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Non-discrimination

Italy
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including summary



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Country report

Non-discrimination

Transposition and implementation at national level of
Council Directives 2000/43 and 2000/78

Italy

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Reporting period 1 January 2018 – 31 December 2018

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EXECUTIVE SUMMARY

1. Introduction

Italy is a country made up of 20 regions, each with its own traditions and history. The main differences, in terms of working conditions, job opportunities and the quality of public services (education, healthcare and transport), are between the northern and southern regions. The family is at the centre of the structure of society and of social welfare, with extended families still living together, in particular in the south. Organised crime, corruption, the black economy and tax evasion are structural scourges that still hinder the full development of the country, with the complicity of a political class that has never been able to tackle them adequately.

Some relevant data on the Italian population are provided by Istat, the *Istituto nazionale di statistica* (Italian National Institute for Statistics). According to the most recent surveys, in a population of 60 438 973,¹ there are about 2 600 000 people with disabilities, which represents 4.3 % of the total population.² Pupils with disability number 156 000, or 3 % of the total number of students. One million people identify themselves as homosexual or bisexual.³ There are 5 144 400 foreign nationals, but no data are available on the racial or ethnic origin of the population. With regard to religion, 76.5 % of the total population have been baptised into the Catholic Church, although only around 25 % declare themselves to be practising Catholics. Muslims represent around 2 % of the population, the same percentage as Orthodox Christians. The Jewish community has a historical presence in Italy and has about 35 000 members.

In 2018, the law on the prison system was amended, prohibiting discrimination and introducing a duty on the administration to place a homosexual detainee in an appropriate place, taking into account his or her fear of being mistreated by fellow prisoners and the right to access training activities.⁴ Proper implementation of the law requires appropriate places but not separate ones: homosexual detainees enjoy the right to access all training activities available to detainees in general and should not be placed in separate or special places.

The majority of judgments in the field of discrimination law are still based on the ground of nationality, although the application of anti-discrimination law on other grounds is increasing. However, discrimination law is still not perceived as a specific sector of the law, and is ignored even in databases that are commonly used by judges and lawyers. Both on political platforms and in the social sciences, discrimination is still a low-priority issue. The marginalisation of the activity of the *Ufficio Nazionale Antidiscriminazioni Razziali* (UNAR) (National Office Against Racial Discrimination), an office of the Government that is supposed to be the equality body, is both a cause and an effect of this lack of awareness, at least among politicians.

Surveys about perceptions of discrimination are very rare, so it is difficult to provide accurate estimates of the frequency and magnitude of discrimination in all fields – and media reports are often very inaccurate.⁵ Certainly, hostile attitudes can be observed

¹ Istat (2019), available at: http://dati.istat.it/Index.aspx?DataSetCode=DCIS_POPRES1.

² Istat (2010), *La disabilità in Italia (Disability in Italy)*, available at: https://www.fabi.it/public/documenti/salute-e-sicurezza/72861STAT_DISAB_2010.pdf.

³ Istat (2012), *La popolazione omosessuale nella società italiana – 2011 (The homosexual population in Italian society – 2011)*, available at: http://www.istat.it/it/files/2012/05/report-omofobia_6giugno.pdf.

⁴ Italy, Legislative Decree 123/2018, on reforming the prison system (*Riforma dell'ordinamento penitenziario*), 2 October 2018, available at: <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2018-10-02;123!vig>.

⁵ Survey on discrimination by gender, sexual orientation and ethnic origin (IST-02258 *Indagine sulle discriminazioni in base al genere, all'orientamento sessuale, alla appartenenza etnica*), available at: <http://www.istat.it/it/archivio/30726>.

towards different groups of people, mostly in relation to the recent waves of immigration and asylum seekers. Moreover, hostility against the Roma is becoming an increasingly heated issue, with several politicians openly supporting policies of segregation in housing and education. School drop-out rates among Roma pupils are an issue of serious concern. They may be a direct consequence of housing segregation, with camps based far from schools and sudden transfers of people from one camp to another.⁶

Racial and ethnic discrimination often overlaps with discrimination on the ground of religion and belief, mostly in the case of ethno-religious groups such as 'Arabs' and 'Muslims', when discrimination occurs without any distinction being made between the two terms.⁷ Terrorism and the refugee crisis have worsened the general picture still further. With regard to religious minorities not linked to immigration (Jews, Waldensians and others), there are no reports of serious cases of discrimination or of a general climate of hostility.

2. Main legislation

Article 3 of the Italian Constitution contains a general clause on equality and banning discrimination. While it clearly prohibits any discriminatory legislation, it is a matter of legal debate whether the constitutional principle has a direct effect, i.e. if it offers sufficient grounds for action by an individual who has faced discrimination. This has never been properly tested in court. In addition, Law 300/1970 (the Workers Act) contains a provision banning discriminatory acts against workers, and a specific legal tool is provided for by criminal legislation on 'hate speech' which includes references to discriminatory acts of a different nature.

The first enactment of advanced anti-discrimination regulations took place with Legislative Decree 286/1998 (the Immigration Decree). This Decree prohibits direct and indirect discrimination by individuals and public authorities, with definitions roughly corresponding to those of the directives but with an open-ended list of fields of application. Protection extends to discrimination on the ground of national origin, which is understood as nationality, as in citizenship.

Implementation of the EU anti-discrimination directives has triggered a new era of anti-discrimination law in Italy. In order to transpose Directive 2000/43/EC and Directive 2000/78/EC into Italian law, the Government approved two decrees in July 2003: Legislative Decree 215/2003 (transposing Directive 2000/43) and Legislative Decree 216/2003 (transposing Directive 2000/78), which are still in force and constitute the main anti-discrimination laws.

Legislative Decree 215/2003 is applicable to discrimination on the grounds of race and ethnic origin in all the fields mentioned in Directive 2000/43/EC, while Legislative Decree 216/2003 applies within the field of employment to discrimination based on religion and belief, sexual orientation, disability and age. Both decrees basically aim to transpose the directives into the legal system as they are, without any attempt at coordination between them or with other existing Italian laws. Some drafting mistakes were corrected by a later decree, and legislation passed in early 2008 amended some of the major discrepancies with the directives.

⁶ In addition, see the La Barbuta case, which was decided in 2015, available at: www.asgi.it/wp-content/uploads/2015/06/Ordinanza-La-Barbuta.pdf. In 2016, the ECtHR ordered Italy, as an interim measure, to stop the forced eviction of a mother with disability and her daughter. See the press releases available at: <http://www.21luglio.org/21luglio/la-corte-europea-ferma-litalia/>; <http://www.hlrn.org/news.php?id=pm9rZA==#.WNfFg4VOJjo>.

⁷ See the extensive and up-to-date press record on hate speech edited by Associazione Carta di Roma, available at: <http://www.cartadiroma.org/>.

A further law was passed in 2006 to extend the prohibition of direct and indirect discrimination on the ground of disability beyond the field of employment, with remedies similar to those provided for by the decrees transposing the directives.

One criticism of this sort of law-making concerns the fact that, since it does not abolish pre-existing anti-discrimination laws nor attempt consolidation, it adds further legal regimes, creating a complex legal framework. A step towards coordination was taken in 2011, with the general fast-track procedure applying expressly to all the grounds covered by the directives, plus national origin, language and colour.

It should be recalled that Italy is party to the major international treaties and conventions against discrimination – for example, the Convention on the Elimination of All Forms of Racial Discrimination, International Labour Organization Convention No. 111 on Discrimination and the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), which have all been transposed into domestic law. However, while Italy has ratified the European Social Charter, the European Convention on Human Rights (ECHR) and additional protocols, it has not yet ratified Protocol 12 to the ECHR, thus limiting the potential of the Convention as a tool for anti-discrimination litigation.

3. Main principles and definitions

The 2003 decrees forbid direct as well as indirect discrimination, with wording that is based on that of the directives, on all the grounds concerned. Harassment is also defined and prohibited. Instructions to discriminate are explicitly considered to be a form of discrimination. Victimisation is provided with the same level of judicial protection as other forms of discrimination, and is an element to be taken into consideration in the assessment of the amount of damages to be awarded. Discrimination by association (on presumed grounds or characteristics) is not explicitly covered, but the decrees can probably be interpreted as covering such discrimination, which could also be considered as an infringement of freedom of expression and of association. However, the Tribunal of Matera, in a case decided in 2018, held that a person cannot claim to have been discriminated against on the ground of disability if he or she is not personally an individual with disability.

For all grounds of discrimination, occupational requirements can justify an exception to the prohibition of discrimination within the limits of 'proportionality and reasonableness', along the lines of the relevant provisions of the directives. However, this unfortunately cannot be said of the scope of application of the Decree provisions on 'work suitability' tests.

Italy chose to use the possibility of maintaining ad hoc rules for organisations with a special ethos. A partial exemption from the non-discrimination obligation for organisations with a specific ethos was developed by judges before the transposition of the directive, while in terms of legislation, the only provision on this point was a very limited one enacted in 1990 with regard to organisations characterised by a certain 'ideology' in a broad sense, such as churches, political parties and trade unions. In cases of unfair dismissal, employees of these organisations are granted only the remedy of damages and not the right to reinstatement that is otherwise available. However, according to many scholars, Legislative Decree 216/2003 gives employers with an ethos based on religion and belief a power that they did not have before the transposition of the directive.

With regard to religion, a problem exists for faiths (such as Islam) that have not signed an agreement with the state and thus do not enjoy automatic legal recognition of their specific needs (such as holidays and ritual obligations). However, they enjoy freedom of religion and the right to equality of churches under the Italian Constitution.

In order to execute the judgment of the Court of Justice of the European Union (CJEU) that Italy had failed to fulfil its duty to implement Directive 2000/78/EC correctly in respect of the reasonable accommodation duty,⁸ a new paragraph was added to Article 3 of Legislative Decree 216/2003.⁹ However, the new provision does not give a definition of reasonable accommodation nor any sort of guidance to employers on how to respect this duty; it simply compels employers to make provision for reasonable accommodation. It should be noted that public bodies must respect this duty only if no any additional financial or human resources are required. This may be highly problematic, and could result in a breach of Article 5 of Directive 2000/78/EC, according to which employers must bear a burden if necessary, unless it is disproportionate. Courts have applied Article 3 of Legislative Decree 216/2003, in line with Directive 2000/78/EC and the UNCRPD, finding that the failure to meet the duty of reasonable accommodation counts as discrimination.¹⁰

Jurisprudence regarding discrimination on the ground of age is in line with EU anti-discrimination directives and with CJEU case law. In 2018, the Lazio Regional Administrative Tribunal maintained the legality of the maximum age limit in relation to the selection of firemen, referring to the relevant EU directive and to CJEU case law.

Multiple and assumed discrimination is not dealt with as such in Italian anti-discrimination legislation. A reference to multiple discrimination is made in the yearly activity report of UNAR, the national equality body for the promotion of equal treatment and prevention of discrimination on the grounds of race or ethnic origin.¹¹

4. Material scope

The scope of application includes the same fields listed in the directives, and the provisions apply to both the private and public sectors. An interesting legal development took place in 2018, with the inclusion of a prohibition on discrimination on the grounds of sex, gender identity, sexual orientation, race, nationality, social and economic conditions, political opinions and religious belief as part of the reform of the prison system.¹²

Unlike in the Immigration Decree, discrimination on the ground of nationality is explicitly excluded from the scope of application of Legislative Decree 215/2003, as are all legal provisions concerning the status of third-country nationals and stateless persons. In this regard, both decrees mention rules not only on entry and residence but on access to employment, assistance and welfare. As mentioned above, a 2006 law extends protection from discrimination on the ground of disability beyond the field of employment.

The exclusion of discrimination on the ground of nationality has been overcome by judges who apply the same legal framework, consisting of the Immigration Decree and Legislative Decree 215/2003, to every case of racial or nationality discrimination. This

⁸ Judgment of 4 July 2013, *Commission v. Italy*, C-312/11.

⁹ Italy, Law 99/2013, converting Legislative Decree 76/2013, on preliminary urgent measures for the promotion of employment, in particular of young people, of social cohesion and on other urgent financial measures (*Conversione in legge, con modificazioni, del decreto-legge 28 giugno 2013, n. 76, recante primi interventi urgenti per la promozione dell'occupazione, in particolare giovanile, della coesione sociale, nonché in materia di Imposta sul valore aggiunto (IVA) e altre misure finanziarie urgenti*), 9 August 2013, available at: <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2013-08-09:99!vig>.

¹⁰ Italy, Tribunal of Bologna, judgment of 17 June 2013, available at: http://adapt.it/adapt-indice-a-z/wp-content/uploads/2013/08/trib_bg_18_6_13.pdf; Tribunal of Ivrea, *TG v. OMP S.r.l.*, judgment No. 8248 of 24 February 2016, available at: <http://www.osservatoriodiscriminazioni.org/index.php/2016/04/20/licenziamento-giustificato-motivo-oggettivo-consistente-nella-sopravvenuta-inidoneita-fisica-psichica-del-lavoratore-lobbligo-datoriale-dei-ragionevoli-adattamenti-tribunale-ivrea-ordina/>.

¹¹ UNAR reports are available at: <http://www.unar.it/cosa-facciamo/relazioni/>.

¹² Italy, Legislative Decree 123/2018, on reforming the prison system (*Riforma dell'ordinamento penitenziario*), 2 October 2018, available at: <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto:legislativo:2018-10-02:123!vig>.

allows judges to handle cases of discrimination on the ground of nationality as direct discrimination and not as indirect racial discrimination.

Along these lines, the hostility of certain political actors towards ethnic and racial groups perceived as 'different' and, for one reason or another, 'strange' or 'dangerous' is increasingly reflected in formally 'ethnically blind' legislation (in particular, legislation introduced by municipalities) which uses various pretexts (requirements on residence, nationality, etc.) to exclude members of these groups from becoming full members of society.

5. Enforcing the law

Action against discrimination is based on a claim being filed with the courts by the victim. In 2011, a procedural change was made, enhancing coordination between the various laws enacted in recent years. Article 28 of Legislative Decree 150/2011 revoked the special procedure for anti-discrimination cases provided by the Immigration Decree, which was replaced by the general fast-track procedure provided by Article 702-*bis* of the Civil Procedural Code. In especially urgent cases, the judge can issue an interim order, the violation of which (as well as that of the order issued in the final decision) is a criminal offence. The judge can order a plan to be produced for the rectification of discrimination. Moreover, the general law on pre-trial mediation now applies to all anti-discrimination claims, thus extending the provisions of Decree 216/2003, which previously applied solely to employment and occupation-related claims.

Concerning standing to litigate, both decrees contain special rules. Generally, in the first instance, the victim can act personally without representation by a lawyer. With regard to race and ethnic origin, the Department for Equal Opportunities of the Presidency of the Council of Ministers keeps a list, approved by the Ministry of Labour and Social Policies and the Department for Equal Opportunities, of associations and bodies selected on the basis of 'their purpose and the degree of continuity in their action' which have standing to litigate in support of or on behalf of victims of discrimination. They can also act through *actio popularis* against discrimination when the victim is not identified. In cases concerning the other grounds of discrimination, the Decree transposing Directive 2000/78/EC now grants similar legal standing to relevant organisations without introducing a special register. For discrimination on the ground of disability outside employment, Law 67/2006 (the Disability Discrimination Act) introduced a system similar to that in force according to the decrees, with a special register held by the Ministry of Labour. Associations and trade unions are more aware of their key role in strategic litigations, in particular with regard to migration, Roma and sexual orientation.¹³ In 2018, an interesting case was decided by the Tribunal of Bergamo after a legal action that had been brought by a trade union challenging the discriminatory nature of an extinction clause included by Ryanair in contracts signed with pilots and flight attendants. The Tribunal condemned Ryanair for breaching anti-discrimination legislation, with wide reference to EU law and CJEU case law.¹⁴ In 2017, two judgments were issued by the Court of Appeal and the Tribunal of Milan thanks to legal actions brought by an NGO condemning the Lega Nord party for discrimination against asylum seekers.¹⁵

¹³ Italy, Supreme Court, *ASGI v. INPS*, judgment of 8 May 2017, available at: https://www.asgi.it/wp-content/uploads/2017/05/Corte_di_Cassazione_sez_lavoro_sentenza_n_11166_del_8517_pres_D%E2%80%99Antonio_est_Rivero_INPS_avv_Coretti_Stumpo_e_Triolo_c_ASIGI-APN.pdf; Tribunal of Rovereto, *X and Associazione radicale certi diritti, CGIL v. Istituto delle figlie del Sacro Cuore di Gesù*, judgment of 21 June 2016, available at: <http://www.osservatoriodiscriminazioni.org/index.php/2017/03/01/tribunale-di-rovereto-ordinanza-ex-art-702-ter-cpc>.

¹⁴ Italy, Tribunal of Bergamo, judgment No. 1586 of 30 March 2018.

¹⁵ Italy, Court of Appeal of Milan, judgment of 23 February 2017, available at: <http://www.unar.it/wp-content/uploads/2019/01/Relazione-PCM-2017.pdf>; Tribunal of Milan, judgment of 22 February 2017, available at <https://www.asgi.it/wp-content/uploads/2017/02/ASGI-NAGA-BORGHI-DAVIDE-2-TRIBUNALE-DI-MILANO-ORDINANZA-DEL-22.2.2017.pdf>.

Class action in discrimination cases is not expressly allowed in the discrimination field and no such case has been brought, but it is likely that collective actions could be admitted thanks to a broad interpretation of the same rules on *actio popularis* and actions in support of or on behalf of victims of discrimination, or of the rules on class action in the consumer protection field included in Law 244/2007 (known as the Finance Act).

With regard to penalties, general legislation provides labour law sanctions such as the invalidity of any discriminatory act as well as measures against unlawful dismissal (including compulsory reinstatement in the workplace). Judges are allowed to order compensation for non-pecuniary damages as well, and they usually do, sometimes taking into account the dissuasive effect, in accordance with Directive 2000/78/EC. In the *FILT CGIL v. Ryanair Dac* case, which was decided in 2018, the Tribunal of Bergamo condemned the flight company and required it to pay EUR 50 000 to the trade union. The Tribunal classified the compensation as punitive damages, making reference to the CJEU *Asociația Accept* case and to anti-discrimination directives.

Article 28 of Legislative Decree 150/2011 provides a rule on the burden of proof, which is applicable to all grounds of discrimination. This rule introduces a reversal of the burden once the claimant produces evidence (which may include statistical data) that can precisely and consistently establish a presumption of the existence of discriminatory acts, agreements or behaviours.

Situation testing can be used as evidence in civil proceedings. However, while there are no legal obstacles to its use, there is also no express provision allowing it, and evidence gathered through situation testing has not as yet been presented as such to a court.

6. Equality bodies

The equality body, UNAR, was originally created to deal only with race and ethnic origin, hence its full name: the National Office Against Racial Discrimination. In 2010, a Governmental directive extended UNAR's remit to cover nationality, sex, religion or personal belief, disability, age and sexual orientation, and it became known as the *Ufficio per la promozione della parità di trattamento e la rimozione delle discriminazioni fondate sulla razza o sull'origine etnica* (Office for the promotion of equal treatment and prevention of discrimination on the grounds of race or ethnic origin). It is not an independent body, since it was established as a section of the Department for Equal Opportunities of the Presidency of the Council of Ministers, which previously dealt exclusively with gender discrimination. UNAR can use staff from other Government departments, including judges and state attorneys as well as external experts and advisers.

According to its founding legislation, UNAR's competences include providing independent assistance to victims of discrimination in pursuing their complaints; carrying out independent surveys on discrimination; promoting the adoption of specific measures aimed at eliminating or compensating for disadvantages incurred by people who have been victims of discrimination; issuing opinions and proposing legislative reforms concerning racial and ethnic discrimination; issuing recommendations on matters relating to racial and ethnic discrimination; and disseminating information on the rules on equal treatment irrespective of racial or ethnic origin.

UNAR has two different units, one focusing primarily on legal assistance and dispute resolution and the other on study and research. It reports every year to Parliament and to the executive. It has been operational since November 2004 and, according to its annual reports to the Government, it offers significant assistance to victims of discrimination through the free telephone number that can be called by those who feel they are victims of discrimination. In addition to legal assistance, UNAR has cooperated

with external lawyers to issue a number of opinions on the status of undocumented immigrants. It has also run seminars and workshops to disseminate information and provide training to lawyers and NGOs. The annual reports are rich in information on UNAR activities and on complaints received via the green (freephone) number. During 2018, UNAR appears to have restarted its activities after a change of directors and the political tensions around its role resulted in a sort of standstill. For instance, the annual reports of its activities up to 2017 have finally been published, whereas until last year only reports up to 2012 were available.

In 2012, UNAR was appointed as a national contact point in accordance with European Commission Communication COM(2011)173 and was charged with the task of coordinating Italy's national Roma strategy. It was also appointed as a national contact point for the implementation of Council of Europe Recommendation CM/Rec (2010)5 on discrimination on the ground of sexual orientation, despite the fact that its original remit did not extend beyond discrimination on the grounds of race and ethnic origin. However, the practical implementation of such strategies is extremely limited, and the recent change of director general and of the majority of external experts – without new contracts – risks compromising the execution of what has already been planned. Nevertheless, during 2018, UNAR restarted the promotion of activities in the field of sexual orientation, such as setting up a permanent consultative group comprised of associations acting in the field of LGBT rights.¹⁶

In addition, a special body called the *Osservatorio per la sicurezza contro gli atti discriminatori* (OSCAD) (Observatory for Security against Discrimination) was set up in 2010 as part of the Department of Public Security within the Central Directorate of the Criminal Police. It is not a designated body according to the transposition process. OSCAD is a special body, operated by the police and the *carabinieri* (military police). Its members belong to the Ministry of the Interior (police) and to the Ministry of Defence (*carabinieri*). Therefore, it is not an independent body but a governmental one. It has a mandate to act in all fields of discrimination and has the following tasks: it receives reports of discriminatory acts relating to the security sector, from institutions, professional or trade associations and private individuals, in order to monitor discrimination based on race or ethnic origin, nationality, religion, gender, age, language, physical or mental disability, sexual orientation and gender identity. Based on the reports it receives, OSCAD initiates targeted interventions at local level to be carried out by the police or *carabinieri*; follows up on the outcome of discrimination complaints lodged with police agencies; maintains contact with organisations and institutions, both public and private, dedicated to combating discrimination; prepares modules for training police officers in anti-discrimination activity; participates in training programmes with public and private institutions; and puts forward appropriate measures to prevent and fight discrimination.

7. Key issues

Anti-discrimination seems to have a very marginal role in Government policies, and this is illustrated by several facts, including the lack of a ministry for integration and the limited powers granted to UNAR. With regard to the national Roma strategy, for instance, there is still a lack of effective implementation following its adoption. Moreover, UNAR's lack of independence means that it is merely an office operating within the Department for Equal Opportunities without any significant autonomy. UNAR is clearly and completely linked to the executive and cannot perform any independent activity whatsoever, despite the fact that it has at times adopted a critical position in relation to the Government.

¹⁶ Italy, Decree setting up a permanent consultative group promoting and defending rights of LGBT rights, (*Costituzione del tavolo di consultazione permanente per la promozione dei diritti e la tutela delle persone LGBT*), 22 December 2018, available at: <http://www.unar.it/wp-content/uploads/2018/10/Decreto-composizione-tavolo-LGBT.pdf>.

However, it must be noted that the majority of these cases were initially highlighted by the media or individual lawyers, and UNAR became involved only later after significant pressure from different organisations. This means that UNAR generally does not take the initiative autonomously, although it may issue opinions after being requested to intervene by other associations or NGOs. Evidence of its close connection with the political majority can be seen in the 'spoils system', as applied to the roles of the director and experts. The renewal of their tenure is completely at the discretion of the head of the Department and the Minister.

The lack of a clear policy against discrimination is also reflected in the lack of positive actions in favour of vulnerable groups, aside from traditional social inclusion measures for people with disabilities and the linguistic minorities. Several changes should be made in order to ensure the greater effectiveness of anti-discrimination laws. First, in relation to the duty of reasonable accommodation, a definition and guidelines on how to respect the duty are needed.

With respect to differences in treatment by organisations with a special ethos, the exception as formulated in Legislative Decree 216/2003 also applies to organisations without an ethos actually based on religion or belief, and is likely to go beyond what was provided for under pre-existing national rules in the field.

There has been an interesting development in case law in relation to sanctions. While compensation for non-pecuniary damages is ensured in every judgment, the amount is calculated taking into account the dissuasive nature of such a sanction, in accordance with Article 17 of Directive 2000/78/EC. The 2018 judgment of the Tribunal of Bergamo against Ryanair is a clear example in this regard.

Finally, the coexistence of different legal texts that are very similar is unnecessary and could create legal uncertainty, but no consolidation is planned.

INTRODUCTION

The national legal system

The Italian legal system is based on a written Constitution, which entered into force on 1 January 1948 and is guaranteed by a relatively centralised judicial review of enacted laws adopted by either the national Parliament or regional legislative bodies.

The Italian regions have increasingly important law-making powers within the limits of the state's exclusive competences, in accordance with Article 117 of the Italian Constitution. Measures for social integration and the practical organisation of public services (social and health services, for instance) fall within the competence of the regions; however, it is the role of central Government to determine 'the basic level of benefits relating to civil and social entitlements to be guaranteed throughout the national territory' (Article 117(2)(m)). Moreover, according to Article 177(7) of the Italian Constitution, 'regional laws shall remove all obstacles which prevent the full equality of men and women in social, cultural and economic life, and shall promote equal access of men and women to elected office.'

The regions and the autonomous provinces of Trento and Bolzano participate in the EU legislative process and apply and implement international agreements and European Union legal acts. The regions with special constitutional status (Friuli Venezia Giulia, Sardinia, Sicily, Trentino-Alto Adige and Valle d'Aosta) have particularly extensive legislative powers.

The municipalities, provinces and metropolitan cities have regulatory powers in accordance with the system of organisation and mode of operation that has been granted to them.

This division of competences is far from clear and has generated considerable case law from the Constitutional Court. As far as discrimination laws are concerned, in a judgment of 2006 the Constitutional Court quashed the section of a law enacted by the region of Tuscany, which imposed (subject to an administrative sanction) an obligation of non-discrimination on the ground of sexual orientation in commercial activities, since the imposition of such an obligation falls under the exclusive competence of the state at national rather than regional level, being an infringement of the individual's freedom of contract.

Any laws, regulations, administrative acts or municipal acts must comply with the Constitution. In addition, provisions derived from international human rights instruments (and the related jurisprudence from international courts) are also employed by Italian courts, either in order to interpret Italian enacted law or to directly decide cases.

The equality principle and anti-discrimination laws can be applied by either ordinary or administrative courts; case law is therefore generated by decisions of the Constitutional Court, ordinary judges and administrative judges, depending on whether the case concerns a constitutional review, a dispute among private individuals, a dispute with public entities or a specific action against discrimination.

List of main legislation transposing and implementing the directives

The two anti-discrimination directives have been implemented in Italy through the adoption of two legislative decrees in 2003. Those legislative decrees are still in force and only minor changes have been adopted later on.

- Legislative Decree 215/2003 implementing Directive 2000/43/EC on equality of treatment between persons irrespective of racial or ethnic origin
Date of adoption: 9 July 2003
Grounds covered: Race and ethnic origin
Material scope: Public employment, private employment, access to goods or services (including housing), social protection, social advantages, education
- Legislative Decree 216/2003 on the implementation of Directive 2000/78/EC for equal treatment in employment and occupation
Date of adoption: 9 July 2003
Grounds covered: Religion or belief, disability, age, sexual orientation
Material scope: Private and public employment

1 GENERAL LEGAL FRAMEWORK

Constitutional provisions on protection against discrimination and the promotion of equality

The constitution of Italy includes the following articles dealing with non-discrimination:

Article 3: provides a general clause. It recognises equal dignity and equality under the law without distinction on the grounds of sex, race, language, religion (belief is not mentioned per se), political opinion and personal or social conditions. The grounds of discrimination listed in Article 3 are more restricted than those mentioned in Article 19 of the Treaty on the Functioning of the European Union (TFEU); however, the list has been interpreted as non-exhaustive and the 'reasonable clause test' has been applied by the Constitutional Court to any ground of unjustified difference and in any fields. Article 3 also includes the principle of substantive equality and calls on the state to remove the social and economic obstacles which limit the freedom and equality of citizens and prevent the full development of the human being.

Article 8(1): contains a specific clause regarding freedom and equality of religions.

Article 37(1): contains a specific clause regarding sex discrimination in labour law.

Article 37(3): contains a specific clause providing for equal pay for equal work for minors.

Article 51: contains a specific clause regarding equal access for women and men to elected office.

These provisions apply to all areas covered by the directives and there is no restriction to their material scope. Their material scope is broader than the scope of the directives.

These provisions are directly applicable in theory and can be enforced against private actors (as well as against the state). However, there are not many cases of this type, while the majority of judgments applying constitutional provisions are issued by the Constitutional Court with regard to the validity of laws.

2 THE DEFINITION OF DISCRIMINATION

2.1 Grounds of unlawful discrimination explicitly covered

The following grounds of discrimination are explicitly prohibited in national law: race and ethnic origin; religion and personal belief; age; disability; sexual orientation; sex; nationality; language; political opinion; personal and social condition.

Protection against discrimination on those grounds is provided for in different pieces of law:

- Italian Constitution, Article 3: sex, race, language, religion, political opinion, personal and social conditions;
- Legislative Decree 215/2003: race and ethnic origin;
- Legislative Decree 216/2003: age, disability, religion and belief, sexual orientation;
- Legislative Decree 286/1998, Article 43(1): race, colour, ancestry, national or ethnic origin, religion or personal belief;
- Law 67/2006: Measures for the judicial protection of persons with disabilities who are victims of discrimination
- Law 300/1970, Article 15: political opinion, race, religion, language, sex, disability, age, sexual orientation or personal belief.

2.1.1 Definition of the grounds of unlawful discrimination within the directives

The two legislative decrees transposing the directives do not contain any definition of the grounds of unlawful discrimination.

a) Disability

Regarding disability, a definition is given by Article 3(2) of Law 104/1992 (the Framework Law on care, social integration and rights of disabled people), according to which, 'A disabled person is anyone who has a physical, mental or sensory impairment, of a stable or progressive nature, that causes difficulty in learning, establishing relationships or obtaining employment and is such as to place the person in a situation of social disadvantage or exclusion'.

Moreover, the guidance on the concept of 'persons with disabilities' provided by Article 1 of the UNCRPD, ratified by Italy through Law 18/2009, is now part of the Italian legal order. Owing to this Convention and in particular to the concept of 'interaction with various barriers', a social model of disability has been formally introduced into national law. This definition is in line with the CJEU's judgment in the joined cases of *HK Danmark (Ring and Skouboe Werge)* but with a wider material scope: in *Ring and Skouboe Werge*, as well in the previous *Chacón Navas* case, the definition of disability concerns 'professional life', while both the definitions provided by the UNCRPD and Law 104/1992 apply to any kind of 'participation in society'.

b) Racial and ethnic origin

No definition is provided elsewhere in national law for either of the two elements of this ground. It is worth mentioning that, according to Article 43 of the Immigration Decree, which was inspired mainly by the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), discrimination on the ground of national origin is prohibited and interpreted as covering nationality (as in citizenship). In fact, discrimination against migrants is one of the most common grounds for claims of discrimination, in particular when it comes to legal distinctions on the access of third-country nationals to social protection measures and social advantages.

No definition is given even in the field of equality data collection. For instance, within the framework of the first survey on discrimination, carried out in 2011-12 by Istat, ethnic origin was one of the grounds taken into consideration but without giving any definitions and taking migrants as a proxy.

c) Religion

Criteria for identifying the religious character of social groups have been developed in the case law of the Constitutional Court. The main set of standards were set by the Court in a 1995 case in which it stated that, in the absence of agreements with the state, the 'religious denomination' of a social group can be established on the basis of 'public recognition' or on the basis of its charter (not alone but examined against the backdrop of the organisation's actual activity) or on the basis of 'common opinion'. These criteria have been applied and further detailed, especially with regard to Scientology, which, according to the case law of the Supreme Court, meets the criteria for inclusion as a 'religious denomination' protected under the Constitution. However, such criteria have never been tested in the context of anti-discrimination cases.

d) Belief

According to the Court of Rome, and as later confirmed by the Court of Appeal, the notion of belief laid down by Directive 2000/78/EC has been interpreted to include trade union membership. Therefore, discrimination suffered by members of a left-wing union was dealt with according to that directive and its implementing legislation, i.e. Legislative Decree 216/2003, while the traditional case law on similar cases usually applies the 1970 Workers Act. In a judgment issued in 2016, the Constitutional Court clarified that, under Article 8 of the Italian Constitution, the Government does not have a duty to open negotiations in order to sign an agreement with churches. Moreover, the refusal by the Government to open or to sign an agreement as requested by the Union of Rationalist Atheists and Agnostics does not entail a denial of the rights granted by the Constitution to churches or other religious groups. Case law includes belonging to a trade union among the definition of belief according to Legislative Decree 216/2003 and Directive 2000/78/EC. The first judgment in which such an approach was taken was the 2013 judgment of the Tribunal of Rome in the case of *FIOM CGIL v FIAT, Fabbrica Italia*. In 2018, the Tribunal of Bergamo followed the same approach in the case involving Ryanair.

Age: age is taken into account in several pieces of legislation, in particular with regard to labour policy, social issues and social security. Despite the fact that the Italian Constitution provides express protection only to young people, (Article 37(2)), scholars believe that there is a general prohibition of discrimination on the ground of age deriving from Article 3 of the Italian Constitution ('personal conditions') and from the interpretation of Article 37(3) afforded by the Constitutional Court, which has also applied the same Article to workers aged between 18 and 21.

e) Sexual orientation

No definition is given either of this term or of others used in the same context, such as 'gender identity', or 'transsexual and transgender' (see, for instance, Tuscany Regional Law 63/2004). Furthermore, the Italian courts do not provide their own definition of 'sexual orientation'.

A definition of sexual orientation is provided by the Italian strategy to prevent and combat discrimination on the grounds of sexual orientation and gender identity, enacted to implement Council of Europe Recommendation CM/Rec (2010)5, which was approved

in 2013.¹⁷ The strategy has no timeframe and has not thus far been replaced with another one. It is a non-binding document, the implementation of which depends on the Government. Although it could potentially have been referred to by national courts or other bodies dealing with equality and non-discrimination issues, it is not perceived as a key document, and no reference to it has yet been made in judgments. The strategy includes a glossary in which several definitions are given. In particular, sexual orientation is defined as: 'the direction of affective and sexual attraction towards other people: it can be heterosexual, homosexual or bisexual'. Moreover, in recent years, case law has started to extend rights expressly afforded to heterosexual couples to same-sex couples, taking into account, although not defining, sexual orientation.

2.1.2 Multiple discrimination

In Italy, prohibition of multiple discrimination is not included in the law. A very limited exception is the opening provision (Article 1) of Legislative Decree 216/2003 transposing Directive 2000/78/EC, which says that the decree has been adopted 'in a perspective that takes into account the different impact that the same forms of discrimination can have on men and women respectively'. Likewise, Article 1 of Legislative Decree 215/2003 transposing Directive 2000/43/EC contains the same statement but with the addition of the 'existence of forms of racism of a cultural and religious character'. The same wording is repeated in Article 2 of the Prime Minister's Decree of 11 December 2003, designating UNAR as the equality body according to Article 7 of Directive 2000/43/EC.

An explicit reference to multiple discrimination is provided for in the *Programme of Action for the Integration of People with Disabilities*, which was approved in 2013. On page 7 of the *Programme*, multiple discrimination is taken into account in order to define new criteria to collect data on the integration of people with disabilities so that it will be possible to verify their effective integration and the other factors which ease or hinder integration. The same explicit reference is not made in the third *Programme of Action*, approved during 2016, in which there is only a generic reference to the several different types of diversity that exist in modern societies.

In UNAR's *Annual report of activity for 2017*, the extension of the grounds of discrimination covered by the organisation is seen as a way to address multiple discrimination.¹⁸

In Italy, there is no significant case law on this point. In the Court of Padua's judgment of 17 February 2012, for instance, in a case in which the victims had been insulted because they were black and because they were trade union activists, the case was handled as one of racial discrimination without reference to the multiple discrimination at issue.

2.1.3 Assumed and associated discrimination

a) Discrimination by assumption

In Italy, discrimination based on a perception or assumption of a person's characteristics is not prohibited in national law.

The issue of assumed discrimination has not yet led to any relevant legal debate, not least because relevant case law is lacking. However, the wording of the decrees and of

¹⁷ Italy, *National Strategy for LGBT 2013-2015 (Strategia nazionale per la prevenzione ed il contrasto della discriminazione basate sull'orientamento sessuale e l'identità di genere)*, available at: http://www.unar.it/wp-content/uploads/2017/12/LGBT-strategia-unar-17_24.pdf.

¹⁸ UNAR (2018), *Annual report of activity for 2017*, pp. 4, 8 and 11, available at: <http://www.unar.it/wp-content/uploads/2019/01/Relazione-PCM-2017.pdf>.

other existing anti-discrimination rules allows a wide interpretation, including assumed discrimination among the kinds of discrimination prohibited.

b) Discrimination by association

In Italy, discrimination based on association with persons with particular characteristics is not prohibited in national law.

The issue of associated discrimination has not yet led to any relevant legal debate. However, the wording of the decrees and of other existing anti-discrimination rules allows for a wide interpretation, including this type of discrimination among the kinds of discrimination prohibited.

It is worth mentioning that, in a case decided in 2018, the Tribunal of Matera did not take into account the issue of discrimination by association.¹⁹ A worker had argued that a change in her working hours amounted to discrimination on the ground of disability, because of her duty to take care of her disabled father. However, the Tribunal did not consider the *Coleman* principle and held that, since the claimant herself was not a person with disability, she could not claim to have been discriminated against on the ground of disability.

2.2 Direct discrimination (Article 2(2)(a))

a) Prohibition and definition of direct discrimination

In Italy, direct discrimination is prohibited in national law. It is defined in Article 2 of both legislative decrees implementing the two directives, with a faithful transposition of the directives' definition: direct discrimination occurs when 'one person is treated less favourably than another is, has been or would be treated in a comparable situation'. An identical definition is provided for by Article 2 of Law 67/2006 on measures for the judicial protection of persons with disabilities who are victims of discrimination in fields outside employment.

b) Justification for direct discrimination

Justification of direct discrimination is not permitted. Legislative decrees implementing the two EU anti-discrimination directives contains provisions identical to the ones provided for by the directives as far as genuine and determining occupational requirements are concerned.

2.2.1 Situation testing

a) Legal framework

In Italy, situation testing is not permitted in national law.

The general rules on evidence (Articles 2697-2739 of the Italian Civil Code) may be interpreted in such a way that they allow the use of situation testing, but no cases have arisen so far, and even Italian NGOs do not practise it.

b) Practice

In Italy, situation testing is not used in practice. It is not practised even by equality or human rights NGOs.

¹⁹ Italy, Tribunal of Matera, *Sa. Ta. and Ad. Se*, judgment of 9 October 2018.

2.3 Indirect discrimination (Article 2(2)(b))

a) Prohibition and definition of indirect discrimination

In Italy, indirect discrimination is prohibited in national law. It is defined in Article 2 of both legislative decrees as a situation 'where an apparently neutral provision, criterion, practice, act, pact or behaviour would put persons [followed by reference to the specific grounds] at a particular disadvantage compared with other persons'.

An analogous definition is given in Article 2(3) of Law 67/2006 on discrimination on the ground of disability.

b) Justification test for indirect discrimination

Article 3(4) (race) and Article 3(6) (other grounds) of the legislative decrees establish that 'differences in treatment that, even if indirectly discriminatory, are objectively justified by legitimate aims carried out through appropriate and necessary means are not discriminatory acts (...).'

The justification test is in line with the relevant directives, and its application by the courts has not raised any particular issues.

It is interesting to note that Article 3(6) goes on to say that 'in particular, acts aiming to exclude from an occupation involving the care, assistance or education of minor's persons who have been convicted of offences related to sexual freedom of minors or child pornography are legitimate'. This provision has quite limited practical implications, since dismissal on the ground of criminal conviction is always lawful if the crime is related to an occupational activity. Legislators may have wished to prevent the misuse of the ground of 'sexual orientation', but making an indirect allusion to a link between paedophilia and sexual orientation is hazardous.

No express reference to justification is made by Law 67/2006 on discrimination on the ground of disability.

2.3.1 Statistical evidence

a) Legal framework

In Italy, statistical evidence is permitted by national law in order to establish indirect discrimination. According to Article 28(4) of Legislative Decree 150/2011, when a claimant establishes 'facts, including facts of a statistical character, on which a presumption of discrimination can be based, it is up to the defendant to prove that there has been no discrimination'.

The collection of personal data is permitted within the limit set by the Data Protection Act,²⁰ which was recently amended after the coming into force of EU Regulation 2016/679. Additionally, the Workers Act provides for limits to the collection of data on workers. The definition and collection of sensitive data is now provided for by EU regulation, according to which the collection of sensitive data for statistical purposes is an exception to the general prohibition in force, but in compliance with the ethical codes of conduct. National law provides for implementing provisions that confer on the national privacy authority the competence to adopt ethical codes of conduct. Two codes of

²⁰ Italy, Legislative Decree 196/2003, Data Protection Code (*Codice in materia di protezione dei dati personali, recante disposizioni per l'adeguamento dell'ordinamento nazionale al regolamento (UE) n. 2016/679*), 30 June 2003, available at: <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2003-06-30;196!vig=>.

conduct were adopted in 2018 regarding the collection of data for statistical and scientific purposes within and outside the framework of the national statistical system.²¹

b) Practice

In Italy, statistical evidence in order to establish indirect discrimination is not used in practice.

The first statistical research into gender, sexual orientation and ethnic origin was conducted by Istat during 2011 and was funded by the Government in order to collect data regarding actual discrimination experienced by people on the grounds of sexual orientation and homophobia. The national strategies adopted by UNAR have taken this research as a basis for developing a number of activities to be promoted. However, none of these activities has been carried out effectively and no more recent research has been undertaken.

An important piece of case law on this issue is the Court of Rome's judgment of 19 June 2012 in the case of *FIOM CGIL v. Fiat, Fabbrica Italia*. In fact, this was the only case to be decided mainly on the basis of statistics. In this case, statistics were employed as proof of discrimination against workers on the ground of belief. In particular, the defendant held that workers were recruited in an impartial way and through objective criteria, without any discriminatory intent. However, no worker who was a member of the trade union FIOM was employed by Fiat. Statistics showed that the chances were only one in 10 million that this had happened by coincidence and not as a consequence of a deliberate intention to discriminate against the workers who had most strongly contested Fiat's new industrial strategy.

2.4 Harassment (Article 2(3))

a) Prohibition and definition of harassment

In Italy, harassment is prohibited in national law. It is defined in Article 2(3) of both legislative decrees implementing the directives, using the same wording taken from the directives, which states that the unwanted conduct must have the effect of 'creating an intimidating, hostile, degrading, humiliating or offensive environment'.

In Italy, harassment explicitly constitutes a form of discrimination.

In Italy, harassment is prohibited in national law.

b) Scope of liability for harassment

In Italy, where harassment is perpetrated by an employee, the employer and the employee are liable. Since the legislative decrees are silent on the scope of liability for discrimination, the liability of those other than the individual discriminator must be established on the basis of the general principles of liability in contract and tort.

In the case of a contractual relationship, such as that between employer and employee, the former is liable for the action of the latter, because there is a duty to ensure protection in the working environment.

In the absence of a contractual relationship with the victim of discrimination (even in the form of harassment), the employer will be held liable in tort on the basis of the general

²¹ Italy, Ethical rules on collection of data for statistical or scientific research (19 December 2018); Ethical rules on collection of data for statistical or scientific research within the national statistical system (19 December 2018). Both codes are available at: <https://www.garanteprivacy.it/codice>.

principle of liability of the master for the acts of his servant (acts committed while performing their duties).

With regard to trade unions and professional associations, there is no ground for holding them liable for the actions of their members, if they did not contribute actively to the discrimination (for instance, in the case of instructions to discriminate).

The only relevant case dates from 2012, when the Court of Milan convicted a legal person, a bank, of harassment perpetrated by its managers. According to the judge, the bank was to be held liable because the harassment was perpetrated by managers in top positions in the bank who were thus able to influence the majority of employees; the latter were not individually convicted, but in theory it is possible that both the legal person and the individual harasser or discriminator could be held liable for the same acts of discrimination, since Legislative Decree 215/2003 expressly applies to both physical and legal persons.

2.5 Instructions to discriminate (Article 2(4))

a) Prohibition of instructions to discriminate

In Italy, instructions to discriminate are prohibited in national law, in Article 2(4) of both legislative decrees implementing the two directives. 'Instructions' are not defined.

In Italy, instructions explicitly constitute a form of discrimination.

b) Scope of liability for instructions to discriminate

In Italy, the instructor and the discriminator are liable.

Since the decrees are silent on the scope of liability for discrimination, the sanctions provided for persons other than the individual discriminator must be established on the basis of the general principles of liability in contract and tort.

Liability for the acts of third parties is more limited and must be linked to a direct act or omission by the defendant. The individual harasser or other discriminator is jointly liable with their employer. If the employer or other principal defendant is liable without personal fault, or on the basis of a slighter degree of fault, they can bring an action against the discriminator to obtain complete or partial compensation of the amount paid as damages.

With regard to instructions to discriminate, a case from 2013 is relevant. The Court of Catanzaro dismissed an appeal from the parents of a disabled student against an order to discriminate given by the local administrative director to teachers and schoolmates. According to the court, the order to discriminate could not be condemned per se since it did not produce any discriminatory effects and the administrative director was sanctioned by the Regional Department of Education.

2.6 Reasonable accommodation duties (Article 2(2)(b)(ii) and Article 5 Directive 2000/78)

a) Implementation of the duty to provide reasonable accommodation for people with disabilities in the area of employment

In Italy, the duty on employers to provide reasonable accommodation for people with disabilities is included in the law and is not defined.

The relevant provision is Article 3(3-*bis*) of Legislative Decree 216/2003, which was inserted in order to comply with an infringement judgment by the CJEU. According to the Article: 'in order to apply the principle of equal treatment of persons with disabilities, private and public employers shall provide for reasonable accommodation according to the UN Convention on the Rights of Persons with Disabilities, ratified by Act 18/2009, in workplaces, to guarantee persons with disabilities full equality with other workers. Public employers shall apply this provision without any additional burden and with the human, financial and technical resources already available'. This does not mean that they are not bound to provide reasonable accommodation, but that no additional funding is allocated for this. This is a standard formula included in various laws in Italy in order to limit public spending; however, it is likely to breach the duty to provide reasonable accommodation in accordance with Article 5 of Directive 2000/78/EC, which excludes 'disproportionate' burdens, thus entailing the necessity of a sort of 'soft' burden that may have to be borne by employers.

In addition, Law 68/1999 provides for a set of policies to be applied only to people with severe disabilities as defined by its opening provisions, including the duty to adapt workplaces through the use of equipment and specific solutions to problems connected with the working environment etc.²²

b) Practice and case law

With regard to practical implementation, problems are associated with the requirement at the end of the provision, which is addressed to public employers who are bound to respect the duty to provide for reasonable accommodation 'without any additional burden and with the human, financial and technical resources already available'. This is a sort of ritual clause in Italian laws in an era of economic crisis and financial constrictions, but it is hardly likely that an employer, either public or private, will be able to afford to provide reasonable accommodation without any additional financial or human resources. Only those accommodations that do not involve cost, but instead require a flexible attitude and adaption to standard policy – e.g. adaptations to policies regarding allocation of office spaces or parking spaces – would be feasible. In general, there is no practical guidance on how to implement the provision, and there could be some difficulties around the interpretation of the exact duty on employers.

In 2015, a new law was introduced in this regard, which aimed to simplify the employment of persons with disability by amending Law 68/1999. According to the new Article 14, the Regional Fund for the Employment of Persons with Disability shall fund regional programmes for the inclusion of workers with a disability. This includes the reimbursement of costs incurred by employers to provide for reasonable accommodation for persons with limited working capacity (below 50 %).

Case law on reasonable accommodation shows that employers are not willing to change their organisation or to bear the burden of additional costs in order to provide the necessary accommodations for persons with disability. A relevant decision was issued by the Court of Bologna in 2013, anticipating the CJEU judgment against Italy and applying both Directive 2000/78/EC and the UNCRPD.²³ The court held that the local health service was liable for the failure to provide reasonable accommodation for a disabled

²² Italy, Law 68/1999, on provisions on the right to work of persons with disability (*Norme per il diritto al lavoro dei disabili*), 12 March 1999, available at: <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1999-03-12:68!vig>, amended by Legislative Decree 151/2015, on the simplification of procedures and duties upon citizens and companies (*Disposizioni di razionalizzazione e semplificazione delle procedure e degli adempimenti a carico di cittadini e imprese e altre disposizioni in materia di rapporto di lavoro e pari opportunità, in attuazione della legge 10 dicembre 2014, n. 183*), 14 September 2015, available at: <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2015-09-14:151!vig>.

²³ Italy, Tribunal of Bologna, judgment of 17 June 2013.

employee on a fixed-term contract and required it to pay compensation of damages equivalent to the six months' salary the claimant would have earned had he been hired.

c) Definition of disability and non-discrimination protection

There is no specific definition of 'disability' for the purposes of claiming reasonable accommodation. The issue of definition has been dealt with in a judgment of 16 April 2015 by the Court of Pisa:²⁴ The court held that an employer should provide reasonable accommodation in order to allow an employee, who was no longer able to perform her tasks on account of her status as a person with a disability, to continue working in the same company, and it therefore annulled her dismissal. The employee was declared disabled after having contracted an incurable illness, which resulted in a physical impairment; in particular, she was unable to perform the activities that she was employed for and, for this reason, she was dismissed. The Court quoted the CJEU case law and held that the notion of disability includes the state of health of a person who has an illness 'which, in interaction with various barriers may hinder the full and effective participation of the person concerned in professional life on an equal basis with other workers, and the limitation is a long-term one [...]'. The Court found the dismissal discriminatory on the ground of disability, because the employer had a duty to provide reasonable accommodation and a duty to explore the feasibility of accommodations that could allow the employee to continue working in the same company. According to the Court, the employer had made no effort to find alternative arrangements and share the burden between workers, and it therefore annulled the employee's dismissal. The employer was ordered to reinstate the worker in her job and to pay her the salary not earned as well as EUR 10 000 in compensation for non-material damages caused.

d) Failure to meet the duty of reasonable accommodation for people with disabilities

In Italy, failure to meet the duty of reasonable accommodation in employment for people with disabilities counts as discrimination.

Provisions of Article 3(3-*bis*) of Legislative Decree 216/2003 on reasonable accommodation are included not in Article 2, regarding the definition of discrimination, but in Article 3, on the scope of application. According to Article 3(3-*bis*), the duty to provide reasonable accommodation is a means to respect the principle of equality of treatment of people with disabilities. There is no other specific link to the prohibition of discrimination nor any specific sanction other than the general ones provided for discrimination in general. Reference to the UNCRPD (thanks to its ratification by Law 18/2009) leads to the same conclusion.

In any event, the Courts have interpreted a breach of the duty to provide reasonable accommodation as a violation of the prohibition of discrimination. This was stated in a judgment of 18 June 2013 by the Court of Bologna: the Court held that the local health service was liable for a failure to provide reasonable accommodation for a disabled fixed-term employee and required it to pay compensation for damages amounting to the equivalent of the six months' salary the claimant would have earned had he been hired. The same stance was taken by the Court of Pisa in its judgment of 16 April 2015:²⁵ the Court held that an employer should provide reasonable accommodation in order to allow the employee, who was no longer able to perform her tasks on account of her status as a person with a disability, to continue working in the same company, and it therefore

²⁴ Italy, Tribunal of Pisa, *GC c L.SRL*, judgment of 16 April 2015, <http://www.osservatoriodiscriminazioni.org/index.php/2015/10/19/tribunale-pisa-ordinanza-del-16-aprile-2015/>.

²⁵ Italy, Tribunal of Pisa, *GC c L.SRL*, judgment of 16 April 2015, available at: <http://www.osservatoriodiscriminazioni.org/index.php/2015/10/19/tribunale-pisa-ordinanza-del-16-aprile-2015/>.

annulled her dismissal. Similarly, in 2016, the Tribunal of Ivrea found that the dismissal of an employee with a disability was discriminatory, in particular because the employer had violated his duty to provide for reasonable accommodation for persons with disability according to Article 5 of Directive 2000/78/EC and its implementing legislation, Article 3(3-*bis*) of Legislative Decree 216/2003. The Tribunal annulled the dismissal and ordered the employer to let the worker return to her previous post, and to pay her EUR 1 824.92 for 12 months (net) and EUR 7 500 for legal fees.²⁶

- e) Duties to provide reasonable accommodation in areas other than employment for people with disabilities

In Italy, there is no legal duty to provide reasonable accommodation for people with disabilities outside the area of employment.

Italian law regarding people with disabilities is not based on the general concept of 'reasonable accommodation' outside the field of employment. This was clarified by the CJEU in its judgment of 4 July 2013 against Italy. Indeed, the Court rejected the basic argument raised by the Italian Government, according to which Article 5 of Directive 2000/78/EC was implemented not in Legislative Decree 216/2003 but in other laws that were already in force before the transposition of the anti-discrimination directives. In this regard, the Government referred to Law 104/1992 (the Framework Law on the care, social integration and rights of disabled persons); Act 68/1999 on the right of disabled people to work; Law 381/1991 on social co-operatives; and Legislative Decree 81/2008 on work health and safety. According to the CJEU, while all these laws provide for measures of aid and support, social integration and protection for people with disabilities, none of them provide for a general duty to provide reasonable accommodation – that is, to offer effective solutions to eliminate 'the various barriers that hinder the full and effective participation of persons with disabilities in professional life [...]'.

A positive development in this regard has been triggered by the UNCRPD, which was ratified in Italy by Law 18/2009. According to the Convention, the denial of reasonable accommodation amounts to discrimination and specific duties are placed upon Governments in the field of education and in cases of deprivation of personal freedom.

- f) Duties to provide reasonable accommodation in respect of other grounds

In Italy, there is no legal duty to provide reasonable accommodation in respect of other grounds in the public and/or the private sector.

It is worth mentioning the type of reasonable accommodation measures that are provided for in the field of religion. Forms of favourable differential treatment exist with regard to religion for religious organisations which have signed agreements with the state. Such positive action relates mostly to holidays for Jews and Seventh-Day Adventists. The statute transposing the agreement with the Adventists, for instance, establishes the right of those employed by either private or public employers to refrain from working on Saturdays, with the limitation that this should not affect 'essential public services' and that the right is enjoyed 'within the framework of the organisation of work'; incompatibility with the organisation of work must be proved by the employer. With regard to Adventists, these legislative rules have usually been interpreted by courts in favour of employees through a narrow interpretation of the limitations. Dismissals based on a refusal to work on Saturdays have normally been considered illegal, and the court has ordered the reinstatement of the worker and payment of damages. With regard to

²⁶ Italy, Tribunal of Ivrea, *TG v. OMP S.r.l.*, judgment No. 8248 of 24 February 2016, available at: <http://www.osservatoriodiscriminazioni.org/index.php/2016/04/20/licenziamento-giustificato-motivo-oggettivo-consistente-nella-sopravvenuta-inidoneita-fisica-psichica-del-lavoratore-lobbigo-datoriale-dei-ragionevoli-adattamenti-tribunale-ivrea-ordina/>.

Jewish people, the relevant law also establishes an obligation to take into consideration the obligation to rest on Saturdays when setting dates of tests for public sector employment.

In the absence of an agreement with the state, Muslims do not enjoy a legal right to special measures. Proposals for such an agreement drafted by various Italian Islamic associations include a range of measures, such as the adaptation of working time in order to respect Friday rest, daily prayers, Ramadan and so on.

3 PERSONAL AND MATERIAL SCOPE

3.1 Personal scope

3.1.1 EU and non-EU nationals (Recital 13 and Article 3(2), Directive 2000/43 and Recital 12 and Article 3(2), Directive 2000/78)

In Italy, there are no residence or citizenship/nationality requirements for protection under the relevant national laws transposing the directives. In theory, anti-discrimination provisions should apply even to irregular migrants, although it is in practice impossible and no claim has been brought to justice by an irregular migrant. For instance, in the employment field, an irregular migrant as a worker has the right to the same economic treatment that other workers enjoy. The inability of irregular migrants to enforce their rights is one of the causes of the phenomenon of labour exploitation.

3.1.2 Natural and legal persons (Recital 16, Directive 2000/43)

a) Protection against discrimination

In Italy, the personal scope of anti-discrimination law covers natural and legal persons for the purpose of protection against discrimination. This comes from Article 3(1) of both decrees implementing the two directives, which provides for the application of the principle of equal treatment to all persons in both the public and private sectors.

b) Liability for discrimination

In Italy, the personal scope of anti-discrimination law covers natural and legal persons for the purpose of liability for discrimination. This is derived from the general provision in Article 3(1) of both decrees implementing the two directives and from the provision in Article 1 of Law 67/2006 on discrimination against persons with disability in fields outside employment.²⁷ Moreover, two liability provisions are mentioned in Legislative Decree 286/1998 (the Immigration Decree).²⁸ According to Article 43(2)(e), there is discrimination in the case of an act or treatment promoted by an employer which places workers in a situation of particular disadvantage on grounds of their race, ethnic or linguistic origin, religion or citizenship. No specific provision covers other grounds of discrimination. Article 44(10) specifically addresses the liability of employers by giving trade unions the right to legal standing in cases of collective discrimination. Finally, the following paragraph of the same Article concerns sanctions against legal persons, such as the suspension of entitlement to any sort of public financial assistance and, in the most serious cases, disqualification from entitlement to any public financial assistance or tenders for up to two years.

3.1.3 Private and public sector including public bodies (Article 3(1))

a) Protection against discrimination

In Italy, the personal scope of national anti-discrimination law covers the private and public sectors, including public bodies, for the purpose of protection against discrimination.

²⁷ Italy, Law 67/2006, on measures for the judicial protection of persons with disabilities who are victims of discrimination (*Misure per la tutela giudiziaria delle persone con disabilità vittime di discriminazioni*), 1 March 2006, available at: <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2006-03-01;67!vig>.

²⁸ Italy, Legislative Decree 286/1998, Consolidated Act of provisions concerning immigration and the condition of third country nationals (*Testo Unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero*), 25 July 1998.

This is derived from Article 3(1) of both decrees implementing the two directives, and provides for the application of the principle of equal treatment to all persons in both the public and private sectors.

The same wide scope of application is found in Article 1 of Law 67/2006, on disability discrimination, and in Article 43(2)(e) and Article 44(10) of the Immigration Decree.

b) Liability for discrimination

In Italy, the personal scope of anti-discrimination law covers private and public sector including public bodies for the purpose of liability for discrimination.

This is derived from Article 3(1) of both decrees implementing the two directives, and provides for the application of the principle of equal treatment to all persons in both the public and private sectors, without any further specification or exception regarding liability.

The same wide scope of application is found in Article 1 of Law 67/2006 on disability discrimination and in Article 43(2)(e) and Article 44(10) of the Immigration Decree).

3.2 Material scope

3.2.1 Employment, self-employment and occupation

In Italy, national legislation applies to all sectors of private and public employment, self-employment and occupation, including contract work, military service and holding statutory office, on all five grounds.

This is derived from the combination of the provisions on the personal scope of application – Article 3(1) of both decrees implementing the two directives (Legislative Decrees 215/2003 and 216/2003) – with the provision on the material scope of application, in particular Article 3(1)(a) to (d).

3.2.2 Conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy (Article 3(1)(a))

In Italy, national legislation prohibits discrimination in the following areas: conditions for access to employment, self-employment or occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy, on all five grounds, in both private and public sectors, as described in the directives.

The key provision – Article 3(1)(a) – on the material scope of the decrees transposing the directives (Legislative Decrees 215/2003 and 216/2003) expressly establishes that the prohibition of discrimination and the related judicial remedies apply to all persons in the public and private sectors with reference to 'access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions'.

A similar provision is contained in Article 43(2)(e) and Article 44(10) of the Immigration Decree.

No distinctions apply between branches of activity or levels of professional hierarchy.

3.2.3 Employment and working conditions, including pay and dismissals (Article 3(1)(c))

In Italy, national legislation prohibits discrimination in: working conditions, including pay and dismissals, on all five grounds and for both private and public employment.

The key provision – Article 3(1)(b) – on the material scope of the legislative decrees transposing the directives expressly establishes that the prohibition of discrimination and the related judicial remedies apply to all persons in the public and private sectors with reference to ‘employment and working conditions, including promotions, dismissals and pay’.

Similarly, Article 43(2) of the Immigration Decree provides for the general protection of workers from discrimination.

3.2.4 Access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience (Article 3(1)(b))

In Italy, national legislation prohibits discrimination in: vocational training outside the employment relationship, such as adult lifelong learning courses or vocational training provided by technical schools or universities.

The key provision – Article 3(1)(c) – on the material scope of the legislative decrees transposing the directives expressly establishes that the prohibition of discrimination and related judicial remedies apply to all persons in the public and private sectors with reference to ‘access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience’.

3.2.5 Membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations (Article 3(1)(d))

In Italy, national legislation prohibits discrimination in the following area: membership of, and involvement in, workers’ or employers’ organisations as formulated in the directives on all five grounds and for both private and public employment.

The key provision – Article 3(1)(d) – on the material scope of the legislative decrees transposing the directives expressly establishes that the prohibition of discrimination and the related judicial remedies apply to all persons in the public and private sectors with reference to ‘membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations’.

3.2.6 Social protection, including social security and healthcare (Article 3(1)(e) Directive 2000/43)

In Italy, national legislation prohibits discrimination in: social protection, including social security and healthcare, as formulated in the Racial Equality Directive.

The key provision is Article 3(1) (e) and (f) of Legislative Decree 215/2003.

Protection against discrimination on grounds of ancestry, religion, national or ethnic origin, religious beliefs and practices in the field of social protection, including social security and healthcare, is also found in Article 43 of the Immigration Decree.

With regard to disability, according to Article 1 of Law 67/2006, this law has a general application and therefore also covers social protection, including social security and healthcare.

In these fields, national anti-discrimination laws do not cover discrimination on the grounds of age and sexual orientation.

There is as yet no political initiative aimed at extending the scope of application of the prohibition against discrimination to other fields.

As far as third-country nationals are concerned, the Constitutional Court has clarified the limits that national Government, regions and municipalities face when they differentiate on the ground of nationality. According to the Court, no limit may be applied to access to social protection measures relating to the basic needs of persons, which are protected as fundamental rights by the Italian Constitution.²⁹

a) Article 3.3 exception (Directive 2000/78)

National law relies on the exception in Article 3.3, but this point has not yet caused any difficulties.

3.2.7 Social advantages (Article 3(1)(f) Directive 2000/43)

In Italy, national legislation prohibits discrimination in: social advantages as formulated in the Racial Equality Directive.

The national provision contains the same wording as the directive (*'prestazioni sociali'* in Italian) and is included in the provisions of Legislative Decree 215/2003 concerning the scope of application – that is Article 3(1)(g). The inclusion of social advantages is also derived from Article 43 of Legislative Decree 286/1998 (the Immigration Decree) and Article 1 of the Disability act 67/2006, stating that both are acts with general application.

3.2.8 Education (Article 3(1)(g) Directive 2000/43)

In Italy, national legislation prohibits discrimination in: education as formulated in the Racial Equality Directive.

The relevant provision is Article 3(1)(h) of Legislative Decree 215/2003. Religion and nationality are covered by Article 43 of Legislative Decree 286/1998 (the Immigration Decree), while disability is covered by the law against disability discrimination (Art. 1 of Act 67/2006).

With regard to discrimination on the ground of sexual orientation, national provisions do not apply to sectors outside of employment, but in the past years several projects have been promoted to prevent discrimination and homophobia in several fields, including education. In particular, education is one of the four pillars of the Italian strategy to prevent and fight discrimination on the grounds of sexual orientation and gender identity, developed by UNAR to implement the Council of Europe Recommendation CM/Rec (2010)5. However, the first educational activities in this field, such as the publication of educational materials, elicited severe disapproval from Catholic and centre-right members of Parliament together with Catholic associations, eventually inducing UNAR to cease those activities. This example shows that it is very difficult in Italy to deal with discrimination on the ground of sexual orientation notwithstanding evidence of the existence of discrimination on this ground.

²⁹ Italy, Constitutional Court, judgments Nos. 187/2010, 40/2013, 22/2015 and 230/2015, available at: www.cortecostituzionale.it.

In the field of education, national laws against discrimination do not cover discrimination on grounds of age nor sexual orientation.

a) Pupils with disabilities

In Italy, the general approach to education for pupils with disabilities does not raise problems.

Problems are raised by the lack of funding that forces local administrators to reduce or only allow minimum hours of input from support teachers in schools.

The Italian approach in this regard is definitely to include children with disabilities in mainstream education, with individualised special support. Children therefore attend the same schools they would attend according to the ordinary admission rules and are assisted in by support teachers, in addition to their ordinary teachers, depending on the nature of their disability.

It should be noted that in 2010 the Italian Constitutional Court found illegal legislative provisions which set limits on the number of teachers employed to support disabled students and which revoked the previous option of employing new, specialist teachers for students with particularly severe disabilities on fixed-term contracts.³⁰ The Court declared that it was constitutionally illegal to set limits to the provision of specialist support that failed to take the situation of the individual into account. The Court's starting point was that 'disabled people do not constitute a homogenous group' and that for each form of disability, 'it is, therefore, necessary to identify mechanisms to remove obstacles that take into account the type of [disability] affecting the individual'. Against this background, removing the possibility of employing support teachers for students with significant additional support needs was, in the Court's view, 'unreasonable'. According to the Court, disabled people have a 'fundamental right' to education and, although it recognised that the state had a 'discretionary power to identify measures for the protection of disabled persons', it also reaffirmed (as already stated in its previous case law) that 'such discretion is not absolute and is limited by the respect of a minimum core of guarantees'. An individualised approach to the needs of disabled people was, according to the Court, constitutionally imposed by Article 24(2)(c) of the UN Convention on the Rights of Persons with Disabilities, and by the fact that the legislation on educational support for disabled children aims to pursue an 'evident national interest' implementing Article 38(3) of the Italian Constitution (right to education of disabled people).

The same principles have been restated by several judgments, the most relevant of which is that issued by the Supreme Court on 5 December 2014, which is still the leading case.³¹ In this case the parents of a disabled child had challenged the decision of the school to reduce the employment of a support teacher from 25 hours a week to 12, purely on the grounds of cost. Following the judgment, the school was required to grant the total amount of hours and to pay EUR 5 000 in non-pecuniary damages. The Supreme Court notes that the right to education is one of the fundamental rights of persons with disabilities. The Court refers to the relevant international sources, such as the UNCPRD, ratified in Italy and transposed by Act 18/2009, and the provisions on equality and non-discrimination in the EU Treaties and in the EU Charter of Fundamental Rights. According to the Supreme Court, the reduction to the support teacher's hours made by the school is indirect discrimination on the ground of disability.

³⁰ Italy, Constitutional Court, judgment No. 80 of 22 February 2010, available at: www.cortecostituzionale.it.

³¹ Italy, Supreme Court, judgment No. 25011 of 25 November 2014, available at: <http://www.neldiritto.it/appgiurisprudenza.asp?id=11017>.

A relevant provision is that of the law of 9 January 2004 no. 4 on Measures to promote access by persons with disabilities to information technology.³² This duty applies to every school; in particular, framework contracts between schools and publishers must include the duty to provide school libraries with digital versions of educational materials which are accessible for students with disabilities and support teachers.

b) Trends and patterns regarding Roma pupils

In Italy, there are no specific trends (whether legal or societal) in education regarding Roma pupils, such as segregation.

Inclusion of Roma children in classes has sometimes caused an overreaction by majority-population parents and the current anti-Roma hostility can entail further problems. However, there is as yet no basis for saying that structural discriminatory patterns exist within the education system. The limited schooling of Roma derives from factors other than obstacles to their admission to schools. One very dramatic problem is the impact of the housing system on children's school attendance. In particular, Roma segregation in camps, often established far from public services, including schools, has an adverse impact on school attendance by Roma pupils. Moreover, the frequent evictions of illegal settlements are devastating. Since some of the children living in these settlements attend school, the eviction of their camp without attention to their situation can disrupt an otherwise relatively successful educational path. No significant improvement was recorded in this regard during 2018, and it appears that forced evictions have actually increased.³³

The number of Roma pupils within the education system is around 13 000. The school drop-out rate is much higher than the average, with 50 % of Roma children dropping-out between the primary and elementary school levels and 95 % dropping out between the elementary and higher levels.³⁴ 2016 data for the city of Rome, where the majority of Roma people live, shows that the drop-out rate is even higher there, with only 10 % of Roma pupils attending school on a daily basis.³⁵

The national Roma strategy focuses on school drop-out rates and promotes actions to prevent it, including specific training for teachers within the framework agreement of cooperation agreed with the most representative associations.³⁶ Since the main reason for dropping out of school by Roma pupils is their living conditions, these measures are likely to produce minimal results.³⁷

3.2.9 Access to and supply of goods and services that are available to the public (Article 3(1)(h) Directive 2000/43)

In Italy, national legislation prohibits discrimination in: access to and supply of goods and services as formulated in the Racial Equality Directive.

³² Italy, Law 4/2004, on measures to promote access by persons with disabilities to information technology, (*Disposizioni per favorire l'accesso dei soggetti disabili agli strumenti informatici*), 9 January 2004, available at: <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2004-01-09;4!vig>.

³³ Associazione 21 luglio (2018), *Activity Report 2017*, available at: http://www.21luglio.org/21luglio/wp-content/uploads/2018/04/Rapporto_Annuale-2017_web.pdf.

³⁴ Associazione 21 luglio (2015), *Activity Report 2014*, pp. 30-32, available at: <https://www.21luglio.org/2018/wp-content/uploads/2019/05/rapporto-2014.pdf>.

³⁵ Associazione 21 luglio (2017), *Activity Report 2016*, p. 58, available at: http://www.21luglio.org/21luglio/wp-content/uploads/2017/05/RAPPORTO-ANNUALE_2016_WEB.pdf.

³⁶ Italy, *National Strategy for the Inclusion of Roma, Sinti and Travellers 2012-2020* (*Strategia nazionale d'inclusione dei Rom, dei Sinti, e dei Caminanti 2012/2020*), pp. 52-65, available at: <http://www.unar.it/cosa-facciamo/strategie-nazionali/strategia-rsc/>.

³⁷ See the press release issued by the Associazione 21 luglio on International Children's Day regarding the direct link between living in camps and the low level of access to school by Roma children, available at: <http://www.21luglio.org/21luglio/giornata-infanzia-2017/>.

The relevant provision is Article 3(1)(i) of Legislative Decree 215/2003 on racial discrimination. In this field protection against discrimination on grounds of ancestry, religion, national or ethnic origin, religious beliefs and practices is also included in Article 43 of the Immigration Decree.

Disability is covered by Act 67/2006 on Measures for the judicial protection of persons with disabilities who are victims of discrimination. The relevant provision is Article 1, which provides for a general scope of application, so that the act may apply to discrimination in access to and the supply of goods and services. This law is directly connected to Framework Law 102/1994 on the rights and social integration of persons with disability. Both these provisions are of a general character, and they do not provide for specific duties such as good manufacture or design in order to make goods more suitable for persons with disability.

In these fields, national laws against discrimination do not cover discrimination on grounds of age and sexual orientation.

a) Distinction between goods and services available publicly or privately

In Italy, national law does not distinguish between goods and services that are available to the public (e.g. in shops, restaurants, banks) and those that are only available privately (e.g. limited to members of a private association).

3.2.10 Housing (Article 3(1)(h) Directive 2000/43)

In Italy, national legislation prohibits discrimination in the area of: housing as formulated in the Racial Equality Directive.

The relevant provision is Article 3(1)(i) of Legislative Decree 215/2003 on race. Protection against discrimination on grounds of ancestry, religion, national or ethnic origin, religious beliefs and practices in the field of housing is also included in Article 43 of the Immigration Decree.

Disability is covered by Act 67/2006 on disability discrimination. The relevant provision is Article 1, which provides a general protection against discrimination, therefore covering housing. There is no positive duty in this law regarding adaptations to housing, nor is such a duty provided for elsewhere, except for the building of new blocks of flats.

People with disabilities (and, in some cases, older people) can enjoy a variety of priority rights in the allocation of public housing, since the rankings are based on a complex system of points which takes into account a number of social factors, including disabilities. Rankings are created at regional and municipal levels through regional laws and local regulations, thus making a general description difficult.

In these areas, national laws against discrimination do not cover discrimination on grounds of age or sexual orientation.

The issue of housing is relevant with regard to rules which are beyond the scope of application of the directive, since limitations to access to public housing for ethnic and religious groups can be a practical effect of formal distinctions based on nationality or length of residence, which could possibly lead in some cases to an interpretation that nationality may amount to discrimination on the basis of racial or ethnic origin. The majority of Italian regions have adopted laws requiring a minimum of five years of residence in the territory of each region in order to access social housing. This requirement is most likely to affect migrants negatively, as the large majority of Italian citizens will be able to satisfy the condition.

a) Trends and patterns regarding housing segregation for Roma

In Italy, there are trends and patterns of housing segregation and discrimination against the Roma.

Public administrations spend a huge amount of money on Roma camps without making significant improvements in the living conditions of the Roma community. On the contrary, the camps contribute to their segregation.³⁸ There is a growing debate on the segregation of Roma people through their placement in 'camps', together with the harsh policies that are currently implemented against Roma settlements. However, there has not yet been any significant attempt to place the existence of the camps themselves within the framework of anti-discrimination law, with the exception of a case brought to the Court of Rome concerning a large settlement on the outskirts of the city. The case was brought by two NGOs, ASGI and the Associazione 21 luglio, which claimed that the discriminatory treatment of Roma caused social exclusion resulting in racial discrimination as prohibited by Directive 2000/43/EC.

In a judgment issued on 9 June 2015, the Court of Rome convicted the Municipality of Rome of indirect discrimination, in accordance with Article 2 of Legislative Decree 215/2003 implementing Directive 2000/43/EC.³⁹ The Municipality of Rome was ordered to stop allocating housing to anyone else in La Barbuta camp and to remove the effects of the allocations already in force; to publish the judgment in the national newspaper, *Corriere della Sera*; and to pay half the legal costs incurred by the two claimants.

As far as housing policy regarding Roma is concerned, it is worth mentioning the report published by the European Commission against Racism and Intolerance (ECRI) as part of the fourth round of its monitoring work.⁴⁰ In setting out its conclusions, ECRI noted that only a few of the recommendations that it issued in 2012 had been followed up. With regard to the Roma, ECRI found that its recommendation on the full application of the UN Basic Principles and Guidelines on Development-based Evictions and Displacement had been only partly implemented, and only small steps had been taken. The process appeared to be very slow and did not ensure that all the Roma who may be evicted enjoyed the necessary guarantees. ECRI appreciated the adoption of the national Roma integration strategy, but it regretted the lack of concrete implementation and prosecution for the evictions of Roma, Sinti and Travellers.

³⁸ Associazione 21 luglio (2016), *Activity Report 2015*, pp. 42-65, available at: <https://www.21luglio.org/rapporto-annuale-2015/>. The trial is still pending and will last for at least two years, given that there are more than 200 defendants involved; see: <http://www.iltempo.it/roma-capitale/2016/04/13/mafia-capitale-imputati-tutti-agli-arresti-1.1528927>.

³⁹ Italy, Court of Rome, ASGI, *Associazione 21 luglio v. Rome Capital and Italian Government*, judgment of 4 June 2016, available at: <http://www.asgi.it/wp-content/uploads/2015/06/Ordinanza-La-Barbuta.pdf>.

⁴⁰ European Commission against Racism and Intolerance (ECRI), *Conclusions on the Implementation of the Recommendations in Respect of Italy Subject to Interim Follow-Up*, 9 December 2014, available at: <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Italy/ITA-IFU-IV-2015-004-ENG.pdf>.

4 EXCEPTIONS

4.1 Genuine and determining occupational requirements (Article 4)

In Italy, national legislation provides for an exception for genuine and determining occupational requirements.

The first part of Article 3(3) of Legislative Decrees 215/2003 and 216/2003 establishes that 'in compliance with the principles of proportionality and reasonableness', within the employment relationship or entrepreneurial activity, differences in treatment due to characteristics related to the grounds set out in the directives are not considered as discriminatory acts where, 'by reason of the nature of the particular occupational activity concerned or of the context in which it is carried out, such characteristics constitute a genuine and determining occupational requirement'. No definition of 'proportionality' and 'reasonableness' is given. The substitution of the requirement for a 'legitimate objective' with 'reasonableness' has not led to any practical effects.

In the case of Legislative Decree 216/2003 transposing Directive 2000/78/EC, the same section also establishes that it is not discriminatory to evaluate 'such characteristics when they are relevant to establish whether a person is suitable to carry out the functions that the armed forces and the police, prison and rescue services can be called on to carry out', while the following section establishes (without distinguishing between the different grounds of discrimination) that 'however, the provision remains unaffected that imposes a suitability test for a specific occupation and the provisions allowing different treatment with regard to adolescents and young people linked to the special nature of the occupation and to legitimate objectives of labour policy, the labour market and professional education'. The inclusion of all the grounds under this provision on 'work suitability tests' probably provides too much discretion in admitting exceptions to equal treatment going beyond genuine and determining occupational requirements.

A reference to genuine and determining occupational requirements as exceptions to the prohibition of discrimination is provided in Article 43(2)(e) of the Immigration Decree. There are no specifications for how to apply this exception.

In a case decided in 2016, a Muslim woman claimed that a company had not selected her because she wore a headscarf and would not agree to take it off. She had applied for a job as a hostess at an exhibition, where she had to hand out leaflets. The job requirements were all related to physical characteristics, including 'flowing hair'. Only some of them were highlighted as basic requirements: shoe size 37 and dress size 40-42. The Tribunal of Milan, in the first instance, rejected the claim of discrimination on the grounds of religion on account of the 'genuine and determining occupational requirement' exception. However, the Court of Appeal of Milan, in the second instance, found that this was a case of direct discrimination on the grounds of religion and that the 'genuine and determining occupational requirement' exception was not satisfied, since the advertisement was for the post of hostess, and 'flowing hair' was not required as a genuine and determining characteristic, but as a secondary requirement. The Court of Appeal ordered the company to pay EUR 500 in non-pecuniary damages.

4.2 Employers with an ethos based on religion or belief (Article 4(2) Directive 2000/78)

In Italy, national law provides for an exception for employers with an ethos based on religion or belief.

Article 3(5) of Legislative Decree 216/2003 transposing Directive 2000/78/EC establishes that 'Differences in treatment based on religion or belief and enacted within churches and other public or private organisations do not constitute discriminatory acts where, by

reason of the nature of the particular occupational activity carried out by such entities or organisations or of the context in which they are carried out, such religion or belief constitutes a genuine, legitimate and justified occupational requirement'. The provision corresponds to Article 4(2) of the Directive, with the exception that it makes reference to 'churches and other public or private organisations' without specifying that the ethos of the latter must also be based on religion or belief. This textual difference raises problems because of the risk that it may be used in order to admit discrimination by public and private organisations whose ethos is not actually based on religion or belief.

However, even beyond this textual problem (which may be the result of a further drafting mistake), the choice of the Italian legislator is, in the author's opinion, not compatible with Directive 2000/78/EC, since the Directive does not allow the Member States to introduce during transposition exceptions to equal treatment for the needs of churches and similar organisations that are broader than any exceptions (in legislative or other form) that existed in the legal system at the time of transposition. Before the transposition of Directive 2000/78/EC, the only relevant provision was Article 4 of Law 108/1990, which ruled out the application of protection against discriminatory dismissal in the case of non-profit employers performing religious, cultural, political or trade union activities. Thus, any discretion has been excluded for organisations that operate on a for-profit basis, and in cases where the duties of the individual worker do not have an actual link with the organisation's ideology. Moreover, there is no transposition of the last sentence of Article 4(2), which says that this exception cannot lead to discrimination on other grounds. Legislative Decree 216/2003 implementing Directive 2000/78/EC thus grants employers with an ethos based on religion and belief (and potentially all employers, if a literal interpretation is applied) a power they did not enjoy before the adoption of the directive.

- Conflicts between rights of organisations with an ethos based on religion or belief and other rights to non-discrimination

In Italy, there are specific provisions in this area relating to conflicts between the rights of organisations with an ethos based on religion or belief and other rights to non-discrimination.

In a case decided in 2016, a teacher at a Catholic school claimed that she was being discriminated against on the ground of sexual orientation. The school had not renewed her annual contract on account of rumours about her living with another woman, who was assumed to be her partner. According to the school, the exception provided for under Article 3(5) of Legislative Decree 216/2003 applied, such that this was a case of legitimate different treatment and not discrimination. However, the tribunal rejected this argument and found that it was a case of discrimination on the ground of sexual orientation, which was not covered by the exception, since the 'sexual orientation of a teacher ... is surely beyond the religious ethos of the school'. This case is similar to others involving Catholic schools and universities. The limits of the discretionary power have been discussed primarily in relation to the tenure of teachers and other staff. In this context, the problem related to internal control of respect for moral codes (for instance, requiring religious marriage instead of civil marriage). It is worth mentioning that Catholic universities enjoy the discretion to hire or dismiss, which has been the subject of long and complex litigation in two famous cases (*Cordero* and *Lombardi Vallauri*). These cases went before the Constitutional Court and the Supreme Administrative Court, which both decided in favour of the discretionary power of the institutions.⁴¹

⁴¹ The *Lombardi Vallauri* case went up to the European Court of Human Rights (ECtHR). The Court focused more on fair trial rights than on the prohibition of discrimination. ECtHR, *Lombardi Vallauri v Italy*, No. 39128/05, 20 October 2009.

– Religious institutions affecting employment in state-funded entities

In Italy, religious institutions are permitted to select people (on the basis of their religion) to be hired or dismissed from a job when that job is in a state entity, or in an entity financed by the state.

In the Italian legal system, at legislative (statutory) level, the only explicit exception to equal treatment is represented by a section of Law 108/1990 concerning, among other things, ideologically orientated organisations, which are defined as 'employers of a non-entrepreneurial character which undertake political or trade unionist activities, cultural instruction or religious activities on a non-profit basis'. This Law only limits the remedies that are available in the case of unfair dismissal. A worker who is unfairly dismissed by an organisation covered by the 1990 Law is entitled only to damages and not to reinstatement by order of the judge as in ordinary cases.

With arguments partly based on the existence of this limited legislative provision and partly on constitutional grounds, judges and scholars (in a very intricate debate which cannot be described here in all its nuances) have admitted the discretionary power of the employer to hire or dismiss, or otherwise discriminate. In addition, the exceptions to equal treatment as developed by case law are more limited than those covered in Legislative Decree 216/2003 transposing Directive 2000/78/EC.

Teachers of religion in state schools must have authorisation from the bishop, which can be denied or withdrawn if the person does not fully comply with the moral standards of a Catholic believer. In a 2003 case, the Supreme Court recognised the validity of the termination of an employment relationship when an unmarried female teacher became pregnant. The legal ground for such discretionary power lies in the revised Lateran Treaty and its protocols, and in a law enacted in 2003.

4.3 Armed forces and other specific occupations (Article 3(4) and Recital 18 Directive 2000/78)

In Italy, national legislation provides for an exception for the armed forces in relation to age or disability discrimination (Article 3(4) of Directive 2000/78). The relevant provision is Article 3(5) of Legislative Decree 216/2003.

Legislative Decree 216/2003 establishes in Article 3(2)(e) that it does not affect the validity of rules presently in force concerning the armed forces in relation to age and disability. This specific provision has been interpreted as endorsing the limits already in force in national law regarding access to the armed forces, and it has not been challenged before a court. More recent judgments question not the age limits themselves, but their concrete interpretation and application. For instance, in a judgment issued in 2015, the Council of State declared that a provision raising the age limit for accessing public sector competitions by three years when a person has served in the army applies only to civil servants, and not to a person who has already undertaken military service and reapplies to join the armed forces and pursue a military career.

4.4 Nationality discrimination (Article 3(2))

a) Discrimination on the ground of nationality

In Italy, national law includes exceptions relating to difference of treatment based on nationality.

Nationality (as in citizenship) is explicitly mentioned as a protected ground in the Immigration Decree (Article 43).

Discrimination on the ground of nationality (which also covers statelessness) is explicitly excluded from the scope of application of Legislative Decrees 215/2003 and 216/2003 implementing the directives, but is covered by Legislative Decree 286/1998 (the Immigration Decree).

Since 1998, several actions have been brought before the courts contesting discrimination against third-country nationals on the basis of nationality. Most concern discrimination regarding access to social benefits by local authorities (regions or municipalities) and access to public employment. In these cases, the courts have applied the same legal framework, consisting of the Immigration Decree and Legislative Decree 215/2003, to every case of racial or national discrimination. This allows judges to handle cases of discrimination on the ground of nationality as direct discrimination and not as indirect racial discrimination.

In principle, differences of treatment on the grounds of nationality are not allowed, in particular in the enjoyment of fundamental rights and liberties. A right to equal treatment comes from Article 3 of the Italian Constitution, as broadly interpreted by the Constitutional Court, and from Article 2 of the Immigration Decree. A certain degree of differentiation may be allowed, on account of the duty of loyalty to the homeland and the special powers that are typical of some jobs (e.g. the diplomatic service, the armed forces, the police and security forces and the judiciary and tax authorities). In this regard, the same rules apply for EU citizens and third-country citizens.

An interesting case decided in 2016 involved third-country nationals' access to the civil service. Both the Supreme Court and the Constitutional Court delivered a judgment on this matter. The Government published vacancies in community services, for posts in several public sector and private organisations all over Italy. Access to the Italian civil service was limited to Italian citizens, according to rules similar to those that apply to military service on the basis of the required loyalty to the homeland under Article 52 of the Italian Constitution. The Supreme Court found that the exclusion of aliens from the civil service was discriminatory and ordered the Government to open it up to all persons, including migrants legally staying in Italy regardless of their status, i.e. not just long-term residents. The Supreme Court referred the question to the Constitutional Court, which issued judgment No. 119 in 2015, and the Supreme Court followed this in delivering its judgment. According to the Constitutional Court, the concept of loyalty to the homeland has to be interpreted according to an evolutionary approach and in line with Article 2 on the fundamental rights of persons. Loyalty has to be interpreted together with solidarity, and the civil service shall be viewed as an instrument of integration in society.

b) Relationship between nationality and 'racial or ethnic origin'

With few exceptions as yet, when courts make their decisions they tend to mix up provisions regarding discrimination on the ground of nationality (Legislative Decree 286/1998 – the Immigration Decree) and discrimination on the ground of racial and ethnic origin, without expressly exploring the issue of indirect racial discrimination. One relevant point is that of language requirements, which in theory may result in indirect discrimination on the grounds of racial or ethnic origin. However, no action in this regard has been brought to the courts so far.

4.5 Work-related family benefits (Recital 22 Directive 2000/78)

a) Benefits for married employees

In Italy, it constitutes unlawful discrimination in national law if an employer provides benefits only to those employees who are married. This principle is expressly stated in Law 76/2016 (the Civil Unions Act), which was adopted in 2016 following a heated

debate in Parliament and after the condemnation of Italy by the ECtHR in relation to the *Oliari* case. According to the Civil Unions Act, there should be perfect equivalence between marriage and civil unions with regard to the rights that are granted, which of course includes economic benefits.

b) Benefits for employees with opposite-sex partners

In Italy, it constitutes unlawful discrimination in national law if an employer provides benefits only to those employees with opposite-sex partners.

Law 76/2016 on civil unions represents a very important legal development in this regard, since almost the same rights and duties of marriage are extended to civil unions, which are listed in special registers managed by the municipalities. The extension of rights covers all the economic rights, including benefits, pensions and succession law. No exception is established, therefore for same-sex civil unions there will be a recognition of the same rights as apply to marriages. For instance, a partner will be entitled to a deceased partner's pension, whereas previously only the spouse of a worker (in either the public sector or the private sector) was entitled to benefit from the worker's pension. The only permitted exception to the principle of equal treatment concerns adoption, which is still prohibited for both same-sex couples and single parents.

Besides the very relevant legal development that occurred during 2016, policies aiming to extend benefits to same-sex cohabitant partners are still rare. As far as collective agreements and the law are concerned, marital status has been used to justify differences in treatment (for unmarried different-sex and same-sex partners), even though the current trend is to extend some rights to de facto cohabitants. Indeed, with respect to bereavement and compassionate leave, Law 53/2000 and the resulting regulation adopted by Prime Minister's Decree 278/2000 extend this right in the case of the infirmity or death of a cohabiting partner in a stable relationship. These provisions therefore cover same-sex partners. As a consequence of these rules, many collective agreements already extend to cohabitants (without regard to sexual orientation) rights to leave or to take a sabbatical in order to be able to follow their partner. According to Article 1(20) of Law 76/2016 on civil unions, the same rights that are provided for marriages are extended to civil unions, including those set forth in collective agreements.

Taking into consideration the fact that Article 3(1)(b) of Legislative Decree 216/2003 corresponds to Article 3(1)(c) of Directive 2000/78/EC, it is possible to argue that the denial of the benefits granted to opposite-sex cohabitants to persons in civil unions or de facto same-sex partners constitutes direct discrimination.

Article 3(2)(d) of Legislative Decree 216/2003 explicitly states that the decree shall be without prejudice to the provisions already in force concerning marital status and the benefits dependent thereon, as provided by recital 22 of the original directive. However, it might be possible to challenge different treatment based on marital status as provided by a collective agreement or imposed by employers as a form of indirect discrimination on the ground of sexual orientation.

Finally, the Italian system does not provide specific protection for people who are not the legal parent of a child. Legislative Decree 151/2001 establishes the position of parents with reference to rights and benefits in the workplace: according to Article 1, only a legal or adoptive parent or a person who has legal custody of a child is eligible for the benefits provided by the law. Extra benefits (namely, additional leave of absence) are granted to single parents. Only legal or adoptive children may receive a survivor's pension. Even Law 76/2016 on civil unions does not extend the right to adopt stepchildren to those in civil partnerships.

Notwithstanding the divisive debate during the passage of the Civil Unions Bill, the recognition of equal rights for partners in a civil union has been virtually uncontested in practice. The National Institute of Social Security (INPS) published a circular on 5 May 2017 regarding the application of family benefits to those in civil unions. The same has occurred regarding benefits connected with accidents at work, with a specific circular published by the National Institute for Insurance against Accidents at Work (INAIL). The circulars give instructions for implementing the Civil Unions Act, expressly extending the same treatment hitherto reserved to marriages. A list of benefits is also included.

4.6 Health and safety (Article 7(2) Directive 2000/78)

In Italy, there are no exceptions in relation to disability and health and safety as allowed under Article 7(2) of the Employment Equality Directive.

4.7 Exceptions related to discrimination on the ground of age (Article 6 Directive 2000/78)

4.7.1 Direct discrimination

In Italy, national law provides for specific exception(s) for direct discrimination on the ground of age.

a) Justification of direct discrimination on the ground of age

In Italy, national law provides for justifications for direct discrimination on the ground of age.

This justification is provided for in Article 3(4-*bis*) and (4-*ter*) of Legislative Decree 216/2003, which transposes Article 6(1) of Directive 2000/78/EC. According to the new text, the prohibition of discrimination does not affect the rules providing for differential treatment of workers based on age in the following fields: access to and treatment in employment and occupational training, including dismissal and payment, by young workers, older workers and those with caring responsibilities, in order to promote their integration into employment or their protection (point a). Exceptions are also made for 'the determination of minimum age levels, professional experience or seniority in employment for access to employment or to certain benefits linked to employment' (point b) and 'the determination of a maximum age for recruitment, based on the training requirements for a specific occupation or on the need for a reasonable period of work before retirement' (point c).

The new text of the decree can be considered to be generally in line with the standards imposed by Article 6 of Directive 2000/78/EC. These exceptions are legitimate if they are justified by an objective aim of labour law, the labour market and professional training and are appropriate and necessary.

The new text of the decree can be considered to be generally in line with the standards imposed by Article 6(1) of Directive 2000/78/EC. Practical guidelines could be very useful, in particular regarding the 'objective justification test'.

In 2018, the Administrative Tribunal of Rome held that a maximum age limit set at 37 years old for access to the post of fireman was in line with the EU anti-discrimination directive. In addition, the Tribunal held that the same limit cannot be exceeded taking into account personal conditions, such as the status of spouse or the period of military service, as is the case in other sectors.

b) Permitted differences of treatment based on age

In Italy, national law permits differences of treatment based on age for any activities within the material scope of Directive 2000/78, except for membership of organisations of workers and employers; this is because the fields listed in Article 4(4-*bis*) (a) to (c) Decree 216/2003 coincide with the material scope of the directive as set out in Article 3(1)(a) to (c).

In a case decided by the Court of Appeal of Milan on 15 April 2014 (*Bordonaro v. Abercrombie & Fitch Italia S.r.l.*) the court found that Article 34 of Legislative Decree 273/2003 on fixed-term contracts was in breach of Legislative Decree 216/2003, to be interpreted in line with CJEU case law on discrimination on the ground of age. A worker had been employed at the age of 20, in accordance with a national law which gave benefits to employers taking on workers under the age of 25 and over 45, and was dismissed in 2014 at the age of 25. The Court of Appeal expressly cited the CJEU judgments in *Mangold* and *Kücükdeveci* in its finding that the dismissal was unlawful. According to the Court, the dismissal of the claimant was based solely on his age and was not proportionate and necessary for the pursuit of a legitimate aim. Moreover, the Court ruled that it was irrelevant that the company had acted according to the law, because the subjective intent of the perpetrator when discrimination is involved is not relevant. Finally, the law, which allows discriminatory measures on the basis 'only' of age, violates the general principle of non-discrimination on the ground of age to which Directive 2000/78/EC gives specific expression. However, the judgment was appealed to the Supreme Court, which referred the case to the CJEU for a preliminary ruling, in order to receive guidance on applying the *Mangold/Kücükdeveci* principle to the national rule. According to the judgment issued by the CJEU, 'Article 21 of the Charter of Fundamental Rights of the European Union and Article 2(1), Article 2(2)(a) and Article 6(1) of Directive 2000/78/EC must be interpreted as not precluding a provision, such as that at issue in the main proceedings, which authorises an employer to conclude an on-call contract with a worker of under 25 years of age, whatever the nature of the services to be provided, and to dismiss that worker as soon as he reaches the age of 25 years, since that provision pursues a legitimate aim of employment and labour market policy and the means laid down for the attainment of that objective are appropriate and necessary.'⁴²

c) Fixing of ages for admission or entitlement to benefits of occupational pension schemes

In Italy, national law allows occupational pension schemes to fix ages for admission to the scheme or entitlement to benefits, taking up the possibility provided for by Article 6(2). However, there is no explicit reference in Legislative Decree 216/2003 to Article 6(2), although occupational social security schemes contain several different ages for admission or entitlement to retirement or invalidity benefits.

4.7.2 Special conditions for young people, older workers and persons with caring responsibilities

In Italy, there are special conditions set by law for older and younger workers in order to promote their vocational integration, and/or for persons with caring responsibilities to ensure their protection.

Labour law provides an extensive number of exceptions to ordinary rules in order to promote the employment and vocational integration of young people. It should be noted that not all these rules provide more favourable treatment but instead allow a reduction in salaries or a lower degree of protection as a policy to increase youth employment. A

⁴² Judgment of 16 July 2017, *Abercrombie & Fitch Italia*, C-143/17, para. 47.

wide reform of labour law was introduced through Law 183/2014 (the Jobs Act) which was enacted during 2014 but implemented by the Government for the first time in January 2015.

Of particular note is Law 23/2015, which introduces a new kind of contract: the 'Contract with an increasing degree of protection'. This new contract may be applied only to new recruits and includes financial benefits for employers. A vigorous debate has developed between supporters of the reform who see it as a symbol of the modernisation of Italian labour law, and those who view it merely as another means of weakening workers' rights. In fact, the law does not include any provisions on treatment and pay, but concerns only dismissal. The key issue in the debate concerns the sanctions that apply to illegal dismissals: according to the new law, employers may be required only to pay compensation, meaning that reinstatement in the job is no longer available as a remedy in the case of illegal dismissal. However, no change was made to discriminatory dismissals, for which both compensation and reinstatement remedies continue to be available.

There are also many rules that provide protection for people with caring responsibilities in the form of maternity leave and similar benefits. Rules with regard to people who care for persons with a severe disability are provided in Law 104/1992 (the Framework Law on care, social integration and the rights of disabled people). According to Article 3, a disability is severe when a person needs permanent and comprehensive assistance. In such cases, ordinary leave of three days a month is granted; additionally, special leave of up to two years may be granted and even split into small periods to be taken throughout the employee's working life (Article 33 of Law 104/1992). Moreover, in the public sector, a worker who cares for a person with a severe disability may be transferred to a different place of work nearer to where the person with the disability lives. Other fiscal benefits are granted in relation to the costs incurred in taking care of persons with any kind of disability. According to Article 4 of Law 104/1992, this must in any case be certified by a special commission.

4.7.3 Minimum and maximum age requirements

In Italy, there are exceptions permitting minimum and maximum age requirements in relation to access to employment (notably in the public sector) and training.

The current version of Legislative Decree 216/2003 transposing Directive 2000/78/EC allows exceptions for 'the determination of minimum age levels, professional experience or seniority in employment for access to employment or to certain benefits linked to employment' (point b) and 'the determination of a maximum age for recruitment, based on the training requirements for a specific occupation or on the need for a reasonable period of work before retirement' (point c).

As far as the public sector is concerned, employment is in principle free of any age limit, but each public body can set a specific age limit by issuing a special decree. Such decrees must state the reasons for the age limit. It is possible to seek judicial review of these decrees.

4.7.4 Retirement

a) State pension age

In Italy, there is a state pension age at which individuals must begin to collect their state pensions.

If an individual wishes to work for longer, the pension can be deferred up to the age of 70, provided that the employer agrees – the worker's wish to defer their retirement is not sufficient on its own. Beyond the age of 70, the pension may not be deferred further.

An individual can collect a pension and still work in a self-employed capacity.

The retirement age for men and women in both the public and private sectors will gradually be equalised: from 2018, men and women in both sectors will retire at the age of 66 and seven months. They will be able to retire before the age of 66 and seven months only if they have worked for 42 years and three months (for men) or 41 years and three months (for women), and with a 2 % cut in their pension for each year of early retirement (that is, before the age of 66 and seven months). This is the only chance for people to retire earlier than the age of 66 years and seven months. A complex system of flexibility will operate between the ages of 62 and 70 years. In all these cases, the state pension is granted only to those who have worked for a minimum of 20 years.

b) Occupational pension schemes

In Italy, there is a normal age when people can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements.

If an individual wishes to work for longer, payments from such occupational pension schemes cannot be deferred.

An individual can collect a pension and still work.

There are several occupational pension schemes currently in existence, generally based on employer-funded pension arrangements (e.g. for lawyers, notaries and physicians). They each fix minimum and maximum ages for starting to collect pensions, with a mix of requirements in relation to age and years of contribution. Pensions can be deferred until the compulsory retirement age, which is around 70 years, is reached, and potentially for longer. For notaries, for example, the limit for deferral is 75 years of age.

c) State imposed mandatory retirement ages

In Italy, there are state-imposed mandatory retirement ages. The general mandatory retirement age imposed by the state is 70, with adjustments in line with life expectancy. At this age, at least five years of contributions are necessary to receive the pension. In 2014, a law was enacted to lower the mandatory retirement age for judges from 75 to 70. This was enshrined in Decree-Law 90/2014 of 1 November 2014, on reform of the public administration, with a gradual application up to 31 December 2015. For other civil servants, including doctors, the mandatory retirement age is 65.

There is no way that an employee may continue to work past the mandatory retirement age in the same role and with the same contract. However, it is possible to continue to work on a self-employed basis or as a consultant.

In addition, it is possible for the mandatory retirement age in public sector employment to be set below the age of 70 for employees who have worked for at least 40 years. A general rule is now in force, originally introduced as one of the measures inspired by the so called 'public spending review'. In one case decided in 2016, the Supreme Court rejected the claim of discrimination on the ground of age alleged by a teacher who had been forced to leave his job since, according to Article 6 of Directive 2000/78/EC, implemented in Italy through Legislative Decree 216/2003, a Member State may differentiate between workers on the ground of age if an objective and reasonable justification applies. The Supreme Court found that mandatory retirement ages do not

infringe on Directive 2000/78/EC, since they pursue a legitimate policy aim of ensuring a turnover of staff, and the means employed are appropriate and necessary.

d) Retirement ages imposed by employers

In Italy, national law does not permit employers to set retirement ages (or ages at which the termination of an employment contract is possible) by contract and/or collective bargaining and/or unilaterally.

An employment contract cannot be terminated on the ground of age before the employee fulfils the conditions (age included) required to receive a pension. Employers are thus bound by national law on pension ages.

e) Employment rights applicable to all workers irrespective of age

The law on protection against dismissal and other laws protecting employment rights apply to all workers, irrespective of age, if they remain in employment on attaining pensionable age or another age.

f) Compliance of national law with CJEU case law

In Italy, national legislation is in line with CJEU case law on age regarding compulsory retirement.

Rules providing for difference of treatment on the ground of age, in particular in the field of employment, are generally justified by reference to the need to avoid exclusion of older people from the labour market or, on the contrary, to favour the entry of young people (generally up to 29 years old).

With regard to different regimes concerning mandatory retirement ages or early retirement ages (for instance, for the armed forces, police, and airline employees), the legal framework is in line with CJEU case law, but several limits still exist, which should be changed or removed if they cannot be properly justified.

4.7.5 Redundancy

a) Age and seniority taken into account for redundancy selection

In Italy, national law permits age or seniority to be taken into account in selecting workers for redundancy, within the framework of special arrangements made in the case of financial crisis followed by so-called 'solidarity contracts': in this case, agreements with trade unions make provision for financial incentives for voluntary retirement, switching to part-time contracts and even the dismissal of only a proportion of the workers, in accordance with Law 223/1991. The selection of workers for the new contracts is based on several criteria, including age. This is clearly discriminatory, and judges have ruled this to be the case in several judgments, but no significant amendment has been enacted.⁴³

The compliance of this situation with the directive has not been the subject of significant discussion.

⁴³ The point is clearly explained in UNAR's report for 2012, pp. 40-43, available at: <http://www.unar.it/cosa-facciamo/relazioni/>.

b) Age taken into account for redundancy compensation

In Italy, national law provides compensation for redundancy. This is affected by the age of the worker. The system applies to workers who are dismissed after having previously enjoyed the social security benefits granted to workers in enterprises in difficulty (redundancy insurance). The length of the period for which mobility compensation is granted depends on the age of the worker (the older the worker, the longer the period during which they are eligible for compensation).

4.8 Public security, public order, criminal offences, protection of health, protection of the rights and freedoms of others (Article 2(5), Directive 2000/78)

In Italy, national law includes exceptions that seek to rely on Article 2(5) of the Employment Equality Directive. Article 3(2)(c) establishes that Legislative Decree 216/2003 shall be without prejudice to the provisions already in force concerning public security, the maintenance of public order, the prevention of criminal offences and the protection of health. This provision seems to allow the legislator too much discretion, since there is no express limit and no means of verifying its compatibility with the needs of a democratic society.

4.9 Any other exceptions

In Italy, other exceptions to the prohibition of discrimination (on any ground) provided in national law are as follows. Article 3(4) of Legislative Decree 216/2003 establishes that its provisions are without prejudice to the 'provisions that establish work suitability tests with respect to the necessity of suitability for a specific occupation (...)'. This provision is unclear. Considering that the second part of Article 3(4) specifically states that differences of treatment are justified with reference to adolescents, young people, older workers and workers with caring responsibilities if they are required by the specific nature of the occupation and by legitimate employment policy, labour market and vocational training objectives, it seems that the first part makes reference to more general and vague work suitability tests without specifying the nature of the work for which a test is required, a specific ground or even the purpose or nature of the test. Even assuming that such tests would be lawful only when based on a separate statutory provision and would not justify different treatment, the current version of the decree is quite suspect since it allows a general appraisal of the worker's suitability not provided by the directive itself and not defined in its aims, criteria and limits.

5 POSITIVE ACTION (Article 5 Directive 2000/43, Article 7 Directive 2000/78)

a) Scope for positive action measures

In Italy, positive action is permitted in national law in respect of racial or ethnic origin, religion or belief, disability, age or sexual orientation, through an express and identical implementation of Articles 5 and 7 of both directives. The only difference concerns Article 7(2)(c) of Legislative Decree 215/2003, according to which the tasks of UNAR, the equality body, include promoting the adoption of positive actions by private parties.

Positive action is in principle legitimate under the Italian Constitution in the light of the principle of substantive equality in Article 3(2). Several laws have been enacted to give special status to linguistic minorities and to certain religions. Moreover, other laws aim to promote the social inclusion of people with disabilities. Finally, several projects have been funded to promote the social integration of the Roma.

Relevant provisions related to disability, in particular those concerning employment, have come into force under Law 68/1999, which was most recently amended in 2015.

Race and ethnic origin

Specific projects have been funded by UNAR and labelled as positive actions. In particular, special events are promoted during Anti-Racism Week. However, these activities appear to be aimed more at raising awareness than at the implementation of positive actions. The same applies to projects funded by UNAR to promote a culture of diversity in the workplace.

Disability, national origin, transgender

Since 2013, UNAR has been funding a project entitled Diversity in the Workplace (*Diversità al lavoro*) to promote the recruitment of potentially disadvantaged people and support them in attending job interviews.

Disability

In relation to the grounds covered by the directives, positive action applies in practice, strictly speaking, only to people with disabilities on the basis of a complex set of rules contained in Law 68/1999. It should be noted that the aim of this Law is to amend and partly fill the gaps in Law 104/1992, which provides for measures to support people with a disability - including those with severe disabilities - in Article 3. In fact, Law 68/1999: 1) provides for some new concrete interventions and services; 2) allows some experimental projects to be implemented; 3) promotes the use of surveys and the collection of statistical data on disability; and 4) makes provision for a national conference on disability policy to be held every third year. The Law targets local authorities, which have specific competences to promote actions to support disabled people, to draft programmes and to provide services for people with disabilities. During the first phase of its implementation, this law was financed directly by the state (Ministry of Labour and Social Policies), which transferred the financial resources to the local authorities (by the year 2000). Local authorities now provide their own funding.

Interventions include different forms of personal care, personal assistance, emergency short-term accommodation and partial refunds of expenditure on assistance.

Roma, Sinti and Travellers

Positive actions for Roma do not exist at the national level. Specific measures that are aimed at enhancing the integration of Roma groups are promoted, generally through the funding of projects of limited duration. Despite the positive results of some of these projects, they still appear to be very marginal in the context of the overall picture of segregation and racism perpetrated against the Roma population. Moreover, they are addressed to 'nomad groups' or people living in the camps, without taking into account the specific characteristics of Roma, Sinti and Traveller minorities who do not live in a camp or who are sedentary. An Italian national strategy was adopted on 28 February 2012, implementing European Commission Communication COM(2011)173. Unfortunately, the strategy has not brought about any relevant results, in particular in housing. One of the reasons for this is the absence of activity promoted by UNAR, which had been identified as the national focal point. This may be due to the more general inability of UNAR to translate principles into concrete actions. The strategy covers four pillars: housing, healthcare, education and employment. However, the national strategy provides incentives and promotes coordination without setting binding targets to be met by the regions. At national level, the Government could promote a law setting a minimum level of services, including housing, to be provided, but no such law is on the agenda of any political party.

Linguistic minorities

Some linguistic minorities enjoy special protection in the charters of regions with a special constitutional status. In the case of the German-speaking minority of Trentino-Alto Adige (South Tyrol), this entails an extremely complex system of quotas for public employment and for the enjoyment of certain rights such as the use of language in court proceedings.

Much weaker protection is granted at the national level to other linguistic minorities defined as 'historic' by a law of 1999 – i.e. the languages 'of the Albanian, Catalan, Germanic, Greek, Slovenian and Croatian populations and of those speaking French, Franco-Provençal, Friulan, Ladin, Occitan and Sardinian'.

b) Quotas in employment for people with disabilities

In Italy, national law provides for quotas for people with disabilities in employment.

- The placement of persons with disability in specific jobs as decided by a medical commission. This commission has the task of: i) carrying out a functional diagnosis in order to determine the total capacity of the disabled individual, specifying the grade and quality of their impairments and ii) proposing how to facilitate their placement in employment. The commission assesses the social environment of persons with disability, their attitudes and their family relationships, taking into account their educational background and the jobs they have already done.
- An obligation on public bodies and private enterprises with more than 50 workers to ensure that persons with disability make up 7 % of their total workforce. For enterprises with more than 15 workers, it is sufficient that one worker with disability is employed, while for those with 30 to 50 workers, two persons with disability have to be employed. An exception to this obligation, which had been granted to political parties, trade unions and organisations for social development and support, was removed in 2015. For police and civil protection jobs, people with disabilities are employed only in administrative roles. Other cases of derogation are set out in Articles 3 and 5. These quotas are generally complied with. Statistics on the enforcement of the quotas are available from the Ministry of Labour; 25 000 to 30 000 people are hired under this system each year. In certain cases, an employer who is not in a position to hire people with disabilities for a stated reason (e.g. the

type of activity involved) must make a financial contribution to the Regional Fund for the Employment of Persons with Disability. The contribution is of EUR 153 20 per day per unfilled place.

In addition, the 1999 Law provides for: some services in order to facilitate access to work for people with disabilities (Article 7); lists of unemployed people with disabilities (Article 8); labour relations (Article 10); support for enterprises which comply with the law (Article 11); the creation of social cooperatives in order to support access to work (Article 12); benefits for employers who employ people with disability (Article 13); and the institution of a Regional Fund for the Employment of Persons with Disability. Sanctions of different kinds are applied to employers who do not fulfil their obligations (Article 15).

As has already been mentioned, amendments to Law 68/1999 were introduced in 2015 by Legislative Decree 151/2015, with the aim of simplifying the procedures for placing persons with disability in jobs. One controversial issue concerns the extension to all employers of the options for choosing a worker with disability. Before the entry into force of Decree 151/2015, this applied only to enterprises with fewer than 15 workers, while larger firms could hire from among people included in the list of unemployed people with disability, but without choosing the individual. A complaint was submitted to the European Commission claiming that this provision infringes Article 5 of Directive 2000/78/EC, because leaving the choice of workers up to the employer risks excluding persons with more severe disabilities from the labour market. This is particularly true in the context of high unemployment. However, no legal action was taken by the European Commission following the complaint.

6 REMEDIES AND ENFORCEMENT

6.1 Judicial and/or administrative procedures (Article 7 Directive 2000/43, Article 9 Directive 2000/78)

a) Available procedures for enforcing the principle of equal treatment

In Italy, the following procedures exist for enforcing the principle of equal treatment: according to Article 28 of Legislative Decree 150/2011, the general provisions on fast-track procedures apply to discrimination litigation. The relevant article is Article 702-*bis* of the Civil Procedural Code.

Under the general fast-track procedure, a victim of discrimination can apply, even in person (whereas in ordinary cases the assistance of a lawyer is compulsory), to the judge (the ordinary civil court) with jurisdiction over their place of residence (an exception to the general principle of suing in the court with jurisdiction over the place of residence of the defendant). The judge can issue a judgment ordering cessation of the discriminatory activity as well as damages (including for non-pecuniary losses, ordinarily excluded in civil cases). The judge can order an anti-discrimination plan to be drafted. In the case of collective discrimination, the judge decides whether an anti-discrimination plan is needed after hearing the opinion of the association which brought the complaint. The judgment can be appealed before the Court of Appeal (second instance) within 30 days; the decision on appeal can be challenged before the Supreme Court (third instance). The main difference between the ordinary and fast-track procedures is that a final ruling can be given in the former, while the latter may always be followed by a full trial, the only forum in which a final judgment may be given. It must be recalled that pre-trial mediation is now mandatory in anti-discrimination cases.

The civil action against discrimination prevails over other special procedures applying in the fields of labour law or administrative law. With regard to administrative law, according to a general principle of Italian law, ordinary administrative procedure applies when public bodies are involved. However, the Supreme Court has stated that in discrimination cases, the discrimination decrees apply, including the special procedure provided for in Legislative Decree 150/2011. Therefore, the civil action against discrimination applies and not the ordinary administrative one with the competence of ordinary civil courts.

With regard to the field of employment, the prevalence of civil action against discrimination over labour law and labour procedural law was expressly confirmed by the Milan Court of Appeal in its judgment of 15 April 2014. The Court of Appeal held that, when an action of discrimination has been brought before a labour court, it shall apply a civil action against discrimination rather than labour procedural law. In addition, ordinary proceedings are available. In particular, with regard to employment, labour inspections could take place, while no administrative or criminal investigations are applicable for infringements of the prohibition of non-discrimination.

b) Barriers and other deterrents faced by litigants seeking redress

According to Article 28 of Legislative Decree 150/2011, a civil action against discrimination can be brought before the court with jurisdiction over the victim's place of residence. The law is silent about jurisdiction in instances of collective discrimination and a case is pending before the Supreme Court on this point: the question is whether NGOs may bring proceedings only in courts with jurisdiction for the place where they have their registered office or if they can choose another court. This is particularly relevant in cases where both a collective and an individual action are brought.

Legal costs, such as fees and the payment of the lawyers, may function as a barrier for victims of discrimination. The same goes for the length of proceedings, which in Italy can be quite long, even though a civil action against discrimination is faster than a general civil action. In order to overcome the barriers represented by legal costs, an Interinstitutional Agreement on Access to Justice was agreed in 2013 by UNAR and the National Lawyers' Association, which was aimed at making access to justice easier for victims of discrimination, anticipating the legal costs of actions brought before the courts (about EUR 600 for each level of judicial proceedings). This amount is not sufficient to cover the overall legal expenses, but it is sufficient to act as an incentive for lawyers engaging in discrimination cases. In the event of a favourable judgment, the legal aid provided must be refunded to UNAR.

In Italy, there are no available statistics on the number of cases related to discrimination that are brought to justice.

UNAR's remit includes the drafting of an annual report to the President of the Council of Ministers, which includes data on its activity and, in particular, on the discrimination complaints made through its contact centre. However, UNAR does not conduct surveys or collect more complex data. The most recent report to be published concerns 2017. According to this report, a total of 3 909 complaints were lodged in 2017, of which 82.9 % were based on the grounds of race or ethnic origin (including nationality and religion or belief); 4.4 % on disability; 9.1 % on sexual orientation; 2.4 % on age; and 1.2 % on multiple grounds. It is not clear how many of these complaints were settled thanks to the intervention of UNAR as mediator, or whether legal action was taken and the cases brought to court. UNAR follows the latter course, also asking for information from tribunals and prosecutors.

c) Registration of discrimination cases by national courts

In Italy, discrimination cases are not registered as such by national courts. When a case is brought to court, lawyers must fill in a form where they have to enter the subject of the case and the relevant code. The list of subjects and codes is attached to the form and does not include discrimination. Discrimination cases are in fact classed as 'Others – Other fast-track procedures'. Cases are registered on the basis of the type of decision (judgment, decree or order) and not on the basis of their subject.

6.2 Legal standing and associations (Article 7(2) Directive 2000/43, Article 9(2) Directive 2000/78)

a) Engaging on behalf of victims of discrimination (representing them)

In Italy, associations, organisations and trade unions are entitled to act on behalf of victims of discrimination.

Article 5 of Legislative Decree 215/2003 entitles associations and legal persons to act in support of or on behalf of victims of discrimination on the grounds of racial and ethnic discrimination. Legal standing is granted to associations and bodies included in a list approved by a joint decree of the Ministry of Labour and Social Policies and the Department for Equal Opportunities. Associations and other bodies must have been officially established for at least one year, and must have been operating continuously in the year immediately before registration, as well as having an official charter establishing that they have a democratic structure; that they do not operate in order to make a profit; and that the promotion of equal treatment and opposition to discrimination is their only or primary aim. Moreover, they must have a budget and a register of members that fulfils certain legal standards, while their legal representatives must not have been sentenced for crimes related to the activity of the association nor act in any form as entrepreneurs or board members of commercial enterprises operating in the same field.

The associations included on the list are drawn partly from those included in the pre-existing register of associations and organisations operating in support of immigrants and partly from the register of associations and organisations specifically active in the anti-discrimination field established under Legislative Decree 215/2003 (all of which applied to obtain standing). Thanks to this provision regarding the legal standing of associations, two NGOs were able to bring an action against the municipality of Rome, citing the discriminatory housing policy of the so called 'nomad camps'.

Article 5 of Legislative Decree 216/2003 entitles trade unions, associations and legal persons to act in support of or on behalf of victims of discrimination on the grounds of religion or personal belief, disability, age and sexual orientation. Standing to litigate – previously limited to trade unions – is now extended to other organisations and associations representing the rights or interests affected, with no special register. Legal standing is accorded on an ad hoc basis where the organisations are regarded as having a 'legitimate interest' in the enforcement of the relevant legislation. However, no relevant action has been brought to court by NGOs under this new mandate.

It is worth mentioning that legal standing according to Legislative Decree 216/2003 is much broader than that under Legislative Decree 215/2003.

The Disability Discrimination Act (Article 4) grants standing to litigate to associations identified by a joint decree of the Ministry of Labour and Social Policies and the Department for Equal Opportunities along the lines applied in the case of race and ethnicity. A decree of 2007 established a register jointly managed by the above-mentioned departments, on roughly the same model as was established for race and ethnicity under the decree transposing Directive 2000/43/EC.

In addition, in the field of employment, trade unions have the right to legal standing on behalf of or in support of victims of discrimination, in accordance with Article 43(10) of Legislative Decree 286/1998 (the Immigration Decree) and Article 18 of Legislative Decree 1970/300 (on discriminatory dismissal).

b) Engaging in support of victims of discrimination (joining existing proceedings)

In Italy, associations, organisations and trade unions are entitled to act in support of victims of discrimination. The same is true for NGOs. As the rise in the number of cases concerning alleged discrimination shows, associations and NGOs are increasingly entering into court proceedings in support of or on behalf of victims.

Article 5 of Legislative Decree 215/2003 entitles associations and legal persons to act in support of or on behalf of victims of racial and ethnic discrimination. Legal standing is granted to associations and bodies included in a list approved by a joint decree of the Ministries of Labour and Welfare and Equal Opportunities. Associations and other bodies must have been officially established for at least one year, and must have been operating continuously in the year immediately before registration, as well as having an official charter establishing that they have a democratic structure; that they do not operate in order to make a profit; and that the promotion of equal treatment and opposition to discrimination is their only or primary aim. Moreover, they must have a budget and a register of members that fulfils certain legal standards, while their legal representatives must not have been sentenced for crimes related to the activity of the association nor act in any form as entrepreneurs or board members of commercial enterprises operating in the same field.

The associations included on the list are drawn partly from those included in the pre-existing register of associations and organisations operating in support of immigrants and partly from the register of associations and organisations specifically active in the anti-discrimination field established under Legislative Decree 215/2003 (all of which applied

to obtain standing). The register was updated in 2013. This was only the second update – the provision specifying that the list must be updated on a yearly basis has not been observed. Two associations included in the list are particularly active in promoting legal actions supporting victims of discrimination. A relevant case was settled in 2015 thanks to the active role of ASGI and the Associazione 21 luglio. A judgment was made by the Court of Rome on 6 February 2015, in which it ruled against a publisher who had published a legal handbook containing discriminatory examples of criminal conduct perpetrated by Roma people, referred to as 'Gypsies'.

The court found that all three claimants (the two associations and a person belonging to the Roma community) had legal standing – the woman because she belonged to the Roma community and therefore was a victim who felt personally injured when reading the challenged opinion. The court noted that, 'as explained, her legal standing (undisputed by the defendant) comes from her belonging to the discriminated ethnic group, and to the following breach of her human dignity'. The legal standing of the woman was allowed under a broad interpretation of the notion of 'victim'. To put it another way, she had acted not to defend her group, but to defend her human dignity as a person belonging to the Roma minority. The court defined the Roma minority as an ethnic group, but did not explore the link between the woman and her ethnic group, taking for granted her declaration of being Roma. The defendants did not contest her legal standing, perhaps considering that Roma ethnicity is self-assumed without any need for it to be validated.

As for the two NGOs, their legal standing is a typical example of representative action under Article 5 of Legislative Decree 215/2003, as they have the right to bring a case of collective discrimination to court when the victim is an entire group and not an identified victim. It is worth pointing out that the court could also have granted the right to legal standing to the two NGOs that were acting in support of the victim – the woman – but the judgment was very clear in granting legal standing to the three claimants on a separate basis and in allowing the NGOs to bring a representative action.

Article 5 of Legislative Decree 216/2003 entitles trade unions, associations and legal persons to act in support of or on behalf of victims of discrimination on the grounds covered by Directive 2000/78/EC. Standing to litigate – previously limited to trade unions – is now extended to other organisations and associations representing the rights or interests affected, with no special register. Legal standing is accorded on an ad hoc basis where the organisations are regarded as having a 'legitimate interest' in the enforcement of the relevant legislation. It is worth mentioning that legal standing according to Legislative Decree 216/2003 is much broader than that under Legislative Decree 215/2003.

Law 67/2006 (the Disability Discrimination Act) grants standing to litigate to associations identified by a joint decree of the Ministry of Labour and Social Policies and the Department for Equal Opportunities along the lines applied in the case of race and ethnicity (Article 4). A decree of 2007 established a register jointly managed by the above-mentioned departments, on roughly the same model as was established for race and ethnicity under the decree transposing Directive 2000/43/EC.

In addition, in the field of employment, trade unions have the right to legal standing on behalf of or in support of victims of discrimination, in accordance with Article 44(10) of the Immigration Decree and Article 18 of Legislative Decree 1970/300 (on discriminatory dismissal).

c) Actio popularis

In Italy, national law does not allow associations/organisations/trade unions to act in the public interest on their own behalf, without a specific victim to support or represent (*actio popularis*). Some exceptions exist, e.g. in the field of environmental litigation.

Specific provisions on *actio popularis* are provided for by discrimination law, whereby associations, organisations and trade unions may act in the public interest on their own behalf, without a specific victim to support or represent. In accordance with both decrees implementing the two directives of 2000, organisations with legal standing can act (obviously without the authorisation of the victim) in cases of collective discrimination when victims cannot be identified in a direct and immediate way (Legislative Decree 215/2003, Article 5; Legislative Decree 216/2003, Article 5; Legislative Decree 67/2006, Article 4). For instance, in the case *Associazione avvocatura per i diritti LGBT – Rete Lenford v. C. Taormina*, the Court of Bergamo accorded legal standing to the claimant association in accordance with Article 5 of Legislative Decree 216/2003. The association contested a discriminatory statement made by a well-known lawyer to a very popular broadcaster that he would scrutinise thoroughly each application he received to avoid recruiting any gay people. No individual victim was identified; there was 'only' a collective potential discrimination. It is notable that the legal standing of the association was not contested. The judgment, which contained extensive reference to the *Feryn* and *Accept* cases, was appealed up to the Supreme Court. It referred the case to the Court of Justice for a preliminary ruling, which is still pending.

A relevant case was decided in 2018 by the Tribunal of Bergamo regarding the legal standing of trade unions when there is a case of discrimination on grounds of belief and there is not an identified victim (details are provided in the case law section).

According to Article 4(2) of Law 67/2006, associations can intervene in civil actions brought by people with disabilities and can institute administrative proceedings to review the legality of the discriminatory acts contested in the civil proceedings, while, according to Article 4(3), organisations are entitled to act in cases of collective discrimination.

d) Class action

In Italy, national law allows associations/organisations/trade unions to act in the interest of more than one individual victim (class action) for claims arising from the same event. After heated scholarly and political debate, in December 2007, the Government included a provision in the Finance Act introducing an opt-in class action for obtaining financial compensation for wrongs perpetrated against groups of consumers or users. After having been frozen for a time, this new piece of legislation entered into force, in a slightly modified form, on 1 January 2010. While its provisions make no mention of anti-discrimination suits as such, it is not inconceivable that actions relating to discrimination against specific groups of consumers on racial or other grounds could be brought under the new law.

Discrimination law does not provide a specific statutory basis for class action. One may argue whether the provisions on *actio popularis* (Article 44 of the Immigration Decree, Article 5(3) of Legislative Decree 215/2003, Article 5(2) of Legislative Decree 216/2003 and Article 4(3) of Law 67/2006) also allow collective actions representing groups of victims. There is no evidence of the Government or Parliament having taken into account the Commission recommendation 2013/396/UE on collective redress.

6.3 Burden of proof (Article 8 Directive 2000/43, Article 10 Directive 2000/78)

In Italy, national law permits a shift of the burden of proof from the complainant to the respondent.

According to Article 28(4) of Legislative Decree 150/2011, the claimant establishes facts, including facts of a statistical character, on which a presumption of discrimination can be based; it is up to the defendant to prove that there has been no discrimination. Testing is still not part of current practice.

The most interesting case applying the shift in the burden of proof was that heard by the Court of Rome in 2012 in the case of *Fiat, Fabbrica Italia*. The Court held that statistical data are sufficient to shift the burden of proof to the respondent. The Court clarified that discrimination law establishes a 'proof by presumption', according to which it is sufficient for the complainant to provide facts on which the presumption of discrimination is based, in order for the burden of proof to be placed on the employer to demonstrate that no discrimination was involved.

6.4 Victimisation (Article 9 Directive 2000/43, Article 11 Directive 2000/78)

In Italy, there are legal measures for protection against victimisation.

According to a new Article 4-*bis* in both legislative decrees implementing the two directives, judicial protection is 'also applied against any prejudicial behaviour towards a person affected by direct or indirect discrimination or towards any other person as a reaction against any activity aimed at obtaining equality of treatment' (the same standards of evidence apply, including the reversal of the burden of proof).

In an interesting judgment issued on 4 December 2014, the Court of Vercelli clearly stated that the protection against victimisation afforded by Article 4-*bis* of Legislative Decree 215/2003 covers anyone who acts to obtain equality of treatment, notwithstanding the result of the legal action against discrimination.⁴⁴ The case concerned four citizens who had brought a case against the mayor of Varallo Municipality, together with his assessor – who is also a Member of the European Parliament – for the dissemination of racist posters around the city. The Court of Turin had dismissed the case, since the municipality had removed the posters before the judgment. However, other posters had subsequently been posted around the city with the names of the citizens who had brought the case to court, ridiculing them for diverting economic resources (to pay legal costs) away from the community.

The Court of Vercelli condemned the Mayor of Varallo (Eraldo Botta), the assessor (Gianluca Buonanno, a former Member of the European Parliament) and the Municipality of Varallo for victimisation, in accordance with Article 4-*bis* of Legislative Decree 215/2003 implementing Directive 2000/43/EC. The Court held that protection against victimisation extends to anyone who acts to combat discrimination, notwithstanding the result of the legal action – that is, the upholding or rejection of the appeal. Moreover, legal actions against victimisation follow the same pattern of rules as for legal action against discrimination, including the shift of the burden of proof. The respondents were ordered to pay EUR 6 000 and EUR 5 500 respectively to the victims as moral damages, in accordance with Article 15 of the Directive, which requires that sanctions must be effective, proportionate and dissuasive. In addition, the ruling ordered that the judgment be published in a local newspaper, on the Facebook page of Mr Buonanno and on the website of the Varallo Municipality, and also that the legal fees had to be paid.

6.5 Sanctions and remedies (Article 15 Directive 2000/43, Article 17 Directive 2000/78)

a) Applicable sanctions in cases of discrimination – in law and in practice

⁴⁴ Italy, Court of Vercelli, *Pantè v. Botta, Buonanno and Municipality of Varallo*, judgment of 4 December 2014, available at: www.asgi.it/wp-content/uploads/2014/12/2014_tribunale_Vercelli_rq-1241-del-2014-ord-04-12-2014_Varallo-BOTTA-BUONANNO-trib-vercelli.pdf.

According to Article 28(5) of Legislative Decree 150/2011 – which applies to the anti-discrimination Legislative Decrees 215/2003 and 216/2003, the Immigration Decree and disability law – the judge may order the termination of the discriminatory behaviour, conduct or act and the removal of its effects, including by means of a plan aiming to rectify the discrimination identified. The basic idea of this remedy (similar to remedies against gender discrimination) is consistent with Article 15 of the Workers Act, which declares that any discriminatory act or behaviour is unlawful and consequently void. Therefore, the consequences of such acts and behaviour must be rectified and the previous situation restored. According to some authors, even though this sanction may work in cases of dismissal (when reinstatement must be ordered) or other acts, it might not be an effective remedy for omissions (e.g. denial of access to work); in these cases, only compensatory damages are available. A victim of discrimination may claim for compensation of pecuniary and non-pecuniary losses. Under Article 44(8) of the Immigration Decree, criminal sanctions are applied if the decision of the court is not complied with.

Article 28(7) of Legislative Decree 150/2011 establishes that the decision of the judge must be published in a national newspaper if this is explicitly ordered by the judge in the light of the circumstances of the case.

Article 44(11) of the Immigration Decree establishes that, if the discriminatory act or behaviour is performed by enterprises to which public bodies have awarded tenders, supply contracts or public financial assistance, such benefits can be withdrawn; in particular cases, these enterprises may be excluded for up to two years from tenders/financial assistance.

Discriminatory dismissals are governed by Article 3 of Law 108/1990 on individual dismissals (which is in fact a consolidated version of Article 4 of Law 604/1966 and of the amended version of Article 15 of the Workers Act), according to which they are always considered as void and entail the worker's reinstatement. This provision is confirmed by what is known as the Jobs Act.

b) Ceiling and amount of compensation

No ceiling to the amount of compensation applies.

c) Assessment of the sanctions

It is difficult to assess the amount of non-pecuniary damages that can be awarded, which largely depends on the circumstances of the individual case. The small number of cases decided to date makes it impossible to calculate an average. The overall effectiveness of these remedies is very high in comparison with ordinary Italian civil procedure. It remains to be seen, of course, whether this effectiveness will be sufficient to overcome more general cultural obstacles that make anti-discrimination litigation quite rare, but the procedural requirements of the directives are certainly met.

In the case of *Associazione avvocatura per i diritti LGBT – Rete Lenford v. C. Taormina* decided by the Court of Bergamo, the defendant was ordered to have the judgment published in a newspaper with nationwide coverage and to pay EUR 10 000 as a 'dissuasive sanction' (in accordance with Article 28 of Legislative Decree 150/2011, interpreted in line with Directive 2000/78/EC and with the *Accept* judgment (C-81/12)), as well as having to pay EUR 5 000 in legal costs.

This judgment is an example of the perfect transposition of the *Feryn – Accept* case law: the facts are similar and the arguments of the court identical, with explicit reference to the judgments of the CJEU. Two points are worth mentioning. First, this is a case of collective potential discrimination contested by an organisation whose legal standing, in

line with Article 5(2) of Legislative Decree 216/2003, was not contested. Secondly, the court ordered the defendant to pay EUR 10 000 as a 'dissuasive sanction', in accordance with Article 28 of Legislative Decree 150/2011, interpreted in line with Directive 2000/78/EC and with the *Accept* judgment (C-81/12). This is a private sanction, a type of punitive damages, since no damage had effectively been suffered by one or more identified victims.

This type of sanction is not common in Italy: doctrine and jurisprudence have always asserted that they are contrary to general principles of civil liability. However, an identical provision to that applied in this judgment is laid down in Article 37(3) of the Equal Opportunities Code (Legislative Decree 198/2006): in the case of collective discrimination, the sanction may include the payment of non-pecuniary damages. These are not defined as punitive damages but are paid to a collective body that has not, in fact, suffered any damage. The issue of (punitive?) damages in cases of collective discrimination is emerging from the case law as a result of a broad interpretation of the written law. This approach has not been challenged so far, but it is likely that the higher courts will be called on to give their interpretation in the near future.

An interesting case is the *Ryanair* case decided in 2018 by the Tribunal of Bergamo. The Tribunal, having found that an extinction clause included in collective and individual contracts was of a discriminatory nature, ordered the publication of the judgment in two national newspapers and condemned the company to pay EUR 50 000 in non-pecuniary damages. The Tribunal made reference to the EU directive and the *Accept* case, requiring that 'The sanctions, which may comprise the payment of compensation to the victim, must be effective, proportionate and dissuasive' and qualifying them expressly as punitive damages.

7 BODIES FOR THE PROMOTION OF EQUAL TREATMENT (Article 13 Directive 2000/43)

- a) Body/bodies designated for the promotion of equal treatment irrespective of racial/ethnic origin according to Article 13 of the Racial Equality Directive

The requirement to introduce a body for the promotion of equal treatment is covered in Article 7 of Legislative Decree 215/2003, transposing Directive 2000/43/EC. The decree establishes an 'office' within the Department for Equal Opportunities of the Presidency of the Council of Ministers. According to Article 7(1), the promotion of equal treatment and the elimination of any sort of discrimination on grounds of racial and ethnic origin are the general and exclusive tasks of the office. UNAR's remit has been extended to cover all grounds of discrimination by a ministerial directive (an internal act of the Government assessing the specific tasks of each Government department) issued in 2010 and renewed in 2012. It is not clear if this extension will be confirmed by the next Government.

The director of the office is appointed by the Prime Minister or by a minister on his behalf (Article 7(4) of Legislative Decree 215/2003). Its internal organisation is set out by a Prime Minister's Decree adopted on 11 December 2003 (*Costituzione e organizzazione interna dell'Ufficio per la promozione della parità di trattamento e la rimozione delle discriminazioni, di cui all'art. 29 della legge comunitaria 1° marzo 2002, n. 39*). The office fulfils two services: one devoted to actions against discrimination; the other devoted to research and relations with other institutions.

According to Article 3 of the Decree, 21 officials shall be employed, including one general executive, one executive for each service and 18 officials. Moreover, other officials may be recruited, seconded either from other Prime Minister's departments (up to a maximum of five), or from other Government departments. This includes judges, state attorneys, experts and advisers without civil servant status (up to a maximum of five) (Article 7(5) of Legislative Decree 215/2003). Currently, none of the three directors is officially in post, and only two external experts are working at UNAR. In January, the Government appointed Luigi Manconi, currently an MP and previously a professor of sociology, who has written books on racism, as General Director. He took office on 24 March 2018, when he was no longer an MP, fulfilling the role without remuneration.

UNAR's competences include assistance to victims of discrimination in pursuing their complaints in judicial or administrative proceedings and surveys on discrimination, but without infringing on the prerogatives of the judicial authorities.

- b) Political, economic and social context for the designated body

In Italy, there is a general lack of interest regarding the equality body and regarding bodies dealing with human rights in general. No independent body has been designated to deal with discrimination (not even on the grounds of gender) or human rights. On the contrary, there appears to be sharp hostility, judging from recurring questions asked by Members of Parliament to the Government, sometimes including requests to close UNAR or to limit its remit to race and ethnic origin, as required by Legislative Decree 215/2003.

There is no evidence of a popular debate on the designated body, which is not even known about by most people, even those who are more supportive of equality and diversity. UNAR took centre stage in the national media only recently, when a scandal on its allocation of funding was discovered, in addition to one previous occasion when an MP reacted to a letter sent by UNAR's director asking for more balanced speeches when dealing with migrants. As far as equality and diversity in general are concerned, the popular debate has mostly been influenced by hostility against migrants. In particular, there is an increasing trend to link crimes committed by migrants to the general policy

regarding migration and expulsion, and even to integration policies. It appears that there is no place for a popular consensus on equality and diversity.

UNAR's budget is provided for by law and has been the same since its designation, which dates back to 2003. It is established by Article 8 of Legislative Decree 215/2003 and is set at EUR 2 035 357; in addition, UNAR manages funds, including structural funds, linked to special projects. The management of these projects has increased the administrative work of the office; therefore, most of the staff are dealing with administrative issues. Moreover, the extension of UNAR's remit to other grounds of discrimination has not been reflected through a proportionate extension of the budget.

c) Institutional architecture

In Italy, the equality body, UNAR, does not form part of a larger body with a multiple mandate. It was created as a result of the implementation of Directive 2000/43/EC.

It should be mentioned that, in Italy, there is no national human rights body – not even one in charge of UN reporting. The reporting activity is performed through the Human Rights National Commission, which is led by a diplomat and made up of officials and academics, and reports to the Ministry of Foreign Affairs.

d) Status of the designated body/bodies – general independence

i) Status of the body

Italy has chosen to set up an office completely within the structure of the state administration. UNAR is an 'office' of a ministry of the Government, and fulfils two services: one devoted to actions against discrimination; the other devoted to research and relations with other institutions. It is currently set up within the Department for Equal Opportunities, which previously only dealt with gender discrimination.

UNAR's budget is part of the budget of the Department for Equal Opportunities. Additional funding can be assigned, depending on the body's activities and projects, from either another Government department or an international organisation (Article 3(3) of Legislative Decree 215/2003).

The director is appointed by the Department for Equal Opportunities and the staff reports directly to the director. The office and its staff are together accountable to the Minister for Equal Opportunities and, in the second instance, to the Prime Minister.

ii) Independence of the body

The body is fully answerable to the Department for Equal Opportunities and to the Prime Minister. The General Director has a certain degree of discretion, like any general director in the Government Administration, but has to implement the political will of the Government in office. This is also clear regarding the competences of the Department for Equal Opportunities, which comprise those performed by UNAR according to Article 7 of Legislative Decree 215/2003. In practice, the functions of UNAR are listed among the functions of the Department for Equal Opportunities.

A clear example of this lack of independence occurred in March 2014, after the promotion by UNAR of an educational activity aiming to improve knowledge about sexual orientation and related issues through the publication of leaflets. Catholic associations and members of Parliament complained against the Government,

which denied any responsibility regarding the publications, ascribing the initiative to UNAR's director, who was addressed with a dishonourable mention. The Government then took the decision to stop the educational campaign. During 2018, UNAR relaunched its activities in the field of LGBT issues, promoting the creation of a consultative group made up of representative of associations and NGOs. The group was set up on 23 October 2018.⁴⁵

A similar but more serious event took place in 2015, when UNAR sent a letter, signed by its director and dated 30 September 2015, to a member of Parliament, Giorgia Meloni, targeting her exhortations to close the country's borders to aliens from Muslim countries. According to her comments, people from those countries are more violent and linked to acts of terrorism than others. The letter closed with a very gentle invitation to the MP Giorgia Meloni to consider taking the opportunity, in her future speeches, to send people different messages that are not based on stereotypes. Giorgia Meloni reacted very badly to the letter, invoking freedom of speech and the immunity of all members of Parliament and writing to the Prime Minister and the President of the Chamber of Deputies. A request for clarification was sent by the Prime Minister's Secretary General to the director of UNAR, Marco De Giorgi, and a vacancy was then published for the role of director, which has now been taken on by another person, who is an external expert. The former director, Marco De Giorgi, has challenged the Prime Minister's sanctions at the Tribunal of Rome, claiming that they violate Directive 2000/43/EC.⁴⁶ The Tribunal upheld the complaint by interpreting Article 7 of Legislative Decree 215/2003 in line with the Directive. In particular, according to the Tribunal, although UNAR is based within the Government, Italian law is in line with Directive 2000/43/EC only if UNAR can perform independent activities, and this entails that no disciplinary sanctions can be imposed on the director or other staff acting in the exercise of their duties. The judgment, which has not been appealed by the Government, is very relevant, because the Tribunal sets out clear guidelines to interpret the relationship between UNAR and the Government and the requirement for independent functions as set forth in Directive 2000/43/EC. On 1 October 2018, the General Secretary of the Office of the Prime Minister adopted an administrative circular underlining the limits of the disciplinary sanctions that can be applied to UNAR's director and the need to ensure his/her broad autonomy in order to allow UNAR to perform independent activities.⁴⁷ The judgment and the circular could prevent similar events from happening again, but there is clear evidence that the link between the Government and UNAR is very close, and domestic law does not expressly provide any special provision in order to guarantee UNAR's effective independence. Moreover, judicial interpretation cannot always be sufficient, and it is worth mentioning that, in the case at hand, Marco De Giorgi has nonetheless been transferred to another service. The Tribunal dismissed a specific claim for compensation for damages caused by the transfer on the basis of a lack of sufficient evidence showing the causal link between the events that occurred and Marco De Giorgi's transfer to another service.⁴⁸

The appointment of Luigi Manconi as General Director of UNAR may herald a slight change to the way in which the office has been led until now. An authoritative person who has declared that he will not be paid for this function will be less subject to Government influence. Indeed, the new director has allowed the office to restart its activities, since it appeared to have been put in a sort of 'stand-by' mode

⁴⁵ <http://www.unar.it/bandi/costituzione-del-tavolo-di-consultazione-permanente-per-la-promozione-dei-diritti-e-la-tutela-delle-persone-lgbt/>.

⁴⁶ Tribunal of Rome, Judgment of 17 May 2017, MDG v. PCM, Register number 37262/2016.

⁴⁷ Italy: Circular on operational aspects of UNAR (*Circolare inerente aspetti operative dell'Ufficio per la promozione della parità di trattamento e la rimozione delle discriminazioni fondate sulla razza o sull'origine etnica* – UNAR) of 1 October 2018 – Not published.

⁴⁸ Tribunal of Rome, Judgment of 17 May 2017, MDG v. PCM, Register number 37262/2016., point 42.

in recent years. For instance, the yearly reports up to 2017 were finally published in 2018, and the most relevant elements of the work performed by UNAR – including the establishment of the contact centre and Anti-Racism Week – have been renewed.

The issue of lack of independence is underlined in ECRI's 2015 report regarding Italy. In particular, the report found that ECRI's recommendations have not been fully implemented. The recommendations focused on the enhancement of UNAR's activity by formally extending its powers so that the relevant legislation, and not just internal administrative acts, clearly covers discrimination based not only on ethnic origin but also on colour, language, religion, nationality and national origin; by granting it the right to bring legal proceedings rather than just supporting victims; and by ensuring that its full independence is secured both in law and in fact. These measures have not been implemented. In particular, ECRI finds that the office is not *de jure* independent, in breach of ECRI's general policy recommendations 2 and 7, which state that the office should be placed 'under the Department for Equal Opportunities of the Presidency of the Council of Ministers, its Director who is a civil servant appointed by the Government and part of its staff seconded to UNAR from various ministries'. Moreover, despite the widening of the grounds of discrimination covered by UNAR, ECRI underlines that 'no legislation has yet been enacted to extend formally UNAR's competence'.

e) Grounds covered by the designated body/bodies

UNAR's remit has been extended to cover all grounds of discrimination listed in Article 19 of the TFEU. The proposal to extend UNAR's powers was put forward by UNAR itself in its first report to Parliament, and this was implemented in a ministerial directive (an internal act of the Government assessing the specific tasks of each Government department) issued in 2010 and renewed in 2012. The 2014 report to Parliament relating to activities in 2013 reflects this extension of competences, with different sections for each area of activities as provided for by the Ministerial Directive of 2010 (sexual orientation and gender; age; disability; religion; Roma, Sinti and Travellers; nationality; and race and ethnic origin).

The equality body also deals with discrimination against migrants, although this does not qualify as a priority issue.

The extension of competence to other grounds has allowed UNAR to act as a point of reference for the management of governmental projects related to equality and social exclusion, in particular those funded through structural funds. However, this extension has not been reflected by an increase in the staff. Moreover, no additional experts have been recruited, even though this is expressly allowed according to Article 3(3) of Legislative Decree 215/2003.

These projects deal almost exclusively with discrimination against the Roma (with a budget of around EUR 17 million) and sexual orientation (EUR 3 million).⁴⁹ UNAR also acts as a contact point for the national Roma strategy and for the LGBT strategy.⁵⁰

Nationality, issues relating to Roma and sexual orientation appear to be the areas in which more projects have been promoted and to which a greater budget has been allocated. For other grounds, such as racial discrimination in general, nationality, age and

⁴⁹ The general topics of the projects are quoted in UNAR (2018), *Report to the Prime Minister for the year 2017*, pp. 45-49, available at: <http://www.unar.it/wp-content/uploads/2019/01/Relazione-PCM-2017.pdf>.

⁵⁰ Italy, *National Strategy for LGBT 2013-2015 (Strategia nazionale per la prevenzione ed il contrasto della discriminazione basate sull'orientamento sessuale e l'identità di genere)*, available at: <http://www.unar.it/cosa-facciamo/strategie-nazionali/strategia-nazionale-lgbt/>.

religion and belief, no special action has been put in place and no dedicated staff have been assigned. These grounds are dealt with through the activities that cover all grounds, such as the work of the contact centre. On disability, projects and other activities are promoted by the various ministries within the Government. Moreover, a national observatory for persons with disability has been created as part of the implementation of the UNCRPD. The observatory is in charge of promoting the effective implementation of the convention, conducting studies and analysis, proposing the adoption of specific measures and reporting yearly on the activities performed.

f) Competences of the designated body/bodies – and their independent exercise

i) Independent assistance to victims

In Italy, the designated body has the competence to provide independent assistance to victims.

UNAR's remit includes the provision of assistance to victims of discrimination. This is provided through a contact centre with a freephone number and operators speaking several languages (Italian, English, French, Spanish, Arabic, Russian, Romanian and Chinese). The contact centre's only task is to receive and 'filter' requests for help from victims of discrimination, while decisions on action are taken by UNAR staff. Actions may include writing a letter to the relevant authority asking for the removal of the discriminatory measure or behaviour, writing a public opinion and/or, following the case, assuming the role of a sort of mediator between the claimant and the perpetrator of the discrimination.

The contracts to manage the contact centre have been renewed for a three-year period, starting in 2017. The contact centre is one of the most visible activities put in place by UNAR and its mandate has always been renewed, notwithstanding the turnover of UNAR staff and, in particular, the change of general directors. A report relating to activities in 2017, including complaints received, was published in 2018.⁵¹ According to this report, a total of 3 909 complaints were lodged in 2017, of which 3 574 were deemed relevant. Of these, 2 964 were based on the grounds of race or ethnic origin (82.9 %); 158 on disability (4.4 %); 324 on sexual orientation (9.1 %); and 44 (1.2 %) on multiple grounds.

The follow-up to these cases is not available, so it is very hard to assess the effectiveness of this activity.

It should be mentioned that UNAR has promoted the creation of a solidarity fund for access to justice for victims of discrimination (*Fondo di solidarietà per la tutela giurisdizionale delle vittime di discriminazione*). The fund was created by UNAR in order to facilitate access to justice for victims of discrimination, anticipating the legal costs of actions brought before the courts (estimated at about EUR 1 000).

On independence, there is no indication of a lack of independence regarding how the contact centre is managed. A lack of independence may be recognised, however, in the choice of the actions to be performed to assist victims, because these must follow ministerial guidelines and approval.

ii) Independent surveys and reports

In Italy, the designated body has the competence to conduct independent surveys and publish independent reports.

⁵¹ UNAR (2018), *Report to the Prime Minister for the year 2017*, p. 8, available at: <http://www.unar.it/wp-content/uploads/2019/01/Relazione-PCM-2017.pdf>.

However, UNAR does not conduct surveys or collect more complex data than those collected through the contact centre. Only one statistical survey was commissioned by UNAR from Istat in 2011-12. The survey was conducted and funded by the Government in order to collect data regarding actual discrimination experienced by people on the grounds of sexual orientation, homophobia and ethnic origin. The survey was conducted independently, in accordance with the rules and standards applied by Istat.

UNAR publishes an annual report on its activity, as well as reporting on the application of the principle of equal treatment. However, no report was published for four years since 2014 and only in 2018 four reports have been published: two referring to 2015-2016 years and the latest two regarding 2017. The reports that have been published have mainly reflected the activities performed during the previous year, and have provided only a brief analysis of the data gathered through the contact centre.

Resources dedicated to this activity are too few, in particular regarding surveys, since only one survey has been conducted and there is a general lack of data available in this field.

iii) Recommendations

In Italy, the designated body has the competence to issue independent recommendations on discrimination issues.

In particular, according to Article 2(2)(b) of the Prime Minister's Decree of 11 December 2003, UNAR is in charge of issuing opinions and proposals for reforming the laws on racial and ethnic discrimination and for issuing recommendations on matters related to racial and ethnic discrimination. The latest opinions published on the UNAR website date back to 2013 and are written up in the 2014 reports. In the most recent published reports, there is no evidence of new opinions issued by UNAR.

There are no resources dedicated specifically to following up on the recommendations that have been formulated within the annual reports.

iv) Other competences

In particular, according to Article 2(2)(a) and (b) of the Prime Minister's Decree of 11 December 2003, UNAR's remit includes conducting inquiries to verify the existence of discrimination and promoting the adoption, by private or public entities, of specific measures – including positive action initiatives – aimed at eliminating or compensating for the disadvantages linked to a certain race or ethnic origin. It also includes the dissemination of information concerning the rules on equal treatment irrespective of racial or ethnic origin.

During its 13 years of activity, UNAR has not performed any inquiries. As for the promotion of positive actions, UNAR has awarded private companies with a prize for good praxis adopted on anti-discrimination in their businesses.

As regards the dissemination of information, UNAR has continually funded several training courses addressed to lawyers, judges and journalists – thanks also to the initiatives of the NGOs responsible for organising the courses.

g) Legal standing of the designated body/bodies

In Italy, the designated body, UNAR, does not have legal standing to:

- bring discrimination complaints (on behalf of identified victims) to court;
- bring discrimination complaints (on behalf of non-identified victims) to court;
- bring discrimination complaints ex officio to court;
- intervene in legal cases concerning discrimination, for example by providing an *amicus curiae*.

According to Article 7(2) of Legislative Decree 215/2003, UNAR can support victims of discrimination during judicial proceedings, even intervening to provide factual information to the judge, in accordance with Article 425 of the Italian Civil Procedural Code. So far, UNAR has never intervened in a judicial proceeding. It has, however, promoted a solidarity fund to assist victims of discrimination, with a financial contribution towards the legal costs.

h) Quasi-judicial competences

In Italy, the body is not a quasi-judicial institution.

i) Registration by the body/bodies of complaints and decisions

In Italy, the body registers the number of inquiries received through its contact centre. These data are available to the public via the annual reports. According to the 2017 report, the centre has dealt with around 3 909 calls falling within its mandate. All contacts are recorded in a database, which provides information that has been analysed and published by UNAR.

j) Stakeholder engagement

UNAR holds a register listing associations and bodies. The associations included in the register have the right to legal standing and may apply for funding by UNAR.

According to Article 2(2)(a) of the Prime Minister's Decree of 11 December 2003, UNAR should hold regular hearings with the associations listed in the register. Funding is allocated to the associations through a public tender, and the list of those that are awarded funding is generally published on the UNAR website.

A network of regional and local offices against discrimination was set up in 2011, but it appears from the UNAR website that no activity has been promoted since 2015.

k) Roma and Travellers

UNAR considers Roma issues a priority. It usually gives Roma issues considerable space in its reports to Parliament and to the President of the Council of Ministers. It organises awareness campaigns on prejudice against people from the Roma community and informally monitors critical situations when they occur. Since its appointment as the national contact point in accordance with European Commission Communication COM(2011)173, UNAR has increased its activity in support of the Roma, involving NGOs and organisations devoted to the protection of Roma, Sinti and Travellers in order to ensure their contribution to the development of Italy's Roma strategy. In terms of its approach, UNAR does not have a specific strategy separate from the Government's: indeed, UNAR is the body which has the task of coordinating the implementation of the Italian national strategy on Roma, Sinti and Travellers. Some activities, in particular the dissemination of information and awareness-raising, are run directly by UNAR, while the large majority of activities included in the national strategy are intended to be implemented at regional and local level, without any coercive powers given to UNAR to act against omissions.

8 IMPLEMENTATION ISSUES

8.1 Dissemination of information, dialogue with NGOs and between social partners

- a) Dissemination of information about legal protection against discrimination (Article 10 Directive 2000/43 and Article 12 Directive 2000/78)

After its institution, UNAR launched a number of initiatives aimed at raising awareness (seminars and other public relations events), some of which have had an impact. According to its annual reports, UNAR has achieved a good degree of visibility, and this has been accompanied by an increase in the attention paid by legal scholars to anti-discrimination issues. Since 2014, however, there has been a gradual decrease in the intensity of these sorts of activities. Notwithstanding that some work, beside the activity of the contact centre, was undertaken during 2018 after the appointment of the new director, this is still a weak point. It is worth mentioning that a consultative committee on LGBT issues has been set up, comprising representative of NGOs and associations working on LGBT issues.⁵²

Beyond UNAR's activities, there are no specific governmental initiatives to disseminate information about legal protection against discrimination. In fact, OSCAD has the task of protecting victims rather than disseminating information on anti-discrimination law. Occasional actions have been promoted by the regions and local authorities.

- b) Measures to encourage dialogue with NGOs with a view to promoting the principle of equal treatment (Article 12 of Directive 2000/43 and Article 14 of Directive 2000/78)

Dialogue with NGOs on race and ethnicity should be one of UNAR's priorities. The most relevant activity in this regard is the creation of the consultative committee on LGBT issues, since it comprises representative of associations and NGOs working on LGBT issues.⁵³

- c) Measures to promote dialogue between social partners to give effect to the principle of equal treatment within workplace practices, codes of practice, workforce monitoring (Article 11 of Directive 2000/43 and Article 13 of Directive 2000/78)

In Italy, no measure has been taken to promote dialogue between social partners so as to combat discrimination.

- d) Addressing the situation of Roma and Travellers

As coordinator of Italy's national Roma strategy, UNAR continues to promote the application of the strategy at both national and regional levels.⁵⁴ So far, however, there have been no visible results, nor have any actions been carried out to apply the strategy. At any rate, no public documents, reports or projects have been disseminated to explain how UNAR is implementing the strategy.

⁵² <http://www.unar.it/bandi/costituzione-del-tavolo-di-consultazione-permanente-per-la-promozione-dei-diritti-e-la-tutela-delle-persone-lgbt/>.

⁵³ <http://www.unar.it/bandi/costituzione-del-tavolo-di-consultazione-permanente-per-la-promozione-dei-diritti-e-la-tutela-delle-persone-lgbt/>.

⁵⁴ Italy, *National Strategy for the inclusion of Roma, Sinti and Travellers 2012-2020* (Strategia nazionale d'inclusione dei Rom, dei Sinti, e dei Caminanti 2012/2020), pp. 22-32.

8.2 Compliance (Article 14 Directive 2000/43, Article 16 Directive 2000/78)

a) Mechanisms

From a theoretical point of view, any contract, collective agreement or internal rules of undertaking contrary to the principle of equal treatment is invalid. The decrees do not contain provisions establishing the invalidity of discriminatory provisions included in contracts, agreements or other rules, but this follows from the application of Article 15 of the Workers Act in the field of labour law and from general principles on the invalidity of contractual clauses contrary to binding statutory rules in other fields.

However, there is no mechanism to ensure the enforcement of the principle except for complaints to the equality body or to the courts. No statutory or administrative provision has been abolished because of conflict with the principle of equal treatment in relation to any of the grounds covered by the directives.

b) Rules contrary to the principle of equality

The absence of provisions that expressly directly discriminate on the basis of the grounds covered by the directives does not eliminate the problem of their compatibility with Italian law but instead raises the issue of indirect discrimination. This is especially true in the case of discrimination on the grounds of race and ethnic origin and to some extent in relation to religion. In such cases, indirect discrimination can take place through differences of treatment formally based on nationality (such as exclusion of non-EU citizens) or through insufficient attention to the needs of specific groups. This is particularly the case where a community of non-EU citizens is primarily composed of groups that are often subject to discrimination.

One very serious problem has been the adoption of formally ethnically blind rules or policies that in practice mostly affect members of Roma communities, and which have developed from political debates in which prejudice against Roma is evident.

With regard to religion, the main issue is primarily the absence of a special regulation for Islam, a gap which could open the way to indirect discrimination relating to the specific needs of Muslims. As yet, no litigation has been brought, but this is increasingly a subject of public debate, which has been fuelled by court cases over crucifixes in schools that have been much inflated by the media.

The main controversial issue in this regard stems from a regional law adopted by the region of Lombardy in January 2015. The law concerns building new places of worship, and makes an express distinction between religions that have entered into agreements with the state and those that have not. Through a number of procedural and administrative obstacles, the regional law makes building new places of worship for those religions that are not linked to the state by a specific agreement difficult, if not impossible. It goes without saying that the majority of people affected by this law belong to the Muslim religion, which does not have an agreement with the state. Indeed, the law is commonly referred to as the 'Anti-Mosques Law'.

This law has been referred by the central Government to the Constitutional Court, claiming an infringement of Article 3 of the Italian Constitution on equality of all persons, of Article 8 on equality of religions, and of Article 19 on freedom of religion. The Constitutional Court issued its judgment on 24 March 2016, quashing the two most controversial provisions of the regional law and preventing them from entering into force.⁵⁵ According to the Italian Constitutional Court, a place of worship is strictly linked

⁵⁵ Italy, Constitutional Court, judgment 63/2016, available at: www.cortecostituzionale.it.

to the freedom of religion as enshrined in Article 19 of the Italian Constitution and does not depend upon the conclusion of an agreement under Articles 7 and 8 of the Constitution.

9 COORDINATION AT NATIONAL LEVEL

The Ministry of Labour and Social Policies and the Department for Equal Opportunities share responsibility for coordinating equal treatment issues in the fields covered by the directives.

A national anti-racism action plan was presented by the Ministry of Labour and Social Policies during the meeting that the Government held on 7 August 2015. Several press releases were made available regarding this presentation, but no further information has been given about it subsequently. The official document of the plan remains unavailable on the UNAR website, and it is not on the Ministry of Labour website either. It could not even be found in a search of the *Official Journal* and legal databases. Up to the time of drafting this report, no official document has been available except for the press release for the Government's meeting at which the strategy was presented. Following a request made directly to UNAR, copies of the plan and of the related decree were forwarded to a mailing list of migration lawyers. However, there is no official record of the plan. Even more seriously, there is no record of its effective implementation. The restructuring of UNAR (the change of director and the majority of its staff) may be one of the reasons for the plan not being implemented and/or for information about it not being disseminated. Another reason might be the absence in Government of any ministerial office with responsibility for integration affairs whereas, thanks to the previous existence of such an arrangement, the national Roma strategy was adopted and the drafting of the Anti-Racism Action Plan was begun. It seems that the Government lacks a minister who is willing and able to act in the field of anti-racism, with the paradoxical situation that the only relevant governmental office is UNAR, the equality body, which is supposed to be independent.

There is a certain uneasiness in commenting on a document whose nature and legal effects are so uncertain, especially in the absence of any practical impact. Therefore, as far as we are concerned, the plan has been formally adopted, yet without having any effectiveness. This is equivalent to non-adoption, and during the years following its adoption no significant step has been taken to change this situation of inactivity. The situation has not changed during 2018, despite the appointment of the new director.

10 CURRENT BEST PRACTICES

During 2018, new projects have been promoted, thanks to the restarting of UNAR's activity. The projects started in December 2018, so it is not possible to mention which actions have been taken in practice. The project 'CO.N.T.R.O. – Counter Narratives Against Racism Online' aims to combat hate speech, while the project 'To.Be.Roma – Towards a better cooperation and dialogue between stakeholders inside the National Roma Platform', aims to make the integration of people of Roma origin easier.

It is worth mentioning that the Interinstitutional Agreement on Access to Justice, which was agreed in 2013 and is aimed at strengthening protection for vulnerable victims, is still active. Within this framework, a solidarity fund for access to justice by victims of discrimination was set up (*Fondo di solidarietà per la tutela giurisdizionale delle vittime di discriminazione*). The fund was created by UNAR in order to facilitate access to justice by victims of discrimination, anticipating the legal costs of actions brought before the courts (about EUR 600 for each level of judicial proceedings). This amount is not sufficient to cover the overall legal expenses, but it is sufficient to act as an incentive for lawyers engaging in discrimination cases. In the event of a favourable judgment, the legal aid provided must be refunded to UNAR. Applications must be sent to the National Lawyers' Association by individuals or by collective bodies with the right to legal standing (a maximum of three per year). A steering committee made up of lawyers and public officials from UNAR decide on the allocation of aid, which is an alternative to the legal aid provided by the state for those who are eligible on the basis of their incomes.

However, no report has so far been published on the application of this financial support.

11 SENSITIVE OR CONTROVERSIAL ISSUES

11.1 Potential breaches of the directives (if any)

The main discrepancies between the decrees and the directives can be considered to be the following:

1. The weakness of UNAR, which operates within the Department for Equal Opportunities of the Presidency of the Council of Ministers, is one of the reasons for the limited application of anti-discrimination law in Italy. Despite the fact that UNAR has at times adopted a critical position in relation to the Government, the office is clearly and completely linked to the executive; it is only thanks to the jurisdictional interpretation given by the Tribunal of Rome in one judgment delivered in 2017 that the Government's disciplinary powers in respect of UNAR's director have been limited. One can argue that the same principle should apply to all staff, but it is not sufficient to guarantee that UNAR can perform any activities in an independent way.
2. It may appear that Italian law allows organisations that are not based on an ethos to discriminate on the ground of religion. Directive 2000/78/EC permits an exception to differences of treatment for 'churches and other public or private organisations the ethos of which is based on religion or belief', while Article 3(5) of Legislative Decree 216/2003 specifies only 'churches and other public or private organisations'. Pre-existing national rules in this area appear to be more restrictive in admitting exceptions than the decree, which thus goes beyond the discretion granted to Member States, which may implement Article 4(2) only in accordance with existing laws or practices.
3. Legislative Decree 216/2003, on reasonable accommodation for people with disabilities, which was introduced in 2013 to implement Article 5 of Directive 2000/78/EC and the CJEU decision of 4 July 2013, is not perfectly in line with EU law, for two reasons. As regards public bodies, reasonable accommodation is required but without any additional burden, while according to Article 5 of Directive 2000/78/EC, a certain degree of burden is implicit if it is acceptable. This may lead to the conclusion that in Italy, public bodies are bound to the reasonable accommodation duty only if no additional financial burden or additional resources are required. Additionally, the national provision risks being ineffective if it is not supported by specific guidelines addressed in particular at employers, in both the private and public sectors.
4. There is still a serious problem with housing with regard to the Roma community. The policy of settlements, and in particular the forced removals of people, including children, could potentially amount to breaches of the Racial Equality Directive.

11.2 Other issues of concern

With regard to the text of the transposing decrees, the main remaining issues are:

- unnecessary complications due to the coexistence of different legal texts;
- the lack of provisions on positive action;
- the lack of instructions as regards compensation amounts;
- the non-implementation of the adopted national strategies;
- insufficient data gathering on equality in order to assess properly the situation of vulnerable groups and to choose the most suitable action to address social exclusion and discrimination;
- selection of workers in case of collective dismissal is based on several criteria, including age, with the serious risk of discrimination.

12 LATEST DEVELOPMENTS IN 2018

12.1 Legislative amendments

- Legislative Decree 123/2018 of 2 October 2018, on reforming the prison system (*Riforma dell'ordinamento penitenziario*).⁵⁶

Article 1: prohibition of discrimination on any ground, such as sex, gender and sexual orientation

Article 14: homosexuals should be detained into separate sections only when the prisoner fears harassment by other detainees and upon his/her consent. Without consent, detention will take place in ordinary detention centres. Moreover, separate sections should include only homogeneous categories, therefore preventing the detention of persons fearing discrimination on ground of sexual orientation in mixed sections, where there also prisoners at risk of assault for being sex offenders or having committed other crimes belonging to the police or the judiciary. In any case, training activities should always be guaranteed together with all the other detainees.

12.2 Case law

Name of the court: Tribunal of Bergamo

Date of decision: 30 March 2018

Name of the parties: *FILT CGIL v. Ryanair Dac*

Reference number: No. 1586

Address of the webpage: (if the decision is available electronically)

Brief summary: FILT CGIL, a transport union, challenged an extinction clause – which entails an automatic end of the employment contract in the case of work stoppages or any other trade union actions, not trade union membership per se – introduced by Ryanair in collective and individual contracts related to the Cabin Crew Agreement for Crew Operation. According to the Tribunal, the contested clause amounted to direct discrimination on ground of personal belief, a concept which includes belonging to trade unions, as had already been stated in the case of Fiat, Fabbrica Italia decided in 2012 by the Tribunal of Rome. The Tribunal of Bergamo held that the extinction clause had the effect of deterring workers belonging to trade unions from applying for a job with that airline company, in particular taking into account the statements released by the company's CEO following the strike called by pilots. Moreover, a letter had been sent to pilots and flight assistants threatening sanctions on the striking workers.

With regard to remedies, the Tribunal found it impossible to order the cancellation of the extinction clause because of the uncertainty about the applicability of the law to individual contracts. Therefore, the Tribunal ordered the publication of the judgment in two national newspapers and compelled the company to pay EUR 50 000 in non-pecuniary damages. The Tribunal made reference to the EU directive and the *Accept* case, requiring that 'The sanctions, which may comprise the payment of compensation to the victim, must be effective, proportionate and dissuasive'.

Name of the court: Tribunal of Spoleto

Date of decision: 29 December 2018

Name of the parties: *XX v. Prison Department*

Reference number: No. 7461

Address of the webpage: (if the decision is available electronically)

⁵⁶ Italy: Legislative Decree 123/2018, on reforming the prison system (*Riforma dell'ordinamento penitenziario*), 2 October 2018, available at: <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2018-10-02;123!vig=>.

Brief summary: XX was imprisoned in a mixed protected section because he had declared himself to be homosexual. However, he did not feel safe in that prison, where persons who had committed various crimes, included sex offenders, lived together without proper training activities; such activities were to be chosen according to each individual's skills. XX applied to be transferred to another prison, under Article 1 and Article 14 of Legislative Decree 123/2018. According to these provisions, every prisoner enjoys the right not to be discriminated against on any ground, including sex, gender and sexual orientation. The Tribunal held, in a preliminary ruling, that a declaration of being homosexual was relevant to allowing the detainee to enjoy his/her rights to maintain contact with his/her partner. However, detention in separate sections should take place only when a prisoner fears harassment by other detainees and upon his/her consent. Without consent, detention will take place in ordinary detention centres. Moreover, separate sections should include only homogeneous categories, therefore preventing the detention of persons who fear discrimination on the ground of sexual orientation in mixed sections, where there also prisoners at risk of assault for being sex offenders or who have committed other crimes while belonging to the police or the judiciary. In any case, training activities should always be guaranteed together with all the other detainees.

The Tribunal upheld the complaint and ordered the prison department to place the prisoner in a separate section, where there are detainees with the same protection needs and where the prisoner will be able to access to training activities. The judgment is not clear on this point – e.g. which detainees would have the same protection needs – and it appears that the public administration is required to identify the proper solutions to be applied to the actual case.

Name of the court: Lazio Regional Administrative Tribunal, section I

Date of decision: 28 May 2018

Name of the parties: *Do. De Sa. v. Home Office*, department for firemen

Reference number: No. 5944

Address of the webpage: *(if the decision is available electronically)*

Brief summary: Do. De Sa. had been excluded from participating in the selection process for firemen on the ground of age. The firemen sector is one of those in which a maximum age limit of accession is still provided for, as an exception to the general rule of the abolition of age limits in accessing employment. The Tribunal referred to previous judgments on the same topics, and even in the same sector. Moreover, the Tribunal referred to CJEU case law and to Directive 2000/78 and Legislative Decree 216/2003. According to the Tribunal, the age limit was justified and proportional, taking into account the specific tasks that firemen should perform, entailing specific requirements as regards physical fitness. The same requirements in respect of physical fitness exclude the duty that is in force on public bodies to increase the age limit, taking into account the period of military service and the status of spouse.

Name of the court: Tribunal of Matera

Date of decision: 9 October 2018

Name of the parties: *Sa. Ta. And Ad. Se.*

Reference number: N/A

Address of the webpage: *(if the decision is available electronically)*

Brief summary: Two employees working in a school challenged the decision to change their shift pattern to a split shift. They argued that this decision did not take into account neither their status of illness, nor, with regard to Ad. Se., her duty to take care of her disabled father. In order to perform this activity, she could benefit from special permits granted to parents of a person with disability to take care of the latter. The Tribunal held first of all that the definition of disability comes from EU law as interpreted by the CJEU. Therefore, it did not recognise the claimant as a person with disability, applying the general rule according to which illness per se is not in principle included in the definition of 'disability'. However, it did not take into account that, according to the CJEU, an illness under certain circumstances can result in a disability. Moreover, the Tribunal stated that

Ad. Se. could not invoke the prohibition of discrimination on the ground of disability, because she is not a person with disability, while the relevant EU directive protects only those who are personally a victim of discrimination. The Tribunal rejected all the complaints, without taking into account the principle stated in *Coleman* regarding discrimination by association.

ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION

The **main transposition and anti-discrimination legislation** at both federal and federated/provincial level.

Country: Italy
Date: 31 December 2018

<p>Title of the law: Legislative Decree 215/2003 implementing Directive 2000/43/EC on equality of treatment between persons irrespective of racial or ethnic origin</p> <p>Abbreviation: Legislative Decree 215/2003 Date of adoption: 9 July 2003 Latest relevant amendment: Art. 28 of Legislative Decree 150/2011 Entry into force: 27 August 2003 Web link: www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2003-07-09;215 Grounds covered: Race and ethnic origin Civil law Material scope: Public employment, private employment, access to goods or services (including housing), social protection, social advantages, education Principal content: Prohibition of direct and indirect discrimination, harassment, instructions to discriminate, remedies and sanctions, creation of a specialised body</p>
<p>Title of the Law: Legislative Decree 216/2003 on the implementation of Directive 2000/78/EC for equal treatment in employment and occupation</p> <p>Abbreviation: Legislative Decree 216/2003 Date of adoption: 09 July 2003 Latest relevant amendment: Art. 9, para. 4-ter, Law decree no. 76/2013, converted into law no. 99/2013 Entry into force: 28 August 2003 Web link: www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2003-07-09;216!vig Grounds covered: Religion or belief, disability, age, sexual orientation Civil law Material scope: Public and private employment Principal content: Prohibition of direct and indirect discrimination, harassment, instructions to discriminate, remedies and sanctions</p>
<p>Title of the law: Act 67/2006, Provisions on the judicial protection of persons with disabilities who are victims of discrimination</p> <p>Abbreviation: Act on the non-discrimination of disabled people Date of adoption: 01 March 2006 Latest relevant amendment: Art. 28 of Legislative Decree 150/2011 Entry into force: 21 March 2006 Web link: www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2006-03-01;67!vig Grounds covered: disability Civil law Material scope: All fields (there is no limit to the scope of application) Principal content: Implementation of the principle of equal treatment and equal opportunity. Prohibition of direct and indirect discrimination</p>
<p>Title of the Law: Legislative Decree 286/1998, Consolidated text of provisions on the regulation of immigration and the status of foreign citizens, Articles 43 and 44</p> <p>Abbreviation: Immigration Decree Date of adoption: 25 July 1998</p>

Latest relevant amendment: Art. 28 of Legislative Decree 150/2011
 Entry into force: 02 September 1998
 Web link: <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:1998-07-25;286!vig>
 Grounds covered: Race, colour, ancestry, religion, national or ethnic origin, religious beliefs and practices
 Civil Law
 Material scope: Public employment, private employment, access to goods or services (including housing), social protection, social services, education, economic activity.
 Principal content: Prohibition of direct and indirect discrimination; remedies and sanctions; creation of regional observatories

Title of the law: Act 122/1993, Urgent measures on racial, religious and ethnic discrimination

Abbreviation: Mancino Act
 Date of adoption: 25 June 1993
 Latest relevant amendment: Art. 34 of Legislative Decree 150/2011
 Entry into force: 27 June 1993
 Web link: www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legge:1993-04-26;122!vig
 Grounds covered: racial and ethnic origin, religion
 Criminal law
 Material scope: All fields (there is no limit to the scope of application)
 Principal content: Hate speech, discriminatory acts

Title of the law: Framework Act 104/1992 on rights and social integration of persons with disability

Abbreviation: Framework act on social assistance
 Date of adoption: 05 February 1992
 Latest relevant amendment: Legislative Decree 119/2011
 Entry into force: 18 February 1992
 Web link: <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1992-02-05;104!vig>
 Grounds covered: disability
 Administrative law
 Material scope: all fields
 Principal content: Integration of persons with disability

Title of the law: Act 68/1999, Provisions on the right to work of disabled people

Abbreviation: Act on the employment of disabled people
 Date of adoption: 12 March 1999
 Latest relevant amendment: Legislative decree 151/2015
 Entry into force: 17 January 2000
 Web link: <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1999-03-12;68!vig>
 Grounds covered: disability
 Civil/administrative law
 Principal content: Integration of people with disability

Title of the law: Act 68/1999, Provisions on the right to work of disabled people

Abbreviation: Act on the employment of disabled people
 Date of adoption: 12 March 1999
 Latest relevant amendment: Legislative decree 151/2015
 Entry into force: 17 January 2000
 Web link: <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1999-03-12;68!vig>

[12;68!vig](#)

Grounds covered: disability

Title of the law: Act 300/1970, Provisions on the protection of the freedom and dignity of workers, on freedom of trade unions and their activity in the workplace, and on employment

Abbreviation: Workers' Act

Date of adoption: 20 May 1970

Latest relevant amendment: Law 92/2012

Entry into force: 11 June 1970

Web link: www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1970-05-20;300!vig

Grounds covered: Race, sexual orientation, disability, age, religion or personal belief

Civil law

Material scope: employment

Principal content: Unfair dismissal and discrimination in the workplace

Title of the law: Tuscany Regional Act 63/2004, Provisions against discrimination on the ground of sexual orientation and gender identity

Abbreviation: Tuscan Regional Act 63/2004

Date of adoption: 15 November 2004

Latest relevant amendment: N/A

Entry into force: 10 December 2004

Web link:

<http://raccoltanormativa.consiglio.regione.toscana.it/articolo?urndoc=urn:nir:regione.toscana:legge:2004-11-15;63>

Grounds covered: Sexual orientation and gender identity

Civil/administrative law

Material scope: All field

Principal content: Implementation of the principle of equal treatment and equal opportunity. Measures of social inclusion, vocational training, occupation and healthcare

Title of the law: Liguria Regional Act 52/2009, Provisions against discrimination on the ground of sexual orientation

Abbreviation: Liguria Regional Act 52/2009

Date of adoption: 10 November 2009

Latest relevant amendment: N/A

Entry into force: 26 November 2009

Web link:

http://lrv.regione.liguria.it/liguriass_prod/articolo?urndoc=urn:nir:regione.liguria:legge:2009-11-10;52

Grounds covered: Sexual orientation

Civil/administrative law

Material scope: All fields

Principal content: Implementation of the principle of equal treatment and equal opportunity. Measures of social inclusion, vocational training, occupation and healthcare

Title of the law: Emilia Romagna Regional Act 5/2004, Provisions on the social integration of migrants

Abbreviation: Emilia Romagna Regional Act 5/2004

Date of adoption: 24 March 2004

Latest relevant amendment: N/A

Entry into force: 9 April 2004

Web link: <http://demetra.regione.emilia-romagna.it/al/articolo?urn=er:assemblealegislativa:legge:2004;5>

Grounds covered: Race, ethnicity, nationality and religion

Civil/administrative law

Material scope: Social integration, healthcare, education, vocational training, occupation

and employment, democratic participation
Principal content: measures against discrimination, establishment of a regional observatory, measures against social exclusion in the fields of education, healthcare, employment, and occupation

Title of the law: Lazio Act 10/2008 Promotion of full equality and integration of aliens

Abbreviation: Lazio Regional Act 10/2008

Date of adoption: 14 July 2010

Latest relevant amendment: N/A

Entry into force: 5 August 2010

Web link: <http://www.consiglio.regione.lazio.it/consiglio-regionale/?vw=leggiregionalidettaglio&id=9125&sv=vigente>

Grounds covered: race and ethnic origin, nationality

Civil/administrative law

Material scope: Social integration, healthcare, education, vocational training, occupation and employment, democratic participation

Principal content: measures against discrimination, establishment of a regional observatory, measures against social exclusion in the fields of education, healthcare, employment, and occupation

Title of the law: Tuscany Act 29/2009 on the reception, integration and protection of aliens

Abbreviation: Tuscan Regional Migration Act

Date of adoption: 9 June 2009

Latest relevant amendment: N/A

ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

Country: Italy
Date: 31 December 2018

Instrument	Date of signature	Date of ratification	Derogations / reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
European Convention on Human Rights (ECHR)	04.11.1950	26.10.1955	No	Yes	Yes
Protocol 12, ECHR	04.11.2000	Not ratified	No		
Revised European Social Charter	03.05.1996	05.07.1999	No	Ratified collective complaints protocol? Yes. The collective complaints protocol has been ratified	Yes
International Covenant on Civil and Political Rights	18.01.1967	15.09.1978	No	Yes	Yes
Framework Convention for the Protection of National Minorities	01.02.1995	03.11.1997	No	N/A	Yes
International Covenant on Economic, Social and Cultural Rights	18.01.1967	15.09.1978	No	N/A	Yes
Convention on the Elimination of All Forms of Racial Discrimination	13.03.1968	05.01.1976	No	Yes	Yes
Convention on the Elimination	17.07.1980	05.09.1991	No	Yes	Yes

Instrument	Date of signature	Date of ratification	Derogations / reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
of Discrimination Against Women					
ILO Convention No. 111 on Discrimination	25.06.1958	12.08.1963	No	N/A	Yes
Convention on the Rights of the Child	26.01.1990	05.09.1991	No	N/A	Yes
Convention on the Rights of Persons with Disabilities	30.03.2007	15.05.2009	No	N/A	Yes

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