

REPORT ON THE SITUATION OF DISABLED PERSONS IN ITALY WITH REGARD TO THE ACCESS TO OCCUPATION

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Summary: 1. Introduction: the situation of disabled persons in Italy, statistical data; 2. Main legislation; a) Laws; b) Temporary dispositions; 3. Material scope of law: a) Italian law; b) The Directive of 27 November 2000; c) The implementation of the Directive by Italian legislation; 4. Definition of disability; 5. Direct-Indirect discrimination; 6. Treatment of reasonable accommodation; 7. Positive actions.

1. Introduction: the situation of disabled persons in Italy, statistical data

As regards Italy, according to ISTAT data¹, 3.000.000 units are disabled persons, i.e. 5% of the entire population approximately (while in Europe the same index rises to 10%).

In particular 40% of them are male and 60% women.

4% of the babies has malformations or congenital illnesses, which may hinder them to access to a normal life.

20.561.000 out of 2.362.000 families have a disabled person among their relatives: the related percentage is 14% approximately.

Disabled persons may be listed as follows;

A) by typology:

- Motors: ~ 1.100.000 (60.000 out of them live in wheel-chair)
- Sight: ~ 350.000
- Hearing: ~ 800.000 (50.000 out of them are deaf-and-dumb)
- Mental: ~ 750.000

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¹ "ISTAT" stands for Italy's National Statistical Institute.

B) by age:

< 6 years of age: ~ 200.000

6 - 14 years of age: ~ 188.000

15 – 64 years of age: ~ 615.000

> 64 years of age: ~ 2.000.000

Notwithstanding the remarkable legislative action aiming to improve social integration of disabled persons, which led to the recent adoption of Law n. 68/1999 concerning the right of employment for disabled people, it is estimated that disabled who really work do not even rise to 150.000 units, that is to say 21% of disabled persons in working age, while 54,6% of people with their same age - but without a disability malformation – have a job.

According to recent data, disabled adults (15-44 years of age) with a job are 32 % approximately, against 70% of male adults at the same age and without disabled problems. Moreover, it's important to stress that 28.2% of people with disabilities work in agriculture triple the figure for employed people without disabilities (9.6%) and that people with sensory disabilities have a higher employment level (22.9%) than those with functional disabilities (11.7%).

Other data are remarkable:

- 61% of people with disabilities are very or quite satisfied with their job, while 47.7% are little or not at all satisfied;
- people with disabilities are much more satisfied with job security than the nondisabled (96% of more severely disabled and 21% of those less severely disabled against 0.4% for people without disabilities)².

Italian legislation pays special attention to the cooperative enterprises which are divided in two categories in conformity with art. 1 of Law November 8 1991 n. 381:

² More statistical data about disabled persons in Italy may be obtained from the Web site of the Information System on Handicap project of the Ministry of Labour and Social Policy, implemented by ISTAT: www.istat.it

- category a) finalized to the management of social-sanitary and educational services;
- category b) with the aim to give job opportunities to disabled persons.

According to data produced by ISTAT 754 type b) social cooperatives³ were operating in Italy at the end of 1997 and employed 11,165 people, 5,414 of which were disabled people (thereby ensuring a ratio between disabled and able-bodied persons of 48.5%). Cooperatives employed 15 people on average, with an average of 7 disabled people. Most cooperatives (52.2%) employed less than 15 disabled people, whereas 12.1% employed over 50.

Most type b) social cooperatives have been established to provide temporary employment for disabled people and subsequently ensure they are hired by standard companies. However, although the main objective of such cooperatives is to find outside work for disabled people, they may also employ them permanently within their own co-operative or find jobs in other cooperatives when workers are unable to find other employment.

A survey carried out on a number of type b) social cooperatives involved in a Trento Employment Agency Project highlights the potential of this active labour policy tool - 87 of the initial 115 disabled people that joined the cooperatives involved in the project between 1992 and 1997 were fully integrated at the time of the survey and 43 (53%) of these had found permanent employment, most of whom (32) with other companies and almost all for at least two years.

³ In Italy, social cooperation is regulated by numerous regional Laws and by the national Law November 8 1991, n. 381 -“General rules on social cooperatives”- published in the Official Journal (Gazzetta Ufficiale) December 3 1991, n. 283. This last law had been some amendments during the years. This legislation provides for exemption from payment of welfare contributions for disadvantaged employees, and particularly for disabled people (who have a degree of disability/impairment of at least 46%). Type b social cooperatives concentrate on the employment of disadvantaged people and have lower levels of economic and productive activity and organizational capability. In spite of this limitations and problems, social cooperative represent a growing movement within the italian economy. There are currently about 2.000 type b cooperatives, employng 44.000 people, of which approximately 16.000 are disabled persons.

2. Main Legislation⁴

The most important rules adopted in Italy in the field of the protection of disabled persons in employment – taking into account that some of them are laws, others are circulars or degrees implementing the laws – are the following:

(a) Laws

- Legge 10 febbraio 1962, n. 66: Nuove disposizioni relative all'Opera nazionale per i ciechi civili; Gazzetta Ufficiale 7 marzo 1962, n. 61
- Legge 28 marzo 1968, n. 406: Norme per la concessione di una indennità di accompagnamento ai ciechi assoluti assistiti dall'Opera nazionale ciechi civili, Gazzetta Ufficiale 17 aprile 1968, n. 98
- Legge 2 Aprile 1968 n. 482: Disciplina generale delle assunzioni obbligatorie presso le pubbliche amministrazioni e le aziende private, Gazzetta Ufficiale 30 aprile 1968, n. 109, abrogata dalla legge 12 marzo 1999 n. 68 (*Law April 2 1968 n. 482 containing the general rules on compulsory enrolment of disabled persons in the public administration and private enterprises, Official Journal, April 30, n. 109*)
- Legge 2 aprile 1968, n. 472: Norme sull'istruzione professionale dei sordomuti, Gazzetta Ufficiale, 26 aprile 1968, n. 106
- Legge 26 maggio 1970, n. 381: Aumento del contributo ordinario dello Stato a favore dell'Ente nazionale per la protezione e l'assistenza ai sordomuti e delle misure dell'assegno di assistenza ai sordomuti, Gazzetta Ufficiale 23 giugno 1970, n. 156
- Legge 27 maggio 1970, n. 382: Disposizioni in materia di assistenza ai ciechi civili, Gazzetta Ufficiale 23 giugno 1970, n. 156

⁴ Gazzetta ufficiale stands for Official Journal.

- Legge 30 marzo 1971, n. 118: Conversione in Legge del D.L. 30 gennaio 1971, n. 5 e nuove norme in favore dei mutilati ed invalidi civili, Gazzetta Ufficiale, 26 aprile 1968, n. 106
- Legge 18 dicembre 1973, n. 854: Modalità di erogazione degli assegni, delle pensioni ed indennità di accompagnamento a favore dei sordomuti, dei ciechi civili e dei mutilati ed invalidi civili, Gazzetta Ufficiale, 2 gennaio 1974, n. 1
- Legge 22 dicembre 1979, n. 682: Aumento della indennità di accompagnamento a favore dei ciechi civili assoluti, Gazzetta Ufficiale, 8 gennaio 1980, n. 6
- Legge 11 febbraio 1980, n. 18: Indennità di accompagnamento agli invalidi civili totalmente inabili, Gazzetta Ufficiale, 14 febbraio 1980, n. 44
- Legge 13 dicembre 1986, n. 912: Interpretazione autentica dell'articolo 12, ultimo comma, della Legge 30 marzo 1971, n. 118, e dell'articolo 7, ultimo comma, della Legge 26 maggio 1970, n. 381, in materia di quote di assegni o pensioni spettanti agli eredi di mutilati o invalidi civili e di sordomuti, Gazzetta Ufficiale, 30 dicembre 1986, n. 301
- Legge 21 novembre 1988, n. 508: Norme integrative in materia di assistenza economica agli invalidi civili, ai ciechi civili ed ai sordomuti, Gazzetta Ufficiale, 25 novembre 1988, n. 277
- Legge 9 gennaio 1989, n. 13: Disposizioni per favorire il superamento e l'eliminazione delle barriere architettoniche negli edifici privati, Gazzetta Ufficiale, 26 gennaio 1989, n. 21
- Legge 15 ottobre 1990, n. 295: Modifiche ed integrazioni all'articolo 3 del D.L. 30 maggio 1988, n. 173, convertito, con modificazioni, dalla L. 26 luglio 1988 n. 291, e successive modificazioni, in materia di revisione delle categorie delle minorazioni e malattie invalidanti, Gazzetta Ufficiale, 20 ottobre 1990, n. 246
- Legge 8 novembre 1991 n. 381: Disposizioni sulle cooperative sociali, Gazzetta Ufficiale, 3 dicembre 1991 n. 283 (*Law November 8*

1991, n. 381, *General rules on social cooperatives, Official Journal December 3 1991, n. 283*)

➤ Legge 31 dicembre 1991, n. 429: Nuove norme in materia di indennità di accompagnamento ai ciechi civili ed ai pluriminorati, *Gazzetta Ufficiale*, 10 gennaio 1992, n. 7

➤ Legge-Quadro 5 febbraio 1992 n. 104, per l'assistenza, l'integrazione sociale e i diritti delle persone handicappate, *Gazzetta Ufficiale*, 17 febbraio 1992, n. 39, S.O (*Frame-law, 5 february 1992 n. 104 on the care, social integration and rights of disabled persons, Supplement to Official Journal, n. 39 of 17th February 1992*)

➤ Legge 28 agosto 1997, n. 284: Disposizioni per la prevenzione della cecità e per la riabilitazione visiva e l'integrazione sociale e lavorativa dei ciechi pluriminorati, *Gazzetta Ufficiale*, 4 settembre 1997, n. 206

➤ Legge 21 maggio 1998, n. 162: Modifiche alla Legge 5 febbraio 1992, n. 104, concernente misure di sostegno in favore di persone con handicap grave, *Gazzetta Ufficiale*, 29 maggio 1998, n. 123 (*Law May 21 1998, n. 162, amending Law February 5 1992, n. 104, concerning support measures in favour of people with severe disabilities, Official Journal, May 29 1998, n. 123*)

➤ Legge 12 marzo 1999, n. 68: Norme per il diritto al lavoro dei disabili, pubblicata nel Supplemento Ordinario n. 57/L alla *Gazzetta Ufficiale* 23 marzo 1999 (*Law 12 March 1999, n. 68, concerning the right of employment for disabled people, Supplement n. 57/L to Official Journal, March 23 1999*)

➤ Legge 23 dicembre 2000, n. 388: interventi in favore dei soggetti con handicap grave privi dell'assistenza dei familiari, *Gazzetta Ufficiale* 18 gennaio 2002 n. 15

➤ Legge 3 aprile 2001, n. 131: Norme a sostegno delle persone in condizioni di cecità parziale, *Gazzetta Ufficiale*, 19 aprile 2001, n. 91

- Legge 3 aprile 2001, n. 138: Classificazione e quantificazione delle minorazioni visive e norme in materia di accertamenti oculistici, Gazzetta Ufficiale, 21 aprile 2001 n. 93
- Legge 27 dicembre 2002, n. 288: Provvidenze in favore dei grandi invalidi – Gazzetta Ufficiale 31 dicembre 2002 n. 305 (*Law December 27, n. 288, Official Journal, December 31 n. 305*)

(b) Temporary dispositions

- Decreto del Ministero del Lavoro e delle Politiche Sociali 31 ottobre 1992, n. 553 (Decree of the Minister of Labour and Social Policy): Regolamento recante disposizioni per l'accertamento delle condizioni reddituali e degli obblighi di comunicazione da parte dei mutilati ed invalidi civili, dei ciechi civili e dei sordomuti, nonché per l'eventuale revoca delle prestazioni e per la disciplina del diritto di opzione, in attuazione dell'art. 3, comma 2, della Legge 29 dicembre 1990, n. 407.
- Decreto del Presidente della Repubblica (Decree of the President of the Italian Republic) 21 settembre 1994, n. 698: Regolamento recante norme sul riordinamento dei procedimenti in materia di riconoscimento delle minorazioni civili e sulla concessione dei benefici economici.
- Decreto Legislativo (Legislative Decree) 30 aprile 1997, n. 157: Attuazione della delega conferita dall'articolo 3, comma 3, lettera d), della Legge 8 agosto 1995, n. 335, in materia di potenziamento delle attività di controllo sulle prestazioni previdenziali ed assistenziale di invalidità e inabilità. Decreto del Presidente della Repubblica 24 luglio 1996 n. 503: Regolamento recante norme per l'eliminazione delle barriere architettoniche negli edifici, spazi e servizi pubblici. Legge 8 agosto 1995, n. 335: Riforma del sistema pensionistico obbligatorio e complementare.
- Decreto del Presidente della Repubblica 10 ottobre 2000 n. 333: Regolamento di esecuzione della legge 12 marzo 1999, n. 68, recante norme per il diritto al lavoro dei disabili – Gazzetta Ufficiale del

18/11/2000, n. 270 (*Decree of the President of the Italian Republic, October 10 2003, n. 333, in order to implement the law 1999 on the right to employment of disabled persons – Official Journal., Novembre 18,2000, n. 270*)

➤ Decreto del Presidente del Consiglio dei Ministri (Decree of the President of the Council of Ministers), 13 gennaio 2000, Atti di indirizzo e coordinamento in materia di collocamento obbligatorio dei disabili a norma dell'art. 1, comma 4 della legge 12 marzo 1999 n. 68, Gazzetta Ufficiale, 13 gennaio 2000 n. 43 (*Decree of the President of the Council of Minister, on January 13 2000 – Official Journal January 13 2000 n. 43 – containing the act of trend and co-ordination regarding the obligatory employment of Disabled Persons following article 1, n. 4 of the Law March 12 1999*)

➤ Decreto del Ministero del Lavoro e delle Politiche Sociali 12 luglio 2001: Ripartizione tra le regioni delle risorse finanziarie del Fondo per il diritto al lavoro dei disabili, istituito dall'art. 13, comma 4, della Legge 12 marzo 1999, n. 68. (Gazzetta Ufficiale n. 211 del 11-09-2001)

➤ Decreto del Ministero del Lavoro e delle Politiche Sociali 13 dicembre 2001 n. 470: Regolamento concernente criteri e modalità per la concessione e l'erogazione dei finanziamenti di cui all'articolo 81 della Legge 23 dicembre 2000, n. 388, in materia di interventi in favore dei soggetti con handicap grave privi dell'assistenza dei familiari (Gazz. Uff. 18.1.2002 n. 15)

➤ Decreto del Ministero del Lavoro e delle Politiche Sociali 15 luglio 2002 Ministero del Lavoro e delle Politiche Sociali, Ripartizione tra le regioni delle risorse finanziarie del Fondo per il diritto al lavoro dei disabili, istituito dall'art. 13, comma 4, della legge 12 marzo 1999, n. 68. (Gazzetta Ufficiale n. 221 del 20-9-2002)

➤ Decreto Legislativo, 9 luglio 2003, n. 216, Gazzetta Ufficiale n. 187 del 13 agosto 2003 (*Legislative Decree on July 9 2003, n. 216, aimed to the implementation of directive 2000/78 establishing a general*

framework for equal treatment in employment and occupation. This Decree has been published in the Official Journal August 13 2003, n. 187; it entered into force on August 28 2003)

3. Material scope of law:

(a) Italian law

From a juridical point of view, the most important act concerning the employment of disabled is the Law (legge) April 2 1968 n. 482 containing the general rules on compulsory enrolment of disabled persons in the public administration and private enterprises (*disciplina generale delle assunzioni obbligatorie presso le pubbliche amministrazioni e le aziende private*)⁵. This law regarded the work only of physical disabled persons. Only after many years and after some strong interventions of Ngos aiming to modify such law, and a clear position taken by the Italian Constitutional Court with the decision n. 50 taken on February 2nd 1990 n. 50 (*Review of legal constitutionality of the art. 5 of Law April 2nd 1968, n. 482 - General rules on compulsory enrolment of disabled persons in the public administration and private enterprise - in relations to the artt. 1, 2 and 3 of the same law*), it was definitively provided that law n. 480 should be applied also to the mentally disabled persons.

This principle entered into Italian juridical system by means of the framework law of 5 February 1992 n. 104 on the care, social integration and rights of disabled persons (*legge-quadro per l'assistenza, l'integrazione sociale e i diritti delle persone handicappate*)⁶.

This Law involved fundamental innovation for social policies regarding disabled people in Italy, thereby creating the premises and conditions for full affirmation of civil rights and participation in the social life of disabled people.

⁵ *Published in Official Journal, April 30, n. 109.*

⁶ *Supplement to Official Journal, n. 39, February 17 1992.*

Frame-law 104/92 marked a complete inversion compared to previous legislative actions on this subject, which were almost exclusively based on assistance and specific sectors. Italy previously underwent a gradual process involving acknowledgement of partial rights for disabled people. However, this occurred in a fragmented manner and took into account specific categories of disabled people or specific needs and rights (economic support, health, education, employment, mobility, etc.)⁷.

Frame-law 104/92 fully acknowledges a disabled person despite the extent of his/her disability and takes into consideration the development of a disabled person from birth to participation in the family, at school, at work and during leisure time.

Another important law has been promulgated on March 12 1999, (Law n. 68/99) containing new rules on the right to the work of disabled persons (*legge contenente norme per il diritto la lavoro dei disabili*) which represents the most important instrument on such matter before the promulgation of the above quoted Directive⁸. Law 68 of 1999 protects the rights of workers with disabilities and prohibits discrimination against them in the workplace. Besides promoting access to work for disabled people, through a compulsory employment quota system, this law states

⁷ More specifically, Law 104/92 involves actions and innovative services in two particular areas: prevention and protection for disabled people with severe impairments.

The following actions focussing on prevention receive particular attention:

- *health-related information and education on the causes and consequences of disabilities;*
- *information and education focussing on accident prevention;*
- *services focussing on prevention of genetic illnesses that may cause disability;*
- *establishment of a personal medical card.*

The following actions focussing on disabled people with severe impairments receive particular attention:

- *personal assistance services;*
- *communities or similar residential services;*
- *daytime rehabilitation and education centres;*
- *actions to ensure integration in schools;*
- *actions to encourage the use of collective transport;*
- *actions to encourage the use of individual transport;*
- *allowances for vehicles used by disabled persons;*
- *benefits for exercising the right to vote.*

⁸ Supplement n. 57/L to Official Journal, March 23 1999.

that the same standards of legislative and collectively agreed treatment must apply to disabled workers as to other workers.

Such law concerns public and private agencies and enterprises with more than 15 employees. This law entered into force on 17/1/2000.

This law embodies some fundamental principles which can be so referred:

- 1) the enrolment of Disabled Persons in a place conform to their abilities with aids and support-aids, by means of affirmative actions and solution of problems connected with the environment etc.,
- 2) the accomodation of disabled persons in a job is decided by a medical commission (art. 1.4) as already provided by frame-law n. 104 of 1992. This commission has the task: i) to formulate a functional diagnosis in order to determine the whole ability of disabled persons i.e. to specify the grade and quality of his/her impairments and the type of this; ii) to propose the lines to facilitate his/her accomodation in a job. The commission will precise the position of disabled persons inside his/her environment, attitudes, family relations, taking into account the school's degree and the work already effected;
- 3) there is an obligation to assume people with disabilities for public and private enterprises on 7% on total working force if the private enterprise has less than 50 employees.

There are some exceptions from such obligation for: political parties, unions, organizations of social solidarity; nevertheless they are obliged in case of new assumptions.

For the police and civil protection disabled persons are enrolled only for administrative tasks. Moreover other cases of derogation are provided by the article 3 and 5.

In certain cases provided by article 5 the employer, who demonstrates not to be in condition to assume disabled persons for one of the reasons there indicated (e.g. the type of activity etc.) will pay to the Regional Fund for the Employment a financial contribution indicated by the same law.

Moreover the law provides some services in order to facilitate the access to work of Disabled Persons in conformity with article 7; other rules regard lists for the employment, the regulation of job relations (art. 10); the incentivisation for the enterprises which conform their behaviour to the law (art. 11); the creation of social cooperatives in order to support the access to work (art. 12); some facilities for the assumption (art. 13); the institution of a Regional Fund for the job of Disabled Persons (Fondo regionale per l'occupazione dei disabili).

It is important to remark that this law contains rules aiming to punish the enterprises who do not implement its dispositions: for instance the enterprises which take part to a competition in order to obtain a contract with the public administration have to demonstrate that they have respected the provision of the law by means of a written certification.

In order to implement such law many other acts have been promulgated. Such acts have a level subsidiary in respect to the above quoted law, having the nature either of ministerial decree or of a circular: for instance the decree of 22 November 1999 explains how should be drafted that projects of employers who are obliged to obligatory assumptions.

Other dispositions clarify the conditions and the procedure in order to obtain partial derogations by the employers.

It is important also to quote the decree of the President of the Council of Minister, on January 13 2000, containing the act of trend (guidelines) and co-ordination regarding the obligatory employment of Disabled Persons following article 1, n. 4 of the Law March 12 1999 (Atto di indirizzo e coordinamento in materia di collocamento obbligatorio dei disabili a norma dell'art. 1, comma 4 della legge 12 marzo 1999 n. 68)⁹.

This decree provides the Commission in order to ascertain the type of disability and the grade of residual capacities. All this activity is finalized in order to describe from the social and working point of view the profile of Disabled Persons; to express the so-called functional diagnosis and to

⁹ *Published in Official Journal, January 13 2000 n. 43.*

draft a final relation on the person. Some medical controls have the aim to verify periodically the status of disability of the person during the years; the act is completed by a “glossario” with the aim to define the ability to work and other terms of the same act.

On 10 October 2002 the President of Italian Republic has promulgated a Regulation n. 333 in order to implement the law 1999, which contains a further specification of people having the right to be enclosed into the special lists for the compulsory assumption, the duty to reserved parts, the exceptions to such duties and the suspension from them, the way to enrole people. The principle indicated in that act regards the so-called nominative assumptions that means that the public and private employers have the possibility to choice inside of the lists the Disabled Person who has more ability to effect a certain work and to call this person. Also this act contains rules regarding conventions between employers and social cooperatives in order to facilitate the integration into the work.

(b) The Directive of 27 November 2000

The former observations had the aim to illustrate the juridical situation in Italy regarding the sector of the employment of Disabled Persons before the entry into force of the Directive here quoted.

It is well known that the aim of a directive is the harmonisation of all legislations (or of a part of them) of the member States of the European Community (as the harmonization is one of the tasks of the Community and not of the European Union). It is also known that the directive normally facilitate at most level the process of harmonization. Sometimes a directive finds the juridical system of a State ready to embody itself, sometimes there is the need of other internal acts in order to get the result provided by itself.

The observations here made show that in Italy there is a good trend to create positive conditions for the access to the work of the disabled

persons. All the above quoted laws and acts confirm such trend, even if sometimes the practical implementation of these rules is very difficult and Disabled Persons are not in conditions to really exert and enjoy of their rights concretely.

Even if one has to remark that italian juridical system contains already a large number of rules which are conform to those of directive, one should also consider that there are some innovations in the directive which request the necessary attention as, for instance, the introduction of the principle of the renversement of the burden of the proof (evidence) which is present in Italy only since about ten years in some sectors.

From another side, this directive which regards all kinds of discrimination devotes to the problem of disability only the specific rules contained in article 5 even if the concept of discrimination there considered covers all situations and also the ones of Disabled Persons.

If one considers this Directive from a technical point of view one has to affirm that it has not detailed character, being a normal Directive: therefore in order to get the results of non-discrimination every State has to take by itself all necessary measures in order to get the results there indicated.

Conscious of the character of this Directive, the European Council has taken a resolution on July 15 2003 regarding the promotion of the occupation and social integration of disabled persons.

Regarding this Resolution it is important to remark the invitation to the State to act not only at national level, but also at European one in order to create a connection among each State in the respective relations and inside of internal system and the European institutions, especially with the Commission in the frame of respective competences. This connection should have the result:

- 1) to further promote the full integration of Disabled Persons into the society as these persons have the same rights as others;
- 2) to eliminate the obstacles still remaining to the access to labour market in order to realize the equality of treatment with other persons and

to ameliorate the integration and participation at all levels of education and educational training;

3) to continue all efforts to maintain a sort of permanent education (education along the life) and to utilize the new technologies in order to remove the obstacles which do not allow to use in due way the informations on the access to occupation and to professional training;

4) to study new measures in order to promote the integration and occupation of Disabled Persons;

5) to take both at national and at European level measures coherent with the european strategy; to continue the exchange of experience in this sector;

6) to collect statistical data on the persons with disabilities having special attention to the gender problems;

7) to support the perspective of Disabled Persons in all politics which concern them in all phases of formulation, drafting, implementation, control and evaluation of these policies.

(c) The implementation of the Directive by italian legislation

Even if some rules are already existing in the italian juridical system before the entering into force of the above quoted directive, it was necessary to introduce some new rules in order to facilitate to get the final result provided by the communitary act. This was obtained by means of the promulgation of the Legislative Decree (Decreto Legislativo) on July 9 2003, n. 216¹⁰, aimed to the implementation of directive 2000/78 establishing a general framework for equal treatment in employment and occupation. This Decree has been published in the Official Journal on August 13, 2003, n. 187; it entered into force on August 28, 2003. It represents the implementation of the so-called communitary law: Law March 1, 2002, n. 39 (Disposizioni per l'adempimento di obblighi

¹⁰ Published in *Official Journal* n. 187, August 13 2003.

derivanti dall'appartenenza dell'Italia alle Comunità europee. Legge comunitaria 2001)¹¹.

The aim of this act is to define the notion of discrimination (art. 2) and to determine its sphere of implementation (art. 3); to provide the jurisdictional protection (art. 4); to define the legitimation in front of the trials (art. 5); the duty to present a relation (art. 6).

Entering into details of the above quoted rules, one has to remark the general principle mentioned at its article 1, by which the intention of the Italian legislator is to exclude any sort of discrimination and to guarantee the same treatment without any reference to religion or belief, particular disability, age, or particular sexual orientation and to provide measures in order to impede all discriminations, considering also the different impact that the same form of discrimination can have on women and men (art. 1).

It is very important to consider the notion of discrimination there exposed (art. 2): it corresponds to the concept of discrimination described at article 2 of the Directive which includes both direct and indirect discrimination. Regarding the implementation of art. 2, n. 2, lett. b, ii, of the Directive, one should remark that there is no correspondence into the Italian act (Legislative Decree July 9, 2003), because the former legislation, here before quoted, contained already rules finalized to forbid all discrimination against disabled persons in the work and to favourite their access to the work.

Similar observations regard the implementation of art. 5 of the Directive concerning the reasonable accommodation for disabled persons: this provision is already covered by the precedent legislation.

Nevertheless one has to consider the article 3, n. 3, of the Legislative Decree recalling the principles of proportionality and reasonability inside the work and excluding as discriminatory some differences of treatment. This article affirms that one cannot consider as discriminatory the

¹¹ *Published in Supplement to Official Journal, n. 72, March 26 2002.*

difference of treatment depending of some characteristics of the religion, ... handicap, age etc., when the particular nature of working activity is such that the mentioned characteristics constitute an essential element to effect that kind of work. Another exclusion concerns the impossibility to enter into the armed forces and the police, relief.

Other exceptions are provided at nn. 4 and 5 of the same article 3 of Legislative Decree: n. 4 makes some reference to specific capacity to work that can require particular fitness in order to effect that work. N. 5 does not consider as discriminatory the exclusion from the activities of a religion, belief, organization when the kind of the work requested implies that a person is practicing that religion or belief and has the same personal opinions of the organization, both public and private.

Regarding the jurisdictional protection of the rights, there is a reference to a Law of May 21 1970, n. 300, containing rules on the protection of freedom and dignity of workers, of freedom of unions (“Norme sulla tutela della libertà e dignità dei lavoratori, della libertà sindacale e dell’attività sindacale nei luoghi di lavoro e norme sul collocamento”). This Law is mentioned both in the Preamble of the Legislative Decree and in the article 4 of the same Decree in order to be modified with the addition of words “handicap, age, etc.”. The result of such amendment is the nullity of a covenant or arrangement aiming to discriminate a worker on the basis of handicap.

The same article 4 provides at its n. 3 the possibility to act in justice in order to be recognized as having been discriminated: if she/he refuse to use the procedure of conciliation provided by collective contracts, she/he can promote the procedure of conciliation provided by article 410 of Procedure Code in case of private job or by article 66 of Legislative Decree of 30 March 2001 n. 165 in case of public employment.

It is also important to stress that the Legislative Decree mentions another Legislative Decree 25 July 1998 n. 286 related to the condition of foreigners in Italy in order to protect the whole category of persons

discriminated. This reference is justified by the fact that the Decree of 1998 provides a more simple and speed procedure for the defence of the rights of foreigners.

Regarding the possibility that the defence of rights is given to associations (in conformity of article 9 n.2 of the Directive) the Legislative Decree 2003 provides at its article 5 such possibility. Therefore the contents of the Directive has been embodied expressly in the Italian system.

A different observation should be made in order to the principle of the evidences and proves: in fact article 4 n. 4 affirms that the claimant can use in the process all elements of fact at his/her disposition including statistical data. Therefore Italian legislation does not introduce in this sector the principle so-called of the inversion of the burden of proof, mentioned by article 10 n. 1 of the Directive as the burden of proofs rests to the actor in the process. This depends on the fact that the principle of inversion of the burden of proof is not familiar to our juridical system which has adopted it only recently in some particular cases (e.g. law on the molestations in the work).

Following the Legislative Decree 2003 in case in which the judge considers that recourse has a juridical ground the result of the procedure can be:

- 1) to provide an indemnisation if requested;
- 2) to put end to the act or behaviour having discriminatory character to remove the effects;
- 3) in order to exclude the repetition of similar behaviour the judge can establish that a plan should be presented inside a delay to remove the discriminations;
- 4) if the judge finds out that the discriminatory act represents a response to a precedent judicial action is an unjust reaction of the victim finalized to obtain the observance of the principle of equal treatment, he/she increase the entity of the indemnisation;

5) the judge can also order that his decision should be published at charge of the author of the discrimination, for once, on a news paper of national level.

At the end the Legislative Decree provides also that the Ministry of Labour will send to the European Commission the first relation before December 2, 2005 and later every five years. This relation will give all informations regarding the implementation of such directive.

In conclusion, the decree does not fully transpose the framework Directive 2000/78/EC on equal treatment. As a consequence, there are some significant differences between the new italian legal situation and the Directive's provisions: the legislation implementing the Directive is in contradiction with EU law at some points (e.g. as it was already precised on the burden of proof). A further perceived problem relates to the fact that the italian decree applies to all grounds of discrimination the wider definition of permissible justifications for differences in treatment which the Directive applies only in relation to age. It is feared that this might lead to provisions which are contrary to the equal treatment principle.

In terms of the broader policy response to the Directive and anti-discrimination action programme, this has been very limited. No significant political initiative has been taken by the italian parliament; no new body has been set up to promote equal treatment; and no public action has been taken to disseminate information on anti-discrimination measures. Social dialogue on these issues appears to have been neglected. To date, the State has not adopted measures to foster dialogue between the social partners aimed at promoting equal treatment, or to monitor practices in workplaces, collective agreements or codes of conduct. Nor have the social partners been encouraged to conclude agreements introducing anti-discrimination rules.

4. Definition of disability

The most commonly cited definition is that of the World Health Organisation in 1976¹², which draws a three-fold distinction between impairment, disability and handicap, defined as follows. “An impairment is any loss or abnormality of psychological, physiological or anatomical structure or function; a disability is any restriction or lack (resulting from an impairment) of ability to perform an activity in the manner or within the range considered normal for a human being; a handicap is a disadvantage for a given individual, resulting from an impairment or a disability, that prevents the fulfilment of a role that is considered normal (depending on age, sex and social and cultural factors) for that individual”¹³.

According to the United Nations Standard Rules on the equalization of Opportunities for Persons with disabilities¹⁴:

- The term “disability” summarizes a great number of different functional limitations occurring in any population in any country, of the world. People may be disabled by physical, intellectual or sensory impairment, medical conditions or mental illness. Such impairments, conditions or illnesses may be permanent or transitory in nature.

- The term “handicap” means the loss or limitation of opportunities to take part in the life of the community on an equal level with others. It describes the encounter between the person with a disability and the environment. The purpose of this term is to emphasize the focus on the shortcomings in the environment and in many organized activities in society, for example, information, communication and education, which prevent persons with disabilities from participating on equal terms.

In 1980, the World Health Organization adopted an international classification of impairments, disabilities and handicaps, which suggested a more precise and at the same time relativistic approach. The International

¹² World Health Organisation. Document A29/INFDOCI/1, Geneva, Switzerland, 1976

¹³ M.R. Saulle, *The Disabled Persons and the International Organizations*, International Documentation Ent. 1981, La Sapienza, Roma. P. 488-493.

¹⁴ M.R. Saulle, *Le norme standard sulle pari opportunità dei disabili*, ESI, Napoli, 1993.

Classification of Impairments, Disabilities, and Handicaps¹⁵ makes a clear distinction between “impairment”, “disability” and “handicap”. It has been extensively used in areas such as rehabilitation, education, statistics, policy, legislation, demography, sociology, economics and anthropology. Some users have expressed concern that the Classification, in its definition of the term “handicap”, may still be considered too medical and too centred on the individual, and may not adequately clarify the interaction between societal conditions or expectations and the abilities of the individual. Those concerns, and others expressed by users during the 12 years since its publication, will be addressed in forthcoming revisions of the Classification.

As a result of experience gained in the implementation of the World Programme of Action and of the general discussion that took place during the United Nations Decade of Disabled Persons, there was a deepening of knowledge and extension of understanding concerning disability issues and the terminology used. Current terminology recognizes the necessity of addressing both the individual needs (such as rehabilitation and technical aids) and the shortcomings of the society (various obstacles for participation).

It’s also important to underline the definition of disability contained in the Draft Convention on the rights of disabled persons, presented at the United Nations by Prof. Maria Rita Saulle on behalf of Italy. Art. 1 provides: *“For the purposes of the present Convention, the term disabled shall mean any person who, due to a physical or mental disability, either congenital or acquired, of a lasting or permanent character, is not able to secure itself, in an autonomous way, conditions for a normal individual and social life”*.

With reference to the Italian legislation, frame-law n. 104/92, which is the basis of current legislation regarding the rights of disabled persons, ensures a clear definition of a disabled person (art. 3.1, *“Persons*

¹⁵ World Health Organization, *International Classification of Impairments, Disabilities, and Handicaps: A manual of classification relating to the consequences of disease* (Geneva, 1980).

entitled”), following the WHO definition: “A *disabled person is anyone who has a physical, mental or sensory impairment, of a stable or progressive nature, that causes difficulty in learning, establishing relationships or obtaining employment and is such as to place the person in a situation of social disadvantage or exclusion*”. People are not called “severely disabled” but disabled people with severe impairments, thereby using an expression that indicates an advanced and dynamic outlook of the psychic, physical and relational condition of a disabled person and thereby overcoming the old and pseudo-scientific static conception of disability.

5. Direct-Indirect discrimination

Italian labour law lays down general principles of equality of treatment and of prohibition of discrimination while drawing a sharp distinction between them. Whilst the former principle requires that equal situations must receive equal treatment - eg that the same remuneration must be paid for the same work - the latter requires that different situations must be treated equally - ie that any difference, even if very marked, must be ignored.

Article 3 of the Italian Constitution states that: “(1) *All citizens have equal social status and are equal before the law, without regard to their sex, race, language, religion, political opinions, and personal or social conditions*”. With regard to equal treatment in employment, article 36 states that: “*Workers are entitled to remuneration commensurate with the quantity and quality of their work ...*” This principle of “fair pay” can be established only by collective bargaining.

As regards banning discrimination, Italian legislation, in line with art. 2 of the Directive 2000/78/EC distinguishes between direct and indirect discrimination. According to the quoted Decree of 9 July 2003, n. 216 (art. 2) the prohibition of direct discrimination requires employers selecting employees or deciding their conditions of employment to ignore

differences among them which have no bearing on their ability to perform the work (such as gender, race, and religion). Prohibition of indirect discrimination obliges employers to ignore differences, even if they are relevant to the content of the work, which are not directly but only indirectly connected with discrimination (such as automatic promotion after a certain period in employment, which penalises women who take time off work for maternity leave). Clauses in collective agreements which breach the principle of non-discrimination may be annulled by law.

6. Treatment of reasonable accomodation

As art. 5 of the Directive 2000/78/EC is concerned, in order to guarantee compliance with the principle of equal treatment in relation to people with disabilities, “reasonable accomodation” shall be provided. This means that employers shall take appropriate measures, where needed in a particular case, to enable a person with disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a “disproportionate burden” on the employer. This burden shall not be disproportionate when it is sufficiently remedied by measures within the framework of the disability policy of the member State concerned.

This provision is already covered in Italy by the precedent legislation, in particular by Frame-law, 5 february 1992 n. 104, partially modified by Law May 21 1998 n. 162.

In particular, it must be quoted article 10 of frame-law n. 104 (*“Measures for the benefit of people with severe disabilities”*), which foresees that: 1) municipalities, including consortiums between municipalities and with provinces, unions of municipalities, *comunità montane* [mountain communities] and local health authorities, within the context of the responsibilities for social services assigned to them by Law no. 142 of 8th June 1990, can use their own resources to open *comunità-alloggio*

[community homes] and rehabilitation centres for disabled people in a serious condition, but in so doing they must continue to ensure the rights of the disabled to social integration and access to schooling in the ways required by this Law and respecting the priorities laid down in Law no. 184 of 4th May 1983¹⁶.

2) The facilities referred to in sub-paragraph l) and the activities referred to sub-paragraph m), paragraph 1, of article 8¹⁷, shall be organized in agreement with the “*gruppo di lavoro per l’integrazione scolastica*” [working group for educational integration] referred to in article 15 and with school governing bodies¹⁸.

3) The organizations referred to in paragraph 1 can contribute, by means of appropriate funding and provided the regional authorities agree that their actions are in line with regional programmes, to the establishment and support of *comunità-alloggio* [community homes] and rehabilitation centres for people with severe disabilities, promoted by organizations, associations, foundations, *Istituzioni pubbliche di assistenza e*

¹⁶ Subparagraph 1 is added by Law May 21 1998 n. 162. It establishes that the organizations referred to in paragraph 1 of art. 10 of frame-law n. 104 shall arrange services at protection of disabled persons without a family.

¹⁷ Art. 8 (*Social integration*), of frame-law n. 104, sub-paragraph l and m, foresees that the social integration of disabled people shall be ensured by means of: l) the setting up or adaptation of day-care community rehabilitation and educational establishments to enable temporarily or permanently disabled people who have completed their compulsory schooling, and whose remaining potential has been ascertained as insufficient for them to gain access to suitable forms of employment, to enjoy social contacts. The standards of community rehabilitation establishments shall be set by the Ministry of Health, in agreement with the Ministry for Social Affairs, after consulting the *Conferenza permanente per i rapporti tra lo Stato, le regioni e le province autonome di Trento e di Bolzano* [Standing committee on relations between the State, the regions and the autonomous provinces of Trento and Bolzano] referred to in article 12 of Law no 400 of 23rd August 1988; m) the organization of extra-curricular activities to complement and extend educational activities as an extension of school teaching programmes.

¹⁸ Art. 15 (*Working groups on integration in schools*) of frame-law n. 104 provides that every provincial educational department will set up a working group consisting of: a specialized inspector appointed by the *provveditore agli studi* [director of education], an educational expert to be used under the terms of article 14, paragraph 10 of Law no. 270 of 20th May 1982 and subsequent modifications, two experts appointed by the local authorities, two local health authority experts, three experts appointed by the associations of disabled persons which are most representative at provincial level, designated by the *provveditore agli studi* [director of education] on the basis of criteria established by the Minister of Education.

beneficienza (IPAB) [public welfare and aid organizations], cooperatives and voluntary organizations registered with the regional authorities.

4) The action referred to in paragraphs 1 and 3 of the article can also be implemented by means of the agreements referred to in article 38¹⁹.

5) The geographical location, organization and operation of *comunità-alloggio* [community homes] and rehabilitation centres must be such as to ensure that they can pursue the objective of achieving constant social interaction among the people they host by various means, including action directed at involving public services and volunteers;

6) Approval of the building plans submitted by public or private bodies for buildings intended for the *comunità-alloggio* [community homes] and rehabilitation centres referred to in paragraphs 1 and 3 shall constitute a modification to the local town planning scheme, where the buildings are to be used for the purposes of this Law for a period of at least twenty years and are situated on encumbered sites or sites intended for other specific uses, although the regulations of Law no. 1497 of 29th June 1939 and subsequent modifications, and those of decree Law no. 312 of 27th June 1985, which was converted, with modifications, by Law no. 431 of 8th August 1985, remain applicable. If a building ceases to be effectively used for the purposes specified in this Law before twenty years have elapsed, the site shall be restored to its original purpose under the town planning scheme.

¹⁹ Art. 38 of frame-law n. 104 provides that in order to provide the services required by this Law, municipalities, including those which operate as a consortium, their unions, mountain communities and local health authorities, in their respective areas of responsibility, will utilise the structures and services referred to in article 26, Law no. 833 of 23rd December 1978. Furthermore they will be entitled to draw up appropriate agreements to avail themselves of the services of associations, whether recognized or not, private non-profit making support institutions and co-operatives, on condition that they are able to provide the levels of service, skilled personal and organizational and operational efficiency required.

It's also important to make reference to article 12 of frame-law n. 104 concerning the right to education and training, which stresses that:

- 1.) disabled children of between 0 and 3 years of age shall be guaranteed a place in a nursery;
2. The disabled shall be guaranteed the right to receive education and training in kindergartens, in the ordinary classes of schools of all types and levels, and in universities.
3. The purpose of educational integration shall be to develop the potentials of all disabled people in learning, communication, relationships and social interaction.
4. Exercise of the right to education and training cannot be prevented by learning difficulties or by other difficulties deriving from the disabilities connected with a handicap.
5. The identification of a pupil as disabled and the functional diagnosis shall be followed by the preparation of a detailed report on the child's capabilities and potential for the purpose of drawing up a personalized education plan, to be prepared jointly, with the participation of the disabled child's parents, by the staff of the local health authority and, for each level of schooling, by the school's specialized teaching staff, with the contribution of the teacher responsible for psychological and pedagogical support, identified according to the criteria established by the Minister of Education. The detailed report shall describe the physical, mental and social characteristics of the disabled child, assess his/her emotional reactions and highlight not only the learning difficulties resulting from the disablement and the potential for recovery, but also the capabilities which the child possesses and which must be supported, stimulated and gradually reinforced and developed with respect for the cultural choices made by the disabled person.
6. The production of this initial report on capabilities and potential will be followed by checks to assess the results of the various types of action taken and the influence of the school environment. These checks will be

carried out with the participation of the local health authority, the school and the family.

7. The duties assigned to the local health authorities under paragraphs 5 and 6 will be carried out as described in a relevant guideline and co-ordination document issued under the terms of article 5, paragraph 1, Law no. 833 of 23rd December 1978.

8. The report on capabilities and potential is updated at the end of primary schooling, elementary schooling and lower secondary schooling, as well as during the higher secondary schooling period.

Art. 13 of the Law guarantees that the access by disabled people to ordinary classes of all kinds and to all levels of schooling and university study will be ensured, amongst other means, by the following (without prejudice to the provisions of Law no. 360 of 11th May 1976 and Law no. 517 of 4th August 1977 and subsequent modifications remain applicable):

a) coordinated planning of educational services with health, welfare, cultural, recreational, sport services and with other local activities run by private or public organizations. For this purpose, local authorities, schools and local health authorities, within their specific areas of responsibility, will draw up the programme agreements referred to in article 27 of Law no. 142 of 8th June 1990. Within three months of the date on which this Law comes into effect, by decree issued by the Minister of Education, in agreement with the Ministers for Social Affairs and Health, guidelines will be provided for the programme agreements to be drawn up. The aim of these programme agreements will be to jointly set up, implement and monitor personalized educational, rehabilitative and social interaction programmes and to achieve forms of integration between school and complementary extra-curricular activities. The agreements will also establish the requirements which must be met by public and private organizations wishing to take part in the co-ordinated collaboration activities;

b) the supply to schools and universities of technical equipment, teaching aids and any other form of technical aid, including individual aids and facilities to ensure the freedom of disabled people to exercise their right to education, to be achieved by various means, including agreements with specialized establishments providing pedagogical consultancy and advice on how to produce and adapt specific teaching materials;

c) the planning by universities of action which is appropriate to the needs of the person and the peculiarities of the individual's curriculum;

d) the appointment, by decree to be issued by the Minister for Universities and Scientific and Technical Research within three months of the date on which the Law comes into effect, of professional interpreters to universities to allow non-hearing pupils to attend these establishments and participate in the learning process;

e) carrying out the experiment described in Presidential Decree no. 419 of 31st May 1974 in classes attended by disabled pupils.

2. In order to achieve the aims of paragraph 1, local authorities and local health authorities may also provide for the organization and operation of nurseries to be adapted in such a way as to meet the needs of disabled children, so that the recovery, social interaction and integration process can begin early, and may also assign specialized teaching staff and specialized managers and assistants.

3. Without prejudice to the obligation, under the terms of Law no. 616 of 24th July 1977, and subsequent modifications, for local authorities to provide assistance which allows pupils with physical and sensory disabilities to be independent and communicate, complementary activities will be guaranteed in schools of all kinds and levels by the appointment of specialized teachers.

4. The number of support teacher posts in higher secondary schools will be determined by reference to the number of teachers in service on the date on which this Law comes into effect, so that a ratio can be established which is at least equal to that provided in other levels of education and is

permitted by the financial resources provided for this purpose under article 42, paragraph 6, sub-paragraph h).

5. In lower and higher secondary schools, teaching support activities, with priority given to the experimental actions referred to in paragraph 1, letter e), will be carried out by specialized support teachers in the subject areas identified in the report on capability and potential and in the resulting personal educational plan.

6. The support teachers become jointly responsible [with the teachers] of the units and classes in which they teach; taking part in the drawing up of educational and teaching plans and in the planning and monitoring of the activities which are the responsibility of *consigli di interclasse* [interclass committees], *consigli di classe* [class committees] and teachers' committees.

Finally, it is relevant article 14 of frame-law n. 104 (*Methods by which integration will be achieved*) which establishes that the Minister of Education will be responsible for ensuring the training and updating of teaching staff, to provide them with knowledge about how to ensure the integration of disabled pupils in school, under the terms of article 26, Presidential Decree no. 399 of 23rd August 1988, applying the methods for co-ordinating decisions with the Minister for universities and scientific and technical research specified in article 4, Law no. 168 of 9th May 1989. The Minister of Education will also provides for the following:

- a) implementing systematic [professional] guidance activities, specifically directed at disabled people to begin no later than the first year of lower secondary education;
- b) organizing educational and teaching activities in a way which allows for flexibility in the structuring of teaching units and classes, even leaving room for an open class structure, in order to allow for personalized educational programmes;
- c) ensuring the continuity of education throughout the various levels of schooling, providing for forms of obligatory consultation between teachers

in primary and secondary education and for the greatest possible richness of the disabled person's educational experience in establishment of all kinds and levels, allowing the disabled to complete compulsory schooling even as far as their eighteenth year of age. In the interest of the pupil, subject to a decision by the teachers' committee, after consultation with the experts referred to in article 4, paragraph 2, sub-paragraph 1) of Presidential Decree no. 416 of 31st May 1974, on receipt of a proposal made by the class or interclass committee, he/she can be allowed to repeat a specific year for a third time.

2. The curricula of the specialization establishments referred to in article 4 of Law no 341 of 19th November 1990 offering the secondary school teacher diplomas will include, within the limits of the budgets already assigned under the terms of current legislation for the drawing up of these curricula, optional courses relating to the integration of disabled pupils, [the content of] which will be determined in accordance with article 4, paragraph 3, of the aforesaid Law no. 341 of 1990. The specialization diploma obtained under the terms of the aforesaid article 4 must specify whether the teacher has taken the exams which relate to the teacher support activities in the subject for which the diploma is awarded, in which case the specialization qualification will allow the teacher to work as a support teacher.

3. The curriculum for the degree course referred to in article 3, paragraph 3, of the aforesaid Law no. 341 of 1990 includes, within the limits of the budgets already assigned under the terms of current legislation for the drawing up of degree course curricula, optional courses relating to the integration of disabled pupils in schools. The graduate diploma for primary and elementary school teachers referred to in article 3, paragraph 2, of the aforesaid Law no. 341 of 1990, is only valid as a qualification to be admitted to competitive entrance examinations for support teachers if the corresponding examinations have been taken, these examinations being considered as obligatory within the aforementioned curriculum drawn up

under the terms of article 3, paragraph 3, of the same Law no. 341 of 1990, for teachers preparing to work as support teachers.

4. The optional courses included in the specialization school curricula referred to in paragraph 2, and the degree courses referred to in paragraph 3, can even be taught by specialized organizations or institutes which are approved by the universities, which will regulate the way in which exams are taken and monitored. The lecture giving the specialization courses must be graduates who also hold the specialization diploma.

5. Until such a time as article 9 of the said Law no. 341 of 1990 is applied for the first time, specialization schools will be covered by the provisions of Presidential Decree no. 417 of 31st May 1974 and subsequent modifications, Presidential Decree no. 970 of 31st October 1975, and article 65 of Law no. 270 of 20th May 1982.

6. The use as support teachers of teachers who do not have the required specialization qualifications is only permitted where there are no specialized subject-specific or non-subject-specific teachers.

6. Positive actions

Positive action has the aim to combat against the discrimination by means of “special temporary measures”; they can be of different kinds and they are provided by art. 3.2 of the Italian Constitution which foresees: *“It is the duty of the republic to remove all economic and social obstacles that, by limiting the freedom and equality of citizens, prevent full individual development and the participation of all workers in the political, economic, and social organisation of the country”*.

Regarding disabled persons positive action can be very different, including accommodation, arrangement in the place of work, transport, housing and so on.

The Law of May 21 1998 responds completely to the necessity to promote disabled persons by means of positive actions. As the Law n. 162 is

concerned, one has to remark that its aim is to amend and fulfil the lacks of the frame-law of 1992 providing some interventions in favour of persons in conditions of severe disabilities. In fact it shall: 1) provide some new concrete interventions and services; 2) realize some sperimental projects; 3) promote the inquests and the collection of statistical data regarding the disability; 4) gather every three years a national conference on the politics if disabilities. Moreover the law is destined to the so called “territorial bodies” (enti territoriali) which have specific competences to promote, to draft programs and to realize services relating to disability.

During the first phase of its implementation this law was financed directly by the State (Ministry of Labour and Social Policy), which has transferred the financial resources to the territorial bodies (till year 2000). Actually the same territorial bodies provide by themselves to funding.

The aims of the interventions regard: different forms of personal assistance; service of personal help; services of accommodation in emergency of short periods; partial remboursement of expences for assistance. Territorial bodies are obliged to send to the Italian Parliament a relation in order to refer about the way of utilisations of financial resources. Shortly, in order to better specify the scope of law, one has to stress that the financial resources will be used for the personal help, domiciliary assistance, housing, centres of rehabilitation and education.

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