HEALTH AS A PUBLIC PLURAL SERVICE

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Abstract

This study aims to trace a theoretical legislation line, that allows to fully understand the complexity, vastness and pluralism of the health sector.

Given the extreme importance of both the right to health and the health benefits, and referring specifically to the Italian law, it seemed advisable to report the evolution which has taken place in this field.

Heath is, clearly, not the mere absence of disease. In fact, the good health confers on a person or a groups the freedom from illness, and the ability to realize one's potential.

Health is therefore best understood as the indispensable basis for defining a person's sense of well being. The health of populations is a distinct key issue in public policy discourse in every mature society, often determining the deployment of huge society. They include its cultural understanding of ill health and well-being, extent of social and economic disparities, reach of health services and quality and costs of care, and current bio-medical understanding about health and illness.

Health care covers not merely medical care but also all aspects pro preventive care too. Health care at its essential core is widely recognized to be a public good. Its demand and supply cannot therefore, be left to be regulated solely by the invisible hand of the market. Nor can it be established on considerations of utility maximizing conduct alone.

The main theme along which the whole processed has developed, was, without doubt, trying to bring out the pluralist nature of health as defined by the title: *"Health as a public plural service "*.

The plural nature of the health service refers both to the good health and the

structure of the health service.

We attempted to show, in fact, as the health care system, including the most extensive system of social security, is characterized by an extreme complexity in terms of areas of intervention.

This areas of intervention include from the protection of the collective to the individual health , from the epidemiological study of the health status of the population to the protection of the environment, from prevention to treatment of diseases, and the rehabilitation and recovery. We talk about health care system also in terms of coordinated action of multiple institutional entities that interact in the system as a function of the health care organization.

This characterisation has emerged both at the level of definition and description of the good health but also at the level of plurality of actors of the service.

First, the good health covers all aspects of the individual and collective life, from work to food even to the sport.

Second, we talk about actors of the service, referring to central State, regions, local governments, healthcare organizations and hospitals, private dispensers, medical and health professions, citizens, pharmaceutical companies and medical devices. They all called to optimize and test new forms of organization, adjustment and production of health service.

To better understand the context of health care, we tried at first to explain the category of which is the health service part. We refer to the category of public service, as defined by the jurisprudence and the law.

Really, drawing a definition of public service was not simple and clear, because in the legislation it is not easy to find a unique concept to public service. For this reason, it was particularly sought in the jurisprudence of the Constitutional Court and the State Council.

We not only tried to explain the meaning of the term public service, but we have also tried to define what is the role and task of the public administration. Certainly, the public administration should ensure the necessary structures and the best ways for the allocation of health services or however for the protection of the right to health as enshrined in the Constitution.

In the first part of this study, we have made a distinction between subjective and objective conception of public service, from the first theories in administrative law to the more recent theories.

In the second part of this study, we tried to explain in detail how the health constitutes public service with reference especially to the constitutional requirements (articles 2, 3, 32 of the Constitution) and the law, with particular regard to the verdict of the Constitutional Court and the Council of State.

The work continued showing the changes in regulations in the area of health care. Beginning from the law Mariotti, first law of reform of hospital facilities, to the latest regulations in the area of health care.

In this part we focused, especially, on the law December 23, 1978, n. 833 establishing the national public health service.

This is certainly one of the most significant measures of reform of the health service. Not only because it is the first law of reform, but mainly because in it are spelled out organization, planning and management of the service and the fundamental principles.

Performance consistency, equality of treatment, universality of the recipients: these are the founding principles of the national health service. Principles that correspond, in the intent of the legislature, with a guarantee as faithful as the constitutional rules referred to in art. 32 the right to health and the art. 3 on the principle of equality.

In the third part of this study, we attempted to explain as the establishing law of the national public health service was not easy to apply. For this reason, they are followed inevitably moments of reform.

In fact, the work continues with the explanation of the subsequent moments of reform of the early nineties.

First, legislative decree December 30, 1992, n. 502, which exemplifies the change of perspective of the entire field of healthcare. In fact, if with the law 833 of 1978, the attention was once again especially given to the guarantee of the above said principles - without particular attention to the funding aspect - with the beginning of the nineties and the economic crisis, which could be perceived

in our country, we have had necessarily to make a change in perspective.
It was no longer thinkable a "all for all" but, on the contrary, it moved to a system that is based on financial fixed parameters to be followed.
Further, the regions took more and more part in the management of health care services. In fact, it is extremely interesting to note how the reforms of health have been accompanied by reforms of the State.
You can really say that the Health has been the scene of the transformation of the State in a federal state as we know it today.
Furthermore, the legislative decree 502 of 1992 has also had the merit of making clear and binding the so-called essential levels of assistance. According to the provisions of the decree the State lays down the essential levels of assistance that the regions are bound to respect. The uniform levels of assistance are defined as the set of activities that must be delivered by the national health system and represent a minimum standard of performance that are right for all citizens.
The second part of this elaborate, continues with the third moment of health reform that took place with the legislative decree June 19, 1999, n. 229 that has had the merit of having conducted the national health system toward a more aware and wished corporatization process, with a view to interdisciplinary work where the parts of governance , managerial, technical and scientific work together to obtain the best results.
A really exemplary action for this objective was surely the transformation of Usl in Asl, as local health authorities. We can note how the Asl have set up a time of a very important step from an inevitably politicised system to one, we could say, de-politicised and based on management.
Then, we have shown another important aspect of the decree 229 of 1999, that is, the anticipation of the so-called integration social planners that covers all the activities which are adapted to meet, through a complex process assistance, health needs to the person requiring unitarily health performance and actions to social protection.
It is a very significant moment if we consider that the integration social planners in the law establishing the national health service were entrusted to the

competence of the region and that in the decree of 1992 were made even optional.

In the decree of 1999, on the contrary, are subject to a true and proper discipline with regard to both ownership of skills and rules of operation, depending on whether it is a health benefits at the social level, social security benefits on the level of health or healthcare performance high health integration.

Another very important element made by legislative decree 229 of 1999, was without doubt to have accelerated even more the process of regionalisation.

But it is in the legislative decree February 18, 2000, n. 56 “Provisions in the field of fiscal federalism” that the idea of regionalism assumes a real connotation in a process that will peak with the amendment to the Title V, Part II, of the Constitution.

In fact, the most significant moment of history legislation is in the field of health reforms and in the matter of reform of the State was without doubt the constitutional law October 18, 2001, n. 3 bearing changes to title V of the second part of the Constitution amending the allotment of responsibilities between the State and regions.

It has been very interesting to study the legislation because it constitutes a clear signal of a change in perspective extremely significant, in particular, we are thinking of the fact that the previous residual criterion is reversed: the legislative competence is matter for the regions, while the State is vested the powers mentioned in art. 117 of the Constitution.

The regions therefore have more and more legislative autonomy, especially in the area of health care you can see how this creates a somehow ambiguous situation. In fact, in a State characterized by federalist elements, the need is, without a doubt, to keep the national unity especially in the field of health care benefits in respect of constitutional forecasts.

We have tried to explain how it is absolutely essential to find a common solution between centrality and federalism. I am referring to the attempt of the legislation to create tools to make effective progress of growth in the autonomy of the regions, but at the same time safeguard the right to health protection and unitary

citizenship without giving in to the temptation of a centralistic nature.

This contradiction is solved, both in the rules and in the law, trying to ensure a minimum level of consistency of performance the task of which is entrusted to the State.

The concluding part of the study, therefore, focuses on innovations brought by fiscal federalism – with the legislative decree 6 May 2011, n. 68 "Provisions of autonomy of entry of an ordinary statute regions and provinces, as well as costing standards and needs in the health sector", implementing the enabling act May 5, 2009, n. 42 - in the healthcare field, not omitting the problems that revolve around such a system, both from the point of view of management and organization and the funding level in the health sector.

The universality of the service and the new risks that may emerge on the formation of inequalities at the regional level, could almost put into question the entire system at the foundation of the health system as well as the principles contained in the constitutional text. Really many questions still remain open and many knots are to be solved , but at the same time there are many proposals for future management of the health sphere.

It appeared that the continuous pervasiveness of regulatory interventions and the adjustment of the area of health care - at both national and regional level - the growing concern with regard to financial limits opposite to the need of the guarantee of minimum levels and uniform service, but at the same time, the need to introduce differentiated care systems, not only are able to explain the plurality and complexity of the health but also to describe a health care system, such as the Italian, capable of innovation and adaptation to such a sudden change of the health needs of society.

If it is true that the whole world linked to health has its roots in the mists of time, its evolution over the years has led to provide a health care system capable of guaranteeing the best psycho physical welfare state of the individual.

In this sense, the evolution has been very interesting because, following the trends in the economic and medical-scientific, cultural and social, has changed its approach from simple care to prevention of all the factors that can in some

way affect the welfare of the individual in all aspects of his life, by suffering at work and at leisure.

Politics continues to hope a fair federalism, but the gap existing between the various regions and interest groups, if it is not tempered with a goal of balance in terms of consistent performance in the national territory, can lead to a remarkable diversification in terms of ability to respond to the needs of health of the population.

It is clear that the transformation of the State in a federal sense which had , however, to be characterised by the principles of solidarity, in health has had even more fragmentation in terms of interventions and performances to the citizens, with different consequences also on the health of the population.

We can see a fundamental criticism regarding to the risk that the forms of acceleration in the federalist sense can accentuate even more already existing diversities . In fact, the differences in income that have historically characterized the north and the south of our Country, have shown no sign to decrease.

The elaborated tries to state that our national healthcare system is shifting more and more toward a model of welfare assistance but less and less universalistic due to the processes of devolution in our legal system.

Concluding, in the preparation of the study, we tried to be the more impartial possible, trying however to bring out the complexity and vastness which certainly are not lacking in the area of health care. In a market economy, health care is subject to three links, none of which should become out of balance with the other - the link between state and citizens entitlement for health, the link between the consumer and provider of health services and the link between the physician and patient.

As regards to the method of work followed for the drafting of this elaborate, we tried to tap into the most possible bibliographic sources, drawing information from both the administrative law and by public and constitutional law.

This study, not being a work that is intended to achieve innovative results or new proposals in the areas of healthcare, should rather be defined illustrative of legislation and law in the area of health care.