





Università degli studi di Napoli Federico II

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# **Economy, labour market and Italian and European migration policies**

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## **ABSTRACT**

The processes of restructuring the labour market, which are inspired by neo-liberal economic theories, influence the migration policies of the Member States of the European Union. The migration policy is expressed, in the Italian legislation, by the Legislative Decree n. 286/1998, the Consolidated Text on Immigration (T.U.I.), which has been continuously modified over the next two decades. The last interventions to combat illegal immigration are represented by the security decrees (the Act April 13, 2017, n. 46, the Act December 1, 2018, n. 132, and the Act August 8, 2019, n. 77), which regulate migratory flows and limit cases for the recognition of international protection.

## **SINTESI**

*Nell'ambito delle strette relazioni intercorrenti tra economia, mercato del lavoro e politiche migratorie, le ondate di crisi – diretta conseguenza delle speculazioni finanziarie che, creando una ricchezza virtuale, danneggiano l'economia reale – producono un'amplificazione del fenomeno dell'esclusione economica e sociale, i cui effetti si dispiegano soprattutto sulle persone migranti.*

*L'affermarsi della "new economy" negli anni Novanta del secolo trascorso necessita del ricorso a una manodopera a costi inferiori rispetto agli standard italiani ed europei. I processi di ristrutturazione del mercato del lavoro, che si ispirano alle teorie economiche neo-liberiste, influenzano le politiche migratorie dei Paesi membri dell'Unione europea. I concetti chiave della riforma economica, a partire dagli anni Novanta del secolo trascorso, sono la precarietà e la flessibilità.*

*La ristrutturazione del mercato del lavoro, a tali logiche improntata, riafferma la ricattabilità dei lavoratori: la persona migrante, vittima della minaccia di espulsione dal territorio dello Stato, è la più ricattabile tra i prestatori d'opera.*

*Il concetto di multiculturalismo, che si va affermando nel corso degli anni Novanta del secolo passato nell'ambito degli Stati membri dell'Unione europea, si ridefine sulla scorta delle esclusive esigenze mercantili.*

*Il principio dell'accoglienza, definito dalla riforma del mercato del lavoro, comporta l'identificazione tra "espulsione dal ciclo produttivo" ed "espulsione dal territorio dello Stato". Il modello economico e il modello della sicurezza coincidono; la legislazione italiana introduce misure penali e amministrative finalizzate all'esclusione della persona migrante.*

*Il doppio livello delle politiche italiane di contrasto dei fenomeni migratori, che affermano un'accoglienza fondata su interessi economici, è rappresentato, da un lato, dalla disciplina dei flussi migratori, direttamente regolamentata dal D.Lgs. 25 luglio 1998, n. 286, il Testo Unico in materia di immigrazione (e dai costanti successivi interventi che, nell'arco di oltre un ventennio, ne hanno ridefinito l'impianto), e, dall'altro, dalla disciplina del sistema di protezione internazionale, attraverso il recepimento di direttive comunitarie e i decreti sicurezza.*

## SOMMARIO

1. Introduction - 2. Relations between multiculturalism and Italian constitutional and criminal systems - 3. The double level of the concept of integration - 4. The concept of the economic citizenship - 5. Conclusions

### 1. Introduction

There is a relationship between economy, labour market and migration policies. Financial speculation creates a virtual wealth that damages the real

economy.<sup>1</sup> The crisis amplifies the phenomenon of economic and social exclusion, which in the current phase mainly involves the migrants.

The processes of restructuring the labour market, which are inspired by neo-liberal economic theories, influence the migration policies of the Member States of the European Union. The key concepts of economic reform, as from 1990s, are the precariousness and the flexibility. The emergence of the new economy in the 1990s requires the use of labour at lower costs than Italian and European standards.

The migration legislation in the Member States of the European Union has the aim to exclude the migrant; concealed work is thus nourished, where it is possible to hire labour at low cost, functional to the new economy.

As from the nineties of the last century, therefore, progressive European governments adopted a double neo-colonial strategy, on the one hand, paternalistic, on the other, repressive. Migration policies propose interventions on a dual level, both theoretical and practical, affirming, on the one hand, the values of the integration of migrants and multiculturalism and, on the other, an idea of reception focused on the exploitation of the work force. The exploitation of the work force is guaranteed by legislation that establishes strict parameters for obtaining a residence permit, in order to make the regular presence of the migrant very difficult. The Italian legislator, particularly, has introduced administrative and criminal measures<sup>2</sup> to ensure the expulsion of the migrant who has no requirements for a residence permit.

The migration policy is expressed, in the Italian legislation, by the Legislative Decree n. 286/1998, the Consolidated Text on Immigration (T.U.I.). The non-regularized migrant has no contractual power with the employer or entrepreneur and becomes a victim of the exploitation of concealed work, which is fundamental for the growth of the economic system.

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<sup>1</sup> See J.F. HORAU, *Sur les aspects aggravants de l'exclusion économique et sociale*, in *Intégration / exclusion des minorités à la lumière de l'interculturalité. Actes de colloques internationaux organisés par ORACLE (avril et novembre 2009)*. Alizés. Revue Angliciste de La Réunion, 2012, pp. 78 and ff.

<sup>2</sup> See A. MANNA, *Il diritto penale dell'immigrazione clandestina, tra simbolismo penale e colpa d'autore*, in *Cassazione penale*, n. 2, 2011, pp. 446 e ss.

Thus, models of multicultural societies are affirmed which do not guarantee the pluralism of cultures and consequently don't give rise to a concrete inclusion and integration of migrants, but implement strategies of exclusion.

The subordination of migration policies to exclusive economic interests implies, therefore, a concept of exclusionary multiculturalism, alien to the debate on the problems concerning its coexistence with the constitutional and criminal systems.<sup>3</sup>

The renunciation of a dominant cultural identity is, vice versa, functional to the affirmation of open forms of interculturalism;<sup>4</sup> each order thus is transformed into a plurality of micro-systems placed on equal levels. The cultural pluralism<sup>5</sup> takes on a juridical connotation, developing an idea of multiculturalism aimed at overcoming the very concept of citizenship, which implies a unity of the order. The affirmation of cultural pluralism requires the contribution of the national and comparative law.<sup>6</sup> Multicultural societies come into sight, which don't allow the sacrifice of the migrant identity, according to this approach, different from that of the government policies of the Member States of the European Union.<sup>7</sup>

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<sup>3</sup> See A. BERNARDI (ed.), *Multiculturalismo, diritti umani, pena. Atti del convegno in occasione del conferimento della laurea h. c. a Mireille Delmas-Marty* (Ferrara, November 5-6, 2004), Giuffrè Editore, Milano, 2006.

<sup>4</sup> See S. GEOFFROY, *Introduction: Intégration / exclusion des minorités à la lumière de l'interculturalité*, in *Intégration / exclusion des minorités à la lumière de l'interculturalité. Actes de colloques internationaux organisés par ORACLE* (avril et novembre 2009), cit., pp. 15 and ff.

<sup>5</sup> See I. ASGARALLY, *L'interculturel ou la guerre*, in *Intégration / exclusion des minorités à la lumière de l'interculturalité. Actes de colloques internationaux organisés par ORACLE* (avril et novembre 2009), cit., pp. 37 and ff.

<sup>6</sup> See M. CHIAVARIO, *Diritti fondamentali e giustizia penale nella Convenzione europea dei diritti dell'uomo*, in *Multiculturalismo, diritti umani, pena*, cit., pp. 71 and ff.

<sup>7</sup> See F. VIOLA, *Diritti fondamentali e multiculturalismo*, in *Multiculturalismo, diritti umani, pena*, cit., p. 56.

## **2. Relations between multiculturalism and Italian constitutional and criminal systems**

The concept of multiculturalism,<sup>8</sup> when it also concerns the legal level, requires, with regard to the Italian legal system, the harmonization with the constitutional and criminal systems. As for constitutional law, an extensive interpretation of the provisions of the Italian Constitution allows for the continuation of the ever-evolving principles of freedom and fundamental rights in the Charter of 1948.

The Italian Constitution can thus offer guarantees to the pluralism of cultures, characterized by the absence of the concept of unity of people and by the opening to a differentiated society, the result of a multitude of minorities.

The intercultural conflict consists, originally, in the claim of migrants of fundamental rights to existence and evolves, subsequently, in the affirmation of the identity of its status. From this evolution of needs arises the debate on the possible integration of bearers of different cultural models with respect to Italian values.

The debate among Italian constitutionalists concerns the opportunity for an extension of the concept of citizenship, which includes any expression of culture different from the western one. According to some constitutionalists, the interpretation of the Italian Constitution must set limits to democratic pluralism, to stem the danger of forms of oppression against other associates generated by a deregulated openness to endless hypotheses of identity claims.<sup>9</sup>

The balances existing between the logic of pluralism and the phenomena of multiculturalism involve the intervention of social control, exercised through criminal law. Criminal law is the second of the systems, to which the multicultural demands must be harmonized, when these invest the legal plan.

The problems of harmonization between multiculturalism and criminal law concern the conflict existing between the options of criminal policy, expression of the models imposed by the dominant culture of an order, and the behaviours

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<sup>8</sup> See S. ZAPPALA', *Diritti fondamentali e giustizia penale sovranazionale*, in *Multiculturalismo, diritti umani, pena*, cit., p. 58.

<sup>9</sup> See E. GROSSO, *Multiculturalismo e diritti fondamentali nella Costituzione italiana*, in *Multiculturalismo, diritti umani, pena*, cit., pp. 117-119.

that violate the incriminating rules, as they are put in place by people who follow different cultural orientations.

Unlike what happens at European level, the Italian criminal law does not allow exceptions; the recourse to legal categories, such as the exclusion of anti-legality or inability, is not allowed to make behaviour contrary to the Italian criminal system no punishable.<sup>10</sup> The prohibition of the use of the veil in schools as a will to remove any obstacle to effective social interaction is an example.

The Criminal law is not, therefore, a tool to guarantee the unity of different cultural systems, but an instrument of exclusion of cultural values unrelated to the Italian tradition and of exclusion of the rights of people who have different values, incompatible with the constitutional system (*rectius*, economic system).

The demand for non-specialized foreign labour – based on the flexibility and, therefore, on the exploitation of migrant workers – is functional to the economy of European Union States; the demand for concealed work feeds the illegal markets.<sup>11</sup>

The use of migrants, both in the legal economy, and above all in the illegal economy, costs much less than that of Italian workers. The role reserved for the migrant, even within illegal markets, completely is marginal. The irregular migrant is therefore a victim of criminal systems, which exploit its weak condition, which in turn is a consequence of European policies and legislation for the exclusion of non-citizens.

The migratory phenomena vice versa are considered by European policies the cause of the increase in crime. According to the European policies, there is also a connection between migratory phenomena and global terrorism. The Italian legislator, particularly, has introduced administrative and criminal measures to ensure the expulsion of the migrant suspected of international terrorism.<sup>12</sup>

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<sup>10</sup> See G. DE FRANCESCO, *Multiculturalismo e diritto penale nazionale*, in *Multiculturalismo, diritti umani, pena, cit.*, pp. 143-150.

<sup>11</sup> See M. PAVARINI, *Criminalità e pena nella società multiculturale*, in *Multiculturalismo, diritti umani, pena, cit.*, p. 176.

<sup>12</sup> See L. MASERA, *Il terrorismo e le politiche migratorie: sulle espulsioni dello straniero sospettato di terrorismo*, in *Speciale Questione giustizia*, n. 9, 2016, pp. 76 and ff.

The illegal migrants are considered by the governments above all as perpetrators of crimes, more than as victims of the crime that exploits this phenomenon. Italian criminal justice, particularly, mainly punishes migrants. However, there is no link between migrant status and crime.<sup>13</sup>

The European Union also entrusts, on the one hand, the formal protection of Human Rights to the constitutional and criminal systems and elaborates, on the other hand, a concept of functional integration to the needs of the economic system.

The formal objective of EU policies is the harmonization of the legal systems of the Member States, both for the common protection of procedural guarantees in favor of suspects and investigated, and for the affirmation of a concept of common integration with the laws of the Member States. The rules of reception and the ban on the removal, expulsion or extradition of a suspect or accused person to a State in which there is a danger of death, torture or inhuman treatment must be the same for all the Member States of the European Union.<sup>14</sup>

These reflections would presuppose the unconditional respect of Human Rights, regardless of the global immigration strategies.

The renunciation, however, of a pluralism of cultures involving the inclusion of migrants and the affirmation of a concept of utilitarian reception, functional only to economic needs, affirms a concept of multiculturalism aimed at exclusion.

### **3. The double level of the concept of integration**

The European Union recognizes fundamental rights only to skilled migrants. Even in the Italian system, some rights, such as the access to the pension system and the insurance against accidents at work,<sup>15</sup> are guaranteed only to

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<sup>13</sup> There are studies on the relationship between migrant state and crime in the Italian experience; see G. GABRIELLI - S. STROZZA, *Migrazioni e criminalità in Italia e in Campania: evidenze, criticità e necessità informative*, in G. DI GENNARO - R. MARSELLI, *Criminalità e Sicurezza a Napoli*, FedOA Press, Napoli, 2015, pp. 149 and ff.

<sup>14</sup> See G. GRASSO, *Diritti fondamentali e pena nel diritto dell'Unione europea*, in *Multiculturalismo, diritti umani, pena, cit.*, pp. 95-96.

<sup>15</sup> See R. CRAMEROTTI - Z. PÀSZTOR - R. SALADINO - L. DI SCIULLO - G. DE MAIO, *Insurance*

skilled migrants. The social security and the Welfare legislation system, in fact, provide the obligation for employers to insure foreign workers who have a regular employment contract. According to Italian legislation, a regular work contract must be stipulated before the foreigner enters the Italian State territory; this circumstance especially occurs in cases of qualified work. In most cases of unskilled labour and, therefore, of concealed work, the migrant worker, vice versa, does not have these rights. «Due to their young age», unskilled migrants workers, who have a regular employment contract, «are almost exclusively contributors and not beneficiaries of pension benefits».<sup>16</sup>

The objective of European migration policies is the exploitation of concealed work by increasing the economic and social disparity between EU workers and non-EU workers, between regular workers and irregular workers. The development of economic systems, in fact, requires, on the one hand, skilled migrants, who have the same rights as European citizens, and, on the other, irregular migrants, who offer unskilled labour at low cost. The Italian and European social security system and the migrants' access to the pension system<sup>17</sup> are an example.

The connection between migratory phenomena and the Welfare state guarantees the social protection system only to the skilled migrants.<sup>18</sup> The integration of the foreigner is established by European and Italian laws. The European legislative process to combat discrimination starts with the Maastricht Treaty of 1992 and Amsterdam Treaty of 1997 up to the Directive 2000/43/CE, implemented, in the Italian legal system, through the Legislative Decree n. 215/2003.<sup>19</sup>

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against accidents at work: the Italian case, in *Migrants and social security. The Italian case*. Seventh EMN Italy Report, IDOS Editions, Rome, 2014, pp. 93 and ff.

<sup>16</sup> See F. PITTAU, *IDOS Study and Research Centre's estimate on immigrant pension flows*, in *Migrants and social security. The Italian case*. Seventh EMN Italy Report, cit., p. 74.

<sup>17</sup> See R. MARINARO, Predictions on immigrants' access to the pension system, in *Migrants and social security. The Italian case*. Seventh EMN Italy Report, cit., pp. 82 and ff.

<sup>18</sup> See P. IAFRATE, *The imperfect equal opportunities of the Italian social security system: case studies and jurisprudence*, in *Migrants and social security. The Italian case*. Seventh EMN Italy Report, cit., pp. 88 and ff.

<sup>19</sup> See G. GUARINO, *Lo strumento europeo di lotta alla discriminazione razziale e la sua applicazione in Italia, alla luce del diritto internazionale generale e convenzionale*, in *Discriminazione razziale e autonomia privata. Atti del Convegno. Napoli, 22 marzo 2006*,

The prohibition of discriminatory conduct however is not absolute; this principle is not valid unconditionally for all subjects. The limit to the recognition of equal rights and social dignity is the condition of regular, in violation of the principle of equality expressed by the Article 3 of the Italian Constitution and by the Article 2 of Legislative Decree n. 286/1998. The Article 3 of the Italian Constitution contains a concept of citizenship extensively interpreted.

The equal treatment and the principle of equality between all workers, EU and non-EU, therefore is not valid for the irregular foreigners.

The passage from the «State form» to the «market form»,<sup>20</sup> which delegitimizes the constitutionalism at international level and reduces States however imposes the re-examination of the concept of citizen. After the Second World War, the needs of a global financial and commercial market leave the Member States of the EU with a residual economic and political autonomy. The hopes and promises of the founders of the EU, which identified the creation of a common market as a necessary tool to ensure peace and solidarity cooperation between the European peoples, have been betrayed. In fact, the Europe of the market and the Europe of the Euro are replacing the Europe of democratic and social institutions.<sup>21</sup>

The progressive replacement of the centers of private political power instead of the centers of public political power – a phenomenon known as the constitution of private governance – facilitates the development of a constitutionalism called multilevel. Multilevel constitutionalism accentuates, rather than reduces, the levels of inequality expressed by the heterogeneity of States.<sup>22</sup>

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Nuova Officina Poligrafica Laziale, Roma, 2006, pp. 21 and ff.

<sup>20</sup> See C. AMIRANTE, *Dalla forma stato alla forma mercato*, G. Giappichelli Editore, Torino, 2008.

<sup>21</sup> See C. AMIRANTE, *Union Européenne et libertés économiques entre marché, état et démocratie*, in *L'architecture du droit. Mélanges en l'honneur du Professeur Michel Troper*, Economica, Toulon, 2006, pp. 35 and ff.

<sup>22</sup> See P. POLICASTRO, 'On The Reconstruction of the Legal Strength of the Constitution in a World in transition. Multi-Level Constitutionalism towards Multi-level Democracy', in J. NERGELIUS - P. POLICASTRO - K. URATA (ed.), *Challenges of Multilevel Constitutionalism*, Proceedings of IVR 21<sup>st</sup> World Congress, Lund 12-18 August 2003, Polpress Publisher, Kraków, 2004, pp. 55 and ff.; P. POLICASTRO, A new Garment for an Old Question: 'A Clash between Man's Rights and Citizens' Rights in the Enlarged Europe', in J. NERGELIUS (ed.), *Nordic*

#### 4. The concept of the economic citizenship

In the third wave of economic globalization the concept of economic citizenship is affirmed, functional to financial interests, from which the citizen's participation in the political activity is excluded.<sup>23</sup> The concept of economic citizenship is used as a parameter to identify the migrants that can be integrated into the production cycle: only these are given the citizenship. Thus, there is a contrast between a low number of qualified migrants employed in the legal market and a high number of illegal migrants, excluded from the production cycle and destined to enlarge illegal economies, which also are fundamental to the labour market; in the middle are the seasonal workers as well regularized ones.

The concept of the economic citizenship is therefore totally different from the concept of universal citizenship, which does not presuppose a privileged status.<sup>24</sup> The concept of universal citizenship in fact guarantees the recognition and protection of Human Rights; the concept of economic citizenship vice versa is defined according to the parameters of economics and finance, which impose a distinction between citizens, holders of constitutional rights, and non-citizens, who have no rights.

The concept of the economic citizenship, affirmed by European policies, involves the renunciation of the idea of citizenship of integration and democratic participation, aimed at overcoming the concept of Nation-State, as a community instrument for bringing together people. The willingness of the European Union to promote the affirmation of the coexistence of a plurality of cultural identities appears unlikely in this regard.<sup>25</sup> The phenomenon of the constitution of private governance is functional to the exclusion from

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and other European Constitutional Traditions, Martinus Nijhoff Publishers, Leiden/Boston, 2006, p. 66.

<sup>23</sup> See C. AMIRANTE, *Dalla forma stato alla forma mercato*, cit., XXI.

<sup>24</sup> See L. Lo SCHIAVO, *Identità e società civile internazionale: ricognizioni intorno all'uso di un concetto*, in *Teoria politica*, n. 2, 2006, pp. 29 and ff.

<sup>25</sup> See L. Lo SCHIAVO, *Identità e società civile internazionale: ricognizioni intorno all'uso di un concetto*, cit., p. 46.

participation in public life and to the decisions of the entire population: the regular/irregular dichotomy represents only the most immediately perceptible aspect of ancestral national and supranational policies of concealment of decision-making power centers.

The post-industrial transformation processes of the metropolises of the main European Union States, which are defined as transnational market places, have developed an idea of integration as a resource.<sup>26</sup> The centralization in metropolitan areas of financial services and, in general, of highly specialized services (consulting companies, accounting companies, administrative companies), requires an exponential increase in the demand for labour, which is highly qualified or poorly qualified.<sup>27</sup> The job application requires, on the one hand, qualified professionals privileged by globalization, functional to urban economies, and, on the other hand, flexible and concealed work, consisting in the performance of manual tasks, also useful for the new economy.

The US model of inserting foreigners among the privileged working groups, adopted in Europe by States such as Germany, France and Great Britain, is not compatible with the economy of Italian urban areas, very different from other European cities. The skilled migrations represent a phenomenon which totally is foreign to that of irregular immigration and concerns exclusively the reception in the EU citizens of non-EU citizens from developed States (rectius, colonizers).

European and Italian immigration policies vice versa affirm the strategies of the exclusion of migrants fleeing developing States (rectius, colonized), devastated by poverty and wars, caused by Western powers. In these cases, the forms of integration are exclusively aimed at the exploitation of legal or illegal labour at lower costs than that offered by "EU citizens". With reference to Italian legislation, the status of irregular is a starting point for a process that leads, only in a few cases, to the status of regular; in fact, it is difficult or impossible for an unqualified migrant to obtain a work contract before entering Italy, a necessary condition for the residence permit.

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<sup>26</sup> See S. SASSEN, *Le città nell'economia globale*, Il Mulino, Bologna, 2003.

<sup>27</sup> See M. AMBROSINI (ed.), *L'immigrazione come risorsa: dimensioni economiche e implicazioni sociali*, Final Report CIRIEC, Milano, 2006.

The legal doctrine,<sup>28</sup> proposing the Marshall's marginalist theories, states that the neo-liberal economic scheme is also applicable to the phenomena of global migration.

The marginal utility theory, applied to the labour market, highlights the relevance of the substitution principle, which characterizes all types of goods, including the work performance. The interchangeability of workers, affirmed by this theory, defines the optimal wage, identified in socio-economic marginality, which produces profit for the entrepreneur, protected by legislation that does not require him to also bear the costs.<sup>29</sup>

The labour market, even in globalised societies, is governed by the law of supply and demand and by an unequal relationship between enterprise and employees, which is being redefined through the constant expulsion from the production cycle of workers who are asking for a salary increase for work performances; these workers are replaced by people who accept lower wages in order to take on the same tasks.

The revival of marginalist theories through the neo-liberal economic theories, identifies a new marginal subject, which is the irregular or clandestine non-EU migrant. In this way, the archaic relationships of production, characterized by pay and safety working conditions, are very far from the standards formally defined by the Italian and European laws.

The development of the new economy subtracts, especially as regards to the Italian economic, workforce to small business, to construction, to agriculture and to all other sectors characterized by the demand for material services to be performed in the absence of the worker's safety. The progressive unavailability of local labour requires the use of illegal foreign workers.

The migrant is attracted to the illegal economy, that is functional to the labour market, which is redefined through the precarization of labour, in conjunction with the decline of the Welfare State.

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<sup>28</sup> See A. CIERVO, *Una pura formalità. Alcune osservazioni critiche a margine del recepimento della direttiva 2009/52/CE da parte del legislatore italiano*, in *Questione giustizia*, n. 3, 2014, pp. 145 and ff.

<sup>29</sup> See A. CIERVO, *Una pura formalità, cit.*, pp. 146-148.

The neo-liberal policies, which have inspired Western governments since the 1990s, affirm the principle of flexibility, the key principle of the economic systems of the new millennium.

The economic citizenship is only one point of arrival of a long process of insecurity and flexibility.

The starting point of this process is the entry into the world of precarious job and the stages of the process are represented by the transition from precarious work to another precarious job; the production cycle is thus subtracted from the traditional rules of the States.

Business development is facilitated by the precarization of working conditions. The legislative measures of European governments, that affirm job insecurity and flexibility, take the place of those that should increase the demand for consumer goods and services to ensure the development of employment and the economy.<sup>30</sup>

Being the working class exposed to increasing blackmail which ensures a reduction in wages and further facilitates the dismissals, is useful in reducing labour costs for the benefit of the productivity of the entrepreneurs.

The validity of traditional pre-Keynesian theories, which identify economic growth in the progressively putting private intervention in place of public one is, however, disputed.<sup>31</sup> It is thus denied the principle that downward flexibility in wages is useful for higher employment and guarantees greater productivity of companies, ensuring greater international competitiveness of the State compared with the other States inside or outside the Eurozone.<sup>32</sup>

The European Union redefines itself as a European Monetary Union, at the same time as the transition of fiscal policy management from national administrations to independent supranational institutions. These supranational institutions do not have the obligation, as the States, have to respect the rules of democratic representation. In this phase, two supranational institutions, namely the European Commission and the European Central Bank (E.C.B.), are opposed

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<sup>30</sup> See A. STIRATI, *Crescita e "riforma" del mercato del lavoro*, in S. CESARATTI - M. PIVETTI (ed.), *Oltre l'austerità*, MicroMega (e-book), Roma, 2012, pp. 148 and ff.

<sup>31</sup> See A. PALUMBO, *Quale spesa pubblica*, in S. CESARATTO - M. PIVETTI (ed.), *Oltre l'austerità*, cit., pp. 136 and ff.

<sup>32</sup> See A. STIRATI, *Crescita e "riforma" del mercato del lavoro*, cit., pp. 149-151.

to national parliaments and governments.<sup>33</sup> The overcoming of the concept of Nation-State in matters of fiscal policies is the dismantling of the social achievements achieved during the seventies of the last century, in order to implement a labour market reform inspired by the principle of flexibility.

The reform of the labour market, characterized by flexibility and insecurity, reaffirms the blackmail of workers: the migrant worker, victim of the threat of expulsion from the territory of the State, is the most blackmailable of workers.

The principle of reception, defined by labour market reform, involves the identification of "expulsion from the production cycle" and "expulsion from the territory of the State".<sup>34</sup> The economic model and the security model coincide. Italian legislation introduces criminal and administrative measures aimed at excluding migrants.

The double level of Italian policies to combat migratory phenomena, which affirm a reception based on economic interests, is represented, on the one hand, by the regulation of migration flows, directly regulated by the Legislative Decree n. 286/1998, the Consolidated Text on Immigration (T.U.I.), and, on the other hand, by the international protection system, through the implementation of EU directives and through the Italian security decrees.

## 5. Conclusions

The Legislative Decree July 25, 1998, n. 286, the Consolidated Text on Immigration (T.U.I.), is the point of arrival of the Italian legislative path, which begins with the Act December 30, 1986, n. 943, adopted in implementation of the Convention of the I.L.O. (International Labour Organization) n. 143 of June 24, 1975, ratified in Italy by Act April 10, 1981, n. 158. The migratory phenomena, during the eighties of the last century, are also starting interest Italy. The main goal of the Italian legislator is the definition of an organic discipline concerning the treatment of migrants present in the State territory.

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<sup>33</sup> See V. MAFFEO, *La crisi economica e il ruolo della BCE*, in S. CESARATTO - M. PIVETTI (ed.), *Oltre l'austerità*, cit., pp. 125-131.

<sup>34</sup> See M. PASCALI, *La «decolorazione» del lavoro nero nel processo di decostruzione del diritto penale del lavoro. Normalizzazione, migrazione ed eclissi del diritto*, Editoriale Scientifica, Napoli, 2007.

Through the Act n. 943/1986, all non-EU workers legally resident in Italy and their families, as Italian workers, are assured equal treatment and full equality of rights, including the right to social and health services use, the right to maintain cultural identity, the right to school and the right to housing. The sole purpose asserting these rights is the adaptation of Italian legislation to European one. The recognition of these rights to migrants is only abstract: the Act n. 943/1986, as the subsequent Italian laws and as the community laws, in fact distinguishes between regular non-EU migrants and irregular migrants. The rights of Italian and European citizens are recognized only to non-EU citizens legally present in the State territory

The next stage of the Italian legislation against illegal immigration is the Act 28 February 1990, n. 39 (so-called "Martelli"), introduced into Italian law to regulate the phenomenon of migratory flows, considered a concrete threat to internal public order. The logic of exclusion begins to characterize the Italian legislation, implemented through the expansion of security measures and administrative sanctions, and the forecast of a new hypothesis of ministerial expulsion, ordered for reasons of public order or state security.

The aim of the removal is the Leit-motiv of European and Italian migration strategies also in the second half of the nineties of the last century, coinciding with the emergence, also in Europe, of the example of Clinton's experience in the United States, of governments (the Italian government of Prodi, the German government of Schroeder and the British government of Blair) based on a progressive politics, expression of the new economy.<sup>35</sup> The new model of economy, which characterizes the end of the twentieth century, requires the development of integration policies aimed at the subjugation of the migrant to the rules of a labour market, which is also founded on the regular/irregular dichotomy.

The non-EU workers integrated into the production cycle and therefore regularized carry out work tasks, on the one hand, more arduous and more risky and, on the other hand, less qualified and remunerated for work tasks performed by EU workers. The working conditions imposed on regular migrants,

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<sup>35</sup> See A. DAL LAGO, *Non-persone. L'esclusione dei migranti in una società globale*, Feltrinelli, Milano, 2005, 265-266.

often aimed at specific sectors (such as domestic work), in effect frustrate the extension to them of constitutional rights reserved for citizens.

The status of irregular undermines, vice versa, the foreigners expelled from the production cycle, who represent labour to be used at even lower costs, expand illegal economies, functional to the new economy and the neoliberal model. The illegal markets inevitably attract the excluded, destined for sectors – such as agricultural work and seasonal work – now characterized by the unavailability of local workers.

The regular/irregular dichotomy and the logic of exclusion represent the key principle of Legislative Decree n. 286/1998, which has been continuously modified over the next two decades. The last interventions to combat illegal immigration are represented by the security decrees (the Act April 13, 2017, n. 46, the Act December 1, 2018, n. 132, and the Act August 8, 2019, n. 77), which regulate migratory flows and limit cases for the recognition of international protection.

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