

SOCIAL SECURITY LEGISLATION IN ITALY DURING FASCISM

-Legislación sobre seguridad social en la Italia fascista-

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Resumen: Este ensayo explica la problemática de la legislación social aprobada en Italia durante el fascismo. A través del examen del Estatuto de los Trabajadores de 1927 y de las leyes aprobadas entre 1926 y 1947 es posible entender la política social fascista en un régimen marcado por la presencia del mutualismo y las organizaciones caritativas de carácter ideológico.

Abstract: This essay explains the problem of the social legislation enacted in Italy during Fascism. Through the examination of the *Carta del Lavoro* (Labour Charter) of 1927 (the program document analyzing the issue of public security), and of the laws enacted between 1926 and 1943, it's possible to understand fascist social policy which sought to bring under the hands of the regime a system of social protection still marked by the presence of mutualism and sectarian-related charitable initiatives. The new model of social organization of the cooperative type wanted to delete all the intermediate structures between population and State (decreasing free participation to some associations). It eliminated free membership and free fees paid by people to social security bodies and transformed them in public institutions.

Palabras clave: Legislación social, trabajo, fascismo, mutualismo, Italia.

Key words: Social Laws; work; fascism; mutualism; Italy.

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After the First World War parliamentary discussion about the new laws in security and social assistance matters took place in Italy. There were new ways of fighting against pauperism² (the well-known welfare step of *poor law*³ that Tocqueville identified with legal charity pursued by mutualism⁴) following the example of the *Sozialstaat*⁵ in the Bismarckian Germany. In fact, social insurances for the workers were introduced in Germany, and they were covered by the payments of employees and companies and, in few cases, by public contributions. Those insurances covered the risk of workers' injuries, disabilities, illnesses and old age⁶. Also in Italy law 603/1919 enacted

² Cf. Gian Carlo Jocteau, 'Le origini della legislazione sociale in Italia. Problemi e prospettive di ricerca' (1982) 2 *Movimento operaio e socialista* 289-302; Pierre Rosanvallon, *Lo Stato Provvidenza tra liberalismo e fascismo* (Armando, 1984); Maurizio Ferrera, *Modelli di solidarietà. Politiche e riforme sociali nelle democrazie* (Il Mulino 1993); Id, *Il Welfare State in Italia* (Il Mulino 1984); Romilda Scaldaferrì 'L'origine dello «Stato sociale in Italia» (1876-1900)' (1986) 3 *Il pensiero politico* 223-40; Michele La Rosa, *Welfare State: teorie e metodologie di analisi* (Franco Angeli 1990); Gerhard A. Ritter, *Storia dello Stato sociale* (Laterza 1996); Stefano Sepe, *Le amministrazioni della sicurezza sociale nell'Italia unita (1861-1998)* (Giuffrè 1999); Fulvio Conti and Gianni Silei, *Breve storia dello stato sociale* (Carocci 2005).

³ The English *poor laws* started with a series of statutes enacted between 1598 and 1601 under the reign of Elizabeth I. Their aim was to minimize the phenomena of vagrancy and begging, and also to prevent the possible serious social consequences of poverty with social assistance. This objective would have been obtained especially during the Industrial Revolution with the search of funds due to local tax for welfare schemes for poor families. Cf. Paul Slack, *The English Poor Law 1531-1782* (MacMillan 1990); John Duncan Marshall, *The Old Poor Law 1795-1834* (MacMillan 1991).

⁴ Alexis de Tocqueville, *Il pauperismo* (edited by Mario Tesini. Lavoro 1988) 115.

⁵ Claudio De Boni, *Lo stato sociale nel pensiero politico contemporaneo. L'Ottocento* (Firenze university press 2007) 6: «[...] in the second part of the XIX century a proper social state was born, during the Bismarckian Germany, and it was known as *Sozialstaat*. The linguistic specific definition meant a new state which worked for social stability through the care of its citizens' life at all levels».

⁶ Scrive Claudio De Boni, *Lo stato sociale nel pensiero politico contemporaneo. Il Novecento: parte prima: da inizio secolo alla seconda guerra mondiale* (Firenze university press 2009) 1: «The social Bismarckian state made compulsory the insurance for several categories of workers and at the beginning for people working in factories; before the end of XIX century

a compulsory insurance against disability and old age for all the salaried employees (hand-workers, employees, farmers, sharecroppers and landlords without distinction of sex and nationality⁷) who were between 15 and 65 years old. This law merged the National Fund of Injuries with the National Fund of Social Insurances in the CNAS (National Fund of Social Insurances). A social insurance for illnesses was established 10 years later.

Fascism and its corporative idea of State developed even more the social politic of the liberal State and pushed the speed-up in the unifying process of all social insurances⁸. The Fascist social politic had «totalitarian» characters which aimed to put social protection in the hands of the regime. It was marked by mutualism and linked with charitable actions.

other countries followed the way, with particular reference to insurances against injuries at work. They were compulsory in Austria and in some states of Northern Europe too».

⁷ This law concerned subordinate workers, except public workers. The insurance guaranteed the award of pensions in case of disability or old age, and also a temporary cheque grant monthly to the widow or the fatherless and the prevention and therapies of disability. Michele Oricchio, *Il contenzioso previdenziale: lineamenti sostanziali e processuali* (Cedam 2010) 34: «Between the two pension schemes adopted in Europe until that time, the English one, which provided the payment of a minimum pension to all citizens on behalf of government, and the German one, which was based on a form of insurance for workers only funded by the contribution of workers and employers with a modest public contribution, the second was chosen».

⁸ Cf. Giovanni Mira, *Storia d'Italia nel periodo fascista* (Torino 1959); Renzo De Felice, *Mussolini, il fascista, 2, L'organizzazione dello stato fascista (1925-1929)* (Einaudi 1968); Gian Mario Bravo, *Sindacalismo fascista e corporativismo (1922-1945)* in AA.VV., *Il movimento sindacale in Italia (1945-1969)* (Einaudi 1970); Arnaldo Cherubini, *Storia della previdenza sociale in Italia: 1860-1960* (Editori riuniti 1977); Arnaldo Cherubini and Italo Piva, *Dalla libertà all'obbligo: la previdenza sociale tra Giolitti e Mussolini* (Franco Angeli 1998); Lorenzo Gaeta, 'La politica sociale del fascismo nella pubblicistica corporativa' (1985) *Politica del Diritto* 523; Domenico Preti *Economia e istituzioni dello stato fascista* (Editori riuniti 1980); Id, *La modernizzazione corporativa (1922-1940). Economia, salute pubblica, istituzioni e professioni sanitarie* (Franco Angeli 1987); Giovanni Cazzetta, 'L'autonomia del diritto del lavoro nel dibattito giuridico tra fascismo e repubblica' (1999) 28 *Quaderni fiorentini* 511-629.

A protective politic was the strategy followed to create a common consent to the regime, given that assistance institutions started helping more and more the members of the fascist party⁹. This plan was apparent in the *Carta del lavoro* (Labour Charter) of the 21st April 1927¹⁰ in which the problem of public pensions was faced. It would have required more coordination and unification by the State, through corporative bodies and professional associations (statement XXVI)¹¹.

This *vis coesiva*¹² was referred to the coordination and the unification of the pension system and was focused on «political targets like political control, political stability and constant research of common consent» even if «it was clearly seen a strong process of centralization, [...] it was particularly focused on control, not on direct management»¹³. Fascist government disliked the existence of mutual aid associations, bodies and unions able to manage the pension system in an almost complete autonomy. Given the situation, it is easy to understand the new model of social organization of cooperative type¹⁴

⁹ DE BONI (n 5) 11.

¹⁰ Gustavo Del Vecchio, *I principi della Carta del lavoro* (Cedam 1934) 53.

¹¹ The *Carta del lavoro* says that the insurance against injuries at work and involuntary unemployment has to be refined, maternity one has to be improved, the one against professional illnesses and tuberculosis has to be the beginning of a compulsory insurance against all illnesses. Cf. Giuseppe Bottai and Augusto Turati, *La Carta del lavoro illustrata e commentata* (Edizioni del diritto del lavoro 1929); Marco Palla, *Lo Stato fascista* (La nuova Italia 2001); Chiara Giorgi, *La previdenza del regime. Storia dell'Inps durante il fascismo* (Il mulino 2004); Gianni Silei, *Lo stato sociale in Italia: storia e documenti. 1: Dall'unità al fascismo, 1861-1943* (Lacaita 2003) 373; Ferdinando Cordova, *Verso lo Stato totalitario. Sindacati, società e fascismo* (Rubbettino 2005).

¹² The expression «*vis coesiva* of the multiplicity» was used by Arnaldo Volpicelli, *I presupposti scientifici dell'ordinamento corporativo*, in *Atti del secondo convegno di studi sindacali e corporativi* (tip. del Senato 1932) 128. Cf. Pietro Costa 'Lo Stato totalitario: un campo semantico nella giuspubblicistica del fascismo' (1999) 28 *Quaderni fiorentini* 118-29.

¹³ Ugo Ascoli, *Welfare State all'italiana* (Laterza 1984) 28; Franco Bonelli, *Il capitalismo italiano. Linee generali di interpretazione*, in *Storia d'Italia. Annali. I. Dal feudalesimo al Capitalismo* (Einaudi 1978).

¹⁴ Paolo Ungari, *Alfredo Rocco e l'ideologia giuridica del fascismo* (Morcelliana 1963) 10. This new model of social organization started with the union law n. 563 of the 3rd April 1926 which established the uniqueness of the recognised trade union (only Fascist one); the collective bargaining

that wanted to delete all the intermediate structures between population and State (decreasing free participation to some associations). It eliminated every free membership and free fees paid by people to social security bodies and transformed them in public ones.

After the first 1923 laws the Fund for no-voluntary unemployment was re-established and put in the hands of the CNAS¹⁵ with public contributions. In 1926 a large expansion of the «public hand»¹⁶ started with the monopolization of insurance: in fact the National Fund against Injuries (CNI) was re-introduced, and the ban for employers to insure their workers through private institutes or private foundations was established¹⁷. In 1927 compulsory insurance against tuberculosis¹⁸ was introduced and in 1929 it was extended also to the seafarers disease. In the same year insurance against accidents was extended to professional workers too¹⁹.

The great financial productive and commercial crisis of 1929 and the following reduction of salaries together with the employment drop

effectively *erga omnes*; making a new panel of judges competent on collective working disputes, prohibition of strikes and lockouts.

¹⁵ Royal Decree n. 3184 of 1923, 30 December and the following regulation enacted by the Royal Decree n. 1422 of 1924, 26 August, defined the re-establishment of the CNAS which was not modified in its structure and services. The act excluded from compulsory insurance settlers, sharecroppers and tenants. The changeover from an optional insurance to a compulsory one made the CNAS the fulcrum of new security activities. After the centralization of public transport services, welfare funds and the absorption of welfare funds for all the other categories (public telephonic services, tax collection offices and duty offices), the CNAS started to manage the marine merchant fund for disable people, the national fund of unemployment, which was transformed in a new self-insurance sector, and the insurance against tuberculosis. Cherubini and Piva (n 7) 384-7.

¹⁶ Bernardo Sordi 'La resistibile ascesa del diritto pubblico dell'economia' (1999) 28 *Quaderni fiorentini* 1042.

¹⁷ Royal Decree-Law n. 2051 of 1926, 5 december.

¹⁸ Decree Law n. 2055 of 1927, 27 october.

¹⁹ Royal Decree n. 928 of 1929, 13 May, came into force on the 1st January 1934 only and created the first protection insurance against professional illnesses. It was based on the law of 1904. This act protected workers in case of poisoning by lead, mercury, phosphorus, carbon disulphide, benzene and hookworm; it excluded the anthrax infection just because it was included in the injuries at work.

opened a new period of interventionism in the economic and social sphere²⁰. In the social security field the necessity of great amounts of fiscal resources for the urgent welfare measures and the benefits of a large number of un-employed brought to the unification of the different foundations in an unique organism²¹ which avoided the possibility to create new dangerous rival organizations. In fact, in 1933 it was created the INFAIL (National Fascist Institution against working Injures) which took the place of the CNI (National Fund against Injures), several bodies and authorised labour unions for the protection against injuries²². The INFAIL managed the compulsory insurance against working injures and professional illnesses of most of public employees: the reform implied the automatic creation of the insurance coverage. So, it was definitively abandoned the private-contractual system in favour of the public one²³, which provided indemnities and healthy compensations for injured or ill workers²⁴.

In 1933, the INFPS (National Fascist Institute of Social Security), which managed all compulsory insurances, was created in place of the National Fund of Social Insurances²⁵. In 1935 government enacted a unique law of social security concerning the *Refinement and*

²⁰ De Boni (n 5) 15.

²¹ Bottai and Turati (n 10).

²² Royal Decree-Law n. 264 of 1933, 23 march. The INFAIL absorbed 17 trade unions and their union with more than 50.000 members.

²³ With this new system, the right to have benefits arose automatically upon the circumstances of an event, even if the employer had not complied his insurance obligations.

²⁴ Cf. Luisa Riva Sanseverino 'La nuova legge italiana per l'assicurazione degli infortuni sul lavoro' (1935) 6 *Le assicurazioni sociali* 996; Domenico Riccardo Peretti-Griva 'Le cure mediche e chirurgiche che possono essere imposte all'infortunato' (1937) *Rivista critica di diritto del lavoro* 6; Italo Grasso Biondi 'Problemi di deontologia sociale. L'obbligatorietà delle cure nella nuova legge per gli infortuni industriali' (1938) II *Diritto del lavoro* 358.

²⁵ Royal Decree Law n. 371 of 1933, 27 march converted in the law n. 166 of 1934. The management of the INFPS included compulsory insurances for the disable people and old age, tuberculosis, not-voluntary unemployment, maternity extended to the seafarers and the staff of subsidized companies in marine services business and every other compulsory insurance. Giorgi (n 10) 333.

coordination of social security legislation ²⁶ that disciplined the fragmented social security system of elders and disable people, unemployment, tuberculosis and pregnancy²⁷. With reference to the pension system, the law of 1935 was important especially under the judicial aspect, but it did not change the system of 1919²⁸. In particular, the reform of 1935 provided a financing system based on an equal contribution by employers and workers and a modest contribution by the State (100 lire paid for each pension); a technical insured regime of the capitalization²⁹; a new formula for the pension calculation in function of the pension contributions paid by each person; an old retirement age (65 years for men and women). Some modifications to this system took place in 1939³⁰, when the principle of reversibility of the pension to the survivors was admitted, but it was postponed the effective delivery of the duty until 1945, and the retirement age was reduced to 60 years for men and 55 for women with a little modification of the measure of the services adequate until 1943.

In the last year of the regime, it tried to unify all insurances for illnesses. This project - thought after the Great War – was abandoned due to the regime cautions to the «serious, perhaps unsolved, economic difficulties that a general insurance against all illnesses would have faced»³¹. Government choice was, therefore, to keep alive temporarily the many voluntary health insurers³², establishing that

²⁶ The RDL of the 4th October 1935 n. 1827 on the *Perfezionamento e coordinamento legislativo della previdenza sociale* (converted in the l. 6 April 1936 n. 1155) created a consolidated matter. Cherubini and Piva (n 7) 369.

²⁷ *Ibid* 370-1.

²⁸ Oricchio (n 6) 34.

²⁹ *Ibid*.

³⁰ *Ibid*.

³¹ Cherubini and Piva (n 7) 400-1.

³² The mutual funds as «organization of class and so, political enemy» were necessary diverted to other « more permissive institutions». In fact, during November 1925, the Italian Federation of Mutual Assistance Societies inspired by socialist ideas was suppressed and its assets acquired by trade unions legally recognised according to the law of the 3rd April 1926 n. 563. According to Paolo Greco 'Contratto collettivo di lavoro e casse mutue per malattia' (1934) *Diritto del lavoro* 501, in 1932 there were 1875 mutual funds with 1.293.875 members and 1373 of them (the 68%) were in Northern Italy.

«the collective working contracts – as it is written in the XXVIII statement of the *Carta del lavoro* – will establish, when there is a technical possibility, the formation of a mutual fund against illnesses, with the contribution of employers and workers, managed by representative of each category, under control of the corporative bodies»³³. The 31st of 1933 there were 1978 mutual funds in the industrial sector with 1.390.895 members; in agriculture 7 regional mutual funds with 120.000 members; in the commercial a national sector a fund of 200.000 members; in the transport on road one 14 regional funds with 27.000 members and 11 independent port funds with more than 20.000 members together with 5 funds of network companies with 6.000 members.

The fragmentation and the disorganization required to be composed, with particular reference to the different and unique pension system: in this situation, in 1943, a Mutual Body (the Institute of assistance for illnesses and workers)³⁴ was created: this body, according to the purposes of law 138/1943 would have produced the complete unification of all the bodies for illnesses assistance, but at least it did not succeed³⁵.

³³ The purpose of the mutual funds against illnesses was to provide medical, surgical, pharmaceutical and hospital assistance to all members in case of illness; to recover them in clinics or care house; to pay a subsidy of disease, starting from the third or the fourth day in hospital for a determined period (90 or 120 days) for an amount equal to half or two thirds of the salary.

³⁴ Law n. 138 of 1943, 11 January, defined the Body as «the institution through which trade unions of employers and workers fulfilled their duties established by the statements XXVII e XXVIII of the *Carta del lavoro*, concerning the assistance to workers and their family in case of illness». The act established also a compulsory registration of all the workers represented by trade unions belonging to industry, agriculture, commerce, banking and insurance together with professionals and artists. All the funds and the bodies in the assistance business had to merge without distinction. Cherubini and Piva (n 7) 431. Cf. Ludovico Barassi 'I soggetti del rapporto giuridico assicurativo' (1930) II *Diritto del lavoro e assicurazioni sociali*; Giuseppe Landi 'Unificazione della mutualità sindacale' (1952) 5 *Rivista del lavoro*.

³⁵ According to Nazareno Bonfatti 'Dalle Mutue di soccorso all'Ente Mutualità' (1943) 7-8 *Rivista del lavoro*, «The failure of the unification was probably due to the fact that the reform was discussed in a hurry, with particular reference to old and decaying institutions during the ages of war».