The Great Inequality Gaps: A National Overview on Italy

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Abstract: *At the ISLSSL Congress, held in Rome from September 2024, the working group coordinated by Catarina de Oliveira Carvalho (Porto Faculty of Law) focused on the Great Inequality Gaps. The method approved in the WG was the Q&A approach. The questionnaire was discussed in the WG and settled in April 2024. The first part (questions 1-10) of the Italian report was written by Massimiliano Delfino (University of Naples Federico II) with the collaboration of Mariagrazia Lamannis (Università Magna Graecia di Catanzaro); the second part (questions 11 - 19) was explained by Carla Spinelli (University of Bari Aldo Moro) with the collaboration of Federica Palmirotta, (University of Modena-Reggio Emilia); finally, the third part (questions 20 - 28) was elaborated by Anna Zilli (University of Udine), together with Massimiliano De Falco (University*

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of Udine). The purpose was to offer a wide overview on the national jurisdiction, to compare the situation between EU Countries and those outside the EU.

Keywords: Inequality gaps – Discrimination – Italy – Overview.

1. Part

I. Framework questions

1. Bearing in mind your national context, what would you consider to be "the great inequality gaps" within the labour market?

Even though progress has been made in the last decades in achieving the principle of equality, also through the implementation of antidiscrimination law, some "inequality gaps" persist in Italy.

In trying to identify the more 'urgent' gaps, three main issues should probably be considered: the "gender gap", access for foreigners to social security and welfare benefits, and protection of disabled people.

Just to give a quick overview, «with 68.2 points out of 100, Italy ranks 13th in the EU on the Gender Equality Index. Its score is 2.0 points below the score for the EU as a whole» – this notwithstanding an improvement of almost 17 points since 2010[1]. However, according to the Index, «gender inequalities are strongly pronounced in the domain of work (65.0 points), in which the country has consistently ranked last among all Member States since 2010. […] Within this domain, Italy ranks lowest (27th) in the sub-domain of participation […] *and* the country's lowest score (61.4 points) is in the sub-domain of segregation and quality of work»[2]. Here, indeed, Italy has registered a drop in ranking from 19th to 22nd place since 2020, due to making slower progress than other EU countries.

Moreover, both in private and public employment the gender pay gap persists[3], partly due to the lower presence of women in so-called top positions (i.e., as managers or people in a leading role), and the higher presence of women in low-paid industries and among part-timers. This is even tough that for public servants the principle of equal treatment is established by law (Article 7 and Article 45, para. 2, Legislative Decree 30 March 2001,

[1] Available at https://eige.europa.eu/gender-equality-index/2023/country/IT.

[2] *Ibidem*. See more here https://eige.europa.eu/gender-equality-index/2023/domain/work/IT for additional data on segregation and the quality of work as well, and here https://www.inapp.gov.it/en/press-and-media/press-releases/07-03-2023-in-app-employment-1-in-5-women-out-of-the-labour-market-after-giving-birth-a-third-of-them-are-either-dismissed-or-their--contract-is-not-renewed.

[3] On the gender pay gapamong public servants see, for example, https://www.openpolis.it/la-parita-di-genere-al-vertice-dei-ministeri-si-e-ridotta/; https://www.forumpa.it/temi-verticali/lavoro-occupazione/crescono-le-donne-nella-pa-ma-il-gap-e-ancora-forte-nei-livelli-apicali/; https://contoannuale.rgs.mef.gov.it/it/web/sicosito/analisi-commenti. On the gender gap in private employment, seehttps://www.euractiv.com/section/politics/news/italys-gender-pay-gap-continues-to-widen.

No. 165) and collective agreements have *erga omnes* effects. On the contrary, in private employment, that principle is not guaranteed either by law or by case law. Therefore, any differential treatment is allowed, unless it is discriminatory (see *infra*).

Turning to access of foreigners to social security and welfare benefits, in recent years case law has often addressed (and sometimes denied) the legitimacy of the requirements established for various benefits (e.g., the so-called *reddito di cittadinanza* and *bonus bebè*[4]) where concerning the duration of legal residence in Italy and/or in a specific area and/or the possession of additional conditions only on behalf of foreign nationals[5].

According to a recent study published by the ILO[6], the issue of labour inclusion of persons with disabilities continues to be one of the most sensitive points in Italian labour policies. Although, for decades there has been a law regulating the so-called targeted placement of disabled people (Law 24 March 1999, No. 68[7]), in recent times – also due to the Covid-19 pandemic – the already difficult access to the labour market for people with disabilities has come to a standstill or slowed down[8].

With Delegation Law 22 December 2021, No. 227 the Italian Parliament gave the Government the power to adopt by 15th March 2024 one or more legislative decrees for the revision and reorganisation of the existing provisions on disability. The goals of the Delegation Law include, for example, adopting a definition of "disability" consistent with UN Convention in Law 5 February 1992, No. 104; introducing the notion of reasonable accommodation in Law No. 104/1992; establishing the appointment by public employers of a person responsible for the process of including persons with disabilities in the work environment, under Law No. 68/1999. This is also to guarantee the implementation of reasonable accommodation under Article 3, para. 3-*bis*, Legislative Decree 9 July 2003, No. 216 (see *infra*).

Following the Delegation Law, the Guidelines on the targeted placement of persons with disabilities were adopted (Ministerial Decree 11 March 2022, No. 43), and Legislative Decree 5 February 2024, No. 20 established the National Authority for the Rights of Persons with Disabilities.

Consequently, some important changes are expected in legislation concerning disabled people.

[4] Respectively citizenship income and baby bonus.

[5] For a comprehensive analysis and report of case law, see the database of *ASGI*, Association for legal studies on immigration available here: https://www.asgi.it/aggiornamenti-giurisprudenza/. For example, and very recently, see: Constitutional Court 20 April 2023, No. 77 and 9 March 2020, No. 44 on access to public housing; Constitutional Court 10 April 2018, No. 107 on access to kindergartens; Court of Cassation 5 June 2019, No. 15170 on the social allowance recognition; Court of Cassation No. 23763/2018 on civil invalidity pension.

[6] Available here: https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---ilo-rome/documents/publication/wcms_874035.pdf.

[7] The law introduces a hiring obligation for public and private employers. These are obliged to employ workers belonging to the categories of disadvantaged persons, in the amount provided for by the so-called reserve quotas.

[8] See *amplius* the ILO report cited in footnote no. 6.

As for case law, one of the most debated issues is the (il)legitimacy of dismissals when the employer does not provide for reasonable accommodation – when feasible[9]. Furthermore, many court rulings[10] have recently considered as discriminatory the failure to consider– when calculating the period of job retention in the event of illness – the greater risk of sickness due to disability. In other words, guaranteeing disabled workers a job retention period of the same duration as that guaranteed to other workers constitutes indirect discrimination and makes the subsequent dismissal unlawful.

2. Does your national law contain an express declaration of equality and non-discrimination principle? At which level(s)? (Constitutional; Labour Law field)?

The principle of equality is one of the fundamental principles of the Italian Constitution. Article 3, para. 1, establishes that all citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinion, personal and social conditions. Para. 2, indeed, establishes the so-called principle of substantive equality (*eguaglianza sostanziale*), by attributing to the Republic (i.e., the State and all the social bodies) the task of removing economic and social obstacles, which, by effectively limiting the freedom and equality of citizens, prevent the full development of the human person and the effective participation of all workers in the political, economic, and social organisation of the country.

Consequently, and in a nutshell, the Italian Constitution allows for differentiation in treatment, especially to remove inequalities that exist in practice, if they are reasonable and non-discriminatory[11] (see next Section on the nature of the list included in Article 3 of the Constitution).

As concerns the prohibition of discrimination in the employment relationship, both Legislative Decrees 9 July 2033, No. 215 (Article 2) and No. 216 (Article 2)[12] state that «the principle of equal treatment means the absence of any direct or indirect discrimination».

Under Article 2, para. 3, Legislative Decree 25 July 1988, No. 286 (the so-called Immigration Act, *Testo Unico sull'Immigrazione*) and in implementation of the ILO Convention No. 143/1975[13], Italy ensures that all foreign workers legally residing in its territory and their families have equal treatment and full equality of rights as compared to Italian workers.

[9] See *infra* and Ilo cit., pp. 32 ff.

[10] See, for example: Court of Cassation 31 March 2023 No. 9095; Court of Appeal of Naples 17 January 2023, No. 168, Court of Appeal of Milan 1 January 2022.

[11] On the application of the principle of equality in relations between private individuals and in the employment relationship, Barbera, Borelli, *Principio di eguaglianza e divieti di discriminazione*, 87 ff. available here https://csdle.lex.unict.it/sites/default/files/Documenti/Articoli/2022-1_Barbera-Borelli.pdf.

[12] As for every EU Member State, Italian antidiscrimination law implements the relevant EU directives. Legislative Decree No. 215/2003 is the Italian transposition of the Directive 2000/43/EC, while Legislative Decree No. 216/2003 is the transposition of the Directive 2000/78/EC. The Gender equality Code implements Directives 2002/73/EC, 2004/113/EC, and 2006/54/EC.

[13] Ratified by Law 10 April 1981, No. 158.

The «prohibition of discrimination and equal treatment and opportunities between women and men, as well as the embedding of the goal of equality between women and men in all policies and activities» is regulated by Article 1 of the so-called Gender Equality Code (Legislative Decree 11 April 2006, No. 198).
Finally, it should be mentioned that to prevent discrimination in workplaces, Article 8 of Law 25 May 1970, No. 300 (the so-called Workers' Statute) still prevents the employer – for recruitment, as well as during the employment relationship – from investigating, even through third parties, the employee's political, religious or trade union opinions, as well as facts that are not relevant to the assessment of the employee's professional aptitude.

3. How is the prohibition of discrimination set forth in your legal system? Is it accompanied by a list of prohibited grounds for differentiation? Is this closed or an open list (exhaustive or illustrative)?
As briefly mentioned, Italian antidiscrimination law implements the European relevant directives. Therefore, the list of prohibited grounds in Legislative Decrees Nos. 215/2003, 216/2003 and the Gender Equality Code is usually considered closed. This is consistent with the interpretation given by the ECJ on the closed nature of the lists included in the European legislation[14].
According to some scholars, Article 3 of the Italian Constitution also contains an exhaustive list of factors. However, others stress that the reference to "personal and social conditions" seems to be a sufficiently broad clause to allow for the inclusion in the list of additional factors to those already mentioned – thus making the list an open one[15].

4. According to this list, if existent, would you underline any of the grounds therein contained as especially innovative, or less common?
The protected grounds under Italian antidiscrimination law, unlike European directives, expressly include colour, descent or national or ethnic origin (Legislative Decree No. 286/1988). However, since the so-called 2019/2020 European law, the ground "nationality"[16] has been added to the prohibited discrimination factors provided in Legislative Decree No. 216/2003. The latter now also implements Directive 2014/54/EU and not only Directive 2000/78/EC – which expressly does not cover discrimination grounded on nationality.

[14] Militello, Strazzari, *I Fattori di discriminazione,* in Barbera, Guariso (eds.), *La tutela antidiscriminbatoria. Fonti, strumenti, interpreti*, Giappichelli, 2019, 85-86 and ECJ 22.1.2019, *Achatzi,* C-193/17; 17.4.2018, *Egenberger,* C-414/16; 11.7.2006, *Chacon Navas*, C-13/05; 24.04.2012, C-571/10, *Kamberaj*. Nevertheless, over time, this interpretation has been 'balanced' by a less strict interpretation of some of the protected grounds. See, e.g., ECJ 11.04.2013, C-335-11, *HK Danmark* and ECJ 31.07.2008, C-303/06, *Coleman* on disability; ECJ 16.07.2015, C-83/14, *Chez* on Roma people.

[15] Militello, Strazzari, op. cit.

[16] See broadly here https://www.italianequalitynetwork.it/divieti-di-discriminazione-il-fattore-nazionalita-entra-nel-d-lgs-216-2003-e-ne-estende-lambito-di-applicazione/ also on the addition of "nationality" in Article 15, Law No. 300/1970.

Additionally, Article 44 of Legislative Decree No. 286/1988 regulates civil action against discrimination and enables people to go before courts for discrimination based on racial, ethnic, linguistic, national, geographical, or religious grounds. So, it also covers discrimination grounded on language and geographical origin – the latter being a concept probably broader and different than descent or national or ethnic origin. Indeed, language was already included in the protected factors under Article 15 of the Workers' Statute, since Law 9 December 1977, No. 903[17].

Finally, it should be clarified that the provisions established in Legislative Decree No. 286/1988 and Legislative Decree No. 216/2003 are complementary.

The definition of discrimination under Article 25 of the Gender Equality Code (see *infra)* encompasses personal and family care needs in the protected grounds along with gender, age, pregnancy, maternity, or paternity status, including adoption, and the entitlement to and exercise of related rights. Moreover, Article 27, para. 2 (regulating «prohibitions of discrimination in access to employment, professional training and promotion and working conditions») prohibits discrimination even if implemented by reference to marital or family status, together with pregnancy, maternity, or paternity status, including adoption.

Discrimination on trade union grounds is prohibited by Article 15 of the Workers' Statute (Law No. 300/1970) and Italian case law usually includes trade union freedom in the realm of "beliefs" protected by European antidiscrimination law[18].

5. Does the national literature and case law identify other relevant prohibited grounds for discrimination different from the legally listed ones?

See the previous Section.

6. Does your national law contain explicit definitions of key concepts in antidiscrimination law, such as direct and indirect discrimination?

The Italian legal system contains various definitions of discrimination. This is because antidiscrimination law is not provided for by a single piece of legislation, but there are different legislative instruments concerning specific grounds of discrimination thus establishing their legal definition. However, these definitions, with some exceptions (*infra*), are similar. Following the chronological order of approval of laws, this Section presents the definition of direct and indirect discrimination. The other relevant definitions are described in the following Section.

[17] In addition to the prohibition of discrimination in Article 3, the Italian Constitution protects linguistic minorities in Article 6.

[18] Court of Cassation, 2 January 2020, No. 1; Court of Appeal of Rome, 9 October 2012; Court of Bologna, 31 December 2021. Trade union freedom and the right to strike are guaranteed by Articles 39 and 40 of the Italian Constitution. Furthermore, Article 28 of the Workers' Statute regulates a specific civil action against anti-union conduct – i.e., any conduct by the employer that impedes the exercise of trade union freedom and the right to strike.

Under Legislative Decree No. 286/1988, Article 43, discrimination on racial, ethnic, national or religious grounds is «any conduct which, directly or indirectly, involves a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin, religious beliefs and practices, and which has the purpose or effect of destroying or impairing the recognition, enjoyment or exercise, on an equal basis, of human rights and fundamental freedoms in the political, economic, social and cultural fields and any other area of public life».

Moreover, Article 43, para. 2, specifies that, in any case, five peculiar conducts are to be considered discriminatory:

when a public official or a person entrusted with a public service or a person performing a service of public necessity, in the exercise of his duties, carries out or omits acts against a foreigner, solely because of his status as a foreigner or as a member of a particular race, religion, ethnic group or nationality, and this conduct unjustly discriminates against him.

when anyone imposes more disadvantageous conditions or refuses to supply goods or services offered to the public to a foreigner solely because of his or her status as a foreigner or person belonging to a certain race, religion, ethnic group, or nationality.

when anyone unlawfully imposes more disadvantageous conditions or refuses to provide access to employment, housing, education, training, and social and welfare services to a foreigner lawfully residing in Italy solely because of his status as a foreigner or as a member of a certain race, religion, ethnic group or nationality.

when anyone prevents, by action or omission, the exercise of an economic activity lawfully undertaken by a foreigner residing legally in Italy, solely because of his status as a foreigner or as a member of a certain race, religious belief, ethnic group, or nationality.

when the employer or his supervisors – under Article 15 of Law No. 300/1970, as amended and supplemented by Law No. 903/1977, and Law 11 May 1990, No. 108 – commit any act or conduct that produces a prejudicial effect by discriminating, even indirectly, against workers on account of their race, ethnic or linguistic group, religious denomination, or nationality. Indirect discrimination shall be deemed to be any prejudicial treatment resulting from the adoption of criteria that proportionately disadvantage workers belonging to a particular race, ethnic or linguistic group, religious group or nationality and that concern requirements that are not essential to the performance of the job.

Finally, it is important to mention that Articles 43 and 44 (concerning the civil action against discrimination) also apply to xenophobic, racist, or discriminatory acts committed against Italian citizens, stateless persons and citizens of other EU Member States who are in Italy.

Under Legislative Decree No. 215/2003 regulating equal treatment of persons irrespective of racial or ethnic origin, direct discrimination exists when «because of their race or ethnic origin, a person is treated less favourably than another is, has been or would be treated in a similar situation» (Article 2, para. 2, lett. A). Indeed, indirect discrimination consists of an apparently neutral provision, criterion, practice, act, covenant or conduct which may put persons of a certain racial or ethnic origin at a particular disadvantage compared to other persons (Article 2, para. 2, lett. A).

Essentially the same, except for the reference to the discrimination factors covered, is the definition of direct and indirect discrimination in Article 2, Legislative Decree 216/2003. The latter, indeed, implements Directive 2000/78/EC and thus prohibits discrimination in employment on the grounds of religion, belief, disability, age, (nationality[19]) and sexual orientation.

Finally, also the so-called Gender Equality Code (Legislative Decree No. 198/2006) has its definition of discrimination, recently amended by Law 5 November 2021, No. 162. Indeed, not everyone among scholars welcomed this change – e.g., because it broke the mirrored definitions of discrimination contained in the Code and Decrees Nos 215 and 216 of 2003 and/or 'simply' encompassed in the definition situations and conducts already included by case law[20]. Conversely, someone appreciated the explicit inclusion of changes in the organisation of working conditions and time among discriminatory conduct, as well as of personal and family care needs as a discriminatory factor (along with gender, age, pregnancy, maternity, or paternity status, including adoption, and the entitlement to and exercise of related rights).

More specifically, under Article 25 of the Gender Equality Code, any provision, criterion, practice, act, covenant or conduct, as well as an order to engage in any act or conduct, which has a detrimental effect by discriminating against female or male candidates and applicants during the selection of personnel and against workers on the grounds of their sex and, in any case, any of the preceding conducts that cause a less favourable treatment than that of another worker in a similar situation, shall constitute direct discrimination.

Indeed, indirect discrimination shall occur where an apparently neutral provision, criterion, practice, act, covenant, or behaviour, including those of an organisational nature or affecting working time, puts or is likely to put candidates for selection and workers of a given sex at a particular disadvantage compared with workers of the other sex. This is unless it relates to prerequisites essential to the performance of the job, provided that the aim is legitimate and the means of achieving it are appropriate and necessary.

Moreover, shall be considered discriminatory any treatment or change in the organisation of working conditions and hours which, because of sex, age, personal or family care needs, pregnancy, maternity, or paternity, including adoption, or because of the entitlement to and exercise of the corresponding rights, places or is likely to place the worker in at least one of the following conditions:

- a position of disadvantage compared to other workers in general.
- limitation of opportunities to participate in the life or choices of the company.
- limitation of access to the mechanisms for advancement and career progression.

[19] See Section 4.

[20] E.g., the Court of Bologna (31.12.2021) considered a change in working hours discriminatory on gender grounds before the change implemented by Law No. 162/2021.

7. Which type of discrimination are recognized in your national law? In particular:
a. Is harassment at work considered a sort of discriminatory conduct?
b. Is retaliation qualified as discrimination? Under what conditions?
c. Is discrimination by association expressly recognized?
d. Is multi-dimensional discrimination expressly provided? In case you answer negatively, do you consider your legal system consistent with the recognition of such category in literature and/or case law?

Harassment and sexual harassment at work are explicitly considered discrimination and thus the same provisions concerning discrimination apply (See Legislative Decree No. 198/2006, Article 26 and Article 55-*bis,* para. 4; Legislative Decree No. 215/2003, Article 2, para. 3; Legislative Decree No. 216/2003, Article 2, para. 3). Furthermore, as mentioned, an order to discriminate is considered discrimination and so is – according to scholars and case law – the refusal of reasonable accommodation for disabled persons[21].

As for retaliation, there is no general provision qualifying retaliation as discrimination. Nevertheless, some provisions extend jurisdictional safeguards to people suffering negative consequences for taking action to achieve equal treatment[22]. For example, the Gender Equality Code (Article 26, para. 3-*bis*) prohibits the employer from adopting any measure with a direct or indirect negative effect against an employee suing for the declaration of discrimination based on harassment or sexual harassment committed in violation of the Code. Any act of retaliation, including dismissal and change of tasks, is null and void. Additionally, Article 41-*bis* of the Code also extends the judicial protection provided for in Chapter III to cases where any detrimental behaviour towards the person injured by discrimination or any other person, as a reaction to any activity aimed at obtaining respect for the principle of equal treatment between men and women, takes place. Both Legislative Decrees Nos. 215 and 216 of 2003 contain a quite similar provision in Article 4-*bis*.

Additionally, according to Article 28, para. 6, Legislative Decree 1th September 2011, No. 150 (regulating litigation on discriminations), where establishing compensation due, judges shall consider whether the discriminatory act or behaviour was retaliation for a previous legal action or an unfair reaction to a previous activity of the injured party aimed at obtaining compliance with the principle of equal treatment. However, this increase in

[21] See Legislative Decree No. 216/2003, Article 3, para. 3-*bis*, for the notion of "reasonable accommodation". A new legal definition of "reasonable accommodation" should be soon introduced in implementation of the Delegation Law No. 227/2021. Among scholars, Militello, Strazzari, op. cit., 155 ff.; Barbera, *Le discriminazioni basate sulla disabilità,* in Barbera (ed.), *Il nuovo diritto antidiscriminatorio. Il Quadro comunitario e nazionale,* Giuffrè, 105-106. In case law, see, e.g., Court of Appeal of Milan 11 November 2022, No. 857 who considered the refusal of reasonable accommodation to be an indirect discrimination and Court of Cassation 9 March 2021, No. 6497.

[22] See, for example, in case law Court of Appeal of Milan, 23 February 2017; Court of Appeal of Milan, 23 June 2015; Court of Appeal of Brescia, 18 January 2019, No. 96. *Amplius* Militello, Guariso, op. cit., 483 ff.

compensation is not applicable in cases of gender discrimination[23] because they are not covered by Article 28.

Discrimination by association is not expressly recognized by law. However, one should question whether this absence has been to some extent filled by the 'new' definition of gender discrimination. Here, indeed, reference is made to any treatment or change in the organisation of working conditions and hours which, due to personal or family *care needs*, places or is likely to place the employee in at least one of the conditions referred to in Article 25, para. 2-*bis*.

Anyway, following the interpretation given by the ECJ in the *Coleman* case (C-303/06), Italian case law protected caregivers of disabled persons using the concept of discrimination by association (e.g., Court of Pavia,19 September 2009; Court of Appeal of Milan 11 November 2022, No. 857). Last January, indeed, the Court of Cassation (17 January 2024, No. 1788) issued an interlocutory order asking the ECJ to clarify whether discrimination by association – as defined in *Coleman* – can occur in the case of indirect discrimination as well.

Neither multidimensional nor intersectional discrimination is recognised by law – and no case law on the subject is known to date. In this regard, it should be considered that the application of different procedural rules for gender discrimination (see Legislative Decree No. 198/2006, Chapter III), as opposed to discrimination based on other factors, probably excludes upstream the possibility of claiming a finding of discrimination due to both gender and some other factor in the same legal case.

8. Does your legal system provide any special regulation concerning the burden of proof in discrimination cases?

Article 28, para. 4, Legislative Decree No. 150/2011 and Article 40 of the Gender Equality Code provide a special regulation of the burden of proof in proceedings concerning discrimination. In both cases, that peculiar regime does not imply a full reversal of the burden of proof, but only its easing (*alleggerimento*) in favour of the applicant[24]. However, mechanisms to ease the burden of proof vary depending on the protected factor.

[23] Except for discrimination in the access of goods and services under Article 55-*ter* of the Gender Equality Code (See Article 1, Legislative Decree No. 150/2011).

[24] See, *ex multis*, Court of Cassation 5 June 2013, No. 14206; Court of Cassation 15 June 2020, No.11530 and Court of Cassation 26 February 2021, No. 5476 on Article 40 of the Gender Equality Code; on Article 28, see, *ex multis,* Court of Cassation 27 September 2018, No. 23338; Court of Cassation 02 January 2020, No.1. Moreover, in the latter decision the Court applied the peculiar regime of the burden of proof in a proceeding *ex* Article 28 Law No. 300/1970 concerning the anti-union conduct. According to the Court, the regime is related to the protected ground and not to the procedural rules and thus should be also applied outside the scope of the civil action against discrimination (See accordingly, but on gender discrimination, Court of Cassation 5 June 2013, No. 14206). A*mplius* on the burden of proof in Italian antidiscrimination law Santagata De Castro, *Anti-discrimination Law in the Italian Courts: the new frontiers of the topic in the age of algorithms*, in *WP CSDLE "Massimo D'Antona".IT – 440/2021*, 18 ff. available at: https://csdle.lex.unict.it/sites/default/files/Documenti/WorkingPapers/20210519-100206_Santagata_n_440_2021itpdf.pdf; Guariso, Militello, op. cit., 459 ff..

More specifically, as for litigation concerning gender discrimination, Article 40 establishes that «where the appellant provides factual evidence, including statistical data relating to recruitment, remuneration schemes, assignment of tasks and qualifications, transfers, career progression and dismissals, which is sufficient to grounding, in precise and concordant terms, the presumption of the existence of acts, pacts or conduct discriminatory on grounds of sex, the burden of proof on the non-existence of the discrimination lies with the defendant».
Article 28 does not require the *prima facie* proof to be based on precise and concordant terms: for the appellant it is sufficient to provide factual elements, including statistical data, from which the existence of discriminatory acts, agreements or conduct may be presumed, to make the burden of proof shift on the defendant. Consequently, although this is still a facilitating regime compared to the proof incumbent on the defendant, in the case of gender discrimination the regulation of the burden of proof is stricter than that concerning discrimination based on other grounds. In fact, to give *prima facie* proof of gender discrimination, multiple facts need to be provided and these must be precise and mutually concordant. On the contrary, about other discrimination grounds, a single fact could be enough to make the burden of proof shift on the other party.
Indeed, under both Articles 28 and 40, the defendant shall give full proof of the non-existence of discrimination[25] – i.e., no facilitation is established for him.
As mentioned, since harassment is equated with discrimination, the same regulation of the burden of proof applies.

9. Which means of justification of discrimination are provided for in your national law? Are there specific vias of justification applying to particular grounds?
In addressing the concept and scope of justification for discrimination, a preliminary distinction is needed. In the Italian legal system – again in line with European legislation on discrimination – no justification is allowed for direct discrimination and harassment. In both cases, only the law can establish a specific *exception*. Therefore, the discriminator can only justify his behaviour in the case of indirect discrimination.
To be more precise, exceptions are derogations (usually typified) to the principle of non-discrimination, placed *ex-ante*. Justifications, on the other hand, are usually atypical and can be assessed *ex-post*, i.e. in the concrete appreciation of the act or conduct suspected of constituting indirect discrimination[26].
In the context of the employment relationship, the law establishes a general exception for direct discrimination: a conduct/act cannot be considered discriminatory where it relates to requirements essential to the performance of the job. The aim pursued must be legiti-

[25] This is why the Court of Cassation 5 June 2013, No. 14206 said that the regime of the burden of proof in discrimination cases is "asymmetrical".

[26] Barbera, *Principio di eguaglianza e divieti di discriminazione,* in Barbera, Guariso (eds.), op. cit., 59 ff.

mate and the means used to achieve it must be appropriate and necessary (see Article 25, para. 1; Article 27, para. 5 on selection procedures in public and private employment of the Gender Equality Code[27]; Article 43, para. 2, lett. E) of the Immigration Act; Article 3, para. 3, of Legislative Decrees Nos 215 and 216 of 2003).
However, justifications are allowed for discrimination grounded on age (Article 3, para. 4-*bis* and 4-*ter*, Legislative Decree No. 215/2003[28]) and for gender discrimination concerning the supply of goods and services (Article 55-*bis*, para. 7, Gender Equality Act). Additionally, under Article 3, para. 5, Legislative Decree No. 215/2003, differences in treatment based on the profession of a particular religion or belief practised within religious bodies or other organisations[29] do not constitute discrimination, where such religion or belief, because of the nature of the professional activities carried out by those bodies or organisations or by the context in which they are performed, constitute an essential, legitimate, and justified requirement for the performance of those activities.
A general justification clause is provided for indirect discrimination. It requires the presence of a legitimate aim and the use of appropriate and necessary means (see Article 3, para. 4, Legislative Decrees No. 215/2003; Article 3, para. 6, Legislative Decree No. 216/2003; Article 55-*bis*, para. 2 and Article 25, para. 2, Gender Equality Act).

10. Does your legal system allow or demand that a hypothetical comparator be mobilized to demonstrate the disadvantage of the subject who claims having been discriminated against?

The definition of discrimination itself allows for a hypothetical comparison. As mentioned, discrimination occurs when someone, because of a protected factor, is treated less favourably than another is, has been or *would be* treated in a similar situation.
However, a comparative assessment is not required in the case of harassment.

[27] Moreover, Article 27, para. 6 of the Gender Equality Code specifies that it is not discriminatory to make employment in fashion, art, and entertainment activities conditional on being of a particular sex when this is essential to the nature of the work or service.

[28] According to para. 4-*bis* «the provisions providing for differentiated treatment based on the age of workers and in particular those governing: (a) the establishment of special conditions for access to employment and vocational training, employment and remuneration, for young people, older workers and workers with dependent family members, to the aim of promoting their occupational integration or ensuring their protection; (b) the fixing of minimum conditions of age, professional experience or seniority for access to employment or to certain advantages linked to employment;(c) the fixing of a maximum age for recruitment, based on the training conditions required for the job in question or the need for a reasonable period of work before retirement» are not discriminatory. Para. 4-*ter* clarifies that those provisions must be objectively and reasonably justified by legitimate aims, such as justified labour policy, labour market and vocational training goals, if the means of achieving those aims are appropriate and necessary.

[29] The so-called *organizzazioni di tendenza*. It must be pointed out that the Italian legislation transposing Directive No. 78/2000 does not specify, as required by the Directive, that the ethics of such organisations must be based (only) on religion.

2. Part[30]

11. Compare the regime applicable to disciplinary measures adopted by the employer when they are considered discriminatory and when they are merely unlawful. Refer, in particular, to dismissal.

Unlawful and discriminatory disciplinary measures: a focus on the dismissal.

According to article 15, Law No. 300/1970 (Workers' Statute), any disciplinary measure based on legally recognized grounds of discrimination—such as trade union membership, political affiliation, religious beliefs, race, language, sex, disability, age, nationality, sexual orientation, or personal beliefs—is null and void. Workers who believe that the disciplinary measure is discriminatory or unlawful may request a conciliation procedure before the Labour Inspectorate within twenty days of receiving the notice. Alternatively, workers may file an appeal to the Labour Court within two years[31].

Regarding dismissal, the Italian legal framework applicable to the private sector is complex and foresees several protection regimes in force at the same time, depending on the type of unlawfulness affecting the dismissal, the size of the company, as well as on the date of establishment of the employment relationship[32]. Indeed, pursuant to the Legislative Decree 4 March 2015, No. 23, a different regime of protection, defined "*contratto a tutele crescenti*" is applied to workers hired after the 7th March 2015.

Nonetheless, the dismissal based on discriminatory ground is radically null and void. Regardless of the size of the company or the date of hire, such a dismissal always entails the highest possible protection available under Italian labour law, i.e. the reinstatement in the workplace as well as the compensation, with a minimum threshold of at least 5 months' salary[33]. Alternatively, instead of the reinstatement, the employee subjected to a discriminatory dismissal may choose to receive an indemnification equal to 15 months' salary ("alternative indemnification").

The regime of protection described above is the "harder" reinstatement regime of protection, also defined in literature as "*tutela reintegratoria forte*". There are also three other protection regimes which apply for employers with more than fifteen employees: namely, the light reinstatement protection (*tutela reintegratoria attenuata*); the hard compensatory protection (*tutela indennitaria forte*) and, lastly, the light compensatory protection (*tutela indennitaria debole*), according to the severity of the reason of the dismissal's unlawfulness.

[30] Carla Spinelli, Full Professor of Labour Law, University Aldo Moro of Bari; Federica Palmirotta, Postdoctoral Research Fellow University of Modena-Reggio Emilia.

[31] Failla, *I poteri del datore di lavoro*, in Chiaromonte, Monaco, Vallauri (eds), *Elementi di diritto del lavoro*, Giappichelli, 2023, 149.

[32] For further details Tampieri, *Il licenziamento individuale. Analisi normativa e orientamento giurisprudenziale*, Pacini Giuridica, 2023.

[33] Article 18, para. 1, Law No. 300/1970 and article 2, Legislative Decree, No. 23/2015. Ballestrero, *Tra discriminazione e motivo illecito: il percorso accidentato della reintegrazione*, in *GDLRI*, 150, 2, 2016, 231 ff.

The hard reinstatement protection, apart from the dismissal based on discriminatory ground, also applies in cases of violation of specific provisions (such as, maternity or paternity leave and exercise of relevant rights, marriage), oral dismissal or dismissal due to unlawful motives, such as the retaliatory dismissal. For workers employed after the 7th March 2015, the Legislative Decree No. 23/2025 provides the application of this regime of protection also in case of the development of a physical or mental inability of the worker. As regards the light reinstatement protection, it entails the reinstatement of the employee and the payment of a "reinstatement indemnification" (up to a maximum of 12 months' salary). For workers hired before the 7th March 2015, this protection applies if the contested acts are found to be non-existent or when the national collective bargaining agreement or disciplinary codes provide a conservative sanction for those acts. Conversely, for workers hired after the 7th March 2015, it applies when the absence of the material fact contested against the worker is demonstrated in court.

The hard compensatory protection applies to any other reason of unlawfulness related to the lack of justification for the dismissal, with the consequence varying depending on the date of the establishment of the employment relationship. Employees hired before the 7th March 2015 are entitled to a compensation ranging from a minimum of 12 and a maximum of 24 months' salary, while employees hired after such date are entitled to a compensation established by the judge ranging between a minimum of 6 and a maximum of 36 months' salary[34].

Lastly, the light compensatory protection applies in case of formal or procedural biases, entitling the employee to a compensation between a minimum of 6 (or 2, in case the employee is hired after the 7th March 2015) and a maximum of 12 months' salary.

12. Refer briefly to the remedies and enforcement of the non-discrimination principle provided by your legal system (not mentioned in question 11).
Remedies and enforcement of the non-discrimination principle.

In the Italian antidiscrimination law framework, the remedies and enforcement procedures vary according to the ground of discrimination protected.

As regard discrimination in the field of labour law, workers who deem to have been submitted to a discriminatory treatment based on the ground of ethnic origin, nationality, religion, race, language, age, disability, personal belief, sexual orientation, may take legal action according to Article 28, Legislative Decree No. 150/2011. Conversely, the enforcement procedure in cases of gender discrimination is established by the so-called Gender Equality Code (Articles 36 and ff)[35].

[34] This results from the amendment to Article 3, para. 1, Legislative Decree No. 23/2025 included in the Law. 9 August 2018, No. 96 as well as from the ruling of Constitutional Court, n. 194, 8th November 2018. Tampieri., op. cit., 2023.

[35] For further details on the judicial protection in antidiscrimination law, Guariso, Militello, *La tutela giurisdizionale*, in Barbera, Guariso (eds), op. cit., 445 ff.

These enforcement procedures have common elements, referred mainly to the "lightened" burden of proof and the potential remedies or sanctions that the judge may order.
As regards the burden of proof, people who feel they have faced discrimination must only establish, before a court or other competent authority, *prima facie* instances of discriminations, i.e. facts from which it may be presumed that there has been discrimination[36].
Concerning the enforceable remedies, the judge ascertaining the occurrence of a discrimination orders the defendant, responsible for the discrimination, to restore the damages, stop the contested discrimination and remove its effects. Furthermore, especially in cases of collective discriminations, the judge may order the defendant to put in place a plan of removal of discrimination, when the behaviour is likely to produce discriminatory impact in the future[37]. It must be noted that the jurisprudence has made an extremely cautious use of this instrument, which, indeed, can be rarely found in rulings[38].
The legislative framework also foresees additional sanctions, including administrative or criminal ones[39].
More precisely, in cases of gender collective discrimination, the non-compliance of the defendant to the Court order is sanctioned with a fine of up to € 50,000 and with the arrest for up to 3 months, in addition to a fine of € 51.00 for each day of delay, to be paid to the fund for the activity of the Gender Equality Body, as well as with the automatic revocation of the benefits granted by any public administration. The remedy for individual gender discrimination differs since it doesn't include the fine for the day of delay and the revocation of benefits.
Conversely, Article 44, para. 8, Legislative Decree No. 286/1998, for discrimination on racial, ethnic, linguistic, national, geographical, or religious grounds, establishes that non-compliance with the judicial order, exempt for the restoration of damages, is sanctioned with the imprisonment for up to three years or a fine ranging from € 103 to € 1,032.
Lastly, for discrimination based on any other ground, the Legislative Decree No. 215/2003 and Legislative Decree No. 216/2003 at Article 4 provide for the revocation of benefits granted by any public administration in cases of non-compliance with the judicial order.
The procedural rules also vary with reference to the actors entitled to legal standing on behalf or in support of the victims, but also in the absence of identified victims.
In cases of gender discrimination, the body entitled to act in support or in behalf of the victims, as well as, in cases of collective discrimination, as a legal substitute and therefore, in the presence of identified victims, or where victims are not identifiable, is the Gender

[36] For gender discrimination, *see* Article 40, Gender Equality Code, which also requires such facts to be accurate and consistent. For any other ground of discrimination: Article 28, para. 4, Legislative Decree No. 150/2011.

[37] For gender collective discrimination, *see* Article 37, Gender Equality Code. For the other grounds of discrimination, also in individual action, *see* Article 28, para. 5, Legislative Decree No. 150/2011

[38] Guariso, Militello, op. cit., 478.

[39] Guariso, Militello, op. cit., 488 ff.

Equality Body, i.e. "Consigliere di parità"[40]. Whereas, according to Article 5, Legislative Decree No. 216/2003[41], in circumstances of discriminations occurring in the employment context, because of religion, personal convictions, handicap, age, nationality, sexual orientation, impacting several persons, and provided that the victims cannot be identified, the legal standing is allocated not only to trade unions, but also to any other associations having a legitimate interest in the enforcement of the relevant legislation, which may be inferred from the statute of the entity. The same subjects may also act on behalf or in support of the victims, when they are identifiable. Furthermore, with regards to collective discriminations for race and ethnic origin with no identifiable, the legal standing for collective discriminations is provided to subjects with the filter of a Ministerial Decree, as established by article 5, Legislative Decree No. 215/2003[42]. A specific provision should be applied for discrimination on racial, ethnic, linguistic, national, geographical, or religious grounds determined by a private or public employer, where legal standing is also ensured to the local representatives of the most representative Trade Unions at national level, whether or not there are identifiable victims[43].

13. Does your legal system provide for any type of affirmative/positive action? In particular:
a. Which protected category/ies is/are at stake?
b. How would you describe the measures in cause?
Positive actions in the Italian legal system.

The legitimacy of positive actions lays in the Italian Constitution at Article 3, para. 2, establishing the principle of substantive equality, which commits the Government to actively remove the economic and social obstacles that, in fact, limit the freedom and equality of citizens, preventing the full development of the human person and the effective participation of all workers in the political, economic, and social organization of the Country[44]. In this regard, positive actions may take the most various forms, but the most common and impactful examples of positive actions is the implementation of quotas, which involves reserving a specific number or percentage of positions for underrepresented groups. A similar mechanism is provided in the Italian discipline to the targeted placement for people with disabilities (*Collocamento mirato per le persone con disabilità*), by the Law No.

[40] Article 37, Gender Equality Code.

[41] Statutory act implementing the Directive 2000/78/EC.

[42] Statutory act implementing the Directive 2000/43/EC.

[43] Article 44, para. 10, Consolidated Text on Immigration.

[44] The immediate implementation of article 3, para. 2, through positive actions has been explicitly recognised by the Constitutional Court with the ruling no. 109 of 26th March 1993 where the judges stated that positive actions are "the most powerful instrument at the disposal of the legislator, which [...] tends to raise the starting threshold for individual of socially disadvantaged groups [...] in order to ensure that these categories have a real status of equal opportunities for social, economic and political inclusion".

68/1999, which promotes the insertion and integration of disabled people into the labour market through targeted support and placement services. Among other things, this law requires public and private employers to employ workers belonging to specific categories, including persons with a certain degree of disability in the following measure: 7% of employees, if the company employs more than 50 people; 2 workers, if they employ 36 to 50 people; a single worker, if they employ 15 to 35 people[45].

Nonetheless, in Italy, the principle of substantive equality though positive actions has been mainly applied with regards to gender discriminations. Indeed, the first statutory act introducing positive actions dates to 1991, with the Law 10 April 1991, No. 125, transposed in the Gender Equality Code with some amendments[46].

Positive actions related to gender discrimination are currently regulated by Articles 42 and ff. of the Gender Equality Code, which rather than defining them, merely identifies their purpose, namely measures aimed at the removal of obstacles preventing the realisation of equal opportunities and aimed at promoting the employment of women and achieving substantive equality between men and women in employment[47]. This purpose is also clarified with some specific objectives listed at Article 42, para. 2, such as: encouraging the inclusion of women in activities, occupations and levels where they are under-represented; encouraging access to self-employment and entrepreneurial training and the professional qualification of self-employed women and women entrepreneurs; or overcoming conditions, organisation and distribution of work that have different impact according to gender. Among measures aimed at promoting the inclusion at higher level of responsibilities, the so-called Golfo-Mosca Law shall be included, requiring listed companies to ensure gender balance within boards of directors through the presence of at least 1/3 of the members of the underrepresented gender[48]. This regulation has been amended by the Law 27 December 2019, No 160, which established a different quota reserved for the underrepresented gender from at least 1/3 to at least 2/5.

It must be noted that the adoption of positive actions, which is normally voluntary, may be promoted by different subjects, including Gender Equality Bodies; employment offices; private and public employers; trade unions.

Public Administrations, instead, have a mandatory obligation to adopt «three-year positive action plans» under Article 48, Gender Equality Code. This document identifies initiatives

[45] Further details on the measures addressing disability discriminations will be investigated below in section III, para. 20 and ff.

[46] For considerations on the Gender Equality Code, Amato, Barbera, Calafà, *Codificazioni mancante: riflessioni critiche sul codice delle pari opportunità*, in Aa. Vv. (eds), *Il nuovo diritto antidiscriminatorio*, Giuffré, 2007, 227 ff.

[47] Alessi, *Le azioni positive*, in Barbera, Guariso (eds), op. cit., 500 ff.

[48] Article 1, Law 12 July 2011, No. 121. This duty was subjected to a time limit of three terms of office of the Board of Directors from the entry into force of the law itself, but it has been also adopted by the Corporate Governance Code for Listed Companies (*Codice di autodisciplina delle società quotate*), approved in 2018, therefore, the provisions continued to be applied, voluntarily, even after the aforementioned expiry date.

capable of ensuring the removal of obstacles that prevent the full realisation of equal employment opportunities between men and women. For instance, in order to promote the inclusion of women in sectors and professional levels in which they are under-represented, the plans «favour the rebalancing of the presence of women in activities and hierarchical positions where there is a gender gap of at least two-thirds». Since 2022, public administrations with more than fifty employees are required to define affirmative actions within the Integrated Activity and Organization Plan (PIAO), aiming at pursuing public value[49].
Furthermore, Articles 52 to 55 of the Gender Equality Code regulate positive action for women entrepreneurship, through incentives for the creation and development of enterprises, including cooperatives, with predominantly female participation, particularly in the most innovative sectors, as well as through the promotion of entrepreneurial training and facilities for access to credit[50].
There are also specific regulation laying down provisions to promote the rebalancing of gender representation in local authority councils and regional councils[51].
Among positive actions related to gender discriminations, other examples have been implemented at national level, such as, but not limited to, the duty to fill a report on the workforce status (analysed at subsequent paragraph 17) or the Gender Equality Certification (analysed at subsequent paragraph 19)[52].

II. Sex/gender discrimination

14. Does your legal system prohibit discrimination on grounds of pregnancy and maternity? Is it considered a case of sex or gender discrimination? (If you answer affirmatively, please explain if that qualification arises from positive law or from literature and/or case law)?

Discrimination on the ground of pregnancy and maternity in Italy.

In the Italian antidiscrimination law framework, any less favourable treatment linked to the grounds of pregnancy and maternity, or paternity, is prohibited and qualified as discriminatory[53]. When the discrimination is based on the condition of pregnancy, it is associated by case-law to a direct discrimination, based on the ground of sex and gender, being it

[49] Law Decree 9 June 2021, No. 80 converted by Law 6 August 2021 No. 113; President of the Republic Decree 24 June 2022, No. 81.

[50] Alessi, op. cit., 2019.

[51] Law No. 215/2012. D'Amico, *Rappresentanza politica e di genere*, in Barbera (ed.) *Il nuovo diritto antidiscriminatorio*, Giuffré, 2007, 347 ff.; Leone, *Sulla conformazione delle Giunte degli Enti locali al canone delle pari opportunità: riflessioni alla luce delle innovazioni legislative e della giurisprudenza più recente*, in *Forum di QCost*., 2015; Alessi, op. cit., 2019.

[52] Such measures will be investigated below in section II, para. 19. For further details, Scarponi, Stenico, *Le azioni positive: le disposizioni comunitarie, le luci e le ombre della legislazione italiana,* in Barbera (ed.) op. cit., 423 ff.

[53] Article 25, Gender Equality Code.

biologically linked to gender and sex[54]. For the same reason, such discrimination doesn't necessarily require the comparison with the treatment of similar persons.
Since 2010, however, pregnancy and parental status have received the authority of an autonomous ground of discrimination, together with discrimination based on personal or family care needs and maternity or paternity, including adoptive, according to Article 25, para 2-*bis*, Gender Equality Code and Article 3, Legislative Decree 26 March 2001, No. 151 (Consolidated Text on Maternity and Paternity)[55]. Recently, the width of the objective scope of the afore-mentioned para. 2-*bis*, Article 25, seems to have been restricted by the Law No. 162/2021 since the separation from the ground of sex and gender seems to be mainly referred to the so-called "organisational" discrimination that originates from changes in the organisation of working conditions and working time[56].
Nonetheless, it must be noted that the special protection afforded to working mothers in state of pregnancy and due to their condition of maternity has been recognised at a Constitutional level in Italy since 1948 at Article 37, which recognises to the women the same rights and, for equal work, the same pay as the male worker, while also confirming that the working conditions must allow the fulfilment of her essential family function and ensure special adequate protection for the mother and the child.
The obsolescent expression that links the "essential family function" to the role of the mother, has been generally overcome in the interpretation provided by policymakers and jurisprudence. Nonetheless, for regulations related to pregnancy, the combination between the role of the woman and the provision of special rights for childcare, which has characterised for a long time the Italian legal system, persists, since it is linked to the protection of physical and mental health of the working mother[57]. Examples of this combination are regulated within the Consolidated Text on maternity and paternity and most of them are also recognised at European level, such as the ban on night work for women from the ascertained establishment of pregnancy and until the child is 1 y.o. (Article 53, Legislative Decree No. 151/2001); the ban on dismissal of the contract which is objectively and directly correlated with the status of pregnancy until the child is 1 y.o. (Article 54, Legislative Decree No. 151/2001); and, last but not least, the need for certified procedure in case of resignation until the child is 3 y.o. (Article 55, Legislative Decree No. 151/2001).

[54] Court of Cassation 5 April 2016, No. 6575, where the judges established the unlawful and discriminatory nature on the ground of gender of the dismissal issued as a result of the mere announcement by the employee of her intention to be absent from work in order to undergo artificial insemination; *see* also Court of Cassation 26 February 2021, No. 5476. Consistently with the orientation of ECJ in ECJ, 8 November 1990, C- 177/88, Dekker..

[55] Ballestrero, op. cit., 2016, 231 ff.

[56] Alessi, *La flessibilità del lavoro per la conciliazione nella direttiva 2019/1158/UE e nel d.lgs. 30 giugno 2022 n. 105*, in *Diritto di conciliazione. Prospettive e limiti della trasposizione della Direttiva 2019/1158/UE,* in *Quaderni DLM*, 14, 2023, 85 ff. Also Calafà, *Il dito, la luna e altri fraintendimenti in materia di parità tra donne e uomini*, in www.italianequalitynetwork.it/il-dito-la-luna-e-altri-fraintendimenti-in-materia-di-parita-tra-donne-e-uomini.

[57] Ballestrero, *Dalla tutela alla parità*, Il Mulino, 1979; Vallauri, *Genitorialità e lavoro. Interessi protetti e tecniche di tutela*, Giappichelli, 2020, 17 ff; Militello, *Conciliare vita e lavoro. Strategie e tecniche di regolazione*, Giappichelli, 2020, 93 ff.

The violation of such provisions, apart from being discriminatory, is also sanctionable with fines as well as with the exclusion to obtain the Gender Equality Certification for two years[58].

15. Does your legal system establish a connection between reconciliation of work and family life and discrimination? Namely, is the violation of rights related to reconciliation of work and family life considered a discriminatory treatment? If so, is it considered a discrimination on grounds of sex or gender? Or is the exercise of these rights a specific ground for discrimination?

15. The bond between rights of work-life balance and discriminatory treatment in the Italian legal system.

From a general standpoint, in the Italian legal system, any disparate treatment related to parenting or care responsibilities, or the exercise of relevant rights is deemed as discriminatory pursuant to Article 25, para. 2-*bis*, Gender Equality Code and Article 3, Consolidated Text on Maternity and Paternity. Such discrimination is often qualified as gender or sex discrimination, due to the cultural norms that burden mainly women of care responsibilities, however, other case-law explicitly recognise discriminations based on parental status, consistently with the "autonomy" that this ground of discrimination has been granted since 2010[59].

Furthermore, the Italian positive law establishes explicit connection between discrimination and the violation of some reconciliation rights. More precisely, any retaliatory behaviour, such as sanction, demotion, dismissal, transfer, or any other organisational measure with direct or indirect negative impact on the working condition consequent to the request of transformation to part-time from parents with less than 13 y.o. child[60] or the request to smart working from parents with less than 12 y.o. child[61] is discriminatory and, for this reason, null and void. It must be noted that any repercussion consequent to the request to smart working may be qualified as an indirect discrimination on the ground of gender, if proved that most women request the transformation and that such transformation is linked to care responsibilities[62].

Additionally, any refusal, opposition or obstruction to the exercise of such rights or to the right of being given priority in the request excludes from the reward and recognition coming from the certification of Gender Equality for two years[63].

The same consequence arises when employers do not comply with the prohibition for women working during maternity leave or when they refuse or hinder the exercise of the

[58] *See* below, para. 17 and 19 for further details on the Gender Equality Certification.

[59] *See* Trib. Firenze, 22 October 2019; Trib. Bologna, 31 December 2021.

[60] Article 8, Legislative Decree 15 June 2015, No 81.

[61] Article 18, Legislative Decree 22 May 2017, No. 81.

[62] Borelli, *I divieti di discriminazione e i divieti di ritorsione*, in Renga (ed), *Lungo la strada della conciliazione: spunti per il dibattito*, Giappichelli, 2023, 124.

[63] *See* Article 8, para. 5-*ter*, Legislative Decree No. 81/2015; and Article 18, para. 3-*ter*, Legislative Decree No. 81/2017.

right to paternity leave, or the right to parental leave and any other right included in the Consolidated Text of Maternity and Paternity[64].

16. Does your legal system address gender discrimination through the promotion of a fairer division of care and domestic work?

Legal strategies to promote fairer division of care and domestic work in Italy.

In the Italian legislative framework on work-life balance, there are few regulations aimed at promoting a fairer division of care and domestic work. However, while some of them are the result of the transposition of the Directive 1158/2019/EU, others were already envisaged in the legal system, despite their lack of effectiveness[65]. These were conceived as strategies to foster working fathers in assuming care responsibilities in the attempt to promote the full realization of each individual in the world of work, moving away from the initial approach, now anachronistic, according to which the institution of "leave" has been introduced in the Italian legal system, namely the protection of the "essential family function" of the mother, pursuant to article 37 Italian Constitution.

In this latter group of provisions, the following should be included:

The entitlement to a supplementary month in the total period of parental leave, if the working father exercises his right to take off work for a continuous or fractioned period of not less than three months[66];

The introduction of the paternity leaves in 2012 (on an experimental basis with the Law 28 June 2012, No. 92, whose length has been progressively extended until 2020) with a cash allowance equal to 100% of pay, higher than the percentage covered for maternity leave, precisely with the view to stimulate its use.

As regards the changes introduced with the transposition of the Directive 2019/1158/EU and in order to encourage fathers to make use of their rights, the Consolidated Text on protection and support for maternity and paternity has been modified with the Legislative Decree 30 June 2022, No. 105 through amendments that pursue the objective of gender equality and fair balance of family duties by modifications in the use of the allowance as well as in the financial treatment.

More precisely, the amended Consolidated Text provides that, out of the six months of parental leave to which each parent is entitled, three months are non-transferable to the other parent. This period of non-transferability is one month longer than the minimum required by the Directive. Furthermore, the Italian legislation extends the use of the right

[64] Articles 2-5, Legislative Decree No. 105/2022, modifying the Consolidated Text on Maternity and Paternity for the transposition of the Directive 2019/1158/EU.

[65] Calafà, *I congedi dei genitori dopo la trasposizione della direttiva 2019/1158*, in *Diritto di conciliazione. Prospettive e limiti della trasposizione della Direttiva 2019/1158/UE*, in *Quaderni DLM*, 14, 2023, 13 ff.

[66] Article 32, para. 2, Legislative Decree No. 151/2001.

to parental leave until the child reaches 12 y.o., instead of the minimum requirement of 8 y.o., laid down in the Directive.
Concerning the financial treatment, the allowance for the parental leave is normally equivalent to 30% of their salary for 9 months, six of which are reserved to each parent, three for each, while the other three can be used alternatively between parents. Furthermore, the percentage of allowance can be increased to 80% of the salary for one month and 60% for an additional month, alternatively, between the parents, for a total maximum duration of two months until the sixth year of the child's life[67].
It must be noted that with the amendments adopted in the transposition of the Directive, the paternity leave has left its experimental nature and is now conceived has a structural right included in the Consolidated Text entitling fathers to a compulsory suspension of work for 10 days covered by 100% allowance, to be used during the same period of maternity leave.
Another legal strategy adopted in the Italian system to achieve greater work-life balance leverages positive actions. Indeed, Article 9 of Law 8 March 2000, No. 53 provides for the allocation of an annual share of public resources to support employers who undertake initiatives to facilitate the reconciliation of life and working time through the stipulation of trade union agreements at the company level. However, experiences with the use of this regulatory instrument have been limited and ineffective[68].
Lastly, among the legal strategies to foster fairer division of care and domestic work in Italy, the possibility to obtain a Gender Equality Certification for virtuous company should be included. Indeed, the promotion of equal care responsibilities is an indicator that the accredited certifying bodies should take into consideration when issuing the Certification. Furthermore, the reconciliation of work and family life is expressly included in the minimum parameters to be taken into consideration for the attainment of the Gender Equality Certification, as established by Article 46-*bis,* Gender Equality Code[69].

17. Does your legal system especially reflect the concern of equal pay between men and women? Do you have a specific regime concerning this issue, namely establishing the principle of transparency at this level?
The regime for Equal Pay in Italy.
The right to equal pay for equal work between male and female workers lies its foundation in the Italian Constitution at Article 37. In order to foster compliance with this constitutional right and tackle the gender gap, the Italian legal system has required certain

[67] The percentages of allowance have been recently modified by the Law 30 December 2023, No. 213.

[68] Militello, op. cit., 2020, 164 ff.

[69] *See* below, para. 19 for further details on the incentives and benefits pursuant the successful completion of the Certification process.

employers, according to the dimension of their enterprise, to submit a report on their workforce status since 1991.
This mandatory report has been included at Article 46, Gender Equality Code and its content and procedures have been largely amended with the Law No. 162/2021, also known as the Law on Equal Pay. The provision in exam mandates public and private enterprises with more than 50 employees to report on their workforce gender pay gap and employment conditions, such as recruitment, training, promotion, redundancy, retirement, and other parameters. This report, to be filled digitally and to be shared with Work Councils, should include at least: the numbers of female and male workers employed and hired during the year; the initial salary gap between female and male workers; the numbers of pregnant workers; the contractual classifications and functions performed by each worker; and the actual remuneration received, which includes bonuses, allowances or any other benefit in kind and any other benefit paid to the worker.
The report is also accessible for Territorial and Regional Gender Equality Bodies ("Consigliere di Parità"), who share it with the National Labour Inspectorate, the Minister of Labour and Social Policies, the National Gender Equality Body, and other institutions.
Non-compliance with this mandatory requirement doesn't seem particularly effective or dissuasive. Indeed, if false or incomplete information is provided in the report, the National Labour Inspectorate may impose an administrative fine of between € 1,000 and € 5,000. While if the enterprise fails to meet the reporting deadline, it is given a further 60 days' notice to present their report. In the case of non-compliance with the reporting requirement, the sanctions range from € 515 to € 2,580. In the most serious cases, the suspension for one year of the social benefits enjoyed by the enterprise may be ordered.
On the other hand, enterprises that fill in the report and meet certain objectives related to gender equality can obtain the Gender Equality Certification and receive economic incentives or benefits in return. Indeed, the remuneration earned is explicitly included among the minimum parameters established in the Gender Equality Code to obtain the Certification.
It must be added that the report can also be voluntarily prepared by smaller companies to obtain the Gender Equality Certification.

18. Could it be considered that non-standard forms of employment impact sex/gender discrimination in your country?

Non-standard forms of employment and gender discrimination.

Non-standard employment, particularly in the form of part-time work, can be an aggravating factor in gender inequalities in the labour market, as it often guarantees lower quality of work, in terms of social security, remuneration, etc., than standard work. In the Italian labour market, women are the primarily subject involved in these working conditions:

27.7% of employed women are in non-standard jobs compared to 16.2% of men[70]. As regards part-time, in particular, the rate of women with this form of contract amounts to 50% compared to 20% of men[71].
Furthermore, the adoption of part-time as a measure of work flexibility at the disposal of the employer rather than a genuine instrument to favour work-life balance has a worrying gender impact, considered the high concentration of women in involuntary part-time, meaning those who weren't able to find a full-time position[72]. Hence, this gap is reflected in the remuneration received by women.
Lastly, non-standard forms of work, including smart-working, increase gender discrimination in terms of reduced opportunity to participate in the life and choices of the company as well as in limited opportunities of career advancements[73].
It must be noted that, in the attempt to foster transparency on the impact of non-standard forms of employment on gender, the report on the workforce status, pursuant to Article 46 Gender Equality Code, should also take into account the distribution between female and male workers of full-time and part-time contracts.

19. Is gender mainstreaming considered in defining and implementing social policies, as well as laws, regulations and administrative provisions?
Gender mainstreaming in Italy.
The objective of gender mainstreaming is recognised in positive law, within the Gender Equality Code, at Article 1, para. 4, establishing that «The objective of equal treatment and equal opportunities between women and men must be taken into account in the formulation and implementation, at all levels and by all actors, of laws regulations, administrative acts, policies and activities». It must be noted that this objective was already envisaged by the principle of substantive equality established at Article 3, Constitution[74].
One of the most cutting-edge and virtuous examples of the gender mainstreaming approach undertaken thanks to the National Strategy for Gender Equality 2021-2026 and to the NRRP is the implementation of the project "Gender Equality Certification System", led by the Italian Department for Equal Opportunities. This initiative brought to the adoption of the Gender Equality Certification in the Italian Gender Equality Code at Article 46-*bis*, as amended by the Law No. 162/2021.
The Gender Equality Certification, issued by accredited certifying bodies, indicates the policies and concrete measures adopted by employers to reduce the gender gap concerning opportunities for career advancement within the company, equal pay for equivalent

[70] Istat, *Donne e lavoro: un binomio ancora da costruire*, 2022, available at: https://www.istat.it/it/archivio/287778.
[71] Inps, *Analisi dei divari di genere nel mercato del lavoro e nel sistema previdenziale attraverso i dati INPS*, 2023.
[72] More precisely, 16.5% of women compared to 5.6% of men, *see* Istat, *op. cit.*
[73] Militello, op. cit., 2020, 170 ff.
[74] *See* above, para. 13.

positions, gender diversity management policies, and maternity or paternity protection. The practice entails measuring, reporting, and assessing gender data within organizations, with the objective of addressing current disparities and embedding the new paradigm of gender equality within organizations, thereby fostering enduring and sustainable change over time[75]. This objective is achieved by adopting the lever of tax exemptions, benefits, or economic incentives. Indeed, the successful completion of the Certification process ensures virtuous employers: a 1 per cent point reduction in their social contribution rate, a bonus score in the evaluation of project proposals for state aid and European funding, a reduction of the guarantee for participation in tenders by up to 20%, and, lastly, a bonus score in tenders.

The lever of tax exemptions has also been adopted by the Italian legislator, pursuing the gender mainstreaming approach, in other law regulations to promote the recruitment of disadvantaged women (Law. 29 December 2022, No. 197), unemployed women victims of violence (Law. No. 213/2023) or women with at least two underaged children, or victims of violence or unemployed and living in specific regions (Article 4, Legislative Decree No. 216/2023).

Lastly, the afore-mentioned article 9 of L. 53/2000, despite its scarce application, represents another example of gender mainstreaming providing for the allocation of an annual share of public resources to support employers who sign trade union agreements aimed at facilitating the reconciliation of life and working time[76].

3. Part[77]

III. Disability discrimination

20. Does your legal system provide a definition of *disability* as grounds for discrimination?

The Italian legal system is complex and fragmented[78]. The disability status assessments in Italy is a result of the historical evolution of legislation. To truly understand the different disability statuses and assessment procedures, it is crucial to have a solid grasp of these

[75] Lamberti, *I Key Performance Indicators della certificazione della parità di genere. Una lettura critica*, in *federalismi.it*, 19 April 2023, 212 ff; Cerullo, *La certificazione della parità di genere: volano per i diritti e il business. Come ottenerla e come conservarla*, in *LDE*, 2023, 1 ff.

[76] Militello, op. cit., 2020, 164 ff.

[77] Anna Zilli, Associate Professor of Labour Law, University of Udine; Massimiliano De Falco, Research Fellow, University of Udine. PRIN Prot. 2020CJL288 INSPIRE- Inclusion Strategies through Participation In Workplace for Organizational Well-Being

[78] Istat, Conoscere il mondo della disabilità: persone, relazioni e istituzioni, 2019, in https://www.istat.it/it/files//2019/12/Disabilita.pdf (available only in Italian); Infographic is available in English as Disability: a broad overview, in https://www.istat.it/en/archivio/236374.

laws and the institutions that enforce them[79]. This existing fragmentation creates inefficiencies and hurdles, ultimately leading to inequality across people and regions[80].

The legal framework for disability in Italy is based on the Italian Constitution of 1948, which, however, does not provide any definition. Law 30 March 1971, No. 118 established the concept of civil invalidity (invalidità civile) and is also a key component[81]. People with civil invalidity are those who, due to a physical or mental disorder, either congenital or acquired, have persistent difficulties in carrying out age-specific tasks and functions, when they are under 18 or over 65. They could also be those who have experienced a permanent reduction in working capacity of more than one third, if they are between 18 and 65 years old. Additionally, this definition includes people who are unable to perform essential daily activities or walk also fall into this group. Qualifying for civil invalidity is an important requirement for people with disabilities to access economic benefits. The assessment process is jointly managed by the National Social Security Institute (*Istituto Nazionale della Previdenza Sociale - INPS*) and local health authorities[82]. Entitlement to different benefits is related to the assigned percentage of disability following the assessment of civil invalidity.

The legal framework is fragmented, with some exemptions applying to people who qualify for civil invalidity status under Law No. 118/1971. It's important to note that blind and deaf individuals do not fall under civil invalidity[83]. Different legal provisions regulate their disability status and benefits. Specifically, Law 26 May 1970, No. 381 defines deaf individuals as those with congenital or acquired deafness before the age of 12, which prevents them from learning spoken language normally. Law 27 May 1970, No. 382 defines civil blinds as those who are either totally blind or partially blind[84]. Law 24 June 2010, No. 107 was later introduced to explain the concept of deafness-blindness, which is mostly based on a combination of the above definitions.

The laws mentioned provide specific economic benefits to assist people with impairments. They describe the assessment process, which is similar to the process for civil invalidity[85].

[79] De Falco, The Agreements for Access to Employment of Persons with a Disability: a Genuine Tool to Promote People and Work, in E-Journal of International and Comparative LABOUR STUDIES, Joint Issue (Vol 10 No. 03/2021 - Vol. 11 No. 01/2022), 143 ss., in https://ejcls.adapt.it/index.php/ejcls_adapt/article/view/1160.

[80] Agovino, Rapposelli, Employment of disabled people in the private sector. An analysis at the level of Italian Provinces according to article 13 of law 68/1999, in *Qual Quant*, 48, 1537–1552 (2014). https://doi.org/10.1007/s11135-013-9851-3.

[81] Oecd, Disability, Work and Inclusion in Italy: Better Assessment for Better Support, OECD Publishing, Paris, https://doi.org/10.1787/dc86aff8-en.

[82] Consolazio, The Assessment of Disability in Italy: The Laborious Procedure and Sharing of Objectives, in Int J Environ Res Public Health. 2022 Oct 23; 19(21):13777. Doi: 10.3390/ijerph192113777. PMID: 36360657; PMCID: PMC9655108.

[83] Cruciani, Perilli, Piccioni, Blindness and social security in Italy: Critical issues and proposals, in *Recent. Prog. Med.,* 2018; 109:371–373. https://doi.org/10.1701/2955.29705.

[84] Vitiello, Marrone, Loffredo, Evaluation of multi-impaired subjects in area of interest of legal disability: The partial blind individuals, in *RIML,* 2016; 3:1077–1088

[85] Consolazio, Reflections and proposals with respect to the new procedure for evaluating civil invalidity, in *RIML,* 2011;

However, the number of individuals going through assessments for deafness, blindness, and deafness-blindness is small compared to the number of assessments for civil invalidity. Additionally, people with hearing or vision impairments who do not qualify for deafness and blindness will also have to undergo the regular assessment for civil invalidity. Another group of exceptions relates to individuals who do not qualify for civil invalidity because their disability arose in an occupational context.

The Decree of the President of the Italian Republic 30 June 1965, No. 1124 and Law 23 February 2000, No. 38 establish that occupational diseases and work accidents should be considered in assessing work invalidity (*invalidità da lavoro*). This process is under the responsibility of the National Institute for Insurance against Accidents at Work (*Istituto Nazionale Assicurazione Infortuni sul Lavoro – INAIL*). Disabilities obtained in war-related settings are regulated by separate legal provisions, which correspond to different designations including civilian invalids of war (*invalidi civili di guerra*) – Laws 15 July 1950, No. 539 and 24 February 1953, No. 142, war invalids (*invalidi di guerra*) – Law 5 March 1963, No. 367, and war civil invalids (*invalidi per causa di servizio*) – Law 22 December 2011, No. 214. The different disability statuses correspond to different pensions and allowances, with the Ministry of Economy and Finance being the responsible authority for all war and military-related pensions.

Furthermore, and while most of the definitions described above work as alternatives to each other in the context of economic support, two other key disability-related laws were adopted later in time, to complement the portfolio of available support. These laws created additional disability statuses that are cumulative to the definitions described above, meaning that people with disability can apply for them regardless of whether they have also been assessed for civil invalidity, blindness or deafness, work/war (military) disability or disability in the context of the contributory insurance system:

The concept of "handicap" was introduced in Law No. 104/1992, which grants access to a variety of benefits, including cost-sharing exemptions in healthcare, tax allowances, and family member rights[86]. The law establishes two levels of handicap: an ordinary and a severe one. People are attributed a severe handicap status when the single or multiple impairments that reduce their personal autonomy – compared to what is normal for the respective age group – lead to a need to receive permanent, continuous, and comprehensive assistance, either in the context of their individual tasks or when relating to others.

For a long time, the Italian discipline was identified in the Law of 3 March 2009 No. 18, through which the Parliament authorized the ratification of the Convention on the Rights of Persons with Disabilities and its optional protocol, signed by Italy on 30 March 2007.

2:341–363.

[86] Ales, Disability in Italy: The Legal Concept, in Comp. Lab. L. & Pol'y. J, 609 (2002-2003).

The Convention sets out the basic requirements for the rights of persons with disabilities and is legally binding. It was adopted by the UN General Assembly on 13 December 2006 and became effective on 3 May 2008. Its purpose is to «promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity» (Article 1). Its contents set out the general principles, obligations, principles of equality and non-discrimination, issues of accessibility, mobility, work, education, health, and other important issues related to inclusion. In its context, the disability situation is due to the presence of barriers of various kinds that can be an obstacle to those who have physical, mental or sensory limitations, lasting, and which can therefore prevent people from full and effective participation in society on an equal basis.

The recent Italian Legislative Decree of 3 May 2024, No. 62 formalized the definition of "person with disabilities", which must be understood as «who has lasting physical, mental, intellectual or sensory compromises that, in interaction with barriers of different nature, can hinder full and effective participation in different life contexts based on equality with others» (Article 2). By this, the Italian legal system has also moved beyond an interpretation of disability based on the physical or mental impairment of the person, embracing the biopsychosocial model that emphasizes environmental conditions[87].

However, the Italian discipline is very recent, and many provisions now apply experimentally, in some territories of the country.

21. Does your legal system refer only to disability, or does it mention chronicle illness, or a similar category, apart from disability? If this is the case, is chronicle illness given a different regulation?

To deal with the relationship between chronic diseases and work, it is necessary to address the defining issue and clarify what is meant by chronic disease. The main definitions used in the European context are those provided by the World Health Organization (WHO) and the EHIS, European Health Interview survey. The first defines chronic diseases as those diseases, not transmissible from one person to another, that have long-lasting characteristics and generally slow progression. However, according to the EHIS definition, chronic diseases are attributable to long-lasting diseases or those health problems that last or are expected to last for at least six months.

In the national definitions given by the Member States of the European Union, the specification of long duration is always found, which is the main characteristic of this type of disease. Although each country has its own specification of these diseases, the common situation in Europe is that there is no specific definition of chronic disease.

[87] Hogan, Moving Away from the "Medical Model": The Development and Revision of the World Health Organization's Classification of Disability, in *Bull. Hist. Med.,* 2019; 93:241–269. https://doi.org/10.1353/bhm.2019.0028.

Within the Italian legal system, attempts to regulate this phenomenon have been made, with Article 8, para. 3, Legislative Decree No. 81/2015, on the organic regulation of employment contracts and revision of the legislation on duties, according to Article 1, para. 7, of Law 10 December 2014, No. 183, which extended the right to part-time workers suffering from «serious chronic-degenerative diseases (s.c. ingravescenti)», a right already introduced by Article 46 of the Legislative Decree 10 September 2003, No. 276, implementing c.d. Biagi Law, for workers suffering from oncological diseases only[88].
Although, in this case, the Italian legislator is referring to chronic diseases, there is no real technical definition of this concept[89]. Therefore, it cannot be said that there is in Italy a clear concept of chronic disease at a legal level that allows to offer integral protection to the workers suffering from these diseases. Faced with this situation, the main risk is confusing chronic diseases with other concepts with which they may have common characteristics and are subject to *ad hoc* regulation in the Italian and EU legal order[90].

22. Does your legal system expressly set forth the obligation of reasonable accommodation of working conditions? Please describe the terms of such provision and illustrate it, if possible, with case law samples.
In Italy, there is a legislation dating back to 1968 and amended in 1999, that mandates the hiring of people with disabilities. This law requires public and private employers with over 15 employees to recruit a certain percentage of employees with a disability based on their headcount.
The percentage increases with the company's headcount, as seen in the following breakdown: - Headcount 15–35: 1 employee with disabilities
Headcount 36–50: 2 employee with disabilities
Headcount > 50: 7% of total headcount in employee with disabilities.
Employers can fulfil this obligation by either hiring persons with disabilities from the labor market or integrating those who are identified by the relevant offices into their organization[91].
The process for obtaining certification has become stricter in recent years, resulting in a high number of persons not meeting the requirements and failing to obtain certified disability status. In addition, the certification process is voluntary, leading many employed individuals with impairments not to pursue certification. This creates a challenging situa-

[88] Davolio, Bertolini, Cascinu, Longo, Partesotti, Artioli, Cellini, Pelosi, Disability in cancer patients: A new organization model with an integrated care approach, in *Riv. Ital. Med. Leg.,* 2018; 3:813–825.

[89] Bernell, Howard, Use Your Words Carefully: What Is a Chronic Disease? In Front Public Health, 2016 Aug 2; 4:159. https://doi.org/10.3389/fpubh.2016.00159. PMID: 27532034; PMCID: PMC4969287.

[90] Tiraboschi, The New Frontiers of Welfare Systems: The Employability, Employment and Protection of People with Chronic Diseases, *E-Journal of International and Comparative LABOUR STUDIES,* Volume 4, No. 2 May-June 2015, 5 ss., in https://www.bollettinoadapt.it/wp-content/uploads/2015/05/TIRABOSCHI_EJICLS_2015.pdf.

[91] De Falco, op. cit. for a wide Italian literature review.

tion where employers must recruit the required number of persons with a certified disability and provide accommodations for uncertified employees who require specific working conditions.

Meanwhile, a significant number of people are unable to obtain official certification but still need accommodations in the workplace. Employers who fail to meet the minimum requirement of hiring persons with a disability may face administrative fines[92]. Compliance with this hiring requirement is also a pre-condition for participating in public tenders. To achieve compliance, employers may seek exemptions offered by the law. For instance, they may enter agreements with authorities allowing gradual hiring of employees with disabilities or pay fees to be released from the hiring obligation due to the nature of their business. Traditionally, the employment of persons with disabilities has been viewed as a burden by employers rather than an opportunity to create an inclusive workplace.

However, there is a growing awareness, especially within larger companies, of the importance of inclusivity of those with disabilities and mental diversity due to the increasing attention to environmental, social, and governance (ESG) criteria[93].

Employers are also obliged to make "reasonable accommodations" to provide suitable working conditions for employees with diverse abilities, considering the company's specific production and business needs. This includes temporary disabilities, such as illness, recovery periods, and cases of unverified deficits or disabilities. For an employee's disability to be recognized by the law, it must be officially confirmed and certified by the competent health and labor authorities. Certification entitles individuals to specific social security benefits paid by the state.

The regulatory prescription is the result of a 2013 condemnation by the European Court of Justice to Italy (ECJ, 4 July 2013, C-312/11, European Commission v. Italian Republic)[94]. The Italian legislator, in transposing, with the Legislative Decree No. 216/2003, Directive 2000/78/EC on equal treatment in employment and occupation without distinction on grounds of religion, belief, age, sexual orientation and disability did not require all employers to provide reasonable accommodation for all persons with disabilities, as requested by Article 5 of the Directive.

[92] Marra, Brief outlook on provisions concerning disability in Italy and methods to enforce law, in https://disability-studies.leeds.ac.uk/wp-content/uploads/sites/40/library/marra-Laws-and-Enforcement.pdf. Fines have recently been increased: from 1 January 2022 (according to Ministerial Decree no. 194/2021) failure and delay in submitting the form of personnel in force, as of 31 December of the year preceding the reference year) result in the payment of an administrative fine of €702.43 with an increase of € 34.02 for each day of delay

[93] Valuable 500, ESG and disability data a call for inclusive reporting, 2023 in https://www.thevaluable500.com/ lead to World Economic Forum, Driving disability inclusion is more than a moral imperative – it's a business one, in https://www.weforum.org/agenda/2023/12/driving-disability-inclusion-is-more-than-a-moral-imperative-it-s-a-business-one/.

[94] The decision has been fully discussed by EQUINET, Reasonable accommodation for persons with disabilities: Exploring challenges concerning its practical implementation, 2021, in https://equineteurope.org/wp-content/uploads/2021/03/Reasonable-Accommodation-Disability-Discussion-Paper.pdf.

Then, paragraph 3-*bis* was added to Article 3 of the Legislative Decree No. 216/2003, stating that «to ensure compliance with the principle of equal treatment of persons with disabilities, public and private employers are required to make reasonable accommodations, as defined in the United Nations Convention on the Rights of Persons with Disabilities, ratified under Law 3 March 2009 no. 18, in the workplace, to ensure that people with disabilities are fully equal to other workers».
The mentioned Legislative Decree No. 62/2024 (Article 17) envisaged an extension of this mechanism, providing that:
«1. In cases where the application of the provisions of the law does not guarantee persons with disabilities the enjoyment and effective and timely exercise, on an equal basis with others, of all human rights and fundamental freedoms, reasonable accommodation, following Article 2 of the United Nations Convention on the Rights of Persons with Disabilities, done at New York on 13 December 2006, identify the measures and adaptations that are necessary, relevant, appropriate and adequate, that do not impose a disproportionate or excessive burden on the obliged entity.
2. Reasonable accommodation shall be activated on a subsidiary basis and shall not replace or limit the right to full access to benefits, services and support recognised by the legislation in force.
3. The person with a disability, the person exercising parental responsibility in the case of a minor, the guardian or the support administrator, if endowed with the powers, shall have the right to request, through a specific written request, from the public administration, from the concessionaires of public services and from private entities the adoption of reasonable accommodation, including by formulating a proposal.
4. The person with a disability and the applicant referred to in paragraph 3, if different, shall participate in the procedure relating to the identification of reasonable accommodation.
5. Reasonable accommodation must be necessary, adequate, relevant and appropriate in relation to the extent of the protection to be afforded and the context of the case, as well as compatible with the resources actually available for the purpose.
6. In the assessment of the request for reasonable accommodation, the possibility of accepting any proposal submitted by the applicant under paragraph 3 must be verified beforehand.
7. In the final decision, the public administration shall take into account the needs of the person with disabilities also through personalised meetings and shall conclude the procedure with a reasoned refusal, if it is not possible to grant the reasonable accommodation proposed, with an indication of the accommodation according to the principles referred to in paragraph 5».
There are examples where the law indicates reasonable accommodation:

1. Guaranteeing the right to convert the relationship to part-time:
The Legislative Decree No. 81/2015, confirming the provisions contained in previous regulations (Legislative Decrees No. 61/2000 and No. 276/2003, Law No. 247/2007), protects

workers in the public and private sectors, suffering from oncological pathologies or serious chronic-degenerative diseases, destined to worsen progressively and gradually over time, and for which it is practically impossible to improve, for which a reduced working capacity remains, possibly also due to the disabling effects of life-saving therapies (in the case of cancer patients, chemotherapy), recognising their right to transform their full-time employment relationship into part-time work (Article 8, para. 3, Legislative Decree No. 81/2015).
Cancer patients who (although burdened by the suffering caused by the disease and the therapies) are and feel able to continue to perform – at least partially – their work have the right, subject to verification of their pathology by a Medical Commission, to request and obtain from their employer the transformation of the employment relationship; This, with a proportional reduction in salary and with the right to keep their job, for the time necessary to achieve any improvement in their health conditions, such as to allow him to return to his original working hours.
Therefore, with this rule – aimed at protecting health and, at the same time, professionalism and participation in working life as a means of social integration and permanence in working life – the seriously ill worker is recognized as having a real subjective right, the exercise of which cannot be denied by the employer for conflicting organizational needs, technical and productive aspects of the company. The latter is entitled only to decide on the quantification of the reduction in working hours; This decision must be taken taking – in any case and always – into due consideration the prevailing needs of the worker to be absent to undergo medical check-ups and life-saving therapies (such as chemotherapy).
A worker suffering from cancer, following the transformation of their employment relationship from full-time to part-time, is granted the right of priority in any recruitment with a full-time contract for the performance of similar or equal tasks and legal categories to those covered by the part-time employment relationship (Article 8, para. 6, Legislative Decree No. 81/2015).
At the request of the worker – whose oncological pathology has been treated with a favourable outcome – the part-time employment relationship must be transformed back into a full-time employment relationship, with the consequent restoration of full salary (Article 8, para. 3, Legislative Decree No. 81/2015). But if the worker's health conditions have worsened, and they can no longer be assigned to the same tasks (not even with reduced hours), the employer is obliged to identify a different position in the company even with inferior tasks. Only if it is established that it is objectively impossible to assign them to any task, the employer may proceed with the dismissal of the worker, who will in any case be able to benefit from compulsory placement and priority in hiring due to their disability[95].

2. Ensuring priority in access to remote work

The provision of "reasonable solutions", identified by Article 5 of Directive 2000/78/EC, to give effect to equal treatment, requires the employer to adopt a series of active behaviours

[95] Equal, *CLINICA 2024: Diritto del lavoro e protezione della paziente oncologica*, in www.dirittoantidiscriminatorio.it.

such as «effective and practical measures designed to adapt the workplace to the disability', to change the status quo concerning the 'needs of the concrete situations» characterising the person with functional disabilities and the environment in which he or she is placed. Therefore, in the event of a worsening of the worker's health conditions, the employer will not only have to assess the availability of equivalent or inferior tasks compatible with their remaining ability to work but will also have to seek (and introduce) organizational solutions that make the workplace accessible to the person with disabilities, to bridge the protection gap.
In addition, Article 3, para. 3-*bis*, Legislative Decree No. 216/2003 seems to coincide with the more general duty of safety referred to in Article 2087 of the Italian Civil Code – as well as, in a broad sense, with Article 28, Legislative Decree 9 April 2008, No. 81 on the assessment of risks at work – expanding the range of preventive and remedial measures aimed at protecting the «physical integrity and moral personality» of all providers (including persons with disabilities) and guaranteeing them the permanence in a working environment suited to the needs of each one.
However, it can be seen that the regulatory provision – both in the supranational pattern (Directive 2000/78/EC) and in the national transposition (Legislative Decree No. 216/2003) – conditions the right of the person with disabilities to demand such adjustments, of which the cost necessary for their provision must be assessed, to economic sustainability.
The high adaptability and low relative costs of the technological tools for the performance of remote work increase the possible ways of carrying out the work performance and the solutions for job retention, where compatible with the work performed. The employer would have the burden of proving that it is impossible to grant the worker with disabilities remote work accommodation, because it constitutes a disproportionate and unreasonable cost or burden; or because the physical presence in the workplace is indispensable. Of course, the possibility of using remote work reduces the employer's organizational power and the topic is still very discussed among the jurisprudence[96].

3. Ensuring the choice of the nearest place of work.
Article 21 of Law No. 104/1992 regulates the right of priority in public employment. The law states that the disabled civil servant, with a degree of disability greater than 2/3, has the right to priority choice among the available locations and has priority in the case of voluntary transfer. The State Council (Decision 2 April 2020, No. 2226) established that to

[96] Zilli, *Il lavoro agile per Covid-19 come "accomodamento ragionevole" tra tutela della salute, diritto al lavoro e libertà di organizzazione dell'impresa*, in *Labor*, 2020, 4, https://www.rivistalabor.it/lavoro-agile-covid-19-accomodamento-ragionevole-tutela-della-salute-diritto-al-lavoro-liberta-organizzazione-dellimpresa/; De Falco, *L'accomodamento per i lavoratori disabili: una proposta per misurare ragionevolezza e proporzionalità attraverso l'INAIL*, in *LDE*, 2021, 4, in https://www.lavorodirittieuropa.it/images/de_falco_NOTA_A_SENT_MDF_copia_2.pdf and Id., *Il Protocollo sul lavoro agile per l'inclusione sociale delle persone con disabilità*, in *Bollettino ADAPT 13 dicembre 2021, n. 44, in https://www.bollettinoadapt.it/il-protocollo-sul-lavoro-agile-per-linclusione-sociale-delle-persone-con-disabilita*

deny the transfer under Article 33, para. 5, Law No. 104/1992, the service needs can neither be generically referred to, nor based on generic assessments regarding staff shortages. Article 33, para. 5. of Law No. 104/1992 provides for the right of the caregiver to choose, where possible, the place of work closest to the home of the person to be cared for. The provision does not specify whether the person with a disability must necessarily be in a serious situation, but the case law seems to point in this direction. The Court of Cassation, Labour Section, with sentence no. 26603 of 18 October 2019, established that, to recognise the worker's right to transfer, it is necessary to ascertain the existence of some indicators revealing the real need for assistance in favour of the caregiver, so that the caregiver who assists a family member can legitimately request a transfer to a closer place of work by demonstrating that he or she has already assisted in the past[97].

23. In addition of being entitled to reasonable accommodation, do employees suffering from disability/chronicle illness benefit from further specific protection, in comparison with other employees?

The "protected period" or "grace period" is a timeframe, generally established by relevant collective bargaining agreements, applied by the employer, during which an employee is entitled to retain employment when absent due to illness. Once this period has passed, the employee can be legally dismissed 'for exceeding the grace period', according to the second paragraph of Article 2110 of the Italian Civil Code.

On the one hand, a (minority) orientation considered the model of protection outlined by Article 2110 of the Italian Civil Code on sick leave and grace period, as protected in collective bargaining following the European Union regulatory framework on anti-discrimination protection. Courts in Bologna, Lodi and Vicenza, contends that there is no justification for granting workers with a disability and those with less serious illnesses different grace periods. One of the arguments in favour of this viewpoint is the existence of numerous safeguards that already support disabled people's employment relationships.

On the other hand, the majority orientation – shared by the Supreme Court – which, based on the rulings of the European Court of Justice, had led many domestic courts to consider, according to Directive 2000/78/EC, the provision of the same protected period for disabled and non-disabled workers as indirect discrimination. In a recent judgment, the Naples Court of Appeals upheld the decision of the lower court, declaring it unlawful to dismiss an employee with a degenerative disease for exceeding the grace period (judgment No. 168/2023). This important decision supports the legal stance that including the provision for the grace period for employees with less serious illnesses and disabilities in collective

[97] Lamonaca, *Le agevolazioni ed i limiti al trasferimento dei lavoratori che prestano assistenza ai disabili gravi*, in *LG*, 2014, 12, 1051.

bargaining agreements is a form of indirect discrimination under Legislative Decree No. 216/2003 and Directive 2000/78/EC.
The topic was recently addressed by the Italian Court of Cassation, with judgment no. 9095 of 31 March 2023, questioned on indirect discrimination resulting from the adoption of non-differentiated sick-leave in favour of workers with disabilities[98]. By intervening on this controversial issue, the Court has solved the contrasts that have arisen in domestic jurisprudence, concerning the possible discriminatory nature of the application of the same period of protection for disabled and non-disabled workers[99].
Given many conflicting rulings, it is now up to collective bargaining agreements to decide how to introduce different grace periods for workers with a disability, as opposed to employees with less serious illnesses. In the absence of changes to collective bargaining agreements, the Supreme Court's intervention offers a new balance between the rights of persons with a disability and the needs of employers.

24. Please provide a brief comparison between the regulation of employment termination on grounds of employees' incapacity to perform the job in case of working accident/occupational disease and in other cases of disability.
In both cases, dismissal is the employer's *extrema ratio*. In general, employers must prove that they have attempted to relocate the worker to positions corresponding to the tasks for which he/she was hired, or to those corresponding to the higher legal classification that they have subsequently acquired, or to tasks that are at the same level and legal category of classification as the last ones performed (Article 2103 of the Italian Civil Code).
Where there are no such possibilities, the employer and the worker may agree to change the duties, the legal category, the level of classification, and the related remuneration, if it corresponds to the worker's interest in maintaining employment. These are agreements entered into with assistance (the worker may be assisted by a representative of the trade union association to which they belong, or by a lawyer or a labour consultant) and in protected situations (trade union, before the court, *ad hoc* commissions, according to Article 2113 of the Civil Code).
In the case of workers who were not a person with a disability at the time of recruitment, but who had acquired any disabilities due to an accident at work or occupational disease, employers, both public and private, are required to ensure their occupation (Article 4, para. 4, Law No. 68/1999).

[98] Lamberti, *Licenziamento per eccessiva morbilità del lavoratore e contemperamento degli interessi: una nuova pronuncia della Cassazione*, in *Bollettino ADAPT 15 maggio 2023, n. 18*, in https://www.bollettinoadapt.it/licenziamento-per-eccessiva-morbilita-del-lavoratore-e-contemperamento-degli-interessi-una-nuova-pronuncia-della-cassazione.

[99] De Falco, *Licenziamento per superamento del comporto e discriminazione indiretta del lavoratore disabile: un tema di giustizia sociale*, in *Bollettino ADAPT 20 febbraio 2023, n. 7*, in https://www.bollettinoadapt.it/licenziamento-per-superamento-del-comporto-e-discriminazione-indiretta-del-lavoratore-disabile-un-tema-di-giustizia-sociale and in www.dirittoantidiscriminatorio.it.

Workers who cannot perform their duties as a result of an accident or illness must not be counted in the mandatory quota (obligation to recruit) if they have suffered a reduction in working capacity of less than 60% or, in any case if they have become disabled as a result of the employer's failure to fulfil their obligations, as determined by the courts, occupational safety and hygiene regulations. For these workers, accidents or illnesses do not constitute a justified reason for dismissal if they can be assigned to equivalent tasks or, failing that, to inferior tasks.
In the case of assignment to inferior duties, they shall be entitled to retain the most favourable treatment corresponding to the performed duties. If the worker cannot be assigned to equivalent or inferior tasks, he/she is sent to another company by the competent offices, to carry out activities compatible with their remaining working capacities (Article 4, Law No. 68/1999).
In case of unfair dismissal, the protection of the worker with a disability against dismissal seems to be distinguished according to the date of hiring, applying for the one hired before March 7, 2015, Article 18, para. 7, Law No. 300/1970 (i.d. the worker has the right to be reinstated and compensated for the temporary loss of the job, up to max 12 months wage); vice versa for the one hired starting from that date, Article 2, para. 4, Legislative Decree No. 23/2015 with an apparent inequality in treatment. But facing the rules in the light of the EU anti-discrimination law, this inequality can be excluded by using the notion of disability and the category of reasonable accommodations.
In any case, during the proceedings, based on the worker's claim, the discriminatory nature of the dismissal is established, the "full real protection" applies, regardless of the number of employees employed: it means that the worker has the right to be reinstated and fully compensated for the temporary loss of the job[100].

25. Does your legal system provide any obligation of reasonable accommodation in the field of discrimination on grounds of religious beliefs/behaviours?

The issue is addressed both by the Italian legislator and the Courts.
Concerning the first aspect, the most significant provision is Law 8 March 1989 No. 101 on «Rules for the regulation of relations between the State and the Union of Italian Jewish Communities».
In the Article 4, it is provided that:
«1. The Italian Republic recognizes the right of Jews to observe the Sabbath rest from half an hour before sunset on Friday to one hour after sunset on Saturday.
2. Jews who are employed by the State, by public or private bodies or who are self-employed or commercial, military personnel and those who are assigned to substitute civil

[100] C. Garofalo, *Illegittimità del licenziamento del lavoratore disabile. I diversi regimi sanzionatori*, in *VTDL*, 2022, 2, 249 ss., in https://www.dirittolavorovariazioni.com (available in Italian, with references).

service, have the right to take the Sabbath rest as a weekly rest at their request. This right is exercised within the framework of the flexibility of the organisation of work. In any other case, working hours not worked on Saturdays are made up on Sundays or other working days without the right to any overtime compensation. However, the essential requirements of the essential services provided by the legal system remain unaffected.
3. In drawing up the competition test diary, the competent authorities will take into account the need to respect the Sabbath rest. In fixing the diary of the examinations, the school authorities will in any case take appropriate measures to allow Jewish candidates who request it to take examinations fixed on the Sabbath on another day».
There is no similar agreement for other religions/communities.
According to jurisprudence, the recent decision of the Court of Cassation (United Sections) no. 24414 of 9 September 2021 examined the issue of the display of the crucifix in classrooms – precisely in high school – truly offers an opportunity for reflection on crucial issues for the democratic State and the pre-eminence of law such as the secularity of the State and religious freedom. The question concerned the legitimacy of a disciplinary sanction imposed on a teacher for not having complied with the prescription, addressed by the school director to the entire teaching staff, following what the institution assembly had decided, to display the crucifix during lessons. In particular, the applicant teacher removed the crucifix from the wall for the time of his lecture and then put it back in its place. The judges had confirmed the legitimacy of the managerial prescription, and therefore of the disciplinary sanction imposed on the teacher, excluding that the teacher had suffered discrimination because of his beliefs.

26. Have your national courts ruled on any case concerning the prohibition of wearing religious clothes or symbols?
There is no prohibition, except for health and safety reasons.
On the opposite side, there is the right to wear religious clothes and symbols, for example, Law 8 March 1989 No 10 on «Rules for the regulation of relations between the State and the Union of Italian Jewish Communities» states that «Jews who request it are allowed to take the oath required by the laws of the state with their heads covered» (Article 6).
The decisions are very few.
The Court of Appeal of Milan has addressed (with sentence no. 579 of 20 May 2016) the issue relating to the discriminatory conduct of a company which, during the selection of *hostess* candidates, decided to exclude from the pre-selection a (woman) candidate of Muslim religion, who had not given her willingness to work without the veil. The applicant argued that the company should have included her in the list of candidates in any event and that her exclusion because of refusing to remove her headscarf was discriminatory. The company defended itself by arguing that its task was to select and submit to its client candidate hostesses based on the physical and aesthetic characteristics predetermined by the client himself and that it had therefore excluded the applicant precisely because of her unwillingness to uncover her head.

The first instance judge (Tribunal of Lodi, 3 July 2014)[101] ruled out direct and indirect discrimination as the exclusion from the selection could not be said to be unjustified but found a legitimate request by the recruiter to present to the client candidates with image characteristics not compatible with the request to wear a head covering.
The Court of Appeal considered that the conduct was to be qualified as *direct discrimination,* since the conditions for the application of the so-called grounds of justification provided for by Article 2(b) of Directive 78/2000/EC were not met, since, in the present case, the absence of the veil had never been envisaged either by the principal or by the selector as an essential and determining requirement for the service[102].
In the case dealt with by the Court of Cassation, no. 3416 of 22 February 2016, an employee had been sanctioned because he had refused to work on Sundays for religious reasons. In assessing the proportionality of the disciplinary sanction imposed, the Court had assessed the subjective attitude of the worker and the context in which the failure had occurred, valuing, in confirming the judgment of non-proportionality of the sanction adopted, elements such as the worker's expectation induced by the employer's previous attitude of tolerance, his offer of service on another non-Sunday rest day, the existence of an ongoing trade union dispute and the request not to be assigned to the Sunday shift for religious reasons. For these reasons, the disciplinary sanction was annulled.

27. Does your national law contain any regime aiming to encourage the hiring of young people? Would you say it is discriminatory on grounds of age?

The law provides for the apprenticeship contract, which is an open-ended contract, with a mixed cause (work and training) of a duration of not less than 6 months[103]. Young people between 15 and 29 years old can be hired on an apprenticeship contract[104]. In particular:

1. young people between 15 and 25 years old can be hired with an apprenticeship contract for the professional qualification and diploma that has a duration of no more than 3 years (4 years in the case of a four-year professional diploma);
2. young people between 18 (17 if they have a professional qualification) and 29 years old can be hired with a professional apprenticeship contract that has a duration of no more than 3 years (5 years for professional profiles characterizing the figure of the craftsman and identified by the collective agreement);

[101] In http://www.osservatoriodiscriminazioni.org/index.php/2016/05/09/rifiuto-togliersi-velo-mancata-assunzione-hostess-fiera-commerciale-comportamento-non-integra-discriminazione-tribunale-lodi-ordinanza-3-luglio-2014.

[102] Peruzzi, *Il prezzo del velo: ragioni di mercato, discriminazione religiosa e quantificazione del danno patrimoniale*, in *RIDL*, 2016, 5-6, 821; Tarquini, *Il velo islamico e il principio paritario: la giurisprudenza di merito si confronta con i divieti di discriminazione,* in *www.labor.it* 4 May 2016 (both available only in Italian).

[103] Rustico, David, Ranieri, 'Apprenticeship' in the Italian approach to the dual system, in Transfer: European Review of Labour and Research, 2020, 26(1), 91-103. https://doi.org/10.1177/1024258919896902.

[104] Tiraboschi, Productive employment and the evolution of training contracts in International Journal of Comparative Labour Law and Industrial Relations, Volume 22, Issue 4 (2006) 635 – 649 https://doi.org/10.54648/ijcl2006030.

3. young people between 18 and 29 years old, who have an upper secondary education diploma or a vocational diploma, can be hired under a higher education apprenticeship contract.

The discriminatory profile exists because at the end of the contracted period (3, 4, 5 years) the employer can withdraw without justification[105].

The intermittent or on-call employment contract is provided for young people under 24 years of age, provided that the work is carried out by the age of 25. The employment relationship is characterized by the circumstance for which the worker makes himself available to an employer who can use his work performance in a discontinuous or intermittent manner according to the needs identified by collective agreements. The provision was deemed to conform with European law by the European Court of Justice (Case C-142/1, Abercrombie & Fitch v. AB)[106].

28. Does your national law somehow facilitate the termination of the employment contract with elder employees? If so, would you say such regime is discriminatory on grounds of age?

In the private sector, the employer is free to dismiss the worker, without giving reasons if he or she meets the requirements for the ordinary retirement pension. However, the employer cannot dismiss, in most cases, if the employee meets the requirements for early retirement, currently equal to 42 years and 10 months of contributions for men and 41 years and 10 months for women, or for any other type of retirement other than old-age treatment. This is because the typicality and exhaustiveness of the causes of termination of the relationship exclude automatic terminations upon reaching pension requirements, even if possibly contemplated by collective bargaining.

The discipline is different for public employees: once the requirements for any type of pension have been met, in fact, the administration is obliged to terminate them from service, if the statutory age is also reached, i.e. the age provided for the termination of the system to which the worker belongs, generally equal to 65 years. If the statutory age is not reached, but the requirements for a pension are met, the termination is instead at the discretion of the administration.

In detail, there are 2 (*rectius*, 3) cases of "forced" retirement by the public administration:

1. two mandatory, applicable to those who have met the requirements for an old-age pension, or the right to another pension, together with reaching the statutory age limit provided for by the individual sectors to which they belong;

[105] Sciulli, On-the-job-training contracts in Italy: Training or flexibility device?, https://doi.org/10.1016/j.cesjef.2013.04.002.

[106] Mulder, Age discrimination is not in fashion: AG Bobek's Opinion in Abercrombie & Fitch v Bordonaro, in https://legalresearch.blogs.bris.ac.uk/2017/05/age-discrimination-is-not-in-fashion-ag-bobeks-opinion-in-abercrombie-fitch-v-bordonaro/.

2. an optional one, left to the discretion of the administration, aimed at those who have reached the maximum contribution requirements (42 years and 10 months for men, one year less for women).

The justification of this legislation does not appear immediately comprehensible, except in the perspective (in any case to be justified) of a discipline that intends to encourage generational renewal.

Last, in its judgment of 13 November 2008 following the infringement procedure initiated in July 2005 by the European Commission, the Court of Justice condemned Italy for having maintained legislation under which civil servants are entitled to receive an old-age pension at different ages depending on whether they are men or women. In initiating the infringement procedure, the European Commission argued that the scheme managed by INPDAP under Directive 86/378/EEC and Article 141 of the Treaty, which prohibit any discrimination in pay on grounds of sex. Consequently, the pension system established in Italy for the civil service was discriminatory in that it demands that the retirement age is 65 years for men and 60 years for women.

The judgment did not accept the argument that the fixing of a different age for retirement could be justified by the objective of eliminating discrimination against women. In that regard, it has been pointed out by the Court that the fixing of a different age for the retirement pension is not such as to compensate for the disadvantages to which the careers of female civil servants are exposed. The Court therefore concluded that, by maintaining in force legislation under which civil servants are entitled to receive an old-age pension at different ages depending on whether they are men or women, the Italian Republic has failed to fulfil its obligations under Article 141 of the Treaty.