Citizenship at work and legal constraints in Italy. Issues of effectiveness for people with disabilities and immigrants.

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Globalization and the effects on the labour market

• The transformation of political and economic systems produced by globalization and, therefore, the neo-capitalist attitude have led to the downsizing of the importance of work and its contribution to the material and spiritual growth of society.

• The concept of stable, permanent and long-lasting life work is being progressively substituted by the awareness that the working experience has contours which are even less defined and certain
Globalization and the effects on the labour market

• The paradigm of post-modernity is in fact the flexibility, meant as the continuous search for an always increasing production efficiency, which has also resulted in a fragmentation of the legal regulation of labour relationships, which in turn has accentuated the segmentation of society and, therefore, of the labour market.

• The studies on the effects of globalization do not seem, for the most part, able to capture fully the structural contradictions generated by the new balance of power in the globalized world as it appears today.

• Anyway there are critical proposals that aim to build "another globalization"
Globalization and European Constitutional Traditions

• This globalization is in contrast to, as far as the Western European legal experience is concerned, the promises inherent in the Constitutions following the World War II.

• The paradigm of citizenship at work developed in this context is based on work as a tool for social inclusion and empowerment for all people.

• The Italian Constitution of 1948 reflects this appreciation of work and at the same time reinforces it, since the labour principle is one of the pillars of the fundamental Charter (Articles 1, 3, 4, 35).

• Indeed, for the Italian Constitution work is any activity, whether manual or intellectual, which contributes to the material or the spiritual growth of the country.
Work as a form of participation in the social life, an expression of social solidarity.

• Foreigners who immigrate to work as well as people with disabilities are able to contribute to the social growth and obtain from this contribution the recognition of their dignity, in a virtuous process from the society to people and from the individual to the society.

• The commonality among these subjects is clear considering that in both cases the subject who works is abstracted from his workforce: for the foreigners, believing that you can use the workforce to the point of exhaustion; for the disabled, considering them as waste products because not consistent with the standard efficiency parameters measured on able-bodied subjects.
Globalization and the crisis of the welfare state

- The combination between work and social emancipation has worked and developed step by step until the State has succeeded in implementing an ordinary legislation that applies the constitutional principles, according to the model of the welfare state.

- Therefore, a large part of the redistribution of income has gone through public policies whose costs were funded by general taxation. The price was a progressive fiscal crisis of the State.

- This crisis, in the current phase of global capitalism, seems untenable: the space for the implementation of universalistic and inclusive social policies is increasingly narrow.
Vulnerable workers and welfare state crisis

• In this context, labour law has gradually lost one of its functions as an instrument of rebalancing the unequal bargaining power and, consequently, as an instrument of protection of the weaker party, thus merely meeting the needs of the productive system, helping to accentuate a dynamic of social exclusion.

• Such evidence shows the most significant negative effects relating to the weakest working categories, like migrant workers and people with disability. The criticalities of the respective regulations in Italy have profiles of assimilability. In both cases the socio-political notion of citizenship at work is put into crisis from a specific legislation, which, although formally implementing the constitutional design, in terms of effectiveness it’s either scarce or produces paradoxical effects.
Social inclusion of disabled people through work

- Legal obligation for public and private employers to hire disabled people in a variable quota that depends on the total number of employees in production activities (Law no. 68/99)
- The quota system is weakened by the large possibility to derogate.

- The organizational investment that would be required to allow the integration at work of the disabled person does not produce a return for the company in terms of flexibility as described above. Therefore, in the practical application, the balance between freedom of economic initiative and the right to work is poured, respecting the principle of solidarity, on the public welfare system.

- But now it should be considered the recent judgment of the European Court of Justice (4 July 2013, C-312/11): the Italian law does not set for employers the obligation to plan reasonable solutions for the adaptation of the work environment to concrete situations, in order to make it suitable for the best exploitation of the qualities and working skills of the disabled.
Migrants works and the reasons of undeclared work

- The legislation on migrant workers is particularly rigid and in stark contrast to today's Italian ordinary legislation of work which is based on the paradigm of flexibility.
- In fact, to allow the entry of a foreigner in order to work in Italy, the prospective employer must obtain a permit demonstrating the unavailability of other unemployed workers to take the place offered. On top of that, every year a maximum quota of foreigners who can have access to the labour market is decided.

The employer also undertakes to ensuring suitable accommodation and the payment of the return journey, and must demonstrate to possess a certain economic capacity.

It is evident that the employer must have a strong interest in hiring the foreign worker, and must be willing to wait for the completion of the entire procedure, that does not respect the rules of just-in-time at all. The employer must be able to postpone the achievement of the productive result - understood here in a broad sense, of course - for whose prosecution is seeking to recruit a foreigner, or, as often happens, resort to undeclared work.
Alternative solutions in the Italian system

• With reference to the disabled, the types of employment that include forms of support to work on the part of organizations working in the social sector and/or public facilities are relevant in this respect.

• These are the conventions of inclusion and integration at work, which represent an alternative opportunity for public and private employers to comply with mandatory quotas.

• These manners of employment lead to better results in terms of adaptation of the disabled to the organization.

• Other interesting experiences that deserve attention are the ones carried out by universities, to which the Italian legal system gives the authority to intermediate between supply and demand of labour.

• Universities, therefore, act with their job placement services providing orientation activities, organization of internships and placements in enterprises.
Alternative solutions in the Italian system

- For migrants, as in the past (1998 -2002), the law contemplated one provision in a position to provide a response to the needs for protection of the regularity of the labour market and for control on the entries and the characteristics of the supply-demand relationship for immigrant labour. It was the so-called sponsorship, with which the foreigner was allowed to enter for job search for one year. During this period, other authorized parties were guaranteeing his life needs. It was a realistic rule because it governed a recurrent and still very present phenomenon, i.e. the migration chain. It should be also kept in mind that there were third sector organizations among the ones authorized.
Alternative solutions in the Italian system

• **In Apulia**, in order to counteract the phenomenon of severe exploitation of migrant workers in the agricultural sector, together with poor housing and unsanitary conditions, the regional body has set up a pilot project involving the members of the **regional Council for immigration** (composed of representatives of institutions, trade unions, voluntary and third sector associations both).

• **At the root of serious exploitation of foreign workers is the illicit brokering of labour**: a few individuals - usually linked to organized crime - are often the ones that permit the meeting between employer and employee. The regional body, in order to counter this intermediation, aims to offer hospitality structures and services to boost with a monetary contribution the regular hiring of workers enrolled in a special public register, balancing the amount of benefit to the days actually worked.

• Some employers have shown interest in collaborating in the project. In fact, the image of agriculture in Apulia as a place of exploitation and lack of respect for workers' fundamental rights is producing adverse effects on the placement of products on the European markets. The regional body aims to promote regular employment and establish an **ethical certification of the product**.
Concluding remarks

• The cases reported here present themselves as interventions of partial maintenance that are very limited compared to the complexity of the problem of bringing back the work to its centrality, for which it is necessary to think of a structural reform of the current paradigm.

• As has been said, our time is a time of strong questions and weak answers, however, questions demand answers: a precondition is to avoid taking a position unhistorical and abstract. Proclaiming the existence of rights and accepting their violation accentuate the gap between law in books and law in action and, consequently, contributes to the underestimation of the role of law.

• This is, firstly, a choice of values: if you assign to citizenship a meaning that is not merely formal, like a bond between an individual and a State, but stands for belonging to a community, then the question is how to change the current political and economic structure that leads to exercising employment policies to the downside.