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### NEWS REPORT

<b>Country:</b>	Italy
<b>Title:</b>	Judgment on rules applicable to employment contracts with disabled workers
<b>Date:</b>	12 April 2017
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<b><u>Context</u></b>	
<b>Issue at stake:</b>	No implicit derogations apply to contracts agreed with workers with disability
<b>Ground of discrimination:</b>	Disability
<b>Source:</b>	National court decision, Supreme Court no. 17867/2016, <i>DNC CF v. Honeywell Garret SPA</i>
<b>Field:</b>	Employment
<b>Applicable law:</b>	Legislative decree no. 368/2001

### Content

**Case:** A person with disability ('the claimant') worked for a private employer under an agreement signed with a municipality according to a special Law no. 68/1999 aiming to foster the integration of persons with disability in the job market. The claimant was employed under a short-term contract according to legislative decree no. 368/2011 which requires an express reason to conclude a contract of a limited length. Believing that Law No. 68/1999 had a special nature compared to the general Legislative decree no. 368/2001, the employer had not provided for reasons to conclude fixed-term contracts with employees with disability. When the claimant's contract ended, the employer aimed to conclude new short-term contracts with other disabled workers for the same job, with the practical effect of excluding workers with disability from the possibility to conclude long-term contracts. The claimant brought the case to court, and on appeal it reached the Supreme Court.

**Decision of the Court:** According to the Supreme Court, Law No 68/1999 provided for incentives in order to foster the integration of workers with disability and there was no reason to apply implicitly another derogation that is the exclusion of motivation in case of fixed-term contracts. Saying the contrary would amount to discrimination against workers with disability in breach of Directive 2000/78/EC and UNCRPD. The Supreme Court did not explore the nature of the discrimination (direct or indirect) but examined the potential application of 'the duty to provide reasonable accommodation' for workers with disability. According to the Court, this duty upon employers aims to respect the principle of equal treatment and not to allow derogations to the application of a law on fixed-term contracts for workers with disability. The Supreme Court found the discriminatory conduct of the employer and condemned it to provide for a specific reason to fixed-term contracts, also when they are concluded with persons with disability.<sup>1</sup>

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<sup>1</sup> Supreme Court Judgment, no. 17867/2016 of 9 September 2016.

**Key points of analysis:** In Italy, fixed-time contracts shall contain an express reason in order to justify the short-term relationship, according to Legislative decree no. 368/2001 and there is no reason why the same rule does not apply to contracts agreed with persons with disability.

**Internet link source:**

[http://www.europeanrights.eu/public/sentenze/Corte di Cassazione 17867 discriminazione contratti a termine disabilit.pdf](http://www.europeanrights.eu/public/sentenze/Corte_di_Cassazione_17867_discriminazione_contratti_a_termine_disabilit.pdf).