**

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

***Inter-ministerial Committee for Human Rights***

***Italy’s contribution to the Questionnaire***

***on the rights of older persons with disabilities***

*April 2019*

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**Italy’s contribution to the Questionnaire**

**on the rights of older persons with disabilities**

1. **Please provide information on the legislative and policy framework in place in your country to ensure the realization of the rights of older persons with disabilities, including both persons with disabilities who are ageing and older persons who acquire a disability**

The protection of persons with disabilities who reach the age of senility and of persons who, only in old age, acquire a condition of disability, derives, in Italy, from the "combined" of laws concerning disability - some of which specifically addressed to the elderly with disability - and a widespread welfare system. In this perspective, the following normative references should be considered cornerstones of the legislative framework.

As a result of the Law 8 August 1995, No. 335, at the age of 65 (from 2018 raised to 66 years and 7 months and from 2019 to 67 years) the disability pension, the monthly allowance, or the pension for the deaf cease, being paid in replacing the social allowance. The pension for absolute blinds and the pension for partial blinds are not transformed into social allowances: they are paid even after the age of 65 and 7 months of age.

Law 11 February 1980 No.18 set the accompaniment allowance, an important instrument of protection for persons with disabilities in general - including those in old age - consisting in a State financial support paid by the National Welfare Social Institute (INPS) and intended for people declared totally invalid and / or unable to walk without the help of an escort or unable to perform the daily acts of life.

The expression "and / or" depends precisely on the fact that while for people between the ages of 18 and 65 it is necessary for a degree of civil disability equal to 100% to be certified, for minors and people over 65 this percentage is not necessary, not being able to demonstrate and presume from the above a capacity for work. Consequently, in the case of the elderly, for the purpose of recognizing the indemnity it is sufficient that they have difficulty walking on their own or need continuous assistance because they are unable to carry out the common acts of everyday life on their own. The accompanying allowance is paid to the person for 12 monthly installments, regardless of his and his family unit income and it is not taxed.

The law for assistance, social integration and the rights of persons with disabilities (Law No. 104 of 5 February 1992 as amended by the Law 8 March 2000, No. 53, Law 4 November 2010, No. 183 and by the Legislative Decree 119 of 18 July 2011), constitutes the main source of legislation on paid work permits. Article 33 defines the benefits granted to family members who assist a person with disabilities in a serious situation, including assistance to the elderly with a disability within their family unit.

The administrative organization of competences for social welfare policies is regulated in Italy by the Constitutional Law 18 October 2001, No. 3 (Article 3) which reformed Title V of the Constitution of the Italian Republic and Article 117: the central government determines the essential levels of the services relating to civil and social rights. According to the Framework Law for the realization of the integrated system of interventions and social services, no. 328 of 8 November 2000, the planning and organization of an integrated system of interventions and social services is the responsibility of local authorities, Regions and the State, through multiple funding which they contribute, according to differentiated competences and with financial allocations pertaining to the respective budgets. The Regions, according to their competences, provide for the allocation of funding allocated by the State for objectives and sector interventions, as well as, in a subsidiary form, to co-finance interventions and social services deriving from regional transfer provisions to local authorities. The costs of activating interventions and social services in favour of the person and the community are the responsibility of the individual and associated municipalities.

Finally, the Decree of the President of the Council of Ministers of the 12 January 2017, updates the essential levels of assistance and defines the services that the National Health Service guarantees for patients with disabilities. In particular:

1. the supply of single-use medical devices to the assisted tracheostomised, ileostomised, colostomised and urostomised patients, who permanently require catheterization, to patients suffering from severe chronic urinary or faecal incontinence, and to patients suffering from severe chronic disease that requires lodging (Article 11);
2. health services that involve the supply of prostheses, orthoses and technological aids within the framework of a rehabilitation-assistance plan aimed at the prevention, correction or compensation of impairments or functional disabilities resulting from diseases or injuries, to the enhancement of residual abilities, as well as the promotion of the assistants autonomy (Article 17);
3. to people with complex disabilities, in the area of direct access to district and territorial assistance, multidisciplinary care and the development of an individualized therapeutic and rehabilitation program differentiated by intensity, complexity and duration, which includes services, including home care, specialized, diagnostic and therapeutic, psychological, psychotherapeutic and rehabilitative medical, through the use of methods and tools based on the most advanced scientific evidence, necessary and appropriate. This assistance is supplemented by social interventions in relation to the social-assistance need that emerged from the assessment (Article 27);
4. intensive residential care treatments and functional maintenance, with a high health commitment, for people with non-acute pathologies who, due to their high level of complexity, clinical instability, difficult-to-control symptoms, need for support to vital functions and / or serious disability, require continuity assistance with prompt medical availability and 24-hour nursing attendance. The treatments, not payable at home or in other less intensive care settings, are provided through the use of methods and tools based on the most advanced scientific evidence and consisting of professional medical, psychological, rehabilitation, nursing and tutoring services, assessments diagnostics, pharmaceutical assistance, supply of preparations for artificial nutrition and medical devices (Article 29);
5. in the field of semi-residential and residential care, people of all ages with physical, mental and sensory disabilities, rehabilitation treatments using methods and tools based on the most advanced scientific evidence, intensive, extensive and maintenance based upon evaluation multidimensional, taking charge and individual rehabilitation project (PRI) that defines the methods and duration of the treatment (Article 34);
6. in hospitalization, for non-assisted day-hospital or non-hospital people, intensive care rehabilitation services aimed at the recovery of disability in the phase immediately following an ordinary hospitalization for acute cases or an episode of exacerbation of a disease disabling, as well as extensive rehabilitation services and post-acute long-term care services for persons with disabilities who are not self-sufficient (Article 44).
7. **Please provide information on discrimination against older persons with disabilities in law and practice**

On 6 March 2006, the law concerning the measures for the judicial protection of persons with disabilities victims of discrimination came into force (Law 1 March 2006, No. 67). The need underlying the aforementioned law lies in defining and recognizing discriminatory behaviour against persons with disabilities and providing protection for the victims of such practices through an ad hoc sanctioning system. This legislation allows the elderly person with disabilities to rise up against any kind of discrimination, be it direct or indirect. There is direct discrimination when, for reasons connected with disability, a person is treated less favourably than a non-disabled person in a similar situation has been or would be treated. Indirect discrimination occurs when an apparently neutral provision, criterion, practice, act, pact or behaviour puts a person with disabilities at a disadvantage compared to other people. This instrument of action has great potential and the jurisprudence of merit has broadened its scope of application. For example, the Court of Rome, in June 2018, ordered a transport company, which takes care of the movements from the train station to the airport, to activate accessible vehicles for persons with disabilities, at the time of the unexpected events. On the subject, it’s worth pointing out that a research by LEDHA[[1]](#footnote-1) (League for the rights of handicapped persons) carried out in June 2018, showed that discriminatory behaviours occur daily and involve various aspects of the life of the person with disabilities. And from the same research, it can be seen that the areas at greatest risk, where the victims are also elderly with disabilities, are: access to social and health and social services; legal capacity; the presence of architectural barriers; the assessment of disability; mobility; prostheses and aids, as well as pension protection.

However, based on the data received at UNAR (National Anti-Racial Discrimination Office), in the 2016-2018 three-year period, the number of reports of cases involving a person with a disability aged 65 or over is very small and residual.

1. **Please provide information and statistical data (including surveys, censuses, administrative data, literature, reports, and studies) related to the realization of the rights of older persons with disabilities in general, as well as with particular focus in the following areas:**

* **Exercise of legal capacity;**
* **Admission procedures to social or healthcare services, including involuntary admissions;**
* **Older persons with disabilities living in institutions;**
* **Access to support to live independently in the community;**
* **Access to free or affordable healthcare:**
* **Access to free or affordable rehabilitation goods and services;**
* **Access to social protection schemes; and**
* **End of life and palliative care.**

According to data collected by the Italian National Institute of Statistics (ISTAT), over two and a half million people in Italy live in conditions of disability: 4.8% of the total population, 44.5% in the age group over 80 years old.

Information and statistical data (including surveys, censuses, administrative data, literature, reports, and studies) related to the realization of the rights of older persons with disabilities in general are available on the website www.disabilitaincifre.it of ISTAT, resulting from the monitoring of several institutional sources and censuses. Additional databases are available in the archive at the link <https://www.istat.it/it/archivio/disabili>.

Regarding the procedures for admission of persons with disabilities to social and health care services, Article 14 of Law 328 of 2000 states that to achieve the full integration of persons with disabilities referred to in Article 3 of Law 104/92, the municipalities, in agreement with the local health units, prepare, at the request of the interested party, an individual project. It includes, in addition to the diagnostic-functional evaluation, the care and rehabilitation services to be paid by the National Health Service, personal services to which the municipality provides a direct or accredited form, with particular reference to the recovery and social integration, as well as the economic measures necessary for overcoming the conditions of poverty, marginalization and social exclusion. In the individual project the potential and the possible support for the family nucleus are defined.

See Annexes 1 and 2 for data on Elderly treated in integrated home care and Residential and semi-residential health facilities for the elderly.

1. **Please provide information on the existence of long-term care services in your country and describe to what extent they promote the autonomy and independence of older persons with disabilities.**

In Italy the institutionalization rate of the elderly is significantly lower than the European average.

Several alternative housing models to traditional shelter structures have been adopted: especially in the northern regions, in fact, the development of interventions aimed at the redevelopment of houses is reported in order to make them suitable for the lives of the elderly, with the spread of protected housing and solutions for independent living, as well as contractual forms of equal aid.

In Italy, financing and provision of care services are divided between municipalities, regions, national health service and INPS. The main component of public services for the non-self-sufficient elderly and their families is in fact represented by the monetary transfers that INPS provides in the form of accompanying compensation.

To cover socially significant costs and to support both the autonomy of the non self-sufficient person and his family, the National Fund for non self-sufficiency (FNA) and the Directorate General for the fight against poverty and social planning of the Ministry of Labor and Social Policies manages the procedures relating to the division of labor to guarantee the implementation of the essential levels of welfare benefits throughout the national territory (Article 1, paragraph 1264, of the Law of 27 December 2006, No. 296).

As per Decree of the Minister of Labor and Social Policies and of the Minister of the Family and Disabilities, in conjunction with the Ministry of Health and the Ministry of Economy and Finance, the resources allocated each year by law are allocated to the regions budget for the coverage of socially and health-related costs of social relevance. The resources are additional and for services that are complementary to health services.

By decree of the Ministry of Labor and Social Policies in agreement with the Ministry for the Family and Disabilities a Fund called “Dopo di Noi” ("After Us") was established for the progressive taking in care of persons with severe disabilities, even during their existence in life of parents if these are elderly, or unable to provide adequate support, or missing. The Fund ensures the assistance, care and protection measures of Law No. 112 of 22 June 2016 “*Provisions for assistance in favor of persons with severe disabilities without family support*”.

The National Programme on care services for early childhood and dependent elderly people(*Programma Nazionale di Servizi di cura alla prima infanzia e agli anziani non autosufficienti*) started in 2013 as part of the National Programme for Action and Cohesion (PAC). It is coordinated by the Department for Family Policies together with Ministry of Labour and Social Policies, and is addressed, among others, to older persons over 65 who are not self-sufficient.

Regarding the services for elderly, the Programme is aimed at:

* Increasing the assistance to elderly persons for home care, by ensuring an adequate level of social and welfare services;
* Increasing and improving the quality of residential and semi-residential services for elderly people;
* Improving managers’, professional operators’ and family careers’ expertise;
* Experimentation of innovative MoUs for the customized assistance of vulnerable elderly people, by supporting the integration among the different administrative sectors in charge of social and health services.

Under the Programme, 201 social districts (*ambiti territoriali*) – organized in groups of municipalities - have been funded, for a total amount of 264 million euros in four Regions in Southern Italy (Campania, Apulia, Calabria and Sicily) for the period 2013-2019. As of March 2019, a total amount of 12.100.000 hours of home, health and social care for the elderly have been financed. The Programme will end in June 2020.

In December 2017, the Department for Family Policies published on its website a Public Call for Proposals for the promotion and financing of projects on family policies, including also projects dedicated to elderly people. Indeed, one of the intervention areas was called “active ageing and solidarity between generations” and includes projects for the: *a)* integration and intergenerational exchange through the inclusion of elderly people; *b)* promotion of a culture of active ageing giving value to the useful contribution of the elderly to the society and the economy, through their participation in the social life and through a healthy and independent lifestyle; *c)* prevention of situations of discrimination, violence and abuse against them.

1. **Please describe how is access to justice guaranteed for older persons with disabilities. Please provide information on jurisprudence, complaints or investigations in relation to violence, abuse and neglect against older persons with disabilities**

To protect elderly people who are, due to a physical or mental illness, in a situation of limitation of their ability to perform daily activities, it is foreseen by our legal system according to Law No. 6 of 9 January 2004, the institution of Support Administration.

The Support Administrator is a person appointed by decree by the tutelary judge who has the task of assisting, supporting and representing those who, due to a physical or mental impairment, find it impossible, even partially or temporarily, to provide everything or in part to fulfill the functions of daily life.

The Support Administrator has the purpose of guaranteeing a sort of "legal protection", without, however, excessively limiting the ability to act to those who find it difficult to provide for their own interests because they lack all or part of autonomy.

A positive measure of interest is also that relating to costs for access to justice. In particular, favorable treatment (with reduction of the cost of the unified contribution) is provided for those who must take legal action to institute a mandatory social security and assistance dispute (art. 9, Presidential Decree No. 115 of 2002): these are the typically introduced disputes from elderly people to obtain recognition of their disability. A similar procedural measure is the one referred to in Art. 152 of the implementing provisions of the Code of Civil Procedure where it is foreseen (with certain conditions) the exemption from the payment of expenses, competences and fees in the judgments for social security benefits. In this context, patronage at the expense of the State also foreseen by the above mentioned Presidential Decree No. 115 of 2002 for the poor: the elderly person who does not reach a sufficient income to sustain the costs of the process (according to the threshold established by the law) can access the institution of free legal aid and the State will bear all costs.

In the context of measures to guarantee access to justice, it also seems necessary to include regulatory instruments that aim to break down architectural barriers: in fact, only full freedom of movement can guarantee the elderly persons with disabilities to effectively exercise their rights.

On the topic deserves to be remembered Law No. 13 of 1989, which aims to overcome architectural barriers to ensure quality levels of accessibility of buildings. As highlighted by the Constitutional Court in sentence no. 167 of 1999, the legislation concerning persons with disabilities (and in particular the aforementioned Law No. 104, "*Framework law for assistance, social integration and the rights of disabled people*") was not limited to raising the level of protection in favor of these subjects but marked a radical change of perspective with respect to the same way to address the problems of persons with disabilities, which have to be hired by the entire community (Cass. Civ. No. 18334 of 2012).

The Italian Criminal Code provides - through the coordination of two distinct types of crime, pursuant to Article 572 ("*Ill-treatment against family members and cohabitants*") and Article 610 ("*Private Violence*") and the recent forecast of a common aggravating circumstance ex article 61 No. 11 sexies (introduced with Law 3/2018) - a strong protection system with respect to cases of violence and mistreatment perpetrated at home or in public facilities for elderly patients who are not self-sufficient.

The provision of a rigid penal sanction finds a reason for the Legislator's need to protect particularly exposed and fragile figures both physically and psychologically. There are numerous complaints and disputes concerning such unlawful behavior on the part of health care residence (RSA) staff or family members / cohabitants against the elderly with a disability. To further expand the protection provided, the conduct liable to punishment is not only related to the active conduct, but also to omissive conduct.

1. **Please describe to what extent and how are older persons with disabilities involved in the design, planning, implementation and evaluation of policies related to ageing and/or disability**

In Italy a series of consultation bodies are active which, both nationally and locally, favor the participation of the main associations of persons with disabilities in the planning, implementation and evaluation of policies that impact on the quality of life of persons with disabilities. The associations that participate in it are interpreters also of the instances that interest and characterize more specifically the disability in old age.

At national level, operates the National Observatory on the condition of persons with disabilities (OND), established pursuant to Art. 3 of the Law No. 8 of 3 March 2009. Similarly, in the various regions, and even in some municipalities, a series of consultations or thematic tables are active, which favor the listening and the participation of trade associations. For instance, we recall: the experience of Friuli Venezia Giulia, with the establishment of the Regional Council of Associations of Persons with Disabilities and their Families (CRAD) recognized pursuant to Article 13-bis of the Regional Law 31 March 1996; the experience of Lombardy, with the establishment of the Third Sector Consultation Table, referred to in the Council Resolution 7797/2008; and again, in Lazio, the Regional Council for problems of disability and handicap, established by Regional Law No. 36 of 3 November 2003. In Sicily operate since 2017 the Regional Observatory on the conditions of persons with disabilities set up by Assessor Decree No. 18 of 21 September 2017 which aims to favor the social inclusion of persons with disabilities and to break down cultural and physical barriers, carrying out technical-scientific and consultative support functions with regard to the analysis of data on regional policies on disability.

1. **Please provide information on any innovative initiatives that have been taken at the local, regional or national level to promote and ensure the rights of older persons with disabilities and identify lessons learned from these**

At national level, it is important to highlight the establishment of the Fund to overcome and eliminate architectural barriers, in compliance to Law 13/89, that simplify the lives of persons with disabilities by eliminating the physical and structural barriers that limit their ability to move. Also worth mentioning is the Fund for the accessibility and mobility of persons with disabilities established for the year 2019 with Law No. 145 of 30 December 2018, aimed at interventions for the technological innovation of structures and mobility of persons with disabilities.

The major initiatives undertaken at the local level concern mostly accessibility and usability of services in the area. The role in this sense of the National Association of Italian Municipalities (A.N.C.I.) is certainly that of directing and monitoring the adoption by the associated Municipalities of the Plans to eliminate architectural barriers (P.E.B.A.).

Good practices in this direction come, for instance, from the frequent and stringent monitoring activity carried out by ANCI Lombardia, appointed by the Region itself to carry out investigations at the local Administrations (Circular 8 March 2018, No. 94).

Other interventions, again at the regional level, concern: measures aimed at activating interventions in favor of seriously disabled persons and non self-sufficient elderly, as established in the Lombardy regional Operational Program, implemented through the ‘Territorial Areas’ and Municipalities through the provision of monthly vouchers and service vouchers; the creation of the ‘Space Disability Institute’, that is a free service at the ‘Space Region’ of the Regional Territorial Offices to provide information and advice through specialized staff on disability issues; the activation of a Regional Action Plan aimed at offering qualified home care services to people in a condition of fragility, disability, or non-self-sufficiency and to their families; the provision of ‘Assisted Residency Measure’ for citizens aged 65 or over who are in a situation of fragility and / or partial self-sufficiency. The measure in question provides for the provision, in a controlled and protected environment, of services of a social-health and welfare nature useful to support the maintenance of the person's remaining abilities, with the aim of delaying the decline of psychophysical and social conditions, as well as any institutionalization.

Finally, a series of initiatives widespread at national level are worth mentioning, aimed at maintaining the autonomy of the elderly person, primarily in a family context, in order to avoid the risks of non-self-sufficiency: the homogeneous dissemination of home care throughout the territory; the strengthening of family support services, including financial contributions and care allowances for those families who are responsible for guaranteeing the assistance of their own non self-sufficient elder; and finally, the creation of relief services and facilities.

**Active ageing policies - Cooperation agreement with INRCA (*Istituto Nazionale di Riposo e Cura per Anziani*)**

The Department for Family Policies signed on December 2018 a three-year Cooperation agreement with INRCA, which for over 20 years now has been considered an excellence center in the field of scientific research aimed at promoting the integration of elderly people in Italy.

The objective of the Agreement is to facilitate:

* the collaboration between institutional actors at different governmental levels in order to help elaborate the next Report on the 4th cycle of monitoring and evaluation of the implementation of the Madrid International Plan of Action on Ageing (MIPAA) at the national level;
* the elaboration of specific guidelines for actions at national and local level, in accordance with regions and municipalities, also through the use of indicators on the active ageing and social inclusion of the elderly (such as the UN AAI), by strengthening intergenerational solidarity in respect of MIPAA’s principles.

A first technical meeting under the Agreement is planned to take place in April 2019 between the Department for Family Policies and INRCA, also with the Ministry of Labor and Social Policies and the National Institute of Statistic, in order to adopt the Agreement’s executive project.

1. Ledha was established in 1979 as a network of several non governmental organizations based in the Lombardy region, with the aim to promote and protect the rights and dignity of persons with disabilities and their families. [↑](#footnote-ref-1)