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THE PRINCIPLE OF SOLIDARITY WITHIN THE ITALIAN CONSTITUTION. RECENT ISSUES AND DEVELOPMENTS IN THE EUROPEAN CONTEXT

Abstract

The Constitution of the Italian Republic asserts the principle of solidarity in a particularly evident manner and marks one of the clearest instances and one of the most strongly enshrined manifestations of that principle within Europe. The centrality and pervasive way this watchword of the contemporary political and legal lexicon is used takes on a particular depth in the light of the immense tragedy of the migrants crossing the Mediterranean Sea, who for several years now have been knocking on the doors of Europe day after day, with a profound effect on the Old Continent. The word solidarity has taken on an even more dramatic depth since Russia launched an unprovoked war of aggression against its peaceful neighbour, Ukraine, resulting in a significant armed conflict in Europe and an increase in the number of refugees and asylum-seekers from Ukraine. In contrast to the weak and uncertain European solidarity towards those migrants who reach its southern boundaries, the EU's solidarity towards the Ukrainian people has been clear and evident.

Keywords

solidarity, Italian Constitution, migrants, Europe

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INTRODUCTION

The term solidarity,¹ as is known, originates from ethical and religious discourse, echoing the ancient term of fraternity. As a constant concern within the social teachings of the Church and an object of various encyclicals, it did not feature in the constitutions of the liberal era.

However, with the advent of the welfare state it has invaded public discourse. Having been enshrined in the principal European constitutions after the devastation of the Second World War, with the adoption of the Charter of Fundamental Rights and the subsequent Lisbon Treaty,² solidarity has taken on a central importance also within the new constitutional and institutional framework of the European Union, which grants it the status of one of the “indivisible, universal values”³ alongside human dignity, freedom, and equality.

The centrality and pervasive way this watchword of the contemporary political and legal lexicon is used takes on a particular depth in the light of the immense tragedy of the migrants crossing the Mediterranean Sea who for several years now have been knocking on the doors of Europe day after day, with a profound effect on the Old Continent.

The word solidarity has taken on an even more dramatic depth since Russia launched an unprovoked war of aggression against its peaceful neighbour, Ukraine, resulting in a significant armed conflict in Europe

¹ B. Pezzini, C. Sacchetto (eds.), *Il dovere di solidarietà*, Giuffrè, Milan, 2005; F. Giuffrè, “I doveri di solidarietà sociale”, in: R. Balduzzi, M. Calvino, E. Grosso (eds.), *I doveri costituzionali: la prospettiva del Giudice delle leggi*, Giappichelli, Turin, 2007, p. 3; Id, “Alle radici dell’ordinamento: la solidarietà tra identità e integrazione”, *Rivista AIC, Associazione italiana Costituzionalisti*, 2019, 4; L. Carlassare, “Solidarietà: un progetto politico”, *Costituzionalismo.it*, 2016, Issue 1; F. Polacchini, “Il Principio di solidarietà”, in L. Mezzetti (ed), *Diritti e doveri*, Turin, 2013, p. 227; D. Florenzano, D. Borgonovo Re, F. Cortese, *Diritti inviolabili, doveri di solidarietà e principio di eguaglianza*, Giappichelli, Turin, 2nd ed. 2015, p. 53. See also L. Mezzetti, F. Polacchini, *Diritto costituzionale, Casebook*, Pacini giuridica, Pisa, 2019, p. 9.

² See Article 42(7) of the Treaty on European Union (TEU) and Article 222 of the Treaty on the Functioning of the EU (TFEU), which imposes an obligation on EU Member States to act jointly if a Member State is the object of a terrorist attack or the victim of a natural or man-made disaster.

³ See the Preamble to the Charter of Fundamental Rights of the European Union.

and an increase in the number of refugees and asylum-seekers from Ukraine.

This paper will be focused around three main arguments: first it will sketch out a short genealogy of the principle of solidarity within the Italian constitutional system, and briefly illustrate the implicit and explicit content within the Constitution. Secondly, with an inevitable degree of approximation imposed by the requirements of synthesis, it will trace out the specific scope in Italy of the principle of solidarity and the social rights of foreign nationals, including specifically migrants, in the light of the case law of the Constitutional Court.

Finally, it will set out several grounds for reflection on the “tangible” crisis of solidarity in Europe concerning migrants on the one hand, and the “compact” response of solidarity in Europe to refugees from Ukraine on the other hand.

It is important to state at the outset that it will not be possible within the short space available in this paper to provide an account, even in summary form, of the various legal problems surrounding such a broad and fluid issue. These problems are extremely complex and relate to questions that are not only strictly ideological and political in nature, but also historical, sociological, and economic. However, reference may be made to some specific points to draw some final conclusions.

I. THE ITALIAN CONSTITUTION: MOVING BEYOND LIBERAL 19TH CENTURY INDIVIDUALISM AND AS A RESPONSE TO FASCISM

All Western European Constitutions adopted after the Second World War establish constitutional frameworks which may be classified in terms of the “welfare state”⁴ and embrace, albeit in different ways, the

⁴ See the fundamental contribution by Giovanni Bognetti, *La divisione dei poteri*, Giuffrè, Milan, 2001, translated as *Dividing Powers. A theory of the separation of powers*, edited by Baraggia and Vanoni. Cedam Wolters Kluwer, 2017, p. 35. The principle of solidarity, which permeates the Italian Constitution, was proclaimed for example in the Preamble to the 1946 French Constitution and subsequently in Article 1 of the Constitution of the 5th Republic; it is clearly apparent in Articles 1 and 20 of the German Basic Law of 1949, and also in Articles 2 and 138 of the Spanish Constitution. However, the expres-

principle of solidarity. However, the Italian republican Constitution, which entered into force on 1 January 1948, asserts the principle of solidarity in a particularly evident manner and marks one of the clearest instances⁵ and most strongly enshrined manifestations of the principle within Europe.

As is always the case,⁶ the reasons for this have deep roots in history: the characteristics of the Italian Constitution may only be comprehended to the full in the light of the historical events which accompanied its adoption and then its implementation.

The drafting of the republican Constitution by the Constituent Assembly, which was elected by the people of Italy on 2 June 1946,⁷ occurred during the aftermath of the twenty-year dictatorship, the painful defeat in the war, and the Resistance, and marked the restoration and re-birth of democratic institutions. It was necessary to rebuild Italy in both a material and a moral sense out of the ruins of the fascist regime and the previous liberal regime.

The Italian Constitution thus amounts to the endpoint of a political process which started with the fall of fascism, followed by the assertion by anti-fascist political parties organized into the Committee of National Liberation (C.L.N.) of their leading role within that political process. Despite being profoundly divided amongst themselves, these political parties shared the common aim of creating a state that was not only diametrically opposed to the fascist state, but also, broadly speaking, substantially different from the pre-fascist state. The essential values of the democratic state, such as freedom, equality and solidarity, represent the

sion “welfare state” does not appear in the Italian Constitution, whilst Article 20 of the German Basic Law asserts that the Federal Republic of Germany is a federal, democratic, and social state. A similar provision is contained in the 1978 Spanish Constitution, which provides (in Article 1) that “Spain is established as a democratic and social state governed by law”, whilst the 1958 French Constitution states in Article 1 that “France is an indivisible, secular, democratic, and social republic”.

⁵ S. Giupponi, *Solidarietà. Un itinerario di ricerca*, Editoriale Scientifica, Naples, 2022.

⁶ G. Bognetti, *Introduzione al diritto comparato. Il metodo*, Giappichelli, Turin, 1994, p. 23.

⁷ Italians chose the Republic in the institutional referendum of 2 June 1946, which was the first vote to be held according to universal suffrage without any distinction on the grounds of gender. At the same time, 556 members of the National Assembly were elected.

common starting points of the political forces present within the Constituent Assembly, as the conceptual and foundational basis for the new Constitution.

Leaving aside these *common elements* for the various political groupings present within the Constituent Assembly, it is important to note the highly heterogeneous and profoundly diverse composition of the ideological groupings represented by the deputies elected within the Constituent Assembly. This was certainly a reason for the compromise status of various rules within the Constitution, and indeed of the Constitution as a whole. There is full agreement within the literature concerning the fact that the Italian Constitution is the result of a compromise between Catholic, Liberal, Socialist, and Marxist political forces.⁸

If the normative content of the individual provisions of the Constitution is considered, the decisive Catholic influence is clearly apparent, for example in the definition of relations between Church and State⁹, or within the provisions applicable to the family. Conversely, as regards the issue of solidarity, the assertions of principle, and all of the provisions that express the desire to give the constitutional text an advanced social content are a clear expression of the ideals of the workers' movement; these provisions represented a clear break with the tradition of the previous Albertine Statute¹⁰ and define the constitutional objectives with significant social content that were imposed as goals for future legislators.

There are numerous examples of this, including primarily the definition of Italy as a "Democratic republic grounded on work" (Article 1

⁸ It is not superfluous to point out that the Communists had been a central pillar of the Resistance and that Marxist parties represented more than 40% of the Constituent Assembly. Following the "*conventio ad escludendum*" (namely the political shift that marked the end of coalition governments between Catholics, Socialists and Communists followed by the exclusion of the last two parties from the government in April 1947), the Italian Communist Party maintained constant relations with the Soviet Union and established a stable consensus amongst around 25/30% of the electorate. See L. Elia, entry for *Governo* [Government], *Enciclopedia del Diritto*, XIX, Giuffrè, Milan, 1970, p. 655.

⁹ See Article 7 of the Italian Constitution.

¹⁰ The Albertine Statute was promulgated by Charles Albert of Savoy on 4 March 1848 as a "fundamental, perpetual and irrevocable law of the monarchy" and remained in force (at least formally) throughout the entire period of existence of the Kingdom of Italy until the end of the Second World War.

of the Constitution). This formula sought to reverse the value of the two constituent elements of the property-work dichotomy, enabling the latter to predominate over the former.

Also Article 4, which asserts the right to work as an instrument for the realization of the personality, and more generally the numerous provisions concerning economic and social relations were laid down with the aim of moving beyond 19th Century liberal individualism. Similarly, the variety of rules on the advancement of society towards a distribution of wealth in accordance with fairer criteria, not only in formal terms (Articles 35-43), represented a major novelty and laid the basis for developing a constitutional model of the welfare state.¹¹

It is within this context that the numerous and precise references - both *explicit and implicit* - to the vocation of solidarity inherent within the Italian Constitution, which is “strongly characterized by the principle of solidarity,” must be placed and construed. It constitutes in a certain sense the **foundational value**,¹² or the cement or glue holding together all the fundamental principles that permeate the legal order.

II. THE PRINCIPLE OF SOLIDARITY WITHIN THE ITALIAN CONSTITUTION

The principle of solidarity within the Italian Constitution, which is mentioned explicitly in Article 2, is naturally included amongst the core individual rights of the person. Article 2 provides that “*The Republic recognizes and guarantees the inviolable **rights** of the person, both as an individual and in the social groups where human personality is expressed.*”

The first part of this article will thus first and foremost recognize and assert the value of the individual, and the possibility for the individual to develop his or her own personality to the full, to be able to make his or her choices and to exercise his or her rights: it was out of this principle, which we may call “personalist”, that it was possible for

¹¹ G. Bognetti, *La Costituzione economica*, Giuffrè, Milan, 1995.

¹² G. Dossetti, “Assemblea costituente, I Sottocommissione, session of 9 September 1946”, in Camera dei Deputati, *La Costituzione della Repubblica nei lavori preparatori dell'Assemblea Costituente*, Segretariato Generale, 1970, Rome, Vol. I.

Italian democracy to be reborn after the dictatorship. The second part of the article will assert that in recognizing inviolable human rights, “*the Republic (...) calls for the fulfilment of the inderogable duties of political, economic and social solidarity*”. There is therefore a close connection between fundamental **rights** and the **duties** of solidarity. These accordingly constitute the deontological aspect to inviolable rights and a component of the personalist principle upon which our democracy is grounded. It is clearly apparent from a glance at the works of the Constituent Assembly that the founding fathers insisted that the Constitution of the Republic should bind together rights and duties “as inseparable sides, as two aspects of which one cannot be distinguished without the other”.¹³

Similarly, the literature has on various occasions stressed the importance of the duties of solidarity, which are inderogable in line with the inviolability of human rights, of both individuals and groups, as “no democracy can thrive unless it is buttressed by a sound and widespread civic spirit, by a virtue that fuels the conscience of individuals and inspires their conduct according to a principle of solidarity”.¹⁴ Also the Constitutional Court has stressed in this regard that the principle of solidarity is an “expression of deep-seated sociality which characterizes the individual (...) entailing the original connotation of man *uti socius*” and precisely for this reason has been posited by the Constitution amongst “the foundational values of the legal order”¹⁵ and “as a basis for social cohabitation”, as normatively stipulated by the Constituent Assembly.

In other words, the **acquired** significant role of the value of the individual within the architecture of the republican order constitutes the prerequisite for the assertion in law of solidarity as its corollary. As has been authoritatively explained,¹⁶ an assertion of the principle of solidarity – albeit **implicit** – is already present within Article 1 of the

¹³ See Meuccio Ruini, Presidente della Commissione per la Costituzione all'interno dell'Assemblea Costituente in F. Falzone-F. Palermo-F. Cosentino, *La Costituzione della Repubblica italiana. Illustrata con lavori preparatori*, Colombo, Rome, 1948, p. 24.

¹⁴ C. Mortati, *Costituzione dello Stato*, II, *La Costituzione italiana*, in *Enciclopedia del Diritto*, vol. XI, Giuffrè, Milan, 1962, p. 7; Id, *Forme di governo*, Padua, 1973, pp. 335-336.

¹⁵ Constitutional Court, judgment no. 75 of 1992, section 2.

¹⁶ C. Mortati, “Commento all'articolo 1”, in G. Branca (ed), *Commentario della Costituzione, Art. 1-12: Principi fondamentali*, Bologna and Rome, 1975, p. 1; Id, *Costituzione dello Stato*, cit, p. 214.

Constitution, which states that Italy is a democratic republic “founded on work”. Not only does it represent a “resounding break with tradition,” but the fact that this assertion was incorporated into the **opening provision** of the Constitution, and indeed within the first phrase or its first paragraph, enhances its status. “The right to work is the first of the fundamental principles of the Italian Constitution and is vested with the status of `constitutional super-legality` and an `idea-force` that inspires all other principles and encapsulates them.” Therefore, within the republican constitutional model, work – precisely insofar as it “realises a synthesis between the personalist principle and that rooted in solidarity” – performs a central role which is in fact unknown within other legal systems that also embrace the principles of the democratic and social state, thereby shaping, so to speak, the connective tissue for the entire legal order.

The principle of solidarity is also closely related to the principle of equality enshrined in Article 3. The principle of solidarity in fact provides the new basis for the legitimation of the democratic state, which is directly involved, through the recognition of social rights, in **giving effect** to the equal freedom of citizens to participate in public life.¹⁷ Article 3 of the Italian Constitution recognizes (with a “sincerity” not encountered elsewhere¹⁸) the abstract nature of the formal assertion of equality and assigns the Republic the task of removing obstacles to the effective development of the individual and ensuring cohesion between the many heterogeneous components of the collectivity organized into the state. The vocation of solidarity is in addition linked to the principle of subsidiarity which, following the constitutional reform introduced in 2001, is expressly recognized in Article 118 of the Constitution. The recognition of solidarity between individuals and communities is in fact implemented through the principle of subsidiarity. As a result of the same reform of constitutional law, an explicit reference to the principle of solidarity is also found in the new Article 119(5) of the

¹⁷ G. Bognetti, entry for *Diritti dell'uomo* [Human Rights], in *Digesto delle Discipline Privatistiche*. 5th Civil Division, Turin 1989, p. 381; A. Baldassarre, *Diritti della persona e valori costituzionali*, Giappichelli, Turin, 1997.

¹⁸ See F. Fernández Segado, “Consensus e ideología en la Constitución española de 1978”, *Revista de la Asociación IUS ET VERITAS*, 1993, Issue 4, p. 11.

Constitution¹⁹ which sets out the fundamental contours of financial relations between the local government bodies comprising the Republic.

Finally, it should be pointed out that the application of the principle of solidarity is evident also within the part of the Constitution dedicated to economic relations, including Article 45 on cooperatives and protection for the handcraft sector. It provides that the Republic shall recognize the social function of non-profit cooperation. In making the brief reference to cooperation “which must be one of the linchpins of democracy”,²⁰ the constitutional legislator establishes mutuality as the aim of cooperatives and as an instrument for regulating relations between individuals whilst inducing them to sacrifice the personal speculative objective. The principle of solidarity manifests itself in the cooperative company’s aim to pursue goals different from those expressed by members. A cooperative company’s aims may thus be classified in solidarity towards society and the local territory.

There are many other constitutional duties of solidarity expressly enshrined in constitutional law.²¹ However, the prevailing literature considers that, given its persuasive character, the principle of solidarity is not expressed solely through the provisions of the Constitution, but involves an open series²² of legal institutes. The duties of solidarity that are not expressly enshrined within constitutional law are those identified by the Constitutional Court, those existing within uniform and settled case law, or those that have been introduced through ordinary

¹⁹ Article 119 of the Constitution stipulates an obligation of cohesion and social solidarity as one of the prerequisites that can justify the allocation of additional resources or special intervention by the state.

²⁰ F. Cimenti, E. Canevari, in F. Falzone, F. Palermo, F. Cosentino, *La Costituzione della Repubblica italiana*, cit. p. 91.

²¹ The following constitutional duties of solidarity have been explicitly enshrined in constitutional law: the right/duty to work (Article 4), the right/duty to mandatory education and the right of the able and deserving to achieve the highest level of study (Article 34), the right to health (Article 32), the legal right/civic duty to vote (Article 48), the duty to defend the homeland, which must not prejudice employment circumstances and the exercise of political rights (Article 52), the duty to pay tax (Article 53), and the duty of loyalty to the Republic and of respect for its laws (Article 54).

²² A. Barbera, “Commento all’articolo 2”, in G. Branca (ed), *Commentario della Costituzione* cit.; Id, *Diritti dell’uomo e libertà fondamentali*, Bologna, 1984, p. 54 ss.; A. Pace, *Problematologia delle libertà costituzionali*, Cedam, Padua, 2003, p. 20; P. Caretti, G. Tarli Barbieri, *I diritti fondamentali. Libertà e Diritti sociali*, Giappichelli, Turin, 2022.

legislation, such as for example, in relation to foreign nationals, the Consolidated Law on Immigration referred to above.

III. THE PRINCIPLE OF SOLIDARITY AND SOCIAL RIGHTS TOWARDS FOREIGN NATIONALS

The principle of solidarity pervades the structure of the republican legal order which contemplates, as has been noted, innumerable forms of expression of the principle of solidarity. There is no doubt that Article 2 of the Italian Constitution gives rise - at least within the intention of the Constituent Assembly - to a conception of associated life as "life in which all persons express solidarity with the destinies of all others."²³ However, do fundamental rights, and specifically social rights, and the inderogable duties of solidarity, apply only to Italian nationals or also to foreigners?²⁴ Article 3 of the Constitution, which enshrines the principle of equality and promotes *action by the state with the aim of removing obstacles of an economic and social nature that prevent the full development of the individual*, refers only to citizens ("All citizens shall have equal social dignity"). Similarly, also the fundamental principles guaranteed in Part One of the Constitution appear to apply only to Italian nationals.

The literature²⁵ considers that the interpretation of these provisions must not be limited solely to their literal wording. Conversely, an expan-

²³ G. Dossetti, *supra note 12*.

²⁴ It should be pointed out that Italy was a country of emigrants at the time the Constitution was adopted. It is sufficient to consider that the Republican Constitution of 1948 expressly recognized freedom of emigration and enshrined the protection of Italian workers abroad (Article 35(4)). See V. Onida, "Lo statuto costituzionale del non cittadino", in AAVV., *Lo statuto costituzionale del non cittadino*, Atti del Convegno di Cagliari, 16 ottobre 2009, Associazione Italiana dei Costituzionalisti, Jovene, Naples, 2010, p. 3. A. Sciorino, *Anche voi foste stranieri*, Laterza, Bari, 2010.

²⁵ C. Lavagna, "Basi per uno studio delle figure giuridiche soggettive contenute nella Costituzione italiana", in Id., *Studi economico-giuridici*, Cedam, Padua, 1953, p. 14; L. Paladin, *Il principio costituzionale di uguaglianza*, Milan, 1965, p. 205; A. Pizzorusso, *Che cos'è l'eguaglianza?*, Editori riuniti, Rome, 1983, p. 69; E. Grosso, entry for *Straniero* [Foreigner], in *Digesto delle Discipline Pubblicistiche*, XV, Utet, Turin, 2000, p. 162; B. Pezzini, "Una questione che interroga l'uguaglianza: i diritti sociali del non-cittadino", in AAVV., *Lo statuto costituzionale del non cittadino*, cit., p. 163; C. Corsi, "Stranieri, diritti sociali

sive reading of Article 3 is widely endorsed amongst jurists, according to which the principle of equality is applicable also to those who are not Italian nationals. Also, the decisions of the Constitutional Court have for some time preferred an expansive reading of fundamental rights. Since the 1960s the Constitutional Court has adopted a clear position in asserting that “whilst it is the case that Article 3 of the Constitution refers expressly to citizens only, it is also the case that the principle of equality also applies to foreign nationals *as far as respect for fundamental rights is concerned*”.

Over subsequent years the extension of fundamental rights to foreign nationals became consolidated within the case law of the Constitutional Court, both using Article 2 of the Constitution and the principle of solidarity where fundamental rights are in place and through Article 10(2) of the Constitution on the treatment of foreign nationals.²⁶ In general, when the benefit stipulated by law for Italian nationals is a remedy intended to permit “the specific satisfaction of ‘primary needs’ inherent within the sphere of protection of the individual, which it is the task of the Republic to promote and safeguard”,²⁷ the immigrant must be treated in terms fully equivalent with those applied to Italian nationals.

Accordingly, all of the provisions that subject the payment of allowances and social security benefits of various types to the prerequisite of possession of a residence card are unconstitutional.²⁸ A residence card may only be issued after a period of residence in Italy not shorter

e principio di eguaglianza nella giurisprudenza della Corte costituzionale”, in www.federalismi.it, Focus Human Rights, n. 7/2014, available at: <http://www.federalismi.it/document/22102014151431.pdf> [last accessed 20.03.2023].

²⁶ According to Article 10(2) of the Italian Constitution, “the legal status of foreign nationals shall be regulated by law in accordance with international law and treaties”. See G. D’Orazio, *Lo straniero nella Costituzione italiana (asilo-condizione giuridica-estradizione)*, Cedam, Padua, 1992; G. Bascherini, *Immigrazione e diritti fondamentali. L’esperienza italiana tra storia costituzionale e prospettive europee*, Jovene, Naples 2007; B. Nascimbene (ed), *Diritto degli stranieri*, Cedam, Padua, 2004; C. Corsi, *Lo Stato e lo straniero*, Cedam, Padua, 2001.

²⁷ Constitutional Court, judgment no. 187 of 2010.

²⁸ For example, the provision of financial assistance to underage persons who are physically disabled or civilian invalids and who encounter persistent difficulties doing their schoolwork and the activities typical of their age or who require rehabilitative treatment or therapy following their injury cannot be conditional upon the holding of a residence card.

than five years: thus, the wait required “could significantly compromise the need for care and assistance of individuals which the legal system should by contrast protect, if not even thwarting them entirely.”²⁹

The Constitutional Court has recently extended fundamental rights to non-Italian nationals – even where these do not relate to primary requirements – applying the principle of reasonableness. Whilst recognizing the “non-essential” and “constitutionally unnecessary nature” of services – with reference to the so-called benefits of a socio-welfare nature – it has increasingly consolidated an inclusive approach over the years. In a series of judgments, the Constitutional Court has stated its position regarding various provisions contained in laws enacted by the regions or autonomous provinces that provide for different treatment of foreign nationals based on their right to residence or the duration of their residence in a particular place. These included provisions granting free public transport to those who are fully disabled (judgment no. 432 of 2005), or creating beneficial arrangements for the right to study (judgment no. 2 of 2013), or access to regional financing for persons who are not self-sufficient (judgment no. 4 of 2013), or the grant of the carer’s allowance (judgment no. 40 of 2013) or a regional allowance to the immediate family (judgment no. 133 of 2013) or regional initiatives to combat poverty and social exclusion (judgment no. 222 of 2013).

In identifying a “logic of social solidarity”³⁰ at the root of financial benefits, the Court has constantly asserted that “the prerequisites of citizenship and extended periods of residence as criteria for selecting the recipients of payments appear to be entirely immaterial, and hence arbitrary, with regard to the rationale of those rights.” The lack of any connection between citizenship or the holding of a certain type of residence permit and “need” thus constitutes an intolerable element of unreasonableness. The authentic basis for the eligibility for benefits of the individual (whether a national or a “non-national”) is thus need. However, the large body of case law concerning the conditions under which foreign

²⁹ Constitutional Court, judgment no. 329 of 2011.

³⁰ Constitutional Court, judgment no. 222 of 2013 and no. 432 of 2015.

nationals are entitled to receive social security benefits has not always been consistent³¹.

For the sake of completeness, it is also important to note the recent debate on the Italian variant of universal basic income (“citizens’ income,” *reddito di cittadinanza*) established in April 2019³² in order to combat poverty, inequality, and marginalization. The legislation applicable to “citizens’ income” requires, amongst the various prerequisites stipulated to establish eligibility for this benefit, that foreign nationals must “hold a long-term resident’s EU residence permit.”

The Constitutional Court has held that the requirement of a long-term residence permit as a prerequisite for eligibility for citizens’ income is not unreasonable. Citizens’ income is not a simple initiative aimed at combatting poverty but pursues various other more nuanced objectives in the fields of active employment policy and social integration. Since its temporal horizon is not short, the prerequisite of holding a right of stable residence in Italy is not entirely unrelated to the rationale underlying the benefit.

IV. THE PRINCIPLE OF SOLIDARITY AND SOCIAL RIGHTS AS REGARDS MIGRANTS

It is sufficient to cast a glance at the daily media broadcasts over the last few years dedicated to Italian political debate to establish that one of the most widely discussed issues – throughout the Italian public sphere – has been the state’s treatment of migrants.

The enormous influx into Europe, above all through the gates of Italy and Greece, of persons from the Middle East and Africa fleeing war and persecution, who claim status as refugees, amounts to a genuine emergency, which continues to claim victims on the routes across the

³¹ See D. Loprieno, “Riflessioni sul reddito di cittadinanza e gli stranieri alla luce della sent. n. 19 del 2022 della Corte costituzionale”, *Osservatorio Costituzionale*, 2022, Issue 3, p. 252.

³² Decree Law no. 4, 19 April 2019. The “citizens’ income” was one of the key election promises from the anti-establishment Five Star movement, which has governed the country along with the right-wing populist and conservative party The League since the 2018 election.

Mediterranean. This is an influx in addition to that resulting from the “normal immigration on economic/social grounds” to which Europe has been subject since the 1990s.

It is a problem - with a highly emotive impact, a high rate of subjectivity and which has often been used and exploited by political parties³³ - to which Italy is extremely sensitive.³⁴ It is evident that the challenge of societies of today is not represented by foreigners in Italy with a valid residence document, nor indeed foreigners who are lawfully resident in Italy: the challenge comes from migrants, i.e. those present in the country who *in any way* cross the border without being a national of the country.³⁵ The question which we must pose for ourselves is therefore the following: do fundamental rights also apply to those who arrive on Italy’s shores daily? Do those present in Italy without a valid residence document also have some kind of right?

³³ See for example the debate surrounding Legislative Decree no. 94 of 2009 (the so-called security package), which introduced the offence of illegal immigration into Italian law. See also Constitutional Court, judgment no. 63 of 2022 which partially declared the illegitimacy of the criminalization of solidarity and the permanence of high detention sanctions.

³⁴ This is a much-felt problem above all by Italians who live in the south of the country in Lampedusa, in Sicily, in Calabria, and in the vicinity of the Italian coastal areas where hundreds of people are now arriving on a daily basis.

At the time of writing, at the beginning of 2023, more than 13,000 migrants reached the shores of Lampedusa in 24 hours (between Saturday 6 and Sunday 7 May), further overcrowding the reception centre on the tiny Italian island in the central Mediterranean. A total of 40,856 migrants arrived in Italy in the first four months of 2023, compared to 10,188 in the whole of last year, according to official figures from the Italian interior ministry. More than 100,000 foreign minors reached the shores of Italy over the last ten years. Source: UNHCR. On 11 April 2023, Italian Prime Minister Giorgia Meloni declared a six-month national state of emergency, which enables the Italian government to speed up migrant repatriations, as well as granting other powers. In response to the Cutro shipwreck on 26 February, which led to the deaths of at least 94 migrants, the Italian Parliament converted into law Decree Law no. 20 of 10 March 2023 on migration (the “Cutro decree”). The package of measures severely limits the special protection status that Italian authorities can grant to migrants who do not qualify for asylum.

³⁵ F. Biondi Dal Monte, “Regioni, immigrazione e diritti fondamentali”, available at: http://www.forumcostituzionale.it/wordpress/images/stories/pdf/documenti_forum/giurisprudenza/2010/0047_nota_269_299_2010_biondi.pdf; A. Randazzo, “La salute degli stranieri irregolari: un diritto fondamentale “dimezzato”?” available at: <http://www.giurcost.org/studi/randazzo3.pdf> [last accessed 15.02.2023]; C. Corsi, *supra note* 25.

It is beyond question that a foreign national - whether irregular or undocumented - must be vested with fundamental constitutional rights, according to the many lines of argument deployed in this area for some time by the literature³⁶ and the Constitutional Court, which agree on this issue. Moreover, an affirmative answer to this question is provided by the applicable legislation on immigration. Article 2 of the Consolidated Law on Immigration³⁷ states that “any foreign national present *on any grounds* at the border or within the territory of the state shall be guaranteed the fundamental human rights provided for under internal law, international conventions in force, and the generally recognized principles of international law”.

It is evident that the rationale for the applicability and application of fundamental rights also to foreign nationals who do not hold a residence permit lies in the simple fact that they are *persons* within the territory of Italy, irrespective of their status.

Amongst the fundamental rights, the right to health provided for under Article 32 of the Constitution is of the utmost significance. The *right to health*, which leaves no doubt - having regard also to its literal wording - as to its status of a fundamental human right,³⁸ is reiterated by Article 35 of the Consolidated Law. It provides that “foreign nation-

³⁶ L. Montanari, “La giurisprudenza costituzionale in materia di diritti degli stranieri”, *Federalismi*, n. 2/2019, available at: <chrome-extension://efaidnbmnnpkajpcglclefindmkaj/https://www.astrid-online.it/static/upload/2503/25032019222142.pdf> [last accessed 05.01.2023].

F. Cerrone, “Identità civica e diritti degli stranieri”, *Politica del diritto*, 1995, Vol. 26, Issue 3, 1995, p. 441; M. Luciani, “Cittadini e stranieri come titolari dei diritti fondamentali. L’esperienza italiana”, *Rivista critica del diritto privato*, 1992, p. 203; S. Sicardi, “L’immigrato e la Costituzione. Note sulla dottrina e sulla giurisprudenza costituzionale”, in *Giurisprudenza italiana*. 1996, IV, p. 313.

³⁷ The Consolidated Law on Immigration (Law no. 286) was enacted on 25 July 1998. It is available at the address: <http://www.camera.it/parlam/leggi/deleghe/98286dl.htm> [last accessed 10.01.2023]. The Consolidated Law on Immigration has been amended on various occasions and submitted to the Constitutional Court for review in relation to various aspects. For example, in judgments no. 222 and 223 of 2004, the Constitutional Court ruled unconstitutional, at least with reference to certain aspects of the legislation in question, rulings that were incompatible with the constitutional law on personal freedom.

³⁸ Article 32 of the Constitution refers to persons in general and not to Italian citizens in asserting that “The Republic shall safeguard health as a fundamental right of the individual and as a collective interest, and guarantee free medical care to the indigent”.

als present within the national territory who are not compliant with the rules governing entry and residence, shall be guaranteed outpatient and hospital care that is urgent or otherwise essential, including on an ongoing basis, for illnesses and accidents at public and accredited facilities, and the programmes of preventive medicine in order to safeguard individual and public health shall be extended to such persons.”³⁹

The Constitutional Court has provided clarification on this issue on various occasions, holding that it is necessary to safeguard “the guarantee of an *irreducible core* of the right to health.” It “is protected by the Constitution as an inviolable sphere of human dignity, which mandates that any situations lacking protection that could prejudice the enjoyment of that right be excluded”.⁴⁰ This is a core “which must therefore be recognized also in relation to foreign nationals, *irrespective* of their status vis-a-vis the provisions governing entry into and residence within the state, notwithstanding that the legislator may stipulate different arrangements for its exercise”.

It is interesting to recall in this regard a decision from more than twenty years ago⁴¹ which indicated a greater openness on the part of the Court. The question of constitutionality was related to the prohibition on the expulsion of foreign non-Community nationals who, having entered the country illegally, remained there for the sole purpose of completing essential treatment for an illness contracted prior to arrival. This scenario is not expressly provided for under the Consolidated Law, but in the decision of the Court, which held that “the ‘irreducible core’ of protection of health guaranteed under Article 32 of the Constitution as a fundamental human right must be recognized also in relation to foreign nationals, irrespective of their status vis-a-vis the provisions governing the entry into and residence within the state.”

If a foreign national invokes the right to health, the expulsion order must be preceded by an “assessment of the state of health of the individual and the non-deferrable and urgent nature of the treatment according to a prudent medical assessment.” “The irreducible core” of the fundamental right to health laid down in Article 32 of the Constitution

³⁹ Article 35(3).

⁴⁰ Constitutional Court, judgments no. 269 of 2010; no. 269 of 2010; no. 299 of 2010; no. 61 of 2011; no. 252 of 2001; no. 509 of 2000; no. 309 of 1999 and no. 267 of 1998.

⁴¹ Constitutional Court, judgment no. 252 of 2001.

and reiterated by Article 35 of the Consolidated Law thus renders the distinction between legal and illegal immigrants irrelevant. The Court concludes by asserting that, based on the applicable legislation, it is not possible “to expel an individual who could, as a result of the immediate implementation of the order, suffer irreparable harm” to his or her right to health, even where the individual is suffering from an illness contracted prior to arrival in Italy.

Also the right to a defence, the guarantee of personal freedom and the guarantee of the right for a matter to be dealt with by the courts⁴² laid down in Article 13 of the Constitution, along more generally with the right to judicial relief, without doubt fall within the scope of the constitutional guarantees available to foreign nationals, irrespective of their status. The Consolidated Law on Immigration does not leave any doubt in this respect.⁴³ Also the case law of the Constitutional Court is unequivocal in this respect. As far as the guarantee of the right for a matter to be dealt with by the courts is concerned, the Constitutional Court explicitly denies that “the guarantees under Article 13 of the Constitution are mitigated at all in relation to foreign nationals.”⁴⁴ The Constitutional Court also expressly held that a foreign national, even if irregular or undocumented, is fully entitled to exercise the right to a defence in relation to the guarantee of the right to be heard, to linguistic assistance, to representation free of charge, to return to Italy in order to participate in a criminal trial, and to confirmation proceedings in relation to expulsion orders and the relative arrangements for their enforcement. As far as judicial relief is concerned, “the right to the review of an expulsion order, along with a full guarantee of the right to a defence, is vested not only in foreign nationals lawfully resident in Italy, but also those present unlawfully within the national territory.”⁴⁵

To summarize, we may therefore assert that the Consolidated Law on Immigration is legitimately situated within a solid constitutional framework, with the backing of the Constitutional Court, in vesting fundamental rights in foreign nationals “present on any grounds at the bor-

⁴² According to Article 13 of the Italian Constitution personal liberty is inviolable.

⁴³ See Article 2(5), which provides that “equal treatment for all citizens with regard to judicial protection for rights and legitimate expectations”.

⁴⁴ Constitutional Court, judgment no. 105 of 2001.

⁴⁵ Constitutional Court, judgment no. 198 of 2000.

der or within the territory of the state”, which includes “equal treatment with Italian nationals with regard to judicial protection for rights and legitimate expectations”. However, whilst as far as the protection of the right to health and judicial relief are concerned, there is no problem concerning the formal right of the foreign national, there is a problem in the effective exercise⁴⁶ of these rights. Their full exercise is at times *de facto*

⁴⁶ Reference is made here to the serious problems concerning the procedure for removing foreign nationals, which are managed in full by the administrative authorities without any involvement of the courts, either in order to approve the expulsion order or to authorize its enforcement (even though this impinges upon personal freedom and even though Article 13 of the Constitution explicitly provides that only the courts may impose restrictions on personal freedom).

On this point see the study by A. Pugiotto with the eloquent title “Purché se ne vadano” (As long as they go away), in various authors, *Lo statuto costituzionale del non cittadino*, cit.; A. Caputo, *Diritto e procedura penale dell’immigrazione*, Turin, 2006, p. 286; A. Ruggeri, “Cittadini, immigrati e migranti, alla prova della solidarietà”, *Diritto immigrazione cittadinanza*, 2019, Issue 2, available at <https://www.dirittoimmigrazione cittadinanza.it/archivio-saggi-commenti/saggi/fascicolo-n-2-2019-1/393-cittadini-immigrati-e-migranti-alla-prova-della-solidarieta> [last accessed 10.3.2023]; N. Maggini, “The Social and Political Dimensions of Solidarity in Italy”, in C. Lahusen, M. Grasso (eds) *Solidarity in Europe: Citizens’ Responses in Times of Crisis*, Palgrave Studies in European Political Sociology, 2018. Precisely the lack of adequate forms of judicial relief within the mechanism for expulsion illustrated lies at the root of the concerns expressed by Amnesty International in both the 2015 and the 2016 reports on The State of the World’s Human Rights within the section dedicated to Italy.

In addition, as can readily be imagined, when confronted with the incessant migratory flows from North Africa towards the Italian coasts, reception facilities on the island of Lampedusa and in the ports of southern Italy are perennially overcrowded, which has had extremely serious consequences in terms of the protection of fundamental rights. See regarding this aspect the recent judgment of the Dutch Council of State given on 26 April 2023 concerning a case brought by two migrants, one from Nigeria and another from Eritrea. Both claimants had entered Europe through Italy. The Nigerian man had sought asylum three times in Italy before applying in the Netherlands, whilst the other man had arrived in Italy but had not sought asylum there. Under the terms of the Treaty of Dublin, both of them should have been sent back to Italy as the first step country.

However, the supreme administrative court in the Netherlands held that the country could not send the asylum seekers back to Italy as there was a tangible risk that their human rights would be violated owing to the lack of adequate reception facilities in Italy. “The Italian authorities are unable to provide reception for (asylum seekers) owing to the lack of reception facilities. Without reception, there is a genuine risk that their basic needs, such as shelter, food, and running water, will not be met, which is a human rights violation.” See Dutch Council of State, Administrative Law Division, Judgments 202207368/1 and 202300521/1, currently available at <https://www.raadvan->

negated owing to the manner of enforcement of expulsion orders, and on other occasions *de jure* due to incomplete or inadequate legislation. Moreover, it is evident that the rights of the individual and of migrants cannot consist solely in the right to health and the right to judicial relief (consider for example the “fundamental social right to a home”). Whilst it may be the case that the “tasks which the state cannot under any circumstances renounce” include the task of “contributing to ensure that the life of every person reflects every day and in all respects the universal image of human dignity”,⁴⁷ it would rather be appropriate to reverse the question, reformulating it as follows: “*which human rights can be circumscribed in favour only of some persons, insofar as citizens?*”.

V. MIGRANTS AND THE CHALLENGE OF A EUROPE FOUNDED ON SOLIDARITY

Without entering into an extremely complex series of problems which cannot be addressed in this study, it must be pointed out that, on the facts, there is an acute contradiction between the over-usage, including within legal circles, of the term “solidarity” and the miserable condition of its specific implementation within actual public policies. It is evident primarily that the range of beneficiaries of fundamental rights, including specifically social rights, is overly broad. It is also evident that, when confronted with a biblical exodus of migrants converging on the coasts of southern Italy, the question is extremely delicate as it is associated with the objective problem of the economic crisis and the marked imbalance between the available resources and the needs that must be satisfied.

There is no doubt that social rights are the most concrete instruments for liberation and human promotion. However, they are evidently “rights that have a cost”⁴⁸ and it is natural that the requirements man-

state.nl/talen/artikel/english-version/state-secretary-blocked-from-returning/ [last accessed 12.3.2023].

⁴⁷ Constitutional Court, judgment no. 404 of 1988.

⁴⁸ On various occasions the Constitutional Court has found that the need to ensure the universal and comprehensive nature of the social security system in Italy has con-

ifested in this area by citizens and foreign nationals, with or without a residence permit, translate into financial commitments.

And inevitably the difference is made – at least in terms of the perception which citizens have of the phenomenon of migration – precisely by the “cost” of social rights combined with the limited resources, which forces lawmakers and the government to reduce the spaces available for social benefits and entails a serious risk of unleashing a “war” between the weakest segments of the population, the results of which are unforeseeable. Immigration often lies at the centre of electoral battles, and it is frequently exploited by politicians who seek to differentiate between the treatment of foreigners – especially if they are not lawfully resident – and of nationals of the state, which end up privileging the latter and “sacrificing” the former depending upon the financial health of the state coffers.

The migrant crisis is felt differently throughout the twenty-seven Member States of the European Union. Those who must deal with it day in day out⁴⁹ feel the weight of a drama which does not appear to affect others: “It is a crisis for some parts of Europe but not for others⁵⁰”, and not everybody seems to be interested to the same extent. In fact, the opposite is the case. Given an undoubtedly complex situation both internationally and within the individual Member States there often appears to be one single certainty within the approach towards migratory

flicted and still conflicts with the limited availability of the financial resources that it is possible to allocate to the healthcare sector each year, within the ambit of the general planning of social assistance and welfare spending. See for example judgments no. 111 of 2005 and no. 162 of 2007.

⁴⁹ See *supra* note 35.

⁵⁰ See M. Weber, President and group leader in the EU Parliament of the European People’s Party, interview with the Italian newspaper *«Il Corriere della Sera»*, 17 April 2023, “Italy must be thanked [...], we need solidarity from the other EU countries [...]. We need common action and we very much regret the fact that there has not been much awareness, listening, or action on the part of the Commission and the EU states towards a serious problem”. The interview is currently available at <https://www.agenzianova.com/en/news/migrants-weber-ppe-litalia-must-be-thanked-we-need-solidarity-from-the-other-eu-countries/> [last accessed 10.3.2023].

See: M. Del Monte -A. Orav, Solidarity in EU asylum policy, European Parliamentary Research Service, January 2023, currently available at [chrome-extension://efaid-nbmnnnibpcajpcglcfindmkaj/https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/649344/EPRS_BRI\(2020\)649344_EN.pdf](chrome-extension://efaid-nbmnnnibpcajpcglcfindmkaj/https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/649344/EPRS_BRI(2020)649344_EN.pdf) [last accessed 10.3.2023].

policies: the strong propensity of the Member States to adopt measures to contain migratory flows which have little to do with the principle of solidarity.

However, an effective immigration policy cannot fail to be based on a common Community policy that can provide the instruments necessary to deal with the emergency and to create a more structured policy. It must be pointed out in this regard first and foremost that Article 80 TFEU, which asserts the “principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States”, invokes values that are in conflict⁵¹ with the general rule laid down in the so-called “Dublin III” regulation,⁵² that is the so-called “rule of the state of first entry”.

The so-called Dublin III regulation (along with its direct precursor the Dublin Convention) in fact establishes not only the Member State that is competent to examine a request for international protection, but also the state that is responsible for any protection that is granted and in which the person may reside after his or her status as a refugee has been recognized. In other words, the Dublin regulation ends up *permanently* fixing the residence of persons who have been granted the status of refugees within the country responsible for the protection granted.

Despite the initiatives taken by the European institutions, this rule has placed a heavy brake on the full realization of solidarity and the fair sharing of responsibility in the area of asylum. It has resulted in the placing of excessive burdens on the asylum systems of certain Member States – resulting in enormous critical issues⁵³ which have a consider-

⁵¹ A. Pugiotto, *Purchè se ne vadano*, cit., C. Favilli “L’Unione europea e la difficile attuazione del principio di solidarietà nella gestione dell’«emergenza» immigrazione”, *Quaderni costituzionali*, 3/2015, p. 785; A. Geraci, “There is not enough union in this Union. Principio di solidarietà e Sistema di Dublino”, *Federalismi*, n. 9/2016, available at: <http://federalismi.it/nv14/articolo-documento.cfm?artid=31775> [last accessed 24.02.2023].

⁵² Community Regulation no. 604/2013.

⁵³ It should be pointed out that, as far as welfare, infrastructure, and organization are concerned, Italy often has to deal with serious difficulties resulting from the inefficiency of its public administration. Also in relation to immigration Italy suffers from the historic rigidity of weak administrative structures, the low cultural inclination of which towards administrative efficiency leads to inconsistencies in the pursuit of objectives. G. Bolaffi, *I confini del Patto*, Einaudi, Turin, 2001, Preface; M. Interlandi, “The Organisational Dimension of the Reception of Immigrants from the Prospective of the

able impact on the fundamental rights of persons seeking international protection. These countries without doubt include Italy, which is characterized by its geographical location as a platform projected into the Mediterranean.

For the time being, the Member States of the European Union do not appear to be able, overall, to reach agreement on a common line of action. This is undoubtedly an indication of the real political status of a community that is not directed by a common parliament and government, but rather by compromises concluded between twenty-seven national governments.

CONCLUSIONS

This complex and contradictory relationship between solidarity and migration in Europe has been further complicated by the devastating war of aggression against Ukraine. However, the EU's position in relation to this tragic saga appears to be more cohesive and rooted in solidarity.

"The EU stands firmly with Ukraine and its people, and will continue to strongly support Ukraine's economy, society, armed forces, and future reconstruction" is the leitmotiv repeated on the official websites and press releases issued by the various European institutions⁵⁴.

Russia's war of aggression against Ukraine has shown the world the true nature of the Kremlin's imperial ambitions. It has been condemned by both the United Nations as well as the Hague Criminal Court and is regarded by European countries as an extremely serious breach of international law, a violation of Ukrainian sovereignty and a violation of the principle of self-determination of peoples. The attack is therefore

Right to 'Good Administration': the Role of Local Authorities in the Balancing of Immigrants' Interests and Those of Local Communities", *PA PERSONA E AMMINISTRAZIONE. Ricerche Giuridiche sull'Amministrazione e l'Economia*, n. 1, 2020, p. 301.

⁵⁴ See Council of European Union <https://www.consilium.europa.eu/en/policies/eu-response-ukraine-invasion/eu-solidarity-ukraine/> [last accessed 30.03.2023].

also an attack on the European peace order, in which borders may never again be moved by force⁵⁵ or an attack on the rule of law⁵⁶.

In contrast to the weak and uncertain European solidarity towards those migrants who reach its southern boundaries, the EU's solidarity towards the Ukrainian people has been clear and evident.

Poland stepped up to the mark immediately, displaying exemplary solidarity and taking in the largest number of refugees. Around 60% of all refugees from Ukraine are currently in Poland⁵⁷. However, all EU Member States threw open their gates to refugees fleeing the war, offer-

⁵⁵ See the EU Military Assistance Mission (EUMAM) in support of Ukraine launched in November 2022 with the aim of contributing to enhancing the capability of Ukraine's armed forces to conduct military operations, currently available at https://www.eeas.europa.eu/eumam-ukraine/about-eu-military-assistance-mission-support-ukraine-eumam-ukraine_en?s=410260 / [last accessed 10.3.2023]. It should be noted that, since the very beginning of the European military assistance mission, there has been a heated debate on this issue in all European countries. It is not possible to consider the issue in detail in this paper. It is sufficient to recall here that various authoritative jurists in Italy have argued that "solidarity must not be armed", stressing the fact that, as is stated in Article 11 of its Constitution, "Italy repudiates war". G.Azzariti, "La pace attraverso il diritto. Una conferenza internazionale per la sicurezza tra le nazioni", in G.Azzariti (ed.), *Il Costituzionalismo democratico può sopravvivere alla guerra?* Atti del Seminario di Roma 1° aprile 2022, Editoriale scientifica, Napoli, 2022, p. 3. By contrast, most commentators within the literature take the view that Article 11 of the Constitution provides that Italy repudiates war in the sense of *wars of aggression* or war understood as an *instrument for resolving international disputes*. Moreover, the provision of weapons to Ukraine is consistent with the international treaties signed by Italy, and does not constitute an act of war against Russia. See S. Cassese, "Diritto nazionale, europeo e internazionale consentono la cessione di armi in presenza di gravi violazioni", interview to the Italian newspaper «*Il Corriere della Sera*», 6 June 2022; C. Mirabelli, "Perchè l'invio di armi a Kiev non è contro la Costituzione italiana", *Il Sole24Ore*, 17 March 2022. Both are former judges on the Constitutional Court.

⁵⁶ Lyal S. Sunga, "Will Russia's War Kill the Rule of Law in Ukraine and Europe? Ukraine, the European Union and the Rule of Law", 19 December 2022, available at <https://verfassungsblog.de/will-russias-war-kill-the-rule-of-law-in-ukraine-and-europe/> [last accessed 10.3.2023].

⁵⁷ "This has been a tremendous effort from the people, local communities, municipalities, and government of Poland in receiving and hosting new arrivals" See Christine Goyer, UNHCR's Representative in Poland, available at: <https://www.unhcr.org/news/news-releases/poland-welcomes-more-two-million-refugees-ukraine> [last accessed 10.3.2023].

See also M. Jankowski, M. Gujski, "The Public Health Implications for the Refugee Population, Particularly in Poland, Due to the War in Ukraine", *Medical Science Monitor*:

ing hospitality to extremely large numbers of people, guaranteeing access to medical care, and taking children and young people into schools and universities, etc.

As was clarified by Amnesty International Secretary General Agnès Callamard, responses to Russia's invasion of Ukraine gave us some indication of what can be done where there is political will. "We saw global condemnation, investigations of crimes, borders opened to refugees. This response must be a *blueprint* [emphasis added] for how we address all massive human rights violations".⁵⁸

This view appears to be entirely correct. Europe must display solidarity and unity in the face of *all* violations of human rights, including both those that occur far from its borders - regarding which Europe often does not take a clear stance⁵⁹- as well as those committed in neighbouring countries. In reality, the war in Ukraine provides confirmation for the view expressed by Giovanni Bogneri⁶⁰ half a century ago that "nobody can fail to notice that a great empire is flexing its muscles in the eastern part of the European continent, which due to the internal logic of its power dynamics and the very ideological faith that provides its official credo, seeks to expand its sphere of influence". The renowned scholar warned that "*strong political unity* [emphasis added] amongst western European democracies is an indispensable condition for saving genuine national independence and saving the very internal political freedom of European countries."

International Medical Journal of Experimental and Clinical Research, Vol. 28, 2022, Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8982099/> [last accessed 10.3.2023].

⁵⁸ Amnesty International, Report on The State of the World's Human Rights, Annual Report 2022/2023, 28 March 2023, available from: <https://www.amnesty.org/en/latest/news/2023/03/international-system-unfit-to-deal-with-global-crises-annual-report-2022/#:~:text=%E2%80%9CResponses%20to%20Russia's%20invasion%20of,violations%2C%E2%80%9D%20said%20Agn%C3%A8s%20Callamard> [last accessed 11.3.2023].

⁵⁹ See for example the situation in Nagorno-Karabakh and the systematic attempt by Azerbaijan to erase Armenia's history and culture, currently available at https://www.europarl.europa.eu/doceo/document/B-9-2022-0149_EN.html [last accessed 14.3.2023].

⁶⁰ G. Bogneri, "«La strana disfatta». Marc Bloch e la crisi etico-politica dell'Europa contemporanea", *Studi Urbinati*, 42, 1973-4, p. 119. Later on this contribution was also published in a book by the same author, see G. Bogneri, *Europa in crisi*, Giuffrè, Milan, 1991, p. 53.

To achieve what today truly “nobody can fail to notice,” we need primarily national communities that are mindful of the many and overriding interests that they share. To that end the European Union must create a social structure based on consent that is as united and cohesive as possible. It will only be possible to achieve these objectives by implementing cohesion procedures between the Community institutions and the Member State institutions, thereby sustaining the dynamics of integration for the peoples of Europe who experience it every day.

The European Constitution of 2004 appeared to be capable of realizing the project of creating a European identity, which was not interrupted by the French and Dutch referendums. And it is this that must provide the basis for moving forward, stressing the benefits of being European and re-establishing a positive relationship of trust between citizens and European institutions. Europe cannot exist if European citizens do not identify with and feel part of the group and the political community. European citizens must make their own political judgments, not only regarding issues of national politics, but also in relation to European politics. To ensure stability at a time when their credibility is under threat, European institutions need to facilitate the process of forming a European political and social culture, enhancing existing cultural projects. (The European Erasmus programme for student exchanges is only one example of this). “The cooperation of European peoples cannot remain an economic and technical affair. It is necessary to give it a soul. Europe will live as far as it will have conscience of itself,” as was stated by one of the founding fathers, French Foreign Minister Robert Schuman.⁶¹

If solidarity and Europe are inseparably linked concepts, and if solidarity constitutes the linchpin of the constitutions of all Member States and the entire European legal order, then European policy must be centred on solidarity. The complicated world that surrounds us and the difficult challenges that it entails must therefore be addressed by all European countries acting cohesively. It has already been pointed out⁶² that the hardship created by uncontrolled immigration has often

⁶¹ See the Declaration of 9 May 1950 enshrining the launch of the process of European unification. See R. Schuman, *Écrits politiques. Pour l'Europe, Préface de Jacques Delors*, Nagel, Geneva, 2000.

⁶² V. Stoyanova, S. Smett, (eds), *Migrants' Rights, Populism and Legal Resilience in Europe*, Cambridge University Press, 2022.

been exploited by political movements, which have taken it as a reason for disaffection with, and even for attacking Europe itself, taking advantage of dissatisfaction and emphasizing the defence of national interests through various forms of self-defence and closure to outsiders. When confronted with increasingly intransigent national defences, the diametrically opposite choice of guaranteeing a dignified welcome for *everyone* who reaches Europe's borders, allowing them to make Europe their home, appears to be terribly difficult to achieve. The prevailing view is that priority must by contrast be given to everyone fleeing from *any* war, whilst at the same time deploying *European* diplomacy as a matter of priority in an attempt to influence political and economic conditions in third world countries, so that their citizens no longer feel forced to risk their lives in the Mediterranean.

We are all familiar with the immense and almost insurmountable difficulties that stand in the way of each of these approaches. However, it is beyond doubt that, in the same way as the conflict in Ukraine - along with all of the deep-seated reasons to act in response, aroused by the horrors of war that we had previously thought had been confined to Europe's dark past - so too immigration from more distant countries is also equally deserving of attention, as also is all of the suffering experienced by those migrants. Regardless of the specific approaches chosen by European countries, they must be pursued by all of Europe acting *cohesively* and in a spirit of *solidarity*.