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Solidarity and social rights in EU



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Our mutual solidarity is here to stay



Social Rights

- What is the origin of Social Rights?
- What are the Social Rights?
- How are social rights protected in EU?
- How are they protected by Italian Constitution?
- Why and how are they protected at the regional level?

The origin of Social Rights: Mexican Constitution

- 1917 Mexican Constitution:
- Some of the most important provisions are Articles 3, 27, 123:
 - Article 3 established the basis for a free, mandatory, and secular education;
 - Article 27 laid the foundation for land reforms
 - Article 123 was designed to empower the labor sector

The origin of Social Rights: Weimar Constitution

- The 1919 Weimar Constitution: first explicit recognition of Social Rights
- Preamble: The German people, united in all their racial elements, and inspired by the will to renew and strengthen their Reich in liberty and justice, to preserve peace at home and abroad and to foster **social progress**, have established the following constitution
- **Article 7**
The Reich shall have exclusive legislative competence for: (...)
 - 5. poor relief and the care of vagrants
 - 7. policies relating to population, **maternity relief, welfare of infants, children and youth**
 - 8. **public health**, veterinary matters, and the protection of plants against disease and pests
 - 9. labour laws, insurance and protection of workers and employees, employment bureaus
 - 11. provision for war veterans and the surviving dependents of deceased
 - 13. the socialization of natural resources and economic enterprises, and also the production, manufacture, distribution and price regulation of economic wares for the benefit of the general economy.



Beveridge Report and foresight of Churchill

- The **Beveridge Report**, officially entitled **Social Insurance and Allied Services (Nov/'42)** formed the basis for the post-war reforms known as the **Welfare State**, which include the expansion of National Insurance and the creation of the National Health Service.
- «Organisation of social insurance should be treated as one part only of a comprehensive policy of social progress. Social insurance fully developed may provide income security; it is an attack upon Want. But Want is one only of five giants on the road of reconstruction and in some ways the easiest to attack. The others are Disease, Ignorance, Squalor and Idleness»



2. What are the Social Rights?

- Civil rights / Social rights
- classical Social Rights: health, work, care and welfare, education, right to study, protection of the family
- **Old or new rights?**
 - the protection of childhood, adolescence and the elderly
 - support to culture, art, music
 - role of foreign residents
 - policies to enhance **meritocracy**

Recognition of Social Rights value

- Primacy of civil rights over social rights?
- “equal dignity”: social rights synthesis between freedom and equality = balance (which cannot be the source of inequality)
- Right and enforceability of the right
- Unconditional rights and conditional rights



Conditional Rights



- They are characterized by the fact that their guarantee supposes positive intervention by the public authorities
- “Conditional Rights” = need for public intervention
- Conditional Rights = Social Rights ?
- Social Rights = acquired rights are in contrast with claimed rights?



Notion

- **Acquired rights** are those categories of rights which, once they have entered the legal sphere of an entity, are immutable. This condition also remains in the case of possible changes in the legal order.
- This area closely involves the question of the effectiveness of the law over time.



The social rights in the Constitutions

- German Constitution **Art. 20 (Basis of the State system, right of resistance)** (1) The Federal Republic of Germany is a democratic and social federal state.
- Spanish Constitution: Art. 1. Spain is a social and democratic State
- Difference between the rights listed in tit. II, classical rights, and tit. III., basic principles of social and economic policy (less protection).

3. How are social rights guaranteed in Europe?

- EU ≠ Council of Europe
- Council of Europe (1949) and Convention for the Protection of Human Rights and Fundamental Freedoms (1953)
- 1954-55
 - Protocol to the European Interim Agreement on Social Security Schemes Relating to Old Age, Invalidity and Survivors
 - European Convention on Social and Medical Assistance
 - European Cultural Convention
- 26/2/1965 European Social Charter

European Social Charter

- **European Social Charter** is a Council of Europe treaty that guarantees fundamental social and economic rights as a counterpart to the European Convention on Human Rights, which refers to civil and political rights. It guarantees a broad range of everyday human rights related to employment, housing, health, education, social protection and welfare. The Charter lays specific emphasis on the protection of **vulnerable persons** such as elderly people, children, people with disabilities and migrants.
- **European Committee of Social Rights:** 15 independent, impartial members are elected by the Council of Europe's Committee of Ministers for a period of six years, renewable once



3. How are social rights guaranteed in European Union?

- Why are Social rights characterized by great ambiguity in EU?
- The European Communities were born and live for economic purposes → Treaty of Rome (EEC) 25 March 1957
- Single European Act (SEA): The beginning of a European sensitivity to social issues (1986/87)
- Treaty on European Union (TEU) / Maastricht Treaty



CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

- Artt. 13 Freedom of the arts and sciences
- Article 14 Right to education
- Article 15 Freedom to choose an occupation and right to engage in work
- Article 24 The rights of the child
- Article 25 The rights of the elderly
- Article 26 Integration of persons with disabilities
- CHAPTER IV SOLIDARITY

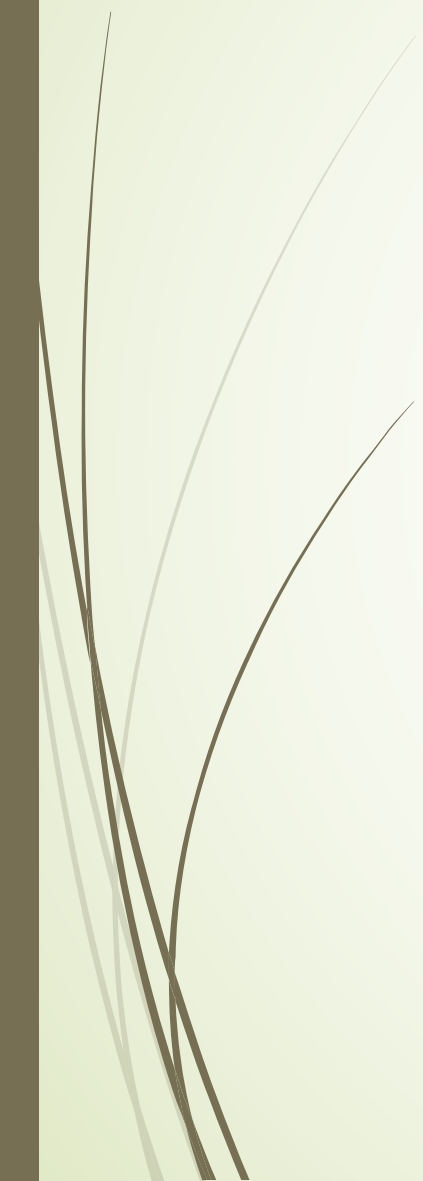


Treaty of Lisbon

- **INTRODUCTION OF SOCIAL POLICY:** The Treaty of Lisbon strengthens the social dimension of the European Union (EU). It recognises the social values of the Union in the founding Treaties and includes new objectives for social matters.
- However, the competences of the EU in this area remain largely unchanged. The Treaty of Lisbon introduces some innovations, but the development and implementation of social policies remains principally the responsibility of Member States.



The European Pillar of Social Rights

- **Chapter I: Equal opportunities and access to the labour market**
 - **Chapter II: Fair working conditions**
 - **Chapter III: Social protection and inclusion**
- 



Chapter I: Equal opportunities and access to the labour market

1. Education, training and life-long learning Everyone has the right to quality and inclusive education, training and life-long learning in order to maintain and acquire skills that enable them to participate fully in society and manage successfully transitions in the labour market.

2. Gender equality Equality of treatment and opportunities between women and men must be ensured and fostered in all areas, including regarding participation in the labour market, terms and conditions of employment and career progression.

Women and men have the right to equal pay for work of equal value.

3. Equal opportunities: Regardless of gender, racial or ethnic origin, religion or belief, disability, age or sexual orientation, everyone has the right to equal treatment and opportunities regarding employment, social protection, education, and access to goods and services available to the public. Equal opportunities of under-represented groups shall be fostered.

4. Active support to employment: Everyone has the right to timely and tailor-made assistance to improve employment or self-employment prospects. This includes the right to receive support for job search, training and re-qualification. Everyone has the right to transfer social protection and training entitlements during professional transitions.

Young people have the right to continued education, apprenticeship, traineeship or a job offer of good standing within 4 months of becoming unemployed or leaving education.

People unemployed have the right to personalised, continuous and consistent support. The long-term unemployed have the right to an in-depth individual assessment at the latest at 18 months of unemployment.

Europe Role

Article 157 (ex art. 141 ECT)

1. Each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied.

2. For the purpose of this Article, "pay" means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment, from his employer.

Equal pay without discrimination based on sex means:

(a) that pay for the same work at piece rates shall be calculated on the basis of the same unit of measurement;

(b) that pay for work at time rates shall be the same for the same job.

Europe role: directive 2019/1158



Europe role: directive 2019/1158 on the balance between work and family life for parents



(paternity leave ≠ parental leave):

'paternity leave' means leave from work for fathers, on the occasion of the birth of a child for the purposes of providing care

'parental leave' means leave from work for parents on the grounds of the birth or adoption of a child to take care of that child

Chapter II: Fair working conditions

5. Secure and adaptable employment

6. Wages

Workers have the right to fair wages that provide for a decent standard of living.

Adequate minimum wages shall be ensured, in a way that provide for the satisfaction of the needs of the worker and his / her family in the light of national economic and social conditions, whilst safeguarding access to employment and incentives to seek work. In-work poverty shall be prevented.

All wages shall be set in a transparent and predictable way according to national practices and respecting the autonomy of the social partners.

7. Information about employment conditions and protection in case of dismissals

Workers have the right to be informed in writing at the start of employment about their rights and obligations resulting from the employment relationship, including on probation period.

Prior to any dismissal, workers have the right to be informed of the reasons and be granted a reasonable period of notice. They have the right to access to effective and impartial dispute resolution and, in case of unjustified dismissal, a right to redress, including adequate compensation.

8. Social dialogue and involvement of workers

The social partners shall be consulted on the design and implementation of economic, employment and social policies according to national practices. They shall be encouraged to negotiate and conclude collective agreements in matters relevant to them, while respecting their autonomy and the right to collective action. Where appropriate, agreements concluded between the social partners shall be implemented at the level of the Union and its Member States.

Workers or their representatives have the right to be informed and consulted in good time on matters relevant to them, in particular on the transfer, restructuring and merger of undertakings and on collective redundancies.

Support for increased capacity of social partners to promote social dialogue shall be encouraged.

9. Work-life balance

Parents and people with caring responsibilities have the right to suitable leave, flexible working arrangements and access to care services. Women and men shall have equal access to special leaves of absence in order to fulfil their caring responsibilities and be encouraged to use them in a balanced way.

10. Healthy, safe and well-adapted work environment and data protection

Workers have the right to a high level of protection of their health and safety at work.

Workers have the right to a working environment adapted to their professional needs and which enables them to prolong their participation in the labour market.

Workers have the right to have their personal data protected in the employment context.

Chapter III: Social protection and inclusion

11. Childcare and support to children Children have the right to affordable early childhood education and care of good quality.

Children have the right to protection from poverty. Children from disadvantaged backgrounds have the right to specific measures to enhance equal opportunities.

12. Social protection Regardless of the type and duration of their employment relationship, workers, and, under comparable conditions, the self-employed, have the right to adequate social protection.

13. Unemployment benefits The unemployed have the right to adequate activation support from public employment services to (re)integrate in the labour market and adequate unemployment benefits of reasonable duration, in line with their contributions and national eligibility rules. Such benefits shall not constitute a disincentive for a quick return to employment.

14. Minimum income Everyone lacking sufficient resources has the right to adequate minimum income benefits ensuring a life in dignity at all stages of life, and effective access to enabling goods and services. For those who can work, minimum income benefits should be combined with incentives to (re)integrate into the labour market.

15. Old age income and pensions Workers and the self-employed in retirement have the right to a pension commensurate to their contributions and ensuring an adequate income. Women and men shall have equal opportunities to acquire pension rights.

Everyone in old age has the right to resources that ensure living in dignity.

16. Health care Everyone has the right to timely access to affordable, preventive and curative health care of good quality.

17. Inclusion of people with disabilities People with disabilities have the right to income support that ensures living in dignity, services that enable them to participate in the labour market and in society, and a work environment adapted to their needs.

18. Long-term care Everyone has the right to affordable long-term care services of good quality, in particular home-care and community-based services.

19. Housing and assistance for the homeless: a. Access to social housing or housing assistance of good quality shall be provided for those in need. b. Vulnerable people have the right to appropriate assistance and protection against forced eviction.

c. Adequate shelter and services shall be provided to the homeless in order to promote their social inclusion.

20. Access to essential services

Everyone has the right to access essential services of good quality, including water, sanitation, energy, transport, financial services and digital communications. Support for access to such services shall be available for those in need.

Social Rights in Italy

- Italian Constitution of 1948: it can be said that the Constitution has been “inspired” by the principles of the welfare State
- The reform of Title V in 2001 introduced the *nomen* “Social Rights” in art. 117 c. 2 lett. m) “essential levels of civil and social rights benefits to be guaranteed throughout the national territory”

EDUCATION

Art. 30. It is the duty and right of parents to support, raise and educate their children, even if born out of wedlock.

Art. 33. **The Republic guarantees the freedom of the arts and sciences, which may be freely taught.**

The Republic lays down **general rules** for education and establishes state schools of all branches and grades.

Entities and private persons have the right to establish schools and institutions of education, at **no cost** to the State.

The law, when setting out the rights and obligations for the non-state schools which request parity, shall ensure that these schools enjoy full liberty and offer their pupils an education and qualifications of the same standards as those afforded to pupils in state schools.

State examinations are prescribed for admission to and graduation from the various branches and grades of schools and for qualification to exercise a profession.

Higher education institutions, universities and academies, have the right to establish their own regulations within the limits laid down by the law.

Art. 34. Schools are open to everyone. Primary education, given for at least eight years, is compulsory and free of tuition.

Capable and deserving pupils, including those lacking financial resources, have the right to attain the highest levels of education.

The Republic renders this right effective through scholarships, allowances to families and other benefits, which shall be assigned through competitive examinations.

Right to work

- Art. 4.

The Republic recognises the right of all citizens to work and promotes those conditions which render this right effective.

Every citizen has the **duty**, according to personal potential and individual choice, to perform an activity or a function that contributes to the material or spiritual progress of society.

Art. 35.

The Republic protects work in all its forms and practices.

It provides for the training and professional advancement of workers.

It promotes and encourages international agreements and organisations which have the aim of establishing and regulating labour rights.

It recognises the freedom to emigrate, subject to the obligations set out by law in the general interest, and protects Italian workers abroad.

Art. 36.

Workers have the right to a remuneration commensurate to the quantity and quality of their work and in any case such as to ensure them and their families a free and dignified existence. Maximum daily working hours are established by law. Workers have the right to a weekly rest day and paid annual holidays. They cannot waive this right.



Working women

▀ Art. 37.

Working women are entitled to equal rights and, for comparable jobs, equal pay as men.

Working conditions must allow women to fulfil their essential role in the family and ensure appropriate protection for the mother and child.

The law establishes the minimum age for paid labour.

The Republic protects the work of minors by means of special provisions and guarantees them the right to equal pay for equal work.



Italian Constitutional Court and art. 37 Const.

- ▶ Judgement n. 33 of 1960, «Rosa Oliva case»: the Court declared unconstitutional a 1919 law (art. 7) that excluded women from a vast array of public positions.
- ▶ 1991 law n. 125 “Positive actions for the realization of gender equality at work”, that is to say, as the Constitutional Court stated, (judgment n. 109/1993) *“interventions of a positive character in favor of women, directed to make up for, or in any event to assuage, an evident imbalance that, because of the discriminationa accumulated in the course of past history as the result of the dominance of certain social behaviors and cultural models, has favored persons of the male sex in positions of entrepreneurship or of business management”*.

State legislation

- 3 periods: 1948/80- 1990/2000 – new Millennium
- 1) to protect in an exclusive manner pregnant workers and new mothers.
 - ban on dismissal of female workers on grounds of marriage
 - 1975 reform of family law
- 2) 1991 law n. 125 “Positive actions for the realization of gender equality at work”, that is to say, as the Constitutional Court stated, (judgment n. 109/1993) *“interventions of a positive character in favor of women, directed to make up for, or in any event to assuage, an evident imbalance that, because of the discriminationa accumulated in the course of past history as the result of the dominance of certain social behaviors and cultural models, has favored persons of the male sex in positions of entrepreneurship or of business management”*.
- 3) law Golfo-Mosca n. 120 of 2011 (1/3 di genere diverso nei consigli amministraz. scadenza 2020)

RIGHT TO HEALTH AND COMPULSORY HEALTH CARE

- **Art. 32.** The Republic safeguards health as a fundamental right of the individual and as a collective interest, and guarantees free medical care to the indigent. No one may be obliged to undergo any health treatment except under the provisions of the law. The law may not under any circumstances violate the limits imposed by respect for the human person.
- In any kind of circumstances the law cannot violate the limits imposed by respect for the human person.

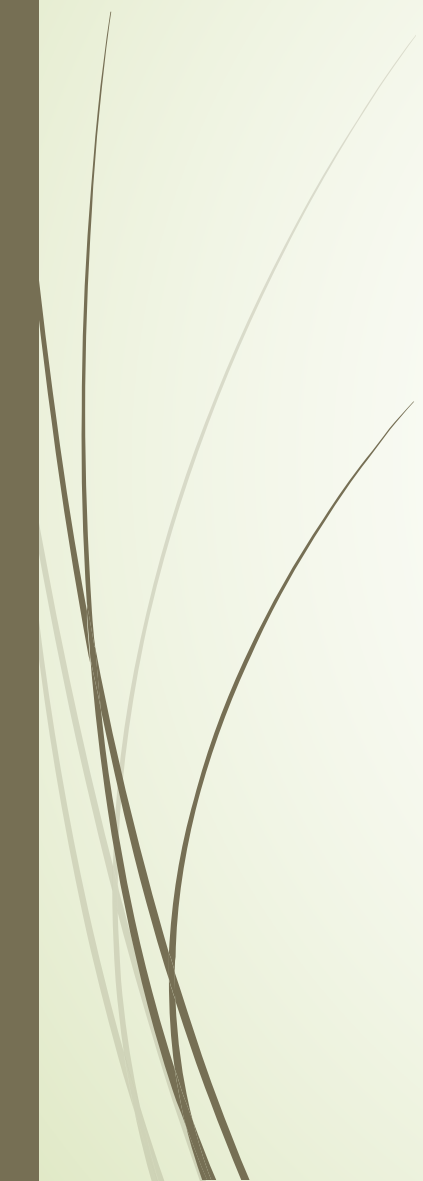


RIGHT TO HEALTH AND COMPULSORY HEALTH CARE

- RIGHT DEFINED AS FUNDAMENTAL and recognized to all citizens and foreigners and to be understood in the maximum extent as right to the psycho-physical integrity of the person.
- Static and dynamic-relational dimension (patient/caregiver/healthcare/third party)
- Biological damage (compensation for all non-material damage caused by impairment of physical integrity).
- Right to care and right to free treatment (sharing of costs)
- Right to be treated and right to refuse treatment (l. 219/2017 right to know your health condition in a complete, informed and understandable way)→ free and informed consent
- (Biological Will)
- Right to health includes the right not to harm the health of others (mandatory vaccination or TSO)



Cultural Rights art. 9 C.

- Freedom of the Art (art. 33 co. 1 C.)
 - Freedom of the Science in the scientific research
 - Freedom of taught/right to education
- 

Social Right evolution

- ➡ Social Rights enlargement: RIGHT TO ENVIRONMENT (art. 9.2)
- ➡ Right to housing (artt. 42.2, 47.2 Const.),
- ➡ Elderly rights
- ➡ The rights of immigrants (ex artt. 2 and 10 Const.)
- ➡ Equal opportunities rights (i.e. people with disability)

The reform of title V of the Constitution

- State competence:
 - lett. M) Essential level of performance civil and social rights
 - lett. N) education
 - lett. O) social security
- All the rest concurrent or residual competence of the regions
- State intervention art. 119 c. 5 e 120 C