REPORT ON MEASURES TO COMBAT DISCRIMINATION
Directives 2000/43/EC and 2000/78/EC

COUNTRY REPORT 2013

ITALY

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State of affairs up to 1st January 2014

This report has been drafted for the **European Network of Legal Experts in the Non-discrimination Field** (on the grounds of Race or Ethnic Origin, Age, Disability, Religion or Belief and Sexual Orientation), established and managed by:

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INTRODUCTION

0.1 The national legal system

Explain briefly the key aspects of the national legal system that are essential to understanding the legal framework on discrimination. For example, in federal systems, it would be necessary to outline how legal competence for anti-discrimination law is distributed among different levels of government.

The Italian legal framework guaranteeing equal treatment is mainly based on statute law in the form of acts of parliament or acts of the same force that originate in a decision of the national parliament (legislative decrees). Case law has played quite a marginal role until recently. This was certainly the case before the transposition of the Directives, when quite advanced anti-discrimination rules were contained in a legislative decree of 1998[1] that covered immigration generally (and the lack of visibility of anti-discrimination provisions, dispersed throughout this piece of legislation that was devoted to another subject, was indeed problematic). Only recently have we seen significant litigation in the field, and mainly concerning discrimination based on nationality against third country nationals in the field of social advantages, access to employment and to services available to the public.

The fact that the current state of affairs must be evaluated by looking primarily at statute law does not mean that other sets of legal rules are not potentially relevant. However, such relevance is indeed only potential, and adequate legal protection can be guaranteed only through reference to positive statutory rules. This applies particularly with regard to the ability to enforce the equality principles contained in the Constitution. Notwithstanding the theoretical possibility of basing a civil action (for instance in tort) on the violation of the Constitution's general equality provision, this has never been clearly accepted by the courts.

Despite the bold statement in Article 3 of the Italian Constitution of every citizen's right to equal social dignity and to equality of treatment, the legislator has never adopted a specific law forbidding discrimination that implements this principle of equality *per se*. The only exception was the ban on discrimination in labour law provided by Article 15 of the 1970 Workers' Act, which was later amended to cover other grounds of discrimination such as sex, race, language, religion and political opinion included in an open-ended list.

Indeed, the first legislation adopted to forbid discrimination was issued to implement international conventions (such as Racial Discrimination Act 654 of 13 October 1975)[2] or European laws (such as Sexual Discrimination Act 903 of 9 December

[1] Legislative Decree *25 July 1998, no. 286, Consolidated Act on Migration and treatment of Aliens.*
[2] Later amended by the Act of 20 May 1993 and Article 13 of Act 85/2006. It is worth mentioning that the criminal law approach of this law has had little success: it has not prevented violations, and alleged perpetrators have all too rarely been found guilty.

1977). Moreover, Article 44 of Legislative Decree 286/1998, which instituted a specific civil action against discrimination based on race, colour, descent, national or ethnic origin and religious belief in all instances where either a private entity or a public body has caused discrimination ('…the judge may order the cessation of the detrimental behaviour and adopt any other adequate measure'), reflects its international inspiration as discrimination is defined in terms which recall the definition used by the 1965 UN Convention on the Elimination of All Forms of Racial Discrimination, and its scope of application is limited to fundamental rights.

Italy has also ratified the UN Convention on the Rights of Persons with Disabilities by Act 18/2009. However, the Convention's impact on national law has not been of much relevance so far. This can be explained with reference to the special system for incorporating international treaties, which consists of an *ad hoc* law known as an 'order of enforcement'. An order of enforcement is a very short provision, stating that 'full and entire application is given to the treaty...'. This is considered a 'special' system of incorporation because the international treaty is not rewritten in a domestic act, but it can be applied directly by judges or administrative authorities if the treaty is self-executing: i.e. if its provisions can be applied without the need to modify existing national laws. This system of incorporation ensures strict coherence between national law and international treaties (with regard to their interpretation and adherence to the *life* of treaties as influenced by reservations to them or their expiry); on the negative side, it tends to mean that knowledge of international provisions of this kind is less widespread among jurists who are not international law experts. As a consequence, many lawyers do not refer to international law in their petitions and judges (in the lower courts especially) do not apply it in their decisions.

Nowadays the key legislative provisions are two legislative decrees enacted by the Government in 2003 in order to implement Directives 2000/43/EC and 2000/78/EC.[3] Legislative Decree 215/2003 covers only racial and ethnic discrimination, while Legislative Decree 216/2003 concerns religion and belief, disability, age and sexual orientation. Moreover, their scope of application is different – the former applies to all the sectors covered by Directive 2000/43/EC, while the latter deals only with employment and occupation as does Directive 2000/78/EC. As far as definitions and remedies are concerned, they provide the same rules.

With regard to sub-national levels of legislation, i.e. the possible relevance of rules promulgated by the Italian regions that have increasingly important law-making powers following the reform of Article 117 of the Constitution, the boundary between the legislative powers of the State and the regions as to employment and discrimination (in particular with respect to equal treatment between men and

[3] *Decreto legislativo 9 luglio 2003, n. 215 Attuazione della direttiva 200014310E per la parità di trattamento tra le persone indipendentemente dalla razza e dall'origine etnica*, *Official Journal* no. 186 of 12 August 2003; *Decreto legislativo 9 luglio 2003, n. 216 Attuazione della direttiva 2000/78/CE per la parità di trattamento in materia di occupazione e di condizioni di lavoro*, *Official Journal* no. 187 of 13 August 2003.

women) is far from being clear. Although the State has exclusive competence regarding the 'determination of the basic standards of welfare relating to those civil and social rights that must be guaranteed in the entire national territory', the new Article 117(7) explicitly establishes that 'regional laws shall remove all obstacles which prevent the full equality of men and women in social, cultural and economic life, and shall promote equal access of men and women to elective office.' The provision thus recognises the power of the regions to legislate on substantive equality, with reference to gender equality.

Although there is no clear reference to the grounds covered by the Directives in the constitutional provisions on sub-national legislative competences, there have been some pioneering experiments at regional level. For instance, in 2004 the Tuscany Region enacted a law prohibiting discrimination on the ground of sexual orientation, although its key provision on equal treatment in the provision of services seems to be applicable also to different forms of discrimination.[4] The validity of this regional law was challenged by the Government before the Constitutional Court, which in a judgment of 2006 quashed the section of the law which imposed (subject to an administrative sanction) an obligation of non-discrimination on the ground of sexual orientation in commercial activities, since the imposition of such obligations falls under the exclusive competence of the State at national rather than regional level, being an infringement of the individual's freedom of contract.[5]

As far as procedures are concerned, since October 2011 the general fast track procedure (Article 702-*bis* of the Civil Procedure Code) has applied to non-discrimination claims. The competence to decide the case is vested in ordinary judges regardless of the legal nature (public or private) of the persons involved.

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

While the growth of case law has been relatively slow, scholars are increasingly dealing with anti-discrimination, on which one can now find a number of relevant publications, while NGOs are increasingly involved in monitoring cases where equal treatment principles have been infringed.

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[4] Tuscany Regional Law *15 November 2004, no. 63, Measures against Discriminations based on Sexual Orientation and Gender Identity, In Burt - Official Journal of Tuscany Region, no. 46 of 24 November 2004.*

[5] Constitutional Court 4 July 2006, no. 253 (other measures contained in the same law introducing actions to combat discrimination in employment were not declared to conflict with the Constitution). On this decision see D. Maffeis, *Offerta al pubblico e divieto di discriminazione,* Milan: Giuffrè, 2007, at 139.

0.2 Overview/State of implementation

List below the points where national law is in breach of the Directives or whether there are gaps in the transposition/implementation process, including issues where uncertainty remains and/or judicial interpretation is required. This paragraph should provide a concise summary, which may take the form of a bullet point list. Further explanation of the reasons supporting your analysis can be provided later in the report.

This section is also an opportunity to raise any important considerations regarding the implementation and enforcement of the Directives that have not been mentioned elsewhere in the report.
This could also be used to give an overview of the way (if at all) national law has given rise to complaints or changes, including possibly a reference to the number of complaints, whether instances of indirect discrimination have been found by judges, and if so, for which grounds, etc.

Please bear in mind that this report is focused on issues closely related to the implementation of the Directives. General information on discrimination in the domestic society (such as immigration law issues) are not appropriate for inclusion in this report.

Please ensure that you review the existing text and remove items where national law has changed and is no longer in breach.

The Directives were implemented by two Legislative Decrees, each followed the wording of one of the Directives: decree 215/2003 and 216/2003. Discrepancies with the Directives can easily go unnoticed by the layperson. The Decrees were introduced without the relevant preparatory work: in the case of the Decree implementing Directive 2000/78 (the 'Omnibus Act') the preparatory documents did not contain specific guidelines, while those referring to the transposition of Directive 2000/43 were very poor. The Decrees did not abolish or consolidate pre-existing anti-discrimination rules, but just added a further legal regime, thus creating a complex legal framework.

Moreover, in 2006 a law was enacted to protect the victims of discrimination on the ground of disability which was based on Article 3 of the Constitution.[6]

A straightforward amendment and consolidation of relevant anti-discrimination law would be appreciated, but it is not on the agenda of the Government or of the main political parties. In any case, the most recent case law on discrimination against migrants shows that lawyers and judges mix legal provisions: nationality

[6] Act of 1 March 2006 no. 67 on Measures for the Protection of Disabled People who are Victims of Discrimination, in Official Journal no. 54 of 6 March 2006.

discrimination cases are dealt with as if they involved the same legal issue as racial discrimination cases so that non-discrimination rules are applied according to which is the most suitable to the case at hand, notwithstanding their respective scope of application, personal or material. In principle, in fact, nationality discrimination falls outside the scope of application of Directive 2000/43/EC. However, NGOs, lawyers, judges and UNAR (the Italian equality body created in accordance with Article 13 of Directive 2000/43/EC) apply Legislative Decree 215/2003 (implementing Directive 2000/43) by analogy with Article 43 of the 1998 Immigration Decree, which prohibits discrimination on several grounds, including national origin.

In this regard it is important to stress that cases of nationality discrimination have constituted the vast majority of cases reported in Italy in recent years. We have to constantly remember that the hostility of certain political actors to ethnic and racial groups perceived as 'different' and for one reason or another 'strange' or 'dangerous' is increasingly translated into formally 'ethnic-blind' regulations (in particular enacted by municipalities) which use various pretexts (requirements regarding residence, nationality, etc.) to try to exclude members of these groups from becoming full members of society. Accordingly, the most significant litigation does not formally deal with ethnic and racial discrimination (for various reasons, the route of proving 'indirect discrimination' is seldom used), but with discrimination on the ground of nationality or other legal categories.

The main discrepancies between the Decrees and the Directives can be considered to be the following:

1. With regard to Directive 2000/43, UNAR, the equality body set up in accordance with Article 13, is not independent as it is totally integrated within the Government: it is actually a department of the Ministry for Immigration and Integration;
2. The new provision on reasonable accommodation inserted into Decree 216/2003, transposing Directive 2000/78, does not give a definition of reasonable accommodation and no guidance is given to public and private employers to apply the duty; moreover no mention is made of the concept of disproportionate burden both in the public and private spheres;
3. It may appear that Italian law allows organisations that are not based on an ethos to discriminate on the ground of religion. Directive 2000/78/EC permits an exception to differences of treatment for 'churches and other public or private organisations the ethos of which is based on religion or belief', while Article 3, paragraph 5 of Legislative Decree 216/2003 specifies only 'churches and other public or private organisations.'[7] Pre-

[7] 'Differences in treatment based on religion or belief and enacted within churches and other public or private organisations do not constitute discriminatory acts where, by reason of the nature of the particular occupational activity carried out by such entities or organisations or of the context in which they are carried out, such religion or belief constitutes a genuine, legitimate and justified occupational requirement.'

existing national rules in this area appear to be more restrictive in admitting exceptions than the Decree, which thus goes beyond the discretion granted to Member States, which may implement Article 4, paragraph 2 only in accordance with existing laws or practices.

0.3 Case-law

*Provide a list of any important case-law in **2013** within the national legal system relating to the application and interpretation of the Directives. (The **older case-law mentioned in the previous report should be moved to Annex 3)**. Please ensure a follow-up of previous cases if these are going to higher courts. This should take the following format:*

➔Please use this section not only to update, complete or develop last year's report, but also to include information on important and relevant case law falling under both anti-discrimination Directives (Please note that you may include case-law going beyond discrimination in the employment field for grounds other than racial and ethnic origin)

Name of the court: Court of Justice of the European Union
Date of decision: 4 July 2013
Name of the parties: Commission v. Italy
Reference number: C-312/11
Address of the webpage: http://www.curia.eu
Brief summary: The Court of Justice (CJEU) ruled on 4 July 2013 that Italy has failed to fulfil its obligations under Directive 2000/78/EC by not implementing expressly article 5 of the Directive and rejected all the arguments raised by the Italian Government. Express reference is made by the Court to the UN Convention on the Rights of Persons with Disabilities both for the definition of disability and for the interpretation of the duty to provide for reasonable accommodation. The Court rejected the basic argument raised by the Italian Government according to which Article 5 of Directive 2000/78/EC was implemented not in legislative decree no. 216/2003 but in other laws already in force even before the adoption of the Anti-discrimination directives. In this regard, the Government referred to Act no. 104/1992, Framework law on care, social integration and rights of disabled people; to act no. 68/1999 on the right to work of disabled people; to Act no. 381/1991 on Social co-operative; and to Legislative decree no. 81/2008 on work health and safety. According to the CJEU while all these laws provide for measures of aid and support, of social integration and protection of disabled, none of them provide for a general duty to provide for reasonable accommodation that is to offer effective solutions to eliminate “the various barriers that hinders the participation of disabled people in professional life […]” (*HK Danmark (Skouboe Werge and Ring)*, C-335/11, point 54). Furthermore the CJEU rejected the “captious” argument concerning the lack of a definition of the concept of disability in Directive 2000/78/EC, recalling both its previous case, *HK Danmark (Skouboe Werge and Ring)*, and the UN CRPD, which

give a definition of disability that national Governments must respect when applying Directive 2000/78/EC.

Name of the court: Regional Administrative Tribunal of Lombardia – Section of Brescia
Date of decision: 28 December 2013
Name of the parties: Muhammadiah v. Comune di Brescia
Reference number: 1176/2013
Address of the webpage:
http://www.asgi.it/public/parser_download/save/tar_lombardia_1176_2013_28122013.pdf
Brief summary: Regional Administrative Tribunal of Brescia has upheld the appeal against Brescia's Plan of local governance opened by 'Muhammadiah', an Islamic Association based in Brescia.

According to the plaintiff, Brescia Municipality had written the contested Plan disregarding the needs of religious communities other than the Catholic community. In particular the Plan had classified the building holding the seat of the association only as an ancient one and not as a religious one. This had the main effect of depriving the association of any services related to the performance of their religious activities.

The first point addressed by the Tribunal concerned the right to legal standing of Muhammadiah. The Tribunal rejected the defendant's argument based on the fact that the claimant was only one of several Islamic associations based in Brescia and could not represent the interests of the whole Islamic community. According to the Tribunal the existence of a plurality of associations is a typical feature of the Islamic religion and cannot lead to the denial of legal standing of each of them, otherwise there would be a denial of justice for a wide range of individual rights.

As far as the merits go, the Tribunal held that the Municipality has a duty to plan the city's public services taking into account the religious communities based in the area, notwithstanding the existence of agreements with them. These sorts of agreements are necessary only when a religious association applies for public contributions but not for the planning of local public services.

The Tribunal partially quashed the city council act approving the Plan of Local Governance ordering the integration of its content.
After this decision the President of the Lombardia Region published a tweet stating that the Region aimed to appeal the judgment to prevent the "spread of the virus".

Name of the court: Regional Administrative Tribunal of Lazio
Date of decision: 4 June 2013
Name of the parties: X. v. Ministero dell'Interno
Reference number: 5568/2013

Address of the webpage:
http://www.asgi.it/public/parser_download/save/tar_lazio_sent_5568_04062013.pdf
Brief summary: Regional Administrative Tribunal of Lazio has shed new light over the powers of a legal guardian of a person with a disability (in Italian "amministratore di sostegno", articles 404 ff of the Italian Civil Code). According to the Court the guardian can apply on behalf of the person with a disability to acquire the Italian Citizenship on ground of naturalization even if the represented person does not have the full capacity to show the willingness to become an Italian citizen and to sign the application.

Therefore the Tribunal has quashed the refusal of the Home Office to examine the application based on the guardian's lack of legal capacity to act on behalf of the person with a disability. The Tribunal has specified that the lack of communication skills cannot hinder the right of the disabled person to express his/her willingness. In that case, it is discrimination on ground of disability contrary to the UN CRPD which states expressly that persons with disability have the right to acquire and change nationality.

According to the Court, the Home Office Officials have to accept the application signed by the guardian and then, in order to verify the willingness of the represented person, they should arrange a special investigation.

Name of the court: Tribunal of Rome
Date of decision: 27 May 2013
Name of the parties: *ASGI, Associazione 21Luglio, Open Society Initiative v. Ministero Interno, Prefettura di Roma, Presidenza Consiglio dei Ministri*
Reference number:
Address of the webpage:
http://www.asgi.it/public/parser_download/save/trib_roma_ordinanza_27052012_impronte.pdf
Brief summary: In this case an Italian Roma citizen filed an appeal asking the judge to order the Government to delete his personal data and to pay compensation for moral damages. His data were collected during a census and an identification process through fingerprinting, occurred in the framework of the "state of emergency" introduced by the Government in three regions (Lombardia, Lazio and Campania), in order to react to an alleged crisis within the settlements known as *campi nomadi*. His action was supported by three NGOs: ASGI, Associazione 21 luglio and Open Society Justice Initiative who however couldn't take part in the proceedings because they were not properly delegated to participate according to Article 5, para. 1 of Legislative decree 215/2003.

The state of emergency was introduced by a decree of May 2008 which was found to be illegal by the *Consiglio di Stato* in 2011 (http://www.asgi.it/home_asgi.php?n=1907&l=it). According to the Court, the identification, fingerprinting and storage of the data of the claimant was discriminatory on ground of race and ethnic origin, because the apparent neutral criterion of the

"inhabitants of the camps" affected primarily and mostly Roma people. The Government was ordered to pay compensation of 8000 Euro for moral damages together with the publication of the judgment in the "Corriere della sera" newspaper. Moreover the Tribunal ordered the Government to delete the claimant's data stored with the same procedure. Finally the Tribunal rejected the request to delete the whole data base since this request was enrolled by the three NGOs which were not allowed to stay in the proceedings. The judgment has become final and has been enforced.[8]

Name of the court: Supreme Court
Date of decision: 11 January 2013
Name of the parties: N/A
Reference number: 601
Address of the webpage: http://www.certidiritti.it/notizie/comunicati-stampa/item/download/23_572e7edd66bfb261ceccd4200aab7de5
Brief summary: In the case at stake a father had challenged the decision of the Minors' tribunal of Brescia giving to a mother the exclusive right of custody over her natural child. One of the appeal's arguments was that the child could not live with the mother and her same-sex partner. The Supreme Court rejected the appeal on the basic argument that the appellant had not shown any scientific proof or empirical data about the danger of growing up in a same-sex couple. On the contrary, such a danger was taken for granted due to the existence of a prejudice against homosexual families. With this judgment the Supreme Court strengthens the case-law on the right to equal treatment of same-sex couples, following what was already stated by the Constitutional Court (Judgment no. 138/2010).

According to the Supreme Court, Articles 29 and 30 of the Italian Constitution on marriage and rights of the children do not rule out that families could be made by same-sex couples. A similar approach was given by the Tribunal of Reggio Emilia in a case of family reunification (Decree of 13 February 2012). No reference was made to the Equality and Non-discrimination principles, to Article 3 of the Italian Constitution on the right to equality, or to the international and European legal framework.

Name of the court: Tribunal of Bologna
Date of decision: 28 August 2013
Name of the parties: X. v. Health service "Sant'Orsola Malpighi"
Reference number: N/a
Address of the webpage:
www.asgi.it/public/parser_download/save/tr_bologna_ord_18062013.pdf
Brief Summary: The case concerned an appeal against the refusal by the Health service "S.Orsola Malpighi" to sign a six months' employment contract with a male nurse, because due to his disability he was unable to attend night shifts. The nurse

[8] As of 28 April 2014 lawyers have asked the Government to show evidence that data have been effectively erased.

was selected after a public competition started in 2010 and concluded in 2012. His physical impairment (night epilepsy) was diagnosed in 2012, during the selection procedure. First of all the Tribunal held that the illness at stake, night epilepsy, amounts to the notion of disability as interpreted by CJEU in *HK Danmark (Skouboe Werge and Ring)* (11 April 2013, C-335/11); second that the vacancy required a healthy worker with full capacity but that the illness was diagnosed in 2012, therefore the nurse made the application in *bona fide*, believing to have all the skills required. Finally the Tribunal found that the refusal to sign the contract amounted to discrimination on ground of disability forbidden by legislative decree no. 216/2003, implementing Directive 2000/78/EC. Moreover the Health service failed to provide for reasonable accommodation according to Article 5 of the EU Directive, for example hiring the disabled applicant without applying him to night shifts. The duty of providing for reasonable accommodation had not been implemented in Italy but the Tribunal applied the Directive's provision directly, with reference also to the UN Convention on the Rights of Persons with Disabilities which in turn provides for a duty of reasonable accommodation. The Tribunal condemned the Health service to the payment of the compensation of damages amounting to the estimated six months' salary, which is what that the claimant would have gained had he been hired.

This case came before the execution of the CJEU judgment against Italy for failure to implement Article 4 of Directive 2000/78/EC on reasonable accommodation and was decided applying directly Directive 2000/78/EC as interpreted by the CJEU, with explicit reference to the CJEU case *HK Danmark (Skouboe Werge and Ring)*. Moreover the UN CRPD and its ratification both by Italy and the European Union were explicitly quoted.

Name of the court: Tribunal of Catanzaro
Date of decision: 15 January 2014
Name of the parties: F and S. v. A.
Reference number: N/A
Address of the webpage: N/A
Brief Summary: The parents of M. claimed for redress of damage caused by the Director of the School (A.) attended by their child (M.) affected by Down's Syndrome. A. had attempted to keep their child out of the external activities promoted by the School and had encouraged the other students not to inform M. about this sort of activities eventually promoted in the future, otherwise they would be annulled for the whole group. Thanks to the strong and public reaction from the students (they published a letter addressed to their schoolmate stating that they preferred staying beside him rather than having activities outside the school), the regional Director of the Education Office disposed a formal investigation on the case and suspended the School's director without remuneration for three months.

According to the Tribunal, the definition of discrimination includes an order to discriminate, which can be challenged through a civil action against disability discrimination according to Article 3 of Law no. 67/2006, with the main purpose to put

an end to the discriminatory behaviour, to remove the discriminatory effects of the behaviour and to claim for the redress of the damage caused by the discriminatory act. However the Tribunal rejects the claim for damages, stating that the law does not include punitive damages but only the redress of actual damages, which have not been proven in the case at stake. In particular the claimants would have had to show the actual violation of human dignity of M. and his family, which they have not. Moreover the Tribunal deems that jurisdictional action should have to play a residual role, in particular when civil actors and institutions are not able to avoid that discriminatory acts take place. Relevant in this case is that the other students and teachers had not followed the order of the Director and in this way they had not committed any act having the effect of discrimination; on the contrary the Education Office had sanctioned the Director. Therefore there has been an order to discriminate without any effects, with sanctions imposed by the Education Office, a strong reaction by civil society no proof of any other damages suffered by the claimant.

Please describe trends and patterns in cases brought by Roma and Travellers, and provide figures – if available.

Until early 2009 no significant anti-discrimination cases were brought by Roma, although anti-Romani hostility is becoming an increasingly significant social and political problem. Roma have a disproportionate visibility in local and national debates on urban crime and suffer a high degree of stigmatisation as a result. For example, a relevant issue is the frequent use by municipalities of ordinances that, although not openly targeting the Roma, are quite clearly aimed at facilitating police actions against them, by for instance criminalising various street-level activities such as begging and the like. Many such ordinances were blatantly illegal[9] until the enactment of the recent reforms that gave the municipalities wider policing powers, and even now serious doubts remain as to their constitutionality given their broad formulation.

However, the traditional Italian reluctance to engage in 'civil rights litigation' was set aside in an important series of cases challenging the ordinances (widely discussed in the media) enacted by the Government following a decree of May 2008[10] introducing a state of emergency in three regions (Lombardy, Lazio and Campania) in order to react to an alleged crisis within the settlements known as *campi nomadi* and that introduced a range of measures, primarily a census and the identification (and fingerprinting) of people living there. The decree and subsequent civil protection

[9] A well-known example in this sense, much debated even in the national press, is represented by the ordinances issued in Florence. On these see A.Simoni-F.Giunta, 'Il diritto e i lavavetri: due prospettive sulle 'ordinanze fiorentine', in *Diritto, Immigrazione e Cittadinanza, 3/2007,* particularly pp. 75 ff.

[10] *Decreto del Presidente del Consiglio dei Ministri 21 maggio 2008,* (*in Gazzetta Ufficiale n. 122 del 26.5.2008, 'Dichiarazione dello stato di emergenza in relazione agli insediamenti di comunità nomadi nel territorio delle regioni Campania, Lazio e Lombardia* (Decree of the President of the Council of Ministers, no. 122 of 21 May 2008, in *Gazzetta Ufficiale*, 26 May 2008, Declaration of a state of emergency in settlements of nomadic communities in the territory of Campania, Lazio and Lombardy).

ordinances (which were renewed after their initial period of validity expired) do not mention Roma and Sinti populations, and the Minister of the Interior constantly stressed in his statements that the decree was 'ethnic blind' and simply applied to people actually living in the camps. However, the decree refers to 'nomads' (the exact phrase is '*comunità nomadi*', 'nomadic communities') in a way which reflects current use in both popular and administrative Italian language of the term 'nomad' as synonym for Roma, without any reference to an actual travelling lifestyle. It is worth pointing out that the decree was issued after a long political debate which constantly and unambiguously addressed the Roma.

Against this background, several anti-discrimination suits were filed in ordinary and administrative courts by individuals supported by NGOs (including the European Roma Rights Centre) challenging the legality of the decree (and of the measures implemented on its basis) on various grounds: violation of the law on the introduction of a state of emergency, violation of rules on identification measures taken by the police, and use of a category – 'nomads' – which in this context is ethnic. While a case brought before the ordinary court of Mantova was dismissed on jurisdictional grounds, a first ruling by the administrative court of Rome ruled the ordinances partially illegal; this verdict was upheld in 2011.

Policies against Roma settlements implemented by several municipalities are often controversial, criticised by NGOs for their harshness and by centre-right parties for their inefficacy. Only in one case the existence of the camps themselves has been challenged before the Court of Rome. The case concerned a large settlement in the outskirts of the city and was brought by two NGOs, ASGI and *Associazione 21 Aprile*, which claimed that the discriminatory treatment of the Roma had caused social exclusion thus resulting in racial discrimination prohibited by Directive 2000/43. The case is still pending and will most likely be decided on the merits in 2014.[11]

[11] http://www.asgi.it/home_asgi.php?n=2365&l=it.

1 GENERAL LEGAL FRAMEWORK

Constitutional provisions on protection against discrimination and the promotion of equality

a) Briefly specify the grounds covered (explicitly and implicitly) and the material scope of the relevant provisions. Do they apply to all areas covered by the Directives? Are they broader than the material scope of the Directives?

General protection against discrimination is established by Article 3 of the 1948 Constitution, which recognises equal dignity and equality under the law without distinction on the grounds of sex, race, language, religion (belief is not mentioned *per se*), political opinion, and personal or social conditions. This article also includes the principle of substantive equality and calls on the State to remove the social and economic obstacles which limit the freedom and equality of citizens and prevent the full development of the human being.

The grounds of discrimination listed in Article 3 are more restricted than those mentioned in Article 19 TFEU. However, the expression 'personal or social conditions' potentially allows an open interpretation, covering for instance ethnic origin, sexual orientation, age and disability, although the lack of clear case law does not permit a definite answer. Disability is not mentioned in the general equality clause, but people with disability, referred to in the antiquated phrase '*inabili e minorati*', have the right to education and vocational training under Article 38.

The situation becomes more complicated with regard to discrimination on the ground of religion. The 1948 Constitution mentions religion within the general equality clause contained in Article 3. It also establishes (Article 8, section 1) that 'All religious beliefs are equally free before the law', and (Article 19) that '[all] shall be entitled to profess their religious beliefs freely in any form, individually or in association with others, to promote them, and to celebrate their rites in public or in private, provided that they are not offensive to public morality.'[12] However, practical enforcement of the general principle of religious freedom has been somewhat difficult because of its coexistence with other provisions deeply marked by the strong role of the Catholic Church. The Constitution establishes (Article 7, section 1) that 'The State and the Catholic Church are both, each within its own order, independent and sovereign'. The same article establishes that the relationship between the State and the Catholic Church is regulated by the Lateran Treaty (*Patti lateranensi*) with the Holy See of 1929, amendment of which does not require a constitutional revision. This Treaty makes Catholicism the official religion of the State, but some provisions establishing privileges for Catholicism were incompatible with the fundamental rights introduced in 1948 and were reviewed by the Constitutional Court. The Court was, for instance,

[12] G .Casuscelli, '*Uguaglianza e fattore religioso*', in *Digesto IV, Discipline pubblicistiche,* Torino, UTET, vol. XV, 1999, pp. 428 ff.

called to evaluate whether restrictions on the appointment, re-appointment and tenure of lecturers in Catholic universities (which are recognised by the Italian State) were compatible with the freedom of academic teaching, since authorisation is required from the Holy See 'in order to ensure that there are no objections from the moral and religious points of view'. The Court[13] upheld this view, considering it as the statement of 'a principle intrinsic to the liberty of instruction and of religion, applicable to any religion or ideology'. The *Lombardi Vallauri* case[14] decided by the ECHR in 2009 focused on procedural guarantees and so does not immediately pose a challenge to this approach.

With regard to other religions, the Constitution establishes (Article 8) that they can 'organise themselves according to their own charters, provided that these are not in conflict with the Italian legal system' and that their 'relations with the State shall be regulated by the law on the basis of agreements with their representative bodies', thus leaving open the possibility of more favourable treatment for religious associations that have signed those agreements. This provision was implemented after the 1984 revision of the Lateran Treaty, which corrected some of the major discrepancies with the Constitution and was followed by the introduction of the first agreements – transposed in statutes approved by Parliament – with the representative bodies of some religious denominations (the Adventists, the Waidensian Movement, the Jewish Communities, the Assemblies of God, the Baptist Movement, and the Lutheran Church). These agreements regulate the effects for the Italian State of the internal regulations of these denominations, while solving several problems specific to each of these, for instance holidays.[15] Within the scope of application of Directive 2000/78, it is therefore clear that the employer enjoys wider discretion to refuse to take into consideration specific needs relating to a religion or belief when the employee is a member of a 'religion without an agreement'. Further problems exist outside employment in any situation where there is a degree of judicial and administrative discretion, as for instance proved by the outright and explicit denial by some local authorities of administrative authorisation to organise any kind of Muslim place of worship. This piecemeal approach means that legal protection of freedom of religion in Italy is still unsatisfactory, primarily as regards denominations that have not been able to sign agreements or to have them transposed in an act of Parliament. Besides Islam, this is the case for instance of

[13] Constitutional court, judgment 1951/1972.
[14] ECHR, 20 Oct. 2009, *Lombardi Vallauri v Italy* (rec. no. 39128/05).
[15] *Law 11 August 1984 no. 449 Norme per la regolazione dei rapporti tra lo Stato e le Chiese rappresentate nella Tavola Valdese; Law 22 November 1988 no. 516 Norme per la regolazione dei rapporti tra lo Stato e l'Unione Italiana delle Chiese Cristiane Avventiste del settimo giorno; Law 22 November 1988 no. 517 Norme per la regolazione dei rapporti tra lo Stato e le Assemblee di Dio in Italia; Law 8 March 1989 no. 101 Norme per la regolazione dei rapporti tra lo Stato e l'Unione delle Comunità ebraiche italiane; Law 5 October 1993 no. 409 Integrazione dell'intesa stipulata nel 1984 con la Tavola Valdese; Law 12 April 1995 no. 116 Norme per la regolazione dei rapporti tra lo Stato e l'Unione delle Comunità Evangeliche Battiste Italiane; Law 29 November 1995 no. 520 Norme per la regolazione dei rapporti tra lo Stato e le Comunità evangeliche luterane.* Agreements have been signed with Buddhists and Jehovah's Witnesses, but they have not yet been transposed into law.

Jehovah's Witnesses, whose situation is thus still regulated by the antiquated 1929 act on 'tolerated cults'.[16] The failure to sign an agreement with Muslims is commonly explained by a mix of political reasons and difficulties linked to the absence of a unified body representing Islamic communities.

In order to define the status of religious denominations that have not executed agreements with the State, Parliament has spent considerable time discussing bills which give effect to the principles of Article 9 of the European Convention on Human Rights (ECHR) and other relevant international instruments, while trying to identify a minimum set of guarantees that any religious denomination should enjoy in the absence of any agreement whatsoever with the State.

Other articles of the Constitution concern specifically sex discrimination in labour law (Article 37, paragraph 1), equal pay for equal work of minors (Article 37, paragraph 3) and equal access of women and men to elective office (Article 51).

b) Are constitutional anti-discrimination provisions directly applicable?

Constitutional provisions are in general directly applicable. As far as the principle of equality is concerned it has played a crucial role in the Italian system. The inclusion in the Constitution of a general statement emphasising the principle of equality (Article 3)[17] has allowed the Constitutional Court to address all disparate treatment that is not based upon a reasonable case-by-case differentiation.

c) In particular, where a constitutional equality clause exists, can it (also) be enforced against private actors (as opposed to the State)?

According to some authors, constitutional equal treatment provisions are also binding on legal persons and associations and within relationships governed by private law: this is particularly important since it would allow for a broad interpretation of the anti-discriminatory provisions contained in labour legislation.

[16] *Law 24 June 1929, no. 1159 Measures on exercise of authorised religions and on marriage celebrated according to them.*

[17] Article 3.1 states that 'All citizens possess an equal social status and are equal before the law, without distinction as to sex, race, language, religion, political opinions, personal and social conditions.' Article 3.2 provides that 'It is the duty of the Republic to remove all economic and social obstacles which, by limiting the freedom and equality of citizens, prevent the full development of the individual and the participation of all workers in the political, economic and social organisation of the country.' The list of forbidden distinctions included in Article 3.1 is not a closed list but affirms a presumption of discrimination with regard to any different treatment based on those grounds. Moreover, the 'social origin' ground listed in Article 3.1 may be construed to include other implicitly forbidden forms of discrimination that everyone is entitled to be protected against. See, regarding disability, the decision of the Constitutional Court, no. 406/1992 of 21 October 1992; regarding sexual orientation decision no. 138/2010 of 14 April 2010 and regarding age decisions no. 256/2002 of 17 June 2002 and no. 125/1992 of 16 March 1992; http://www.cortecostituzionale.it/default.do.

Notwithstanding the open attitude of some scholars, the Supreme Court still holds quite a restrictive position,[18] and it is very difficult to find much case law regarding the application of the non-discrimination principle within private entities, in particular in comparison with the huge amount of case law on the application of the same rule by public authorities. In particular the Supreme Court has declared that there is no general constitutional duty of equal treatment directly binding on the employer.[19] This is an orientation that will be likely to change due to the recent explicit introduction into the Constitution (Articles 51 and 117) of the principle of equal treatment between men and women beyond the general equality clause of Article 3.

[18] Supreme Court, no. 4177 of 11 November 1976; Supreme Court, no. 6030 of 29 May 1993; Supreme Court, no. 4570 of 17 May 1996.
[19] Supreme Court (*Corte di Cassazione*), no. 1101 of 4 February 1987, confirmed by Supreme Court, no. 6448 of 8 July 1994 and Supreme Court no. 4570 of 17 May 1996, after a controversial decision by the Constitutional Court (*Corte Costituzionale*), no. 103 of 22 February 1989.

2 THE DEFINITION OF DISCRIMINATION

2.1 Grounds of unlawful discrimination

Which grounds of discrimination are explicitly prohibited in national law? All grounds covered by national law should be listed, including those not covered by the Directives.

If one puts together the Immigration Decree and the Decrees transposing the Directives, the grounds of discrimination prohibited by statute law (beyond the equal treatment provisions contained in the Constitution) coincide with those covered by the Directives, with the relevant addition of discrimination on the ground of national origin and colour. Moreover, a specific set of rules concern discrimination on the ground of sex.

A statutory principle of equal treatment was in fact already in force in the Italian legal system before the enactment of the Decrees transposing the Directives, due to the anti-discrimination provisions contained in the 1998 Immigration Decree which provides in its Article 43 a definition of direct and indirect discrimination that is generally in line with the Directives, applicable to the grounds of race and colour, ethnic origin, religious beliefs and practices (non-religious belief is not dealt with as such), and national origin (which is broadly interpreted, thus including also nationality). The Immigration Decree contains a 'black list' of discriminatory acts, roughly corresponding to the scope of application of the Race Directive (although the list in the Immigration Decree is non-exhaustive).

Besides these rules, some criminal law provisions contained in a 1993 Act sanction 'hate speech' and racist propaganda[20] and provide harsh punishments for 'acts of discrimination on racial, ethnic, national or religious grounds'.

Discrimination on grounds of nationality is specifically prohibited under ILO Convention no. 143 of 1975 concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, according to which Italy ensures equality of opportunity and treatment for legally resident migrant workers and their families.[21]

In addition a pre-existing set of statutory rules on discrimination has been in force in the labour law field since 1970. On the basis of the Workers' Act of 1970[22] it was illegal – even before the enactment of the Directives – to dismiss or discriminate, even indirectly, against a worker in the assignment of qualifications or duties,

[20] Law 25 June 1993, no. 205, Conversion into Law with amendments of Law Decree 26 April 1993 no. 122 Urgent Measures on discrimination on grounds of race, ethnic origin and religion.
[21] ILO Convention of 24 June 1975 no. 143, ratified by Act 158 of 10 April 1981.
[22] Law 20 May 1970, no. 300, Measures on rights of freedom and dignity of workers, on rights of Trade Unions and Placement; in Official Journal no. 31 of 27 May 1970, Article 15, para. 2.

transfers, or disciplinary proceedings, or to let him/her suffer other harm for political, religious, racial and linguistic reasons or because of gender. The Workers' Act has been amended by the explicit addition of age, disability, sexual orientation and personal belief to the grounds that make dismissal or other prejudicial treatment unlawful (as described above). This was not the case for 'ethnic origin', for reasons which are not clear. However, differences between the concepts of race and ethnic origin are not so sharp in Italy as to make the absence of the latter in the Workers' Act less important in practice, especially against the background of the broad equality clause of the Constitution.

A dismissal based on such grounds is explicitly declared as void,[23] and in the Italian legal system this entails both the award of damages and a court order requiring the employer to reinstate the worker in his/her employment.[24]

The Legislative Decrees superimposed provisions on these rules, which have not been repealed, so that the pre-existing anti-discrimination rules coexist with the provisions implementing the Directives.

Moreover, in 2006 law no. 67 was enacted to protect the victims of discrimination on the ground of disability.

2.1.1 Definition of the grounds of unlawful discrimination within the Directives

a) How does national law on discrimination define the following terms: (the expert can provide first a general explanation under a) and then has to provide an answer for each ground)

Italian law on discrimination, both the Legislative Decrees and the pre-existing statutes, does not contain any definition of these terms, which in the case of the Legislative Decrees are simply borrowed from the Directives.

i) racial or ethnic origin,

No definition is provided by Legislative Decree 215/2003 implementing Directive 2000/43/EC or by other anti-discrimination provisions. Even Recital 6 of Directive is not reflected in Legislative Decree 215/2003.

ii) religion or belief,

[23] Article 4 of Law 15 July 1966, no. 604, Measures on individual dismissal, in Official Journal 6 August 1966, no. 95 as amended in 1970 and 1990.
[24] A reinstatement order following unfair dismissal ordinarily applies only to employers with a minimum number of workers (i.e. in the case of small companies the only remedy is represented by damages), but this limit does not apply to discriminatory dismissals.

No definition is provided by Legislative Decree 216/2003 implementing Directive 2000/78/EC. Other terms are used in the pre-existing anti-discrimination provisions such as 'religious faith' (Article 1 of Workers' Act 300/1970 protecting workers' freedom of opinion) and 'religious belief and practices' (Article 43 of Legislative Decree 286/1998). Even these terms are not defined.

iii) disability. Is there a definition of disability at the national level and how does it compare with the concept adopted by the Court of Justice of the European Union in Joined Cases C-335/11 and C-337/11 Skouboe Werge and Ring, Paragraph 38, according to which the concept of 'disability' must be understood as: "a limitation which results in particular from physical, mental or psychological impairments which in interaction with various barriers may hinder the full and effective participation of the person concerned in professional life on an equal basis with other workers" (based on Article 1 UN Convention on the Rights of Persons with Disabilities)?

No definition is provided by Legislative Decree 216/2003 implementing Directive 2000/78/EC or by other anti-discrimination provisions.

However a definition is given by other legal instruments which are based on the social model of discrimination which has a wide scope of application, since it is not limited to medical impairments but includes socially created barriers.

First of all a definition is provided for by Article 3, para. 2, of Act 104/1992 (Framework law on care, social integration and rights of disabled people),[25] according to which 'A disabled person is anyone who has a physical, mental or sensory impairment, of a stable or progressive nature, that causes difficulty in learning, establishing relationships or obtaining employment and is such as to place the person in a situation of social disadvantage or exclusion.'

Moreover the definition provided by Article 1 of the UN Convention on the Rights of Persons with Disabilities, ratified by Italy through Act 18/2009, is now part of our legal order. Owing to this Convention and in particular to the concept of 'interaction with various barriers' a social model of disability has been formally introduced into national law, which is in line with the CJEU judgment *Skouboe Werge and Ring*.

Furthermore, in *Skouboe Werge and Ring*, as well in the previous *Chacón Navas* case the definition of disability concerns 'professional life', while both the definitions provided by the UN Convention and Act 104/1992 apply to any kind of 'participation in society'.

[25] Framework Law 104 of 5 February 1992 on the care, social integration and rights of disabled persons, Supplement to *Official Journal* no. 39 of 17 February 1992.

iv) age,

No definition is provided by Legislative Decree 216/2003 implementing Directive 2000/78/EC nor by other anti-discrimination provisions.

v) sexual orientation?

No definition is provided by the Legislative Decree implementing Directive 2000/78/EC or by other legislation. The majority of scholars do not distinguish between behaviour and identity or emotional and sexual aspects: 'sexual orientation' therefore generally includes homosexual, heterosexual and bisexual orientation.

At regional level legislation exists regarding discrimination on the grounds of sexual orientation, but this does not have a clear definition of the term: e.g. the title of Tuscan Act 63/2004 mentions 'gender identity' alongside 'sexual orientation' ('Provisions against discrimination on the ground of sexual orientation or gender identity') while the expression 'transsexual and transgender' is employed in the text (Article 2, paragraph 3). No definition is given of these different terms, but based on the aim of inclusive protection pursued by the legislator, we can give them a wide interpretation.

b) Where national law on discrimination does not define these grounds, how far have equivalent terms been used and interpreted elsewhere in national law? Is recital 17 of Directive 2000/78/EC reflected in the national anti-discrimination legislation?

There is no direct counterpart of recital 17 in Italian anti-discrimination legislation, although the provision on the 'work suitability test' could be seen as reflecting basically the same concern.

i) racial or ethnic origin

No definition is provided elsewhere in national law. It is worth mentioning that according to Article 43 of the 1998 Immigration Decree, mainly inspired by ICERD, discrimination on the ground of national origin is prohibited and interpreted as covering nationality.

ii) religion or belief (e.g. the interpretation of what is a 'religion' for the purposes of freedom of religion, or what is a "disability" sometimes defined only in social security legislation)?

Criteria for identifying the religious character of social groups have been developed in the case law of the Constitutional Court. The main set of standards were set by the

Court in a 1995 case[26] where that the Court stated that, in the absence of agreements with the State, the "religious denomination" of a social group can be established on the basis of "public recognition" or on the basis of its charter (not alone but examined against the backdrop of the organisation's actual activity) or on the basis of "common opinion". These criteria have been applied and further detailed especially with regard to Scientology, which according to the case law of the Supreme Court meets the criteria for the inclusion as a "religious denomination" protected under the Constitution. However, such criteria have never been tested in the context of anti-discrimination cases.

iii) Disability

Besides the UN Convention on the Rights of Persons with Disabilities, ratified by Italy through Act 18/2009, a statutory definition of disability exists outside anti-discrimination law and is contained in Framework Law 104/1992, which is the basis of current disability rights legislation. This act provides the only clear general definition of a person with disabilities (in Article 3.1, "Entitled persons"; other legislation such as the 1999 Quota Act contain narrower definitions of the categories covered) following the definition developed by the WHO in 1976:[27] "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".

iv) Age

Age is taken into account in several pieces of legislation, in particular with regard to labour policy, social issues and social security. Despite the fact that the Italian Constitution protects expressly only young people, (Article 37, paragraphs 2 and 3: 'The law shall establish the minimum age for paid labour. The Republic shall protect the work of minors by means of special provisions and shall guarantee them the right to equal pay for equal work'), scholars believe that there is a general prohibition of discrimination on the ground of age deriving from Article 3 of the Italian Constitution ('personal conditions') and from the interpretation of Article 37, paragraph 3 afforded by the Supreme Court, which has also applied the same Article to workers aged between 18 and 21.[28]

v) sexual orientation

A definition of sexual orientation is provided by the Italian strategy to prevent and fight discrimination on ground of sexual orientation and gender identity, enacted to implement Council of Europe Recommendation CM/Rec(2010)5, approved in 2013.

[26] Judgment no. 195 of 27 April 1993, in *Foro italiano,* 1994, at 2986.
[27] World Health Organization, Document A29/INFDOCl/1, Geneva, Switzerland, 1976.
[28] Supreme Court, 18 December 1983 no. 749.

The strategy includes a glossary where several definitions are given. In particular sexual orientation is defined as: "the direction of affective and sexual attraction towards other people: it can be heterosexual, homosexual or bisexual".[29]

Moreover, in recent years interesting case law has started to extend rights expressly afforded to heterosexual couples to same-sex ones, taking into account sexual orientation, without defining it. Although the supreme courts continue to refuse to recognise marriages of Italian same-sex couples that take place abroad (Supreme Court 4184/2012), they stress the existence of a *de facto* relationship that should be treated in a similar way to heterosexual married couples (Supreme Court 601/2013, on child custody). The reasoning of the Courts is based mainly on the interpretation of Articles 8 and 12 of the ECHR given by the European Court of Human Rights (24 June 2010, *Schalk and Kopf v Austria*), according to which 'marriage' does not entail only heterosexual couples anymore; despite the recognition that it is for national parliaments to grant the right to marry, that interpretation has the effect of requiring equal treatment between homosexual couples and married (heterosexual) couples.

c) *Are there any restrictions related to the scope of 'age' as a protected ground (e.g. a minimum age below which the anti-discrimination law does not apply)?*

Age as a protected ground is not submitted to any general restriction in Legislative Decree 216/2003 transposing Directive 2000/78, besides the exceptions described in section 4 of this report below.

2.1.2 Multiple discrimination

a) *Please describe any legal rules (or plans for the adoption of rules) or case law (and its outcome) in the field of anti-discrimination which deal with situations of multiple discrimination. This includes the way the equality body (or bodies) are tackling cross-grounds or multiple grounds discrimination.*
Would, in your view, national or European legislation dealing with multiple discrimination be necessary in order to facilitate the adjudication of such cases?

Multiple discrimination is not explicitly covered by legislation (or in the practice of the equality body) with the very limited exception of the opening provision (Article 1) of Legislative Decree 216/2003 transposing Directive 2000/78, which says that the Decree has been adopted 'in a perspective that takes into account the different impact that the same forms of discrimination can have on men and women respectively'. The Decree transposing Directive 2000/43 contains the same statement but with the addition of the 'existence of forms of racism of a cultural and religious character'. These statements have, however, little practical value.

Further legislative action at European or national level would certainly contribute to

[29] http://www.unar.it/unar/portal/wp-content/uploads/2014/02/LGBT-strategia-unar-inglese.pdf.

improving the current situation.

An explicit reference to multiple discrimination is provided for in the "Programme of action for the integration of people with disability", approved in 2013.[30] At page 7 of the Programme of action, multiple discrimination is taken into account in order to define new criteria to collect data on integration of people with disability so that it will be possible to verify their effective integration and the other factors which ease or hinder integration.

Multiple discrimination is referred to even in UNAR's report on activity for 2012 in two points. First of all regarding the approach followed to define the Italian strategy on LGBT approved in 2013; second showing that multiple discrimination has been detected when investigating age discrimination in job advertisements.[31]

b) How have multiple discrimination cases involving one of Art. 19 TFEU grounds and gender been adjudicated by the courts (regarding the burden of proof and the award of potential higher damages)? Have these cases been treated under one single ground or as multiple discrimination cases?

There is no significant case law on this point. Scholars show an increasing interest in the mutual reinforcement effect that discrimination on the grounds of nationality and race/ethnicity can have.

In a judgment of the Court of Padua of 17/02/2012, where the victims had been insulted because they were black and trade union activists, the case was handled as one of racial discrimination, without reference to the multiple discrimination at issue.

2.1.3 Assumed and associated discrimination

a) Does national law (including case law) prohibit discrimination based on perception or assumption of what a person is? (e.g. where a person is discriminated against because another person assumes that he/she is a Muslim or has a certain sexual orientation, even though that turns out to be an incorrect perception or assumption).

In Italy no legal provision prohibits this sort of discrimination. Moreover there is no relevant legal debate on the issue of assumed characteristics. However, the wording of the Decrees and of other existing anti-discrimination rules, especially if interpreted in the light of the Constitution, seems capable of including this among the kinds of discrimination prohibited. This is even more likely with regard to discrimination in employment.

[30] www.gazzettaufficiale.it/eli/id/2013/12/28/13A10469/sg.
[31] "Report to the Parliament on effective enforcement of the principle of equal treatment and on effectiveness of remedies – Year 2012", available at;http://www.unar.it/unar/portal/wp-content/uploads/2014/01/RELAZIONE-PCM-2012.pdf, in particular see page 12 and 38.

b) *Does national law (including case law) prohibit discrimination based on association with persons with particular characteristics (e.g. association with persons of a particular ethnic group or the primary carer of a disabled person)? If so, how? Is national law in line with the judgment in Case C-303/06 Coleman v Attridge Law and Steve Law?*

In Italy there is no relevant legal debate on the issue of a person's association with persons with special characteristics, or with events or organisations linked to these. However, the wording of the Decrees and of other existing anti-discrimination rules, especially if interpreted in the light of the Constitution, seems capable of including this among the types of discrimination prohibited. This is even more likely with regard to discrimination in employment. A discriminatory dismissal based on such a ground can hardly fall within the concept of 'just cause' or 'justified reason'. According to case law, it is firmly excluded that personal behaviour or private facts and acts can be considered just cause or justified reason for a dismissal if they have no actual or potential negative consequences on a person's performance at work or the nature of the employment relationship.

There is absolutely no case law on the point, but discrimination of this kind could also be considered as an infringement of the freedoms of expression and association protected by Articles 21 and 18 respectively of the Constitution. There is, therefore, insufficient evidence to surmise how facts like those of the *Coleman* case would have been treated under national law.

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

a) *How is direct discrimination defined in national law? Please indicate whether the definition complies with those given in the directives.*

The definition of direct discrimination is provided by the Decrees transposing the Directives, and is – as mentioned – very faithful to these. According to their Article 2, direct discrimination occurs when 'one person is treated less favourably than another is, has been or would be treated in a comparable situation.' An identical definition is provided for by Article 1 of Act 67/2006 on Discrimination against disabled people in fields outside employment.

b) *Are discriminatory statements or discriminatory job vacancy announcements capable of constituting direct discrimination in national law? (as in Case C-54/07 Firma Feryn).*

Public statements or announcements are likely to be considered as direct discrimination. Although there is no case law on the point, NGOs and UNAR, the Italian equality body, have reported several cases involving in particular real estate advertisements or insurance companies which used nationality as one of the

parameters determining the price of an insurance policy.[32] After several complaints UNAR issued a general recommendation dealing with the topic of differentiated prices on the ground of nationality.[33]

c) *Does the law permit justification of direct discrimination generally, or in relation to particular grounds? If so, what test must be satisfied to justify direct discrimination? (See also 4.7.1 below).*

Justification of direct discrimination is not admitted generally, but it is allowed on the grounds related to the exceptions foreseen in the Directives with regard to professional requirements.

d) *In relation to age discrimination, if the definition is based on 'less favourable treatment' does the law specify how a comparison is to be made?*

No indication is provided on how to make a comparison in cases of age discrimination.

2.2.1 Situation Testing

a) *Does national law clearly permit or prohibit the use of 'situation testing'? If so, how is this defined and what are the procedural conditions for admissibility of such evidence in court? For what discrimination grounds is situation testing permitted? If not all grounds are included, what are the reasons given for this limitation? If the law is silent please indicate.*

'Situation testing' is not defined nor covered as such in Italian law, and there are no legislative provisions on the point.

b) *Outline how situation testing is used in practice and by whom (e.g. NGOs, equality body, etc.).*

In principle, situation testing can provide indicators of discrimination which can be used like any other means of evidence in civil cases. The relatively scarce use of litigation in court to fight against discrimination, and the fact that litigation often refers to institutional discrimination by formal acts (where the discriminatory effect on the ground of, for example, race is indirect, while direct discrimination is on the ground of nationality), make situation testing a tool almost never used in practice. It is certainly possible that the idea of 'situation testing' lies behind certain actions aiming to draw attention to discrimination cases or to collect evidence. It is for example possible that in cases like the one before the Court of Padua in 2005, some of the people facing discrimination had actually decided, in coordination with the NGOs involved, to test

[32] http://www.asgi.it/home_asgi.php?n=2057&l=it .
[33] http://myp25.regione.veneto.it/alfstreaming-servlet/streamer?resourceId=1a129fbe-cf32-471f-929c-dc3e0de852c8/rep16.pdf.

the behaviour of the defendant. The facts were, however, not presented as the result of 'situation testing', nor did the Court discuss its admissibility in principle. Parties who could have acted with the purpose of implementing 'situation testing' were therefore treated as ordinary plaintiffs or witnesses.

c) *Is there any reluctance to use situation testing as evidence in court (e.g. ethical or methodology issues)? In this respect, does evolution in other countries influence your national law (European strategic litigation issue)?*

The scarce number of cases does not allow us to speak of 'reluctance' but rather of a consequence of the still-weak tradition of proactive anti-discrimination action. It must be said, however, that among lawyers and NGOs involved in combating discrimination there is an increasing awareness of the potential of situation testing (which is a topic often discussed in publications and workshops), and therefore its use could become more frequent in the future. Evolution in other countries is likely to have an influence in Italy, in particular if related to the interpretation and application of EU directives.

d) *Outline important case law within the national legal system on this issue.*

No cases have been reported that discuss the use of situation testing.

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

a) *How is indirect discrimination defined in national law on discrimination? Please indicate whether the definition complies with those given in the directives.*

Article 2 of the Decrees defines indirect discrimination as a situation 'where an apparently neutral provision, criterion, practice, act, pact or behaviour would put persons [followed by reference to the specific grounds] at a particular disadvantage compared with other persons'.

An analogous definition is given at Article 2, para. 3, of Law 67/2006 on discrimination on ground of disability.

b) *What test must be satisfied to justify indirect discrimination? What are the legitimate aims that can be accepted by courts? Do the legitimate aims as accepted by courts have the same value as the general principle of equality, from a human rights perspective as prescribed in domestic law? What is considered as an appropriate and necessary measure to pursue a legitimate aim?*

Articles 3(4) (race) and 3(6) (other grounds) of the Decrees establish that 'differences in treatment that, even if indirectly discriminatory, are objectively justified by legitimate aims carried out through appropriate and necessary means are not discriminatory acts (…).' The first draft of the Decrees referred to 'adequate and

proportionate means', but since the notion of proportionality was elaborated by Italian courts with reference to the concept of indirect discrimination on the grounds of gender, with different implications, the final version is more appropriate. It is interesting to remark that Article 3(6) continues by saying that 'in particular, acts aiming to exclude from an occupation involving the care, assistance or education of minors persons who have been convicted of offences related to sexual freedom of minors or child pornography are legitimate.' This provision has quite limited practical implications, since dismissal on the ground of criminal conviction is always lawful if the crime is related to an occupational activity, nor is it apparent which of the grounds of the Directives could be relevant in the case of a criminal conviction of the kind here described, at least if one refuses to include paedophilia as a sexual orientation. It is clear that the roots of this provision are purely political and symbolic and it is not relevant here as it does not concern a formal violation of the Directives in any case.

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

c) *Is this compatible with the Directives?*

The test described above is in line with the Directives.

d) *In relation to age discrimination, does the law specify how a comparison is to be made?*

No indication is provided of how to make a comparison in relation to age discrimination.

e) *Have differences in treatment based on language been perceived as potential indirect discrimination on the grounds of racial or ethnic origin?*

As yet discrimination on the ground of race and ethnicity has not focused on the linguistic component of identity (on the protection of linguistic minorities in Italy see *infra*). One minor exception is a blatantly illegal ordinance of a local municipality in Northern Italy which prohibited the use of languages other than Italian in public gatherings.[34] This ordinance, which was rapidly quashed by the local court, was clearly primarily meant purely to put pressure on local immigrants and to obtain visibility in the press rather than to introduce a preference for the national language.

It must be recalled that Article 3 of the Italian Constitution expressly grants equality before the law without distinction, among other grounds, of language. An application of this principle, together with other Constitutional articles and laws, has been given

[34] T.A.R. Lombardia, Brescia, Sez. II, Decision no. 19 of 15 January 2010, available at http://www.asgi.it/public/parser_download/save/tar_brescia_sentenza_19_2010_150110.pdf.

in the context of the right to translation and interpretation in jurisdictional proceedings and of protection of linguistic minorities (article 6 of the Italian Constitution).

2.3.1 Statistical Evidence

a) Does national law permit the use of statistical evidence to establish indirect discrimination? If so, what are the conditions for it to be admissible in court?

Article 28 of Legislative Decree 150/2011[35] has reformulated the rule on the burden of proof. According to paragraph 4, when a plaintiff establishes 'facts, including facts of a statistical character, on which a presumption of discrimination can be based, it is up to the defendant to prove that there has been no discrimination.'

b) Is the use of such evidence widespread? Is there any reluctance to use statistical data as evidence in court (e.g. ethical or methodology issues)? In this respect, does evolution in other countries influence your national law (European strategic litigation issue)?

In the Italian context where anti-discrimination litigation is scarce, provisions on the use of statistical data have not often been relied upon. It is possible that knowledge of the importance of statistical evidence in other legal systems could increase its use in Italy, at least if anti-discrimination litigation is increased.

c) Please illustrate the most important case law in this area.

On 19/06/2012 the Court of Rome issued the first judgment relying upon statistical evidence in the case of *FIOM CGIL v FIAT, Fabbrica Italia*. In this case statistics were employed as proof of the discrimination against workers on grounds of belief. In particular, the defendant held that workers were recruited in an impartial way and through objective criteria, without any discriminatory intent. However, no worker who was a member of the trade union FIOM was employed by FIAT-Fabbrica Italia. Statistics showed that there was only one chance in ten million that this had happened by coincidence and not as a consequence of a precise intention to discriminate against workers who had most strongly contested FIAT's new industrial strategy.

d) Are there national rules which permit data collection? Please answer in respect to all five grounds. The aim of this question is to find out whether or not data collection is allowed for the purposes of litigation and positive action measures. Specifically, are statistical data used to design positive action measures? How are these data collected/ generated?

[35] Additional Measures to the Procedural civil Code in order to reduce and simplify civil proceedings, according to Article 54 of Law 19 June 2009, no. 69, in Official Journal of 21 September 2011, no. 220.

Employers are prohibited by Article 8 of the Workers' Act no. 300/1970 from collecting information on their employees concerning 'their political, religious, or trade-unionist ideas, or facts which are not relevant to the appraisal of the professional skills of the worker.' Information concerning these issues can be held on file by the employer for various purposes in the interest of the employer (for instance, special benefits for people with a disability or special menus for religious purposes). Data on racial and ethnic origin, religious beliefs, health and sexual life (thus all information on disability and sexual orientation) are considered as 'sensitive data' under Article 22 of the Data Protection Act,[36] which regulates data collection within and outside employment. There is therefore extremely restricted access to this data, and it can be stored and processed only with the authorisation of the individuals concerned and of the State Agency for the Protection of Privacy.

A first statistical enquiry on gender, sexual orientation and ethnic origin was conducted by ISTAT during 2011 and funded by the Government in order to have data regarding the actual discrimination of people on ground of sexual orientation and homophobia.[37] The national strategy adopted by UNAR takes this enquiry as a base in order to develop several activities to be promoted in the following years.[38]

2.4 Harassment (Article 2(3))

a) *How is harassment defined in national law? Does this definition comply with those of the directives? Include reference to criminal offences of harassment insofar as these could be used to tackle discrimination falling within the scope of the Directives.*

The Decrees implementing the 2000 Directives contain the first statutory definition of harassment introduced into the Italian legal system. The two Decrees use the same wording (taken from the Directives), saying that the unwanted conduct must have the effect of 'creating an intimidating, hostile, degrading, humiliating *or* offensive environment'. It must be recalled that, until the correction made in 2008, there was a textual difference between the two Decrees (probably a pure typographical error) since the Decree transposing Directive 2000/43 had the wording 'humiliating *and* offensive environment' while the Decree transposing Directive 2000/78 already used a wording corresponding to the Directive.

Notwithstanding the lack of statutory definitions until recently, scholars and case law developed a set of principles which to a considerable extent corresponded to the idea of harassment, and provided protection in situations comparable to those foreseen by the Directives. Much has been done for instance under the label of 'mobbing'.

[36] Law no. 675 of 31 December 1996 Legislative decree 30 June 2003, no. 19, Personal Data Protection Code.
[37] http://www.istat.it/it/archivio/62168.
[38] http://www.unar.it/unar/portal/wp-content/uploads/2014/02/LGBT-strategia-unar-inglese.pdf.

This notion can still be useful in some cases that cannot be precisely covered by the Decrees, since the courts have identified a ground for civil liability in some articles of the Civil Code such as Article 2087 on the employer's duty of protection[39] and Article 2103[40] on the employee's duties (as well as Article 2043 on damage compensation), and case law in the field is now abundant. Criminal liability can be established in some extreme cases, but the procedural and evidentiary implications of the use of criminal law make it quite an impractical tool for protection against harassment. Although the case law does not seem to include cases of harassment or 'mobbing' based on the grounds of discrimination foreseen by the Directives, the approaches developed are fully applicable to our context and build a legal regime potentially concurring with that of the Decrees.

b) Is harassment prohibited as a form of discrimination?

Harassment is clearly defined as a form of discrimination in the Decrees.

c) Are there any additional sources on the concept of harassment (e.g. an official Code of Practice)?

Apart from the concept of 'mobbing', there are no additional sources on the concept of harassment which are valid and binding at the national level. Codes of practice have been identified within specific fields and public bodies.

d) What is the scope of liability for discrimination)? Specifically, can employers or service providers (in the case of racial or ethnic origin, but please also look at the other grounds of discrimination) e.g. landlords, schools, hospitals, be held liable for the actions of employees? Can they be held liable for actions of third parties (e.g. tenants, clients or customers)? Can the individual harasser or discriminator (e.g. co-worker or client) be held liable? Can trade unions or other trade/professional associations be held liable for actions of their members?

The Decrees are silent on the scope of liability for discrimination, and since the sanctions provided are civil (primarily the payment of damages), extension of liability to persons other than the individual discriminator must be established on the basis of the general principles of liability in contract and tort.

[39] Article 2087 Civil Code: 'An entrepreneur must adopt, in the exercise of the business, and according to the nature of the work, experience and technology, the necessary measures to protect the physical integrity and the moral personality of the workers'.

[40] Article 2103 Civil Code: 'The worker must be assigned to the tasks for which he was recruited, or to the duties relating to a superior category successively reached, or to the last duties that he actually carried out, without any cut in his salary. If the worker is assigned to superior duties, he has the right to treatment corresponding to the activity carried out; the assignment cannot be modified, unless the worker has replaced another worker who has the right to be reinstated (...). The worker can be transferred to other productive units only if organisational, production-related or technical needs are proved'.

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

In the absence of a contractual relationship with the victim of discrimination (even in the form of harassment), the employer will be held liable in tort on the basis of the general principle of liability of the master for the acts of his servant (acts committed while performing their duties).

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

Liability is not, however, without limits since it does not extend to acts which are not linked to the work place or the performance of professional duties, and problems can arise when the discrimination (like harassment) takes place partly in the work place and partly outside it. An individual worker who has discriminated somebody can always be held liable as an individual, apart from any given instruction.

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

In a case in 2012, the Court of Milan convicted a legal person, a bank, of harassment perpetrated by its managers against an employee on grounds of his racial and ethnic origin, according to article 2, para. 3, of Legislative decree no 215/2003 (Tribunal of Milan, *X v. Extrabanca*, 23 March 2012). According to the judge, the bank was to be held liable because the harassment was perpetrated by managers in top positions in the bank who were thus able to influence the majority of employees. The employees were not individually convicted, but in theory it is possible that both the legal person and the individual harasser or discriminator could be held liable for the same acts of discrimination.

2.5 Instructions to discriminate (Article 2(4))

a) *Does national law (including case law) prohibit instructions to discriminate? If yes, does it contain any specific provisions regarding the liability of legal persons for such actions?*

The Decrees implementing the 2000 Directives equate instructions to discriminate with ordinary discrimination in Article 2(4) of both texts. Legal persons are bound by both Legislative decrees but there is no special rule regarding liability of legal

persons in the context of instruction to discriminate.

b) Does national law go beyond the Directives' requirement? (e.g. including incitement)

The Decrees implementing the Anti-discrimination Directives do not go beyond the Directives' requirement.

c) What is the scope of liability for discrimination? Specifically, can employers or service providers (in the case of racial or ethnic origin)(e.g. landlords, schools, hospitals) be held liable for the actions of employees giving instruction to discriminate? Can the individual who discriminated because s/he received such an instruction be held liable?

The Decrees are silent on the scope of liability for discrimination, and since the sanctions provided are civil (primarily the payment of damages), extension of liability to persons other than the individual discriminator must be established on the basis of the general principles of liability in contract and tort.

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

As far as instruction to discriminate is concerned, a case of 2013 is relevant (Tribunal of Catanzaro, *F and S. v. A.*, 15 January 2014). The Court of Catanzaro dismissed the appeal of two parents of a disabled student against the order to discriminate given by the local administrative director to teachers and schoolmates. According to the Tribunal the order to discriminate couldn't be condemned *per se* since it was not able to produce any discriminatory effects and the administrative director was sanctioned by the Regional Governmental Department of Education.

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

a) How does national law implement the duty to provide reasonable accommodation for people with disabilities? In particular, specify when the duty applies, the criteria for assessing the extent of the duty and any definition of 'reasonable'. For example, does national law define what would be a "disproportionate burden" for employers? Is the availability of financial assistance from the State to be taken into account in assessing whether there is a disproportionate burden?

The Italian Government did not include the requirement of 'reasonable

accommodation' in the Decree transposing Directive 2000/78/EC. For this reason the Commission referred an infringement procedure to the Court of Justice which has ruled that Italy has failed to fulfil EU obligations.[41]

In order to execute this judgment a new paragraph has been added to Article 3 of Legislative decree 216/2003.[42]

The new Article 3, para. 3-*bis*, has the following content: "in order to apply the principle of equal treatment of persons with disabilities, private and public employers shall provide for reasonable accommodations according to UN Convention on Rights of Persons with disabilities, ratified with Law no. 18/2009, in workplaces, to guarantee to persons with disabilities full equality with other workers. Public Employers shall apply this provision without any additional burden and with human, financial and instrumental resources already available".

This new provision does not give a definition of reasonable accommodation nor any sort of guidance to employers to respect this duty. Much more problematic is the requirement written at the end of the provision and addressed to public employers who are bound to respect the duty to provide for reasonable accommodation "without any additional burden and with human, financial and instrumental resources already available". This is a sort of ritual clause in Italian laws in an era of economic crisis and financial constrictions, but it is hardly likely that an employer, either public or private, will be able to afford reasonable accommodations without any additional financial or human resources.

Moreover no reference is made to the concept of disproportionate burden according to which a refusal to make a reasonable accommodation by a public or private body can be justified. This omission in the Italian law can easily be overcome thanks to an interpretation of new Article 3, para. 3-bis, in conformity with Article 5 of Directive 2000/78/EC. Nevertheless it is a breach of the Directive that could be amended as soon as possible, in order to clarify which are the exact duties upon employers, both in private and public spheres.

b) Please also specify if the definition of a disability for the purposes of claiming a reasonable accommodation is the same as for claiming protection from non-discrimination in general, i.e. is the personal scope of the national law different (more limited) in the context of reasonable accommodation than it is with regard to other elements of disability non-discrimination law.

[41] Judgment of 4 July 2013, *European Commission v. Italy*, C-312/11.
[42] Law decree 28 June 2013 no. 76, in Official Journal no. 150 of 28 June 2013, then converted into Law 9 August 2013, no. 99, in Official Journal no. 196 of 22 August 2013, page 1, regarding "Preliminary Urgent Measures for the promotion of employment, in particular of youngsters, of social cohesion and on and other Urgent financial measures."

No specific definition of disability is given in the context of reasonable accommodation. In this regard the UN Convention on the Rights of Persons with Disabilities could be relevant too, and much greater application could be made of it than has been the case so far: first of all, despite the fact that the Convention provides for a specific duty to provide reasonable accommodation only in education (Article 24), in the case of deprivation of liberty (Article 14, paragraph 2) and in employment (Article 27, paragraph 1, letter i), reasonable accommodation is expressly mentioned within the definition of discrimination, at Article 2; second, since the Convention places such a duty upon States we can argue that Italy has not met its obligations to provide for reasonable accommodation; therefore its provisions are also liable to be employed by Italian courts either in order to directly decide a case against public bodies (see the judgment of the Court of Varese, 12 March 2012) or to interpret other laws in force, in particular when a case between private parties is at issue.

c) *Does national law provide for a duty to provide a reasonable accommodation for people with disabilities in areas outside employment? Does the definition of "disproportionate burden" in this context, as contained in legislation and developed in case law, differ in any way from the definition used with regard to employment?*

Italian law on people with disabilities is not based on the general concept of 'reasonable accommodation' either within or outside the field of employment. This has been clarified even by the Court of Justice in the Judgment against Italy of 4 July 2013. Indeed the Court rejected the basic argument raised by the Italian Government according to which Article 5 of Directive 2000/78/EC was implemented not in legislative decree no. 216/2003 but in other laws already in force even before the adoption of the Anti-discrimination directives. In this regard, the Government referred to Act no. 104/1992, Framework law on care, social integration and rights of disabled people; to act no. 68/1999 on the right to work of disabled people; to Act no. 381/1991 on Social co-operative and to Legislative decree no. 81/2008 on work health and safety. According to the CJEU while all these laws provide for measures of aid and support, of social integration and protection of people with disability, none of them provide for a general duty to provide for reasonable accommodation that is to offer effective solutions to eliminate "the various barriers that hinders the participation of disabled people in professional life […]" (*HK Danmark (Skouboe Werge and Ring)*, C-335/11, point 54).

A positive development in this regard could be triggered by the UNCRPD, which has been ratified in Italy by Act 18/2009. According to the Convention the denial of reasonable accommodation amounts to discrimination and specific duties are laid upon governments in the field of education and in cases of deprivation of personal freedom. A relevant decision was held by the Tribunal of Bologna in 2013, anticipating the CJEU judgment against Italy and applying both Directive 2000/78/EC and the UNCRPD (*X. v. Health service "Sant'Orsola Malpighi"*, 28 August 2013).

d) Does failure to meet the duty of reasonable accommodation count as discrimination? Is there a justification defence? How does this relate to the prohibition of direct and indirect discrimination? What is the potential sanction? (i.e.: fine)

The new article 3, para. 3-bis of legislative decree no. 216/2003 on reasonable accommodation is not included in article 2, regarding definition of discrimination, but in Article 3 on the scope of application.

Anyway according to new article 3, para. 3-bis, the duty to provide reasonable accommodation is a means to respect the principle of equality of treatment of people with disability. There is no other specific link to the prohibition of discrimination or any specific sanction, different from the general ones provided for discrimination in general. Indeed Italian law follows Directive 2000/78/EC which does not include any specific sanctions.

In the judgment of Tribunal of Bologna of 18 June 2013 the Court held the local health service liable for failure to provide a reasonable accommodation to a disabled fixed-time employee and condemned it to the payment of the compensation of damages amounting to the estimated six months' salary, which is what that the claimant would have gained had he been hired.

e) Has national law (including case law) implemented the duty to provide reasonable accommodation in respect of any of the other grounds (e.g. religion)

No.

i) race or ethnic origin

No.

ii) religion or belief

Religion-specific arrangements (for example, holidays or ritual slaughtering) are contained in the agreements with religious denominations (such as the agreements with the Italian Association of Jewish Communities and the Italian Association of Seventh-day Adventists) but not through the general concept of 'reasonable accommodation'.

iii) age

No.

iv) sexual orientation

No.

f) Please specify whether this is within the employment field or in areas outside employment

i) race or ethnic origin

N/A.

ii) religion or belief

N/A.

iii) age

N/A.

iv) sexual orientation

N/A.

g) Is it common practice to provide for reasonable accommodation for other grounds than disability in the public or private sector?

No.

h) Does national law clearly provide for the shift of the burden of proof, when claiming the right to reasonable accommodation?

This point could be a problem in case of a literal interpretation of both directive 2000/78/EC and the new article 3, para. 3-bis of legislative decree no. 216/2003. The failure to provide reasonable accommodation is not defined as discrimination but "only" as a means to respect the principle of equality. Indeed the shift of the burden of proof is provided for to show discrimination. There is room for a wide and coherent provision but a clarification on this point by the European Commission or the CJEU could be very useful.

i) Does national law require services available to the public, buildings and infrastructure to be designed and built in a disability-accessible way? If so, could and has a failure to comply with such legislation be relied upon in a discrimination case based on the legislation transposing Directive 2000/78?

Italian law provides a complex set of rules for the elimination of architectural barriers, i.e. obstacles to the free movement of disabled people, with certain standards for public buildings and incentives for the adaptation of private ones.[43] Violation of mandatory requirements contained in these rules could certainly be considered as a

[43] *Law 9 January 1989, no. 13, Measures to overcome architectural barriers and to remove architectural barriers in private buildings*, in *Official Journal*, 26 January 1989, no. 21; *Presidential decree 24 July 1996, no. 503, Official Journal*, Supplement, 27 September 1996, no. 227.

form of discrimination, according to Act 18/2009 implementing the UNCRPD, although there is no significant case law on the point. The level of compliance is high with regard to public buildings, while for private ones it is affected by the general problem of enforcing construction standards (the situation can vary greatly from place to place).

j) Does national law contain a general duty to provide accessibility by anticipation for people with disabilities? If so, how is accessibility defined, in what fields (employment, social protection, goods and services, transport, housing, education, etc.) and who is covered by this obligation? On what grounds can a failure to provide accessibility be justified?

There is no general duty to provide accessibility by anticipation in national law.

A relevant provision is that of the Law of 9 January 2004 no. 4 on Measures to favour the access of persons with disability to informatics devices.[44] Several provisions apply to the public administration and to the accessibility of their resources via web; article 4, para. 4 provides for a specific duty upon employers to give to employees with disability hardware and software devices and the proper technology related to the activities to be performed.

However the principle of accessibility is deemed to be part of national law by the implementation of the UNCRPD. In particular the principle of accessibility is referred to in the "Programme of action on disability" and linked to the principle of non-discrimination.[45] In this context accessibility – not only to physical buildings environment but also to goods, services, communication and media – is defined according to the Convention as a prerequisite to allow people with disability to fully enjoy human rights and fundamental freedoms in every field. In the same Programme several measures of implementation are proposed, both reforming the legal order with the formal introduction of that principle and giving practical guidelines to implement it in the following sectors: environment; internal and external frameworks, mobility, access to ITC devices, communication and media.

k) Does national law require public services to also translate some or all of their documents in Braille? (i.e. Tax declarations, general information) Is translation in sign languages provided in some of the public services where needed? What is the practice?

There is not a general requirement but specific provisions. In particular there is the duty to write in braille expire dates of drugs.[46]

[44] Official Journal 17 June 2004, no. 13.
[45] http://www.gazzettaufficiale.it/eli/id/2013/12/28/13A10469/sg, at page 28.
[46] Decree 13 April 2007, in Official Journal 26 April 2007 no. 96.

The Law of 9 January 2004 no. 4 on Measures to favour the access of persons with disability to informatics devices[47] provides for a duty to guarantee that every informatics content of the public administration is accessible by persons with disability. The duty applies also to every school; in particular, framework contracts between schools and publishers shall include the duty to furnish school libraries with digital versions of didactic materials accessible by Students with disabilities and support teachers. In the Programme of action on disability, translation in Braille and in Sign language is taken into account as one of the competences to be acquired by teachers and support teachers (at page. 37).

As far as sign language is concerned, a debate has arisen about the implementation of the UNCRPD regarding the recognition of sign language and the identity of deaf culture. Many experts and two associations have contested the approach behind this recognition, as it is deemed to lower the level of integration and of health assistance afforded to deaf people, in particular children. The question is twofold: first of all there is the scientific issue of determining the preferable treatment for a deaf person; preserving and promoting deaf culture and sign language or promoting early diagnosis and the most appropriate remedy, such as prostheses. Should we choose the latter, it is then necessary to solve a legal question: can the approach, the rights and the principle enshrined in a national law (such as Act 104/1992) be changed to implement a human rights convention, such as the Convention on the Rights of Persons with Disabilities, if this convention lowers the level of protection already granted by a State? The answer should be in the negative but it could be very useful to have a pragmatic guideline based on scientific grounds issued by the European Union, as the EU is also a party to the UNCRPD.

l) Please explain briefly the existing national legislation concerning people with disabilities (beyond the simple prohibition of discrimination). Does national law provide for special rights for people with disabilities?

There is a variety of rights, deriving from several legal sources. As far as employment is concerned, an important piece of legislation was passed in March 1999 (Act 68/1999)[48] containing new rules on the right to work of disabled people, which represents the most important instrument on this matter before the introduction of Directive 2000/78/EC. The Act promotes access to work for people with disabilities through a compulsory employment quota system among other means, establishing that the same standards of legislative and collectively agreed treatment must apply to disabled workers as to other workers. It is applicable to public and private agencies and enterprises with more than 15 employees.

The main general law on disability is Act 104 of 5 February 1992, a very advanced law that lays out several guiding principles and specific rights that must be granted to

[47] Official Journal 17 June 2004, no. 13.
[48] Law 12 March 1999 no. 68, Provisions on right to work of people with disability, Official Journal, Supplement, 23 March 1999.

disabled people in order to achieve their social integration.

Italy also signed (in 2007) and ratified (in 2009) the United Nations Convention on the Rights of Persons with Disabilities.

2.7 Sheltered or semi-sheltered accommodation/employment

a) To what extent does national law make provision for sheltered or semi-sheltered accommodation/employment for workers with disabilities?

A general system of sheltered accommodation/employment does not exist in Italy. The working conditions of workers with severe disabilities are, however, established on the basis of a medical assessment. The provisions concerning their placement at work, particularly those of Act 68/1999, thus provide a set of protective rules implying a sort of sheltered employment.

b) Would such activities be considered to constitute employment under national law- including for the purposes of application of the anti-discrimination law?

A special provision is lacking but according to the general legal framework such activities would be considered to constitute employment, thus applying even anti-discrimination law.

3 PERSONAL AND MATERIAL SCOPE

3.1 Personal scope

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

Are there residence or citizenship/nationality requirements for protection under the relevant national laws transposing the Directives?

The Decrees – as well as the pre-existing anti-discrimination provisions of immigration law – apply to all persons without residence or citizenship/nationality requirements. Indeed the vast majority of case law over recent years concerns discrimination on ground of nationality. Although nationality is not covered by the Directive and its implementing law, judges also categorise these acts as discrimination on the ground of nationality. UNAR (the Italian equality body created in compliance with Article 13 of Directive 2000/43/EC) also addresses discrimination on the ground of nationality although it is not expressly within its mandate. The basic reason is because according to Article 43 of the 1998 Immigration Decree, discrimination on ground of national origin is prohibited and interpreted as covering nationality. Judges therefore apply all these different legal sources as a single legal framework.

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

a) *Does national law distinguish between natural persons and legal persons, either for purposes of protection against discrimination or liability for discrimination?*

The prohibition of discrimination provided by the Decree and the anti-discriminatory provisions of pre-existing labour law apply to all natural and legal persons, including organisations of workers and employers.

b) *Is national law applicable to both private and public sector including public bodies?*

Yes, it is; indeed the majority of anti-discrimination case law involves the public sector and public bodies, in particular in connection with discrimination on the ground of national origin in access to and supply of public services or social advantages.

3.1.3 Scope of liability

Are there any liability provisions other than those mentioned under harassment and instruction to discriminate? (e.g. employers, landlords, tenants, clients, customers, trade unions)

A liability provision is mentioned in Article 43, paragraph 2, letter e) of Legislative Decree 286/1998, according to which there is discrimination in the case of an act or a treatment promoted by an employer which places workers in a situation of particular disadvantage on grounds of their race, ethnic or linguistic origin, religion or citizenship. No specific provision covers other grounds of discrimination.

3.2 Material Scope

3.2.1 Employment, self-employment and occupation

Does national anti-discrimination legislation apply to all sectors of public and private employment and occupation, including contract work, self-employment, military service, holding statutory office? In case national anti-discrimination law does not do so, is discrimination in employment, self-employment and occupation dealt with in any other legislation?

National legislation on anti-discrimination in general applies to all sectors of public and private employment. A specific reference to private or public bodies is made by Article 44, paragraph 1, of Legislative Decree 286/1998, concerning civil action against discrimination.

In paragraphs 3.2.2 - 3.2.5, you should specify if each of the following areas is fully and expressly covered by national law for each of the grounds covered by the Directives.

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

Does national law on discrimination include access to employment, self-employment or occupation as described in the Directives? In case national anti-discrimination law does not do so, is discrimination regarding access to employment, self-employment and occupation dealt with in any other legislation?
Is the public sector dealt with differently to the private sector?

The key provision (Article 3(1)) on the material scope of the Decrees transposing the Directives expressly establishes that the prohibition of discrimination and the related judicial remedies apply to all persons in the public and private sectors with reference to the following fields:

For both Decrees:

a) access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions;
b) employment and working conditions, including promotions, dismissals and

pay;
c) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;
d) membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations.

For the Decree transposing Directive 2000/43, the following must be added:

a) social protection, including social security;
b) health care;
c) education;
d) access to goods and services, included housing.

No distinctions apply between branches of activity or levels of professional hierarchy. A problematic point concerns the exclusion of the applicability of the Decree to access to employment of third country nationals (see *infra* at 4.4). It must again be stressed that the scope of application of the Decrees partly corresponds to other pre-existing legislation still in force. This is the case primarily for the 1998 Immigration Decree, which offers protection that mostly overlaps with that of the Decrees. Before the development of general anti-discrimination rules, labour law already provided a good level of protection. On the basis of the Workers' Act of 1970[49] nobody can be dismissed, or discriminated against – even indirectly – in the assignment of qualifications or duties, in transfers or in disciplinary proceedings, or suffer other harm, for political, religious, racial, linguistic reasons or because of gender, a list to which the Decree transposing Directive 2000/78 added the grounds of disability, age, sexual orientation and personal beliefs. A dismissal based on such grounds is explicitly declared to be void,[50] and in the Italian legal system this entails both the award of damages and a court order to the employer to reinstate the worker in his/her employment.[51] Collective economic privileges in favour of special groups of workers identified on the grounds of prohibited discrimination are also forbidden and punished with heavy fines.[52]

The anti-discrimination provisions apply to both the private and public sector. In the latter field, the highly formalised rules on recruitment and career make discrimination less likely. Despite this, most discrimination cases are still against public sector entities, in particular for discrimination on the ground of national origin in access to and supply of public services or social advantages.

[49] Article 15, para. 2, of Law 20 May 1970, no. 300, 'Workers' Act'.
[50] Article 4 of Law 15 July 1966, no. 604, as amended in 1970 and 1990.
[51] A reinstatement order following unfair dismissal ordinarily applies only to employers having a minimum number of workers (i.e. in the case of small companies the only remedy is damages), but this limit does not apply to discriminatory dismissals.
[52] Article 16 of no.300/1970.

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

Does national law on discrimination include working conditions including pay and dismissals? In case national anti-discrimination law does not do so, is discrimination regarding working conditions dealt with in any other legislation?

In respect of occupational pensions, how does national law on discrimination ensure the prohibition of discrimination on all the grounds covered by Directive 2000/78 EC? NB: Case C-267/06 Maruko confirmed that occupational pensions constitute part of an employee's pay under Directive 2000/78 EC. In case national anti-discrimination law does not do so, is it dealt with in any other legislation?

Note that this can include contractual conditions of employment as well as the conditions in which work is, or is expected to be, carried out.

The area is fully and expressly covered by the Decrees for all the grounds of the two Directives, plus nationality on the basis of the 1998 Immigration Decree. Italian law can be thus considered to be in line with *Maruko* standards. Contractual and non-contractual conditions of employment are both covered by the general principles of labour law.

Occupational pensions are regulated in a highly formalised manner that does not allow factors other than age, gender and type of profession to be taken into account. Indirect discrimination on one of the grounds concerned by Directive 2000/78 could be challenged on the basis of general constitutional equal treatment principles.

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

Does national law on discrimination include access to guidance and training as defined and formulated in the directives? In case national anti-discrimination law does not do so, is discrimination regarding working conditions dealt with in any other legislation?

Note that there is an overlap between 'vocational training' and 'education'. For example, university courses have been treated as vocational training in the past by the Court of Justice. Other courses, especially those taken after leaving school, may fall into this category. Does national law on discrimination apply to vocational training outside the employment relationship, such as that provided by technical schools or universities, or such as adult lifelong learning courses? If not does any other legislation do so?

The area is fully and expressly covered by the Decrees for all the grounds of the two Directives. Children with disabilities are placed in mainstream education with support

from specialised tutors who assist ordinary teachers, and they cannot by any means be denied access to education at any level including universities. There is no legislation authorising any form of segregation. Act 104/1992 provides at Articles 12 ff. a comprehensive set of rules on integration at all levels of education including professional education, and the same applies to universities and adult education. Implementation problems may arise, but they are not linked to any deficiencies in the legislation.

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

Does national law on discrimination include membership of, and involvement in workers or employers' organisations as defined and formulated in the directives? In case national anti-discrimination law does not do so, is it dealt with in any other legislation?

In relation to paragraphs 3.2.6 – 3.2.10 you should focus on how discrimination based on racial or ethnic origin is covered by national law, but you should also mention if the law extends to other grounds.

The area is fully and expressly covered by the Decrees for all the grounds of the two Directives, plus nationality on the basis of the 1998 Immigration Decree (a first draft of the Decrees did not include membership, but this was included again in the final text).

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

Does national law on discrimination cover social protection, including social security and healthcare? In case national anti-discrimination law does not do so, is it dealt with in any other legislation?

In relation to religion or belief, age, disability and sexual orientation, does national law seek to rely on the exception in Article 3(3), Directive 2000/78?

The Decree transposing Directive 2000/43 fully and expressly covers this area, for race and ethnicity. Religion and nationality are covered by the 1998 Immigration Decree. Disability is in principle also covered by Act 67/2006, which has a general scope of application. Legislative Decree 216/2003 implementing Directive 2000/78 applies only to employment and occupation; in other areas, such as social protection, only the general equality principle enshrined in Article 3 of the Italian Constitution applies.

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

Does national law on discrimination cover social advantages? In case national anti-discrimination law does not do so, is it dealt with in any other legislation?

This covers a broad category of benefits that may be provided by either public or private actors to people because of their employment or residence status, for example reduced rate train travel for large families, child birth grants, funeral grants and discounts on access to municipal leisure facilities. It may be difficult to give an exhaustive analysis of whether this category is fully covered in national law, but you should indicate whether national law explicitly addresses the category of 'social advantages' or if discrimination in this area is likely to be unlawful.

The Decree transposing Directive 2000/43 expressly covers this area. Religion and nationality are covered by the 1998 Immigration Decree. In principle the law against disability discrimination (Act 67/2006) is also relevant as it contains a broad equal treatment clause without a clear definition of the scope of application. With regard to race and ethnicity it must be noted, however, that exclusion from social advantages can most easily be linked to requirements as to nationality (see also the section of this report on housing). The Constitutional Court quashed, for instance, a regional law of the Lombardy Region which excluded non-Italian citizens from the free public transport granted to completely disabled people,[53] and several decisions of first instance courts have quashed municipal regulations which used various conditions (e.g. length of residence) to make it harder for persons of foreign origin to obtain specific social advantages.

Legislative Decree 216/2003 implementing Directive 2000/78 applies only to employment and occupation; in other areas, such as social protection, only the general equality principle enshrined in Article 3 of the Italian Constitution applies.

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

Does national law on discrimination cover education? In case national anti-discrimination law does not do so, is it dealt with in any other legislation?

This covers all aspects of education, including all types of schools. Please also consider cases and/ or patterns of segregation and discrimination in schools, affecting notably the Roma community and people with disabilities. If these cases and/ or patterns exist, please refer also to relevant legal/political discussions that may exist in your country on the issue.
Please briefly describe the general approach to education for children with disabilities in your country, and the extent to which mainstream education and segregated "special" education are favoured and supported.

[53] Constitutional court, Judgment no. 432 of 28 November 2005.

The Decree transposing Directive 2000/43 expressly covers this area. Religion and nationality are covered by the 1998 Immigration Decree. No type of school which wishes to issue State-recognised qualifications is excluded. Cases of discrimination on the ground of ethnicity have not been central to legal/political debate. Inclusion of Roma children in classes has sometimes caused an overreaction by majority parents, and the current anti-Romani hostility can entail further problems, but there is so far no basis to say that structural discriminatory patterns exist since the limited schooling of Roma derives from factors other than obstacles to their admission to schools. One practical problem can be the impact on the school attendance of children of the frequent eviction of illegal settlements. Since some of the children living in these settlements attend school, the eviction of their camp without attention to their situation can disrupt an otherwise relatively successful educational track.

With regard to children with disabilities, the Italian approach is definitely to include them in mainstream education with individualised special support. Children therefore attend the same schools they would attend according to ordinary rules, and will be assisted in that school by *ad hoc* support teachers, in addition to their ordinary teachers, depending on the nature of their disability. Debate normally focuses not on discrimination but on the reduction of funding to pay specialist support teachers.

It must be noted that in 2010 the Italian Constitutional Court found illegal legislative provisions which set limits on the number of teachers employed to support disabled students and which revoked the previous option of hiring new specialist teachers for students with particularly severe disabilities on fixed-term contracts.[54] This case originated from a decision by a Sicilian school authority which, by applying the new provisions, reduced from 25 to 12 the weekly hours of teaching support provided to a severely disabled child. The parents challenged the decision in the regional administrative court, and the Sicilian special administrative appeal court referred the case to the Constitutional Court. The Court declared that it was constitutionally illegal to set limits to the provision of specialist support that failed to take account the situation of the individual. The Court's starting point was that 'the disabled do not constitute a homogenous group' and that for each form of disability 'it is, therefore, necessary to identify mechanisms to remove obstacles that take into account the type of handicap by which a person is actually affected'. Against this background, removing the possibility to hire extra *ad hoc* support teachers for severe cases was, in the Court's view, 'unreasonable'. According to the Court, disabled people had a 'fundamental right' to education and, although it recognised that the State had a 'discretionary power to identify measures for the protection of disabled persons', it also reaffirmed (as already stated in its previous case law) that 'such discretion is not absolute and is limited by the respect of a minimum core of guarantees'. An individualised approach to the needs of disabled people was, according to the Court, constitutionally imposed by Article 24, section 2, c) of the UN Convention on the

[54] Decision no. 80 of the Constitutional Court of 22 February 2010, in Official Journal 3 March 2010. The decision can be found on the Constitutional Court website www.cortecostituzionale.it.

Rights of Persons with Disabilities, and by the fact that the legislation on educational support to disabled children aims at pursuing an 'evident national interest' implementing Article 38, section 3 of the Italian Constitution (right to education of disabled people).

A relevant provision is that of the law of 9 January 2004 no. 4 on Measures to favour the access of persons with disability to informatics devices[55]. The duty applies also to every schools; in particular, framework contracts between schools and publishers shall include the duty to furnish school libraries with digital versions of didactic materials accessible by students with disabilities and support teachers.

As far as discrimination on ground of sexual orientation is concerned, national provisions do not apply to sectors outside of employment, but Italy has started several activities to promote equality of treatment and prevent discrimination and homophobia in several fields, including education. In particular, education is one of the four pillars of the Italian strategy to prevent and fight discrimination on ground of sexual orientation and gender identity, enacted to implement Council of Europe Recommendation CM/Rec(2010)5. The first educational activity in this field, such as the publication of educational materials, has raised harsh disapproval from catholic and centre-right Members of Parliament together with catholic associations. They have contested the procedure followed by UNAR, the Office appointed as national focal point to implement Recommendation CM/Rec(2010)5, and the competence of that office to deal with discrimination based on grounds other than race and ethnic origin. As far as the procedure is concerned, the major critique was that associations supporting family and children's rights have not been heard, while on the contrary only LGBT association have been involved. The protests have been addressed to the Minister competent for anti-discrimination issues, actually a Vice-Minister, who has declined any responsibility and criticised the UNAR director, addressing him with a dishonourable mention. Latest news show that the educational activity has been stopped. This affair shows that it is very difficult in Italy to deal with discrimination on ground of sexual orientation notwithstanding evidence of existence of discrimination on this ground.

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

Does national law on discrimination cover access to and supply of goods and services? In case national anti-discrimination law does not do so, is it dealt with in any other legislation?

a) Does the law distinguish between goods and services available to the public (e.g. in shops, restaurants, banks) and those only available privately (e.g.

[55] Official Journal 17 June 2004, no. 13.

limited to members of a private association)? If so, explain the content of this distinction.

The Decree transposing Directive 2000/43 expressly covers this area with no distinction of the kind mentioned above. Religion and nationality are covered by the 1998 Immigration Decree, while disability is covered by the law against disability discrimination (Act 67/2006).

b) Does the law allow for differences in treatment on the grounds of age and disability in the provision of financial services? If so, does the law impose any limitations on how age or disability should be used in this context, e.g. does the assessment of risk have to be based on relevant and accurate actuarial or statistical data?

There is no provision allowing for differences of treatment in the provision of financial services, nor binding standards for the assessment of risks. This could be, in principle, a field to test the application of the law against disability discrimination (Act 67/2006).

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

Does national law on discrimination cover housing? In case national anti-discrimination law does not do so, is it dealt with in any other legislation?

To which aspects of housing does the law apply? Are there any exceptions? Please also consider cases and patterns of housing segregation and discrimination against the Roma and other minorities or groups, and the extent to which the law requires or promotes the availability of housing which is accessible to people with disabilities and older people.

The Decree transposing Directive 2000/43 expressly covers this area, mentioning 'housing' without further distinctions, thus including both private and public accommodation. Religion and nationality are covered by the 1998 Immigration Decree, while disability is covered through the law on discrimination against disabled people (Act 67/2006). The problem of housing is relevant with regard to rules which are beyond the scope of application of the Directive since limitation to access to public housing for ethnic and religious groups can be a practical effect of discrimination formally based on nationality. See *infra* section 4.4.

The debate on the existence of segregation against the Roma through their placement in 'camps' is becoming increasingly important, also owing to the harsh policies against Roma settlements currently implemented. No-one has, however, yet tried to place the existence of the camps themselves into the framework of anti-discrimination law, with the exception of a recent case pending before the Court of Rome, concerning a large settlement in the outskirts of the city. The case has been brought by two NGOs, ASGI and *Associazione 21 Aprile*, which claim that the

discriminatory treatment of the Roma has caused social exclusion thus resulting in racial discrimination prohibited by Directive 2000/43. The case is still pending and will be likely decided on the merits in 2014.[56]

Although not as severely as the Roma, non-Western immigrants often suffer difficulties in accessing the housing market, although the situation can vary depending on the part of the country involved and the position of the individual concerned (legal/illegal immigrant, specific ethnic group).

People with disabilities (and, in some cases, older people) can enjoy a variety of priority rights when public housing is assigned since the rankings for allocating available public housing (which are created at municipal level, thus making a general description difficult) are based on a complex system of points which takes into account a number of social factors.

[56] http://www.asgi.it/home_asgi.php?n=2365&l=it.

4 EXCEPTIONS

4.1 Genuine and determining occupational requirements (Article 4)

Does national law provide an exception for genuine and determining occupational requirements? If so, does this comply with Article 4 of Directive 2000/43 and Article 4(1) of Directive 2000/78?

The first part of Article 3(3) of both Decrees establishes that 'in compliance with the principles of proportionality and reasonableness',[57] within the employment relationship or the entrepreneurial activity, differences in treatment due to characteristics related to the different grounds foreseen in the Directives are not considered as discriminatory acts where, 'by reason of the nature of the particular occupational activity concerned or of the context in which it is carried out, such characteristics constitute a genuine and determining occupational requirement for its carrying out'. No definition is given of 'proportionality' and 'reasonableness'. The substitution of the requirement of 'legitimate objective' with 'reasonableness' has been criticised since it can allow a broader discretion in admitting exceptions to equal treatment, but the courts may not give a significantly different meaning to the provision on the basis of this wording.

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

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

a) Does national law provide an exception for employers with an ethos based on religion or belief? If so, does this comply with Article 4(2) of Directive 2000/78?

Article 3(5) of the Decree transposing Directive 2000/78 establishes that 'Differences in treatment based on religion or belief and enacted within churches and other public

[57] In Italian these are '*proporzionalità e ragionevolezza*'.

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

However, even beyond this textual problem (which may be the result of a further drafting mistake), the choice of the Italian legislator is in the author's opinion not compatible with the Directive[58] since the Directive does not allow the Member States to introduce during transposition exceptions to equal treatment for the needs of churches and similar organisations which are broader than those already existing (in legislative or other form) in the legal system when the Directive was adopted. In particular, before the implementation of Directive 2000/78/EC the only relevant provision was that of Article 4 of Law 108/1990 ruling out the application of protection against discriminatory dismissal in case of non-profit employers performing religious, cultural, political or trade-unionist activities.[59]

b) *Are there any specific provisions or case law in this area relating to conflicts between the rights of organisations with an ethos based on religion or belief and other rights to non-discrimination? (e.g. organisations with an ethos based on religion v. sexual orientation or other ground).*

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

With arguments partly based on the existence of this limited legislative provision and partly on constitutional grounds, judges and scholars (in a very intricate debate which cannot be described here in all its nuances) have admitted the discretionary power of the employer to hire or dismiss, or otherwise discriminate. Moreover, the exceptions to equal treatment as developed by case law are more limited than those foreseen in

[58] For an extensive discussion of this point, see N. Fiorita, '*Le direttive comunitarie in tema di lotta alla discriminazione, la loro tempestiva attuazione e l'eterogenesi dei fini*', in *Quaderni di diritto e politica ecclesiastica,* 2004, pp. 361 ff.
[59] Law 108/1990 on "Provisions on Individual Dismissal".

the Decree transposing Directive 2000/78.[60]

Any discretion is thus excluded for organisations working on a profit-making basis and when the duties of the individual worker do not have an actual link with the organisation's ideology.[61] The Decree thus grants employers with an ethos based on religion and belief (and potentially all employers, if one makes a literal interpretation) a power they did not enjoy before the adoption of the Directive.

c) *Are religious institutions permitted to select people (on the basis of their religion) to hire or to dismiss from a job when that job is in a state entity, or in an entity financed by the State (e.g. the Catholic church in Italy or Spain can select religious teachers in state schools)? What are the conditions for such selection? Is this possibility provided for by national law only, or international agreements with the Holy See, or a combination of both? Is there any case law on this?*

In Italy, religious institutions clearly have complete discretion in this regard, which can raise problems of compatibility with the Directives. Teachers of religion in State schools must have authorisation from the bishop, which can be denied or withdrawn if the person does not fully comply with the moral standards of a Catholic believer. In a 2003 case[62] the Supreme Court recognised the validity of a termination of an employment relationship when an unmarried female teacher became pregnant. The legal ground for such discretionary power lies in the revised Lateran Treaty and its protocols, and now in a law enacted in 2003.[63]

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

a) *Does national law provide for an exception for the armed forces in relation to age or disability discrimination (Article 3(4), Directive 2000/78)?*

[60] Supreme Court 13 July 1995, no. 7680; Supreme Court 11 April 1994, no. 3353; Supreme Court 12 October 1995, no. 10636.

[61] In the religious field, the limits of such discretionary power have been discussed primarily with regard to Catholic schools in terms of the tenure of teachers and other staff. In this context, however, the problem was not so much that of discrimination between different religions or beliefs, but internal control of the respect of moral codes (for instance, requiring religious marriage instead of civil marriage). It is worth mentioning that Catholic universities enjoy a discretion to hire or dismiss which has been the subject of long and complex litigation in two famous cases (*Cordero* and *Lombardi Vallauri*) which went before the Constitutional Court and the Supreme Administrative Court which, however, both decided in favour of the discretionary power of the institutions. The *Lombardi Vallauri* case has been the subject of a recent ECHR judgment. The Court found violation of Article 10 of the ECHR: ECHR, 20 Oct. 2009, *Lombardi Vallauri v Italy*, rec. no. 39128/05.

[62] *Supreme Court 24 February 2003, no. 2803*.

[63] Act 186 of 18 July 2003, on the legal status of teachers of Catholicism in institutes and schools of any category and level, *Official Journal* no. 170, 24 July 2003. If the authorisation is withdrawn, however, the Act foresees at Article 4 a system allowing the person – under certain conditions – to move to another job within the educational system.

The Decree transposing Directive 2000/78/EC establishes (Article 3, paragraph 2, letter e)) that it does not affect the validity of rules presently in force concerning the armed forces in relation to age and disability.

b) Are there any provisions or exceptions relating to employment in the police, prison or emergency services (Recital 18, Directive 2000/78)?

The original text of Legislative Decree 216/2003 transposing Directive 2000/78/EC mentioned an exception regarding employment in the police, prison and emergency services. The Legislative Decree has been amended, deleting this exception and leaving only the general exception under the new Article 3, paragraph 3: 'assuming respect of the principles of proportionality and reasonableness, and in the presence of a legitimate aim, those differences in treatment based on characteristics linked to religion, personal beliefs, disability, age or sexual orientation that, because of the nature of the activity or the context in which it takes place, are an essential and determining requirement for undertaking the activity, do not constitute discrimination'.

There is no express counterpart of Recital 18 of Directive 2000/78/EC.

4.4 Nationality discrimination (Art. 3(2))

Both the Racial Equality Directive and the Employment Equality Directive include exceptions relating to difference of treatment based on nationality (Article 3(2) in both Directives).

a) How does national law treat nationality discrimination? Does this include stateless status?
What is the relationship between 'nationality' and 'race or ethnic origin', in particular in the context of indirect discrimination?
Is there overlap in case law between discrimination on grounds of nationality and ethnicity (i.e. where nationality discrimination may constitute ethnic discrimination as well?

Discrimination on the ground of nationality (which certainly covers statelessness) is explicitly excluded from the scope of application of the Decrees, as are all legal rules concerning immigration, work, and assistance to citizens of non-EU countries. The exclusion of discrimination on the ground of nationality, although admitted by the Directive, raises problems since in Italy indirect racial and ethnic discrimination is often disguised as discrimination against 'non-EU citizens.'

More than ten years have passed since the first judgment against a measure enacted by a Northern-Italy city council aiming to restrict access to public housing by third country nationals.[64] In all these years several actions have been brought before

[64] Tribunal of Milan, Sction I, Judgment no. 3624/2001, in Diritto, Immigrazione e Cittadinanza, 4,

Courts contesting the same purpose and analogous legal measures enacted in different sectors of public services, including housing. Looking at this case-law one can easily see that they concern discrimination on the basis of nationality, but that the political decisions behind them are taken in a context where the ethnic identity of the foreign citizens involved is a crucial factor. Indeed those political decisions could be qualified as an example of covert direct discrimination on ground of race and ethnic origin.

From a legal point of view the Courts – with few exceptions so far – take their decisions mixing up provisions regarding discrimination on ground of nationality (legislative decree 1998 no. 286) and discrimination on ground of racial and ethnic origin, without expressly exploring on the issue of indirect race discrimination.

b) Are there exceptions in anti-discrimination law that seek to rely on Article 3(2)?

Both Decrees implementing the 2000 Directives (at Article 3.2) exclude migration law from their own scope of application. This exclusion applies not only to the rules on entry and residence of third country nationals (as per the Directives) but also to their 'access to employment' (and assistance and welfare), with regards to which they should instead be protected under other legislative provisions.[65]

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

Some employers, both public and private, provide benefits to employees in respect of their partners. For example, an employer might provide employees with free or subsidised private health insurance, covering both the employees and their partners. Certain employers limit these benefits to the married partners (e.g. Case C-267/06 Maruko) or unmarried opposite-sex partners of employees. This question aims to establish how national law treats such practices. Please note: this question is focused on benefits provided by the employer. We are not looking for information on state social security arrangements.

a) Would it constitute unlawful discrimination in national law if an employer only provides benefits to those employees who are married?

Policies aiming at extending benefits to same-sex cohabitant partners are still rare.[66] As far as collective agreements and the law are concerned, marital status has been

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2002, with a commentary by Alessandro Simoni.

[65] Article 3(2) of both Directives provides that: 'This Directive does not cover difference of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into and residence of third country nationals and stateless persons on the territory of Member States, and to any treatment which arises from the legal status of the third-country nationals and stateless persons concerned.'

[66] The health insurance fund for journalists extends its benefits to *de facto* cohabitants, expressly including same-sex partners (see www.casagit.it).

used to justify differences in treatment (for unmarried different-sex and same-sex partners), even though the current trend is to extend some rights to *de facto* cohabitants. Indeed, with respect to bereavement and compassionate leave, Act 53/2000[67] and the resulting regulation adopted by Decree 278/2000 of the Prime Minister[68] extend this right in cases of the infirmity or death of a stable cohabitant.[69] These provisions therefore cover same-sex partners. As a consequence of these rules, many collective agreements extend to cohabitants (without regard to sexual orientation) rights to leave or to take a sabbatical in order to be able to follow their partner.[70]

b) Would it constitute unlawful discrimination in national law if an employer only provides benefits to those employees with opposite-sex partners?

Many problems for same-sex partners derive from the limitation of several benefits to married couples (Italy does not recognise same-sex marriage or registered partnerships).

A major discriminatory consequence affecting unmarried partners in general concerns the pension system with particular reference to survivors' pensions: according to revised Royal Decree 636/1939,[71] only the spouse of a worker in the public or private sector is entitled to benefit from the worker's pension. The Constitutional Court upheld this provision in 2000.[72]

Considering that Article 3(1)(b) of the Decree has implemented Article 3(1)(c) of the Directive, it is possible to argue that denial to same-sex partners of benefits granted to opposite-sex cohabitants constitutes direct discrimination being, in fact, not a direct consequence of national law but rather a result of a decision by the employer.

[67] Act no. 53 of 8 March 2000, Provisions to support motherhood and fatherhood, on the right to care and training, on the co-ordination of schedules in cities, *Official Journal* no. 60 of 13 March 2000.
[68] Decree of the President of the Council of Ministers-Department for Social Affairs no. 278 of 21 July 2000, Regulation concerning provisions for the implementation of Article 4 of Act no. 53 of 8 March 2000 on leave for particular causes and events.
[69] The Act makes reference to the registered family as defined by Article 4 of Presidential Decree 223 of 30 May 1989: this registration is conceived for residence purposes, has no legal consequences and, despite the grounds on which leave may be granted, cannot be considered as a form of recognition of *de facto* couples. The right to leave is also provided for non-cohabiting relatives (e.g. brothers/sisters, grandparents, grandsons/granddaughters).
[70] As an example, see the national collective agreement for postal workers of 11 January 2001: employees are granted even a substitute marriage licence for same-sex and different-sex cohabitants. In other cases ,collective agreements do not yet include rights for cohabitants: for instance, the national collective agreement for workers in the metallurgical and mechanical industry of 8 June 1999 excludes *de facto* partners from compensation for a worker's death or from benefits if the worker has to leave her/his residence.
[71] Royal Decree no. 636 of 14 April 1939, Provisions on pensions, converted and revised by Act no. 1272 of 6 July 1939.
[72] Constitutional Court *3* November 2000, no. 461.

Article 3(2)(d) explicitly states that the Decree shall be without prejudice to the provisions already in force concerning marital status and the benefits dependent thereon, as provided by recital 22 of the Directive: however, it could be possible to challenge different treatment based on marital status as provided by a collective agreement or imposed by employers as a form of indirect sexual orientation discrimination.

Finally, the Italian system does not provide specific protection for people who are not the legal parent of a child. Legislative Decree 151/2001[73] establishes the position of parents with reference to rights and benefits in the work place: according to Article 1, only a legal or adoptive parent or a person who has legal custody of a child[74] is eligible for the benefits provided by the law. Extra benefits (namely, additional leave of absence) are granted to single parents. Only legal or adoptive children may receive a survivor's pension.

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

a) Are there exceptions in relation to disability and health and safety (Article 7(2), Directive 2000/78)?

No specific exception is mentioned in the Decree transposing Directive 2000/78/EC in relation to disability, nor do exceptions in relation to health and safety apply to other grounds. These issues are unexplored in Italian law.

Outside the Decree, the provisions on health/safety and disability are to be found in Act 68/1999 on the integration of the disabled into the labour market. This act applies only to people with severe disabilities for whom it provides different forms of protected employment. Special public commissions establish what the most appropriate measures to adapt working conditions are. Otherwise, a person's suitability for a specific job is always established by a medical screening. The employer cannot exclude a worker considered suitable for the job, nor may the employee run the risk of working without proper medical approval.

b) Are there exceptions relating to health and safety law in relation to other grounds, for example, ethnic origin or religion where there may be issues of dress or personal appearance (turbans, hair, beards, jewellery, etc.)?

There are no exceptions of this kind.

[73] Legislative Decree 151 of 26 March 2001, General framework of legislative provisions on the protection of and support to motherhood and fatherhood, in compliance with Article 15 of the Act no. 53 of 8 March 2000, *Official Journal* no. 96 of 26 April 2001.
[74] In principle, also the same-sex partner of the parent.

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

4.7.1 Direct discrimination

Please, indicate whether national law provides an exception for age? (Does the law allow for direct discrimination on the ground of age?)
Is it possible, generally, or in specified circumstances, to justify direct discrimination on the ground of age? If so, is the test compliant with the test in Article 6, Directive 2000/78, account being taken of the Court of Justice of the European Union in the Case C-144/04, Mangold and Case C-555/07 *Kucukdeveci?*

a) Does national law permit differences of treatment based on age for any activities within the material scope of Directive 2000/78?

The Decree transposing Directive 2000/78 as amended in 2008[75] makes certain new provisions in Article 3.4, which now has two new sections: paragraphs 4-*bis* and 4-*ter*. According to the new text, the law does not affect the rules providing for 'work suitability tests' nor differential treatment based on special conditions for 'access to employment and occupational training' by 'young workers, aged workers and those with caring responsibilities, in order to favour their integration into employment or their protection' (point a). Also excepted are 'the determination of minimal levels of age, professional experience or seniority in employment for access to employment or to certain benefits linked to employment' (point b) and 'the determination of a maximum age for recruitment, based on the training requirements for the specific occupation or on the need for a reasonable period of work before retirement' (point c). The new text of the Decree can be considered generally in line with the standards imposed by Article 6 of Directive 2000/78.

It is not possible to provide here a list of all possible cases of differences of treatment based on age within the material scope of the Directive. For instance, employment under a contract of apprenticeship is, until the regions implement their own rules (this being within their field of competence), limited to people with a maximum age of 24, 26 or 29, depending on various factors.

b) Does national legislation allow occupational pension schemes to fix ages for admission to the scheme or entitlement to benefits, taking up the possibility provided for by article 6(2)?

No explicit use of the possibility under article 6(2) is reported. However, the latest pension reform introduced in 2011 made significant changes to the regulation of

[75] Legislative Decree 59 of 8 April 2008 later converted into ordinary law as Act 101 of 6 June 2008 converting into a law, with amendments, the Legislative Decree of 8 April 2008, containing urgent provisions for the implementation of EU obligations and the execution of judgments of the Court of Justice of the European Communities, published in Official Journal no. 132 of 7 June 2008.

physically arduous jobs.[76] Workers performing one of the jobs included in a special and exhaustive list of jobs may ask for early retirement at the age of 60, if they have already worked for at least 35 years.

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

Are there any special conditions set by law for older or younger workers in order to promote their vocational integration, or for persons with caring responsibilities to ensure their protection? If so, please describe these.

Labour law provides an extensive number of rules making exceptions to ordinary rules in order to promote the employment and vocational training of young people. It must be noted that not all these rules provide more favourable treatment but instead allow a reduction in salaries or a lower degree of protection as a policy to increase youth employment. A wide reform of labour law has been planned by the Government to be approved by the end of 2014; if the proposals are approved, there will be radical changes to employment contracts, especially for young workers. There are also many rules providing protection for people with caring responsibilities in the form of maternity leave and similar.

4.7.3 Minimum and maximum age requirements

Are there exceptions permitting minimum and/or maximum age requirements in relation to access to employment (notably in the public sector) and training?

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

As far as the public sector is concerned, employment is in principle free from any age limit, but each public body can provide a specific age limit by issuing a special decree.[77] Such decrees must state the reasons for the age limit. It is possible to seek judicial review of these decrees although nobody has done this so far.

4.7.4 Retirement

In this question it is important to distinguish between pensionable age (the age set by the state, or by employers or by collective agreements, at which individuals become

[76] For a list of and the requirements provided for those kind of jobs see the details given by INPS: http://www.inps.gov.it/portale/default.aspx?iMenu=1&iNodo=5904.
[77] Article 3, paragraph 6 of Act no. 127 of 15 May 1997.

entitled to a state pension, as distinct from the age at which individuals actually retire from work), and mandatory retirement ages (which can be state-imposed, employer-imposed, imposed by an employee's employment contract or imposed by a collective agreement).

For these questions, please indicate whether the ages are different for women and men.

a) *Is there a state pension age, at which individuals must begin to collect their state pensions? Can this be deferred if an individual wishes to work longer, or can a person collect a pension and still work?*

The pension system was most recently reformed in 2011 under pressure to recover from the economic crisis which has affected Italy as it has several other countries in the Eurogroup. The retirement age for men and women in both the public and private sectors will be gradually equalised: in 2018 men and women in both sectors will retire at 66. They will be able to retire before 66 only if they have worked for 42 years and three months (for men) or 41 years and three months (for women) but with a 2% cut for each year of early retirement. A complex system of flexibility will operate between the ages of 62 and 70 years (see below).

Pension age can be deferred if individuals wish to work longer but only up to 70 years.

Only the self-employed can start collecting their pensions and still work.

b) *Is there a normal age when people can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements? Can payments from such occupational pension schemes be deferred if an individual wishes to work longer, or can an individual collect a pension and still work?*

There are several occupational pension schemes currently in force, generally based on employer-funded pension arrangements (e.g. lawyers, judges, notaries, physicians). Each of them fixes minimum and maximum ages to start to collect pensions, with a mix of age and years of contribution. Pensions can be deferred until the compulsory retirement age is reached, that is around 70 years, but may be longer e.g. for judges and notaries that is 75 years. Only the self-employed can start collecting pensions and still work.

c) *Is there a state-imposed mandatory retirement age(s)? Please state whether this is generally applicable or only in respect of certain sectors, and if so please state which. Have there been recent changes in this respect or are any planned in the near future?*

70 years is the mandatory retirement age imposed by the State, with adjustment in line with life expectancy. At that age at least five years of contribution are necessary to get the pension.
Special occupational pension schemes can provide different retirement ages.

d) *Does national law permit employers to set retirement ages (or ages at which the termination of an employment contract is possible) by contract, collective bargaining or unilaterally?*

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

e) *Does the law on protection against dismissal and other laws protecting employment rights apply to all workers irrespective of age, if they remain in employment, or are these rights lost on attaining pensionable age or another age (please specify)?*

Until retirement, the individual worker enjoys all rights, including the protection against illegal dismissal according to Article 24, para. 4, of Law 214/2011 which has extended the application of Article 18 of Workers' Act also to those workers.

f) *Is your national legislation in line with the CJEU case law on age (in particular Cases C-229/08 Wolf, C-499/08 Andersen, C-144/04 Mangold and C-555/07 Kücükdevici C-87/06 Pascual García [2006], and cases C-411/05 Palacios de la Villa [2007], C-488/05 The Incorporated Trustees of the National Council on Ageing (Age Concern England) v. Secretary of State for Business, Enterprise and Regulatory Reform [2009], C-45/09, Rosenbladt [2010], C-250/09 Georgiev, C-159/10 Fuchs, C-447/09, Prigge [2011]) regarding compulsory retirement?*

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

As far as age limits are concerned, the legal framework is in line with CJEU case law, but several limits still exist and they should be changed or removed, if they cannot be properly justified.

4.7.5 Redundancy

a) *Does national law permit age or seniority to be taken into account in selecting workers for redundancy?*

There is no legislation authorising employers to take into account age or seniority in selecting workers for redundancy, but for so-called "collective dismissals". Special arrangements apply in case of financial crisis followed by so-called "contracts of solidarity": in this context agreements with trade unions provide for financial incentives to reduction of working hours and may include the voluntary retirement, switch to part-time contracts and even the dismissal of a part of the work-force, according to Law 223/1991.[78] The selection of workers whose contracts should be amended is based on several criteria, including the workers' age. This is clearly discriminatory and judges have so declared in several judgments but no significant amendment has been enacted.[79]

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

b) If national law provides compensation for redundancy, is this affected by the age *of* the worker?

The social security system provides 'mobility compensation' for workers who are made redundant. The system applies to workers who are dismissed after having previously enjoyed the social security benefits granted to workers in enterprises in difficulty (unemployment insurance). The length of the period for which mobility compensation is granted depends on the age of the worker (the older the worker, the longer the period during which he/she is eligible for compensation).

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

Does national law include any exceptions that seek to rely on Article 2(5) of the Employment Equality Directive?

Article 3(2)(c) establishes that the Decree shall be without prejudice to the provisions already in force concerning public security, maintenance of public order, prevention of criminal offences, and protection of health. The actual meaning of this provision cannot be understood – it seems to allow too great a discretion to the legislator since there is no means of verifying its compatibility with the needs of a democratic society.

4.9 Any other exceptions

Please mention any other exceptions to the prohibition of discrimination (on any ground) provided in national law.

[78] http://www.inps.it/portale/default.aspx?iMenu=1&iNodo=6543.
[79] The point is clearly explained in UNAR's report for 2012 at pages 40-43; http://www.unar.it/unar/portal/wp-content/uploads/2013/09/Relazione-2012.pdf.

Article 3(4) of the Decree transposing Directive 2000/78 establishes that this is without prejudice to the 'provisions that establish work suitability tests with respect to the necessity of suitability for a specific occupation (…)'. The provision is unclear. Considering that the second part of Article 3(4) specifically states that differences of treatment are justified with reference to adolescents, young people, older workers and workers with caring responsibilities if they are required by the special character of the occupation and by legitimate employment policy, labour market and vocational training objectives, it seems that the first part makes reference to more general and vague work suitability tests without specifying the nature of the work for which a test is required, a specific ground, or even the purpose or nature of the test. Even assuming that such tests would be lawful only when based on a separate statutory provision and would not justify different treatment, the current version of the Decree is quite suspect since it allows a general appraisal of the worker's suitability not provided by the Directive itself and not defined in its aims, criteria and limits.

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

a) What scope does national law provide for taking positive action in respect of racial or ethnic origin, religion or belief, disability, age or sexual orientation? Please refer to any important case law or relevant legal/political discussions on this topic.

The Decrees did not introduce anything new in terms of positive action. It is in principle legitimate under the Italian Constitution in the light of the principle of substantive equality under Article 3(2). Such measures exist and are applied with regard to gender on the basis of Act 125/1991.

b) Do measures for positive action exist in your country? Which are the most important? Please provide a list and short description of the measures adopted, classifying them into broad social policy measures, quotas, or preferential treatment narrowly tailored. Refer to measures taken in respect of all five grounds, and in particular refer to the measures related to disability and any quotas for access of people with disabilities to the labour market, any related to Roma and regarding minority rights-based measures.

In relation to the grounds covered by the Directives, positive action strictly speaking applies in practice only to persons with disabilities on the basis of a complex set of rules contained in Act 162/1998. As far as this act is concerned, one has to remark that its aim is to amend and partly fill the gaps of the 'Framework Act' of 1992 that provides some measures in favour of persons with severe disabilities. In fact it: 1) provides for some new concrete interventions and services; 2) allows some experimental projects to be implemented; 3) promotes the use of surveys and the collection of statistical data on disability; 4) provides for a national conference on disability policy to be held every third year. The act targets local authorities, which have specific competences to promote actions in favour of disabled persons, to draft programmes and to perform 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 transferred the financial resources to the local authorities (by 2000). Local authorities now provide their own funding.

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

In the field of employment, Act 162/1988 establishes a set of policies to be applied only to people with severe disabilities as defined by its opening provisions, which can be summarised as follows:

- the employment of disabled people in work places that have been adapted to their abilities through the use of facilities and specific solutions to problems connected with the environment etc.
- the placement of disabled people in specific jobs as decided by a medical

commission. This commission has the task of: i) carrying out a functional diagnosis in order to determine the total ability of disabled people, specifying the grade and quality of their impairments and ii) proposing how to facilitate their placement in employment. The commission clarifies the position of disabled persons in his/her environment, their attitudes, and their family relationships, taking into account their educational background and the jobs that they have already done.

- an obligation on public bodies and private enterprises to ensure that disabled people make up 7% of the total workforce (applies to private enterprises with more than 50 employees). Exceptions to this obligation apply to political parties, trade unions, and associations for social development and support. For police and civil protection jobs, disabled persons are employed only for administrative tasks. Moreover, other cases of derogation are set out in Articles 3 and 5. These quotas are generally complied with. Statistics on the enforcement of such quotas are available from the Ministry of Labour; 25,000-30,000 people are hired under this system each year. In certain cases an employer who is not in a position to hire disabled people for a stated reason (e.g. the type of activity) will make a financial contribution to the Regional Employment Fund.

Moreover, the Act provides some services in order to facilitate access to work by the disabled in compliance with Article 7; other rules cover lists of unemployed disabled people; labour relations (Article 10); support for the enterprises which comply with the law (Article 11); the creation of social cooperatives in order to support access to work (Article 12); benefits for employers who employ disabled people (Article 13); and the institution of a Regional Fund for the Employment of Disabled Persons. Sanctions of different kinds are applied to the employers who do not fulfil their obligations.

As already mentioned, forms of favourable differential treatment exist with regard to religion for denominations which have signed agreements with the State. Such positive action mostly relates to holidays for Jews and Seventh-day Adventists.[80] The statute transposing the agreement with the Adventists, for instance, establishes the right of those employed by private or public employers to refrain from working on Saturdays, with the limit that this should not affect 'essential public services' and that the right is enjoyed 'within the framework of the organisation of work'; incompatibility with the organisation of work must be proved by the employer. With regard to Adventists, these legislative rules have been usually interpreted by courts in favour of employees through a narrow construction of the limits. Dismissals based on a refusal to work on Saturday have normally been considered illegal, and the court has ordered the reinstatement of the worker in his/her position and payment of damages.[81] As regards Jews, the relevant act also establishes an obligation to take into consideration the obligation to rest on Saturday when setting dates of

[80] See Article 17 of the 1988 Act for the Adventists and Article 3 of the 1989 Act for the Jews.
[81] See for instance the judgment of the Tribunal of Rome of 6 November 1998, in *Il diritto ecclesiastico,* II, 2000, page. 95 ff.

recruitment assessments for public sector employment.

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

As far as this author is aware, no case law as yet exists on the limits within which such characteristics of religious identity can enjoy legal protection on the basis of general principles (such as freedom of expression or religion or good faith in employment relations). The comparative disadvantage of Islam could constitute an infringement of the Directive.

There is no organised state policy promoting specific measures to prevent disadvantages linked to religion or belief beyond what is already granted in the agreements mentioned above.

Positive action for the Roma does not exist at the national level. Some regional legislation provides for very weak support to the integration of Romani groups, but such measures are currently very marginal in the overall picture, often completely unimplemented, and initiatives in favour of the Roma are most often decisions taken at the municipal level. An Italian national strategy was adopted on 28 February 2012, implementing the European Commission Communication COM(2011)173.[82] It is too early to assess the effects of this strategy, in particular on housing, where legislative competence lies mainly with the regions and local authorities. The strategy covers four pillars: housing, health care, education and employment. However, the national strategy provides an incentive and promotes coordination without setting binding targets to be reached by the regions. At national level the Government could promote a law setting the minimum level of services, including housing, but such a law is not on the agenda of any political party.[83]

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

82 http://www.interno.gov.it/mininterno/export/sites/default/it/assets/files/22/0251_STRATEGIA_ITALIANA_ROM_PER_MESSA_ON_LINE.pdf.

83 A reference to this activity of coordination and to the desirable amendment in laws in force is made in UNAR's report for 2012, at pages 49-52.

Much weaker protection is granted at the national level to other linguistic minorities[84] defined as 'historic' by a law of 1999, i.e. the languages 'of the Albanian, Catalan, Germanic, Greek, Slovenian and Croatian populations and of those speaking French, Franco-Provençal, Friulan, Ladin, Occitan and Sardinian'.

Positive action with regard to race and ethnicity could be based on the Immigration Decree, which envisages actions for the integration of third country nationals, but current political conditions make the use of this possibility very unlikely.

[84] On minority protection in general, see A. Simoni, '*Minorités-droit public italien',* in *Journées mexicaines 2002 de l'Association Henri Capitant des Amis de la Culture Juridique Française,* Universidad Nacional Autonoma de Mexico, 2005, pp. 751-758. The law on the national linguistic minorities is Law 15 December 1999, no. 482, *Measures on protection of historical and linguistic minorities*, in *Official Journal* no. 297 of 20 December 1999.

6 REMEDIES AND ENFORCEMENT

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

In relation to each of the following questions please note whether there are different procedures for employment in the private and public sectors.

a) What procedures exist for enforcing the principle of equal treatment (judicial/ administrative/alternative dispute resolution such as mediation)?

Anti-discrimination procedures were radically changed in 2011. The special anti-discrimination action, available since 1998 and mentioned expressly by the Decrees implementing the 2000 Directives, has been withdrawn under Article 28 of Legislative Decree 150/2011.[85] Since 7 October 2011 the general provisions on fast track procedures have applied to discrimination litigation instead of the special procedure provided by Article 44, paragraph 3-8 of the Immigration Decree. The relevant article is Article 702-*bis* of the Civil Procedural Code. The new procedure applies to claims lodged after 7 October 2011, while the previous one will continue to be applied to claims already filed.

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

b) Are these binding or non-binding?

Since the procedure is judicial, the decisions are binding.

[85] Additional Measures to the Procedural civil Code in order to reduce and simplify civil proceedings, according to Article 54 of Law 19 June 2009, no. 69, in Official Journal of 21 September 2011, no. 220.

c) *What is the time limit within which a procedure must be initiated?*

Time limits are the same as applicable to ordinary liability in tort, that is, five years (Article 2947 of the Civil Code).

d) *Can a person bring a case after the employment relationship has ended?*

The alleged victim can bring the action after the employment relationship has ended, subject to the ordinary statute of limitations applicable in labour law (ten years for non-economic rights and five for economic rights).

e) *In relation to the procedures described, please indicate any costs or other barriers litigants will face (e.g. necessity to instruct a lawyer?) and any other factors that may act as deterrents to seeking redress (e.g. strict time limits, complex procedures, location of court or other relevant body).*

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

f) *Are there available statistics on the number of cases related to discrimination brought to justice? If so, please provide recent data.*

There are no available statistics on cases related to discrimination brought to justice. UNAR has among its tasks the drafting of an annual report to the Parliament which includes data on its activity and racial discrimination cases. However, UNAR does not conduct surveys or collect more complex data. According to the 2012 report in 2011 95 cases related to racial discrimination were brought to justice.[86] A recent publication reports and classifies cases related to nationality discrimination heard in the last four years in northern Italy: 52 cases are reported, plus seven judgments of the Constitutional Court.[87]

g) Are *discrimination* cases registered as such by national courts? (by ground? Field?) Are these data available to the public?

[86] http://2.228.163.148/unar/_image.aspx?id=fddf67ab-5f6d-449c-bc55-1fdbb702b360&sNome=Relazione attività UNAR 2011.pdf.

[87] A. Guariso (ed.), *Quattro anni alle discriminazioni istituzionali nel Nord Italia*, Milan: Terre di Mezzo, 2012.

Discrimination cases are not registered as such by national courts. When a case is brought to Courts lawyers have to fill in a form where they have to write down the subject of the case and the related code.[88] The list of the subjects and the codes of cases are set out in an annex to the form and discrimination is not included in the list.[89] Discrimination cases are in fact registered as "Others – Other fast-track procedures". Then cases are registered on the basis of the type of decision: judgment, decree, order; and not on the basis of their subject.

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

Please list the ways in which associations may engage in judicial or other procedures

a) Are associations entitled to act on behalf of victims of discrimination? (to represent a person, company, organisation in court)

Article 5 of Legislative decree 215/2003 entitles associations and legal persons to act in support or on behalf of victims of discrimination.

Article 5 of Legislative decree 216/2003 entitles Trade unions, associations and legal persons to act in support or on behalf of victims of discrimination.

The same is provided for by Article 4 of Disability Act 67/2006 which grants standing to litigate to associations and legal persons.

b) Are associations entitled to act in support of victims of discrimination? (to join already existing proceedings)

Article 5 of Legislative decree 215/2003 entitles associations and legal persons to act in support or on behalf of victims of discrimination.

Article 5 of Legislative decree 216/2003 entitles Trade unions, associations and legal persons to act in support or on behalf of victims of discrimination.

The same is provided for by Article 4 of Disability Act 67/2006 which grants standing to litigate to associations and legal persons.

c) What types of entities are entitled under national law to act on behalf or in support of victims of discrimination? (please note that these may be any association, organisation, trade union, etc.).

[88] http://www.giustizia.it/giustizia/it/mg_3_7_9.wp?tab=d.

[89] http://www.giustizia.it/resources/cms/documents/iscrizione_a_ruolo_lavoro_procedimenti_speciali_sommari_tribunale.rtf.

According to Article 5 of Legislative Decree 215/2003, legal standing is granted to associations and bodies included in a list approved by a joint decree of the Ministries of Labour/Welfare and Equal Opportunities.

With regard to all the grounds of discrimination dealt with in Directive 78/2000, standing to litigate – previously limited by Legislative Decree 216/2003 to trade unions – is now extended to other organisations and associations representing the rights or interests affected, with no special register.

Disability Act 67/2006 grants (Article 4) standing to litigate to associations identified by a joint decree of the Ministries of Labour and Equal Opportunities along the lines applied in the case of race and ethnicity.

Moreover in the employment field Trade Unions have right to legal standing on behalf or in support of victims of discrimination according to article 43, para. 10, of Legislative decree 1998/286 and to Article 18 of Legislative decree 1970/300 (the latter on discriminatory dismissal).

d) *What are the respective terms and conditions under national law for associations to engage in proceedings on behalf and in support of complainants? Please explain any difference in the way those two types of standing (on behalf/in support) are governed. In particular, is it necessary for these associations to be incorporated/registered? Are there any specific chartered aims an entity needs to have; are there any membership or permanency requirements (a set number of members or years of existence), or any other requirement (please specify)? If the law requires entities to prove "legitimate interest", what types of proof are needed? Are there legal presumptions of "legitimate interest"?*

As regards race and ethnicity, associations and organisations that comply with certain requirements as verified by the competent ministries may be included in the list mentioned above.[90] Associations and other bodies must have been officially established for at least one year and continuously operating in the year immediately before registration, as well as having an official charter establishing that they have a democratic structure, do not operate in order to make a profit and that promotion of equal treatment and opposition to discrimination is their only or primary aim. Moreover, they must have a budget and a register of members that fulfils certain legal standards, while their legal representatives must not have been sentenced for crimes related to the activity of the association nor act in any form as entrepreneurs or board members of commercial enterprises operating in the same field. The associations admitted to the list were partly taken from those included in the pre-existing register of associations and organisations operating in favour of immigrants

[90] Decree of the Prime Minister, 31 August 1999, no. 394, Regulation implementing the legislative decree 25 July 1998, no. 286, in Official Journal no. 258 of 3 November 1998, Supplement no. 190.

and partly from the register of associations and organisations specifically active in the field of opposition to discrimination established under Legislative Decree 215/2003 (all of which applied to obtain standing). The list of the associations and bodies with standing to litigate, drawn up for the first time in 2005, can be found on the UNAR website at http://www.lavoro.gov.it/AreaSociale/Immigrazione/associazioni/Pages/default.aspx. It was updated in 2013. This was the second update as the provision specifying that the list had to be updated on a yearly basis has not been observed.

Moreover according to Article 44 of Legislative decree 1998 no. 286, legal standing is granted to the local sections of the most representative trade unions in order to act against collective discrimination in the field of employment when victims are not identifiable.

When it comes to the grounds envisaged in Directive 2000/78, standing is accorded on an *ad hoc* basis where the organisations are regarded as having a 'legitimate interest' in the enforcement of the relevant legislation.

With regard to action based on the Disability Act no. 67/2006, a decree of 2007 established a register jointly managed by the Ministries of Labour and Equal Opportunities, along roughly the same model as established for race and ethnicity under the Decree transposing Directive 2000/43.[91]

It is worth to mention that for associations acting in the framework of legislative decree 216/2003, implementing directive 2000/78/EC, the conditions to have standing to litigate are much broader than those required according to act no. 67/2006, because no preliminary registration or ad hoc certification is required. This means that associations acting against discrimination in the field of employment enjoy a much broader right to legal standing than those acting in other fields according to act no. 67/2006.

e) *Where entities act on behalf or in support of victims, what form of authorization by a victim do they need? Are there any special provisions on victim consent in cases, where obtaining formal authorization is problematic, e.g. of minors or of persons under guardianship?*

Under Article 5 of both Decrees, the entities that have standing to litigate must have a power of attorney provided by the victim in written form (under seal). Moreover, under both Decrees, associations having standing to litigate can bring a case to court (obviously without the authorisation of a victim) in the event of collective discrimination when victims cannot be identified in a direct and immediate way.

[91] http://www.lavoro.gov.it/AreaSociale/Disabilita/Tutela_giudiziaria/Pages/default.aspx.

Where obtaining formal authorisation is problematic there is no special provision therefore the general rules on representation apply.

f) Is action by all associations discretionary or do some associations have a legal duty to act under certain circumstances? Please describe.

There is no duty whatsoever for associations to engage in legal actions.

g) What types of proceedings (civil, administrative, criminal, etc.) may associations engage in? If there are any differences in associations' standing in different types of proceedings, please specify.

The Decrees allow associations to engage in civil and administrative proceedings. Standing to litigate in criminal cases is possible to claim for pecuniary redress under the general rules: representatives are allowed to stand if they are a victim or in support of crime victims.

h) What type of remedies may associations seek and obtain? If there are any differences in associations' standing in terms of remedies compared to actual victims, please specify.

Associations can seek the same remedies as individual victims.

i) Are there any special rules on the shifting burden of proof where associations are engaged in proceedings?

Rules on the burden of proof are not affected by the involvement of associations in the proceedings.

j) Does national law allow associations to act in the public interest on their own behalf, without a specific victim to support or represent (actio popularis)? Please describe in detail the applicable rules, including the types of associations having such standing, the conditions for them to meet, the types of proceedings they may use, the types of remedies they may seek, and any special rules concerning the shifting burden of proof.

Italian law does not provide a specific statutory basis for *actio popularis* although some exceptions exist, e.g. in the field of environmental litigation. It must be, however, taken into account that under both Decrees implementing the two Directives of 2000, associations having legal standing can intervene (obviously without the authorisation of a victim) in the case of collective discrimination when victims cannot be identified in a direct and immediate way.

According to Article 4, para. 2, of act no. 67/2006, associations can institute administrative proceedings to review the legality of discriminatory acts contested in the civil proceedings, while according to Article 4, para. 3, of act no. 67/2006,

associations are entitled to act in case of collective discrimination.

A specific provision is that of Article 44, para. 10, of Legislative decree 1998 no. 286 according to which local sections of the most representative trade unions have legal standing in order to act against collective discrimination when victims are not identifiable.

*k) Does national law allow associations to act in the interest of more than one individual victim (**class action**) for claims arising from the same event? Please describe in detail the applicable rules, including the types of associations having such standing, the conditions for them to meet, the types of proceedings they may use, the types of remedies they may seek, and any special rules concerning the shifting burden of proof.*

After heated scholarly and political debate, in December 2007 the Government included a provision in the Finance Act introducing a class action for obtaining financial compensation for wrongs perpetrated against groups of consumers or users. After having been frozen for a while, this new piece of legislation entered into force, in a slightly modified form, on 1 January 2010. While its provisions make no mention of anti-discrimination suits as such, it is not inconceivable that actions relating to discrimination against specific groups of consumers on racial or other grounds could be brought under the new law.

Moreover according to both decrees implementing the two directives and to Article 4, para. 3, of act no. 67/2006, associations are entitled to act in case of collective discrimination: in theory they could act through both an *actio popularis* or/and a collective redress.

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

Does national law require or permit a shift of the burden of proof from the complainant to the respondent? Identify the criteria applicable in the full range of existing procedures and concerning the different types of discrimination, as defined by the Directives (including harassment).

Article 28 of Legislative Decree 150/2011 has reformulated the rule on the burden of proof. Under paragraph 4, if the plaintiff establishes facts, including facts of a statistical character, on which a presumption of discrimination can be based, it is up to the defendant to prove that there has been no discrimination. Testing is still not part of current practice.

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

What protection exists against victimisation? Does the protection against victimisation extend to people other than the complainant? (e.g. witnesses, or someone who helps the victim of discrimination to bring a complaint).

Victimisation was mentioned in the first version of the Decrees transposing the Directives, but only as an element to be taken into consideration when assessing the amount of damages.

A new Article 4-*bis* has been introduced into the Decrees (while keeping the old provision) saying that judicial protection is 'also applied against any prejudicial behaviour addressed to a person affected by direct or indirect discrimination or to any other person as a reaction against any activity aimed at obtaining equality of treatment' (the same evidentiary standards apply, including the reversed burden of proof).

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

a) What are the sanctions applicable where unlawful discrimination has occurred? Consider the different sanctions that may apply where the discrimination occurs in private or public employment, or in a field outside employment.

Under Article 4(5) of the Decree 216/2003, the judge orders the termination of the discriminatory behaviour, conduct or act and the removal of its effects, including by means of a plan aiming to rectify discrimination identified. The basic idea of this remedy (also provided by remedies against gender discrimination) is consistent with Article 15 of the Workers' Act, which declares that any discriminatory act or behaviour is unlawful and consequently void. Therefore, the consequences of such acts and behaviour must be rectified and the previous situation restored. According to some authors, even though this sanction may work in cases of dismissal (when the reinstatement must be ordered) or other acts, it might not be an effective remedy for omissions (e.g. denial of access to work); in these cases only compensatory damages are available. A victim of discrimination may claim for compensation of pecuniary and non-pecuniary losses under Article 4(5). Under Article 44(8) of the Immigration Decree, criminal sanctions are applied if the decision of the court is not complied with.

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

Article 4(7) of the Decree establishes that the decision of the judge must be published in a national newspaper if this is explicitly ordered by the judge in the light of the circumstances of the case.

Discriminatory dismissals are governed by Article 3 of Act 108/1990 on individual dismissals (which is in fact a consolidated version of Article 4 of Act 604/1966 and of the amended version of Article 15 of the Workers' Act), according to which they are

always considered as void and entail the worker's reinstatement.

b) Is there any ceiling on the maximum amount of compensation that can be awarded?

No ceilings to the amount of compensation apply.

c) Is there any information available concerning:

i) the average amount of compensation awarded to victims?

ii) the extent to which the available sanctions have been shown to be - or are likely to be - effective, proportionate and dissuasive, as required by the Directives?

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

7 SPECIALISED BODIES, Body for the promotion of equal treatment (Article 13 Directive 2000/43)

When answering this question, if there is any data regarding the activities of the body (or bodies) for the promotion of equal treatment, include reference to this (keeping in mind the need to examine whether the race equality body is functioning properly). For example, annual reports, statistics on the number of complaints received in each year or the number of complainants assisted in bringing legal proceedings.

a) *Does a 'specialised body' or 'bodies' exist for the promotion of equal treatment irrespective of racial or ethnic origin? (Body/bodies that correspond to the requirements of Article 13. If the body you are mentioning is not the designated body according to the transposition process, please clearly indicate so).*

The requirement to introduce a body for the promotion of equal treatment is dealt with in Article *7* of Legislative Decree 215/2003, transposing Directive 2000/43. The Decree establishes that the Government shall provide for the creation of an office charged with the implementation in 'an autonomous and impartial manner' of activities relating to the promotion of equal treatment and the elimination of discrimination based on race or ethnic origin.

In addition a special body named OSCAD was set up in 2010 within the Department of Public Security, Central Directorate of Criminal Police. It is not a designated body according to the transposition process but it was established to protect the victims of hate crimes, to help individuals who belong to minorities enjoy their right to equality before the law and to guarantee protection against any form of discrimination.

It is worth mentioning the Observatory on disability although it is not technically an equality body.[92] This body has been set up in order to implement UN CRPD and started its activity in 2011. The very first relevant act implemented by this body was the proposal to the Government for the approval of the Programme of action on disability. The body is not independent and acts as an Observatory on disability issues; collecting data, promoting studies and making proposals to the Government in order to improve legislation and policies on disability.

b) *Describe briefly the status of this body (or bodies) including how its governing body is selected, its sources of funding and to whom it is accountable. Is the independence of the body/bodies stipulated in the law? If not, can the body/bodies be considered to be independent? Please explain why.*

UNAR was set up within the Department for Equal Opportunities (which previously dealt with gender discrimination alone) of the Presidency of the Council of Ministers, and is directed by a person appointed by the President of the Council of Ministers or

[92] http://www.osservatoriodisabilita.it/index.php?lang=en.

by a Minister on his/her behalf. UNAR can also make use of staff from other government departments, including judges and state attorneys, and of experts and advisers (the latter without civil servant status). Its annual budget is established by law at EUR 2,035,000 and it is part of the budget of the Department of Equal Opportunities. Additional funding can be assigned depending on the activities and projects performed and the source can be either another government department or an international organisation.

Italy has thus chosen to set up an office completely within the structure of the State administration.

The decree on the internal organisation of the anti-discrimination office was published in the Italian Official Journal on March 2004.[93] This is very short and does not add anything substantial to the main decree. It states again at Article 2 that the office shall act 'with full autonomy of judgment and in conditions of impartiality'. However, despite these declarations it is impossible to talk about independence from the Government as UNAR is part of the Government.

Changes of government lead to changes in key staff, as usually happens in other offices attached to government departments. The opening presentation of the new Office in Rome took place on 16 November 2004. Its official name (different from that contained in the decrees, which was much longer) is the National Office for Opposition to Racial Discrimination (UNAR), and its staff of experts is mostly drawn from other government departments, including the judiciary.

OSCAD is a special body, operated by the *Polizia di Stato* (State Police) and the *Carabinieri* (military police) and part of the Department of Public Security - Central Directorate of Criminal Police. Its members are directors in the Ministry of the Interior (Police) and in the *Carabinieri* (linked to the Ministry of Defence). Therefore, it is not an independent body but a governmental one.

c) *Describe the competences of this body (or bodies), including a reference to whether it deals with other grounds of discrimination and/or wider human rights issues.*

UNAR's competences include 1) assistance to victims of discrimination in pursuing their complaints in judicial or administrative proceedings; 2) surveys on discrimination, without infringing the prerogatives of the judicial authorities; 3) the promotion of the adoption, by private or public entities, of specific measures – including positive action initiatives – aimed at eliminating or compensating for the disadvantages linked to a certain race or ethnic origin; 4) issuing opinions and proposals for the reform of the laws on racial and ethnic discrimination; 5) issuing

[93] Prime Minister's decree of 11 December 2003 on the Institution and internal organisation of the Office for the promotion of equal treatment and the fight against discrimination according to Article 29 of Communitarian law of March 1st 2002, in Official Journal, no. 66,19 March 2004.

recommendations on matters related to racial and ethnic discrimination; 6) drafting an annual report to Parliament on the application of the principle of equal treatment, and of a report to the President of the Council of Ministers on the activities of the previous year; 7) the dissemination of information concerning the rules on equal treatment irrespective of racial or ethnic origin.

UNAR's remit has been extended to cover every sort of discrimination thanks to a wide interpretation of its tasks provided for in Article 7 of Legislative Decree 215/2003. The proposal to extend UNAR's powers was advanced by UNAR itself in its first report to Parliament, and this was implemented in a ministerial directive (an internal act of the Government assessing the specific tasks of each Governmental Department) given to UNAR in 2010, renewed in 2012. In particular, in 2011 two new UNAR offices were set up dealing with discrimination based on sexual orientation and gender, age, disability, religion and personal belief. The 2013 report to the Parliament relating to 2012 reflects this extension of competence, with different chapters for each ground of activities (sexual orientation and gender identity; age; disability; freedom of religion; Roma, Sinti and Travellers, nationality). Quite surprisingly, "Race and ethnicity" is not addressed specifically in any of these chapters or in the general one.

As far as OSCAD is concerned, it has the following tasks covering all fields of application: it receives reports of discriminatory acts relating to the activity of the police and other bodies charged with ensuring public security from institutions, professional or trade associations and private individuals, in order to monitor discrimination based on race or ethnic origin, nationality, religion, gender, age, language, physical or mental disability, sexual orientation and gender identity. Based on the reports received, OSCAD initiates targeted interventions at local level to be carried out by the police or the *Carabinieri*; it follows up the outcome of discrimination complaints lodged with the police; it maintains contact with associations and institutions, both public and private, dedicated to combating discrimination; it prepares modules to train police officers in conducting anti-discrimination activity and participates in training programmes with public and private institutions; and it puts forward appropriate measures to prevent and fight discrimination.

d) Does it / do they have the competence to provide independent assistance to victims, conduct independent surveys and publish independent reports, and issue recommendations on discrimination issues?

UNAR strongly stresses the importance of assistance – including assistance in litigation – to victims of discrimination. This is provided through three contact centres with a toll-free number and operators speaking several languages (Italian, English, French, Spanish, Arabic, Russian, Romanian and Chinese). The contact centres' only task is to receive and 'filter' requests for help from victims of discrimination, while decisions on action are taken by UNAR staff. According to the 2011 annual

report to the Prime Minister,[94] the centres have dealt with around 1,000 calls, mostly in the form of requests for information. All contacts are recorded in a data base, which provides information on levels of racial and ethnic discrimination in the country. This data was analysed in the annual report mentioned above.[95]

UNAR's annual report to the Parliament for 2012 is articulated in different sections; one for each ground of discrimination where activities of the Office in the field is shown alongside specific recommendations to the Parliament, in particular aiming to change laws where necessary.

OSCAD has been set up in order to deal with reports of discriminatory acts, coordinating the activities of the relevant institutions at local level. It is not independent and there is no commitment to provide independent assistance, to conduct independent surveys or publish independent reports.

e) *Are the tasks undertaken by the body/bodies independently (notably those listed in the Directive 2000/43; providing independent assistance to victims of discrimination in pursuing their complaints about discrimination, conducting independent surveys concerning discrimination and publishing independent reports).*

When UNAR establishes that a case is relevant, it provides assistance by means of offering legal advice, acquiring further information and contacting the alleged discriminator to see whether the discrimination can be stopped without further action. Based on several policy statements in the first annual report, its activity appears to be characterised by a strong focus on mediation in order to reach a satisfactory settlement between the parties without judicial proceedings. In the last year, UNAR submitted some interesting opinions as *amicus curiae* in cases brought to court, mostly concerning the status of illegal immigrants. Besides legal assistance, UNAR has also undertaken dissemination and training activities for lawyers and NGOs in the shape of seminars and workshops. Legal information (as well as a handbook for practitioners) is available on its website. UNAR also sponsors publications and has built up contacts with a few similar foreign institutions, such as the Romanian equality body, something which is explained by the recent ethnic tensions which have involved Romanian citizens (particularly Roma) in Italy. Moreover, in 2011 UNAR signed several protocols with regions and municipalities to set up local observatories and to institute a general framework for cooperation with regional and local authorities in anti-discrimination activities.

UNAR's activities are part of the Department's programme, like any other

[94] The report is downloadable at http://109.232.32.23/unar/_image.aspx?id=fddf67ab-5f6d-449c-bc55-1fdbb702b360&sNome=Relazione attività UNAR 2011.pdf.
[95] The 2012 annual report appears as published on UNAR's website but it is not downloadable as of 24 March 2014 and it is not available in other institutional or non-institutional websites. An ad hoc request has been sent by e-mail to UNAR on 24 March 2014.

government office. However, in its capacity of *amicus curiae*, UNAR has been able to give opinions on discrimination by local authorities, which are mostly controlled by a centre-right coalition, even when the same coalition had the majority of the central Government.

During 2013 UNAR adopted a national strategy against discrimination on grounds of sexual orientation and gender identity.[96] The implementation of this strategy has led to harsh criticism by catholic associations, centre-right parties and some newspapers. The Vice-minister holding the competence on non-discrimination has declined any responsibility regarding those activities, ascribing the initiative to UNAR's director, who has been addressed with a dishonourable mention. Moreover, members of Parliament have asked the Vice Minister to dismiss the Director who in his turn has been requested to resign. At the end, the campaign of education in schools has been stopped.[97] This affair shows the lack of independence of this equality body set up to implement Directive 2000/43. We see in fact that even if it acts in an independent way it has a duty to account to the Government. Moreover UNAR's officials risk to be dismissed if they act without the approval of the Government which rules out any room for independent initiatives. It is obvious that what has happened for measures on sexual orientation could happen again in any field of activities of UNAR, including race and ethnic origin.

f) Does the body (or bodies) have legal standing to bring discrimination complaints or to intervene in legal cases concerning discrimination?

UNAR has no standing to litigate on behalf of victims of discrimination, and can just provide external assistance before and during litigation.

OSCAD has no standing to litigate or to intervene in legal cases.

g) Is / are the body / bodies a quasi-judicial institution? Please briefly describe how this functions. Are the decisions binding? Does the body /bodies have the power to impose sanctions? Is an appeal possible? To the body itself? To courts? Are the decisions well respected? (Please illustrate with examples/decisions).

These bodies cannot be considered as quasi-judicial institutions, nor can they issue sanctions.

As far as UNAR is concerned, in its annual reports to Parliament, UNAR has comprehensively analysed the shortcomings of the present anti-discrimination legislation and proposed that its own role in the legal system be strengthened through the extension of its competence to other grounds of discrimination, stronger

[96] http://www.unar.it/unar/portal/wp-content/uploads/2014/02/LGBT-strategia-unar-inglese.pdf.
[97] http://www.camera.it/leg17/410?idSeduta=0176&tipo=atti_indirizzo_controllo.

powers of intervention (with for instance the power to issue binding orders for documents to be disclosed or the cessation of discriminatory activities) and the introduction of at least some form of standing in judicial proceedings.

h) Does the body register the number of complaints and decisions? (by ground, field, type of discrimination, etc.?) Are these data available to the public?

UNAR registers every complaint and the following measures adopted, if any. Data are available to the public and published in the yearly report presented to the Parliament and the Government and downloadable from UNAR's website.

i) Does the body treat Roma and Travellers as a priority issue? If so, please summarise its approach relating to Roma and Travellers.

In its public statements on the issue, UNAR has always considered Roma issues as a priority. It gave Roma issues considerable space in its last report to Parliament, organised an awareness campaign on prejudice against people of Romani ethnicity, and informally monitored a few critical situations. During 2012 a steering committee was set up with representatives of ministries, regional and local authorities. UNAR, appointed as the National Contact Point in accordance with Communication COM(2011)173, has strengthened the involvement of NGOs and organisations devoted to the protection of Roma, Sinti and Travellers in order to ensure their contribution to the development of the Italian Strategy. As far as its approach is concerned, UNAR does not have a specific strategy that is separate from the Government's: indeed UNAR is the body which has the task of coordinating implementation of the Italian strategy on Roma, Sinti and Travellers.[98]
A special reference to this activity performed by UNAR is made in its Report submitted to the Parliament for 2012: chapter IV of this report is devoted to the Principle of non-discrimination and the legal status of Roma, Sinti and Travellers.[99]

[98] http://www.interno.gov.it/mininterno/export/sites/default/it/assets/files/22/0251_STRATEGIA_ITALIANA_ROM_PER_MESSA_ON_LINE.pdf; see also UNAR's report for 2012 at page 43 ff.
[99] http://www.unar.it/unar/portal/wp-content/uploads/2013/09/Relazione-2012.pdf.

8 IMPLEMENTATION ISSUES

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

Describe briefly the action taken by the Member State

a) to disseminate information about legal protection against discrimination (Article 10 Directive 2000/43 and Article 12 Directive 2000/78)

After its institution, UNAR launched a number of initiatives aimed at spreading awareness (seminars and other public relations events), some of which have had an impact. According to its annual reports, the Office has achieved a good degree of visibility, and this has been accompanied by an increase in the attention paid by legal scholars to anti-discrimination issues. UNAR's networking strategy, launched in 2009, has stimulated several regional and local authorities to take initiatives increasing the visibility of the anti-discrimination legal framework.

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

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

Dialogue with NGOs on race and ethnicity is one of UNAR's priorities and is an integral part of its networking strategy. According to its annual reports, NGOs were involved in joint seminars and discussions on a number of occasions, and members of UNAR staff attend public events in the field of anti-discrimination as a matter of course. UNAR is also implementing an action plan to promote positive action in the field of race and ethnicity by NGOs and other non-profit bodies (the projects selected were still to be implemented when this report was drafted). Until recently, there was no centralised action with regard to grounds of discrimination other than race and ethnic origin, although the Minister of Equal Opportunities has always been quite active, for instance, paying special attention to the empowerment of organisations for disabled people. Relevant improvements in this regard are the establishment of the National Observatory on the Conditions of People with Disability[100] and the extension of UNAR's remit to cover every sort of discrimination, to promote the principle of equal treatment in fields other than race and ethnic origin.

[100] http://www.lavoro.gov.it/AreaSociale/Disabilita/Osservatorio/Pages/default.aspx.

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

The same applies to social partners (primarily trade unions) as under b).

d) *to specifically address the situation of Roma and Travellers. Is there any specific body or organ appointed on the national level to address Roma issues?*

UNAR has been appointed as the National Contact Point in accordance with Communication COM(2011)173 and has been charged with the task of coordinating the Italian Roma National Strategy. During 2012 a steering committee was set up with representatives of ministries, the regions and local authorities.[101]

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

a) *Are there mechanisms to ensure that contracts, collective agreements, internal rules of undertakings and the rules governing independent occupations, professions, workers' associations or employers' associations do not conflict with the principle of equal treatment? These may include general principles of the national system, such as, for example, "lex specialis derogat legi generali (special rules prevail over general rules) and lex posteriori derogat legi priori (more recent rules prevail over less recent rules).*

The existence of equal treatment rules predating the Decrees meant that for most grounds, contractual rules that conflicted with the principle of equal treatment were illegal in any case. Although the case law was quite limited with the exception of decisions on gender discrimination, equal treatment was commonly considered as a general principle in the light of Article 3 of the Constitution. This was not the case with regard to sexual orientation, where scholars were divided about whether labour law implied a prohibition of discrimination. On all the grounds concerned by the Directives, no statutory or administrative provision has been abolished because of conflict with the principle of equal treatment.

The Decrees do not contain provisions establishing the invalidity of discriminatory provisions included in contracts, agreements or other rules, but this follows quite easily from the application of Article 15 of the Workers' Act in the field of labour law, and from general principles on the invalidity of contractual clauses contrary to binding statutory rules in other fields.

b) *Are any laws, regulations or rules that are contrary to the principle of equality still in force?*

101 http://www.interno.gov.it/mininterno/export/sites/default/it/assets/files/22/0251_STRATEGIA_ITALIANA_ROM_PER_MESSA_ON_LINE.pdf, pages 22-32.

Statutory provisions that explicitly discriminate can be found with regard to age, and all provisions containing differences of treatment probably need to be screened. If one looks at the legislative history of the Decrees, one sees clearly that no substantial discussion took place on the compatibility of Italian law and regulations on equal treatment irrespective of age, especially since Italy has decided not to make use of the option to defer implementation.

The absence of provisions that expressly directly discriminate on the basis of the grounds covered by the Directives does not eliminate the problem of their compatibility with Italian law but instead raises the issue of indirect discrimination. This is especially the case of discrimination on the grounds of race and ethnic origin, and partly religion. In such cases indirect discrimination can take place through differences of treatment formally based on nationality (such as exclusion of non-EU citizens) or through insufficient attention to the needs of specific groups. This is particularly the case where a community of non-EU citizens is primarily composed of groups that are normally targeted by discrimination. An exemplary case was the above-mentioned decision of the Court of Milan on a regulation which limited access to public housing by non-Italian citizens, where clearly the majority of applicants for public housing among non-EU citizens come from groups with a racial and ethnic identity which is usually perceived as 'different'. With regard to discrimination on the ground of nationality, the problem is made even more significant by the still-postponed ratification of Protocol 12 to the ECHR.

A very recent problem is the adoption of formally ethnic-blind rules or policies that in practice mostly affect members of Romani communities and which have developed out of political debates where prejudice against the Roma is evident. This can be observed in several national and local policies, ranging from measures concerning the free movement of EU citizens (in relation to migration flows of Roma from Romania) to a mass of urban policing initiatives established in a number of municipalities.

With regard to religion, the main issue is primarily the absence of an *ad hoc* regulation for Islam, a lack which could open the way to indirect discrimination relating to the specific needs of Islamic believers. As yet, no litigation has taken place but this is increasingly the subject of public debate that has also been fuelled by court cases over crucifixes in schools that have been much inflated by the media.

9 CO-ORDINATION AT NATIONAL LEVEL

Which government department/ other authority is/ are responsible for dealing with or co-ordinating issues regarding anti-discrimination on the grounds covered by this report?

The Ministry of Labour/Welfare and the Ministry of Equal Opportunities divide the responsibility of coordinating equal treatment issues in the fields covered by the Directives.

Is there an anti-racism or anti-discrimination National Action Plan? If yes, please describe it briefly.

There is no anti-racism or anti-discrimination National Action Plan.

ANNEX

1. **Table of key national anti-discrimination legislation**
2. **Table of international instruments**
3. **Previous case-law**

ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION

Please list below the **main transposition and Anti-discrimination legislation** at both Federal and federated/provincial level

Name of country: Italy **Date: 1 January 2014**

Title of Legislation (including amending legislation)	Date of adoption: Day/month/ year	Date of entry in force from: Day/month/ year	Grounds covered	Civil/Administrative/ Criminal Law	Material Scope	Principal content
Title of the law: Act 67/2006, Provisions on the judicial protection of persons with disabilities who are victims of discrimination Abbreviation: Act on the non-discrimination of disabled people Date of adoption: 01/03/2006 Latest amendments: Art. 28 of Legislative Decree 150/2011	01/03/2006	21/03/2006	Disability	Civil law	All fields (there is no limit to the scope of application)	Implementation of the principle of equal treatment and equal opportunity Prohibition of direct and indirect discrimination

Entry into force: 21/03/2006 www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2006-03-01;67!vig						
Title of the law: Legislative Decree 215/2003 implementing Directive 2000/43/EC on equality of treatment between persons irrespective of racial or ethnic origin Abbreviation: Legislative Decree 215/2003 Date of adoption: 9/07/2003 Latest amendments: Art. 28 of Legislative Decree 150/2011 www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2003-07-09;215	09/07/2003	27/08/2003	Race and ethnic origin	Civil law; labour law	Public employment, private employment, access to goods or services (including housing), social protection, social advantages, education	Prohibition of direct and indirect discrimination, harassment, instructions to discriminate, remedies and sanctions, creation of a specialised body

Title of the Law: Legislative Decree 216/2003 on the implementation of Directive 2000/78/EC for equal treatment in employment and occupation Abbreviation: Legislative Decree 216/2003 Date of adoption: 09/07/2003 Latest amendments: Art. 9, para. 4-ter, Law decree no. 76/2013, converted into law no. 99/2013 Entry into force: 28/08/2003 www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2003-07-09;216!vig=	09/07/2003	28/08/2003	Religion or belief, disability, age, sexual orientation	Public and private employment	Civil law; labour law	Prohibition of direct and indirect discrimination, harassment, instructions to discriminate, remedies and sanctions
Title of the Law: Legislative Decree 286/1998, Consolidated text of	25/07/1998	22/08/2008	Race, colour, ancestry, religion,	Public employment, private employment, access to goods or services (including	Civil law; labour law	Prohibition of direct and indirect discrimination;

provisions on the regulation of immigration and the status of foreign citizens, Articles 43 and 44. Abbreviation: Immigration Decree Date of adoption: 25/07/1998 Latest amendments: Art. 28 of Legislative Decree 150/2011 Entry into force: 02/09/1998 HTTP://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:1998-07-25;286!vig=			national or ethnic origin, religious beliefs and practices	housing), social protection, social services, education, economic activity. The list is not exhaustive so the scope of application is general.		remedies and sanctions; creation of regional observatories
Title of the law: Act 122/1993, Urgent measures on racial, religious and ethnic discrimination Abbreviation: Mancino Act Date of adoption:	25/06/1993	27/06/1993	Race, ethnicity, religion	Criminal law	General	Hate speech, discriminatory acts

25/06/1993 Latest amendments: Art. 34 of Legislative Decree 150/2011 Entry into force: 27/06/1993 www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legge:1993-04-26;122!vig=						
Title of the law: Act 18/2009, Ratification and Execution of United Nations Convention on the Rights of Persons with Disabilities Abbreviation: Ratification and Enforcement of the UN Convention on the Rights of Persons with Disabilities Date of adoption: 3/03/2009 Latest amendments: N/A Entry into force:	3/03/2009	15/03/2009	Disability	Civil/administrative law	All fields (there is no limit to the scope of application)	Ratification and Execution in Italy of the UNCRPD

15/03/2009 http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2009-03-03;18!vig=						
Title of the law: Framework Act 104/1992 on rights and social integration of handicapped persons Abbreviation: Framework act on social assistance Date of adoption: 05/02/1992 Latest amendments: Legislative Decree 119/2011 Entry into force: 18/02/1992 http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1992-02-05;104!vig=	05/02/1992	18/02/1992	Disability	Administrative law	All fields	Integration of disabled people

Title of the law: Act 68/1999, Provisions on the right to work of disabled people Abbreviation: Act on the employment of disabled people Date of adoption: 12/03/1999 Latest amendments: Act 221/2012 Entry into force: 17.01.2000 http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1999-03-12;68!vig=	12/03/1999	17/01/2000	Disability	Administrative law/Labour law	Public and private employment	Integration of disabled people
Title of the law: Act 300/1970, Provisions on the protection of the freedom and dignity of workers, on freedom of trade unions and their activity in the work place, and on employment	20/05/1970	11/06/1970	Race, sexual orientation, disability, age, religion or personal belief	Labour law	Private employment	Unfair dismissal and discrimination in the work place

Abbreviation: Workers' Act Date of adoption: 20/05/1970 Latest amendments: Law 92/2012 Entry into force: 11/06/1970 www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1970-05-20;300!vig=						
Title of the law: Tuscany Regional Act 63/2004, Provisions against discrimination on the ground of sexual orientation and gender identity Abbreviation: Tuscan Regional Act 63/2004 Date of adoption: 15/11/2004 Latest amendments: N/A Entry into force: 10/12/2004 http://raccoltanormati	15/11/2004	10/12/2004	Sexual orientation and gender identity	Civil/administrative law	All fields	Implementation of the principle of equal treatment and equal opportunity Measures of social inclusion, vocational training, occupation and healthcare

va.consiglio.regione.toscana.it/articolo?urndoc=urn:nir:regione.toscana:legge:2004-11-15;63						
Title of the law: Liguria Regional Act 52/2009, Provisions against discrimination on the ground of sexual orientation Abbreviation: Liguria Regional Act 52/2009 Date of adoption: 10/11/2009 Latest amendments: N/A Entry into force: 26/11/2009 http://www.edizioneuropee.it/data/html/119/li2_03_073.html?hgK{l_yj	10/11/2009	26/11/2009	Sexual orientation	Civil/administrative law	All fields	Implementation of the principle of equal treatment and equal opportunity Measures of social inclusion, vocational training, occupation and healthcare
Title of the law: Emilia Romagna Regional Act 5/2004, Provisions on the social integration of	24/03/2004	9/04/2004	Race, ethnicity, nationality and religion	Civil/administrative law	Social integration, healthcare, education, vocational	Several measures aiming to foster the integration of

migrants Abbreviation: Emilia Romagna Regional Act 5/2004 Date of adoption: 24/03/2004 Latest amendments: N/A Entry into force: 9/04/2004 http://demetra.regione.emilia-romagna.it/al/monitor.php?vi=nor&dl=ae6576a6-66b1-ac84-77fe-4e4cc2e7c000&dl_t=text/xml&dl_a=y&dl_id=10&pr=idx,0;artic,1;articparziale,0&ev=1			Race, ethnicity and religion		training, occupation and employment, democratic participation	aliens: measures against discrimination, establishment of a regional observatory, measures against social exclusion in the fields of education, healthcare, employment, and occupation.
Title of the law: Regional Lazio Act 10/2008 Promotion of full equality and integration of aliens Abbreviation: Lazio Regional Act 10/2008 Date of adoption:	14/07/2010	5/08/2010		Civil/administrative law	Social integration, healthcare, education, vocational training, occupation and employment,	Several measures aiming to foster the integration of aliens: measures against

14/07/2010 Latest amendments: N/A Entry into force: 5/08/2010 http://www.socialelazio.it/binary/prtl_socialelazio/tbl_normativa/LR_10_2008.pdf					democratic participation	discrimination, establishment of a regional observatory, measures against social exclusion in the fields of education, healthcare, employment, and occupation
Title of the law: Tuscany Act 29/2009 on the reception, integration and protection of aliens Abbreviation: Tuscan Regional Migration Act Date of adoption: 9/06/2009 Latest amendments: N/A Entry into force:	9/06/2009	30/06/2009	Race and ethnic origin, xenophobia	Civil/administrative law	Social integration, employment and occupation, vocational training, education	Several measures aiming to foster the integration of aliens: measures against discrimination, measures against social exclusion in the fields of

30/06/2009 http://www.immigrazione.regione.toscana.it/lenya/paesi/live/contenuti/norme/legge-29-2009_it.html?datafine=20090618						education, healthcare, employment and occupation

ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

Name of country: Italy **Date: 1 January 2014**

Instrument	Date of signature (if not signed please indicate) Day/month/year	Date of ratification (if not ratified please indicate) Day/month/year	Derogations/ reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
European Convention on Human Rights (ECHR)	04.11.1950	26.10.1955	No	Yes	Yes
Protocol 12, ECHR	04.11.2000	Not ratified	No		
Revised European Social Charter	03.05.1996	05.07.1999	No	Ratified collective complaints protocol? Yes. The collective complaints protocol has been ratified	Yes

Instrument	Date of signature (if not signed please indicate) Day/month/year	Date of ratification (if not ratified please indicate) Day/month/year	Derogations/ reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
International Covenant on Civil and Political Rights	18.01.1967	15.09.1978	No	Yes	Yes
Framework Convention for the Protection of National Minorities	01.02.1995	03.11.1997	No	N/A	Yes
International Convention on Economic, Social and Cultural Rights	18.01.1967	15.09.1978	No	N/A	Yes
Convention on the Elimination of All Forms of Racial Discrimination	13.03.1968	05.01.1976	No	Yes	Yes
Convention on the Elimination of Discrimination Against Women	17.07.1980	05.09.1991	No	Yes	Yes

Instrument	Date of signature (if not signed please indicate) Day/month/year	Date of ratification (if not ratified please indicate) Day/month/year	Derogations/ reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
ILO Convention No. 111 on Discrimination	25.06.1958	12.08.1963	No	N/A	Yes
Convention on the Rights of the Child	26.01.1990	05.09.1991	No	N/A	Yes
Convention on the Rights of Persons with Disabilities	30.03.2007	15.05.2009	No	N/A	Yes

ANNEX 3: PREVIOUS CASE-LAW

Name of the court: Supreme Court (*Corte di Cassazione*)
Date of decision: 22 December 2012
Name of the parties: Not available
Reference number: No. 47894
Address of the webpage:
http://www.asgi.it/public/parser_download/save/cass_penale_47894_2012.pdf
Brief summary: A councillor of Trento had been found guilty at first and second instance of defamation for a speech against the Roma community. In particular the town councillor had stated, in a public sitting of the town council, that the Roma are unable to bring up children honestly and that the local authorities should institute a radical policy with the aim of taking Roma children away from their parents.

The Supreme Court held that the crime in question was not simple defamation but the more serious crime of dissemination of ideas based on racial superiority, punishable with imprisonment for up to six years and six months or with a fine of up to EUR 6,000, according to Article 3 of Act 654/1975 on the Ratification and Execution of the UN Convention on the Elimination of All Forms of Racial Discrimination, as most recently amended by Act 85/2006.[102] According to the Supreme Court, aggravating circumstances were also applicable under Article 61, paragraph 9 of the Penal Code, as the crime was committed while exercising public office. The Court sent the case back to the Court of Appeal to decide on the merits and assess the sanction to be given in this specific case.

Name of the court: Court (*Tribunale*) of Milan, Labour Section
Date of decision: 23 March 2012
Name of the parties: *X v Extrabanca*
Reference number: Not available
Address of the webpage:
http://www.meltingpot.org/IMG/pdf/S0198912032611070.pdf
Brief summary: The Court found a bank liable for the infringement of Article 2, paragraph 3 of Legislative Decree 215/2003, implementing Article 2, paragraph 4 of Directive 2000/43/EC. According to the judgment, the Bank, through the behaviour of its managers, had harassed an employee on the grounds of his racial and ethnic origin. Since the perpetrators were managers, and hence able to influence the majority of the bank's employees, their behaviour was attributed to the bank. The Court therefore ordered the Bank to circulate a notice urging its employees not to use racist, obscene or offensive expressions and to pay EUR 5,000 compensation to the victim. The Bank has appealed against the decision but an extrajudicial agreement has put an end to the controversy.

[102] *Ratifica ed esecuzione della convenzione Internazionale sull'eliminazione di tutte le forme di discriminazione razziale, aperta alla firma a New York il 7 marzo 1966*.

Name of the court: Supreme Court, I Section – Penal (*Corte di Cassazione*)
Date of decision: 13 March 2012
Name of the parties: Not available
Reference number: no. 20508
Address of the webpage: http://www.marinacastellaneta.it/wp-content/uploads/2012/07/doc227.pdf
Brief summary: The Supreme Court upheld the first and second instance judgments against a professor of philosophy at the University of Cagliari for the crime of dissemination of racist ideas against the Jewish community (Article 3 of Act 654/1975,on the ratification and enforcement of the UN Convention on the Elimination of All Forms of Racial Discrimination as amended most recently by Act 85/2006).[103] In particular, the crime was committed through the publication of a book condemning the cruelty of the Jewish ritual for slaughtering animals. This ritual was compared to the Nazi gas chambers, with the author claiming that animals suffer more than the Jews killed in the Nazi genocide and that anti-Semitism is therefore justified. The Court rejected the defence based on the fundamental freedom of expression and scientific research, which cannot act as justification of a crime when the values protected are fundamental, such as that of human dignity. The professor was sentenced to pay a fine of EUR 4,000, with compensation to be set in a separate judgment (not published).

Name of the court: Court of Padua
Date of decision: 17 Februari 2012
Name of the parties: N/A
Reference number: N/A
Address of the webpage:
http://www.meltingpot.org/IMG/pdf/trib_pd_sent_206_2012_17022012.pdf
Brief summary: The Court convicted two men of the crimes of insult and defamation aggravated by racism, under Article 3 of Act 654/1975, as amended most recently by Act 85/2006 on the Ratification and Execution of the UN Convention on the Elimination of All Forms of Racial Discrimination.[104] The defendants were two construction workers who gravely insulted two trade union activists who went to their building site to raise awareness among the workers. The insults were particularly serious as the victims were black as well as being trade union activists, thus combining two characteristics particularly disliked by the defendants.

The workers were sentenced respectively to eight months and two months and 15 days of detention; moreover, they were ordered to pay EUR 6,000 and EUR 3,000 as compensation to the two trade union activists.

[103] *Ratifica ed esecuzione della convenzione Internazionale sull'eliminazione di tutte le forme di discriminazione razziale, aperta alla firma a New York il 7 marzo 1966*.
[104] *Ratifica ed esecuzione della convenzione Internazionale sull'eliminazione di tutte le forme di discriminazione razziale, aperta alla firma a New York il 7 marzo 1966*.

The judgment has been appealed by the men convicted, the victims and the public prosecutors; as of April 2013, the Court of Appeal has not decided.

Name of the court: Court of Rome
Date of decision: 13 September 2012
Name of the parties: *Articolo 21 and ASGI v Rome municipality*
Reference number: Not available
Address of the webpage:
http://www.asgi.it/public/parser_download/save/1_12_.25_itgiurisprudenza.pdf
Brief summary: Two NGOs, ASGI and *Articolo 21*, filed an action against the municipality of Rome claiming that the policy of placing Roma in a camp named La Barbuta, a largesettlement in the remote outskirts of Rome and so hindering their effective inclusion in society, was discriminatory. The judgment on the merits is still pending and will probably be delivered in the second half of 2013. However, the Court has already ruled on the NGOs' request for interim measures. A first decision on August 2012 held that *prima facie* discrimination was suffered by the Roma and ordered the municipality to stop the operation in La Barbuta, while a month later, on appeal, another panel of judges of the same Court quashed the previous decision on interim measures, rejecting the complaint of discrimination.

Name of the court: Court of Varese
Date of decision: 12 March 2012
Name of the parties: Not available
Reference number: Not available
Address of the webpage: http://www.ilcaso.it/giurisprudenza/archivio/7051.pdf
Brief summary: A patient affected by amyotrophic lateral sclerosis is allowed to make a will through a special attorney, even though this is a strictly personal act and may not generally be delegated. According to the Court, the denial of this facility would be discrimination on the grounds of disability (UN Convention on the Rights of Persons with Disabilities, ratified in Italy by Act 18/2009), as an ALS patient is perfectly capable of acting apart from the physical impairment. The Court therefore allowed a special attorney to write the patient's will on the basis of instructions imparted by the patient through an eye tracking system. This is a sort of reasonable accommodation, ordered by the Court in application of the notion of discrimination, without mentioning Article 5, paragraph 3 of the UNCRPD, which expressly lays a duty upon States to provide for reasonable accommodation to promote equality and eliminate discrimination. The Court also added that ALS patients have a right to non-verbal communication through eye tracking systems.

Name of the court: Court of Reggio Emilia
Date of decision: 13 June 2012
Name of the parties: *X v Ministry of the Interior and Reggio Emilia Provincial Police Office*
Reference number: N/A

Address of the webpage:
http://www.asgi.it/public/parser_download/save/tribunale_reggio_emilia_decreto_13022012.pdf
Brief summary: A Uruguayan citizen is the spouse of an Italian citizen of the same sex after a marriage held in Spain. The couple moved to Italy where the Uruguayan spouse applied for a residence card as a family member of an EU citizen, in accordance with Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely in EU Member States. The Immigration Office of Reggio Emilia denied the spouse a residence card because Italy does not allow marriage between same sex partners and therefore cannot recognise a same-sex spouse legally married abroad as a family member.

The Court of Reggio Emilia quashed the denial of a residence card with a decree issued on 13 February 2012. The basic argument of the decision is that the primary right at stake is the right to stay in Italy according to Legislative Decree 30/2007 implementing Directive 2004/38/EC. Such rights must be interpreted according to the fundamental right to live freely. Any relationship, regardless of sexual orientation, is part of the right to private and family life protected by Article 8 of the ECHR, recently recalled by the Italian Constitutional Court in Judgment 138/2010. The judge therefore held that Member States retain the exclusive competence to recognise 'civil status', while the competence with regard to free movement of EU citizens has been conferred to the EU; conflicts between these two areas must be settled by reaching a point of equilibrium. This point of equilibrium cannot be represented by the denial to same sex couples of rights to equal treatment with heterosexual couples and to freely continue their relationship. The judge concluded by saying that under Directive 2004/38/EC, the term 'spouse' without any other qualification is not to be interpreted in accordance with the conditions laid down in the legislation of the host Member State, as the Directive specifies this expressly only with regard to registered partnerships. The judge therefore ordered the Immigration Office to issue a residence card to the Uruguayan citizen.

This decision follows a relevant judgment of the Constitutional Court concerning the right to marry for same sex couples (Judgment 136/2010). According to the Court, no such right exists based upon the Italian Constitution, the European Convention on Human Rights or the Charter of Fundamental Rights of European Union. However, the Constitutional Court held that it is up to the national Parliament to decide which rights should be recognised to same sex couples, even if the Parliament decides not to confer the right to marry. This means that even if there is not a constitutional right to marry, equal treatment between same sex couples and heterosexual ones should be granted by the legislator. The Reggio Emilia judge therefore applied this principle to migration law in the same way as other judges have applied it to other fields such as torts, rentals and other social benefits.

This judgment is also very important regarding the interpretation of the notion of 'spouse' in the Directive 2004/38/EC, which, according to the judge, cannot be interpreted in accordance with the law of the host Member State. This means that

every Member State must recognise the marriage between same sex partners at least as far as granting free movement of EU citizens and their family members.

Name of the court: Court of Rome; Court of Appeal of Rome
Date of decision: 29 June 2012; 15 January 2013
Name of the parties: *FIOM v FIAT Fabbrica Italia*
Reference number: N/A
Address of the webpage: http://www.fiom-cgil.it/web/aziende/grandi-gruppi/gruppo-fiat/decreti-e-sentenze-fiat/239-fabbrica-italia-pomigliano-na-discriminazione-agli-iscritti-fiom
http://www.fiom-cgil.it/web/aziende/grandi-gruppi/gruppo-fiat/decreti-e-sentenze-fiat/269-fabbrica-italia-pomigliano-na-discriminazione-agli-iscritti-fiom-appello
Brief summary: The Labour Court of Rome found FIAT-Fabbrica Italia guilty of collective direct discrimination perpetrated in Pomigliano against members of FIOM, a left-wing trade union. On 15 January 2013 the Court of Appeal upheld the first-instance decision.

FIOM refused to sign contracts at local level which were a fundamental pillar of FIAT's new industrial strategy. In Pomigliano a workers' consultation took place: few workers took part in the consultation (37%) and the new local contract was approved by a slight majority. After this event, FIOM was excluded from the factory. In 2011, after a change to the company's articles of association and name, 2071 workers out of 4367 were employed again under the new contract in the new plant now named 'Fabbrica Italia', but none belonging to FIOM. Moreover, 20 workers were hired after having withdrawn from membership of FIOM. Before the new contract, 382 workers out of 4327 were FIOM members. FIOM therefore claimed that its members were discriminated against on grounds of personal belief; moreover, 20 workers claimed to have been discriminated against on the same ground individually.

The Court sentenced FIAT-Fabbrica Italia to reinstate 145 workers in order to restore the same balance between FIOM members and the total number of workers in Pomigliano (in 2011 the numbers of FIOM members had decreased to 261 members since 2010 when there had been 623). The employer was also ordered to pay EUR 3,000 as moral (non-pecuniary) compensation to each of the 19 victims who were personally represented by FIOM in this case.

It was the first time that Directive 2000/78/EC was applied to a case of discrimination on the ground of personal belief. Moreover, for the first time a court admitted evidence of discrimination based on statistical data provided by the applicants.

As far as sanctions are concerned, the Court has ordered the employer to pay moral compensation to the victims, but only to those who had individually taken legal action: according to the Court, the fact of appealing to the Court is a demonstration of the particular pain suffered by these workers; such suffering cannot be proven for the other workers, who faced collective discrimination. Finally, the Court ordered the reinstatement of 145 workers to their original posts, deemed the only way to remove

the discrimination and granting to members of the disadvantaged category the same arrangements as those enjoyed by persons in the other category.

Name of the court: Campania - Naples Regional Administrative Court, Section II
Date of decision: 26 June 2012
Name of the parties: *Sa. Na. v Seconda Università degli Studi di Napoli*
Reference number: 2992
Address of the webpage: http://www.giustizia-amministrativa.it/DocumentiGA/Napoli/Sezione%202/2011/201105107/Provvedimenti/201202992_01.XML
Brief summary: Professor X was dismissed after making 40 years of contributions to the pension scheme. In accordance with Article 17, paragraph 35-*nonies* of Act 102/2009, which entitles public bodies to terminate contracts of employment when employees have made 40 years of contributions to the pension scheme. The law introduces an exceptional rule which must be interpreted in a strict way in order to avoid arbitrary dismissal. The Administrative Court therefore stressed the need for a proper justification of each dismissal, taking into account the specific needs of each administration involved. According to the Court, this is the only way to provide an interpretation in line with EU Directive 2000/78 and Legislative Decree 216/2003. In the present case, the Court judged the dismissal contrary to this legal framework as a specific link was not made between the dismissal and the needs of the University, since the claimant was teaching a subject for which no other professors or lecturers were employed.