



Anti discrimination Law In Italy: Five Years Later¹

Angelo D. Marra

Università Mediterranea di Reggio Calabria

1 Introduction

This paper examines the development of case law regarding protection of disabled people from discrimination in fields other than employment in Italy. The Italian legal system has two main anti-discrimination laws: the Decreto Legislativo 216/2003 and Law no. 67/2006. The Decreto Legislativo was enacted to implement the EU Framework Directive 2000/78. The EU Directive establishes a general framework on equal treatment in employment and occupation. Law 67/2006 was enacted to provide protection from discrimination for disabled people in all aspects of their lives not covered by the EU Directive.

This paper is about law no. 67/2006. Law no. 67 provides protection through several remedies including injunctions and damages. This law was approved by the Parliament on the 1st of March 2006. It is worth to examine how it has been applied in 5 years of its existence. In order to do so, the most significant cases that arose out of this law will be considered.

2 Types of discrimination

The law covers three forms of discrimination: *direct discrimination*, *indirect discrimination* and harassment. *Direct discrimination* occurs when, for a disability-related reason, a disabled person is treated less favorably than a non disabled person in the same situation is (or would have been) treated. *Indirect discrimination* occurs when a criterion, a behavior, or a regulation places a disabled person at a position of disadvantage compared to other people. *Harassment* and undesirable behaviors which are motivated for reasons connected to

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the disability, violating the dignity and the freedom of the person with the disability, or creating an intimidating climate or hostility towards the disabled person are considered discriminatory.

3 Available remedies

If discrimination is recognized by the Judge, the Judge can order:

- Damages to be paid to the claimant, if a claimant asks for them. These damages can be moral damages as well. These damages can cover the fact that the person being discriminated, because of the discrimination, can't do things on an equal basis with others.
- The ongoing discrimination to be terminated.
- The judge can adopt, or order to adopt, any other provision or behavior needed, according to the circumstances, to remove the consequences of the discrimination.
- The adoption of a plan to remove the recognized discriminations within a fixed time (given by the judge in the decision). This kind of remedy is useful when the discriminations are extended and therefore not possible to eliminate all of them through a single act. These cases may require long term planning. For example if the judge finds a number of rails stations accessible. In this case, the adoption of a plan with the intent for modifying the stations to be accessible is most likely to be the most useful solution, as it is not possible to modify simultaneously all the stations.
- The judge can also order that the court decision on the discrimination be published once in a daily newspaper (local or national) in the territory in which the discrimination occurred.

4 The Recent Cases

i. Cases in which discrimination has been recognized

The Tribunal of Milan on the 01/10/2011 recognized that; not to give a supporting teacher to disabled students puts the disabled student at a position of disadvantage in learning and this amounts to indirect discrimination against such a student. This pronouncement is consistent with the Article 24 of the CRPD (Convention on the Rights of Persons with Disabilities), which guarantees disabled people a right to education without discrimination and on the basis of equal opportunities. The Tribunal decision on this case is also consonant with the Constitutional Court decision 80/2010, which declared that the right to education is not negotiable. Therefore, the Tribunal has affirmed that providing a supporting teacher to a disabled student is a means of to enable such a student enjoy a right to education. The enjoyment of a right to education should not be restricted because of financial constraints. Providing a supporting teacher is the means to obtain a right to education for a disabled student. Therefore, such a teacher is to be granted to the student regardless of financial constraint in order to obtain equality of education. As already stated, in this case, the judge established existence of indirect discrimination, Therefore he ordered to cease discrimination against disabled pupils granting them with the proper amount of supporting teaching hours. I argue that, this court decision is important in two ways. Firstly, the judge issued the order to a public authority (*i.e.* the Department of Education). This is normally not the case because in Italy public authorities are judged by administrative courts. This case went in front of civil tribunal because discrimination issue was arising and the judge in court was a civil tribunal, and normally in civil courts in Italy, a civil tribunal can not judge public administration, while in this case, because it is a discrimination case, the judge in court was from a civil court.

Secondly, this case is very relevant, as one of the parties promoting the procedure was a NGO of disabled people, which is possible under Italian law number 67/2006. This has been the very first time an NGO has used this possibility. It is one of the good points of national Italian law that NGOs can act as claimants, which is not common in Europe.

In this case, the judge declared that the public Authority (i.e. the Department of Education) should be responsible for getting teachers into the school and maintain appropriate numbers of teachers amongst students. Therefore the judge ordered a plan to remove the discrimination to be adopted.

Before this case, there had been some cases recognizing discrimination.

On the 04/06/2009, the Tribunal of Taranto, section Martina Franca, recognized that a disabled person had been discriminated against during the examination to enter the Bar. The tribunal recognized as discriminatory the following: that the candidate received the civil code, in paper format, well after the beginning of the examination, the fact that the table on which the candidate had to write his paper was too high to be used with comfort from a wheelchair and the fact that there were no policeman to facilitate the candidate during the act of entering the building, which was in fact inaccessible. In this case the judge awarded the claimant 4000 Euros as damages.

In the case of the Tribunal of Tempio Pausania 20/09/2007, the judge condemned a sailing club to pay 4000 Euros as damages. In that case the discrimination occurred because the sailing club prevented a wheelchair user from accessing his own boat. Moving the boat from the usual stand and preventing the owner of the boat from putting a hoist near the boat itself, where the hoist was needed to let the person move from the chair into the boat. In this case, the judge awarded the claimant 4000 Euros as damages (the judge multiplied the club fee by a hundred, leading to 4000 Euros).

The Tribunal of Catania, in the decision of 11/01/08, declared that architectural barriers in the classroom, as they prevented a disabled student to move within the classroom due to lack of space, were to be considered discrimination against the disabled student. In this case, the claimant was awarded 400 euros as damages.

ii. Cases in which discrimination has not been recognized

In case 09/09/2009 (Tribunal of Milan), the judge decided that the new bridge on the Canal Grande in Venice was inaccessible for disabled people. Despite the existing laws about accessibility, it was not to be considered discriminatory. In fact the existing laws, which this judge argued provide a notion of accessibility emphasizing the urban context. Because of this emphasis on the context, the judge did not recognize discrimination: he argued that the discrimination did not occur because it was possible to go from one side of the river to the other, using boats near by the bridge. As a result the judge argued, the bridge itself (even if it was inaccessible) was not putting disabled people at disadvantage therefore discrimination was not occurring. When reading this decision one can argue that, interpreting accessibility in its broad meaning does not imply that the access to the urban context is granted at a whole if single buildings are inaccessible. In other words, accessibility in the urban context must imply that accessibility should be granted both to single buildings and the urban context.

In another case (251/2008), the Constitutional Court decided that obliging disabled customers in a cinema to sit in a predetermined place was not to be considered as discrimination. The argument underpinning the decision was that this arrangement was to be justified because of health and safety reasons.

5 Conclusions

These cases provide evidence of individual right for disabled people not be discriminated against. This right is stated at international level by the CRPD and domestically by law no 67/2006. These cases also show how national Italian courts are beginning to use and interpret the new concept to Italian jurisdiction. Today, behaviors and situations which prevent disabled people from having an ordinary life, find several responses in Italian jurisdiction. On one hand the awarding of damages, and on the other side, the increasing attention demonstrated by judges for daily activities prove that within the Italian law it is not possible to perform any discrimination which disadvantage disabled people it is also important to stress on the vital role NGOs in promotion of equality for people with disabilities in the litigation process. Whereas significant developments demonstrated by the cases examined in this paper, the protection of disabled people against discrimination appears new to Italian context and it is therefore too early to judge its effectiveness in practice.

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