

ITALY

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Executive summary

Definitions

- [1.] The Italian law system contains different definitions of mental health disorders and intellectual disabilities. These definitions may be found in combination or accompanied by additional qualifications, for example with regard to the severity of the relevant conditions.
- [2.] Legal definitions may focus on: (1) the scientific notion of the illness or disorder (healthcare law); (2) the limitations disabilities, illnesses and disorders can impose on personal capacity (private and criminal law); (3) on the outcomes of these limitations in the personal and social life of the affected person (social security, welfare and employment law).

Anti-discrimination

- [3.] The UN Convention on the Rights of Persons with Disabilities and its Optional Protocol were ratified by Italy on 15.05.2009. The law authorising ratification provides for the establishment of a national observatory on conditions for persons with disabilities.
- [4.] Equality rules and preferential treatment arrangements have a sound constitutional basis in Articles 2-3 of the Italian Constitution and in the principles on social and economic fundamental rights. In the long process towards fully embracing an equality-oriented approach to mental health problems and disorders, the passing in 1978 of the Basaglia Law, ordering the closure of mental asylums and setting stricter limits for compulsory medical treatments, was an historic moment.
- [5.] Anti-discrimination rules are firmly established in employment law, more so since the transposition of Directive 2000/78/EC. Case law against discrimination is not unheard of beyond this field; a relevant piece of legislation is the 2006 law establishing a general prohibition of discrimination against persons with disabilities and setting out judicial procedures to enforce this prohibition.
- [6.] Preferential treatment arrangements are extremely varied and complex. They include a variety of grants and allowances, including those aimed at providing support of family care for people with disabilities, support teachers and other special support measures for school pupils with disabilities, and a quota system for the employment of workers with disabilities.

Specific fundamental rights

- [7.] Violations of the rights to life, liberty and safety of disabled persons are usually regarded as aggravated forms of more general offences, or as specific offences formulated to protect persons with reduced capacities.
- [8.] In civil procedure law, only a formal judicial order declaring a person to have capacity limitations may restrict the capacity of that person to stand trial. In criminal procedure law, when an acquittal is ruled out proceedings against a defendant who is incapable of consciously taking part in a trial must be stopped; however, *interim* measures may apply.
- [9.] Privacy law is particularly concerned to assure secure and confidential processing of health data. In private law, as an effect of competence limitations imposed on them by judicial order, persons with intellectual disabilities are normally subject to limitations of their fundamental rights. However, the

wishes of the person concerned are taken into account in certain particularly sensitive decisions (e.g. potential termination of pregnancy, refusal of artificial life support).

Involuntary placement and involuntary treatment

- [10.] Compulsory placement in a hospital for purposes of psychiatric care requires two medical assessments; its enforcement is entrusted to general hospital psychiatric services. Placement orders are issued by the relevant mayors, are confirmed by guardianship judges and are subject to review before district tribunals and the Court of Cassation. However, administrative and judicial control of medical assessments may sometimes be quite deferential and of a formal nature.
- [11.] A different legal framework applies to the compulsory placement of offenders with psychiatric disorders; this may lead to the placement of offenders in a judicial psychiatric hospital. Since reconciling therapeutic efficacy with the security arrangements of penitentiary establishments may be difficult, the Constitutional Court has tried to limit placement in judicial psychiatric hospitals to particularly difficult cases. Whenever possible, less restrictive measures are to be given preference.

Competence, capacity and guardianship

- [12.] The traditional interdiction scheme in cases of limited capacity brings about a general disqualification of the person concerned from performing legal acts, and the judicial appointment of a guardian to act on his/her behalf under judicial supervision. Under the new support management scheme (2004), the powers and duties of support managers are designated on a case by case basis with regard to the actual needs and capacities of the beneficiary, as considered appropriate by the judge.

1. Definitions

- [13.] The Italian law system contains no single definition of either mental health disorders and intellectual disabilities, or persons affected by them. In the many pieces of legislation dealing with the problems of such persons, different definitions apply to different effects, occasionally with a variety of notions used—sometimes questionably—within a single statute.¹
- [14.] The Constitution of the Italian Republic mentions, but does not define: *inabili al lavoro* [persons unable to work], who are entitled, if they lack means of subsistence, to social assistance and support; *malattia* and *invalidità* [illness and invalidity], as risks that each worker must be covered against by social insurance (as well as against accidents and old age); *inabili* and *minorati* [‘disabled and handicapped’ persons], who have a right to education and vocational training.²
- [15.] Healthcare law typically focuses on notions such as *salute mentale* [mental health] or *disturbi mentali* [‘mental disorders’]; no legal definition is given of these notions, thus allowing medical science to describe them. This is the case, for example, with the target project *Tutela della salute mentale 1998-2000* [Mental Health Care 1998-2000], which sets out the basic organisational guidelines for mental health and psychiatric services.³
- [16.] In private and criminal law, mental health disorders and intellectual disabilities are mostly considered with regard to their effects on a person’s capacity to understand the meaning of certain acts, to decide to perform them, and to actually perform them with sufficient awareness. Both the Civil and Criminal Codes refer to the notion of *capacità di intendere e di volere* [capacity to understand and decide]. Capacity to understand is a person’s awareness of the meaning of their behaviour and of its consequences and repercussions. Capacity to decide includes the power to restrain impulses to act, and the capacity to decide on a more reasonable course of action (or on one which is preferable according to a certain scale of values). According to the Criminal Code, if an offence is committed by someone totally or partially lacking such capacities, due to infirmity or chronic alcohol or drug intoxication, criminal responsibility is negated or diminished.⁴ According to the Civil Code, the lack of the capacity to understand and decide may render wills, gifts, marriages and contracts voidable.⁵ Neither code provides definitions of the notions mentioned, which are therefore left to judges and medicine counsels to establish and implement. In 2005, a leading ruling of the Court of Cassation summarised the case law and the authoritative legal literature on these notions, holding that they must be construed so as to remain open to developments in psychiatry and psychology. On these grounds, the Court of Cassation held that personality disorders also qualify as infirmities under Articles 88 and 89 of the Criminal Code, when they are so consistent, intense, relevant and severe as to actually

¹ See e.g. A. Avio (2005) ‘I lavoratori disabili tra vecchie e nuove discipline’, in: M.V. Ballestrero, G.G. Balandi (eds) *I lavoratori svantaggiati tra eguaglianza e diritto diseguale*, Bologna: Il Mulino, pp. 156-157, on terminological inconsistencies within Italy/Decreto legislativo n. 276/2003 (10.09.2003).

² Italy/Constitution (27.12.1947): Art. 38. An official translation of the Italian Constitution is available at: http://legxven.camera.it/cost_reg_funz/345/346/listaarticoli.asp (15.09.2009).

³ Italy/Decreto del Presidente della Repubblica 10.11.1999. Italy/Decreto del Presidente del Consiglio dei Ministri 29.11.2001, which lists healthcare services that must be provided to any citizen throughout the national territory, refers to the 1999 target project when setting out the uniform standards for psychiatric assistance.

The two documents are available at:

<http://www.ittig.cnr.it/BancheDatiGuide/vipdn/documenti/DPR%2010%20novembre%201999.htm>
<http://www.ministerosalute.it/dettaglio/pdPrimoPiano.jsp?id=3&sub=1&lang=it> (15.09.2009).

⁴ Italy/Codice Penale (19.10.1930): arts 85, 88, 89. The text of this code, as well as those of the civil, criminal procedure and civil procedure codes (Codice Civile; Codice di Procedura Civile; Codice di Procedura Penale) is available at: <http://www.altalex.com/index.php?idnot=34120> (15.09.2009).

⁵ Italy/Codice Civile (16.03.1942): arts 591, 775, 120, 428. On lasting infirmities and permanent competence limitations, see below, section 5.

reduce or eliminate a person's capacity to commit an offence with full awareness of its meaning and consequences.⁶

[17.] In the field of social welfare (tax-financed grant schemes), a person qualifies as *invalido civile* [civil invalid]⁷ if he or she is affected by congenital or acquired disabilities, including those of a progressive character. This includes persons with mental health disorders due to organic or dysmetabolic oligophrenia, or with learning difficulties caused by sensory and functional impairment, and whose working capacity is reduced by not less than one third (or, when younger than 18 years of age, if they encounter permanent difficulties in performing tasks and functions appropriate to their age).⁸ It was disputed whether this definition also applied to purely mental health disorders: but after case law gave a positive answer, it was statutorily specified that any disability, disorder or impairment—physical, mental health and sensory—is relevant in this respect, if its outcomes and the ensuing functional damage are permanent.⁹ The degree of civil invalidity is assessed as a percentage value, according to the official Tables of Invalidity Percentages for Disabling Impairments and Diseases,¹⁰ which also list, for each diagnostic category, the corresponding reference in the WHO classification of diseases. The accuracy of these tables is questioned, with regard both to the compatibility of some of their entries with more recent international standards (DSM-IV-TR, ICD-10) and to the silence on evaluation criteria for functional impairments caused by non-organic mental health disorders.¹¹ Invalidity status is assessed by medical commissions established in each *Unità Sanitaria Locale*, presently *Azienda Sanitaria Locale* (ASL) [Local Healthcare Unit],¹² comprising a forensic medicine specialist as chairperson and two other members—one of these preferably a specialist in occupational medicine—and also a health worker representing the national association for the category the person concerned belongs to (civil invalids; persons with visual, hearing or speech impairment; adults and children with intellectual disabilities).¹³

[18.] In the field of social security (pensions and allowances financed by workers' social security contributions and managed by the *Istituto nazionale della Previdenza Sociale* (INPS) [National Institute for Social Security (NISS)]), two different notions of invalidity apply: (a) a person qualifies as *invalido* [invalid] when his/her capacity to perform a job suitable to his/her aptitude is permanently reduced to less than one third as a consequence of a mental health disorder or physical illness or disability; (b) a person qualifies as *inabile* [unable], when he/she is absolutely and permanently unable to perform any job. Limitations of working capacity affecting a person prior to the beginning of his/her inclusion in social insurance—as is often the case with people with learning disabilities—are also relevant, provided that new illnesses or worsening of pre-existing conditions take place after the insurance has started.¹⁴ Assessment of these two types of invalidity is carried out by NISS doctors.

⁶ Italy/Corte di cassazione, Sezioni Unite penali/n./n. 9163/2005, R.G. (08.03.2005).

⁷ The expression 'civil invalidity' is used in opposition to 'work invalidity' and 'war invalidity', as disabilities originated by industrial accident, professional illness or wartime service are subject to different discipline.

⁸ Italy/Legge n. 118/1971 (20.03.1971): art. 2. For many effects, higher impairment levels are required: e.g., 74 per cent invalidity is required for access to the monthly allowance provided for by Italy/Legge n. 118/1971 (20.03.1971), art. 13, and Italy/Decreto legislativo n. 509/1988 (23.11.1988), art. 9. The texts of Legge n. 118/1971 and Decreto legislativo n. 509/1988 are available at:

<http://www.handylex.org/stato/1300371.shtml>

<http://www.handylex.org/stato/d231188.shtml> (15.09.2009).

⁹ Italy/Decreto legislativo n. 509/1988 (23.11.1988): art. 1.

¹⁰ The tables were enacted with Italy/Decreto del Ministero della sanità 05.02.1992, available at:

<http://www.handylex.org/stato/d050292.shtml> (15.09.2009).

¹¹ U. Fornari (2008) *Trattato di Psichiatria Forense*, Torino: UTET Giuridica, pp. 758-761.

¹² In Italy, healthcare assistance is provided by ASLs, administrative bodies (juristic persons), controlled and financed by the regions. Each ASL is in charge of providing health care services for a geographically defined catchment area, inside the regional territory. ASLs also provide psychiatric care through public services and cover access to private inpatient psychiatric facilities. In Italy, all the population has unlimited health care coverage, normally free of charge (some fees may be charged for specific medical examinations; medicines for major mental health disorders are generally free of charge).

¹³ Italy/Legge n. 295/1990 (15.10.1990): art. 1. The full text of the law is available at:

<http://www.handylex.org/stato/1151090.shtml> (15.09.2009).

¹⁴ Italy/Legge n. 222/1984 (12.06.1984): arts 1-2. The full text of the law available at:

- [19.] Under the framework law on disability, a *persona handicappata* [‘handicapped person’—person with disability] is someone affected by a physical or intellectual disability, mental health disorder or sensory impairment, either stabilised or progressive, which causes difficulties in learning, social relations or working integration, so as to bring about social disadvantage or marginalisation.¹⁵ This status is assessed by the ASL medical commissions, integrating a social worker and a specialist in the relevant fields serving in the same ASL. The evaluation is not restricted to the disabilities, impairments and capabilities of the person concerned, but must also take into account the difficulties that person may meet and the need for any permanent assistance in overcoming these.¹⁶ Different provisions of the framework law apply to different sub-groups of persons with disabilities, in accordance with the degree of disability or impairment.¹⁷
- [20.] The notions mentioned above are often also invoked outside their field of origin, sometimes in combination, or with additional qualifications and requirements: see, for example, the 2006 law on judicial protection of persons with disabilities (see below, para. 30),¹⁸ which draws on the definition of such persons from Article 3 of Law n. 104/1992, or the 2007 extraordinary housing plan, which is aimed at disadvantaged tenants, and also applies to families which include persons with disabilities whose civil invalidity is assessed at levels over 66 per cent.¹⁹

<http://www.handylex.org/stato/1120684.shtml> (15.09.2009).

¹⁵ Italy/Legge n. 104/1992 (05.02.1992): art. 3. The full text of the law available at:

<http://www.handylex.org/stato/1050292.shtml> (15.09.2009).

¹⁶ Italy/Legge n. 104/1992 (05.02.1992): art. 4. On the assessment of disability for persons of school age, see Italy/Legge n. 289/2002 (27.12.2002): art. 35, co. 7; Italy/Decreto del Presidente del Consiglio dei Ministri n. 185/2006 (23.02.2006). The texts are available at:

<http://www.handylex.org/stato/1271202.shtml>

<http://www.handylex.org/stato/d230206.shtml> (15.09.2009).

¹⁷ Italy/Corte costituzionale/n./n. 246/1997 (18.07.1997) considered these distinctions a reasonable exercise of legislative discretion, balancing the many interests at stake.

¹⁸ Italy/Legge n. 67/2006 (01.03.2006): art. 1. Available at:

<http://www.parlamento.it/parlam/leggi/060671.htm>

¹⁹ Italy/Legge n. 9/2007 (08.02.2007): art. 1; Italy/Decreto legislativo n. 159/2007 (01.10.2007): art. 21. The texts are available at:

<http://www.camera.it/parlam/leggi/070091.htm>

<http://www.camera.it/parlam/leggi/decreti/07159d.htm> (15.09.2009).

2. Anti-discrimination

2.1 Incorporation of United Nations standards

- [21.] Italy signed the UN Convention on the Rights of Persons with Disabilities and its Optional Protocol (CPRD) on 30.03.2007. The Parliament passed the law authorizing the ratification of the CPRD in March 2009²⁰ and the convention was ratified on 15.05.2009.
- [22.] The law authorising the ratification of the CRPD provides for the establishment of the *Osservatorio nazionale sulla condizione delle persone con disabilità* [National Observatory on the Condition of Persons with Disabilities], chaired by the *Ministro del lavoro, della salute e delle politiche sociali* [Minister for Employment, Health and Social Policies]. This National Observatory shall comprise a maximum of 40 members, representing public offices (national, regional and local administrations involved in policies related to disabilities), social partners (trade unions, employers' associations, pensioners' associations), as well as NGOs, and associations representing persons with disabilities. According to a parliamentary motion accepted by the government during the passage of the law for the ratification of the CRPD, members representing the latter two categories of organisations (associations representing persons with disabilities and NGOs) should be no less than 20 per cent of the total.²¹ However, the Ministry for Employment, Health and Social Policies, in its draft regulation (see below), has proposed that representatives of disabled persons and of their families should have more than one third of the available seats.²² The Observatory—which will be financed with a yearly appropriation of €500,000 for the period 2009-2014, drawn from the National Fund for Social Policies²³—will be charged with different tasks related to policies for the disabled: it shall monitor these policies and their enforcement; it shall draft periodic reports, including the report which is to be submitted under Article 35 of the CRPD; it shall also prepare a two-year action plan for the implementation of national and international legislation on disability. It must be noted that the Observatory has not yet been established, as the required regulation, which was expected within three months of the law entering into force, has not yet been adopted.²⁴ However, a first draft regulation has been completed by the Ministry for Employment, Health and Social Policies; the administrative process for its formal adoption, currently under way, should be completed by the end of 2009.²⁵
- [23.] Accepting another parliamentary motion presented during the passage of the law for the ratification of the CRPD, the government committed itself to submit to the Parliament a national action plan for the enforcement of the CRPD, and within this to report on the efficiency of the Observatory.²⁶ The plan and the report, which were expected within six months of the law entering into force, have to date not been issued, since, as noted above, procedures for establishing the Observatory have not yet been completed.

²⁰ Italy/Legge n. 18/2009 (03.03.2009). Available at:

<http://www.parlamento.it/parlam/leggi/090181.htm> (15.09.09).

²¹ Italy/Ordine del giorno 9/2121/2 al disegno di legge A.C. n. 2121 (24.02.2009).

Available at:

http://banchedati.camera.it/sindacatoispettivo_16/showXhtml.asp?highLight=0&idAtto=9869&stile=6 (10.10.09).

²² Speech of Undersecretary Eugenia Roccella to the III National Conference on Disability Policies (02.10.2009).

Available at:

<http://www.conferenzanazionaledisabili.it/wp-content/uploads/2009/10/iINTERVENTO-ROCCELLA.pdf>

²³ Italy/Legge n. 18/2009 (03.03.2009): art. 3.

²⁴ Law n. 18/2009 entered into force the day after its publication in the *Gazzetta Ufficiale della Repubblica Italiana* [Official Journal of the Italian Republic], which took place on 15.03.2009.

²⁵ Speech of Undersecretary Eugenia Roccella to the III National Conference on Disability Policies (02.10.2009).

²⁶ Italy/Ordine del giorno G100 al disegno di legge A.S. n. 1279 (28.01.2009).

Available at:

<http://www.senato.it/japp/bgt/showdoc/frame.jsp?tipodoc=Emend&leg=16&id=341479&idoggetto=441925> (15.09.09).

[24.] No amendment of existing legislation has been considered during the passage of the law authorising the ratification of the CRPD; parliamentary debates have briefly stressed the need for reform of tax benefits for persons with disabilities and for monitoring the 1999 law on the right to work of people with disabilities (see below, para. 39-41).²⁷ In 2007, the former Ministry of Social Solidarity, now Ministry for Employment, Health and Social Policies, financed a research project by the *Consiglio Nazionale delle Ricerche* (CNR) [National Research Council] to analyse the impact of the CRPD on national legislation, alleging that identifying the national laws to be amended was impossible before the research had been completed.²⁸ The final report by the National Research Council's *Istituto di Studi Giuridici Internazionali* (ISGI) [Institute for International Legal Studies] was submitted to the Ministry in April 2009 and has not been published; however, this report did not specifically consider intellectual disabilities.²⁹ The report is presently being considered by the Ministry and will be forwarded to the Observatory, as soon as it is established, as it falls within the competence of the latter to make suggestions and set out priorities for reforming the relevant pieces of legislation, also taking into account the CNR-ISGI study.³⁰

2.2 The Anti-Discrimination National Framework

[25.] Although the Italian Constitution expressly addresses disability issues only in Article 38 and has no provision specifically addressing intellectual disabilities, many of its clauses promote the fight against discrimination on any ground and make a commitment to grant integration and equal opportunities to disadvantaged persons. The general framework of the constitutional approach to disability can be found in the fundamental principles laid down in Articles 2-3. Under the first part of Article 2, 'The Republic recognises and guarantees the inviolable rights of the person, as an individual and in the social groups where human personality is expressed'. The human rights clause in Article 2 must be construed in the light of relevant international charters and declarations, as the Constitution has chosen to broadly open the national law system to international integration.³¹ The 'social groups' clause in Article 2 is also very important, as it provides the basis for any integration policy promoting equal opportunities in education, employment and social life.

[26.] Article 3 of the Italian Constitution enshrines the two aspects of the equality principle, which are indeed closely linked, even more so where disability is concerned. The principle of formal equality is expressed in Article 3, para. 1 of the Italian Constitution: 'All citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinion, personal and social conditions'. This very broad principle is furthered by other, more specific, constitutional provisions, such as those referring to schools ('Schools are open to everyone.') and employment ('The Republic recognises the right of all citizens to work and promotes the conditions rendering this right effective', 'The Republic protects work in all its forms and practices').³³

[27.] Nevertheless, it must be remarked that it took many years for the Italian law system to fully embrace an equality-oriented approach to disability in general, and intellectual disability in particular. The initial, paternalistic approach centred on special assistance facilities and provisions—not lacking in

²⁷ See for a short account Camera dei deputati—Servizio Studi—Dipartimento affari esteri (2009), *Dossier di documentazione – A.C. 2121*, n. 110. The dossier is available at: <http://documenti.camera.it/leg16/dossier/testi/ES0131.htm> (15.09.2009).

²⁸ EU/European Commission (2008) *First Disability High Level Group Report on Implementation of the UN Convention on the Rights of Persons with Disabilities*, p. 18.

²⁹ Information provided by a CNR-ISGI researcher and by a Ministry for Employment, Health and Social Policies official to the authors (17.09.2009-12.10.2009).

³⁰ Information provided by a Ministry for Employment, Health and Social Policies official to the authors (10.10.2009).

³¹ See Italy/ Costituzione (27.12.1947): arts 10-11; art. 117, para. 1.

³² Italy/ Costituzione (27.12.1947): art. 34, para. 1.

³³ Italy/ Costituzione (27.12.1947): art. 4, para. 1; art. 35, para. 1. See also art. 36.

substantial segregating effects—gradually gave way, beginning in the 1970s, to integration-oriented policies, whereby special rights and measures were designed to compensate for the impairments of persons with disabilities, in order to enable such persons to better express their personality in individual and social life. Since the 1990s, including under the auspices of some important constitutional rulings and of the advanced equality principles set out in European Union law, the focus has moved to providing persons with disabilities with equal opportunities, first in employment, but also beyond this field. However, the effectiveness of many of such measures is conditioned by the amount of resources allocated. With regard to mental health and intellectual disabilities, a cornerstone of this development was the law known as the Basaglia Law,³⁴ named after Franco Basaglia, the psychiatrist who strongly advocated such a major shift in the legislative, medical and social handling of mental health problems and disorders. This law ordered the gradual closure of ‘asylums’ / psychiatric hospitals (with the notable exception of judicial psychiatric hospitals: see below, para. 100-102) and the establishment of new, functionally integrated, community-based services for prevention, care and rehabilitation in mental health (new rules were also set out on compulsory treatment and involuntary placement: see below, para. 92). All the existing psychiatric services were integrated in the National Healthcare System. Unfortunately, the Basaglia Law only set out some general principles and guidelines, but neither provided detailed standards for service and staff provision, nor allocated an appropriate budget for setting up the new services. After many years of uneven implementation of the law by the different regional healthcare systems, the target projects on Mental Health Care 1994-1996 and 1998-2000 finally provided general, nationwide standards for the organisation, management and financing of psychiatric services.³⁵

[28.] Some legal provisions expressly forbidding discrimination against people with disabilities—irrespective of the physical or intellectual nature of their disability—have long been available in employment law. In 1999, the new law on the right to work of people with disabilities stated that such persons employed under the quota system (see below, para. 39-41) enjoy the same status granted to any employee by statutes and collective agreements, and that workers with disabilities cannot be required to perform duties incompatible with the disabilities affecting them.³⁶ Yet case law has also been able to use older legislative material to establish several rules that could be seen as corollaries of a broader prohibition against discrimination. For example, it has been consistently held that under the 1968 statutory quota system too a probation clause did not allow employees with disabilities to be dismissed for poor efficiency due to their disabilities.³⁷ The *Consiglio di Stato* [Council of State (administrative appellate court)] has lately ruled that Article 19 of Law n. 104/1992 establishes a general principle according to which fitness for service requirements with regard to persons with disabilities are to be construed in a relative way, taking into account such workers’ effective capabilities, and not only the disabilities affecting them.³⁸ In 2003, the transposition of Directive

³⁴ Italy/Legge n.180/1978 (13.05.1978). This law, the passing of which was necessitated by the need to block an imminent referendum for the repeal of the old legislation on asylums (see below, para. 92), anticipated part of a more far-reaching reform of the healthcare system, and was subsequently absorbed in the general reform law, which established the National Health System: Italy/Legge n. 833/1978 (23.12.1978). With the enactment of Legge n. 833/1978, the Basaglia Law formally ceased its effects: see Italy/Legge n. 180/1978 (13.05.1978), art. 11. The texts of the two laws are available at:

http://www.italgiure.giustizia.it/nir/1978/lexs_77670.html
<http://www.handylex.org/stato/1231278.shtml> (15.09.2009).

³⁵ Italy/Decreto del Presidente della Repubblica 07.04.1995; Italy/Decreto del Presidente della Repubblica 10.11.1999. The former is available at:

http://www.ministerosalute.it/saluteMentale/documenti/PO_SaluteMentale_1994_96.pdf (01.10.2009).

³⁶ Italy/Legge n. 68/1999 (12.03.1999): art. 10, paras 1-2. Available at:

<http://www.handylex.org/stato/1120399.shtml> (15.09.2009).

³⁷ See lately Italy/Corte di cassazione, Sezioni Unite/n./n. 11633/2002 (18.04-02.08.2002). Art. 10 of Italy/Legge n. 482/1968 (02.04.1968) was construed as establishing a general prohibition of discrimination against workers employed under the quota system, as they were granted rights and duties equal to those of ordinary employees. The text of art. 10 of Legge n. 482/1968 is available at:

<http://www.handylex.org/stato/1020468.shtml> (15.09.2009).

³⁸ Italy/Consiglio di Stato, Sezione VI/n./n. 248/2009 (20.01.2009). This ruling, albeit referring to physical disabilities and fitness requirements, relies on statutory provisions applying to any kind of evaluation process and disability impairment.

2000/78/EC finally introduced a general prohibition of discrimination in employment law (see below, para. 42).

- [29.] Beyond employment law, cases dealing with discrimination against persons with disabilities are rarer.³⁹ In 1987, an important constitutional ruling summed up the prohibition of discrimination in education (see above, para. 26) and the constitutional entitlement to preferential treatment (see below, para. 31), holding that persons with disabilities have a right to enjoy effective opportunities to express their personality by attending secondary school: their incapacity to benefit from attending school cannot be abstractly presumed, but, on the contrary, has to be compensated for as much as possible through special support measures. Only when it is certain that secondary school attendance is not beneficial to a person with disabilities, he/she may be assigned to vocational training.⁴⁰
- [30.] In 2006, the Parliament passed a law prohibiting discrimination against persons with disabilities in any field not covered by employment law. Definitions of discrimination are drawn from the national transposition of Directive 2000/78/EC, with some differences: indirect discrimination only occurs when suspect measures effectively ‘put’ (not ‘would put’) persons with disabilities at a disadvantage); harassment only occurs when the relevant conduct actually violates the victim’s dignity etc. (it is not sufficient for such action to be taken ‘with the purpose of’ violating the victim’s dignity etc.).⁴¹ As a remedy against discrimination—both for injunctions for it to cease and for damage redress—a special, simplified judicial procedure applies, based on the procedure devised to combat racial and ethnic discrimination.⁴² Such action may be raised by the persons with disabilities concerned, or on their behalf by associations and other bodies, who are also entitled to challenge discriminatory administrative acts and to bring actions against collective discrimination.⁴³ *Locus standi* is however only granted to associations and bodies meeting requirements pertaining to their object and to the stability of their organisation; the evaluation procedure is carried out by a ministerial commission and eventually results in the grant of a recognition decree.⁴⁴
- [31.] Preferential treatment arrangements have a constitutional basis in the clause enshrining the second aspect of the equality principle (substantive equality): ‘It is the duty of the Republic to remove economic and social obstacles constraining the freedom and equality of citizens, and thereby impeding the full development of the human person and the effective participation of all workers in the political, economic and social organisation of the country’.⁴⁵ This clause is usually interpreted in conjunction with more specific provisions pertaining to employment, education, social security etc. (see above, para. 14 and 26).
- [32.] In 2006, a Constitutional Court judgment set significant limits to preferential treatment in employment: it was held that such treatment is constitutionally permissible for persons with disabilities only with regard to access to work (first occupation); preferential treatment in career progression is not guaranteed and may be granted only if this does not interfere with other values and interests recognised by the Constitution (e.g. equality of all citizens, administration efficiency, selection of public employees by merit only).⁴⁶ Although the Constitutional Court purported to take into account EC law (Article 21 and Article 26 of the Nice Charter, on this occasion), doubts were

³⁹ Recent discrimination cases in private law are especially rare and mostly pertain to ethnic discrimination: in contract law, see the examples in D. Maffei (2008) ‘Libertà contrattuale e divieto di discriminazione’, in: *Rivista trimestrale di diritto e procedura civile*, Vol. 61, No. 2, pp. 401 ff.

⁴⁰ Italy/Corte costituzionale/n. 215/1987 (03-08.06.1987).

⁴¹ Italy/Legge n. 67/2006 (01.03.2006): art. 2.

⁴² Italy/Legge n. 67/2006 (01.03.2006): art. 3.

⁴³ Italy/Legge n. 67/2006 (01.03.2006): art. 4.

⁴⁴ Italy/Decreto del Ministro per i diritti e le pari opportunità e del Ministro della solidarietà sociale 21.06.2007. Available at:

<http://www.informahandicap.it/allegati/documenti/decreto%20attuativo%20legge%2067.pdf> (15.09.2009).

⁴⁵ Italy/ Costituzione (27.12.1947): art. 3, para. 2.

⁴⁶ Italy/Corte costituzionale/n. 190/2006 (03-11.05.2006).

raised on the actual compatibility of this ruling with EC principles on equal opportunities and with Directive 2000/78/EC in particular.⁴⁷

- [33.] Legislative provisions on preferential treatment arrangements for persons with intellectual disabilities are no less varied and complex than the welfare system itself. Competences and responsibilities for providing care, support and services to people with disabilities are split among different administrations, including regional and local bodies, operating according to different organisational models, with different levels of available resources and under different legal provisions: recent governmental analysis singled out fragmentation and heterogeneity as major critical areas in the field of welfare services for people with disabilities.⁴⁸ Therefore, it is only possible here to list a few examples of preferential treatment arrangements, and for each of these to describe only some of the most significant legal features. Focus will be on measures designed to compensate for impairments and disabilities and to promote the integration of the persons affected in the main fields of social life (family, school, work).⁴⁹
- [34.] In social security, a variety of pension and grant schemes apply to persons with disabilities, some financed by taxes and subject to income requirements,⁵⁰ others financed by workers' social security contributions and requiring the persons concerned to fulfil certain contributions requirements.⁵¹ Special attention must be paid to *indennità di accompagnamento* [attendance allowance], this being the only grant scheme which is not subject to contribution or income requirements, since it is specifically meant to support private care for persons with disabilities (especially by their own families). The allowance is awarded to 100 per cent civil invalids who, due to physical or intellectual disabilities, cannot walk or perform everyday routine tasks without continuous personal assistance.⁵² The payment is suspended whenever the beneficiary is placed in a structure providing full and continuous personal assistance.⁵³ With regard to intellectual disabilities, it has been ruled that inability to perform everyday routine tasks also occurs when the affected person can perform physical actions (e.g. eating), but not instrumental social activities (e.g. buying food),⁵⁴ or when continuous assistance is necessary to prevent the affected person from endangering himself/herself or others (but not when such danger arises only occasionally, for example as a result of episodes of violent behaviour due to severe schizophrenia).⁵⁵
- [35.] In education, the right of pupils with disabilities to attend mainstream schools⁵⁶ is supplemented by many preferential treatment arrangements, the main example of these being assistance to pupils with disabilities by specialised *insegnanti di sostegno* [support teachers].⁵⁷ The number of support teachers is determined by law, but other teachers may be assigned to projects designed for pupils with specific

⁴⁷ E. Raimondi (2006), 'Una sentenza discutibile della Corte costituzionale su tutela dei disabili e progressioni di carriera nella p.a.', in: *Rivista italiana di diritto del lavoro*, Vol. 25, No. 1, p. 798.

⁴⁸ See Italy/Ministero del Lavoro, della Salute e delle Politiche Sociali (2009) *Libro bianco sul futuro del modello sociale. La vita buona nella società attiva*, pp. 48-50. Available at:

http://www.lavoro.gov.it/Lavoro/PrimoPiano/20090505_Presentazione_LibroBianco.htm

⁴⁹ Many other provisions exist: see, e.g. on healthcare services, the references quoted above in note 3; on parental leave, see below, para. 83; on fiscal benefits, Italy/Agenzia delle entrate (2008), *Guida alle agevolazioni fiscali per disabili*, available at:

http://www.agenziaentrate.gov.it/ilwvcm/resources/file/ebbd5b09f7920f0/GUIDA_disabili.pdf (15.09.2009).

⁵⁰ See e.g. Italy/Legge n. 118/1971 (20.03.1971): arts 12-13.

⁵¹ See e.g. Italy/Legge n. 222/1984 (12.06.1984).

⁵² Italy/Legge n. 18/1980 (11.02.1980); Italy/Legge n. 508/1988 (21.11.1988): art. 1. See also Italy/Corte di cassazione, Sezione Lavoro/n. 5152/1999 (24.11.1998-26.05.1999). The texts of Legge n. 18/1980 and Legge n. 508/1988 are available at:

<http://www.handylex.org/stato/1110280.shtml>

<http://www.handylex.org/stato/1211188.shtml> (15.09.2009).

⁵³ Italy/Corte di cassazione, Sezione Lavoro/n. 2270/2007 (20.12.2006-02.02.2007).

⁵⁴ Italy/Corte di cassazione, Sezione Lavoro/n. 3299/2001 (07.12.2000-07.03.2001).

⁵⁵ Italy/Corte di cassazione, Sezione Lavoro/n. 4664/1993 (22.10.1992-21.04.1993).

⁵⁶ See Italy/Decreto legislativo n. 297/1994 (16.04.1994): arts 312 ff. Available at:

<http://www.altalex.com/index.php?idnot=34229> (15.09.2009).

⁵⁷ See Italy/Decreto legislativo n. 297/1994 (16.04.1994): art. 315, para. 2 and 4-5, art. 316, art. 319 etc.

disabilities.⁵⁸ When reviewing the administrative measures enforcing statutory cuts to support teaching staff, case law stressed the specific needs of these pupils and the constitutional nature of their right to education; therefore, these measures were subject to a somewhat stricter scrutiny.⁵⁹ Other examples of preferential treatment in education include: (a) a longer time to complete compulsory education (up to the age of 18, with three repetitions allowed for each class);⁶⁰ (b) a lower maximum number of pupils for classes including students with disabilities;⁶¹ (c) special provisions for examinations and tests (during compulsory education, tests must take into account the skills of pupils with disabilities and the initial level of their learning capacities; at secondary school, the time allowed to students with disabilities for tests may be of longer duration, and standard tests can be substituted with others of equivalent value).⁶²

- [36.] The most complex legal framework arguably belongs to special arrangements for the employment of people with mental health disorders or intellectual disabilities. This is also a field where the particular characteristics of intellectual disabilities have been seriously taken into account, including at constitutional level. Indeed, in 1990, after several warnings, the Constitutional Court finally declared the exclusion of civil invalids with intellectual disabilities from the quota system established under Law n. 482/1968 to be unconstitutional. Considering the particular conditions of these persons, the Court specified that they had to be employed under the quota system if their capacity to perform productive tasks was assessed positively by the competent legal body.⁶³ The Constitutional Court ruling, subsequently enforced by civil courts, led to new provisions on this issue being included in Law n. 104/1992 (Article 19), and finally to the 1999 reform of the quota system.
- [37.] Currently, the two main lines of support for the right to work of people with disabilities are: (a) the provisions of *cooperative sociali di tipo B* [B-type social cooperatives] enterprises; (b) the quota system established under Law n. 68/1999.⁶⁴ However, other special provisions also exist: for example, the *contratto di inserimento* [placement contract]—allowing fixed-term employment for some categories of disadvantaged workers, who are to follow an individual training project—is also open to workers with disabilities, for whom its duration (normally 9-18 months) may be increased to 36 months.⁶⁵
- [38.] B-type social cooperatives have the purpose of fostering the employment of disadvantaged workers in agricultural, industrial, commercial or service activities.⁶⁶ Disadvantaged workers, who must make up

⁵⁸ Italy/Legge n. 449/1997 (27.12.1997): art. 40, para. 1 and para. 3. See also Italy/Legge n. 289/2002 (27.12.2002): art. 35, co. 7; Italy/Decreto del Presidente del Consiglio dei Ministri n. 185/2006 (23.02.2006): art. 4; Italy/Legge n. 244/2007 (24.12.2007), art. 2, paras 413-414. Texts available at:

http://www.edscuola.it/archivio/norme/leggi/scfin_98.html

<http://www.handylex.org/stato/1271202.shtml>

<http://www.handylex.org/stato/d230206.shtml>

<http://www.superabile.it/repository/ContentManagement/information/P1600575023/fin.pdf> (15.09.2009).

⁵⁹ See e.g. TAR Campania, Napoli, sez. VIII/n. 2994/2009 (20.04-28.05.2009).

⁶⁰ Italy/Decreto legislativo n. 297/1994 (16.04.1994): art. 182, para. 2, and art. 316, para. 1, lett. c).

⁶¹ Italy/Decreto del Presidente della Repubblica n. 81/2009 (20.03.2009): art. 5, para. 2.

Available at:

http://www.edscuola.it/archivio/norme/programmi/riorgrete_scolastica.pdf (15.09.2009).

⁶² Italy/Decreto legislativo n. 297/1994 (16.04.1994): art. 318.

⁶³ Italy/Corte costituzionale/n. 50/1990 (31.01-02.02.1990).

⁶⁴ Statistical data on the application of Law n. 68/1999 can be found in Italy/Ministero del Lavoro, della Salute e delle Politiche sociali, *Quarta relazione al Parlamento sullo stato di attuazione della legge 12 marzo 1999, n. 68, "Diritto al lavoro dei disabili" 2006-2007*. The report was submitted to the Parliament in September 2008, as required by Italy/Legge n. 68/1999 (12.03.1999), art. 21. The report is available at:

<http://www.lavoro.gov.it/NR/rdonlyres/EBEFFDC5-52FD-4E39-874E-E94C7698B595/0/IVRelazionealParlamento.pdf> (15.09.2009).

⁶⁵ Italy/Decreto legislativo n. 276/2003 (10.09.2003): arts 54 ff. See especially art. 57, para. 1. Available at:

<http://www.lavoro.gov.it/NR/rdonlyres/686C529C-6BFB-4708-9644-2E395029C02C/0/DL10settembre2003n276.pdf> (15.09.2009).

⁶⁶ Italy/Legge n. 381/1991 (08.11.1991): art. 1, para. 1, lett. b). Available at:

<http://www.handylex.org/stato/l081191.shtml>.

at least 30 per cent of the total workforce,⁶⁷ include people with physical, psychiatric and intellectual disabilities and sensory impairment, former patients of psychiatric hospitals and persons undergoing psychiatric treatment.⁶⁸ These cooperatives enjoy several benefits: for example, with regard to disadvantaged workers, no employer's social security contributions are required from them;⁶⁹ they may be awarded contracts not subject to the conditions of ordinary public contract law by public bodies, provided that the value threshold set out by EC directives is not exceeded.⁷⁰

[39.] The 1999 quota system is open to persons of working age with physical, intellectual or psychiatric disabilities or sensory impairments which reduce their working capacity by more than 45 per cent.⁷¹ Assessment is based upon the 1992 tables on civil invalidity (see above, para. 17), but the competent body must also provide a functional diagnosis of the physical disabilities and mental health condition of the person concerned, as well as an evaluation of their family, education and working situations.⁷² The basic principle of Law n. 68/1999 is *collocamento mirato* [targeted placement], comprising any technical instrument or support useful in the evaluation of the working capacity of people with disabilities and in the placement of these persons in suitable employment.⁷³ Public and private employers have to recruit a number of workers with disabilities, varying with the total workforce: one worker, where 15-35 persons are employed; two workers, where 16-50 persons are employed; 7 per cent of the total workforce, where there are more than 50 employed persons.⁷⁴

[40.] The recruitment of people with intellectual and psychiatric disabilities under the quota system ordinarily takes place in two phases.⁷⁵ First, agreements are negotiated between the competent administrative offices and employers⁷⁶. These agreements set a cadre for recruitments by the interested employers, define the relative timing, and also determine the conditions for training and for flexible employment contracts. When these apply to persons with special working integration problems, agreements should also set out each worker's duties, support, consulting and tutoring arrangements, as well as periodic monitoring of their working integration.⁷⁷ Then, following the guidelines set out in the agreements, employers select and summon the workers they wish to recruit, choosing each of them individually (*chiamata nominativa* [individual call]). This recruitment scheme entitles employers to special incentives, in particular to a contribution amounting to up to 60 per cent of the employed persons' salary, subject to the availability of resources from the relevant fund.⁷⁸ It has however been noted that no remedy is available, if an employer does not subscribe to any

⁶⁷ Italy/Legge n. 381/1991 (08.11.1991): art. 4, para. 2.

⁶⁸ Italy/Legge n. 381/1991 (08.11.1991): art. 4, para. 1.

⁶⁹ Italy/Legge n. 381/1991 (08.11.1991): art. 4, para. 3.

⁷⁰ Italy/Legge n. 381/1991 (08.11.1991): art. 5.

⁷¹ Italy/Legge n. 68/1999 (12.03.1999): art. 1. In order to effect such evaluation, the medical commission is integrated as provided by Italy/Legge n. 104/1992 (05.02.1992), art. 4: see above, para. 14.

⁷² Italy/Decreto del Presidente del Consiglio dei ministri 13.01.2000; Italy/ Circolare del Ministero del Tesoro, del Bilancio e della Programmazione economica n. 150/2001 (07.05.2001). Texts available at:

<http://www.spazio-lavoro.it/04lavoro/DPCM13012000.HTML>

http://www.isfol.it/Normativa/Dettaglio_Normative/index.scm?id=14627&view=1 (15.09.2009).

⁷³ Italy/Legge n. 68/1999 (12.03.1999): art. 2.

⁷⁴ Italy/Legge n. 68/1999 (12.03.1999): art. 3. See arts 4-5 for rules on calculating the relevant numbers.

⁷⁵ Italy/Legge n. 68/1999 (12.03.1999): art. 9, para. 4. See also Italy/Decreto del Presidente della Repubblica n. 333/2000 (10.10.2000): art. 7, para. 5. Text available at:

<http://www.handylex.org/stato/d101000.shtml> (15.09.2009).

⁷⁶ Italy/Legge n. 68/1999 (12.03.1999): art. 11. See art. 6 for the designation of competent offices: these are the Disabled Working Integration Services, whose offices operate in every province, with the advice of technical committees including medico-legal and social service specialists.

⁷⁷ Italy/Legge n. 68/1999 (12.03.1999): art. 11.

⁷⁸ Italy/Legge n. 68/1999 (12.03.1999): art. 13, para. 1, lett. a), as amended by Italy/Legge n. 247/2007 (24.12.2007) art. 1, para. 37, lett. c). The text of Legge n. 247/2007 is available at:

<http://www.camera.it/parlam/leggi/072471.htm> (15.09.2009).

Art. 13 applies to any worker with 'intellectual or psychiatric disabilities', irrespective of the relevant invalidity percentage (see above, para. 39). It has been held that the notion of 'intellectual or psychiatric disability' must be construed in the light of the *ratio* of Law n. 68/1999 and of the classification in DSM-IV-TR. Therefore, 'intellectual disability' includes learning difficulties, dementia and mental deterioration due to psychotic disorders; 'psychiatric disability' encompasses personality disorders. See Italy/Messaggio INPS n. 23991/2008 (30.10.2008), available at:

<http://www.handylex.org/stato/c301008.shtml> (15.09.2009)

agreement or, having agreed, does not issue individual calls to persons with intellectual and psychiatric disabilities: in such cases, the employer may simply discharge statutory obligations by recruiting persons with other categories of disability.⁷⁹

- [41.] Employers have alternative options for discharging their quota obligations.⁸⁰ One of the most debated options—introduced in 2003, abolished in 2007 and re-established in 2008—allows employers to permanently fulfil their quota obligations by placing orders with social cooperatives and having these employ disabled persons with special integration problems. The regime for this employment scheme is set out in territorial collective agreements signed by the competent offices, social partners and associations of social cooperatives. Such agreements also determine limits on the number of workers to whom the scheme may apply (such limits only apply to employers with more than 35 employees). These conventions have attracted some criticism, as it has been questioned whether they are consistent with the integration and equal opportunities principles set out in national and EC law. Some fear that these conventions may actually foster exclusion of disabled persons and their confinement to a restricted segment of the labour market,⁸¹ while others point out that these schemes have a selective character, only applying to persons with special integration problems, and are subject to collective control through the participation of public administration bodies and social partners in the making of the above-mentioned territorial agreements.⁸²
- [42.] Legislative Decree n. 216/2003,⁸³ which was enacted in order to transpose Directive 2000/78/EC, considers disability ('handicap'), but does not define it. There is no reason to doubt that this notion—as with the notion of disability ('handicap') under Law n. 68/1999 or under Law n. 104/1992 and others—may apply to any category of disability or impairment, including mental disorders.
- [43.] There is no reason, similarly, to doubt that equal opportunity legislation in areas other than employment might also rely on a broad notion of disability (invalidity etc.), also including the disabling consequences of mental disorders, as is often the case in existing legislation (see above, para. 17, 19, for example).
- [44.] Legislative Decree n. 216/2003 contains no 'reasonable accommodation' clause. While some see this as a gross violation of the Directive,⁸⁴ others feel that 'reasonable accommodation' is already provided for by the many preferential treatment measures in Law n. 104/1992.⁸⁵ Indeed, the foremost example of provisions imposing 'reasonable accommodation' obligations on employers is Article 10

⁷⁹ S. Ciucciiovino (2000), commentary on art. 9 of Legge n. 68/1999, in: *Le nuove leggi civili commentate*, Vol. 23, No. 6, p. 1412; P. Bozzao (2000) 'Il collocamento mirato e le relative convenzioni', in: M. Cinelli, P. Sandulli (eds), *Diritto al lavoro dei disabili*, Torino: Giappichelli, pp. 228-229; G. Pera (2001), 'Disabili (diritto al lavoro dei)', in: *Enciclopedia giuridica*, Vol. XI, Rome: Istituto dell'Enciclopedia Italiana, p. 3; F. Limena (2004) *L'accesso al lavoro dei disabili*, Padova: CEDAM, pp. 124-127.

⁸⁰ See also Italy/Legge n. 68/1999 (12.03.1999), art. 12, as amended by Italy/Legge n. 247/2007 (24.12.2007) art. 1, para. 37, lett. a), and art. 12bis, enacted by Italy/Legge n. 247/2007 (24.12.2007) art. 1, para. 37, lett. b), on *convenzioni di inserimento lavorativo temporaneo con finalità formative* [temporary working placement conventions with training purposes] and *convenzioni di inserimento lavorativo* [working placement conventions].

⁸¹ S. Costantini (2005) 'Efficienza ed efficacia delle convenzioni per l'inserimento lavorativo dei disabili', in: M.V. Ballestrero, G.G. Balandi (eds) *I lavoratori svantaggiati tra eguaglianza e diritto diseguale*, Bologna: Il Mulino, pp. 188-189; A. Avio (2008) 'Disabilità e avviamento al lavoro', in: *Lavoro e diritto*, Vol. 22, No. 3, pp. 503-505; M.C. Cimaglia (2008), 'La riforma del diritto al lavoro dei disabili', in: M. Magnani, A. Pandolfo, P.A. Varesi (eds) *Previdenza, mercato del lavoro, competitività*, Torino: Giappichelli, p. 319.

⁸² A. Tursi (2006), 'Le nuove convenzioni per l'inserimento lavorativo dei disabili e dei soggetti svantaggiati tramite cooperative sociali, due anni dopo', in: *Giornale di diritto del lavoro e di relazione industriali*, Vol. 28, No. 109, pp. 71 ff.

⁸³ Italy/Decreto legislativo n. 216/2003 (09.07.2003).

⁸⁴ M. Barbera (2007), 'Le discriminazioni basate sulla disabilità', in: M. Barbera (ed.) *Il nuovo diritto antidiscriminatorio. Il quadro comunitario e nazionale*, Milano: Giuffrè, p. 81.

⁸⁵ M.R. Saulle (2003) *Report on the situation of disabled persons in Italy with regard to the access to occupation*, pp. 23 ff., available at http://diskriminace.info/do-postizeni/disabfull_it.pdf (15.09.2009).

of Law n. 68/1999.⁸⁶ This provides that when the competent bodies attest that significant changes to an employer's work organisation, or deterioration of an employee's disabilities, make it impossible for the employee to continue working with that employer, the employee's dismissal is allowed, but only if it is not possible to overcome the new difficulties through adjustments to work organisation.⁸⁷ One of the first reported rulings based on Legislative Decree n. 216/2003 held that an employer must avoid any action or behaviour that might cause discomfort to disabled employees because of their disability, but is *not* bound to eliminate situations of discomfort arising from an employee's disability.⁸⁸

[45.] In addition, Law n. 67/2006 (see above, para. 30), while specifically drawing inspiration from Directives 2000/43/EC and 2000/78/EC, contains no provision on 'reasonable accommodation' obligations. In the absence of a general principle, the question whether (and how) the concept of 'reasonable accommodation' is implemented in social protection etc. turns into the question of whether the existing array of non-discrimination and preferential treatment rules applying to disability is sufficiently comprehensive and effective. Given the layered, complex and varied structure of the relevant provisions, there is no simple and complete answer to such a question that can be given here which would differ from what has already been noted above in this section.

[46.] The equality body established under Directive 2000/43/EC, transposed by Legislative Decree n. 215/2003, is the *Ufficio nazionale antidiscriminazioni razziali* (UNAR) [National Office Against Racial Discrimination],⁸⁹ whose competences and activities focus, as the name of the body indicates, on racial discrimination. Nevertheless, some limited actions with a broader scope have been launched, including initiatives for raising awareness on disability issues.⁹⁰ More importantly, in the light of ongoing initiatives for the extension of the approach to discrimination on grounds of religion, age, sexual orientation, as well as disability, enshrined in Directive 2000/43/EC, UNAR itself has lately felt the need to call for wider competences, including with regard to action against discrimination based on disability, and for more effective intervention tools.⁹¹

⁸⁶ S. Giubboni (2008), 'Il licenziamento del lavoratore disabile tra disciplina speciale e tutela antidiscriminatoria', in: *D&L Rivista critica di diritto del lavoro*, Vol. 17, No. 2, pp. 442 ff.; A. Tursi (2006), 'Le nuove convenzioni per l'inserimento lavorativo dei disabili e dei soggetti svantaggiati tramite cooperative sociali, due anni dopo', in: *Giornale di diritto del lavoro e di relazione industriali*, Vol. 28, No. 109, p. 101.

⁸⁷ Italy/Legge n. 68/1999 (12.03.1999): art. 10, para. 3. As noted above (para. 28), under art. 10, para. 2 an employer may not require a person with disabilities to perform tasks not compatible with his/her impairments: this too might be read as implying an obligation for the employer to arrange his work organisation in such a way as to create suitable places for employees with disabilities. Art. 13, para. 1, lett. d), provides incentives for adjusting work organisation to the needs of persons with disabilities, but does not make this compulsory.

⁸⁸ Italy/Tribunale di Pistoia/ ord. 03.12.2005.

⁸⁹ Italy/Legge n. 39/2002 (01.02.2002): art. 29; Italy/Decreto legislativo n. 215/2003 (09.07.2003): art. 7; Italy/Decreto del Presidente del Consiglio dei ministri 11.12.2003. The basic texts on UNAR are available at: http://www.governo.it/GovernoInforma/Dossier/settimana_antidiscriminazioni_razziali/opuscolo.pdf (15.09.2009).

⁹⁰ See UNAR (2007) *Un anno di attività contro la discriminazione razziale. Rapporto 2007. Relazione al Presidente del Consiglio dei ministri*, pp. 171-172 and p. 183. UNAR reports are available at: <http://www.virtualcommunityunar.it/> (15.09.2009).

⁹¹ UNAR, *L'efficacia degli strumenti di tutela nel contrasto alle discriminazioni razziali. Relazione al Parlamento 2007*, p. 99 ff.

3. Specific Fundamental Rights

- [47.] As a general introduction, it is worth recalling that the Italian Constitution recognises and guarantees the fundamental rights of any person, including persons with disabilities and persons with mental health disorders and/or intellectual disabilities (see above, para. 25). With regard to civil and political rights, the Italian Constitution does not provide for any explicit, special limitation or extension of fundamental rights for persons with mental health disorders and/or intellectual disabilities—with the notable exception of compulsory treatment and placement (see below, section 4). This does not prevent the Italian law system from taking into account mental health disorders and intellectual disabilities in the legal provision for specific rights: special provisions may be allowed, or even required, by Article 3 of the Italian Constitution, because of the needs of the affected persons for special protection.
- [48.] In private law, while there is no limitation as to the rights persons with intellectual disabilities might have (no limitation on legal capacity: see below, para. 117), such disabilities may affect the validity of single acts performed (see above, para. 16), or also require different types of general competence limitations. Where competence limitations apply, the exercise of private legal rights normally takes place through, or with the assistance of, a representative of the affected party (guardian, support manager, curator, special curator), after authorisation for such procedure has been issued by the competent judicial body (see below, section 5).
- [49.] In criminal law, the protection of persons with psychiatric disorders and/or intellectual disabilities is commonly entrusted to general provisions, with additional rules taking into consideration their relevant needs for special protection. For example, any offence may be considered aggravated, if the offender took advantage of personal conditions diminishing the victim's defensive capacities,⁹² or if the offender abused his/her authority over or special relationship with the victim (e.g. parental, guardianship or professional—including medical—responsibilities).⁹³ If someone instigates a person who cannot be punished due his/her mental health condition to commit an offence, he/she is responsible for that offence;⁹⁴ if the person actually committing the offence can be punished, despite being affected by mental health disorders or disabilities, the instigator is still held responsible for an aggravated offence (while extenuating circumstances apply to the direct perpetrator of the crime).⁹⁵ Moreover, the framework law on disability has established a special aggravating circumstance when a person with disability is the victim of a variety of offences, including sexual offences and offences against the person or property.⁹⁶
- [50.] When a *querela* [victim's request for punishment of the offender] is required for prosecution, it can be filed by the guardian, if the victim is subject to interdiction (see below, section 5), or by a *curatore speciale* [special curator], if the victim has intellectual disabilities and no legal representative has been appointed (or the interests of the appointed representative conflict with those of the victim).⁹⁷ However, a victim may still personally file a valid request for punishment, if he/she is able to do so: a victim's mental health condition is therefore never ground for invalidation of the request (or of any ensuing sentence).⁹⁸

⁹² Italy/Codice Penale (19.10.1930): art. 61, n. 5.

⁹³ Italy/Codice Penale (19.10.1930): art. 61, n. 11.

⁹⁴ Italy/Codice Penale (19.10.1930): art. 111.

⁹⁵ Italy/Codice Penale (19.10.1930): art. 112, para. 1, n. 4; art. 114, para. 3.

⁹⁶ Italy/Legge n. 104/1992 (05.02.1992): art. 36, para. 1.

⁹⁷ Italy/Codice Penale (19.10.1930): arts 120-121. A special curator is someone appointed to assist a person with competence limitations for the purpose of performing a single legal act (hence the special character of his/her power, as opposed to the general power of the guardian, curator or support manager).

⁹⁸ Italy/Corte di cassazione, sez. VI/n. 7280/2000, Valente (06.04-20.06.1990).

3.1 The right to life

- [51.] The right to life of persons with mental health disorders and/or intellectual disabilities is protected by the criminal provisions on offences against life and personal safety,⁹⁹ with additional protection due to aggravated responsibility (see above, para. 49).
- [52.] Impairments due to mental health disorders or intellectual disabilities normally exclude or reduce the legal relevance of a victim's consent to his/her own death: if the victim was affected by a mental health disorder or intellectual disability, his/her killing is punished as murder¹⁰⁰—unless there is clear evidence that the victim was actually able to express full, explicit and conscious consent to the taking of his/her life¹⁰¹—and assistance in his/her suicide is considered an aggravated offence. However, assistance in a person's suicide is also punished as murder, if the victim lacked the capacity to understand and decide to take that action.¹⁰²
- [53.] When defects that might cause a disability can be diagnosed before the person affected is born, consideration of these defects and disabilities, and of their possible traumatic impact on the mental health of the affected person's mother may allow abortion, even after the ninetieth day of pregnancy. However, abortion is not permitted if the foetus is capable of autonomous life, unless the survival of the mother is threatened.¹⁰³ In such cases, the mother has full rights to decide whether to terminate or complete the pregnancy: any conduct infringing this right—for example medical error in pre-natal diagnosis—may entail responsibility for damages.¹⁰⁴

3.2 The right to freedom from torture or cruel, inhuman or degrading treatment or punishment

- [54.] The Italian Constitution requires human dignity to be preserved during any correctional or medical treatment (including compulsory medical treatments).¹⁰⁵ However, the Italian law system does not make torture—as defined in the 1984 UN Convention against Torture—a specific crime: different offences punished by criminal law fall, or may to some extent fall, under the scope of Article 1 and Article 16 of the Convention (and Article 15 of the CRPD, Article 3 of the ECHR, etc.). Some of these offences, for example abandonment,¹⁰⁶ maltreatment,¹⁰⁷ and abuse of authority over convicts,¹⁰⁸ have a particular relevance for the protection of persons with intellectual disabilities and mental health disorders, as they are typically committed by those having legal authority over such persons (guardians, doctors, social workers, staff of correctional facilities).
- [55.] With regard to coercion of persons with intellectual disabilities or mental health disorders, case law has consistently held that: (a) coercion may be applied only by those having legal authority over people with disabilities, including medical personnel of facilities to which care of people with disabilities has been entrusted; (b) coercion may be used only when it is strictly necessary to prevent a patient to endangering himself/herself or others; (c) any illegitimate or unnecessary coercion by those

⁹⁹ Italy/Codice Penale (19.10.1930): arts 575-593.

¹⁰⁰ Italy/Codice Penale (19.10.1930): art. 579, para. 3, n. 2.

¹⁰¹ Italy/Corte di cassazione, sez. I/n. 13410/2008, B.F. (14.02-28.03.2008).

¹⁰² Italy/Codice Penale (19.10.1930): art. 580, para. 2.

¹⁰³ Italy/Legge n. 194/1978 (22.05.1978): arts. 6-7. Text available at: http://www.dirittoefamiglia.it/Docs/Giuridici/leggi/1978_194.htm (15.09.2009).

¹⁰⁴ Italy/Corte di cassazione, sez. III/n. 6735/2002 (28.02-10.05.2002).

¹⁰⁵ Italy/Costituzione (27.12.1947): art. 27, para. 3, and art. 32, para. 2 (see below, section 4).

¹⁰⁶ Italy/Codice Penale (19.10.1930): art. 391. See e.g. Italy/ Corte di cassazione, sez. V/n. 15245/2005, N.G. (22.02-22.04.2005), where it is also specified that a criminally relevant obligation to care for people with disabilities also arises when assistance takes place under a private law contract.

¹⁰⁷ Italy/Codice Penale (19.10.1930): art. 572.

¹⁰⁸ Italy/Codice Penale (19.10.1930): art. 608.

having legal authority over people with disabilities is punished as maltreatment.¹⁰⁹ It is worth noting that, when coercion is the only way to prevent a patient from endangering himself/herself or others, its omission makes the doctors responsible for damages that may follow.¹¹⁰

- [56.] In particular cases, abuses of legal authority over persons with disabilities have been so abnormal, that they were punished as offences of a more general type (i.e. the legal authority vested in the offenders was considered irrelevant in the categorisation of the offence), such as *violenza privata* [private violence]¹¹¹ and false imprisonment,¹¹² for example where coercion was applied in a structure not authorised to care for the disabled,¹¹³ or by personnel lacking the appropriate professional qualifications and with the sole purpose of not having to carry out other, more demanding, forms of assistance;¹¹⁴ or when extensively used on convicts in a judicial psychiatric hospital to discourage their protests and force them to tolerate degrading treatments.¹¹⁵ Moreover, physical coercion should not be used, in principle, on agitated persons who might injure themselves while fighting against restraints. In such cases, physical coercion is allowed only as an emergency measure and pharmacological sedation is to be administered as soon as possible; if this does not happen and bodily harm to the patient ensues, the doctors may be punished for such injuries.¹¹⁶
- [57.] In addition to criminal law, deontological rules on medical practice also require that a patient's dignity as a human being is always respected, prohibiting doctors from taking part in torture and in any cruel, inhuman and degrading treatment.¹¹⁷ A rigorous respect for human rights is particularly required with regard to patients who are subject to restriction of liberty, with the additional precept of use of coercion on patients subject to compulsory treatment only when it is actually necessary, in ways compatible with human dignity, and in observance of the law.¹¹⁸

3.3 The right to freedom from exploitation

- [58.] The Italian Criminal Code, as amended by the 2003 Law against trafficking in human beings,¹¹⁹ punishes enslavement, slave trafficking, and acquisition and transfer of slaves.¹²⁰ All these offences are centred around the exploitation of a victim who has been forced into submission through violent or insidious practices, in order to coerce him/her into work, prostitution, begging, etc. Practices leading to forced submission explicitly include exploitation of a victim's intellectual disadvantage, or corrupting those who have legal authority over the victim.¹²¹

¹⁰⁹ Italy/ Corte di cassazione, sez. V/n. 27882/2003, D.C.A. (23.05-30.06.2003). For an example see Italy/ Corte di cassazione, sez. VI/n. 6581/2007, L.A. (05.12.2007-12.02.2008), on coercion used not as a protective measure, but as chastisement.

¹¹⁰ Italy/ Corte di cassazione, sez. IV/n. 13241/2005, L.L. (12.01-12.04.2005).

¹¹¹ Italy/Codice Penale (19.10.1930): art. 610 (coercing someone, by violence or threat, into doing, suffering or not doing something)

¹¹² Italy/Codice Penale (19.10.1930): art. 605.

¹¹³ Italy/ Corte di cassazione, sez. I/n. 409/2004, D.C.A. (28.10.2004-13.01.2005).

¹¹⁴ Italy/ Corte di cassazione, sez. V/n. 6131/2006, B.E. (29.11.2006-14.02.2007).

¹¹⁵ Italy/Tribunale di S. Maria Capua Vetere/ 09.05.1978, Ragozzino.

¹¹⁶ Italy/ Corte di cassazione, sez. IV/ 19.12.1979, Rocco (19.12.1979).

¹¹⁷ Italy/Codice deontologico del Consiglio Nazionale della Federazione Nazionale degli Ordini dei Medici Chirurghi e degli Odontoiatri (16.12.2006): art. 52. Available at: http://portale.fnomceo.it/Jcmsfnomceo/cmsfile/attach_3819.pdf (15.09.2009).

¹¹⁸ Italy/Codice deontologico del Consiglio Nazionale della Federazione Nazionale degli Ordini dei Medici Chirurghi e degli Odontoiatri (16.12.2006): art. 51.

¹¹⁹ Italy/Legge n. 228/2003 (11.08.2003). Available at: <http://www.camera.it/parlam/leggi/032281.htm> (15.09.2009).

¹²⁰ Italy/ Codice Penale (19.10.1930): art. 600, 601, 602.

¹²¹ Italy/ Codice Penale (19.10.1930): art. 600, para. 2.

3.4 The right to liberty and security

- [59.] Some remarks on this topic have already been made above, with regard to offences against liberty and security of persons with disabilities by those having legal authority over them. (See sections 3.2-3, also for references to some relevant legal provisions.) It has also been noted that when a general offence—for example, battery, injury, false imprisonment etc.—is committed against a person who, because of impairment due to disability, is unable to defend himself/herself, the offence is aggravated. (See para. 49, also for references to some relevant legal provisions.)
- [60.] It is noteworthy that, with a famous (albeit unpublished) ruling, the Court of Cassation denied the validity of what is known as a ‘Ulysses pact’, whereby a person, in anticipation of his/her potentially confused state of mind due to a mental health disorder at a later date, agrees to future restrictions of personal liberty for treatment purposes.¹²² It was held that restrictions to personal liberty do not amount to false imprisonment if—as well as being carried out for a justifiable purpose, limited to the minimum duration necessary and in a manner respecting human dignity—they are consented to by the restricted person. The latter can however revoke his/her consent at any time and regain liberty, notwithstanding any previous agreement. If the person concerned actually revokes his/her consent, and if his/her condition at that moment requires action to prevent dangerous behaviour (e.g. in cases of persons with drug addiction during a withdrawal phase), it is questionable whether those who enforced the restrictions in the first place would be allowed to maintain these, alleging necessity as a defence. In Italian law, necessity does not apply, in principle, when the relevant danger has been caused by or could have been avoided by the offender (if rehabilitation practices different from those involving the ‘Ulysses pact’ were available, for example).¹²³
- [61.] With regard to sexual life, the law has tried to strike a balance between the right to self-determination of people with disabilities and their protection from abuse. After the sexual offences reform enacted in 1996,¹²⁴ the Criminal Code punishes whoever takes advantage of a victim’s mental (or physical) impairment to induce him/her to engage in intercourse.¹²⁵ Case law has specified that intercourse with a person who has a mental (or physical) impairment is to be punished if: (1) the relevant condition prevents the victim from self-determination in sexual life; (2) the offender is aware of, or could easily notice this impairment, and (3) takes advantage of it; (4) the offender deliberately persuades the victim to allow intercourse.¹²⁶

3.5 The right to fair trial

- [62.] Capacity to take part in civil (and administrative) proceedings belongs, in principle, to any physical person. Persons to whom competence limitations have been applied by judicial decisions can only take part in proceedings through, or with the assistance of their guardian, curator or support manager, normally with authorisation from the guardianship judge or the tribunal.¹²⁷ In urgent cases, if no guardian, curator or support manager has already been appointed, the judge who has jurisdiction over the relevant proceedings may assign a special curator to the person lacking capacity. The request for

¹²² Information on this case is available in the legal literature: see e.g. F. Viganò (2006), commentary on art. 605, in: E. Dolcini, G. Marinucci (eds.) *Codice penale commentato*, Vol. II, Assago: IPSOA, pp. 4192-4194.

¹²³ Italy/Codice Penale (19.10.1930): art. 54.

¹²⁴ Italy/Legge n. 66/1996 (15.02.1996). Available at: http://www.edscuola.it/archivio/norme/leggi/1066_96.htm (15.09.2009).

¹²⁵ Italy/Codice Penale (19.10.1930): art. 609-bis, para. 2, n. 1.

¹²⁶ Italy/Corte di cassazione, sez. III/n. 35878/2007 (05.06-01.10.2007).

¹²⁷ Italy/Codice di Procedura Civile (28.10.1940): art. 75. On competence limitations, see below, section 5. The guardianship judge sits in a single-judge court, presently established in every district tribunal (Italy/Codice Civile (16.03.1942): art. 344): one of the tribunal’s magistrates sits as the guardianship judge.

the appointment of a special curator can be made by the *pubblico ministero* [public prosecutor]. It can also be made by the party lacking capacity in person (the party may always make such a request, notwithstanding his/her legal incapacity), by his/her close relatives; or also by the opposing party. The public prosecutor, who is entitled to bring action for the appointment of a permanent guardian, curator or support manager, is always informed of these requests.¹²⁸

- [63.] If no competence limitation has been applied, the mere fact that a party lacks capacity to understand and decide has no relevance in civil procedure: for example, a defendant may not challenge the validity of a claim by alleging that it was filed by a person lacking capacity to understand and decide.¹²⁹ This principle has raised some concerns, as a person suffering from intellectual disability may have serious difficulties in exercising his/her defensive rights, if unassisted. While a special curator has occasionally also been appointed in such cases,¹³⁰ the Constitutional Court has repeatedly ruled that the correct course of action would be for the public prosecutor to request, in separate proceedings, the appointment of a guardian, curator or support manager for the person concerned; after such a request, *interim* measures could be adopted, including the appointment of a provisional representative to assist the person concerned in the pending proceedings.¹³¹
- [64.] If competence limitations are applied while proceedings are pending, either the newly appointed guardian, curator or support manager appears before the court, or proceedings are suspended (provided that the advocate representing the person subject to competence limitations declares the latter to have been applied).¹³² After being suspended, proceedings can be continued within a period of three months, either by the guardian, curator or support manager, or by the opposing party¹³³
- [65.] Criminal proceedings may be suspended if the defendant is unable consciously to take part in them due to mental health disorders.¹³⁴ This rule is a corollary of the constitutional right of defence: accordingly, it does not apply when all defence activities rest with the advocate alone, as before the Court of Cassation.¹³⁵ It is noteworthy that the requirements for suspension of proceedings are different from those of other protection measures for persons with intellectual disabilities: for example, it has been held that a person subject to interdiction does not necessarily lack capacity to take part in criminal proceedings.¹³⁶
- [66.] Where the defendant suffers from mental health disorders, the judge may always decide for acquittal. Only where there are no grounds for acquittal, the judge must assess the defendant's mental capacity—if necessary after psychiatric examination—and may eventually order proceedings to be suspended. The suspension order may be challenged before the Court of Cassation.
- [67.] During this assessment and suspension, the running of the period of limitations for legal proceedings is also suspended, and the judge may only admit evidence favourable to the defendant, or evidence that could not be collected at a later time. A special curator—the legal representative appointed for private law purposes, if possible—is appointed for the defendant, to assist him/her in the permitted procedural activities.¹³⁷ Every six months, the defendant's psychiatric condition is reassessed; whenever the mental health disorder improves sufficiently, suspension may be revoked.¹³⁸

¹²⁸ Italy/Codice di Procedura Civile (28.10.1940): arts 78-80.

¹²⁹ Italy/Corte di cassazione, sez. lav./n. 5152/1999 (24.11.1998-26.05.1999).

¹³⁰ Italy/Tribunale di Napoli/ 22.09.2006.

¹³¹ Italy/Corte costituzionale/n. 468/1992 (05-19.11.1992); Italy/Corte costituzionale/n. 198/2006 (03-11.05.2006).

¹³² Italy/Codice di Procedura Civile (28.10.1940): arts 299-300.

¹³³ Italy/Codice di Procedura Civile (28.10.1940): arts. 302-305.

¹³⁴ Italy/Codice di Procedura Penale (22.09.1988): arts. 70-71. Suspension was initially excluded, when the relevant mental illness had arisen after the offence had been committed; this limit was however removed by Italy/Corte costituzionale/n. 340/1992 (07-20.07.1992).

¹³⁵ Italy/Corte di cassazione, sez. V/n. 7063/2000, V.D (16.03-15.06.2000).

¹³⁶ Italy/Corte di cassazione, sez. V/n. 2283/2004, S.C. (13.12.2004-25.01.2005).

¹³⁷ Italy/Codice di Procedura Penale (22.09.1988): art. 70, para. 2; art. 71.

¹³⁸ Italy/Codice di Procedura Penale (22.09.1988): art. 72.

- [68.] Where the defendant needs psychiatric assistance, the judge informs the competent bodies, and in urgent cases may also order provisional placement in the care of hospital psychiatric services until the competent bodies take action.¹³⁹ If custody is needed, this will take place either by placement under surveillance in a hospital,¹⁴⁰ or by custody in a special penitentiary section or facility for people with psychiatric disorders;¹⁴¹ provisional placement in a judicial psychiatric hospital is only allowed if it is reasonably foreseeable that such placement will be ordered as a security measure at the end of proceedings¹⁴². Custody time limits are suspended, but the maximum time limit under Article 304, para. 6 of the Criminal Procedure Code still applies.¹⁴³ Therefore, while suspension of proceedings may last indefinitely (where the illness is permanent), custody may not.
- [69.] If a person who has suffered damage or injury as the result of a crime makes his/her claim for compensation in criminal proceedings, this person's competence to act is subject to rules similar to those which apply in civil procedure (see above, para. 62).¹⁴⁴ In urgent cases, if a potential claimant is not assisted by a guardian, curator or support manager (or if the claimant has interests conflicting with those of the guardian etc.), at the request of the public prosecutor, of the person concerned or of his/her close relatives (also at the request of the guardian, curator or support manager, if there are conflicting interests) a special curator may be appointed. In very urgent cases, the public prosecutor can claim for damages on the behalf of the incompetent party.¹⁴⁵
- [70.] Moreover, with regard to offences which are aggravated if committed against a person with disabilities (see above, para. 49), competence to act in proceedings is also statutorily granted to ombudsman offices and to associations to which the victim or his/her relatives belong.¹⁴⁶

3.6 The right to privacy, including the access to one's own confidential medical records

- [71.] The basic discipline for the protection of data on intellectual disabilities and personality disorders is set out by the medical deontological rules on professional secrecy,¹⁴⁷ the violation of which is also punishable as a criminal offence.¹⁴⁸ Medical data are in principle confidential; their confidentiality continues even after the patient's death or the end of the doctor's professional practice, and also applies to the doctor's staff. Exceptions to this principle may be permitted only under specific provisions of law (which however may never require the doctor to testify against the patient), or when it is strictly necessary to protect third persons or the patient himself/herself from danger to health or life.
- [72.] Additional and more specific provisions are found in the *Codice in materia di protezione dei dati personali* [Data Protection Code] (compliant with Directive 2002/58/EC).¹⁴⁹ These include: the right of the subject of data to know whether personal data concerning him/her exist; to obtain

¹³⁹ Italy/Codice di Procedura Penale (22.09.1988): art. 73, paras 1-2.

¹⁴⁰ Italy/Codice di Procedura Penale (22.09.1988): art. 73, para. 3, and art. 286.

¹⁴¹ Italy/Decreto del Presidente della Repubblica n. 230/2000 (30.06.2000): art. 111, para. 5.

¹⁴² Italy/Corte di cassazione, sez. IV/n. 3518/2004, Murru (10.12.2003-29.01.2004). On placement in judicial psychiatric hospital, see below, paras 100-102.

¹⁴³ Italy/Corte di cassazione, sez. I/n. 16939/2009, Vallini (01-21.04.2009).

¹⁴⁴ Italy/Codice di Procedura Penale (22.09.1988): art. 77, para. 1.

¹⁴⁵ Italy/Codice di Procedura Penale (22.09.1988): art. 77, paras 2-4.

¹⁴⁶ Italy/Legge n. 104/1992 (05.02.1992): art. 36, para. 2.

¹⁴⁷ Italy/Codice deontologico del Consiglio Nazionale della Federazione Nazionale degli Ordini dei Medici Chirurghi e degli Odontoiatri (16.12.2006): arts 10-12, 34.

¹⁴⁸ Italy/Codice Penale (19.10.1930): art. 622 (disclosure by professionals of confidential information made available to them due to their profession). See also art. 326, punishing the disclosure by any public officer of confidential information made available to him/her due to his/her office.

¹⁴⁹ Italy/Decreto legislativo n. 196/2003 (30.06.2003). An English translation is available at: <http://www.garanteprivacy.it/garante/document?ID=1219452> (15.09.2009).

communication of such data and information on their processing; to require updating and rectification of data; to object to unlawful data processing, and to require erasure or blocking of unlawfully processed data.¹⁵⁰ Under the Data Protection Code, the subject's consent is required for data processing to take place; however, simplified arrangements for obtaining consent are specifically provided for with regard to the healthcare sector.¹⁵¹

- [73.] Data related to health are classified as sensitive, and therefore benefit from an accordingly higher level of legal protection,¹⁵² and their processing is also subject to a number of additional special rules and guarantees.¹⁵³ For example, data on health may never be disseminated;¹⁵⁴ access to such data—including case notes¹⁵⁵—for the defence of third parties' legal claims is allowed only if the right to be defended is a fundamental right or liberty, or enjoys a status as high as the data subject's right to privacy;¹⁵⁶ bodies providing health care services must adopt a number of precautionary arrangements, including the extension of secrecy obligations imposed on doctors to workers not in principle bound by such obligations.¹⁵⁷
- [74.] Case law from the *Garante per la protezione dei dati personali* [Personal data protection supervisory authority] has enforced and furthered the principles on personal data protection, including with regard to data on mental health: the authority has, for example, discouraged the processing of nominative data on mental health for psychiatric services planning, management, monitoring and evaluation, as these purposes may also be fulfilled using data not traceable back to specific individuals.¹⁵⁸
- [75.] Data processing without the data subject's consent is allowed when it is necessary to protect the health and safety of third persons or of the public: this requires, in principle, an authorisation from the supervisory authority (Personal data protection authority),¹⁵⁹ unless there is an urgent need to prevent danger to life or personal safety of a third person.¹⁶⁰ The data subject's consent may also be obtained after data processing, when this is necessary to assure the timeliness and efficacy of medical treatment, or to avert an imminent, serious and irreparable danger to the data subject's health.¹⁶¹

¹⁵⁰ Italy/Decreto legislativo n. 196/2003 (30.06.2003): art. 7.

¹⁵¹ Italy/Decreto legislativo n. 196/2003 (30.06.2003): arts 77 ff.

¹⁵² See Italy/Decreto legislativo n. 196/2003 (30.06.2003):.

¹⁵³ The main statutory guarantees are summarised in Italy/Autorizzazione generale del Garante per la protezione dei dati personali n. 2/2008 (19.06.2008), which also sets out more specific rules on health data processing. An English translation is available at:

<http://www.garanteprivacy.it/garante/doc.jsp?ID=1642045> (15.09.2009).

On recent initiatives for the networking of health data processing (creation of virtual medical files editable by and accessible to different medical professionals and structures), see also Italy/Delibera del Garante per la protezione dei dati personali n. 25 – Linee guida in tema di Fascicolo sanitario elettronico (Fse) e di *dossier* sanitario (19.06.2008). Available at:

<http://www.garanteprivacy.it/garante/doc.jsp?ID=1634116> (15.09.2009).

¹⁵⁴ Italy/Decreto legislativo n. 196/2003 (30.06.2003): art. 22, para. 8; art. 26, para. 5. This rule has prevailed, on occasions, over different rules less favourable to personal data protection: see e.g. Italy/Garante per la protezione dei dati personali/divieto 21.04.2009.

¹⁵⁵ Italy/Decreto legislativo n. 196/2003 (30.06.2003): art. 92. The subject's consent is not required for the retention of case notes in archives, as this is not a medical treatment, but a purely administrative activity with certification purposes, allowed by art. 85, para. 1, lett. d) of Decreto legislativo n. 196/2003 (30.06.2003): see Italy/Garante per la protezione dei dati personali/ provvedimento 11.10.2004.

¹⁵⁶ Italy/Decreto legislativo n. 196/2003 (30.06.2003): art. 26, para. 4, lett. c). More detailed guidelines on how to perform this equivalence assessment are laid out in Italy/Delibera del Garante per la protezione dei dati personali 09.07.2003 – Dati sanitari Provvedimento generale sui diritti di "pari rango". Available at <http://www.garanteprivacy.it/garante/doc.jsp?ID=29832> (15.09.2009).

¹⁵⁷ Italy/Decreto legislativo n. 196/2003 (30.06.2003): art. 83 (see especially para. 2, lett. i).

¹⁵⁸ Italy/Garante per la protezione dei dati personali, parere 06.05.2009.

¹⁵⁹ Italy/Decreto legislativo n. 196/2003 (30.06.2003): art. 76, para. 1, lett. b). General authorisations on this issue have been issued over the years: see lately Italy/Autorizzazione generale del Garante per la protezione dei dati personali n. 2/2008 (19.06.2008).

¹⁶⁰ Italy/Decreto legislativo n. 196/2003 (30.06.2003): art. 24, para. 1, lett. e).

¹⁶¹ Italy/Decreto legislativo n. 196/2003 (30.06.2003): art. 82, para. 2-3.

[76.] If the data subject is incapable of granting consent because of competence limitations (see below, section 5) or incapacity to understand and decide (see above, para. 16), consent may be obtained from his/her guardian, from a relative or family member, from a cohabitant or, if none of these is available, from the manager of the facility where the data subject lives.¹⁶²

3.7 The right to marry, to found a family and to respect of family life

[77.] Intellectual disability may entail limitations on the right to marry. Persons subject to interdiction (the strongest type of competence limitation: see below, section 5) may not marry,¹⁶³ nor are their guardians allowed to consent to marriage on their behalf. If interdiction proceedings are pending, the public prosecutor may stop celebration of a marriage; if a celebration of marriage takes place, the guardian, the public prosecutor or any person having an interest (including the person subject to interdiction, after this has been revoked) may request the marriage to be declared void. This also applies to persons who, at the time of their marriage, were not yet subject to interdiction, but were already affected by the illness causing interdiction.¹⁶⁴

[78.] More generally, if someone consents to marriage while lacking capacity to understand and decide, he/she is entitled to bring action to have the marriage declared void.¹⁶⁵

[79.] The same action cannot be brought by the other spouse (the spouse unaffected by a lack of capacity to understand and decide). However, mental health is considered an important personal quality and errors concerning it may affect the validity of the marriage. Accordingly, the other spouse may request the marriage to be declared void, if: (a) the relevant mental health condition disrupts conjugal life; (b) the spouse was not aware of the mental health disorder at the time of marriage; (c) he/she would not have consented to marriage, had he/she been aware of it.¹⁶⁶ Since in these instances Italian private law allows a marriage to be declared void on the ground of mental health disorder, case law has also permitted the recognition of ecclesiastical rulings declaring a canon law marriage with civil effects void. This does not apply only to canon rulings on the ground of lack of ‘sufficient use of reason’, or of ‘grave defect of discretion of judgment concerning the essential matrimonial rights and duties’;¹⁶⁷ recognition has also been allowed for rulings on the ground of inability to ‘assume the essential obligations of marriage for reasons of a psychic nature’.¹⁶⁸ This clause is actually quite broad and probably encompasses personality disorders whose direct relevance in competence issues under Italian law could be disputed. However, this difference is not considered a decisive obstacle to recognition of canon law rulings, since, as has been noted, to a certain extent Italian law also allows a marriage to be indirectly challenged on the ground of mental illness.¹⁶⁹

[80.] In any case, actions under Italian law to have a marriage declared void may not be brought, if one year has passed since interdiction was revoked (or incapacity to understand and decide has subsided, or the relevant error has been discovered) and if the spouses have lived together during this year.¹⁷⁰

[81.] With regard to divorce of a person subject to interdiction, statute law only takes into consideration cases where a request for divorce is filed *against* him/her, requiring the guardian to request the

¹⁶² Italy/Decreto legislativo n. 196/2003 (30.06.2003): art. 24, para. 2, lett. e).

¹⁶³ Italy/Codice Civile (16.03.1942): art. 85.

¹⁶⁴ Italy/Codice Civile (16.03.1942): art. 119, para. 1.

¹⁶⁵ Italy/Codice Civile (16.03.1942): art. 120, para. 1.

¹⁶⁶ Italy/Codice Civile (16.03.1942): art. 122, para. 3, n. 1.

¹⁶⁷ Roman Catholic Church/Codex Iuris Canonici: can. 1095, nn. 1-2. An English translation (quoted here) is available at: http://www.vatican.va/archive/ENG1104/_INDEX.HTM (15.09.2009).

¹⁶⁸ Roman Catholic Church/Codex Iuris Canonici: can. 1095, n. 3.

¹⁶⁹ Italy/Corte di cassazione, sez. I/n. 12144/1993 (09.03-09.12.1993).

¹⁷⁰ Italy/Codice Civile (16.03.1942): art. 119, para. 2; art. 120, para. 2; art. 122, para.4.

appointment by the guardianship judge of a special curator to assist the concerned person in pending proceedings.¹⁷¹ Case law has construed these provisions as also allowing the appointment of a special curator when a request for divorce is to be filed on behalf of the ward/person subject to interdiction.¹⁷²

- [82.] On the other hand, no legal provision allows substitution with regard to other highly personal legal acts that are often strictly related to family life, such as making wills and gifts.¹⁷³ a person subject to interdiction is simply unable to perform such acts or to have them performed on his/her behalf. Obviously, other competence limitations also caused by interdiction or support management (see below, section 5) may interfere with family life, for example the general disqualification from performing legal acts, or the powers of the guardianship judge to decide on placement of the person concerned. Interdiction is also ground for separating the joint estate of spouses, including at the request of the representative of the spouse concerned who is subject to interdiction.¹⁷⁴
- [83.] In a broader perspective, it is noteworthy that Italian law provides several measures designed to support family life and family care for people with disabilities, for example various different kinds of leave from work, which the Constitutional Court has extended over the years so as to encompass a greater number of family relationships and types.¹⁷⁵

3.8 The right to have children and maintain parental rights

- [84.] There are no legal limitations on the right to have children for persons with intellectual disabilities or personality disorders. In principle, parental rights and obligations will be managed in accordance with the general private law rules on competence limitations, if applicable. There are, however, special rules on intellectual disability with regard to the performing of certain acts.
- [85.] With regard to potential pregnancy termination, when the pregnant woman is subject to interdiction, authorisation for abortion may be requested on her behalf by her guardian or husband (if not separated). Only the guardianship judge may issue this authorisation; the woman's guardian must be consulted; a doctor (either the woman's personal doctor, or a doctor working for the *consultorio* [parenthood advice centre] or the institution the woman has turned to) must, on request, submit a report on the woman, on her attitude ('however expressed', that is to say, the woman's will is relevant, however it is expressed, including where intellectual disabilities or mental health disorders interfere with its expression), on her pregnancy and mental illness. More importantly, as an exception to the general disqualification produced by interdiction, the request must be confirmed by the woman.¹⁷⁶ It has been held that, if the woman is unable to express any intelligible will, the guardianship judge may still authorise termination of pregnancy on the basis of the medical report, if this seems necessary under the circumstances.¹⁷⁷
- [86.] No law provision regulates potential pregnancy termination for women who, although they are not subject to interdiction, are nevertheless affected by a mental health disorder which affects their

¹⁷¹ Italy/Legge n. 898/1970 (01.12.1970): art. 4, para. 5. Available at: <http://www.altalex.com/index.php?idnot=41744> (15.09.2009).

¹⁷² Italy/Corte di cassazione, sez. I/n. 9582/2000 (20.03-21.07.2000).

¹⁷³ Italy/Codice Civile (16.03.1942): art. 591, para. 2, n. 2; art. 774.

¹⁷⁴ Italy/Codice Civile (16.03.1942): art. 193

¹⁷⁵ Italy/Decreto legislativo n. 151/2001 (26.03.2001): art. 42. Particularly, the right to special leave under para. 5 was initially granted only to the parents of the person with disabilities or, after their death, to that person's siblings. The Constitutional Court has extended this as follows: to the siblings of the person in cases where the parents are still alive, but unable to care for the person; to the spouse of the person with disabilities, with priority over any other subject; and lately, to the sons/daughters of the spouse of the person with disabilities, when they live with their parent and no other person is able to assist him/her. See Italy/Corte costituzionale/n. 19/2009 (26-30.01.2009). The text of Decreto legislativo, art. 42, n. 151/2001 is available at: <http://www.handvlex.org/stato/d260301.shtml> (15.09.2009).

¹⁷⁶ Italy/Legge n. 194/1978 (22.05.1978): art. 13.

¹⁷⁷ Italy/Pretura di Genova, Giudice tutelare/20.03.1986.

capacity to understand and decide. Some think that, in such cases, interdiction proceedings should immediately be started by the public prosecutor, in order to allow the appointment of a provisional guardian. However, on some occasions, at the request of a woman's husband, guardianship judges have resorted to analogy in order to apply to these cases too the rules on potential pregnancy termination for women subject to interdiction.¹⁷⁸

- [87.] The acknowledgement of a natural child is another highly personal act that a person subject to interdiction cannot perform, not even through their guardian. On the contrary, the guardian of a person subject to interdiction may challenge any such acknowledgement, even when truthful, performed by that person; a challenge may also be brought by the person making the acknowledgement, within one year of interdiction being revoked.¹⁷⁹ Legal representation of a person subject to interdiction is also generally allowed in the different judicial proceedings for the ascertaining of parenthood (disputes on legitimacy; actions for the declaration of parentage).¹⁸⁰

3.9 The right to property

- [88.] There are no legal limitations on the right to property for persons with intellectual disabilities or personality disorders. Acquisition, management and transfer of properties will obviously take place according to the general rules on competence limitations.

3.10 The right to vote

- [89.] Electoral law used to deprive both persons placed in mental hospitals and persons subject to competence limitations of their right to vote.¹⁸¹ However, these rules were repealed by the Basaglia Law.¹⁸² Therefore, no limitation presently applies to the right to vote for persons with intellectual disabilities or personality disorders.

4. Involuntary placement and Involuntary Treatment

- [90.] Currently, the most relevant findings of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) related to the issues of involuntary placement and involuntary treatment in Italy appear to be those summarised in the report on the CPT visit of 21.11.2004-3.12.2004.¹⁸³ Among the establishments visited was the psychiatric ward (*Servizio psichiatrico di diagnosi e cura* (SPDC) [psychiatric service for diagnosis and care] (see below, para. 97)) of the San Giovanni di Dio Hospital in Agrigento, where the Committee was able for the first time to examine Italian rules and practice on compulsory placement of people with psychiatric

¹⁷⁸ Italy/Pretura di Nicosia, Giudice tutelare/23.11.1997.

¹⁷⁹ Italy/Codice Civile (16.03.1942): art. 266.

¹⁸⁰ Italy/Codice Civile (16.03.1942): arts 245, 247, 248, 264, 273.

¹⁸¹ Italy/Decreto del Presidente della Repubblica n. 223/1967 (20.03.1967): art. 2, n. 1; art. 3. Available at: http://www.italgiure.giustizia.it/nir/1967/lexs_39488.html (15.09.2009).

¹⁸² Italy/Legge n. 180/1978 (13.05.1978) art. 11

¹⁸³ Council of Europe/ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (2006) *Rapport au Gouvernement de l'Italie relatif à la visite effectuée en Italie par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) du 21 novembre au 3 décembre 2004*, CPT/Inf (2006) 16, available at: <http://www.unhcr.org/refworld/docid/445085d94.html> (15.09.2009)

disorders.¹⁸⁴ While the Committee came to a generally positive assessment, some critical points were highlighted, most notably: (a) patients' treatment was mainly pharmacological and behavioural, although service organisation allowed for a more multidisciplinary, flexible and individualised approach; (b) medical certifications of psychiatric conditions requiring compulsory placement were somewhat laconic and vague; (c) accordingly, administrative and judicial control on the actual existence of the legal and medical requirements for compulsory placement appeared mostly bureaucratic and formal (the competent authorities had only checked if the required certifications had been issued).¹⁸⁵ However, no case of abuse was reported.

[91.] Other recent CPT and United Nations Committee Against Torture (CAT) documents mainly focus on health care in the penitentiary system, including psychiatric assistance to convicted prisoners, only briefly touching upon issues relevant to the present report.¹⁸⁶

4.1 Legal Framework

[92.] The foundations for the regime for involuntary placement and treatment are laid down in Article 32 of the Italian Constitution, which protects health 'as a fundamental right of the individual and as a collective interest' and prohibits compulsory treatment, except when prescribed by law and provided human dignity is always preserved. Nevertheless, until 1978 these issues were governed by pre-constitutional legislation aimed at social defence against danger or 'public scandal', through the compulsory confinement of the 'alienated' in mental hospitals ('asylums').¹⁸⁷ Until 1968,¹⁸⁸ not even the mere possibility of voluntary placement was provided for by the relevant laws. In 1978, the Basaglia Law (see above, para. 27) set out new principles on involuntary treatment, which are now part of the law establishing the National Health System.¹⁸⁹ These principles are valid throughout the nation. However, it rests with the regions and regional laws to organise within each ASL the psychiatric services where involuntary treatments take place.¹⁹⁰ Moreover, regional rules and guidelines (which do not have force of law) have complemented the principles laid out in national law, in some respects clarifying some obscure points, in other respects also adding new provisions to the legal framework.¹⁹¹

¹⁸⁴ See report quoted in the previous footnote: paras 130ff., 178ff. In September 2008 another CPT visit took place in another SPDC (San Giovanni Bosco Hospital, Naples) and in a judicial psychiatric hospital (Aversa). Only a News Flash is presently available for this visit at:

<http://www.cpt.coe.int/documents/ita/2008-10-02-eng.htm> (15.09.2009).

¹⁸⁵ A Response of the Italian Government to CPT remarks may be found in Italy/Ministero degli Affari Esteri-Comitato Interministeriale dei Diritti Umani (2006), *Italian remarks on the report of the Committee on Prevention of Torture on its mission to Italy*, CPT/Inf (2006) 17, available at:

<http://www.cpt.coe.int/documents/ita/2006-17-inf-eng.pdf> (15.09.2009).

¹⁸⁶ See e.g. Italy/Ministero degli Affari Esteri-Comitato Interministeriale dei Diritti Umani (2008) *Concluding observations (CAT/C/ITA/CO/4) of the United Nations Committee Against Torture: Italy's follow-up*, pp. 13 ff., on ongoing renovation and reorganisation processes for penitentiary establishments, including judicial psychiatric hospitals (see especially p. 20 on the foreseen shift of healthcare services in these hospitals from the Ministry of Justice to ordinary healthcare administrations—on this, see also below, para. 100).

The document is available at:

<http://www2.ohchr.org/english/bodies/cat/cats38.htm> (15.09.2009).

¹⁸⁷ Italy/Legge n. 36/1904 (14.02.1904); Italy/Regio decreto n. 615/1909 (16.08.1909). Available at:

http://www.italgiure.giustizia.it/nir/1904/lexs_12.html

http://www.italgiure.giustizia.it/nir/1909/lexs_1552.html (15.09.2009).

¹⁸⁸ Italy/Legge n. 431/1968 (18.03.1968). Available at:

http://www.italgiure.giustizia.it/nir/lexs/1968/lexs_218452.html

¹⁸⁹ Italy/Legge n. 833/1978 (23.12.1978): art. 33-35.

¹⁹⁰ See Italy/Legge n. 833/1978 (23.12.1978): art. 34, para. 1 and 3.

¹⁹¹ The main regional rules, guidelines and practices are now summarised in: Conferenza delle regioni e delle province autonome (2009) *Raccomandazioni in merito all'applicazione di accertamenti e trattamenti sanitari obbligatori per malattia mentale (art. 33-34-35 legge 23 dicembre 1978, n. 833)*. The text is available at:

http://www.regioni.it/upload/290409_TSO.pdf (15.09.2009).

- [93.] Currently, no fewer than six bills concerning compulsory placement and treatment for psychiatric care have been introduced by private members in the two houses of the Parliament.¹⁹² Most of these proposals call for clearer provisions at national level on outpatient compulsory treatment (see below, para. 95), as well as for a stronger and more explicit emphasis on the role of trained psychiatrists in decision procedures (see below, para. 106). On other issues, namely on placement of psychiatric patients in special, separate residential institutions, on danger as a possible ground for compulsory treatment, and on the shift from mainly judicial to mainly medical control of compulsory treatment and placement orders, the proposals differ greatly. Not all of these proposals seem to take into account that Article 13 of the Italian Constitution requires a swift judicial review of administrative measures limiting personal liberty (see below, para. 113). However, the bills appear to have a rather low level of political priority: reading procedures have not started for any of them.
- [94.] Law n. 833/1978, at Article 33, lays down some general principles and procedural rules on *accertamento sanitario obbligatorio* (ASO) [compulsory medical examination] and *trattamento sanitario obbligatorio* (TSO) [compulsory medical treatment]. Article 33 does not establish if, when and according to which criteria ASOs and TSOs may be ordered: other legal provisions are required to make these determinations, in order to legally confer upon healthcare authorities the power to enact compulsory measures. Compulsory placement for purposes other than treatment is not allowed.
- [95.] The provisions on compulsory psychiatric treatment may be found in the same Law n. 833/1978, at Articles 34-35. These provisions only regulate in full detail psychiatric TSO in hospitals (for compulsory placement in SPDCs: see below, para. 97). Regional guidelines give supplementary instructions and directives on: (1) ASO for psychiatric purposes, taking place in outpatient services or at the patient's home; (2) outpatient psychiatric TSO, that is compulsory psychiatric treatment administered outside hospital (this, however, is largely theoretical, since there is very scarce evidence, if any, of compulsory treatment in outpatient settings).
- [96.] Law n. 833/1978 considers all compulsory measures as exceptional, short-term therapeutic interventions, the primary aim of which is the treatment of illnesses and the recovery of the patient's health. However, judges have remarked that the negative consequences of mental health disorders that TSO is designed to prevent include criminal behaviour by the affected person and the potential ensuing consequences, that is to say that preventing a person from committing a crime is a way to protect him/her from the pernicious effects of criminal indictment, punishment and security measures.¹⁹³
- [97.] In order to guarantee aftercare, responsibility for compulsory treatment is assigned to the same services charged with general psychiatric care functions (prevention, treatment and rehabilitation),¹⁹⁴ so that these services may also continue to care for the patient after compulsory treatment has ended. These services are managed by the *Dipartimento di salute mentale* (DSM) [Mental Health Department] that each ASL must establish according to national standard organisational and operative protocols (e.g. each DSM must set out guidelines for the drafting of personalised therapeutic plans, for TSOs, etc.). Each DSM includes a *Servizio psichiatrico di diagnosi e cura* (SPDC) [psychiatric

The regions have agreed to disseminate these recommendations and to promote their enforcement: while some regions have simply transposed the recommendations into formal directions (see e.g. Italy/Delibera della Giunta regionale della Puglia n. 1499/2009 (04.08.2009)), others went further, developing them into even more detailed guidelines (see e.g. Italy/Delibera della Giunta regionale del Veneto n. 847/2009 (31.03.2009)). The two quoted texts are available at:

http://www.regione.puglia.it/www/web/files/sanita/trattamento_malattie_mentali.pdf

<http://bur.regione.veneto.it/BurVServices/Pubblica/DettaglioDgr.aspx?id=214444> (17.09.2009).

¹⁹² Italy/Disegno di legge A.S. n. 348 (06.05.2008), Carrara et al.; Italy/Progetto di legge A.C. n. 1423 (01.07.2008), Guzzanti et al.; Italy/Disegno di legge A.S. n. 1181 (05.11.2008), Rizzi et al.; Italy/Progetto di legge A.C. n. 1984 (04.12.2008), Barbieri; Italy/Progetto di legge A.C. n. 2065 (15.01.2009), Ciccioli et al.; Italy/Disegno di legge A.S. n. 1423 (04.03.2009), Rizzi et al. On reform proposals introduced in past Parliaments see E. Carbone (2005), 'Habeas corpus e sofferenza psichica: riflessioni di un giudice tutelare', in: *Diritto di famiglia*, Vol. 34, No. 2, pp. 626-631. A database of bills introduced in both houses of Parliament is available at:

<http://www.senato.it/ricerche/sDDL/nuova.ricerca>

¹⁹³ Italy/Corte di cassazione, sez. IV/n. 10795/2007, P.E. (14.11.2007-11.03.2008).

¹⁹⁴ Italy/Legge n. 833/1978 (23.12.1978): art. 34, paras 1, 3, 5.

service for diagnosis and care], which is a specialised ward in a general hospital, with up to 16 beds: TSOs are carried out in SPDCs.¹⁹⁵ Private facilities are not allowed to make compulsory admissions.

[98.] Law n. 833/1978 does not lay down special rules on involuntary treatment and placement of children and/or young adults.¹⁹⁶ The general principles on age and competence require that for any medical treatment to be carried out on an underage person, consent must be given by his/her parents (or guardian). However, deontological rules and regional guidelines take into greater account both the wishes of the minor, if he/she is mature enough to consciously express these, and the necessity to safeguard his/her interests. Provision is therefore made that: (a) if the parents (or guardian) refuse to consent to necessary treatment, the doctor (i) must apply to the public prosecutor of the *Tribunale dei minorenni* [youth court],¹⁹⁷ so that appropriate measures, including suspension of or exclusion from parental responsibilities, may be taken,¹⁹⁸ and (ii) can also propose TSO; or (b) if the parents (or the guardian) consent to treatment, but the minor opposes it, (i) a TSO procedure should still be carried out, as assessment procedures offer an additional guarantee that treatment is necessary and appropriate, but (ii) application to the public prosecutor of the *Tribunale dei minorenni* would be preferred, whenever the doctor detects a general family environment that might be detrimental to the health of the minor.¹⁹⁹

[99.] No special rules apply to compulsory treatment and placement of persons subject to competence limitations and persons with drug or alcohol addictions (on the latter, however, see para. 101). It must nevertheless be noted that

- for persons subject to competence limitations, treatment consented to by their appointed representatives is considered to be voluntary.²⁰⁰ However, if the doctor notices that a person subject to competence limitation is opposed to a treatment consented to by his/her representative, he/she must inform the guardianship judge,²⁰¹ who is invested with broad control and directional powers (see below, section 5);
- while there is no provision on compulsory rehabilitation from drug or alcohol addictions, availability of (and willingness to follow) an adequate rehabilitation programme may entitle an addicted offender to sentence suspension and to *affidamento in prova ai servizi sociali* [probation under social services supervision].²⁰²

[100.] A separate, complex body of rules addresses the compulsory placement of offenders with mental health disorders. In the entire body of Italian law, this is arguably the most critical field for

¹⁹⁵ See Italy/Decreto del Presidente della Repubblica 10.11.1999.

¹⁹⁶ On the compulsory treatment of juvenile offenders, the Constitutional Court has held that placement in judicial psychiatric hospitals (see below, para. 100-102) is not allowed, as this is incompatible with the particular needs of underage persons: Italy/Corte costituzionale/n. 324/1998 (14-24.07.1998).

¹⁹⁷ The *Tribunale dei minorenni* is a court comprising magistrates and experts in human sciences which has jurisdiction on civil and criminal matters concerning underage persons: see Italy/Regio decreto legge n. 1404/1934 (20.07.1934), converted in Italy/Legge n. 835/1935 (27.05.1935); see also Italy/Disposizioni per l'attuazione del Codice Civile (30.03.1942): art. 38.

¹⁹⁸ See Italy/Codice Civile (16.03.1942): arts 330, 333.

¹⁹⁹ See: Italy/Delibera della Giunta Regionale dell'Emilia-Romagna, n. 1457/1989 (11.04.1989): para. 4.5; Conferenza delle regioni e delle province autonome (2009), *Raccomandazioni in merito all'applicazione di accertamenti e trattamenti sanitari obbligatori per malattia mentale (art. 33-34-35 legge 23 dicembre 1978, n. 833)*: para. 8; Italy/Delibera della Giunta regionale del Veneto n. 847/2009 (31.03.2009): para. 5.5. See also Italy/Codice deontologico del Consiglio Nazionale della Federazione Nazionale degli Ordini dei Medici Chirurghi e degli Odontoiatri (16.12.2006), arts 32, 37, 38.

²⁰⁰ Whenever a doctor becomes convinced that the legal representative is opposing appropriate treatment of the person with disabilities, the doctor is under a deontological obligation to apply to the proper judicial authorities: see Italy/Codice deontologico del Consiglio Nazionale della Federazione Nazionale degli Ordini dei Medici Chirurghi e degli Odontoiatri (16.12.2006), arts 32 and 37. See also Italy/Delibera della Giunta regionale del Veneto n. 847/2009 (31.03.2009): para. 5.6.

²⁰¹ Italy/Codice deontologico del Consiglio Nazionale della Federazione Nazionale degli Ordini dei Medici Chirurghi e degli Odontoiatri (16.12.2006), art. 38.

²⁰² Italy/Decreto del Presidente della Repubblica n. 309/1990 (09.10.1990): arts 90 ff. Available at: <http://www.altalex.com/index.php?idstr=49&idnot=33849> (15.09.2009).

fundamental rights of persons with mental health disorders. Here the new psychiatric approach launched in the 1970s meets older models, strongly committed to collective defence against ‘social danger’. The *ospedali psichiatrici giudiziari* (OPGs) [judicial psychiatric hospitals], formerly known as *manicomi criminali* [criminal asylums], are institutions of a closed type, with a basically penitentiary organisation. Because of this, and some broader problems concerning management of judicial psychiatric hospitals and the resources available, significant concerns still linger about the real therapeutic and rehabilitative efficacy of treatments administered in these facilities.²⁰³ In 2008, furthering a project started back in 1998, the government launched a wide-ranging reform of penitentiary healthcare services, pivoting on the shift of responsibility for these services from the Ministry of Justice to ordinary (regional) healthcare administrations:²⁰⁴ this included psychiatric assistance in judicial psychiatric hospitals, with a stronger integration between this and ordinary psychiatric services being foreseen.²⁰⁵ However, professional associations and the specialised press have expressed concerns on the enforcement of this reform, which seems to proceed at different speeds in different regions, and in general not very rapidly.²⁰⁶

- [101.] The legal framework for compulsory placement of offenders with mental disorders centres upon the *misure di sicurezza* [security measures] named *ricovero in casa di cura e custodia* [placement in a house of treatment and custody] and *ricovero in ospedale psichiatrico giudiziario* [placement in a judicial psychiatric hospital]²⁰⁷. These measures apply if: (1) it has been established by trial that the person concerned has committed a crime; (2) the offender’s capacity to understand and decide is diminished or absent due to infirmity, or chronic alcohol or drug intoxication (see above, para. 16); (3) both the trial judge and the *magistrato di sorveglianza* [overseeing magistrate (the magistrate overseeing correctional treatments)] establish that the person concerned is socially dangerous, that is that he/she is likely to commit new offences if unrestrained.²⁰⁸⁻²⁰⁹ Security measures are additional to ordinary criminal punishment, if applicable, and are executed only after an ordinary sentence has been served. One of their most notable features is that no maximum duration is set out for them. After the minimum statutory duration, and in order to confirm or terminate a measure, the overseeing magistrate reviews whether the offender has ceased to be socially dangerous; however, review is also possible at an earlier point.²¹⁰

²⁰³ See on the ongoing debate: R. Malano (2008) ‘Attualità delle problematiche riguardanti i Manicomi Giudiziari. Una revisione storica dei progetti di legge riguardanti il superamento dell’Ospedale Psichiatrico Giudiziario e la modifica dell’attuale sistema della non imputabilità per gli infermi di mente autori di reato’, in: *Rivista italiana di medicina legale*, Vol. 30, No. 4-5, pp. 1021 ff. On the origins, history and present conditions of OPGs (and more generally on psychiatric assistance in the penitentiary system), see lately: U. Fornari (2008) *Trattato di Psichiatria Forense*, Torino: UTET Giuridica, pp. 75-91.

²⁰⁴ Italy/Legge n. 419/1998 (30.11.1998); Italy/Decreto legislativo n. 230/1999 (22.06.1999); Italy/Legge n. 244/2007 (24.12.2007): art. 2, para. 283-284; Italy/Decreto del Presidente del Consiglio dei ministri 01.04.2008. The two latter texts are available at:

<http://www.handylex.org/stato/1241207.shtml>

http://portale.fnomceo.it/Jcmsfnomceo/cmsfile/attach_6456.pdf (15.09.2009).

²⁰⁵ Italy/Decreto del Presidente del Consiglio dei ministri 01.04.2008: Annex C. See also Italy/Accordo in sede di conferenza unificata 29.04.2009, available at:

http://www.statoregioni.it/Documenti/DOC_021853_29%20cu.pdf (15.09.2009).

²⁰⁶ See M. Perrone (2009) ‘Salute in carcere, riforma in “alto mare”’, in: *Il Sole24Ore Sanità—Lavoro & Professione* (16-22.06.2009), pp. 22-23.

²⁰⁷ Italy/Codice Penale (19.10.1930): arts 215-222. ‘Houses of treatment and custody’ are separate sections of judicial psychiatric hospitals.

²⁰⁸ Italy/Codice Penale (19.10.1930): arts 202-203; Italy/Codice di Procedura Penale (22.09.1988): art. 679. In order to perform this assessment, the judge responsible may order a criminological examination of the offender (Italy/Codice di Procedura Penale (22.09.1988): art. 220, para. 2). The evaluation of the offender’s social dangerousness must not be limited to assessment of his/her psychiatric condition (Italy/Corte di cassazione, sez. I/n. 8996/1996, S.F. (20.09-08.10.1996)) and can be extended to the availability of non-penitentiary psychiatric services offering adequate and safe treatment alternatives (Italy/Corte di cassazione, sez. I/n. 507/1993, Mitrugno (07.12.1993-19.01.1994)).

²⁰⁹ Compulsory placement in a judicial psychiatric hospital may also be ordered in other cases, e.g. when a convicted person becomes mentally ill (Italy/Codice Penale (19.10.1930): arts 148 and 212); as a precautionary measure (Italy/Codice Penale (19.10.1930): art. 206); etc.

²¹⁰ Italy/Codice Penale (19.10.1930): artt. 207-208.

- [102.] To some extent, the Constitutional Court has shared the persistent concerns about the therapeutic efficacy of these measures, and has accordingly limited their field of application, emphasising their *extrema ratio* character. Lately, in several rulings, the Constitutional Court has held that placement in a judicial psychiatric hospital should never be statutorily imposed in an abstract manner (based only on the type of offence committed and on the absolute character of the offender's incapacity to understand and decide); on the contrary, it is preferable to allow the judge to assess whether under the specific circumstances (taking into account the offender's personality, his/her therapeutic needs and the level of 'social danger') less intrusive security measures can reasonably apply (e.g. *libertà vigilata* [freedom under surveillance], with additional programme requirements).²¹¹

4.2 Criteria and Definitions

- [103.] [103.] According to Law n. 833/1978, compulsory admission for treatment (TSO) is possible only if : (i) the patient requires urgent psychiatric care due to his/her mental health condition, (ii) the patient refuses to comply with any appropriate psychiatric treatment,²¹² and (iii) effective, focused, therapeutic interventions are possible only in a psychiatric in-patient facility.²¹³ The order and the medical proposal it relies on (see below, para. 106-107) must give a full and specific account of each of these circumstances, the lack thereof being ground for challenging the order.²¹⁴ The danger of harm to self or others is not a direct requirement: accordingly, no classification of danger in regard to risk levels or thresholds is mentioned. However, a therapeutic protocol may be considered non-effective if it is not sufficient to prevent or contain the risks that violent behaviour poses to the patient himself/herself, including the risk of exposing the patient to indictment (see above, para. 96).
- [104.] It is not required that TSOs take place only after less intrusive therapeutic means have been adopted. However, if such means are available and if their adoption can produce timely and effective results, they must be preferred to TSO (see paragraph above).
- [105.] As a general rule, when ordering compulsory healthcare measures, the competent authorities (see section below) should respect, as far as possible, the patient's dignity and rights, including the right to choose doctors and places of treatment.²¹⁵ During the enactment of the measures, initiatives must be taken to seek the patient's consent and his/her participation in examinations and treatment.²¹⁶

4.3 Assessment, Decision Procedures and Duration

- [106.] Law n. 833/1978 requires the participation in decision procedures of 'doctors', without any additional qualification as to their expertise. Nevertheless, (a) a general deontological rule—belonging to a body of rules having public law relevance in the Italian law system—prohibits any practitioner from engaging in diagnostic and treatment procedures that he/she is not competent to carry out;²¹⁷ and (b)

²¹¹ The first and foremost of these rulings is Italy/Corte costituzionale/n. 253/2003 (02-18.07.2003).

²¹² Italy/Corte di cassazione, sez. IV/n. 10795/2007, P.E. (14.11.2007-11.03.2008) specifies that TSO cannot be ordered when the patient accepts treatment, albeit maintaining, due to his/her disorder, a recalcitrant and apparently hostile demeanour.

²¹³ Italy/Legge n. 833/1978 (23.12.1978): art. 34, para. 4.

²¹⁴ Italy/Corte di cassazione, sez. I/n. 6240/1998 (27.03-23.06.1998).

²¹⁵ Italy/Legge n. 833/1978 (23.12.1978): art. 33, para. 2.

²¹⁶ Italy/Legge n. 833/1978 (23.12.1978): art. 33, para. 5.

²¹⁷ Italy/Codice deontologico del Consiglio Nazionale della Federazione Nazionale degli Ordini dei Medici Chirurghi e degli Odontoiatri (16.12.2006): art. 21, 23.

regional provisions normally require the involvement of territorial psychiatric services in the assessment procedure.²¹⁸

- [107.] Two expert opinions are necessary in the assessment of psychiatric conditions before TSO in hospital is ordered: (1) a first doctor must propose the TSO, as generally required; (2) a second doctor, working for the competent ASL, must validate the proposal.²¹⁹
- [108.] After the proposal is issued by the first doctor and validated by a second doctor belonging to the public healthcare service, psychiatric TSO in hospital is ordered by the competent mayor, who also decides on TSO termination and modification, following the same procedure.²²⁰ The mayor acts here as the chief hygiene and healthcare authority at local level, in accordance with a qualification well-grounded in the tradition of Italian public law.
- [109.] There is no explicit provision on voluntary placement becoming involuntary. However, since informed consent is a basic requirement for the legitimacy of medical treatment, in principle treatment must cease whenever consent is revoked,²²¹ and it is to be inferred that, on such occasions, treatment can only continue as a compulsory measure.²²²
- [110.] There is no explicit provision on the maximum time lapse between the psychiatric assessment and the beginning of TSO in hospital. The TSO order (see above, para. 108) must be issued by the mayor within the 48 hours following the validation of the medical proposal (see above, para. 107).²²³ Some regional guidelines require that the order is enforced within 48 hours, and a new decision procedure must be enacted if this period expires and treatment has not begun.²²⁴
- [111.] Law n. 833/1978 does not set out separate rules for emergency situations. As a general rule, a psychiatric TSO in hospital lasts for a maximum of seven days. After the seventh day, the psychiatric service charged with care of the patient may ask the mayor to order treatment for a longer time, if this is necessary. In this case, the presumed duration of the treatment must be expressly assessed; when it expires, a new extension may be ordered, using the same procedure.²²⁵ If the treatment is completed or the requirements for compulsory treatment cease, the psychiatric service must inform the mayor, who must in turn inform the guardianship judge.²²⁶

²¹⁸ See Italy/Delibera della Giunta Regionale dell'Emilia-Romagna, n. 1457/1989 (11.04.1989): para. 4.6; Conferenza delle regioni e delle province autonome (2009) *Raccomandazioni in merito all'applicazione di accertamenti e trattamenti sanitari obbligatori per malattia mentale (art. 33-34-35 legge 23 dicembre 1978, n. 833)*, paras 1 and 3.

²¹⁹ Italy/Legge n. 833/1978 (23.12.1978): art. 33, para. 3, and art. 34, para. 4. It must be remarked that, as noted above (para. 95), Law n. 833/1978 only regulates in full detail the procedure for carrying out psychiatric TSOs in hospital. Regional guidelines indicate that psychiatric ASOs are carried out through simpler procedures: specifically, only a single medical proposal (without validation) is required; the proposal may be issued by any doctor; the mayor's order (see below, paras 108 and 103) is not forwarded to the guardianship judge for control and confirmation. See Conferenza delle regioni e delle province autonome (2009) *Raccomandazioni in merito all'applicazione di accertamenti e trattamenti sanitari obbligatori per malattia mentale (art. 33-34-35 legge 23 dicembre 1978, n. 833)*, para 2.

²²⁰ Italy/Legge n. 833/1978 (23.12.1978): art. 33, para. 3 and 8. With regard to outpatient TSO, only a single medical proposal is required and the order issued by the mayor does not require judicial confirmation. Nevertheless, the guardianship judge is normally informed when such an order is issued: see Conferenza delle regioni e delle province autonome (2009) *Raccomandazioni in merito all'applicazione di accertamenti e trattamenti sanitari obbligatori per malattia mentale (art. 33-34-35 legge 23 dicembre 1978, n. 833)*, para. 4.

²²¹ Italy/Corte di cassazione, sez. I/n. 21748/2007 (04-16.10.2007).

²²² See also Conferenza delle regioni e delle province autonome (2009) *Raccomandazioni in merito all'applicazione di accertamenti e trattamenti sanitari obbligatori per malattia mentale (art. 33-34-35 legge 23 dicembre 1978, n. 833)*, para. 1.

²²³ Italy/Legge n. 833/1978 (23.12.1978): art. 35, para. 1.

²²⁴ Italy/Delibera della Giunta regionale del Veneto n. 847/2009 (31.03.2009): para. 6.2.

²²⁵ Italy/Legge n. 833/1978 (23.12.1978): art. 35, para. 4. According to Conferenza delle regioni e delle province autonome (2009) *Raccomandazioni in merito all'applicazione di accertamenti e trattamenti sanitari obbligatori per malattia mentale (art. 33-34-35 legge 23 dicembre 1978, n. 833)*, para. 1., each extension is normally ordered for a seven day period.

²²⁶ Italy/Legge n. 833/1978 (23.12.1978): art. 35, para. 5.

- [112.] There is no specific legal regulation of medical practices or coercive measures applicable during psychiatric TSOs in hospital, although the relevant general principles should reduce coercion to the strict minimum.²²⁷ It is worth noting that regional laws prohibiting—in general, and not only in psychiatric TSOs—some disputed psychiatric practices (particularly ECT) have been struck down by the Constitutional Court, as they were not grounded on sound and generally accepted scientific conclusions on the effects of these practices.²²⁸
- [113.] Before Law n. 833/1978, the Constitutional Court had held that compulsory placement of a psychiatric patient in a mental hospital fell under the scope of Article 13 of the Italian Constitution, according to which limitations on personal liberty—which only apply under specific law provisions, subject to strict interpretation—may exceptionally be ordered by authorities other than the judiciary, but must be brought under judicial control within 48 hours, and expire if not confirmed by a judge within a further 48 hours.²²⁹ The 1978 reform has purged compulsory placement of its former distinctly custodial character, redesigning it as an *extrema ratio* therapeutic measure (see above, para. 92). This notwithstanding, there is a general consensus on the opinion that Art. 13 still applies to TSOs in hospital, as this measure, although having a therapeutic and beneficial character, still seriously infringes on the patient’s personal liberty.²³⁰ Presently, three levels of judicial control and review are available:
- The placement order must be submitted to the guardianship judge within the 48 hours following the compulsory placement. Within a further 48 hours, the guardianship judge decides whether to confirm the order or not;²³¹
 - the guardianship judge’s decision can be appealed before the tribunal: (a) by the mayor (within 30 days, if confirmation is denied); (b) by the patient and/or by any person having an interest (within 10 days, if confirmation is granted).²³² The tribunal decides *in camera*, on the advice of the public prosecutor; its president may issue *interim* measures;²³³
 - the tribunal ruling may be brought to review (only on points of law) before the Court of Cassation.²³⁴
- [114.] Judgments before the two lower courts follow simplified, fast-track procedures, but the right to defence and fair trial—including defendant access to documents—is nonetheless guaranteed, as prescribed by Article 24 and Article 111 of the Italian Constitution, in accordance with civil procedure standards. Hearing of the person concerned is not required, but may take place before the guardianship judge and the tribunal, who are entitled to make any enquiry deemed necessary. Doubts have been raised on the effectiveness of the control exercised by guardianship judges on orders issued by mayors, since—notwithstanding the general problems on the assessment of mental health, due to the well-known, persistent scientific uncertainty on this topic—magistrates sitting as guardianship judges may lack a background in psychiatry and may have difficulties in obtaining detailed expert witnesses within the required 48 hour period. It is therefore suspected that control by guardianship

²²⁷ See above, para. 54 and 96.

²²⁸ Italy/Corte costituzionale/n. 282/2002 (19-26.06.2002).

²²⁹ Italy/Corte costituzionale/n. 74/1968 (20-27.06.1968).

²³⁰ Although different opinions have been expressed: see for references E. Carbone (2005) ‘*Habeas corpus* e sofferenza psichica: riflessioni di un giudice tutelare’, in: *Diritto di famiglia*, Vol. 34, No. 2, pp. 618-621; D. Piccione (2002) ‘La crisi della giurisdizione sui provvedimenti limitativi della libertà personale estranei a fini penali’, in: *Giurisprudenza Costituzionale*, Vol. 47, No. 4, pp. 3170-3173.

²³¹ Italy/Legge n. 833/1978 (23.12.1978): art. 35, para. 2. It is worth noting that, while mayors must ask for their orders to be confirmed by the guardianship judge within 48 hours of the placement, the person concerned may bring the order to review at an earlier time, with the purpose of preventing the treatment actually beginning: Italy/Tribunale di Padova/ 05.04.2003.

²³² Italy/Corte di cassazione, sez. I/n. 18143/2002 (13.05-20.12.2002).

²³³ Italy/Legge n. 833/1978 (23.12.1978): art. 35, paras 8-9 and 11-14.

²³⁴ Italy/Corte di cassazione, sez. I/n. 6240/1998 (27.03-23.06.1998).

judges may at times become a purely formal review.²³⁵ It must be noted that such concerns match those expressed by CPT after its 2004 visit (see above, para. 90).

- [115.] Law n. 833/1978 does not grant free legal support to the person concerned (general rules on legal support at the State's expense apply). However, these proceedings are exempt from the tax normally imposed on any judicial action; the person concerned may be defended by a person other than a lawyer, and may even defend himself/herself; appeal to the tribunal may be made via recorded delivery (it is not necessary to follow civil procedure rules on service of documents).²³⁶

²³⁵ E. Carbone (2005), '*Habeas corpus* e sofferenza psichica: riflessioni di un giudice tutelare', in: *Diritto di famiglia*, Vol. 34, No. 2, pp. 621-625; D. Piccione (2002) 'La crisi della giurisdizione sui provvedimenti limitativi della libertà personale estranei a fini penali', in: *Giurisprudenza Costituzionale*, Vol. 47, No. 4, pp. 3173-3175.

²³⁶ Italy/Legge n. 833/1978 (23.12.1978): art. 35, paras 10 and 15.

5. Competence, Capacity and Guardianship

- [116.] The main provisions on the management of affairs of persons with mental health disorders and/or intellectual disabilities are in the 1942 Civil Code, Book I, Title XII, formerly entitled ‘*Dell’infermità di mente, dell’interdizione e dell’inabilitazione*’ [On mental infirmity, interdiction, inabilitation]. For many years these provisions were the object of a wide political and legal debate concerning their excessive rigidity. Finally, in 2004, a major legal reform was enacted by the Parliament, changing the title of the relevant section of the Civil Code to ‘*Delle misure di protezione delle persone prive in tutto o in parte di autonomia*’ [On measures for the protection of persons totally or partially lacking autonomy], and more importantly, making the interdiction regime less rigid and introducing the new support management scheme.²³⁷
- [117.] The Italian law system contains two notions broadly corresponding to ‘competence’. No statutory definition is given of these, as implicit reference is made to well-established doctrinal explanations: (a) *capacità giuridica* [legal capacity] is the capacity, belonging to any person, to have individual rights and obligations;²³⁸ (b) *capacità di agire* [capacity to act] is the capacity to enter into legally binding agreements and more generally to perform any act which may entail rights and obligations for its author.²³⁹ Capacity to act may be subject to limitations due to mental health disorders or intellectual disabilities (these are what this report refers to as ‘competence limitations’). Legal definitions of ‘capacity’ may be inferred by provisions setting out the conditions requiring these limitations: for *interdizione* [interdiction], the inability to take care of one’s own interests, due to habitual mental infirmity;²⁴⁰ for *amministrazione di sostegno* [support management], the impossibility, including partial or temporary, of taking care of one’s own interests, due to infirmity or to physical or mental health impairments.²⁴¹
- [118.] The Italian law system describes in very general terms the mental health conditions that may determine the legal incapacity of adults: as seen above, reference is made to ‘mental infirmity’ or ‘psychic impairments’. Indeed, as case law on these issues also points out, greater attention is paid to the need for protection of the persons concerned than to their mental health conditions. It has accordingly been held that no typical mental pathology is required, since any mental health alteration—provided it is both habitual (lasting, although with lucid intervals) and present (the mere risk of relapse in a past mental health disorder does not qualify)²⁴²—may be ground for competence limitations, if it renders the affected person totally or partially unable to care for his/her own interests.²⁴³ This is *a fortiori* true for support management, where the field of application has been purposely made as broad as possible.
- [119.] Different measures entail different degrees of incapacity. Interdiction used to, and may still, bring about a complete deprivation of capacity to act and a general substitution of a judicially appointed *tutore* [tutor, guardian] for the person concerned in performing legal acts. Since the 2004 reform, the judge, when subjecting someone to interdiction, may permit him/her to validly perform some ordinary

²³⁷ Italy/Codice Civile (16.03.1942): arts 404 ff.; Italy/Legge n. 6/2004 (09.01.2004). The text of Legge n. 6/2004 is available at:

<http://www.camera.it/parlam/leggi/040061.htm> (15.09.2009).

The case against interdiction has been strongly argued by legal scholars and most prominently by Prof. Paolo Cendon, who has lately been advocating the definitive repeal of interdiction. Comments, information and references on these issues—and on other issues related to law and disability—may be found on Prof. Cendon’s website:

<http://www.personaedanno.it/> (15.09.2009).

²³⁸ Italy/Codice Civile (16.03.1942): art. 1.

²³⁹ Italy/Codice Civile (16.03.1942): art. 2.

²⁴⁰ Italy/Codice Civile (16.03.1942): art. 414.

²⁴¹ Italy/Codice Civile (16.03.1942): art. 404.

²⁴² Italy/Corte di cassazione, sez. I/n. 2031/1990 (25.01.1989-13.03.1990).

²⁴³ Italy/Corte di cassazione, sez. I/n. 11131/1991 (11.04-21.10.1991).

legal acts, either acting alone or with assistance from his/her guardian.²⁴⁴ Support management, on the other hand, does not necessarily entail competence limitations: when it does, it is for the judge to establish, with due regard to the specific circumstances, which acts the person concerned (*il beneficiario* [the beneficiary]) may only perform with assistance from the *amministratore di sostegno* [support manager] and which acts the support manager may perform on the behalf of (i.e. as a substitute for) the person concerned; however, the beneficiary always retains the capacity to perform basic everyday acts.²⁴⁵

- [120.] The existence and some of the basic features—requirements and effects—of interdiction and support management have already been accounted for above.
- [121.] More light on conditions for imposing competence limitations on adults has been shed by recent case law, establishing how, in cases of severe mental health impairment, choice should be made between interdiction or support management. It has been ruled that support management, due to its flexible structure, may also apply in the same situations of complete inability to care for one's own interests, that could abstractly entail interdiction. In these cases, choice depends on which measure is more effective, under the specific circumstances, in affording adequate protection to the interests of the person concerned. Support management is to be preferred when simple interests are at stake, their management does not involve special difficulties and the person concerned is not likely to interfere with it; interdiction shall only apply when the person concerned has more complex interests, or it is necessary to prevent him/her from performing detrimental acts.²⁴⁶
- [122.] No maximum time limit is set out by law for interdiction or support management. When appointing a support manager, the judge may fix a maximum duration, which may subsequently be prolonged.²⁴⁷
- [123.] The interdiction of an adult person may be requested by the person himself/herself, by his/her spouse or partner, by relatives (up to the fourth degree) and relatives-in-law (up to the second degree), and by the public prosecutor (anyone may invite the public prosecutor to file such a request and provide relevant evidence). If an underage person under guardianship needs legal protection for the time when he/she comes of age, the request may also be filed by the guardian.²⁴⁸ The same persons are entitled to request the appointment of a support manager; healthcare and social services may also file such a request, being under a legal obligation either to do so, or to inform the public prosecutor of the necessity.²⁴⁹
- [124.] Jurisdiction on declaring legal incapacity and taking measures directed at the protection of the person concerned and his/her properties (including giving general directions for management, authorising major legal decisions etc.) is vested in the guardianship judges or the tribunals (the latter being competent for applying interdiction and authorising major property management decisions by the guardian on behalf of the ward). On appellate jurisdiction, see the paragraph below. When an interdiction or management support regime has been established, an appeal against any management decision or authorisation issued by a guardianship judge or a tribunal lies before the tribunal or the court of appeal respectively, and is decided *in camera*.
- [125.] An appeal against an interdiction ruling takes place according to the general provisions on appellate civil jurisdiction: a tribunal ruling may be challenged before the court of appeal; the appellate ruling may be reviewed—on points of law only—by the Court of Cassation. Appeal against the appointment of a support manager follows a similar procedure, with the court of appeal deciding *in camera*. All persons who are entitled to request interdiction or the appointment of a support manager are also entitled to file appeals against the ensuing decisions.

²⁴⁴ Italy/Codice Civile (16.03.1942): art. 424, 427.

²⁴⁵ Italy/Codice Civile (16.03.1942): art. 405, para. 5, nn. 3-4, and art. 409.

²⁴⁶ Italy/Corte di cassazione, sez. I/n. 13584/2006 (04.04-12.06.2006).

²⁴⁷ Italy/Codice Civile (16.03.1942): art. 405, para. 5, n. 5, and para. 6.

²⁴⁸ Italy/Codice Civile (16.03.1942): art. 417.

²⁴⁹ Italy/Codice Civile (16.03.1942): art. 406.

- [126.] The choice of guardian or support manager can be made by the person subject to competence limitations, with a formal act made before capacity impairments arise. If a choice has not been made, or is considered inappropriate by the guardianship judge, the latter chooses a different person, preferably the spouse or partner, a parent or sibling, or a relative within the fourth degree (designation can also be made by a parent before death, in his/her will or other formal act). If necessary, the guardianship judge may appoint as a guardian another physical person, or even a juristic person, whose administrator or delegate shall exercise guardianship functions.²⁵⁰ Appointment is not permitted—and if already made, must be revoked—in a number of cases, for example any persons subject to bankruptcy, competence limitations, parental responsibility limitations or conflicts of interests with the person concerned.²⁵¹ Appointment of persons working for private or public service providers taking care of the person concerned is also forbidden.²⁵²
- [127.] In interdiction, the guardian basically substitutes the ward in performing all the legal acts the ward is no longer qualified to perform directly, with regard to both property management and personal life. There are, however, a number of acts—known as *atti personalissimi* [highly personal acts]—which do not allow substitution and therefore cannot be performed at all, either by the ward, or by the guardian on his/her behalf. As noted above, in sections 3.7-8, this includes some very important acts related to family life (marriage, gifts, wills, acknowledgement of a natural child). The guardian’s power to perform highly personal acts on the behalf of the ward only exists when specifically provided for by law, although case law has shown a tendency not to construe the relevant legal provisions too narrowly (see above, para. 81, on legal representation in divorce proceedings). Moreover, the legal provisions allowing the guardian to consent to the enactment of experimental medical treatments on the ward, as well as to request a potential termination of the ward’s pregnancy, have been construed as implying a broader principle allowing legal representation in deciding on medical treatments.²⁵³ In many cases, the guardian can only perform a major legal act after an authorisation has been issued by the tribunal or guardianship judge.²⁵⁴ The latter also decides on the ward’s placement, education and work, and on guidelines for the management of the ward’s properties.²⁵⁵ In support management, there is no general model for the powers of the manager, which are specified by the guardianship judge in the appointment decree, taking into account the specific circumstances of the case (see above, para. 119). However: (a) a support manager can also be appointed to take care of the beneficiary’s personal interests (i.e. to decide on medical treatment);²⁵⁶ (b) some of the provisions of the law requiring judicial authorisation for major management acts also apply to support management;²⁵⁷ (c) if the beneficiary and the support manager differ on management of a certain matter, the manager must inform the guardianship judge;²⁵⁸ (d) the guardianship judge is always entitled to ask for information and give directions on the management of the beneficiary’s personal and economic interests.²⁵⁹
- [128.] The guardianship judge appoints the guardian or support manager. On appeal against the appointment of a support manager, see para. 125 above. On appeal against the appointment of a guardian, see para.

²⁵⁰ Italy/Codice Civile (16.03.1942): art. 408 and art. 424, para. 3.

²⁵¹ Italy/Codice Civile (16.03.1942): art. 350.

²⁵² Italy/Codice Civile (16.03.1942): art. 408, para. 3.

²⁵³ Italy/Corte di cassazione, sez. I/n. 21748/2007 (04-16.10.2007): in this leading ruling, concerning a person in a permanent vegetative state, it was also stressed that decisions for the person concerned must be taken in his/her best interest and taking into account, when possible, the wishes he/she may have expressed when conscious. Italy/Corte di cassazione, sez. I/ord. n. 8291/2005 (03.03.2005-20.04.2005) specifies that the guardian may not directly decide on interruption of life support, as there may be a conflict of interests with the ward; the appointment of a special curator is therefore necessary.

²⁵⁴ Italy/Codice Civile (16.03.1942): arts 374 ff. On personal acts, see e.g. Italy/Codice Civile (16.03.1942): art. 273 (authorisation by the guardianship judge is required for the guardian to bring actions to ascertain who is the father or mother of the ward); Italy/Legge n. 194/1978 (22.05.1978): art. 22 (the guardianship judge is to decide on the guardian’s request for potential termination of the ward’s pregnancy).

²⁵⁵ Italy/Codice Civile (16.03.1942): art. 371. Criteria for investment of the ward’s capital are set out in arts 372-373.

²⁵⁶ Decisions by lower courts on this point have found favour with the Court of Cassation: see for a brief mention of this Italy/Corte di cassazione, sez. I/n. 21748/2007 (04-16.10.2007).

²⁵⁷ Italy/Codice Civile (16.03.1942): art. 411, para. 1.

²⁵⁸ Italy/Codice Civile (16.03.1942): art. 410, para. 2.

²⁵⁹ Italy/Disposizioni per l’attuazione del Codice civile (30.03.1942): art. 44. This also applies to interdiction.

124 above. (After the tribunal rules for interdiction, the choice of guardian is a management decision made by the guardianship judge).

- [129.] Interdiction decisions are not subject to periodic review; however, they can be revoked at any time, at the request of the spouse of the person concerned, of his/her relatives (up to the fourth degree) and relatives-in-law (up to the second degree), of the guardian, or of the public prosecutor. If at any time the guardianship judge recognises that interdiction is to be revoked, he/she must invite the public prosecutor to bring an action. Periodic review of support management takes place, if the support manager was appointed for a limited time, at the expiry of the relevant time limit.²⁶⁰ Nevertheless, those entitled to request the appointment of a support manager (see above, para. 123) are also entitled—as is the beneficiary—to request revocation of the measure at any time. In addition, management decisions taken or authorised by the tribunal or the guardianship judge (including appointment of a guardian: see above) may be modified or revoked at any time.
- [130.] It is worth noting that in the Italian law system incapacity and need for a guardian (or support manager) are assessed at the same time and in the same decision.

²⁶⁰ See above, para. 122.

6. Miscellanea

- [131.] EU citizens resident in Italy enjoy the same treatment granted by law to Italian citizens in the fields covered by the EC Treaty. This includes social security and welfare rights, including when connected to disability, for example the right to civil invalidity pensions and allowances (see above, para. 34). The same applies to the relatives of EU citizens resident in Italy, if they have an autonomous right of residence, or whenever their relative has a permanent right of residence in Italy.²⁶¹
- [132.] With regard to non-EU citizens resident in Italy, the problem is more complex. While the framework law on disability is applicable in principle to non-EU citizens, specific limits and restrictions may apply, in accordance with the rules on each right and measure.²⁶² The Constitutional Court has held that such limits and restrictions should be expressly set out in specific law provisions; otherwise, the general equality principle established with regard to civil and social rights applies. Moreover, limits and restrictions must never be unreasonable and discriminatory: it was specifically on grounds of unreasonableness that the Constitutional Court struck down statutory provisions subjecting the right of long-term residents to attendance allowance and civil invalidity pension to income requirements.²⁶³ The employment quota system (see above, paras 39-41) is open to non-EU citizens who are permitted to work and live in Italy,²⁶⁴ with the single exception of access to employment in public offices.²⁶⁵

²⁶¹ Italy/Decreto legislativo n. 30/2007 (06.02.2007): art. 19 (this act bears the national transposition of Directive 2004/38/EC). See also Italy/Messaggio INPS n. 4602/2008 (25.02.2008), available at: <http://www.meltingpot.org/IMG/pdf/mess-inps-4602-2008.pdf> (15.09.2009).

²⁶² Italy/Legge n. 104/1992 (05.02.1992): art. 3, para. 4.

²⁶³ Italy/Corte costituzionale/n. 306/2008 (29-30.07.2008); Italy/Corte costituzionale/n. 11/2009 (14-23.01.2009).

²⁶⁴ Italy/Corte costituzionale/n. 454/1998 (16-30.12.1998).

²⁶⁵ Italy/Corte di cassazione, sez. lav/n. 24170/2006 (19.10-13.11.2006).

7. Annexes – Case Law

Case title	Cass., SS.UU., n. 9163/2005, R.G.
Decision date	25.01.2005-08.03.2005
Reference details	<i>Corte suprema di cassazione, Sezioni Unite penali</i> [Supreme Court of cassation, Joint criminal chambers]
Key facts of the case	R. G., who shot down a neighbour after repeated quarrels, is affected by a severe personality disorder (defined by expert opinions as paranoid disorder, borderline personality or narcissistic personality disorder). It must be ascertained whether such disorder is relevant under art. 89 of the Criminal Code as an infirmity diminishing mr. R.'s capacity to understand and decide.
Main reasoning/argumentation	The notion of “infirmity” is open to the developments of psychiatry and psychology, whose legal relevance has to be assessed in the light of constitutional principles. Account must be particularly taken of international medical standards. This is also true for the definition of personality disorders, whose open-endedness is matched by the flexible notion of criminally relevant infirmity set out in foreign legislation and in recent projects for Criminal Code reform.
Key issues (concepts, interpretations) clarified by the case	Severe personality disorders qualify as “infirmities”, and are therefore criminally relevant – partial or total – defects of reason, when the judge establishes that (a) they are so severe and intense, as to eliminate or greatly reduce the affected person’s capacity to understand and decide, and (b) a causal link exists between the disorders and the committed offence.
Results (sanctions) and key consequences or implications of the case	The Court of cassation quashes the appellate ruling, which had denied R.G. diminished responsibility for partial mental defect and had revoked the security measure of mandatory placement in a house of custody and care issued by the Tribunal in the first instance of judgment. Decision is referred to another chamber of the same Court of appeal.
Proposal of key words for	Definitions – Mental disorders – Personality disorders – Capacity in criminal law

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Link: <http://www.altalex.com/index.php?idstr=20&idnot=9371>

Case title	Corte cost., n. 246/1997
Decision date	18.07.1997
Reference details	<i>Corte costituzionale</i> [Constitutional court]
Key facts of the case	An administrative court challenges the constitutional validity of art. 21 and art. 33, para. 6, of Law n. 104/1992, reserving priority in the choice of office assignment only to some categories of handicapped persons. It is suggested that every handicapped persons should enjoy this benefit, since it is designed to support the beneficiary's right to work and health.
Main reasoning/argumentation	Law n. 104/1992 has a broad scope, tackling the many problems arising from handicap and establishing different provisions, each of them comprising a complex balancing among the various interests at stake. The equality principle does not require that every provision applies to every handicapped person. Classification must however be reasonable: the Court suggests updating annex A to Law n. 648/1950, as it shows some gaps.
Key issues (concepts, interpretations) clarified by the case	It is not unreasonable for the legislator to reserve some special rights and provisions only to certain categories of handicapped persons, setting a different balance of the interests at stake for each issue considered .

Results (sanctions) and key consequences or implications of the case	Art. 21 and art. 33, para. 6, and the distinctions and limitations they establish, are upheld.
Proposal of key words for data base	Definitions – Disability – Statutory classifications – Reasonableness

See attached file: Corte cost 246-97.pdf.

Case title	Cass., S.U., n. 11633/2002
Decision date	18.04-02.08.2002
Reference details	<i>Corte suprema di cassazione, Sezioni Unite</i> [Supreme Court of cassation, Joint Chambers]
Key facts of the case	A disabled worker is dismissed during the probation period, in execution of the relevant probation clause, without any explicit motivation being given by the employer. The dismissal is challenged and, since different rulings of the Court of cassation differed on formal requirements for this type of dismissal, decision is referred to the Joint Chambers.
Main reasoning/argumentation	According to a well-established case law, a probation clause may be established in employment contracts for disabled workers, if probation is compatible with the worker's conditions. A negative outcome cannot be grounded in disability impairments. Its legitimacy – and that of the ensuing dismissal – can be judicially challenged. It is questioned if, when and how the employer must give grounds for dismissal.
Key issues (concepts,	When dismissing a disabled employer during the probation period, the employer is not bound to inform the worker of the underlying

interpretations) clarified by the case	reasons. The worker is however entitled to challenge the dismissal, alleging its discriminatory nature. Evidence can be supplied by the employer or can be pursued by the judge with appropriate enquiries.
Results (sanctions) and key consequences or implications of the case	The lower courts rulings had held the dismissal void, because no explanation had been given of its reasons. The rulings are quashed and decision is referred to another chamber of the competent Court of appeal, which will be bound by the Court of cassation's findings.
Proposal of key words for data base	Disability – Anti-Discrimination – Employment – Probation clause – Discriminatory dismissal

Attached file: Cass 11633-02.pdf

Case title	Cons. St., sez. VI, n. 248/2009
Decision date	07.11.2008-20.01.2009
Reference details	<i>Consiglio di Stato, Sezione VI</i> [Council of State, Sixth Chamber]
Key facts of the case	The applicant has served yearly, for three-month periods, as a custodian for the Ministry for Cultural and Environmental Heritage. When she becomes entitled to permanent employment in the same position, the Ministry objects she, as a civil invalid (for physical reasons), is unfit to the use of service weapons.

Main reasoning/argumentation	No immediate parallel runs between custodians and police officers as for recruitment requirements. In the evaluation of handicapped workers, account must be taken not only of physical and psychic impairments affecting them, but also of their work and relational capabilities, such as those displayed by the applicant during previous service. Administrations are particularly required to adopt flexible employment criteria in order to suit the needs of disadvantaged workers, as long as this is compatible with organization requirements.
Key issues (concepts, interpretations) clarified by the case	As a general rule, physical fitness requirements are to be constructed in a relative way, with regard to handicapped persons. This principle, which applies to the entire field of employment law, is inferred from Art. 19 of Legge n. 104/1992 prescribing that the evaluation of handicapped must take into account their work and relational capabilities, and not only physical and psychic impairments.
Results (sanctions) and key consequences or implications of the case	The first instance decision, which had annulled the Ministry's refusal to permanently employ the applicant, is upheld.
Proposal of key words for data base	Disability – Anti-Discrimination – Employment – Fitness requirements – Relative character

See attached file: Cons St 248-09.pdf.

Case title	Corte cost., n. 215/1987
Decision date	03-08.06.1987
Reference details	<i>Corte costituzionale</i> [Constitutional court]

Key facts of the case	A 18-years old girl affected by a neuro-psychic handicap had not been allowed to repeat a year in a professional high school. It had been established that attending school could only have a limited effect on the girl's education, but would be beneficial to her social integration. The relevant law provisions (Law n. 118/1971, art. 28, para. 3) did not grant handicapped persons the full-fledged right to attend high school, only providing that their attendance was to be "promoted".
Main reasoning/argumentation	The Italian law system has stepped beyond the stage where education of handicapped persons took place in separate institutes or classes. The new approach, launched with Law n. 118/1971, assures integration of disabled pupils in ordinary schools, by limiting the number of pupils per class and by providing special teaching support. This approach has to be completed with full guarantee of the disabled persons' right to attend high schools.
Key issues (concepts, interpretations) clarified by the case	Art. 3, para. 2, art. 34 and art. 38, para. 3, of the Italian Constitution require that disabled persons are granted the opportunity to express their personality by attending high school. Their incapacity to beneficially attend school cannot be abstractly presumed, but, on the contrary, has to be compensated as much as possible through special support measures. Only when it is certain that high school attendance is not beneficial to a disabled person, he/she may be assigned to professional training.
Results (sanctions) and key consequences or implications of the case	Art. 28, para. 3, of Law n. 118/1971 is voided where it only promotes, instead of guaranteeing, high school attendance for disabled persons.
Proposal of key words for data base	Disability – Anti-Discrimination – Preferential treatment – School

See attached file: Corte cost 215-87.pdf.

Case title	Corte cost., n. 190/2006
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Decision date	03-11.05.2006
Reference details	<i>Corte costituzionale</i> [Constitutional court]
Key facts of the case	The quota system established by Legge n. 68/1999 also applies to the selection of school headmasters, which are to be recruited among school teachers already in service. Some headmaster postings are therefore assigned to disabled teachers, rather than to non-disabled teachers with better qualifications.
Main reasoning/argumentation	The relevant provisions entail preferential treatment for persons already employed and facilitate these persons in achieving higher positions in the administrative branch employing them. This is an exception to the general rules established by Legge n. 68/1999, which normally require the interested disabled to be unemployed. Such exception has no constitutional grounding.
Key issues (concepts, interpretations) clarified by the case	Art. 38, para. 3, of the Italian Constitution – as well as UN standard rules on equalization of opportunities for disabled (rule n. 7) and the Nice Charter (artt. 21 and 26) – allow preferential treatment of the disabled only for what concerns access to work (first occupation). Preferential treatment in career progression may be granted only if this does not infringe on constitutional values such as equality, administration efficiency and selection by merit only of public employees.
Results (sanctions) and key consequences or implications of the case	The quota system for headmaster recruitment is voided.
Proposal of key words for data base	Disability – Preferential treatment – Constitutional limits

See attached file: Corte cost 190-06.pdf.

Case title	Cass., sez. lav., n. 5152/1999
Decision date	24.11.1998-26.05.1999
Reference details	<i>Corte suprema di cassazione, Sezione lavoro</i> [Supreme Court of cassation, Employment section]
Key facts of the case	The Ministry of Internal Affairs challenges the appellate ruling, which has awarded attendance allowance to a man suffering from severe intellectual and sensorial disabilities. The Ministry alleges that: 1) the claim is void, because the claimant, while being mentally ill, had brought action without the assistance of a guardian; 2) the allowance is not designed to finance the generic assistance needed by persons with intellectual disabilities.
Main reasoning/argumentation	1) Only a formal judicial order applying competence limitations to a person may prevent him/her from bringing proceedings unassisted; 2) art. 1 of Legge n. 18/1980 and art. 1 of Legge n. 508/1988 grant the right to attendance allowance also to persons suffering from psychic illnesses, if these prevents them from walking or from performing everyday tasks.
Key issues (concepts, interpretations) clarified by the case	1) Even if it has been established that a person, taking part in legal proceedings, is affected by a severe mental illness, this is not ground for holding procedural acts performed by that person void; 2) a purely psychic illness may entitle the affected person to attendance allowance, if the illness prevents him/her from walking or from performing everyday tasks.
Results (sanctions) and key consequences or implications of the case	The appellate ruling is upheld.
Proposal of key words for data base	Intellectual disability – Fundamental rights – Right to trial; Intellectual disability – Preferential treatment – Personal care allowance

Attached file: Cass 5152-99.pdf

Case title	Cass., sez. lav., n. 2270/2007
Decision date	20.12.2006-02.02.2007
Reference details	<i>Corte suprema di cassazione, Sezione lavoro</i> [Supreme Court of cassation, Employment chamber]
Key facts of the case	The applicant's daughter has been lying for many years in deep coma, in a hospital. The attendance allowance that had been granted to her is revoked, on the ground that all the necessary care was provided by the hospital. The father, acting as her guardian, challenges this decision.
Main reasoning/argumentation	Attendance allowance is granted to support the provision of private assistance to the person concerned. Placement of the person in a public healthcare structure does not entail suspension of the allowance payment, if the structure does not provide full, permanent and complete assistance (e.g.: if a private nurse is needed).
Key issues (concepts, interpretations) clarified by the case	The payment of attendance allowance may be suspended, when the beneficiary is placed in a structure providing assistance for free, but only if such assistance is complete, efficient and continuous and fully covers the concerned person's need of help in personal activities.
Results (sanctions) and key consequences or implications of the case	The appellate ruling – which had denied the woman's right to attendance allowance – is quashed. Decision is referred to another chamber of the Court of appeal, which is to decide according to the findings of the Court of cassation.
Proposal of key words for data base	Disability – Preferential treatment – Grants and allowances – Attendance allowance – Requirements

Attached file: Cass 2270-07.pdf

Case title	Cass., sez. lav., n. 3299/2001
Decision date	07.12.2000-07.03.2001
Reference details	<i>Corte suprema di cassazione, Sezione lavoro</i> [Supreme Court of cassation, Employment chamber]
Key facts of the case	The applicant's ward suffers from intellectual disability arising from organic and cerebral deficits. Expert witnesses declare she is able to perform basic tasks (eating, drinking, washing herself), but unable to "interact with the world". It is questioned whether this entitles her to attendance allowance.
Main reasoning/argumentation	The incapacity to attend to everyday routine tasks, which entitles the affected invalid to attendance allowance, occurs whenever someone, although able to move inside his/her own home and outside as well, is not capable to tend for him/herself and to satisfy his/her own everyday needs. This applies, e.g., to a person able to bring food to his/her own mouth, but unable to acquire food, or to find urgently needed care, or to call for help.
Key issues (concepts, interpretations) clarified by the case	The right to attendance allowance requires inability to perform everyday routine tasks, occurring also when the affected person is able to perform physiologic actions (e.g.: eating), but not instrumental social activities (e.g.: buying food).
Results (sanctions) and key consequences or implications of the case	The appellate ruling, which had considered the applicant's ward entitled to attendance allowance, is upheld.

Proposal of key words for data base	Disability – Intellectual disability – Preferential treatment – Grants and allowances – Attendance allowance – Requirements
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Attached file: Cass 3299-01.pdf

Case title	Cass., sez. lav., n. 4664/1993
Decision date	22.10.1992-21.04.1993
Reference details	<i>Corte suprema di cassazione, Sezione lavoro</i> [Supreme Court of cassation, Employment chamber]
Key facts of the case	A man suffers from severe irreversible schizophrenia, causing him fits of dangerous behaviour. During these attacks, he totally loses self control and requires someone to watch over him to prevent or contain risks. It is questioned whether this qualifies as a continuing need of personal assistance in everyday routine tasks, entitling the affected person to attendance allowance.
Main reasoning/argumentation	The total civil inability and the incapacity to attend to everyday routine tasks, which entitle the affected person to attendance allowance, may well be caused by psychic illness. Yet, the need of personal assistance must be continuous and not limited to episodic moments, however serious the need may be in such moments.
Key issues (concepts, interpretations) clarified by the case	Attendance allowance is designed to provide private assistance to persons who are in continuous need of help (to walk or) to perform everyday routine tasks. This allowance, while compatible with disability of a psychic origin, is not meant as a substitute for vigilance onto patients subject to fits of rage or to episodic dangerous behaviour.

Results (sanctions) and key consequences or implications of the case	The appellate ruling, which had denied the concerned person's right to attendance allowance, is upheld.
Proposal of key words for data base	Disability – Intellectual disability – Preferential treatment – Grants and allowances – Attendance allowance – Requirements

Attached file: Cass 4664-93.pdf

Case title	T.A.R. Campania, Napoli, sez. VIII, n. 2994/2009
Decision date	20.04-28.05.2009
Reference details	<i>Tribunale amministrativo regionale per la Campania, Napoli, sezione VIII</i> [Regional administrative tribunal for Campania, Naples, Eighth chamber]
Key facts of the case	The applicants' child, affected by a complex, severe psychic handicap, was assigned a support teacher for only 9 out of 30 weekly hours of school attendance. The applicants claim full support.

Main reasoning/argumentation	The ruling summarizes the relevant statutory provisions and their history since 1992, stressing the constitutional nature of the handicapped persons' right to education and to special support measures. The focus is on the 2002-2006 provisions allowing extra support teachers to be assigned to pupils affected by severe handicap, as assessed by the competent bodies, which are also charged with devising a personalized education plan for each pupil.
Key issues (concepts, interpretations) clarified by the case	Pupils with a severe handicap have a right to education and to special support by specialized teachers. Support teachers must be assigned to each pupil for a weekly number of hours determined by the pupil's educational needs, as ascertained by the competent bodies (multi-disciplinary teams, comprising teachers, doctors etc.) in the personalized education plan.
Results (sanctions) and key consequences or implications of the case	With an interim injunction, the school administration had already been prompted to extend support for the applicants' child (support had been extended from 9 to 33 hours) for the ongoing school year. For subsequent years, the administration is bound to comply with the results of the evaluations and periodic monitoring of the competent bodies. No damage is awarded, as no clear and precise allegation had been made, nor any convincing evidence had been given.
Proposal of key words for data base	Disability – Preferential treatment – School – Support teachers

See attached file: TAR NA 2994-09.pdf.

Case title	Corte cost., n. 50/1990
Decision date	31.01-02.02.1990
Reference details	<i>Corte costituzionale</i> [Constitutional court]

Key facts of the case	Different civil courts, including the Court of cassation, challenge the constitutional validity of Law n. 482/1968, which, while establishing a quota system for the employment of disabled persons, does not apply to persons affected by psychic disabilities, unless caused by industrial accidents, professional illnesses or wartime service.
Main reasoning/argumentation	The Constitutional court had repeatedly examined this issue before 1990, calling for appropriate legal provisions to fill the gap. The Court had refrained from direct intervention, holding that it was for the Parliament to tackle this especially complex issue. However, since the gap remained open over the years, the Court now rules that no further waiting is tolerable and tries to take directly into account the peculiar problems of employment of the psychically disabled.
Key issues (concepts, interpretations) clarified by the case	Art. 3 of the Italian Constitution does not allow special legal provisions for the employment of disabled persons to exclude the psychically impaired. The Republic is bound to promote any organizational arrangement which can be expected to facilitate disabled persons in exercising their right to work.
Results (sanctions) and key consequences or implications of the case	Art. 5 of Law n. 482/1968 is voided, where it does not apply to psychically impaired civil invalids, if their working capacity allows their profitable employment in compatible tasks. Art. 20 of the same Law is voided, where it does not provide that, when assessing psychic disabilities, the competent body, integrated by a neurology or psychiatry specialist, must also ascertain the compatibility of the task to which the affected person is assigned with the relevant impairments.
Proposal of key words for data base	Disability – Intellectual disability – Employment – Quota system – Assessment of working capacity

See attached file: Corte cost 50-90.pdf.

Case title	Trib. Pistoia, ord. 03.12.2005
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Decision date	03.12.2005
Reference details	<i>Tribunale di Pistoia</i> [Tribunal of Pistoia]
Key facts of the case	The applicant, employed by the Ministry of Justice, is entitled to a working placement not entailing the necessity to walk. Being placed in Bologna, very distant from her house, the employee requests a more convenient placement. In 2003, the Ministry provisionally places her in an office easily reached by local transit, but then, in 2005, moves her to another place (Pistoia). While the employee had asked for placement in Pistoia, she now challenges it, alleging it is less comfortable than the temporary one.
Main reasoning/argumentation	The employee's removal has no discriminatory character, as the 2005 placement (Pistoia) is still more favourable than the initial one (Bologna). No law provision – neither anti-discrimination rules laid down in Decreto legislativo n. 216/2003, nor the targeted placement principle in Legge n. 68/1999 – awards the employee a full fledged right to opt for the placement he/she finds more convenient.
Key issues (concepts, interpretations) clarified by the case	Decreto legislativo n. 216/2003 prohibits the employer from actions or behaviours that might cause discomfort to disabled employees because of their disability. However, Decreto legislativo n. 216/2003 does not bind the employer to eliminate possible discomforts the employee may suffer because of the impairments affecting him/her.
Results (sanctions) and key consequences or implications of the case	The Tribunal (sitting as a panel) quashes the injunction which the same Tribunal (sitting as a single judge) had issued to the Ministry to have it cease its discriminatory behaviour by renewing the applicant's provisional placement decided in 2003.
Proposal of key words for data base	Disability – Anti-Discrimination – Directive 78/2000/EC – National transposition – Reasonable accommodations

See attached file trib pistoia.pdf

Case title	Cass., sez. IV, n. 7280/2000, Valente
Decision date	06.04-20.06.2000
Reference details	<i>Corte suprema di cassazione, Sezione VI penale</i> [Supreme Court of cassation, Sixth criminal chamber]
Key facts of the case	A man has been convicted of breach of familiar obligations, at the request [<i>querela</i>] of his wife. The man alleges that since the woman is affected by mental illness, her request should have been filed by a special curator and is therefore void.
Main reasoning/argumentation	The appointment of a special curator is necessary only when mental illness prevents the victim from requesting the offender's punishment. Notwithstanding minor age, incapacity to understand and decide and competence limitations, the victim is always entitled to file a request for punishment, if he/she is able to do so. Appointment of a special curator, in these cases, is unnecessary.
Key issues (concepts, interpretations) clarified by the case	The victim of an offence, although subject to competence limitations or lacking capacity to understand and decide, may still file a request for punishment of the offender. Intervention by the guardian or appointment of a special curator are necessary only if the victim is unable to personally file such a request.
Results (sanctions) and key consequences or implications of the case	The sentence is upheld.
Proposal of key words for data base	Disability – Intellectual disability – Fundamental Rights – Protection – Offences – Request for punishment of the offender

Attached file: Cass 7280-00 Valente.pdf

Case title	Cass., sez. IV, n. 13410/2008, B.F.
Decision date	14.02.2008-28.03.2008
Reference details	<i>Corte suprema di cassazione, Sezione I penale</i> [Supreme Court of cassation, First criminal chamber]
Key facts of the case	A young woman (18 years old), affected by mental retard and severe personality disorders, has been killed by her grandfather, who is convicted of intentional murder. The sentence is challenged, also for not having taken into account that the victim had repeatedly asked to be killed, being unable to withstand her psychic sufferings.
Main reasoning/argumentation	In order to exclude murder, consent of the victim to his/her own killing must be valid, full, earnest, unambiguous and present. No such consent can be given, if the victim is affected by any psychic pathology limiting her capacity to express a full and conscious consent. Lacking conclusive evidence, protection of the right to life must prevail on consideration of the victim's illnesses and intellectual defects and of the opinion others may have of the quality of his/her life.
Key issues (concepts, interpretations) clarified by the case	The killing of a person suffering from mental illness may be punished (not as murder, but) as killing of a willing victim only if there is conclusive evidence that effective consent was given and that the relevant illness had not undermined the victim's capacity to express a full and conscious will of dying.
Results (sanctions) and key consequences or implications of the case	The sentence is upheld.
Proposal of key words for data base	Disability – Intellectual disability – Fundamental Rights – Right to life – Consent to one's own killing

Case title	Cass., sez. III, n. 6735/2002
Decision date	28.02-10.05.2002
Reference details	<i>Corte suprema di cassazione, Sezione III civile</i> [Supreme Court of cassation, Third criminal chamber]
Key facts of the case	A child is born with severe physical and psychic disabilities due to a severe congenital disorder (Apert syndrome), which could have been, but was not, diagnosed. The parents sue the doctor for damages, alleging his error had infringed on the mother's right to abortion.
Main reasoning/argumentation	When pathologic processes affecting a foetus and pose a significant threat to the mother's physical or psychic health – including the threat of giving birth to, and having to care for a handicapped child – the mother has a full-fledged right to choose whether to terminate her pregnancy or not, even after the 90 th day. This right is excluded if, at the time of diagnosis, the foetus is capable of autonomous life.
Key issues (concepts, interpretations) clarified by the case	A medical error in diagnosis of a foetus' defects and malformations may infringe on the woman's right to abortion and entail damage responsibility for the doctor, unless the latter proves that abortion was not possible because the foetus was capable of autonomous life (or that the mother did not want her pregnancy terminated).
Results (sanctions) and key consequences or implications of the case	The appellate ruling had awarded the parents £ 700 millions (€361.519,83), plus interests since 1989, for economic damage, psychic trauma and existential damage. The Court of cassation upholds the ruling.
Proposal of key words for data base	Disability – Intellectual disability – Fundamental Rights – Right to life – Abortion – Pre-natal diagnosis – Medical error

Attached file: Cass 6735-02.pdf

Case title	Cass., sez. V, n. 15245/2005, N.G.
Decision date	22.02-22.04.2005
Reference details	<i>Corte suprema di cassazione, Sezione V penale</i> [Supreme Court of cassation, Fifth criminal chamber]
Key facts of the case	The applicant – responsible for assistance to the disabled in a private facility – is accused of having omitted surveillance on a disabled person entrusted to his care, indirectly causing death of the victim. The applicant has been acquitted of the charge for lack of subjective requirements (awareness of surveillance omission and ensuing dangers), but has been condemned to damage redress. He challenges the ruling, alleging he had no criminally relevant surveillance obligation.
Main reasoning/argumentation	Art. 391 of the Codice Penale (abandonment) protects personal safety of children and persons who are unable to care for themselves, including persons with mental illnesses, and have been entrusted to the care of other persons. There is no limit to the sources of the relevant assistance and custody obligations, which may well arise from private law sources, such as contracts for assistance services.
Key issues (concepts, interpretations) clarified by the case	When disabled persons are placed in a private assistance facility, under a private law contract, the persons responsible for the facility have a legal obligation to keep under surveillance those entrusted to their care and protect them from danger. Breach of this obligation is punished as abandonment.
Results (sanctions) and key consequences or implications	The Court upholds the challenged ruling.

of the case	
Proposal of key words for data base	Disability – Intellectual disability – Fundamental Rights – Right to freedom from torture or cruel, inhuman or degrading treatment or punishment – Abandonment

Attached file: Cass 15245-05 NG.pdf

Case title	Cass., sez. V, n. 27882/2003, D.C.A.
Decision date	23.05-30.06.2003
Reference details	<i>Corte suprema di cassazione, Sezione V penale</i> [Supreme Court of cassation, Fifth criminal chamber]
Key facts of the case	The manager of a residential facility for elderly persons has been acquitted of charges, including false imprisonment and abandonment, relating to bad treatment of patients: at night, the facility's doors were locked from the outside and only a mentally retarded worker was left to take care of the patients. The appellate judge has found that a different treatment would have required an excessive expense of resources (e.g., the recruitment of a high number of workers).
Main reasoning/argumentation	The opportunity to avoid excessive expenses is not a defence against charges of false imprisonment or abandonment, when infringements on patients' personal liberty or breaches of protection obligations have been committed. However, when it is necessary, coercion may be applied in the treatment of persons with mental illnesses by those having disciplinary powers on such persons (e.g.: guardians of persons subject to interdiction; health professionals entrusted with care of the mentally ill).

Key issues (concepts, interpretations) clarified by the case	Those who are entrusted with care of mentally ill persons, persons subject to interdiction, abnormal persons etc. may apply restriction to the liberty of movement of such persons, when this is necessary. If such power is exercised in unlawful ways, the offender is not punished for false imprisonment, but for maltreatment.
Results (sanctions) and key consequences or implications of the case	The appellate ruling is quashed. Decision is referred to another chamber of the same Court of appeal, which will be bound by the Court of cassation's findings (see below, Cass., sez. I, n. 409/2004, D.C.A.).
Proposal of key words for data base	Disability – Intellectual disability – Fundamental Rights – Right to freedom from torture or cruel, inhuman or degrading treatment or punishment – Abandonment – Maltreatment – Coercive measures

Cass. 2782-2003 pdf.

Case title	Cass., sez. VI, n. 6581/2007, L.A.
Decision date	05.12.2007-12.02.2008
Reference details	<i>Corte suprema di cassazione, Sezione VI penale</i> [Supreme Court of cassation, Sixth criminal chamber]
Key facts of the case	The director and the workers of a residential facility for persons with intellectual disabilities face charges for crimes relating to wrongful treatment of patients, including maltreatment (recurrent pharmacological sedation; use of coercion with “reformation” purposes) and abandonment (poor surveillance at night and during excursions).

Main reasoning/argumentation	It had been found that the facility staff did not comprise any psychologist and that, although conventions had been made with the locally available public psychiatric services, the latter actually provided no specialized support. Pharmacological sedation was applied constantly, so to leave the patients in a permanent condition of dizziness. Physical coercion was applied in order to discourage undisciplined behaviour.
Key issues (concepts, interpretations) clarified by the case	The staff of a residential facility for persons with intellectual disabilities can use coercion on persons only during compulsory treatment or when it is necessary to prevent them from injuring themselves or others. The staff has no right of chastisement on the patients and any coercion applied with educational purposes is punished as maltreatment.
Results (sanctions) and key consequences or implications of the case	The appellate ruling, which had found the applicants guilty of the relevant charges, is upheld. The ruling is quashed only with regard to one of the applicants (a cook) who had no legal responsibility for personal assistance and treatment of the patients.
Proposal of key words for data base	Disability – Intellectual disability – Fundamental Rights – Right to freedom from torture or cruel, inhuman or degrading treatment or punishment – Abandonment – Maltreatment – Coercive measures

Attached file: Cass 6581-07 LA.pdf

Case title	Cass., sez. IV, n. 13241/2005, L.L.
Decision date	12.01-12.04.2005
Reference details	<i>Corte suprema di cassazione, Sezione IV penale</i> [Supreme Court of cassation, Fourth criminal chamber]
Key facts of the case	The doctor on duty in a hospital and his superior are convicted of negligence murder: they have not enacted sufficient custodial measures, including coercion, on a patient under compulsory treatment, who had therefore been able to commit suicide.

Main reasoning/argumentation	A patient with suicidal tendencies, when under compulsory treatment, must be prevented from self-endangering and killing with the necessary custodial measures (e.g.: vigilance by dedicated personnel), including, if strictly necessary, physical coercion. However a doctor is not liable for omitting such measures, if there is no conclusive evidence he/she personally knew the suicidal tendencies of the patient.
Key issues (concepts, interpretations) clarified by the case	When a patient is under compulsory treatment, the doctor assisting him/her is responsible for his/her custody and may also restrict the patient's personal liberty in order to protect the patient him/herself or others. In exceptional cases, when the patient refuses treatment, also custodial measures and coercion may and should be applied.
Results (sanctions) and key consequences or implications of the case	The challenged ruling is quashed for not having explained if the doctor on duty was actually aware of the patient's suicidal tendencies: he was on duty during the suicide, but not when the patient was accepted and examined for the first time. The decision is referred to another chamber of the same Court of appeal, which will be bound to the court of Cassation's findings, although only for decision on damage redress (the limitation period for criminal punishment has expired).
Proposal of key words for data base	Disability – Intellectual disability – Fundamental Rights – Right to freedom from torture or cruel, inhuman or degrading treatment or punishment – Right to liberty – Involuntary treatment – Coercive measures

Attached file: Cass 13241-05 LL.pdf

Case title	Cass., sez. I, n. 409/2004, D.C.A.
Decision date	28.10.2004-13.01.2005

Reference details	<i>Corte suprema di cassazione, Sezione I penale</i> [Supreme Court of cassation, First criminal chamber]
Key facts of the case	In the new appellate ruling following Cass., sez. V, n. 27882/2003, D.C.A. (see above), the appellate judge has found that the residential facility was authorized to care only for self-sufficient elder persons: the treatment of disabled elder persons had therefore no legal basis and did not bestow on the personnel of the structure any legal disciplinary power. The applicant has been convicted of false imprisonment (and abandonment).
Main reasoning/argumentation	The principles established in Cass., sez. V, n. 27882/2003, D.C.A, do not apply and are not relevant, in the light of the new findings: the placement and treatment of disabled elderly persons was radically illegal, as it was unauthorized and conflicting with the facility organization; coercion of the disabled persons was the ordinary “treatment” enacted in the facility, as decided by the applicant.
Key issues (concepts, interpretations) clarified by the case	If treatment of the disabled takes place unlawfully (i.e.: in an unauthorized structure), no legal authority over the disabled is vested in the persons providing treatment. These persons therefore are not entitled to any disciplinary power on the disabled persons and cannot apply coercion to them. If they do, they may be convicted of false imprisonment.
Results (sanctions) and key consequences or implications of the case	The second appellate ruling is upheld.
Proposal of key words for data base	Disability – Intellectual disability – Fundamental Rights – Right to freedom from torture or cruel, inhuman or degrading treatment or punishment – Right to Liberty – False imprisonment – Coercive measures

Attached file: Cass 409-04 DCA.pdf

Case title	Cass., sez. V, n. 6131/2006, B.E.
Decision date	29.11.2006-14.02.2007
Reference details	<i>Corte suprema di cassazione, Sezione V penale</i> [Supreme Court of cassation, Fifth criminal chamber]
Key facts of the case	The management and staff of a residential facility face charges for crimes pertaining to bad treatment of disabled patients. The charges include false imprisonment and abandonment (also leading to injuries and death of some victims), aggravated as committed by abuse of the authority connected to responsibility for assistance of the victims.
Main reasoning/argumentation	It had been found that the disabled patients – elderly persons with varied physical and psychic illnesses – were left without sufficient food and hygienic care, in premises which were cold, dirty, overcrowded and infested with vermin. The doctor responsible for medical assistance had let orderlies administer pharmaceuticals and, often, also apply coercion to the patients.
Key issues (concepts, interpretations) clarified by the case	1) Offences committed to the detriment of non self-sufficient persons by those legally entrusted with their care – including offences for distorted treatment – are aggravated. 2) False imprisonment is committed, if coercive measures in the treatment of disabled patients are applied by personnel lacking the appropriate professional qualifications (e.g.: orderlies) with the only purpose of avoiding different forms of assistance.
Results (sanctions) and key consequences or implications of the case	The appellate ruling, which had found the applicants guilty of the relevant charges, is upheld (except where referring to an applicant who had died: in this part, the ruling is quashed).
Proposal of key words for data base	Disability – Intellectual disability – Fundamental Rights – Right to freedom from torture or cruel, inhuman or degrading treatment or punishment – Right to Liberty – False imprisonment – Coercive measures

Attached file: Cass 6131-06 BE.pdf

Case title	Trib. S. Maria Capua Vetere, 09.05.1978, Ragozzino
Decision date	09.05.1978
Reference details	<i>Tribunale di Santa Maria Capua Vetere</i> [Tribunal of Santa Maria Capua Vetere]
Key facts of the case	This case concerns a long series of abuses in the oldest Italian judicial psychiatric hospital (Aversa) – including extensive use of pharmacological sedation and physical coercion – whose responsibility mainly fell on the hospital director. The director was particularly accused of purposefully neglecting his duties to the prisoners, not to be distracted from more profitable private practice.
Main reasoning/argumentation	The ruling painstakingly describes the frequent abuses by the prison staff, the director's negligence and his interference with official enquiries (including fomenting prisoners' riots against inspectors), as well as his parallel private activities. The Ministry of Justice itself is deemed responsible for damage redress: no effective control on the prisoners' conditions inside the hospital was enacted for a long time, notwithstanding frequent denunciations of abuses.
Key issues (concepts, interpretations) clarified by the case	The use of physical coercion in a judicial psychiatric hospital is punished as authority abuse on convicts, when their residual liberty is subject to limitations stricter than prescribed by law (e.g.: illegitimate close arrest). If coercion is used to discourage protests from the prisoners, forcing them to accept illegitimate treatments, the offence is severer and is punished as <i>violenza private</i> [private violence].
Results (sanctions) and key consequences or implications of the case	The director was sentenced to reclusion for five years (and other minor sanctions). His subordinates got milder sentences. All of them and the Ministry were condemned to damages, provisionally liquidated in £ 10.000.000 for each victim (the appellate judgment stopped proceeding against the director, who had committed suicide; changed the charges against two subordinates from private violence to authority abuse, applying amnesty to them; confirmed the sentence against a third subordinate).

Proposal of key words for data base	Disability – Intellectual disability – Fundamental Rights – Right to freedom from torture or cruel, inhuman or degrading treatment or punishment – Right to Liberty – Duress – Coercive measures
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Attached file: trib. santa maria capua a vetere.pdf

Case title	Cass., sez. IV, 19.12.1979, Rocco
Decision date	19.12.1979
Reference details	<i>Corte suprema di cassazione, Sezione IV penale</i> [Supreme Court of cassation, Fourth criminal chamber]
Key facts of the case	A prisoner is subject to physical coercion (strapped to a bed) in the prison infirmary, for two days. During this time, he is very agitated and injures himself fighting against the restraints. The prison doctors are considered liable for these injuries, by negligence, for omitting to replace physical coercion with pharmacological sedation.
Main reasoning/argumentation	Physical coercion was correctly applied as an urgent remedy, when the agitated patient was at first brought to the infirmary. However, when it had been clear that the continuing agitation of the restrained patient was causing him physical damage, the doctors should have considered alternative measures, including pharmacological sedation. Not having done so is a breach of duty; the doctors are therefore liable, by negligence, for the injuries the patient inflicted to himself.

Key issues (concepts, interpretations) clarified by the case	Physical coercion may be used on an agitated patient when necessary, as an urgent remedy. If agitation continues and, together with physical coercion, it may cause injuries to the patient, doctors must consider therapeutic alternatives, including pharmacological sedation. Prolonged physical coercion, when it is clearly causing unnecessary distress to the patient, is unlawful; if physical damage to the patient ensues, doctors are criminally liable for it, by negligence.
Results (sanctions) and key consequences or implications of the case	The challenged ruling is upheld.
Proposal of key words for data base	Disability – Intellectual disability – Fundamental Rights – Right to freedom from torture or cruel, inhuman or degrading treatment or punishment – Right to Safety – Coercive measures – Injuries

Attached file: Cass1979.pdf

Case title	Cass., sez. III, n. 35878/2007
Decision date	05.06-01.10.2007
Reference details	<i>Corte suprema di cassazione, Sezione III penale</i> [Supreme Court of cassation, Third criminal chamber]
Key facts of the case	Over 25 years, a man has had intercourse with his sister-in-law, affected by a mental retard, following the same pattern: the man asked for intercourse and the woman showed at first reluctance but then, after some insistence, accepted. On the last occasion the woman, who had resolved to stop this relationship and had tried to become unavailable, accepts intercourse but then denounces her brother-in law.

Main reasoning/argumentation	The ruling summarizes the legal discipline of sexual intercourse with persons in a condition of psychic or physical inferiority, which strikes a balance between the right of these persons to self-determination and their peculiar needs of protection. The ruling also highlights that the man, while perfectly aware of the woman's intellectual disability, may not have understood that, in the last meeting, she had actually changed her mind.
Key issues (concepts, interpretations) clarified by the case	Intercourse with persons in a condition of psychic or physical inferiority is punished if: 1) the relevant psychic or physical inferiority prevents the victim from self-determination in sexual life; 2) the offender is aware of, or could easily notice this impairment and, 3), takes advantage of it; 4) the offender purposefully persuades the victim to accept intercourse.
Results (sanctions) and key consequences or implications of the case	The appellate ruling is quashed and decision is deferred to another section of the same Court of Appeal, which will enquire whether the man had actually understood that his sister-in-law had changed her mind (and was opposed to continuing their relationship) and whether he had purposefully taken advantage of the woman's intellectual inferiority to persuade her to accept intercourse.
Proposal of key words for data base	Disability – Intellectual disability – Fundamental Rights – Right to liberty and security – Right to sexual self-determination

Attached file: Cass 35878-07 BE.pdf

	Trib. Napoli, 22.09.2006
Decision date	22.09.2006
Reference details	<i>Tribunale di Napoli</i> [Tribunal of Napoli]

Key facts of the case	Eviction proceedings are started against a man suffering from a severe form of Parkinson's disease. The judge has established that the man is not capable of effectively exercising his defensive rights, but the peculiar speed of eviction proceedings makes it difficult to wait for the appointment of a guardian. The mother of the defendant requests to be appointed as his special curator.
Main reasoning/argumentation	The appointment of a special curator is particularly appropriate in urgent cases (e.g.: fast track proceedings), where a person suffering from intellectual disabilities lacks adequate representation and may be consequently impaired in the exercise of his/her right of defence. The public prosecutor is always informed of the appointment of a special curator and is therefore able to take the necessary initiatives for the protection of the person concerned.
Key issues (concepts, interpretations) clarified by the case	In civil procedure, when a party suffers from intellectual disabilities impairing him/her in the exercise of his right of defence, a special curator may be appointed to assist him/her, even if he/she is not yet subject to interdiction, inabilitation or support management.
Results (sanctions) and key consequences or implications of the case	The applicant is appointed as her son's special curator to represent him in the eviction proceedings.
Proposal of key words for data base	Disability – Intellectual disability – Fundamental rights – Right to fair trial – Civil procedure – Incapacity to understand and decide without interdiction – Special curator

Attached file: Trib NA 22-09-06.pdf

Case title	Corte cost., n. 468/1992
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Decision date	05-19.11.1992
Reference details	<i>Corte costituzionale</i> [Constitutional court]
Key facts of the case	One of the parties in proceedings for joint property division is affected by a severe Down's syndrome. The competent judge questions the validity of the procedural rules that do not allow him to stop proceedings in order to allow the public prosecutor to bring action for the appointment of a guardian to the disabled party, before the proceedings continue.
Main reasoning/argumentation	It is necessary to guarantee proper assistance to disabled persons taking part in judicial proceedings. However, an automatic interruption of pending proceedings could be inappropriate, before separate proceedings for the appointment of a guardian have started and the concerned person's actual capacity has been assessed.
Key issues (concepts, interpretations) clarified by the case	When a person unable to understand and decide is taking part in civil proceedings, the public prosecutor may intervene to protect the rights of this person, as this is required by the general interest. The public prosecutor may ask for the appropriate <i>interim</i> measures and may also bring a separate action for the appointment of a guardian – also requesting the urgent appointment of a provisional guardian. The public prosecutor's powers are an adequate guarantee for the concerned person's right of defence.
Results (sanctions) and key consequences or implications of the case	The challenged procedural rules are upheld.
Proposal of key words for data base	Disability – Intellectual disability – Fundamental rights – Right to fair trial – Civil procedure – Incapacity to understand and decide without interdiction – Special curator

See attached file: Corte cost 468-92.pdf.

Case title	Corte cost., n. 198/2006
Decision date	03-11.05.2006
Reference details	<i>Corte costituzionale</i> [Constitutional court]
Key facts of the case	A Tribunal questions the constitutionality of the general civil procedure rules that do not allow the appointment of a special curator to persons that, while not being subject to competence limitations, lack the capacity to understand and decide. This is considered a violation of the right to defence and an irrational discrimination, with regard to procedure rules on divorce, that instead allow the appointment of a special curator.
Main reasoning/argumentation	The procedural rules on divorce are exceptional and cannot be extended to other issues. The law system, especially after Legge n. 6/2004, already provides for the protection of persons lacking the capacity to understand and decide, with measures that are applied to the person concerned through proceedings adequate to the relevance of the decisions to be taken. In cases of urgent need, these proceedings also allow the adoption of <i>interim</i> measures.
Key issues (concepts, interpretations) clarified by the case	The general measures on the protection of persons lacking autonomy – taking into account the possibility of immediate <i>interim</i> measures – are sufficient to protect these persons also in the exercise of their right to defence. There is no constitutional need to allow special curators to be appointed in these cases.
Results (sanctions) and key consequences or implications of the case	The challenged procedural rules are upheld.
Proposal of key words for data base	Disability – Intellectual disability – Fundamental rights – Right to fair trial – Civil procedure – Incapacity to understand and decide without interdiction – Special curator

See attached file: Corte cost 198-06.pdf.

Case title	Corte cost., n. 340/1992
Decision date	07-20.07.1992
Reference details	<i>Corte costituzionale</i> [Constitutional court]
Key facts of the cas	In criminal proceedings, the defendant is affected by a mental illness that prevents him from consciously defending himself. However, proceedings suspension is not allowed by the Criminal procedure code with regard to illness that – as in the case – already existed when the offence was committed. The competent judge finds this rule arbitrary and disrespectful of the concerned person’s right of defence.
Main reasoning/argumentation	The Court subscribes to the judge’s construction of the relevant rules, which is consistent with preparatory work for the 1988 code. As it was held in a previous ruling (n. 23/1979), the defendant’s mental incapacity does not require proceedings suspension only if conviction is impossible: e.g., because the defendant was already ill at the moment of the offence and may not be punished. This is not the case, if the illness arose after the offence and conviction is possible.
Key issues (concepts, interpretations) clarified by the case	It is an arbitrary infringement on the defendant’s right of defence to allow criminal proceedings to continue, even if a psychic illness prevents the defendant from consciously taking part in them, only because the illness already existed when the offence was committed.
Results (sanctions) and key consequences or implications of the case	Art. 70 of the Criminal procedure code is voided where it allows proceedings suspension only with regard to illness arisen after the offence.

Proposal of key words for data base	Disability – Intellectual disability – Fundamental rights – Right to fair trial – Criminal procedure – Incapacity to consciously take part in proceedings – Time of incapacity arising
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See attached file: Corte cost 340-92.pdf

Case title	Cass., sez. V, n. 7063/2000, V.D.
Decision date	16.03-15.06.2000
Reference details	<i>Corte Suprema di cassazione, Sezione IV penale</i> [Supreme Court of cassation, Fourth criminal chamber]
Key facts of the case	Two persons have been convicted of offences relating to drug trafficking. During the appellate ruling's review before the Court of cassation, the defence requests proceedings to be stopped for one of the applicants, as in different proceedings medical evidence was collected on her inability to consciously take part in them.
Main reasoning/argumentation	In proceedings before the Court of cassation, any possible mental illness affecting the defendant is irrelevant, as defensive activities can never be performed by him/her, but only by his/her advocate. Moreover, procedure before the Court of cassation is incompatible with enquiries on the defendant's mental capacities, as the Court only decides on points of law and cannot perform assessments of factual circumstances.
Key issues (concepts, interpretations) clarified by the case	Suspension of criminal proceedings due to the defendant's inability to consciously take part in them is a guarantee of the defendant right of defence. Suspension is therefore neither necessary, nor possible before the Court of cassation, where all the defensive activities are performed by the advocate.

Results (sanctions) and key consequences or implications of the case	The request for suspension is dismissed. The appellate ruling is upheld.
Proposal of key words for data base	Disability – Intellectual disability – Fundamental Rights – Right to fair trial – Proceedings before the Court of cassation

Attached file: Cass 7063-00 VD.pdf

Case title	Cass., sez. V, n. 2283/2004, S.C.
Decision date	13.12.2004-25.01.2005
Reference details	<i>Corte Suprema di cassazione, Sezione V penale</i> [Supreme Court of cassation, Fifth criminal chamber]
Key facts of the case	A man has been sentenced for aggravated theft. Challenging the appellate sentence, his guardian complains that, during criminal proceedings, the man was subject to interdiction: the Court of appeal had therefore to take note of his mental incapacity and suspend the proceedings.
Main reasoning/argumentation	Pending proceedings, no application for suspension had been made. The Court of appeal was therefore under no obligation to suspend proceedings; nor would the Court have been, had it been informed of the interdiction, as private law competence limitations and criminal proceedings suspension have different requirements.

Key issues (concepts, interpretations) clarified by the case	Criminal proceedings may be suspended when the defendant is unable to take consciously part in them. The fact that the defendant is subject to private law competence limitations does not automatically entail criminal proceedings suspension: even a person unable to care for his/her own interests can be capable of understanding the proceedings' meaning and to consciously take part in them, with assistance by his/her advocate.
Results (sanctions) and key consequences or implications of the case	The appellate ruling is upheld.
Proposal of key words for data base	Disability – Intellectual disability – Fundamental rights – Right to fair trial – Criminal procedure – Incapacity to consciously take part in proceedings – Interdiction

Attached file: Cass 2283-04 SC

Case title	Cass., sez. IV, n. 3518/2004, Murru
Decision date	10.12.2003-29.01.2004
Reference details	<i>Corte Suprema di cassazione, Sezione IV penale</i> [Supreme Court of cassation, Fourth criminal chamber]
Key facts of the case	A previous offender, indicted of serious charges and relapsed immediately after his release under probation, suffers from depression, with a significant risk of suicide. He had been at first subject to custody in a ordinary hospital, but was then transferred to a judicial psychiatric hospital, due to his very high social dangerousness. This second order is challenged as, among other things, there is no evidence of him being affected by any lack of capacity to understand and decide.

Main reasoning/argumentation	When the defendant mental conditions require psychiatric assistance, he/she may be placed in a ordinary hospital, under surveillance (Criminal procedure code, art. 73, para 3), or be made subject to custody in a special penitentiary section or facility for the mentally ill (d.P.R. n. 230/2000, art. 111, para. 5). Provisional placement in a judicial psychiatric hospital is allowed only if it is reasonably foreseeable that such placement will be ordered at the end of proceedings.
Key issues (concepts, interpretations) clarified by the case	When the defendant mental conditions require psychiatric assistance, the judge may order either the defendant's placement in a ordinary hospital, or his/her custody in a special penitentiary section or facility for the mentally, but not his/her provisional placement in a judicial psychiatric hospital, unless application of this measure at the end of proceedings is foreseeable.
Results (sanctions) and key consequences or implications of the case	The challenged order is quashed. Decision on the applicant's placement is referred to the competent Tribunal, which will be bound to the Court's findings.
Proposal of key words for data base	Disability – Intellectual disability – Fundamental rights – Right to fair trial – Criminal procedure – Custody – Custodial measures

Attached file: Cass 3518-04 Murru

Case title	Cass., sez. I, n. 16939/2009, Vallini
Decision date	01-21.04.2009
Reference details	<i>Corte Suprema di cassazione, Sezione I penale</i> [Supreme Court of cassation, First criminal chamber]

Key facts of the case	Criminal proceedings have been suspended due to an irreversible mental illness that prevents the defendant from taking consciously part in them. However, also the course of custody time limits has been halted for this person.
Main reasoning/argumentation	As under the 1930 Criminal procedure code, illnesses, also of a psychic nature, are among the impediments allowing to stop the course of custody time limits. However custody will never be permanent: acquisition of proofs, which may lead to a ruling, is partially allowed even during suspension and may lead to acquittal; the maximum time limit set by art. 304, para. 6, Criminal procedure code still applies; custodial measures may be changed or revoked, as required under the circumstances.
Key issues (concepts, interpretations) clarified by the case	When proceedings are suspended due to the defendant's psychic incapacity to take consciously part in them, custody time limits are to be suspended as well. The maximum time limit set by art. 304, para. 6, Criminal procedure code still applies.
Results (sanctions) and key consequences or implications of the case	The Tribunal order which has stopped the course of custody time limits is upheld.
Proposal of key words for data base	Disability – Intellectual disability – Fundamental rights – Right to fair trial – Criminal procedure – Custody – Time limits

Attached file: Cass 16939-09 Vallini

Case title	Divieto 21.04.2009
Decision date	21.04.2009

Reference details	<i>Divieto</i> [prohibition] 21.04.2009; <i>Garante per la protezione dei dati personali</i> [Personal data protection authority]
Key facts of the case	On the website of a local government body, some lists were made accessible to the public, containing the full names of more than 6000 disadvantaged persons entitled to employment under the statutory quota system, in some cases together with other information, including relevant disadvantages (disability, blindness etc.), age, income, profession etc. This was made in accordance with statutory provisions (e.g.: Legge n. 68/1999, art. 8) requiring such lists to be made public.
Main reasoning/argumentation	Even when performing tasks of public relevance the administration has to comply with statutory provisions on personal data protection, including the principle of proportionality. This also requires that, if sensitive data processing is necessary for a transparent management of the quota system, data is not be made available to the public, but only to authorized persons and bodies.
Key issues (concepts, interpretations) clarified by the case	Sensitive personal data may be processed by public administrations only to the extent and in the ways which are necessary to perform the tasks administrations have been charged with. Dissemination of personal data on health is strictly forbidden.
Results (sanctions) and key consequences or implications of the case	Data publication in the website is blocked. The Ministry of Employment and the State-Regions Conference are invited to design different data processing models, suitable to guarantee that access to data allows both a transparent management of the quota system, and the protection of personal data required by law.
Proposal of key words for data base	Disability – Intellectual disability – Fundamental rights – Right to privacy – Dissemination of health data

Link: <http://www.garanteprivacy.it/garante/doc.jsp?ID=1616870>

Case title	Provvedimento 11.10.2004
Decision date	11.10.2004
Reference details	<i>Provvedimento</i> [order] 11.10.2004; <i>Garante per la protezione dei dati personali</i> [Personal data protection authority]
Key facts of the case	A woman has undergone urgent psychiatric treatment in a hospital. The data collected during the treatment had been archived by the competent ASL and then transmitted to the public prosecutor, who had started interdiction proceedings (the woman being in need of urgent surgical treatment she was not willing to consent). The woman complains about this and requests data erasure, anonymization or blocking.
Main reasoning/argumentation	Case sheets are public acts mandatorily formed by healthcare administration for certification purposes. Their formation and conservation do not require, accordingly, the consent to data processing which is instead required for the information needed to perform medical treatments.
Key issues (concepts, interpretations) clarified by the case	Consent from the data subject is required for the collection and processing of information needed to perform medical treatments; no consent is required for the compilation of this information in case sheets and for the conservation of the latter.
Results (sanctions) and key consequences or implications of the case	The woman's request is rejected.
Proposal of key words for data base	Disability – Intellectual disability – Fundamental rights – Right to privacy – Processing and filing in archives of health data

Link: <http://www.garanteprivacy.it/garante/doc.jsp?ID=1121272>

Case title	Parere 06.05.2009
Decision date	06.05.2009
Reference details	<i>Parere</i> [advice] 06.05.2009; <i>Garante per la protezione dei dati personali</i> [Personal data protection authority]
Key facts of the case	The authority's advice has been requested by the Ministry of Employment in the drafting of the regulation on an informative system on mental health, collecting all the data coming from the competent public bodies in order to allow their analysis at regional and national level. Both the draft regulation and the advice are very similar to those concerning the establishment of a national informative system on addictions (see the other advice issued on 06.05.2009)
Main reasoning/argumentation	The advice touches upon many issues: clear statement of data processing purposes; precise identification of offices entitled to data processing; directions on informatics security etc. Among other things, it is assessed that, in order to perform activities concerning healthcare services planning, management, monitoring and evaluation, healthcare administration does not need to process nominative data.
Key issues (concepts, interpretations) clarified by the case	Data processing must never exceed the purposes for which data is collected and processed. Data processed for healthcare services planning, management, monitoring and evaluation must be neither nominative, nor traceable back to specific persons.
Results (sanctions) and key consequences or implications of the case	Among other things, the authority requires the Ministry to use only information without reference to data subjects' identities and to prevent cross-searches allowing to identify data subjects.
Proposal of key words for data base	Disability – Intellectual disability – Fundamental rights – Right to privacy – Data processing for planning, management and monitoring purposes

Link: <http://www.garanteprivacy.it/garante/doc.jsp?ID=1616893>

Case title	Cass., sez. I, n. 12144/1993
Decision date	09.03-09.12.1993
Reference details	<i>Corte suprema di cassazione, Sezione I civile</i> [Supreme Court of cassation, First civil chamber]
Key facts of the case	Ecclesiastical courts have declared a marriage void, under canon law, for “marked narcissism” of the husband, not allowing him to leave his family of origin. This ruling is recognized by State courts: among other things, it is held that the canon rules on inability to assume conjugal duties find a partial parallel in the Italian rules allowing a marriage to be declared void for error on some personal qualities, including mental health. This ruling is challenged on procedural and substantive grounds.
Main reasoning/argumentation	The Italian law system does not consider psychic inability of a spouse to assume conjugal duties as ground for declaring a marriage void. However, if a spouse is affected by a psychic illness interfering with matrimonial life and the other spouse ignored the illness, and would not have consented to marriage had he/she been aware of it, the ensuing error may be ground for declaring the marriage void under Italian law. Italian and canon law are therefore different, but not radically incompatible.
Key issues (concepts, interpretations) clarified by the case	Ecclesiastical rulings declaring a marriage void for personality disorders preventing a spouse to validly assume conjugal duties do not infringe on any fundamental principle of Italian law and may be recognized by Italian courts.

Results (sanctions) and key consequences or implications of the case	The challenged ruling is upheld.
Proposal of key words for data base	Disability – Intellectual disability – Fundamental rights – Right to marry – Competence limitations – Canon law

Attached file: Cass 12144-93.pdf

Case title	Cass., sez. I, n. 9582/2000
Decision date	20.03-21.07.2000
Reference details	<i>Corte suprema di cassazione, Sezione I civile</i> [Supreme Court of cassation, First civil chamber]
Key facts of the case	A guardian, acting on the behalf of her ward, files a request for divorce. The Court of appeal dismisses the application, assuming a ward lacks the power to make highly personal decisions for the ward, including application for divorce.
Main reasoning/argumentation	While a guardian is allowed, in some instances, to make highly personal decisions for a ward subject to interdiction, such provisions have an exceptional character. In divorce proceedings, when the petition is filed by the ward's partner, law requires the appointment of a special curator as the ward's representative: this also applies, on analogy, when the petition is filed by the person subject to interdiction.

Key issues (concepts, interpretations) clarified by the case	Unless expressly provided by law, the guardian has not the power make highly personal decisions for the ward, whose individual will is the only one having legal relevance. However the provision allowing a special curator to be appointed to assist the ward in divorce proceedings may also apply when the proceedings are to be started on the ward's behalf.
Results (sanctions) and key consequences or implications of the case	The appellate ruling is upheld.
Proposal of key words for data base	Guardianship – Interdiction – Guardian – Highly personal acts – Divorce

Attached file: Cass 9582-00.pdf

Case title	Corte cost. n. 19/2009
Decision date	26-30.01.2009
Reference details	<i>Corte costituzionale</i> [Constitutional court]
Key facts of the case	The right to a special leave for assisting relatives with a severe handicap is granted to the disabled person's parents or, after their death, siblings. The constitutional court has extended it to siblings, also in the case that the disabled person's parents are unable to care for him/her (n. 233/2005), and to the spouse (n. 158/2007). A further extension is now requested: to the disabled person's sons/daughters, when they live with him/her and no other person is available for assistance.

Main reasoning/argumentation	The same argumentation used in 2005 and 2007 applies to the case: the special leave is designed to support family care for the disabled and his/her integration in family life; it is arbitrary to impose limitations on this right, depending on the concerned person's family type; any relative who is subject to family solidarity duties is also entitled to the relevant support measures.
Key issues (concepts, interpretations) clarified by the case	The special leave for assisting relatives with a severe handicap is designed to support family care for the disabled and his/her integration in family life. The right to this leave must be granted to any relative who is bound by family solidarity duties to assist the disabled person.
Results (sanctions) and key consequences or implications of the case	The challenged rules are voided, where they do not grant the right to special leave to the disabled person's son or daughter, when they live with their parent and no other person is able to assist him/her.
Proposal of key words for data base	Disability – Intellectual disability – Fundamental rights – Right to family life – Special support measures

See attached file: Corte cost 19-09.pdf

Case title	Pret. Genova, 20.03.1986
Decision date	20.03.1986
Reference details	<i>Pretura di Genova, Giudice tutelare</i> [Praetor of Genova, Guardianship judge]

Key facts of the case	A woman, suffering from severe chronic schizophrenia with a dominant autistic attitude, is pregnant. Her guardian requests the Guardianship judge to order the anticipated termination of the pregnancy. Medical reports state that the birth of the child could deeply affect the frail psychic health of the woman. The woman, however, is not able to express her will in any way.
Main reasoning/argumentation	Legge n. 194/1978 allows the guardian to request the anticipated termination of his/her ward's pregnancy; if the request is made, the woman has to confirm it; the doctor must moreover inform the Guardianship judge of the woman's attitude towards her pregnancy, "however expressed". But, in this case, the woman is unable to express any intelligible will.
Key issues (concepts, interpretations) clarified by the case	If a guardian requests the Guardianship judge to order the anticipated termination of the pregnancy of a woman subject to interdiction and if the woman is unable to confirm, or refuse to confirm the request, the Guardianship judge may still grant the requested order, grounding his evaluation on the available medical reports and evidence.
Results (sanctions) and key consequences or implications of the case	The Guardianship judge decides for anticipated termination of the woman's pregnancy, ordering healthcare services to see to it adopting all the necessary precautions.
Proposal of key words for data base	Disability – Intellectual disability – Fundamental rights – Right to have children – Anticipated pregnancy termination

Attached file: pretura di genova.pdf.

Case title	Pret. Nicosia, 23.11.1997
Decision date	23.11.1997

Reference details	Pretura di Nicosia, Giudice tutelare [Praetor of Nicosia, Guardianship judge]
Key facts of the case	A husband requests the Guardianship judge to order the termination of his wife's pregnancy. The woman, affected by recurrent but not permanent psychic disorders, is not subject to interdiction, but neither is capable of understanding her condition and expressing any intelligible will. Medical reports discourage continuation of the pregnancy, which would impede the woman's pharmacological treatment and expose her to severe psychic distress.
Main reasoning/argumentation	Legge n. 194/1978, on abortion, provides for women subject to interdiction (art. 13), not for women lacking capacity to understand and decide, who were not, or could not be subject to interdiction (e.g.: women affected by recurring crises, but not by a lasting, habitual intellectual disability). To fill the gap in a way which is not inconsistent with the law system and safe enough for the woman, the best solution seems applying art. 13 on analogy.
Key issues (concepts, interpretations) clarified by the case	When a pregnant woman is not subject to interdiction, but is incapable of understanding her condition and deciding on pregnancy termination, art. 13 of Legge n. 194/1978 applies on analogy: the Guardianship judge may order anticipated termination of the pregnancy at the husband's request, on the basis of medical evidence. The order automatically ceases its effects, as soon as the woman regains sufficient clearness of mind.
Results (sanctions) and key consequences or implications of the case	The Guardianship Judge decides for anticipated termination of the woman's pregnancy, ordering healthcare services to see to it and warning that the order would cease its effects, should the woman regain sufficient clearness of mind.
Proposal of key words for data base	Disability – Intellectual disability – Fundamental rights – Right to have children – Anticipated pregnancy termination

Attached file: pret Nicosia

Case title	Cass., sez. IV, n. 10795/2007, P.E.
Decision date	14.11.2007-11.03.2008
Reference details	<i>Corte suprema di cassazione, Sezione IV penale</i> [Supreme Court of cassation, Fourth criminal chamber]
Key facts of the case	In a complex case, a doctor – charged with psychiatric assistance to patients of a protected community – has wrongly assessed the condition of a psychotic patient, reducing and then suspending his pharmaceutical treatment, and afterwards administering a different drug at insufficient dosage. The patient’s illness, unrestrained, brings him to kill a social worker. It is questioned, <i>inter alia</i> , if the doctor is responsible for not having initiated TSO procedures.
Main reasoning/argumentation	The primary aim of TSO discipline is the treatment of illnesses and the recovery of the patient’s health. With regard to mental disorders, the negative effects of such disorders that TSO is designed to prevent include risks of dangerous behaviour and the consequent possibility of responsibilities for the affected person, also of a criminal nature: preventing a patient from committing a crime is a way to protect him from the disrupting effects of criminal trial and punishment. Nevertheless, for TSO to be correctly ordered, all the required circumstances must occur.
Key issues (concepts, interpretations) clarified by the case	1) TSO must be ordered, when mental disorders cause the affected person to have aggressive behaviours, whose containment requires medical treatment; 2) TSO may not be ordered, when the patient voluntarily accepts the necessary treatment.
Results (sanctions) and key consequences or implications of the case	Since it was proved that the patient had accepted pharmaceutical treatment – although he only tolerated treatment by his own personal doctor and, as the treatment was administered and received, used to threaten her of death – the charge of not initiating TSO procedures was acquitted (the defendant is still sentenced of murder by negligence on other grounds).
Proposal of key words for data base	Involuntary placement and treatment – Requirements – No voluntary acceptance of treatment – Lack of safe alternatives

Case title	Corte cost., n. 324/1998
Decision date	14-24.07.1998
Reference details	<i>Corte costituzionale</i> [Constitutional court]
Key facts of the case	An underage offender is deemed totally incapable to understand and decide and socially dangerous. She should therefore be placed in a judicial psychiatric hospital, just like an adult offender would be, under the same circumstances. However, the judge does not consider constitutionally correct that juvenile and adult offenders undergo the same treatment.
Main reasoning/argumentation	As it has been suggested by the judge, neither the Criminal Code discipline of compulsory placement of offenders in a judicial psychiatric hospital, nor the actual organization of such hospitals take into account the special needs of young persons suffering from mental disorders. This is not compatible with the protection granted to the young by the Italian Constitution and by the 1989 New York Convention on the Rights of the Child.
Key issues (concepts, interpretations) clarified by the case	The discipline and execution of criminal measures applying to underage offenders must take into account the peculiar needs of such persons. This is especially true with regard to placement in a judicial psychiatric hospital, since both general legislation on compulsory treatment and criminal procedure rules on precautionary measures for the mentally ill consider compulsory placement as an exceptional measure.
Results (sanctions) and key consequences or implications of the case	Criminal Code provisions allowing placement of underage offenders in judicial psychiatric hospital are voided. The Court invites the legislator to fill the gap opened by the ruling with new measures compatible with the special needs of socially dangerous juvenile offenders suffering from mental disorders.

Proposal of key words for data base	Involuntary placement and treatment – Involuntary placement and treatment of offenders – Underage offenders – Judicial psychiatric hospital
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See attached file: Corte cost 324-98.pdf.

Case title	Cass., sez. IV, n. 8996/1996, S.F.
Decision date	20.09-08.10.1996
Reference details	<i>Corte suprema di cassazione, Sezione I penale</i> [Supreme Court of cassation, First criminal chamber]
Key facts of the case	A murder is attempted by a person suffering from degenerative dementia, who is deemed to be totally incapable to understand and decide. This person has been considered socially dangerous, and his placement in a judicial psychiatric hospital has been ordered, mainly taking into account the assessment of his psychiatric conditions. This decision is challenged as it is alleged that it does not consider other factors, such as the offender's previous life and his clean record.
Main reasoning/argumentation	As a consequence of legislative reforms and constitutional rulings, it is not correct to assume that mental illness always entails social dangerousness of the affected person. When assessing the degree of social danger, art. 203 and art. 133 of the Criminal Code require other factors to be taken into account: offence committed; damage caused; offender's personality, life and record; etc.
Key issues (concepts, interpretations) clarified by the case	When evaluating the degree of social danger posed by an offender, i.e. the probability that he may commit new offences, the judge must take into account both the offender's psychiatric conditions, as assessed by psychiatric counsel, and the other circumstances mentioned in art. 133 of the Criminal Code. It is however sufficient that only some of these circumstances – and not all of them – are mentioned in the judgment on this point.

Results (sanctions) and key consequences or implications of the case	The appellate ruling had take into account not only the psychiatric conditions of the offender, but also their effects on the offender's behaviour, the severity of the offence and the reasons underlying it. The social danger assessment had therefore been correct and the Court upholds it (the order for placement in judicial psychiatric hospital for two years is confirmed).
Proposal of key words for data base	Involuntary placement and treatment – Involuntary placement and treatment of offenders – Social dangerousness

Attached file: Cass 8996-96 SF

Case title	Cass., sez. I, n. 507/1993, Mitrugno
Decision date	07.12.1993-19.01.1994
Reference details	<i>Corte suprema di cassazione, Sezione I penale</i> [Supreme Court of cassation, First criminal chamber]
Key facts of the case	A murder is committed by a person suffering from partial incapacity to understand and decide. The offender obtains a diminished sentence, but the appellate judge considers him socially dangerous and orders a security measure to be applied to him. In this decision, the judge also considers evidence showing that locally available non-penitentiary psychiatric services cannot be trusted to be able to keep the offender under control and prevent him from further offences.
Main reasoning/argumentation	When assessing the social danger posed by an offender, account must be taken of the objective context where the offender would find him/herself, after serving sentence. This includes the availability and reliability of local psychiatric health care services, which should take care of the offender while also fulfilling the social defence purposes of security measures.

Key issues (concepts, interpretations) clarified by the case	When assessing the social danger posed by an offender, the judge may also consider whether locally available non-penitentiary psychiatric services are able to take care of the offender, while effectively preventing him/her from dangerous behaviour.
Results (sanctions) and key consequences or implications of the case	The Court upholds the challenged ruling.
Proposal of key words for data base	Involuntary placement and treatment – Involuntary placement and treatment of offenders – Social dangerousness

Attached file: Cass 507-93 Mitrugno.pdf (NB: only a summary is available)

Case title	Corte cost., n. 253/2003
Decision date	02-18.07.2003
Reference details	<i>Corte costituzionale</i> [Constitutional court]
Key facts of the case	A sexual offender is judged fully incapable to understand and decide and socially dangerous: he should therefore be placed in a judiciary psychiatric hospital (OPG). However, it has been assessed that he would not be dangerous if placed – under probation regime with additional requirements – in a therapeutic community for psychotic patients.

Main reasoning/argumentation	The Court sums up its previous rulings on the treatment of offenders with mental disorders and recalls the doubts still lingering on the relevant discipline, including concerns on the segregationist character of OPGs. If the offender suffers from mental disorders, both social defence and therapeutic needs must be taken into account; moreover, any measure imposed must not damage the offender's health, and mental health as well.
Key issues (concepts, interpretations) clarified by the case	It is unreasonable and incompatible with the constitutional protection of health for statutes to prescribe placement of an offender with mental disorders in OPG, without taking into account his/her personality and therapeutic needs, as well as the effective level of social danger. Whenever possible under the specific circumstances, a more flexible and less intrusive security measure is to be applied.
Results (sanctions) and key consequences or implications of the case	The Court annuls the rules that do not allow, for socially dangerous persons with complete incapacity to understand and decide who have committed certain offences, the enactment of <i>libertà vigilata</i> [freedom under surveillance] with adequate additional requirements (e.g. community rehabilitation requirements), instead of placement in a judiciary psychiatric hospital.
Proposal of key words for data base	Involuntary placement and treatment – Involuntary placement and treatment of offenders – Statutory requirements – Lack of effective alternatives under the specific circumstances

See attached file: Corte cost 253-03.pdf.

Case title	Cass., sez. I, n. 6240/1998
Decision date	27.03-23.06.1998
Reference details	<i>Corte suprema di cassazione, Sezione I civile</i> [Supreme Court of cassation, First civil chamber]
Key facts of the case	A TSO order – confirmed by the Guardianships judge and the Tribunal – is motivated simply by referring to the medical proposal. The Tribunal rejection of the appeal against the confirmed order is challenged before the Court of cassation, alleging a purely indirect

	motivation is insufficient.
Main reasoning/argumentation	1) The TSO order issued under Legge n. 833/1978 affects personal liberty in the same way compulsory placement under Legge n. 36/1904 did. The Tribunal's ruling on such order falls therefore under the scope of art. 111 of the Italian Constitution; 2) Art. 34 of Legge n. 833/1978 requires full and specific positive assessment of the occurrence of all the requirements set out for psychiatric TSO in hospital.
Key issues (concepts, interpretations) clarified by the case	1) The Tribunal's ruling on appeal against a TSO order may be challenged before the Court of cassation on points of law; 2) An order for psychiatric TSO in hospital is not valid, if it only refers to the underlying medical proposal, omits to explicitly and specifically assess the requirements set out in art. 34 of Legge n. 833/1978 and contains a stereotypical description of the relevant illness.
Results (sanctions) and key consequences or implications of the case	The Tribunal's ruling is quashed and the decision is referred to a different section of the same Tribunal, which will decide according to the findings of the Court of cassation.
Proposal of key words for data base	Involuntary placement and treatment – Decision procedure – Judicial confirmation – Appeal – Application for cassation Involuntary placement and treatment – Decision procedure – Requirements – Motivation

Attached file: Cass 6240-98.pdf

Case title	Cass., sez. I, n. 21748/2007 (the Englaro Case)
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Decision date	04-16.10.2007
Reference details	<i>Corte suprema di cassazione, Sezione I Civile</i> [Supreme Court of cassation, First civil chamber]
Key facts of the case	This highly debated case concerns a woman who, after a car crash, has been lying for many years in permanent vegetative state. Her father, acting as her guardian, and the special curator (appointed according to Cass., sez. I, n. 8291/2005: see below) request authorization to interrupt artificial life support, alleging that the woman, prior to the accident, had expressed opposition to this kind of treatment.
Main reasoning/argumentation	Informed consent is required for any medical treatment. The patient may refuse treatment or have it stop, even if this damages his health and cause death. A number of legal provisions, including those on abortion, make clear that when a person is subject to interdiction, it is for his/her legal representative to decide on medical treatments, always for the concerned person's best interest and taking into account, when possible, the will he/she might have expressed in the past.
Key issues (concepts, interpretations) clarified by the case	When a person is subject to competence limitations, his/her representative has the competence to grant or deny consent to medical treatment. Such decisions must be grounded on a reconstruction of the concerned person's will, as far as this is possible; this may include recourse to advance directives or to opinions expressed beforehand. The competent judge is charged with scrutiny on the consistency between the representative's decision and the concerned person's will.
Results (sanctions) and key consequences or implications of the case	The appellate ruling is quashed. Decision is referred to another chamber of the Court of appeal, which is to decide according to the findings of the Court of cassation (therefore making enquiries on the will the woman has allegedly expressed before the accident).
Proposal of key words for data base	Medical treatment – Informed consent – Consent by person subject to competence limitations Guardianship – Interdiction – Guardian – Highly personal acts

Link: <http://www.altalex.com/index.php?idstr=105&idnot=38683>

Case title	Corte cost., n. 282/2002
Decision date	19-26.06.2002
Reference details	<i>Corte costituzionale</i> [Constitutional court]
Key facts of the case	A regional law forbids ECT and lobotomy, until the Ministry of Health is able to provide scientific evidence of their innocuousness and therapeutic efficacy. The State Government challenges this law, alleging that such decisions are reserved to national authorities or – for aspects not regulated by national law – to medical science.
Main reasoning/argumentation	The challenged law purports to stop some medical practices whose efficacy and innocuousness is dubious. This stop has a purely precautionary character and is not based on scientific analysis of such practices and their effects; on the contrary, the regional law calls for future investigations, to be made at an indefinite time by the Ministry of Health.
Key issues (concepts, interpretations) clarified by the case	The selection of acceptable therapeutic practices does not rest, in principle, with the legislator, but with medical science. Therapeutic decisions are to be taken by practitioners, at the best of their medical knowledge, with informed consent from the patient. The legislator may intervene, e.g. to discipline the enactment of dangerous therapeutic practices, but must do so on the basis of sound scientific evidence, grounded in national or international studies.
Results (sanctions) and key consequences or implications of the case	The challenged law is voided.

Proposal of key words for data base	Medical treatment – Statutory limitations - Constitutional requirements – Sound scientific evidence
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See attached file: Corte cost 282-02.pdf.

Case title	Corte cost., n. 74/1968
Decision date	20-27.06.1968
Reference details	<i>Corte costituzionale</i> [Constitutional court]
Key facts of the case	Legge n. 36/1904 allowed compulsory placement of the mentally ill by order of the <i>Pretore</i> [Praetor: single judge court], to be confirmed by the Tribunal. In urgent cases, placement could also be ordered by police for up to three days. It was questioned whether this was compatible with the Constitution provisions allowing administrative limitations of personal liberty only for 48 hours and prescribing such limitations to be brought to judicial review, in a fair trial, in another 48 hours.
Main reasoning/argumentation	The Court holds that compulsory placement procedures must comply with the requirements set out in artt. 13, 24 and 111 of the Italian Constitution. As far as possible, Legge n. 36/1904 is to be constructed and applied complying with such requirements. Statutory provisions not susceptible of constitutionally-oriented construction must be annulled.
Key issues (concepts, interpretations) clarified by the case	Compulsory placement of the mentally ill under Legge n. 36/1904 is a measure affecting personal liberty of the person concerned. It must therefore be applied with the <i>habeas corpus</i> and fair trial guarantees enshrined in artt. 13, 24 and 111 of the Italian Constitution.
Results (sanctions) and key consequences or implications	Legge n. 36/1904 is voided where it does not allow defence of the person concerned before the Tribunal and where it allows police to order compulsory placement for more than 48 hours. Other provisions, although in principle justified by the peculiar problems of psychiatric illness, must be applied in the light of the constitutional rules on fair trial and of civil procedure discipline of <i>in camera</i>

of the case	proceedings.
Proposal of key words for data base	Involuntary placement and treatment – Constitutional guarantees – <i>Habeas corpus</i>

See attached file: Corte cost 74-68.pdf.

Case title	Trib. Padova, 05.04.2003
Decision date	05.04.2003
Reference details	<i>Tribunale di Padova, Giudice tutelare</i> [Tribunal of Padua, Guardianship judge]
Key facts of the case	A mayor orders psychiatric TSO in hospital following a rather irregular assessment procedure. The person concerned brings the order to the Guardianship judge's review, before the mayor has informed the Judge of the issuing of the order and even before placement and treatment has begun.
Main reasoning/argumentation	Psychiatric TSO in hospital, from its very beginning, can be very intrusive, heavily infringing upon individual rights and liberties of the concerned person (e.g.: pharmaceutical treatments limiting the concerned person's intellectual capacities). The consequently urgent need for judicial review allows the Judge to examine the order as soon as it is brought under scrutiny, even if this happens on the initiative of the person concerned.
Key issues (concepts, interpretations) clarified by the case	The Guardianship judge may review a TSO order whenever this order is brought to his/her attention, without having to wait for its formal transmission from the mayor.

Results (sanctions) and key consequences or implications of the case	Since it was unsure whether psychiatric assessment had taken place before the order was issued, and also whether symptoms of illnesses had been objectively recognized, the Judge refused to confirm the order, thereby preventing the treatment from beginning.
Proposal of key words for data base	Involuntary placement and treatment – Decision procedure – Judicial confirmation

Attached file: Trib Pd 05-04-03.pdf

Case title	Cass., sez. I, n. 18143/2002
Decision date	13.05-20.12.2002
Reference details	<i>Corte suprema di cassazione, Sezione I civile</i> [Supreme Court of cassation, First civil chamber]
Key facts of the case	Appeal against the Guardianship judge's confirmation of a psychiatric TSO order is filed three years after treatment has taken place. The Tribunal dismisses the belated appeal, but its ruling is challenged, alleging Legge n. 833/1978 fixes no explicit time limit to appeals.
Main reasoning/argumentation	While Legge n. 833/1978 actually sets no time limit to appeals, the general Civil Procedure Code rules on <i>in camera</i> proceedings apply. These include the time limit of 10 days for appeal, starting from the day when the challenged decision is notified (or its execution begins). Questions on the reasonableness of the longer time limit allowed for the mayor's appeal (30 days) are irrelevant, as the appeal under scrutiny was filed much later.

Key issues (concepts, interpretations) clarified by the case	Appeal against the Guardianship judge's confirmation of a psychiatric TSO order, which can be made by the person concerned or by anyone having an interest, must be filed within 10 days of the order notification or the beginning of its execution.
Results (sanctions) and key consequences or implications of the case	The rejection of the belated appeal is upheld.
Proposal of key words for data base	Involuntary placement and treatment – Decision procedure – Judicial confirmation – Appeal – Time limits

Attached file: Cass 18143-02.pdf

Case title	Cass., sez. I, n. 2031/1990
Decision date	25.01.1989-13.03.1990
Reference details	<i>Corte suprema di cassazione, Sezione I civile</i> [Supreme Court of cassation, First civil chamber]
Key facts of the case	A man has recovered from mental illness, although with some lingering defects (hostility against his family; mnemonic, cultural and emotive defects) and with the possibility of relapses. His wife asks for his inabilitation, being concerned that the husband may dissipate his property.
Main reasoning/argumentation	The lingering consequences of the past illness are not sufficient ground for inabilitation. It has been assessed, according to expert witness, that the person concerned has recovered from the past illness. Lapses are still possible, but it does not appear that any lapse actually took place: should this happen, a new application for interdiction or inabilitation will be allowed; moreover, single decisions

	made by the person concerned are still open to challenge under art. 428 of the Civil Code.
Key issues (concepts, interpretations) clarified by the case	Interdiction and inabilitation may apply only when there is evidence of a present mental illness. Past mental illnesses are not relevant, if the patient has recovered, and neither is the mere possibility of lapses, unless there is a high probability of these happening.
Results (sanctions) and key consequences or implications of the case	The appellate ruling, which had rejected the application, is upheld.
Proposal of key words for data base	Guardianship – Interdiction – Requirements – Mental health

Attached file: Cass 2031-90.pdf

Case title	Cass., sez. I, n. 11131/1991
Decision date	11.04-21.10.1991
Reference details	<i>Corte suprema di cassazione, Sezione I civile</i> [Supreme Court of cassation, First civil chamber]
Key facts of the case	An appellate ruling is challenged for having made the person concerned subject to inabilitation only, and not interdiction.

Main reasoning/argumentation	The appellate ruling has decided for inabilitation, and not interdiction, while there was evidence of the person concerned being unable to care for his own interests, both personal and economic. No clear explanation has been given for this decision.
Key issues (concepts, interpretations) clarified by the case	1) Interdiction and inabilitation do not require any typical mental pathology; any mental alteration may be ground for them, if it renders the affected person totally or partially unable to care for his/her own interests; 2) incapacity to care for one's own interests also concerns personal (non economic) interests, whenever they can be damaged by legal acts and therefore need to be cared for by a guardian.
Results (sanctions) and key consequences or implications of the case	The appellate ruling is quashed. Decision is referred to another chamber of the same Court of appeal, which will be bound to the Court of cassation's findings.
Proposal of key words for data base	Guardianship – Interdiction – Requirements – Mental health Guardianship – Interdiction – Need for protection – Personal interests

Attached file: Cass 11131-91.pdf

Case title	Cass., sez. I, n. 13584/2006
Decision date	04.04-12.06.2006
Reference details	<i>Corte suprema di cassazione, Sezione I civile</i> [Supreme Court of cassation, First civil chamber]

Key facts of the case	A lawyer falls ill of encephalitis and, after a long coma, becomes totally incapable of caring for his own interests. It is questioned whether he should be subject to support management or interdiction: the appellate ruling decides for the latter, on consideration of the absolute lack of autonomy of the person concerned.
Main reasoning/argumentation	The 2004 reform made support management the rule, and interdiction the exception: the former, also due to its flexible structure, applies in a variety of situations, including complete inability to care for one's own interests. In these cases, the choice between support management and interdiction depends on which measure is more effective, under the specific circumstances, to afford adequate protection to the concerned person's interests.
Key issues (concepts, interpretations) clarified by the case	When someone is totally unable to care for his/her own interests, the choice between support management and interdiction depends on protective efficacy: support management is to be preferred when simple interests are at stake, their management does not involve special difficulties and the person concerned is not likely to interfere with it; interdiction shall only apply when the person concerned has more complex interests or it is necessary to prevent him/her from performing detrimental acts.
Results (sanctions) and key consequences or implications of the case	The appellate ruling is upheld, but its grounds are corrected: interdiction is to be preferred in consideration not only of the concerned person's mental conditions, but also of the complexity of his economic interests, due to his former profession.
Proposal of key words for data base	Guardianship – Interdiction – Requirements – Mental health – Need for protection

Link: <http://www.altalex.com/index.php?idnot=10523>

Case title	Cass., sez. I, ord. n. 8291/2005 (Englaro Case)
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Decision date	03.03.2005-20.04.2005
Reference details	<i>Corte suprema di cassazione, Sezione I civile</i> [Supreme Court of cassation, First civil chamber]
Key facts of the case	This highly debated case concerns a woman who, after a car crash, has been lying for many years in permanent vegetative state. Her father, acting as her guardian, requests interruption of artificial life support to be authorized, alleging that his daughter, prior to the accident, had expressed opposition to this kind of treatment. The Tribunal and the Court of appeal reject the application.
Main reasoning/argumentation	The application has not been notified to anyone. This is allowed (the proceedings may have a single party) when it is clear and unquestionable that the application suits the applicant's interests. However, when highly personal questions are at stake, such as those concerning ethics and beliefs on life and death, the guardian is not entitled to make decisions for the ward and, on the contrary, a conflict of interests may arise.
Key issues (concepts, interpretations) clarified by the case	Whenever the interests of the ward and the guardian may conflict – as is the case with decisions on the interruption of artificial life support, entailing very personal evaluations on life and death issues – a special curator must be appointed to be a party in the relevant proceedings, besides the guardian.
Results (sanctions) and key consequences or implications of the case	The appellate ruling had rejected the application on substantive points of law. This ruling is upheld, as the application for cassation of the appellate ruling is rejected on procedural grounds: no special curator having been appointed, no notification to him/her was made (proceedings continue after the appointment of a special curator; see above, Cass., sez. I, n. 21748/2007).
Proposal of key words for data base	Guardianship – Interdiction – Guardian – Highly personal acts – Consent to medical treatment – Refusal of artificial life-support

Link: <http://www.altalex.com/index.php?idnot=9551>

Case title	Corte cost., n. 306/2008
Decision date	29-30.07.2008
Reference details	<i>Corte costituzionale</i> [Constitutional court]
Key facts of the case	In 2002, access to attendance allowance for non-EU residents was restricted to those having a long-term residence permit – for whose issuing specific income requirements are set out. These income requirements are challenged, as they infringe on art. 2-3, 32 and 38 of the Italian Constitution and on the right to equal treatment with regard to social security and welfare enshrined in ILO Conventions nn. 97 and 143.
Main reasoning/argumentation	The national legislator may discipline and limit the right of non-EU nationals to live and work in Italy; it may also limit the access to non-urgent welfare measures to long-term residents. However, when a long-term residence permit has been issued, the person concerned should not suffer unreasonable discriminations, particularly with regard to measures designed to support fundamental rights.
Key issues (concepts, interpretations) clarified by the case	It is unreasonable and discriminatory to make the right of non-EU long-term residents (only) to obtain attendance allowance subject to specific income requirements.
Results (sanctions) and key consequences or implications of the case	The challenged provisions are voided, whereby they exclude non-EU residents from access to attendance allowance when they do not meet the income requirements set out for issuing a long-term residence permit.
Proposal of key words for data base	Disability – Preferential treatment – Non-EU residents – Personal care allowance

See attached file: Corte cost 306-08.pdf.

Case title	Corte cost., n. 11/2009
Decision date	14-23.01.2009
Reference details	<i>Corte costituzionale</i> [Constitutional court]
Key facts of the case	Access to civil invalidity pension for non-EU residents has been restricted to those having a long-term residence permit – for whose issuing specific income requirements are set out. These income requirements are challenged, as they infringe on art. 2-3 of the Italian Constitution and on the right to equality under art. 14 ECHR.
Main reasoning/argumentation	The same reasoning behind judgment n. 306/2008 applies to the case. The challenged restrictions are even more unreasonable, as they set out income requirements for benefits which in their turn are reserved to persons having an income lower than a certain threshold.
Key issues (concepts, interpretations) clarified by the case	It is unreasonable and discriminatory to make the right of non-EU long-term residents (only) to obtain civil invalidity pensions subject to specific income requirements.
Results (sanctions) and key consequences or implications of the case	The challenged provisions are voided, whereby they exclude non-EU residents from access to civil invalidity pension when they do not meet the income requirements set out for issuing a long-term residence permit.

Proposal of key words for data base	Disability – Preferential treatment – Non-EU residents – Civil invalidity pension
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See attached file: Corte cost 11-09.pdf.

Case title	Corte cost., n. 454/1998
Decision date	16-30.12.1998
Reference details	<i>Corte costituzionale</i> [Constitutional court]
Key facts of the case	The national provisions on the status of non-EU workers do not include the right of these persons to benefit from the quota system established for disabled persons under Legge n. 482/1968. This exclusion is challenged, as it seems incompatible with artt. 2-3 of the Italian Constitution and art. 10 of ILO Convention n. 143.
Main reasoning/argumentation	The exclusion of non-EU nationals from the quota system is only apparent. Art. 2 of Decreto legislativo n. 286/1998 establishes a general equality principle for Italian citizens and non-EU nationals who have been permitted to live and work in Italy. Exceptions may be set out by specific law provisions, but no exception has been established with regard to the quota system, which is besides a corollary of the right to assistance and access to work enshrined in art. 38 of the Italian Constitution.
Key issues (concepts, interpretations) clarified by the case	Non-EU nationals who are granted a permit to live and work in Italy have, in principle, the same civil and social rights of Italian citizens. Exceptions – open to judicial review by the Constitutional court – may be set out, but none is explicitly provided with regard to the quota system for the employment of disabled persons.

Results (sanctions) and key consequences or implications of the case	The challenged provisions are upheld and their incompatibility with the Constitution is denied, provided they are constructed as the Constitutional court suggests.
Proposal of key words for data base	Disability – Preferential treatment – Non-EU residents – Employment quota system

See attached file: Corte cost 454-98.pdf.

Case title	Cass., sez. lav, n. 24170/2006
Decision date	19.10-13.11.2006
Reference details	<i>Corte suprema di cassazione, Sezione lavoro</i> [Supreme Court of cassation, Employment chamber]
Key facts of the case	A disabled resident, of Albanian citizenship, complains against the refusal of the competent office to grant him access to the employment quota system established by Legge n. 68/1999 also with regard to employment in public offices. While the first instance judge allows the claim, the appellate judgment finds that Italian citizenship is a requirement for employment in public offices and bodies and that this also applies to the quota system for the employment of disabled persons.
Main reasoning/argumentation	Italian citizenship is required for employment in public offices by specific rules, which have force of law and have not been repealed by the general equality principle enshrined in art. 2 of Decreto legislativo n. 286/1998 for foreign workers legally resident in Italy. This requirement is compatible with the Italian Constitution and international law, as employment in public offices has significant peculiarities and the right to work for public employers is no fundamental right.

Key issues (concepts, interpretations) clarified by the case	Italian citizenship – or EU citizenship, with some exceptions – is a requirement for employment in public offices and bodies. This requirement is not incompatible with constitutional and international principles, account taken of the peculiarities of this type of employment, and also applies to employment under the quota system established for disabled persons by Legge n. 68/1999.
Results (sanctions) and key consequences or implications of the case	The appellate ruling is upheld.
Proposal of key words for data base	Disability – Preferential treatment – Non-EU residents – Employment quota system – Employment in public offices

File attached: Cass 24170-06.pdf