**ITALY**

***Ministry of Foreign Affairs and International Cooperation***

*Inter-ministerial Committee for Human Rights*

*Comitato Interministeriale per i Diritti Umani*

**ITALY’S CONTRIBUTION**

**TO THE QUESTIONNAIRE ON GOOD PRACTICES**

**TO ENSURE EFFECTIVE ACCESS TO JUSTICE FOR PERSONS WITH DISABILITIES**

***August 2019***

**ITALY’S REMARKS**

**Introduction**

Italian Authorities thank the Special Rapporteur on the rights of persons with disabilities and want to provide the following information on good practices taken in Italy to ensure effective access to justice for persons with disabilities.

1. **Please provide information on any existing good practices in legislation, policies and/or institutional measures taken in your country to ensure effective access to justice for persons with disabilities on an equal basis with others, as required by article 13 of the Convention of the Rights of Persons with Disabilities.**
2. **Please provide information on any existing good practices in place in your country, including strategies and guidelines, to facilitate the direct or indirect participation of persons with disabilities in judicial and other legal proceedings (e.g., as concerned parties, witnesses, jurors, judges, lawyers, experts) including in the areas of:**

* **Recognition of the right to legal standing;**
* **Accessibility and access to information;**
* **Procedural, gender- and age-appropriate accommodations; and**
* **Provision of legal aid.**

1. **Please provide information on any existing good practices in jurisprudence in your country related to the effective access to justice for persons with disabilities.**

Italy has ratified the United Nations Convention on the Rights of Persons with Disabilities and its Optional Protocol with Law no. 18, 3 March 2009, implementing them at the national level. In particular, art. 13 of the Convention regulates the 'access to justice' for persons with disabilities by stipulating that *“The Parties will ensure effective access to justice for people with disabilities, on the basis of equality with others, including through the provision of appropriate procedural accommodations or age-appropriate accommodations, in order to make their role effective as direct and indirect participants, including the role of witnesses, at all stages of the legal process, including the phase investigation and the other preliminary steps*.” In more detail, Italian jurisprudence uses the UN Convention for the interpretation of internal rules and the strengthening of the rights of people with disabilities (even the Constitutional Court refers to this Convention; former multis, v. Court Cost. No. 275 in 2016). The impact that the Convention had on the internal system also affected the matter of the proceedings. For example, the case law of merit (Trib. 27 November 2010) and the Court of Cassation (Cass. Referred to the Convention under consideration, Civ., No. 10374 in 2013), have developed the concept of so called ‘forum conveniens’ interpreting the internal provisions of reference in the sense that, in the hypothesis of protective measures for the disabled or vulnerable adult, competence is rooted in the place where the weak person actually resides. This approach aims to ensure the maximum access of the disabled to justice by establishing that the reference court, for the purposes of legal protection, is that of proximity, the closest to the vulnerable adult. The area referred to is certainly the key to ensuring vulnerable people access to justice. Italy, on the point, has developed a series of protections to be considered at the forefront in Europe. In fact, for the person who has a disability, the legal system offers classic protective tools such as interdiction and inability and innovative protective measures such as support administration (art. 404 ss. civil code). This measure of protection has extraordinary flexibility but, above all, allows action to ensure that the person with disabilities can in practice exercise rights and have access to justice. Assuming that the disabled persons, because of disability, can no longer exercise rights that do not allow representation, it would in fact be established that these persons "lose" these subjective legal situations because "if there is no exercise there is not even ownership”. Precisely on that point, Italian jurisprudence has worked hard to remove any obstacle to access to justice for the disabled, especially in the area of fundamental rights. According to the legal system under reference (articles 125, 127, 428 of the civil code), the disabled person who is in marriage, perhaps forced or instrumental in exploitation, is in fact in a situation that precludes the exercise of rights that would guarantee access to justice, such as the appeal bond.

On this side, the case law has intervened, believing that such a *vulnus* can be averted or limited, "referred to a systematic and evolutionary interpretation that allows the possibility for the support administrator, if appointed (and excluding cases of conflict of interest), to assist the person in need in the expression of his will, preserving him from any external pressure, even in relation to the carrying out of very personal acts, as considered by a case law of advanced merit that authorized him, with the intervention of the Court, to appeal for personal separation or for termination of the civil effects of the marriage of the beneficiary” (Cass. 14794 in 2014; Cass. Civ. 11536 in 2017). What has been said is that the Italian system has opened up to the institution of the so called *replacement representation* for the exercise of any right of the person with disabilities, even the application for personal separation or divorce (see Cass. Civ. 2183 cdl 2013; Cass. Civ. 9582 of 2000) or actions for the exercise of the right to care or to refuse treatment (see the leading case Cass. 21748 in 2007). This is a decisive point in the protection of vulnerable people: ensuring access to justice by providing replacement mechanisms for the exercise of protection actions with the intervention of the judicial authority.

The support administration is therefore one of the most important measures to ensure the vulnerable person's access to justice. It is a protection regime designed to 'not minimize the rights and possibilities of initiative of the disabled person', if involved in proceedings. This is the case with art. 4, paragraph 5, Act 898/1970: in the divorce proceedings, the Court may appoint the defendant as a special curator when he appears not capable of understanding and wanting. In these cases, access to justice for the disabled person is guaranteed by the judicial authority, appointing a curator in the process to assist, represent and defend him. These are positive measures of intervention on behalf of the disabled persons so that they are effectively able to access the public service of justice.

Another positive measure of interest regards the cost of access to justice. In particular, there is a favourable treatment (with a reduction in the cost of the unified contribution) for those who have to take legal action in order to establish a dispute over compulsory pension and assistance (Article 9, Decree of the President of the Republic No. 115, 2002): these are disputes typically introduced by older people to gain recognition of their disability. A similar measure, of a procedural type, is that of art. 152 of the provisions implementing the Code of Civil Procedure where (with certain conditions) the exemption from payment of expenses, competences and fees in judgments for social security benefits is provided. In this context, there is also the legal aid provided by the above mentioned Decree of the President of the Republic No. 115, 2002 for the underprivileged: the disabled person who does not reach a sufficient income to support the costs of the process (according to the threshold established by the law) can access to the institution of legal aid and the State will sustain any costs.

In the context of measures to ensure access to justice, it seems necessary to include regulatory instruments that aim to break down architectural barriers. Only full freedom of movement can ensure that the persons with disabilities effectively exercise their rights.

Law no. 13 of 1989 bearing "Dispositions to facilitate the overcoming and removal of barriers " aims to overcome architectural barriers to ensure quality levels of housing affordability. A further tool for protecting people with disabilities is certainly the anti-discrimination action referred to in the Law no. 67 of 2006, which states "Measures for the judicial protection of people with disabilities who are victims of discrimination". In this case, access to justice is regulated ad hoc to ensure the protection of disabled from discrimination. This legislation allows the person with disabilities to rise up against any kind of discrimination, be it direct or indirect. There is direct discrimination when, for reasons related to disability, a person is treated less favourably than is, has been or would be treated as a non-disabled person in a similar situation. Indirect discrimination occurs when a provision, criterion, practice, act, pact or seemingly neutral behaviour puts a person with disabilities at a disadvantage compared to other people.

1. **Please provide information on any existing good practices in your country to promote access to effective remedies and reparations in cases where the rights of persons with disabilities have been breached.**

Against stereotypes and prejudices, relevant is the above mentioned Law no. 67 of 2006, which states: 'Measures for the judicial protection of people with disabilities who are victims of discrimination', published in the Official Journal no. 54 of 6 March 2006.

This law is a protection both inhibitory and compensatory. If, in fact, discrimination is established, the Court may:

* if the applicant requests to sort compensation for damages - even non-assets - from discrimination, that is the result of not being able to do something like the others;
* order an end to discrimination, if it is still ongoing;
* in accordance with the circumstances, adopt any other measures that should be taken to remove the effects of discrimination.

The hypotheses of discrimination against which it is possible to react by appealing to the Tribunal are the direct one (which determines less favourable treatment for reasons related to disability) and the indirect one (in which a seemingly neutral fact puts person with disabilities at a disadvantage compared to others). In addition, it is also possible to react with the same tool against harassment and, in general, against all those behaviours put in place for reasons related to disability, which violate the dignity and freedom of a person with disabilities or create a climate of intimidation, humiliation and hostility.

1. **Please provide information on any innovative initiatives that have been taken in your country to promote and ensure effective access to justice for persons with disabilities.**

A fundamental novelty is the establishment in 2018 of both the Minister for Family and Disabilities and the Mission Structure for policies in favour of people with disabilities, which ensures the necessary fulfilments for the implementation of interventions related to the enforcement of policies aimed at guaranteeing the inclusion and the promotion of the rights of persons with disabilities and also equal access to judicial protection in coherence with the United Nations Convention on the rights of persons with disabilities and the Charter of Rights of the European Union.

**Conclusions**

Italian Authorities take this opportunity to reiterate their firm willingness to continue cooperating with all relevant UN Special Procedures, mechanisms and bodies.