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Non profit organisations and the delivery of services of general interest:
legal innovations and new public responsibilities: A comparative overview
– Italy and Israel

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Changes in the (inter)national structure

- Marketisation (Newdick, 2014), globalisation (Stefanelli, 2017, p. 2), health budget restraints, the increase in the demand for health care services and the progressive ageing of population appear to undermine individuals' right to health.

The moral obligation

- Sometimes, it seems as though the obligation on the part of governments and public authorities to ensure citizens' fundamental rights is no longer an essential dimension of modern welfare states.
- A frustrating example is the death toll of senior citizens from the coronavirus living in parents home

Data from Care Homes



Care homes across globe



The screenshot shows a mobile browser interface. At the top, the status bar displays signal strength, Wi-Fi, and battery icons, along with the time 23:45. The address bar shows 'google.com' with a refresh icon on the left and 'AA' on the right. Below the address bar, the page URL is 'theguardian.com'. The main content area features a dark blue header with a yellow 'Subscribe →' button on the left and the 'The Guardian' logo on the right. A navigation bar below the header lists 'News', 'Opinion', 'Sport', 'Culture', and 'Lifestyle' in white text, with a yellow menu icon on the far right. The main image is a photograph of several yellow and orange ambulances parked in a line. A person in a white shirt and blue overalls is standing in the foreground, facing away from the camera. Below the image, the article title is 'Care homes across globe in spotlight over Covid-19 death rates', with a red sub-headline 'Coronavirus outbreak' above it. The text below the title reads: 'Residential homes have emerged as key breeding ground for infections from Madrid to New York'. There are two red links: 'Coronavirus - latest updates' and 'See all our coronavirus coverage'. At the bottom, the author is listed as 'Kate Connolly in Berlin and Guardian reporters' in red, and the date is 'Thu 9 Apr 2020 18.09 EDT'.

23:45

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Coronavirus outbreak

Care homes across globe in spotlight over Covid-19 death rates

Residential homes have emerged as key breeding ground for infections from Madrid to New York

- [Coronavirus - latest updates](#)
- [See all our coronavirus coverage](#)

Kate Connolly in Berlin and Guardian reporters

Thu 9 Apr 2020 18.09 EDT

Human rights v. economic growth

- There are views of certain political and economic players who consider social and health policies as a burden to growth and competitiveness (Vanherke, Sabato and Bouget, 2017, p. 201).

- Still the frustrating example:

The bureaucrats in both countries are under criticism of neglecting this sector

A Fair Society

- we firmly believe that a fair society should be built upon the effective enforceability of all those rights that imply somehow access to services of public interest.
- Covid 19 – access to appropriate health care to all citizens

Privatization and its impact

- Whilst in the past, most of these services used to be mainly supplied by public agencies,
- since late 1980s these services have been delivered also by private organisations, especially non profit.

Why Non-Profit/Non-Governmental

- The non-distribution constraint
- The control of the government over these organizations

New approach

- Such a responsibility does not only refer to a new role played by non profit organisations.
- It also calls upon a new approach by public authorities, which have been recently pressed to be more citizen-friendly.
- New public management has doubtless helped introducing into public authorities' mentality and regulations business-like methods and tools.

Modern complexity and public agencies

- Yet, in the face of modern complexity, public agencies are facing new challenges, which require also new procedures and evaluation patterns.

Modern complexity and non-profit organizations

- Non-governmental organizations face similar challenges:
- the balance between the economic interests and the moral orders and human rights

NGOs: A LEGAL DEFINITION

«Organisations that exist outside the public government and private market sector, within what is referred to as the third, voluntary or non profit sector»

(Salamon and Anheier, *Defining the nonprofit sector*

A cross-national analysis, 1997)

NGOs: THE MISSION

- Healthcare and social care
- Empowerment of civil society;
- Information and knowledge;
- Advocacy, campaigning and lobbying;
 - Health litigation;
- Human rights and migration
 - Education

NGOs IN EUROPE: THE LEGAL FRAMEWORK

Main legal forms: foundations and associations

They are set up within and by local communities

Members: volunteers and paid staff and employees

They can engage in revenue-generating activities, though they do not distribute any profit or surplus among their members or board members

EUROPEAN COMMISSION, Commission Discussion Paper,
The Commission and Non-Governmental Organisations:
Building a stronger partnership, presented by President Prodi
and Vice-President Kinnock, 2000:

NGOs AND PUBLIC PROCUREMENT: DIRECTIVE 2014/24/EU

Article 77: Reserved contracts for certain services

1. Member States may provide that contracting authorities may reserve the right for organisations to participate in procedures for the award of public contracts exclusively for those health, social and cultural services (...)
2. An organisation referred to in paragraph 1 shall fulfil all of the following conditions:
 - (a) its objective is the pursuit of a public service mission linked to the delivery of the services referred to in paragraph 1;
 - (b) profits are reinvested with a view to achieving the organisation's objective. Where profits are distributed or redistributed, this should be based on participatory considerations;
 - (c) the structures of management or ownership of the organisation performing the contract are based on employee ownership or participatory principles, or require the active participation of employees, users or stakeholders; and
 - (d) the organisation has not been awarded a contract for the services concerned by the contracting authority concerned pursuant to this Article within the past three years.
3. The maximum duration of the contract shall not be longer than three years.

NGOs AND HEALTH CARE SERVICES

The commitment of NGOs: ensure that fundamental rights are enforceable, especially where their relationship agreements with health authorities are clearly stated and regulated.

NGOs AND THE ITALIAN LEGAL AND HEALTH SYSTEM

Different legal forms: associations, foundations and social enterprises

NGOs are expressly recognized as partners of public authorities in the delivery of healthcare

NGOs supply healthcare services both directly and through partnership agreements with local health authorities

NGOs AND THE Israeli LEGAL AND HEALTH SYSTEM

Similar pattern to Italy:

Different legal forms: associations, for-profits corporations

NGOs are expressly recognized as partners of public authorities in the delivery of healthcare

NGOs supply healthcare services both directly and through partnership agreements with local health authorities

The NPM

- Non-governmental organizations in health services are expected to apply NPM
- Their rivals: for profit corporations that are identified as hybrid entities to bear the duty of securing human rights for their customers

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All the best and health