

THE THIRD SECTOR AND SOCIAL ENTERPRISE IN ITALY

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Summary

The contribution provides an initial reading of the regulatory provisions of Delegated Law No. 106 of May 2016, by which the areas of competence of the Third Sector were formally unified, and of Legislative Decree No. 117 of July 3, 2017 (so-called Code of the Third Sector) as well as Legislative Decree No. 112 of July 3, 2017, on Revision of the Discipline on Social Enterprise. The reflection focuses mainly around the social, economic and legal consequences arising from the introduction of the Code of the Third Sector, addressed in its most relevant aspects and as far as this is necessary for the correct and exhaustive analysis of the main object of this work, paying attention to the principle of horizontal subsidiarity, by virtue of which a channel of shared administration is established between public entities and Third Sector entities, alternative to that of profit and the market. In addition, this paper contains a special reference to the services of "insertion or reintegration into the labor market of workers and disadvantaged or disabled persons" falling within the new activities of general interest of social enterprise. Lastly, there is reference to the Guidelines for the implementation of regional projects aimed at experimenting with outreach facilities for the implementation of which the involvement of Third Sector entities has been envisaged.

Keywords: Third sector, reform, laborlaw, social enterprise, subsidiarity, disability, inclusion.

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Introduction. Since the 1993 publication of the European Community White Paper on "Growth, Competitiveness and Employment" (European Commission 1993)—which was intended to fuel reflection to make decentralized, national, or community decisions that would lay the foundations for "sustainable" development—the idea that the Third Sector, i.e., the set of non-profit organizations, can contribute to the creation of new employment has become widespread. In Italy, over the past thirty years, nonprofit institutions have been strongly established in the pursuit of solidaristic objectives for the benefit of "weak" categories of society: according to the latest ISTAT census (2020), nonprofit institutions active in Italy number about 360,000 and, overall, employ 861,919 employees, with encouraging data even for areas in southern Italy—notoriously marked by periods of strong economic depression—with a growth trend that has been confirmed to be positive for a decade (Riccobono, 2020). In the face of the growth in the number of employees in nonprofit institutions, there

can only be a real boom in employment to which, however, with the reform, it was not intended to devote a specific discipline, thus equating, in this way, employee employment in the Third Sector with that of the First and Second Sectors (Pareo, 2017; Visonà, 2018).

However, although the Third Sector presents a multifaceted system, i.e., consisting of social enterprises, social cooperatives, voluntary organizations, mutual aid societies, etc, it is possible to trace it back to a unified framework in its role of advocacy, that is, "the activity of promoting and protecting rights through voluntary actions to plead the cause of individuals, families, and groups in a state of marginality and need, and to urge equalizing and restorative reforms vis-à-vis the authorities charged with redistributive functions of the social product"(Ardigò, 2003; Rossi, 2009).

1. Legal recognition of the Third sector in Italy and the enabling reform law

With the crisis of the Italian welfare state model in the 1970s (Borzaga&Santurari, 1999), there was a downsizing of direct state intervention in the management of activities aimed at satisfying collective needs and, at the same time, the conferring of increasingly incisive roles on private organizations that, originating from motivations other than that of "increasing wealth," initiated and managed economic activities directed at satisfying the needs of specific individuals or the entire community (Najam,1996). It was during the 1990s that there was a progressive legal and political recognition of the role of Third Sector organizations in the direct and autonomous production of welfare services, which was accompanied, moreover, by changes in their relations with public agencies. This is a reality that has contributed increasingly incisively to providing answers to the state welfare crisis through the elevation of participatory welfare, consisting of broad community governance in constant support of the state in meeting collective needs.

Following the growth of the sector, the Italian legal system has gradually adapted its body of law to the need for regulation of the different social aggregates that have emerged in civil society. This resulted in a "tangle" of regulation that the reform of the Third Sector aimed to reorder by offering a unified framework within which Third Sector entities can move in search of common rules of behavior (Montanini & D'Andrea, 2020).

In Italy, the turning point was marked with the enactment of Delegated Law No. 106/2016 (Borzaga&Defourny, 2001; Gori & Rossi, 2016), which delegated the government to issue legislative decrees to reform the Third Sector (Legislative Decree No. 117/2017. On this profile see Boschetti, Clarich, 2018), social enterprise (Legislative Decree No. 112/2017) and the regulation of universal civil service (Legislative Decree No. 40/2017), through which it was intended, moreover, to promote work as a factor of social inclusion (Garofalo, 2018).

The main guidelines of the reform of the Third Sector can be found in the legislator's desire to establish a more organic regulatory framework for the entire Third Sector, reserving ad hoc legislation for social enterprise; in the establishment of the Single National Registry of the Third Sector with the task of carrying out administrative control functions over Third Sector entities and ensuring a system of legal publicity; and in the provision of facilitative regulations (Iasiello, P., 2018).

Through these regulatory innovations, it intended to encourage a change in the economic-productive method in a more ethical and social sense, for which the social balance sheet (Bani, 2018) becomes the privileged tool for relating a dimension other than the merely economic one, well attentive to the welfare of workers and the community in which they work.

2. Subsidiarity and the Third Sector. The decision of the Constitutional Court n. 131 of 2020

Solidarity, subsidiarity, inclusion and full development of the person, and enhancement of the potential for growth and employment, are the general principles with which the Code of the Third Sector opens, which, through the purposes indicated in the first article, aims to implement articles 2, 3, 4, 9, 18 and 118, fourth paragraph, of the Constitution. Indeed, in order to trace the legitimacy of Third Sector entities, as expressions of civil society aggregations, it would have been sufficient just to refer to the norms set forth in Articles 2 and 118, fourth paragraph, of the Constitution, from the reading of which in conjunction it is already possible to infer the fundamental dimensions in which the Third Sector operates: on the one hand, in fact, the value of the person indicated by Article 2 of the Const. as a social value (Perlingieri, 2009) makes it possible to see in social aggregations the value and social function of the Third Sector as a tool for the development of the personality; on the other hand, the pursuit of civic, solidaristic and socially useful purposes, including through forms of collaboration with the state, regions, provinces and local authorities (Amato, 2021), makes it possible to recognize the Third Sector also an active role in the planning, design and evaluation of interventions, declining in welfare policies the principle of horizontal subsidiarity referred to in Art. 118, fourth paragraph, Const. (Montanini & D'Andrea 2020). The focus here is on Article 55 of the Third Sector Code, which "realizes for the first time in general terms a true proceduralization of subsidiary action" (Constitutional Court no. 131/2020; on this profile see Gori, 2020; Rossi, 2020; Galdi, 2020; Arena, 2020). In the interpretation of the constitutional judge, Art. 55 CTS constitutes "one of the most significant implementations of the principle of subsidiarity" by virtue of which "a channel of shared administration, alternative to that of profit and the market, is established: *co-programming, co-design*[...] are configured as phases of a complex procedure that is an expression of a different relationship between the public and the private social sphere, not based simply on a synallagmatic relationship." The reference to the principle of subsidiarity is further explicated in the overcoming of the idea "whereby only the action of the public system is intrinsically suited to the performance of activities of general interest and it has been recognized that such activities well may, instead, also be pursued by an autonomous initiative of citizens," a consequence of the "recognition of the profound sociality that connotes the human person and its possibility of realizing a positive and responsible action" (Constitutional Court no. 131/2020). Ultimately, in the interpretation of the constitutional judge, "third sector entities in so far as they are representative of *solidarity society* [...] often constitute a capillary network of proximity and solidarity on the territory, sensitive in real time to the needs that come from the social fabric, and are therefore able to make available to the public body both valuable information data [...] and an important organizational and intervention

capacity: what often produces positive effects, both in terms of saving resources and increasing the quality of services and benefits provided in favor of the *society of need*."

The role of Social Enterprise for the inclusion and reintegration into the labor market "of workers and people with disadvantages or disabilities"

Among the benefits provided for the "society of need" are those new activities of general interest of "services aimed at the insertion or reintegration into the labor market of workers and disadvantaged or disabled persons" (Art. 2, paragraph 1, letter p. Legislative Decree No. 112/2017). It is legitimate to question the meaning of the expression "disadvantaged people or people with disabilities" which—while clearly presenting two alternative categories (disadvantaged people or people with disabilities) as if to imply that people with disabilities are not also disadvantaged and vice versa—come to be lumped together by the perception of some form of weakness. On this point, the provision in Paragraph 4 of Article 2 of Legislative Decree No. 112/2017 - through the reference to Article 112, Paragraph 2, of Legislative Decree No. 50/ 2016 - clarifies the scope of the "alleged" distinction: that is, "persons with disabilities" are considered to be those referred to in Article 1 of Law No. 68/1999 i.e., "persons of working age suffering from physical, mental or sensory impairments and to the intellectually disabled, resulting in a reduction in the ability to work of more than 45 percent [...]; persons disabled for work with a degree of disability of more than 33 percent [...]; blind or deaf-mute persons [...]; persons disabled by war, civilian invalids of war and disabled for service [...]." While "disadvantaged" are considered to be the people specified in Article 4 of Law no. 381/1991, namely, "the physically, mentally and sensory disabled, former inpatients of psychiatric hospitals, including judicial ones, persons undergoing psychiatric treatment, drug addicts, alcoholics, minors of working age in situations of family difficulties, persons detained or interned in penitentiary institutions, convicts and interneers admitted to alternative measures to detention and outside work pursuant to Article 21 of Law No. 354 of July 26, 1975, as amended." In essence, what seems to be inferred from reading the above-mentioned regulations is that the category of disadvantaged persons should be considered as a broader category into which persons with disabilities can also be included. The distinction arises again in reference to the conventional instrument referred to in Articles 11-12 and 12 bis of Law No. 68/99 and those under Article 14 of Legislative Decree No. 276/2003 (Garofalo, 2008), where, while in the latter provision we refer to the job placement of "disadvantaged workers and disabled workers," in Law No. 68/99 the references only to "disabled workers." Therefore, the distinction of the protected categories "persons with disabilities" and "disadvantaged persons" is confirmed, but the question that constitutes a qualifying point on the subject of occupational well-being and sustainable development is: can the intervention of the social enterprise or, in any case, of the Third Sector entities, also concern persons who are disadvantaged and disabled and, who, instead, maybe involved among the variables related to the effects for the person and for the work organization such as: presenteeism; burnout; mobbing/straining; (in)job satisfaction, etc.? Indeed, with the epidemiological emergency, there has been a form of experimentation with outreach facilities, which has involved through forms of shared administration Third Sector entities for health promotion and prevention, as well as

for the care and rehabilitation of frail people (Article 1, paragraph 4 bis, DecreeLaw No. 34/2020 converted into law No. 77/2020). What should be pointed out is that the objective of the aforementioned experimentation is to "promote the well-being, quality of life and autonomy of all people with particular reference to fragile people," meaning by the latter "those suffering from chronic diseases, disabled, with mental disorders, with pathological dependencies, non-self-sufficient" (p. 2 "Guidelines for the implementation of regional projects on the experimentation of outreach facilities"). If, on the one hand, once again, the perimeter of the categories of people targeted by the "outreach services" does seem to be clear, since, for example, the category of "disadvantaged people" is not counted among the protected fragile ones (even if it is nevertheless intended to promote welfare "to all people" and, therefore, also to disadvantaged ones, albeit "with particular reference to the fragile ones"); on the other hand, an unequivocal factis represented by the entrusting of care services to Third Sector entities. In the latter perspective, even the DelegatedLaw on Disability No. 227/2021 (Ferri, 2021), entrusts Third Sector entities with an active role in the elaboration of the life project of the person with disabilities in order to ensure their social and labor inclusion.

Literature review. Essential bibliography on Third Sector and social enterprise law treated from a labor law perspective.

Research methodology. Due to the complexity of the subject matter, the research was conducted using qualitative survey techniques with the aim of describing and interpreting social norms and cultures and offering descriptive models of behavior, organizations, and social dynamics. The research was developed in three phases:

1) Normative analysis. With the Delegated Law No. 106/2016 "Delegation to the Government for the reform of the Third Sector, social enterprise and for the regulation of universal civil service," a path of reform of the Third Sector was started and is still ongoing. According to the provisions of the delegation, the government has adopted:

- on the subject of Universal Civil Service, Legislative Decree No. 40/2017 on "Establishment and discipline of Universal Civil Service, pursuant to Article 8 of Law No. 106 of June 6, 2016."

- in the field of 5 per thousand, Legislative Decree No. 111/2017 bearing "Discipline of the Institute of 5 per thousand of personal income tax in accordance with Article 9, paragraph 1, letters c) and d) of Law No. 106 of June 6, 2016"

- in the field of social enterprise, Legislative Decree No. 112/2017 on "Revision of the regulations on social enterprise, pursuant to Article 2, paragraph 2 of Law No. 106 of June 6, 2016.

- in the field of a general revision of regulations on Third Sector Entities, registers, tax treatment, supervision of Third Sector Entities, Legislative Decree No. 117/2017 bearing "Code of the Third Sector, pursuant to Article 1, paragraph 2, letter b) of Law No. 106 of June 6, 2016."

- The Delegated Law also provided, within one year after the entry into force of each legislative decree, for the possibility of issuing supplementary and corrective provisions to the decrees. They were, therefore, issued:

- Legislative Decree No. 43 of April 13, 2018, containing supplementary and corrective provisions to Legislative Decree No. 40 of March 6, 2017;

- Legislative Decree No. 95 of July 20, 2018 on supplementary and corrective provisions to Legislative Decree No. 112 of July 3, 2017;

- Legislative Decree No. 105 of August 3, 2018 on supplementary and corrective provisions to Legislative Decree No. 117 of July 3, 2017.

- Law No. 68 of March 12, 1999, "Regulations for the right of the disabled to work". Legislative Decree September 10, 2003, No. 276 "Implementation of the delegations on employment and labor market, referred to in Law No. 30 of February 14, 2003. Law No. 77 of July 17, 2020, "Conversion into law, with amendments, of Decree-Law No. 34 of May 19, 2020, containing urgent measures on health, labor and economic support, and social policies related to the epidemiological emergency from COVID-19.

1) Doctrinal analysis. The following scholarly contributions are to be considered particular doctrinal reference points for the development of this scientific texts:

- Consorti, P., Luca, G., & Rossi, E. (2018). Law of the Third Sector, Società editrice il Mulino spa.

- Iasiello P. (2018). The social enterprise, Cendon Book-Civillaw.

- Montanini, L., & D'Andrea, A. (2020). The reform of the Third Sector. The impact on accountability tools. Giappichelli Editore.

- Riccobono, A. (2020). Employment law and the third sector. Employment and partnership welfare after d. lgs. n. 117/2017, Edizioni scientifiche italiane.

2) Jurisprudential analysis. Decision of the Constitutional Court n. 131 of 2020

Discussion and conclusions. The question arises as to whether the promotion of welfare for "weak" categories entrusted to the intervention of Third Sector entities should walk hand in hand with corporate welfare, of whose development the Third Sector itself is a potential provider of services with a high social impact. The question arises in the absence of a specific regulatory provision that legitimizes the Third Sector's intervention in promoting the welfare of workers who, while not falling into the protected categories (frailty, disadvantage, disability), are nevertheless still bearers of general interests to be protected.

In other words, in the face of the (non-similar) cases of "disability," "disadvantage," and "frailty," the proactive intervention of Third Sector entities is desirable to protect that residual sphere of categories of workers (not assimilated to the aforementioned categories) whose work well-being could have a significant impact on the organization's productivity performance.

In particular, the direct and active involvement of Third Sector entities in promoting the "welfare" of workers could be very significant in revitalizing the corporate welfare system as well. The latter is, in fact, inextricably linked to

occupational welfare: two aspects that Third Sector entities must be able to unitedly protect.

Ultimately, thanks to the model of shared administration implemented by Third Sector entities being able to incisively contribute to the implementation of the principle of horizontal subsidiarity, it is possible to create aggregative forms that open up the prospect of new professionalism by offering a service not only for the benefit of the disadvantaged, fragile and/or disabled but towards all workers involved in the company in which the welfare to be protected becomes a flywheel for sustainable development in terms of social and labor inclusion.

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