. 116 prescribes federal mandate to enact protection of families, especially in the form of "family allowances and maternity-insurance". Consequently, federal law has been enacting income compensation since 2005 in the event of maternity (Loi fédérale sur les allocations pour perte de gain en cas de service et de maternité [LAPG; RS 834.1). This income compensation is restricted to professionally active women (LAPG Art. 16b). Compensation is provided as a daily allowance for every working day of her maternity leave. The daily allowance is equal to 80% of the average income received 6 to 12 months before the entitlement to maternity allowances, yet capped at CHF 196.- (LAPG Art. 16e and 16f), and is paid for a maximum duration of 98 days (LAPG Art. 16d). Funding is implemented through additional contributions to the OASI scheme (LAPG Art. 27). As such, all residents and/or workers and employees in Switzerland contribute to LAPG, even though it only benefits professionally active mothers (Perrenoud 2015).

Cantons can improve protection by enacting specific provisions, such as the provision of adoption allowances, sometimes paid to adoptive fathers too, in most French-speaking cantons. Canton Geneva also provides maternity and adoption allowances up to 112 days and for a maximal daily amount of over CHF 320.- (Loi instituant une assurance en cas de maternité et d'adoption [LAMat; RS/GE J 5 07]).

Since 2009, a Federal Law on Family Allowances (LAFam) came into force. Previously, family allowances, except for people in agriculture, were only under cantonal jurisdiction. Self-employed and low-income parents have been entitled to allowances under federal law since 2013

(LAFam Art. 11§ 1 let. c and 1§ 1*bis*). LAFam sets unified minimal standards for monthly allowance in all cantons: CHF 200 francs per child under 16; vocational training allowance of CHF 250 per child between 16-25 years (LAFam Art. 3).

Cantons are entitled to enact more generous legislation, which has again been the case in all French-speaking and a few German-speaking cantons (see Table 3 below; LAFam Art. 3§ 2). Thus, in French-speaking cantons, monthly allowances are higher, and birth and adoption allowances have been enacted.

Table 3: Kind and amount of allowances according to cantonal laws

Canton	**Monthly child allowance**	**Monthly training allowance**	**Birth allowance**	**Adoption allowance**
Zurich	200/250	250	-	-
Bern	230	290	-	-
Lucerne	200/210	250	1,000	1,000
Uri	200	250	1,000	1,000
Schwyz	220	270	1,000	-
Obwalden	200	250	-	-
Nidwalden	240	270	-	-
Glarus	200	250	-	-
Zug	300	300/350	-	-
Fribourg	245/265	305/325	1,500	1,500
Solothurn	200	250	-	-
Basel-Stadt	200	250	-	-
Basel-Land	200	250	-	-
Schaffhausen	200	250	-	-
Appenzell Outer Rhodes	200	250	-	-
Appenzell Inner-Rhodes	200	250	-	-
St. Gallen	200	250	-	-

Canton	Monthly child allowance	Monthly training allowance	Birth allowance	Adoption allowance
Grisons	220	270	-	-
Argovia	200	250	-	-
Thurgovia	200	250	-	-
Ticino	200	250	-	-
Vaud	250/370	330/450	1,500	1,500
Valais	275/375	425/525	2,000	2,000
Neuchâtel	220/250	300/330	1,200	1,200
Geneva	300/400	400/500	2,000/3,000	2,000/3,000
Jura	250	300	850	850

Source: Adapted from Information Centre OASI/DI, Memento 6.08 on Family Allowances (as on 1st Jan. 2017), p. 4.

Family allowances are financed through contributions set at a percentage of the insured income under OASI (LAPG Art. 11). Contributions are paid by employers or self-employed workers (and salaried workers when their employers are not subject to contributions under OASI; Perrenoud 2015). Family allowances for people deprived of compensated professional activity are usually fully financed by the cantons (LAFam Art. 20§ 1), sometimes partly supported by communes (Perrenoud 2015). Other family-related benefits are discussed below.

Social Security in Case of Unemployment

Swiss solidarity towards unemployed people is not one of the most developed in Europe, because the unemployed population is constantly changing and the unemployment rate is low[5] (Giugni et al. 2014). Unemployment Insurance is regulated by a federal law (Loi fédérale sur l'assurance-chômage obligatoire et l'indemnité en cas d'insolvabilité [LACI; RS 837.0; last revision 2011]).

5 Swiss and OECD statistics differ for Switzerland only qualifies as unemployed persons who have been registered at Regional employment offices (LACI Art. 10§ 3).

While Cst. Art. 114§ 2 let. c expressly mentions that self-employed persons may insure themselves voluntarily, this option has not been enforced under the actual scheme. LACI is mandatory for every salaried worker and financed by equal contributions between the employer and the employee (LACI Art. 2). An additional contribution of 1%, called "solidarity percentage" is required for incomes over CHF 148,200 per annum. To access benefits, a contribution period of at least 12 months within 24 months is mandatory (LACI Art. 13). LACI provides benefits equivalent to 80% of the income for beneficiaries with children and 70% for those without children, with a capped amount of about CHF 455 (CHF 398 when 70%) per working day.

A waiting period is set before access to allowances, depending on the insured income and familial expenses of the insured (LACI Art. 18). Without a child under 25 years old, the shortest period before receiving the allowances is five days, if the worker's income was under CHF 60,000 per year, and the longest is 20 days for a worker with an income over CHF 125,000 per year.

The main criteria to receive LACI is employability: "[someone who is] ready, able and qualified to accept reasonable work and to participate in integration measures" (LACI Art. 15). Every person over 30 years old is "required to immediately accept any job that corresponds to their experience and education, while unemployed persons below the age of 30 are required to accept any job, irrespective of suitability to their competences and experiences (LACI Art. 16)" (Livewhat 2014, 397). Cantonal unemployment benefits are prevalent in cantons with high unemployment rates: mostly the French-speaking cantons, Zurich and Schaffhouse (Bertozzi and Bonoli 2003, 27).

Although it is a contribution-based scheme with high reciprocity, vertical solidarity notably appears in capped benefits while contributions rest on all of the worker's salary. Specific solidary provisions have also been enacted for certain groups of insured persons. For example, LACI Art. 13§ 2 enumerates circumstances where certain periods are assimilated to contribution periods to secure the insured person's access to benefits (people who could not reach 12 months of contributions, notably due to sickness, military or civil-service or maternity). Likewise, certain groups of people are freed from contribution requirements, such as surviving spouses compelled to look for work because of their spouse's death (LACI Art. 14).

Non-Contributory Benefits

The purpose of non-contributory benefits differs from the one pursued by insurance-based protection regimes. While the latter are conceived as a substitute-income scheme, the former aim at fighting extreme poverty (Beveridge's "Freedom from Want"). As such, non-contributory benefits are fully covered by public powers, through direct or indirect taxation, and thus reflect the People's will to act in solidarity with a selected part of its population (Greber 1984).

In the Swiss legal order, non-contributory benefits are embedded in several regimes, whether as separate laws or as provisions within an otherwise insurance-based law. Altogether, these benefits are considered as social aid in a broad sense.

The first of those regimes, is the one of complementary provisions (CP). When, in spite of pensions under both pillars, fundamental needs are not covered, complementary provisions can be served at federal (Loi fédérale sur les prestations complémentaires à l'AVS et à l'AI [LPC; RS 831.30) and cantonal levels. As such, CP can be considered as an attempt at providing minimum income guaranteed to specific insured persons belonging to the national community (Jöhl and Usinger-Egger, 2016). In particular, it is important to mention that, contrary to the benefits they top-up, CP are not subject to exportation, but can only be received by residents. As of 2016, 278,000 persons benefitted from CP (Dossier assurances sociales 2017).

CP reflect the people's will to guarantee freedom from want in case of old-age, death of family support (Greber et al. 2010) or invalidity (Cst. Art. 112a). As non-contributory benefits, CP are fully financed by public powers through general taxation. Perceived CP are strikingly, in general, not subject to individual taxation. Benefits are served in the form of annual complementary provisions, financed to 5/8th by the Confederation and 3/8th by the cantons, and of reimbursement for healthcare (including dental care) and invalidity expenses, fully supported by the cantons (LPC Art. 13 and 16).

Cantons can develop more generous regulations on the matter, which have been enacted in most cantons. For example, Canton of Geneva, covers additional health-related expenses according to its own regulation (Règlement relatif au remboursement des frais de maladie et des frais résultant de l'invalidité en matière de prestations complémentaires à l'as-

surance-vieillesse et survivants et à l'assurance-invalidité [RFMPC; RS/GE J 4 20.04]).

Moreover, a few cantons have notably enacted CP for families, granted in case of insufficiently income to cover basic household needs (Ticino [1997], Solothurn [2010], Vaud [2011], Geneva [2012]; while other cantons have enacted such legislation for a limited time period after child birth). In Cantons of Geneva and Vaud, selected parents are thus entitled to specific CP, including capped reimbursement for childcare and school tutoring expenses (Loi sur les prestations complémentaires cantonales [LPCC; RS/GE J 4 25]; Loi sur les prestations complémentaires cantonales pour familles et les prestations cantonales de la rente-pont [LPC-Fam; RS/VD 850.053).

Another example of non-contributory benefits is the allowance for functional impotence set out in different insurance regimes. The choice of applicable law depends on the nature of the contingency related to the functional impotence (old age [OASI], disability [DI], accident [LAA]). This cash benefit means to cover the need, induced by a health injury, for constant support or surveillance by a third party to perform basic actions of daily life (getting dressed, eating, etc.). The allowance is fully supported by the Confederation in case of old-age or invalidity related to functional impotence (OASI Art. 102§ 2; DI Art. 77§ 2).

Other various means-tested benefits, including housing benefits and alimony advances, are contained in social aid in a broader sense. The latter, when unreimbursed by the debtor, are supported by public sectors at subfederal level. As an illustration, in 2015, 51,171 persons received alimony advances in Switzerland (Federal Statistical Office).

At cantonal level, social aid provisions have been enacted for unemployed people. In Canton of Geneva, special publicly-supported benefits are provided by the cantonal Unemployment Law (Loi en matière de chômage [LMC]; RS/GE J 2 20), which includes return-to-work allowances ("allocations de retour à l'emploi", in force since 2008), re-qualification professional internships ("stages de requalification professionnelle", in force since 2012) and solidary jobs ("emplois de solidarité sur le marché complémentaire de l'emploi", in force since 2015).

Last but not least, regulation on social aid most prominently embodies the People's mandate to the legislative body to fight poverty. The fundamental right to human dignity is recognised (Cst. Art. 7). Persons in need and unable to provide for themselves have the constitutional right to assistance and care, and to the financial means required for a decent standard

of living (Cst. Art. 12). Consequently, social aid is subsidiary to any other form of financial support (social and private insurance, savings, family, etc.; Perrenoud 2015).

Social aid is conceived as a programme, including financial support, individual support measures (such as advice and orientation) and action plans for the beneficiaries' social and professional reinsertion. As a contract between the State and the individual, infringement of its conditions raise sanctions, including reductions in financial support to the minimum vital amount complying with Cst. Art. 12 (Report of the Federal Council of 25 Februrary 2015, "Aménagement de l'aide sociale et des prestations cantonales sous condition de ressources: Besoins et possibilités d'intervention", p. 27). According to the latest statistics, 3.2% of the Swiss permanent resident population benefits from social aid financial support (265,626 persons; Federal Statistical Office: results for 2015).

At federal level, the law contains no material provisions but only establishes cantonal jurisdiction based on residency and coordination in case of intercantonal intervention (Cst. Art. 115; Loi fédérale sur la compétence en matière d'assistance des personnes dans le besoin [LAS; RS 851.1]). The cornerstone principle is one of absolute subsidiarity of social aid by any other means, including family support. Specific groups of residents are protected through topical regulations, which sometimes create a federal competence on the matter (such as assistance for asylum-seekers and refugees lodged in federal centres).

In general, cantons are solely competent to determine their own regulations and the amounts granted to beneficiaries. In order to reduce cantonal disparities, the Swiss Conference of Social Aid Institutions had adopted general recommendations to set guidelines on the matter (SCSAI Norms). These soft-law tools aim at guiding regional action and may be implemented in cantonal provisions.

Recommendations cover concepts and purposes of social aid, types of benefits, conditions, sanctions and methods of means assessment. Thus, for example, savings above CHF 4,000 should bar access to social aid for an individual (SCSAI Norm 2.1). Financial support is generally subject to reimbursement when the beneficiary's personal situation has improved, which can be perceived as exercising a negative effect on individual effort to break out of the system.

Conclusion

Swiss institutional solidarity stands under the Helvetic values of consensus, direct democracy and federalism. In general terms, the political and territorial complexity of the Swiss State is translated within the development of its Welfare State. The constitutional provision related to access to social security (Cst. Art. 41) does not ensure rights to the social schemes. The right to social security is not automatic; supplementary executional laws are key to gaining rights and for the implementation of the schemes at cantonal level. As seen in Table 1, the political values of federalism, diversity and democracy have strongly affected the adoption of the social schemes.

Solidarity pairs with individual and collective responsibility. Attachment to this value is so deep, that since a constitutional revision of 2010, improper claim of solidarity-based benefits (social insurances or aid) gives ground for loss of resident status and deportation of foreign residents (Cst. Art. 121§ 3 and 5). Swiss insurance schemes have of late strengthened their anti-fraud and abuse provisions, allowing private investigator-led surveillance[6].

Finally, federal diversity also contributed to the creation of complementary insurance based schemes at cantonal level (e.g. Cantons Geneva and Vaud have created a complementary insurance for unemployed people suffering from illness) and to the substantial variation of cantonal complementary provisions. In this respect, the cantons of Geneva, Soleure, Tessin and Vaud are the only ones accounting for complementary family provisions based on a logic of means-testing and child-care responsibilities.

6 In 2016, Switzerland was held in violation of Art. 8 and 6§ 1 of the European Convention on Human Rights by the European Court of Human Rights for such a practice led secretly by a private accident insurer, in particular for lack of sufficient legal basis. ECHR, 18.10.2016, Case of Vukota-Bojić v. Switzerland, n° 61838/10.

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The United Kingdom

Tom Montgomery and Simone Baglioni

Introduction

Solidarity has been a key ingredient in the existence of the United Kingdom (UK) as a single political entity since its inception. As a pluri-national state (the country brings together four different nations: England, Scotland, Wales and Northern Ireland), the UK has had to find a balance between what would otherwise be competing solidarities located at different geo-political levels. Infra-national solidarity (e.g. solidarity among Scottish or Welsh people) must be combined with cross-national forms of solidarities (e.g. Scottish towards Welsh), as well as with a supra-national solidarity (e.g. Scottish towards British).

A complex system is therefore necessary to sustain these forms of solidarities at different geo-political levels and has been developed through specific institutions and policies. In this chapter we focus on some of these key political-institutional factors, and we discuss how recent political-institutional and political-economic developments are challenging them.

From a political-institutional viewpoint, solidarity among constituting 'nations' has been maintained through a mechanism of power sharing (devolution) enabling mediation between the need for national (Scottish, Welsh, English, Northern Irish) sovereignty and supranational (British) interests. Therefore, political power and representation are divided between national (devolved assemblies and governments) and supranational (British) levels with the acceptance of all parties for the Westminster Parliament (as opposed to national assemblies) being the preeminent political institution. The Westminster Parliament is an institution which has been able to find, out of the national flavours of solidarity, the necessary 'supranational' synthesis. At the top of this institutional multi-layered system of solidaristic ties stands the monarchy as its supreme guarantor.

From a social-political point of view, this complex web of solidarities has been maintained via the development of the welfare state, namely the establishment of a public health care system, along with public pensions and insurance programmes that have been in place from the early decades

of the 20th century. In the UK, like elsewhere, the welfare state as a set of redistributive policies has been a key tool in the promotion of national and supranational identity building, and therefore as a way to create solidarity among citizens. In fact, citizens allow a redistribution of their resources to happen so far as they perceive each other as members of the same group or nation (Miller 1995). Moreover, in the UK the development of the welfare state as a tool for building a British identity has replaced the vanishing "British empire" which had been a key-tool of identity building in earlier centuries (Williams 1989).

However, such solidarity-creating mechanisms are being seriously challenged by political and political-economic issues. These challenges seem to be a catalyst for the robust revival of national solidarities at the expense of supranational (British) ones.

One of the most salient of such challenges comes from a failure in the political institutional mechanisms designed to mediate claims for national sovereignty with supranational (British) interests. In fact, the devolution of power occurring from the end of the 1990s has come under intense scrutiny in recent years in terms of its capacity to allow national communities to have their voice and interests represented by supra-national (British) decision making. As a consequence, in Scotland in 2014, there took place a referendum for one of the constituting nations of the UK to become independent from the UK, and although the vote was lost by those supporting independence, the event has shaped the political landscape in Scotland ever since. Similarly, another form of supranational solidarity which in the meanwhile had been established between the UK and other European societies (namely the solidarity based on the European Union) came under pressure as a legitimate system of redistributing resources across the continent, with the British people having opted through a popular majority vote in 2016 to leave the European Union.

Consequently, solidarity issues have taken a central position not only in the political-institutional history of the country, but also in contemporary, socio-political affairs, given the relevance of the challenges posed against solidarity within the UK as a pluri-national country, and between the UK and supranational forms of solidarity which had been embodied by the European Union.

This chapter discusses key political institutional features in the UK underpinning solidarity: we begin with the constitutional setting; we then discuss the socio-cultural dimensions of solidarity; subsequently we discuss devolution arrangements; and finally we discuss how current politi-

cal, social and economic challenges are threatening the very existence of the multi-layered system of solidarity that has held the UK together thus far.

The Constitutional Setting

One of the defining features of the UK constitution is that unlike many of its counterparts in Europe it is not codified. Therefore as no single document of reference for citizens exists, the constitution must be read using various sources such as statute law, common law, conventions and 'works of authority' (Norton 2015). On the one hand, the uncodified nature of the constitution obviously raises issues of clarity in terms of citizens understanding their rights, but on the other hand this has been regarded by some as an advantage, providing flexibility and enabling the constitution to move with the times. These issues are addressed by Bogdanor et al. (2007) who identify two key explanations as to why the UK has no codified constitution. Unlike many of its counterparts in Europe or the USA, there has never been a 'constitutional moment' (Bogdanor et al. 2007, 500) when the framework used to govern a country has required clarification: even when the Parliament of the United Kingdom of Great Britain was created following the 1707 Act of Union, this remained located in London and adopted many of the characteristics of the existing English Parliament. Furthermore, Bogdanor et al. (2007) explain that aside from this historical explanation, there is also a conceptual reason, namely that the primary constitutional principle of the land has been the sovereignty of Parliament, indeed Bogdanor, Khaitan and Vogenauer claim that the British constitution can be summed up in eight words, "what the Queen in Parliament enacts in law" (Bogdanor et al. 2007, 501).

Therefore, understanding the entrenchment of the principle of solidarity within the UK constitution is made difficult by the lack of a codified constitution. We have to trace it back through the UK conventions and Acts of Parliament.

Efforts to understand some modern forms of legislation which may promote or instil solidarity in UK society must really begin with the blueprint for a different society in post-war Britain, exemplified by the Social Insurance and Allied Services report by the economist Sir William Beveridge in 1942 which, although never mentioning the word 'solidarity', recognised 'five giants' that were obstacles on the road to postwar reconstruc-

tion, namely want, disease, ignorance, squalor and idleness and outlined a renewed relationship between the state and the individual, where in return for a contribution from the individual, the state would offer social security. Widely considered as having laid the foundations for the modern welfare state in the United Kingdom the 'Beveridge Report' would go on to be utilised by the postwar Atlee government to inform a number of significant pieces of legislation including the National Insurance Act 1946, Family Allowances Act 1945 and the Pensions (Increase) Act 1947 and remains a reference point in debates concerning welfare in the UK (Titmuss 1951; Townsend 1954; Timmins 2001).

In terms of developing a sense of solidarity (although, again, with no explicit mention of solidarity) another crucial example stems from the National Health Service Act 1946 which established a universal healthcare system, free at the point of use. Indeed the solidaristic element of the National Health Service is perhaps best summed up by its architect, the Labour Minister Aneurin Bevan who asserted that, 'illness is neither an indulgence for which people have to pay, nor an offence for which they should be penalised, but a misfortune, the cost of which should be shared by the community' (Curtis 2015). Over the decades the role of the NHS has been a source of much debate, particularly during the 1980s and 1990s when there were efforts to introduce market style reforms into the delivery of healthcare (see Klein 2013), nevertheless the basic principle that healthcare should be free at the point of use has remained steadfast and one of consensus.

The universalism which characterizes the NHS has also been a feature of other aspects of the welfare state since its inception including family allowances (which evolved into Child Benefit) and was offered to all families with children as well as the state pension offered to all retirees, reflecting the objective set out by the Beveridge Report to offer support 'from cradle to grave'. However as public spending has contracted since the turbulence of the crisis and austerity has manifested itself in policy discourses which question the 'affordability' of welfare benefits, challenges to the universalism of some benefits have been made. This has resulted in one of the foundation benefits of the postwar settlement, Child Benefit, being effectively reformed into a means-tested benefit where households with at least one higher rate tax payer (those earning above £50,000) see their child benefit reduced through a new 'High Income Child Benefit Charge' and withdrawn completely once earning £60,000.

Therefore, although the NHS has been one of the areas of spending protected from the austerity measures implemented since 2010 other aspects of the welfare state have been far more exposed to cuts in public expenditure, including the introduction of a 'benefit cap' which limits the amount of welfare working age people can receive (Kennedy et al. 2016). Indeed, some research claims that without significant investment and support to tackle inequalities entrenched by austerity and the pressure on services caused by an ageing population, the UK welfare state may struggle to overcome the 'double crisis' (Taylor-Gooby 2013) it currently faces.

Although the absence of a codified constitution in the UK deprives us of the opportunity to highlight an explicit expression of solidarity, when examining the solidarity that is operationalised through the welfare state there can be little doubt what is at stake in a time of crisis and austerity. Solidarity becomes manifest through the collective efforts to overcome societal challenges such as the five giants identified by Beveridge and is expressed through forms of support and supportive institutions which are universalist, such as the NHS. On a practical level this is underpinned by a system of taxation and redistribution but is more fundamentally built upon an understanding of what T.H. Marshall described as 'social citizenship':

'from the right to a modicum of economic welfare and security to the right to share to the full in the social heritage and to live the life of a civilized being according to the standards prevailing in the society (1950, 11)'.

The Socio-Cultural Dimensions of Solidarity

One way to understand the principle of solidarityin the UK is to comprehend how it is practiced. Moreover, the diverse and fragmented nature of the organisations which engage in the practice of solidarity in the UK provides us with an insight into the variegated nature of solidarity in contemporary Britain. Thus to fully understand solidarity in UK society requires an appreciation of the diversity of solidarity both in society and the economy but also as a response to crisis and austerity.

One way in which the practice of solidarity in the UK is perhaps best exemplified is through the work of the voluntary sector. The term voluntary sector is often used as a catch-all word for organisations but a term equally used is that of the 'third sector', indeed the question of terminology has been one that has been addressed in extant research (Kendal and

Knapp 1996; Alcock and Kendall 2011). Nevertheless neither term succeeds in capturing the diversity of these organisations which range in size, scale of activity and degree of formalisation. Voluntary organisations in the UK range from very small informal grassroots initiatives in local communities to large national charities and these organisations operate across a range of issues. According to the National Council for Voluntary Organisations (NCVO) there are over 160,000 voluntary organisations operating across the UK in areas such as culture, health, employment, housing, education and the environment[1]. Moreover, although these organisations may be considered as a locus of solidarity where people volunteer their time and skills, we must recognise the extent to which a number of voluntary organisations in the UK are also employers, with over 850,000 people making up part of the paid workforce of the voluntary sector. What we can establish from this is the extent to which solidarity exercised through the voluntary sector is well established enough in the UK to support a considerable workforce.

One of the areas of society in the UK where there is an explicit usage of the term solidarity is perhaps best recognised through the trade union movement where the word continues to signify comradeship between workers and trade unions operating across various sectors. At present there are over fifty trade unions in the UK representing over five million workers, unions which are also affiliated to the Trade Union Congress an umbrella organisation formed in 1868 which acts as the voice of the labour movement[2]. Despite its rich history and continued role in organising worker solidarity, perhaps the scarce use of the term in contemporary political and policy discourses in Britain can in some part be attributed to the decline of trade union membership (Department for Business, Innovation and Skills 2016) following a process of deindustrialisation which reached a pinnacle in the 1980s when the trade union movement and specifically the miners, were in open confrontation with the Thatcher Government. Despite this decline in membership, the activism of trade unions remains one area of contemporary society where solidarity is a term that is articulated openly and continues to have particular resonance (see Cohen 2006; Freeman and Pelletier 1990; McIlroy 1995; Fernie and Metcalf 2005).

1 https://data.ncvo.org.uk/a/almanac17/scope-data/
2 https://www.tuc.org.uk/britains-unions

Trade unions are not however the only organisations which operationalise solidarity in the economy. A prime example of other forms of solidarity in the economy stems from the emergence of the cooperative movement in Britain. In the nineteenth century the endeavours of the 'Rochdale pioneers' in Lancashire as well as the community built by Robert Owen in New Lanark promoted the idea of solidarity through cooperative enterprise, reflecting a vision of a better society. Moreover, the impact of the cooperative movement continues to be felt in UK society today with sector representatives reporting that over 6,500 cooperatives are currently operating in the UK today, employing over 200,000 people[3]. Therefore although solidarity is a term which seldom forms part of the discourse in the UK regarding economic policy, this does not mean that the principle of solidarity is not being practiced within the UK economy.

Although there are examples, as outlined above, where solidarity is reflected in a functioning economy, there is also evidence in the UK of the role played by solidarity when the economy is not functioning properly. One example of this solidarity, through the rise of 'food banks', has emerged against the backdrop of the financial crisis and the austerity measures which followed, particularly those cuts to the welfare state. Food banks in the UK offer free basic foods to those experiencing hunger and destitution and depend on the donations of food made by members of the public and the organisation of distribution is frequently reliant upon volunteers. Concerns regarding the rising costs of living for the poorest in society, particularly those in low paid employment and those in receipt of benefits (APPG Hunger 2014) have been mirrored in the Scottish Parliament where the Welfare Reform Committee has claimed that 'there is a direct correlation between the Department of Work and Pensions welfare reforms and the increase in use of food banks' (Scottish Parliament 2014, 14). One of the leading charities involved in establishing food banks across the UK, the Trussell Trust, have reported that in 2010-2011 the number of people provided with three days emergency food (the standard level of support offered by Trussell Trust food banks) was 61, 468. These numbers then rose to 346, 992 in 2012-2013 and in 2013-2014 reached 913, 138 (Trussell Trust 2015). The link between austerity and the rise of food banks has been captured by extant research (Loopstra et al. 2015) and has also highlighted the renewed role of Churches in voluntary life in

3 http://reports.uk.coop/economy2016/

Britain through their involvement in supporting food banks (Lambie-Mumford 2013). Therefore the rise of food banks as a form of solidarity in the UK reflects not only the impact of welfare state retrenchment but also highlights how cuts to public budgets can also reshape the expression of solidarity and the actors involved.

The Evolution of Solidarity in the UK

In the 2010 UK General Election, dominated by the debate over how to address the financial crisis, one central plank of the Conservative Party manifesto was that of the 'Big Society'. This strategy was widely regarded as an attempt by the Conservative leader David Cameron to distance himself, at least rhetorically, from the perception of the Conservative Government of the 1980s led by Margaret Thatcher who claimed during her premiership that, 'there was no such thing as society' (Keay 1987). The commitment to the Big Society by the Conservative Party involved, 'social responsibility, not state control, the Big Society, not big Government' (Conservative Party 2010, 35). The message conveyed in the manifesto and in their campaign suggested a link between the ability of the country to balance its budget and the strength of civil society in tackling social problems. Further still, the root causes of poverty and inequality in the UK were framed not as a consequence of market failure or cuts to public budgets, but instead excessive public spending by the previous Labour Government, an assertion that has not gone unchallenged (Kisby 2010).

Despite not winning an overall majority in the UK General Election of 2010 and entering into a Coalition Government with the Liberal Democrats, the newly elected Conservative Prime Minister David Cameron made clear his enthusiasm for the concept of the Big Society shortly after his election during a high profile speech in Liverpool where he stated his hope that when people looked back at the period from 2010 onwards they would say, 'in Britain they didn't just pay down the deficit, they didn't just balance the books, they didn't just get the economy moving again, they did something really exciting in their society' (Prime Minister's Office 2010).

The key values underpinning the type of community solidarity pursued by the Big Society were claimed by the Prime Minister to be liberalism, responsibility and community empowerment. These values were to be manifested through a greater level of voluntarism, including paving the

way for charities, private enterprises and social enterprises to be much more involved in the running of public services, all of which were to be encouraged by the Coalition Government. To some extent this can be seen as an attempt by the Government to bridge the gap which may emerge when cutting welfare spending by appealing to a sense of public duty, a strategy which set the Conservative led Government apart from their predecessors both in the Labour Government which emphasised its commitment to the public sector and the previous Conservative Governments which valorised individualism (Smith 2010).

The actual success of the Big Society in meeting its objectives has however been mixed to say the least. In the final of a series of audits of the Big Society conducted by Civil Exchange (a civil society 'think tank'), the report's authors conclude that overall the initiative has failed, citing amongst other things, the domination of market based solutions via large private enterprise in the expansion of choice in public services, little evidence of the much promised decentralisation, a failure to provide targeted support to the poorest communities and a failure to build any real partnership between Government and the voluntary sector. These findings are further reflected in the report's conclusion that, 'the Big Society might have been expected to result in a more united and better society – but so far the signs are of a more divided one' (Slocock et al. 2015, 7). The conclusion that the UK is a more divided society does however require more evidence than the failure of one initiative, regardless of how prominently that initiative was supported by Government.

The Precariousness of 'British' Solidarity?

The campaigns which preceded and have to some extent continued since the decision of the UK electorate to vote to leave the European Union not only opened a huge debate surrounding the future relationship of Britain with its European neighbours but has also again revealed the fragility of the relationships between the constituent nations of the UK.

The UK has experienced a shift in recent years from a much centralised system of power at Westminster to one that has witnessed political devolution to different constituent nations in Scotland, Wales and Northern Ireland. Although the processes of devolution occurred within a very similar timeframe, the actual powers that have been devolved and reserved (that is, retained at Westminster) have diversified over the years and thus leaves

the UK with an 'asymmetric' form of devolution. One key illustration of this has been the relatively scarce degree of devolution that has been undertaken in the largest constituent nation of the UK, England, which via a referendum, rejected the establishment of regional assemblies. Nevertheless, England has witnessed some devolution and this is perhaps most prominently represented by the creation of a directly elected Mayor of London following a referendum.

The asymmetric nature of devolution in the UK makes for a complex polity that is constantly evolving and adapting to new demands for power. Constitutional issues have for some time been reflected over the years by the election of MPs from parties such as Sinn Fein and the DUP in Northern Ireland, Plaid Cymru in Wales and of course the 2015 election of 55 (out of Scotland's 59 MPs) representing the SNP at Westminster. Such a trend unveils in fact what could be a dysfunctional, in the long term, effect of the institutional mechanisms (devolution) created to maintain infra-national solidarity, when coupled with policy divergences that are at their peak with the Conservative Party in control of Westminster, as peoples living in the 'devolved' nations seem to consider their interests and ideas to better protected and promoted by nationalistic politics.

Moreover, the distribution of votes to leave the European Union have served to further emphasise the fragility of 'British' solidarity with two constituent nations – namely Scotland and Northern Ireland – voting to remain in the European Union whilst England and Wales voted to leave. These are results which have raised the prospect not only of another independence referendum in Scotland (Scottish Government 2016) but also raised the prospect of a renewed debate on Irish unity (Halpin 2016).

Therefore although contemporary UK politics has been marked by the debate surrounding future relations with European neighbours, the post-Brexit landscape has refuelled the debates on the future of the United Kingdom, leading to calls for greater equality between the constituent nations including radical constitutional reform in the shape of federalism (Carrell and Walker 2016). Should the pursuit of equality come to the fore in efforts to strengthen the fragile solidarity of the UK constitutional settlement then this to some extent would mirror similar endeavours to bolster the social solidarity of UK society through efforts to establish greater equality through legislation.

Conclusion

The UK has been for sometime a paradigmatic example of how a polity can develop through a multi-layered system of social, political and economic solidarities. As a pluri-national country, it has managed to combine national-based solidarities (English, Scottish, Welsh and Northern Irish) with a supranational one (British), and even to allow such a pluri-solidaristic community to embrace a further layer of supra-national solidarity through its membership of the European Union. This has been made possible by the mutual reinforcing effect of political-institutional arrangements, such as the sharing of political authority (and economic resources) between national and supra-national bodies, the development of a welfare state securing the redistribution of resources across nations and social classes, and the guarantor role of the monarchy in the constitution.

However, some of the mechanisms that have underpinned cross-national solidarity for so many years are now heavily challenged and consequently the basic framework of solidarity that has held together the UK is now at risk. Political-institutional arrangements such as power sharing among different nations and territorial-political actors have been closely scrutinised in their capacity to represent the range of interests and voices to the point that one of the constituent components of the UK, Scotland, has sought independence from the UK through a referendum. Another key-political institution that has guaranteed solidarity, such as the welfare state, has been curtailed by austerity policies following the financial and economic crisis. Finally, supranational solidarity in the form enshrined by the UK membership of the European Union has collapsed following the country's decision, through a referendum held in June 2016, to vote to leave.

To conclude, the solidarity infrastructure that has sustained the UK as a pluri-national polity for centuries is revealing new cracks which expose a precarious equilibrium and consequently a great deal of uncertainty regarding the long-term consequences for both state and society.

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Part II:

Solidarity as a Legal Principle within the European Union's Legal System

Solidarity in the European Union in Times of Crisis: Towards "European Solidarity"?

Ester di Napoli and Deborah Russo[1]

Introduction

This chapter presents legal principles and provisions and policies adopted within the European Union, and also considers the commitments undertaken by member states, derived from both customary rules and treaties. Special attention will be devoted to solidarity as it is addressed by the founding treaties, as they developed within the framework of international and human rights law. It also explores the relevant case law of the Court of Justice of the European Union (CJEU) – which is endowed with the power to ensure the correct and uniform interpretation of EU law and to assess member states' compliance with EU obligations.

Following the paths of European integration, member states are increasingly called to share responsibility and to handle issues with a solidarity-inspired approach when dealing with economic, financial, social, and humanitarian challenges affecting Europe since early 2008.

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1 Paragraphs 1 (*Introduction*) and 5 (*Towards a model of "European Solidarity"? Concluding remarks*) are the result of a joint reflection by the Authors. Paragraphs 2 (*The context of European solidarity: social, economic and political challenges*), 3 (*Solidarity in the European Union; Horizontal solidarity; Horizontal solidarity in the Treaties; Vertical solidarity; Vertical solidarity and the EU in the human rights perspective; Solidarity via 'minimum harmonisation'?*) and 4 (*Unemployment*; *Social protection of workers and inactive citizens between national and European solidarity; EU strategy to contrast unemployment*) have been written by Ester di Napoli. Paragraph 4 (*Disability; Equal treatment and Immigration/Asylum; Article 80 TFEU: scope and implications; The critical aspects of the system of Dublin; Solidarity in asylum seeking*) by Deborah Russo.

The Context of European Solidarity: Social, Economic and Political Challenges

In the last decade, the European Union has faced a series of events that have put the idea of European solidarity under considerable strain. In particular, its member states and populations had to first face a deep financial and economic crisis, followed by rounds of austerity policies, compounded by massive influxes of migrants forced to flee from the Syrian war and geo-political instability in the Middle-East. These events have afforded opportunities to European institutions and member states, as well as to the European demos, to commit to fiscal and economic solidarity and/or to take joint responsibility for the many refugees and migrants. However, this series of events has also provided an opportunity to challenge the idea of European solidarity as announced in European principles, norms and attached values.

On the one hand, since late 2008, after the banking crisis was triggered by Lehman Brothers' bankruptcy, a global recession has affected the whole European Union, albeit unevenly, with some countries suffering more than others. Looking at growth in gross domestic product (GDP) between 2007 and 2011[2], the crisis has just slightly affected countries such as Austria, Germany and Poland, as well as Sweden (and Norway – outside the EU), Belgium, Slovakia and Malta. The crisis had a stronger impact on countries such as Denmark, Hungary, Italy, Slovenia and the UK. Some Southern European countries and the Baltic ones have been severely hit by the economic and financial crisis, which has been combined in some cases, namely in Greece, Italy and Spain, with dramatic public debt exposure.

On the other hand, large migration flows of both asylum seekers and economic migrants have contributed, increasing the challenge to the solidarity capacity of European societies and institutions. In fact, since 2014, Europe has experienced the greatest mass movement of people since the Second World War.[3] More than a million refugees and migrants have arrived in the European Union, the large majority of whom were fleeing war and terror in Syria.

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2 See https://www.eurofound.europa.eu/observatories/eurwork/comparative-information/impact-of-the-crisis-on-working-conditions-in-europe.

3 See https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/reports/nationalreports_en.

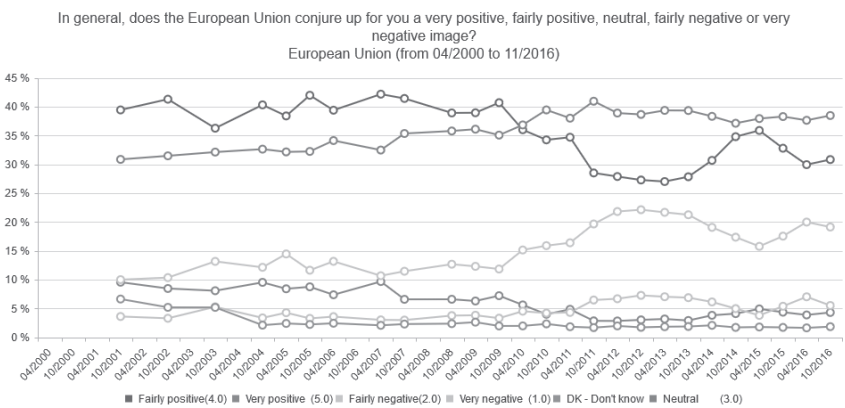
These crises have severely challenged the EU. They have required an extraordinary effort from EU institutions and member states in both economic-financial and infrastructural levels. Moreover, the collective financial support to countries most severely hit by the economic and public debt crunches unleashed political tensions among member states, ensued by harsh debate between some countries and the EU as institutions, as well as among its peoples. Such tensions and conflict questioned the capacity of European governments and of EU institutions to effectively address issues in a solidarity manner, leading to a corrosion of the EU legitimacy in the public sphere.

Indeed, the economic stress, and the increased social fragility provoked by the crisis and by the austerity policies have deeply impacted euro-optimism and trust in the EU in both political and identity terms. Available data confirms that the EU has suffered in regard to public support. For example, Eurobarometer data show that the crisis has negatively affected attitudes towards EU membership among European citizens. Between 2007 (before the start of the crisis) and 2013, the percentage of European citizens that felt their country's EU membership was a good thing declined respectively from 72.6% to 50%. Such a sharp decrease in the positive appreciation of EU membership occurred especially in those countries most affected by the economic crisis such as Spain (that lost 26 percentage points), Greece (-21%) and Portugal (-19%).[4] In a similar vein, the percentage of people having an overall positive consideration of the EU declined in the post-crisis period: before the crisis, approximately 50% of Europeans had a positive opinion of the EU (see Figure 2). Since then, there has been a significant increase in the percentage of those having a fairly (and also very) negative image of the EU. In fact, in 2013 and in 2016 less than a third of European respondents had a positive image of the EU.

4 See "Eurobarometer 40 years", http://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Archive/index.

Figure 1. Opinions on EU membership (Source: Eurobarometer)

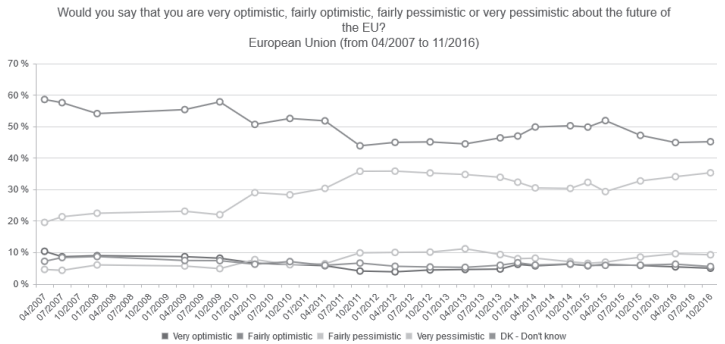
Figure 2. EU image (Source: Eurobarometer)



Consistent with earlier figures, optimism too has declined since 2007 when 69% of European citizens declared being optimistic about the future of the EU. In the autumn of 2013, the percentage of those having optimistic views about the EU's future had fallen to 51% (with a significant portion of interviewees saying they were actually pessimistic (43%). Again, the decline in the number of those being optimistic was stronger in the countries most severely hit by the different crises such as Cyprus (-41

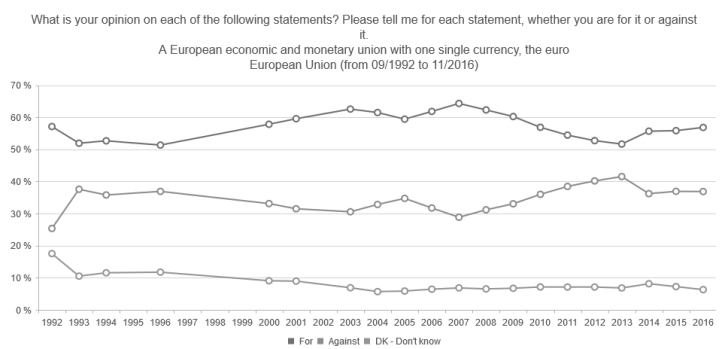
percentage points), Greece (-38), Italy (-28), Portugal (-26), Spain (-26) and Slovenia (-26)[5] (see Figure 3).

Figure 3. Optimism about the future of the EU (Source: Eurobarometer)



Finally, the impact of the crises was also felt also on a key aspect of the EU institution-building: the common market and its common currency. If we consider people's appreciation of the "European economic and monetary union with one single currency, the euro" we can see that since autumn 2009, such appreciation started to decrease, most likely because of the sovereign debt crisis in the euro area and the EU's response to that (see Figure 4).

Figure 4. Opinions on the euro (Source: Eurobarometer)



5 See "Eurobarometer 40 years", http://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Archive/index.

This trend of disaffection with the EU, a culmination point of the various crises Europe has faced in the last decade, peaked with Brexit, a paradigmatic example of decline in infra-European solidarity. In fact, transnational solidarity in the form enshrined by the UK membership of the European Union has dissolved following the country's decision, through a referendum held in June 2016, to leave. Although somewhat perennially regarded as 'reluctant Europeans', the vote by the UK electorate to end EU membership exposed the fragility of the European Union in a context of crisis and austerity.

More specifically, however, the actual tenor of the campaign which took place during the referendum revealed not only divisions within the UK in relation to age (older voters were more likely to vote for Brexit) and constituent nation (Scotland and Northern Ireland voted to remain in the EU) but also the so called 'winners and losers' of globalisation (Hobolt, 2016), a polarising factor mirrored across parts of Europe and the United States. Furthermore, the focus of the leave campaign in the UK on immigration, a salient issue for other EU countries, undermined one of the fundamental freedoms of the EU, the freedom of movement, by amplifying some of the most negative tropes on migration and asylum and which may have contributed to a 41% spike in the number of racially or religiously aggravated offences in July 2016 compared to July 2015 (Corcoran and Smith, 2016). In such a polarised and shifting political landscape, the UK is reconfiguring its relations with its European neighbours, and the triggering of Article 50 of the TFEU (which allows member states to withdraw from the European Union) begins a two-year process of negotiations over a wide range of policy areas which will undoubtedly test the solidarity between the UK and the European Union to the maximum.

Since the Europe of 27 shall shape its future, the discussion on the social dimension of the European Union is timely and essential: on 25 March 2017 – on the sixtieth anniversary of the European Treaties – the member states' leaders signed the "Rome Declaration", a reflection paper to prepare the way for a full and open discussion on the strengthening of the EU social dimension, in order to achieve a safe and secure, prosperous, competitive, sustainable and socially responsible Union, capable of "shaping globalisation". The Rome Declaration endorsed the European Pillar of Social Rights, announced by Mr. Juncker in September 2015, and intervening in three areas: equal opportunities and access to the labour market; fair working conditions; adequate and sustainable social protection.

The following section of this chapter discusses how solidarity is conceptualised within the EU political-institutional legal framework. In particular, it investigates whether an obligation of solidarity – and, therefore, of shared responsibility – among Member States arises from the EU Treaties and from the secondary law adopted in the fields of unemployment, immigration, asylum and disability. In presenting the legal instruments adopted by the EU in these sectors, it focuses on both soft (e.g. the Open Method of Coordination) and hard law.

By re-contextualsing European solidarity, the chapter studies the emergence – and the feasibility – of genuine measures to promote solidarity, ones that go beyond the mere coordination of 'solidarity' among different national systems.

Solidarity in the European Union

The European Union legal framework has not been established (nor has it developed) in a vacuum; it draws some of its key principles from International Law. This also applies to solidarity, which – according to the UN General Assembly's 2001 and 2002 resolutions – is "a fundamental value, by virtue of which global challenges must be managed in a way that distributes costs and burden fairly, in accordance with basic principles of equity and social justice, and ensures that those who suffer or benefit at least receive help from those who benefit the most"[6] (Campanelli, 2012). Such resolutions, which do not have legal binding force, have, however, a programmatic content and a human rights-based approach. At the international level, the UN promotes an equitable and cohesive international community, where solidarity entails a form of "help" offered by some actors towards others, in order to achieve common goals or to recover from critical situations. European Union Law has evolved to include two types of relationship: firstly, the relationship among states, and secondly, the relationship between States and individuals. These two forms of solidarity – that can be referred to, respectively, as "horizontal" and "vertical" solidarity –

6 UN General Assembly, resolutions 56/151 of 19 December 2001 and 57/213 of 18 December 2002, both entitled "Promotion of a democratic and equitable international order", available at: http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/2bbae3bc55f36b86c1256b80003f2f81?Opendocument and here: http://www.refworld.org/docid/3f49d46a4.html.

have different political roots and legal implications, so therefore they will be treated separately in the following sections. To give an example about such a diversity of meaning between horizontal and vertical solidarity, one may consider that evidence of solidarity between states does not necessarily emanate from the fact that strong solidarity ties exist within those countries' populations or among them. However, solidarity among people in the long run contributes to forging a stronger sense of solidarity within the populations, at the benefit of the overall societal cohesion in Europe.

Horizontal Solidarity

Solidarity, and in particular horizontal solidarity, has been part of the European Union establishment and development since its inception. On 9 May 1950, the French Minister Robert Schuman, proposing the creation of a European Coal and Steel Community, famously declared that "Europe will not be made all at once, or according to a single plan. It will be built through concrete achievements which first create a *de facto* solidarity".

Solidarity became a crucial value to be supported by a supranational organisation whose primary goal was to develop a common market, a common commercial space implying competition and therefore potential contentiousness among its participants (the member states). Therefore, solidarity was a value to be nurtured for mitigating the potentially divisive effects of the common market, and its associated freedom of movement of persons, goods, services and capital. We could also consider that solidarity has been a key factor in the establishment of European integration as a stepwise process of resource-sharing and mutual policy learning. In fact, European integration, built on an *ad hoc* established system of norms and mutual obligations, required a sense of solidarity among participants to be successful in the long term. In the following section, we briefly discuss how such solidarity provisions have been addressed by the Union since its inception, drawing on examples from its founding Treaties.

Horizontal Solidarity in the Treaties

Horizontal solidarity is already evoked in the EU Treaties. For example, Article 3 of the TEU, enunciating the objectives of the Union, declares that the Union "shall promote economic, social and territorial cohesion,

and solidarity among Member States". This formulation unveils the programmatic nature of this principle. In fact, when specific strategic policies are at stake, still in the treaties, we find evidence of the need for infra-state solidarity. For example, according to Article 80 of the TFEU, "The policies of the Union set out in this Chapter [V, devoted to EU policies on border checks, asylum and immigration] and their implementation shall be governed by the *principle of solidarity* and *fair sharing of responsibility, including its financial implications*, between the Member States. Whenever necessary, the Union acts adopted pursuant to this Chapter shall contain appropriate measures to give effect to this principle" [emphasis added]. Notwithstanding the unsatisfactory level of compliance with such a provision – which will be discussed in the section devoted to "Immigration and asylum", the provision clearly offers the legal basis for measures aimed at sharing burdens and duties of member states and in contributing towards shaping a common European policy in the field of immigration.

Another of such examples is offered by Articles 122 and 194 of the TFEU which establish a principle of solidarity in the field of economic policy, and, in particular, with reference to energy policy ("Without prejudice to any other procedures provided for in the Treaties, the Council, on a proposal from the Commission, may decide, in a spirit of solidarity between Member States, upon the measures appropriate to the economic situation, in particular if severe difficulties arise in the supply of certain products, notably in the area of energy").

In the same vein, Article 222 of the TFEU, states that "The Union and its Member States shall act jointly in a *spirit of solidarity* if a Member State is the object of a terrorist attack or the victim of a natural or man-made disaster" [emphasis added]. And it is in fact on that article's basis that Regulation (EU) n. 661/2014 of 15 May 2014 amending Council Regulation (EC) n. 2012/2002 establishing the European Union Solidarity Fund, was adopted[7]. The EU Solidarity Fund is a sound and flexible element at the disposal of the European Union that allows it "to show solidarity, send a clear political signal and provide genuine assistance to citizens affected by major natural disasters that have serious repercussions on economic and social development". The regulation was adopted to provide the Union with a systematic, regular and equitable method of granting financial support involving all member states according to their capacity,

7 OJ L 189 of 27.6.2014, p. 143 ff.

rather than such support being provided on an ad hoc basis. Moreover, the same regulation n. 661/2014 improves and speeds up the procedure of granting financial contributions to States which have been hit by a "terrorist attack" or "natural or man-made disaster" (where such expressions shall be given an autonomous and "unambiguous interpretation, as outlined in the Regulation's Preamble) by establishing, in Article 4, that "As soon as possible and no later than 12 weeks after the first occurrence of damage as a consequence of a natural disaster, the responsible national authorities of an eligible State may submit an application for a financial contribution from the Fund to the Commission".

However, horizontal solidarity is invoked in the EU Treaties also when foreign policy is at stake. In fact, Article 24 TFEU (to which Articles 31, par. 1, and 32 are linked) underlines that the EU's external action shall be based on "the development of mutual political solidarity among Member States" (paragraph 2) and that "Member States shall support the Union's external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity" (paragraph 3).

In sum, horizontal solidarity, that is infra-state solidarity, finds a sound legal basis in the EU Treaties, as both a general principle to guide infra-state collaboration to achieve the overall goal of the Union, as well as a specific provision in strategic policy areas or in paradigmatic situations, such as, asylum, immigration, energy, foreign policy, and natural or man-made disasters.

Vertical Solidarity

The vertical dimension of solidarity is solidarity focused on relationships, on the one hand, between the EU and its member states, and, on the other, between the EU and individuals. The latter also entails an infra-individual form of solidarity, addressed by EU Law. Vertical solidarity as a whole has been developed through European instruments for the protection of human rights, based on member states' common constitutional traditions, the European Convention on Human Rights (ECHR) and, ultimately, the EU Charter on fundamental rights (hereinafter also the "EU Charter").

Vertical Solidarityin the Treaties

The infra-individual dimension of vertical solidarity appears in the Preamble of the TEU stating that the Union aims to "deepen the solidarity between their peoples while respecting their history, their culture and their traditions". Again, solidarity is also mentioned in Article 2 of the TEU, which enunciates the principles that have to inspire the EU's policy action: "The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society where pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail". Furthermore, vertical solidarity takes an intergenerational meaning in Article 3 of the TFEU, stating that the EU "shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child".

Vertical Solidarity and the EU in the Human Rights Perspective

The European vertical dimension of solidarity has been progressively based on the Union's promotion and adherence to human rights' principles. In this sense, one of the most salient instruments to promote vertical solidarity in the European society is the European Charter. The Charter is binding only with respect to acts undertaken by EU institutions, or by member states in implementing EU Law. The EU Charter makes significant reference to the principle of solidarity, in its Preamble, which establishes that: "Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity". Moreover, the entire Title IV of the Charter (Articles 27-38) is devoted to (as its title suggests) solidarity. Such Title includes provisions related to the fundamental rights of workers such as the workers' right to information and consultation within the undertaking (Article 27); the rights of collective bargaining and action (Article 28); access to placement services (Article 29); the protection in the event of unjustified dismissal (Article 30); the right to fair and just working conditions (Article 31); the prohibition of child labour and the protection of young people at work (Article 32); the right to a family and professional life (Ar-

ticle 33); the right to social security and social assistance (Article 34). Some provisions entail a principle of accessibility to services which are an essential precondition for the dignity and the development of the person, such as the right to health care (Article 35); the right of access to services of general economic interest (Article 36); the rights to environmental and consumer protection (Articles 37 and 38).

According to certain democratic constitutions, solidarity is also promoted through respect and protection of cognate principles, such as the principles of equality and non-discrimination. According to such a broad understanding of solidarity as a principle strictly intertwined with equality and non-discrimination, the state has the duty to remove barriers and contrast disadvantages that preclude equality. Such principles are incorporated into the EU Charter, whose Articles 20 and 21 establish, respectively, the right to equality before the law and the prohibition of discrimination. The Charter also includes the recognition of positive obligations to avoid discrimination as established, for example, by Article 26, which states that persons with disabilities will be entitled to "benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community". As we discuss in the section devoted to disability, this provision – interpreted in accordance to the UN Convention on the rights of persons with disabilities (UNCRPD) – requires the EU and its member states to elaborate on specific policies to grant disabled people full participation in society's life, and to remove obstacles causing discrimination and exclusion. Unfortunately, the Court of Justice of the European Union (CJEU) case law has suggested that Article 26 enshrines a mere principle rather than a proper right, and as a principle, it requires a normative specification in European Union or national law to confer a subjective right that individuals can invoke as such (see, to that effect, Article 27 of the Charter, Case C 176/12 *Association de mediation sociale*, paragraphs 45 and 47). Such an interpretation of the notion of "principles" contained in Article 52, para. 5, of the Charter introduces uncertainty in the field of protection of rights, and in particular social rights, since the Charter does not clearly distinguish between provisions affirming rights and those providing for principles.

In general, the existence of positive obligations might be inferred by Article 52 of the Charter. According to this provision, in so far as the EU Charter rights correspond to rights guaranteed by the European Convention on Human Rights, these must be interpreted according to the meaning and scope of the latter (and in accordance with the jurisprudence of the

European Court of Human Rights – ECtHR), except for the possibility of according a more extensive protection.

Regretfully, this provision does not mention (but it certainly does not exclude) the need to interpret the Charter in accordance with the European Social Charter of the Council of Europe. The latter treaty complements the ECHR as far as social rights are concerned. Its monitoring body, the European Social Committee, receives communications from victims of violations and, through its concluding observations, plays a fundamental interpretative role.

Both the European Court of Human Rights and the European Social Committee have consistently affirmed that when the EU member states have to act in compliance with obligations stemming from EU Law, they must respect the standards of protection of human rights provided by those treaties. This is an important principle which grants effectiveness to the international protection of human rights and, particularly, to the case law imposing positive obligations on contracting state.

In addition of giving binding force to the EU Charter, Article 6, para. 2, of the TEU imposed an obligation on the European Union to accede to the ECHR: that development will lead to the scrutiny of EU Law by the ECtHR. Nevertheless, eight years since the entry into force of this provision of the TEU, ratification is yet to be finalised. The CJEU gives the ECHR "special significance" as a "guiding principle" in its case law (Polakiewicz, 2013). Yet, on 18 December 2014, the CJEU found the final text of the accession agreement between the Council of Europe and the EU of April 2013 not in accordance with EU Law[8]. The EU accession to the ECHR has, therefore, been postponed to an unknown time in the future. In a note of 2 October 2015, the Presidency of the Council of Europe outlined the state of play on the accession of the EU to the ECHR following the CJEU's opinion: the Presidency considered that the accession remains of paramount importance[9]. The commitment to continue working on the ECHR accession was expressed on 20 April 2016, and again reiterated on 9 November 2016 by Parliament's Committee on Constitutional Affairs (AFCO) in its opinion for the Committee on Civil Liberties, Justice and Home Affairs (LIBE) on the situation of fundamental rights in the

8 CJEU Opinion 2/13, 18 December 2014, available at: http://curia.europa.eu/juris/document/document.jsf?text=&docid=160882&pageIndex=0&doclang=en&mode=lst &dir=&occ=first&part=1&cid=40247.

9 http://data.consilium.europa.eu/doc/document/ST-12528-2015-INIT/en/pdf..

European Union in 2015, where it invited the Commission to identify the steps necessary for the accession.

A restriction to the vertical dimension of solidarity and to its human rights based approach, relates to its limited scope of application, due to the principle of attribution of EU competences. In fact, the rights based on solidarity apply in the areas of EU competence. However, as we shall discuss in the following sections, the Union has de facto forged a cross-policy area of action where solidarity has a role to play.

Solidarity via 'Minimum Harmonisation'?

While policy harmonisation has been extensively achieved in many areas related to market regulation, in domains where the European Union does not have a direct competence, such as in the field of social policy and more broadly welfare state services that are relevant to promoting vertical and horizontal solidarity, its actions have been softer (but not to be neglected). Social policy, in the European Union, as provided by Article 151 and subsequent of TFEU – better dealt with in the section dedicated to unemployment – is primarily developed by minimum harmonization goals, that is through rules aimed at minimising the different levels of provisions existing among member states rather than through the promotion of a common general standard system. This means that the European legislator has the power to adopt minimum standards of social protection, which prevent those member states with particularly inclusive welfare state provisions, to have to lower their standards (Shanks 1977; Ronchi 2013). Such a policy framework has not affected the heterogeneity in national policy and legal systems with reference to social – and welfare state – provision, *de facto* allowing the existence of a differentiated, unequal, system of (a plurality of) solidarities among EU citizens and among member states. The consequence of the distinct attitudes that member states show towards solidarity is that it is not possible to identify one single "European social model".

As has been partially highlighted, European social provisions have taken shape through the treaties (and secondary legislation) and the case law of the CJEU. In the seventies, several European directives were adopted against a background of economic recession and mobilisation by militants at a national level. In 1974, Europe adopted its first Social Action Programme, under pressure from the trade unions. The programme provided

for some 40-priority actions, designed to achieve three main objectives: full employment and better jobs, employment policy, and improvements in living and working conditions. Between 1989 and 1997, a strategy defining minimum social standards was launched, the 1989 Community Social Charter of the Fundamental Social Rights of Workers: throughout its historical process of European social integration, progress has been made, albeit slowly, towards a more proactive, all-embracing approach to employment policy (Tilly 2016).

Several methods have been used to build social Europe, among them, a soft-law approach. A paradigmatic example of a 'soft' policy instrument as a way towards an EU social policy is a policy instrument used as a reference point in social policy. The European strategy established in the Treaty of Amsterdam in the field of social policy set forth the premises of the enhancement of the "open-method of co-ordination" (OMC) as an emerging form of European social governance (Sciarra 2000)[10]. The OMC has been defined as "a process, in which clear and mutually agreed objectives are defined, after which peer review, on the basis of national action plans, enables EU Member States to compare practices and learn from each other" (Vandenbroucke 2002): in its intentions, the OMC aims to be a "creative" and flexible instrument that respects local diversity, a pragmatic approach which can effectively foster social progress. Through OMC States should jointly define their objectives (adopted by the Council) in the field of employment and social policy, establish measuring instruments (statistics, indicators, guidelines) and benchmarking by comparing EU

10 Article 127 of the TEC established that "The Community shall contribute to a high level of employment by encouraging cooperation between Member States and by supporting and, if necessary, complementing their action. In doing so, the competences of the Member States shall be respected. 2. The objective of a high level of employment shall be taken into consideration in the formulation and implementation of Community policies and activities", while Article 128 states that "1. The European Council shall each year consider the employment situation in the Community and adopt conclusions thereon, on the basis of a joint annual report by the Council and the Commission. 2. On the basis of the conclusions of the European Council, the Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament, the Economic and Social Committee, the Committee of the Regions and the Employment Committee referred to in Article 130, shall each year draw up guidelines which the Member States shall take into account in their employment policies. These guidelines shall be consistent with the broad guidelines adopted pursuant to Article 99(2). […]".

countries' performances and exchange of best practices (monitored by the Commission).

The OMC has provided a new framework for cooperation between EU countries, whose national policies can thus be directed towards certain common objectives. After some initial enthusiasm (Prpic 2014), the OMC has been increasingly criticised for the lack of democratic legitimacy and effectiveness due to its political irrelevance at national level and the absence of control mechanisms (Frazer and Marlier 2008). The European Parliament, in a 2003 resolution on the application of the Open Method of Coordination, called for it to be introduced into more fields, but warned against its becoming a "non-transparent and subversive parallel procedure in the EU"[11]; in a 2007 resolution on the use of soft law, and in one of 2010 on economic governance, EU Parliament called the OMC "legally dubious", and demanded an end to reliance on it in economic policy[12]. However, more recently, it positively viewed the application of OMC in the European Voluntary Quality Framework (2011 resolution on social services of general interest[13]), and likewise, the EU Regulation n. 1380/2013 on common fisheries policy.

However, as the Commission itself has noted in its *Reflection paper on the social dimension of Europe*, the 'soft' policy methods adopted to promote social policy at European level via harmonisation and progressive convergence, has not resisted the blows of the economic and financial crisis that has left European societies even more unequal than they were in terms of unemployment, deprivation, and social exclusion. In sum, the European policy on social and employment fields has not been successful in realising the goals established in 2010, when EU leaders committed to reducing the number of people at risk of poverty by some 20 million by 2020. Actually, the Union is still far from achieving these objectives and the crisis further impeded reaching them.

Preliminary Concluding Remarks

To sum up our earlier sections we can say that although the European Union is challenged by its capacity to deal with several phenomena, such

11 P5_TA(2003)0268.
12 P6_TA(2007)0366 and P7_TA(2010)0224.
13 P7_TA(2011)0319.

as the economic and financial crisis, and geo-political instability leading to massive fluxes of migrants and asylum seekers, it possesses the legal and policy instruments to allow it to deal with such challenges in a more explicit solidaristic manner.

Solidarity is the EU's intimate component: it is indicated as a key-value in its founding treaties both as a general principle and as a norm guiding mutual support among member states and peoples during specific circumstances such as natural or man-made calamities. In addition, in fact, solidarity was evoked as a guiding idea by the inspired political leaders who forged the very idea of a united Europe.

What is left to be done is a thorough implementation of such a principle, and although the road towards such an implementation seems to be long, progress has been made already: in the following sections we discuss how the European Union has developed (or in some cases failed to do so) solidarity as a policy principle in three areas: disability, unemployment, and migration/asylum.

EU Policies and Case Law in the Areas of Disability, Unemployment, and Immigration/Asylum: An Overview

Disability

The European Commission expects the number of EU citizens living with a disability to reach 120 million by 2020 (EC 2017, 4). Disability therefore, and the policies aimed to address it, represent very salient issues for European solidarity to be tested. In fact, disabled people show much lower employment rates (48.7%) than people without disabilities (78.5%). They also score worse on education parameters (22.5% of young people with disabilities are early-education and training leavers versus 11% of young pupils without disabilities), not to mention the higher proportion of people with disabilities among those who live in poverty (30%) compared to people without disability (21.5%) (EC 2017, 4). Therefore, action is required at European level to address such issues in a solidaristic way aimed at making Europe an environment where opportunities are made equal among its citizens regardless of their status. In this section, we present an overview of how the EU has addressed challenges related to persons with disability through both its key policies and through ECJ case law.

In the field of disability, the EU's policy is rooted in international legal/policy provisions, such as the Standard Rules on the Equalisation of Opportunities for Persons with Disabilities, adopted by the UN General Assembly in 1993[14]. Although not a legally binding instrument, the Standard Rules represent a strong moral and political commitment for Governments to take action to attain equalisation of opportunities for persons with disabilities. The Standard Rules serve as an instrument for policy-making and as a basis for technical and economic co-operation, and consist of twenty-two articles, organised into four chapters – preconditions for equal participation, target areas for equal participation, implementation measures, and the monitoring mechanism – covering all aspects of the lives of people with disabilities. Furthermore, the Standard Rules provide for the appointment of a Special Rapporteur to monitor their implementation.

However, the cornerstone of EU policy and legal framework in this area is the 2006 UN Convention on the Rights of Persons with Disabilities (CPRD) that the EU ratified in 2010. The Convention was the first Convention on human rights to be ratified by a regional integration organisation. All (still) 28 EU member states signed it, and 25 ratified it. The Convention represents a watershed in the political conceptualisation of disability, one that shifts disability from a medical to a social and legal condition, meanwhile increasing the social and political empowerment of people with disabilities.

The CPRD is intended as a human rights instrument with an explicit, social development dimension: it adopts a broad categorisation of persons with disabilities and reaffirms that all persons with all types of disabilities must enjoy all human rights and fundamental freedoms. It clarifies and qualifies how all categories of rights apply to persons with disabilities, and identifies areas where adaptations have to be made for persons with disabilities to effectively exercise their rights and areas where their rights have been violated, and where protection of rights must be reinforced. This implies the imposition of positive obligations on contracting parties (included the EU) in order to adopt all those measures essential for rendering effective the rights of disabled persons[15].

As far as the EU policy and legal framework on disability are concerned, the CRPD provides what is a particularly useful provision when it

14 http://www.un.org/esa/socdev/enable/dissre00.htm.

15 The standard of reasonableness though implies a measure of flexibility, which is particularly sensitive to the economic crisis.

sets a definition of "Discrimination on the basis of disability". The EU, in fact, could make use of its policy competence on anti-discrimination issues to promote an EU-wide disability policy, as we discuss in the following sections. The CRPD defines discrimination as "any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation".

To monitor its implementation, the CRPD has established the Committee on the Rights of Persons with Disabilities, to which all state parties have to submit regular reports concerning the implementation within their countries. The Committee examines each report and makes suggestions and general recommendations on them, that are then communicated, in the form of concluding observations, to the state party concerned. The reports and the Committee's observations are collected in a web portal[16].

Finally, the Convention is an essential component of EU Law and constitutes a standard of validity for all European legislative acts, which, therefore, must comply with it and have to be interpreted in line with its provisions.

In consistency with such an adherence to the CRPD, the European Union has progressed in acquiring competence on disability issues via its action on anti-discrimination policy but also by developing its own disability strategy. In fact, the requirement for positive obligations of the earlier discussed Directive 2000/78/EC highlights that the prohibition of discrimination based on disability does not forbid only unjustified disparities of treatment, but also needs the implementation of a general policy for granting equal opportunities to people with disabilities, particularly in the field of education and occupation, as a precondition of participation in society. For this reason, with a Communication of 15 November 2010 to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, the Commission launched the European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe[17]. The Communication aims at eliminating barriers,

16 http://www.ohchr.org/EN/HRBodies/CRPD/Pages/Jurisprudence.aspx.
17 COM(2010) 636 final.

with actions in eight priority areas: accessibility, participation, equality, employment, education and training, social protection, health and external action. The initial list of actions covered the period 2010-2015. Their implementation is underpinned by instruments such as awareness-raising, financial support, statistics, data collection and monitoring as well as the governance mechanisms required by the CRPD. In addition, it is also worth mentioning the adoption of Regulation (EU) n. 1381/2013 of the European Parliament and of the Council of 17 December 2013 establishing a Rights, Equality and Citizenship Programme for the period 2014 to 2020[18]. Its brief is financing actions with European added value aimed at promoting the implementation of the principle of non-discrimination on the grounds, among others, of disability and, in general, of contributing, in accordance with Article 4.

In February 2017, the Commission published the evaluation report of the European Disability Strategy that shows significant progress made in all its actions, and reaffirms its commitment to continuing working towards the fulfillment of all the strategies' goals (EC 2017).

Equal Treatment

EU legal and policy provisions converge with those of the CRPD in particular when equal treatment of citizens with respect to work is at stake. The normative reference is Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation (so-called "Employment Equality Directive") which protects disabled people from discrimination at work. It provides for prohibition of direct and indirect discrimination in all aspects of employment, including access to work, working conditions (dismissal and retribution) etc. Indirect discrimination occurs when an apparently neutral provision, criterion or practice puts a disabled person at a particular disadvantage in comparison with other persons.

To increase its normative saliency, Article 5 of the directive imposes positive obligations on Member States in order to accommodate the needs of disabled persons and realise their human and social rights in employment. According to this provision: "In order to guarantee compliance with

18 OJ L 354 of 28.12.2013, p. 62 ff.

the principle of equal treatment in relation to persons with disabilities, reasonable accommodation shall be provided. This means that employers shall take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer. This burden shall not be disproportionate when it is sufficiently remedied by measures existing within the framework of the disability policy of the Member State concerned".

The strength of the principle of non-discrimination applied to disability was restated in 2006 by the Court of Justice, which ruled that "the prohibition, as regards dismissal, of discrimination on grounds of disability contained in Articles 2(1) and 3(1)(c) of Directive 2000/78 precludes dismissal on grounds of disability which, in the light of the obligation to provide reasonable accommodation for people with disabilities, is not justified by the fact that the person concerned is not competent, capable and available to perform the essential functions of his post" (judgement of 11 July 2006, Case C-13/05, *Sonia Chacón Navas*). Moreover, in the same judgement, the Court went on to promote an understanding of disability as something different from a purely medical condition (in that sense, in accordance with CRPD 'social model' understanding of disability). In fact, while rejecting the claimant's reasons, the Court stated that the concept of "disability" is not defined by the directive itself, nor does it refer to the laws of the Member States for the definition of that concept. Therefore, considering the context of the provision and the objective pursued by the legislation in question, the EU legislator, by using the word "disability" in Article 1, deliberately chose a term which differed from "sickness": therefore, the two concepts cannot be treated equally.

The Court has further refined its understanding of disability continuing in its 'social model' interpretation, in a judgement of 18 March 2014 (Case C-363/12, *Z.*), affirming that the concept of disability "must be understood as referring not only to the impossibility of exercising a professional activity, *but also to a hindrance to the exercise of such an activity*. Any other interpretation would be incompatible with the objective of that directive, which aims in particular to enable a person with a disability to have access to or participate in employment" [emphasis added].

Other rulings of the CJEU move the EU understanding of disability even closer to the 'social' rather than to the 'medical' model, with the former considering disability as the results of environmental barriers rather

than individuals' impairments, while the latter focuses on disabled people's physical or mental issues. Hence, the CJEU, in a case concerning the lawfulness of a worker's dismissal, allegedly on the basis of his obesity, included obesity within the notion of disability. In this case, it argued that disability has to be understood as "a limitation which results in particular from physical, mental or psychological impairments which in interaction with various barriers may hinder the full and effective participation of the person concerned in professional life on an equal basis with other workers" (judgement of 18 December 2014, Case C-354/13, *Fag og Arbejde (FOA)*). Such a ruling unveils how the CJEU has relied on the CRPD and acknowledged disability as an evolving concept, specifying that in the area of employment and occupation, EU Law does not lay down a general principle of non-discrimination on the grounds of obesity as such. However, the Court found, for example, that if under given circumstances, the obesity of the worker entails a limitation which results, in particular, from physical, mental or psychological impairments which in interaction with various barriers may hinder the full and effective participation of that person in professional life on an equal basis with other workers, and the limitation is a long-term one, such obesity can be covered by the concept of "disability" within the meaning of the directive. It also stressed that the concept of "disability" within the meaning of Directive 2000/78/EC does not depend on the extent to which the person may or may not have contributed to the onset of their disability (*inter alia*, see judgement of 11 April 2013, Cases C-335/11 and C-337/11, *HK Danmark*).

Conclusions

In the field of disability, the EU has developed a robust policy and legal system enrooted in international progressive understanding of disability such as the UNCRPD, which is considered, also by Disabled People's Organisations (DPOs), a policy cornerstone towards an understanding of disability departing from purely medical-based definitions. As such, solidarity towards disabled people has taken the form of a legal-policy framework protecting and promoting equality among people, regardless of their physical and/or mental conditions. In particular, the focus of EU institutions' actions, *in primis* the EU Commission and the CJEU, has been to secure an effective implementation of anti-discrimination policies in employment, which still remain a challenge for disabled persons, other spheres of

life like education. Moreover, to monitor and promote an effective cross-policy field action supporting people with disabilities, the Commission has established a proper 'strategy' endowed with implementing bodies and mechanisms, whose evaluation reports unveil significant progress in its implementation (EC 2017).

Despite such a policy and legal framework effort, European institutions, urged by DPOs, are aware that there is still a long way toward full implementation of the UN Convention, which requires an overall human rights-based disability strategy aimed at granting equal opportunities and social inclusion for people with disabilities, but which also requires an effective implementation at member-state level.

At the political level, the Commission should make all possible efforts to disseminate awareness of the rights of people with disabilities, to collect data and statistics to monitor the situation and to allocate funds for furthering actions from the EU and its member states.

In particular, we would like to point out two actions on which the Commission should focus its efforts over the coming years:

Promoting the full implementation of the "Employment Equality Directive", by supporting understanding and correct interpretation of the required reasonable measures to be adopted by employers, such as the elaboration and dissemination of guidelines on the proper interpretation of the notions of "disability" and "reasonable accommodation". This is particularly important to avoid economic difficulties of enterprises and public entities in times of crisis overcoming the application of core rights.

Striving for the adoption of the 2008 proposal for an Equal Treatment Directive to fight discrimination not only in the field of occupation but in further key areas such as social protection, education, and access to goods and services, and integrating in this proposal the "accessibility approach" which has also been forwarded by the Proposal for the "European Accessibility Act" (COM(2015)0615 final).

Unemployment

Employment has been severely hit by the economic and financial crisis, although unevenly across Europe (Guerrieri 2016). While some member states have seen a dramatic increase in their unemployment rates, and, in particular of youth unemployment, others have proved themselves more capable of dealing with the crisis. Only three countries (Austria, Belgium

and Germany) had a lower unemployment rate in 2011 than in pre-crisis 2007. Six countries (Estonia, Greece, Ireland, Latvia, Lithuania and Spain) saw an increase of more than 8% in their unemployment rates over this period (Eurostat 2017).

In addition, the crisis has had a tremendous impact on youth unemployment (that is, people under 25), with a rise in this field in 2009 for all countries except Germany. Post 2009, part of Europe experienced a decline in youth unemployment, together with economic recovery in 2010 and 2011. Still, youth unemployment remained above the pre-crisis level in all EU countries with the exception of Austria, Belgium, Germany and Malta. In other countries, mostly in the South-East and Southern Europe, the rising trend also continued after 2011.

Rates concerning the so-called 'NEET' (i.e. young people "Not in Education, Employment, or Training") increased significantly between 2010 and 2015 in the countries most strongly hit by the crisis like Greece (from 18.6% to 24.1%) and Italy (from 22% to 25.7%). Today, the number of young people not in employment, education or training across the EU is estimated at 14 million. However, similar to youth unemployment, NEET's rates vary widely across Europe, ranging from around 5.5% in the Netherlands to 22.7% in Italy.[19]

In sum, despite some variance, the economic and financial crisis has heavily impacted on the (quantitative and qualitative) level of employment in the large majority of European member states. This puts heavy responsibility on European institutions' capacity, given that Article 145 of the TFEU, states that "the Union shall contribute to a high level of employment by encouraging cooperation between Member States and by supporting and, if necessary, complementing their action". However, as mentioned earlier with reference to social policy, EU competence in this field relies primarily on coordination of national policies and legislation.

However, solidarity-wise, employment policies are connected to two salient issues: the social protection of workers and social rights. The section below discusses these two aspects with reference to unemployment, focusing on freedom of movement and of residence of inactive EU citizens. We are aware that employment policies and labour law have reached a certain level of complexity in the EU, therefore our interest in this sec-

19 For further background information see the Eurofound report, 'Young people not in employment, education or training: Characteristics, costs and policy responses in Europe'.

tion is to discuss solidarity issues with a "narrow" focus on legal and policy provisions referring explicitly to unemployment.

Social Protection of Workers and Inactive Citizens between National and European Solidarity

As is the case for disability, as well as unemployment, the EU has developed a policy competence by building, not only, but primarily, on anti-discrimination principles, which, in this case, represent a key-value to correctly implementing the freedom of movement of workers across the EU. The pursuit of freedom of movement as a key condition for the common market to succeed has pushed member states, under EU guidance, and sometimes under EU mandatory decisions through its Courts, to agree on some sharing of (un)employment related social security provisions. Article 45 of the TFEU provides for the abolition of any discrimination based on nationality between workers of the member states concerning employment, remuneration and other conditions of work and employment. A relevant piece of legislation concerning the freedom of movement of workers is regulation (EU) n. 492/2011 of 5 April 2011 on freedom of movement for workers within the Union[20]. According to the extensive CJEU jurisprudence, the prohibition of discrimination has progressively covered all elements of the contractual relationship between employees and employers, including the protection of those European citizens who are looking for occupation abroad.

Again, similar to policy development in the disability field, as well as on (un)employment related issues, EU policy has taken inspiration from existing international regulations. For the matter under discussion here, it is particularly interesting to recall the International Labour Organisation (ILO) 1919 Unemployment Convention, which was ratified by all EU member states, except Croatia, Portugal and Slovakia. The convention establishes, according to its Article 3, that those contracting states which have established systems of insurance against unemployment shall "make arrangements whereby workers belonging to one Member and working in the territory of another shall be admitted to the same rates of benefit of

20 OJ L 141 of 27.5.2011, p. 1 ff.

such insurance as those which obtain for the workers belonging to the latter".

In this sense, a relevant EU piece of legislation is Regulation (EC) n. 883/2004 on the coordination of social security systems[21], which allows employed/unemployed people (as well as people receiving a pension, etc.) to benefit from the same (or a better) social security system as their member state of origin. In 2009, its implementing regulation was adopted (Regulation (EC) n. 987/2009): the two regulations are commonly referred to as "EU Law on social security coordination". The regulation does not set up a common scheme of social security, but allows different national social security schemes to co-exist, and its sole objective is to ensure the coordination of those schemes so that workers can benefit from them according to where their employment place is rather than according to their nationality. In fact, the preamble of Regulation n. 883/2004 contemplates that "within the Community there is in principle no justification for making social security rights dependent on the place of residence of the person concerned; nevertheless, in specific cases, in particular as regards special benefits linked to the economic and social context of the person involved, the place of residence could be taken into account".

Moreover, to constrain the capacities of member states to jeopardise these norms with their own interpretation, according to its recital 37, Regulation 883/2004 states that: "provisions which derogate from the principle of the *exportability of social security benefits* must be interpreted strictly" [emphasis added]. Moreover, Article 3 delimits the matters covered by the regulation, which clearly includes unemployment benefits (along with sickness benefits; maternity and equivalent paternity benefits; invalidity benefits; old-age benefits; survivors' benefits; benefits with respect to accidents at work and occupational diseases; death grants; pre-retirement benefits; family benefits).

The regulation is built on the principle of equality of treatment, as people moving cross borders shall "enjoy the same benefits and be subject to the same obligations under the legislation of any member state as the nationals thereof", at the same time preventing the overlapping of benefits (it expressly establishes that a person shall be subject to the legislation "of a single Member State only"). When crafting such a principle of exportability of social rights as a fundamental complement to the freedom of move-

21 OJ L166 of 30.4.2004, p. 1 ff.

ment of EU workers, EU institutions had to combine it with some of the member states' reluctance to make their social security provisions the sole attraction for the establishment in their territory of non-national workers or would-be workers. Therefore, the same Directive 2004/38/EC states that "all Union citizens shall have the right of residence on the territory of another Member State for a period of longer than three months if they: (a) are workers or self-employed persons in the host Member State; or (b) have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence and have comprehensive sickness insurance cover in the host Member State".

The jurisprudence in this field is vast, space reasons oblige us to mention a few cases only, related to the freedom of circulation of inactive individuals or, to phrase it in EU terminology, of non-economically active citizens. In this framework, the discourse around two different ideas of social justice – i.e. social justice with a commutative nature and strictly solidarity-based – gains importance (de Witte 2015). Commutative social justice concerns the rights of the individual to be entitled to certain social benefits as "compensation" for having worked, that is for having contributed to social welfare. Solidarity-based social justice comes into play in relation to the freedom of movement of inactive nationals (Strazzari 2016). However, the question on the model of social justice that needs to be applied in transnational mobility – mainly to inactive individuals – underlies also the CJEU case law. In fact, when leveraging European citizenship, the Court seemed to incline towards a universal and solidarity-based perspective; today, however, such an approach is less evident.

Within the solidarity-based perspective, in the *Martínez Sala* case of 12 May 1998 (Case C-85/1996), the Court restored a Spanish national's social benefits granted by the host state after they had been denied. The Spanish national was unemployed and residing in Germany at the time. The Court rendered its judgement on the basis of the exercise of her freedom of movement and establishment, in the light of the principle of non-discrimination on the grounds of nationality (similarly, see also the *Trojani* case of 7 September 2004, Case C-456/02). In the *Grzelczyk* case of 20 September 2001 (C-184/99), the Court established that access to social benefits of a non-economically active individual (in this case, a student in the last year of school) can be seen by the host state as an indicator of the individual's lack of sufficient resources and, therefore, be removed. How-

ever, the host state should have a case-by-case approach, as recourse to assistance cannot automatically be considered as a condition for removal.

Directive 2004/38/EU on the right of citizens of the Union and their family members to move and reside freely within the territory of the member states was adopted after the aforementioned CJEU's solidarity phase. The directive identifies different types of residence, depending on their duration. Concerning the issue of making the access to social benefits contingent to a real connection with the territory, in the *Collins'* case (Case C-138/02), the Court established that the requirement of a prior period of residence in the host state can in principle be considered as legitimate, as it can demonstrate that the person is effectively job searching.

In a judgement of 19 September 2013 (Case C-140/12, *Brey*), the Court was called to evaluate a state's discretionary capacity to assess whether the granting of social security benefit to a non-national EU citizen was a burden or not. It stated that the Directive 2004/38 recognises: "*a certain degree of financial solidarity between nationals of a host Member State and nationals of other Member States*, particularly if the difficulties which a beneficiary of the right of residence encounters are temporary" [emphasis added]. However, the shift towards a CJEU's less solidarity approach with a clear change in orientation is witnessed in the following judgements. The Court delivered its decision in the *Dano* case (Case C-333/13) concerning a paradigmatic case of so-called social tourism, a phenomenon occurring when EU citizens who are not economically active move into another country to take advantage of its welfare state benefits supposed to be better than those available to them in their state of nationality (McCabe and Minnaert 2011).

Some member states, especially those with more generous welfare systems, believe that this phenomenon may present a risk to the financial sustainability of their systems of social protection, and should be tackled through restrictive interpretations of EU rules on free movement of European citizens. Overall, the phenomenon of the so-called social tourism can be considered an outcome of the tension existing between, on the one hand, the logic of opening borders that characterises es the process of European market integration and, on the other hand, the opposed logic of closing borders on which the national welfare systems rely. Welfare systems remain strongly national-based in their organisation but also in their zeitgeist: they require the belonging to a "community" of people having adhered to a principle of redistribution of resources to address common risks and needs: An agreement based on an equal contribution towards the

funding of such a redistribution mechanism guaranteed by a mutual pact of loyalty and support between the community and its supreme political authority (the state) (Ferrera 2005).

In *Dano,* the referring court asked the CJEU whether Articles 18 and 20(2) of the TFEU, Article 24(2) of Directive 2004/38 and Article 4 of Regulation n. 883/2004 must be interpreted as precluding legislation of a member state under which nationals of other member states who are not economically active are excluded, in full or in part, from entitlement to certain "special non-contributory cash benefits" within the meaning of Regulation n. 883/2004 although those benefits are granted to nationals of the member state concerned who are in the same situation (Article 7(1)(b) of the directive). The Court considered that the dispositions at stake "must be interpreted as not precluding legislation of a Member State under which nationals of other Member States are excluded from entitlement to certain 'special non-contributory cash benefits' within the meaning of Article 70(2) of Regulation No 883/2004, although those benefits are granted to nationals of the host Member State who are in the same situation, in so far as those nationals of other Member States do not have a right of residence under Directive 2004/38 in the host Member State". The judgement confines itself to the definition of the substantive scope of "the financial solidarity" of which also the economically inactive citizens should benefit, excluding those who are not even potentially capable of contributing to the financing of the social protection system of the host country, but leaving intact the possibility that it operates for other categories. A solution which, although certainly not satisfactory for the creation of a genuine European social citizenship, it is in line with the objectives of a regulatory framework that, despite the undeniable progress that has been made, still shows in a clear manner its "commercial" origins. The decision delivered in the case *Dano* has subsequently been confirmed in the judgement of 15 September 2015, Case C-67/14, *Alimanovic*.

The judgements rendered by CJEU in the cases *Brey* and *Dano* show how EU case law fluctuates between two "visions" of solidarity: the conception in *Brey* is based on territorial presence, while the one in *Dano* (and *Alimanovic*) promotes social cohesion (Thym 2015).

On 14 June 2016 – a few days before Brexit became reality – the CJEU rendered a judgement repealing the infringement procedure against the United Kingdom concerning the violation of Article 4 (Equal treatment as regards access to social security benefits) of Regulation n. 883/2004 (Case C-308/14). UK legislation required nationals of other Member States to

have a right of lawful residence in order to be granted child benefit and child tax credit. The Commission, relying on the Advocate General's Opinion in the case which gave rise to the judgement of 13 April 2010 (Case C-73/08, *Bressol and Others*), submitted that the right to reside test constitutes direct discrimination based on nationality, given that it involves a condition that applies only to foreign nationals (UK nationals who are resident in the United Kingdom, in fact, satisfy it automatically). The Commission also submitted that the UK legislation, instead of encouraging free movement of EU citizens (which is the underlying purpose of regulation n. 883/2004), impedes it by introducing a barrier. The CJEU found that the need to protect the finances of the host member state "justifies in principle the possibility of checking whether residence is lawful when a social benefit is granted in particular to persons from other Member States who are not economically active, as such grant could have consequences for the overall level of assistance which may be accorded by that State" (see *Brey*, para. 61, and *Dano*, para. 6). The CJEU, which had once suggested that citizenship is "destined to be our fundamental status", and provides the basis for a "degree of financial solidarity" (*Grzelczyk*), has ultimately shifted away from the notion of EU citizenship (O'Brien 2016; Montaldo 2017).

Subsequently, on 31 December 2016, the Commission adopted a proposal for a regulation amending regulations n. 883/2004 and n. 987/2009 (COM(2016) 815 final): such a proposal shall be seen as an expression of a change of gear in the scenario of EU integration and social inclusion. In fact, it lays down a very debatable derogation to the equal treatment principle enshrined in Article 4, with the view of codifying the above-mentioned CJEU case law, by establishing strict limits to inactive EU mobile citizens to have access to social assistance in the host member state[22]. Other proposed amendments are also aimed at redefining the distribution of financial costs between sending and receiving countries, especially in the domain of unemployment benefits. While the objective of the proposal is deemed to be the "modernisation of the EU law on social security coordination", it is of concern that such a process does not follow the paths of solidarity. The proposal, in fact, seems to be biased towards permitting

22 See the Study for the EMPL Committee of the European Parliament, Coordination of Social Security Systems in Europe, November 2017, available here: http://www.europarl.europa.eu/RegData/etudes/STUD/2017/614185/IPOL_STU(2017)614185_EN.pdf.

host (Northern) countries to further protect their welfare systems from pressures coming from the free movers from the South to the East (Giubboni et al. 2017).

EU Strategy to Combat Unemployment

Article 151 of the TFEU requires that "The Union and the Member States, having in mind fundamental social rights such as those set out in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers, shall have as their objectives the promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion". On this legal basis, the Union may adopt minimum prescriptions, in order to minimise the different standard of social protection in the legal systems of member states and to prevent "social dumping" inside the EU.

However, the European policy has not always been consistent with those objectives.

The economic crisis has favoured the European strategy aimed at improving occupation through more flexible employment relations, called "flexicurity". The Commission defined flexicurity as an "an integrated strategy for enhancing, at the same time, *flexibility and security* in the labour market"[23] (emphasis added; Adinolfi 2015).

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23 Brussels, 27 June 2007 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Towards Common Principles of Flexicurity: More and better jobs through flexibility and security {SEC(2007) 861} {SEC(2007) 862}, COM(2007) 359 final. Under the initiative "Mission for Flexicurity", EU representatives, together with the social partners visited five EU countries and discussed with them how they have been setting up and implementing flexicurity policies. The results of the survey are available at: http://ec.europa.eu/social/search.jsp?pager.offset=0&langId=en&searchType=events&mode=advancedSubmit&order=&mainCat=0&subCat=0&subCat=0&year=0&country=0&city=0&advSearchKey=Mission for Flexicurity.

It was introduced by the Commission in the Green Paper Modernising labour law to meet the challenges of the 21st century[24]: the Commission explained that a "flexicurity" approach includes "life-long learning enabling people to keep pace with the new skill needs; active labour market policies encouraging unemployed or inactive people to have a new chance in the labour market; and more flexible social security rules catering for the needs of those switching between jobs or temporarily leaving the labour market".

In its Recommendation, adopted in October 2008, on the active inclusion of people excluded from the labour market[25], the Commission called upon EU member states to establish an integrated strategy based on three social policy pillars, namely adequate income support, inclusive labour markets, and access to quality services. Having regard for the respect for human dignity as a founding principle in the EU, as well as for Article 34 of the EU Charter, which provides for the right of social inclusion and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, the Commission called upon member states to design and implement an integrated comprehensive strategy for the active inclusion of people excluded from the labour market "combining adequate income support, inclusive labour markets and access to quality services". In fact, in the Commission's words, "active inclusion policies should facilitate the integration into sustainable, quality employment for those who can work and provide resources which are sufficient to live in dignity, together with support for social participation, for those who cannot". It further upheld the necessity to implement the common criteria contained in Council Recommendation 92/441/EEC of 24 June 1992 on common criteria concerning sufficient resources and social assistance in social protection systems[26]. The latter, in the Commission's understanding, is still to be considered a reference instrument for the (then) Community policy in relation to poverty and social exclusion, which "has lost none of its relevance, although more needs to be done to implement it fully".

The EU coordination of national employment policies in times of crisis should always prove to be compliant with fundamental rights, which play a key role. While the approach based on flexicurity may justify a lowering of social guarantees, all actions of EU institutions shall comply with hu-

24 COM (2006) 708.
25 OJ L 307 of 18.11.2008, p. 11 ff.
26 OJ L 245 of 26.8.1992, p. 46 ff.

man rights. From this perspective, the potential role of European Institutions is still undeveloped, as well as the awareness of the importance of another international instrument that should integrate and supplement the Charter of fundamental rights: the European Social Charter of the Council of Europe.

Since 1992, new policy instruments have emerged, as i) the prior mentioned EU Open Method of coordination on social protection and social inclusion (OMC), and ii) the European Employment Strategy (EES).

The European Employment Strategy emerged in the early 1990s within a context of rising unemployment and the establishment of the Economic and Monetary Union. The purpose of the EES was to foster convergence of national priorities towards lower unemployment and higher employment (Serrano Pascual 2009; Van Rie and Marx 2012) by increasing the internal and external flexibility of work, enhancing the human capital of workers and bringing the economically *inactive into* employment. This overall purpose (broken down into Employment Guidelines) was aligned with a monetarist approach to controlling inflation, the promotion of supply-side economics (deregulation) and a reduced role for the State (Salais 2004; Raveaud 2007).

Since its emergence, the EES has been linked to three European overarching strategies namely, the Lisbon Strategy (2000-2004), the Growth and Employment Strategy (2005-2010) and, more recently, the Europe 2020 strategy. Interestingly, throughout the years, the EES developed not only as a policy-oriented strategy but also as a procedural method. It gave rise to a flexible method of governance involving coordination at EU level, cooperation among EU Member States, and convergence of national policies towards certain common objectives in areas subject to subsidiarity. This flexible, soft (voluntary, not binding by hard law) method of cooperation, which was later placed at the heart of the Lisbon Strategy in the form of the 'Open Method of Coordination' and extended to other subsidiarity-driven policy areas such as pensions, social inclusion, healthcare and education (Zeitlin 2007 2010) has been faced with mixed criticism over its (in-)effectiveness and concrete policy outcomes at the country level (see, for example, Amable et al. 2009; Natali 2009; Heidenreich and Zeitlin 2009; Barbier 2011; Conter 2012; Van Rie and Marx 2012).

The policy objectives and procedural aspects of the EES, as part of the Europe 2020 strategy, were largely affected by economic development at the European and global levels. In a context of economic crisis and budgetary austerity, the EES required a significant adaptation in its orienta-

tion. Though the EES has not retained a distinctive role in Europe 2020 strategy, its basic principles play a key role, albeit in different settings. The Europe 2020 strategy, adopted at the European Council of June 2010, brought forward a new agenda: to turn the EU into a 'smart, sustainable and inclusive economy, delivering high levels of employment, productivity and social cohesion, and setting out a vision of Europe's social market economy for the 21st century' (European Commission 2010). The flagship initiatives 'An Agenda for New Skills and Jobs' and 'Youth on the Move' are those most explicitly related to employment. They are also the 'Employment Package' and a 'Social Investment Package', both of which were developed to support the flagship initiatives relating to employment and social inclusion. The 'evolution' of the EES into the Europe 2020 strategy has been seen with skepticism. The European Parliament and the social partners have strongly voiced their criticism over the subordination of employment (and social) policies to budgetary and monetary objectives. They have expressed their desire to be more closely and visibly involved in the Europe 2020 process (ETUC 2013; European Parliament 2013) and give the EES more prominence within the new European governance system.

Finally, a special mention should be made of the recent discussions surrounding the proposal – very much pushed by Pier Carlo Padoan, Italy's finance Minister – of a supranational European unemployment insurance scheme (EUBS) (Beblavý, Marconi, Maselli 2015; Beblavý, Lenaerts and Maselli 2017), a "panEuropean jobless scheme" (*Financial Times* 5 October 2015), "a Union with a human face" (Fattibene 2015). The EUBS would represent progress of utmost importance towards solidarity and shared risk among member states, an attempt to increase EU citizens' trust in European institutions showing them that there is "a solidarity net" at the European level, and that the European Union is part of the solution, not of the problem. The proposal of a binding European instrument of common solidarity would tackle unemployment and restore growth following the recent economic crisis, by recurring to automatic mechanisms that could potentially be the means of stabilising the Eurozone, while at the same time addressing social problems associated with the financial crisis, as shown in a study of the European Parliament published in 2014, which called for a "social dimension" to the Economic and Monetary Union (The Cost of Non-Europe Common unemployment insurance scheme for the euro area).

Conclusions

Human rights play a key role within the EU coordination of national employment policies in times of crisis: all actions of EU Institutions and member states shall comply with them, as well as with the European Social Charter of the Council of Europe. However, the potential role of European Institutions is still undeveloped. The importance of the European Social Charter within EU social policies, which has been previously underlined, is proved by its special mention in Article 151 of the TFEU.

In a scenario where the CJEU interpretation activity is moving away from a solidarity-based perspective, the proposal of a European unemployment insurance scheme (EUBS) shall be taken forward, as it translates a "truly European" solidarity instrument.

Immigration/Asylum

In the words of President Juncker, addressing the humanitarian crisis facing refugees has become the first priority of the EU. According to Eurostat figures[27], the total number of asylum applications in Europe in 2015 reached 1.3 million, more than double the number in 2014 and more than triple the number in 2013, setting a record for the last 70 years. In addition to refugees and asylum seekers, Europe – due to its comparatively high living standards and economic outlook – continues to be an attractive destination for economic migrants. According to the European Commission's autumn 2016 economic forecasts[28], 3 million arrivals were expected in the EU during the period between 2015 and 2017 if the level of inflow in 2016 remained at the level of the third quarter of 2015 and assuming a gradual normalisation during 2017. Due to limitations in the availability and reliability of data, these figures should, however, be interpreted with a great deal of caution.

Whether or not this trend continues, all analysts agree that a large share of the incoming migrants and refugees will settle in Europe permanently

27 Pew Research Centre analysis of Eurostat data, available at: http://www.pewglobal.org/2016/08/02/number-of-refugees-to-europe-surges-to-record-1-3-million-in-2015/.

28 Available at https://ec.europa.eu/info/business-economy-euro/economic-performance-and-forecasts/economic-forecasts_en.

(in 2015, 52% of total asylum applications resulted in positive outcomes[29], and a standard policy assumption is that at least half of the total number of asylum applicants will stay over the long-term). Therefore, and asylum represent key-issues where European solidarity can demonstrate its robustness.

In fact, the principle of solidarityhas a special role in the common policies of asylum and immigration, set forth respectively in Articles 78 and 79 of the TFEU. This is due to Article 80 of the TFEU, which meaningfully provides that these policies and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the member states.

However, the principle of solidarity in immigration and asylum policies also includes the relationship between the EU and its member states, on the one side, and individuals, especially those escaping persecution and war and looking for asylum in Europe. Indeed, this is the sole interpretation, which is in harmony with the values enshrined by Articles 2 and 3, para. 5 of the TEU, according to which, "In its relations with the wider world...it shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter". According to this interpretation, solidarity should apply both to the relationship among member states and to the relations among peoples inside and outside the European territory. It expresses a model of society that should fight against discrimination, violence and unfairness towards disadvantaged people and should actively promote minimum standards of dignity for all human beings.

Moving from theory to practice, the effectiveness of such fundamental provisions is problematic.

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29 Eurostat, Asylum Statistics (*Data extracted on 2 March 2016 and on 20 April 2016),* available at http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics.

Article 80 TFEU: Scope and Implications

From a strictly legal point of view, the scope of application and the precise legal implications of Article 80 of the TFEU are still under debate, and even more so after the economic crisis and the increase in migration and asylum flows. According to a critical point of view, the relation between solidarity and fair sharing of responsibility has been misunderstood by certain member states and by the European Institutions (such as in the conclusions of the European Council of Bratislava, 26-27 June 2014). They have subordinated measures of solidarity towards States facing the crisis to the responsibility of the latter in the correct application of EU Law (De Bruycker and Tsourdi 2015). Such interpretation seems to be supported by the literal meaning of Article 80, which refers to two cumulative engagements of the same member States, so that solidarity is a condition for the correct application of EU Law.

In other words, in the field of immigration and asylum, Article 80 of the TFEU requires of the member States something more than what is generally required by the principle of fair cooperation provided by Article 4, para. 3, of the TEU. This is what certain authors have called a "duty to support" as a general element of the asylum policy (Tsourdi 2016). This principle derives from the need of fair burden sharing. Such a principle results from the preamble of the 1951 Convention relating to the Status of Refugees, to which Article 18 of the EU Charter of fundamental rights refers, which reads: "the granting of asylum may place unduly heavy burdens on certain countries…a satisfactory solution of a problem of which the United Nations has recognised the international scope and nature cannot therefore be achieved without international co-operation". Given the general value of the principle enshrined by Article 80 of the TFEU, solidarity should constitute a structural component of European immigration and asylum policies, instead of a recipe for emergencies, as it is still considered.

Unfortunately, whether Article 80 of the TFEU provides for an autonomous legal basis for the EU asylum policy is still a debated question (Hailbronner and Thym 2016). In 2011, when the proposal for the regulation on Asylum, Migration and Integration Fund (AMIF) was advanced, (COM/2011/753/FINAL) the Council refused to recognise that Article 80 of the TFEU could work as the proper legal basis. The European Parliament and the Commission strongly disagreed on this point. The different opinions of the three European Institutions were summarised in separate

declarations within the Annex to the position of the European Parliament adopted by the Council (Document ST89472014ADD1 of the 13 May 2014)[30].

Financial, Operational and Humanitarian Solidarity

The practical implementation of the principle of solidarity in the field of migration/asylum can be arranged in three categories: "financial (or economic) solidarity", "operational solidarity" and "humanitarian solidarity" (among others: Morano-Foadi 2016; De Bruycker 2016). Financial solidarity consists of measures of assistance contemplating the distribution of economic resources to Member States for the management of the migration flows. Operational solidarity relates to actions and measures, adopted by the European Union, aimed at granting direct on-site support, immediately available for national authorities (see below Frontex and EASO). Personal or humanitarian solidarity consists of those measures, which directly intervene on migrants as the relocation measures (Morgese 2014; Mori 2015).

The majority of European measures based on solidarity are financial. Decision n. 573/2007/EC of 23 May 2007 establishing the European Refugee Fund for the period 2008 – 2013 as part of the General Programme 'Solidarity and Management of Migration Flows' and repealing Council Decision 2004/904/EC[31] recalls that the implementation of this policy "*should be based on solidarity* between Member States and requires mechanisms to promote *a balance of efforts* between Member States in receiving and bearing the consequences of receiving refugees and displaced persons" (emphasis added). To that end, "a European Refugee Fund was established for the period 2000 to 2004 by Council Decision 2000/596/EC. That decision was replaced by Council Decision 2004/904/EC of 2 December 2004 establishing the European Refugee Fund for the period 2005 – 2010. This ensured continued solidarity between member states in the light of recently adopted Community legislation in the field of asylum, taking into account the experience acquired

30 http://data.consilium.europa.eu/doc/document/ST-8947-2014-ADD-1/fr/pdf).
31 OJ L 144 of 6.6.2007, p. 1 ff.

when implementing the European Refugee Fund for the period 2000 – 2004. However, the fund has a limited effect on redistribution of financial burdens among member states. One of the reasons is that the method used for distribution, based on the overall amount of asylum seekers and beneficiaries in each state, favours bigger states (Thielemann 2005).

As far as "operational solidarity" is concerned, the EU has established instruments and agencies to deal with the external and internal dimension of immigration. On the one hand, the internal border-free Schengen Area, which currently comprises 26 Member States, calls for stronger cooperation with regard to external border control and surveillance. Council Regulation n. 2007/2004 of 26 October 2004 established Frontex, the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (the so-called "Frontex Regulation")[32]. Frontex became operational in 2005, in order to complement national border security systems by coordinating border management operations such as "Triton" and "Poseidon", as well as return operations: today, it is one of the most highly funded agencies in the EU. Its mandate was significantly revised and expanded in Regulation n. 1168/2011 of 25 October 2011 (the "new Frontex Regulation")[33], to ensure that all measures taken "fully respect fundamental rights and the rights of refugees and asylum seekers, including in particular the principle of non-refoulement"[34].

On the other hand, the EU and its member states saw the need to step up coordination between national administrations with regard to asylum matters. Regulation 439 of 2010 helped to create the European Asylum Support Office with the objective, *inter alia*, of providing operational support to member states whose asylum and reception systems face particular pressure. Since 2015, EASO has heavily intensified its presence at ground level through its emergency support for member states at the external borders with high numbers of incoming refugees. Moreover, its mission is to promote cross-national cooperation among national administrations and

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32 OJ L 349 of 25.11.2004, p. 1 ff.

33 OJ L304 of 22.11.2011, p. 1 ff.

34 Human Rights Council, Report of the Special Rapporteur on the human rights of migrants, F. Crépeau, *Banking on mobility over a generation: follow-up to the regional study on the management of the external borders of the European Union and its impact on the human rights of migrants*, 8 May 2015, UN Doc. A/HRC/29/36, para. 26.

harmonise the practical work in order to minimise different legal standards and outcomes (e.g., asylum denial and grant rates). However, due to the discretionary character of its powers and insufficient financial resources, its contribution to the application of the principle of solidarity and to the realisation of a concrete burden sharing among states has been limited. A recent further instrument is represented by the creation of European Border Guard Corps (a special unity within Frontex http://frontex.europa.eu/news/european-border-and-coast-guard-agency-launches-today), which, according to the Commissioner for Migration, Home Affairs and Citizenship, Dimitris Avramopoulos, have turned "into reality the principles of shared responsibility and solidarity among the Member States and the Union" [35].

With reference to "humanitarian solidarity", the first directive adopted after the attribution of competencies to the EU in 1999 is Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof[36]. Recital 22 establishes that its provision should be made for "a *solidarity mechanism* intended to contribute to the attainment of a balance of effort between Member States in receiving and bearing the consequences of receiving displaced persons in the event of a mass influx. The mechanism should consist of two components. The first is financial and the second concerns the actual reception of persons into the Member States. Chapter VI of the directive, entitled "solidarity", calls for Member States to "receive persons who are eligible for temporary protection in a spirit of *Community solidarity*" [emphasis added]. Unfortunately, this directive has never been applied.

In 2012, the EU Pilot Project on Intra-EU Relocation from Malta (EUREMA)[37] was launched. It was centred on a voluntary-solidarity basis. While a number of participating states maintained that voluntary ad hoc relocation measures with Malta were a concrete tool for demonstrating in-

35 The European Border and Coast Guard Agency was officially launched on 6 October 2016.

36 OJ L 212 of 7.8.2001, p. 12 ff.

37 EUREMA is a EU Pilot Project for the relocation of beneficiaries of international protection from Malta, endorsed in the European Council Conclusions of 18-19 June 2009 (doc. 11225/2/09 CONCL 2).

tra-EU solidarity, and generally assessed them positively, other States feared that regular and protracted use of stand-alone relocation in situations of disproportionate pressure could act as a pull factor for irregular migration and thus exacerbate the pressure rather than reduce it.

Even though many of these instruments and measures had been established before the summer of the immigration crisis, the EU had to step up its efforts in reaction to the recurrent news about humanitarian tragedies. This was the case on the occasion of the extraordinary EU Council of 23 April 2015 which was dismayed by the shipwreck of 18 April 2015 in the Sicilian Canal, where approximately 800 persons lost their lives. Immediate measures in this area were agreed, and four objectives were pointed out: 1) strengthening the presence at sea; 2) combating trafficking in accordance with International law; 3) preventing irregular migration; 4) strengthening solidarity and responsibility among the Member States (Nascimbene, 2015). These decisions anticipated a programme developed by the EU Commission, which was adopted on 13 May 2015 as the European Agenda on Migration.

Such an Agenda develops the political guidelines of the EU Commission into tailored initiatives aimed at managing migration better in all its aspects. The Agenda puts forward concrete actions to react against the immediate crisis and save lives at sea, and proposes structural responses for the medium and long term. The European Commission has been consistently and continuously working towards a coordinated European response on the refugee and migration front. A first implementation package on the European Agenda on Migration was adopted on 27 May. It includes a proposal to trigger for the first time Article 78(3) of the TFEU (according to which "In the event of one or more Member States being confronted with an emergency situation characterised by a sudden inflow of nationals of third countries, the Council, on a proposal from the Commission, may adopt provisional measures for the benefit of the member State(s) concerned. It shall act after consulting the European Parliament") in order to urgently relocate 40,000 asylum seekers for the benefit of Italy and Greece; a Recommendation for a resettlement scheme for 20,000 persons from outside the EU; an Action Plan on Smuggling; and the necessary amendments to the EU Budget to reinforce the Triton and Poseidon operations at sea so that more lives can be saved.

Unfortunately, these efforts did not produce the desired results. Recently the European Commission started an infringement procedure against Hungary, Poland and Czech Republic for refusing to take in their share of

refugees (see the press release of 14 June 2017 europa.eu/rapid/press-release_IP-17-1607_en.pdf), which has attracted a strong political reaction from the participating states.

The Critical Aspects of the System of Dublin

An appraisal of the so-called "system of Dublin" sheds light on the inefficacy of the current resettlement schemes as effective measures of solidarity. This system, originally based on the Dublin Convention and currently disciplined by Regulation (EU) n. 604/2013 of 26 June 2013, provides the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person. The State determined as responsible for the application is also the sole State bound to guarantee the rights to asylum and to provide the refugees with all the benefits and rights granted by the European Union provisions. Arguably, the cause of the unfair sharing of burdens is the criteria established by Dublin regulations and particularly the criteria according to which the state obliged to manage the application is the first country of entry. This criterion, which is residually applicable in the majority of cases, burdens the Member States at the external borders of EU. Hence, the question arises whether the Dublin system is compatible with the principle of solidarity and demonstrates fair sharing of burdens affirmed by primary law.

The Court of Justice of the EU has never dealt with this specific question. However, the Commission has been working for a long time on possible modifications and improvement of the current legislative framework. A novelty introduced in 2013 by the so-called Dublin Regulation III was a mechanism to deal with situations of crisis in the asylum area. This measure establishes a method for determining for a temporary period, which Member State is responsible for examining applications made in a Member State confronted with a crisis situation, with a view to ensuring a fairer distribution of applicants between Member States in such situations and thereby facilitating the functioning of the Dublin system even in times of crisis.

Decisions 2015/1523 and 2015/1601 have established temporary schemes of resettlement beneficial for Italy and Greece, lasting two years, and applying for quotas (of respectively 40,000 and 120,000 refugees). These instruments have proved to be inadequate to correct the unfairness

of the Dublin system. The majority of the Member States has been reluctant to comply with those decisions and the European Commission has only recently started to react, by opening up the aforementioned infringing procedure against Hungary, Poland and Czech Republic.

More generally, this system would have operated in situations of emergency only, leaving unaltered the unfair foundation of the European policy as reflected in the Dublin system.

The prospects for a consistent application of the principle of solidarity and fair sharing of burdens are not positive. On 13 July 2016, the Commission adopted a proposal for a further modification of the Dublin system (called Dublin IV; Mori 2016). The problem is that it leaves untouched the criterion of the country of first entry for the determination of the State bound to the reception of refugees. This criterion will be corrected by a mechanism of resettlement applicable in situations of emergency in favour of countries that have been burdened by an extraordinary number of applications. The number is extraordinary when it overcomes 150% of the capacity of reception of the country calculated on the basis of its GDP and its overall population. A "buy-out option" is provided by Article 37 of the proposal, providing that a State which does not want to participate must pay 250,000 euros for each resettled refugee. It is evident that this proposal is not sufficient to recalilbrate the system on the principle of solidarity. The system will remain premised on the unfair criterion of the country of first entry and any help from the other member states would operate just when the national systems of the states at the external borders have almost collapsed.

Solidarity in Asylum Seeking

The principle of solidarity towards people escaping from persecutions, wars, natural disasters etc., as enshrined by the above-mentioned articles 2 and 3, para 5, of the TEU, applies to further European acts which regulate the status of asylum seekers and refugees. The status of the asylum seekers, for example, is regulated by directive 2013/33/EU laying down standards for the reception of applicants for international protection[38]. This directive has also codified rules stemming from the case law of the Court of

38 OJ L 180 of 29.6.2013, p. 96 ff.

Justice. In particular, the Court has established that the standard of protection applies from the moment when the person declares her/his will to seek asylum (therefore even before submitting the application) regardless of the fact the State concerned is the one responsible for the examination of the application according to the Dublin criteria (C-179/11, *Cimade and GISTI*).

The status of asylum seekers is also disciplined by Directive 2013/32/EU on common procedures for granting and withdrawing international protection[39] (the "Asylum Procedures Directive") which requires that asylum seekers be given effective access to the labour market no later than nine months from the date of their application, and introduces new safeguards for vulnerable applicants, including *a duty to put in place a system to identify vulnerable persons*. The Court has recently clarified that this procedure is the sole applicable for asylum seekers and has excluded that the application for a visa with limited territorial validity ex Article 25(1) of the EU Visa Code (regulation n. 810/2009) can offer an alternative to getting to Europe (C-638/16, *X and X*). This interpretation of EU legislation has already attracted criticism for being too restrictive (among others, Zoeteweij-Turhan, Progin-Theuerkauf 2017).

The rights of those who have been recognised as refugees are provided by the directive 2011/95/EU on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted. Those legislative acts are really important to guarantee to asylum seekers and refugees a standard of protection of human rights and human dignity and are therefore extremely important for the realisation of the principle of solidarity towards people. Also in this field of law and policy, there are certain limits that could be overcome in future, such as the scarce attention paid to the will of refugees to move to other European countries, different from that responsible for the application. In other words, the European status of refugees paradoxically does not recognise the right to free movement in the EU territory and risks frustrating or diminishing the possibilities of integration of refugees into European society.

39 OJ L 180 of 29.6.2013, p. 60 ff.

Towards a Model of "European Solidarity"? Concluding Remarks

Despite the European Union's efforts to mitigate challenges to solidarity arising from the tensions between the mantra of economic integration and mechanisms of social protection and decommodification that remain bound to national levels, recent events risk jeopardising those efforts.

The horizontal dimension of solidarity has been dramatically threatened, first, by the economic crisis and, subsequently, by the increase of migration flows and the incapacity of European leaders to agree on a burden-share based asylum policy, which would have provided evidence of infra-state solidarity. More recently, in addition, the Brexit vote has represented a painful wound to the European horizontal dimension of solidarity.

When asylum and migration issues are at stake, the European Commission has shown a timid approach by proposing mechanisms designed to operate mainly in an emergency situation, and has proved to be unable to structurally apply solidarity to the European legislation in the field of asylum. Only in spring 2017 did the Commission open infringement procedures against the Czech Republic, Hungary and Poland for non-compliance with their obligations under the 2015 Council Decisions on relocation following the massive influxes of asylum seekers fleeing from the Syrian conflict. In the sphere of employment and disability, which are intertwined, the economic crisis has critically worsened the living conditions of people, raising concern and mistrust towards the European process of integration, ultimately strengthening populism and nationalism. Although, on disability matters, EU intervention has played a crucial role for the consolidation of a social-model based understanding of disability other than a medical-one. Moreover, solidarity vis-à-vis disabled people has been implemented by the adoption of a progressive, human rights-based, policy framework, endowed with a proper long-term, cross-policy, strategy and monitoring instruments for its implementation.

In general, the crisis has also exacerbated public perceptions about the uneven capacity that member states have to seize the benefits of the European integration process, with some countries appearing more capable of seizing the opportunities offered by the single market, while others struggle to achieve that.

The vertical dimension of European solidarity has also had to face different challenges. A key challenge is represented by the inconsistencies created between the commonalities underpinning the single market and the monetary Union and the still national-based social provisions that usually

serve the purpose of accompanying the development of a market economy, from both social security and welfare provisions sides. The European system is still made up of "separate" social systems that the EU sometimes forces or attempts to put in communication with efficient – though not sufficient – policy coordination methods.

In the field of immigration and asylum, the unequal distribution of burdens has severely prejudged the system of reception of those States subjected to higher levels of pressure, showing the incapacity of the EU and their member states to respect the principle of solidarity as well as the essential fundamental rights of refugees and asylum seekers.

On the employment side, on 16 November 2016, in its Communication entitled Annual Growth Survey 2017, the Commission outlined the main features of its jobs and growth agenda[40], realising that the European Union's economy is experiencing a moderate recovery. The Commission affirmed that the economic performance and social conditions, as well as reform implementation, remain uneven across the EU: many economies still face the far-reaching challenges of high long-term, youth unemployment, and that the unprecedented inflow of refugees and asylum seekers over the last year has represented a significant new phenomenon in some Member States. In this context, policies should be directed at consolidating the recovery and fostering convergence towards the best performers. A renewed process of upward economic and social convergence is needed in order to tackle the economic and social disparities between Member States and within European societies.

In the same document, the Commission outlined that member states should continue to modernise and simplify employment protection legislation, ensuring effective protection of workers and the promotion of labour market transitions between different jobs and occupations. More effective social protection systems are needed to confront poverty and social exclusion, while preserving sustainable public finances and incentives to work. Any such development will have to continue to ensure that the design of in-work benefits, unemployment benefits and minimum income schemes constitutes an incentive to enter the job market. Adequate and well-designed income support, such as unemployment benefits and minimum income schemes, allow those out of work to invest in job search and train-

40 COM(2016) 725 final:.

ing, increasing their chances to find adequate employment that matches their skills.

Finally, comprehensive integration measures are required for those further excluded from the labour market and especially in response to the recent arrival of a large number of migrants and asylum seekers. Integration of migrants, especially refugees, calls for a comprehensive approach to facilitate their access to the labour market and more generally their participation in society. In the 2016 Annual Growth Survey (which launched the 2016 European Semester), the Commission put forward that the EU, in order to overcome its economic and social challenges, needs to act ambitiously and collectively, with a strong focus on job creation and social inclusion.

While promoting social developments at the national level – therefore fostering "bottom-up" solidarity– the EU is simultaneously "imposing" solidarity "top-down". This is particularly evident from the proposals of a supranational European unemployment insurance scheme and, in the field of immigration asylum, from the proposals of 9 September 2015 concerning the relocation of people in need of international protection among EU Member States under extreme pressure and a common EU list of safe countries of origin. These future EU instruments show the progressive construction of a structural "European solidarity net", which goes beyond mere coordination, and beyond the voluntary basis that has been typically characterising solidarity. The so-called – refugee crisis is probably "helping" European solidarity to emerge and grow stronger: today Member States are called upon to act – not just "*in the spirit of* solidarity" [emphasis added] – but rather "according to" the principle of solidarity, which is gaining importance at the supranational level.

The challenge of European solidarity is more a political than a legal one. The current legal framework provides a potential that is still not sufficiently exploited. In the field of immigration, for example, the scope of application of Article 80 of the TFEU should be enhanced in order to overcome the current Dublin system and construct a coherent European policy of reception. Analogously, in the field of unemployment and disability, there are legal bases for harmonising national social policy by taking inspiration from the more inclusive social protection systems, and recognising equal opportunity and full accessibility to work and society to people with disabilities. The European Institutions should encourage member states to negotiate common progress in the social fields and monitor their compliance. The Court of Justice, in particular, which has demon-

strated courage in improving social protection for the functioning of the market (at least until its more recent rulings, i.e. *Dano* or *Alimanovic*) should enhance the social provisions of the Charter of Fundamental Rights as a driving force in the field of social rights, and for the elaboration of social reforms inspired by solidarity. In the future, the development of European solidarity requires the social constitutional refoundation of Europe (the European Pillar of Social Rights, endorsed in the "Rome Declaration", shall establish the context for discussion): in other words, a political process calling on States to understand- the social aspirations of people and harmonising them with the functioning of the market.

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Part III:

Solidarity at a Crossroad: Solidarity and Member State Public Policies on Unemployment, Disabilities and Migration/Asylum

Solidarity in Times of Crisis: Disability, Immigration and Unemployment in Denmark

Deniz Neriman Duru, Thomas Spejlborg Sejersen and Hans-Jörg Trenz

Introduction

In a European comparative context, the Danish Welfare State is considered to be relatively supportive in terms of providing care for the three areas discussed in this chapter: disability immigration, and unemployment. Among other things, the state grants relatively high disability and unemployment benefits, guarantees job security for disabled people, and offers extensive rehabilitation to help sick people re-enter the labour market. This is in line with a particular understanding of *solidarity* which, in the Danish context is strongly grounded in *welfare*, and encompasses equal distribution of income through taxation. Reciprocal solidarity as welfare is in this sense state-centred, while citizens invest at the same time in horizontal and privately organised solidarity action in support of the state supplied welfare services.

The economic and financial crisis in 2008 marks some modest changes, but not, as we shall argue, a radical rethinking of the welfare state. As a result of the very recent policy changes in the three issue areas under analysis, social benefits have been cut or become more conditional with preference given to measures that seek to reintegrate service receivers into the labour market. This is, however, in line with the tradition of the universalistic Danish Welfare State, which has always combined a generous social safety net and free education by collecting high taxes and contributing actively to the wealth of society through work, volunteering and social responsibility.

The relative stability of the welfare state in times of crisis can, in part, be explained by Denmark's quick economic recovery after suffering from recession in the initial crisis years. The GDP growth dropped from 1.6 % in 2010 to 0.66 % in 2012 – and rose to 1.3 % in 2016 – and in turn the population did not suffer from a substantial loss in wealth, while recession or economic stagnation endured in other parts of Europe. Furthermore, the debt and deficit of the Danish government is the lowest in the EU; its Gini

coefficient – a socio-economic measure that allows income inequality among the population to be compared – remains the lowest in Europe (around 0.25 during the crisis years); the average annual wage is one of the highest in Europe, and inflation is at a historical low level.[1] Contrary to what is often assumed, moreover, the tax burden for the average Danish worker is not higher than the average in other European countries.[2]

Unemployment rose in the initial crisis years, but since 2011 this trend has reversed with a current unemployment rate of 6.5% (December 2016). This is below the EU-average of 8.3% and far below the rate of countries hardly hit by the crisis like Italy (11.9%), Spain (19.1%) and Greece (23.1) (Eurostat 2017). Youth unemployment is around 10% and thus significantly lower than in other European countries where it even doubles the unemployment rates for all ages (ibid.). The youth unemployment rate is also decreasing, indicating the quick recovery of the labour market. Over the last years, Denmark has, in fact, offered job opportunities for young adults from all over Europe with an increasing influx of both high-skilled and low skilled mobile EU citizens who escaped economic hardship in their countries of origin.

In the field of immigration, an important change is marked by the more recent arrival of refugees in 2015. The number of asylum seekers increased dramatically from 2,409 in 2008 to 21,316 in 2015, but dropped again considerably in 2016. Over the same period, the number of incoming non-EU working migrants (not asylum seekers) has dropped steadily (from 21,440 in 2007 to 11,682 in 2015), while the number of EU migrants increased significantly (from 14,620 in 2007 to 37,366 in 2015).[3] There has thus been a shift from non-EU to intra-EU immigration, which – according to Jørgensen and Thomsen (2013) – is reflected in an increasing negative tone in the media towards both groups: the EU and Non-EU migrants.

In the field of disability, Danish disabled people, who according to Christoffersen et al. (2014, 86) includes up to 25 % of the population, are provided with a variety of measures to apply for public funding. However,

1 http://www.dst.dk/da/Statistik/nyt/NytHtml?cid=19280 and http://www.dst.dk/da/Statistik/nyt/NytHtml?cid=22577.

2 http://www.skm.dk/skattetal/statistik/generel-skattestatistik/skattetryk-en-international-sammenligning-i-2013.

3 https://www.nyidanmark.dk/NR/rdonlyres/6460D4F5-F48B-4724-9ED6-0BCD97683104/0/StatisticalOverview2015.pdf.

the terms for these funding schemes have been bureaucratised since the structural reform of 2007 and the crisis in 2008. Furthermore, even though it seems that disabled people are met with a high degree of solidarity regarding employment matters, they are less protected from discrimination outside the labour market.

This chapter aims to place the Danish Welfare State into context and to trace more recent legislative and policy changes with regard to these three areas. We begin, first, with a brief introduction to the Danish legal system, hereunder judicial reviews, the role of the courts and intermediary complaint board, 'The Danish Parliamentary Ombudsman'. We then go on to discuss the three areas separately. Within each area, we disclose the main legislation and discuss relevant case law from the Supreme Court of Denmark and the Ombudsman. Finally, we include reactions and experiences from civil society to the changes after 2008.[4]

The Danish Judiciary System and the Tradition of Conflict Mediation beyond the Courts

The Danish Judiciary System is a hybrid of civil law and public law (Lund-Andersen 2015) and has no separate constitutional court (see Wahgren 2007).[5] Relevant cases within our areas of interest are thus dealt with by ordinary courts, the Supreme Court of Denmark being the highest appeal instance. To consider the specifics of the judicial review system in Denmark, it is however important to keep in mind the cultural and democratic self-understanding of a country that strongly trusts in the role of representative government and parliament. According to Marlene Wind (2014, 18-19), in the Nordic part of Europe, there is "a broad but unspoken consensus that democracy equals the will of the majority in parliament and that this majority should be more or less unconstrained by other powers", including the judiciary. There is, thus, a consensus approach to judicial and political matters, which – it is argued by Wind – works best "in homogenous societies with few violent conflicts and little ethnic diversity". Denmark is indeed one such society which imagines itself just like a

4 We do this through our 30 research interviews performed with transnational solidarity organisations (TSOs) working within disability, immigration, and unemployment.

5 Overview of the Danish Courts and judicial system is found in Wahlgren (2007).

'big family' or a 'tribe' (Olwig and Paerregaard 2011, 2). Furthermore, Danish citizens have a high level of trust in institutions, and national authorities are considered to be your 'friend', one whose advice you take, and against whom you do not press charges (Wind 2009; Christoffersen et al. 2014, 139, 174-177).

Judicial reviews are rare in legal systems based on parliamentary supremacy, such as Denmark's. This is different from states with strong constitutional protection such as Germany and Italy, where the Constitutional Court is a primary place for the protection of the rights of the citizens. People in majoritarian democracies can even be said to be afraid of the strong role of courts to restrict the sovereignty of the people (Wind 2014). Thus, Denmark like the other Nordic countries does not have the tradition of using the judicial review by courts, since it prefers that rights should be the product of legislative proposals (Wind 2009).

In light of this democratic self-understanding, laws (especially constitutional law) enforced by courts only play a minor role in the protection of citizen rights in Denmark. The general disregard for courts is also reflected in the attitude of the Danish people who often prefer alternative procedures of conflict settlement instead of opening court cases. The affected parties thus usually call in intermediary bodies and complaint boards to sort out these conflicts, such as The Ombudsman, *Ankestyrelsen* and *Udlændingenævnet*. [6] In the Danish system, there is, in short, no strong tradition to appeal to courts for conflict resolution in private and public law cases.

The concept and role of the Ombudsman is a rather unique Scandinavian institution. In short, it allows individuals, groups or enterprises who feel that their rights have been violated by public administration to settle their conflicts outside the courts. The Ombudsman is not only a proactive institution, it also has an active Inspection Division, which annually visits and monitors a large number of public institutions, such as psychiatric institutions, social care homes, refugee asylums, etc. The office of the Ombudsman writes annual reports, which includes selected cases, an overview of the types of complaints received, and what cases were reopened or transferred to relevant parties. Especially within the area of im-

6 Ankestyrelsen is a complaint board related to social and employment matters. Udlændingenævnet is a complaint board related to immigration matters.

migration and unemployment we have selected cases from these reports to illustrate the work of the Ombudsman.

Disability

Background and Main Legislation

In 2007, Denmark underwent a major structural reform. Besides limiting the number of municipalities and regions drastically, the distribution of tasks underwent changes, especially within the area of disability. The most prolific change was that the municipalities, to a much higher extent than before, were given the responsibility of the disability sector. Before 1980, this was the responsibility of the state (the so-called "Special Care"), and between 1980 and 2007, of the regions. The Danish Disability Council, a government-funded body founded in 1980, re-accentuated the four principles, also created in 1980, on which the disability sector should be grounded. These are: 1) the anti-Discrimination principle, 2) the Sector Responsibility Principle, 3) The Welfare Compensation Principle, and 4) The Solidarity Principle (Wiederholdt 2005, 6-8). Combined with the UN Convention on Rights for Persons with Disabilities, these lay the foundation for main legislation on disability in Denmark.

The SolidarityPrinciple is defined in relation to the public taxation of the Danish Welfare State in the sense that "most welfare benefits – also within the area of disability – are financed through taxation, and it is in principle freely available to the disposal of citizens, who are in need of help" (The Danish Ministry of Children and Social Affairs 2017). In practice, this suggests that disabled people in Denmark are eligible for a variety of state-funded social services ranging from free healthcare, reimbursement of medical expenses, access to assistive devices, and home help. Furthermore, patient associations have the possibility of applying for a multitude of state (e.g. 'the Disability Fund' and 'Udlodningsmidler', hereunder the so-called 'Activity-' and 'Administration-'fund), regional and municipal funds (e.g. funding to voluntary work, the so-called '§ 18-funds'). Those who qualify can apply for these for different purposes such as administration and activities. Close to all respondents in our interviews with 10 civil society patient organisations can confirm that they in fact apply for public funding, and that this is considered to be the main part of their income. One interviewee stresses that these funds have been much

harder to access recently, here specifically referring to the state funds 'The Activity Fund' and 'The Disability Fund':

> "*The demands to get funding have been sharpened. They have become bureaucratic to apply for. Often you need to apply a very long time in advance. And the information you give has to be very precise.*"
> (Interview No. 19)[7]

When asked about the implications of this "sharpened" and more "bureaucratic" process, the respondent specifies that this has created inequality between the bigger organisations with sufficient resources to cope with bureaucracy who are thus able to secure funding, and smaller patient organisations which work under financial constraints and have difficulties meeting the new bureaucratic requirements:

> "*This heightened demand of documentation makes it difficult. […] Especially if you are a small patient organisation, you might feel that this is brutal*."
> (ibid.)

In conclusion, a prospering civil society support network in the field of disabilities was built with the purpose of supporting state welfare (and not replacing it), while remaining heavily dependent on state-funding. While these funds are vital for civic activism in the field, they have become harder to access in recent years.

Case law: Disability Discrimination inside the Employment Area

In relation to anti-discrimination, we will discuss an important act with wide-reaching consequences that has been tested in the Danish Courts in support of the rights of disabled.[8] This is the Act on prohibition against discrimination with respect to employment (Act No. 1349 of 16/12/2008).[9] This act prohibits any kind of discrimination regarding employment, whether related to ethnicity, race, religion, sexuality, and/or, most relevantly in this context, disability (§ 1). It should be mentioned that an equivalent act, where disability discrimination is prohibited outside of

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7 Interview conducted on September 29, 2016.

8 Cases related to this act –which from now on we will refer to as the Discrimination Act – are typically dealt with through the complaint board *Ligebehandlingsnævnet* (The Board of Discrimination) in *Ankestyrelsen.*

9 https://www.retsinformation.dk/forms/r0710.aspx?id=122522.

employment, does not exist. In both cases, the courts (in the first case, the Supreme Court; in the second, the District Court of Kolding) ruled in favour of the disabled.

In Case No. 104/2014, an employee in a supermarket was laid off by the employer due to physical disability.[10] The employer claimed that this should be seen in relation to the so-called '120-days rule' (i.e. Act on the Salaried Employees, § 5, stk.2). This law states that an employer can lay off an employee, if the employee has had more than 120 sick days within the last 12 months, unless it is not in conflict with the Discrimination Act, more specifically § 2a. This states that an employer should make appropriate arrangements in relation to employees with disabilities. The Supreme Court ruled in favour of the employee, and the employer was asked to pay compensation and legal costs of approx. € 65,000. This clearly suggests that the rights of persons in need of special protection (in this case, the disabled) is given priority over the application of labour law provisions. It is without precedent in Danish legal history that an employer has been sentenced to pay compensation to an employee for not respecting the Discrimination Act.

The second case (C-354/13) went directly from the District Court of Kolding to The European Court of Justice (ECJ) in Luxembourg.[11] This case concerns principles of discrimination in relation to disability, but more specifically to obesity as a disability. A public employee was laid off as a children's day-care worker in 2010. In this context, his obesity was discussed. This, he claimed, was an example of discrimination related to disability. In 2014, the District Court of Kolding provided four preliminary questions to the ECJ regarding whether obesity discrimination is in conflict with EU law and whether obesity can be regarded as a disability. Later that year, the ECJ answered that obesity discrimination (e.g. dismissal of somebody because of obesity) is different from discrimination due to religion, disability, and skin-colour. However, they also decided that a serious degree of obesity can be a disability and in such cases, obesity discrimination should be equated with other forms of discrimination.

Even though cases like these are rarely tested in Danish Courts, both cases show that the rights of disabled people are to some extent protected by the Danish (and the European) Legal System. However, this protection

10 http://domstol.fe1.tangora.com/media/-300016/files/104-2014.pdf.

11 http://curia.europa.eu/juris/document/document.jsf?text=&docid=160935&pageIndex=0&doclang=DA&mode=req&dir=&occ=first&part=1&cid=65750).

is only guaranteed when it comes to disability discrimination in relation to employment because as we shall see in the next section, the principle of discrimination and the Solidarity Principle in relation to the private life of the disabled is contested in civil society.

Case Law: Disability Discrimination outside the Area of Employment

Support action in the field of disability has also suffered in more general terms from the financial cuts that were imposed on the public sector in Denmark. Mainly, this is experienced as a retrenchment of social benefits (which could also relate to the formerly discussed "sharpened bureaucracy"), but also in a very specific sense that it has become much more difficult to get access to e.g. assistive devices. This can be said to contradict the SolidarityPrinciple, where welfare benefits should be "freely available to and at the disposal of citizens who are in need of help" (The Danish Ministry of Children and Social Affairs 2017). One interviewee discusses this in the following:

> "*The crisis has made it more difficult. And I say this because now people have begun to discuss the economy in relation to medicine [..] Before, this was not the case here in Denmark, legally speaking. I think this discussion is caused by the time we live in."*
> (Interview No. 15)

Several of our respondents have pointed out that the increasingly complex administrative processes have made it more difficult to apply for and receive public funding. For disabled people, this often implies insufficiencies in receiving personal assistance (e.g. disability friendly cars, oxygen machines), but also more restrictive access to early retirement pensions or other benefits:

> "*It is my impression that it has become more difficult for members of my association to get access to the specific help tools that they need. For instance, when can you get home help because you cannot do your own cleaning? This has become more difficult to get access to. [] You apply through a social worker and get a rejection.*"
> (Interview No. 15)[12]

12 Interview conducted on September 26, 2016.

In February 2017, the Danish Minister for Children and Social Affairs reacted to such complaints about discrimination related to non-unemployment matters. She thus began to develop legislation inspired by the Discrimination Act to correct this inequity (The Danish Ministry for Children and Social Affairs 2017). In summary, this retrenchment of funds and specific support are experienced as dissatisfactory by the affected Civil Society Organisations. The Danish government is accused of restricting the rights and worsening the living conditions of disabled people living in Denmark. Even though this situation is perceived rather negatively by many of the informants, they also discuss the Danish situation in a European context and acknowledge that the financial crisis has struck harder in Southern and Eastern European countries than in Denmark.

Immigration

Background

In a Danish context, the narrative of solidarity concerning immigration goes back to the "booming years" (primo-1970s), where Denmark's – similar to other Northern European countries like Germany, the Netherlands or Sweden – recruitment policies opened the borders to a large number of migrants. At that time, there was a high demand for a (temporary) work force on the labour market, but this situation was not perceived as integration per se: the migrants were considered as "guest workers". In the wake of 'the oil crisis' in 1973, causing the first massive rise of unemployment in Danish post-war history, the recruitment policies were abruptly ceased. Similar to countries like Germany, this resulted in a situation where migrants continued to stay. This was partly because a return to their home countries was not an option and partly because living in Denmark for a variety of reasons, mainly the supportive welfare state, was considered preferable. This created a division in Danish society concerning immigration. One the one hand, immigration was embraced as promoting the vision of a more tolerant and diverse society; on the other, immigration was defined as a 'social problem'.

Around the financial crisis of 2008, the public discourse on immigration followed this very pattern. This should also be seen in the context of the comprehensive immigration from the new Eastern European EU members. On the one hand, governmental sources emphasised the need to re-

cruit foreign labour in order for the Danish economy to boom.[13] The Danish industry as well supported labour mobility arguing that it would increase possibilities for Danish business exports. Recruitment thus took place within the common market framework of free movement and labour mobility, allowing workers, especially from the new member states (both low- and highly-skilled) to come to Denmark and apply for jobs. In line with neoliberal logic, the labour market was seen as self-regulating and not in need of governmental intervention.

On the other hand, there was a strong resistance against this logic, which was expressed in terms of social justice and cultural protectionism. These counter-frames were mainly promoted by the trade unions, who raised a solidarity issue – reminiscing about the early twentieth century. It was argued that the Eastern European migrants were creating an unequal competition for jobs, as they tended to work for substantially lower salaries, and were stigmatised as 'people who scrounged off the government' and 'wage dumpers'.[14] From the perspective of trade union solidarity, the critique was turned towards the employers (Danes and non-Danes) who recruited "cheap labour" and exploited the situation. The negative tone was reflected in the media as an "invasion from the East" (Jørgensen and Thomsen 2013, 256). Especially during the first crisis years, unemployment went up in the construction and building sectors, where Eastern Europeans predominantly worked, and in 2007, claims for social benefit increased 16 times (ibid., 257). As a consequence of these developments, the debate surrounding Danish welfare shifted from a universalistic model based on equal rights to differentiated rights, which had to be earned/deserved. Solidarity thus became more conditional and dependent on contributions and pay-backs.

The hostile frame against immigration was stressed in particular by the Danish People's Party, a partner to the governing party, Venstre. They

13 Venstre – The Liberal Party of Denmark – was the most prolific governing party from 2001-2011 and again in 2015-2017.

14 On the discourse of the trade unions and their framing of labour mobility in terms of solidarity and fairness see Jørgensen and Thomsen (2013: 256): *"The trade unions' argument is no longer based on protecting the workers – national or non-national – but on being competitive in a time of economic crisis […] Struggles over the prognosis are in this debate based on either creating better forms of production and protecting Danish workers, which are central issues for the trade unions, whereas the use of cheaper and more flexible labour to reduce the cost of production is the prognosis of neo-liberal positions".*

were against free labour mobility and considered immigration a threat to national homogeneity. They were also the driving force behind the most restrictive rules of family reunification in the European Union and the lowering of welfare support to non-EU migrants. These hostile attitudes also extended to EU migrants, raising claims against 'welfare tourism' from Southern and Eastern Europe.

Concerning non-EU migrants in Denmark, their labour market participation is lower than Danish people. The difference between these two groups has decreased over time, but it is still significant, and the financial crisis hit the non-EU migrants harder than the natives (Baadsgaard 2012). This has rekindled the old debate of the 1970s on whether immigration is a resource or a cost burden to Danish society. On the one hand, studies have focused on the negative impact of predominantly low-skilled migrants on tax income of municipalities (Bregenov-Pedersen 2012; Christoffersen et al. 2014, 230-231), or on wage-dumping and losses of wage income that increasingly affect low-skilled Danish workers, especially women (Malchow-Møller et al. 2006). Furthermore, non-EU migrants and their children were found to be overrepresented among the beneficiaries of the welfare state. On the other hand, non-EU migrants are often selected for their high skills or for their contributions to the service sectors in areas with labour shortages. They often arrive without a family, start working upon arrival, pay taxes and leave the country again prior to retirement (see Christoffersen et al 2014, 233). As such, they can be considered as a resource, contributing to the receiving country by creating a producer surplus, having a positive effect on the age distribution, providing alternative goods and services, and creating new jobs (Christoffersen et al. 2014, 229).

Retrenchment of Welfare Benefits

In our civil society-interviews with immigration organisations, concerns were repeatedly expressed with regard to the more recent restrictions of Danish immigration law introduced by the current Liberal and the previous Social Democratic (2011-2015) governments. One grassroots' activist mentioned three main concerns: 1) the law of family reunification, and in particular, the fact that the waiting time for a family reunion had been extended from one year to three years (and now recently, seven years); 2) the cutting down of money allowance (cash benefits) for refugees; and 3) the

adjustment of citizenship rules with a new requirement of work for seven out of eight years in Denmark to qualify for citizenship (with times for study and education excluded). With this complexity of legal issues, the role of grassroots' organisations is increasing in providing information about legal changes and assistance in dealing with Danish "bureaucracy". When asked about the state of solidarity in Europe during the so-called refugee crisis, the same interviewee responded:

> "*I think the whole problem with refugees is that it is not a good idea that each [European] country is making their own policy."*
> (Interview No. 2).[15]

She went on to criticise Denmark and other European countries as being too protective of their own countries and hoped also for solidarity to expand beyond the borders of Europe:

> "*When we heard about all these refugees drowning, I think Denmark and all the other countries should have been much more eager to show we can't accept that just outside European borders, children and people are drowning in their thousands!"*
> (ibid.).

Other interviewees were highly critical of the decision made by the Danish government in 2015 about the retrenchment of development support.

> *"We are highly concerned with the retrenchment of development support [...] And the story about parts of this being relocated to refugees coming to Denmark... I shake my head in disbelief. If you want to decrease the number of refugees in Denmark, then you should increase support where they come from."*
> *(Interview No. 19)*[16]

Main Legislation

Main legislation regarding immigration in Denmark is found in the Aliens Act (No. 416 of 09/05/2016).[17] This act sets the conditions for visas, entry

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15 Interview conducted on August 16, 2016.

16 Interview conducted on August 5, 2016.

17 https://www.retsinformation.dk/Forms/R0710.aspx?id=180093. The main legislation regarding foreigners can be accessed in English on the webpage of Danish ImmigrationService: https://www.nyidanmark.dk/da-dk/Lovstof/ophold_love.html.

and stay of residents (Scandinavian, EU/EEA, Schengen countries, Non-EU), foreign workers, residence and work permits (family reunification, asylum, refugees), different rules for residency, expulsion and refusal, competence and complaint procedures and expenses. Another important piece of legislation here is the Consolidated Integration of Aliens Act in Denmark (Act No. 1094 of 07/10/2014).[18] It specifies how to integrate aliens into Danish society, and the rules for entrance, stay and work of foreigners in Denmark. Most recent law changes concern the regulation of border controls and the acceptance of asylum seekers. In 2015, a new chapter dealing with the so-called 'refugee crisis' was added to the Aliens Act (Act No. 1021 of 19/09/2014).[19] It is called 'Handling of mass in-rush of refugees and immigrants to Denmark'. Under this act, the police and the Immigration Service are allowed to take different drastic measures, e.g. closing down cross-border transportation.

In the beginning of 2016, yet another amendment to the Aliens Act (Act No. 192 of 03/02/2016) received negative international attention mainly due to the so-called 'Jewelry article'. This introduced the possibility to force asylum-seekers' to use their personal assets and belongings to pay for their reception during the asylum procedure in Denmark. The police can, for this purpose confiscate asylum seekers' belongings over a value of 10.000 DKK, however not valuables with personal or sentimental value.[20] In the same amendments, also rules for family reunification and permanent residence were restricted. Recognized refugees now need to wait three years before they can apply to be reunited with their families.

Case Law

Case law regarding immigration is very limited. Instead of the Danish courts, most cases of conflict are dealt with by the aforementioned complaints' board, the Ombudsman and Udlændingenævnet. Still, a few cases were judged by the Supreme Court, all of them backing administrative practices and not finding any violation of existing Danish legislation (e.g. the Aliens Act).

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18 https://www.retsinformation.dk/Forms/R0710.aspx?id=163323.
19 https://www.retsinformation.dk/Forms/R0710.aspx?id=164258.
20 https://www.retsinformation.dk/Forms/R0710.aspx?id=177348.

In Case No. 243/2014, an EU citizen, who was born and raised in Denmark, claimed that his potential deportation was in conflict with the Aliens' Act (specifically § 26, stk. 2). Furthermore, he claimed that the deportation was in conflict with Denmark's international obligations, more specifically, the EU residence directive Article 28, and the European Convention on Human Rights, Article 8. The Supreme Court stated that the severity of the criminal activity gave them permission to deport the citizen without breaching any of the above-mentioned directives and conventions. The same result was reached in Case No. 478/2007. [21] A non-EU citizen, from Ghana, had been living in Denmark since 1993 and had had Danish citizenship since 2002. In 2003, A married B, another non-EU citizen, and applied for family reunification. In 2004, this was refused with reference to the 28-year-rule (spouses who apply for family reunification have to be Danish citizens for longer than 28 years or living in Denmark legally for the same period). In 2007, A and B initiated a lawsuit against the Ministry of Refugees, Immigrants, and Integration, claiming that the refusal violated the European Convention on Human Rights Articles 8 and 14. On January 13, 2010, the Supreme Court found that neither article had been violated.

The same tendency is found in immigrationGinicoefficient complaints cases in the office of the Ombudsman. Case 14/04861 concerned the observation of a forced deportation of a non-EU male, his wife and teenaged son. Such observations are monitored in the case that there should be any complaints regarding the use of police force. In this specific case, it was concluded that the police did not use problematic forcible measures.[22] In Case 2014-42, the Ombudsman conducted a monitoring visit to the asylum centre "Center Sandholm" together with the Institute for Human Rights and DIGNITY, the Danish Institute against Torture. This was carried out in order to assess the conditions of the people under tolerated residence status. Here, 25 people were reported to have "overall stressful and restrictive living conditions".[23] In the report, their living conditions are described as follows:

> "*Among other things, they have to live at the centre (often in rooms with one or two other people), they have a duty to report regularly to the police (typically every day), they cannot take on paid work, and they receive a limited*

21 http://domstol.fe1.tangora.com/media/-300016/files/478-2007.pdf.
22 http://beretning2014.ombudsmanden.dk/english/ar2014/ – pp. 54.
23 http://beretning2014.ombudsmanden.dk/english/ar2014/ – pp.68, 123-124.

cash allowance (a maximum of 31 DKK a day). They get meal coupons for the centre's cafeteria. They can in principle cook their own food, but the reality is that this is very difficult for them because of the limited financial resources available to them. There is no limit to the duration of tolerated residence."

After this observation, the Ombudsman stated the conditions to be poor, but not in conflict with the UN Convention against Torture and the European Convention on Human Rights. Nonetheless, he raised a concern about the stressful and restrictive conditions of people with tolerated status.

Another similar case involved a 15 year-old non-EU girl, who applied for a residence permit to live with her mother, who had moved to Denmark some years earlier. Her application was rejected on the basis that the mother had left the child behind and had decided to move to Denmark, that the child was currently living with her father, had lived there almost her entire life, attended school there, spoke the native language, and had all her relatives, siblings and friends there. In turn, the Ombudsman received a complaint about the rejection from a legal aid bureau. He asked the Ministry of Justice to explain the case, which had been considered by the UN Human Rights Committee and the European Court of Human Rights. The Ministry responded and the Ombudsman considered the case on the basis of the relevant international rules. He concluded that there were no grounds to criticise the authorities in this specific case.[24]

These examples show how the Ombudsman considers the European Human Rights Convention and decisions by the European Court of Human Rights as putting to the test the application of restrictive national legislation, e.g. concerning family reunification. European and international law thus plays a role for the Ombudsman and is used as a reference point for envisaging a more inclusive approach towards migrants. The examples above also show however that such considerations based on international law have thus far not been effective to mitigate the restrictive practices based on national legislation. Decisions concerning complaints by foreigners affected by these restrictions were mostly ruled in favour of the state.

24 http://beretning2012.ombudsmanden.dk/english/ar2012/ – pp.21.

Unemployment

Background and Main Legislation

As within the areas of disability and immigration where people have been affected by the financial crisis, the area of unemployment has also undergone changes. As we shall see in the following, this has come with a substantial lowering of unemployment benefits. The main point here is that welfare has become workfare (Jöhncke 2011), meaning that to a higher extent than before, people are pushed to work in order to earn access to unemployment benefits.

In order to approach the specifics of solidarity in the field of unemployment, it is useful to unfold the two meanings that are commonly associated with the concept of solidarity in Denmark. The first one, as mentioned in the introduction, associates solidarity with welfare and refers to the general principle of reciprocal and equal distribution through taxation – whereas the second meaning is more contextual and related to the socialistic worker and trade union movement of the late nineteenth and early twentieth century. Here, solidarity refers to being part of a community of workers "where the individual affiliates with and adapts itself to the community, its organisational form being the trade union…" (Kaspersen and Christiansen 2017). When the solidarity principle is evoked in public discourse, most Danes would be reminded of this second, more specific meaning of worker solidarity, and not think about 'reciprocal solidarity' as welfare. This also needs to be borne in mind when interpreting our interviews, as many of our respondents would talk about solidarity in the more narrow sense of the Danish trade union tradition and not apply this concept automatically to other fields of welfare or global justice.

Throughout the twentieth century, the trade unions and their affiliated 'A-kasser' (unemployment insurance funds) have played an important part in worker-employers' agreements. The system is extremely complex, but its main details are secured and explained in the Act on Unemployment Insurance (No. 128 of 31/07/2017).[25] By being part of an 'A-kasse', people can receive the so-called daily allowance (dagpenge) for a maximum of two years, which can amount to up to 90% of the previous income. To

25 https://www.retsinformation.dk/Forms/R0710.aspx?id=186332#idec7cd264-8b84-4a3b-8114-fd1cf36bc6a7.

receive this, you must agree to actively seek employment and be prepared to accept job offers as long as you are unemployed. Most employed Danes contribute to the unemployment insurance funds, which at a relatively low fee often goes hand in hand with trade union membership. These unemployment insurances are highly subsidised by the government, which encourages people to sign up (Christoffersen et al 2014, 193). If you are not a member of an unemployment insurance fund, you are still eligible to other kinds of unemployment benefits, e.g. cash benefit (kontanthjælp), but this and other subsidiaries are substantially lower than the daily allowance.

Such traditions and legislation have – among other things – resulted in the fact that the welfare state of today is generally considered to take good care of unemployed people living in Denmark. It provides generous maternity and paternity leaves, different schemes of unemployment benefits, active labour market and family policies, which are all aimed at encouraging the Danes to return to work, and yet provides them with the necessary security when faced with unemployment (Christoffersen et al 2014).

Welfare and labour market policies are combined in what is called the *Danish flexicurity model*. *Flexicurity* refers to an employment-welfare policy, which combines *flexibility* for the employers in hiring and firing employees, and social *security* for the employees in providing them with unemployment benefits and income insurance when they lose their jobs. It also refers to an active labour policy that offers training for skills development in order to get access or return to the labour market. In contrast to other countries, especially the UK, where the flexicurity model has been held responsible for the emergence of a new social class, the precariat (Standing 2011), the Danish case combines labour flexicurity with relatively high standards of welfare state protection. Flexible labour is safeguarded by the existing schemes of unemployment benefits (e.g. the above-mentioned 'A-kasser') and active labour market policy by providing skills and training (Duru and Trenz 2017; Alves 2015, 11). This model is generally considered a success: Danish workers can easily lose their job, but they will also be quickly reemployed. In the period from 1990 to 2010, 41% were unemployed for longer than six months, which is low compared to EU-15 countries, where the average is 54% (Christoffersen et al. 2014, 47). Over the last decade, we have observed however that a neo-liberal market logic prevails. Labour market flexicurity has become more employer-friendly and less protective of social rights. Welfare benefits have become less compensatory and more integrationist, meaning that rather

than providing benefits unconditionally, these are now first and foremost aimed at getting people back into employment (see also Østergaard Møller and Stone 2013, 588). This aligns with the tendency seen in other areas: that solidarity has become more conditional than universal.

As we shall also see here, there are legislative overlaps with the area of disabilityjust as the formerly discussed Discrimination Act was related to discrimination in employment. Probably one of the most relevant pieces of legislation within this area is the Act on Active Social Policy (No. 1460 of 12/12/2007), which basically grants the right to social welfare.[26] Its aim is to prevent unemployment while simultaneously enforcing the social obligation to work (Chapter 1, § 1), and it is (in principle) applicable to all citizens residing in Denmark, who have had employment difficulties due to disability (Chapter 2, § 3). Second, there is the Act on Sickness Benefits (Act No. 563 of 09/06/2006).[27] This is applicable to e.g. persons who have acquired a disability that is covered by the law of industrial injury – and gives them the right to unemployment benefit. Basically, these acts sketch the framework of how unemployed people residing in Denmark have the right to claim social welfare and benefits in the case of health issues.

Case Law

Again, it is rather exceptional for the courts in Denmark to sort out conflict regarding employment matters because affected parties would usually call in intermediary bodies and complaint committees. As representative of the Danish way of conflict intermediation, we have therefore selected two cases from the Ombudsman. They both concern principles of solidarity where people have been denied unemployment and sickness benefits. In both cases the Ombudsman found in favour of the claimants.

In Case No. 2015-57, a woman complained to the Ombudsman, because the Employment Committee of the National Social Appeals Board had found that she was not entitled to receive supplementary unemploy-

26 https://www.retsinformation.dk/Forms/R0710.aspx?id=113596. Its current version: https://www.retsinformation.dk/Forms/R0710.aspx?id=180043.

27 https://www.retsinformation.dk/Forms/R0710.aspx?id=30746. Its current version: https://www.retsinformation.dk/Forms/R0710.aspx?id=182048.

ment benefits.[28] For a period of time, she had received these benefits while being self-employed as a musician in a band. The Employment Committee ruled that this musical occupation could have been practiced outside normal working hours, meaning that she was not entitled to the benefits. She therefore had to pay back a substantial amount of money to the state (approx. € 21,500). The ombudsman however found that this was not the correct decision and that the woman was entitled to the benefits. He therefore recommended that the Appeals Board change their decision so that she could receive the benefits in the future, and did not have to repay the above-mentioned figure.

In Case No. 13/00228, a woman filed a complaint to the Ombudsman because she had been denied special unemployment and sickness benefit when she moved from one municipality to another.[29] She received these benefits and was on the so-called flexible job scheme. The woman wanted to move and had applied for a flex job (and the benefits) in advance. She then resigned and moved, but the new municipality did not grant her a new job and benefits with the reasoning that her unemployment was voluntary. The Ombudsman passed the case to the then newly opened National Social Appeals Board, and they arrived at the conclusion that her new municipality had not given her the satisfactory guidance. As a consequence of the woman's complaint and the action of the Ombudsman, the National Social Appeals Board stated that the municipality was obliged to grant the woman her previous received benefits.

Besides illustrating that the complaint board-system plays an important part in being an intermediary between Danish citizens and the courts, these cases also exemplify that unemploymentschemes have been increasingly harder to access and, in many cases, do no longer provide a substantial living. Precisely this concern is also expressed in our interviews with representatives from unemployment organisations, most of them trade unions. Respondents mention, above all, the cutting down of unemployment benefits, which following new rules is only paid for a maximum period of two years (formerly four years) (Interview No. 26).[30] Another radical change concerns the so-called 'Kontanthjælpsloft' (daily benefit maximum) adopted in October 2016. According to another interviewee from a

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28 http://beretning2015.ombudsmanden.dk/english/annual_report_2015/ – pp. 152-53, 195.

29 http://beretning2014.ombudsmanden.dk/english/ar2014/ – pp. 19.

30 Interview conducted on September 26, 2016.

trade union, this makes it much harder for unemployed persons to uphold decent life conditions – and in turn reintegrate them onto the labour market:

> "*It has been discussed in the media that 13 %* [affected by this law] *cannot pay their rent and many cannot stay in their recent housing.* [] *It has a major significance for many of the people we are aiming to help. In our official politics, we are openly against this.* [] *It is very hard to convince people to get a job or get better if you don't have a place to live*".
> (Interview No. 29).[31]

It seems clear that both the traditional concept of labour solidarity and the more general welfare principle of solidarity are under pressure, when unemployed people experience severe retrenchments. Still, in a European context, unemployment benefits are substantially higher in Denmark than in other countries and unemployment rates are at a historical low, which explains why labour solidarity has thus far not been a highly contested issue.

Conclusions

The Danish case is illustrative of the constraints which the established system of universal welfare and social security is currently facing, both internally with the introduction of new conditionality and an emphasis on criteria of deservingness to decide about the distribution of welfare provisions, and externally with regard to the negative effects of the economic and financial crisis on economic growth and unemployment. The Danish case is however also unique as the Danish economy, despite the continuing recession in many parts of Europe, is performing well with some stagnation in the initial crisis years but with fast and immediate recovery rates and generally low rates of unemployment.

Denmark like other Nordic countries has a universal social-democratic welfare state-tradition with a high level of trust in the state and its institutions. However, increased individualism, the inflow of refugees and asylum seekers, and the increasing intra-EU mobility have created tension between transnational solidarity principles and the particularities of the welfare state.

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31 Interview conducted on September 20, 2016.

Denmark has been further affected by the financial crisis of 2008 and the so-called refugee crisis of 2015. The impact of these has been experienced specifically in retrenchments of welfare benefits with regard to unemployment and disability (e.g. unemployment insurance benefit from four years to two years, harder access to public welfare benefits, and more emphasis on trying to get the disabled and the sick back to work) and immigration (trying to reduce the intake of (EU and non-EU) migrants and refugees, by e.g. restricting social benefits).

The change of government in June 2015 from a social-democratic-left coalition to a liberal-right coalition has implied a couple of legislative changes but not a radical redirection of the Danish solidarity regime. With regard to general welfare and employment policies the new government will continue the flexicurity policies with a stronger emphasis on individual responsibility and initiative. The new government has taken some precautions against so-called 'welfare tourism'. Freedom of movement and labour shall be supported, but access to welfare for foreign workers will be restricted, if necessary through a change in EU rules. With regard to immigration policies and the integration of migrants, the new government continues to apply restrictive measures of control and deterrence. The new (and old) slogan is "firm and fair on immigration" and this presupposes strict limits on immigration (quoted in Lægaard 2013, 180). In terms of integration, the new government explicitly takes up a strong 'anti-multiculturalism agenda' approaching issues of diversity from an immigration, not an integration perspective, as a social problem that needs to be combatted. Problems of integration are thus addressed by way of more restrictive immigration policies and full legal entitlements or even citizenship are considered as a "prize for successful integration, not as a means of fostering integration" (ibid.).

Still, Denmark continues to accommodate migrants, other EU citizens and refugees and, to a large extent, relies on foreign work forces. To EU citizens, the benefits of the Danish Welfare State are the same as for Danish citizens, whereas non-EU citizens are denied some benefits (e.g. free education, student loan, unemployment benefit for Green Card holders). There is thus an inbuilt communal-universal tension in the Danish Welfare State-model, which seeks the difficult balance between the protection of social cohesion of the community and the principles of universal rights and equality.

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Disability, Unemployment, Immigration: Does Solidarity Matter in Times of Crisis in France?

Manlio Cinalli and Carlo De Nuzzo

Introduction

This chapter focuses on three particular fields of socio-economic disadvantage, namely, disability, unemployment, and immigration, with the aim of assessing the concrete applications of solidarity, and their potential cross-field variations. In these three fields, policies are expected to have been shaped by the traditional French welfare agenda to allow the best combination of 'Freedom' and 'Equality', through the working of the principle of solidarity itself. Solidarity has historically emerged as a concrete operationalisation of the third Revolutionary pillar of French Republicanism, namely, Fraternity. Right at the beginning of its Revolutionary roots, Fraternity referred especially to national identity and the cohesion of French people against foreign anti-revolutionary forces. Yet it later stood out as the crucial principle to avoid a potential short-circuit between Freedom and Equality (Spitz 2005). These latter could hardly be under a worse threat than the constitution of "groups" of low freedom and equality; hence, solidarity came to guarantee various forms of redistribution in favour of certain "groups" suffering from long-term social and economic disadvantage. The first determined intervention of Republican institutions through top-down organised social action can be traced as far back as in the 19th century, as soon as industrialisation and the liberal market produced the worst miseries, and their '*miserables*' (Hugo 1849, 1862): this was the time, for example, when government established some minimal protection of children in the labour market in terms of minimum age, working times, and school attendance.

The main aim of this chapter, therefore, is to see whether solidarity as a well-functional structure to fill in the gap between freedom and individual equality, can still be taken today as a powerful and viable tool to readdress the potential marginalisation of most disadvantaged groups such as the disabled, the unemployed, and immigrants. Indeed, throughout the 2000s and the 2010s, an overall process of retrenchment has affected all the main

branches of French welfare, with family benefits representing the only exception. The substantial stability of policies concerning the family shows the importance given to family-related solidarity in the political agenda, as well as the key role played by the state services devoted to the family, including the large network of CAFs, (*Caisse d'allocations familiales*) that manage welfare state provisions. In a sense, family under the Republican framework is still seen as a nucleus of 'marital bond of solidarity' that deserves to be protected. Suffice it to say, family services manage the provision of the RMI, (*Revenu minimum d'insertion*, Minimum Income Benefit) for more than one million households, while public expenditure on the family is substantially higher than the EU-27 average (Eurostat 2010) even without taking into account the fiscal support also available to families. However, we will also see that, behind a general commitment to the family, welfare retrenchment has also regarded family policies. This is evident only when studying more closely specific fields of marginalisation.[1]

The potential role of solidarityfor contemporary France is evident when considering the social, political, and economic burden of this country. France's economy is the fifth largest in the world (or the 9th largest economy by purchasing power parity) and represents around one fifth of the GDP in the Euro zone. France maintains today a leading role in European politics and economics in spite of the recent economic crisis, which was the deepest since the Great Depression of 1929. Findings in Table 1 put the French case in a mid-term perspective over the last five years. The largest sector in the economy is services (e.g. banking, energy, tourism, transport and health) providing 78.9 % of the GDP; the manufacturing sector accounts for 19.3% and agriculture for less than 2%. In manufacturing, France is one of the global leaders in the automotive, aerospace and railway sectors as well as in cosmetics and luxury goods. Furthermore, France has a highly educated labour force and the highest number of science graduates per thousand workers in Europe. International trade is strong, France being the sixth-largest exporter and the fourth-largest importer of manufactured goods. The specific composition of the French economy is a combination of an extensive private sector with strong government intervention. Having a large population in public employment, France also has natural protection from sudden job losses. Yet, the drawback of this

1 Cf. the restrictive reforms to (un)validate family solidarity in the section dedicated to immigration

French mixed economy is a chronic public deficit, responsible for high public debt (67.5% of the GDP in 2008) and unbalanced social costs (part of government spending is for supporting healthcare, pension and unemployment).

The strong public intervention in welfare, however, provides hardly sufficient recovery for vulnerable groups such as people with disabilities, immigrants, and the unemployed. Starting with unemployment, emphasis should be put on its consistently high rates through time. In fact, France's unemployment rate fell below 10% for the first time in 2012. Yet unemployment has since then declined more slowly than in other leading European economies, as a gradual recovery in economic growth and job creation has been offset by the high number of young people entering the labour force every year. Thus, although unemployment has been decreasing in all age categories, particularly among younger people, rates of youth unemployment are still significant today, with approximately a quarter of young people unemployed. The government has increasingly weakened its commitment to unemployment benefits, although these latter remain relatively high for European standards (up to 75% of previous salary for the first year).

As regards refugees, and immigrants more generally, there has been a similar worsening of policy protection (further reinforced with the economic crisis between the late 2000s and the early 2010s). The traditional generosity of the French system, both in terms of welcoming the displaced in the short term, and integrating them as full citizens in the long term, has been replaced by a series of restrictive twists. Accordingly, new 'reforms' have prevented immigrants from accessing the country by making it more difficult for them to attain citizenship (Cinalli 2017), while at the same time nurturing anti-immigrant discourses which push the idea that immigrants are a burden on society (*immigration subie*). Perhaps the strongest symbol of the immigration crisis has been the 'Calais Jungle', a camp near the Northern city of Calais. Many immigrants living in this camp have pursued the objective of crossing the Channel and entering Britain. The camp gained global attention during the European refugee and migrant crisis, particularly with respect to mass evictions which French authorities have been carrying out since October 2016 (Baumard 2016).

Lastly, there has also been a worsening of policy protection for sick people and the disabled, particularly when considering the policies of public expenditure rationalisation and the reduction in all spheres of government. While public authorities control a generous healthcare system, they

dedicate only 1.8% of the GDP to disability policy (figure for 2014). Suffice it to say that the disability aid has met with regular cuts amid outcries from French disability groups; and that the FNATH (*Fédération Nationale des Accidentés du Travail et des Handicapés*) has stated that "choosing the most fragile and excluded people in society for budget cuts is unacceptable".[2] In addition, the two million people with disabilities in France are the first victims of unemployment: their unemployment rate at 21% shows a level that is more than double the percentage of people of the same working age (Dares 2016). To this, one needs to add that people with disabilities are also older and less educated than the average French population.

Table 1: General economic statistics, France 2012-2016 (Source: OECD data)

	2012	**2013**	**2014**	**2015**	**2016**
Population (million)	63.4	63.7	64.0	64.3	64.5
GDP per capita (EUR)	32,929	33,221	33,469	33,934	34,433
GDP (EUR bn)	2,087	2,116	2,141	2,181	2,222
Economic Growth (GDP, annual variation in %)	0.2	0.6	0.7	1.2	2.5
Domestic Demand (annual variation in %)	0.4	0.5	0.6	1.3	1.4
Consumption (annual variation in %)	-0.2	0.6	0.7	1.5	-
Investment (annual variation in %)	0.4	-0.7	-0.4	0.9	-
Exports (G&S, annual variation in %)	2.7	1.9	3.4	6.0	-
Imports (G&S, annual variation in %)	0.8	2.2	4.8	6.4	-
Industrial Production (annual variation in %)	-2.2	-0.5	-0.9	1.8	-
Retail Sales (annual variation in %)	1.9	1.8	2.3	3.8	-

2 http://www.connexionfrance.com/social-benefits-student-housing-disability home-help-cut-income-support-rsa-11820-view-article.html.

	2012	2013	2014	2015	2016
Unemployment Rate	9.8	10.3	10.3	10.4	10.0
Fiscal Balance (% of GDP)	-4.8	-4.0	-4.0	-3.5	-
Public Debt (% of GDP)	89.5	92.3	95.3	96.2	-
Inflation Rate (HICP, annual variation in %, eop)	1.5	0.8	0.1	0.3	-
Inflation Rate (HICP, annual variation in %)	2.2	1.0	0.6	0.1	-
Inflation (PPI, annual variation in %)	2.8	0.3	-1.4	-2.2	-
Policy Interest Rate (%)	0.75	0.25	0.05	0.05	-
Stock Market (annual variation in %)	15.2	18.0	-0.5	8.5	-
Exchange Rate (vs USD)	1.32	1.38	1.21	1.09	-
Exchange Rate (vs USD, aop)	1.29	1.33	1.33	1.11	-
Current Account (% of GDP)	-2.1	-1.3	-0.7	-	-
Current Account Balance (EUR bn)	-44.0	-28.0	-23.0	-4.0	-
Trade Balance (EUR billion)	-70.6	-62.3	-58.0	-44.8	-

Disability

There are five million disabled people living in France, two million of whom are less mobile. Thirty percent of motor disabilities are caused by accidents. Some 135,000 disabled children attend ordinary schools and 110,000 are registered at specialised institutions. Disability spending increased by 13.5 billion euros from 2005 to 2014 (DRESS 2017). The effort has amounted to € 46.6 billion in 2014, or 2.2% of the gross domestic product (GDP). This effort relies first and foremost on the social protection system. The tax and social benefits in addition amounted to € 3.4 billion in 2014. The overall budget for the mission "*solidarité, insertion et égalité des chances*" amounted to 18 billion euros for 2016, showing governmental commitment to disability.[3] From a legal viewpoint, the Act No. 2005-102 of 11 February 2005 on 'equal rights and opportunities, partici-

3 https://informations.handicap.fr/decret-loi-fevrier-2005.php.

pation and citizenship of people with disabilities' [4] amended the 1975 acts on the disabled (Act No. 75-534 of 30 June 1975) and social and medical institutions (Act No. 75-535 of 30 June 1975). In particular, the new law strengthened some existing measures, but it also introduced new ones based on the principle of national equality and solidarity

Prior to the latest reforms, the disabled were looked after as a part of a to-be-protected "group". The developments in legislation and consequent policies have meant that today, the disabled are active subjects of their own lives, and responsible citizens who have an equal place in society. Thus, the disabled people, just like any other group at risk of socio-economic disadvantage, have been put back at the core of traditional French concern to strike the balance between the two fundamental pillars of freedom and individual equality. The principle of full "individual" equality is at the heart of the welfare state's mission; most crucially, it is supposed to be achieved through various forms of redistribution in solidarity with certain "groups" suffering from long-term social and economic disadvantage. This process is also grounded on the strict duty of each individual towards the community, or social solidarity. It is indeed this commitment that guarantees the Republican affiliation of citizens and their unity as a sustainable national body, not only vis-à-vis other national communities beyond French borders (Fraternity in the main meaning of Revolution), but also vis-à-vis the worst outcomes of individualism and liberal markets for internal social cohesion. The priority that France puts on top-down state agency completes the specific French approach to welfare: that is to say, solidarity is implemented as social action organised by the state. Accordingly, disability is for us a first crucial field of solidarity to retrace the idea that the state is indeed at the service of society.

Labour Market Access for Disabled Workers

The 2005 Act is the most important legislation regarding measures to support disabled workers in France. In line with the 1987 Disability Employment Act,[5] the law has introduced the employment of disabled persons to

4 *Loi numero 2005-102 du 11 février 2005 pour l'égalité des droits et des chances, la participation et la citoyenneté des personnes handicapées*.

5 *Loi numero 87-517 du 10 juillet 1987 en faveur de l'emploi des travailleurs handicapés*.

the field of contractual policy, and finally, it has extended this legal obligation to the whole world of work, public and private sectors combined (Blanc and Stiker 1998, 56). The law thus represents a major step forward in the recognition of disabled workers, and more generally it stands for the virtues unanimously recognized and defended by the Republic such as the principle of equality. The idea of solidarity is strong: workers with disabilities are entitled to adjustments and arrangements in their working hours and shifts. They also receive priority access to further training and continuing education as part of their current position. In case of redundancy, the notice period concerning a disabled worker is double that which is otherwise used in the company. Disabled workers are also entitled to early retirement from the age of 55 on the basis of 30 working years with disabled worker status.

The 2005 law has also asserted once and for all the responsibility of employers (Bardoulet and Igounet 2007). This follows previous legal acts, in 1987 and in 1999 respectively, by which firms had to employ people with disabilities, or otherwise pay penalties in cases of non-compliance.[6] In particular, private companies and public employers with more than 20 employees have today the obligation to employ 6% of disabled people, subject to paying a financial contribution. This system of quotas was dictated by practical considerations, since employers do not naturally tend to hire workers with disabilities. Without this policy, people with disabilities would not be competitive: '*les personnes handicapées ne sont pas capables d'entrer en compétition pour un emploi sur un pied d'égalité avec les personnes valides et de l'emporter sur la base de leurs seuls mérites*''.[7] In the absence of direct recruitment, however, the company can sign a plan with the unions or use subcontractors who employ persons with disabilities. This form of indirect recruitment is considered to be enough to fulfil solidarity with the disabled, and hence, avoid the payment of penalties.

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6 Conseil de l'Europe, Groupe de travail sur l'évaluation des critères individuels régissant l'octroi d'allocations et d'aides personnelles aux personnes handicapées Evaluation du handicap en Europe – similitudes et differences: rapport, 2002, p.128. The French law of 1987 introduced the hiring of workers with disabilities into contract law, extending the legal obligation to hire workers with disabilities in both the public and the private sectors (Blanc and Stiker 1998).

7 Interview realised on the 8th July 2016. 'It is impossible for disabled workersto compete on an equal footing with able-bodied people and to succeed on the sole basis of their personal merit'.

Employers also have another third option. They can pay a contribution fee to the 'fund for the professional inclusion of disabled people' (*association de gestion du fonds pour l'insertion professionnelle des personnes handicapées*), an organisation which is dedicated to furthering professional inclusion in the private sector. Unfortunately, recourse to this third option has largely been abused by employers, who have transformed it into a devious practice for avoiding direct or indirect recruitment as in the other two options (Coulibaly and Fardeau 2004, 25). Thus, in spite of significant progress on the legislative front, some employers still consider workers with disabilities as fundamentally unfit to operate in a professional environment. François Bloch-Laine aptly summarises this attitude in his analysis of the issues associated with integrating people with disabilities: "*Il paraît anormal d'embaucher des handicapés dans des entreprises ordinaires alorsqu'il y a tant de demandeurs d'emploi parmi les personnes valides*". Large companies are aware of their legal obligations, but they usually prefer to pay penalties rather than hire workers with disabilities. In the private sector, more than 60% of employers adopt this strategy to avoid direct solidarity with the disabled.

At the same time, the 2005 law has matched an increasing recognition and attention paid to persons with disabilities in terms of public policies. The creation of Departmental Houses for Persons with Disabilities (MDPH is worth reiterating here. Their mission is to welcome, inform, support and advise persons with disabilities, and their families. Moreover, beyond the purely medical approach, accessibility and the right to compensation have become essential pillars of policies for people with disabilities. Hence, the objective of the 2005 Act has been to promote the participation of people with disabilities in all spheres of economic and social life. A number of tools to promote vocational training and the integration of people with disabilities have been strengthened, notably through the creation of the 'Fund for the Integration of People with Disabilities in the Public Service'. The main obstacle in this case is the lack of workers with disabilities with the right professional and educational qualifications, which also explains why some employers prefer to pay penalties instead of hiring such workers. The main way to stimulate the effective participation of people with disabilities in working life is by promoting better access to transport, schools and businesses. The main aim is to open up society and shrink the possibilities for exclusion and stigmatisation.

Education Access for Disabled Pupils

Education represents a necessary precondition for workers with disabilities to enjoy equal opportunities and equal treatment on the labour market. Hence, the Act of 11 February 2005 has put some crucial emphasis on the right for any children with a disability to attend their local primary and secondary schools.[8] The right to schooling is part of the personalised education plan which ensures that the necessary adjustments are made to the school infrastructure and to timetables to allow alternate attendance at a specialised institution if required. Among the main issues there is the fact that the two million disabled people in France are older and less educated than the average French population. In fact, 90% of jobseekers with disabilities have a degree that is equal or inferior to a CAP (Bardoulet and Igounet 2007, 81). This low level of qualification can be explained by the many obstacles encountered by pupils with disabilities in the course of their schooling, which often translates into the fact that disabled pupils make common recourse to special schools and medical institutions. The 2005 law seems to give some primary attention to this when stating that "*le service public de l'éducation assure une formation scolaire professionnelle et supérieure aux enfants, aux adolescents et aux adultes présentant un handicap ou un trouble de santé invalidant*". Hence, this law reasserts the right of people with disabilities to receive an education in an institution located as close as possible to their dwellings.

The law posits the principle that personalised solutions should be developed on a case-by-case basis. It appeals to the principle of non-discrimination, by arguing that disabilities should not be turned into insuperable obstacles because of some environments that do not meet accessibility standards. In simpler words, the legislator seems to be aware that, even if the right of children with disabilities to attend an ordinary school has been recognised, the availability of specialised teaching staff and the issue of accessibility are still huge problems that need solutions. Suffice it to say that many school buildings are still not accessible for children with severe disabilities. This is the first obstacle that has to be removed in order to integrate children with disabilities, together with the need to increase the

8 This is in line with the Act No. 75-534 of 30 June 1975 made education, training and career guidance for disabled children and adults a national obligation. Cf. also the circular of January 1982 that reaffirmed the principle that adolescents with disabilities were, as far as possible, to benefit from ordinary schooling.

number of specialised teachers and specialised training for teachers in general. Following the limited recruitment of teaching assistants with a dedicated training, France is still struggling to meet the needs of the ca. 80,000 children with disabilities attending its public schools. This goes clearly against the ambition to increase the number of children with disabilities in the education system (Vuibert 2007).

Disability Guidelines Laid Out in the 'Loi Travail'

The *Loi Travail* covers the whole labour market, ruling in particular the intricacies of its operations. In so doing, it has also developed a number of specific measures concerning disability. These measures are part of a broader concern with people for whom an incapacity occurs, and with caregivers of disabled children or dependent persons. The fact that the law is also designed to support caregivers follows the fact that some disabilities require constant assistance from family members or close friends. In particular, the provisions of the *Loi Travail* have established that:

- The remit of Cap Emploi, the employment agency working with people with disabilities, is extended to include work retention. The aim is to offer targeted, long-term help for people with disabilities by promoting integration and a greater continuity in the provision of services from looking for employment to overcoming obstacles in the workplace.
- From the moment they are hired, workers recognised as having disabilities will be referred to the company's occupational physician so they can benefit from a close and personalised follow-up, starting with the first information and accident prevention visit.
- Each company's CHSCT (*Comitéd'hygiène, de sécurité et des conditions de travail*, that is, the Committee for workplace hygiene, security and working conditions) is entrusted with additional responsibilities to better care for workers with disabilities.
- A system of employment support for workers with disabilities has been introduced. This support includes a series of socio-medical follow-ups and help to promote professional integration, in order to enable workers with disabilities to gain and maintain employment. Its implementation also includes specific support and guidance from employers.

As regards families specifically:

- If a disabled child or adult is present in the home, a derogation from the prohibition to take more than 24 working days of paid vacation in a row will be put in place.
- In the criteria for departures on leave, the presence of a disabled child or adult within the families of employees will be taken into account. As far as caregivers are concerned, if they care for a child or an adult with a disability, then they are exempt from the general rule that prohibits workers from taking more than 24 consecutive working days of paid vacation. If an employee cares for a disabled child or adult, this is also taken into account in the case of a dismissal.

Unemployment

French policy reforms throughout the 2000s have also had an important influence on the situation of the unemployed. Once again, it is interesting to assess the extent to which policies have remained faithful to the traditional agenda governing French welfare from the point of view ofstriking the right balance between freedom and (individual) equality. As said, a state-driven social action has been a long-term characteristic of the French Republican system, which can be retraced as far back as in the 19th century, when the state emerged as the source of "public service" through its own institutions and decision-making (Duguit 1913, 15). Since then, naturally, many developments have taken place, especially with the strengthening of a fully-fledged welfare state in the aftermath of WWII, which has combined elements from the Beveridgean and Bismarckian models (Esping-Andersen 1990). Yet, if we focus more specifically on unemployment protection, we notice that it has changed considerably in France over the course of the 2000s, in line with the overall retrenchment of the welfare state.

Not only were benefits quite radically restructured, but there was also a significant shift with respect to the instruments used for unemployment protection, with an increasing emphasis being laid on "active" measures for labour market integration compared to the "passive" provision of income maintenance. While French unemployment benefits have remained relatively generous, and while there has been substantial stability in terms of the investments made for every percentage point of unemployment, the target group of benefit-based efforts has been progressively reduced, with

a decreasing proportion of the unemployed population benefitting from this type of protection.

These changes in the unemployment field date back to the end of the *Trente Glorieuses* in the mid-1970s. Indeed, the necessary self-financing aspects of the previously generous system became less and less viable as unemployment started to dramatically rise. Faced with the growing reticence of employers to accept further increases in contribution rates, social partners increasingly latched on to the idea of asking the state for fiscal help in order to keep the system afloat. On the one hand, social partners increasingly accused the government of failing to properly scale up its participation in a context of rapidly increasing unemployment. On the other hand, the government increasingly objected to the fact that it could contribute any more to a system over which it exercised so little control. Most crucially, the idea of solidarity as a one-way right to be helped that is given to the needy started to weaken in an era when neo-monetarism replaced Keynesian policies in major world economies, progressively introducing an idea of solidarity that was more in line with growing neo-liberal ideology in general. The final development was soon to be bring about a new approach to welfare rights, whereby solidarity was rather a two-way process involving some strong responsibilities on the side of welfare recipients. While the finalisation of this process came about only in the 1990s with the establishment of rights and responsibilities (Giddens 1998), the 1980s provided a decade of economic innovation calling for the imminent adaptation of ideas.

In fact, the provision of new resources under the Mitterrand presidency was interpreted by many social partners, and by the unions in particular, as an attempt on the part of the government to gain more managerial leverage. In 1982, employers announced that they would not accept any further increase in their contribution rate, suspending their cooperation with the unemployment insurance system. The CNPF (*Conseil National du Patronat Français, the National Council of French Employers* now known as the MEDEF, *Mouvement des Entreprises de France*, *the Movement of French Enterprises*) suggested that the system needed to be reformed by introducing a distinction between insurance expenditures (*régime d'assurance*) available to employees having worked and contributed to the system for a long time, and the solidarity expenditures (*régime de solidarité*) available to other job seekers who could not rely on the insurance regime to intervene on their behalf. The *régime d'assurance* had to remain under the control of social partners, while the *régime de solidarité* would fall un-

der the full control of the state. It was at this stage that this new division of costs and responsibilities between the social partners and the state was introduced, transforming the unemployment protection system into what it looks like today.

Since the more generous benefits of the *régime d'assurance* were only accessible to those having contributed for a long time, this change represented the first important restriction affecting the unemployed. In addition, benefits were also restructured, with the introduction of a "single decreasing benefit" (*allocation unique dégressive*), which declined, by a certain percentage over time, and at a faster rate for younger beneficiaries. There was also a drastic reduction in the maximum period of compensation for those with short contribution histories, while eligibility requirements were tightened for different types of compensation, and especially for minimum benefits. These measures, which were increasingly framed throughout the 1990s as a form of 'activation', made it progressively difficult for unemployed people to access the main tier of unemployment protection under the *régime d'assurance*. In a context of rising unemployment, these interventions led to a steep decrease in the rate of unemployed people benefitting from unemployment insurance, and in the increasing 'eviction' from the system of those with limited contribution histories.

Throughout the 2000s and the 2010s, reforms of the unemployment system have been complemented by a number of insertion programmes meant to increase "activation", in line with a more explicit idea of solidarity as something that needs to be deserved as well as requiring a number of obligations on the side of recipients of solidarity.[9] The introduction of special subsidised contracts (*contrats aidés*), an important aspect of French employment policy, was extended to the private sector. Many of these special contracts, both in the private and the public sectors, have included provisions that circumvent labour laws and the collective agreements governing normal employment, with an extensive reliance on "atypical" contracts based on short-term and part-time arrangements. The "active turn" of recent years has not suppressed a number of specificities of the French labour market, in which jobs and skills are typically highly firm-specific, and in which the initial entrance into the workforce is rarely easy or

9 It should be noted that some Keynesian logic was still alive in the 1990s as a result of the political force of the left in France. For example, in 1997, the NSEJ program (Nouveaux Services- Emploi Jeunes) offered contracts of five years in the public and voluntary sectors to ca. 350,000 young people with low qualifications.

straightforward. It is not uncommon for young people to move from one short-term, entry-level position to another until they finally manage to secure a permanent job or fall back into unemployment. Overall then, one notes that in spite of a few remnants from France's earlier Keynesian approach, the interventions in French unemployment policy have sought to emphasise 'activation' elements, in accordance with the broader supply-focused trend characterising European unemployment policies throughout the 2000s and the 2010s.

Meanwhile, the conditions governing insurance compensation have become more restrictive. Today, the substitute income known as the ARE (*allocation d'aide au retour à l'emploi*, the return-to-work allowance) is granted to the unemployed on the basis of their age and how long they have been affiliated. These types of benefits are only paid to workers who lose their job in certain specific conditions. For instance, they need to have worked for at least six out of the previous 22 months. Another crucial condition is that such benefits can only be granted in cases of involuntary unemployment; only in some very limited cases are resignations considered to be legitimate and thereby entitle workers to benefits. It is also necessary to register (that is, the unemployed have to officially declare themselves to be job-seekers), which makes it easier for the employment agency to assess whether they are "actively seeking employment". The level of coverage nevertheless remains quite generous, since for a person earning the minimum wage, the ARE it corresponds to is up to three quarters of their lost earnings. The use of sanctions has increased in recent years, particularly following the 2008 law that introduced more frequent controls and more severe sanctions for those rejecting job offers. In spite of this, the amount of people benefitting from unemployment insurance remains significant, as can be deduced from the ca. 25,000 people removed from the register every year, out of an overall insured population of two and a half million people.

For a long time, the UNEDIC[10] has been in charge of the entire system of unemployment insurance, while the CGT (*Confédération générale du travail*, *General Confederation of Labour*) has relied on its own unemployment committee. Unions have significant powers when it comes to finalising collective contracts, establishing subsidiary branches within com-

10 According to the Unedic report (Les Echos, 26 January 2007), 24 800 sanctions have been established in 2006.

panies, and, to some extent, influencing life within these companies (for instance during elections for employee representatives). In membership terms, the French trade union movement is one of the weakest in Europe, since no more than 11% of employees are unionised and since the movement is divided into rival confederations competing for leadership and membership. Nevertheless, trade unions enjoy strong public opinion support and are able to significantly mobilise French workers, which means that they sometimes have a decisive impact on government policy (for example, in 2006 they pressured the government into withdrawing a new type of employment contract for young workers). Attention can also be focused on the provisions targeting the unemployed, especially the young, within the broader framework of the national education system. In particular, it has repeatedly been pointed out that too many young people are channelled into general education, when the labour market (at least in some areas), is in need of highly specialised workers. So a greater emphasis has therefore been placed on the students' need to receive specialised training, to prepare them for entering work sectors with better employment opportunities.

As a consequence, throughout the 2000s one notes a growing professionalisation of diplomas, and the introduction of new professional curricula leading to various masters and certificates. In addition, more resources have been devoted to apprenticeship programmes, in order to improve the articulation between the training and production systems, for instance by introducing professional development training and support for courses alternating formal education with work placements. Measures designed to promote a large variety of different training programmes have thus been at the heart of the government policies designed to tackle youth unemployment. "Learning and certification contracts" (*contrats d'apprentissage et de qualification*) have indeed proved to be quite effective, with a number of studies confirming that they increase trainees' chances of successfully entering the labour market compared to students from vocational schools such as the *lycées professionnels*. Similar conclusions have been drawn about the "certification contracts" (*contrats de qualification*), which also increase its beneficiaries' chances to quickly find employment that is both stable and not subsidised by the state.

Lastly, some emphasis needs to be put on the jurisprudence and the relevant role of the courts in the field. Looking at the most recent developments, an eventful case consisted of the demand by the Haut-Rhin County Council to recipients of the 'solidarity labour income' (*Revenu de solidar-*

ité active) to carry out seven hours of weekly 'solidarity' work for associations, local authorities, retirement homes or public institutions starting from January 2017. This highly controversial request was successively considered to be unlawful by the Strasbourg Administrative Court (jugement n° 1304888, 29 octobre 2015). But the motivation referred simply to the fact the Haut-Rhin County Council was not the competent authority for paying the 'solidarity labour income'. As a consequence, this motivation has safeguarded the principle of conditional solidarity even if this is linked to the willingness of parties involved, including recipients ("*la situation particulière de l'intéressé*").[11] In fact, one may argue that the principle of conditionality has gone through a further twist in the request of institutional actors, reversing the obligation of solidarity on the shoulders of solidarity recipients. In other words, solidarity is seen as an obligation that exists on the shoulders of the needy, who must commit to giving back solidarity to reciprocate for the help which they receive. Under this understanding of solidarity, the contract is *des ut do* rather than *do ut des*. Only more time will tell if this specific piece of jurisprudence will be essential to delete once and for all the idea that solidarity is a one-way act of unreciprocated generosity in favour of the opposing idea that looks at solidarity as a two-way relationship that engages beneficiaries of help to provide solidarity vis-à-vis the broader community that welfare providers represent.

The Loi Travail

The most recent key reform of the French labour market, the *Loi Travail*,[12] was undertaken in the summer of 2016 – after strong opposition and several struggles taking place across the political domain and civil society. This law is a piece of national French legislation that relates to employme. It is also known as the El Khomri law, since it was first presented to Parliament on 17 February 2016 by the labour minister Myriam El Khomri. It was passed into law on 8 August 2016, and came into force on 1 January 2017, following huge waves of protest throughout 2016. While the legal

11 http://www.lefigaro.fr/social/2016/10/05/20011-20161005ARTFIG00086-rsa-contre-benevolat-pour-la-justice-le-dispositif-est-illegal.php.

12 *Loi n° 2016-1088 of 8 August 2016 relative au travail, à la modernisation du dialogue social et à la sécurisation des parcours professionnels*.

workweek is still 35 hours long, the law gives specific company agreements precedence over branch agreements. The maximum number of hours worked in a day (10 hours) can thus be extended to a full 12 hours, in cases of increased activity or for reasons pertaining to the company's organisation. It is thus possible to raise the weekly number of hours worked to 46 hours, instead of 44, over 12 weeks. Specific company agreements can reduce the rate of overtime compensation from 25% to 10% of the base salary. However, company agreements must have been ratified by the "majority" of workers (that is, signed by unions representing more than 50% of employees). In the absence of such a majority, minority trade unions (representing more than 30% of employees) can organise an internal referendum to validate the agreement.

Overall, it can be argued that the large space that the law gives to spell out the conditions under which employers can use economic redundancy (for example, operating losses for several months, deterioration in cash flow, technological change, reorganisation for competitiveness, and refusal of wage contract by employees), weakens any progressive and solidarity element that may be singled out. Accordingly, the law allows companies to adjust their organisation in order to "preserve or develop employment". Majority agreements take precedence over employment contracts, including when it comes to questions of remuneration and working hours. The employees' monthly salary cannot be reduced, but premiums can, for example, be abolished. Employees who refuse to accept such agreements can be dismissed for economic reasons. These employees then benefit from a "personalised support programme", provided by *Pôle Emploi* and mainly financed by the state. The criteria for economic redundancies are laid out according to the size of the companies. Companies are allowed to lay off workers in the event of a "significant reduction in orders or in turnover", compared to the same period during the previous year.

Some emphasis, however, should be put on the promotion of gender equality and the protection against overly strenuous work. The period during which workers returning from their maternity leave cannot legally be dismissed has been extended from four to ten weeks. In addition, for young people who are neither in employment, enrolled in a course of studies or in training, the law extends a type of protection that is subject to resources and that includes help to find employment and a monthly allowance of 461 euros for one year. For those under the age of 28 and having graduated less than three months earlier, a four-month job search assistance programme has been put into place. It is also important to mention

the *'garantie jeunes*' aimed at better training for unemployed young people. Most crucially, the *Loi Travail* establishes a day of solidarity that is to say, the work of an additional day (seven hours) by the employees without additional compensation. This is a controversial way of interpreting solidarity, since to many commentators it seems to flow especially from those who can least afford it. The day of solidarity is fixed by a company or establishment agreement or, failing that, by branch agreement. In the absence of such agreements, the employer unilaterally fixes the day of solidarity after consulting the work's council or, failing that, the PDs (Personnel Delegates).

Migration

Immigration offers the third field to evaluate the state of solidarity in contemporary France: this is indeed a very complex field characterised by intense policy reforms over at least two decades. The French Office for Immigration and Integration (OFII), established in 2009, is today the State operator responsible for the integration of newly-arrived migrants. It also manages family and economic migration procedures, national reception of asylum seekers, as well as assisted return and reintegration. The French Office for the Protection of Refugees and Stateless Persons (OFPRA) handles asylum cases. A number of organisations work as partners of public authorities in handling reception and integration of legally staying foreigners. Major legislative reforms have been implemented across the 2000s and the 2010s including new tools for promoting access to citizenship, socio-economic integration, and the fight against crime over migration. These policies have thus far taken into account various economic, social and cultural aspects, which have often forced different stakeholders to engage with the concept of solidarity, both in terms of their first steps and integration into the labour market, and willingness to make it easier for them to walk along the pathway between immigration and citizenship.

Starting with the final step of immigrants' access to citizenship, Republican France is renowned for its civic traditions, whereby group distinctions in general are not made in the public space and play no hard role in the distinction between citizens and non-citizens (Cinalli 2017). Yet, it is interesting to see how French authorities, through their latest reforms, have extended the notion of the public sphere to include more traditional areas such as family. This is an important point for the argument of this

chapter since family itself is supposed to be rooted in the most solidaristic relationship that two individuals may reciprocally commit to. Accordingly, legal reforms over acquisition of French citizenship through marriage represents a crucial indicator of the intrusion of the French state into the most intimate site of solidarityindeed with the aim to evaluate and (in)validate the intimate bond of marital solidarity. Provisions governing marriage with a foreign spouse are obviously relevant for immigrants and citizens with a migrant background since they are more likely to marry a foreigner than the average French citizen.

A previous law from 1988 stated that citizenship could not be requested until one year after the marriage. In 2003 and 2006, however, laws were passed that further restricted access to citizenship through marriage, by mandating that the spouse of a French citizen could only apply for citizenship after two years of married life, a period which was then increased to four years in 2006. This period of time has been extended to five years if the foreign spouse has continuously resided in France for at least one year following the wedding. In all these cases, it is easy to see how the authorities have come to distrust marriage as a self-evident indicator of a truly solidaritybond, but consider time to be the test of that bond's sincerity. To this cautious distrust, the French state has added more stringent conditions to evaluate cultural proximity between the foreign spouse and the broader national context, for example through the assessment, since 2003, of a "sufficient mastery of the French language". Applicants are also expected to have a basic knowledge of France's civic norms, including the "rights and duties conferred by French citizenship". And since 2006, the law has put a minimal income requirement for sponsors to be considered eligible for family reunification procedures. This required income is based on the minimum wage (RMI), and must be earned through employment and increases depending on the applicant's number of children and/or family members.[13] Given that immigrants in France are more likely to be unemployed or in more low-skilled work than nationals, this set of policies have especially restricted the scope of redistributive and solidarity policies in the migration field.

No doubt, this willingness to assess family life more closely is in line with the political hegemony enjoyed by individualist policies and the neo-

13 Book 4, Title 1, Article R411-4 of the *Code de l'entrée et du séjour des étrangers et du droit d'asile*.

liberal executive applying them throughout the 2000s (with the exception of a short period of "*cohabitation*" at the very beginning of the decade). This same hegemony has simultaneously accounted for more stringent constraints in terms of socio-economic integration. In this case the major emphasis must be put on the '*contract of reception and integration*', together with its various employment-oriented initiatives. In principle, foreigners who wish to have paid employment have a number of commitments to make, which translate in a number of clear administrative steps to fulfil.[14] Yet the contract pays little substantial attention to the specific conditions of immigrants (and their descendants) in low income neighbourhoods, who must face various processes with difficulties and discrimination when trying to fulfil their promise of integration. The shortcomings in terms of insufficient work-training, action plans, support of diversity-related HR need, and counselling in situations of low self-confidence or limited information over the labour market add up to a very constraining context for immigrants. Crucially, in this case, French authorities have transferred to NGOs and social firms the burden of sustaining immigrants through granting specific funding.

Once again then, the notion of subsidiarity can be used to provide a crucial framework so as to understand the developments of solidarity in France. NGOs and social enterprises can thus implement programmes that are broader in scope and deeper in outreach, targeting for example disadvantaged neighbourhoods with the highest percentages of immigrants (Escafré-Dublet 2014). A number of organisations have thus taken the responsibility for actions that are invaluable to mediate between the 'willingness' of the state to welcome on the one hand and, on the other, the promise of immigrants to integrate. They may connect immigrants with firms to create job opportunities, maintain databases of potential candidates for employers, offer immigrants a course of preparation for a job search, combine group workshops, individual coaching, media training with professional communication and human resources. French authorities also favour this outsourcing of support by facilitating the creation of larger partnerships that include different actors such as local governments, universities, as well as businesses and associations of different types.

14 Accordingly, they need a work authorisation, issued by Regional Directorates for Companies, Competition, Consumption, Work and Employment (DIRECCTE) and a medical certificate issued by the OFII.

Beside a stronger scrutiny of solidarity (as in the case of assessment of marital bonds of migrant spouses) and outsourcing of solidarity (as in the socio-economic integration of welcoming of immigrants), another relevant characteristic of the intervention of the French authorities in the field of immigration consists of the increasing fight against irregular immigration. Among the elements of this hard stance against irregular immigration (and the various dangers that are concomitant with that), a major emphasis should thus be put on the coercive measures that target those who provide spontaneous and individually-based aid to immigrants. These coercive measures have found a legal basis in Article L622-1 of the Code for Entry and Residence of Foreigners and the Right of Asylum (CESEDA) that ban any action that helps somebody enterFrance irregularly.[15] In the eyes of many pro-migrant actors, these coercive measures —which have often included the detention of people who have offered shelter or other kinds of help to immigrants (later found to be irregular)— have been applied as an implicit formalisation of a 'solidarity crime', the latter being based on a very vague definition that the law gives to the content of the crime itself. The vagueness of this definition is so strong that it may allow confusing human trafficking with genuine concerns and solidarity (Müller 2009 and 2015).

Most crucially, the harsh stand which government and security agencies have sometimes taken against people committed to the humanitarian aid of immigrants, including minor actions of help such as speaking up against undignified conditions, or simply recharging a mobile phone of an immigrant in situations of irregularity (Allsopp 2010), has opened room for relativising the whole concept of solidarity And at the time of writing,a number of ordinary people, including farmers such as Cédric Herrou, or academics such as Pierre Mannoni, are going through highly contentious court trials for the most basic acts of solidarity such as offering water to migrant children in situations of severe dehydration.[16] Far from being a concept that is universally taken as positive, solidarity has itself become

15 In the words of the article, "*Toute personne qui aura, par aide directe ou indirecte, facilité ou tenté de faciliter l'entrée, la circulation ou le séjour irréguliers, d'un étranger en France sera punie d'un emprisonnement de cinq ans et d'une amende de 30 000 euros*".

16 Cf. for example the articles "Farmer on Trial Defends Smuggling Migrants: 'I Am a Frenchman" *The New York Times*, 5 January 2017; and "French Fraternity and Migrants", *The New York Times*, 17 January 2017.

contentious, something that can be opposed when it does not favour the particular interests of policy-makers and main stakeholders.

Conclusive Remarks

We can conclude by attempting to find an underlying thread across the many recent developments in the field of solidarity, particularly in terms of the provisions that affect vulnerable groups such as the disabled, the unemployed, and migrants. As a first (self-indulgent) comment, we can say that a first underlying thread is that accounting for some similar patterns is not an easy task not even when looking across similar fields of vulnerability. As this chapter has demonstrated, in recent years the legal and policy production in these fields has been considerable in France, yet reference to solidarity is rarely explicit, and rarely straightforward in its understanding. The main finding is indeed that the search for solidarity implies looking into fields made of complex multi-level structures of policies and institutions. France is usually considered to be a highly unified and centralised state, scoring very low on the Lijphart's index of federalism (1999). And as demonstrated in this chapter, solidarity is no doubt a concept that one finds in the Republican Constitution (most strongly, in its powerful reference to *fraternité*) as well as in the main provisions of national institutions across the different fields of vulnerability. Yet, especially as a result of the many new measures of decentralisation that were introduced in the 2000s, we did find that the shape of fields of solidarity is also influenced by the intervention of a plurality of actors at the sub-national level.

Designed to correct the institutional imbalance between the national and the sub-national levels, these measures have had an impact on the way that solidarity is understood and practiced in France, for example by changing the access points available for vulnerable groups and by blending new sets of opportunities and constraints for bottom-up intervention of French citizens more generally (Cinalli 2004; Cinalli and Giugni 2013). In particular, by zooming in on this complex multi-level governance of solidarity, a further underlying thread that has emerged throughout the pages of this chapter consists of the growing role of French associations. This is a relevant result when analysingbottom-up intervention in the public discourse of pro-beneficiary organisations in the fields of disability, unemployment, and migration. Their aim is to increase the discursive legitimacy of justice and equality for vulnerable people. Besides being a "*bastion*

who stands up to defend a large part of the (disabled) people",[17] the main point is that these associations have taken leading responsibilities in these current times of economic crisis, welfare retrenchment, and progressive withdrawal of the state. In particular, associations are playing a double role. On the one hand, they continue to be close to vulnerable people in a direct relationship of care and exchange with them, while at the same time, on the other hand, they fill in the solidarity vacuum left by traditional welfare agents. In the words of an associational leader "*respect, equality and dignity are the most fundamental values. The two main dimensions are subsidiarity and reciprocity*".[18] The sense of purpose and the objective importance of these associations in the field is further emphasised in times of austerity policies, when solidarity as direct empathy vis-à-vis vulnerable people and as a welfare enterprise can only continue thanks to their intervention, in spite of the reduction of funds and state support.

Another essential underlying thread that has emerged in the pages of this chapter is the cross-roads at which solidarity stands today in France, both in terms of its fundamental understanding and actual practice. Most crucially, this is a finding that has emerged across all fields of vulnerability that we have examined. In very general terms, it can be argued that, following two decades of discussion on the relationship between rights and responsibilities (Giddens 1998), the project of "third way" is today stronger than ever before in France. This project, which in political terms has coincided with the decreasing appeal of traditional parties on both sides —the right and the left— of the political spectrum, has put much emphasis on self-initiative, duties, and personal commitment. And even in the French context of traditional welfare rights, the idea of contractualism has increasingly become hegemonic, thereby undermining more classic conceptions of welfare just as much as in other countries that have more famously taken a neo-liberal turn (Dwyer 2004). The pages of this chapter have given plenty of space to discussing the extensive policy investment in measures to tackle vulnerability, socio-economic exclusion, and to move more vulnerable people from welfare to autonomy. Beside these renewed practices of solidarity, however, this chapter has also demonstrated that a fundamental rethinking of solidarity is taking place. Many times this fundamental rethinking passes unobserved in the application of measures,

17 Interview No. 5 In the field of disability
18 Interview No. 8 in the field of disability

but we have identified at least three main scenarios under which this has emerged in open contradiction with more traditional approaches to solidarity.

A first scenario of potential contradiction between old and new thinking of solidarity is the case of the 'commodification of solidarity', whereby solidarity has *de facto* become a tax that actors pay 'in the name of solidarity', which in fact is not implemented (if not indirectly). There were many examples throughout this chapter, but the most compelling example that we have singled out is the *de facto* monetization of solidarity in the field of disability into a tax that firms pay as an alternative to the recruitment of disabled people. A second scenario is the 'inverse contractualisation of solidarity', whereby institutional actors have attempted to reverse the "*do ut des*" formula (a formula which is itself a neo-liberal approach to solidarity, since in its traditional letter solidarity should instead be thought of as free of obligations) in a more stringent "*des ut do*" formula. In this case, solidarity becomes an obligation on the side of welfare recipients. The most compelling example that we have singled out is in the field of unemployment. It consists of the demand of the Haut-Rhin County Council to recipients of the 'solidarity labour income' (*Revenu de solidarité active*) to be themselves the agents of solidarity in their work for associations, local authorities, retirement homes, and public institutions in general. Finally, the third scenario —whereby contradiction between old and new approaches to solidarity is most strident— refers to the 'situazionalisation of solidarity', which holds that solidarity is not defined by some universal traits (and motivations) of solidarity, but rather by an external viewpoints establishing the distinction between those who do deserve help (which in this case is rightly named solidarity) and those who do not deserve any help (which, if given, would rather be accompliceship, or a 'solidarity crime'). Under this third scenario, solidarity is really solidarity only when it has positive externalities on society according to some contingent norms. In this case, the most compelling example that we have singled out here is in the field of immigration. It consists of the *de facto* enforcement of a 'solidarity crime' which French security actors have been applying against a number of people willing to help needy migrants before checking on their regular or irregular entrance in the country.

Ultimately, the most provocative conclusion that one can take from this chapter is that solidaritymay well be the last constraint from which a fully-fledged neoliberal programme wants to depart. This is no doubt a very ambitious goal in countries where solidarity is historically and constitutional-

ly embedded in the basic understanding that individuals have of their own citizenship community and of their own political institutions. Due to the symbiotic ties that solidarity has with Fraternity, it is normal that France is a crucial stage for the neo-liberal programme to implement its agenda. The recent economic crisis has had a significant impact on solidarity in France, both in terms of the more visible and formal dynamics of top-down welfare policies, and of the policies aiming to include the disabled, the unemployed, and migrants. This is true to such an extent that it could be said that the impact of the crisis is what most strongly unites the three fields of vulnerability in this chapter. Yet the long-term analysis of this chapter — mostly focusing on policy developments throughout the 2000s and the 2010s — allows for arguing that the economic crisis has not in fact led to outstanding policy changes. Indeed, changes often follow a rhythm that is in agreement with previous 'reforms' according to longer-term trends, sometimes having begun well into the pre-crisis period. In the voice of some commentators, the crisis has thus been a tool to justify restrictive reforms that were already considered "necessary" before the crisis. The monetisation of solidarity, its reversal on the shoulders of solidarity recipients in terms of obligations, as well as the idea that solidarity can be good *hic et nunc* but not necessarily everywhere and at any time, are perhaps crucial points that help us to identify the (front)line whereby neo-liberal reforms stand at the present time.

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Disability, Unemployment, Immigration: The Implicit Role of Solidarity in German Legislation

Ulrike Zschache

Introduction

The recent crises had very different effects in the various European countries. Some countries were severely hit by the economic and financial crisis. Other countries had to cope with the unprecedented influx of refugees and migrants. In particular, southern European countries like Greece and Italy faced multiple crises. The different contextual conditions implied different repercussions for solidarity for the most vulnerable groups in society, including the unemployed, people with disabilities and refugees. Accordingly, the crises variously changed the environment for the legal entrenchment of solidarity with these target groups, thus affecting regulations on rights and entitlements and the implementation of the existing constitutional and legal entrenchment of solidarity for people in need. This chapter aims to shed light on the legal framework for solidarity with the unemployed, disabled people and refugees in Germany. It will show that the law and the implementation of rights and entitlements in the three fields were affected very differently by recent developments. In particular, it will argue that the disability law was not impacted by the recent crises. Instead, changes in the legal framework are mainly a reaction to the requirements defined by the UN Convention on the Rights of Persons with Disabilities. In contrast, rights and entitlements in the unemployment and asylum fields were influenced by recent economic developments and the challenges posed by the new transnational movement of migrants and refugees. Yet, those two fields witnessed a certain retrenchment and a growing conditionality in quite distinct ways. In fact, while the unemployment law and its implementation are characterised by a tightening of rights and entitlements – particularly for the long-term unemployed – despite the good overall socio-economic climate, the restrictions in asylum law are a direct reaction to the crisis experiences following the unprecedented arrival of refugees and asylum seekers since summer 2015.

Before moving deeper into the legal framework in the three fields, the following section will elucidate the impact of the different crises in Germany. This will allow us to understand better the extent and the role of crisis experiences in this country. Overall, Germany was most notably hit by the global financial and economic crisis in 2009. But compared to other European countries, the impact of the crisis was dealt with punctually. In fact, after a slump in the financial and economic development at the beginning of the crisis, Germany recovered quickly and absorbed the economic shock rather well. This picture is consistent with many socio-economic and financial indicators. To start with, the government deficit witnessed a sharp increase in the years 2009 and 2010 (reaching a deficit -4.22% of GDP in 2010). But by 2011, these figures were already showing drastic reductions. The following years saw further improvements and a continuous trend towards balanced government accounts. What is more, in 2014, Germany even reached a government account surplus, which was further consolidated in the following years (+0.69 % of GDP in 2015) (OECD 2017a). The government's fiscal balance, i.e. the balance between government revenue and government spending, developed in similar fashion. At the beginning of the crisis, the German government had to increase its spending, which led to a negative fiscal balance. The negative trend was further reinforced due to a decrease in fiscal revenues in 2010 (resulting in a negative fiscal balance of -4.23% of GDP). Yet, after this drastic break, the German government's fiscal balance has recovered quickly since 2011, to the point where the country reached fiscal consolidation and a positive balance sheet in 2013. This positive development was further sustained the following year (with a positive fiscal balance of 0.55% of GDP in 2014) (OECD 2017b; c). Another economic impact was that German government debt increased since the outbreak of the crisis and reached a peak between 2010 and 2012. Overall, government debt stayed at about 85 percent of GDP during peak times. Hence, it remained comparably moderate in contrast to other EU countries. However, in contrast to a continuous average debt increase in the EU, German government debt started to recover after 2012. By 2015, government debt had decreased to 77.8 percent of GDP. Hence, it is approaching the pre-crisis level gradually (64.1% of GDP in 2007) (OECD 2017d).

In addition, the effects of the crisis can be observed with regard to economic indicators. In this respect, Germany witnessed a sharp decrease in the country's gross domestic product in 2009 and a quick and sustained recovery in the subsequent years (DESTATIS 2017a). Furthermore, domes-

tic demand fell considerably in response to the economic crisis between 2007 and 2009. However, similar to the GDP, it quickly regained its strength in 2010 and 2011, eventually exceeding the pre-crisis demand during those two years, most probably as an effect of the government's stimulus measures. After this peak, demand witnessed a punctual drop-back in 2012, but has grown again since 2013, reaching the pre-crisis level by 2016 (OECD 2017e). Inflation followed a similar pattern. It declined markedly after the beginning of the crisis and approached almost the level of zero inflation in 2009, before it re-increased over the years 2010 and 2011. Once again, 2012 brought about a break in this development. Since then, inflation rates fell again, and by 2015, they almost reached zero inflation once again. Despite a marginal recovery, inflation also remained very low in 2016 (OECD 2010; 2012; 2015, 2017f). Going beyond inflation, other important indicators for Germany are the country's export figures. Given the importance of international exports, the German economy was affected considerably by the global economic crisis and the resulting weakening of global markets and external demand. Consequently, there was a steep drop in the foreign trade balance between 2008 and 2011, with a particularly sharp decline in 2009 (see Table 1). However, the country was prepared to return quickly to economic activity and strength when global markets and external demand started to recover. As a result, the foreign trade balance not only re-increased to its pre-crisis level, but it has also exceeded the pre-crisis export surplus since 2013 (DESTATIS 2017b). This trend was most likely facilitated by the weak Euro (IMF 2015, 4).

On the one hand, Germany's preparedness to return swiftly to production and its ability to respond to growing international demand was to a large degree buffered by government growth measures. These were geared to protect employment, maintain work force and know-how and, thus, stabilise businesses and industries during the crisis by means of short-term allowances for employees' reduced working hours (Giesen 2013; Schnitzler 2013). On the other hand, domestic demand was substantially supported by the two growth packages of the German government that introduced important stimulus measures mostly between 2009 and 2011. In part, domestic purchasing power and demand were supported by the aforementioned protection of employment by means of short-term allowances. Moreover, internal demand was triggered by various stimulus measures, including a car scrappage bonus, tax relief on income and corporation taxes for craftsmen and household services, higher child benefits and higher

public spending on infrastructure (ibid.). In addition, the ongoing growth in demand and GPD of the most recent period might at least to some extent have been positively influenced by the 2014 pension reforms that introduced higher pensions for older mothers and earlier statutory pensions without reductions for workers who have worked a minimum of 45 years in regular employment (IMF 2015, 4).

When it comes to the socio-economic response to the crisis, it is remarkable that Germany experienced only a very modest increase in unemployment rates at the beginning of the crisis in 2009 (see Table 1). What is more, the punctual economic decline affected mostly male employees, while there was no negative impact on female and youth unemployment. Moreover, short-term work was implemented mostly in the manufacturing and building industries, thus affecting mostly male employees (Bundesagentur für Arbeit 2009). Subsequently, there was a relatively quick regrowth in employment figures and unemployment has declined steadily since 2010. This trend is even more remarkable because unemployment has now reached a long-term low since German reunification (IMF 2015, 19). Overall, the annual unemployment rate went down to 6.1 percent in 2016 (DESTATIS 2017c). Finally, it is striking that income inequality decreased during the economic crisis in Germany. In that period, it reached its lowest level in 2012 (Gini of 0.283), before it started to re-increase in 2013 (DESTATIS 2017d). In fact, in 2011 and 2012, Germany had less income inequality than the EURO-area average (excluding Cyprus and Malta). Hence, it seems that the growth packages of the German government (employment protection and economic stimuli, e.g. car scrappage bonus), together with redistributive policies have successfully counteracted and evaded the negative effects of the crisis on income distribution and social inequality (cf. also OECD 2011, 36).

While the economic crisis had only a temporary and limited impact and was absorbed quickly, the arrival of large numbers of migrants and refugees in 2015 and 2016 posed a more influential challenge on Germany. Estimates suggest that the country received about 1,000,000 migrants and refugees in 2015 alone. In the same year, almost 477,000 persons applied for asylum. This means that asylum applications suddenly more than doubled compared to 2014 (BMBF 2016). Compared to the entire European Union, asylum applications in Germany made up 35 percent of the total of asylum applications in all 28 EU countries (EUROSTAT 2017). What is more, in 2016, the number of persons applying for asylum in Germany rose to even more than 745,000 (BMBF 2017).

*Table 1: Socio-economic indicators, Germany 2007-2016 (Sources: *=OECD; #=DESTATIS)*

	2007	**2008**	**2009**	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**
general government deficit (% of GDP)*	0.19	-0.18	-3.23	-4.22	-0.96	-0.03	-0.19	0.29	0.69	/
fiscal balance (% of GDP)*	0.18	-0.17	-3.24	-4.23	-0.96	-0.13	0.09	0.55	/	/
government debt (% of GDP)*	64.1	67.9	75.3	84.5	83.9	86.6	81.6	82	77.8	/
GPD (chain index 2010 = 100) #	100.84	101.66	96	99.79	103.51	104.22	104.84	106.51	108.09	/
domestic demand growth rate (%)*	1.8	1	-3.1	2.9	3	-0.8	1	1.4	1.4	1.7
inflation (%)*	2.3	2.8	0.2	1.2	2.5	2.1	1.6	0.8	0.1	0.4
foreign trade balance (bn. Euro) #	195.4	178.3	138.7	154.9	158.7	193.2	197.6	213.6	244.3	/
total unemployment rates (%) #	9	7.8	8.1	7.7	7.1	6.8	6.9	6.7	6.4	6.1
unemployment rates – men (%) #	8.5	7.4	8.3	7.9	7.1	6.9	7	6.8	6.6	6.4
unemployment rates – women (%) #	9.6	8.2	7.9	7.5	7	6.7	6.7	6.6	6.2	5.8
youth unemployment rates (%) #	4.4	4.3	3.8	3.5	3.6	3.6	3.7	3.6	3.9	4.4
Gini coefficient #	/	0.302	0.291	0.293	0.29	0.283	0.297	0.307	0.301	0.302

The unprecedented influx of refugees was largely the result of the government's decision of August 2015 to suspend the Dublin procedures and open the borders for refugees who had travelled the Balkan route via Greece and Hungary. What followed was perceived as an administrative crisis by many observers since public administration largely failed to cope with the newly arrived migrants and refugees. In many German cities, authorities were insufficiently prepared to register new asylum seekers, to provide for decent accommodation and supply with food and basic essentials such as sanitary/hygiene products and clothing during the first months of the new migration influx. On the one hand, civil society spontaneously stepped in to mitigate the situation and to provide for the most urgent needs and pressing problems in the initial reception centres and of people queuing for registration. Indeed, the initial "welcoming culture" during late summer and early autumn 2015 mobilised hundreds of thousands of Germans in solidarity with the refugees. On the other hand, the decision of the Merkel government to open the borders for refugees was strongly contested domestically. Already in late autumn of 2015, members of the governmental coalition started to raise concerns about Chancellor Merkel's liberal policy. What is more, public opinion took a quick turn over the New Year after alleged sexual assaults on women by immigrant men in Cologne. In the following, the initial enthusiasm of the German public decreased and gave way to a more critical climate of public concern. Moreover, support for extreme right-wing anti-immigration and Eurosceptic groups and parties (e.g., Pegida, AfD) gained momentum. The opening of the German borders in late summer of 2015 offered a "window of opportunity" for migrants and refugees, but the subsequent administrative dealings with registration, asylum applications and basic supply put a strain on both the asylum seekers and the whole system. Borders were mostly closed in March 2016 in response to the EU-Turkish deal and the closing of the Balkan routes. Not surprisingly, the number of new arrivals went down drastically. Nevertheless, the receiving and examining of asylum applications and the integration of accepted asylum seekers and refugees remained a major task. However, despite a certain envy expressed by members of other social groups (e.g. in regards to the public investments for German language classes, entitlements to basic health care and social benefits, accommodation or the fear of additional job competition), there was no major negative impact on the unemployed or disabled. Overall, entitlement to welfare benefits did not change due to the reception of refugees. Nonetheless, to a certain extent, unemployment and dis-

ability organisations witnessed both a public and political shift away from their concerns towards the problems of refugees, together with a strong focus of private funding (e.g. of foundations or individual donors) on refugee issues.

Disability

Overall, solidarity with disabled persons is not expressly addressed in the German disability law. The main values and objectives directly targeted are equal treatment, equal participation, equal opportunities, inclusion and self-determination. Nevertheless, the principle of solidarity is indirectly enshrined in disability law in that it can be derived from the basic constitutional rights and principles. Here, the constitutional vision of humanity, the fundamental rights and the welfare state principle are of crucial importance. More specifically, the German disability law is determined by the following legal cornerstones: the Basic Constitutional Law, the Social Security Code and the German commitment to implement the UN Disability Rights Convention. Moreover, the Federal Law on Equal Opportunities for Disabled People and the General Equal Treatment Act are of key importance (BMAS 2015a, 620-622; Eissing 2007, 2-10; Welti 2010).

Constitutional Basic Rights

The Basic Constitutional Law (GG) comprises the following fundamental rights and principles that are of particular relevance for disabled people. To start with, the Basic Law guarantees the inviolable right to human dignity and obliges the state to respect, protect and promote it (Art. 1 para. 1 GG). In addition, it codifies the commitment to inviolable and unalienable human rights (Art. 1 para. 2 GG) and the right to free development of the personality (Art. 2 para. 1 GG). With respect to the latter, the Federal Constitutional Court has specified that this implies the obligation of the state to enable disabled people to make use of this fundamental right by providing material social welfare benefits that compensate for restrictions imposed by a disability (Eissing 2007, 4). Moreover, there is the constitutionally codified prohibition of discrimination (Art. 3 para. 3 GG) and the equal treatment requirement derived from it that entitles and obliges the state to grant particular support to disabled people (ibid., 5). Finally, the

social welfare state principle (Art. 20 para. 1 GG) obliges the state to grant disabled people the possibility to participate in a social life despite disability-specific restrictions. Given the general openness of the social welfare principle, the material consequences of this requirement are, however, dependent on policymaking (Eissing 2007, 5). Similar to the national constitution, there are equality and protection norms for people with disabilities in the constitutions of the federal states (Welti 2010, 26).

Concretisation by Social Law

The Social Security Code codifies the social rights and entitlements of disabled people and people who are at risk of becoming disabled. Its provisions aim at social justice, social security and the effective exercise of the fundamental constitutional rights discussed above (Art 1 para. 1 SGB I). On the one hand, the Social Code comprises provisions in the various benefit sector-related parts (or Books) of the Social Code that are either relevant or specific to disabled people. On the other hand, there is Book IX of the Social Code regulating the "Rehabilitation and Integration of Disabled People". This special part of the Social Code, which came into force in July 2001, defines and consolidates the legal provisions in the various benefit sectors, thus establishing general principles for the application of social security law to the rights and entitlement of disabled people.

Basically, Book IX of the Social Code aims to shift the focus from care and provision to the self-determined participation of disabled people in society alongside the removal of barriers to equal opportunities (BMAS 2015b, 66). Book IX of the Social Code provides for three different types of integration assistance benefits, namely medical benefits for health rehabilitation, occupational benefits for the (re)integration into employment, and social benefits for the (re)integration into social life. Moreover, there are additional social assistance benefits (e.g., for travel expenses, household help, childcare) (BMAS 2015a, 624; BMAS 2015b, 66-67; Art. 5 SGB IX). Integration assistance benefits are geared to "empower […] [people who have a disability or are at risk of becoming disabled] to conduct their own affairs independently and on their own responsibility as far as possible" (BMAS 2015b, 66). Within the sectorally structured German welfare system, these benefits are provided by the different service providers (health care providers, Federal Labour Office, job centres, social welfare authorities, etc.), however, under the conditions of the sector-spe-

cific legal frameworks. Hence, many of the sector specific regulations have been adjusted and unified by Book IX of the Social Code. On the other hand, the rights and entitlements of disabled people codified by Book IX are shaped and constrained by the sector-specific regulations and provisions (BMAS 2015a, 619).

By shifting the legal approach from care and provision to empowerment and participation, Book IX of the Social Code has introduced an important paradigm change in German disability law (BMAS 2015a, 621). This is also reflected in the definition of disabled persons, which is largely based on the approach proposed by the World Health Organisation. According to Book IX of the Social Code, a person is regarded disabled when his or her bodily functions, mental abilities or emotional health deviate, for more than six months, from the condition typical of a person of a given age so that his or her participation in society is impaired (Art. 2 para. 1 SGB IX). In this respect, individual impairments to participation in the various areas of society have gained an important role and became the point of reference in the legal framework.

Moreover, disabled people have access to all social security systems and benefits, provided that they comply with the respective requirements (health care insurance, unemploymentinsurance, basic security benefits for job-seekers, education and vocational training grants, social assistance, etc.). In addition to the general social security system, the social law foresees specific rights and entitlements to assistance for people who have or who are at risk of a physical, mental or psychological disability. Assistance is geared to either "avert, eliminate or reduce [a] disability [or to] prevent [a person's] condition from deteriorating or [to] alleviate its effects, regardless of the cause of [the] disability" (BMAS 2015b, 66). Furthermore, there are supplementary benefits. Since January 2008, disabled persons are entitled to a personal budget that allows them to choose and pay independently for services they need. Furthermore, special benefits are granted for people with severe disabilities. These include free public transport, reduced vehicle taxes, special parking facilities and tax concessions for disabled persons (standard allowance).

Typically, social integration assistance benefits were governed and provided by the social assistance system in terms of Book XII of the Social Code (Kuhn-Zuber and Bohnert 2014, 223). On the one hand, this implies that these benefits were dependent on the neediness of the claimant, i.e. income and property had a negative impact on entitlements. On the other hand, the provision of social integration assistance in welfare facilities was

subject to economic efficiency and based on the avoidance of additional costs (Art. 13 Book XII Social Code). In December 2016, the German government reformed the law on Rehabilitation and Participation of Disabled People (Book IX) and adopted a new Federal Participation Act (Bundesteilhabegesetz), which is coming into force stepwise between January 2017 and January 2023. Basically, the new law aims to modernise the rehabilitation and participation law in line with the inclusion and self-determination objectives of the UN Convention and to further improve accessibility and the removal of barriers (BMAS 2017; cf. also DBR 2015). Moreover, social integration benefits will be separated from the means-tested social assistance system, thus creating an integration benefit scheme that is better oriented toward individual needs and requirements. In addition, the reform seeks to enhance the coordination and cooperation between the social benefit providers. Persons who are entitled to various rehabilitation services will no longer have to apply with different service providers separately (BMAS 2017a).

Federal Act on Equal Opportunities for Disabled People, General Equal Treatment Act and the UN Convention on the Rights of Persons with Disabilities

In addition to the social law, the German disability law is governed by the Federal Law on Equal Opportunities for Disabled People, the General Equal Treatment Act and the UN Disability Rights Convention. The Federal Act on Equal Opportunities for Disabled People (BGG) came into force in 2002. It pursues the aim to implement the ban on discrimination of persons with disabilities also in areas not governed by social law, to guarantee and enforce equal rights and to promote accessibility in various areas of public and private life, thus facilitating participation in society (Art. 7-13 BGG) (BMAS 2015c, 15; Eissing 2007, 6-7; Kuhn-Zuber and Bohnert 2014, 47-48). In addition to the federal law, equal opportunities for disabled people are enshrined at the level of the federal states. As with the national level, all federal state administrations are required to provide equal opportunities and accessibility and to operate in a non-discriminatory manner (Welti 2010, 26). Overall, the principle of accessibility and freedom from barriers is inspired by a revised understanding that perceives disabilities not only as an individual's health condition but also takes account of the contextual factors in society that cause impediments

and impose limitations on people with disabilities (ibid.). Currently, a reform of the Federal Act on Equal Opportunities for Disabled People is being prepared with the aim of strengthening equal opportunities in line with the requirements defined by the UN Convention (BMAS 2016).

Going beyond this specific law for disabled people, equal opportunities and anti-discrimination are governed by the General Equal Treatment Act (AGG). This law was put into force in 2006 and served to transpose the first four EU anti-discrimination directives into national law. Besides banning discrimination on grounds of race, gender, age, ethnic origin, sexual orientation, religion and ideology, the law imposes a ban on disability-related discrimination in many parts of everyday life and at work. In particular, the General Equal Treatment Act protects people with disabilities from discrimination and/or arbitrary placement at a disadvantage in everyday business. Moreover, the ban on discrimination is imposed on all aspects of working life (BMAS 2015a, 620; 2015c, 18-19; Kuhn-Zuber and Bohnert 2014, 51-56).

Furthermore, German law is subject to the UN Convention on the Rights of Persons with Disabilities since its ratification by Germany in 2009 and by the EU in 2010. Building on the Universal Declaration of Human Rights and the UN Covenants on Human Rights, the Convention recognises disability as part of human diversity and seeks to advance, guarantee and protect the equal enjoyment of all human rights by people with disabilities. To this purpose, the Convention applies the general human rights to the specific situation of persons with disabilities, for instance, by specifying the right to education, the right to work or the right to participate in cultural life, together with concrete measures and targets for the realisation of equal opportunities (BMAS 2015c, 20-21). In order to implement the provisions of the Convention in Germany, a National Action Plan was launched in 2011. Its key principles are self-determination and the inclusion of disabled people in society (Art. 19).

Laws' Enforcement and the Crisis

Dissimilar to other European countries, there was no impact of the economic crisis on the disability field in Germany. Nevertheless, also under good economic conditions, the implementation of the existing laws is a main concern, while the laws themselves are largely supported (despite all scope for further improvements). In fact, the effective enforcement of

guarantees and the rights of disabled persons is often a question of the quality of administrative practice at the levels of the national state, the single federal states, local authorities and benefit providers and the assertiveness of individual claimants (Kuhn-Zuber 2015; Welti 2010, 27). Differences in the recognition of entitlements, in the degree and quality of inclusion and participation, and in the claimant's freedom of choice may occur for several reasons. To start with, the German social system is heavily shaped by its fragmented character and the differentiation between distinct sector-specific benefit laws and providers. For the moment, it remains to be seen how the new Federal Participation Act will solve the problems in the coordination and cooperation between service providers. What is more, the provisions for disabled people defined by Book IX apply only in the framework and under the conditions of the sector-specific benefit laws (Welti 2014, 9). The different benefit laws are, however, rooted in distinct principles and logics. Hence, rules differ substantially in terms of access to the system (insurance membership or general access), requirements, benefit allowances and the concrete provision of benefits, thus hampering the establishment of a harmonised legal system for persons with disabilities (Welti 2014, 11). Furthermore, responsibilities are partly shared and interwoven within a complex system of regulations and competences, making it often difficult for claimants to know their rights (Welti 2014, 12). Finally, the granting of entitlements also depends on the interpretation of legislation and administrative practice. In this respect, local authorities with limited financial capacities or under economic pressure may tend towards a rigorous budgetary discipline and a restrictive interpretation of legal entitlements (Welti 2015). In consequence, rights and entitlements of disabled people often have to be legally enforced by complaint proceedings.

These implementation problems are also highlighted by civil society organisations active in the field of disabilities, while practitioners are less concerned with insufficiencies in the laws themselves. For instance, one representative states that:

> "*From their intention, the laws are in many parts very well meant. But their structural implementation is not thoroughly thought out. […] For instance, they adopted a law on integrative schooling, but the necessary structures were lacking. […] From municipality to municipality, there is a different handling. […] The mistake was: They had a good idea and good will, which we accept, but the actual implementation was not thought out. […] They should have paved the way for uniform structures, [for instance] how to finance [inclusive schooling]. These are things we are struggling with."* (Interview 31, 26/10/2016)

From another organisation we learnt:

> "*In our field, the difficulty is that receiving a benefit always implies making a request and fighting for it. […] This is always associated with a lot of justification, and also with legal actions. […] The implementation [is the problem]. And the interpretation of the single public offices and authorities is sometimes not transparent. Or they take the position 'in the first place we reject it and then we wait for the opposition procedure*'. *[…] And what we see is this thinking in terms of different offices. […] What happens in the practice is often quite gruesome; how they try to push the requests away from their own table*." (Interview 30, 24/08/2016)

Apart from problems related to the administrative practice, some criticism has been raised about the existing disability law itself in recent years. In particular, it is argued that the objectives and rights enshrined in the UN Convention on the Rights of Persons with Disabilities are not yet sufficiently applied and implemented in German disability law. Emphasis has been put on deficits regarding the comprehensive inclusion into society, social participation and integration assistance, full accessibility, self-determination and individual life planning (e.g. BAGFW 2015; DBR/BAGFW et al. 2014; FbJJ 2013; Pfahl 2014; Poser 2014). This position is also reflected in statements of civil society organisations. For instance, they highlight that:

> "*The UN Convention on the Rights of Persons with disabilities was ratified in Germany and is actually binding for the Federal Government. However, there are still a lot of deficits. And as regards the new Federal Participation Act, […] I heard a lot of criticism from people with disabilities. […] I believe, much more could be done. […] Overall, I would say that we are relatively advanced in Germany, but not as much as we could be. […] Because people with disabilities are still not on an equal basis with people without disabilities, and they cannot yet participate like people without disabilities*." (Interview 27, 07/11/2016)

In more general terms, suitable instruments and implementation measures are requested that are able to overcome the ongoing segregation of people with disabilities (for instance, in state-protected employments, sheltered workshops, sheltered homes, stationary care, special school, separate education and vocational training), and to put into practice the right to equal opportunities, participation and inclusion into society (e.g. Berger 2015; Pfahl 2014; Welti 2014, 14).

Migration and Asylum

As with disability law, German migration and asylum law does not make explicit reference to the principle of solidarity. Nevertheless, it could be argued that there is an indirect impact of the solidarity principle since it can be derived from the overriding validity of basic constitutional rights and principles, in particular the constitutional vision of humanity, the fundamental rights and the welfare state principle. For refugees and asylum seekers, rights and entitlements are based on three key legal pillars: the German Basic Law, the Residence Act and the Asylum Act. In addition, access to the welfare state is regulated under the Asylum Seeker Benefits Act and the Social Code.

The Three Pillars: German Basic Law, the Residence Act and the Asylum Act

German asylum law rests basically on three main pillars that define status and rights of refugees and asylum seekers: the German Basic Constitutional Law, the Residence Act and the Asylum Act. In addition, social rights and provisions are defined in the Asylum Seekers Benefits Act. First of all, the German Basic Law comprises the constitutional fundamental right to asylum already in place since 1949. Here, the right to asylum is granted to all persons persecuted on political grounds (Art. 16a, para. 1 GG). However, since 1993, the right to asylum has been restricted by limitations. Since that time, those asylum seekers who have entered the country from another EU member state or a secure third country (Art. 16a, para. 2 GG) or who come from – as such defined – safe countries of origin (Art. 16a, para. 3 GG) are excluded from legal entitlement to asylum in Germany.

Secondly, the German Residence Act defines a broad range of protection forms that may lead to a residence permit under international law or on humanitarian or political grounds (chap. 2, part 5). On the one hand, it entails circumstances of residence according to international and European standards. That is, refugee status according to the Geneva Refugee Convention and subsidiary protection according to the European Qualification Directive (Directive 2011/95/EU) (Art. 25, para. 2), the granting of residence for temporary protection (Art. 24) and the granting of protection for victims of human trafficking (Art. 25, para. 4 a). Refugee status and subsidiary protection are regarded as key circumstances of residence due to

humanitarian reasons in Germany (Parusel 2010, 19). On the other hand, the German Residence Act comprises several protection forms based on national law which complement the Europeanised system of protection (Parusel 2010, 24). In addition, the German Residence Act defines a range of circumstances that prohibit deportation. First of all, there are prohibitions on deportation in compliance with the Geneva Refugee Convention (Residence Act Art. 60, para. 1 and 7). Secondly, the broader concept of "international protection" has been integrated into German law with the implementation of the European Qualification Directive (2011/95/EU) in December 2013. Thirdly, the German Residence Act includes forms of protection and prohibitions on deportation that go beyond the harmonised EU-law and can be seen as national rules, even if they largely draw on international agreements (Residence Act Art. 60 para. 5 and 7). Furthermore, the German national law foresees the possibility of a temporary suspension of removal (so-called "Duldung" – "toleration") (Residence Act Art. 60a).

While the Residence Act lays down the legal conditions for entering, residing in and leaving the country for all third-country nationals, the Asylum Act is a special law that governs the admission procedure for asylum seekers in Germany (before October 2015 it was called 'Asylum Procedure Act'). This includes both the circumstances and conditions under which a protection status is granted and the procedural rules for the conduct of the proceedings. The latter cover arrangements regarding application procedures, the rights and duties of applicants during the procedures, the right to a place of residence during the application process and rules in terms of distribution and accommodation (BAMF 2014). With the implementation of the European Qualification Directive in December 2013, the Asylum Act has been restructured fundamentally. It now involves a subchapter specifying the right to asylum and another subchapter about international protection. The latter integrates both the recognition of the refugee status and subsidiary protection.

Reception, Accommodation, Distribution and Access to the Social Welfare System

In Germany, the reception of asylum seekers is regulated both at the national level and at the level of the single federal states. Nevertheless, it is the administrative responsibility of the 16 federal states to accommodate

asylum seekers in reception centres and accommodation facilities. Based on the country-wide system for initial allocation, asylum seekers are distributed throughout the different reception centres of the individual federal states according to a formula based on criteria such as population and tax income ("Königsteiner Schlüssel") (Art. 44 and 45 Asylum Act). After the stay at initial reception facilities, asylum seekers are typically housed in collective accommodations (Art. 53 para. 1 Asylum Act). While the accommodation in initial reception facilities is mainly regulated by national law, follow-up accommodation is governed in accordance with the provisions of the respective federal state (Müller 2013, 12).

Entitlements to social benefits are generally defined by the Social Security Code (SGB). Moreover, specific rules and provisions for non-EU, third-country nationals seeking asylum and international protection are made by the Asylum Seekers Benefits Act and the Asylum Act. As a general rule, the German social system and labour market are basically open to German nationals and EU citizens, provided that certain conditions are met. For non-EU third country nationals, however, these systems are generally closed, but special permits are possible. For asylum seekers and refugees a basic distinction can be made between the rights granted during the asylum procedure and those after the recognition of a protection status.

Applicants for asylum and international protection for whom the decision about a residence permit is still pending, as well as tolerated foreigners whose removal is temporarily suspended, fall under the regulations of the Asylum Seekers Benefits Act. For a long time, this Act was based on the assumption that its beneficiaries would stay in the country only for a restricted interim period of time and would thus not require resources for their integration (BAMF 2008). Consequently, the basic benefits granted were very low and considerably below the social assistance benefits. Benefits in terms of the Asylum Seekers Benefits Act used to be paid for a maximum duration of four years. After four years, asylum seekers were eligible for the higher social assistance benefits in terms of SGB XII. However, the benefit system so defined was declared unconstitutional by the Federal Constitutional Court in its verdict of 18 July 2012. The Court came to the conclusion that the benefits granted to asylum seekers were considerably low and insufficient to guarantee the constitutional right to a subsistence minimum that is in line with human dignity, as enshrined in the constitutional human rights catalogue of the Basic Law (Art. 1 para. 1 and Art. 20 para. 1 GG, so-called "welfare-state principle"). Moreover, the Court decided that the duration asylum seekers were kept within this resid-

ual system of transitional assistance was too long and unjustified. Furthermore, it emphasised that migration policy considerations are inappropriate to justify benefit rates below the subsistence minimum because "human dignity cannot be relativised by migration policy". (BVerfG, Judgement of the First Senate of 18 July 2012 – 1 BvL 10/10). In the following, asylum seekers had to be granted higher benefits suitable to guarantee the subsistence minimum. Moreover, the reform has reduced the maximum duration of asylum seekers benefits from 48 to 15 months so that eligible beneficiaries can now claim social assistance benefits in terms of SGB XII after 15 months (Art. 2 Asylum Seekers Benefits Act).

Besides social assistance, the Asylum Seekers Benefits Act guarantees access to emergency health care for asylum seekers. This means that asylum seekers are entitled to health care in instances of "acute diseases or pain", in which "necessary medical or dental treatment has to be provided including medication, bandages and other benefits necessary for convalescence, recovery, or alleviation of disease or necessary services addressing consequences of illnesses." (AIDA 2015, 66; Art. 7 Asylum Seekers Benefits Act). Yet, asylum seekers have no legally enshrined entitlement to medical treatment of chronic diseases, disabilities and psychological sufferings, for instance due to torture, rape or other serious forms of psychological, physical or sexual violence. In this respect, asylum seekers are not fully integrated into the German health care system. The restricted access to health care remains a major point of criticism. Various political actors and NGOs operating in the sectors consider it insufficient and discriminatory, and claim that it violates the human right to health, the constitutional right to living a life in human dignity and the social welfare state principle of the Basic Constitutional Law (e.g. BAfF 2015, Classen 2013, 22f.; Der Paritätische 2015b, 15; Die Linke 2015; Bündnis 90/Die Grünen 2014; ProAsyl 2014).

Recognised asylum seekers and persons with an international protection status (i.e., recognised refugees and persons under subsidiary protection) are entitled to social benefits in terms of the Second and Twelfth Books of the Social Security Code under the same conditions as German nationals. Moreover, they can receive child benefit, parental benefit as well as educational or vocational grants. Asylum seekers in an open application process and foreigners required to leave the country whose removal is suspended due to an impossible departure by no fault of their own are entitled to basic social assistance in terms of the Twelfth Books of the Social Security Code after a period of 15 months of temporary residence or removal

suspension (Art. 2 Asylum Seekers Benefits Act). This involves both access to social assistance benefits and an entitlement to the statutory health insurance benefits.

Laws' Enforcement and the Crisis

Overall, the development of legislation in the field of asylum has been very dynamic in recent years. To some degree, policy changes were indirectly triggered by the domestic impact of the global economic crisis because of the immense challenges Greece, Italy and other crisis-hit EU countries had and continue to face. However, the most radical change was spurred by the unprecedented arrival of large numbers of refugees and asylum seekers in late summer 2015, leading to various reforms (esp. Asylum Packages I of October 2015 and II of March 2016). In response to the new challenges, the recognition of an asylum or international protection status was subjected to stricter and tighter rules, together with stricter deportation rules and restrictions on family reunification. Moreover, stricter conditions for social benefits were implemented, following the principle of "demanding and supporting" and the requirement to cooperate, together with a stricter definition of target groups with entitlement to asylum seeker benefits. The reforms aimed to remove potential "disincentives" (Deutscher Bundestag 2015, 25-26) and to allocate resources and capacities more efficiently to the growing group of asylum seekers and refugees with humanitarian, political and international protection motives (cf. also Federal and State Decisions on Refuge and Asylum of 24 Sept. 2015). At the same time, access to the labour market was liberalised, transitioning Germany from a staunchly protectionist to one of the most liberal countries in this regard (Expert Council of German Foundations on Integration and Migration 2015).

With respect to the implementation of migration and asylum laws, it is important to note that the enforcement of national legislation varies due to different administrative rules, practices and jurisdictions at the level of the 16 federal states and subordinate administrative authorities. These differences affect the level of rights' guarantee and the interpretation of rules in various respects, for instance, in terms of residence permits, the enforcement of deportation, forms of accommodation and benefit allowances and entitlements to health care (Classen 2013, 20-23; BAMF 2014, 5; Müller 2013, 12).

Against this backdrop, both the existing laws and the administrative practice are regarded as insufficient by many observers and practitioners in the field. With regard to legislation, civil society organisations criticise that the solidarity principle is largely lacking in German asylum legislation:

> "*A huge problem is the fact that the German legislation follows the idea 'we actually do not want them here'. […] Legislation and bureaucracy are impeding this. […] During the past year, the pace of restrictions in asylum law has been so rapid that not even lawyers manage to keep up in order to know which laws are actually valid. And they do not mean improvements. On the contrary, they are basically a deterrent, signalling 'we don't want you here'. […] I believe that the government is using the situation of the arrival of one million refugees and turning it into a catastrophe. […] That a local government is not able to cope with such a situation is a sign of political unwillingness. […] They have used their chances to take countermeasures against the [developments] of the past years*." (Interview 1, 27/10/2016)
>
> "*The German law clearly distinguishes between good and bad refugees. […] I cannot see that the German legislation is primarily geared to help people who are fleeing, but instead to select who is advantageous for Germany, for instance, in terms of labour market integration. […] It is not really in the interest of the people. […] Overall, Germany is not very solidaristic, but tries to seek its own advantage."* (Interview 11, 11/10/2016).

Moreover, the considerable scope for interpretation and discretion in the way laws are implemented and applied at the regional and municipal administrative levels are seen as highly problematic. In this respect, civil society representatives explain:

> "*There are laws that we do not approve of very much and which we would like to change. However, this is beyond our power. But if [the local authorities] are not even acting in accordance with the existing laws, how can we improve these laws? This is a major issue we have to deal with. That at least the existing rights are enforced. But not even this is the case here*." (Interview 7, 10/10/16).
>
> "*New asylum packages are adopted. Local ways of execution change, partly with the climate of public opinion. This is handled in a very arbitrary manner. […] There is a lack of a clear and reliable legislation on which we can count and to which we can refer*." (Interview 4, 07/10/2016)
>
> "*The legislation is quite a catastrophe. […] Is creates more uncertainties than helping anyone. … It works in some federal states, in others it does not work at all. Basically, it is a huge patchwork. Everybody implements it differently and it is completely disparate. And as regards the level of the administrative staff, […] if no one gives them clear guidance, then this leads to a lot of gut decisions*." (Interview 6, 12/10/2016)

Overall, the German migration and asylum legislation remains a highly contested field, since a considerable divide between proponents and opponents of solidarity with refugees has emerged over the past two years both among policymakers and within society. Thus, the question of insufficiencies in law and administrative implementation is itself subject to the conflict between different political and societal groups and positions.

Unemployment

Similar to disability and asylum law, German social law does not refer explicitly to the principle of solidarity. Nonetheless, the solidarity principle is indirectly enshrined in social law because it can be derived from the basic constitutional rights and principles, particularly the constitutional vision of humanity, fundamental rights and the welfare state principle. In Germany, the rights and entitlements of the unemployed are regulated by a multi-pillar system. First of all, there are unemployment benefits in the form of wage replacement benefits (Unemployment Benefit I). These are governed by Book III of the Social Code and are part of the unemployment insurance system. Secondly, there are basic security benefits for job seekers (Unemployment Benefit II/Social Benefit). Those are governed by Book II of the Social Code and are part of a tax-funded social benefit system. Thirdly, social assistance is set up as a basic safety net according to Book XII of the Social Code.

Unemployment Benefit I

In order to be eligible for Unemployment Benefit I in terms of Book III of the Social Code, a person must be unemployed, have registered as unemployed, have completed the qualifying period within the unemployment insurance system, be actively searching for work and be available for work and the jobs offered by the Employment Agency (Art. 16 and 136 SGB III; BMAS 2015b, 25). An unemployed person is entitled to these unemployment benefits if she or he has worked for a minimum of 12 months during the past two years in an employment relationship subject to social security contributions (Art. 142 SGB III). Hence, the entitlement to Unemployment Benefit I requires membership in the solidarity-based community of contributors (BMAS 2015a, 52). The benefit entitlement

period is dependent upon the duration of previous employment and insurance periods. After a minimum of 12 months in regular employment, the entitlement period is six months, after 16 months of employment 8 months, after 20 months of employment ten months and after 24 months of employment, twelve months (BMAS 2015b, 26; Art. 142; Art. 439 SGB III).[1] If unemployment continues after these periods, unemployed persons are able to claim basic security benefits for job seekers (Unemployment Benefit II, see below). Unemployment I benefits are income-related and correspond to 60% of the claimant's net monthly salary earned during the qualification period. They are equivalent to 67% of the previously earned salary for those with children (Art. 149 SGB III).

Basically, unemployment benefits are part of the employment promotion policies governed by Book III of the Social Code. These policies have the purpose to avoid or reduce unemployment, to improve the earning prospects of the unemployed and to match labour market supply and demand. Therefore, unemployment benefits are linked to the requirement to cooperate with the Federal Employment Agency, its local employments agencies and their placement and activation measures, to be available for employment or re-education and skill training offers, to actively seek a new job and to pursue all opportunities to regain employment. A written work integration agreement with the Employment Agency has to be signed in this regard. Non-compliance can be sanctioned with a withdrawal of benefits (BMAS 2015a, 77-82; 2015b, 17; Art. 138 SGB III).

Furthermore, the employment promotion policies under Book III include a range of services and subsidies. For instance, the Federal Agency of Employment provides start-up grants to help people become self-employed and set up one's own business (Art. 93-94 SGB III). Moreover, there is a range of services and measures geared to facilitate the job search and to improve people's chances on the labour market (e.g., advice, vocational orientation and guidance, application coaching, traineeship placement, skills training) (BMAS 2015b, 17-19).

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1 Unemployed beneficiaries older than 50 years can claim additional benefit months. People aged 50 and older are entitled to benefits for a period of 15 months after 30 months of employment, people aged 55 and older to 18 months of benefits after 36 months of employment and people aged 58 and older to 24 months of benefits after 48 months of employment. Since 2015, under certain circumstances, six months of previous employment can be sufficient (BMAS 2015b, 26; Art. 142; Art. 439 SGB III).

Unemployment Benefit II: Basic Security Benefits for Job-Seekers

People who are not or no longer entitled to Unemployment Benefit I but are capable of work can claim Basic Security Benefits for Job Seekers (Unemployment Benefit II). In addition, their relatives who are incapable of earning a living can receive Social Benefit. These specific benefits (also known as "Hartz IV") were introduced in 2005 by the so-called Hartz reforms that merged the former unemployment aid and social assistance aid. The basic security benefits for job seekers enacted in Book II of the Social Code constitute a tax-funded and means-tested basic safety net for employable beneficiaries. Hence, these basic security benefits are granted if the claimant is in need of help; previous contributions to the system or qualifying periods are not required. A claimant is in need of help if he or she is not able to ensure his or her subsistence at all or to an adequate degree from own income or property, with the help of household members or the assistance of other social benefit providers. Moreover, beneficiaries have to be between the age of 15 and the age for entering the old-pension scheme (65-67 years depending on the year of birth) and capable of working a minimum of three hours a day on the general labour market (Art. 7-9 SGB II; BMAS 2015b, 34). Basic security benefits for job seekers consist of employment integration assistance and benefits for covering their living expenses. The scheme follows the principle of combining support and assistance with the requirement to take one's own initiative and actively seek employment ("demanding and supporting"). The overriding aim is that beneficiaries return to employment and cover their living expenses from own income as quickly as possible. To this purpose, the scheme comprises a range of empowerment and employment activation measures, including advice, training, placement and occupational integration services. Beneficiaries are required to enter into an integration agreement that defines a binding commitment to participate in labour market integration activities and to take all opportunities to find new employment (BMAS 2015b, 33). This also stipulates that beneficiaries are required to participate in training and integration measures and to accept reasonable employment offers. The rejection of reasonable (re)integration measures, employment, job or traineeship offers can be sanctioned with a reduction or withdrawal of benefits (BMAS 2015b, 35; Art. 31a SGBII).

Basic security benefit for job seekers (Unemployment benefit II and Social Benefit for household members incapable of earning) is a means-tested, needs-oriented form of social assistance. The entitlement to these

benefits is dependent on the claimant's needs and his or her household members. Therefore, own income and property are taken into account and can affect the sum of benefits received. Entitlements are based on a standard rate to cover the social-cultural subsistence minimum. Moreover, beneficiaries receive support to cover their living expenses, e.g. for accommodation and heating.[2]

Social Assistance

In addition to the social security benefits of SGB II, there is social assistance as a basic safety net against poverty, hardship and social exclusion for those who do not meet the requirements in order to receive Unemployment Benefit I, basic security benefit for job seekers, social benefit or other forms of income support. The provisions for social assistance were part of the fundamental social reforms that came into force in 2005. Social assistance is now governed as a separate scheme under Book XII of the Social Code. It is provided to persons unable to secure their living by own income, savings or other property assets, the help of relatives or household members or by other income support entitlements. In particular, social assistance aims to ensure the subsistence and "human minimum needed to maintain a socially acceptable living standard" (BMAS 2015b, 114) for people under 65 who are either temporarily or permanently incapable of working or whose capabilities are diminished due to medical reasons or disabilities, or for people over 65 who are incapable of covering their living expenses at all or adequately on grounds of old-age pensions, own means or help of others (ibid., 114-116). Benefit entitlements are based on standard rates equivalent to those of basic security benefits for job seekers (Art. 27-40 SGB XII). Social assistance is granted to any person in need who meets the above state requirements and who is resident in Germany (Art. 23, para. 1 SGB XII).

2 From January 2017, the standard rate of benefits for a single adult or single parent is 409 € per month. For unemployed partners age 18 or above it is 368 € for each person, for children up to six years old 237 €, for children between 6 and 13 years 291 €, for children between 14 and 17 years 311 € and for dependent children without their own income between the ages 18 and 24 years, 327 € per month (BMAS 2017).

Laws' Enforcement and the Crisis

When it comes to the rights and entitlements of unemployed persons, the ruling of the Federal Constitutional Court has been of particular importance in recent years. Most importantly, in its verdict of 9 February 2010 (BVerfG, Judgement of the First Senate of 09 February 2010 – 1 BvL 1/09 – "Hartz IV-judgement") the Federal Constitutional Court came to the conclusion that the benefits granted under SGB II (Unemployment Benefit II/Social Benefit), hence the so-called Hartz IV benefits, were substantially too low to guarantee a subsistence minimum that allows a person to live a life in human dignity. According to the court, the existing benefits system was unconstitutional and in conflict with the fundamental right to human dignity (Art. 1 para. 1 GG) and the constitutional "welfare-state principle" (Art. 20 para. 1 GG). Moreover, it claimed that the amount of benefits must be established by means of a transparent and appropriate procedure that takes realistic, de facto needs into account. Against this background, the German government was obliged to reform the respective legal provisions and to implement a procedure capable of assessing and determining a subsistence amount concordant with the right to human dignity. In consequence, the standard benefits rate under Book II of the Social Code is annually adjusted in order to guarantee the adequate minimum subsistence allowance (Art. 20 para. 5 SGB II). In addition, in its verdict of 23 July 2014, the Federal Constitutional Court reemphasised that the Hartz IV benefits have to secure *de facto* a dignified existence, in line with the requirements of the Basic Constitutional Law (BVerfG, Order of the First Senate of 23 July 2014 – 1 BvL 10/12).[3] In fact, practitioners consider the courts as vital authorities that counterbalance the decisions of the executive authorities:

> "*In particular the social courts put the Job Centres in their place. We can certainly say that the decisions of the social courts are much more favourable [for the beneficiaries] than the practice of the administrative authorities. Therefore, they have an important function*." (Interview 16, 30/08/2016).

Yet, while the possibility of enforcing social entitlements through the court route is appreciated and widely used, legal action is seen only as the

3 Moreover, the legislator was asked to examine how to guarantee that certain specific basic needs (e.g. expensive durable goods like refrigerators or washing machines) are in fact covered (for instance, through individual entitlements).

second best option. Many unemployment organisations find the laws themselves to be insufficient and unsocial, and aim for political change:

> "*I believe that it is crucial to improve things at the political level. […] There are many things I would consider politically wrong or insufficient in terms of the benefit rates. But they are not necessarily unconstitutional. It would be wrong to expect jurisdiction to solve the deficits of the social policy. This can only be done by political struggle. […]. Overall, I would say that with regard to the securing of a livelihood both the legal basis and the administrative practice are bad. And as regards the latter, a key issue is that the authorities do not have enough or sufficiently-trained personnel."* (ibid.)

With regard to the impact of the global economic crisis, the area of unemployment was affected in different ways in Germany. On the one hand, the extension of short-term allowances substantially helped the county's economy to overcome the recession between 2008 and 2010 relatively quickly and smoothly. Together with other measures of the government's economic stimulus packages, short-term allowances were an important means to stabilise employment and to avoid a growth in unemployment during the economic crisis. Hence, they have widely received positive feedback from different groups within society. Representatives of unemployment organisations, for instance, perceive some parts of the scheme positively:

> "*I would indeed say that the short-term allowances have helped to mitigate the problem. As well as the car scrapping bonus. […]. We would have liked more of such a public investment programme that creates jobs and stimulates demand through public intervention*." (Interview 16, 30/08/2016).
> "*What the federal government did at the time was a completely different detour, taking the approach 'Let's not leave it to the market. Instead, we need to massively intervene in order to maintain industrial structures and workforces'. Or at least for certain branches. Compared to the quasi market-liberal programme that was previously introduced with Hartz IV and the Agenda 2010, this was almost a Keynesian market-regulating programme.*" (Interview 12, 03/09/2016)

On the other hand, the most recent development is viewed much more critically by unemployment organisations. In particular, they observe a growing divide between people in employment and the long-term unemployed. While the remarkable economic growth of the past years has contributed to an overall rise in employment, the long-term unemployed have largely not benefited from this development. According to unemployment organisations, the chances of the long-term unemployed re-entering the job market have decreased, while the social benefit system has become more rigid:

> "*We see that parts of society do indeed benefit from this boom. And other parts remain completely excluded from it. As regards how Germany dealt with the crisis: In contrast to the promise of earlier times that society is permeable and that everybody can make it, now there is the experience and the practice that one cannot make it anymore. That not everybody can get there. This has been further stabilised in my eyes, because support instruments have been greatly reduced in the Job Centres. And penalty instruments for people who do not comply with the requirements have been increasingly intensified. […] Hence, I think that this situation, in which certain parts are doing very well, while other parts are completely side-lined, is the German response to the crisis. Following the approach 'we are open to the highly qualified and fresh labour forces [from other European countries], while demonstrating that other people do not have a chance here'*." (Interview 12, 03/09/2016).

With the latest reform of the Hartz IV benefit system of August 2016, the trend of increased sanctions and restrictions for benefit receivers and the long-term unemployed seems to be further corroborated (cf. Deutscher Bundestag 2016). The main concerns with the new legislation are the tightening of penalties and controls and the limitation of the right to have incorrect administrative decisions corrected (e.g. Thomé 2016). Accordingly, the new Hartz IV reform was heavily criticised by social welfare and unemployment organisations and the mass media:

> "*The dominance of 'demanding' and a lack of support remain. The corset of low standard rates and accommodation expenses, linked with rigid reasonability and penalty rules, is too tight and forces people in any kind of employment. This way, it fosters precarious employment and devalues existing professional qualifications*." (DGB 2016, 22/06/2016)
>
> "*In the Hartz IV system, millions of people continue to be regarded as potential social spongers. […] The state controls even in the most private spheres and punishes strictly. Harassment by law. This is unworthy of a good social welfare state.*" (Zahn 2016)

Against this backdrop, it seems that the latest reform of the Hartz IV system is a further step that contributes to undermining the solidarity principle of the social welfare state and the chances of all people to live an equal, dignified life.

Conclusions

In many European countries, the crises of the past years have had a considerable impact on the legal entrenchment of the solidarity principle and its implementation in administrative practice. Across Europe, this impact

has been very differential, depending on each country's specific crisis experience.

Overall, Germany witnessed the impact of the global economic crisis mostly during the initial stages, particularly in 2009. But the effects of the crisis were absorbed in a short-term period so that general government finances, the economy and the labour market recovered quickly and sustainably since 2010. Most strikingly, unemployment rates declined steadily and have currently reached their lowest level since German reunification. To a significant extent, the quick recovery and economic and financial stabilisation were promoted by Federal government growth packages. In fact, the German response to the crisis consisted mainly of short-term interventions, while there were no substantial crisis-driven reforms. Notable policy changes, like the introduction of the minimum wage, had their origins before the crisis.

Despite the good economic situation and the resulting improvements for larger parts of society, Germany presents a mixed picture when it comes to the question of how the country shows solidarity with the most vulnerable groups and people in need. Similar to the Basic Constitutional Law, the principle of solidarity is mostly indirectly enshrined in German disability, asylum and unemployment law. Solidarity is not expressly a leading principle in any of the three fields. Nevertheless, it is of relevance for rights and entitlements in disability, asylum and unemployment law to the extent that it can be derived from the basic constitutional rights and principles, in particular from the constitutional vision of humanity, the fundamental rights and the welfare state principle. Above all stands the right to live a life in human dignity, to which all other rights are subordinate. This also means that they have to be interpreted in light of the overriding right to a dignified life. Moving beyond this general legal framework, disability law is led by the principles of equal treatment, equal participation, equal opportunities, inclusion and self-determination, which have become increasingly important in the past decades. Moreover, disability law is traditionally built on the social welfare state principle. Asylum law is guided by the principle of international human rights and humanitarian reasoning, as well as by the welfare state principle. Finally, unemployment law is based on the welfare state principle and the idea of providing for more social justice in light of the social inequalities produced on free markets. In addition, the guiding principles vary depending on the kind of unemployment entitlements. On the one hand, unemployment regulations targeting the short-term unemployed entitled to Unem-

ployment Benefit I within the unemployment insurance system are guided by the principle of social security and the protection of the standard of living, which varies with different status groups. On the other hand, regulations for the long-term unemployed, the working poor and other people in need of the means-tested Basic Security Benefits for Job-seekers are based on the idea of ensuring a sufficient subsistence minimum for a dignified human life. In this respect, the guiding ideas underlying unemployment law are not fully coherent and to some extent are controversial since social security and income protection for well-defined status groups as insiders of the insurance system potentially contradict the idea of protecting the subsistence minimum, and in this respect, the principles of social equality and solidarity with the outsiders of the insurance system (cf. also Zacher 1981, 729).

Irrespective of the missing explicit reference to solidarity, German law foresees a broad range of instruments and mechanisms to support the unemployed, asylum seekers and disabled people. Yet, the laws themselves and their administrative application are not always perceived as sufficient in order to grant solidarity. Unemployment law was substantially reformed a decade ago in the context of the so-called Hartz reforms. At the time, the reforms reduced the – comparatively high – benefit allowances for the long-term unemployed, and merged the previously contribution-based long-term unemployment benefits with the means-tested social assistance system. Simultaneously, unemployment benefits were linked to the sanctionable obligation to actively seek a job and to accept the job offers or training measures presented by the Employment Agency. Moreover, the regulations on dismissal protection and on temporary work were relaxed, and contractual flexibility enhanced. Over the following years, unemployment declined markedly, however at the cost of a growing group of working poor (working in parallel employment or requiring benefit top-ups despite full-time employment) and the rise of precarious employment. The negative effects of the Hartz IV reforms were partly mitigated by the recently introduced general statutory minimum wage. While this catalysed an improvement for people in employment, the long-term unemployed continue to feel excluded from and left behind the generally positive development. On the one hand, sanctions and controls on beneficiaries have become even more rigid. On the other hand, unemployment organisations claim that support measures promoting reintegration into the labour market were reduced or insufficiently provided. In this respect, the divide between the insiders and the outsiders of the employment system and exist-

ing status differences seems to be further cemented. Consequently, social cohesion and social solidarity with people in need appear rather weak, particularly when taking into account the country's economic prosperity.

As regards refugees and asylum seekers, the development of legislation has been very dynamic in recent years. In particular, the various measures and reform acts of the past two years were a reaction to the unprecedented influx of large numbers of refugees and asylum seekers into Germany. At first, the suspension of the Dublin procedures and the opening of the borders for refugees who arrived via the Balkan route in the late summer of 2015 offered a sign of solidarity towards refugees and the European countries of first arrival. But this new "welcoming policy" was soon followed by a step-wise tightening of legislation that brought about stricter rules in terms of recognition, deportation and entitlements to social welfare benefits. At the same time, the reforms introduced a liberalisation in the regulations on labour market access for asylum seekers and refugees. Since autumn 2015, the various reforms have thus contributed to the weakening of the solidarity principle in asylum law, while opening-up the possibilities for those refugees who are employable on the German job market and able to become self-sufficient, and hence, beneficial to the country. Similar to the unemployment field, the German asylum system is thus characterised by a growing divide between those people who meet the requirements in order to participate in the employment market and those excluded from it and in need of social benefits. Again, this indicates a weakening of the solidarity principle. This development took place against the backdrop of growing populism among sectors of society and a shift towards right-wing arguments in public discourse.

In comparison, various improvements have been made in recent years in order to strengthen the rights of disabled persons, even if there is still a long way to go in order to realise full inclusion and equality of persons with disability in society. German law and administrative practice have not yet met the requirements and level of rights' guarantees stipulated by the 2009 UN Disability Rights Convention. Nevertheless, over the last decade, several reforms were adopted that aimed to implement a more comprehensive, participation-based approach, and to improve particularly employment and social integration assistance schemes. However, the solidarity principle is often challenged through the administrative application of disability laws and the restrictive procedures of the different service providers which often force disabled people to claim their rights through legal action.

Overall, German constitutional law and the sector-specific legislation grant protection and help for vulnerable groups in various ways. Nevertheless, solidarity with people in need is not a given. This is particularly true given that the solidarity principle needs to be derived from the fundamental constitutional rights and principles, but in actuality remains otherwise quite vague in the three fields. This opens the door for policymaking to downplay the role of solidarity and to increase the conditionality of solidarity with vulnerable groups, as has happened particularly in the asylum and unemployment fields in recent years. Indeed, recent policy reforms have shown that solidarity is highly contested and subject to political struggles between different interests and groups in society. Interestingly, the conditions underlying such a development vary considerably. In the field of unemployment, solidarity towards the long-term unemployed seems to have decreased due to the generally good economic situation and the remarkable increase of employment and, in consequence, a weakened public awareness of the structural reasons for unemployment. In contrast, in the field of migration, solidarity towards refugees and asylum seekers was limited by a series of restrictive reforms against the backdrop of the so-called "refugee crisis" because of the perception of an overburdening of the asylum and welfare system and growing resentments among parts of society which feel themselves disadvantaged.

At the same time, the vague legal entrenchment of the solidarity principle shifts importance to the role of the courts and case law. In fact, both the field-specific courts (e.g. the social courts) and the Federal Constitutional Court are playing an important part in the enforcement of rights and entitlements in the spirit of the solidarity principle; however, once again without explicitly using the term solidarity. This is well exemplified by the various judgements of the Federal Constitutional Court on a sufficient subsistence minimum for both recipients of Hartz-IV benefits and asylum seeker benefits where the Court pointed to the constitutional right to a subsistence minimum that is in line with human dignity regardless of the target group. Overall, the case law of the courts is an important means to uphold a rights-based approach and to defend and enforce the rights and entitlements covering the solidarity principle. Interestingly enough, affected social groups and the representatives themselves often abstain from putting the solidarity principle centre stage. Similar to the courts, they follow a rights-based approach, arguing that the unemployed, disabled people or refugees and asylum seekers are not in need of charity, but of the proper enforcement and implementation of existing human and fundamental con-

stitutional rights and legally enshrined entitlements. These insights corroborate the primary role of basic rights and the subordinate role of the solidarity principle in Germany.

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Greece in Times of Multiple Crises: Solidarity under Stress?

Maria M. Mexi

Introduction

The question of whether solidarity has guided policy and legal responses during the economic crisis and the accompanying fiscal adjustment process in Greece has rarely been addressed in public, social and/or political debates. Admittedly, since the onset of the economic crisis in 2009, the weaker social groups in Greece have traditionally born an asymmetrically heavier burden compared with better-off groups. Over the pre-crisis period, social solidarity was deformed, manifested in the unequal allocation of social assistance funds on the basis of deep-rooted clientelistic and patronage relationships, between ruling political parties and organised group interests that had strong political influence and leverage (Pappas and Asimakopoulou 2011; Sotiropoulos 2001). The situation did not improve after the onset of the crisis, as Greece had to rely on bailout rescue loans and implement strict fiscal consolidation measures which may have led to some streamlining of social spending but, above all, have resulted in the weakening of solidarity policies for the social protection of the middle and the lower classes, the unemployed, the poor and the socially excluded. The recent refugee crisis has also exposed the weakness of policy elites to protect the most vulnerable and induce solidarity-driven considerations in policy and legal interventions.

In view of the above, the aim of this chapter is to shed light on how solidarityis tackled from a public policy perspective, by examining recent legal and policy responses that have been introduced in the policy domains of disability, migration and asylum, and unemployment since the onset of the Greek crisis in 2009. As shown in the following sections, little attention has been paid to how to put in place a coherent policy framework for solidarity -- a principle which is explicitly entrenched in the Greek Constitution, denoting collective solidarity, humaneness and mutual responsibilities to recognize the respect, dignity and value of all members of society. Rather, policy inefficiency combined with increased conditionality and welfare retrenchment have put solidarity to the test for the most vul-

nerable groups in society. Data for this research was collected within the framework of the Horizon2020 project "TransSOL – European paths to transnational solidarity at times of crisis: Conditions, forms, role models and policy responses" through a combination of desk research of various sources (e.g. policy and legal acts and documents, case law, etc.), information requests from relevant institutions, and semi-structured interviews with representatives of civil society organisations and groups[1] held in Greece between September-November 2016.[2]

The Context of the Greek Crises

Since 2009, Greece has become the epicenter of a series of crises with considerable socio-economic and humanitarian repercussions: the economic crisis, the Eurozone crisis, and more recently the refugee crisis. Based on Eurostat data, Greece experienced a sharp decline in its GDP from 241,990.4€ million in 2008 to million 176,022.7€ million in 2015.[3] The Greek unemployment rate increased from 7.8 percent in 2008 to 24.9 in 2015, [4] while youth unemployment reached almost 50 percent. Interestingly, the unemployment figures obscure the strikingly high unemployment levels among people with disabilities which was more than double the national jobless rate of 23 percent (ANED 2015/2016). "The sudden growth in unemployment", Visvizi (2016) argues, "followed by sudden loss in disposable income level, and accompanied by a disintegrating state administration means that no social provision exists for those in need; and the numbers are growing. The private sector, swamped by excessive taxation, operating in an inflexible labor market framework, under conditions of a liquidity squeeze, cannot absorb the unemployed. Therefore, as the crisis continues, amidst political instability at home and abroad, the resources at

1 The full findings of the interviews are encapsulated in the 2016 TransSOL report: *Integrated Report on Reflective Forms of Transnational Solidarity* available at http://transsol.eu/outputs/reports/.

2 Special thanks to Professor Maria Kousis and Stella Zambarloukou for their insightful comments on earlier outputs of the research.

3 Eurostat. http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=nama_10_gdp&lang=en.

4 Eurostat. http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=une_rt_a&lang=en.

the disposal of families dwindle. In this view, the degree of social deprivation is bound to increase."

The economic crisis has had a profound effect on labour market integration not only for the native population but also for the migrants and incoming refugees. Between 2008 and 2015, the unemployment rate of the latter increased by 26 percent reaching 33 percent against a 17 percentage point increase for the native population (OECD 2016). As emphasized by the OECD (ibid), "727 000 immigrants are currently living in Greece with a residence permit, accounting for 7% of the population. Integrating these immigrants and offering them the possibility to make a living is fundamental. It increases their contribution to the Greek economy and society and also raises acceptance of immigration." Besides the painful consequences of the economic crisis for the migrants already residing in Greece, during 2015-2016, over 800,000 migrants and refugees arrived on Greek shores (The Guardian 2015). As of December 2017,[5] 21,524 out of 63,302 migrants and refugees have been relocated from Greece to other EU Member States. As fiscal consolidation measures have been the primary policy priority the past years, very little attention has been paid to calls for better provision for the incoming migrants and refugees, but also how to put forward stronger and more effective measures to cater to those most affected by the country's multiple crises. As examined in the following sections, legal and policy interventions in the fields of disability, migration and asylum, and unemployment, as well as questions of policy inefficiency, have contributed to weakening elements of solidarity and unemployment and strengthening elements of conditionality and welfare retrenchment at the expense of the most vulnerable.

Responses in the Field of Disability

Policy and legal responses in the field of disability are captured in the phrase "two steps forwards, one step back". More particularly, in the Greek legal system, ratified international conventions constitute an integral part of the Greek legal order and prevail over any contrary provision of the law (Article 28(1) of the Greek Constitution). In the area of disabili-

5 Refer to DG Migration and Home Affairs data available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/press-material/docs/state_of_play_-_relocation_en.pdf.

ty, Greece has ratified most of the major international conventions such as the Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol (OP) in terms of access to education, social protection, healthcare, justice, work and employment for people with special needs and disabilities. Also, the Greek Constitution (Article 4) establishes the principle of equality among all Greek citizens. Article 21 refers explicitly to the fundamental rights of disabled people to autonomy, employment, and participation in social and political life, as well as the duty of the state to implement measures that safeguard those rights. In the Civil Code (civil law), there are certain open-ended clauses that could be invoked by disabled persons seeking equal treatment and non-discrimination in their employment life.[6] Thus, sections 34 and 35 refer to the legal capacity and legal personality of all human beings; sections 57 and 59 refer to the protection of natural persons against any offence, sections 281 and 288 refer to good faith and to business usages, which have helped the courts to construct a wide protection network against discrimination practices by the employer or unfair dismissal (Gavalas 2004). Section 662 establishes a general duty of the employer to ensure the health and safety of workers on work premises. Finally, sections 931 and 932 protect from physical injury and health hazards.

On 11 April, 2012, the Greek Parliament enacted Law 4074/2012 ratifying the UN Convention on the Rights of Persons with Disabilities and its Optional Protocol. The Convention "adopts a broad categorisation of persons with disabilities and reaffirms that all persons with all types of disability must enjoy all human rights and fundamental freedoms. It clarifies and qualifies how all categories of rights apply to persons with disabilities, and identifies areas where adaptations have to be made for persons with disabilities to effectively exercise their rights and areas where their rights have been violated, and where protection of rights must be reinforced." [7] In particular, as far as non – discrimination is concerned, Greece now prohibits all discrimination on the basis of disability, and guarantees persons with disabilities equal and effective legal protection against discrimination on all grounds. Moreover, according toArticle 5 of the Convention, in or-

6 These clauses can certainly be invoked directly against employers, not only via interpretation of other provisions.

7 Refer to "Convention on the Rights of Persons with Disabilities (CRPD)", available at: https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html.

der to promote equality and eliminate discrimination, Greece – along with other States Parties – must take all appropriate steps to ensure that reasonable accommodation is provided. Finally, specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities will not be considered discrimination under the terms of the Convention.

In addition, the Greek Parliament has passed anti-discrimination legislation, Law 3304/2005, which transposes the European Commission Directives 2000/78/EC and 2000/43/EC into Greek national law. Following Theodoridis (2009, 8):

> This law fills a conspicuous lacuna in the Greek legal system, where previously there was no specific antidiscrimination legislation in force. This new statute, entitled "On the application of the principle of equal treatment regardless of racial or ethnic origin, religious or other beliefs, disability, age, or sexual orientation", protects all persons in both the private and public sectors, and covers the fields of access to employment and occupation (but not to self-employment), vocational training and education, social protection, including social security and healthcare, education, and access to goods and services including housing.

There are certain aspects though where the Greek law is in breach of the directives, as noted by Theodoridis (2009, 8-9). In particular, article 28 of Law 3304/2005 specifically states:

> On entry into force, this law repeals any legislation or rule and abrogates any clause including personal or collective contracts, general dealing terms, internal enterprise regulations, charters of profit or non-profit organisations, independent professional associations and employee or employer trade unions opposed to the equal treatment principle defined in this Law.

Moreover, the "purpose" of Law 3304/2005 echoes Article 1 of both Directives:

> The purpose of this law is to lay down a general regulatory framework for combating discrimination on the grounds of racial or ethnic origin, as well as combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, in accordance with the Council Directives 2000/43/EC and 2000/78/EC, with a view to putting into effect the principle of equal treatment.

Drawing on the above Theodoridis (2009, 9) observes: "It is evident that the Greek legislature did not intend to provide specific regulations with regard to the implementation of the principle of equal treatment, but rather a general framework. This is not within the spirit of the Directive, which es-

tablishes the general framework for the member states to make specific regulations and take concrete implementation measures".

Following Gavalas (2004, 4), in the early 00s, at legislative level, Greece's approach to disability issues "cannot be defined as a civil (human) rights' approach but rather as a social welfare approach (ensuring special treatment and quotas)" and that this is "obviously related to the fact that disabled people in Greece (and their organisations) traditionally seek to ensure (and lobby for) social security and social welfare benefits and substantial rights rather than procedural antidiscrimination and human rights". This tendency seems to have prevailed over the decades that followed and it may explain why most sensitive issues pertaining to the implementation of the United Nations Convention on the Rights of the Child (CRC) and the United Nations Convention on the Rights of Persons with Disabilities (CRPD) have not been adequately addressed.

As remarked by Kaltsouni (2013, 6):

> The practical implementation of the CRPD and CRC rights and principles cannot be considered as adequate. In many instances, the best interests of the child are not considered or are not explicitly assessed by the officials of the administration. Additionally, it is extremely doubtful whether the opinion of children with disabilities is considered by the courts or in social care units of a closed nature (i.e. residential institutions). Even though children's right to be free from violence is legally protected, there are significant deficiencies in the way that services receive and address complaints of abuse and violence against children. Several problems with respect to the implementation of the principle of access to assistance have been identified, including the lack of specialised staff in healthcare structures and in residential institutions which sometimes operate based on an outdated asylum model with respect to the way they care for children. Finally, the right of children with disabilities to inclusive education, even though protected by legislation, is in practice not fully implemented.

With respect to older people with disabilities, previous national policies such as obligatory quota placement in the public sector (Law 2643/1998) are no longer compatible with reforms under the economic adjustment programme, whilst no other national policy has been designed to enhance employment prospects for this particular group. Meanwhile, the Equality Law 3304/2005 has been found to have had limited success increasing employment opportunities,[8] while additional obstacles in finding employment relate to low implementation of accessibility laws and standards (e.g.

8 See Conclusions of the Greek Ombudsman (2012).

buildings, transport).[9] Furthermore, evaluation studies of active labour policies implemented through the European Social Fund targeting disabled people (the latest ones encompass programmes up to the end of 2012) show that they have so far fallen short of targets in number, as well as in creating sustainable job placements (ANED 2013). And more recently, as part of a series of austerity measures, there has been some discussion in the media over the introduction of means-tested criteria for benefits and pensions, which has been highly contested by the disability movement in Greece, drawing attention to high unemployment for disabled people and almost exclusive reliance on individual resources for supporting needs and the extra living costs due to disability.[10]

Against this background, a number of civil society organisations and human rights organisations at both national and local level have filled in gaps and acted as a substitute for public sector services in the area of disability. As emphatically pointed out by most of the representatives of Greek civil society organisations which were interviewed within the context of the TransSOL project, the austerity policies encapsulated in the "Memoranda of Understanding" signed by the Greek government and the Troika (European Commission, European Central Bank, International Monetary Fund) have had a negative impact on disabled people and on the functioning of the disability sector as a whole. Welfare benefits for the disabled and state funding to solidarity organisations have been reduced, while at the same time the beneficiaries' needs have increased as a growing number of disabled people and their families cannot afford to pay for certain health-care related services. On the sidelines – as highlighted in the interviews – a range of volunteers and social solidarity groups have emerged in a spontaneous, informal way, creating self-help groups and loose networks providing social assistance and care to vulnerable groups with disability. Interestingly, many young unemployed people have decided to devote time to volunteering in those organisations and groups. This has had a positive impact on the young people's self-esteem, while for many others the need to help their fellow human beings in need takes precedent. The self-awareness of vulnerable citizens has thus been raised

9 Statistical evidence is not available but for a discussion of problems in implementation, see ANED (2012) Country Report on Accessibility.

10 See Press Release National Confederation of Disabled People 17-9-2014 http://www.esamea.gr/pressoffice/press-releases/1109-ta-atoma-me-anapiria-dentromokratoyntai-na-paroyn-thesi-edo-kai-tora-yp-ergasias-pronoia-ika.

with regard both to their rights and to their ability to help one another in hard times.

Responses in the Field of Migration and Asylum

Due to its geographical position, Greece has faced extensive migration flows since the 1990s. Throughout the 1990s, Greek migration policy was exclusively concerned with controlling the entry of migrants. Consequently, the first legislative framework regulating the conditions for the entry and stay of "aliens" in Greece was adopted in 1991. Law 1975/1991 defined an "alien" as a person not in possession of Greek citizenship or having no citizenship. It was directed at preventing illegal entry and facilitating the deportation of undocumented entrants. The law instituted a series of new mechanisms of expulsion and deportation (Baldwin-Edwards and Fakiolas 1998) and made it extremely difficult – indeed close to impossible – for Third Country Nationals (TCNs) to secure a legal status upon arrival or after they had entered the country. As a result of non-functioning and poorly implemented legislation, migration continued apace. Confronted with incidences of smuggling (Antonopoulos and Winterdyk 2006) and the increasing presence of undocumented migrants, i.e. visa over-stayers and illegal entrants, the government adopted in 1997, the first mass regularisation programme.

In the years that followed, Greek migration policy and the management of migration flows has mainly relied on mass regularisation programmes, a practice that has been followed in other southern European countries, such as Spain and Italy. Crucially, as Baldwin-Edwards (2009, 42) rightly observes, "the regularisation was not the result of popular movement or of planned policy, but represented an emergency measure or admission of policy failure". Such regularisation programmes, four in total, provided opportunities for groups of undocumented migrants residing in the country to obtain residence permits.[11] Between 1996 and 2007, when the last regularisation programme took place, approximately 424,800 regularised their status (Baldwin-Edwards and Kraler 2009 as cited in Brick 2011, 4). The recurrence of these programmes was also aimed at extending legal status

11 Subsequent regularisation programmes took place in 2001, 2005 and 2007 in Greece on the basis of Laws 2910/2001 (2.5.2001), 3386/2005 (23.8.2005), and 3536/2007 (23.2.2007) respectively.

to TCNs who had lived in Greece for a number of years but who had not been able to legalise their status due to various reasons (Triantafyllidou 2009). Family members (spouses and unmarried children) of TCN permit holders who resided in the country were also eligible for a residence permits.[12] As noted by Baldwin-Edwards (2009), " Being principally driven by an instrumental view of migration, regularization programs were geared towards providing immigrants with a temporary legal status, renewable as long as the conditions for its granting continued to exist, thus eventually perpetuating residence insecurity" (as cited in Anagnostou 2016, 24). They established rigid requirements that had to be fulfilled in order to renew a temporary residence permit. Migrants wishing to acquire or renew their legal status needed, in most cases, to provide evidence of employment or certificates of payment of social security contributions, conditions that are often hard to meet, due in part to the largely informal and seasonal character of migrant employment in Greece.[13] This is particularly the case with female migrant domestic workers whose work is mostly undeclared.

Although legislation has gradually granted more rights to legally residing TCNs, the lack of measures to prevent migrants from remaining or lapsing into illegality has been identified as one of the main obstacles to migrant integration in Greece (Triantafyllidou 2013, 3-4). The entire body of migration-related legislation adopted since the 1990s has recently been amended and codified in the "Migration and Social Integration Code" (hereinafter the Code). It came into force in March 2014 and now regulates the entry and stay of migrants (especially of TCNs). TCNs are defined as non-Greek citizens or citizens of any other EU Member State (within the meaning of Article 17(1) of the Treaty on the European Union).[14] The Code brings together and replaces existing legislative provisions defining the categories of residence permits for TCNs, the conditions for their issuance and renewal, as well as the rights and obligations of

12 The right to family reunification was introduced by means of Law 1975/1991 (4.12.1991).

13 In an attempt to address part of this problem, Art. 76 of Law 3996/2011 (5.8.2011) established an alternative and flexible type of social insurance for occasional employees and seasonal workers (with a labour ticket, *ergosimo*), among whom high levels of atypical and undeclared employment are common. Yet, only residence permit holders are eligible to apply for this social insurance scheme.

14 Art. 1(b) of Law 4251/2014 (1.4.2014).

legally residing TCNs. The Code provides for the following types of residence permits depending on the status: a) for employment/professional purposes;[15] b) temporary residence permits for seasonal and short-term professional activity; c) for exceptional reasons; d) for studying purposes, volunteer work, research and training; e) short-term residence permits for victims of human trafficking and alien smuggling; f) for reasons of family reunification and; g) long-term residence permits.

Earlier legislation, Law 3838/2010, as Anagnostou (2011, 22) stresses "marked a clear break from pre-existing provisions" by facilitating the naturalisation of first generation migrants, and providing for citizenship acquisition to second generation migrants.

As described by Anagnostou (ibid):

> Law 3838/2010 makes it possible for children who are born in Greece and who have at least one non-Greek parent residing legally in the country for five consecutive years, to acquire citizenship at birth (Art. 1). Children of immigrants, who have attended at least six grades of Greek school, can also acquire citizenship through a simple declaration of their parents within three years following the completion of the required six year schooling period (Art. 1A, parag. 2). In addition, immigrants who legally reside in Greece for at least seven consecutive years can apply for naturalisation (Article 5A, parag. 1d).... the new law also elaborated a variety of criteria considered important as proof for someone's willingness to become a Greek citizen. These comprise basic knowledge of Greek history and civilisation, including familiarity with the country's political institutions (which will be assessed by taking a test), participation in collective organisations and political formations with members who are Greeks, as well as involvement in economic activity, among others (Law 3838/2010, Art. 5A).

Besides facilitating nationality acquisition, Law 3838/2010 also extended to TCNs the right to vote and stand as candidates in local elections.

However, this major reform was subsequently suspended. In 2013, the Council of State (CoS), Greece's high court in administrative and civil law, declared the above two provisions facilitating nationality acquisition and extending political rights to TCNs unconstitutional (Decision 460/2013). It did so on the grounds that they undermined the national character of the state and diluted the composition of the legitimate elec-

15 This category also includes work permits for highly skilled TCNs, thereby incorporating Directive 2009/50/EC (25.5.2009) into the domestic legislation.

torate.[16] The Court ruled that the formal criteria to qualify for Greek citizenship provided by Art. 1 of Law 3838/201076 could not be taken as sufficient documentation that the applicant had a genuine bond with Greece (Anagnostou 2014). The final judgment of the CoS does not elaborate on legislation for naturalization, or the requirements for obtaining Greek citizenship. While the judgment is clearly in the direction of restricting eligibility criteria for nationality acquisition, it is not apparent whether this implies a return to the previous legal frame defined by the 2004 Greek Nationality Code (GNC), which was based on individualised and discretionary assessment of all naturalisation applications. Conversely, if policy remains within the legal frame of Law 3838/2010, but increases the required years of residence and adds more criteria to demonstrate a "substantive bond" with Greece, this would not necessarily be more restrictive from what the 2010 law had envisioned. At least one opinion, expressed by the Greek Ombudsman to the Ministry of Interior, is that CoS decision 460/2013 does not in principle exclude nationality acquisition on jus soli grounds.[17]

As for asylum seekers, pursuant to the adoption of Law 3907/2011, applications for international protection are submitted, registered and examined at first instance by the Asylum Service which is under the responsibility of the Ministry of Public Order and Citizen Protection (MPOCP).[18] Applications lodged before the establishment of the new Asylum Service in July 2013 are received and examined firstly by the police authorities in line with the procedures of Presidential Decree 113/2013.[19] Applicants have the right to appeal first instance decisions to the Appeals Board, which is also under the auspices of the MPOCP. Asylum applicants and members of their family who have registered with the Service receive an International Protection Applicant Card, valid for three months and renewable until the final decision on the asylum application has been issued.

16 See Greece / Council of State, Decision No. 460/2013. The decision confirmed the earlier decision of the 4th Chamber of the Council of State, Decision No. 350/2011.

17 See the letter of the Greek Ombudsman to the Ministry of Interior on the subject "Pending issues in nationality acquisition on the basis of Article 1A of the Greek Nationality Code". Greek Ombudsman (2013), document no. 162184/30261/2013, July 25, 2013.

18 The Asylum Service is composed of the Central Asylum Service, based in Athens, and the Asylum Service Regional Offices. See Law 3907/2011 (26.1.2011).

19 Greece/ Presidential Decree 113/2013 (14.6.2013).

This card entitles the holder to free healthcare access, employment, and access to free public education for school-age dependents.[20] Greek law provides for the granting of two types of status to people seeking international protection: refugee status and subsidiary protection, in line with the definitions provided by the relevant Council Directive.[21] The recognition of refugee status provides permission to stay in the Greek territory, access to social services, such as education and healthcare, free movement within the country and access to the labour market.

Integration of newcomers, migrants and refugees, represents a significant challenge for the country, but also an opportunity. As emphasized by OECD (2016), "the quicker integration takes, the lower the risks that migrants, or their children, will become alienated from Greece's culture and values". The issue has triggered a number of new legislative measures with an initial emphasis on policing and subsequently on developing reception and integration systems. The introduction of the Dublin procedure (the Dublin II Regulation determines which state is responsible for considering an application for asylum or subsidiary protection on the basis of two criteria: the first Schengen country of entry and family reunification; as a result, a large share of the migratory pressure affects member states with external borders like Greece, Italy, Malta and Cyprus) has resulted in additional asylum applications to Greece, adding to migration pressure on its external borders. In February 2016, the European Commission on the basis of the Schengen Evaluation Report on Greece put forward several recommendations to address deficiencies in the asylum system with regard to the registration procedure, border-check procedures, human resources and training, surveillance of sea borders, and infrastructure and equipment.[22] The UN Human Rights Council (UNHCR) described the situation for migrants and asylum seekers in Greece as a "humanitarian crisis" (see also EMN 2011).

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20 Those who have applied for international protection before the enactment of the new law are required to hold 'the pink card' issued by the Greek Police.

21 Pursuant to the provisions of Presidential Decree 113/2013 (14.6.2013) read in conjunction with Art. 44 of Law 3386/2005 (23.8.2005) the leave to remain on humanitarian grounds is no longer part of the legal and administrative framework of international protection.

22 Press Release IP/16/211, European Commission, Commission Adopts Schengen Evaluation Report on Greece and Proposes Recommendations to Address Deficiencies in External Border Management (Feb. 16, 2016), http://europa.eu/rapid/press-release_IP-16-211_en.htm.

As noted by the US Department of State (2010):

> The UNHCR reported that in October the government had a backlog of 5,929 unprocessed initial claims for asylum and approximately 46,500 appeals. In practice the government provided only limited protection against the expulsion or return of refugees to countries where their lives or freedom would be threatened on account of their race, religion, nationality, membership in a particular social group, or political opinion. Many NGOs and international organizations reported that authorities summarily deported illegal immigrants, including asylum seekers, across Greek-Turkish land and maritime borders.

The collapse of the Greek asylum system due to massive flows of refugees and migrants arriving by sea from Europe (219,000 in 2014 and 137,000 as of June 2015) and the consequences of this collapse are evident from the judgements of the European Court of Human Rights (ECHR) in *N.S* and *M.S.S. v. Belgium and Greece* (the Court judged on 21 January 2011). The ruling of the ECHR states that both Greece and Belgium violated the European Convention when applying the Dublin Regulation, which is also indicative of the limits of the collective employment agreements (CEAS). In particular:

> This case examined the compatibility of the Dublin II Regulation with the European Convention on Human Rights regarding transfers to Greece under the Dublin II Regulation. The Court found that there was a violation of Article 3 ECHR by the Greek Government because of the applicant's conditions of detention, violation of Article 3 ECHR by Greece concerning the applicant's living conditions in Greece, violation of Article 13 taken in conjunction with Article 3 ECHR against Greece because of the deficiencies in the asylum procedure followed in the applicant's case and the risk of his expulsion to Afghanistan without any serious examination of the merits of his asylum application and without any access to an effective remedy.

Further, "in relation to Belgium, the court found that there was a violation of Article 3 by sending the applicant back to Greece and exposing him to risks linked to the deficiencies in the asylum procedures in that State, and a violation of Article 3 for sending him to Greece and exposing him to detention and living conditions there that were in breach of that ECHR article. The Court also found a violation of article 13 ECHR taken in conjunction with Article 3 ECHR against Belgium". [23]

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23 This part draws on information available at the European Database of Asylum Law concerning *ECtHR – M.S.S. v Belgium and Greece [GC], Application No. 30696/09*. Refer to: http://www.asylumlawdatabase.eu/en/content/ecthr-mss-v-belgium-and-greece-gc-application-no-3069609.

While migration has acquired an important place in Greek society and economy, the integration measures that have been put forward are generally fragmented and ad hoc. Referring to the efficiency of the Greek state in setting forward a more sustainable response to the current refugee crisis, all the representatives of civil society organisations and groups who were interviewed in Greece agreed that its actions are not sufficient in number or scope, or efficient and adequate to cope well with the increasing demands. More broadly, the lack of a coherent approach to migrant integration quite naturally means that the integration of migrants is not monitored at the central and local levels. According to Karantinos (2016, 15), policy incoherence is partly "linked to the limited influence, or even absence, of a technocratic approach and culture in Greek public administration and among political parties and elites. It is also linked to an endemic and generalized lack of inter-ministerial coordination in sectors and issue areas where multiple institutional actors have to be involved, as required in the field of immigration and social integration. While vulnerable groups are usually referred to in integration policy documents, their integration experiences are not evaluated".

Moreover, Anastasopoulou and Iliadis (2015, 5) emphatically notes that: "Integration actions are not monitored at central level and integration experiences are not evaluated. No specific requirement or indicators for monitoring social integration have been developed nationally, while existing data is not formally used to measure and report on inclusion. To the extent that any monitoring takes place, it is project-based and implemented by independent entities, mostly with EU funding". What is striking is that policy and institutional incoherence has worked at the expense of social solidarity. When asked to evaluate the ways in which the policy-makers set policies, the interviewees criticised the way that policy-makers respond to the refugee crisis, pointing out that the policies created do not promote solidarity, but, on the contrary, burden it. Last but not least, Greece's failed integration policies – as stressed by the interviewees – have led to an increase in the popularity of extreme right-wing and fascist political parties, creating burdens on the notion of social solidarity and cohesion, while at the same time making the actions to protect democracy and human rights all the more essential.

Responses in the Field of Unemployment

From 2010 to 2011, as part of its first new loan agreement with the Troika (known as Memorandum 1), Greece instituted several sweeping reforms in the field of employment, promoting flexibilisation and deregulation of the labour market at the expense – as trade unions claim – of workers' rights and social protection. In particular, according to Karantinos (2013, 21):

> Law 3863/2010 introduced several fundamental changes in labour relations, including: a/ the notice period for terminating white collar workers' open-ended employment agreements is significantly shortened. This amounts to an indirect reduction of white collar workers' severance pay by 50%, b/ the thresholds for collective dismissals are lowered considerably. Dismissals are now considered to be collective where more than six employees lose their jobs with companies which have between 20 and 150 employees, compared with the previous threshold of four employees for companies with 20–200 employees. The threshold is set at 5% of staff or more than 30 employees for companies with more than 150 employees, compared with the previous level of 2%–3% of staff and 30 employees for companies with more than 200 employees.

Changes also affected the way labour relations were structured. With Law 3863/2010, as Karantinos (ibid) observes, "the notice period for terminating white collar workers' open-ended employment agreements is significantly shortened. This amounts to an indirect reduction of white collar workers' severance pay by 50%".

In addition to this:

> The thresholds for collective dismissals are lowered considerably. Dismissals are now considered to be collective where more than six employees lose their jobs with companies which have between 20 and 150 employees, compared with the previous threshold of four employees for companies with 20–200 employees. The threshold is set at 5% of staff or more than 30 employees for companies with more than 150 employees, compared with the previous level of 2%–3% of staff and 30 employees for companies with more than 200 employees.

Moreover, Law 3899/2010 significantly changed the collective labour law, by introducing the "special company-related CEA", which may provide for remuneration and other working terms on a less favourable basis than the remuneration and working terms stipulated by the respective sectoral CEA. In addition, new legislative changes (L. 3833/2010 and L. 3845/2010) introduced inter alia reductions in the salaries of all persons employed in the wider public sector, a 30 percent reduction in the maximum limit of overtime afternoon hours for employees and salaried persons

in the public sector, public entities and local authorities, and the introduction of a ratio of one hire to five departures for permanent employees and for those with indefinite-term private law employment contracts (ibid).

According to Matsaganis (2013, 20-21), concerning "contributory unemployment insurance (ordinary unemployment benefit), eligibility conditions were tightened up as a result of the ceiling, introduced in 2011, on the total number of days a worker can claim unemployment benefit over a period of four years: that number was set to be 450 days from 1 January 2013 and 400 days from 1 January 2014. Furthermore, as a result of sweeping changes concerning the minimum wage, the benefit level paid under unemployment insurance was cut in February 2012, from €454 to €360 per month." Concerning now "non-contributory unemployment assistance (long-term unemployment benefit), the benefit rate remained at 200 € per month (unchanged in nominal terms since 2003), while the maximum duration remained 12 months. On the other hand, eligibility conditions were extended. In January 2012 the annual income threshold below which the benefit may be granted was raised from 5,000 € to 12,000 €. " It should be mentioned that, apart from the long-term benefit mentioned above, no other type of income-based support for the long-term unemployed exists (with the exception of “ad hoc” financial assistance provided on a means tested basis at municipal level), while a general Guaranteed Minimum Income Scheme is still lacking. Concurrently, as Ziomas et al (2015, 9-10) stress, "the long-term unemployment benefit is not accompanied by the provision of any other support services, except counselling services for job-seeking... As for social services offered to the long-term unemployed, no such specific services exist – other than the provision of free access to the public health care system for the registered long-term unemployed who fulfil certain previous work record criteria. Free access for the long-term unemployed aged 29–55 lasts for only two years, while for those aged over 55 free access lasts until retirement age... In short, accompanying actions to facilitate access to social services for the long-term unemployed are not really available in Greece. In general, it is hard to find instances where the provision of financial benefits is combined with relevant enabling services; this is a long-standing weakness of the Greek social protection system."

On 14 February 2012 the Greek Government adopted the so-called Memorandum 2 (L. 4046/12), which involved a new loan agreement signed with the Troika. The new Memorandum 2 introduced a new set of

sweeping changes especially with regard to minimum wages. According to Karantinos (2013, 23-24):

> With respect to minimum wages, a reduction in salary is now permitted for all employees receiving the minimum wages agreed in the National General Collective Agreement (EGSSE), signed by the social partners on 15 July 2010 and intended to be valid for three years. The salary cut for employees generally is 22 percent, 32 percent for those below the age of 25. This cut can be imposed by employers without employee consent. The base monthly salary agreed by the National General Collective Agreement for an employee who is single and has no children or work experience was 751.39 € (gross). Following the 22 percent cut, the new minimum monthly salary for this category of worker will be 586.08 €. After deduction of social insurance contributions and taxes, the net monthly salary will be 476.35 €, and for those under 25, 426.64 €." Further, on the basis of the new law, "the minimum wage may be increased only through the seniority allowance granted for every 3 years of work up to three 3-year periods (i.e. 9 years of previous experience in total).

Finally, based on a new law (L. 4093/12) passed in November 2012 the minimum wage will be fixed at legislative level by the government and it will not be set through collective bargaining between the national social partners. Kilpatrick and De Witte (2014, 21) write that:

> These measures were aimed at aligning Greek minimum wage levels with its peers (Portugal, Central and South-East Europe). They were also expected to help address high youth unemployment, the employment of individuals on the margins of the labour market and to encourage a shift from the informal to the formal labour sector. These provisions were of immediate effect and abolished wage provisions of the National General Collective Agreement in force since 15 July 2011, in the name of public interest and state of emergency. In addition, Law 4093/2012 permanently substituted statutory law for collective bargaining in minimum-wage setting.

In July 2015, the Greek government signed Memorandum 3 with its international and European creditors. The third Memorandum became national law through Law 4336/2015 ("Ratification of the Financial Assistance Draft Contract by the ESM and provisions for the implementation of the Financing Agreement"), which outlines certain obligations on the part of Greece in order to achieve fiscal discipline. As part of these obligations the minimum state pension was reduced from 486 € to 392.7 € per month (Law 4334/2015) and the social protection system was re-organised so as to ensure annual savings of 0.5 percent of GDP.

During the crisis years, the policy changes implemented included many inefficiencies. The inadequacy of unemployment protection in Greece is indicative of the fact that more than the welfare state or the civil society,

the family still remains the prime provider of social support and inclusion in Greece – a characteristic which is typical of a "familistic" welfare regime (González 2002; Flaquer 2001). As Pichler and Wallace contend, family help can be a compensation for the absence of welfare provisions, as is the case in some parts of Southern and Eastern Europe (Pichler and Wallace 2007).

Crucially, the sweeping changes in the labour market have had a tremendous effect on strengthening solidarity among the affected groups. As stressed in the interviews conducted with representatives of civil society groups and organisations working with unemployed and/or supporting unemployed beneficiaries, the crisis has had a positive effect on workers' attitudes towards self-organising. The severity of the crisis and the hostility of the state has made the workers and the unemployed realise that they should self-organise in order to achieve better labour and living conditions. As one interviewee aptly stated: "*With the crisis it becomes clearer to the people that only through their self-organisation can they achieve things since legislation has become all the more flexible and against workers*" (Interview, September 2016). Almost all of the interviewees stressed the effect the crisis has had on raising workers' awareness and consciousness. Even among the trade unions that lost members, this cognitive effect has contributed to enhancing solidarity among the employed and unemployed since the economic strain, as worsening working and living conditions are common to both groups. And it has also led to the expression of their discontent and anger against the ruling elites (Greek and EU) through demonstrative and confrontational actions such as strikes, occupations of public buildings and squares (e.g. the Greek Indignados Movement), public protests and rallies. As recent evidence suggests, such collective action events show higher frequencies in Greece and in the two other crisis-hit countries of the South (Italy and Spain) when compared to countries of the European North (LIVEWHAT Integrated Report 2016, 78-80).

Conclusion

Greece's multiple crises and the extent to which the principle of solidarity has been taken into consideration in policy-making when addressing the needs of vulnerable groups has received little systematic attention in recent years. After seven years of recession, Greece has adopted painful policy choices with regards to wage and pension cuts, labour relations, and

social policies. Failure to protect the weaker, vulnerable population groups most severely hit by the country's multiple crises suggests that Greek political elites and policy-makers have exhibited neither solidarity nor effectiveness in crucial crisis management issues. At the same time, the weakening of solidarity policies for the social protection of people with disabilities, the unemployed, the migrants, the newly arrived refugees and asylum seekers has contributed to the emergence of new divides (extreme right-wing attitudes and politics) and the deepening of adverse social situations (poverty risks and social exclusion). The situation has been aggravated by weak welfare protection and inadequate social safety nets for low-income citizens and vulnerable social groups pre-existing the crisis. The weakening of institutional solidarity has gone hand in hand with increased retrenchment, severity of sanctions and welfare conditionality.

The question of whether solidarity has remained a guiding feature of decision-making among the Greek political elites has arisen many times in public discourse (as very often clientelism and patronage have mediated the allocation of resources and subsidies). Although solidarity and the social welfare state are clearly defined in the Constitution as a duty of the Greek state towards its citizens, there is mounting evidence that the recent policy options are progressively eroding their normative foundation and practical exercise. The austerity measures introduced as part of the state's fiscal adjustment effort have triggered heated debate in European and international organisations. Domestic human rights bodies and organisations have similarly expressed strong criticism of the austerity policies conducted. The Greek National Commission for Human Rights (NCHR), an advisory body to the government in matters of human rights protection, has persistently sought to place fundamental rights, including social and welfare rights, at the centre of the state's adjustment policies, pointing to the state's obligations in this regard, deriving from the Constitution and various international and European sources of fundamental rights protection.[24] In a recommendation issued on 8 December 2011, entitled "The imperative need to reverse the sharp decline in civil liberties and social rights", the NCHR condemned "ongoing drastic reductions in even the lower salaries and pensions" and the "drastic reduction or withdrawal of vital social benefits", stating that "the rapid deterioration of living standards, the

24 On this, see National Commission for Human Rights Decision on the need for continuous respect for fundamental rights in the implementation of the strategy for the exit of the economy and society from the crisis of external debt, 10 June 2010.

concurrent deconstruction of the welfare state and the adoption of measures that do not conform to social justice undermine social cohesion and democracy" in the country" (National Commission for Human Rights 2011).

Substantive pressure to adopt a human rights-based approach for the design and implementation of the fiscal consolidation and reform policies in Greece also came from the UN independent expert on foreign debt and human rights. In a statement following his fact-finding visit in Greece from 22 to 26 April 2013, the independent expert deplored the massive cuts of pensions and other welfare benefits, alongside significant wage cuts, the absence of comprehensive social assistance and housing schemes, the limited funding devoted to extending unemployment benefits and the increasing inaccessibility of the public health care system on account of increased fees and co-payments, the closure of hospitals and health centres and the loss of public health insurance due to prolonged unemployment. He advised on reducing unemployment, alleviating poverty and closing the gaps in the welfare system's safety net to be henceforth included as measurable targets in the Greek adjustment programme, and to be closely monitored.

It should be noted that, as Psychogiopoulou (2014, 17) writes:

> Increasing pressure from domestic fundamental rights bodies and international organisations for a review of the state's austerity policies has not yet translated in policy change. So far there have been no comprehensive attempts to assess the effects of the measures adopted on social welfare and take remedial action with a view to restoring the enjoyment of welfare rights. However, what the various challenges – both successful and unsuccessful – have done is to raise awareness about the fact that the state's formulation and implementation of social policies is subject to scrutiny and that there are limits to the state's wide margin of appreciation in this regard.

Hence, in times of crises, the issue of solidarityfrom a public policy perspective raises many policy questions, such as, which specific considerations and interventions could and should ensure that the various socially painful measures entail forms of protection for the more vulnerable and weaker social groups. Also, a central question pertaining to Greece's fragile situation is whether weak solidarity measures in a context of austerity have actually facilitated growth, the latter being the primary object of the bailout agreements signed between Greece and its international lenders. Apparently, these questions are hard to answer because they are linked to a wide variety of social, economic and political factors, but also to ideo-

logical viewpoints and political rhetoric. Moreover, there is the complicated matter of which new equilibrium would express solidarity in a society where employment and social conditions continuously collapse.

In principle, solidarity from a public policy perspective in contexts driven by crises is associated with disproportional rather than proportional interventions in the sense that not all social groups affected by crises should be of high concern for policy-making but foremost, vulnerable groups, who are in a worse position than before relative to other groups. This may also imply a heavy burden on other weak groups that must bear a disproportionate cost (Hegtvedt 1992). Hence, at all times, the critical issues are about form and intensity -- about 'how much' (what type of considerations of a fair burden-sharing are in place) and 'how' (what kind of assistance and support should be provided) real solidarity could be achieved (Matsaganis 2014). Crucially, an understanding of solidarity in times of crisis cannot ignore what preceded it. It should take into account a time dimension and an acknowledgement of the pathologies and policy legacies of the past. If solidarity before the crisis was deformed due to clientelism and strong patronage arrangements between political parties and organised interests of social welfare recipients causing severe social or economic imbalances at the expense of the weaker groups of the population – as in the Greek case – the predicament of solidarity cannot be easily reversed.

As discussed in Part I, while solidarity as an issue of Greek policy-making, with many parameters and complex aspects that increasingly put its feasibility to the test, a solidarity of citizens associated with organisations and informal groups conscious of the need to protect human rights and social assistance has taken shape. While social solidarity groups cannot and should not replace the more institutionalised forms of social protection, the fact that vulnerable groups can resort to such civil society initiatives while the government curtails the welfare state, shows that solidarity in Greece is an untapped potential for further future development.

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

Veronica Federico and Nicola Maggini[1]

Introduction

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

els, protests against the general cuts,[5] as well as protests against single measures.[6]

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

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

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

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

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

Disability

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

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

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

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

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

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

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

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

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

The first laws addressing the disabled date back to 1920s[12], but disability became a sensitive topic for political debate and public policies only several decades later, at the end of the 1960s and in the early 1970s. For the first time in 1968, law n. 482 provided for the "general rules on compulsory employment of disabled persons in the public administration and private enterprises". The law entrenched the right of people with disabilities to work, creating the premises and the conditions for the integration of the disabled in the labour market and assuring the protection of their jobs. The law established a system of compulsory employment of workers with disabilities in both public sector and private enterprises. A few years later, law n. 118 of 1971 granted all children with disabilities the right to be educated in common classes and, subsequently, law n. 517 of 1997 abolished special schools, guaranteeing the right to study in the mainstream education system with a supporting teacher.

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

Framework Law n. 104 of 1992

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

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

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

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

The Right to Work

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

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

14 CC decision n. 167 of 1999.

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

The employment of persons with a disability is currently governed by law n. 68 of 1999 "Regulations on employment rights of disabled people"[15]. It represents a profound cultural innovation as regards the integration of the disabled in the workplace. The law promotes and supports a "tailored" placement of people with disabilities, and requires public employers and private agencies and enterprises with more than 15 employees to hire disabled workers in proportion to the total number of people employed through a compulsory quota system. Besides promoting access to work, the law prescribes applying to disabled workers the same standards of legislative and collectively bargained treatment of "ordinary" workers, which enforces the principle of substantial equality. What is interesting about this law is that it is not framed in an exclusively charitable approach, but it aims at providing disabled workers with a job that fits their actual abilities and potential and, at the same time, is useful for the business or the public office. Once again, the law does not explicitly mention the notion of solidarityneither does it with the notions of equality. Here the key concept is "integration": it is through "integration" into the workforce that the perimeter of solidarity can encompass people with disabilities.

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

15 For an in depth analysis of the legislation: Cinelli and Sandulli 2000.
16 For an in depth discussion, inter alia, see: Galera and Borzaga 2009.

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

Public Assistance and Anti-Discrimination Measures

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

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

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

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

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

Laws' Enforcement and the Crisis

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

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

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

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

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

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

21 Interview realised on 5th September 2016.

22 Interview realised on 5th September 2016.

23 Interview realised on the 5th October 2016.

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

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

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

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

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

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

25 Interview realised on the 3rd October 2016.

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

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

Unemployment

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

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

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

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

'flexsicurity' model has been resumed only recently under the pressure of the crisis.

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

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

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

pany to reduce the working time of its workers in order to avoid dismissals, with the consent of local trade unions[28]).

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

The Jobs Act

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

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

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

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

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

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

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

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

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

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

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

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

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

The Regional Level

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

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

Laws' Enforcement and the Crisis

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

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

29 Interviews realised on 12th October 2016 and 18th October 2016.
30 Interview realised on 19th October 2016.
31 Interviews realised on 1st September 2016, 23rd September 2016, 18th October 2016, 21st October 2016.
32 Interview realised on 19th October 2016.
33 Interview realised on the 12th October 2016.

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

Immigration/Asylum

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

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

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

34 Interview realised on 1st Sept 2016.

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

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

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

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

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

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

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

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

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

Immigration

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

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

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

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

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

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

Asylum

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

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

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

Laws' Enforcement and the Crisis

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

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

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

39 For an insight: http://www.repubblica.it/politica/2017/05/29/news/migranti_l_accusa_di_strasburgo_ricollocato_un_solo_minore_dei_cinquemila_approdati_in_italia_-166686725/; https://www.theguardian.com/world/2016/mar/04/eu-refugee-relocation-scheme-inadequate-will-continue-to-fail;.

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

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

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

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

Solidarity in Action?

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

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40 Interview realised on 16th September 2016.

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

42 Interview realised on 5th July 2016.

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

> "*The risk is to instigate a war among the poor for scarce resources: unemployed against migrants, for example*"[43].

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

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43 Interview realised on 16th September 2016.

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

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

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

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

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

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Disability, Unemployment, Immigration: Does Solidarity Matter in Times of Crisis? The Polish Case[1]

Janina Petelczyc

Introduction

"Solidarityin its legal forms in three areas – labour, disabilities and migration – has been challenged by socio-economic development. On the one hand, the economic crisis has not officially affected Poland; the country did not have a huge influx of immigrants during the "European refugee crisis" either. But on the other hand, growing numbers of vulnerable citizens on the labour market, difficult situations regarding disabled people as well as new waves of migrants, especially from Ukraine, in addition to the discussion on accepting refugees have put the principle of solidarity to the test. This begs the question: is solidarity a real and important principle in the country of "Solidarity"?

The Polish economy has been relatively resistant to the global economic crisis. With a GDP increase of 19% during the period of 2008-2014, Poland's GDP growth level was ranked first in the EU (ETUI 2015). In 2009, the ruling party Platforma Obywatelska (PO, Civic Platform) introduced the public discourse regarding Poland as a "green island" of economic growth in the midst of falling GDP elsewhere in the EU. However, the opposition and some economics experts have contested this rhetoric (Modrzejewski 2011; Reichardt 2011; Rae 2013; Mrozowicki 2014).

Poland developed its response model to the European economic crisis by using various economic and social policy instruments and taking advantage of its EU membership (Duszczyk 2014). However, despite Polish GDP growing during the crisis, the country is still in the process of catch-

1 We would like to thank Prof. Maciej Duszczyk and Dr Łukasz Łotocki for sharing detailed information on migration issues in Poland with us as well as Paweł Galec, labour lawyer in the All-Poland Alliance of Trade Unions, for the detailed information on labour law in Poland during the crisis and, last but not least, Paulina Roicka for sharing knowledge with us on jurisprudence in migrations, disabilities and unemployment.

ing up with the economies of western EU countries. Poland's GDP per capita in purchasing power parity is still the fifth lowest in the European Union, and Poland has yet to reach the economic standards of the western EU member states (Reichardt 2011). Moreover, the country has been undergoing various economic, social and political problems (such as massive precarious employment among youth, migration outflows and political scandals due to secret recordings in 2014) which could have contributed to the victory of the right-wing party Prawo i Sprawiedliwość (PiS, Law and Justice) with an overwhelming majority in the 2015 parliamentary election.

Core indicators of Poland's economic situation are presented in the tables below. The continuous GDP growth slowed in 2008/2009 and 2012/2013 (during the first and second waves of the crisis). The slowdown, however, was transitory and milder than in the other EU member states.

Table 1: Real GDP growth rate – volume in Poland

	2008	2009	2010	2011	2012	2013	2014	2015
Poland	4.2	2.8	3.6	5.0	1.6	1.4	3.3	3.9
EU 28	0.4	-4.4	2.1	1.7	-0.5	0.2	1.6	2.2

Source: Eurostat (2015 b)

During the global economic crisis, Poland managed to avoid growing inequality. From 2008 to 2015, the Gini coefficient, which measures income inequality, declined from 32% to 30.6%. Therefore, due to the growing inequality in Europe, Poland now has lower income inequality than the average for the EU 28.

Table 2: GINI index

	2008	2009	2010	2011	2012	2013	2014	2015
EU 28	-	-	30.5%	30.8%	30.5%`	30.5%	30.9%	31%
Poland	32%	31.4%	31.1%	31.1%	30.9%	30.7%	30.8%	30.6%

Source: Eurostat (2015 b)

Moreover, in contrast to the other EU28 member states, the rate of people at risk of poverty and social exclusion in Poland has decreased. As presented in Table 3, the percentage of people at risk of social exclusion sank

from 30.5% in 2008 to 23.4 in 2015. However, it is worth noting that the rate of people in extreme poverty grew (see Table 4) and that poverty among the working population was ca. 2% higher than the EU average and has been slightly increasing since 2012 (see table 5).

Table 3: People at risk of poverty or social exclusion; percentage of total population.

	2008	2009	2010	2011	2012	2013	2014	2015
EU 28	-	-	23.7	24.3	24.7	24.5	24.4	23.7
Poland	30.5	27.8	27.8	27.2	26.7	25.8	24.7	23.4

Source: Eurostat (2015 c)

Table 4: People living in extreme poverty (the subsistence minimum).

	2008	2009	2010	2011	2012
Poland	5.6%	5.7%	5.7%	6.7%	6.7%

Source: Central Statistics Office (GUS)

Table 5: Working population at risk of poverty in EU28 and Poland; percentage of total population.

	2008	2009	2010	2011	2012	2013	2014	2015
EU 28	-	-	-	7.7	8.2	8.4	8.3	8.7
Poland	11.6	11.0	11.4	11.1	10.4	10.7	10.6	11.2

Source: Eurostat (2015 b)

The "extreme poverty" and "Working population at risk of poverty" rates show that even with positive economic and social indicators, the most vulnerable groups have borne the brunt of the crisis. This can be seen by analysing the target groups of this study: the unemployed, migrants and disabled people.

The unemployment rate in Poland increased gradually from 7.1% in 2008 to 10.3% in 2013 and started to decrease in 2014, reaching 9% (Eurostat). The worst ranking was the condition of unemployed people under

25 years old, for whom unemployment was 17.2% in 2009 but gradually increased to 27.3% in 2013. In 2014, it decreased to 23.9% but was still above the EU28 average (with Portugal, Cyprus, Italy, Croatia, Spain and Greece being the only countries with youth unemployment rates exceeding those in Poland) (Eurostat).

When writing about the Polish labour market in times of crisis, it is necessary to draw attention to the increasing number of temporary and civil law contracts, which do not guarantee full protection of workers. The precise numbers are unknown, but an estimated one out of six Polish workers is employed on a civil law contract, equalling approximately 1.6 million employees (Kowalski 2014).

The incentives for employers to hire people with disabilities in Poland are boosted by the quotas, penalty system and other legislative solutions and measures aimed at increasing the self-employment opportunities among people with disabilities. However, when looking at the statistics, one can see that these measures are ineffectual. At the EU level, about 47% of persons with disabilities are employed, in comparison to 72% of persons without a disability. The activity gap amounts to 23.5% in all EU countries, whereas it is even higher in Poland and reaches 35.6%. This problem intersects with the gender gap because the activity rate of disabled women is even lower than that of disabled men (Grammenos 2013). The percentage of persons with disabilities at risk of poverty or social exclusion is at the highest level ever [in Poland], at 35.2%". (compared to the average of 30.5% in the EU). One reason is the low employment rate among disabled persons. This is the result of both the general labour market conditions and the few employment opportunities for disabled persons in Poland. Thus, people with disabilities may be partially excluded from the benefits enjoyed by the rest of the population from the GDP and salary increases.

Emigration is a more dominant phenomenon in Poland than migration. An estimated 1.8 million Poles live in the other EU member states. During the economic crisis, the number of Poles in other member states was relatively stable until 2011, when it started to rise (see: table 6).

Table 6. Number of emigrants from Poland in the other EU member states, in thousands

	2008	2009	2010	2011	2012	2013
Number of migrants to the other EU member states	1820	1690	1607	1670	1720	1789

Source: Central Statistics Office (GUS, 2014)

Despite the growing level of returning migrants, the migration balance is still negative. The issue of migration has been evident in public discourse for the last several years. The emigration of youth to other EU countries has been, first and foremost, regarded as part of a "demographic crisis" in Poland. The very low fertility rate in Poland (1.32 in 2014 compared to 1.58 for the EU28, according to Eurostat) accompanied by the high level of emigration has been perceived as catalysing the shrinking and ageing of the Polish population, economic problems, difficulties in providing care services and instability of the pension system (CEED 2015). Secondly, the opposition (especially the right-wing party Law and Justice, which was in parliamentary opposition during 2007-2015) has used the high number of emigrating young Poles, in particular to the UK, to prove the ruling party's failure to promote growth and social stability.

Immigration to Poland is very low compared to other EU countries. According to the Office for Foreigners, 121,219 foreigners received a residency permit in Poland in 2013, which is 0.3% of the Polish population. Thus, immigrants in Poland are a marginal phenomenon (Konieczna-Sałamatin 2015). Among the immigrants, the largest groups are of Ukrainian, Vietnamese, Russian and Belarusian origin. However, the information on the number of foreigners holding residence permits is an incomplete picture of immigration to Poland. Many foreigners from outside the EU come to work in Poland for a relatively short time.

Compared to other EU countries, the number of refugees seeking asylum in Poland is low, and the share of accepted requests is below 3% (6621 requests in 2014, of which 262 have been accepted) (see: Table 7).

Table 7. Submitted and accepted requests of refugees seeking asylum in Poland, 2007-2013

	Request submitted	Request accepted
2007	10048	180
2009	10587	133
2011	6887	153
2013	15253	213

Source: Office for Foreigners (2015).

Unemployment

Poland's primary means of addressing labour are the Constitution of the Republic of Poland and the Labour Code (Act of 26 June 1974)[2]. As Article 24 of the Constitution states: *"Work shall be protected by the Republic of Poland. The State shall exercise supervision over the conditions of work."* However, the Polish labour market became increasingly divided into regular employed and the unemployed as well as vulnerable workers, who are not subject to the labour legislation. This is clear when looking at the impact of the anti-crisis solutions on employees. Although Poland was only slightly affected by the economic crisis, its impact on the labour market was significant. As stated before, unemployment—especially youth unemployment—rose, and growing numbers of people were forced to work on "civil contracts", deprived of labour and social security rights, including unemployment benefits if they lose their job. The government has introduced two so-called "anti-crisis" packages protecting employers rather than employees, which has resulted in the outbreak of conflict in social dialogue because employees, precarious workers and the unemployed were paying the price for the crisis (Theiss et al. 2017). The austerity measures included cut funds for public employment services, including unemployment benefits, as well as salary freezes for some groups of public-sec-

2 The future of this act is unknown, since the "codification commission" consisting of scientists, politicians and social partners is working on new legislation. The new code should be presented in March 2018. It could probably change Polish labour market legislation completely (e.g., by abolishing all contracts other than working contractsand proposing changes to leave and vacation as well as new rules on social dialogue).

tor workers. The government has also introduced a more flexible system of public unemployment services. Additionally, the state introduced some non-austerity measures, like the possibility of combining income from work with social assistance benefits (for those who signed so-called social contracts) and regular increases in the minimum salary.

The liberalisation of labour legislation has not carved out a new direction. In post-communist countries, the labour market is marked by a weak sense of class interests, so employees do not organise themselves, especially in the private sector. Hence, without strong representation, their voices have no meaning during negotiations (Ost 2000). Moreover, according to some scholars, the EU has exported a more "market-radical" variant of neoliberalism to its new member states (Bohle 2006). Therefore, after the transformation of 1989's so-called liberal "shock therapy", consensus dominated Polish public policy. When making international comparisons, the Polish model of social policy is often classified as minimalistic, liberal or hybrid, with certain privileged groups in the labour market (Szelewa 2014; Cerami 2008). Thus, the Eastern European model could be called "flexi-insecurity" (Meardi 2012).

The representatives of stakeholders and grassroots organisations interviewed for the project[3] also emphasised these aspects. They most often stated that the economic crisis did not affect Poland directly, and they did not refer to the legislation on this matter. Fights with the unemployed for a fairer labour market were often perceived as a continuation of a long liberal Polish transition after 1989. However, the results of the global economic crisis and the Polish slowdown are notably headed in both positive and negative directions regarding work. Firstly, the level of solidarity has grown. Organisations are open to new groups; trade unions fight for non-workers' rights, and other organisations focus on the most vulnerable groups of unemployed (like women and the poor) increasingly often:

> *"We answer to all the changes connected to flexibilisation and precarisation; for us, an employee is each person who sells their work".*[4]

3 Based on the TransSol research project's tasks, we carried out 30 in-depth interviews with representatives/participants of transnational solidarity organisations (TSOs) in Poland, from selected community settings from each of TransSol's target groups (disabled, unemployed and migrants/refugees).

4 Interview conducted on 18th October 2016.

They also have more members than before. Organisations reported increases in their sense of solidarity with other groups in the country and abroad. However, this points to the coexistence of economics and migration as well as the fact that the extreme right has used the crisis to decrease solidarity at the ethnic borders:

> "*From my perspective, those crises are linked. The extreme right redirects crises into xenophobia. All that the economic crisis has changed positively regarding the economy and solidarity is now being lost. Solidarity is decreasing and limited only to ethnic boundaries. From our perspective it is a disaster because it literally replays the 30s*"[5].

Finally, the lack of dialogue is a significant problem from the perspectives of Polish stakeholders and other grassroots organisations. They focused on the need to make a real influence with their policies. Also, they emphasised how they are not treated as real partners, and although their voice is heard, their ideas are not taken into account.

Legislation Changes

The main act regulating matters related to unemployment is the Law on Employment Promotion and Labour Market Institutions of 20 April 2004[6]. In Article 1, the act defines the tasks of the State in the fields of employment promotion, unemployment impact relief and unemployment prevention. Unemployment policy underwent several changes in Poland. In 2009, under the Act of 19 December 2008 amending the Act on Employment Promotion, the duration of unemployment benefits was shortened from 18 months to 12 for those living in the areas with the highest unemployment rates (Kłos 2008). Moreover, the generosity of the system was further shrunk by reductions in public employment funds. Firstly, the funds for public employment (guaranteeing service for persons seeking a job) were significantly cut in 2011. Then, funding for vocational activation was reduced (part of the Labour Fund was unfrozen in 2012).

In turn, the Employment Office reform in 2014 (based on the Act of 14 March 2014 amending the Act on Employment Promotion and Labour Market Institutions) introduced some new rules. Through data collection

5 Interview conducted on 18th October 2016.
6 In short: Act on Employment Promotion.

and profiling of unemployed persons, those who were out of work were divided into three categories. The first category includes the active unemployed who do not need any specialised help and only need access to job offers. The second group encompasses the unemployed requiring support who are willing to participate in training or internship programmes. The third group includes the unemployed who are not integrated into the labour market; that is, people in danger of social exclusion as well as those who, of their own choice, are not interested in getting a job or who work within the shadow economy. These selective measures deteriorate the positions of some groups of unemployed on the labour market. In turn, the accompanying changes could improve the situation of certain groups. For example, the period during which an employment office is required to find a job, an internship or a qualification development offer for the young unemployed has been reduced from 6 months to 4. Moreover, employers hiring unemployed individuals under the age of 30 who were referred from an employment office are exempt from paying into the Labour Fund and the Guaranteed Employee Benefits Fund for 12 months. They can also receive a refund of social security contributions and a subsidy for the remuneration of the unemployed individuals they hire. Similar privileges are offered to those hiring an unemployed person age 50+. This reform has also introduced new kinds of vouchers and activation benefits, like a grant for telework, a settlement voucher and training programmes. As for the unemployment benefit, the biggest issue is the low rate of persons entitled to it. To be entitled to the unemployment benefit, claimants (Polish, EU, EEA or Swiss citizens) must fulfil many conditions. Among them are requirements to be involuntarily unemployed, registered with the employment agency and capable of working; to not be receiving any rehabilitation, sickness, maternity or child allowances; and to have worked for at least 365 days in the last 18 months for at least minimum wage. Due to these strict conditions, only 14.1% of unemployed people are eligible to receive benefits – among the total number of unemployed registered at the local labour offices, 85.9% were unemployed without the right to unemployment benefits (GUS 2016). In the judgement of the Administrative Court in Łódź of 1 January 2014 (III Sa/Łd 116/13), the court dealt with the restrictive nature of the provisions regulating entitlement to the unemployment benefit. The court ruled that a failure to comply with the requirements set out in the Act on Employment Promotion excludes the possibility of obtaining the unemployment benefit. The provisions of the act which regulate the terms and conditions of entitlement to unemployment benefits

are mandatory and do not allow for discretionary decisions. Even when an unemployed person is a few days short of fulfilling the statutorily required period of employment, the authorities are bound by law to refuse the benefit.

Moreover, according to the Act on Employment Promotion, an unemployed person is obliged to appear at the appropriate local labour office on the indicated date to confirm his or her readiness to work; otherwise, the person is no longer entitled to the status of unemployed person and loses privileges related to that status. Failure to appear at the local labour office without a justifiable reason and failure to inform the relevant office about the reason for the absence within seven days from the day of the absence will result in depriving that person of the status of unemployed person for a period of 120 days in case of first non-appearance (failure to appear), 180 days for the second non-appearance and 270 days for the third and each subsequent non-appearance. With this in mind, the Administrative Court in Poznań expressed in the judgment of 7 August 2013 (IV SA/Po 477/13) that a lack of financial resources for journeys to the local labour office in order to confirm readiness to work does not constitute a justifiable reason for failing to observe this obligation. The court adjudged that the appeal by persons concerning the administrative authority to deprive them of the status of unemployed persons cannot be upheld. In the court's opinion, a justifiable reason' for non-appearance at the appropriate local labour office is one which could not have been foreseen or which was caused by an unemployed person. Moreover, it has to be a real obstacle; the case law recognises the following: sudden illness, unexpected interruptions in public transport or other sudden events like fire or flood. Unjustifiable reasons must in all circumstances be caused by the unemployed persons, even if only as a result of their recklessness or negligence. According to the court, the unemployed should organise their personal matters so that they appear at an appropriate local labour office on a particular date. Lack of money cannot be the unforeseen reason for non-appearance.

Even though the government effectively denied the existence of an economic crisis in Poland, it introduced two "anti-crisis" packages to avoid the negative consequences of an economic slowdown. The first one was the Law of 1 July 2009 to mitigate the effects of the economic crisis for employees and entrepreneurs in gainful employment from 2009 to 2011. The second (which is permanent) is the law on the amendments to the 11 October 2013 law on specific regulations related to job protection. Contrary to the first anti-crisis package, the second one was introduced with-

out the accordance of all social partners. Trade unions suspended their participation in the Tripartite Commission, which weakened workers' role in the creation of the new rules. According to trade unions, the Polish government was not truly engaged in social dialogue (Gardawski 2014). In October 2015, the new Council of Social Dialogue started its work. Anti-crisis packages have a substantial impact on the labour market. In general, they tend to protect existing jobs and support employers, but they have rather improved the situation of employers at the expense of workers (Theiss et al. 2017). The negative consequences for workers include the possibility of introducing work stoppages for economic reasons, reductions in working time and extensions of reference periods, meaning the elimination of overtime in practice, which in turn will result in lower wages. Moreover, according to the second package, employment conditions can be changed without the individual consent of the concerned employee.

Another critical issue in the Polish labour market is the increase of civil law contracts. Under civil law contracts workers are deprived of labour rights such as, among others, unemployment benefits and paid vacation. Due to the popularity of these kinds of contracts and their negative impact on labour law status, they are often called "junk contracts" in Polish debate. They cause a sort of duality (two different statuses of employees) in the Polish labour market. On the one hand, there are fully protected employees with labour contracts regulated by the Labour Code, and on the other hand, persons often work under the same conditions but are deprived of basic rights. In 2012, trade unions (All-Poland Alliance of Trade Unions) submitted a motion to the Constitutional Court to examine whether the impossibility of joining trade unions by persons performing paid work, including people on civil law contracts and the self-employed, was consistent with the Constitution. In a judgement issued on June 2, 2015 (Case K 1/13), the court ruled that the freedom to create and associate with trade unions under the Constitution should include all workers, not only those within the meaning used in the Labour Code. This means that persons working on a non-employment basis, such as under civil law contracts, will have the right to establish and join trade unions. It could be concluded that by broadening the category of employees, the Constitutional Court has thus expanded solidarity to all persons performing work, regardless of the type of contract. Although it does not directly refer to solidarity, this is part of the principle evoked in article 20 of the ruling, which states*, "A social market economy, based on the freedom of economic ac-*

tivity, private ownership, and solidarity, dialogue and cooperation between social partners, shall be the basis of the economic system of the Republic of Poland". However, the employees on civil contracts, who can now be members of trade unions, are still deprived of employment rights (like social security, etc.) but have the right to collective disputes and to partake in strike actions. After this judgement, the Polish legislation is expected to undergo some revolutionary changes in the near future to give employees on civil law contracts some new powers.

Disability

In Poland, legislation concerning people with disabilities is based on the principles of non-discrimination, integration and equal opportunities. Article 32 of the Polish Constitution stipulates that "*all persons shall be equal before the law* and *shall have the right to equal treatment by the public authorities* and that *no one shall be discriminated against in political, social or economic life for any reason*".

These principles also appertain to anti-discriminatory measures and actions regarding persons with disabilities. The Constitution provides particular rights to ensure that persons from vulnerable groups, such as the disabled, shall enjoy equal opportunities to social security and access to health protection and special health care as well as ways to ensure their subsistence, adaptation to work and social communication. In Art. 67, the Constitution also stipulates the right of disabled persons to social security. It states that "*a citizen shall have the right to social security whenever incapacitated for work by reason of sickness or invalidism as well as having attained retirement age"* and that "*a citizen who is involuntarily without work and has no other means of support shall have the right to social security*".

In 1996, a general anti-discrimination provision concerning employment relations was incorporated in into the Labour Code of 1974, Article 11.3, for the first time. Since 1 January 2002, Article 11.3 reads as follows: "*Discrimination of any kind, direct or indirect, in employment, in particular on the grounds of sex, age, disability, race, nationality, convictions, especially political or religious, as well as union affiliation, shall be inadmissible*".

However, regardless of existing legislation, social indicators show that Poland is far removed from full and effective inclusion of the disabled.

They constitute 12.2% of Polish society and are among the most vulnerable and exposed to discrimination and social exclusion (Bojarski 2016). Although the employment rate and activity rate have been increasing slightly since 2007, they are still lower than the rates among able-bodied people. According to 2013 data, the employment rate of people aged 20-64 in Poland was 69.9%, versus 44.2% among people with moderate disability and 22% among people with severe disability (EUSILC UDB 2013)**.** Their situation on the labour market is also difficult because they have much lower levels of education than the rest of society (Wapiennik 2016). The risk of poverty considerably increases for people living in households with at least one disabled member. In 2013, the poverty rate was 23.1% in households without disabled persons, 28.8% if a person with a moderate disability is in the household and 35.3% if that person is severely disabled (EUSILC UDB 2013). According to the Central Statistics Office in 2014, 10.8% of households with at least one disabled member lived below the extreme poverty line, as compared to 6.5% of households without disabled members. If a family has a disabled child, their situation is even worse: 14.6% of such families were living below the extreme poverty line in 2014, and nearly 30% were below the relative poverty line (GUS 2015).

Although the situation of disabled people is difficult in comparison to other groups, not only national and local governments but also NGOs perform actions in their favour. The NGO movement is also an answer to the insufficient realisation of legislation and the invisibility of disabled people in different spheres of life. From NGOs' perspectives, their activity is necessary to attain their goals, such as improving the quality of life of the disabled and their families. Moreover, international NGOs' activities help to demonstrate how the government's declarations are not in line with reality: "*it could give the opportunity to show the international public opinion how badly Polish disabled people and their caregivers are treated by the state*".[7] As in other studied fields of vulnerability, the representatives of grassroots disability organisations did not directly perceive the crisis. They stated that some of the hardships their organisations are currently facing were caused *not* by economic preconditions but rather by inadequate socialisation, education and social attitudes among society and the families with the disabled person as well as from a "*permanent lack of*

7 Interview DP1, 3.10.2016.

positive response from the state to the drama of this group"[8]. But they draw attention to another direct problem: the funds are cut (whether the crisis exists or not, it serves as the justification), which reduces solidarity between grassroots organisations, mainly because there are fewer resources to divide between them. Before, they cooperated; now, they often remain in conflict.

Legislation Changes

The most important provisions concerning the disabled and the labour market are included in the Act on Vocational and Social Rehabilitation and Employment of Disabled Persons of 27 August 1997. The act does not refer directly to the value of solidarity (because it contains no principles), but it does guarantee some of the basic rights of disabled persons in the area of vocational and social rehabilitation, such as the right to attend occupational therapy workshops, to reduced work hours without loss of remuneration, to training and to special leave from work to participate in rehabilitation courses. It also provides some tools to promote an active attitude among such persons and supports their employment, particularly in the open labour market (Gwiazdowicz 2003). Moreover, the employment of people with disabilities in Poland is encouraged above all through the quota (and penalties) system. A basic assumption, which has made disability a collective responsibility, is that every employer with 25 or more employees should employ at least 6% disabled people in the company. Employers who fail to meet this requirement (with some exceptions) have to pay defined amounts monthly to the State Fund for the Rehabilitation of Disabled Persons.

On 6 September 2012, Poland ratified the United Nations Convention on the Rights of Persons with Disabilities. Ratification of the convention was possible through significant changes in Polish law. Two of the most important were the amendments to the: Act on Occupational and Social Rehabilitation and Employment of People with Disabilities, and the adoption of the act that implements certain provisions of EU legislation on equal treatment. The first supports the employment of people with disabilities, and the second introduces the obligation for employers to provide

8 Interview DP1, 3.10.2016.

reasonable accommodation for people with disabilities and amendments to the provisions concerning the accessibility of means of transport (new rules apply for trams, buses and subways).

The main debate in Poland has been around the refusal to ratify the Optional Protocol to the Convention, which allows individuals or organisations to take a complaint to the Committee on the Rights of Persons with Disabilities when their rights have been breached. Although a Polish ombudsman and 180 NGOs called the Polish government to ratify it, which 88 countries have already done (RPO 2016), the government ignored this call and answered that "*persons with disabilities have the opportunity to assert their rights before the Polish courts*". Moreover, the minister of family, labour and social policy noted that ratification of the protocol could lead to significant changes in the rules on legal incapacity and on marriage for people whose disabilities come from mental illness or mental retardation as well as on abortion regulations (WatchdogPFRON 2016).

The courts have become an important setting for the application of disabled rights. In general, they recognise the rights of people with disabilities. In the judgement of the Supreme Court in Poland of 18 April 2000 (II ZP 6/00), the court settled a dispute between employees with moderate and severe disability and the company which hired them. According to the Act on Rehabilitation, the working time of employees with a moderate or severe disability cannot exceed 7 hours per day or 35 hours per week. These are the normal, full-time working hours for disabled employees, in other words. Shorter working hours should not affect the amount of remuneration for employees with disabilities. The number of working hours for each employee was 7 hours daily and 35 hours per week. Their salary was fixed on an hourly basis; hence, their remuneration was lower than that of employees without disabilities (who work 8 hours a day and 40 hours per week). They demanded that the employer compensate the lower remuneration for the entire duration of employment, claiming that they would receive an increased salary if they were able to work eight hours a day. In the judgement of the Supreme Court of 6 July 2005 (III PK 51/05), the court ruled that an employee with moderate or severe disability who works over seven hours a day is working overtime; therefore, every hour over 7 hours per day for such a person should be paid as overtime. Even though a disabled person can work 8 hours per day (like persons without disabilities), they should receive a statutory pay premium for this additional hour, which adds to the employee's regular wages, in accordance with the relevant provision of the Polish Labour Code.

In its judgement of 12 November 2014 (I PK 74/14), the Supreme Court considered whether it is permissible for an employer to terminate a disabled employee's employment contract due to the employer's failure to provide reasonable accommodation for the employee to enable them to work. In this case, a disabled employee appealed to the court against termination of his employment contract by the employer. The reason for termination was a lack of possibilities to continue the employment contract with this worker (a warehouseman), which requires night-shift work. The employee had a disability, and the applicable provisions prohibit night work for persons with moderate or severe disability. The Supreme Court decided that a dismissal because of an inability to continue the employment relationship with a disabled employee was unlawful. Justifying its opinion, the Supreme Court referred to, among others, the "principles of social coexistence", invoking the difficult family situations of the disabled. In this case, solidarity with the disabled employee and his family could be a default principle. The court also evoked the provisions of Directive 2000/78/EC of 27 November 2000, establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16) and the Polish regulations which impose the obligation for employers to provide reasonable accommodation in the workplace. The court recalled that the purpose of this directive is to establish a general framework for combating discrimination as regards employment and occupation to put the principle of equal treatment into effect in the member states. This means that employers should take appropriate measures, where needed in particular cases, to enable a person with a disability to have access to, participate in or advance in employment, or to undergo training unless such measures would impose a disproportionate burden on the employer. The European Court of Justice (ECJ) confirmed this principle in several judgements, such as Navas (C-13/05). In this verdict, the ECJ held that the prohibition against discrimination on the grounds of disability contained in Articles 2(1) and 3(1) (c) of Directive 2000/78 precludes dismissal on grounds of disability, which, in light of the obligation to provide reasonable accommodation for people with disabilities, is not justified by the fact that the person concerned is not competent, capable and/or available to perform the essential functions of the post. These principles of European law have been implemented into Polish law by the Act on Vocational and Social Rehabilitation and Employment of Disabled Persons. Article 23a states that an employer is obliged to provide necessary and reasonable accommodation for disabled employees and persons participating in the recruitment

process or undergoing training, internships, vocational training and/or apprenticeships. Finally, referring to the principle of equal treatment, the Constitutional Court, in its ruling K 38/13 from 21 October 2014, stated that offering higher benefits for people caring for people that became disabled before the age of 18 (or 26 years old) than for those caring for persons who became disabled in adulthood is incompatible within the constitution. However, this ruling (until March 2017) has not yet been fulfilled by the government.

Migration

According to Article 32 of the Polish Constitution, everybody is equal before the law, including foreigners, and any form of discrimination is forbidden. The Constitution in Article 56 states: "*Foreigners shall have a right of asylum in the Republic of Poland in accordance with principles specified by statutory law. Foreigners who in the Republic of Poland seek protection from persecution may be granted the status of a refugee in accordance with international agreements to which the Republic of Poland is a party*".

The principles, conditions and procedures for granting protection to foreigners within the territory of Poland are regulated by the act of 12 December 2013 on Foreigners; Act on Granting Protection to Foreigners within the Territory of the Republic of Poland of 13 June 2003. Concerning immigration legislation, the changes between 2008 and 2015 were substantial and had completely changed this domain of law in Poland. The new regulations are much more liberal than the previous ones. It is easier to enter Poland and to obtain permission to reside and to work there, especially for citizens from Eastern Europe. Those modifications were implemented for two reasons: for adaptation to EU legislation and for adjustment to actual situations (especially political and military) in Eastern Europe.

One can say that two aspects of solidarity may be considered in the case of immigration to Poland. The first one is solidarity with Eastern post-communist countries as well as descendants of Poles. This element is a part of, for example, *Polish Foreign Policy Priorities 2012-2016*, which emphasises the need for "*openness and solidarity with the East*" and later states that "*Only by acting together can one hope to achieve tangible re-*

sults, which for Poland would represent the embodiment of the idea of solidarity".

Thus, it is easier for citizens from Eastern Europe to obtain permission to temporarily reside and work in Poland, in this case citizens from Belarus, Georgia, the Republic of Moldova, the Russian Federation, the Republic of Romania and Ukraine. Moreover, repatriation exists as a form of acquiring Polish citizenship. The collapse of the communist system resulted in waves of Polish nationals who, due to deportation or other persecution on the grounds of nationality and political opinion, had not been able to settle in Poland. Parliament decided to limit the territories from which persons can be repatriated to Poland to the Republics of Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan as well as Asian areas of the Russian Federation. The solidarity with the eastern countries is also in the numbers of Polish NGOs working in the field of solidarity in countries undergoing democratic transition, including organisations like the Foundation of International Solidarity (which had more than 300 projects for eastern countries in 2012–2016) and the Open Dialogue Foundation.

The second aspect (the refugee crisis) is considered here in the context of human rights and solidarity with the other EU member states, which have to accept immigrants from third countries. In recent years, Polish debate and attitude towards different groups of immigrants has been changing. In the European Social Survey from 2014, Poles were more pro-immigration than other European countries; 63.4% of them agreed or strongly agreed that the government "should be generous judging applications for refugee status". In comparison, 38.8% of Germans and 60.3% of Swedes agreed with that statement. But Poles were not so welcoming to Muslims – only 34.4% of Poles agreed that Muslims should be allowed to come to Poland (Bachman 2016). According to the Polish Public Survey Centre, attitudes towards migrants started to change after the refugee crisis. In September 2015, 46% of Poles agreed or strongly agreed that Poland should receive refugees arriving from the Middle East and Africa. In April 2016, 25% of respondents agreed. At the same time, Poles have constantly favoured immigrants coming from Ukraine. In September 2015, 62% agreed or strongly agreed that Poland should grant international protection to refugees from the Ukrainian armed conflict areas. In April 2016, it was 60% (CBOS 2016). And the Ukrainians have been the largest group of immigrants to Poland over the last years. About a million Ukrainians worked in Poland throughout 2015 (legally or illegally). However, because of the

circular nature of this migration and the short-term character of their work, only 500,000 resided in Poland at the same time. (Chmielewska et al. 2017). Immigrants from outside the European Union do not view Poland as an attractive destination; many migrants still consider Poland a transit country or a gateway to the West and usually cross the eastern Polish border from Ukraine or Belarus.

As for refugees, the opinion of Poles was similar to that of the Polish government. In September 2015, Polish Prime Minister Ewa Kopacz accepted the EU quota for 7,000 asylum seekers in Poland. However, after the Law and Justice Party won the elections in October 2015 and after the Brussels terrorist attacks in March 2016, the new government refused to accept refugees. Prime Minister Beata Szydło stated, "*I say very clearly that I see no possibility at this time of immigrants coming to Poland*". In turn, after calls for Poland to show European solidarityin the face of the refugee crisis, the Polish minister of foreign affairs answered, "*You have to be reminded that for every euro we take from the EU, 80 cents go back to Western Europe*" (Bachman 2016).

It is worth remembering that Poland is largely characterised by emigration (including an outflow of almost two million people, especially to the other member states). After World War II, Poland became a very homogeneous country, with a small rate of immigrants, who represent only 0.3% of the total Polish population. This national and religious homogeneity (more than 87% of Poles declare themselves as Christians) of the state could be the reason why a large percentage of citizens are not favourable to immigrants and refugees.

It is unsurprising that many of interviewed members of grassroots organisations and stakeholders focused on migrants from Ukraine. However, they often extended help to migrants from the former Soviet Union (Belarusians, Russians, Chechens, etc.) as well. This reflects the proportion of immigrants in Poland by origin. But organisations are open to everyone in need, which indicates how they realise the value of solidarity: "*Our organisation aims to help everyone living or residing outside of his or her homeland… we do not restrict ourselves to any group*".[9]

Neither the economic crisis nor migration crisis was perceived by the organisations' members as being important in Poland; consequently, the crises did not strongly affect their work. However, the representative of

9 Interview MP4, 4.10.2016.

one organisation noticed that along with the refugee crisis, a large number of Poles who had hostile attitudes towards migrants from Africa shifted their hostility towards organisations supporting refugees and migrants. The political climate surrounding perceptions of grassroots organisations is unfavourable: *"What is about solidarityis the solidarity between countries. This results in the need for providing help to the foreigners who are here* [in Poland]. *There is this narrative that it's better to help people abroad, where they live, in the areas affected by war. But we think such a narrative is crypto-xenophobic. We help people integrate into Poland*".[10] Some organisation representatives mentioned that they are in contact with public institutions and exchange some resources and information. However, they believe that this interaction on the side of the public institutions is just a formality. They have been invited to many meetings or asked to send their opinion to the public offices, but their voice is always unheard or ignored: "*Our organisation often receives letters when legislators are working on new legislation regarding migrants; many other organisations also receive these letters. The letters ask us to give our comments about the changes/new legislation. However, I do not reply to any of them anymore. When we received this letter for the first time, we were very engaged in revising it, we wrote arguments and counterarguments, but all this was for nothing*".[11]

Legislation Changes

In December 2013, the Polish Parliament adopted the new Law on Foreigners, which replaced the former Act on Foreigners from 13 June 2003. The new act comprehensively regulates all issues connected to foreigners residing and working in Poland, and adjusts the Polish law to the EU directives, specifically:

- Council Directive 2003/109/EC, 25 November 2003 concerning the status of third-country nationals who are long-term residents;
- Directive 2011/95/EU from the European Parliament and the Council (13 December 2011) on standards for the qualification of third countries or stateless persons as beneficiaries of international protection, for

10 Interview MS5, 13.11.2016.
11 Interview MP4, 4.10.2016.

a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted; and
- Directive 2011/95/EU of the European Parliament and the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted.

The new act names the types of residence permits requested by foreigners and lists the rules on how to obtain them (temporary and permanent residence permit, long-term EU residence permit, residence permit for humanitarian reasons and permit for a tolerated stay). A year after this new act came into force, the Office for Foreigners in Poland published a brochure summarising the year of its application. Comparing the last year of the old act (13 June 2003) and the first year after the introduction of new provisions, 76% growth in all pending applications related to the legalization of stay could be seen (45,654 compared to 80,250). Among all of the submitted requests, foreigners applied for the following types of residence permits (in order from the highest to the lowest number of applications):

- temporary residence permit (a 71% increase compared to the last year of validity of the old act);
- permanent residence permit (a 140% increase); and
- EU long-term residence permit (a 27% increase).

Under the new act, most of the applications came from citizens of Ukraine (52%). "Others" accounted for 28%, followed by citizens of Vietnam (6%), China (5%), Belarus (5%) and Russia (4%). Under the previous act, the largest number of applications was submitted by citizens from "other" countries (41%).

Due to the short validity of the new Act on Foreigners (the new act has only been effective since May 2014), few judicial decisions address the new legal systems. However, the administrative courts have adjudged several cases in which foreigners appealed against the administrative decision to deny them refugee status, in accordance with the provisions of the act. In one of the most crucial rulings from October 2016, the Administrative Court in Warsaw, referring to the equal treatment principle, upheld the complaint of the ombudsman for the rights of the child and revoked the denial of the family benefit for a person who had been given refugee status.

Challenges for Solidarity in the Country of "Solidarity"

The economic crisis and refugee crisis are tests of solidarity for European societies. The results are never unambiguous, as has been the case in Poland. The legislation and jurisdiction in the three fields of vulnerability have changed direction. On the one hand, the country that denied the crisis nevertheless adopted "anti-crisis" packages and legislation that mostly affected the unemployed and precarious workers. These were a continuation of liberal changes that have been introduced since 1989. Benefits were cut, while courts ruled in favour of refusing some social rights. On the other hand, legislation on migration and disability (often implementing the European Union's directives) has become increasingly inclusive, and jurisdiction has often taken into account the values of equality, inclusiveness and solidarity prescribed in the law.

However, reality rarely goes at the pace of legislation. Firstly, the jurisdiction has sometimes been inconsistent, and even though some provisions have existed (like the United Nations Convention on the Rights of Persons with Disabilities), there is no possibility to assert the rights before international organisations, courts or institutions.

Both the extremely polarised public discourse and the government's attitude (especially regarding migration) have often failed to guarantee solidaritybetween different groups. According to the interviewed representatives of grassroots organisations (and confirmed by the polls), Polish public opinion is highly divided and often far removed from solidarity, especially with certain groups of foreigners. Even though the economic crisis has strengthened the sense of community and responsibility for all members of society – beyond social classes and borders – the discourse around the refugee crisis has partially squandered this sense by limiting solidarity to ethnicity. Moreover, a lack of real dialogue – as emphasised by the interviews in all of the studied fields – has resulted in a less inclusive society, regardless of legislation. After various crises, Poland has become a country of "Solidaritywithout solidarity. The levels of solidarity and inclusiveness are not ambiguous. Legislation and jurisdiction are differentiated, depending on the field and time, and NGOs and other grassroots organisations are often weak and divided due to having insufficient funds, but still they have managed to expand their activity to new beneficiaries and members.

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Switzerland: Vulnerable Groups and Multiple Solidarities in a Composite State

Eva Fernández G.G. and Tania Abbiate[*]

Introduction

This chapter analyses how social policies aimed at reducing social risks translate into an institutional imperative to support and protect vulnerable groups in Switzerland. More precisely, we perform a legal and policy analysis to assess, first the impact of the country's internal diversity (internal factor) and second the European economic crisis (external factor) on coverage of the institutional solidarity schemes. We argue that within highly contested fields like migration, unemployment and disability, social protection schemes are dependent on the political salience which shapes a particular solidaristic logic and reframes the social safety net.

Swiss Solidarity in the Context of the EU Financial and Economic Crisis

The European financial and economic crisis has long extended beyond the Eurozone. Switzerland has been affected as its major trading partner is the European Union. Germany, France and Italy purchase roughly 30% of all Swiss merchandise exports. Still in contrast to the EU countries the effects of the crisis have not disturbed the positive slope of the Swiss Gross Domestic Product (GDP) trend. It has increased from 551,547 to 650,250,556 Swiss francs (International Monetary Fund – PGI 2008 – 2016). Switzerland is the 15th largest export economy in the world and the second most complex economy according to the Economic Complexity Index (ECI). In 2015, Switzerland countered with a positive balance of trade despite the sensitivity of the Franc to the Euro nominal exchange rate. Some of the

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* Eva Fernandez is the main author of the chapter. Tania Abbiate is the leading author of the migration section based on her legal expertise on the issue.

reasons for this resilience can be found in bilateral trade agreements and a «debt brake» legislation[1] established in 2000 (Schwok 2012, 79-84).

However, the Swiss economy faced some challenges during the hardest period of the economic crisis, namely:

- The euro-franc currency fluctuations. The rise of the Swiss franc against the euro during the crisis was only stopped by the introduction of a minimum exchange rate of 1.20 francs to the euro by the Swiss National Bank (SNB). Still the Swiss franc was overvalued[2].
- A Swiss banking industry without banking secrecy: the negotiations and approval by the Swiss Parliament of the automatic exchange of tax information which ended a long-standing conflict between the EU and Switzerland.
- The initiative against mass immigration launched by the conservative right Swiss People's Party which compromised bilateral relations with the EU. As a consequence, the nature of the EU debate in Switzerland changed and the bilateral treaty strategy has been impacted by new economic and institutional core issues in the Swiss debate on policy vis-à-vis Europe.

Switzerland has more than 120 bilateral agreements with the EU, which are routinised within the domestic framework. Still since the mass immigration initiative, the renegotiation and implementation of these agreements is on the table, and more conservative positions are pulling toward restrictive labour market measures to protect border regions to the EU, in particular.

In general and despite these challenges, the economic situation in Switzerland was prosperous and unparalleled compared to the situation in most European countries at the time. Switzerland therefore represents an outlier case from the rest of the European countries, which faced serious

1 For an in-depth discussion on the Swiss Sanderfall, 'Swiss particularity' and a critical assessment of the bilateral agreements (Switzerland-EU) through the lenses of Swiss neutrality, territory security and popular voting (SCHWOK 2012).

2 In January 2015, the Swiss National Bank removed a three-year-old 1.20 franc per euro cap, described as 'unsustainable'. Today many experts are predicting that the cap removal will impact companies creating pressure on wages, relocation and job loss. However, this assumption about the Swiss economy is stuttering and the consumption decline has been receiving a fairer assessment since the second semester of 2016 and onwards. Prof. Sergio Rossi, Economics – University of Fribourg. Interview – 6 January 2016 – www.swissinfo.ch.

economic recession and adopted severe austerity measures during the crisis period. The crisis impact in terms of economic numbers may not be so dramatic for the Swiss case but when analysing solidarity in action it is not only an issue of economic assessment, but a general assessment of the legal framework and crisis-driven legislation.

During the crisis period, key issues remained tangent to the economic challenges. Immigration became a hot topic in the public debate. During 2010-2014, EU-28/EFTA immigration increased by about 17% while the Swiss migratory balance was negative (State Secretariat for Migration – SEM). In addition, the characterisation of the immigrant population in Switzerland changed: immigrants are now more qualified. Currently, sixty percent of immigrants (aged 25-64 years old) hold a tertiary degree and thus enhance the so-called «brain gain» for the country which contrasts with the popular plea for more restrictive immigration policies (Church 2016). In addition to immigration, unemployment and disability were as well strategically linked to the changes within the social legislation. As a result of economic and debt pressures on social policies, the social policies targeting these groups were strongly redefined under the employability criteria and individual responsibility discourses. As a consequence, it can be rightly argued that the situation of these three vulnerable groups is of particular interest when considering solidarityin action in Switzerland. Besides, to analyse solidarity in action, it has to be pointed out that the country is extremely liberal with a moderate decommodification but a high generosity index (Scruggs and Allan 2006, 67). The Swiss social legislation has been deeply shaped by the strong federalism and decentralization of the State power. Within a twofold perspective the chapter first unveils the legal mechanisms sustaining the solidaristic safety net of the country, and secondly reveals the triggers of change in the social schemes during the crisis period. Further, three traversal issues are addressed all through the analysis: the political and territorial complexity of the Swiss Federal State, the social-liberal welfare model and the crisis' impact in the social schemes focused on unemployed people, people with disability, migrants and asylum seekers in Switzerland.

Disability

As part of the constitutional fundamental rights, Article 8 'Equality before the law', expresses a general principle against discrimination on the

grounds of origin, race, gender, age, language, social position, way of life, religious, ideological, or political convictions, or because of a physical, mental or psychological disability[3]. Additionally, the article strategically focuses on the equality of rights between men and women and the elimination of inequalities affecting people with disabilities (Art. 8, para. 3-4, Cst.). These strategic priorities have been reflected in the development of two federal laws – the Equality Federal Act between Men and Women (*Loi fédérale* sur l'*égalité* entre *femmes* et *hommes* – LEg) and the Equality Federal Act for People with Disability (*Loi sur l'égalité pour les handicapés* – LHand)[4]. Nevertheless, it was only in 2014 that Switzerland ratified the UN Convention on the Rights of Persons with Disabilities (CRPD – 2006). Its ratification represents a supplementary legislative step forward in the overall legal framework concerning disability, due to the monism of the Swiss legal system according to which any international treaty ratified by Switzerland directly becomes part of the Swiss legal order and is readily implemented with no special procedure being requested[5]. Thus, the CRPD has the same status as federal law. Both nationally and internationally, the disability policy framework has evolved toward a more holistic approach. With this regard the Swiss legislation and more precisely the LHand has integrated a broadening of the disability paradigm by conceiving disability not only as a physical, psychological or mental individual difficulty but also as an environmentally conditioned one, which impedes the everyday inclusion of the people living with disability (Art. 2 LHand; Federal Social Insurance Office FSIO 2014). As a result,

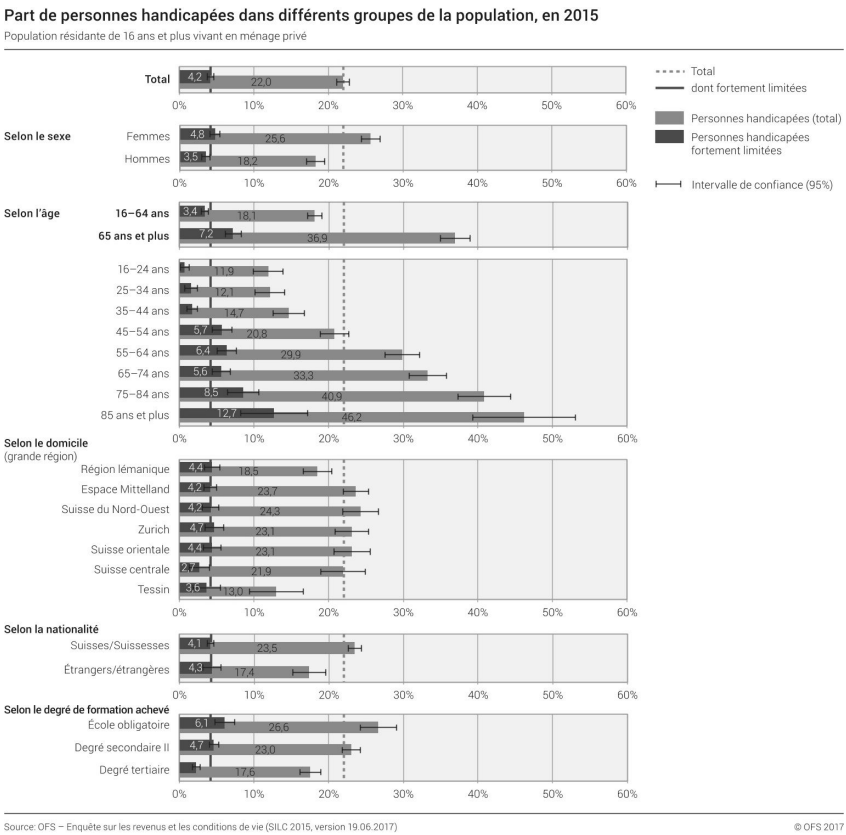
3 Remarkably on 21 March 2017, the Cantonal Tribunal of Appenzell Rhodes-Extérieures has, for the first time in Switzerland, recognised a case of discrimination based on disability. In the case at stake a spa was condemned for having refused access to some students with disabilities. https://www.inclusion-handicap.ch/fr/aktuelles/news/wegweisend-erstmals-urteil-wegen-diskriminierung-von-menschen-mit-behinderungen-205.html (accessed on 5 May 2017).

4 Ordinance du 19 novembre 2003 sur l'élimination des inégalités frappant les personnes handicapées (Ordinance sur l'égalité pour les handicapés, OHand), Ordinance du 12 novembre 2003 sur les aménagements visant à assurer l'accès des personnes handicapées aux transports publics (OTHand), and Ordinance du DETEC du 23 mars 2016 concernant les exigences techniques sur les aménagements visant à assurer l'accès des personnes handicapées aux transports publics (OETHand).

5 Federal Department of Foreign Affairs, Relationship between international and domestic law, https://www.eda.admin.ch/eda/fr/home/aussenpolitik/voelkerrecht/einhaltung-foerderung/voelkerrecht-landesrecht.html (last access 3 April 2017).

the disability legislation in Switzerland is complemented by inclusive policies which primarily foresee the provision of individual services and the support by specialised institutions such as schools, labour markets and specialised shelters, with the major aim of adapting and including the vulnerable group demands in the public and private environments.

Share of people with disability by degree of disability, gender, age, nationality and education



Source: OFS – SILC 2015 survey data reported in 2017.

Currently in Switzerland, about 1.6 million people have some degree of disability corresponding approximately to one fifth of the total population (8 million). Within this figure, only 29% of people have serious disabilities, which strongly limit ordinary daily activities. More specifically, the

disability-vulnerability in Switzerland is related to age, gender and social stratification. As shown in Figure 1 below, women are subject to a higher proportion of disability and strongly limited handicap. Similarly, elderly people are more often affected by functional limitations or health conditions which come with age. Additionally, within this vulnerability matrix, we observe that social stratification plays an important role too; within the educational distribution, people with a tertiary education degree suffer less from health conditions or impairments.

Framework Law

The Helvetic legal framework on disability is mainly defined by the Law on Disability Insurance (DI) adopted in 1959, – and its subsequent amendments- and by the Federal Law on the Elimination of Discrimination against People Living with Disability (LHand). The LHand entered into force in 2004 and its legal implementation was developed through three major ordinances[6] which quickly established the Swiss welfare state policy on disability and inclusion[7].

These two legal frameworks complement each other and express the conception and evolution of disability over time. The legal concept of disability embedded in the confederation legislation first targets the individual situation of the beneficiary as described in the DI. Secondly, it strategically focuses on the elimination of inequalities, as foreseen in the LHand,

6 Ordinance on equality for people living with disability (OHand, RS 151.31), Ordinance on adjustments to ensure access for people living with disability to public transport (OTHand, RS 151.34), Ordinance on technical requirements for the adjustments to ensure access for people living with disability to public transport (OETHand, SR 151,342).

7 Legal provisions concerning disabled people are also contained in other legislations, namely: Law on Telecommunications (Art. 16 al. 1a bed a-c), Ordinance on telecommunication Services (Art. 33), Federal Law on Vocational Training (Art. 3 bed c; Art. 18 al. 1; Art. 21 al. c; Art. 55 para. 1), Ordinance on vocational training (Art. 35 al. 3, Art. 57 al. 2), Ordinance on Confederation staff (Art. 8), Federal Law on Direct Federal Tax (Art. 33 al. 1), Federal Law on the Harmonisation of Direct Taxes of Cantons and Communes (Art. 9 al. 2), Federal Law on Radio and Television (Art. 7 al. 3; Art. 24 al. 3), Ordinance on Radio and Television (Art. 7 and 8), Federal Law on Cableway Installations Designed to Carry Persons (Art. 9 al. 4.), Ordinance on cableway installations designed to carry persons (Art. 11 bed b), Regulations concerning air travel, Federal Law on Copyright and Related Rights.

and further, on welfare state policies. Remarkably, neither the DI nor the LHand make explicit reference to the term 'solidarity', however it is implicitly framed through other key concepts as shown in chapter 9 of Part I.

The DI defines disability as «the diminution of earning capacity presumed to be permanent or long-term, resulting from an impairment of physical or mental health from a congenital infirmity, illness or accident» (Art. 4 DI); and provides for an insurance which ensures a basic living rent in the event of disability, by means of rehabilitation measures or cash benefits. The DI ensures individual decommodification by tackling and reducing inequalities' triggered by loss of income due to disability. In other words, it foresees to guarantee a decent standard of living for people with disabilities and it addresses the need for social justice. It aims at preventing, reducing and addressing the economic effects of the person's health condition by supporting vocational rehabilitation, providing financial services (insured annuities) and the professional integration of people living with disability. However, after various law revisions, particularly reflected within the fourth (2003) and fifth (2008) revisions of the DI, the current legislation accords a keen importance to autonomy and individual responsibility. Within this new perspective, the weight falls mainly on the obligation of the insured person to participate in the economic life – labour reinsertion.

The Lhand complements the legal framework on disability by implementing the principle of non-discrimination enshrined in the Constitution (Art. 8 para 4 Cst). The law defines disability as any form of physical or psychiatric impairment that hinders everyday life and limits the possibilities of working and training (Art. 2 LHand). It provides for the right to appeal in case of discrimination due to a disability (Art. 8 LHand). Moreover, it aims at facilitating the participation of people living with disability, by breaching the major environmental obstacles to their autonomous participation in society through the establishment of adequate facilities (Art. 15 LHand). In addition, it contains provisions to encourage the adoption of specific programmes for the inclusion of persons living with disability in the areas of education, work, housing, public transport, culture and sport (Art. 16 LHand). Remarkably the LHand foresees also the creation of the Office for the Equality of People with Disability (Art. 19 LHand), which in fact has been established since 2004.

The assessment of LHand carried out by the Federal Department of Internal Affairs in 2015 has pointed out that the legislation has improved the situation of the people with disability especially with regard to public

transport and access to services[8]. Moreover, some other developments have been identified, special measures for the reintegration of people with disability into the labour market and the introduction of an assistance allowance. These measures are part of the sixth revision to the DI adopted in 2012 which aims at allowing people with disability to live on their own by financing as well home-based services (Egger et al. 2015, 11).

However, the evaluation has also pointed out the existence of further margins of improvement and the lack of a general disability mainstreaming policy at cantonal level. It is worth reiterating that the LHand, as other federal laws, has to be implemented at cantonal level and the Federal Supreme Court has pointed out that the provisions contained in the LHand constitute only guidelines for the establishment of cantonal legal frameworks for the elimination of discrimination based on disability (TF 134 II 249 E-2.2: 251, 4 décembre 2014). In addition, a major shortcoming of the law, it is the insurance of the equality of chances on the labour market for the people with disability. As a result, the evaluation report points out this aspect as a strategic priority for the following years. Furthermore, the LHand has not been able to improve the situation of social stigmatization related to the disability condition. Finally, the Federal Department of Internal Affairs in its evaluation has highlighted the paucity of data available about the implementation of LHand.

The Right to Education

Art. 62 para. 3 of the Swiss Constitution states that "The Cantons shall ensure that adequate special needs education is provided to all children and young people with disabilities up to the age of 20".

Until the end of 2007, the Federal Disability Insurance Law was the only legislation concerning the federal aspect of special needs education. It regulated the identification and co-financing of special needs education

8 The LHand provides that all infrastructures are open to the public, similarly all buildings composed of more than 8 houses and all places of employment with more than 50 employees have to be accessible to the public (Art. 3 letter a together with art. 7 LHand); furthermore, the LHand obliges public and private actors to prevent, reduce and eliminate inequality in accessing services (Art. 3 letter together with Arts. 8 and 12 para. 3 LHand) and foresees the elimination of all barriers in public transport by 2030 (Art. 22 para 1 LHand).

services for children and young people with more severe disabilities. However in 2008, with the entry into force of the new division of competencies between the confederation and the cantons, responsibility for funding special schools was transferred entirely to the cantons.

According to Article 20 para. 1 LHand, in fact, "The cantons ensure that children and young people receive obligatory education, which is adapted to their special needs" and it also encourages the integration of disabled children within ordinary schools.

In Switzerland, there are special schools for pupils with intellectual disabilities, pupils with physical disabilities, pupils with severe behavioural disorders, pupils with hearing, speech or visual impairments, and chronically ill pupils (hospital schools). The classes are in the same building as mainstream classes and under the same administration.

Children and young people with special needs who are integrated into mainstream schooling are supervised by a support teacher, who is involved in the class for a certain number of hours, depending on a pupil's needs.

With a judgement issued on 4 December 2014 (2C_590/2014), the Federal Supreme Court has decided that the additional costs of assistance requested for the integration into an ordinary school cannot be borne by parents. The community must cover these additional costs as regular assistance costs. The case concerned a cantonal legislation that provided for the integration of people with disabilities in ordinary schools with a maximum of 18 hours of assistance covered by the cantons, while the rest of the assistance needed had to be covered by the family. The Tribunal declared the cantonal legislation contrary to Art. 19 (Right to basic education) and Art. 62 (School education) of the Federal constitution, concerning school education. The judgment made reference to the principle of non-discrimination (Art. 8 para 2) and to the principle of academic freedom (Art. 20 para 2).

This case application can be considered as solidarity in action, since it orders the community to cover the costs for the integration of people into ordinary schools. According to the Tribunal, the principle of free compulsory education prevails over other considerations, including financial constraints (2C_590/2014).

Generally, less densely populated areas (e.g. the canton of Valais) due to their geographical situation, benefit from more integrative and inclusive offers than in others Swiss Cantons. In addition, the cantonal autonomy also encourages a distinctive range of programmes. For instance, the can-

ton of Ticino follows to some extent the Italian model of integration: the so-called "sostegno pedagogico", a model of teaching support to accompany pupils with disability in mainstream schools limiting the possible segregation for the less severe forms of special needs.

The Right to Work

Work represents a fundamental element for the integration of disabled people into society and the Swiss Constitution asks the Confederation "to encourage the rehabilitation of people eligible for invalidity benefits through contributions to the construction and running of institutions that provide accommodation and work" (Art. 112.b para. 2. Cst.). In line with this constitutional provision, the LHand aims at promoting the integration of people suffering from disability into society by supporting their reinsertion into the labour market (Art. 1 para 2 LHand), while DI deals specifically with promoting the reintegration of people with disability into the labour market (Arts. 7a, 14a, 15-18d)[9]. It is relevant to note that within the frame of the amendments to the DI which have gone hand in hand with a budgetary stabilisation policy, the disability allowance is allocated only in situations of impossibility of reintegration in the labour market.

With specific regard to the labour market, several challenges remain since people with disability continue to face difficulties in integration. Remarkably, the LHand evaluation states « Le monde du travail reste lui un casse-tête, les dispositions de la LHand ne portant que sur la Confédération en tant qu'employeur » (Département fédéral de l'intérieur 2017, 13). Furthermore, the measures adopted to promote the (re)integration of people with disability within the labour market have been judged insufficient and not in line with Article 27 of the CRPD (*ibid.* 2017, 11). Consequently, the evaluation report recommends assessing and encouraging the application of the legislation to private employers and to the cantonal and municipal administrations (*ibid.* 2017, 16).

According to the estimates of the Swiss Federal Statistical office, in 2014, three out of four people with disability in active age (16-64) were engaged in the labour market: 71% were employed and 4% were unem-

9 Moreover, it is worth pointing out that at federal level some other legislations deal with topics related to access to the labour market for people affected by disability such as the law on professional and continuous training.

ployed, representing the 75% of the total population with disability considered to be active (standard definition of International Labour Office – ILO). However, the main share of people with disability participates in the 'primary labour market' but mostly under protected structures adapted to the capacities of people with disability, the 'so-called secondary market'. This is particularly the case for people living in institutions and participating in protected workshops, which provide predominantly occupational gain coupled with some productivity gain. The 2014 occupational rate showed that almost half of the people who have a health condition or impairment, work on a part-time basis. The largest share of part-time work activities is developed by people suffering from severe handicap and women. In the particular case of women, the part-time activity is highly predominant across all groups (with or without health conditions or physical disability).

These particular facts were considered and addressed by a recent judgment of the European Court of Human Rights (ECHR), which in the case di Tizio v. Switzerland[10], condemned Switzerland for assessing disability benefits in a manner that disproportionately penalised women.

In the case at stake, the Swiss authorities had used a combined method of assessing disability benefits, which assumed that even without a disability the applicant would not have been employed full-time in order to tend to her household and children. This method was not considered discriminatory and unlawful by the Swiss Federal Tribunal in 2008[11]. The Tribunal issued a judgment determining that disability insurance is not intended to provide compensation for work that would not have been possible even without a disability but rather to compensate for activities that they would have been otherwise carried out (Arrêt 9C_49/2008).

On the contrary, the ECHR found that the "combined method" constitutes an indirect discrimination and impedes progress towards gender equality, and recommended increasing support for the development of a disability assessment method more favourable to persons who work part-time and that better protects women from disproportionate hardship with respect to both their paid work and domestic duties. Although the ECHR

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10 *di Trizio v. Switzerland*, no. 7186/09, Judgement of 2 February 2016 (in French only).

11 The Swiss Federal Tribunal is the highest appellate court in all fields except social insurance. It is not empowered to rule on whether federal legislation is in conflict with the Swiss Constitution.

did not make an explicit reference to 'solidarity', it based its legal reasoning on the principle of equality and non-discrimination, guaranteed by Art. 8 of the Swiss Constitution and Art. 14 of the European Convention on Human Rights: this judicial stance assesses the link between the solidarity principle and the equality one, which allows the courts to rely on the latter for turning down some measures.

These figures and case law suggest that, despite the progressive legal framework concerning disability, people with disabilities still face difficulties entering the labour market. When they participate, they are often subject to poorer work quality conditions compared to non-health afflicted workers. In particular, they are more often subject to discrimination and violence at work. According to a survey carried out in 2016, roughly 5% of the interviewees said that they have suffered from discrimination because of their disability condition during the 12 months prior to the survey (Federal Statistical Office 2016).

Public Assistance

The provision of minimum subsistence and other forms of support to people with disability is a condition that ensures that they can effectively enjoy their rights. The Swiss Constitution states that "the Confederation and cantons shall endeavour to ensure that every person is protected against the economic consequences of old-age, invalidity, illness, accident, unemployment, maternity, being orphaned and being widowed" (Art. 41 para 2, Cst.). Moreover, "the Confederation shall take measures to ensure adequate financial provision for the elderly, surviving spouses and children, and persons with disabilities" (Art. 111ss Cst.). In line with the principle of Swiss executive federalism "the cantons shall provide for assistance and care in the home for elderly people and people with disabilities" (Art. 112c para. 1. Cst.). Quite remarkably, these provisions make explicit reference to solidarity between the confederation and cantons since Art. 112c para 2 provides that "The Confederation shall support national efforts for the benefit of elderly people and people with disabilities. For this purpose, it may use resources from the Old-age, Survivors and Invalidity Insurance". Some cantons and regions have proposed innovative policies. The social policy implemented by the canton of Bern for example is inspired by the principle of self-determination and provides for an employment relationship between the person with disabilities and the rela-

tives for their support (Politique du handicap du canton de Berne 2016 Rapport du Conseil-exécutif au Grand Conseil: 49).

Revisions to the Legal Framework on Disability and the 2008 EU Economic Crisis

Since 1990, the DI law has been at stake and strongly redefined. The major transformations of the law were crafted within the fourth (2003), fifth (2008) and sixth (2012) revisions of the law. These changes were the result of economic and debt pressures accumulated by the disability insurance scheme. The new definition of disability conceals a perception of disability as 'objectively measurable', so the disability could be considered as a feasible reversible state, surmountable. As a result, the Law on Social Insurance of 2000 states that «there is no incapacity for gain unless [the harm to health] is not objectively surmountable» (LPGA Art. 7 para. 2). Currently, people who cannot prove their «objective» disability are required to fit back into the world of work. This particularly sounds out people with 'non-objectifiable' health conditions or impairments, and it mainly affects psychiatric patients (Tabin 2009). The disability legal framework has shifted toward a criterion of employability. It has strengthened the focus on the rehabilitation and the reintegration of the people living with disability. The measures provided within the implementation of the fourth and fifth revisions of the DI focused on the reintegration and maintenance of the work activity. While the latter revision (6th revision) foresaw the reinsertion to the labour market of all pensioners with a professional potential (CHSS 2/2011; Probst et al. 2015).

These revisions are framed within the disability management approach. The fifth modification of the DI provides prevention and support to people suffering from disability in order to prevent additional psychological risk factors linked to the disability (Geisen et al. 2008; Guggisberg et al. 2008). The sixth modification appends a periodic review of rents, including previous permanent rents under the argument of 'poorly used working capacity' of people living with disability (Bieri and Gysin 2011; Probst et al. 2015).

More specifically, the latest revision of the DI has been built into two major pieces of legislation, the revision 6a of the DI and the revision 6b of the DI. The first step of the sixth revision is to improve the financial situation of the DI. The revision 6a currently implemented intends to reduce

the annuities of nearly 18,000 people over six years. The article 8a of the DI law establishes the concept of new rehabilitation pensioners, by which pensioners are subject to new rehabilitation measures listed in the legal framework and to the monitoring of their rents. Also, within the law Art. 7a and 7b enforce sanctions on the pensioners when not following the new rehabilitation measures. Finally and until the end of 2014, through the enforcement of the 6a revision current allowances based on "syndrome without clear aetiology and pathogenesis" will be revised (Spagnol 2010; OFS Centre d'information AVS/AI en collaboration avec l'Office fédéral des assurances sociales, 2011). In respect to the second piece of legislation of the sixth revision, its two major objectives are to particularly rehabilitate people living with mental disability and to introduce a linear pension system in which complete pensions would be given only to people living with 70% or more degree of disability. Also the 6b revision will reduce by 30% the allocation given to the people living with disability who are in charge of an infant (Agile 2009). As observed, the main target of the DI revisions is to reduce costs through the rehabilitation of pensioners and their reincorporation into the labour market. This philosophy was already introduced within the fourth and fifth revisions of the law but translated into enforcement acts within the sixth revision (Agile 2012).

Consequently, the disability legal framework shifted from targeting «compensation rents» to working «readaptation rents» within the scope to restore or improve earning capacity (Probst et al. 2015, 112). The repercussion of the revisions prioritises rehabilitation; the insurance is now organised around the employability criteria (Probst et al. 2015, 112-113). More generally, the modifications of the disability legal framework in Switzerland assert the importance of the rehabilitation measures and activation policies as fundamental to the development of a social and professional identity of the people with disability. These will enable the full participation of the people with disability in Swiss society where the social roles of adults are largely organised around productive and paid work. The implicit solidarity expressed within the current disability legal framework defines solidarity as a goal of social cohesion based on individual responsibility and autonomy.

In the Swiss context, the main concerns within the disability field do not lie with the lack of legislation but with the implementation and the effective financing of measures (funds, services) which have been subject to strategic budget reductions or reallocation. Still these are not the result of the EU economic crisis but a product of the disability management ap-

proach. Indeed, this was highlighted in the vast majority of interviews[12] carried out in September and October 2016 with disability associations in Switzerland[13]. These tend to denounce the technocratic drift imposed by public authorities, which does not ease the inclusion of people with disabilities into the job market and into society: "There is a strong will to better control and regulate public subsidies. That is a good thing because money comes from every citizen but the State is also reducing our manoeuvrability and flexibility, […] it's a real burden for us which takes away a lot of resources"[14]. Likewise, these associations also raised the challenges for inter-cantonal partnerships triggered by the federal structure of the country, which in some way allows for a discrete length of time in implementing the disability insurance federal law at the cantonal level. Lastly and unlike the unemployment and migration fields within the disability field, interviewees clearly expressed the necessity to go beyond the direct beneficiaries of the programmes. Inclusion is embedded in their discourse as equality. As a result, most of the organisations also cover side groups like the relatives of the beneficiaries, experts and companies: "We shall make progress in the mental illness field, and for that we need to mobilise every actor of our society, not only people with a mental health conditions but we also need to involve and increase the awareness of their relatives, public institutions, companies, researchers and other associations"[15]. Their target population definition embraces an inclusive conception toward the people with disability. It seeks solidarityon different

12 According to the TransSol research project's tasks, we carried out 30 in-depth interviews with representatives/participants of Transnational SolidarityOrganisations (TSOs) in Switzerland, from the two main linguistic regions, ten for each of TransSol targeted issues (disability unemployment, and migrants/refugees).

13 The sample selection criteria prioritised a bottom-up approach, focusing on informal, non-professional groups and organisations, including activist groups, umbrella organisations, networks, help groups and service-oriented organisations. Concerning the interviewees' profiles, these were mostly highly qualified workers who occupied a relevant position within the association. For disability The interviewed TSOs were mostly NGOs, professional associations and non-profit associations. Only one of the TSOs could be considered as predominantly protest oriented. The interviewed TSOs were all well-established and highly professionalised. Furthermore, due to the transnational focus of our inquiry within the sample universe, the selected disability TSOs were strongly represented by organisations that implement as well as cooperation and development projects abroad.

14 Interview realised between September and October 2016.

15 Ibid.

scales and between groups on the grounds of equality as in the LHand strategic goals.

Unemployment

Generally, studies describe the Swiss model of unemployment insurance as a liberal model that has evolved towards a social-liberal model since the adoption of a common unemployment insurance system and some essential protection measures for vulnerable groups on the labour market (Schmidt 1995). The institutionalisation of the Swiss social security system has been strongly conceived within a labour-contribution insurance base scheme. The benefits and losses of income insurance are dependent on contributions and oriented towards a family recipient model led by a male bread-winner (Bertozzi and Bonoli 2003; Armingeon 2001).

The current Swiss legal framework concerning unemployment comprises Art. 114 of the Constitution, which provides for unemployment allowance and prescribes the legislation necessary to legislate on it. The main legislation in unemployment is the Federal Law on Compulsory Unemployment Insurance and the Insolvency Allowance (Loi sur l'assurance-chômage, LACI) of 1982. Its creation and application was the result of a constitutional amendment and an urgent federal decree adopted in 1976. The amendment preluded in June 1977 the introduction of a new constitutional article imposing a transitional regime to a common federal mandatory unemployment insurance (Article 34 novies of the 1874 Constitution). This major revision of the unemployment social scheme was at first sight conceived as a crisis-driven legislation due to the 1970s world economic-recession and energy crisis, and not dependent to the labour market's structural factors. However, during the 1990s, both structural factors (an increase in computer technologies, development of means of communication) and short-term factors (the Gulf War consequences) preluded the first (1990) and second (1997) revision of LACI (Rubin 2006, 77).

The LACI encompasses two kind of political tools in order to tackle unemployment. The first type – passive policies – were mainly used before 1996 and consist of compensating for loss of wage of unemployed people. The second type – activation policies – have been the most common since 1996. Activation policies foresee several political and legal provisions to reduce unemployment: wage subsidies (Art. 65 LACI), vocational training (Art. 60 ff LACI), and actions to increase the entry into the labour market

(in particular with the implementation of the regional employment offices (ORP) (Art. 76c, LACI).

The LACI does not make explicit reference to the concept of solidarity. However, within the framework of the fourth revision (2012), we see an outright expression of solidarity: it introduces the so-called temporal solidarity-based contribution of 1% for the wages between 126,000 CHF per year (corresponding to about 107,000 euros) and 315,000 CHF (corresponding to about 290,000 euros) for restoring the economic balance of the scheme. Remarkably, in 2014 the higher threshold was removed by the Federal Council[16].

Along general lines, the current unemployment scheme continues to cover only paid work, excluding any consideration of the self-employed, domestic and care-aid. This mainly affects women and migrants namely those carrying out these professional activities. In addition, the payment of the contributions does not guarantee entitlement to compensation in the event of unemployment. In fact, LACI requires a minimum of months of contributions to qualify for insurance benefits (6-month in 1982, 12-month since 2012 after the 4th revision of the law).

This compulsory labour scheme is financed by equal contributions between the employer and the employee (Article 2, LACI). In addition, the unemployment scheme is partially financed by the Confederation which covers costs of employment services and labour market measures, and cantons, which cover some of the complementary measures' costs.

LACI provides benefits equivalent to 80% of the income for workers with children, with 40% or more disability or with low income, and 70% for the rest.

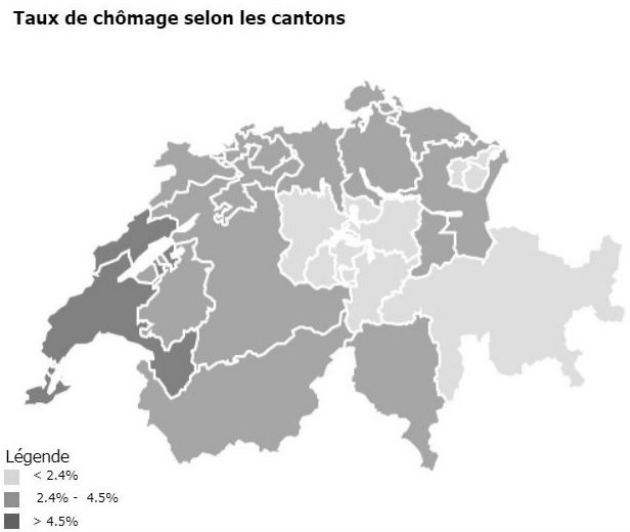
Unemployment in Figures

Since the mid-1990s, the unemployment rate in Switzerland has fluctuated between 3.5 and 4%, with the exception of the years 1999-2002 when the rate fell to 2.5%. Compared to other western European countries, the rate of unemployment in Switzerland is low. However unemployment rates vary between cantons and linguistic regions. The canton of Zurich togeth-

16 https://www.admin.ch/gov/fr/start/dokumentation/medienmitteilungen.msg-id-50526.html.

er with French and Italian-speaking cantons have the highest unemployment rates (see the figure 4 below).

Figure 4: Unemployment rate in Switzerland in 2016



SECO (2017)

Some sociodemographic facts about the distribution of unemployment in Switzerland extracted from the SECO's 2017 monthly assessments showed that more than half of the unemployed rate share correspond to Swiss nationals. Women compared to men have a lower unemployment rate about 15% points in mean difference (41% against 57%). The largest share of unemployed people corresponds to full-time jobseekers (87%) and the highest share of unemployed people (62%) are to be found between the group of people of 24-49 years. More specifically, the rate of *structural unemployment*[17] and *long duration*[18] unemployment in Switzerland is about 17% while the highest rate of the duration of unemployment

17 Structural unemployment is a longer-lasting form of unemployment caused by fundamental shifts in an economy and exacerbated by extraneous factors such as technology, competition and government policy.

18 Long duration unemployment is defined as the share of active people who have been unemployed for than a year.

correspond to a period of one to six months. In fact during all of 2015 the average benefit receipt period of unemployed daily allowances corresponded to 93 working days.

As observed through these sociodemographic facts, we could argue that solidarity defined as some kind of membership to the same community which enhances a strong cohesive identity of a group or collectively, is hard to develop within the Swiss unemployed population; this is because it is changing constantly and the unemployment rate is low. This conjecture is in line with the scarce political participation and mobilisation resulting from the empirical analysis performed by scholarship (Giugni et al. 2014).

Three main particularities differentiate the unemployment insurance scheme from other Swiss social insurance schemes. First, the unemployment insurance does not depend on the individual conditions but on the labour market conditions. Second, the unemployment insurance system is subject to the supervision of the State Secretariat for Economic Affairs (SECO) and not of the Federal Social Insurance Office (FSIO). Finally, the insurance legal framework on compensation assumes that insured people are suitable to work, while in other social insurances compensation is usually related to a diminishment of the working capacity (Rubin 2006,12). However, as shown in the previous section, the latter revisions of the disability insurance have also shifted the scheme conception of risk toward a logic of employability as in the LACI. However, the employability criteria introduced in the LACI foresees measures to ensure individual decommodification and to enhance and to ease faster labour reintegration, but not the creation of jobs: the law defines as employable «who is ready, able and qualified to accept reasonable work and to participate in integration measures» (Art. 15, LACI). However, the law discriminates within the unemployed population based on age criteria. As a matter of fact, every person over 30 years old has to «immediately accept any job that corresponds to their experience and education, while unemployed persons below the age of 30 are required to accept any job irrespective of suitability to their competences and experiences» (Art. 16, LACI). This differentiation embraces a logic of young people's working capacities as a learning process within enterprises, boosted by the flexibility of the job market that enhances a sequence of changing working environments. This concept has been clarified by the Federal Supreme Court in a judgment issued in 2013 about denial of cantonal social assistance after refusal to accept "suitable work" proposed by the city of Bern (8C_962/2012, 29 July 2013). The Federal Supreme Court argued that the right to enjoy social assistance is

subordinated to the condition that the person is notable to provide for himself/herself; the refusal of the proposed work which could have enabled to provide for himself/herself autonomously, prevents any claim to social assistance (para. 3.3). This right is in fact subsidiary to one's own capability to work (para. 3.5). Based on these considerations the Tribunal suspended the allocation of social benefit.

This decision is not so surprising since the courts have ruled on many occasions about the possibility of the legislator to stop social aid in cases of abuse of social insurance rights by the beneficiary (8C_500 / 2012, 22 November 2012), or non-compliance with the subsidiarity principle – i.e. unemployed people can benefit from social aid as long as they are not earning a salary from an undisclosed job (8C_962/2012, 29 July 2013).

Limits of the Unemployment Legislation and its Implementation at Cantonal Level

Some legal experts have highlighted that as most EU unemployment schemes, the Swiss unemployment scheme reveals an important sensitivity to the labour market conditions (Rubin 2006). The social scheme presents two major lacks: first, the financing of the LACI is dependent upon the share of the employee payroll, which is subject to contributions (art. 90 LACI); thus, when contributors of LACI are fewer (employers and employees), unemployment benefits decrease while total unemployment costs increase. Second, the so-called principle of 'causality' of the law – the compensation depends on the risk, not on the status of the person at the time of the contingency- which enhances two unfortunate consequences, overcompensation of some risks and poor compensation of cumulative risks (Rubin 2006, 12).

In addition, the federal structure of the country has also deeply challenged the overall uniformity of the unemployment scheme. As a matter of fact, the law implementation takes place at the cantonal level and according to numerous studies, the administrative capacity of the cantons and the local political tradition – public interventionism, subsidiarity, cantonal centralisation or cantonal decentralisation and corporatism – have favoured 26 different cantonal enactments of the unemployment assistance scheme (Giraud et al. 2007; Germann 1999 and 1986; Kissling-Näf and Knoepfel 1992). Moreover, the context of "executive federalism"– as a steering and implementation system of the law – has an important and

complex role in influencing the implementation of the law at each political-administrative level (Giraud et al. 2007, 21).

For many observers the main factor that explains differences in the LACI's implementation across cantons is inherent to the two objectives of the LACI: fostering social reintegration of unemployed people and combating the abuse of insured people. These two goals are incorporated in two different policy traditions. The first one comes from a tradition of policies focused on human resources which try to preserve human capital from deskilling workers – due to the long-term exclusion of workers from the labour market. These policies contain actions such as improving labour placement for unemployed people, reabsorbing the gaps in qualifications of workers, decreasing the negative impact of unemployment on social and professional domains. The second aim of the LACI – combating the abuse of insured people – comes from a tradition of policies focused on production. These policies avoid influencing the labour market and encourage workers to accept the realities of the labour market in order to provide the economy with the necessary labour force (Giraud et al. 2007, 40-41[19]).

The following table establishes a classification of the Swiss cantons based on the implementation of the LACI in terms of balance between the two traditions developed by Giraud and others. Policies focused on human resources (reintegration) and policies focused on production (control).

19 For an in-depth discussion on the unemployment social scheme legislation and federalism: Giraud et al. 2007.

Classification of the Swiss cantons within the implementation of the LACI by policy traditions

Control	reintegration			
High	High			Low
	Maximalist implementation			Partial implementation focused on control
	Basel-Stadt, Lucerne, Soleure	Berne, Grisons, Schwyz	Argovie, Bâle-Campagne, Glaris, Saint-Gall	Obwald, Nidwald, Uri
	Partial implementation focused on reintegration			Minimalist implementation
Low	Fribourg, Jura, Tessin, Valais, Vaud	Genève, Neuchâtel, Zoug, Zürich		Appenzell Rhodes-Extérieures, Appenzell Rhodes-Intérieures

Source: Giraud et al. 2007, 46.

An example of variations at the cantonal level is the implementation of the LACI in the City-canton of Geneva which stands as more generous than the general federal framework of the law. In 2012, the canton voted for an amendment that extends the access to the reinsertion measures for independent unemployed people. The canton also provides access to allocations of return to employment measures (ARE) and solidarityemployment (Eds) for particularly vulnerable categories of citizens, when their unemployment daily allowance is exhausted. In particular, the Eds are open-ended contracts created by non-profit organisations and associations active in the social and solidarity-based economy of the canton. These employments ensure fair pay and are subject to social security contributions. Moreover, they aim at avoiding the risk of loss of social bonds, in order to maintain and develop social networks (Prestations cantonales (GE); 7.4 Programme d'emplois de solidarité sur le marché complémentaire de l'emploi). This measure highlights therefore a conception of solidarity as a collective need to assist the most vulnerable[20].

20 "A Genève, le tissu associatif apporte des réponses à de nombreux besoins sociaux. En tant qu'association ou fondation, acteur de l'économie sociale et solidaire,

Changes to the Federal Law on Compulsory Unemployment Insurance and the Crisis

The first revision of the unemployment insurance law adopted in 1990 lightly introduced activation polices, but it still maintained a large share of passive measures: it reduced the compensation contribution of the employers in case of reduction of working hours to encourage the reduction of working hours instead of the workers' dismissal and extended the maximum job training allocations (Rubin 2006). In addition, it abolished progressive reduction to income daily allowances based on the duration of unemployment, which penalised the long-term unemployed. However, during the debate of the fourth LACI revision in 2010, the progressive reduction was strongly discussed, although it was not re-introduced into the final draft of the law[21].

The first revision of the LACI was not sufficient to reduce unemployment and it was not robust enough to protect vulnerable populations from unemployment. For these reasons, in June 1994 a second partial revision of the LACI was proposed and introduced in 1996. This reform crafted the foundations of the current law by introducing measures focused on a human resources approach (reintegration) and measures focused on production approach (control). Three major aims were defined within the law: first, to develop labour market regulation measures through new active reintegration dispositions in order to help unemployed people's labour market reintegration; second, to establish Regional Employment Offices (ORP) (Art. 85b LACI); and finally, to introduce a new system of specific daily allowances (Rubin 2006, 86). Between the second and the third revision of the LACI, other minor revisions entered into force. One of the most technical reviews of the LACI took place in 2000. It granted more autonomy to the cantons in the implementation of their tasks, facilitating the use of services introduced by the second revision of the law such as ORP and unemployment funds and it also reduced the daily allowances (Département fédéral de l'économie, de la formation et de la recherché,

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vos actions sont dirigées vers les plus défavorisés. Aujourd'hui, par la création d'emplois de solidarité, la possibilité vous est offerte d'agir en faveur de l'insertion professionnelle des demandeurs d'emploi en fin de droit les plus fragiles." François Longchamp Conseiller d'Etat.

21 History of the Swiss Social Security; version 2013. Office fédéral des assurances sociales OFAS. Available at: http://www.histoiredelasecuritesociale.ch/.

Secrétariat d'Etat à l'économie 2013; Artias 2010). Various scholars have stressed that the third revision of the law in Switzerland coincided with the bilateral negotiations between Switzerland and the EU, which impacted the political discourse about insurance scheme access and benefits.

As within the creation of the LACI and its first reform, the latest revision of the unemployment scheme had also taken place during a period of economic crisis and increasing unemployment, even though the impact of the current crisis on Switzerland, as discussed before, has been less severe than in other EU countries. However, from the qualitative data analysis of the interviews to stakeholders, grassroots movements and associations, it emerges that despite the limited impact of the 2008 crisis in Switzerland, these actors were confronted with the need to provide support to higher numbers of unemployed people with the same resources: "Today, we help a higher number of people […] more and more workers, as well migrants from Portugal and Spain due to the economic crisis"[22].

The fourth revision of the LACI entered force April 2011. Its main objective was the consolidation of the financial equilibrium to assure the continuity of unemployment insurance. In pursuance of this goal, LACI funds increased while reducing costs. The mandatory contribution rate raised from 2% to 2.2% of the wage. Some specific benefits were reduced but not the basic ones. It has also strengthened the link between the number of months of contribution and the duration of the compensation: in order to qualify for 400 daily subsistence allowances, it is now necessary to have contributed for at least 18 months. The fourth revision introduced: one percent point solidarity contribution to fund the unemployment insurance upon wages equivalent to CHF 126,000 or more (ibid. 2013).

To sum up, it can be pointed out that, since the 1990s, the unemployment scheme in Switzerland experienced first an expansion of benefits and measures, then a continual re-categorisation of subjects entitled to benefits and an increasing rigidity of social policies. With regard to this process the associations interviewed during our qualitative organisational research highlighted changes within their target populations, the enlargement of the vulnerable groups and the enforcement of more restrictive laws. Job insecurity was translated into more precarious working conditions; impacting a higher number of families as well, more people were to be found in vulnerable situations: "My associative engagement came before my profes-

22 Interview realised between September and October 2016.

sional life [...] and then one day I became a precarious worker, like the people I helped"[23]. In addition, some of the associations commented that the politicisation of migration issues and the EU crisis have enhanced competition for social aid, competition against the latest comers within a logic of deservedness: "Currently, a very violent discourse exists between the social recipients, against migrants […] it's terrible because it's like a competition between vulnerable groups"[24]. The majority of the interviewed associations, however, had no system or indicators in place to assess the direct impact of the crisis on their daily activities. The changes in the policy domain were framed within a larger welfare state retrenchment in matters related to workfare, activation policies and job market reintegration. All the connections to the crisis were mainly indirect and strongly linked to migration.

Immigration/Asylum

Switzerland is widely recognised as a country of immigration. Historically immigration has been an important component of the Swiss economy. According to recent data, one fourth of the Swiss population was born abroad (OFS 2015). Economic reasons are the main ones given for immigration. Switzerland is in fact a country «which has successfully implemented guest worker initiatives with active economic recruitment policies alongside restrictive integration and naturalisation policies» (Klöti et al. 2007, 622). However, these economic policies are nowadays confronted by a hostile public opinion towards immigration and asylum, which the statistics do not sustain (OFS, Enquête sur le vivre ensemble en Suisse 2016).

In fact, with regard to asylum figures, the number of asylum seekers had already reached a record level (over 40,000 people) in 1991, 1998 and 1999. Remarkably, against the trend of other European countries, since 2013, net foreign immigration to Switzerland has continued to decrease: according to the figures of the State Secretariat for Migration (SEM), the net migration rate was 60,262 people, thus 15% less than in 2015. Nevertheless, in 2016, 2,029,527 foreign people were living in Switzerland, 70% of whom come from the European Union or European Free Trade Associ-

23 Interview realised between September and October 2016.
24 Ibid.

ation (EFTA)[25]. Similarly, a decrease in the number of lodged asylum applications has been registered. In 2016, 27,207 asylum applications were filled in representing a decrease of 31.2% with regard to 2015[26]. This decrease is mainly due to geo-political reasons such as the closure of the Balkans route in 2016. In general, variations in the numbers of asylum seekers coming from specific regions occurs very often (Church 2016, 131). In 2016, the majority of asylum seekers in Switzerland came from Eritrea, followed by Afghanistan, Syria, Somalia, Sri Lanka and Iraq. The arrival of asylum seekers from specific countries made it more likely immigrants to become targets of hostility for the populist parties. This was the case in the summer of 2015. Eritreans were the object of discussions between the right-wing party Swiss People's Party (SVP) and the cantonal authorities of Lucerne, who called the government to refuse the recognition of asylum applications coming from citizens of some specific countries (Church 2016, 136).

Indeed, migration has become a matter of political dispute in Switzerland. On the one hand populist parties pledge for more restrictive policies and promote controversial initiatives such as the the 2014 popular initiative against mass immigration and the 2009 referendum against the construction of minarets on mosques in the Swiss territory. On the other hand the Swiss national Government tries to foster more integration of migrants. Constitutionally, Article 121 assigns to the Confederation exclusive competence to legislate on the entry, exit, residence, establishment and the granting of asylum to foreigners, while cantons are responsible for executing policies.

However, at the national level a part of the population seems to be hostile to less restrictive immigration laws (Freitag and Rapp 2013). This attitude finds an explanation in the long tradition of '*Überfremdung'*, i.e. «the idea of a foreign overpopulation threatening Swiss identity» (Riaño and Wastl-Walter 2006, 1) which has inspired previous federal policy toward immigration. Already in the 90s, the Federal Council launched the «three circles» policy which identified three groups of immigrants on the basis of their feasible integration into Swiss society. The first circle composed by European Union nationals was defined as culturally close and took precedence vis-à-vis other migrant groups. The middle circle was reserved for

25 https://www.sem.admin.ch/sem/fr/home/aktuell/news/2017/2017-01-26.html.
26 https://www.sem.admin.ch/sem/fr/home/aktuell/news/2017/2017-01-23.html.

nationals from the USA and Canada, which were categorised 'half-way' culturally distant to the Swiss and had secondary priority with respect to Europeans. The third circle was composed of 'all other states' which were defined as 'culturally distant' to the Swiss and who were allowed to enter the country under exceptional circumstances (D'Amato 2010).

Conservative Swiss attitude towards immigrants emerged for example in the 1992 popular vote when Switzerland refused to participate in the European Economic Area (EEA) and in the 2014 popular initiative against mass immigration[27]. In particular, a hostile public opinion against more flexible immigration policies in Switzerland, has been reinforced by the population's perception of the limited use of direct democratic tools in this domain. Since 1931 and in contrast to other issues, migration policies have been mainly regulated through ordinances, outside the direct democratic process (Klöti et al. 2007, 627). This modality of decision-making has attracted criticism and it has boosted general hostility towards immigration policies upon the basis of tradition and attachment to direct democracy. In addition, it is evident that the European Union does not directly impose its reforms on countries that are not members. However, European policies affect and influence Swiss immigration policies indirectly (Goetz 2002). For instance, despite refusals by popular vote of the1992 to the EEA, a bilateral Agreement on the Free Movement of Persons (AFMP) was negotiated between the Swiss Confederation and the 15 old members of the EU in 2002. Since then the Swiss immigration policy has been mainly characterised by a binary system: first reserved to immigrants from EU / EFTA countries, and secondly to all third countries.

27 There have been eight popular initiatives for a more restrictive immigration policy since 1970 and this was the only successfully accepted by the ballot box. Previous initiatives were: the 1970 Popular initiative "Popular initiative against foreign infiltration"; the 1974 popular initiative "against foreign ascendancy and overcrowding of Switzerland"; the 1977 Popular initiative "for the protection of Switzerland" (fourth initiative against foreign ascendancy); the 1977 People's initiative "for limiting the annual number of naturalisations" (fifth initiative against foreign influence); 1988 popular initiative "for limiting immigration"; 1996 federal Decree concerning the popular initiative "against illegal immigration" and 2000 popular initiative "for the regulation of immigration".

Switzerland within the European Law System

Although Switzerland has not adhered to the EU and the European Economic Area (EEA), it is a member of the Council of Europe and of the EFTA. In respect to the European Convention on Human Rights (ECHR), Switzerland has abstained from ratifying the 1st (right to peaceful enjoyment of property, right to education and right to free elections by secret ballot), 4th (no deprivation of liberty for non-fulfilment of contractual obligations, right to liberty of movement and freedom to choose one's residence, prohibition of a State's expulsion of a national, prohibition of collective expulsion of aliens) and 12th (general prohibition of discrimination) additional protocols of the ECHR. In the field of migration law, these abstentions are particularly important with regard to the prohibition of collective expulsions and general prohibition against discrimination (SCHR 2015). Similarly, it has not adhered to the Charter of Fundamental Rights of the European Union which enshrines the prohibition against torture and inhuman or degrading treatment or punishment (art. 4), the right to asylum (art. 18) and the protection to immigrants in the event of removal, expulsion or extradition (art. 19).

However, the adherence to the Council of Europe has not be underestimated, since it entails the competence of the European Court of Human Rights to judge on the merit of alleged violation of the ECHR. As a matter of fact, the Strasburg Court has issued a series of judgments on the matter of immigration concerning Switzerland (e.g. Tarakhel v. Switzerland of 4 Nov. 2014, X c. Suisse of 26 Jan. 2017).

With regard to the relations between Switzerland and the EU, these are governed via a bilateral system of treaties that allows the country to participate in the European internal market. The Agreement on the Free Movement of Persons confers upon the citizens of Switzerland and of the member states of the EU the right to freely choose their place of employment and residence within the national territories of the contracting parties (to individuals with valid employment contract, self-employed, or in the case of no gainful employment their proven financial independence and full health insurance coverage). It is worth pointing out that the Agreement is subject to a guillotine clause: any termination of an agreement results in the cancellation of all other agreements of the package, which concerns the coordination of social security systems, the mutual recognition of professional qualifications, and transitional periods with regard to new EU members.

Another relevant pillar of the treaty system that governs the relations between Switzerland and EU is the adherence, since 29 March 2009, to the Schengen agreement that allows transiting from one country to another within the Schengen area without border control. Moreover, Switzerland has adhered to the Dublin Regulation (No. 2013/604) and to Eurodac Regulation (No. 2013/603) which regulate jurisdiction of processing asylum requests. However, when these regulations are modified, Switzerland will enjoy a period of two years to implement the corresponding changes in its domestic law.

In conclusion, it can be argued that Switzerland although not being a State member to the EU entails strong relationships with the European legal framework, which have deep implication with regard to immigration and asylum.

The Immigration Legislation for Third Countries Citizens

The Federal Act on Foreign Nationals (*Loi fédérale sur les étrangers*, 16 Decembre 2005, hereinafter LEtr) outlines the main features of the immigration and integration policies carried out by the Confederation, cantons and communes. The law regulates the conditions of admission, entry, residence, family reunification, and integration, including criminal provisions, end of stay and the temporary admission of immigrants into the Swiss territory. The law governs in particular the entry and stay of non-EU/EFTA country nationals and it is only applicable for some particular asylum domains. The LEtr improves the situation of foreigners staying legally and permanently in Switzerland, promoting their integration on the basis of constitutional values and mutual respect (Art. 4), while at the same time toughening sanctions against abuse like "fictitious weddings" (Art. 118). The reference to constitutional values indirectly includes the principle of solidarity– otherwise not explicitly mentioned in the LEtr. Moreover, the reference to mutual assistance between authorities in the execution of the legislation expressed in Art. 97 of the legislation is another expression of solidarity.

Remarkably, the immigration legal framework provides for a centralisation of power at the federal level: in fact, while the federal level is in charge of framing the policies and competences distribution, through the integration ordinance, cantons are responsible for all the institutional arrangements, programmes and social policies that concern the immigrants'

integration. Communes have the mandate to communicate to the immigrant population about the conditions of living and working in Switzerland and especially, on their rights and duties, and to provide them with public information on policy changes. Even the local asylum centres (State registration and processing centres) are directly dependent on the federal authority via the State Secretariat for Migration (SEM) (Art. 26, LAsi). The main flexibility toward cantons concerns the basic social aid which is delivered by the cantons (Art. 80, 82, 82a, LAsi) in line with article 12 (right to emergency assistance) of the Federal Constitution.

The legal anchor of the integration policies defined by the LEtr differs from canton to canton (Achermann and Künzli 2011, 45). Some cantons refer to the law as part of their own constitution (BL, BS, FR, SO, SZ, VD, ZH) but only six cantons have their own immigration and integration laws (AI, BL, BS, GE, NE, VD). Other cantons have integrated the regulations of the LEtr into their social policies or as legal dispositions. However, all cantons have established solid relations between immigration policies and integration policies, in which integration policies have shaped the bulk of the social advantages shared by immigrants within cantons (D'Amato et al. 2013).

Remarkably, on 1 October 2016, relevant changes to the Federal Act on Foreign Nationals and to the Criminal Code came into force[28]. Those implement the so-called 'deportation initiative' launched by the right-wing SVP party and adopted by the people in a referendum on 28 November 2010. According to this initiative, foreigners who commit criminal acts (of different nature, including social welfare frauds) can more easily be expelled. However, this rule does not apply for refugees or persons who risk facing inhuman and degrading treatment according to Article 3 ECHR (Hertig Randall 2017, 135-140).

It is worth to highlight that this initiative has prompted a harsh constitutional issue, involving the Swiss Federal Supreme Court and the Legislator. As a matter of fact, the Swiss Federal Supreme Court refused to apply the constitutional amendment accepted through referendum in a landmark decision issued in 2012 (BGE 139 I 16) arguing that the provision was not directly applicable and cautioning that in enacting the legislation. The

28 Federal Council, Neues Ausschaffungsrecht tritt am 1. Oktober 2016 in Kraft, 4 March 2016, available in German at: http://bit.ly/2kmXnuV.

Swiss parliament needs to be attentive to the ECHR and Swiss constitutional law.

The Legislator was confronted with the challenge of implementing the initiative while at the same time respecting human rights and more specifically the proportionality principle. In the meantime, however, the SVP-party proposed another referendum initiative (so-called the "Implementation Initiative") aimed at ensuring that the "Expulsion Initiative" would be implemented as originally intended. Under the Damocles sword of a second referendum on deportation the Parliament adopted the implementation provisions as part of the Criminal Code including a safeguard clause. The so-called "hardship clause" enables the authorities to refrain from removal in cases of serious personal hardship.

The Asylum Legislation

The Swiss Constitution provides for the right to asylum (Art. 25 para. 2-3 Const.) and sets out the provisions advocated by the EHCR (Articles 2-3), concerning the prohibition against the *refoulement* of refugees and its protection against their expulsion. Like most European countries, in Switzerland asylum is granted to refugees upon request, in accordance with a criterion provided within the Asylum Act (LAsi, 26 June 1998)[29], and « [it] includes the right to reside in Switzerland » (Art. 2, para 2, LAsi). People who initiate an application for asylum have to be in Switzerland or at the border (Art. 19, para 1 bis, LAsi). Moreover, some additional dispositions are stipulated if the asylum application is initiated at the airport (Art. 22-23, LAsi), particularly the possibility of interrogating the asylum seeker (Art. 22) and their temporary detention for a maximum of 60 days (Art. 22). The LAsi is tightly linked to the LEtr which specify the particular status of persons admitted temporarily into Switzerland[30] (Art. 80a para 6, Art. 86, para 2, Art. 88, Art. 126a), the measures about the right to fami-

29 The legislation is implemented through several ordinances, such as the ordinance on procedure (OA 1), the ordinance concerning housing and financial issues (OA 2) and the ordinance concerning protection of personal data (OA 3).

30 Provisionally admitted foreigners are persons who have been ordered to return to their native countries but in whose cases the enforcement has proven inadmissible because of violation of international law, unreasonable for endangerment of the foreigner or impossible for technical reasons. They are granted 12 months that can be extended of another year. (Art. 83, para. 3 and 4 LEtr).

ly reunification (Art. 3, para 2, Art. 47) and the departure from the country (Art. 76).

It is important to note that the Swiss asylum law has undergone a series of amendments in the last few years and further modifications are foreseen in the near future. In particular a process of restructuring the entire asylum system is under way, following the approval of an amendment proposal through a popular referendum held on 5 June 2016[31].

Contrary to the Member States of the European Union which are subject to European regulations concerning asylum, Switzerland's peculiar status makes the country not subject to most European directives concerning asylum. In this regard, Switzerland is not subject to either the Directive 2013/33 "Procedures", or the Directive 2011/95 "Qualification". This however does not mean that the country adopts a completely different legal framework. The federal legislation provides for similar provisions to those within the EU framework. In fact, the LAsi provides for procedural guarantees and the status of 'temporary admittance' that provides for situations which under EU law would be framed with the status of 'subsidiary protection'.

In addition, Switzerland can take a decision of «non-consideration» (*Non entrée en matière* – NEM) with regard to a request of international protection. This decision stems from the Swiss acceptance of the Dublin Regulation (Regulation 604/2013) and it is based on Art. 31a of LAsi which points out the reasons for dismissal of an application. These concern the return: 1) to a safe third country; 2) to a responsible country under an international agreement; 3) to the country of previous residence; 4) to the country from which the applicant holds a valid visa; 5) to the country in which relatives or people who have a close relationship with the applicant live; 6) to his/her native country or country of origin.

Although the NEM makes reference to a procedural decision, it also gives birth to a status which concerns «asylum applicants whose refugee status is denied when formal legal administrative requirements are incomplete» (Matthey 2012, 11). Persons subject to NEM must leave the country but generally do not do so – due to the lack of economic resources and they disappear from official records, leaving a legal vacuum (Matthey 2012, 11).

31 https://www.admin.ch/gov/en/start/documentation/votes/20160605/Asylum-Act%20.html.

The Social Legislation on Immigration/Asylum

The constitutional bulk of the principle of solidarity concerning immigration and asylum is represented by Arts. 12 and 19 of the Federal Constitution. The former provision entails a minimum support to preserve the person's existence from mendacity, and concerns any person in the country. The second provision guarantees free access to basic education.

In line with these constitutional dispositions, LAsi provides for social assistance and emergency aid (Chapter 5, Arts. 80-84): in particular, it sets out that "the Confederation shall work with the canton concerned to ensure that health-care and primary education are provided" (Art. 80), and that "Persons who are staying in Switzerland on the basis of this Act and who are unable to maintain themselves from their own resources shall receive the necessary social assistance benefits unless third parties are required to support them on the basis of a statutory or contractual obligation, or may request emergency aid" (Art. 81).

Remarkably, the legislation explicitly states that, for asylum seekers and persons in need of protection who do not hold a residence permit, the level of support has to be inferior to that given to the residents in Switzerland (Art. 82 para 3 and 4). This reference to different levels of benefits has been introduced with the LAsi revision adopted in 2012 and entered into force on 1 February 2014.

The people who have received a NEM decision can benefit only from emergency aid and not from further forms of social aid (Art. 83 para 1). Emergency aid however cannot be limited (ATF 131 I 166, para. 3.1.) and its amount varies from canton to canton. As a matter of fact, in 2015 the rate of social assistance (corresponding to the proportion of refugees and temporarily admitted persons benefitting from social aid with respect to the Swiss population) was 80.8% (SEM), while 4,967 persons benefited from emergency aid (corresponding to 46% of potential beneficiaries) with a diminution of 6% in comparison to 2014 (SEM, Rapport de suivi de la suppression de l'aide sociale 2015).

Bénéficiaires de l'aide sciale selon le statut de séjour, 2015

Statut de séjour[32]	Total	
	Nombre	Prop.en %
Total	20.036	100
Réfugiés reconnus B (- 5 ans)	13.812	68,9
Réfugiés admis provisoirement F (- 7 ans)	5.258	26,2
Permis de séjour annuel B	137	0,7
Permis d'établissement C	417	2,1
Autorisation de courte durée L	0	0,0
Réfugiés admis provisoirement F (+ 7 ans)	18	0,1
Personnes admises provisoirement F (+ 7 ans)	18	0,1
Sans autorisation	23	0,1
Autres statuts de séjour	352	1,8
Nationalité suisse	12	0,1
Ne sait pas	1	0,0
Non répondu	81	0,4
N	20.130	

Source : Office fédéral de la statistique OFS 2015

Swiss legislation provides the reimbursement of social assistance, departure and enforcement costs as well as the costs of the appeal procedure "*as far as it is reasonable" (*Italics added) (Art. 85). The reimbursement requirements apply to the persons in need of protection who become successfully employed, and it is justified by the need to cover the overall costs generated by their social assistance.

Similarly, the LAsi provides for the confiscation of assets to asylum seekers and persons in need of protection without a residence permit for the purposes of reimbursing the costs of his/her assistance in case they cannot prove the origin of the assets (Art. 87). However, "confiscated as-

32 Remarques: – Dossiers ayant reçu une prestation durant la période d'enquête, sans les doubles comptages.
- L'attribution des dossiers à FlüStat s'effectue d'après le statut de séjour du demandeur. La personne demandant l'aide sociale doit indiquer son statut de séjour qui peut être «Réfugié reconnu B (jusqu'à 5 ans)» ou «Réfugié admis provisoirement F (jusqu'à 7 ans)». Les autres membres de l'unité d'assistance peuvent par contre avoir un autre statut de séjour (permis de séjour B, C, L, AP7+ ou F7+) ou peuvent être de nationalité suisse. – Permis de séjour annuel (B): sans les réfugiés reconnus B. – Permis d'établissement (C): avec les réfugiés reconnus C.

sets shall be reimbursed in full on request if the asylum seeker or person in need of protection leaves the country under supervision within seven months of filing the application for asylum or the application for temporary protection" (Art. 87.5).

In 2015 the Swiss authorities confiscated assets in 112 cases, out of around 45,000 persons who in theory were subject to this regulation. This was a case of disconnection between law in the book and law in practice.

As far as the LEtr is concerned, the Act stresses the importance of integration (Chapter 8) and in particular provides that the Confederation shall grant financial contributions to promote integration (Art. 55). Moreover, the Act allows foreign nationals to work, provided that some conditions are met, such as being in the interests of the economy as a whole, and it has been proven that no suitable domestic employees or citizens of the state with which an agreement on the free movement of workers has been concluded can be found for the job (Arts. 18-25). These restrictions are in line with the Constitution, which does not guarantee access to the economic market rights to all foreigners, but «only to those who are admitted without restrictions in the domestic market or who have a right to obtain a residence permit» (Art. 27 Cost). In general terms, EU/EFTA citizens can benefit from agreements on the free movement of people that were put into force in 2002 which allow those citizens the right to enter, reside and look for work or to establish themselves as self-employed. On the contrary, citizens from all other countries (so-called third country nationals) must have a guaranteed work contract from an employer as well as the appropriate work visa before entering the country. Refugees, people who have been admitted provisionally and asylum seekers are allowed to take up gainful employment after the first three months post submission of their application. Beneficiaries of protection with income from employment have to pay 10% of their income to contribute to reception costs for 10 ten years (Art. 86 para 2 LASI). Remarkably, however, a proposition of modification of this requirement is under discussion[33].

As a matter of fact, the admission to the labour market is restricted to qualified persons. The Federal Council each year establishes a maximum

33 *Loi federal sur les étrangers (integration.)*.

quota for short-term and long-term residence permits[34]. Remarkably, in this regard, in 2014 the majority of the population approved by referendum the popular initiative "against mass immigration which aimed at limiting immigration through quotas, also for European citizens. The initiative had to be implemented by legislation within three years, and in December 2016 Parliament found a solution of compromise in order not to break the bilateral agreements with the EU: it proposed a revision to the LEtr that gives preference to local people in the labour market but it does not introduce quotas. Art. 21a sets out that employers in sectors or regions with above-average unemployment have to advertise vacancies at job centres and give locals priority before recruiting from abroad. The violation of this provision is sanctioned with a fee of up to 40,000 CHF (equivalent to about 37,000 euro). The revisions, moreover, entail a novelty as far as social aid is concerned: the people who are in Switzerland looking for employment will not be entitled to social assistance, and their families neither (Art. 29a). This provision strengthens a reduction already in force: Art. 18 para 2 of OLCP sets out that if the job search lasts more than three months[35], the renewal of the short-term residence permit is conditional upon the disposal of adequate financial means. This reduction of social benefit is also in line with a previous amendment to the LEtr adopted in 2015 about revocation of residence permit: the competent authority may revoke permits, with the exception of the permanent residence permits, "if the foreign national or a person they must care for is dependent on social assistance" (Art. 62, letter e and 63, paragraph 1 letter c, LEtr).

The restriction on the status because of benefiting from social assistance is reflected also by the naturalisation legislation which was revised in 2014 and implemented through ordinance in 2016[36]. The legislation sets out a series of requisites for the naturalisation, such as the familiarity with Swiss living conditions, the participation in the Swiss social and cultural

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34 In October 2016, the Swiss government announced the following quotas for 2017:

- 4500 "L" short term permits for non-EU/EFTA nationals
- 3000 "B" long term permits for non-EU/EFTA nationals
- 2000 "L" short term permits for EU/EFTA nationals on assignment/secondment
- 250 "B" long term permits for EU/EFTA nationals on assignment/secondment.

35 Currently, Art. 10 of LEtr provides that foreign nationals do not require a permit for any period of stay without gainful employment of up to three months.

36 *Ordinance révision de la loi sur la nationalité 17 June 2016.*

life, contact with locals, the sharing of local traditions; among them, it is remarkable to point out the requisite regarding the participation in economic life (Art. 12 para 1 letter d) legislation and Art. 4 para 2 letter a) and b) Ordinance), which means that the naturalisation is precluded to foreigners who have received social aid in the three years before the application. This qualification has been criticised as being discriminatory and detrimental to the social integration of foreigners, since it can be argued that naturalisation can enhance the capabilities of the individuals to integrate better into the community, finding more opportunities to provide for themselves economically (Hainmueller et al. 2015).

As already stressed, the cantons are responsible for the implementation of the Federal principles and therefore differences from canton to canton occur, with some cantons, such as the canton of Neuchâtel and Bern characterised by liberal migration policy, and others, such as the canton of Ticino, characterised by more restrictive migration policy (Marks-Sultan et al. 2016, 11).

The table below is a synthesis produced by the Swiss Centre of Expertise in Human Rights (2015) in respect to the general laws enhancing access to socio-economic rights to foreigners in Switzerland.

Table 5: Socio-economic rights entitlement to immigrant population

Socio-Economic Rights	Laws
Economic Rights	Swiss Constitution, art. 27 (only Swiss citizens or persons entitled to a residence permit benefit from this fundamental right) Access to labour market through the Agreement on the Free Movement of Persons (ALCP) or LEtr
Right to Education	Swiss Constitution, art. 19 Ordinance OASA (RS 142.201) which allows to follow a professional diploma even in irregular situation Agreement on the Free Movement of Persons (ALCP)
Right to Housing	Swiss Constitution: art. 8 (discrimination prohibition), art. 12 (right to get help in situations of distress) art. 13 (protection of the private sphere) Agreement on the Free Movement of Persons (ALCP)
Right to Health Insurance	Federal Law on Health Insurance (LAMal; art. 3: obligation to ensure all the persons domiciled in Switzerland)
Right to Social Security and Assistance	Agreement on the Free Movement of Persons (ALCP): Annexe II LEtr, LAsi, LAS (Federal Law on Aid to People in Distress) and ordinances (OLCP) RS 142.20

Source: Swiss Centre of Expertise in Human Rights, Manuel de droit Suisse des Migrations (2015)

Law's Enforcement and Jurisprudence

Although the number of immigrants and asylum-seekers in Switzerland is modest in total number if compared with other European countries, the recent 'refugee crisis' in Europe seems to have further triggered hostile opposition to migration that has been present in Switzerland for many decades.

The new emphasis on the issue has found expression especially with regard to Muslim communities, as assessed by: the prohibition of the construction of minarets introduced to the Swiss Constitution by popular vote in 2009 (Art. 72.3), the banning of wearing the burka in Ticino in November 2015 and the proposal of introducing a nation-wide ban.

The Judiciary, however, has partially lightened this restriction: in a recent judgement, the Federal Supreme Court had in fact ruled that wearing a headscarf is not a ground for exclusion from school because of the principle of neutrality of public schools (BGer 2C_121/2015, 11 December 2015).

Moreover, on 8 September 2016, the District Court of Bern-Mittelland issued a remarkable decision on the unlawful dismissal of a female employee because she started wearing a hijab to work (Urteil Regionalgericht Bern-Mittelland, 8. September 2016)[37].

Moving from the jurisprudence of the Swiss Federal Supreme Court concerning specifically the Muslim community to the jurisprudence regarding asylum-seekers and foreigners more in general, it is possible to argue that it has not changed considerably in the last years. In fact the Federal Court has continued to swing from considering minimum social benefits for immigrants as not in contrast with the Constitution (20 March 2009, ATF 135 I 119) to grant the same social benefits to refuges as to Swiss citizens (16 December 2008, ATF 135 V 94). With regard to foreigners coming from the EU, the Swiss Federal Supreme Court has on several occasions decided on the exclusion of social assistance to persons who come to Switzerland looking for jobs (2C-195/2014, 8C-395/2014).

The only relevant innovation in the jurisprudence concerns the recognition of cantons entitlements to provide basic aid for asylum seekers. Significant in this regard, is the judgement of the 11 June 2011 concerning ur-

37 See also: http://www.humanrights.ch/en/switzerland/internal-affairs/groups/cultural/wearing-a-hijab-grounds-dismissal.

gent social assistance for foreigners in the Vaud canton, where the Tribunal stated without making reference to solidarity, that even in the absence of a deportation order, Vaud authorities were committed to continuing the provision of relief benefits to a foreigner without a residence permit, even when the regularisation procedure was pending (ATF 136 I 254).

Besides the jurisprudential responses, some legislative initiatives with regard to immigration have to be mentioned, such as the popular referendum held in February 2016 regarding whether foreign citizens who commit minor offences, like traffic violations, in the space of ten years should be automatically deported. The proposal was rejected, but underscores the high tones of the political debate about migrants.

Looking at the law's implementation, it has to be highlighted that although the Swiss federal law concerning immigration (LEtr) forbids immigration detention of children under the age of 15 (Art. 80 para 4), the detention of minors has been denounced by some human rights organisations (Terre des hommes 2016). This aspect has to be considered in relation with the fact that according to the Swiss Federal Migration Office between 20% to 40% of migrants hosted in Swiss reception centres waiting for the asylum application processing flee the centre shortly after arriving[38].

As far as the confiscation of asylum-seekers' assets is concerned, this power of requisition seems to be used in a limited manner (0,25% of cases in 2015) (Church 2016, 135). However, the announcement of a similar policy in Denmark raised the debate on the legitimacy of the measure in Switzerland.

As already stressed, cantons are responsible for granting social assistance to persons with refugee status, asylum seekers and provisionally admitted persons, and half of the cantons have charged relief organisations with the management of social services for refugees. In the remaining cantons, either the communal social services are responsible or special cantonal welfare services for refugees. The Confederation compensates cantons for the assistance costs, and this represents a concrete application of the principle of solidarity in the Swiss context. Social assistance for asylum seekers includes coverage of basic needs such as food, clothes, transportation and general living costs, in the form of an allowance or non-cash

38 State Secretariat for Migration (SEM) – spokeswoman Chloe Kohlprath in reponse to the reported information of the journal SonntagsZeitung – reported by the Local journal "'Disappearing' migrants on the rise in Switzerland" (https://www.thelocal.ch/).

benefits, accommodation, health care and other benefits related to the specific needs of the person.

The granting and the amount of financial allowance depends on whether the person is entitled to full, partial or no social benefits according to their income. According to national statistics on social assistance, 94% of all asylum seekers received social benefits on 30 June 2015, and same percentage of asylum seekers and temporarily admitted persons who got social benefits on 30 June 2015 received social assistance as their only support (Federal Statistical Office 2016, 23). This high percentage derives from the prohibition of work during the first three to six months of the asylum procedure. However, there are also employed persons who continue to rely on social assistance for everyday life.

Persons targeted by a removal order with a fixed departure deadline are not eligible for social assistance. The same applies for those who are waiting for re-examination or revision of their case. These persons are granted emergency aid whenever they find themselves in a situation of distress according to Article 12 of the Federal Constitution. This aid only consists of minimal cantonal benefits for those who are unable to provide for themselves. The Federal Supreme Court has made some general guidelines clear regarding what can be considered respectful of human dignity, with regards to emergency aid (Trummer 2012, 24ff). The actual amount and supply of emergency aid is however a matter of cantonal law, and is therefore subject to remarkable regional differences.

Like social assistance emergency aid usually takes the form of non-cash benefits. This generally includes accommodation in specific shelters (often underground bunkers or containers, with access sometimes restricted to night time only), where living conditions are reduced to a minimum and are known to be quite rough (Bolliger et al. 2010).

The Crisis and the Solidarity toward Migrants

Within the field of migration and asylum, where people have suffered from the rigidity of the legal framework, the Swiss organisational fabric has demonstrated strong robustness against the hardness of the domestic legislation. In respect to the innovative actions performed by the associations to confront social cuts and hostilities, associations stressed the creation of networks as a means of extensive engagement, enhancing visibility and the coordination of common programmes. Also, they referred to

the creation of customised language and citizenship classes, in addition to the given support to migrants with a long migratory trajectory in Switzerland. Through these means, they seek to actively respond to the challenges enhanced by the recent changes in the migratory legal framework and media portrait of migrants: "People are afraid of losing their jobs, they think migrants could steal their work"[39]. Likewise, several associations do not share the public opinion usage of the term migrant crisis or refugee crisis: "It's not a migrant crisis but the crisis of the European Union which does not successfully help migrants"[40]. So, the crisis has helped to raise awareness of the issue but at the same time Switzerland's extreme right-wing parties have used anti-migrants discourse to the detriment of migrants' rights. The hostile portrayal of refugees/migrants has created tensions and misconceptions within the settled migrant communities of the country, as well as on second generation/naturalised migrants. However, most of the associations were keen to point out that solidarity from below is strong; it brings the community together and eases the welcoming of refugees. One association defined transnational solidarity "as a place of cultural exchange, where people of different nationalities meet and create transnational bonds of friendship and mutual support" [41].

Conclusions

In respect to the policy analysis with emphasis on the crisis-driven legislation, the Swiss case could be considered impervious to the latest European economic crisis. However, when the analysis is examined within a wider period of time, the latent shift of the social system becomes obvious. Since 1990, the Swiss welfare state has shown a pragmatic and fragmented shift towards a social-liberal welfare state characterised by the selective criteria of employability, rehabilitation/potential work capacity and integration as part of economic autonomy.

Besides this development of the social legislation, another observed trend is the politicisation of migration. A deeper analysis of the social perception of immigration among the Swiss population points to the rise of a new immigration regime, which is premised on restrictive attitudes toward

39 Interview realised between September and October 2016.
40 Interview realised between September and October 2016.
41 Interview realised between September and October 2016.

foreigners but especially in German speaking cantons and in the Ticino (Wichmann et al. 2011; D'Amato and Ruedin 2015).

In this respect, the referendum banning the construction of minarets on mosques in the country held in 2009 is paradigmatic and it is contrary to the principle of equality, since it results in the discrimination of a specific group by diminishing their presence in the public sphere. The initiative expresses the willingness to defend a presumed idea of homogeneity and coherence of the Swiss community. It exposes the tensions and the fragile equilibrium between the shared-rule and self-rule when accommodating external migration pressures beyond the cantonal diversity (Fleiner 2009). It also exposes the tensions between individual and collective rights, which may often be translated into equality between communities (within diversity) to the detriment of equality between individual and external communities (migrants' groups).

Furthermore, the effective enforcement of regulation and legislation on solidarityunveils the existence of fundamental cantonal differences in terms of guaranteeing the rights of vulnerable groups. Despite the increasing power of the central structure, federalism and direct democracy have enhanced a complex social-liberal model at different paces. Indeed, the Swiss social schemes are probably among the most fractious and diverse in Europe.

The legal and social analysis of solidarityin action with regard to people with disabilities, unemployed persons and immigrants shows some differences: as far as the protection of people with disabilities is concerned, a general tendency to promote equality of chances and non-discrimination can be noticed. On the contrary the same centrality given to the principle of equality within each group (immigrants and unemployed persons), is less obvious. In this respect, fragmentation of benefits within unemployed groups is based on age, the time-frame of work and type of employment (employed/self-employed). Whereas in the case of migration, the fragmentation of benefits is evident between EU/ALECA citizens and citizens of other countries, as well as between locals and foreigners. The existence of these differences exposes the challenges to the solidarity principle in Switzerland, thus confirming that despite the moderate impact of the Eurozone crisis on the country, this principle is under pressure.

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Solidarity in Austerity Britain: The Cases of Disability, Unemployment and Migration

Tom Montgomery and Simone Baglioni

Introduction

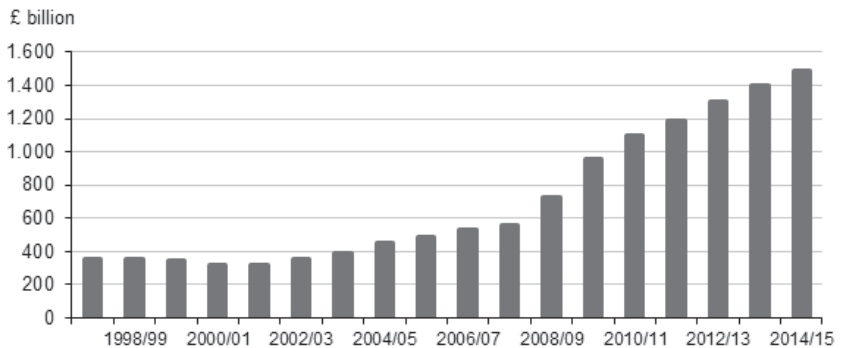
One of the key characteristics of solidarityin the UK has been the welfare state and the social solidarity which not only reflects its foundation but also underpins those arguments for its continuation in supporting those who find themselves challenged by forces beyond their control. Nevertheless, the austerity measures that have been enacted in recent years have eroded the levels of support for some of the most vulnerable groups in British society and these cuts have taken place within a political context that has enabled policymakers to call into question the 'deservingness' of those seeking support, whether they be unemployed, disabled, migrants or even those seeking asylum and it is the impact on these groups which this chapter focuses upon.

Although the implications of Brexit loom large over any contemporary discussion of solidarity in the UK political context, the key defining issue of the 2010 UK General Election was how the country could deal with the effects of the global financial crisis, with the contenders for Government both conceding that there would be cuts to public spending, a process that had already been signalled to some extent under the Labour Chancellor Alastair Darling in his pre-election budget (Elliot 2010). The absence of economic certainty during this period was to be mirrored by political uncertainty following the results of the election in which neither of the two largest parties, Labour or Conservative, gained an overall majority. Eventually, it became clear that the UK would have its first coalition Government for decades, comprised of the Conservatives and the centrist Liberal Democrats.

The 'programme for Government' published by the Coalition Government placed reducing the deficit centre stage, promising to 'significantly accelerate the reduction of the structural deficit over the course of a Parliament, with the main burden of deficit reduction borne by reduced spending rather than increased taxes' (HM Government 2010, 15). As a conse-

quence, the UK budget deficit, has dominated the discourses surrounding austerity. Moreover, there remains a significant problem for the sustainability of the UK economy, namely the national debt. As can be seen in Figure 1, the global financial crisis had significant consequences for the debt of the UK and this is a problem which has continued to grow year on year, with the rate currently standing at just over 80% of GDP (ONS 2015a).

Figure 1. Public sector net debt: financial year ending 1998 to the financial year ending 2015 (Source: ONS 2015a)

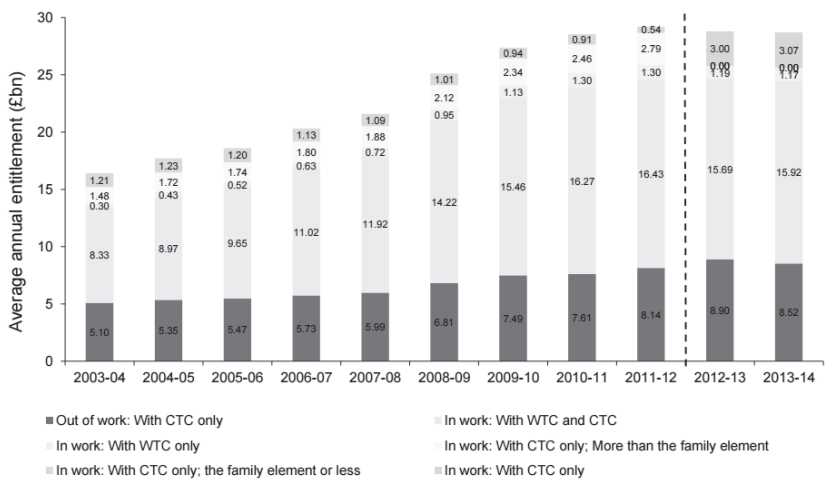


Although such headline figures can understandably capture attention, in order to better understand the impact of austerity in the UK it is important to consider the 2010 Budget of the new Coalition Government which set out in detail how the commitment to tackle the deficit would be met. The new Chancellor of the Exchequer George Osborne explained to the House of Commons that this would be achieved through a combination of raising some taxes; in particular, the rate of Value Added Tax (VAT) and by cuts in public spending. Reflecting the commitment the Coalition had made in its programme for Government, the Chancellor announced that the majority of the measures taken (77%) would be spending cuts (HM Treasury 2010).

One area that has been a focus of attention for reducing public spending has been cuts to welfare support and these have had a considerable impact upon the disabled, the unemployed and precariously employed, as highlighted by the Secretary of State for Work and Pensions who in the foreword to his programme for welfare reform stated that this expenditure

would be addressed 'by tackling the root causes of poverty: family breakdown; educational failure; drug and alcohol addiction; severe personal indebtedness; and economic dependency' (DWP 2010, 1). Moreover, as we shall explore later in this chapter, these reforms were in tandem with discourses that suggested the UK welfare system had apparently been placed under further strain by a liberal approach to immigrants accessing the benefit system. Since these reforms, cuts have been applied to welfare provision for disability, housing costs and tax credits. The latter benefits, Working Tax Credits (WTC) and Child Tax Credits (CTC), have been paid in recent years to those experiencing unemployment that have children but also to support those in low paid employment (see Figure 2). According to the Chancellor in his 2015 UK Budget, the expenditure on tax credits had to be tackled due to the unsustainability of, 'subsidising low pay through the benefit system' (HM Treasury 2015a, 37). These proposed cuts, aimed to reduce the entitlement to tax credits from the current 6 out 10 UK families with children to 5 out of 10 in 2016-17 compared with 9 out of 10 in 2010 (HM Treasury 2015a). Concurrent with these cuts was the introduction of a National Living Wage and a higher threshold before low earners begin paying income tax.

Figure 2. Annual entitlement by type of tax credits received (Source: HM Revenue and Customs 2015)



The overall impact of the first tranche of cuts (since 2010) across the UK have been analysed in research conducted during the period of the Coalition Government (Beatty and Fothergill 2013) which draws upon figures from the UK Treasury and the Department of Work and Pensions to measure the total amounts lost to the economy and the geographical distribution of these cuts across the country. As Figure 3 demonstrates, the largest cuts have fallen upon those claiming incapacity benefits (the disabled), those claiming tax credits (primarily low paid workers) and those in receipt of welfare benefits through the '1% uprating' meaning that benefits will generally rise less than the overall rise in the cost of living. Indeed, concerns over the cost of living in the UK have been a consistent companion to the implementation of austerity measures.

Table1. Overall impact of welfare reforms by 2014-15 (Source: Beatty and Fothergill 2013)

	No of h'holds/individuals affected	Estimated loss £m p.a.	Average loss per affected h'hold/individual £ p.a.	No. of h'holds/individuals affected per 10,000	Loss per working age adult £ p.a.
Incapacity benefits[1][3]	1,250,000	4,350	3,480	310	110
Tax Credits	4,500,000	3,660	810	1,750	90
1 per cent uprating[3]	n.a.	3,430	n.a.	n.a.	85
Child Benefit	7,600,000	2,845	370	2,960	70
Housing Benefit: LHA	1,350,000	1,645	1,220	520	40
Disability Living Allowance[1][2]	500,000	1,500	3,000	130	40
Housing Benefit: 'bedroom tax'	660,000	490	740	260	10
Non-dependant deductions	300,000	340	1,130	120	10
Council Tax Benefit	2,450,000	340	140	950	10
Household benefit cap	56,000	270	4,820	20	5
Total	**n.a.**	**18,870**	**n.a.**	**n.a.**	**470**

[1] Individuals affected; all other data refers to households
[2] By 2017/18
[3] By 2015/16

There have however been areas of public spending which were earmarked for protection from the Coalition Government's austerity measures since 2010, namely those budgets for the National Health Service (NHS), schools and pensions. Moreover, one area which has escaped austerity has been that of international aid. Indeed, the commitment by the UK Government to international aid has been in the spotlight in 2015 during the Syrian refugee crisis in Europe. During that crisis the UK Government and in particular the Prime Minister demonstrated a reluctance to accept into the UK significant numbers of those who had crossed the Mediterranean and

when confronted with criticism for this position, reiterated that, 'we are the only major country in the world that has kept our promise to spend 0.7% of our GDP on aid' (UK Government 2015). The crisis did however serve as a focal point for localised actions of solidarity to those making the dangerous crossing of the Mediterranean (Withnall and Dathan 2015).

During the course of our research we found that solidarity was not a word which permeated the lexicon of UK policymakers in the fields of disability, employment or migration. Instead it was through the various actions of civil society organisations, such as those with whom we conducted interviews as part of our study, that solidarity was manifested. Moreover, our research uncovered an increasingly difficult policy environment in the UK for the disabled, the unemployed, migrants and those seeking refuge and asylum.

Disability

A key piece of legislation which reflects solidarity in action through the efforts of a number of organisations who form the disability rights movement in the UK is the Disability Discrimination Act 1995 which not only defined disability, but protected disabled people from discrimination in the workplace, access to educational opportunities as well as goods and services. As with protections from discrimination for other groups, those included in the 1995 Act were subsumed into the Equality Act 2010 and continues to be crucial for the protection of disabled people. Moreover, the UK in 2009 ratified the United Nations Convention on the Rights for Persons with Disabilities. However, a UN Committee report has indicated violations of the rights of disabled people as a consequence of welfare reforms (United Nations 2016), as confirmed also by our interviews with disabled people's organisations who claimed that austerity measures have made it difficult even to access statutory services.

The Work Capability Assessment

In 2008 the Labour Government, as part of its package on welfare reform (Bambra and Smith 2010), began the process of replacing Incapacity Benefit (IB) with a new benefit, Employment and Support Allowance (ESA). One feature of this new benefit was the Work Capability Assessment

(WCA) which represented a significant shift in evaluating the applications for welfare state support by disabled people by focusing on what they were capable of rather than the extent of their incapacity to work, an assessment which was outsourced to IT company ATOS.

Following the election of the Conservative led Coalition Government in 2010 there was a major expansion of the Work Capability Assessment as part of the overall strategy to reduce welfare spending and move as many disabled people as possible back into work. This involved a national reassessment process which was piloted in 2010 and rolled out in 2011 with the objective of reassessing all claimants by Spring 2014 and resulting in 750, 000 assessments being conducted in 2013 alone (Baumberg et al. 2015). The process involves asking claimants to complete a questionnaire, after which they can then be asked to attend a Work Capability Assessment, carried out by ATOS. Those claimants who are judged fit to return to work have their benefits removed whereas those who are deemed eligible for ESA are placed into two groups: the Support Group (SG), where they do not have to participate in any 'work related activity' but can volunteer to do so and receive a higher rate of benefit (which is not time limited) than those in the other cohort, the Work Related Activity Group (WRAG) where claimants are required to undertake work related activities, attend work focused interviews with a personal adviser and have their benefits limited to 12 months. Furthermore, the 2015 budget has also spelled out plans for ESA WRAG claimants to get reduced benefit rates from April 2017, receiving instead the same amount as Jobseeker's Allowance (JSA) claimants (HM Treasury 2015a).

Overall, some claim the reassessment process has 'led to narrower entitlement and a majority of claimants being redefined as 'fit for work' (Wright 2012, 318). The effectiveness of the WCA in evaluating the capacity for someone to return to work has come under severe criticism from disability activists such as Disabled People Against Cuts (DPAC) who voiced their opposition to the WCA in a statement released in 2015 responding to recently published 'mortality statistics' for those claiming ESA: '2500 people have died after being found fit for work. Another 7,200 people died after being placed in the WRAG, the group for disabled people who can do 'some work', another 7540 died waiting to be assessed' (DPAC 2015). Moreover, groups such as DPAC have highlighted the stress caused to disabled people by the actual process of being reassessed, an issue captured by research conducted with disabled people who have been claiming benefits and going through the process (Garth-

waite 2014). Further still, the actual division of disabled people into different groups by the WCA perhaps lends weight to the conclusion that there has been some effort through these measures to draw a distinction between the 'deserving' and the 'undeserving' (Grover and Piggott 2010; Garthwaite 2011).

Such has been the negative publicity surrounding the implementation of the WCA, the outsourced company hired to carry out the assessments have paid the UK Government to end the contract early (Bennett 2014), with the contract in 2015 now taken up by US outsourcer Maximus. Moreover, in October 2016 the UK Government has announced a consultation on the future of the WCA (UK Government 2016). For those former ESA claimants who now find themselves claiming Jobseeker's Allowance, they will have discovered that there have been some significant changes in recent years affecting benefits to those who are unemployed, one such change has been the embrace by the Conservatives in Government since 2010 of 'work experience' for benefit claimants.

The Bedroom Tax

One piece of legislation introduced in 2013 as part of the Coalition Government's aim to reduce public spending which has caused controversy amongst disabled rights advocates and anti-poverty campaigners alike has been the 'spare room subsidy', a policy otherwise known as the 'bedroom tax'. This policy targeted working age tenants living in social housing (that is, property owned by local Government or housing associations) and was introduced as a strategy to reduce the amount of money spent on 'housing benefit', a welfare measure which helps pay the rents of people who are either unemployed or in low paid employment. Under these reforms, tenants with a spare bedroom in their house would see a reduction in their housing benefit by 14% if they have one spare bedroom and 25% if they have two or more spare bedrooms.

The then Conservative led coalition Government stated that the new 'spare room subsidy' legislation would act as a control on the level of expenditure on housing benefit which had increased to £21 Billion in 2010/2011 (DWP 2012). The policy was also articulated as a way of introducing 'fairness' into the rental market for housing as it was claimed by Ministers to address the inequity of those in state owned or 'social sector' housing being given an unfair advantage to their counterparts in the pri-

vate rented sector as the latter had no option but to opt for accommodation which offered them only the number of rooms they required whereas in the 'social sector' the number of rooms had no impact upon the level of housing benefit they received. However, research has demonstrated that in fact 'under-occupation' of properties – the very problem the bedroom tax was designed to address in the social sector – is actually a much more significant issue in properties that are privately owned or privately rented (Wilcox and Perry 2014; Gibb 2015). Furthermore, an evaluation of the measures commissioned by the Department of Work and Pensions found that social landlords (e.g. local authorities, housing associations etc.) had a scarcity of smaller properties for tenants to move to and revealed that to cope with the loss in benefit, those affected were cutting back spending on energy and food (DWP 2015a).

Indeed, soon after its implementation it became clear that the bedroom tax contained a number of shortcomings, including a failure in its first year to actually deliver the savings it had been projected to deliver, compounded by a poor definition of what was meant by a bedroom and a postcode lottery in its implementation (Wilcox 2014). However there has also been one particular aspect of the bedroom tax which has been of continual concern – its impact upon disabled tenants. Based upon the figures provided in the 'Equality Assessment' carried out by the UK Government prior to the implementation of the bedroom tax, the number of housing benefit claimants in the social sector who would be affected by the new policy and who suffered from a disability (recognised by the Disability Discrimination Act 1995) stood at 420,000, which was 63% of all working age claimants (DWP 2012). Furthermore, those (or the partners of those) who were suffering from a disability which was considered to be long term and had a significant impact upon their daily lives totalled 370,000, in other words, 56% of all working age tenants in the social sector who would be affected (DWP 2012). As a general countermeasure to support those who would encounter difficulties in meeting their rent, the UK Government proposed a system of 'Discretionary Housing Payments' (DHPs) that would be allocated to local authorities to administer with a proportion of these specifically targeted at disabled social sector tenants. Nevertheless, despite such attempts to remedy the problems created for disabled people by the policy, research has demonstrated that the implementation of DHPs has varied considerably across the UK (Wilcox 2014).

Moreover, the consequences of the bedroom tax for the disabled has triggered a variety of reactions across the UK which have included large

scale protests in a number of cities and have also led to legal challenges. Perhaps the highest profile case that has been heard in UK courts in relation to the Bedroom Tax has been that of, R. (on the application of MA) V Sec State for Work and Pensions, which was brought forward by a number of disabled people who claimed that the bedroom tax had unfairly discriminated against them given the extra space that they and their families required. However, the judgement of the High Court, despite accepting that the bedroom tax was indeed discriminatory, ruled that this was justifiable due to the implementation of countermeasures such as Discretionary Housing Payments (DHPs). Nevertheless, the High Court also ruled that in the case of disabled children who were unable to share a bedroom with another child due to their disabilities, the legislation was unlawful and in November 2016 the Supreme Court dismissed an appeal by the Secretary of State for Work and Pensions against this High Court judgement (case UKSC 58 R v Secretary of State for Work and Pensions, 9 November 2016). In these cases, there has been evidence of significant support from civil society organisations towards those taking such action and in disseminating the issues and the rulings of the cases via their own networks and platforms.

Unemployment

Against a background of deindustrialisation and a decline in the power of the key instrument of worker solidaritynamely the trade union movement, following their confrontation with the Thatcher Government during the miner's strike in the early 1980s (Milne 2004). The challenges for trade unions have intensified in recent years with one official explaining during an interview that the organisation was engaged in efficiency savings but simultaneously were challenging new legislation regulating trade union activity (Trade Union Act 2016) and had received legal advice that '*a lot of it will be determined in a court of law*' which was a concern should the union have to fund test cases in the future. More broadly, a number of labour organisations we spoke to pointed towards the changing UK labour market, which as in other European countries, has witnessed an increase in the use of non-standard forms of employment contracts, specifically 'zero-hours' contracts that provide no minimum guarantee of working hours (Pennycook et al. 2013) and have been identified within existing research as helping to form a 'no pay, low pay cycle' in the UK (Shildrick et al.

2012). Moreover, comparative research conducted on the UK and the US labour markets reinforces conclusions that there has been a decline in middle ranking jobs in the economy accompanied by a growth in low skilled occupations, leading to the conclusion that, 'occupational polarisation was accentuated by the 2008 crisis in both the UK and, to a greater extent, the US' (Plunkett and Pessoa 2013, 4). Indeed, research examining poverty in the UK which finds that there has been a rise in in-work poverty in the UK to the extent that in 2013 the Joseph Rowntree Foundation reported that for the first time the majority of people living in poverty were actually employed (MacInnes et al. 2013). Nevertheless, government policy in the UK following the crisis has continued to emphasise work as the best route out of poverty and has reinforced this through a benefit system that has become increasingly punitive.

Work Experience or Workfare?

One of the key messages of the Coalition Government, formed after the UK elections of May 2010 was that welfare had become unaffordable and that in times of austerity there would need to be 'tough choices' with an emphasis being placed on the 'need to address the high and increasing costs of welfare dependency' (DWP 2010, 4). Part of that message became increasingly tailored around the concept of welfare reform and making the benefits system 'fairer', particularly in relation to those who were in work as reflected in a speech given by the Chancellor of the Exchequer at the Conservative Party conference in 2012:

> '*Where is the fairness, we ask, for the shift-worker, leaving home in the dark hours of the early morning, who looks up at the closed blinds of their next door neighbour sleeping off a life on benefits?*' (cited in Stone 2015)

In an effort to simplify and streamline existing welfare to work initiatives, the UK Government introduced in 2011, the 'Work Programme' which sets out how support will be offered to those seeking employment by public, private and voluntary sector service providers who undertake contracts from the Work Programme based upon payment by results. These changes to the delivery of support for the unemployed signalled a broader introduction and scaling up of work experience placements for most unemployment benefit claimants, an approach more commonly known as workfare (Peck 2001; Jessop 2002).

These work placements have come in numerous forms such as Mandatory Work Experience (MWA) for those claiming Jobseekers Allowance (the primary social assistance offered to the unemployed) which involves four weeks of unpaid work for up to 30 hours a week for 'community benefit'. In terms of the Work Programme some providers have signed claimants up for six-month work experience placements. One of the difficulties for claimants has been that should they refuse such placements they can be (and often are) subject to 'sanctions' which include the complete removal of benefits for four weeks in the first instance, leading up to a maximum of three years' removal of benefits for continuous contraventions. Unsurprisingly, these sanctions have been a source of controversy amongst some groups particularly given that there have been 1.76 million decisions to apply a sanction since the new rules came into force (DWP 2015b). Moreover, the policy of applying sanctions to benefit claimants has been highlighted (Mason 2012; Cooper et al. 2014) as being a potential catalyst for the growth of food insecurity.

The opposition to the new emphasis on work experience placements, or workfare crystallised around the cases of a young university graduate who found herself unemployed following graduation and an unemployed lorry driver (Caitlin Reilly and Jamieson Wilson V Secretary of State for Work and Pensions, case UKSC 68, Supreme Court, 30 October 2013). Much of the arguments surrounding the case centred upon the experience of Caitlin Reilly, a geology graduate who had been told by the Job Centre to undertake an unpaid placement at a discount supermarket, Poundland, or else face sanctions to her benefits. One of the main issues which emerged from the case was the apparent contradiction in the case of Reilly who, as a geology graduate was already undertaking unpaid volunteer work in a museum in the hope of gaining employment commensurate with her skills, but would be forced to give that up to undertake an unpaid placement in a supermarket which had no relevance to her future career.

The High Courts of Justice ruled that the 'work for your benefits' schemes were in fact unlawful as they did not provide claimants with a necessary description of the placements in which they were participating, a decision which was later upheld by the UK Supreme Court. Nevertheless, the UK Government felt vindicated to some extent by the judgements as the courts did not consider the work for your benefits schemes as 'forced labour' (and thus not a breach of Article 4 of the European Convention on Human Rights), a claim made by campaigners. However, the rulings have provided some source of inspiration for campaigners who

have long since opposed the schemes and these efforts seemed to be rewarded in late 2015 when it was announced that the Mandatory Work Activity was to be discontinued (HM Treasury 2015b).

Trade Union Act 2016

As we have seen above the role of trade unions in UK policymaking has diminished since the defeat of the mineworkers during the Thatcher years. Nevertheless, as was proven in 1992 and in subsequent years the trade unions continue to be a rallying point for many on the left in the UK, perhaps partly due to their long history of activism and their continued presence in political discourses (see Freeman and Pelletier 1990; McIlroy 1995; Fernie and Metcalf 2005; Howell 2005). Indeed, in recent years they have been a key source of funding for the Labour Party (Pyper 2013). The funding of the Labour Party by trade unions has also been a subject of consistent attack by the Conservatives in Government who view such funding as allowing the trade unions a disproportionate influence in British politics.

One legislative expression of this view has been the Trade Union Act 2016. Contained within the Act are a number of provisions designed to break with the practice of union members being automatically 'opted-in' to having political donations (known as the 'political levy') deducted from their union dues instead union members will be required to regularly enrol manually into paying any donations. This move has been interpreted both by trade unions and the Labour Party as an overtly politicised attempt to reduce both the funds of the Labour Party and to diminish the broader influence of the trade unions in UK politics as the new provisions will affect all trade unions not just those with an affiliation to the Labour Party.

Another aspect of the Act which has caused concern for trade unionists is that it places new restraints on industrial action in term of balloting for strike action. industrial action is an area which has witnessed legal action in recent years in the UK with one case in particular, RMT v Serco Ltd and ASLEF v London & Birmingham Railway Limited (case: EWCA Civ 226, High Court of Justice, 4th March 2011) of particular interest given the ruling in this case that Article 11 of the European Convention of Human Rights may have some bearing on the right to strike (see Dukes 2011). Indeed a successive case heard by the European Court of Human Rights ended with a ruling that recognised that the right to strike (specifi-

cally secondary action or 'sympathy strikes') was covered by Article 11 of the European Convention (RMT v United Kingdom Case: ECHR 366, European Court of Human Rights, 8th April 2014), however the Court found that the ban by the UK Government on secondary strike action was not unlawful, a ruling that some have attributed to the politics of Britain's relationship with the European Court of Human Rights as much as the merits of the case (see Bogg and Ewing 2014). Nevertheless, the ruling has perhaps served to embolden the UK Government in proceeding with its Trade Union Act.

The Act sets out that ballots to strike amongst trade unionists must meet a minimum turnout of 50% of members otherwise the strike will be considered to be illegal. Moreover, should a strike ballot which takes place in any key public services (e.g. emergency services, health workers, teachers, border security) reach the 50% threshold then it must clear another threshold, namely 40% support of all of those who were entitled to vote. Should a strike ballot reach these thresholds then there are new regulations for industrial action which trade unions must observe however some of the more controversial elements – such as requiring a trade union official on picket lines to wear an identifying armband – have been scaled back, however some areas of the new legislation are still being debated including controversial proposals to allow employers to hire temporary agency staff during industrial action.

According to research conducted by Darlington and Dobson (2015) on 158 industrial strike ballots across 28 trade unions between 1997 and 2015, only 85 of these strikes would have met the new 50% threshold set out by the Act. Moreover, they also found that when taking account of 90 strike ballots in those areas deemed 'important public services' during that same period, the new legislation would reduce the number of strikes by almost 40%. Perhaps one of the most interesting responses to emerge from the embryonic debates surrounding this Act is the fact that if the turnout thresholds were to also be applied to Parliamentarians then the Minister responsible for bringing the Act forward would not have been elected (Dathan 2015) given the turnout in his constituency during the 2015 UK General Election.

Migration

Much of the legislation enacted in the UK following the Second World War to protect against racial discrimination can be linked to the issues experienced by immigrants, particularly from the Commonwealth countries. Indeed the protections developed during the 1960s and 1970s are the antecedents of those which underpin the Equality Act 2010. Therefore the issue of immigration has a history of contention in the UK and concerns about the free movement of people whether they are migrants or refugees/asylum seekers is somewhat illustrated by the different approach the UK adopts in comparison to other European countries. For example, in contrast to the majority of Member States of the European Union, the UK, along with five others, is not a signatory of the Schengen Agreement, which enshrines the principle of free movement of people. Of course, this has not prohibited the freedom of movement for EU citizens but it does highlight the reticence of successive UK Governments to fully embrace the concept of removing border controls. Furthermore, the opt out of the 'Schengen Zone' mirrors the opt out the UK also exercises over asylum and immigration policy, instead choosing to opt in to the first phase of the Common European Asylum System but opting out of those phases which succeeded these measures (Blinder 2015). Indeed in recent years the issues of asylum and migration have often been welded together in anti-immigrant discourses perhaps best exemplified by a now infamous poster from the Leave campaign during the 2016 EU referendum which called for a leave vote alongside a picture of a line of Syrian refugees. In one of our interviews with migrant organisations, the current context was portrayed in stark terms by one experienced activist who stated that, '*every immigration act has made the situation worse for asylum seekers and refugees'* and that there has been *'a submission to the populist anti-immigration agenda'*.

'Benefit Tourism'

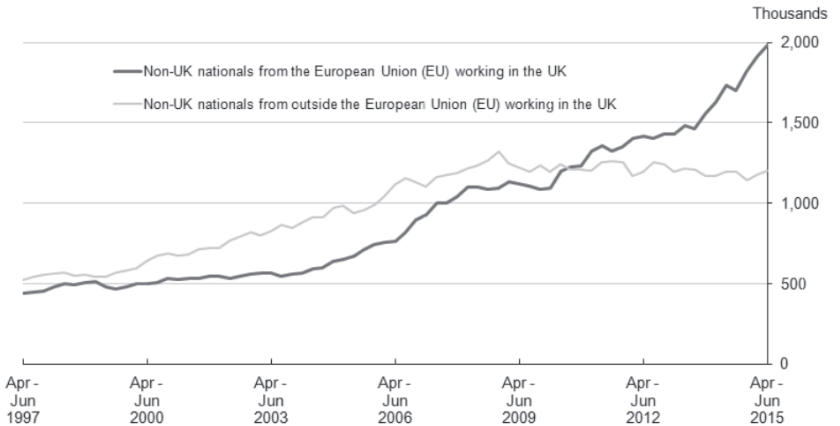
The Directive 2004/38/EC, providing the right to free movement for European Economic Area nationals was implemented in the UK through a statutory instrument (a secondary legislation device used to enact or amend Acts of Parliament without the requirement of bringing forward a new Act), namely The Immigration (European Economic Area Relations)

2006. Nevertheless, the capacity for free movement across Europe has in recent years experienced a gravitational pull towards discussions surrounding the future of the welfare state in the UK. Thus the implications of austerity have not been limited to those who have been resident in the UK since birth; instead the issue of the affordability of paying certain welfare benefits has also encroached into the field of migration.

The current UK Government has in the context of discussions and debate surrounding the future of the UK within the European Union publicly stated their desire to stop the UK benefits system from being such a 'soft touch' (Prime Minister's Office 2013). Unsurprisingly therefore the UK Government has welcomed European Court of Justice rulings such as Elisabeta Dano, Florin Dano v Jobcenter Leipzig, which stipulate that those citizens who are unemployed and/or 'economically inactive' and move to other Member States in order to claim welfare benefits can be lawfully prevented from claiming certain welfare benefits. Nevertheless, the narrative conveyed by emphasising the need to address 'benefit tourism' does not chime with statistics from the UK Labour Market which reveal that there has been an increase of 250,000 between 2014 and 2015 in EU nationals working in the UK (Case: C-333/13, European Court of Justice, 11th November 2014). Indeed, as Figure 4 demonstrates, EU nationals have contributed towards the stable employment rates in the UK during the period following the global financial crisis. Moreover, there are figures which suggest that unemployed UK nationals living in other wealthy EU states draw upon (the often more generous) benefit systems more in those countries than the nationals of those countries do so in the UK (Nardelli et al. 2015).

Nevertheless, following the election of the Conservative Government in May 2015, it became clear that the issue of 'benefit tourism' would play a role in the negotiations leading up to the in/out referendum promised in the Parliamentary term by the Conservative Party with a particular focus upon Regulation (EC) No 883/2004 Article 67 enabling European Union citizens to claim benefits in any European Member State. What this issue demonstrates is that any discussion of the movement of people to and from the UK must begin by comprehending the different relationship that the UK Government envisages in terms of the free movement of people across Europe. This is also evident in the treatment of asylum seekers and refugees.

Figure 3. Non-UK nationals working in the UK, not seasonally adjusted April to June 1997 to April to June 2015 (Source: ONS 2015b)



Seeking Asylum and Refuge

The issue of asylum is not one the UK can easily ignore with an ongoing situation near Calais in France where people living in camps, including asylum seekers wishing to enter the UK have been prevented from doing so by border controls (see Rygiel 2011). The position of the UK Government in relation to asylum came under closer scrutiny in 2015, during the height of the Syrian refugee crisis which captured the attention of Europe. The divergence of the approach of the UK in contrast to some other European states towards Syrian refugees is perhaps best understood when placed within the context of some of the challenges which have emerged in the broader field of issues affecting asylum seekers, refugees and migrants in the UK.

One issue which has re-emerged as an area of concern has been detention of those seeking asylum (see Silverman 2012), a practice that came to the attention of the UK public in dramatic fashion in 2002 when the newly opened Yarls Wood detention centre was partially destroyed in a fire following protests from detainees about the conditions inside. Unrest amongst detainees has not subsided since the opening of the centre and in a recent report by the UK Chief Inspector of Prisons; the centre was declared a 'place of national concern' (Sanghani 2015). Such concerns are mirrored in the findings of a Parliamentary inquiry earlier in the same year into immigration detention which concluded that the, 'current system is

expensive, ineffective and unjust' (APPG on Refugees and Migration 2015, 4). Further still, some of the actual procedures which take place once a person is detained have also come under close scrutiny.

One particular policy, 'detained fast track', introduced in 2002 has come under consistent pressure from campaigners who have argued that this process undermines the basic rights of vulnerable people claiming asylum. As the name suggests, the policy is aimed at speeding up the processing of claims for asylum, which involves detaining asylum seekers after a brief 'initial interview', after which (normally no longer than a matter of days) the claimant for asylum undertakes a longer, more in-depth 'substantive interview', and the day after this the decision to approve or reject the asylum claim is taken (for a detailed analysis of the immigration and asylum appeals process, see Craig and Fletcher 2012).

Following two successful legal challenges (Detention Action v First-Tier Tribunal (Immigration and Asylum Chamber) & Ors 2015; The Lord Chancellor v Detention Action 2015*)* highlighting the limitations placed upon asylum seekers and their legal teams to adequately prepare their cases – challenges which were brought about in part due to the persistent efforts of campaigners – the UK Government announced in July 2015 that the detained fast track system was to be suspended with the Minister of State for Immigration announcing that 'we cannot be certain of the level of risk of unfairness to certain vulnerable applicants who may enter DFT [Detained Fast Track]' (Brokenshire 2015). Therefore, perhaps even in a policy arena such as asylum which seemed intractable in the UK context, the solidaristic efforts of grassroots campaigners can be a catalyst for change.

A benchmark of the solidarity offered by a nation to those who come from beyond its borders is the treatment of people who seek asylum from persecution in their own countries. There is clear evidence that this manifestation of solidarity has been expressed time and time again by the British people and indeed by policymakers. This is perhaps best reflected in modern history by the Convention relating to the Status of Refugees 1951 (and later the 1967 Protocol which extended the scope of the original convention) which provides the definition of a refugee to which the UK is party as well as the European Convention on Human Rights 1950. These landmarks in international law are a source of reflection when scrutinising the solidarity demonstrated by UK Governments towards those seeking asylum. Indeed, in recent years, the field of asylum has been a site for contestation in the UK and has been characterised by discourses which some

claim has been marked by, 'the production of specific subjectivities and identifications, from the 'worthy' refugee to the 'bogus' 'illegal' migrant' (Darling 2013, 77). Before exploring this point in greater depth we should briefly explain the relevance of international law to those currently seeking asylum in the UK.

Through the implementation of the EU Qualification Directive on Asylum (2004/83/EC) the UK is committed to an agreed minimum of standards which should be applied in both the recognition of refugees and the support they are offered. For someone to actually claim asylum in the UK, they are required to present themselves to the offices of the UK Border Agency immediately upon their arrival into the country (claiming UK asylum from outside the UK is not legally possible). A person may apply for asylum in relation to the 1951 Convention through fear of persecution in their own country or may instead make a 'human rights claim' under the 1950 ECHR, indeed an asylum seeker may make a human rights claim as part of a refugee claim. In terms of human rights, an asylum seeker may make a claim in accordance with Article 3 of the ECHR which protects individuals from torture, inhumane and degrading treatment or in accordance with Article 8 of the ECHR which protects the person's right to a personal and family life. Following a pivotal court case (Regina (Razgar) v Secretary of State for the Home Department 2004) those seeking asylum according to their right to a personal and family life have their claims heard in relation to the 'Razgar Test' which aims to balance the rights of the person seeking asylum with the right of the state to effectively control its borders. In doing so, the refusal of asylum in those cases which rely upon Article 8 is decided upon five points:

> (1) Will the proposed removal be an interference by a public authority with the exercise of the applicant's right to respect for his private or (as the case may be) family life?
> (2) If so, will such interference have consequences of such gravity as potentially to engage the operation of article 8?
> (3) If so, is such interference in accordance with the law?
> (4) If so, is such interference necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others?
> (5) If so, is such interference proportionate to the legitimate public end sought to be achieved?
> Speech by Lord Bingham in *Regina (Razgar) v Secretary of State for the Home Department (2004)*, paragraph [17].

When a person makes a claim for asylum they are required to undergo a 'screening interview' which involves providing basic information including why the person is seeking asylum and their route of travel to the UK (to assess whether or not the person's claim for asylum is the responsibility of another country under the Dublin regulations). At this point some asylum seekers can find themselves subject to two types of decision: one is the 'non suspensive appeal' where the Home Office (the UK Ministry which oversees immigration and asylum) certifies that an asylum claim is 'clearly unfounded' and that the person can only appeal once they have left the UK. Another pathway has been the 'detained fast track' route which is when the Home Office decides that the asylum claim can be swiftly assessed whilst detaining the asylum seeker (this was suspended in 2015 but plans to reintroduce a fast track process were unveiled in 2017). The next main stage in the application process is a substantive interview with a case worker to provide in depth details for the asylum application which then forms the basis for the ultimate decision. There are two successful forms of asylum, one being 'refugee status', the other 'humanitarian protection', in both situations the person is awarded limited leave to remain (lasting five years), following which they can apply for indefinite leave to remain in the UK. For those whose applications are refused, some applicants may have the opportunity to appeal this decision which involves taking their case through a process of tribunal and in some cases where there are challenges as to how the law has been applied, to higher courts, including the UK Supreme Court and the European Court of Human Rights. Recent research (Blinder 2015) has revealed that in the UK there were 24, 914 applications for asylum (excluding dependents) in 2014; in the same year 59% of asylum applications were refused but the majority of these decisions were contested on appeal with over a quarter of those appeals proving successful.

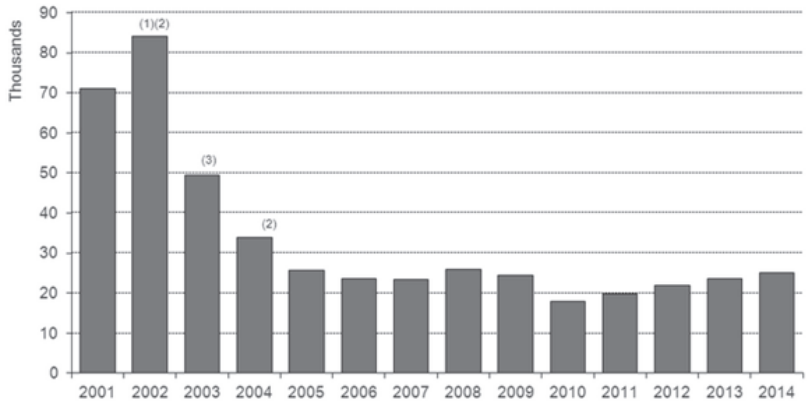
Perhaps what this focus on the process of claiming asylum in the UK does is reveal how being party to conventions can evoke a principle of solidarity with refugees but the actual implementation can somewhat erode the sentiment behind that principle. In other words, the focus of asylum policy in the UK appears to be concentrated to some extent on the control of borders rather than the expression of solidarity (Walters 2004). Indeed asylum in the UK is an issue which has captured the attention of policymakers a great deal in recent times, particularly during the late 1990s and early 2000s during which there was a rise in the number of asylum applications (see Figure 5; these numbers have since fallen but with some in-

cremental rises in recent years) when the Labour Government were particularly active in the area of immigration and asylum with welfare assistance and border control again being the centre of attention (Sales 2002; Mulvey 2010) perhaps in part fuelled by media discourses (Greenslade 2005). However we should be careful not to generalise, although asylum is a policy area reserved to Westminster there is evidence that some scope for variegated responses to asylum seekers and refugees exists within devolved contexts (Lewis 2006) and across England through initiatives such as the 'City of Sanctuary' project which originated in Sheffield, which aims to build a grassroots network of support for those seeking asylum as well as the London based 'Strangers into Citizens' campaign which focused more upon influencing policymaking through political activism (Darling 2010; Squire 2011).

Nevertheless, research has found that the direction of asylum policy in the UK has been dominated by political elites (Statham and Geddes 2006) and indeed an emphasis on border control in relation to asylum can be seen to persist to the present day with the continued tensions surrounding the existence of the camps of asylum seekers in Calais, trying to reach the UK (see Milner 2011; Reinisch 2015). Evidence of continued concerns over border control has also emerged more recently in 2015 during the Syrian refugee crisis in which the UK Government was highly reluctant to accept high numbers of refugees who had crossed the Mediterranean (accepting up to 20,000 over five years) instead opting to emphasise the financial assistance it has provided and the practical support it could offer to those living in refugee camps in the region (UK Government 2015).

(1) A process preventing certain nationalities from appealing a decision while in the country (non-suspensive appeals process) was introduced in 2002.
(2) Full overseas immigration controls operated by UK immigration officers (juxtaposed controls) were opened in France and Belgium in 2002 and 2004 respectively.
(3) Fast-track facilities for asylum applications were introduced in 2003.

Figure 4. Long-term trends in asylum applications for main applicants (Source: Home Office, Immigration Statistics April to June 2015)



Conclusions

Our analysis of the UK context presents a challenging environment for different forms of solidarity. Indeed the very word solidarity is used infrequently by activists and has very little currency in contemporary UK policymaking. When assessing the impact of the austerity measures which have been implemented since 2010, we can observe a much reduced level of state based solidarity in the form of welfare spending which will certainly not remedy the already high levels of inequalities across the communities of the UK.

When looking at the space for transnational solidarity we have observed that the UK Government has a preference for articulating this primarily in financial terms (e.g. the international aid budget) whilst simultaneously emphasising the control of borders. Indeed, our analysis at this stage reveals that policymakers in the UK are very sensitive to even short term rises in migration of any form. Moreover, some of the rhetoric distinguishing between those who are deserving and underserving in terms of welfare appears to also have been translated to the free movement of people, leading us to question if there is a tangible dividing line between the valorisation of high skilled immigrants compared to those with low skills or those who seek asylum. On the subject of work, although we have seen that industrial

relations in the UK have a contentious history, it may also hold a similar future. Therefore, deliberately or not, austerity policies since 2010 may prove to be a source of division in the UK for some time to come.

Nevertheless, there are examples of grassroots initiatives across the UK which aim to act in solidarity with those facing challenges in the labour market, coping with disability or navigating the complex frameworks of immigration and asylum. These actors will undoubtedly play a pivotal role in defending existing protections for these groups and mobilising support for them in broader UK society. Indeed in some of the cases we have highlighted in this report, civil society organisations have offered support to those taking legal action and some have brought forward cases themselves, however in the course of our research we found that only a small minority take the court route. However, one of the strong themes which emerged from our interviews was the growing scarcity of resources for civil society organisations in a context where demand for their assistance was increasingly sought after. Moreover, we can hypothesise that the cuts to financial support via legal aid may present challenges should others wish to follow the path of some of the high profile cases highlighted in this chapter. Therefore it is unlikely that civil society organisations, already under financial pressure from cuts to funding streams, will have the resources to pursue legal avenues for their beneficiaries. Therefore, in terms of pursuing legal action we can envisage those civil society organisations which have the capacity to do so, targeting particular practices, forms of discrimination and those areas of legislation which have the weakest legal basis. Overall our research reveals that despite the existence of protections for the disabled, the unemployed, migrants and those seeking refuge and asylum, the capacity to exercise those rights remains a key issue.

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Decision of 11 November 2014, Case: C-333/13, *Dano*

European Court of Human Rights decision

Decision of 8 April 2014, Case: ECHR 366, *RMT v United Kingdom*

Conclusion:
Solidarity as a Public Virtue?

Veronica Federico

Studying solidarity at the time of the crisis with regard to vulnerable groups (the unemployed, migrant, asylum seekers and refugees, and people with disabilities), which have substantial and symbolic dimensions relevant to solidarity, means putting the legal force of solidarity as binding principle for law and policy-makers and as constitutional paradigm in constitutional litigation to a double critical test. Drawing univocal and perfectly linear conclusions from this research is very difficult and might be misleading. The failure to meet European citizens' expectations in terms of both capacity to provide adequate responses to basic needs, and of crafting new, alternative visions of future European societies is evident. And yet, the ongoing political, social, and academic debates of the past decade have revealed the latent potency of existing legal, institutional, social principles and mechanisms that could prove useful when re-thinking and re-conceptualising social, political and legal institutions at national and supranational level. New actors have emerged over the years (movements, groups, parties, etc.), and others (such as courts, for example) have sometimes revealed more valiant than expected. Therefore, a comparative discussion of the most interesting and peculiar elements of the institutional, political and legal context of solidarity in Denmark, France, Germany, Greece, Italy, Poland, Switzerland, the UK and at the level of the European Union unveils specific traits of policy and legal systems and their social responses that are crucial for reflecting on whether – following Habermas' call (2013)- the path towards a more pervasive European (i.e. transnational) solidarity to politically overcome the crisis is viable.

In these comparative conclusions, we will first reflect on the significance and the "function" of solidarity in the studied countries' legal systems, highlighting: whether the formal inclusion of solidarity in the constitutional texts and in the EU treaties makes a difference, the most important implications of solidarity as a source of legislation and policies at both national and EU level, and the most relevant dimensions of solidarity in the different jurisdictions. Secondly, through the comparative scrutiny of legal

and policy regulation of the three research domains of unemployment, disability and immigration asylum and of the impact of the crisis, we will discuss whether the actual legal and policy framework is coherent with the principle of solidarity at country and EU level transpiring from our analyses.

Towards a Common Notion of Solidarity?

Solidarity as a legal concept has a long history, dating back to Roman times. In the Roman law of contracts, the *obligatio in solidum* bound the co-debtors to the whole, and not just part (*pro-rata*) of the debt – since the joint-liability rule was in existence at that time (Scacconi 1973; Parenti 2012). This meant that a person had an *obligatio in solidum* when she was responsible for the whole debt of another person (something like "all for one and one for all"). A legal "presumption of solidarity existed for people as members of specific groups (family, guild, but also people bound together by religion, as was the case for Jewish people, for example, up until the early 19th century (Leff 2002)). It was the Napoleonic code in 1804 that forbade the presumption of solidarity based on these kinds of memberships in specific groups because "it threatened the solidarity of citizens based on the new creed of liberty, equality and fraternity" (Hittinger 2016, 19). As explained by Blais, the French Revolution, with its emancipatory impetus, had in fact transformed subjects into citizens, setting people free from loyalties imposed by the *ancième regime*. But this opened a new, crucial question: the creation of new ties among "emancipated" and independent people. Solidarity became a strategic asset to reconcile individual independence and collective relations in a society where citizens' freedoms implied the consolidation of the relationships holding those same citizens together (Blais 2007). Contrary to the principles underlying any other private responsibility, the new notion of solidarity does not divide people into those that provide for a guarantee or donate and those that benefit from the same guarantees and donations (Rodotà 2014). Solidarity makes every member of the community, i.e. every citizen, contribute to and at the same time benefit from being a member of that same community. As a legal technique, solidarity allows for bringing unfamiliar persons and heterogeneous interests together, creating a collective responsibility and "allows for thinking individuals on a collective dimension", even in the absence of any other social ties except for an *obligatio in solidum* (Supiot 2015, 7).

By recognising the revolutionary principle of solidarity (named *fraternité* in that context*)* as the socio-legal marker of the nation states' membership, the newly created national communities of the 18th and 19th centuries transformed solidarity from a philosophical concept into a binding legal standard. Since then, solidarity has become a general principle of law, first at national level, and then, through the action of the European Court of Justice and the principles endorsed by the Charter of Fundamental Rights of the EU, at the European level. In fact, at the end of the Second World War, solidarity was fully entrenched in constitutional texts in Europe (De Búrca and Weiler 2011; Tuori 2015). This was when a new model of constitutions grounded in the value of the person, human dignity and fundamental rights, bloomed. In these constitutions, rights and liberties are conceived in a "solidary" frame, therefore the respect for and guarantee of those rights and liberties has to be intrinsically combined with the meta-principle of social solidarity (Cippitani 2010, 34-37). From the research perspective of the present volume, this is a highly relevant legal innovation. The interweaving of rights and solidarity becomes clear, for example, in Art. 25(4) of the Greek constitution ("The State has the right to claim off all citizens to fulfil the duty of social and national solidarity") and in Art. 2 of the 1948 Italian Constitution ("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"). Inviolable human rights are therefore intertwined with the "unalterable duty to […] social solidarity."

At the EU level, on 9 May 1950, the French Minister Robert Schuman, proposing the creation of a European Coal and Steel Community, declared that "Europe will not be made all at once, or according to a single plan. It will be built through concrete achievements which first create a *de facto* solidarity." Solidarity features in the EU landscape since the very beginning, despite a number of ambiguities, and "the Lisbon treaty conforms [its] centrality in the EU's future constitutional arrangements" (Ross 2010:45), even though the walk toward its effective implementation may still be long and uneven.

Solidarity in the Constitutions

From the comparative analysis of Part I chapters, solidarity clearly emerges as a founding principle for all analysed legal systems, even though it is not necessarily listed in specific constitutional provisions. In fact, it is explicitly named in the constitutional texts in four cases (France, Greece, Italy and Poland), in three (France, Poland and Switzerland) solidarity is also evoked (or only) in the preamble to the constitution, and in the remaining three cases (Denmark, Germany and the UK) it has to be inferred by a systematic interpretation of contiguous legal principles, such as equality, human dignity, etc. In the EU treaties, a number of articles explicitly refer to solidarity: from Art. 3 of the TEU, enunciating the objectives of the Union (the Union "shall promote economic, social and territorial cohesion, and solidarity among Member States") to Art. 80 of the TFEU, ("The policies of the Union set out in this Chapter [V, devoted to EU policies on border checks, asylum and immigration and their implementation shall be governed by the *principle of solidarity* and *fair sharing of responsibility, including its financial implications*, between the Member States"- emphasis added), and Articles 122 and 194 of the TFEU which establish a principle of solidarity in the field of economic policy, and, in particular, with reference to energy policy: "Without prejudice to any other procedures provided for in the Treaties, the Council, on a proposal from the Commission, may decide, in a spirit of solidarity between Member States, upon the measures appropriate to the economic situation, in particular if severe difficulties arise in the supply of certain products, notably in the area of energy".

When Solidarity Appears in the Constitutional Document

In the Greek, Italian and Polish constitutions, the principle of solidarity is entrenched among the founding principles of the State, which means that it assumes an overarching value with respect to other constitutional provisions that have to be interpreted in line with solidarity. Therefore, solidarity is to be considered a meta-value, with a higher legal force: it should pervade law and policy-making and, in the case of conflict or balancing with other constitutional values (for example, a balanced budget), it shall prevail. Nonetheless, as we have discussed in country chapters, during the

crisis this has rarely been the case in law and policy-making, and also (even though to a lesser extent) in constitutional litigation.

Article 2 of the Italian Constitution and Art. 25(4) of the Greek Constitution frame solidarity into the context of duties, in direct dialogue with rights that are recognised and entrenched in the first part of Art. 2 of the Italian Constitution, and in the previous clauses of Art. 25 of the Greek one. In Poland, solidarity is framed in the broader context of regulation of the social market economy. Art. 20 ("A social market economy, based on the freedom of economic activity, private ownership, and *solidarity*, dialogue and cooperation between social partners, shall be the basis of the economic system of the Republic of Poland") acknowledges solidarity as a counter-balancing value (together with dialogue and cooperation) against freedom of economic activity and private ownership. However, the Polish Constitution also mentions solidarity in the Preamble ("We call upon all those who will apply this Constitution for the good of the Third Republic to do so paying respect to the inherent dignity of the person, his or her right to freedom, the *obligation of solidarity with others*, and respect for these principles as the unshakeable foundation of the Republic of Poland"). Here the scope is broader: the recognition of human dignity and fundamental rights. Thus, the Polish legal system attributes solidarity a double function: a negative one (limits on market economy) and a positive one (source of rights and social cohesion).

Poland is not the sole country evoking solidarity in the Preamble; both the French and the Swiss constitutions do the same. In academic literature there is an ongoing debate regarding the legal binding force of constitutional preambles. Should they be considered as proper constitutional text (that in all rigid constitutions means that they have to be considered supreme), or do they have a less binding value, as a sort of guiding principle for both law-makers and constitutional judges (Levinson 2011; Orgard 2010)? Beyond theoretical discussion, this can also make a difference from our perspective, as we will argue. The full entrenchment of solidarity in the constitutional text, in fact, seems to allow the courts to refer to solidarity much more often and to greater effect than when solidarity is either inferred from other constitutional values or is solely mentioned in the constitution's preamble.

Solidarity, as mentioned in the French Constitution's preamble, was conferred the constitutional value (and legal force) by the Constitutional council. In France, solidarity is evoked verbatim in a very specific, though rather marginal, context: the Francophone cooperation, which is a by-

product of French colonialism. Art 87 states: "The Republic participates in the development of *solidarity* and cooperation between States and peoples having the French language in common". Solidarity is confined to a definition that seems to limit the relationship to France and its former colonies. This appears rather surprising for the country that first elaborated on the concept of *fraternitè* and that has transposed this moral notion into a legal, binding value. And indeed, the substantive power of solidarity in the French legal system does not originate from Article 87, but from recital 12th of the preamble of the 1946 Constitution ("The Nation proclaims the solidarity and equality of all French people in bearing the burden resulting from national calamities") which has a much broader scope: in association with equality (that it is a legal concept tightly connected with solidarity, as we will discuss later), it defines the perimeter of burden-sharing: whoever participates in this burden-sharing is part of the nation. The preamble of the 1946 Constitution does not simply have a declaratory force, since in 1971 the French Constitutional Council (decision n. 44-71) held that the preamble to the 1946 constitution enjoys a specific legal force and constitutes an independent source of rights, which means that any legislation in breach of the principles enacted in the 1946 Preamble is unconstitutional. Since then, solidarity has acquired its own binding force and has become a relevant constitutional paradigm.

Switzerland is the sole country in this volume's research where solidarity is named exclusively in the preamble ("In the name of God Almighty! We, the Swiss People and the Cantons, being mindful of our responsibility towards creation, in renewing our alliance to strengthen liberty and democracy, independence and peace in *solidarity* and openness towards the world, determined, with mutual respect and recognition, to live our diversity in unity, conscious of our common achievements and our responsibility towards future generations, certain that free is only who uses his freedom, and that the strength of a people is measured by the welfare of the weak, hereby adopt the following Constitution"). The Swiss preamble typically outlines Swiss society's final goals while defining the identity of the country. Since the *incipit* of the constitution, solidarity has been connected with the highly decentralised form of the Swiss State, and this makes a very relevant dimension of solidarity as constitutional values emerge – "territorial" solidarity.

When Solidarity Does Not Appear in the Constitutional Document

Finally, in the Danish, German and the UK constitutions the very word "solidarity" is never mentioned. Of course, this has not prevented lawmakers, courts and scholars from referring to solidarity as a fundamental value of the jurisdiction, but it may have influenced the way in which solidarity is understood and enacted in these countries. The Danish constitution is one of the oldest in Europe and it presents some of the typical features of 19th century constitutions, more focused on enforcing the separation of powers and counter-balancing the Monarch's powers and functions than on a meticulous list of rights and freedoms, and to an even lesser extent on fundamental values (Fioravanti 2014; Matteucci 1976; McIlwain 1940). No surprise, then, that there is no explicit room for solidarity. However, following a pragmatic approach based on the enforcement of individual rights and not on abstract principles, Article 75 (2) provides that "any person unable to support himself or his dependants shall, where no other person is responsible for his or their maintenance, be entitled to receive public assistance, provided that he shall comply with the obligations imposed by Statute in such respect". Throughout the decades, this constitutional provision has become the constitutional foundation for the Danish welfare system, and the most explicit expression, in Denmark, of the notion of solidarity as public virtue.

In the 1949 German Basic law there is no explicit reference to solidarity, but, as in the case of Denmark, the Grundgesetz codifies the social welfare state principle ("The Federal Republic of Germany is a democratic and social federal state" Art. 20(1), and "The constitutional order in the States [Länder] must conform to the principles of the republican, democratic, and social state under the rule of law, within the meaning of this Constitution [...]" 28(1)) that guarantees a minimum of social welfare in order to enforce the overarching values of the German legal system: human dignity and its corollary of fundamental rights ("Human dignity is inviolable. To respect and protect it is the duty of all state authority. The German People therefore acknowledge inviolable and inalienable human rights as the basis of every human community, of peace, and of justice in the world" (Art. 1(1) (2)). Thus, the principle of welfare state, essential to enforce human dignity and fundamental rights, is something that is very close to what other constitutions (Italian, Greek, French and Polish) name solidarity. However, it is interesting to highlight that at the level of the federal states, the picture is more complex. Similar to the Basic Law, the

constitutions of the former West German federal states do not explicitly mention solidarity, whereas solidarity is directly referred to or equivalently addressed as a basic principle of state action in the constitutional preambles of the new, East German federal states, sometimes as abstract expectation and sometimes as concrete obligation of the respective federal state[1].

From a constitutional comparative standpoint, the UK is the most peculiar case in our research, because the country does not have a constitution codified in one, single, written document, but rather its constitution is based on customs, conventions and constitutional practices, as well as on a series of documents spanning almost ten centuries (Magna Carta (1215), Bill of Rights (1689), the Act of Settlement (1701), the Act of Union (1707), and the Great Reform Act (1832), to mention the most famous, the constitutionality of which is not in dispute). The very notion of a legal instrument that we may name "the British constitution" is alien to the UK legal tradition and scholarship, and Sir W. Blackstone, one of the most prominent English jurists of the 18th century, used to refer to the "British constitutions" in the plural. Thus, we cannot expect to find solidarity explicitly entrenched in a constitutional document. Nonetheless, the absence of a single constitutional document does not entail that at the heart of the British constitution(s) there are not basic principles that are the source of law for the whole legal system and derived legislation. Together with the rule of law, Parliamentary sovereignty, the separation of powers and the system of checks and balances, scholars mention the Union of Kingdoms and fundamental rights and liberties (Leyland 2016). And it is exactly in the sphere of application of the latter two that we can situate the notion of solidarity. Similar to the other cases, solidarity in the UK is rooted in the idea of human dignity and fundamental liberties, dating back to the Magna Carta, so that over the centuries this notion assumed incremental value with the development of the complexity of rights and duties that give

1 The preamble of the constitution of the Land of Brandenburg reads: "We, the citizens of the Land of Brandenburg, have given ourselves this Constitution in free self-determination, in the spirit of the traditions of law, tolerance and solidarity in the Mark Brandenburg, based on the peaceful changes in the autumn of 1989, imbued with the will to safeguard human dignity and freedom, to organise community life based on social justice, to promote the well-being of all, to preserve and protect nature and the environment, and determined to fashion the Land of Brandenburg as a living member of the Federal Republic of Germany in a uniting Europe and in the One World".

sense to the fact of belonging to the British political community (Marshall 1950). And, as we discuss in the next section, the tight connection between solidarity, fundamental rights and human dignity upholds the most significant concrete output of solidarity from a legal and political point of view: the welfare system. However, what is interesting in the UK system is the second pillar stemming from solidarity: the unity of the kingdoms. This aspect is not a novelty in our discourse. The solidaristic foundation of highly decentralised States has already been highlighted: ensuring territorial cohesion and spacial justice among territories and communities that have sometimes little cohesion among them and that are characterised more by spacial inequality than by spacial justice is difficult, as it implies that they "support and consult one another, co-ordinate their actions and in case of conflict exhaust all remedies before turning to the court"(Leonardy and Brand 2010, 661) This presumes both solidarity as a pre-existing value and solidarity as a means of pursuing cohesion and justice.

What for Having Solidarity in the Constitution?

Solidarity is part of the constitutional DNA of all our countries. But does its strong entrenchment in constitutional documents make an explicit difference? "The constitution has to be the source of all government powers, its terms identify the fundamental or basic moral and political principles according to which society should be managed" (Loveland 2009, 16). Moreover, according to Sunstain, "…the central goal of a constitution is to create the preconditions for a well-functioning democratic order, one in which citizens are genuinely able to govern themselves" (2001, 6). This means that explicitly acknowledging the value of solidarity shall orient the well-functioning of the democratic order, and, at the same time empower citizens in a solidaristic way: i.e. creating an unambiguous connection between rights and duties (see for example Art. 2 of the Italian Constitution where solidarity directly bridges fundamental rights and citizens' duties). So, the presence of the value of solidarity in the constitution makes it easier for legislators and decision-makers to refer to it in their activities of law and policy-making. Whether they actually do so, and whether there is a relevant difference between a "solidaristic approach" in law-making in the countries where solidarity is explicitly entrenched in the constitution is difficult to assert and it would require a broader and more indepth scrutiny of existing legislation in all fields, which largely exceeds the scope of this

research. However, what we can draw from our enquiry is that in Italy, France, Poland (where the constitutions mention solidarity) there is a relatively wide range of legislation referring to solidarity: from housing policies to family law, from fiscal measures and tax law to labour law; from international cooperation to energy legislation; from the promotion of volunteering and civil society to freedom of association. This entails, first, that the constitutional value attributed to solidarity allows legislators and policy-makers to refer to it as a legitimate source of legislation and policies that go far beyond the more "typical" application of the principle of solidarity that is the welfare system, as we will highlight below. And, secondly, the presence of solidarity among the fundamental principles of the constitutions binds legislators and policy-makers to enact solidarity legislation and policies. It activates a sort of "virtuous circle" of solidarity that starts from the constitution, is put into effect in legislation and policies, through legislation and policies it supports and strengthens solidarity at societal level, and the social value of solidarity reinforces and "gives meaning" to the constitutional principle.

Moreover, should this virtuous circle be breached, for example by the harsh economic and political consequences of the crisis, the constitutional entrenchment of solidarity makes it easier for judges, especially constitutional judges, to refer to it as an insurmountable constitutional paradigm. Indeed, both the Italian Constitutional Court and the French Constitutional Council have been prone to refer to solidarity as a tool to mitigate measures that might have a negative impact on vulnerable people's dignity. The Constitutional Council has referred many times to the notion of solidarity. In its jurisprudence, the term solidarity has a plurality of meanings. The Constitutional Council uses the terms "*mécanisme*" (mechanism) of solidarity, "*principe de solidarité*" (principle of solidarity), "*exigence de solidarité*" (solidarity requirement), "*objectif de solidarité*" (solidarity objective), sometimes relying on several of them in the same decision. It is therefore not a monovalent concept. The privileged applications of these notions obviously lie in the domain of social systems, spanning the routes that individuals make across their lives, for example in and out of the labour market. Thus, in its decision of 16 January 1986, the Constitutional Council ruled, with regard to the "*Sécurité sociale*", that it was the responsibility of the legislator to encourage solidarity between people in employment, the unemployed and those who were retired, and that it was also the responsibility of the legislator to ensure that the finances of the "*Sécurité*

sociale" were well-balanced enough to allow its institutions to fulfil their roles.

A fortiori, to have a better understanding of the legal reasoning behind this case-law, suffices to recall the very recent Italian case concerning the right to education of pupils with disability (CC decision n.257 of 16 December 2016). The Court declared the retrenchment of support teaching for pupils with disabilities in respect of Article 81 of the Italian Constitution ("The State ensures the balances of state revenue and expenditure in its budget whilst taking account of the adverse and favourable phases of economic cycle") in breach of the Constitution because it was in breach of the principle of social solidarity. What is interesting in the argument of the Court here is that solidarity provides the constitutional judges with the tools to maintain that "despite the law-maker's discretion in singling out the most appropriate measures to guarantee the rights of people with disabilities, this discretion finds the insurmountable limit of a core of absolute, unswerving guarantees for these people". This entails that the principle of solidarity allows the Court to overcome the balancing of rights against budget requirements, because of an insurmountable limit. In this decision, the Court goes much further than mitigating austerity measures. It argues that when a core of absolute, unswerving guarantees for vulnerable people is at stake, the very balancing of interests (which is the essence of constitutional courts usual reasoning) becomes pointless. The duty of social solidarity simply prevails. What emerges is a very powerful interpretative innovation.

However, the comparative reading of the country chapters clearly shows that in the past years not all Courts have resorted to using solidarity as insurmountable limit to protecting fundamental rights. In Poland, the very existence of the Constitutional tribunal is at risk due to political contentiousness, so that it becomes difficult, if not impossible, to analyse the case-law and its development over the duration of the crisis years. Nonetheless, this erases any doubt on how courts, and especially constitutional and supreme courts, may be effective watchdogs for the democratic system, so effective that the other powers are tempted to silence them. Indeed, the tension between *jurisdictio* and *gubernaculum* dates back to the dawning of modern constitutionalism (McIlwain 1940), but when in contemporary democracies the very existence of courts is in question, not to speak of their legitimacy, the implications for rights' enforcement and the rule of law itself may be serious.

Noticeably, in Greece the constitutional case-law is more ambivalent than in other countries and it brings to the forefront a second, very important entailment of the principle of solidarity: sacrificing the interests of determined categories in the name of the survival of the whole nation. During the crisis, Greek judiciary has interpreted solidarity as a constitutional paradigm both to mitigate some crisis-driven reforms (in this case solidarity assumes the function of a shield, protecting people's fundamental rights and accessibility to a decent living), and to enforce other austerity laws (in this case solidarity assumes the value of the community's higher common interest). In fact, on the one hand the Council of State (case 668/2012) maintained that the reductions in public wages, pensions and other benefits were justified by a stronger public interest (improving the state's economy and financial situation) – and moreover the measures guaranteed the common interest of the Member state of the Eurozone (a "reinforced" public interest). On the other hand, the Court of Auditors (Proceedings of the 2nd special session of the plenary, 27 February 2013) ascertained that the discretion of legislators to adopt restrictive measures to decrease public spending should not jeopardise adequate living conditions (recognised by Articles 2 and 4(5) of the Constitution), and should ensure a fair distribution of the crisis-burden on citizens in the name of the principle of proportionality (Art. 25(1)) and of the state's right to require social and national solidarity a duty of all citizens.

This is particularly interesting from our perspective: the apparent ambiguity of Greek courts reveals a crucial element of solidarity that we mentioned in abstract terms in the introduction. If solidarity is to be considered as a status of intersubjectivity, in which people are bound together, whether by a shared identity or by the facts of their actual interest, into mutual relationships of interdependence and reciprocal aid, the two dimensions of solidarity that emerge in Greek case-law are both crucial: fundamental rights that grant human dignity on the one hand, and the very existence of the community, which may require the sacrifice of individual interests and benefits, on the other. Of course, this reasoning is not meant to legitimise the harsh austerity measures imposed on Greece to prevent the financial collapse due to the debt crisis and the conditions for the bailout. Beyond the political and social evaluation of the Greek austerity measures, what is relevant here is that this extremely critical situation revealed the notion of solidarity as interconnection between rights and duties. And it is this interconnectivity that integrates the individual into a community of citizens (Apostoli 2012, 10-11).

Despite all that we have just said about the importance of an explicit enforcement of solidarity in the constitution, in other jurisdictions, as is the case for Germany, the courts have had similar arguments, even while building on other fundamental principles such as equality, social justice, human dignity, fundamental rights, to protect the very same un-shrinkable core of rights and entitlements that are protected by solidarity. In Germany, the courts, and in particular the Federal Constitutional Court, the Bundesverfassungsgericht (BverfG), intervened repeatedly to recall that the right to human dignity and the welfare state principle of the Basic Law oblige the state to guarantee a social welfare minimum and, hence, entitle each citizen to the provision of a material minimum needed to cover daily subsistence, as was the case of the minimal provision of social "Hartz IV" benefits (BVerfG, Judgement of the First Senate of 09 Feb., 2010 – 1 BvL 1/09 – "Hartz IV-judgement") and of asylum seeker benefits (BVerfG, Judgement of the First Senate of 18 July, 2012 – 1 BvL 10/10). Moreover, already in 1977, the Federal Court of Justice had highlighted that the "respect and protection of human dignity belong to the constitutional principles of the Basic Law. The free human personality and its dignity are the highest legal values within the constitutional order. […] The Basic Law does not understand this freedom as the freedom of an isolated and autocratic individual, but of a community-related and community-bound individual. Due to this communal connectedness [freedom] cannot be unlimited. The individual must accept the limits to their freedom of action that the legislator draws in order to maintain and promote social coexistence within the limits of the […] as generally reasonable" (BVerfGE 45, 187). Once again, the eventual limitation of rights, interests and benefits for the sake of social cohesion is not claimed in Germany in the name of the principle of solidarity, but rather as human dignity that implies a mutual constitutive relationship between individual autonomy and the solidary community. Implicitly, the reference is to the same significance of what other jurisdictions name "solidarity".

In sum, explicitly or implicitly, in the very text of the constitution or in the preambles (and thus to different degrees of incisiveness), solidarity is in the facts a "constitutional paradigm" (Ross 2010) in all studied countries. In legal and political terms this has three direct implications: first, in all countries, solidarity is a legitimate source of law and policies and guides the choices of public authorities and policy-makers at all levels of government; second, decision-makers should provide good reasons to depart from the respect of the principle of solidarity, should they decide to

do so; and, third, courts, especially Constitutional courts and Supreme courts, are legitimate in their use of solidarity as paradigms of constitutionality in litigation, and are called to decide on the reasonableness of any eventual departure from the application of solidarity.

Solidarity? The Danish, French, Greek, German, Italian, Polish, Swiss and British Way to Solidarity

As for other fundamental values that often and, sometimes more explicitly, permeate our case-studies' constitutions (as for example equality, human dignity, fundamental rights and to some extent also social justice and social state or welfare), solidarity is a nuanced notion that acquires legal force and specific meaning according to its socio-cultural, political and economic context. The ancient Roman maxim, "*Ubi societas, ibi ius*", asserts that every society has its own legal system, and also that societies and legal systems form a sort of hendiadys meaning that societies without a legal system may not be named "societies" and legal systems may not exist as abstract concepts, but always and necessarily require the existence of a society (Romano 1946; Hauriou 1933). Nonetheless, this neither prevents the enactment of legislation inadequate to meet societal needs, nor societal practices that go beyond or even against the law; phenomena of resilience, resistance and protest against governments and "bad" laws and public policies are frequent, as well as phenomena of social resilience, resistance and protest against positive legislation fighting, for example, corruption, discrimination and marginalisation. The intimate relationship between the two terms of the hendiadys may be a conflicting one, but yet a satisfactory understanding of solidarity as legal concept demands also an insight into the solidaristic socio-cultural background, and any sociological and politological analysis underestimating the theoretical and empirical relevance of the legal framework risks impoverishing the results.

In all our countries the social value of solidarity is tightly intertwined with volunteering *lato sensu*. Being engaged in civil society activities, donating time, competencies and money, is a shared value and a widespread practice, and it assumes different connotations, which may reverberate on the general understanding of solidarity.

Table 1 – Proportion of people involved in solidarity activities in the past 5 years (2012-2016)

	Helping a stranger (%)	Donating money (%)	Donating time (%)
Denmark	57	54	21
France	39	30	31
Germany	58	55	22
Greece	50	10	11
Italy	44	30	15
Poland	37	27	13
Switzerland	39	51	33
The UK	58	64	28

Note: In the World Giving Survey, respondents were asked whether they have helped a stranger or someone they did not know; have donated money to charities; and have volunteered time in a voluntary or charitable organisations. The estimates derived here correspond to the proportion of respondents who answered positively.

Sources: World Giving Index 2017

As we can see from Table 1, in all countries almost half of the population is engaged in solidarity activities connected with volunteering, with the exception of Poland and, to a different extent, Greece. These data are confirmed by the analysis of the socio-cultural dimensions of solidarity as illustrated in Part I of the volume, which points at volunteering as one of the most important markers of solidarity in society. Thus, if we assume volunteerism as an indicators of social solidarity at the interpersonal level (Hustinx and Lammertyn 2000; Valastro 2012; Zambeta 2014), we can assert that at least in Denmark, France, Germany, Greece, Italy, Switzerland and the UK, a number of forms of solidarity are based on social activism and volunteerism. Interestingly, however, each country has its own way to solidarity through volunteering, and in each country, solidarity is characterised by specific connotations.

In Denmark, as part of its protestant tradition, the principle of solidarity is often moralised in public discourse emphasising the responsibility of the individual towards the community and blaming the abuses of single beneficiaries or groups who are perceived as relying excessively on welfare services. There is an emphasis on reciprocal obligations of the citizens and on values that all Danes share in principle and in practice. In Germany,

where volunteerism has been increasing in the past years, according to the most recent survey (the German Volunteers' Survey) in 2014 the "political" dimension was very strong: more than 80 percent fully agreed or rather agreed (57.2% and 23.8%, respectively) that their voluntary engagement is motivated by the aim to play a part in shaping society at least to a small degree. Italian society still moves between traditionalism and modernity; between conservative and progressive political culture, and 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) still complement each other. Along with classical forms of volunteerism based on charity and supportive activities of religious inspiration, which remain pervasive in the country, mainly working in the social and healthcare fields, new forms of 'civic' volunteering have also emerged. Based on alternative forms of social vindication and participation, they widen 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. In Switzerland, the decentralised nature of the state and the diversified cultural identity forged on the principle of linguistic and religious diversity also have an impact on solidarity at societal level. The propensity to volunteer is highest in the German-speaking part of Switzerland, followed by the French- and Italian-speaking regions (Freitag and Ackerman 2016). Thus, the territorial autonomy of the different cultural communities translates into various levels of collective belonging, which impacts the political and social structure of the national community, and also the forms of solidarity. In France, the subtle difference between "*bénévolat*" and, "*volontariat*" (the first referring to the free commitment of individual citizens for non-remunerated activities, and the second which is closer to the notion of voluntary service) is directly linked to the intertwining nature of solidarity and subsidiarity, allowing non-profit organisations to multiply in the past four decades in every field of public interest (Faure 1997). The UK perspective adds another aspect: while strongly connected with the voluntary sector, one of the areas of British society where there is an explicit usage of the term solidarity is perhaps best recognised through the trade union movement where the word continues to signify comradeship between workers and trade unions operating across various sectors. Thus, solidarity permeates not only the so called "third sector", but it also reaches the economy through the activism of the trade unions (Cohen 2006; Fernie and Metcalf 2005).

Against a rather homogeneous, though variegated, social dimension of solidarity taking the form of volunteerism, the Greek and the Polish cases can be singled out as outliers.

The political dimension of solidarity is still quite pervasive in Poland, where solidarity is primarily associated with the "Solidarity" social movement which had a substantial influence on political change and democratisation. Thus, solidarity as a value cannot be interpreted without acknowledging the importance of the trade unions and the social movement which had a strong impact on the transformation of the political system in 1989. However, since the defeat of *Solidarność*, the country implemented the so-called "shock therapy" of neoliberalism that could be defined as an ideology that prefers market-based solutions to almost all social phenomena (Duménil and Lévy 2005) and neoliberal values seem to have prevailed. They reverberate in Polish people who have the lowest levels of empathy among 63 countries, according to a study measuring people's compassion for others and their tendency to imagine another person's point of view (Chopik, O'Brien and Konrath 2016). Moreover, Polish Catholicism, which is an important element of Polish cultural, social and also political domains – according to the last census in 2011 when 87.58% of people declared themselves as Catholics (GUS 2013) does not mitigate this attitude, as it is mainly characterised by a reactionary moral approach to social habits. These considerations contribute towards explaining not only a certain reluctance towards volunteerism, but also the tightening of migration policy and the political refusal of a European burden-sharing approach which ended with the European Commission's decision to launch infringement procedures against Poland (together with Hungary, and the Czech Republic) over refugee sharing in June 2017.

Finally, the Greek case is of particular interest because in Greece the crisis had a direct reflection on solidarity as a social value, pushing people towards altruism. Against the backdrop of a traditionally weak and feeble civil society, characterised by low levels of people's attachment to civil society organisations, the crisis has been a turning point for civic engagement, revealing new understandings of solidarity. Since the crisis, there is indeed evidence of a rise in solidarity initiatives consisting of citizen groups which cooperate, organise and manage many activities, such as alternative exchange networks, local economies, social clinics and other informal groups and networks. And the data of several recent surveys converge, showing a significant increase in voluntary participation since the beginning of the crisis (Sotiropoulos and Bourikos 2014). We would be

tempted to conclude that the crisis in Greece gave solidarity a new beginning, with the support of the Greek government that enacted a number of specific measures to give a boost to social economy and social entrepreneurship initiatives.

In sum, in our countries, to a lower degree in Poland, the socio-cultural significance of solidarityevokes altruism and volunteering. However, it assumes different flavours: a more accentuated political taste in some countries, and a more moral one in others; tones that are closer to charity in some contexts, and tones evoking social protest in others; a tighter connection with the kin dimension in some societies, and a tighter connection with the institutional dimension in others.

This paints a rather variegated "European way" towards solidarity.

The Dimensions of Solidarity

In legal systems based on solidarity, i.e. where solidarity "defines a *perimeter of mutual assistance* which includes some people and excludes others" (Supiot 2015, 15), citizenship, which is the maker of this perimeter, means that the legal bond between the individual and the State creates a relationship of mutual responsibility that does not simply concern a bi-directional vertical dimension between the State and its citizens (vertical dimension), but also a bi-directional horizontal dimension, i.e. between fellow-citizens. Every citizen is responsible for the promotion and guarantee of fellow citizens' rights and needs (Apostoli 2012, 143). Moreover, in decentralised States solidarity acquires a third, crucial aspect that has already emerged in the previous paragraphs: the territorial dimension, i.e. the principle of federal solidarity. "The general idea is that governments forming a federation do not merely calculate their actions to be to their own benefit. By forming a federation, partners intend to work collectively for the common good of a shared citizenry. Each government – be it federal, provincial or territorial – owes special duties to the other common members of the federation that they do not necessarily owe to foreign states (or that are not owed with the same degree of intensity) precisely because they belong to a common body politic" (Cyr 2014, 31). These

three dimensions are all interconnected, and they assume a slightly different connotation at the EU level[2].

The most relevant element of solidarity's vertical dimension in every country is the welfare system (Ferrera 2005). From the Danish social democratic Nordic welfare model (Esping-Andersen 1999), where there is a strong state that builds on the principles of universalism by providing tax-financed benefits and services, to the Italian "residual welfare state" in the broader category of the conservative-corporatist model (or Ferrera's Southern group model (1996)), where social services are provided to people who are unable to help themselves; from the Swiss liberal welfare with a moderate decommodification but with a high generosity index, close to the one in Sweden (Scruggs and Allan 2006, 67) to the Greek pre-crisis corporatist model based on moderation and the elimination of the most dramatic inequalities through redistribution policies; from the Polish social model which blends elements of liberalism on a conservative and corporatist tradition inherited from the period between the wars (Esping-Andresen 1999) to the French corporatist regime reflecting, for most part, the Bismarkian tradition of earning-related benefits (Serre and Palier 2004); from the British universalism based on the Beveridge model (Taylor-Gooby 2013) to the typical conservative welfare regime in Germany (Esping-Andersen 1999); whatever type of welfare regime presumes an unequal distribution of resources and wealth, and the specific function of solidarity is to bridge these inequalities through redistribution policies. Solidaritythat is embodied in welfare systems on the one hand promotes human dignity through the enforcement of fundamental rights, and, in this sense, the welfare state represents the institutional form of social solidarity generated in constitutional principles and specified in codified entitlements to social policies. On the other hand, solidarity promotes social cohesion through the binding force of the interconnectivity between rights and duties. Indeed, the welfare state as a set of redistributive policies has been a

2 Due to the supranational nature of the EU legal system, at this level solidarity is embedded in two dimensions: the relationship between Member states (horizontal dimension) that is evoked in a number of articles of the treaties – for example, Article 3 of the TEU, enunciating the objectives of the Union, declares that the Union "shall promote economic, social and territorial cohesion, and solidarity among Member States"- and the relationship between the States and their subjects, i.e. the individuals (vertical dimension), which appears in the Preamble of the TEU stating that the Union aims are to "deepen the solidarity between their peoples while respecting their history, their culture and their traditions".

key tool in the promotion of national identity, and therefore as a way to create solidarity among citizens, "bounding for bonding" (Ferrera 2005, 44). In fact, citizens allow a redistribution of their resources to happen as long as they perceive each other as members of the same group or nation. As we will highlight later on, the crucial issue, then, becomes the boundaries of welfare, i.e. where to draw the perimeter of solidarity.

"The concrete enforcement of solidarity in its vertical dimension (from the State and the institutions towards individuals) is tightly connected to the functioning of the guiding principle of subsidiarity […] as subsidiarity presupposes the *subsidium*, which is the duty of participation and support «top down» by virtue of social cohesion" (Apostoli 2012, 61). Subsidiarity opens the public sphere to citizens' participation and free engagement in the fulfilment of fundamental rights and in service delivery, connecting the vertical and horizontal dimensions. 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 may "activate" the citizens' duty of solidarity through legislation promoting private intervention.

The horizontal dimension of solidarity which has already been discussed, finds its most evident and most widespread expression in volunteerism, may be favoured by specific legislation and measures promoting the third sector (as has been the case of the Italian law n. 266 of 1991), and it has provided valuable solidarity responses during the crisis, as the Greek case clearly describes. But the opening to this horizontal dimension may also acquire more ambiguous political aspects, as was the case of the UK's "The Big Society" policy.

Finally, in decentralised states, subsidiarity allows for interconnectivity between the different tiers of government, making the significance of solidarity relations among all territorial entities emerge. The importance of territorial solidarity is taken into consideration in the cases of Germany, Italy, the UK and Switzerland. In all these jurisdictions, the very structure of the decentralised (federal, regional or cantonal) state relies on the mechanism of power sharing (which assumes different political and legal forms, structures and mechanisms in the different countries) that enables mediation between sub-national and national interests, needs, resources and competences. However, in none of these countries is the equilibrium

between diversity, autonomy and solidarity a simple one, and the crisis has exacerbated several elements of this difficult equilibrium. The British and the Italian cases represent the two most critical aspects of territorial solidarity: the very respect of the *pactum unionis* among sub-national entities and the exacerbation of difference to the detriment of equality in rights enforcement which questions the solidaritstic dimension of decentralisation.

In the UK, the solidarity-creation mechanisms between sub-national entities (Scotland, Wales, England, and Northern Ireland) have been seriously challenged in the past few years by political and political-economic issues. These challenges seem to be a catalyst for the robust revival of sub-national solidarities against the British one. The devolution of power occurring from the end of the 1990s has come under intense scrutiny in recent years in terms of its capacity to allow sub-national communities to have their voice and interests represented by British decision making. As a consequence, in Scotland in 2014, a referendum took place for one of the "constituting nations" of the UK to become independent from the UK. Although the vote upheld the will of Scottish people to remain British, this was a very strong attempt to reshape the boundaries, and even the content, of territorial solidarity. Even though not directly connected with the Scottish national question, the British people put another form of supranational solidarity under pressure as a legitimate system of redistributing resources across the continent: solidarity based on the European Union. In June 2016 they voted to leave the European Union: a dramatic outcome.

In Italy since the 1990s, there has been a significant devolution of functions to regions in the field of welfare, which has radically changed the relationship between the central government, the regional governments, and local governments according to the principle of subsidiarity. The economic crisis had the effect of modifying and reinforcing the role of regional governments in new strategic policy-making and service delivery to temper both the direct effect of the crisis and the impact of national retrenchment measures. Regional responsibilities in the field of social policies has become so important that scholars argue that Italy has moved from a 'welfare state' to 'welfare regions' (Ferrera 2008). This process has exacerbated existing differences, especially between Northern and Southern regions, that remain more strongly marked by high rates of poverty, unemployment, social exclusion, and whose regional governments have proved to be less pro-active in counter-balancing the worst effects of the crisis, especially in the field of unemployment. The gap is not only measurable in terms of per capita income, but also in terms of well-being and opportuni-

ty gaps (Cersosimo and Nisticò 2013). The paradox is that regions most severely hit by the crisis were the most vulnerable ones, and the most severely hit populations were the most marginalised. Another dramatic failure of territorial solidarity. Building on the socio-economic indicators that have been discussed in the introduction (GDP per capita, government debt, percentage of economic strain, percentage of population at risk of poverty; unemployment rate, percentage of people with disability suffering severe material deprivation; asylum applications; social expenditure per capita), it is doubtless that, in the large majority of our case-studies, the crisis has strengthened the need for solidarity. Similarly, it is doubtless that the vertical dimension suffered most from the crisis, stretched between two opposing imperatives: increased requests for redistribution on the one hand, and the urge for austerity and reduced resources on the other.

The discussion of the policy responses in the domains of unemployment, disability and immigration asylum will provide the terrain to enquire about the depth of this solidarity sufferance.

Immigration and Asylum, Unemployment and Disability: Is there Room for Solidarity?

The very diverse constitutional organisation of the State, system of government, rights enforcement and litigation, and political system of Denmark, France, Germany, Greece, Italy, Poland, Switzerland, and the UK have already been described earlier in this volume. Their socio-economic background also shows a much-differentiated pattern, with Greece representing the most deprived, and Denmark and Switzerland holding the most privileged positions in terms of GDP per capita. Noteworthy, other variables such as levels of corruption, clientelism, religion's influence, income and wealth distribution strongly contribute to defining our case-study diversity. Understanding the significance, the function and the potency of solidarityin times of crisis can not ignore the policy legacies and also the pathologies of the past. If solidarity before the crisis was deformed due to clientelism and strong patronage arrangements between political parties and organised interests of social welfare recipients causing severe social or economic imbalances at the expense of the weaker groups of the population – as in the Greek case – the path towards solidarity during the crisis might be more difficult to engage. Nonetheless, even in countries charac-

terised by a strong ethos for solidarity, as in Denmark for example, the enforcement of solidarity-based legislation and policies in given policy domains shall not be taken for granted.

Despite the fact that principles and rules deriving from the European Union legislation and policies should provide a common normative framework in the fields of unemployment, disability and immigration/asylum in EU Member states, the comparative analysis of the seven EU member states and of Switzerland[3] shows that national principles, legislation and policies remain highly country-specific. Moreover, even at the national level there is a lack of consistency. Disability legislation and policies, for example, are generally characterised by internal fragmentation and in decentralised states they are influenced by the regional or federal organisation of the competences.

The transposition of the constitutional solidarity principle into specific legislation and policies is not simple, and in several cases there are evident discrepancies between a solidaristic approach embodied in the constitution and specific laws, regulations and policies violating it. Moreover, in many European countries the economic, as well as "refugees" crises of the past years had a considerable impact on the legal entrenchment of the solidarity principle and its implementation in administrative practice. As already highlighted in Part I and III, courts may intervene and quite often they do so, reaffirming the overarching constitutional value of solidarity, but this has not prevented dramatic welfare retrenchment measures and a generalised tightening of migration laws.

When Laws and Policies Do Not Mention Solidarity

Very seldom, solidarity is expressly named as the leading principle in any of the framework legislation in the policy domains of disability, unemployment/asylum and migration. Very interestingly, from being a fundamental value at the constitutional level, solidarity seems to have become a recessive one at the level of legislation.

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3 The research on the EU impact over Swiss law and policy is wide. Suffice to mention, there are various way of influence: from the so-called autonomous adaptation, to multilateral agreements, passing through international treaties and the comparative law method. For insights: Epinay, 2009; Jenni 2014.

Nonetheless, the analysis of Part III of the volume demonstrates that solidarity is of relevance for rights and entitlements in disability, migration/asylum and unemployment law to the extent that it can be derived from other basic constitutional rights and principles, such as equality and anti-discrimination, with few exceptions such as "solidarity contracts" in Italy and Switzerland, for example. For instance, in Germany it can be derived from the constitutional vision of humanity, fundamental rights, the welfare state principle, equal treatment, equal participation, and equal opportunities. The right to live a life in human dignity stands above all, and all other rights are subordinate to it. This also means that rights have to be interpreted in the light of the overriding right to a dignified life. Thus, irrespective of the missing explicit reference to solidarity, German law still foresees a broad range of instruments and mechanisms to support the unemployed, asylum seekers and disabled people. And yet, some degree of vagueness in determining the exact significance and legal impact of these principles opens the door for policy making to downplay the role of solidarity and to increase the conditionality of solidarity within vulnerable groups. As we learn from the German chapter, this has happened particularly in the asylum and unemployment fields in the past few years. Moreover, laws and their administrative implementation are not always perceived by civil society as sufficient to meet solidarity expectations. Indeed, recent policy reforms have shown that solidarity remains highly contested and subject to political struggles between different interest groups in society, even in a country with good economic performances and low unemployment like Germany.

In other countries, such as Greece, although solidarity and the social welfare state are clearly defined in the Constitution as a duty of the Greek state towards its citizens, there is mounting evidence that the recent policy options are progressively eroding their normative foundation and practical exercise. After several years of recession, Greece has adopted painful policy choices with regards to wage and pension cuts, labour relations, layoffs and social policies. Failure to protect the weaker, vulnerable population groups most severely hit by the country's multiple crises suggests that Greek political elites and policy-makers have neglected solidarity. The weakening of solidarity policies for the social protection of people with disabilities, the unemployed, the migrants, the newly-arrived refugees and asylum seekers has gone hand in hand with increased retrenchment, severity of sanctions and welfare conditionality.

The constitutional entrenchment of solidarity should find a direct application in the legislation. As pointed out by the Italian Constitutional Court, "social solidarity is a general guideline," not merely an abstract, moral and ethical value. It has to be considered "binding for the legislators" (C.C. decision n. 3 of 1975), which means that solidarity should permeate in a very concrete way the whole legal system, or should provide a relevant interpreting paradigm. And yet, the process of translating a constitutional principle (either directly or indirectly enforced) into specific legislation and policies may present major difficulties, as the analysis of the three policy domains illustrates.

Solidarity in Disability Legislation and Policies

In the frame of the EU approach mainly based on non-discrimination measures, disability laws pursue social integration and equality combining typical anti-discrimination measures, proactive integration tools (social inclusion at school and in the labour market, for example) with social assistance.

Except in Germany, people with disabilities have suffered from significant reductions of disability grants and allowances due to the crisis in all countries. The introduction of the system of means-testing for services and benefits in several countries and the reforms of the welfare system generally have meant a further increase in the vulnerability of people with disability. This occurred especially during the first years of the crisis, even in countries not strongly economically affected such as Denmark, Switzerland and Poland. Disability is one of the typical fields where the notions of intersectionality and multiple discrimination have become very relevant (Soder 2009; Lawson 2016), which means that disadvantages in the intersection between disability and, for example, unemployment, gender, race, class, etc. are likely to become more severe, and this is why austerity measures tend to have a stronger impact on people with disabilities.

As we learn from Part III chapters, in a first group of countries (Germany, France, Italy, Denmark and Greece) there have not been significant reforms, whereas in the UK, Switzerland, and Poland a number of reforms have been upheld, not touching the principles, but reviewing the mechanisms for accessing benefits. In Poland, indeed, there has been a relevant legal activism in order to align with the European standards, which has meant an enhancement of rights' guarantees for Polish people with dis-

abilities. Moreover, as we will discuss below, the concomitant adoption of the International Convention on the Rights of Persons with Disabilities in 2006 has entailed innovative approaches to disability, which means that in the time-frame of the crisis, in terms of legal principles and values, law reforms tended to enhance the level of rights and guarantees.

Nonetheless, the crisis has exacerbated the process of socio-spatial production of legal peripheries (Febbrajo and Harste 2013) in the field of disability, where contemporary discourse of inclusion and tolerance of diversity is at odds with the real guarantee of fundamental rights, regarding the relationship with the democratic institutions and public administration services. While formally entrenched in legal documents, basic human rights are systematically denied by the lack of resources, and those same rights then become the terrain where exclusion is *de facto* widespread and strong.

Among the countries most severely hit by the crisis, in Italy the impact has been dramatic and emphasised by the convergence of cuts and/or restriction of measures specifically targeting people with disabilities, and of welfare retrenchment measures. In particular, the 'National Fund for the Non-Self-Sufficient' was reduced by 75% due to budget cuts in 2011, the Fund was not financed at all in 2012. The impact of the cuts was amplified by the concomitant cut in the Fund for Social Policies (policies of social inclusion of people with disabilities, marginalised people, the drug addicted, elderly people, migrants, are financed through this fund). The reduction/non-financing of the Funds were partially compensated for and mitigated by regional activism, but this aggravated the regional inequalities with a perverse multiplier effect.

In Greece, the austerity policies encapsulated in the "Memoranda of Understanding" signed by the Greek government and the Troika (European Commission, European Central Bank, International Monetary Fund) caused significant reductions to welfare benefits for the disabled, and state funding to solidarity organisations have been reduced, while at the same time the beneficiaries' needs have increased as a growing number of disabled people and their families cannot afford to pay for certain health-care related services. The intersectionality between disability and unemployment was brought to the forefront of political debate in the discussion concerning the introduction of means-tested criteria for benefits and pensions. This measure has been highly contested by the disability movement in Greece, drawing attention to high unemployment for disabled people and the almost exclusive reliance on individual resources for supporting needs

and extra living costs due to disability, since social care/welfare is shrinking.

The very same point was raised in France: people with disabilities are the first victims of unemployment. Despite the government providing a generous healthcare system, France dedicates only 1.8% of its GDP to disability policy (in 2014). The policies of public expenditure rationalisation and reduction in all spheres of government hugely impacted on people with disability care and support systems.

Support action in the field of disabilities has also suffered from the financial cuts that were imposed on the public sector even in Denmark, a Northern country traditionally characterised by a universalistic welfare state which provides the disabled with a variety of measures to apply for public funding. During the crisis, the terms for these funding schemes have been increasingly complex, and these complex administrative processes have made it more difficult to apply for and receive public funding. For disabled persons this often implies insufficiencies in receiving personal assistance (e.g. disability-friendly cars, oxygen concentrators), but also more restrictive access to early retirement pensions or other benefits. In counter-trend with the intersectionality argument between disability and unemployment, it seems that Danish disabled people have been met with a high degree of solidarity in employment matters (the anti-discrimination Act of 2008 prohibits any kind of discrimination in respect to employment, whether related to ethnicity, race, religion, sexuality, and, most relevant in this context, disability), whereas they are less protected from discrimination outside the labour market.

In the UK, in 2008, the replacement of the Incapacity Benefit with a new benefit, the Employment and Support Allowance was part of the government package on welfare reform (Bambra and Smith 2010). One feature of this new benefit was the "Work Capability Assessment" which represented a significant shift in evaluating the applications for welfare state support by disabled people by focusing on what they were capable of rather than the extent of their incapacity to work. In 2010 a major expansion of the "Work Capability Assessment" was pursued as part of the overall strategy to reduce welfare spending and get as many disabled people as possible back to work. Moreover, the Welfare reform act of 2012 introduced a particularly contested measure to reduce public spending in 2013, the so-called "bedroom tax", which disproportionally affected people with disability who need more space at home to accommodate their basic needs. This policy targeted working age tenants living in social housing

(that is, property owned by local Government or housing associations) and was introduced as a strategy to reduce the amount of money spent on housing benefit, a welfare measure which helps pay the rents of people who are either unemployed or in low paid employment. However, in March 2017 the Supreme Court found that the tax "unlawfully discriminated" against disabled tenants.

In Switzerland the Law on Disability Insurance was strongly redefined between 2003 and 2012. These changes were the result of economic and debt pressures accumulated by the disability insurance scheme and not because of the economic crisis which did not significantly affect the country. A new definition of disability concealing a perception of disability as 'objectively measurable', so the disability could be considered as feasibly a reversible state, surmountable, has been introduced into the legal system, and people that cannot prove their "objective" disability are requested to fit back into the labour market (which may have a strong impact on psychic patients). Moreover, the legal framework shifted from targeting "compensation rents" to working "re-adaptation rents" within the scope of restoring or improving the earning capacity (Probst et al. 2015, 112). Thus, the disability legal framework has shifted towards a criteria of employability, and has strengthened its focus on rehabilitation and reintegration of people living with disability with periodic reviews of rents, including previous permanent rents under the argument of 'poorly used working capacity' for people living with disability (Bieri and Gysin 2011; Probst et al. 2015).

In Poland, as has already been highlighted, the legislation in the field of disability (often implementing the European Union directives) has been more and more inclusive and has improved the level of fundamental rights and freedoms' guarantees. However, neither the new legislation nor the insignificant impact of the economic crisis on the country's economy have prevented the government from enacting retrenchment measures that resulted in cuts to services and benefits. The positive advancements in terms of recognised rights have been negatively counterbalanced by budget decisions.

Interestingly, in most countries, the main concerns regarding the disability field do not lie in the lack of legislation, but in their implementation, as highlighted by the analysis of the interviews carried out with grassroots and civil societies' associations and movements in all countries. In Italy, for instance, the legal framework is deemed appropriate, in line with the most progressive European countries. In some fields, Italy has

been (and sometimes still is) ground-breaking, as with the example of disabled pupils' integration in schools. What remains highly problematic is the actual implementation of existing legislation. But this is true even for a country like Germany, where the effective enforcement of guarantees and the rights of disabled persons is often a question of the quality of administrative practice at the levels of national state, the single federal states, local authorities and benefit providers, and the assertiveness of individual claimants (Kuhn-Zuber 2015; Welti 2010, 27).

Finally, the coincidence of the early stages of the crisis and the entering into force of the International Convention on the Rights of Persons with Disabilities brought about the extension of anti-discrimination measures between 2007 and 2014 in several countries, and the decisive shift from a medical definition of disability to a socially-oriented one. As far as the protection of people with disabilities is concerned, a general tendency to promote equality of chances and non-discrimination can be noticed in most countries. And yet, reality does not always move at the same pace as legislation.

Solidarity in Unemployment Laws and Policies

The 2008 global economic crisis had very different effects in terms of unemployment across the countries, as illustrated in the introduction. The crisis impact on the quantitative and qualitative levels of employment has put heavy responsibility on European institutions' capacity given that Article 145 TFEU states that "the Union shall contribute to a high level of employment by encouraging cooperation between Member States and by supporting and, if necessary, complementing their action". Despite the fact that EU competence in this field relies primarily on coordination of national policies and legislation, EU legislation and policy have developed along two salient issues: social protection of workers and social rights.

The picture of policy and legislative responses in the field of unemployment shows also differentiated patterns which, nonetheless, do not necessarily adhere to the crisis effect, that impacted differently on member states. Regarding this, as illustrated in Figure 1, the countries can be divided into two groups: those marked by significant crisis-driven reforms (either in response to concrete needs or seizing the crisis as a political opportunity) and those where only temporary measures and/or limited legislative changes were adopted.

Figure 1 - Economic crisis and legislative/policy reforms

Crisis-driven reforms	Economic crisis: severe	Economic crisis: moderate	Economic crisis: low
structural	Italy Greece	The UK France	Poland
Tempo-rary/ limited			Germany Switzerland Denmark

In Germany the crisis was dealt with ad hoc measures. The extension of short-term allowances for employees whose working hours were reduced substantially helped the county's economy to overcome the recession between 2008 and 2010 relatively quickly and smoothly. Together with other measures from the government's economic stimulus packages (a large amount of public money was devoted to investments in the country's infrastructure, tax cuts, child bonuses, increases in some social benefits, incentives to boost the car industry, etc.), short-term allowances were an important means of stabilising employment and avoiding a growth spurt in unemployment. Yet, the unemployment-related welfare witnessed a certain retrenchment and a growth conditionality in quite distinct ways. In fact, with the latest reform of the Hartz IV benefit system of August 2016 (measures recommended by the Hartz commission- named after its chairman), the unemployment law and its implementation are characterised by a tightening of rights and entitlements – particularly for the long-term unemployed – despite the good overall socio-economic climate.

In Switzerland, the most important revisions of the unemployment insurance law occurred in the 1990s, when the Swiss model of unemployment insurance as a national-liberal model evolved towards a social-liberal model with the adoption of a common unemployment insurance system and some essential protection measures for vulnerable groups on the labour market (Schmidt 1995). Thus, in the past few years there was neither need for any significant reform, nor have policy-makers instrumentally used the argument of the incumbent crisis to further reform the labour market or the unemployment services.

Minor adjustment measures were also implemented in Denmark. Welfare and labour market policies are combined in what is called the Danish *flexicurity* model. *Flexicurity* refers to an employment-welfare policy, which combines flexibility for the employers when hiring and firing em-

ployees, and social security for the employees, providing them with unemployment benefits and income insurance when they lose their jobs. It also refers to an active labour policy that offers training for skills development in order to gain access to or return to the labour market. Flexible labour is safeguarded by the existing schemes of unemployment benefits and active labour market policies by providing skills and training (Duru and Trenz 2017; Alves 2015). As a result of most recent policy changes, social benefits have been reduced or have become more conditional with preference given to measures that seek to reintegrate service receivers into the labour market.

Despite the Polish economy's relative resistance, unemployment, especially youth unemployment, rose in the years of the crisis, and growing numbers of people were forced to work on "civil law contracts", deprived of labour and social security rights, including unemployment benefit in the event of losing the job. The government introduced two "anti-crisis" packages protecting employers rather than employees (Theiss et al. 2017). Among austerity measures, cuts were made to funds for public employment services, including unemployment benefits as well as the freezing of salaries for some groups of workers in the public sector. The government also introduced a more flexible system of public unemployment services. On the other hand, the state also introduced some non-austerity measures, like the possibility of combining income from work and social assistance benefits, and regular increases to minimum wage. However, the liberalisation of labour legislation was not a novelty introduced by the crisis. After the transformation of 1989, the so-called liberal "shock therapy" consensus dominated Polish public policies. The crisis did not change this landscape, but rather it was an "excuse" to strengthen the "flexi-insecurity" model (Meardi 2012), characterised by minimalistic, liberal or hybrid models of social policy, with certain privileged groups on the labour market (Szelewa 2014; Cerami 2008).

Conversely, Italy, Greece and (to a lesser extent) France and the UK are all countries which have adopted important crises-driven reforms. The crisis prompted Greek policy-makers to hugely change the labour market law. Greece had to rely on bailout rescue loans and implement austerity packages which may have led to some streamlining of social spending but, above all, has resulted in cutbacks in the earnings of all persons employed in the wider public sector and in the weakening of solidarity policies for the social protection of the middle and the lower classes, the unemployed, the poor and the socially excluded. From 2010 to 2012, Greece instituted

several sweeping reforms in the field of employment, promoting flexibilisation and deregulation of the labour market at the expense – as trade unions claim- of workers' rights and social protection. In particular, several fundamental changes in labour relations were introduced, including the following: a) the notice period for terminating white collar workers' open-ended employment agreements was significantly shortened, leading to an indirect reduction of white collar workers' severance pay by 50 percent; b) the threshold for collective dismissals was lowered considerably; c) a new type of company-related collective employment agreement was introduced which may provide for remuneration and other working terms that are less favourable than the remuneration and working terms provided for by the respective sectoral collective employment agreements; d) the right to determine the minimum wage through collective agreements was taken from the key social partners in Greece, and handed to the government.

Italy was the second country worst hit by the crisis: from 2010 to 2014 the unemployment rate (especially among the youth) increased constantly. In this negative context, the crisis was seized by policy-makers as an opportunity to address the traditional and long-standing weaknesses of the Italian labour market through several reforms among which the most important was undertaken during the biennium 2014-15 under the name of Jobs' Act. Article 18 of the Workers' Statute, imposing very restrictive conditions for workers' dismissal, was radically reviewed, eliminating the system of compulsory reintegration in case of unjustified dismissal for workers employed under the new contract system. According to the Jobs Act, increased levels of job protection now depend on seniority and are based upon monetary compensation (instead of compulsory reintegration). At the same time when passive and active labour market policies were being reformed, the period for fixed-term contracts was extended from 12 to 36 month (with a limit of 5 renewals), and a new form of permanent contract with increasing protection levels was launched, together with incentives to hire or convert more workers onto permanent contracts, and a new unemployment benefit scheme was put in place extending income support to (almost) all the unemployed. These new unemployment measures clearly strive towards the universalisation of income support for the unemployed following the idea of 'flexicurity', providing a safety net necessary to protect the worker during periods of transition from employment to unemployment, which more easily occur in a labour market characterised by flexibility in hiring and firing.

Similar to Italy, in the summer of 2016 the French government upheld an important reform of the labour market, the *Loi Travail*, even though the discussion of this piece of legislation was marked by strong opposition and several struggles across the political domain and civil society. While the legal workweek has been maintained at 35 hours long, the law gives specific company agreements precedence over branch agreements. The maximal number of hours worked in a day can be extended, and specific company agreements can reduce the rate of overtime compensation. The law allows companies to adjust their organisations in order to "preserve or develop employment". The employees' monthly salary cannot be reduced, but premiums can, for example, be abolished. Employees who refuse to accept such agreements can be dismissed for economic reasons. The criteria for economic redundancies are laid out according to the size of the companies. Overall, it can be argued that the large space that the law gives to spell out the conditions under which employers can use economic redundancy, weakens any progressive and solidaristic element that may be singled out.

Also in the UK, policy-makers addressed the crisis through austerity measures to reduce the budget deficit. In an effort to simplify and streamline existing welfare to work initiatives, in 2011, the UK government introduced the 'Work Programme' which sets out how support will be offered to those seeking employment by public, private and voluntary sector service providers who undertake contracts from the Work Programme based on payment by results. These changes to the delivery of support for the unemployed signalled a broader introduction and scaling up of work experience placements for most unemployment benefit claimants, an approach more commonly known as "workfare" (Peck 2001; Jessop 2002). One of the difficulties for claimants has been that should they refuse such placements, they can be (and often are) subject to 'sanctions' which include the complete removal of benefits for four weeks in the first instance, leading up to a maximum of three years' removal of benefits for continuous contraventions. Unsurprisingly, these sanctions have been a source of controversy amongst some groups. Another novelty was introduced by the Trade Union Act in 2016 which has placed new restraints on industrial action in terms of balloting for strike action.

To sum up, this comparative analysis shows that in some countries, the crisis has been seen as an opportunity to address historical weaknesses in the labour market, whereas in other countries it was just an "excuse" to pursue a very politically-oriented agenda. In all countries, however, we

detected a general tendency towards policy changes emphasising flexibilisation of labour relations, conditionality for welfare and unemployment benefits and 'activation' elements, in accordance with the broader supply-focused trend characterising European unemployment policies throughout the 1990s and 2000s. And against this trend, all the respondents from grassroot and civil society organisations active in the field of unemployment, interviewed in the frame of the EU financed project TransSOL which the present volume builds on, agree that a solidarity approach in labour market and welfare benefit reforms is sorely lacking. Solidarityremains a recessive value in current unemployment and labour legislation, even though in this domain it is overtly named, for example, in "solidarity contracts", in Italy and in Switzerland, and in "solidarity gradual pre-retirement contracts" in France.

Solidarity in the Field of Migration Legislation and Policies

The "refugee" crisis especially affected Mediterranean countries like Italy and Greece. The EU legal framework in this field is pivotal: the principle of solidarity has a special role in the common policies of asylum and immigration, set forth respectively in Articles 78 and 79 of the TFEU. This is due to Article 80 TFEU which meaningfully provides that these policies and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States.

Immigration and asylum laws were generally amended in all our countries, adopting more restrictive measures, except in Poland and Greece. This occurred regardless of the country's actual involvement in the migratory crisis, signalling a politicisation of this issue and the increasing importance of populist claims in this regard (Boswell, Geddes and Scholten 2011; Van der Brug et al. 2015), as illustrated in Figure 2.

Figure 2 - Migration crisis and legislative/policy reforms

Tightening of migration legislation	**Migration crisis**		
	heavy	moderate	low
yes	Italy Germany	The UK France	Denmark Switzerland
no	Greece		Poland

The two countries least affected by the migration crisis, Denmark and Switzerland, represent the most interesting litmus test for the argument of the politicisation of the discourse and debate on migration. Despite a relatively low number of migrants and a high-functioning economy, the Danish welfare state has moved from a universalistic to a more exclusivist one, mainly protecting the Danes and the ones who contributes to society in financial terms, leading to retrenchments in welfare benefits with regard to immigration (trying to reduce the intake of ─ EU and non-EU ─ immigrants and refugees, by e.g. restricting social benefits). Denmark, like other Nordic countries, has a universal social-democratic welfare state-tradition with a high level of trust in the state and its institutions. However, increased individualism, the inflow of refugees and asylum seekers, and increasing intra-EU mobility creates tension between the transnational solidarity principle and the particularities of the welfare state. Similarly, Switzerland has neither been affected by the economic crisis, nor dramatically by the refugee crisis; and yet, deeper analysis of the social perception of the crisis in the Swiss population discloses the assumption of a new immigration regime, which turns into restrictive attitudes towards foreigners throughout the country, but especially in German-speaking cantons and in the Ticino (Wichmann et al. 2011; Ruedin et al. 2015). In this respect, the referendum banning the construction of minarets on mosques in the country held in 2009 is paradigmatic and it is inherently contrary to the principle of equality, since it results in discrimination against a specific group by diminishing their presence in the public sphere. The initiative expresses the willingness to defend the presumed idea of homogeneity and coherence of the Swiss community, and it exposes the tensions and the fragile equilibrium between solidarity within national community and solidarity between individuals and exterior communities.

France and the UK have been moderately touched by the new migrant inflow, but in both countries migration has been a highly-contested terrain for political debate, with little room for solidarity. In the UK, the issue of immigration has a history of contention and concerns about the free movement of people; whether they are migrants or refugees and asylum seekers is somewhat illustrated by the different approach the UK adopts in comparison to other European countries. For example, in contrast to the majority of Member States of the European Union, the UK, along with five others, is not a signatory of the Schengen Agreement, which enshrines the principle of free movement of people. Furthermore, in recent years, the issues of asylum and migration have often been welded together in anti-im-

migrant discourses perhaps best exemplified by a poster from the Leave Campaign during the 2016 EU referendum which called for a leave vote alongside a picture of a line of Syrian refugees. Evidence of continued concerns over border control has also emerged, more recently in 2015 during the Syrian refugee crisis in which the UK Government was reluctant to accept high numbers of refugees who had crossed the Mediterranean (accepting up to 20,000 over five years) instead opting to emphasise the financial assistance it has provided and the practical support it could offer to those living in refugee camps in the region (UK Government 2015).

In France, migration comprises a very complex field characterised by intense policy reforms over at least two decades. Major legislative reforms have been implemented across the 2000s and the 2010s including new tools for promoting access to citizenship, socio-economic integration, and the fight against crime over migration. Republican France is notoriously a country of civic traditions, whereby group distinctions in general are not put in the public space and play no significant role in the distinction between citizens and non-citizens. A relevant characteristic of the intervention of French authorities in the field of migration consists of the increasing fight against irregular migration, with a major emphasis on coercive measures that target those who provide spontaneous and individually-based aid to immigrants for entering France irregularly. These coercive measures —which have often included the detention of people who have offered shelter or other kinds of help to immigrants (who were later found to be irregular)— have been applied as an implicit formalisation of a 'solidaritycrime', the latter being based on a very vague definition that the law gives to the content of the crime itself. The vagueness of the definition is indeed so opaque that it allows for mixing up human trafficking with genuine concerns and solidarity (Müller 2009 and 2015). The law does not explicitly name the support to undocumented migrants as "solidarity-crime", but it is extremely interesting that in the media and common discourse, this is the label stuck to the crime. In the field of migration, solidarity may even become a crime.

The refugee crisis strongly affected three countries —Germany, Italy and Greece —, but policy responses were different. In Germany, the development of legislation in the field of asylum has been very dynamic in recent years. The most radical change was spurred by the unprecedented arrival of large numbers of refugees and asylum seekers in late summer 2015, leading to various reforms (esp. Asylum Packages I of October 2015 and II of March 2016). In response to the new challenges, the recognition

of asylum or international protection status was subject to stricter and tighter rules, together with stricter deportation rules and restrictions on family reunification. Moreover, stricter conditions for social benefits were implemented, following the principle of "demanding and supporting" and the requirement to cooperate, together with a stricter definition of target groups with entitlement to asylum seeker benefits. The reforms aimed to remove potential "disincentives" (Deutscher Bundestag 2015, 25-26) and to allocate resources and capacities more efficiently to the growing group of asylum seekers and refugees with humanitarian, political and international protection motives (cf. also Federal and State Decisions on Refuge and Asylum of 24 Sept. 2015). Overall, the German migration and asylum legislation remains a highly contested field, since a considerable divide between proponents and opponents of solidarity with refugees has emerged over the past two years, both among policy-makers and within society. Thus, the question of insufficiencies in the law and administrative implementation is itself subject to the conflict between different political and societal groups and positions.

In Italy, during the crisis, the entry rate of new workers, both documented and undocumented, from non-EU countries diminished mainly due to a sharp decrease on the economy of the country (Bonfazi and Marini 2014). From 2010 to 2014, however, there was a noteworthy increase in the number of asylum applicants, refugees and asylum seekers, especially from Africa and Syria. In order to manage the refugee humanitarian crisis in the Mediterranean Sea, Italian authorities organised migrants' rescues through the naval assets of 'Mare Nostrum' and/or 'Frontex' operations, even in the absence of an agreement at EU level. As of late 2017, no effective burden-sharing mechanism has been enforced and asylum seekers and refugees relocation processes have been extremely difficult, slow and rather inconsistent as regards real numbers of people relocated. Against this backdrop, the Italian legislation on immigration has mainly focused on the 'criminal' aspects linked to undocumented immigration, sometimes at the expense of the protection of fundamental rights (as recognised by the case-law of the Constitutional Court and also by the Council of States, that established that the failure to obey an order of expulsion could not inhibit legalisation – Plenary Meeting of the Council of State, decision n. 7 of 2011). In the past few years, the already restrictive immigration law has been further tightened, favouring repressive aspects (undocumented migration became a crime; ex-post legalisation procedures for undocumented

migrants were forbidden; permanence in the Centres of Identification and Expulsion was prolonged up to 180 days, etc.) over inclusive measures.

Noticeably, Greece and Poland do not follow the mainstream: differently affected by the "migrant crisis", the two countries have the adoption of non-restrictive legislation and policies in common, though for different reasons. In Greece, Law 3838/2010 marked a clear break from pre-existing restrictive provisions by facilitating the naturalisation of first generation migrants, and by providing for citizenship acquisition to second generation migrants. At the same time and in line with the trend for more intensive integration tests in a number of European countries (Baubock and Joppke 2010), the new law also required passing a test verifying an individual's knowledge of Greek history, institutions and civilisation. Besides facilitating nationality acquisition, it also extended to Third Country Nationals (TCNs) the right to vote and stand as candidates in local elections. However, this major reform was subsequently suspended. In 2013, the Council of State declared the above two provisions facilitating nationality acquisition and extending political rights to TCNs unconstitutional (Decision 460/2013). It did so on the grounds that they undermined the national character of the state and diluted the composition of the legitimate electorate. Nevertheless, the final judgement of the Council of State did not elaborate on legislation for naturalisation, nor on the requirements for obtaining Greek citizenship, leaving space for more open policy-making in the future. The introduction of the Dublin procedure[4] has resulted in additional asylum applications to Greece, adding to migration pressure on its external borders. The UNHCR has described the situation in Greece for migrants and asylum seekers as a "humanitarian crisis" (UNHCR 2013; EMN 2011), further exacerbated by the economic difficulties of the country.

Poland, which has not been affected by the Mediterranean refugee crisis, but has faced new waves of refugees from the Ukrainian armed conflict area, adopted the new "Law on Foreigners", in December, 2013. The

4 This system, originally based on the Dublin Convention and currently disciplined by Regulation (EU) n. 604/2013 of 26 June 2013, provides the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person. The State determined as responsible for the application is also the sole State bound to guarantee the rights to asylum and to provide to the refugees all the benefits and rights granted by the European Union provisions.

law comprehensively regulates all issues connected to foreigners residing and working in Poland and adjusts the Polish law to the EU directives concerning the status of third-country nationals who are long-term residents, the standards for the qualification of third countries or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection. This resulted in a friendlier legal and policy framework towards migrants, probably due more to the influence of European standards than to a solidaristic attitude of the people or to a pro-migrant political discourse. This has been confirmed by the firm refusal to welcome refugees and asylum seekers according to the burden-sharing approach of the European Union, refusal that has been sanctioned by the European Commission launching infringement procedures against Poland (and Hungary and Czech Republic) in June 2017 for not having fulfilled their obligation to host relocated migrants from Italy and Greece.

Thus, the importance of the migration waves has been claimed as political justification for restrictive legislation and policies in Germany and in Italy, but the Greek case demonstrates that even under very critical conditions, the legal response may assume different tones. Furthermore, the cases of Denmark, Switzerland, the UK and France confirm that the political debate easily overlooks the real numbers of either the "refugee crisis" or the economic one, as a number of research papers and studies maintain (Geddes and Scholten 2016; Van der Brug et al. 2015). Moreover, this is further confirmed by the interviews carried out with civil society and grassroot movements and organisations in the field of migration: the exacerbation of the tones of the political debate on the refugee crisis have blurred the real aspects of the phenomenon. And the securisation trend of the legislative and policy reforms has been intensified by the lack of material resources and slow policy implementation, especially in the countries most severely involved with intense refugee and migrant incoming fluxes.

Finally, all country chapters show that in the migration legal framework, little reference, if any at all, is made to solidarity. There are other keywords often mentioned, such as fundamental rights, human dignity, social integration, but solidarity, with its distinctive significance, is absent from the legal discourse, and curiously, it appears in media and popular language to identify a crime in France.

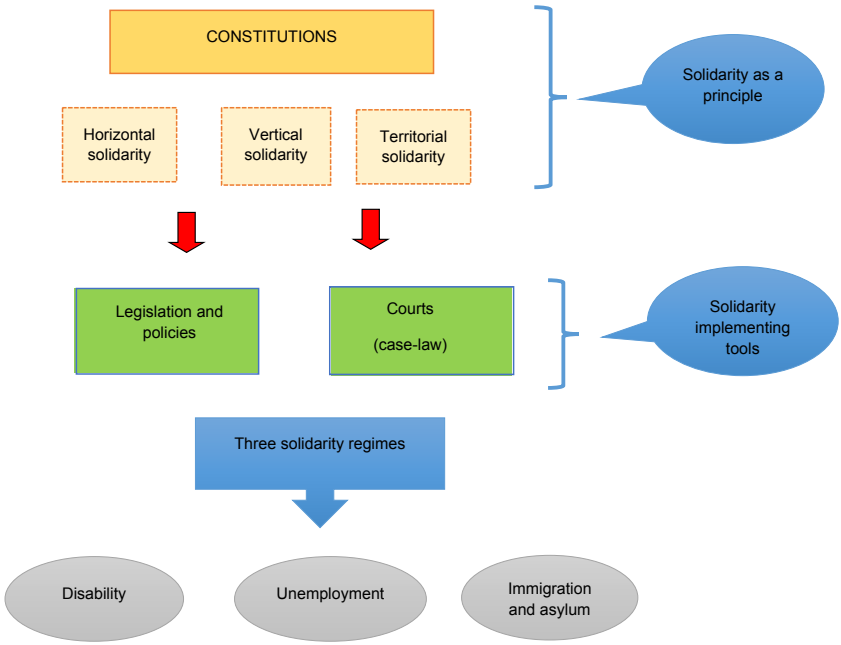
Denmark, France, Germany, Greece, Italy, Poland, Switzerland and the UK are characterised by complex webs of solidarities, and the same applies to the legal and policy framework at the European Union level. These solidarities are sometimes imposed by the legal frameworks, while at other times the legal frameworks accommodate and recognise existing solidarity ties and practices, and on other occasions, laws and policies result in counter-solidarity measures.

According to Durkheim, the substance of law and its processes express the specific features of societies' solidarity that is to say the manner in which societies are integrated and remain united despite increasing complexity and diversity. Studying the evolution of the law in each society unveils how the structures of solidarity allowing contemporary societies to cohere have gradually formed (Durkheim 1984). Thus, our comparative study on the evolution of law and policy reforms in the fields of disability, unemployment and migration and asylum has unfolded how the constitutional solidaristic approach that characterises – albeit diversely- all our countries reveals the weaknesses of social and legal systems pursuing a difficult and precarious balance between the full enforcement of rights and the recognition of human dignity as supreme values on the one hand, and the imperatives of the market on the other.

The Courts have played a significant role, admittedly with a certain degree of ambiguity in some jurisdictions, in mitigating the most severe austerity measures, using solidarity as a potent constitutional paradigm. Moreover, regardless of the concrete effectiveness of jurisprudence as a shield against unconstitutional legislation (which however remains quite an effective shield especially in France, Germany and Italy), the interest of the court's activity is that in this case-law the distinctiveness of solidarity, i.e. the value of bridging rights and duties while allowing for the creation of national communities, has emerged in a much clearer way than in any other legal domain.

The legal “solidarity system” as depicted in Figure 3, shows how solidarity, in its three dimensions, from the constitutional level defines the specific policy regimes through the combined tool of legislation and case-law. However, it assumes different connotations along policy fields and across countries.

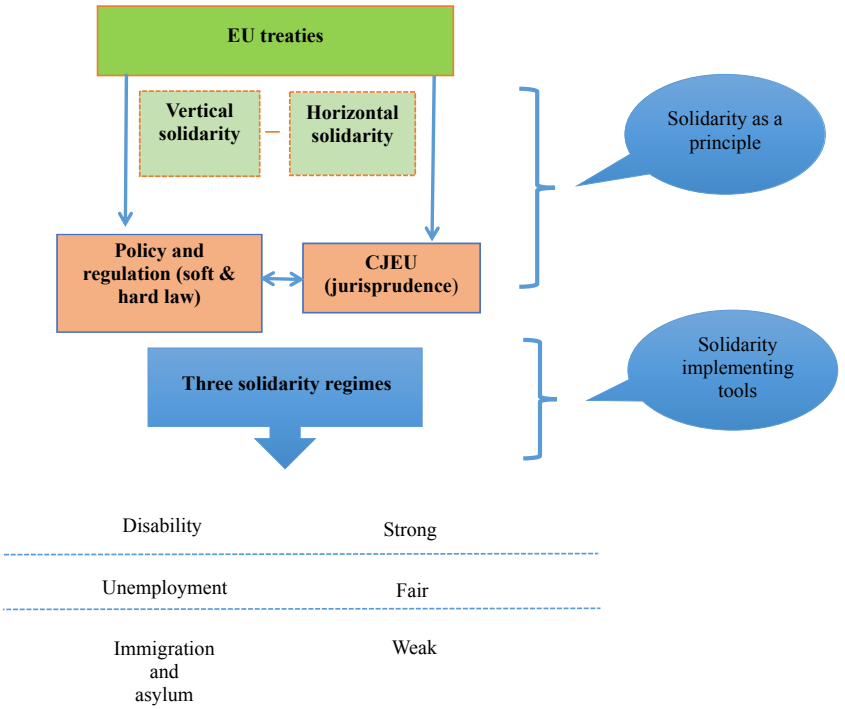
Figure 3: Solidarity in domestic jurisdictions



In the years of the crisis the perimeter of mutual assistance has narrowed and its content has become lighter. And even more narrow and lighter passing from disability to unemployment, and from unemployment to immigration and asylum.

The same structure can be adopted for the EU level (figure 4). Here, the difference in the solidarityregimes is even more evident: disability is the policy domain where solidarity based legislation and policies are stronger, and immigration and asylum the policy domain where they remain weaker.

Figure 4: Solidarity in the EU legal system



Has Solidarity Resisted the Crisis Crush Test?

In our analysis, we have tried to free solidarityfrom the rhetoric often associated with the idea, and to understand the effective potency of the notion. Thus, we should be careful not to paint solidarity as the panacea to the global economic crisis while paying homage to its unique and transformative role in mitigating the ill effects of the crises economically, socially, politically and legally at national and European levels. In all the three policy domains, solidarity has been a recessive value against the imperative of the market (in the field of unemployment), of the securisation discourse (in the field of migration) and of welfare retrenchment (in the field of disability). And even in the field of disability, where all our country chapters have highlighted a strong entrenchment of solidarity in the legal frame-

work, the implementation of the laws remains highly problematic, and this seriously jeopardises people's rights and dignity and undermines solidarity. Moreover, the large majority of interviewed grassroots and civil society organisations across the eight countries struggle to acknowledge the value of a solidarity legal framework. Seldom do they resort to courts to seek the sound respect of the constitutionally entrenched principle of solidarity, so that the judiciary remains an underestimated means for the entrenchment of solidarity.

There is no single lesson to be learned here. There is no single recipe. There is no single roadmap to the full disclosure of the still latent potency of solidarity. As we have demonstrated, *per se* the presence of solidarity in the constitutions or in the EU treaties does not guarantee the solidaristic quality of national and European laws and policies. But constitutions and Treaties are documents deemed to persist in time. They remain tools in the hands of the people, subject to new, more progressive and open interpretations.

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