A UNIVERSAL DILEMMA IN A SPECIFIC CONTEXT: THE INTEGRATION OF FOREIGNERS IN ITALY

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Abstract

Ascertaining that today's migrations have considerable effects on legal systems, it comes to light an apparently irreconcilable dilemma: on one hand, the ideal and universal freedom of movement, theorized by the Cosmopolitans; on the other hand, the sovereign self-determination of the States, predicted by the Communitarians, and today reiterated by the Sovereigntists.

Even in the Italian legal system it is possible to find these divergent positions, especially in the decisions and policies of the sub-state territorial authorities, which have progressively assumed a crucial role in the management of immigration. In fact, it is possible to find regulatory measures aimed at hosting and integrating foreigners, but there are periodically interventions aimed at rejecting them and limiting their access to the use of social rights and services.

In relation to these final measures, the Constitutional Court has also had a crucial role in these years, contributing to the construction of a social citizenship, based on the fundamental principles of our republican system. However, the paper aims to demonstrate - by presenting the SPRAR project and the actions implemented by some Municipalities - that the research of a balance between an unconditional openness to immigration and a hostile and rigid closure of the territories can find a suitable solution in the sub-state territorial authorities, which could become a privileged place for integrated hospitality.

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1. The migration phenomenon and the crisis of States

Although it has been at the centre of political and constitutional debate of modern-day democracies in recent years, the topic of migration processes and legal condition of foreigners is nonetheless not new, existing since the dawn of the modern history[1]. What is new may be, instead, the perception of vulnerability which is linked to migration episodes: a *stricto sensu* physical insecurity – initially perceived after September 11, 2001 – as well as socio-economic insecurity, worsened in 2008 and for which a solution still appears remote.

The 'strong' presence of foreigners in our States or at our «doorstep»[2] may in any case not be kept under control by the State by means of an individual and 'solitary' action, and even less so by its citizens. It is, rather, the clear witness and personification of the 'collapse' of world order that had come about after World War II; the order that has slowly lost its foundation and is still far from a reaffirmation or reconstruction. It thus appears clearly utopic to think that a global management of immigration, even only at a European level, may be created in the short term. At the same time, the search for balance between unconditional openness to immigration and hostile and rigid closure seems to be gradually

[1] See on the topic, among others, M. Livi Bacci, *Il pianeta stretto* (2015); S. Allievi, G. Dalla Zuanna, *Tutto quello che non vi hanno mai detto sull'immigrazione* (2016); V. Calzolaio, T. Pievani, *Libertà di migrare. Perché ci spostiamo da sempre ed è bene così* (2016).

[2] A clear reference is made to the work by Z. Bauman, *Strangers at Our Door* (2016).

leading to a fragmentation of the citizenship[3], a territorial crisis[4], and the dissolution of the principle of State sovereignty – or, oppositely, the consolidation of non-liberal sovereignty.

With regards to its citizens, the methods used by the State in dealing with the migration phenomenon – in particular, a certain degree of 'hostility' that certainly does not belong to the democratic values it is based upon – is causing, as will be dealt with hereinafter, the emergence of regional and local 'citizenships' and an accentuated 'territoriality' of the related rights. The increased complexity of social demand has in fact forced regional and local entities to reconfigure citizen rights (at times even fundamental rights), social services, and their 'boundaries', implying an alarming rise of intra-state 'citizenships' that seem incompatible with the definition of united legal and social citizenship, and rather encourage inequality within the State.

As for a possible dissolution and crisis of the principles of sovereignty and state territoriality, a precise statement shall be made. Territory and sovereignty have established themselves as the traditional, founding elements of a State in the post-Westphalia age, with the birth of national States, implying a perspective lay-out of the planet in essentially closed spaces. The consequence of such idea is that a territory and its borders allow a distinction between inside and outside; they allow to define a «barbarian», a «foreigner», an «other»[5], as well as a distinction – at the international level – between the sphere of sovereignty and responsibility and that, instead, of due 'abstention'.

Upon occurrence of the global and intra-country changes we have witnessed in the past few years, the said idea of territory

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[3] On this matter, see S. Staiano, *Migrazioni e paradigmi della cittadinanza: alcune questioni di metodo*, in 21 federalismi.it 21 (2008); A. Morrone, *Le forme della cittadinanza nel Terzo Millennio*, in 2 Quad. Cost. 303 (2015).

[4] See B. Badie, *La fin des territoires. Essai sur le désordre international et l'utilité sociale du respect* (1995), Italian translation made by M. Cadorna, *La fine dei territori. Saggio sul disordine internazionale e sull'utilità sociale del rispetto* (1996), 118, 123 ff., who states that «the identity appropriation of territories paves the way for political crosshatching which is constantly renewed, it makes the borders and boundaries fragile, and weakens the work of political construction of communities; it erases the work time has done in creating space, thus – to put it differently – marks the end of territories themselves».

[5] See F. Kratochwil, *Of Systems, Boundaries, and Territoriality: an Inquiry into the Formation of the State System*, in 39, 1 World Politics 33 (1986).

implies a growingly exacerbated attachment of public authorities and citizens to their territorial space, and a renewed attention to the principles of territoriality and sovereignty. More recently, such attachment has found expression – at State level – in the intensification of control at the national borders, the reconstruction of boundaries, and erection of new 'walls'; at the intra-state level, it has found expression in a rise in requests for greater autonomy, if not independence, and the consequent secession in parts of State territory.

Moreover, there are certain factors that at the same time compromise the relationship between State and territory, and generate a new concept of territorial dimension, borders, and state sovereignty. Among these, above all, there is globalization and the participation in international organizations and in the European Union, which cause and increase a «disassociation»[6] of political spaces from the places more specifically related to the construction of law. These are not new phenomena, but the dimension they are reaching and the struggle that States endure in their attempt to 'tame' them certainly is[7].

Secondly, there is the desperate search for a more 'dignified', and certainly «precious»[8] citizenship – which keeps pushing thousands of refugees and immigrants every year to challenge the insidious Mediterranean Sea to reach new lands and try to overcome their borders – that is wreaking havoc not only in the foundations of the welfare state and the principles of pluralist democracy, but even more in terms of very ability of western democracies to rule their own territories and exercise full dominion over them. Therefore, in some cases it seems we are witnessing the dissolution of the principle of territoriality[9];

[6] See G. Scaccia, *Il territorio fra sovranità statale e globalizzazione dello spazio economico*, in 3 Rivista AIC 14 (2017).

[7] See among others, more recently published, S. Cassese, *Territori e potere. Un nuovo ruolo per gli Stati?* (2016), 10.

[8] See D. Zolo, *La strategia della cittadinanza*, in Id. (ed.), *La cittadinanza. Appartenenza, identità, diritti* (1994), 42.

[9] On this statement, see G. Sciortino, *Rebus immigrazione* (2017); a symptomatic and worrying trend is represented by growingly frequent episodes recorded seeing the French police force trespassing the Italian border, causing the risk of a diplomatic crisis with France.

oppositely, in other instances we seem to witness the reinstatement, even through use of force, of State sovereignty[10].

Nevertheless, it does not appear impossible to envisage the will – at local level – in order to find occasions for human and institutional encounter and growingly deep contact, with a hope that a concrete fusion of horizons – rather than a forced, artificial, and increasingly exacerbated scission – may be reached.

2. Cosmopolitanism and sovereignty: two apparently incompatible positions

In the past few years, a dichotomy that had already found expression in prior ages returned to life: on one hand, the ideal, universal freedom of movement; on the other, the sovereignty of States over self-determination. On one hand, cosmopolitanism, which has always hoped for universal hospitality; on the other hand, communitarianism, which instead anticipated – much like modern-day sovereigntists – the rejection of those not belonging to the community, namely foreigners.

In the view of cosmopolitanists, as is well known, the borders of/between States are arbitrary, they violate people's fundamental freedom of movement, and impose a condition of inequality among individuals and discriminatory separation between the 'included' and the 'excluded'. The obligation to provide help to migrants and to host foreigners is thus viewed to be absolute and unconditional, not being there space for classification nor distinction of any kind. According to such current of thought, man's primitive condition is in fact distinguished by equal dignity of humans as such, regardless of their national or social origins; the individual is viewed as part of a universal system in which boundaries – even State boundaries – would require a justification as such. This is the basis for a principle – a moral principle above all, to then be transposed to the legal sphere – of equalitarian and universal reciprocal respect among individuals, as well as universal hospitality.

[10] An example of this is the position of the ex-Italian Minister of Home Affairs, Matteo Salvini, who on more than one occasion has expressed a clear, rigid opinion on closing Italian borders and ports to immigrants.

A compulsory reference must be made of course to Immanuel Kant and his essay 'Perpetual peace'[11], in which the philosopher claims the existence of a «universal hospitality»: a right belonging to all human beings as potential members of a global republic; the «planet's neighbours», owning the natural and fundamental right to the «undivided surface of the Earth». In his view, States thus do not have exclusive arbitration over their borders – as in the more Westphalian idea of sovereignty – but are held to respect human rights and universal democratic principles, with the latter granting them their very legitimacy.

More recently, Jacques Derrida seems to have adopted the same philosophy in terms of «hospitality»[12], as he distinguished between absolute hospitality and the pact of hospitality.
«Absolute hospitality should break with the law of hospitality as right or duty, with the 'pact' of hospitality». In other words, «absolute hospitality requires that I open up my home and that I give not only to the foreigner (provided with a family name, with the social status of being a foreigner, etc.)» but even more «to the absolute, unknown, anonymous other, and that I 'give' place to them, that I let them come, that I let them arrive, and take place in the place I offer them, without asking of them either reciprocity (entering into a pact) or even their names». Moreover, while on one hand «the law of absolute hospitality commands a break with hospitality by right», on the other hand it does not condemn or oppose the latter, but instead may «set and maintain it in a perpetual progressive movement».

Again, similar reflections have been made by Hannah Arendt when, in 'The Origins of Totalitarianism', the Author hypothesized «the right to have rights»[13], namely a moral demand for belonging and citizenship by humanity as a whole, which would be followed – within the tangible and social borders of a State – by the necessary legal treatment. The right to have rights may thus come about only within a logic that transcends differences between people, in a system of absolute and universal equality, in virtue of the decision to allow one another equal

[11] I. Kant, *Zum Ewigen Frieden. Ein philosophischer Entwurf* (1795), Italian translation by M. Montanari, L. Tundo Ferente, *Per la pace perpetua* (2016), 66.
[12] A. Dufourmantelle, J. Derrida, *De l'hospitalité* (1997), 29.
[13] H. Arendt, *The Origins of Totalitarism* (1948), Italian translation made by A. Guadagnin, *Le origini del totalitarismo* (2009), 410.

rights. A similar logic would thus imply the required overcoming of the state model in favour of the cosmopolitan model.

Supporters of the so-called «communitarianism»[14] instead of taking a different stand. In their view, duty to exercise hospitality, equality, and solidarity are only valid within the limited social or territorial circle, and not with regard to foreigners. As is known, it is a current of thought that – by shifting the focus on the individual within a society or community – relates the former directly to the latter, recognizing them the rights guaranteed by such society only in case he already belongs to it.

Just like Aristotle[15] viewed citizenship as a model of belonging to a self-determined ethical/cultural community, a society in which each person relates to one another given the belonging to a given community, and whose collective identity is the expression of stable – and improvable over time – sharing of the common good would be deemed fair and equal. Oppositely to the view of cosmopolitanists, society is thus not the result of universally equal individuals on the moral and/or legal level, but a self-creating community including 'members' rather than 'individuals'. Citizenship is thus a legal *status* «bestowed on those who are full members of a community»[16] and all those who possess such *status* are equal in terms of rights and duties.

The legal right of foreigners to be hosted would thus exist only from the moment they own the *status* of legal citizens (and thus, apodictically, as citizens they would no longer be considered foreigners), and – symmetrically – it would be the prerogative of a State to establish who may belong to a community and who instead should be rightfully rejected from it. There would thus be no universal principle – neither moral, nor least of all legal – on which the contents of such citizenship rights and duties would be based. Nonetheless, it is possible that within a given political

[14] Among supporters of communitarianism, see C. Taylor, *The Malaise of Modernity* (1991), Italian translation made by by G. Ferrara degli Uberti, *Il disagio della modernità* (1999); M. Walzer, *Spheres of Justice. A defence of Pluralism and Equality* (1983), Italian translation made by G. Rigamonti, *Sfere di giustizia* (2008); T.H. Marshall, *Sociology at the Crossroads* (1963), Italian translation by P. Maranini, *Cittadinanza e classe sociale* (1976).

[15] Aristotele, *Politics*, book III, 1 ff.

[16] Please refer to T.H. Marshall, *Sociology at the Crossroads*, cit. at 14, 24.

community the image of an «ideal», «developing»[17] citizenship may be presented, and that this may push towards a higher degree of equality and a tangible enrichment of the citizenship *status*, also in favour of those to which such *status* may be granted at a later stage.

The provision of legal guarantees and the tangible advantages related to owning citizenship status may, moreover, always be compliant with the «political code of the sovereign State» [18], namely a code of operation that may also find its fulcrum in the particular instance of safety and exclusion, not the universal instance of equality among individuals. Moreover, according to communitarianists, it is not only impossible to speak of a universal community, but even the national community would risk being «too large and remote to activate a single belonging». This consideration may thus imply the development and recognition of more limited belongings – at the local level – and, as underlined initially, a 'fraying' of citizenship and republican belonging, with a consequent loss in sense of solidarity and collective responsibility, not only for the human community as a whole, but even the national community.

3. Immigration between State and Regions

Upon explaining how the aforementioned antithetic theories find validation not only in the social, anthropological, and political context, but also in national and regional legislation, it is necessary to assess about legal conditions of foreigners within the Italian Constitution, and in particular the national, regional, and local duties within its scope.

Articles 2 and 3 of the Constitution – upon outlining an «emancipating democracy» [19] plan, sets human beings as such, as well as their dignity, at the basis to build a democratic State[20], and

[17] T.H. Marshall, *Sociology at the Crossroads*, cit. at 14, 24.
[18] See D. Zolo, *La strategia della cittadinanza*, cit. at 8, 19.
[19] See M. Dogliani, A. Di Giovine, *Dalla democrazia emancipante alla democrazia senza qualità?*, in 2 *Questione giustizia* 323 (1993).
[20] On the topic, among others, see A. Barbera, *Commento all'art. 2 Costituzione*, in G. Branca (ed.), *Commentario della Costituzione* (1975), 50 ff., in which the author sees in Article no. 2 of the Constitution the will to detach fundamental human rights from the *status civitatis*.

calls upon the Republic to foster formal and substantive equality among individuals, by linking them by means of a rigid solidarity bond. Such democracy plan thus appears – without a shade of doubt – to fall under the logic of unconditional hospitality. At the same time, Article 10, paragraph 3 of the Constitution – once again, symbolically, among the first articles dedicated to fundamental principles at the basis of the entire legal system – upon sanctioning the right to seek asylum by foreigners 'configures' it as a «perfect, subjective, constitutional right»[21]. The right to asylum would thus impose that the State – in the presence of a foreigner whose own State prevents exercise of the democratic freedom guaranteed by the Italian Constitution – has the duty to give up its sovereignty and affirm and protect the inviolable rights of human beings, thus ensuring the Kantian commitment to hospitality. Consequently, this implies that rejection at the border is forbidden, and that there are clear limits to an eventual exile.

It is nevertheless identically clear how, on one hand, there is an ongoing resistance by legislators – particularly at the regional level – to adopt predominantly equalitarian and inclusive policies and how, on the other hand, the enduring absence of a comprehensive legal system in terms of right to seek asylum[22] has augmented the role and discretion of competent administrative and judicial authorities, so that asylum – theoretically a subjective right of the foreigner – «has been configured more and more as a right of the State, which has distorted the principle expressed in the Constitution itself»[23].

A clear example of the above claims are the guidelines of the so-called '*Decreto Sicurezza*' (Security Decree) no. 113 issued on 4 October 2018, and converted to Italian Law 13 December 2018, no. 132, in which the State – with the intent of restricting the pool

[21] See A. Cassese, *Commento all'art. 10, III comma Costituzione*, in G. Branca (ed.), *Commentario della Costituzione,* cit. at 20, 534. See, among others, Court of Cassation, SS.UU., 26 May 1997, no. 4674; Court of Cassation, SS.UU., 4 April 2004, no. 8423.

[22] The most significant provisions on the matter are following Italian Laws, 28 February 1990, no. 39; Law 6 March 1998, no. 40; Law 30 July 2002, no. 189; Law 13 April 2017, no. 46; Decree-Law 25 July 1998, no. 286 and more recently Decree-Law 4 October 2018, no. 113 converted to Law 13 December 2018, no. 132.

[23] See F. Rescigno, *Il diritto di asilo* (2011), 227.

of individuals who may access and settle on our national land – has abolished the concept of residence permit and has established the issuance of certain special, temporary residence permits for humanitarian purposes (Article 1). Before the entrance into force of the Decree, the protection system for foreigners included three levels: recognition of refugee status; subsidiary protection – based upon both international and EU standards[24]; and humanitarian protection. The latter – in accordance with the well-established legislation of the Court of Cassation[25]– related directly to the constitutional right to asylum as specified in Article 10 of the Italian Constitution, along with the 'complementary' protection that EU legislation allows member States to provide[26] to those individuals who – though threatened in terms of their fundamental rights in case of repatriation to their country of origin – may not claim refugee status nor benefit of subsidiary protection.

It is believed that the new Italian legislation, although not violating specific international or EU restrictions[27], may clash with

[24] See, in particular, the Geneva Convention released on 28 July 1951, relating to the status of refugees, and the Directive 2011/95/EU of the European Parliament and of the Council, 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*».

[25] See, among many others, sentences of Court of Cassation, Sec. VI, 26 June 2012, no. 10686; Court of Cassation, Sec. VI, 4 August 2016, no. 16362; Court of Cassation, Sec. I, 23 February 2018, no. 4455; Court of Cassation, SS. UU., 12 Dedember 2018, no. 32177; Court of Cassation, SS.UU., 11 December 2018, no. 32044.

[26] See Article 6, paragraph 4, Directive 2008/115/EC of the European Parliament and of the Council, on «Common standards and procedures in Member States for returning illegally staying third-country nationals», who states that «Member States may at any moment decide to grant an autonomous residence permit or other authorisation offering a right to stay for compassionate, humanitarian or other reasonsto a third-country national staying illegally on their territory. In that event no return decision shall be issued. Where a return decision has already been issued, it shall be withdrawn orsuspended for the duration of validity of the residence permission or other authorisation offering a right to stay».

[27] See on the topic, among others, C. Sbailò, *Immigrazione: il fallimentare approccio europeo e i limiti della risposta neo-sovranista*, in 3 federalismi.it 4 (2019).

Article 10, paragraph 3, of the Italian Constitution[28]. Over the years, humanitarian protection has in fact complemented the other mentioned forms of protection and – in the absence of a specific standard to implement the said article – has also supported the right to asylum[29], which still awaits – as stated above – an accurate and specific measure by the lawmakers.

Therefore, a short-term increase in rejection of residence permit applications has been recorded[30] along with, on one hand, the consequent need – incompatible, among other things, with the principle of non-*refoulement*[31] – to remove foreigners from the national territory and, on the other hand, the impossibility for those holding a regular residence permit for humanitarian reasons to obtain a renewal, and their probable shift to a status of illegal aliens. Thus, a situation of instability and vulnerability has come into existence for those who, ever since the entrance into force of the '*Decreto sicurezza*', appeared to be potential and legitimate owners of the right to asylum within our legal framework and in its safeguard.

As for the Constitution-based subdivision of roles, the 2001 reform of Title V has attributed exclusive sovereignty and competence to the State in terms of: «right to asylum and legal

[28] See, on the topic, the first reaction by the Constitutional Court on Decree Law 4 October 2018, no. 113 namely Constitutional Court, 4 September 2019, no. 194 in 16 federalismi.it (2019).

[29] As constantly supported by out of guidance of the Court of Cassation. See, in particular, Court of Cassation, Sec. VI, 26 June 2012, no. 10686; Court of Cassation, Sec. VI, 4 August 2016, no. 16362; Court of Cassation, Sec. I, 23 February 2018, no. 4455.

[30] See, on the topic, the data presented by the *Dipartimento per le libertà civili e l'immigrazione* (Department of civil rights and immigration) of the Italian Ministry of Home Affairs (*http://www.libertaciviliimmigrazione.dlci.interno.gov.it/it/documentazione/statistica/i-numeri-dellasilo*), which highlight a dramatic fall – upon entrance into force of Decree Law 4 October 2018, no. 113 – in issuance of permits for humanitarian protection reasons, and an increase in rejection of residence permit applications.

[31] On the principle of non-refoulement, see, among others, A. Saccucci, *Espulsione, terrorismo e natura assoluta dell'obbligo di non-refoulement*, in 2 I diritti dell'uomo 33 (2008); F. Salerno, *L'obbligo internazionale di non-refoulement dei richiedenti asilo*, in 3 Diritti umani e diritto internazionale 487 (2010); P. Papa, *L'esclusione per non meritevolezza, i motivi di sicurezza e di pericolo, il principio di "non refoulement" e il permesso di soggiorno per motivi umanitari*, in 2 Diritto, immigrazione e cittadinanza 25 (2018).

condition of citizens of States not belonging to the European Union» (Article 117, paragraph 2, letter *a*); «immigration» (letter *b*); «determination of essential levels of civil and social rights services» (letter *m*); «public order and safety» (letter *h*); and in terms of «citizenship, civil status, and civil registry» (letter *i*). At the basis of such choice there is of course the need to guarantee the legal system's uniformity and unity, the respect of the principle of equality with regard to all those present within a given territory, and more in general the demand to place policies related to immigration in the hands of State.

While the State is deemed competent at the national level and in terms of governance of the formal citizenship and its mode of acquisition, it is the regional level – and in terms of administration, even the local level – which have taken on an undeniable role and scope of action in terms of possible pro-immigration policies[32]. The scopes of sub-state intervention, which were also defined in the 1990s, have been indeed extended in the Constitution as a consequence of the increased regional legislative power, not only in terms of social services but also in terms of education, professional training, safeguard of health, and – in general – all sectors that may somewhat affect the life of a foreigner permanently or temporarily residing on national territory[33].

In the well-known judgment 7 July 2005, no. 300, the Italian Constitutional Court itself – upon identifying the ranges of national and regional power in terms of immigration – has underlined how «public intervention is not limited to the due control of entrance and permanence of foreigners on national land, but also necessarily involves other fields, such as assistance, education, health, and housing. Such subjects combine – as written in the Constitution – State and regional competences, either exclusively or jointly».

Moreover, it is significant to highlight how the Constitution itself – in Article 118, paragraph 3 – acknowledges the need for a

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[32] The distinction between policies *related to* immigration and *pro*-immigration policies is owed, as well-known, to T. Hammar, *Democracy and the Nation State: Aliens, Denizens and Citizens in a World of International Migration* (1990).

[33] On the topic, among many others, see G. Serges, *Le competenze normative delle Regioni in tema di immigrazione*, in G. Caggiano (ed.), *I percorsi dell'integrazione* (2014), 805.

national coordination of immigration and public order/safety. In fact, in such fields more than any other, the constitutional legislator recognizes the need to balance – on one hand – unity and State sovereignty requirements with – on the other hand – pluralism in legal decisions, and how there exists such a complex network of national, regional, and local functions, that they may only find agreement through forms of systematic and/or procedural coordination.

In the past 20 years – taking into account social science, an in particular the theories by Thomas Humphrey Marshall[34] – a different and multidimensional concept of citizenship has come about: the so-called social citizenship[35]. We have in fact witnessed a gradual loosening of the link between Countries and individuals, rooting from the Country-nation crisis, related to globalization and its consequences on economic-financial, political, and even social systems. A crisis which is also motivated by the progressive participation of individuals to economic, social, and welfare contexts of modern democracies – regardless of their *status civitatis* – and not least by the pressure exerted on Western politics by people from underdeveloped and densely populated areas of the continent, in search of a more 'high-class' citizenship.

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[34] T.H. Marshall, *Sociology at the Crossroad*, cit. at 14, 24.

[35] On the concept of social citizenship and on the consequent strong debate see, among others D. Zolo, *La strategia della cittadinanza*, cit at. 8, 5; Id., *La riscoperta della cittadinanza*, in J.M. Barbalet (ed.), *Citizenship. Rights, Struggle and Class Inequality* (1988), Italian translation made by F.P. Vertova, *Cittadinanza. Diritti, conflitto e disuguaglianza sociale* (1992), 7; L. Ferrajoli, *Dai diritti del cittadino ai diritti della persona*, in D. Zolo (ed.), *La cittadinanza. Appartenenza, identità, diritti* (1994), 263 ff.; G. Zincone, *Da sudditi a cittadini* (1992); E. Grosso, *Le vie della cittadinanza. Le grandi radici. I modelli di riferimento* (1997); M. Cuniberti, *La cittadinanza. Libertà dell'uomo e libertà del cittadino nella costituzione italiana* (1997); G. Berti, *Cittadinanza, cittadinanze e diritti fondamentali*, in 1 Riv. Dir. Cost. 3 (1997); G.U. Rescigno, *Cittadinanza: riflessioni sulla parola e sulla cosa*, in 1 Riv. Dir. Cost. 37 (1997); A. Morrone, *Le forme della cittadinanza nel Terzo Millennio*, in 2 Quad. Cost. 303 (2015); C. Panzera, A. Rauti, C. Salazar, A. Spadaro (eds.), *Metamorfosi della cittadinanza e diritti degli stranieri*, (2016); G. Bascherini, *Verso una cittadinanza sociale?, Osservazione a C. Cost. 30 dicembre 1998, n. 454*, in 1 Giur. Cost. 381 (1999); D. Bifulco, *Cittadinanza sociale, eguaglianza e forma di Stato*, in L. Chieffi (ed.), *I diritti sociali tra regionalismo e prospettive federali*, (1999), 27; G. Romeo, *La cittadinanza sociale nell'era del cosmopolitismo. Uno studio comparato* (2011); P. Barcellona, *A proposito della cittadinanza sociale*, in 2-3 Dem. e Dir. 15 (1988).

Therefore, a different concept of citizenship has come into being, according to which citizens are those who live and *participate* to a given community, and citizenship would grant the existence of the complex of social relationships between its members, and between the latter and authority.

Such citizenship is distinguished by new and multidimensional traits and, in particular, by the fact it is founded upon the recognition and sharing of rights and obligations ascribed to people as such, and regardless of their *status civitatis*. A concept of *social* citizenship that, compared to the strictly legal/formal idea, implies an outstandingly inclusive dimension, tending towards equality and dignity, overcoming national borders and the thorny 'barriers' of legal citizenship; not least, a citizenship focused on the universalization of rights[36]. Therefore, social citizenship as «a tangible prerequisite for democracy»[37].

The contents of a substantial[38] citizenship may thus no longer be considered exclusively attributed to the State: in fact, new decision-making centres have replaced the latter. Just consider the international and European restrictions[39], as well as the judgements issued by Court of Justice of the European Union and the European Court of Human Rights. Moreover, a less-than-insignificant role was played – as underlined above – by institutions at the territorial sub-national level, whose actions are questioning not only the concept of social citizenship, but even that of formal citizenship, and are bringing to life a large number of citizenship models.

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[36] In an extreme sense, such form of citizenship would lead, according to certain authors, to a status of «cosmopolitical citizenship», or *civis mundi*. See, on all such topics, L.J. Cohen, *The Principles of World Citizenship* (1954); J. Habermas, *Recht und Moral*, (1986), Italian translation by L. Ceppa, *Morale, Diritto, Politica*, (2011), 136.

[37] See: F. Belvisi, *Cittadinanza*, in A. Barbera (ed.), *Le basi filosofiche del costituzionalismo*, (2007), 141.

[38] On the topic, among others, see L. Ronchetti, *La cittadinanza sostanziale tra Costituzione e residenza: immigrati nelle regioni*, in 2 Costituzionalismo.it (2012).

[39] See on the topic, among others, S. Staiano, *The Crisis of State sovereignty and social Rights*, in 2 The Age of Human Rights Journal 25 (2014).

4. 'Hospitality' and 'rejection': evident divergence in local pro-immigration policies

One of the main issues related to 'composed' governments[40] is doubtlessly the struggle in 'building' a unitary citizenship that may contrast the division of the political power in the national territory[41]. In such form of government there emerges on one hand the need – in the words of the Italian Constitution – to «recognize and promote local government bodies» (Article 5), and on the other hand – at the same time – the duty the Republic has to «recognize and guarantee fundamental human rights» (Article 2) as well as «identical social dignity and equality among individuals» (Article 3). There is a constant tension and delicate balance between the unity and differentiation of the system: no matter how much a legal status may wish to tend towards the greatest level of decentralization possible, there is always an egalitarian legal *status* involving the person, whose core is the guarantee of fundamental rights. It is moreover not easy to understand how far the imposition of a system unity may go, and how much – instead – unity and equality themselves do not translate to an excessive uniformity, going to the detriment of differentiation and independence.

The growing migration flows and the long-term presence of foreigners within our territory – as well as, consequent to the economic crisis, the growth in the category of citizens suffering poverty and weakness – have deeply affected regional and local economies in the past years, thus calling for a more substantial, though (as highlighted above) necessary, action by such government bodies concerning the regulation of social rights and a more efficient guarantee of the same. The 'complication' of social service demand has thus forced the regional legislators and local administrators to reconfigure – in a number of cases – rights (even fundamental rights) and their 'boundaries', thus causing a clear divergence among areas that have taken a more cosmopolitanist, welcoming approach towards foreigners, and those that have instead adopted more sovereigntist and communitarianist positions, pushing clearly and consciously for exclusion.

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[40] R. Bifulco, *La cooperazione nello Stato unitario composto* (1995).

[41] On the topic, among others, please refer to A. Poggi, *I diritti delle persone. Lo Stato sociale come Repubblica dei diritti e dei doveri* (2014) 93.

The first pool includes the Regions that have adopted laws in support of the rights and integration of foreigners, without making particular distinctions in terms of the latter's residence permits, and going as far as including illegal immigrants[42].

The second group includes, instead, the Regions that – highlighting the citizenship requirements and, more often, residence within the regional territory – have generated a gradual exclusion of portions of people from social policies[43], raised the level of inequality within the republican State, and consequently set up a marked 'territoriality' of rights on a regional or local basis.

Actions of the latter kind are especially identified in regional laws applicable to Italian citizens only[44] and – on a wider scale – to regional provisions that require not only legally

[42] See Tuscany Regional Law 8 June 2009, no. 29, *Norme per l'accoglienza, l'integrazione partecipe e la tutela dei cittadini stranieri nella Regione Toscana*, which has envisaged social/welfare actions also «in favour of foreign citizens present within the regional area», thus even not owning a residence permit; Campania Regional Law 8 February 2010, no. 6, «*Norme per l'inclusione sociale, economica e culturale delle persone straniere presenti in Campania*», targeted to 'foreign' people, thus not further specifying their status; Puglia Regional Law 4 December 2009, no. 32, *Norme per l'accoglienza, la convivenza civile e l'integrazione degli immigrati in Puglia*, targeted to foreigners living «on any basis» on the regional land, thus including foreigners not owning a valid residence permit; Marche Regional Law 26 May 2009, no. 13, *Disposizioni a sostegno dei diritti e dell'integrazione dei cittadini stranieri immigrati*, targeted even to foreign citizens «awaiting conclusion of a legalization process»; Liguria Regional Law 20 February 2007, no. 7, *Norme per l'accoglienza e l'integrazione sociale delle cittadine e dei cittadini stranieri immigrati*, targeted to «foreigners present on the regional land»; Abruzzi Regional Law 13 December 2004, no. 46, *Interventi a sostegno degli stranieri immigrati*, which sets out that immigrant foreigners are the recipients of the actions included in the law itself, «upon condition that they are permanently or temporarily resident or otherwise present – in accordance with current legislation – on the regional territory, both in case of definitive immigration and in cases of temporary and finalized permanence».

[43] On the recipients of the regional social policies, see I. Carlotto, P. Cavaleri, L. Panzeri, *Servizi sociali*, in L. Vandelli, F. Bassanini (eds.), *Il federalismo alla prova: regole, politiche, diritti nelle Regioni* (2012), 87; F. Dinelli, *Le appartenenze territoriali. Contributo allo studio della cittadinanza, della residenza e della cittadinanza europea* (2011), 204 ff.

[44] Lombardy Regional Law 9 December 2003, no. 25 foreseeing free local public transportation for fully disabled civilians only upon possession of Italian citizenship; Veneto Regional Law 18 November 2005, no. 18 and Friuli-Venezia Giulia Regional Law 23 May 2007, no. 11 foreseeing access to the regional civil services only for those having Italian citizenship.

certified residence, but also that the individual requiring a service has resided within the issuing territory for a certain period of time and on a continuous basis, thus making the required conditions more complicated to meet[45].

In addition to the regional laws, certain Municipalities have also issued decrees[46] to explicitly limit the criteria for legal

[45] Examples of this are: the Campania Regional Law 19 February 2004, no. 2, ruling the so-called '*reddito di cittadinanza*' (citizen's wage) for those having resided within the Region for at least the previous five years; the Basilicata Regional Law 24 December 2008, no. 33 which requires a minimum 12-month residence within the Region to benefit of the funds allocated to disabled individuals; the Lazio Regional Law 20 March 2009, no. 4 which requires a minimum 24-month residence within the Region in order to access the minimum income in favour of the unemployed, the non-employed, and temporary workers; Trento Provincial Law 27 July 2007, no. 13 relating to the social policies within the Province, which established the requirement of a 3-year period of residence in order to benefit of all services provided by law; Friuli-Venezia Giulia Regional Law 31 March 2006, no. 6 that – in terms of provision of social/welfare, education, and health services – established the requirement of an extended residence period, limiting access only to EU citizens residing in the Region for over three years, and excluding non-EU or even EU individuals having legally resided in the Region for less than three years; Lombardy Regional Law 8 February 2005, no. 7 requiring – for the assignment of public housing – a minimum 5-year period of residence or work within the Region, adding that «residence within the regional territory is a factor in establishing the point-based ranking». More recent examples include, e.g. Trentino-Alto Adige Regional Law 14 December 2011, no. 8 limiting access to regional child benefits to citizens and foreigners residing within the territory for at least 5 years; Trento Provincial Law 24 July 2012, no. 15 that – in terms of persons who are not physically independent – has distinguished bonuses for Italian or EU citizens residing in the Province for a minimum of 3 years and bonuses for foreigners owning a residence permit for a minimum of 3 years; Bolzano Provincial Law 28 October 2011, no. 12 that – in terms of access to bonuses for social services and right to education – set a minimum limit of a 5-year residence for non-EU citizens.

[46] Please refer to the Municipality of Brignano Gera d'Adda (Bergamo) that issued Decree no. 9/2007, requiring – in terms of being granted residency – the proof of a valid residence permit, or the proof of renewal request for the same to the Bergamo Police Station, should it have expired; Municipality of Ospitaletto (Brescia) decrees n. 25/2009 and n. 30/2009, which require that the foreigner shall present a residence permit and a self-certification that he/she has not been subject to punishment restricting civil liberty in Italy; and finally, decrees by the Municipality of Palosco (Bergamo) issued on March 2011, and by the Municipality of Calcinato (Brescia) issued on March 2011, requiring proof of a minimum annual income, possession of a long-term residence permit, a

residence, by – illegitimately – introducing more restrictive requirements compared to those in national legislation, thus causing the *a priori* impossibility to access social services[47]. Moreover, there are examples of interoffice memos issued with the purpose of excluding – directly or more subtly and indirectly – foreigners from the benefit of social services, thus obstructing the permanence within the urban context of groups of people that are not welcome or are considered a 'burden' on local resources. Within the same context, it is possible to mention examples of Municipalities that have granted financial support to families with children under three years of age (the so-called *bonus bebè*), essentially limiting their issue only to Italian citizens[48]; or more recently, the decrees by certain Municipalities of the Lombardy Region[49] that have imposed strict communication procedures for those providing their houses to host international asylum seekers, with the purpose of discouraging private entities and individuals from the adherence to hospitality plans arranged by local government authorities.

The result of the above is a clear issue of inequality in terms of rights, even fundamental rights[50], between Italian and foreign

valid passport including a valid visa to enter the national territory, and the certification of compliance of housing specified by the individual requesting residence.

[47] On the topic of registered residence as a factor of exclusion for foreigners, see M. Gorlani, *Accesso al welfare state e libertà di circolazione: quanto 'pesa' la residenza regionale?*, in 2-3 Le Regioni 345 (2006); E. Gargiulo, *Dalla popolazione residente al popolo dei residenti: le ordinanze e la costruzione dell'alterità*, in 1 Rass. It. di Sociologia 3 (2015).

[48] See Resolution by Brescia Municipality Council no. 1062/52053 issued on November 2008, establishing the issuance of the so-called *bonus bebè* (baby bonus) only to parents having Italian citizenship and residing in the municipality for at least 2 years since the birth of the child; Regulation by Municipality of Palazzago (Bergamo) issued on May 2001, requiring Italian citizenship or formal presentation of a request for Italian citizenship by at least one parent/guardian of the minor; Resolution issued by Municipality of Tradate (Varese) issued on September 2007, requiring Italian citizenship by both parents and the further requisite of a minimum 5-year residence in the municipality by at least one of the parents.

[49] On the topic see G. Sobrino, *Fonti del diritto e (in)attuazione del principio di eguaglianza*, in A. Giorgis, E. Grosso, M. Losana (eds.), *Diritti uguali per tutti? Gli stranieri e la garanzia dell'uguaglianza formale* (2017), 38 ff.

[50] While Article 2, paragraph 1, of the Italian Consolidated Act on immigration expressly outlines that «the foreigner present at the border or within the State

citizens. Moreover, the said measures discourage and hinder forms of «internal migration» within a State[51] by citizens who – upon changing residence – find themselves disadvantaged compared to others, even foreigners, having resided in the area for a longer time. In short, we are witnessing the rise of «intra-country borders», with residence being «a source of privilege, thus inequality»[52].

At the same time, one cannot claim that Regions and local governments must provide quantitatively and qualitatively equal services, in that – should this occur – local autonomy would be severely affected or nullified. In order to consider the legitimacy of regional and local social policies, it is necessary to ascertain the existence – as stated by the Italian Constitutional Court – of a «reasonable correlation» between the nature of the performance provided and the requirements established to benefit of such performance. This once again unearths the crux of the matter: the coexistence of unity/equality and independence/differentiation demands.

5. The Constitutional Court and the construction of a social citizenship

Since its very first rulings, the Italian Constitutional Court has supported a less formal and more substantive idea of citizenship, by promoting and extending the recognition of fundamental rights to all individuals, whether Italian citizens or otherwise. «The conceptual basis» of the path followed by the

territory shall be granted the fundamental human rights as prescribed by domestic law, international agreements in force, and the broadly recognized principles of international law».

[51] P. Carrozza, *Noi e gli altri. Per una cittadinanza fondata sulla residenza e sull'adesione ai doveri costituzionali*, in E. Rossi, F. Biondi Dal Monte, M. Vrenna (eds.), *La governance dell'immigrazione. Diritti, politiche e competenze* (2013), who makes a distinction between 'internal' and 'external' migration within a State, and claims – oppositely to this paper –, how the former is irrelevant from a legal perspective. While 'internal' migration is undoubtedly irrelevant in terms of formal citizenship, today it appears, instead, to take on a high relevance in terms of substantive citizenship.

[52] See G. Lombardi, *Spazio e frontiera tra eguaglianza e privilegio: problemi costituzionali fra storia e diritto*, in 1 Dir. Soc. 47 (1985).

Court is «already clearly laid out»[53] in judgment no. 120 issued in 1967, endorsing the need to consider the constitutional rulings – Articles 2, 3, and 10 in particular – in combination, and thus stating that, given that the principle of equality applies specifically to national citizens, it is implied that it «also applies to the foreigner, when concerning the respect of fundamental rights».

Without the need to follow the legal milestones achieved by the Court[54], it may be stated that it has always, even recently[55], advocated that the fundamental rights granted by Italian law and, above all, the Constitution, are owned by individuals «not as members of a given political community, but as human beings». It is thus unacceptable that the legal condition of non-citizenship is the basis for different and discriminatory treatment, forbidden by way of the principle of equality pertaining to fundamental human rights. Consequently, the matter of conceptually identifying which such fundamental rights are arises[56] – though it will not be possible to discuss it in this paper.

Moreover, even in case the performance of a social service cannot be unequivocally and directly correlated to a specific fundamental right, the choices made in identifying the categories of beneficiaries shall nonetheless, according to the Court[57], «be

[53] See A. Ruggeri, *Note introduttive ad uno studio sui diritti e i doveri costituzionali degli stranieri*, in 2 Rivista AIC 6 (2011).

[54] On the topic, see, among others, S. Gambino, G. D'Ignazio (eds.), *Immigrazione e diritti fondamentali* (2009); B. Pezzini, *Una questione che interroga l'uguaglianza: i diritti sociali del non-cittadino*, in Vv. Aa. (eds.), *Lo statuto costituzionale del non cittadino* (2010), 163 ff.; A. Ruggeri, *Note introduttive ad uno studio sui diritti e i doveri costituzionali degli stranieri,* cit. at. 53; F. Biondi Dal Monte, *I diritti sociali degli stranieri. Politiche di appartenenza e condizioni di esclusione nello Stato sociale*, in E. Cavasino, G. Scala, G. Verde (eds.), *I diritti sociali dal riconoscimento alla garanzia: il ruolo della giurisprudenza* (2013), 189 ff.

[55] See, among many others, Italian Constitutional Court judgments 14 February 1968, no. 11; 26 June 1969, no. 104; 15 January 1970, no. 224; 20 January 1977, no. 46; 24 February 1994, no. 62, in 8 Riv. Dir. Intern. 1054 (1994); 1 June 1995, no. 219, in 11 Cass. Pen. 2780 (1985); 15 July 2004, no. 222, in 7 Giur. It. 1363 (2004), 8 July 2010, no. 249, in 5 Giur. Cost 3984 (2010); 20 April 2011, no. 145, in 2 Giur. Cost. 1849 (2011).

[56] On the topic, see, among others, A. Spadaro, *Il problema del "fondamento" dei diritti "fondamentali"* (1995), 235 ff..; G. D'amico, *La "fondamentalità" dei diritti tra giudici e legislatori*, in V. Baldini (ed.), *Cos'è un diritto fondamentale* (2017), 481 ff.

[57] On the statement, see the well-known judgment of the Constituional Court 25 October 2005, no. 432, in 6 Giur. Cost. 4657 (2005) (with note by Rimoli, Gnes)

always made following the principle of rationality», even should they have «the intention to balance the maximum accessibility to the benefit with the degree of limitation of financial resources».

The legislator shall be allowed to «introduce distinguished access to the single applicants, only in the presence of a legal 'reason', which is not clearly irrational, or even worse, arbitrary». A reasonable distinction may thus be made in terms of fruition of rights and performance of social services – following the complex argumentation by the Constitutional Court[58] – in cases where there is a correlation among satisfied requirements for admission to a service and the social function of the latter. In the event that such correlation should reasonably not apply, distinctions based either on citizenship or on certain types of residence intended to exclude the same people who are most exposed to conditions of need and disadvantage are unacceptable.

The Constitutional Court has thus contributed, in the past few years, to 'break ground' towards the construction of a unitary substantial citizenship, targeted to individuals in the capacity as human beings, regardless of possession of legal Italian citizenship.

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issued by the Court concerning Lombardy Regional Law 12 January 2002, no. 1 (action for development of regional and local public transportation), which does not include foreigners residing within the Region among those having the right to free local public transportation, granted to fully disabled civilians.

[58] On the statement, see, by way of example, Constitutional Court 9 February 2011, no. 40, in 11, I Foro it. 2930 (2011), which has proclaimed the constitutional unlawfulness of Article 9, paragraphs 51-53, of Friuli-Venezia Giulia Regional Law 30 December 2009, no. 24, limiting access to the integrated system of social services and actions only to «EU citizens who have resided in the Region for at least 36 months», thus excluding other individuals, including Italian citizens, having resided in the Region for a shorter time. More recently, see judgments 24 May 2018, no. 106, in 9 Foro it. 1423 (2019), 25 May 2018, no. 107, in 7-8 Foro it. 2252 (2018) (with note by Romboli) and 20 July 2018, no. 166, in 4 Giur. Cost. 1728 (2018) (with note by Bilancia) with which the Constitutional Court – in a strong effort to guarantee compliance with EU legislation (in particular, Directive 2003/109/EC (concerning the status of third-country nationals who are long-term residents) and the principles of rationality and proportionality – seems to reduce the possibility to create excessively discriminating regional welfare states). Please refer to M. Belletti, *La Corte costituzionale torna, in tre occasioni ravvicinate, sul requisito del radicamento territoriale per accedere ai servizi sociali. Un tentativo di delineare un quadro organico della giurisprudenza in argomento*, in 5-6 Le Regioni 1138 (2018); C. Corsi, *La trilogia della Corte costituzionale: ancora sui requisiti di lungo-residenza per l'accesso alle prestazioni sociali*, in 5-6 Le Regioni 1170 (2018).

It is a pondered and reasonable step, founded on the principle of equality and social solidarity, which may at times prevail even over limited financial resources; a path for which the principle of rationality appears to serve as a «criterion for assessment» of disparity in treatment introduced by the legislator[59].

Nevertheless, for a tangible creation of true unity of and within citizenship one cannot rely simply on the hope that it is fully safeguarded at the judicial system[60]; in order to 'reconstruct' the system, it is rather necessary that the legislators – both at the national and regional level – confidently share, set out, and perform an all-encompassing and systematic social citizenship project, and regain a role as privileged «seats»[61], able to more convincingly transpose «universal [dilemmas] to the specific context». In other words, a 'reconstruction' not so much with the purpose to deny the correlation between a moral dimension of human rights value that transcends the different political contexts and, oppositely, the historic, cultural, and social peculiarities of the different legal contexts, but rather to attempt a 'negotiation' of their inevitable «interdependence»[62].

6. Searching for a 'reconstruction' of the system: universal dilemma in specific contexts

The principle of territorial autonomy that seems to generate a more accentuated 'territoriality' of rights may be in fact reassessed and no longer be considered a shock to the 'virtuous'

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[59] See M. Cuniberti, *L'illegittimità costituzionale dell'esclusione dello straniero dalle prestazioni sociali previste dalla legislazione regionale*, in 2-3 Le Regioni 515 (2006).

[60] On the statement, see, among others, S. Staiano, *Per un nuovo paradigma giuridico dell'eguaglianza*, in M. Della Morte (ed.), *Diseguaglianze nello Stato costituzionale* (2016), 421, who rightfully highlights how «an 'empty' or 'neutral' legislation in terms of values – namely […] one that is incapable of interpreting, in itself above all, the constitutional framework, then translating it in accordance with such ongoing interpretation – would give free hand to the judicial creation of inequality suppression policies (or inequality conservation policies, should they be deemed 'tolerable' or 'necessary')».

[61] On the statement, see C. Galli, *Spazi politici. L'età moderna e l'età globale* (2001); S. Sicardi, *Essere di quel luogo. Brevi considerazioni sul significato di territorio e di appartenenza territoriale*, in 1 Pol. Dir. (2003).

[62] See S. Benhabib, *The Rights of Others. Aliens, Residents and Citizens* (2004), Italian translation made by S. De Pretis, *I diritti degli altri. Stranieri, residenti, cittadini* (2006), 107.

cycle of State sovereignty, unitary citizenship, equality, and social solidarity. Territorial autonomy does not oppose the principle of legal unity but, as stated in Article 5 of the Italian Constitution, it finds stability and confirmation within it. Intra-state areas thus not only can, but have the right to define, safeguard, and promote social citizenship, by nurturing its contents – not disintegrating them – and thus stimulating a dynamic vision of citizenship itself.

As it is clear that for modern-day democracies to 'endure' they must find a balance between 'opening' and 'closure' to foreigners, it is worth highlighting significant examples of sub-state bodies that have managed to provide an integrated hospitality to immigrants[63], not designed to break, but to regenerate and strengthen the bond of solidarity uniting all those – Italian citizens and not – that believe in their territory, and to repopulate certain areas of the Country, thus creating growth and development opportunities for all.

Therefore – upon implementation of certain decentralized and networked hospitality practices and experiences, developed especially in southern Italy, in the so-called 'hospitality belt'[64], starting from the late 1990s, upon arrival of Kurd refugees – there has been an attempt to overcome the logic of mere control and recognition existing at identification centres, through insertion and, more specifically, integration of immigrants in the social and urban contexts. Moreover, in 2001 the Italian Minister of Home Affairs has drafted with *ANCI* (the national organization of Italian Municipalities) and UNHCR (United Nations Office of the High Commissioner for Refugees) a letter of intent for the creation of a «national asylum programme». Law no. 189 issued on 30 July 2002 has subsequently institutionalized the announced measures of organized hospitality, including the setup of a so-called SPRAR

[63] On the topic, see, in particular, C. Panzera, A. Rauti, C. Salazar, A. Spadaro, *Metamorfosi della cittadinanza e diritti degli stranieri* (2015); D. Loprieno, *Regionalismo e immigrazione. Le risposte degli ordinamenti regionali italiani al fenomeno migratorio*, in 1 Consultaonline 280 (2018).

[64] The areas in the Calabria Region, in particular the townships of Acquaformosa (Cosenza), Badolato (Catanzaro), Caulonia (Reggio Calabria), Camini (Reggio Calabria), Stignano (Reggio Calabria), and the most famous Riace (Reggio Calabria), in cooperation with non-profit organizations and *NGOs*.

(Protection System for Asylum Seekers and Refugees), assigning its coordination and management to *ANCI*[65].

In particular, the initial reception phase, with the purpose of first aid, immediate assistance, and identification – which took place in government structures close to locations most affected by immigrant flow – was followed by a phase of 'primary reception', which included the request for protection and the initiation of its assessment procedure, along with medical screening of the foreigner. Finally, the so-called 'secondary reception' stage took place, during which the foreigners – who had formalized their request for protection and that they did not have suitable means of subsistence – had access, along with their family members, to the SPRAR reception measures set up by the local authorities on a voluntary basis.

The so-called '*Decreto Sicurezza*' (Article 12 of Decree-Law no. 113 issued in 2018) has also affected the SPRAR system, with the purpose of restricting integration and social inclusion actions to subjects having already been recognized the right to international protection, unaccompanied minors, and owners of the specific residence permits identified in the Decree-Law itself that, as mentioned above, have replace residence permits for humanitarian reasons. Moreover, such legislation has increased the number– and the time of residence – of people undergoing, or who will undergo, 'illegitimate' measures to limit their freedom in CPR holding facilities for repatriation purposes, hotspots, CAS centres of extraordinary reception, or CARA centres for asylum seekers: structures that – as highlighted in specialist research for some time[66] – turn out to be true detention, confinement, and

[65] On the statement, also see Decree-Law no. 142, issued on August 18th, 2015, «*Attuazione della direttiva 2013/33/UE recante norme relative all'accoglienza dei richiedenti protezione internazionale, nonché della direttiva 2013/32/UE, recante procedure comuni ai fini del riconoscimento e della revoca dello status di protezione internazionale*», as well as the Italian Ministerial Decree issued on August 10th, 2016 «*Modalità di accesso da parte degli enti locali ai finanziamenti del Fondo nazionale per le politiche ed i servizi dell'asilo per la predisposizione dei servizi di accoglienza per i richiedenti e i beneficiari di protezione internazionale e per i titolari del permesso umanitario, nonché approvazione delle linee guida per il funzionamento del Sistema di protezione per richiedenti asilo e rifugiati (SPRAR)*».

[66] Centres that, in different measures, are – as is well-known – allocated to the identification and detention of foreigners. On the topic, see, among others, E. Grosso, *Il modello originale: "reconduite à la frontière" e "rétention administrative"*

ghettoization facilities, which are unsuitable in terms of structure and management, detrimental to human dignity, and breaking the legal and jurisdictional requirements of Article 13 of the Italian Constitution.

A reorganization – in the negative sense – of such facilities has taken place, and those who no longer had the right to be hosted in them were forcibly expelled, in the pursuit of 'dismantling' a multilevel integration system (known as a SIPROIMI[67]), which had already given positive results. Along with the loss of an added value reached until that moment, additional outcomes of the new legislation are: increase in expenditure of national and local public funds invested in related initiatives; growth in cost of personnel which was hired in SPRAR centres and is currently unemployed; facilities fallen into disuse; an increase in legal proceedings; and not least, the release of illegal immigrants across the national territory. Likewise, there has been a downsizing of funding criteria and the fund bidding methods for local institutions for the creation and progression of reception projects, within the limits of FNSPA (national fund for asylum policies and services) resources available[68].

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nell'esperienza costituzionale francese, in R. Bin, A. Pugiotto, P. Veronesi (eds.), *Stranieri tra i diritti. Trattenimento, accompagnamento coattivo, riserva di giurisdizione* (2001), 107 ff.; I. Gjergji, *Il trattenimento dello straniero in attesa di espulsione: una "terra di nessuno" tra ordine giuridico e fatto politico*, in 3 Costituzionalismo.it (2006); A. Pugiotto, *"Purché se ne vadano". La tutela giurisdizionale (assente o carente) nei meccanismi di allontanamento dello straniero*, in Vv. Aa. (eds.), *Lo statuto costituzionale del non cittadino*, cit. at. 53, 333 ff.; D. Loprieno, "*Trattanere e punire*". *La detenzione amministrativa dello straniero* (2018).

[67] Acronym used to define the new system for protection of international protection right holders and of unaccompanied foreign minors.

[68] Among the first to have commented on the new legislation, see S. Curreri, *Prime considerazioni sui profili d'incostituzionalità del decreto legge n. 113/2018 (c.d. "decreto sicurezza")*, in 22 federalismi.it (2018); A. Algostino, *Il decreto "sicurezza e immigrazione" (decreto legge n. 113 del 2018): estinzione del diritto di asilo, repressione del dissenso e diseguaglianza*, in 2 Costituzionalismo.it 167 (2018); M. Benvenuti, *Audizione resa il 16 ottobre 2018 innanzi all'Ufficio di Presidenza della Commissione 1a (Affari costituzionali) del Senato della Repubblica nell'ambito dell'esame del disegno di legge recante "Conversione in legge del decreto-legge 4 ottobre 2018, n. 113, recante disposizioni urgenti in materia di protezione internazionale e immigrazione, sicurezza pubblica, nonché misure per la funzionalità del Ministero dell'interno e l'organizzazione e il funzionamento dell'Agenzia nazionale per l'amministrazione e la destinazione dei beni sequestrati e confiscati alla criminalità organizzata"*, in 3 Osservatorio AIC 165 (2018); M. Ruotolo, *Brevi note sui possibili*

Despite this most recent reform, it is important to highlight how today, across the Italian territory – and in 1200 townships in particular – 877 social, economic, and cultural development projects have been activated[69], and stand out for the fact their protagonists are not just foreigners, but even territories, which find expression as meeting places between the alien and the host community. Therefore, a dense network of solidarity, sustainability, growth of social cohesion, and neighbourhood polices has been defined, not with the mere purpose of welfarism, but also to foster «empathy and the culture of dialogue»[70]. This has been brought about through actions such as: teaching the Italian language as well as cultural/language mediation; psychological-social-health protection; orientation for immigrant minors in schools; training programs and orientation/support actions for work placement and housing. A hospitality network has thus been created to promote a structured involvement of public institutions and private-social institutions. Moreover, it has been attested how – considering the competence and responsibilities of the Municipalities and Regions in terms of welfare policies and services – the local 'adaptation' and 'push' is fundamental for the success of social inclusion.

It is by all means a solidarity model that allows a shift from the temptation to build walls and close ports to an integration process that may lead to a new cosmopolitanist culture and

vizi formali e sostanziali del d.l. n. 113 del 2018 (c.d. decreto "sicurezza e immigrazione") Audizione presso la Commissione affari costituzionali del Senato in relazione all'esame in sede referente del disegno di legge n. 840 (d.l. 113/2018-sicurezza pubblica), 3 Osservatorio AIC 173 (2018); N. Vettori, *Servizio pubblico di accoglienza e diritti fondamentali dei richiedenti asilo. Profili di illegittimità della riforma introdotta dal d.l. n. 113/2018*, in 3 Diritti, Immigrazione e Cittadinanza 135 (2019).

[69] In 2009, SPRARs hosted 8,400 people, in 2018 the number reached 35,881, then fell again to 33,625 in 2019, following the so-called '*Decreto Sicurezza*'. Please refer to data avaiable on the SPRAR website *www.sprar.it*.

[70] See T. Groppi, *Multiculturalismo 4.0*, in 1 Rivista AIC 9 (2018), moreover, I share the conclusions of the statement made by the Author: «the 'mother of all causes' of the current transformation […] in humanity» lies in the so-called mind blindness, one «that turns the inability to assess the consequence of one's actions on others, which in turn originates from the inability to recognize such others as human beings». The author also underlines the importance of «imagining policies that lead to 'seeing others' and every single person in their substance and uniqueness».

guarantee the right to respect who we are and all be definitively recognized as part of a «common social circle»[71]. The spaces for a new social and – ultimately – legal citizenship, more apt to being 'humane' and guaranteeing rights, would thus come about within local communities.

In conclusion, upon facing a political stand that claims to be pragmatic but, instead, appears to mainly respond to the 'immune' logic of exclusion, I strongly believe that foreigners may offer an occasion to reflect on the fact that, in reality, they are not dichotomous opponents to citizens, but share a common condition with the latter. The issue, in other words, is not so much the net distinction between hospitality, on one hand – intended as an absolute and impossible proposal, apparently beyond the scope of politics and relegated exclusively to the good heart and ethical commitment of individuals – and, on the other hand, rejection. The point in question is rather the fact that each one of us is, indeed, a «foreign resident»[72] in a given place where we have been given – not by choice – the opportunity to citizenship and to live with others, with whom we have a reciprocal commitment to spatial closeness, cohabitation, and solidarity.

[71] See A.E. Galeotti, *La politica del rispetto. Fondamenti etici della democrazia* (2010); G. Zagrebelsky, *Diritti per forza* (2017), 55.
[72] D. Di Cesare, *Stranieri residenti. Una filosofia della migrazione* (2017).