

Edited by Ida D'Ambrosio Paolo Palumbo

WELFARE AND MARKET: A SOCIAL, ECONOMIC AND LEGAL ANALYSIS

WELFARE AND MARKET: A SOCIAL, ECONOMIC AND LEGAL ANALYSIS

Ida D'Ambrosio Paolo Palumbo





Conscience

高貴

Meiyo Honor K No

Kouki Nobility

VIRTUS INTERPRESS_____

VIRTUS

Published in Ukraine by Virtus Interpress © The Authors, 2020

All parts of this publication may be used according to the Creative Commons Attribution 4.0 International License (CC BY 4.0) https://creativecommons.org/licenses/by/4.0/

New orders of the textbook and enquires concerning reproduction outside the scope of the above should be sent to:

Virtus Interpress Gagarina Str. 9, 311 Sumy, 40000 Ukraine www.virtusinterpress.org

D'Ambrosio, I., & Palumbo, P. (Eds.). (2020). Welfare and market: A social, economic and legal analysis. https://doi.org/10.22495/wmsela.

You must not circulate this book in any other binding or cover and you must impose this same condition on any acquirer.

ISBN: 978-617-7309-15-3

The book has been double blind reviewed.

CONTENTS

Acocella, G. Preface: Europe in the XXI century and the welfare crisis	5
ABSTRACTS LEGAL SECTION	
Arcopinto, A. <i>Social citizenship: The protection of religious diversity as an engine of economic development</i> . Balsamo, F. <i>Creative cities and religion: The potential contribution of religion to the development of culture</i>	
urban and suburban spaces	<i></i> 9
Berrettini, A. The entrusting of the social services in the Third sector code in the light of the principle of free)
competition	
Bruno, G. C. The role of local authorities in the integration and welfare policies for migrants	
Chiola, G. New guidelines for social inclusion policies relevant to mental illnesses inside the prison context	
D'Ambrosio, I. The security of real estate transfers: The guarantee function of the recording for the consumer	17
De Marco, S. Welfare and Third sector	18
De Petris, A. Public duties and private management in the integrated water services in Italy: Still looking for	-
balance	
Fusco, G. The welfare and the church	
Gagliardi, C. The "Catholic" impact investing	22
Guasco, A. Frumentationes in the republican period of ancient rome: Between public welfare and demagogy.	23
Helzel, P. B. <i>Globalization and transformation of rights</i>	24
La Regina, K. New technologies and individual guarantees: The "Trojan horse"	25
Marchisio, E. <i>Civil liability and defensive medicine</i>	
Martini, G. The Diciotti case: A useful starting point to (re-)think about the notion of political act	27 28
Palumbo, D. <i>Organisation and tortious liability</i> Parma, A. <i>Private munificence and management of municipal states in the cities of roman Italy: Some</i>	28
epigraphic examples	29
Santoro, R., Gravino, F. The Internet, cultures and religions towards an intercultural web	
Sorvillo, F. Religious freedom and CSR: International standards and the accountability on human rights in	
Italian ETS	32
Sosa Gómez, C. A conceptual conflict between the people and the citizen	
Staiano, F. Discrimination against women migrant workers in the Italian agricultural sector: Main issues and	
possible normative solutions.	35
Tarantino, G. At the roots of welfare: Citizenship, human dignity and fundamental rights	36
Tarantino, M. L. Conceptions of human nature and rights	
Tropea, G., Giannelli, A. Public security and crisis of welfare state	
Valletta, A. Family and multicultural society	39

ABSTRACTS SOCIAL AND ECONOMIC SECTION

40
42
43
44
45
47
48
49
50
51
53
55
56
-

PAPERS LEGAL SECTION

Arcopinto, A. Social citizenship: The protection of religious diversity as an engine of economic development57
Balsamo, F. Creative cities and religion: The potential contribution of religion to the development of culture in
urban and suburban spaces
Chiola, G. New guidelines for social inclusion policies relevant to mental illnesses inside the prison context73
D'Ambrosio, I. The security of real estate transfers: The guarantee function of the recording for the consumer

De Marco, S. Welfare and Third sector	89
De Petris, A. Public duties and private management in the integrated water services in Italy: Still looking for	
balance	
Decimo, L., Sessa, V. Inclusion policies and intercultural dialogue: The role of religious organizations	.105
Gagliardi, C. The "Catholic" impact investing	.113
La Regina, K. New technologies and individual guarantees: The "Trojan horse"	.121
Marchisio, E. Civil liability and defensive medicine.	.132
Palumbo, D. Organisation and tortious liability	.142
Palumbo, P. Welfare and intercultural education: The role of the teaching of catholic religion	.146
Santoro, R., Gravino, F. The Internet, cultures and religions towards an intercultural web	.158
Sorvillo, F. Religious freedom and CSR: International standards and the accountability on human rights in	
Italian ÉTS	.166
Staiano, F. Discrimination against women migrant workers in the Italian agricultural sector: Main issues and	d
possible normative solutions	.175
Tarantino, M. L. Conceptions of human nature and rights	.187
Valletta, A. Family and multicultural society	

PAPERS SOCIAL AND ECONOMIC SECTION

Carioni, M., de Andreis, F., Verrillo, A. M. The landscape of water conflicts: Actions for a fair managemen	<i>t</i> .203
Comite, U. Care safety, clinical risk management and patient well-being: An economic-business approach.	210
De Andreis, F., Iarrusso, G., Petruzzo, S. New challenges of the global economy: Human trafficking and civ	ril 🛛
aviation organizations	221
García Chamizo, F. Social policies of Castilla-La Mancha: A case study	229
Mebane, M. E., Benedetti, M. Promoting the wellbeing of unemployed: A pilot study	243
Oliva, N. From corporate social responsibility to sustainability: A new corporate development model	253
Pompò, M. Economic and social policies for women: A gender analysis	261

NEW GUIDELINES FOR SOCIAL INCLUSION POLICIES RELEVANT TO MENTAL ILLNESSES INSIDE THE PRISON CONTEXT

Giovanni Chiola *

Social inclusion is a human right for all people, and it should take into consideration also people that manifest a severe psychiatric illness while incarcerated (*rei folli*).

The United Nations Human Rights Committee has sustained the "positive obligation" of states to protect the rights of those whose vulnerability arises from their status, as prisoners deprived of their liberty. The recent constitutional court ruling No. 99 in 2019 goes in this direction. The recent court ruling maintains that some inmates with mental problems may best serve their court ruling outside the prison (e.g., mandatory postponement, optional deferment, home detention, assistance or residential facilities). Prison, for some inmates, can be a cause of severe pathologies and is now recognized as a possible detriment to mental health.

The overcoming of the prejudicial wave that stigmatizes the recluse has taken place thanks to the Italian Constitutional Court through a process that has involved the NBC (National Bioethics Council), but above all the CEDU (European Court of Human Rights) that has focused and fined Italy, on the issue of prisons.

The new penitentiary European system promotes the extramural execution of penalties. The European penitentiary policies are inspired partially by the Italian penitentiary, which has been modified thanks to two significant legislative changes, taken as a model by the WHO: the 1978 Basaglia reform (opening of asylums) and the Law No. 81 of 2014 (closing of the Forensic Psychiatric Hospitals (OPG)).

With the Basaglia reform mental patients were freed from the mental hospitals and after Law No. 81, no citizen, male or female, has been sent in custody as a security measure to the OPG but in residences meant for the execution of security measures (REMS).

To this path of inclusion of the mentally weaker, we must add the recent Constitutional Court Ruling No. 99 in 2019, the focus of this article, which has recognized the prison as a pathogen factor and allowed some inmates, with severe mental problems to serve their court ruling outside the prison and not inside the health units in the same prison.

Thus, with this critical ruling, the judge has equated the physical pathology of prisoners with the mental pathology of prisoners. The sentence has effects not only for the insane offenders but also for having thrown light on the penitentiary institution until now considered a "Sancta Sanctorum" of the Italian penal system.

The ruling is essential for the same recognition of health issues and mental illnesses. Mental issues of inmates were once neglected by the judiciary or used to reinforce security measures and contain social danger. This ruling is innovative also for having conceived the prison as an inappropriate place for inmates who have been diagnosed with a severe mental illness during detention. Imprisoning people with serious mental issues violates not only Art. 27 of the Constitution, but also the supreme and fundamental Art. 3 of the Convention on Human Rights.

This last constitutional ruling confirms that the Constitutional Court has taken into consideration the previous decisions of the European Court of Human Rights (ECHR) on the respect of the absolute prohibition of torture or inhuman or degrading treatment (ECHR, second section, sentence 17 November 2015, *Bamouhammad against Belgium*, paragraph 119; ECHR, Grand Chamber, the judgment of April 26, 2016, *Murray v. Netherlands*, paragraph 105; ECHR, the judgment of July 16, 2009, Ric. No. 22635/03, *Sulejmanovic v. Italy*; ECHR, the judgment of January 8, 2013, Ric. No. 43517/09, *Torreggiani and Others v. Italy*).

The recent Constitutional Court Ruling No. 99 in 2019 affirms that in the event of a violation, it is mandatory for "the jurisdictional authority to provide for the interruption of imprisonment",

^{*} Confirmed Researcher of Public Law, Faculty of Political Sciences, University Federico II of Naples, Italy; Adjunct Professor of Institutions of Public Law and Regional Law, Professor of Public Law, PUP (Prison University Project), Secondigliano, Italy

remembering that the scope of the prohibition according to art. Three of the Convention on Human Rights must be extended to the entire prison system, including the prison psychiatric department because even in this place "degrading treatment could be practiced when the therapies are not appropriate, and the detention is prolonged for a significant period of time".

The long wave against prejudice also affects the Italian prison system, including the automatisms (absence of collaboration) that were deemed unacceptable because they precluded access to benefits (Art. 85, paragraph e) of the Law No. 103 of 2017 (Changes to the Criminal Code, the Criminal Procedure Code, and the Penitentiary System).

The ruling of the EDU Court in the case of *Marcello Viola v. Italy* (No. 2), Ric. No. 77633/16, the sentence of June 13, 2019, condemned Italy for violating the Art. 3 Human Rights Convention, or the right of the prisoner to life imprisonment to not be subjected to inhuman and degrading treatment, and therefore, to enjoy discounts of penalty or benefit.

Thanks to this last ECHR decision, the Italian legislator must modify the prison regulations accordingly and align several penitentiary institutions (e.g., the special detention regime) to the international human rights standards. The ECHR maintains that inmates should enjoy all the rights internationally recognized as fundamental, from the Universal Declaration of Human Rights (1948) and subsequently from the two international covenants, on civil and political rights, and economic, social and cultural rights (implemented in 1976). European penitentiary policies, however, are modifying the rigid system of security measures – at the moment without affecting the granite Criminal Code Rocco – with rapidity and effectiveness.

However, in Italy, the path to the recognition of human, political and civil rights to inmates is still long and tortuous since it can only be reached through the revision of "double track" of the Criminal Code of 1930 (the articles of the Rocco Code are still in force).

The recent Italian Constitutional Court Ruling No. 99 was a big step in the direction of recognition of human rights of prisoners; however, Italy in this period is going through the rising tide of penal populism that strongly affects the legislator. Concrete examples of the recent change in the cultural climate on security can be found in the decree-law on the subject of public order and security (Decree-Law No. 53 of June 2019); starting from the changes to the penal code and other provisions on the matter of legitimate defense (Law No. 36 of April 26, 2019); the decree on international protection and immigration, public safety (Decree-Law No. 113 of October 4, 2018, converted with modifications with Law No. 132 of December 1, 2018); finally, the urban security decree (Decree-Law No. 14 of February 20, 2017).

Therefore, though the Court Ruling No. 99 was jurisprudentially very progressive, the path of inclusion of the mentally weaker inmates has to face a rise of penal populism in Italy – the public generally tends to prefer punitive policies in the field of criminal justice. Italian society is changing sharply towards a position of closure to foreigners, but also towards social policies, strongly compressed in favor of other more perceptible and politically palatable initiatives.

Keywords: Folli Rei, Rei Folli, Psychiatric Illness While Incarcerated, Forensic Psychiatric Hospitals, Alternative Penalties to Prison, Dignity, Rights of Detainees