Insights & Analyses

Reasonable Accommodations for People with Disabilities in Italian Legislation Today

Luca Calcaterra*

Abstract

This essay explores the evolution and current status of reasonable accommodations for people with disabilities in Italian legislation, particularly following the crucial Decreto Legislativo no 62/2024 reform. It analyzes the necessary balance between constitutional principles, such as entrepreneurial freedom (Art 41) and social assistance (Art 38), and the duty to provide these accommodations. The discussion highlights the legislative shift from a fragmented framework based on a medical model of disability to the adoption of a biopsychosocial approach, aligning Italy with international standards like the UNCRPD. Key aspects of the reform include the formal introduction of a definition for reasonable accommodation, the establishment of a structured request procedure, and the creation of the National Guarantor Authority for the Rights of Persons with Disabilities. The essay also addresses persistent challenges, such as the continued reliance on medical certification and the new implications of refusing accommodations, which is now explicitly defined by the Courts as direct discrimination under Italian law. The analysis concludes that while the reform significantly clarifies the legal framework, its practical effectiveness will heavily rely on subsequent judicial interpretation to fully harmonize national and international standards and expand protections for disabled workers and their caregivers.

I. Background: The Entrepreneur's Organisational Freedom Under Art 41 and Art 38 of the Italian Constitutional Charter as a Limit on the Duty of Reasonable Accommodation

Art 41 of the Italian Constitutional Charter states that 'Private economic initiative is free' and that 'it may not be carried out in a way that is contrary to social utility or harmful to health, the environment, security, freedom and human dignity'. The rule also states that:

> 'The law determines appropriate programmes and controls for public and private economic activity to be directed and coordinated towards social and environmental goals'.

The debate about the nature and interpretation of 'appropriate programmes and controls' has been extensive, but the vast majority of scholars have concluded

* Full Professor of Labor Law, Suor Orsola Benincasa University of Naples.

that it is impossible to functionalize private businesses to social goals.[1] This has also meant that under Art 41 of the Italian Constitutional Charter, the judge is not allowed to discuss the entrepreneur's investment and organisational choices.

As a consequence, it has long been believed that no room is available to compel employers to change their own organisations by enjoining them to make reasonable accommodations. In other words, that any requested accommodations would be considered reasonable only if they do not require employers to adopt different organisational solutions.[2] However, it cannot be said that this question of the compatibility of reasonable accommodations duties with constitutionally guaranteed entrepreneurial prerogatives has been settled once and for all. The reasonable accommodations referred to in Art 3, para 3-*bis*, of decreto legislativo 9 July 2003 no 216 and, today, in Art 5-*bis* of legge 5 February 1992 no 104 necessarily imply an 'intrusion' into the employer's organisational discretion.[3] Accommodations must be reasonable, relevant and appropriate in that they are aimed, as the legislator states, at 'ensuring compliance with the principle of equal treatment for persons with disabilities'.

The recently introduced regulations on reasonable accommodation, as set out in decreto legislativo 3 May 2024 no 62, appear to be somewhat influenced by the said constitutional principle. These regulations do not grant the new National Guarantor Authority for the Rights of Persons with Disabilities the power 'to

[1] For all see G. Minervini, 'Contro la «funzionalizzazione» dell'impresa privata' *Rivista di diritto civile*, I, 618 (1958); S. D'Ascola, 'Il ragionevole adattamento nell'ordinamento comunitario e in quello nazionale. Il dovere di predisporre adeguate misure organizzative quale limite al potere di recesso datoriale' *Variazioni su Temi di Diritto del Lavoro*, 179, 202 (2022); S.P. Emiliani, 'Le déclin du principe d'incontestabilité des choix organisationnels de l'employeur en Italie' *Revue de Droit Comparé du Travail et de la Sécurité Sociale*, 32 (2023); and, recently, for a brief overview, P. Ichino, 'La "buona impresa" e l'utilità sociale. Appunti sul dibattito circa i limiti "esterni" e quelli "interni" alla libertà d'iniziativa economica privata' *Lavoro Diritti Europa*, 4 (2024), available at https://tinyurl.com/bddeud5m (last visited 31 January 2026).

[2] For the intangibility of the employer's organisation see Corte di Cassazione-Sezioni Unite 7 August 1998 no 7755, available at www.dejure.it, expression of an interpretative approach that can now be considered superseded today by the majority jurisprudence. Nevertheless, the affirmation of the intangibility of the company organisation established by the entrepreneur sometimes returns in recent rulings: Corte di Cassazione-Sezione lavoro 19 August 2009 no 18387, available at www.dejure.it: 'On the subject of a worker's supervening physical unfitness for his duties, when even the use of the means offered by advanced technologies is capable of eliminating burdensome physical exertion in the performance of certain work, there is no obligation on the part of the entrepreneur to adopt them in order to put himself in a position to cooperate in the acceptance of the work performance of persons suffering from infirmity that goes beyond the duty to guarantee safety imposed by law'; Corte di Cassazione-Sezione lavoro 24 May 2005 no 10914, available at www.dejure.it: 'In the case of dismissal of a worker due to his psychological and physical unfitness for the duties assigned to him, the employer's obligation to seek another position in the company's organisational context in which to profitably place the worker in question, and compatibly with his ascertained state of health, can never entail the duty to modify the existing organisational structure or work organisation in order to carve out new roles or duties'. All judgments cited below, unless otherwise indicated, can be found at www.dejure.it.

[3] In this sense see, explicitly, D. Garofalo, 'La tutela del lavoratore disabile nel prisma degli accomodamenti ragionevoli' *Argomenti di Diritto del Lavoro*, 21, 52-53 (2019).

formulate a proposal for reasonable accommodation' when a private employer refuses to adopt one.[4] However, the Authority does have this power with regard to public administrations, and as such, the exclusion of this power with regard to private employers appears to be intended to respect the entrepreneur's prerogative to structure and define the organisation of work.[5]

It should be stressed that Art 41 of the Charter is not the only constitutional provision relevant to the definition of the obligations that can be imposed on employers to protect disabled workers. Art 38 of the Italian Constitution has been generally interpreted as precluding the imposition of economic burdens on entrepreneurs that are exclusively linked to the protection of the interests of individuals who are no longer useful to their productive organisation. Art 38, in fact, establishes that every citizen who is unable to work and lacks the necessary means to live a life purposefully has the right to maintenance and social assistance. It also provides that workers have the right to be provided with adequate means and insured for their living needs in the event of accident, illness, disability, old age, and involuntary unemployment. Art 38 also stipulates that the tasks provided for in that article are to be carried out by bodies and institutions set up or integrated by the State and that private assistance is free, ie no private individual can be burdened with purely welfare obligations.

Therefore the implementation of measures such as reasonable accommodation raises the difficult issue of balancing the protection of disadvantaged workers not only with regard to possibly needed modifications of the employer organisation, but also in relation to absences caused by disability and the limits that such employment protection encounters in terms of costs and production efficiency in order to guarantee the functionality of the business organisation, which cannot be burdened by purely welfare-related costs.

The two aforementioned provisions of the Italian Constitution establish the framework within which the duty of reasonable accommodation in favour of disabled workers must be considered feasible, also bearing in mind that, today in line with European Union law, 'it is necessary to take into account, in particular, the financial costs they entail, the size and financial resources of the organisation or undertaking'.[6]

[4] See Art 5-*bis*, para 11, legge 5 February 1992 no 104. This issue will be addressed below in section VII.

[5] Differently, under Art 37(1) of decreto legislativo no 198 of 11 April 2006, the legislator provided for the power of the Equality Advisors (in Italian: Consigliere/i di parità), where they detect 'the existence of direct or indirect discriminatory acts, pacts or conduct of a collective nature', to request the employer that has committed discrimination to adopt a plan for the removal of the discrimination ascertained. However, this is not a power of proposal, but a power aimed at the removal of ascertained unlawful acts, provided for in the case of collective discrimination for conciliatory purposes.

[6] See ECJ Case C-631/22 J.M.A.R. v Ca Na Negreta SA, Judgment of 18 January 2024, available at www.eur-lex.europa.eu. What is said above refers to the original Italian legal framework. Clearly today the discourse of balancing freedom of enterprise and the protection of fundamental rights must

The balance that is to be struck between the interests of the parties that has been prescribed by the legislator in the case of reasonable accommodation implies a high degree of discretion in its application, with considerable uncertainty regarding the nature and extent of the judicial review of the actual accommodation provided by the employer. However, this outcome is inevitable, as it is not possible to predetermine the limits of what will constitute a reasonable accommodation in advance by law, eg by setting its content and the implementation methods in advance.

It will therefore inevitably fall to the trial judge to determine, on a case-by-case basis, whether any proposed accommodation can be considered to be reasonable in light of the needs of the disabled worker and the employer's actual ability to adapt its production and organisation to enable the former to perform on an equal footing with other workers.

This premise is necessary to understand the difficulties that the concept of reasonable accommodation faces in becoming fully established in the Italian legal system, particularly with regard to its broadest implications. After all, the concept of reasonable accommodation implies that relevant changes to the organisational structure of a business may also be required and that even substantial costs must be borne by the employer.

II. The Landscape of Disability Rights in Italy Before the Recent Reform

1. The Beneficiaries

The second issue that needs to be addressed briefly in order to understand the concept of reasonable adjustments under Italian law is the identification of beneficiaries. In other words, who are the disabled persons who have the right to claim reasonable adjustments, and what constitutes a relevant disability for the purposes of this entitlement?

The landscape of disability rights in Italy has long been characterized by a fragmented legal framework, with different laws adopting varying approaches to the definition of disability and the associated implementing protections. The somehow frequent illegitimate use of social allowances and the phenomenon of false disability, ie the discovery of a significant number of non-disabled people receiving social benefits, has reinforced the idea that it is necessary to exercise strict public control over disability conditions via a process of scientific verification. This made the public medical certification of disability the point of reference to recognise the right to social

be developed in the multilevel system, thus taking into account first and foremost the UN Convention and the EU Charter of Fundamental Rights and the ECHR, which are not a peculiarity of the Italian legal system, of course. See M.C. Cataudella, 'Disabilità e parità di trattamento nei luoghi di lavoro: il sistema multilivello di protezione giuridica' *Lavoro Diritti Europa*, 2 (2025), available at https://tinyurl.com/4dxe83aw (last visited 31 January 2026) and L. Torsello, *Persona e lavoro nel sistema Cedu. Diritti fondamentali e tutela sociale nell'ordinamento multilivello* (Bari: Cacucci, 2019).

benefits and to access the compulsory recruitment system. Italian laws defining disability (such as legge 5 February 1992 no 104 and legge 12 March 1999 no 68) have followed the medical model, which focuses on the percentage of disability and clinical impairments rather than the interaction of individuals with environmental barriers.

This trend is evidently at odds with the idea of a bio-psycho-social approach to the concept of disability, which is prevalent both at the international and European level. Under Art 1, para 2 of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) 'persons with disabilities' are

> 'those who have long-term physical, mental, intellectual, or sensory impairments which, in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others'.

There is no explicit definition of 'disability' or 'person with a disability' neither in EU primary law[7] nor in secondary law, specifically in Directive 2000/78/EC. The EU Court of Justice has nevertheless held that the notion of disability must be uniform in all the Member States,[8] and has followed the UNCRPD approach in its landmark judgment in *HK Danmark*.[9] Moreover, as is well known, the Court of Justice abandoned the restrictive definition of disability provided in *Chacon Navas*[10] and fully adopted the biopsychosocial definition of disability, stating that this

> 'must be understood as referring to a limitation of capacity, resulting, in particular, from long-term physical, mental or psychological impairments which, in interaction with various barriers, may hinder the full and effective participation of the person concerned in professional life on an equal basis with other workers'.[11]

In the Italian legal system, the bio-psycho-social definition of disability has been recently included in Art 2, para 2, lett a), point 1 of the enabling act legge 22 December 2021 no 227. In terms of this provision, the Italian Government is delegated to introduce measures that will lead to the

[7] See Arts 10 and 19 of the Treaty on the Functioning of the European Union - TFEU - and Arts 21 and 26 of the Charter of Fundamental Rights of the European Union - CFREU.

[8] See ECJ Case C-13/05 *Chacón Navas* v *Eurest Colectividades SA*, Judgment of 11 July 2006, available at www.eur-lex.europa.eu.

[9] See ECJ Joined Cases C-335/11 and C-337/11 *HK Danmark*, acting on behalf of Jette Ring v *Dansk almennyttigt Boligselskab* (C-335/11) and *HK Danmark*, acting on behalf of Lone Skouboe Werge v *Dansk Arbejdsgiverforening*, acting on behalf of Pro Display A/S (C-337/11), Judgment of 11 April 2013, available at www.eur-lex.europa.eu.

[10] See ECJ Case C-13/05 *Chacón Navas* v *Eurest Colectividades SA* n 8 above, para 43: 'the concept of 'disability' must be understood as referring to a limitation which results in particular from physical, mental or psychological impairments and which hinders the participation of the person concerned in professional life'.

[11] See ECJ Case C-631/22 *J.M.A.R.* v *Ca Na Negreta S* n 6 above, para 34.

> '1) adoption of a definition of 'disability' consistent with Art 1, para 2, of the United Nations Convention on the Rights of Persons with Disabilities, including by supplementing legge 5 February 1992 no 104 and introducing provisions for a basic assessment of disability distinct from a subsequent multidimensional assessment based on *the bio-psycho-social approach*, which can be activated by the person with a disability or their representative, after adequate information has been provided [about] the interventions, support and benefits available to them, with a view to the individual, personalised and participatory life plan referred to in letter c) of this paragraph and ensuring the adoption of criteria that take gender differences into due consideration'.[12]

Before this law was passed, no explicit reference to the bio-psycho-social definition of disability could be found in Italian law.[13] Even decreto legislativo 9 July 2003 no 216 itself did not provide an autonomous definition of a person with a disability. In the absence of clear legislative definitions, the Italian Supreme Court case law has played a crucial role in interpreting the obligation to provide reasonable accommodation. Drawing on the EU Directive and the UNCRPD, the Supreme Court, at least in more recent years, adopted the bio-psycho-social approach to identify the beneficiaries of reasonable accommodation, focusing on how long-term impairments interact with barriers to hinder full participation.[14]

[12] As will be seen below, the basic assessment provided for in Chapter II of decreto legislativo no 62/2024, which implements legge no 227/2021, is aimed at the medical certification of the disability and has the purpose of guaranteeing 'effective and full access to the system of services, benefits, assistance, advantages and facilities' (as stated in Art 1, para 2 of decreto legislativo no 62/2024), thus linking it to legge no 104/92. Also for this reason, it cannot be understood as a requirement that limits the possibility of requesting reasonable accommodation.

[13] Indirectly, the biopsychosocial notion of disability had entered the Italian legal system through legge 3 March 2009 no 18, which authorised the ratification and implementation of the UN Convention on the Rights of Persons with Disabilities, which had been adopted in New York on 13 December 2006. In fact, the United Nations Convention on the Rights of Persons with Disabilities does not contain the explicit term 'biopsychosocial', but its approach and definition of disability is deeply aligned with the principles of the ICF. The International Classification of Functioning, Disability and Health (ICF), published by the World Health Organisation (WHO) in 2001 is the first international source to explicitly refer to the biopsychosocial notion of disability. The 2006 UN Convention, however, at art 1(2) defines 'persons with disabilities (...) as those with long-term physical, mental, intellectual or sensory impairments that in interaction with barriers of various kinds may hinder their full and effective participation in society on an equal basis with others'. This definition shifts the focus from the person to the surrounding environment and society, fully reflecting the influence of the biopsychosocial model promoted by the ICF.

[14] Among the various judgments in which the Supreme Court has adopted the biopsychosocial model of disability, see Corte di Cassazione-Sezione lavoro 31 March 2023, no 9095, *Rivista Italiana di Diritto del Lavoro*, II, 254 (2023) with a comment by A. Donini 'L'applicazione indistinta del comporto è discriminatoria se la malattia è riconducibile a disabilità', according to which the 'comporto' period (the limit of days of absence due to illness) applied undifferentiated to a worker with a disability may constitute a form of indirect discrimination. The Court emphasised that a worker with a disability may have a greater risk of absences related to his or her condition, and therefore the application of a standard time limit puts him or her at a disadvantage. Although not the first to address the subject, this ruling is particularly relevant as it explicitly referred to the need to

This was obviously a way to broaden the extent to which individuals would benefit from the provisions of the instrument, following the logic common to other conceptual tools involved in the adjustment of contractual relationships in the Italian legal system (see below, para IV).

2. The Notion of Reasonable Accommodation

The Supreme Court case law is also relevant for the notion of reasonable accommodation. The importance of the role played by the Supreme Court's jurisprudence can only be fully understood by briefly tracing the evolution of the concept of reasonable accommodation in Italian law.

The obligation for employers to provide reasonable accommodation in Italy was primarily derived from decreto legislativo no 216/2003, which transposed the EU's Directive 2000/78/EC (establishing a general framework for equal treatment in employment) into Italian Law. The original text of the decree didn't mention reasonable accommodation at all, and this was for the reason that Italy had been condemned by the European Court of Justice for insufficient transposition of Directive 2000/78/EC.[15] The ECJ condemned Italy on the basis of the absence of a specific provision regarding the explicit and general obligation for employers to provide reasonable accommodation for disabled persons in the workplace. This condemnation occurred despite Italy having a system of incentives to promote workplace accommodations (see Art 14 (4) lett. b, Law no 68/1999 for the Regional Fund for the Employment of Persons with Disabilities).

Following this condemnation, Art 9 (4-*ter*) decreto legge 28 June 2013 no 76 (decree converted into legge 9 August 2013 no 99) amended decreto legislativo no 216/2003, which had transposed Directive no 2000/78/EC, by introducing Art 3 (3-*bis*). This provision explicitly stipulates that 'in order to ensure compliance with the principle of equal treatment for persons with disabilities, public and private employers are required to make reasonable accommodations'.[16]

assess disability from a perspective that takes into account not only the physical or psychological impairment (biomedical model), but also its interaction with social and environmental barriers. See also Corte di Cassazione-Sezione lavoro 20 June 2023 no 17629, available at www.dejure.it. Corte di Cassazione-Sezione lavoro 9 March 2021, no 6497, available at www.dejure.it, is also interesting from this point of view, even if not explicit in the adoption of the biopsycosocial model of disability.

[15] See ECJ Case C-312/11 Commission v Italy, Judgment of 4 July 2013, available at www.eur-lex.europa.eu.

[16] See decreto legislativo no 216/2003 Art 3 (3-*bis*): 'In order to ensure compliance with the principle of equal treatment for persons with disabilities, public and private employers are required to make reasonable accommodations, as defined by the United Nations Convention on the Rights of Persons with Disabilities, ratified pursuant to Law no 18 of 3 March 2009, in the workplace, to ensure that persons with disabilities enjoy full equality with other workers. Public employers must implement this paragraph without new or increased costs for public finances and with the human, financial and instrumental resources available under current legislation'. However, the Constitutional Court has made it clear that the needs and rights of disabled persons must prevail over budgetary constraints: see Corte costituzionale 8 June 1987 no 215; Corte costituzionale 26 February 2010 no 80; Corte costituzionale 16 December 2016 no 275; Corte costituzionale 11 April 2019 no 83.

While art 5 of Directive no 2000/78 requires employers to take appropriate measures, 'where needed in a particular case', to enable persons with disabilities to access, participate in, or advance in employment or training, there is a significant exception which applies where the measures will impose a 'disproportionate burden' on the employer.[17] And importantly, decreto legislativo no 216/2003 itself, also in the amended version, does not explicitly define reasonable accommodation, and instead refers to the UNCRPD's definition.[18]

Following the UNCRPD's definition, the Supreme Court's case law defined reasonable accommodation as organizational changes determined on a case-by-case basis that enable an employee to work on an equal footing with colleagues. It also interpreted the concepts of 'reasonableness' and 'undue burden' (or proportionality), viewing the 'reasonableness' assessment as a concrete application of the principle of good faith, which requires a balancing of the interests of the employee, the company's commercial and output requirements, and other employees.[19] According to some scholars,[20] the Supreme Court's interpretation differs from the international conception of the notion of reasonable accommodation, where reasonableness primarily concerns the effectiveness of the measure, and proportionality relates to the cost or burden. In other words, the UNCRPD defines reasonable accommodations as

> 'necessary and appropriate modifications and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms'.[21]

[17] See Directive 2000/78/EC, Art 5. Reasonable accommodation for disabled persons. 'In order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities, reasonable accommodation shall be provided. This means that employers shall take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer. This burden shall not be disproportionate when it is sufficiently remedied by measures existing within the framework of the disability policy of the Member State concerned'.

[18] See again decreto legislativo no 216/2003 Art 3 (3-*bis*): 'public and private employers are required to make reasonable accommodations, as defined by the United Nations Convention on the Rights of Persons with Disabilities'.

[19] See, for instance, Corte di Cassazione-Sezione lavoro 9 March 2021 no 6497, commented by C. Alessi, 'Disabilità, accomodamenti ragionevoli e oneri probatori' *Rivista Italiana di Diritto del Lavoro*, II, 613 (2021) and Corte di Cassazione-Sezione lavoro 26 October 2018 no 27243, commented by M. Aimo, 'Inidoneità sopravvenuta alla mansione e licenziamento: l'obbligo di accomodamenti ragionevoli preso sul serio dalla Cassazione' *Rivista Italiana di Diritto del Lavoro*, II, 145 (2019).

[20] See M.A. Leonardi, 'Reasonable Accommodation for Workers with Disabilities: Analysis of the New Italian Definitions within the Multi-level Legal System' *Diritti Lavori Mercati*, 93, 103 (2024).

[21] Art 2 para 4 of United Nations Convention on the Rights of Persons with Disabilities (UNCRPD).

According to the UNCRPD Committee and the ECJ,[22] 'reasonableness' refers to the effectiveness and appropriateness of the measure, while 'proportionality' concerns the cost or burden to the employer.

The Italian Supreme Court defined such accommodation as organizational changes enabling the employee to work on an equal basis with colleagues, to be determined on a case-by-case basis and viewed both 'reasonableness' and 'proportionality' as involving a balancing of the interests of all parties concerned. Proportionality is focused on the financial and economic costs of the accommodation, the assessment of 'subjective' parameters (such as company size, financial situation, ongoing crisis) and 'objective' parameters (such as the eligibility for public funding). Reasonableness is seen as a concrete application of the general principle of good faith in legal relationships, evaluating how the measure has affected the company's organization.[23] This implies that the employer should make organizational changes within the limits of a tolerable sacrifice to commercial output and turnover and balance the interests of the employee with those of other employees.[24]

In any case, it does not appear to be the case that the two approaches have significantly different practical implications. Common logic tends to identify a balance between the need to safeguard the interests of disabled workers and the need to ensure that employers are not exposed to requests for organisational adjustments that are inappropriate or that their organisation would be unable to cope with.

As a conclusion, it is possible to highlight the main issues raised by the pre-reform system in the following terms.

1. A fragmented legal framework: The topic of disability was covered by different laws, leading to a fragmented system of protection and a lack of proper harmonization.

2. An inconsistency in definitions: The coexistence of a medical approach in some laws alongside the bio-psycho-social approach adopted by case law for decreto legislativo no 216/2003 created potential confusion and ambiguity regarding the

[22] See Committee on the Rights of Persons with Disabilities, General Comment no 6/2018, 26 April 2018, para 25(a): 'reasonable' should not be misunderstood as an exception clause; the concept of 'reasonableness' should not act as a distinct qualifier or modifier to the duty. It is not a means by which the costs of accommodation or the availability of resources can be assessed, this occurs at a later stage, when the 'disproportionate or undue burden' assessment is undertaken. Rather, the reasonableness of an accommodation is a reference to its relevance, appropriateness and effectiveness for the person with a disability. An accommodation is reasonable, therefore, if it achieves the purpose (or purposes) for which it is being made, and is tailored to meet the requirements of the person with a disability'.

[23] In the same perspective see A. Riccardi, *Disabili e lavoro* (Bari: Cacucci, 2018), 199. More recently see D. Tardivo, *L'inclusione lavorativa della persona con disabilità: tecniche e limiti* (Torino: Giappichelli, 2024), 170.

[24] Among the most recent case law, see Corte di Cassazione-Sezione Lavoro 9 February 2025 no 3282, available at www.dejure.it; Corte di Cassazione-Sezione Lavoro 31 May 2024 no 15282, available at https://tinyurl.com/mr45nt7y (last visited 31 January 2026); Corte di Cassazione-Sezione Lavoro 23 may 2024 no 14402, *Rivista Italiana di Diritto del Lavoro*, II, 376 (2024).

scope of the beneficiaries of reasonable accommodation.

3. A lack of a legal definition for 'reasonable accommodation': The absence of a clear statutory definition raised questions about what specific adjustments were required and how employers should conduct the 'proportionality test'.

III. Legge Quadro 22 December 2021 no 227 and Decreto Legislativo 3 May 2024 no 62

1. The Notion of Reasonable Accommodation and the Procedure Involved in Requesting It

The recent legislative reforms, particularly legge quadro 22 December 2021 no 227 and its implementing decreto legislativo 3 May 2024 no 62,[25] aim to address these inconsistencies and bring Italian law into closer alignment with supranational standards established by the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) and European Union legislation. The key area impacted by these changes is the concept and enforcement of 'reasonable accommodation' for workers with disabilities.[26]

Decreto legislativo no 62/2024 was enacted as an implementing decree of Framework Law no 227/2021, and represents the fundamental step of directly introducing the definition of 'Reasonable Accommodation' into legge no 104/1992 through a new Art 5-*bis*. This new article grants the right of reasonable accommodation to individuals recognized as having a disability through the basic evaluation process, stating that such accommodation identifies

> 'the necessary, relevant, appropriate, and adequate measures and adjustments that do not impose a disproportionate or undue burden on the obligated party'.

Art 5-*bis*(5) further specifies that these accommodations must be

> 'necessary, adequate, relevant, and appropriate to the level of protection to be provided and to the contextual conditions in the specific case, as well as compatible with the resources actually available for this purpose'.

[25] The other two implementing decrees of the reform are decreto legislativo 13 December 2023 no 222 on the upgrading of public services for inclusion and accessibility, and decreto legislativo 5 February 2024 no 20, which establishes the National Authority for the Rights of Persons with Disabilities, with the task of protecting, promoting and ensuring respect for the rights of persons with disabilities.

[26] On the reform, see the recent works by S.P. Emiliani, 'Accomodamenti ragionevoli e organizzazione di lavoro' *Argomenti di Diritto del Lavoro*, 392 (2025) and M.G. Elmo, 'Condizione di disabilità e stato di salute del lavoratore alla luce del decreto legislativo n. 62 del 2024' *Diritto della Sicurezza del Lavoro*, 58, 70 (2025), available at https://tinyurl.com/bde8x7ew (last visited 31 January 2026).

This new definition does not repeal Art 3(3-*bis*) of decreto legislativo no 216/2003, which, however, as mentioned above, refers back to the definition contained in the UNCRPD, whereas Art. 5-*bis*(5) adopts its own wording.

The literal expression of the new legal definition appears to bring the Italian legal text into line with the interpretations provided by the UNCRPD Committee and the ECJ, where 'reasonableness' implies measures that are necessary and appropriate, and 'proportionality' relates to the burden and available resources.[27] As mentioned above,[28] some scholars think that this might potentially contrast with the Italian Supreme Court's previous interpretation of 'reasonableness' which entails a broader balancing of interests based on the principle of good faith. However, as already highlighted, it doesn't seem to be the case that the two approaches have significantly different consequences: whatever legal instrument is referred to, the substance depends on the need to strike a balance between the conflicting interests of the parties, and good faith has this same function in the Italian Supreme Court interpretation.

The new Art 5-*bis*(5) suggests that if a measure is necessary and appropriate to the individual's needs, it is reasonable *per se*, limiting the balancing exercise primarily to the cost of the measure. It remains to be seen how case law will reconcile this new statutory definition with previous judicial interpretations. But the contrast should not be over-emphasised, since in Italian law, the principle of good faith can be considered to be an interpretative guideline that aims to strike a balance between the conflicting interests of the parties.[29]

Decreto legislativo no 62/2024 establishes a new, specific procedure for requesting reasonable accommodation. This procedure requires the person with a disability or their representative to submit a written request, potentially including a concrete proposal, to the obligated party (Public Administrations, public service concessionaires, and private entities).

In accordance with the provisions of Art 5-*bis*(3), persons with disabilities, those exercising parental responsibility in the case of minors, guardians or support administrators, if empowered to do so, have the right to request, by means of a specific written application, that public administrations, public service concessionaires and private entities adopt reasonable accommodation measures,

[27] See again Committee on the Rights of Persons with Disabilities, General Comment no 6/2018, 26 April 2018, para 25(a), already cited.

[28] See above, para II.2.

[29] For a different approach, according to which anti-discrimination law has the typical characteristics of an autonomous subsystem, which are that it is inspired by a unitary purpose and makes use of regulatory techniques that tend to be similar, see M. Barbera, 'Il nuovo diritto antidiscriminatorio: innovazione e continuità', in Id ed, *Il nuovo diritto antidiscriminatorio. Il quadro comunitario e nazionale* (Milano: Giuffrè, 2007), XXXI and Id et al, 'Introduzione', in M. Barbera and A. Guariso eds, *La tutela antidiscriminatoria. Fonti, strumenti, interpreti*, (Torino: Giappichelli, 2019), 1. Consequently, according to this approach, an interpretation of anti-discrimination law that emphasises the autonomy of the legal instruments relating to it is to be pursued, and thus the reference to good faith made by the Italian Supreme Court is unsatisfactory.

including by formulating a proposal.

It is particularly relevant that persons with disabilities and those who represent their interests have the power, rather than an obligation imposed on them, to formulate a proposal, since in Italian case law it has been considered how those (not specifically disabled people) willing to avoid a dismissal must propose an accommodation or declare themselves amenable to an accommodation.[30] In any case, pursuant to para 6 of the provision, the proposal, if submitted, must be subjected to a preliminary review to verify whether it can be accepted as a priority over other forms of reasonable accommodation.

It is also significant that, pursuant to para 4 of the same article, persons with disabilities and the applicant referred to in para 3, if different, have the right to participate in the procedure governing the identification of a reasonable accommodation. This right is a tool designed to secure transparency and, in line with recent European legislation that considers it a means for empowerment,[31] it allows disabled persons and those who represent them to assess the opportunity to take action to ensure that the right to reasonable accommodation is respected.

2. The Beneficiaries. The New System for Assessing Disability

The reform also introduces a new system for assessing disability, featuring a basic evaluation and an optional multidimensional assessment. The notion of disability itself has been revised by the reform and today Art 3(1) legge no 104/92, which defines the 'persons with disabilities entitled to support', identifies them as individuals

> 'with enduring physical, mental, intellectual or sensory impairments which, in interaction with barriers of a different nature, may hinder full and effective participation in the various contexts of life on an equal basis with

[30] The position taken by less recent case law on the point is summarised by the Italian Supreme Court in Corte di Cassazione-Sezione Lavoro 12 August 2016 no 17091, available at https://tinyurl.com/ysa3tkhp (last visited 31 January 2026) according to which 'in the case of dismissal for justified objective reasons, the proof of the impossibility of assigning the worker to other duties within the company organisation must not be understood in a rigid way, requiring the worker challenging the dismissal to cooperate in ascertaining the possibility of reemployment with duties different and even inferior to those originally carried out, by alleging the existence of other jobs in which he could be usefully reallocated; to that allegation corresponds the employer's burden of proving the non-usability of the employee in those posts' (see para 3.2). The majority jurisprudence, however, fully charges the employer with the burden of proving the impossibility of *repêchage*: among many see recently Corte di cassazione-Sezione lavoro 10 July 2024 no 18904, available at https://tinyurl.com/3aup7n33 (last visited 31 January 2026). See also Cassazione-Sezione lavoro 4 March 2021 no 6084, available at https://tinyurl.com/mv76vaa8 (last visited 31 January 2026). For more details and references to case law on the subject, see recently G. Fava, 'Obbligo di repêchage: oneri probatori e conseguenze in caso di violazione' *Lavoro Diritti Europa*, 2 (2023).

[31] Think about the Directive no 2023/970 to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency.

others, ascertained at the outcome of the basic assessment'.[32]

This is a notion that fully reflects, albeit in a regulation that refers to the disabled person 'entitled to support', the biopsychosocial model adopted in the international and European Union legal systems, except for the reference to the 'basic assessment', which, as can be deduced from Art 4 of the same law, is still a formalised medical assessment aimed, in a public context, at certifying the disability, which remains central to the Italian system for various purposes.

Under Art 4 legge no 104/1992, the basic evaluation is linked to primary legal protections and focuses on support needs and capacity. For these reasons it is still based primarily on a medical assessment within the public social security system: thus the recognition of disability status is carried out by INPS (the Italian National Institute for Social Security) through its basic assessment units. Seen from this perspective, even after the 2024 reforms, Italian law differs from international and European standards, since the latter do not require formal certification of disability on a medical basis. However, as will be discussed below,[33] medical certification should not be considered a prerequisite for reasonable accommodations that are aimed at avoiding the dismissal of the employee.

On the contrary, the multidimensional assessment[34] that finds its expression in Arts 18 et seq of decreto legislativo no 62/2024, explicitly adopts a social approach, since it considers the individual's performance in their specific environment which is necessary for the development of an 'Individualised, Personalized and Participatory Life Plan' (IPPLP).[35] According to Art 18, para 3, the person with disabilities may

[32] For the evolution of the notion of relevant disability see C. Di Carluccio, *Lavoro e salute mentale. Dentro e fuori l'istituzione* (Napoli: Editoriale Scientifica, 2022), 138; M. Peruzzi, 'La protezione dei lavoratori disabili nel contratto di lavoro', in M.D. Ferrara ed, *Disabilità e lavoro tra tutela antidiscriminatoria e inclusione reale* (Variazioni su Temi di Diritto del Lavoro), 945, 947, 4 (2020). M.A. Leonardi, n 20 above, 93; A.M. Battisti, 'Il legislatore accoglie (con qualche riserva) la nozione euro-unitaria di disabilità' *Ambiente Diritto* 1, 3 (2024). For European case law on the notion of disability see W. Chiaromonte, 'L'inclusione sociale dei lavoratori disabili fra diritto dell'Unione europea e orientamenti della Corte di giustizia', in M.D. Ferrara ed, 'Disabilità e lavoro' above.

[33] See below in this section and in section IV.

[34] Pursuant to Art 25 of decreto legislativo no 62/2024, first two paras, '1. The multidimensional assessment procedure is carried out on the basis of a multidisciplinary method and is based on the bio-psycho-social approach, taking into account the guidelines of the ICF and the ICD.

2. The process is divided into four stages:

a) in accordance with the outcome of the basic assessment, it identifies the person's goals according to their wishes and expectations and defines their functional profile, including in terms of ICF capacity and performance, in the different areas of life freely chosen;

b) it identifies barriers and facilitators in the areas referred to in point a) and adaptive skills;

c) it formulates assessments relating to the person's physical, mental, intellectual and sensory health profile, needs and quality of life domains, in relation to the priorities of the person with disabilities;

d) it defines the objectives to be achieved with the life plan, starting from a survey of any specific support plans already in place and their objectives'.

[35] See Art 18 decreto legislativo no 62/2024 and Art 14 legge 8 November 2000 no 328, as

request the development of a life plan following the basic assessment. This means that the life plan does not disregard the basic medical assessment that provides the individual has a disability, but rather presupposes and integrates it. The life plan is in fact drawn up after the basic assessment and is based on it, since the latter defines the nature, type and severity of the disability.

A reading of the first two paragraphs of Art 18 also clearly shows the importance of this instrument for the topic addressed in this paper, namely the regulation of reasonable accommodation in Italian legislation. The first para states that

> 'the life plan aims to achieve the goals of the person with disabilities in order to improve their personal and health conditions in various areas of life, facilitating their social inclusion and participation in different contexts on an equal basis with others'.

According to the second paragraph

> 'the life plan identifies, in terms of quality, quantity and intensity, the tools, resources, interventions, benefits, services and *reasonable accommodations* aimed at eliminating and preventing barriers and activating the necessary support for the inclusion and participation of the person in various areas of life, including education, higher education, housing, work and social life'.

It is therefore clear that the IPPLP is intended to identify the nature of the reasonable accommodation that is needed to support the individual's participation in all aspects of life, including work. This is also clearly confirmed by Art 26, paras 1 and 3, which confirm that the identification of reasonable accommodations is an essential part of the Life Project.

The wording of the regulations makes it clear that in Italian law, the right to reasonable accommodation identified in the Life Plan concerning the inclusion and participation of the disabled person in every area of life, is independent of the formal classification of the context in which the accommodation is to be adopted and, therefore, for example, the determination of the employment relationship as autonomous or subordinate.[36] This conclusion is also in line with the case law of the Court of Justice, which, with regard to the application to self-employed workers of Art 3(1)(c) of Directive 2000/78, states that

amended by the first.

[36] In this sense we share the ideas of those authors who have developed the doctrine of the so-called 'personal work relationship', although, as we are saying in the text, decreto legislativo no 62/2024 goes further in this respect, recognising the right to reasonable accommodation in every life context. For the Italian doctrine that shares the idea of M. Freedland, 'Application of labour and employment law beyond the contract of employment' *International Labour Review* 3, 1-2 (2007), available at https://tinyurl.com/yy2974fh (last visited 31 January 2026), see A. Perulli, 'A new category within European Union Law: personal work' *European Labour Law Journal* 184, 1 (2024), available also online at https://tinyurl.com/2nmstvjz (last visited 31 January 2026).

> 'the objective pursued by that directive could not be attained if the protection afforded by it against all forms of discrimination on any of the grounds referred to in Art 1 (…) did not permit compliance with the principle of equal treatment after access to such self-employment and, therefore, in particular, with regard to the conditions of exercise and termination of such work'.

Therefore it can be affirmed that 'the protection extends to the professional relationship in its entirety'. Moreover, the reference to 'conditions of employment' in Art 3(1)(c) 'covers, in a broad sense, the conditions applicable to all forms of employment and self-employment, irrespective of the legal form in which it is carried out',[37] as it is also clear from the reference to self-employment in Art 3(1)(a). The term 'employer' used in Art 5 of the same Directive should not be a decisive argument in support of a formalistic interpretation,[38] which at least in Italy today should in any case be disavowed on the basis of Arts 18 et seq of decreto legislativo no 62/2024.

Seen from a different perspective, a problematic issue concerns the precise relationship between the accommodations identified in the IPPLP, which are designed potentially without employer involvement, and the employer's subsequent obligations and organizational autonomy during recruitment or the ongoing management of the working relationship. The employer's decision regarding IPPLP recommendations may still be subject to judicial review. In any case, it is necessary to wait and see how case law will interpret the new legislation on this point.[39]

In conclusion, decreto legislativo no 62/2024 marks a pivotal moment in the Italian legislature's approach to reasonable accommodation for persons with disabilities.[40] By formally introducing a definition of reasonable accommodation into national law that is more consistent with supranational standards and establishing a formalised procedure for requesting such accommodations, the decree contributes significantly to clarification of the legal framework. However, potential ambiguities remain according to some authors,[41] particularly regarding the precise interpretation of 'reasonableness' in light of previous case law and the practical interaction between the IPPLP and employer discretion. The effectiveness of these innovations will likely depend on future judicial interpretation and the development of the new procedures, including the role of the National Guarantor. However, as already mentioned above, the precise interpretation of 'reasonableness'

[37] The pieces in inverted commas are quotations from Case C-356/21, J.K. c. TP S.A., Judgment of 12 January 2023, paras 56-58, available at www.eurlex.europa.eu.

[38] In this sense see D. Tardivo, n 23 above, 129 and Id, 'I lavoratori autonomi "puri" hanno diritto ai ragionevoli accomodamenti?' *Equal* 35, 1 (2025).

[39] Raised the issue, even before decreto legislativo no 62/2024, M.A. Leonardi, in J. Dormido Abril et al, 'Reasonable Accommodation and Disability: a Comparative Analysis' *Diritto della Sicurezza sul Lavoro,* 18, 31 (2024).

[40] The enforcement of these provisions is also phased in, with full implementation expected by January 1, 2026.

[41] See again M.A. Leonardi, n 20 above, 93, 103.

should not be considered an issue. According to Supreme Court case law, the connection between reasonableness and 'good faith', as a general clause applicable in the interpretation and adaptation of contractual obligations, means that the relative adequacy of the measures to the achievement of the goal (protecting the employee's interests) must be balanced alongside the burden imposed on the employer (protecting its own interests by ensuring there are no excessive costs) in meeting those measures.

An issue that could have been potentially relevant before decreto legislativo no 62/2024 came into force arises instead from Art 10(3) legge 12 March 1999 no 68, which refers to possible adjustments to the organisation of work in order to avoid the dismissal of disabled persons who are mandatorily hired pursuant to the same law. This article stipulates that

> 'In the event of a deterioration in health or significant changes in the organisation of work, the disabled person may request that the compatibility of the tasks assigned to him or her with his or her state of health be assessed. In the same circumstances, the employer may request that the disabled person's state of health be assessed in order to verify whether, due to his or her disabilities, he or she can continue to be employed by the company'.

Furthermore, Art 10 stipulates that

> 'If a condition of aggravation is found that (...) is incompatible with the continuation of work, or such incompatibility is ascertained with reference to changes in the organisation of work, the disabled person is entitled to unpaid suspension of the employment relationship until the incompatibility persists. (...) *Assessments are carried out by the commission referred to in Article 4 of Law no 104 of 5 February 1992* (...). The employment relationship may be terminated if, even after implementing possible adjustments to the organisation of work, the aforementioned commission ascertains that it is definitively impossible to reintegrate the disabled person into the company'.

Based on this article, it could be said that accommodations are actually only required for disabled persons who are mandatorily hired, ie, those who are medically certified as such, since Art 10 of legge no 68/99 is entitled 'Employment relationship of disabled persons who are mandatorily hired' and since, under par 3 of the same article, the 'assessments are carried out by the commission referred to in Art 4 of legge 5 February 1992 no 104', the medical commission who is entitled to formally certify the condition of disability.

This same conclusion seems to be confirmed, but with regard to the new concept of disability, by Art 5(4) of decreto legislativo no 62/2024, according to which 'Recognition of disability also entails the protection of reasonable accommodation pursuant to Art 5-*bis* of legge 5 February 1992 no 104'. It follows that a certified disability remains necessary even after the adoption of a

biopsychosocial concept of disability.

Such a conclusion would be in stark contrast to the case law of the European Court of Justice.[42] However, as mentioned above, it appears that this decision by the Italian legislature is clearly dictated by fears related to the phenomenon of 'false invalids'. The latter is a particularly significant issue in Italy and has contributed towards an increase in expenditure on disability pensions. Nevertheless, this highly restrictive approach to the concept of disability goes against the very logic of the legal concept of reasonable accommodation, which aims to preserve the employment relationship within the limits of an excessive burden. The said limit is broader in the case of certified disabled people, given the presence of public funds that finance the necessary adaptations: no other relevant differences can be found with the case of non formally certified disability.

In other words, an interpretation that would reconciles the position of the Court of Justice and the regulations adopted by the Italian legislature would be to recognise that the European Court's rulings follow an interpretation similar to the one proposed here. Under this approach, the right to reasonable accommodation would be conferred on all workers irrespective of their certified disability status. This conclusion is also derived from Arts 18 et seq of decreto legislativo no 62/2024, which refer to reasonable accommodation in the context of biopsychosocial assessments.

The latter condition, involving a medically certified disability status, is instead essential only when it comes to accessing public funds for the adoption of reasonable accommodations. Therefore, as the Court of Justice has ruled, reasonable accommodation will be required in all cases. However, the limit of reasonableness will be different for certified disabled persons, since only a certified disability will grant access to public funding, which raises the threshold for the reasonableness of the measures to be taken and their tolerability for the employer's finances. In other words, when reasonable accommodation entails taking measures that are eligible for public funding, the range of possibilities that can actually be considered reasonable and financially tolerable for the employer will be much broader in scope.

IV. The Role of Reasonable Accommodation as a Tool in Adapting the Employment Contract to Emerging Developments, and why the Concept of Disability May not Be Relevant

The conclusions we have just reached give rise to some brief reflections on the institution of the reasonable accommodation. It is reasonable to affirm that the right to reasonable accommodation does not depend on any requirement for

[42] See ECJ Joined Cases C-335/11 and C-337/11 n 9 above; on the non-necessity of certification, see Case C-395/15 *Mohamed Daouidi* v *Bootes Plus SL and Others*, Judgment of 1 December 2016, and Case C-397/18 *DW* v *Nobel Plastiques Ibérica*, Judgment of 11 September 2019, both available at www.eur-lex.europa.eu.

a disability to be medically certified[43] because the need for organisational adaptations to preserve the employment relationship exists in every case in which a worker becomes wholly or partially unfit to perform the tasks assigned to them, as is also confirmed by the institution of so-called *repêchage*. The latter term can be understood as a form of duty to consider deployment. In Italian jurisprudence it refers to the burden imposed on the employer who wants to dismiss a worker for organisational reasons to establish that it is unable to usefully employ that worker by entrusting them with tasks other than those hitherto performed, either because those are useless for the employer or because the employee is unable to carry them out.[44]

If, therefore, organisational accommodations are due in any event by the employer in order to preserve the employment relationship of an employee who, due to his supervening total or partial unfitness for the duties or for organisational reasons, is no longer 'useful' in the role she/he has held up to that moment, it would make no sense to assume that reasonable accommodations are only due in the event that he/she is medically certified as having a disability.

A reasonable accommodation is nothing but an instrument to preserve and adapt the employment relationship to new and emerging organisational developments and needs.

The said instrument (I would like to stress the concept) is not ontologically any different from what in the Italian system is referred to as *repêchage*. Believing that a 'certified' disabled person benefits from greater protection would in fact harm the interests of workers (who become disabled in the course of employment) from enjoying similar protection against dismissal.[45] The only conceivable difference between the condition of the 'originally' certified disabled person and that of the worker who has become disabled but not (yet) certified lies in the possibility of gaining access to public funds under Art 14(4) of Law No. 68/99.

As I pointed out in a recent article,[46] even the employer's obligation, under Art 2103(3) cc, to train the employee when assigning her/him new tasks can be regarded as a reasonable accommodation.

In all these three hypotheses (reasonable accommodation for disabled people, assignment of different tasks to avoid dismissals, training needed to accomplish newly assigned tasks), we are facing adjustments of the contractual content that is aimed at preserving the employment contract itself. Given this common function,

[43] O. Bonardi, 'Le soluzioni ragionevoli per i disabili come tecnica di prevenzione delle discriminazioni' *Rivista Giuridica del Lavoro*, I, 376, 381 (2024), comes to the same conclusions by analysing the case law of the European Court of Justice.

[44] For the limits of this obligation in the case law of the Court of Justice, which emphasises the requirement of proportionality, see Case C-485/20 *XXXX* v *HR Rail SA*, Judgment of 10 February 2022, para 45-49 and Case C-631/22 *J.M.A.R.* v *Ca Na Negreta SA* n 6 above, para 45-46 and 52-53, both available at www.eur-lex.europa.eu.

[45] Raises the question M.G. Elmo, n 26 above, 58, 72.

[46] See L. Calcaterra, 'L'obbligo di formazione ex Art 2103, terzo comma, c.c. come accomodamento ragionevole' *Lavoro Diritti Europa*, 1 (2024), available at https://tinyurl.com/yxrum5jx (last visited 31 January 2026).

it is difficult to conceive of the right to a reasonable accommodation as comprising an exclusive right for those whose disability has been medically established. Thus, it can be argued that there are two real differences between a 'common' adjustment of the employment contract that is aimed at its basic preservation and the 'reasonable accommodation' for disabled people.

1. The existence of public incentives to adopt reasonable accommodations for the employment of disabled people in equal conditions with non disabled people, which makes the limits of the 'undue burden' calculation higher since public finance will cover part of the cost incurred.

2. The tasks which can be assigned will need to be compatible, not only with the employer's needs, but also with the disabled employee's capabilities.

What is being said is also confirmed by the fact that the law also provides for reasonable accommodation for so-called caregivers. This is not a mere functional extension aimed at satisfying the needs of the disabled person, but a provision that confirms that the underlying logic of the concept is the adaptation of the employment contract aimed at its preservation.

Workers with disabilities in a situation of 'ascertained seriousness' pursuant to Art 4(1) of legge 5 February 1992 no 104, or who are caregivers pursuant to Art 1(255) of legge 27 December 2017 no 205[47] are also entitled to so-called 'agile'

[47] Art 1(255) of legge 27 December 2017 no 205 states that: 'A family caregiver is defined as a person who assists and cares for their spouse, partner in a same-sex civil union, or cohabiting partner pursuant to legge 20 May 2016 no 76, of a family member or relative up to the second degree, or, in the cases indicated in Article 33, paragraph 3, of legge 5 February 1992 no 104, of a family member up to the third degree who, due to illness, infirmity or disability, including chronic or degenerative conditions, is not self-sufficient and able to take care of themselves, is recognised as disabled as needing comprehensive and continuous long-term assistance pursuant to Article 3, paragraph 3, of legge 5 February 1992 no 104, or is entitled to a carer's allowance pursuant to legge 11 February 1980 no 18'.

Art 33, para 3, of legge no 104 of 5 February 1992 states that 'an employee, whether public or private, is entitled to three days' paid monthly leave covered by contributions, also on a continuous basis, to care for a disabled person in a serious situation, who is not a full-time hospitalised person, and in respect of whom the employee is a spouse, a party to a civil union pursuant to Art 1, para 20 of legge 20 May 2016 no 76, a *de facto* cohabiting partner pursuant to Art 1, para 36, of the same Law, or a relative or relative-in-law within the second degree of kinship within the meaning of Art 1, para 36, of legge 20 May 2016 no 76, a de facto cohabitee within the meaning of Art 1, para 36, of the same law, a relative or relative-in-law within the second degree. In the event of the absence or death of the parents or spouse or party to a civil partnership or de facto cohabitee, or if they are suffering from disabling pathologies or have reached the age of sixty-five, the right is granted to relatives or relatives-in-law within the third degree of kinship of the disabled person in a situation of seriousness. Without prejudice to the overall limit of three days, for assistance to the same individual with a disability in a situation of seriousness, the right may be granted, upon request, to more than one person among those listed above, who may take it alternatively. The worker is entitled to provide assistance to more than one individual with a disability in a situation of gravity, provided that they are the spouse or the party to a civil union referred to in Art 1, para 20 of legge 20 May 2016 no 76, or of the de facto cohabitee pursuant to Art 1, para 36, of the same law or of a relative or relative-in-law within the first degree or within the second degree if the parents or spouse of the disabled person in a situation of gravity have reached the age of 65 years or are also affected by disabling pathologies or are dead or missing'.

work, ie to be allowed to work remotely.[48] More precisely, Art 18, para 3-*bis* of legge 22 maggio 2017 no 81, as amended by Art 4, para 1, letter b) of decreto legislativo 30 June 2022 no 105, provides that

> 'public and private employers who enter into agreements for the performance of agile work are required in any case to give priority (...) to requests from workers with disabilities in a situation of ascertained seriousness pursuant to art 4, paragraph 1, of legge no 104 of 5 February 1992, or who are caregivers pursuant to art 1, para 255, of legge no 205 of 27 December 2017. The worker or employee requesting agile work may not be sanctioned, demoted, dismissed, transferred or subjected to any other organisational measure that would have a direct or indirect detriment or adverse effect on their working conditions. Any measure adopted in violation of that provision is considered to be retaliatory or discriminatory and, therefore, null and void'.

Therefore, Italian law has not yet reached the stage of conferring a real right to 'agile' (remote) work in favour of disabled persons and caregivers, but instead it confers on such workers a right of priority over other workers in the evaluation of any request. Nevertheless, this is a clear indication from the Italian legislature that remote working is considered a reasonable accommodation that should be prioritized for people with disabilities and their caregivers.

On the other hand, a real right to 'agile' work for disabled persons and caregivers was recognised during the Covid pandemic emergency (and only during that limited period of time) by Art 39 of decreto legge 17 March 2020 no 18. A reasonable accommodation expressly recognised by the Italian legislation also to caregivers, that has anticipated the recent outcome of the European jurisprudence on the right to reasonable accommodations for caregivers of disabled people.[49] In its order

[48] This provision was also renewed in various ways during the Covid pandemic emergency: see, among the relevant regulations, Art 39 of decreto legge 17 March 2020 no 18 and Art 90 of decreto legge 19 May 2020 no 34. On remote working as a reasonable accommodation in the Italian legal system see C. Spinelli, 'Inclusive Digital Workplaces for Persons with Disabilities', in E. Menegatti ed, *Law, Technology and Labour* (Bologna: Italian Labour Law e-Studies, 2023), 223, 227, available at https://tinyurl.com/k82d8abc (last visited 31 Janaury 2026); and Id, 'Disability, Reasonable Accommodation and Smart Working: a virtuous matching?', in D. Casale and T. Treu eds, *Transformations of work: challenges for the national systems of labour law and social security* (Torino: Giappichelli, 2018), 1309.

[49] See Case C-38/24 *GL* v *AB spa*, Judgement of 11 September 2025, available at www.curia.europa.eu, according to which 'Directive 2000/78 and, in particular, Article 5 thereof, read in the light of Arts 24 and 26 of the Charter of Fundamental Rights of the European Union and Art 2 and Art 7(1) of the United Nations Convention on the Rights of Persons with Disabilities, must be interpreted as meaning that an employer is required, in order to ensure compliance with the principle of equal treatment of workers and the prohibition of indirect discrimination referred to in Art 2(2)(b) of that directive, to make reasonable accommodation, within the meaning of Art 5 of that directive, in respect of an employee who does not himself or herself have a disability but who provides, to his or her child who has a disability, the assistance which enables that child to receive the primary care required by virtue of his or her condition, provided that that accommodation

no 1788 of 17 January 2024, the Italian Court of Cassation referred three questions to the Court of Justice, asking whether a caregiver is entitled to rely on anti-discrimination protections even in the face of indirect discrimination; if so, whether the employer is also obliged to adopt reasonable accommodation in favour of the caregiver; and finally, what the relevant notion of caregiver for the purposes of Directive no 2000/78 might be.[50] At least with regard to the right to work remotely, a specific positive response in favour of caregivers already existed in the Italian legislation. Although limited to pandemic circumstances, the extension of the right to work remotely to caregivers (in Italian 'agile work', 'lavoro agile') gives rise to a logic that can be exported outside the exceptional context that originally justified the normative provision, as the Court of Justice has recently confirmed in case *GL* v *AB spa*.

The aforementioned hypothesis is not the only one in which caregivers would benefit from accommodations under Italian law. Other measures that are provided both by collective bargaining and case law should be borne in mind.[51] With regard to the former, mention should also be made of the priority right referred to in Art 8, para 4, decreto legislativo 15 June 2015 no 81. This is conferred in favour of caregivers in the context of the transformation of the employment relationship from a full-time to part-time one, which, in some cases, will be recognised by collective agreements as a real right where the care they provide is for disabled persons (see, for example, the collective agreement for credit companies). Moreover, in the same context, caregivers of disabled persons will benefit from the provision of permits or incentives for 'agile' work (see the company trade union agreements of 2022 and 2023, for IBM, Banca Nazionale del Lavoro and Sky). With regard to the latter, it should also be borne in mind that the relevant jurisprudence has held the caregiver's right to prevail over the employer's power of transfer, with the former's right to be able to choose, where possible, the place of work closest to his home pursuant to Art 33, para 5, Legge 5 February 1992 no 104.[52]

V. Prior Employer Knowledge of the Worker's Disability as a Necessary Prerequisite for the Adoption of Reasonable Accommodations. The Evolution of the Supreme Court's Position

does not impose an unreasonable burden on that employer'.

[50] See O. Bonardi, 'Le soluzioni ragionevoli' n 43 above, 391, and D. Tardivo, n 23 above, 132.

[51] See P. Lambertucci, 'Nuove frontiere della disabilità: soggetti protetti e accomodamenti ragionevoli' *Diritti Lavori Mercati*, 237 (2024); M. Turrin, 'L'accesso 'preferenziale' al lavoro agile tra disabilità e condizione di fragilità: analogie e differenze' *Equal*, 179, 194 (2024); O. Bonardi, 'Il diritto di assistere. L'implementazione nazionale delle previsioni a favore dei caregivers della direttiva 2019/1158 in materia di conciliazione' *Quaderni Diritti Lavori Mercati*, 14, 103 (2023).

[52] See Corte di Cassazione-Sezione lavoro 20 July 2023 no 21627, *Notiziario di Giurisprudenza del Lavoro*, 565 (2023); Corte di Cassazione-Sezione lavoro 1 September 2022 no 25836, available at https://tinyurl.com/2zfubxnb (last visited 31 January 2026).

Following what was decided by the lower courts in case law,[53] Supreme Court has ruled that discrimination operates objectively and therefore regardless of the employer's awareness of the employee's disability.[54] This position can be criticised strongly because it generates considerable problems in the management of the employment relationship. More critically, it fails to take into account the obligation of the contractual parties to act in accordance with the general rule of good faith.[55] The latter rule requires employees to inform the employer of their disability not only when the imparting of this information is necessary for them to request the adoption of reasonable accommodations, but also when prior knowledge of the employee's disability may be useful to the employer in identifying the correct organisational measures to be adopted so that the employer can prevent the taking of unconsciously discriminatory decisions.

If reasonable accommodation can be thought of as a form of adjustment of the employment contract to meet the specific needs of one of the parties to the contractual relationship, namely the employee, it seems logically inescapable that the other party, namely the employer, should be made aware in advance of those specific needs that make such a contractual adjustment necessary.

There is no doubt that knowledge of the type of disability that the worker has is necessary both in order a) to identify absences caused by it (to assess the adequacy of the duration of the period of sick leave established by collective bargaining) and b) to trigger reasonable and appropriate accommodations.[56] Consequently, the employee should be held liable for any failure to inform the employer of their disability in advance, specifying its type, and in such a way as to clarify a) any absences (if applicable) that are caused by the disability and b) the measures that can be considered reasonable accommodations aimed at enabling them to carry out their work in appropriate conditions and on an equal footing with other employees.

This information should be provided to the employer in accordance with the general rules governing illness and, therefore, by submitting a medical certificate. This is all the more true if the proposed reasonable accommodation is an increase in the period of sick leave due to the existence of episodes of illness attributable to the worker's disability. It should be considered insufficient for the worker to submit medical certificates that merely indicate the prognosis of the illness, without

[53] For references see D. Tardivo, n 23 above, 165.

[54] See Corte di Cassazione-Sezione lavoro 31 March 2023, no 9095, available at https://tinyurl.com/3tdvu457 (last visited 31 January 2026); Corte di Cassazione-Sezione lavoro 21 December 2023, no 35747, available at https://tinyurl.com/2vsnyt7z (last visited 31 January 2026).

[55] For the relevance of the rule of good faith behaviour in this context see again A. Riccardi, n 23 above, 199; D. Tardivo, n 23 above, 170 to which reference is made for other doctrine critical of the Supreme Court's orientation and for insights into the problems arising from the need to protect employee privacy (see 174).

[56] In this sense, see A. Maresca, 'Disabilità e licenziamento per superamento del periodo di comporto' *Lavoro Diritti Europa*, 7 (2024), available at https://tinyurl.com/tctuz7mu (last visited 31 January 2026).

specifying anything about the link between the illness and the worker's disability.

Once informed, the employer must act accordingly, implementing reasonable and appropriate accommodations as required by law and, therefore, calculating the maximum period of tolerable sick leave differently.[57]

The legislature has recently intervened by adopting legge 18 July 2025 no 106, which includes provisions concerning job retention and paid leave for examinations and medical treatment in respect of workers suffering from cancer, and other disabling and chronic diseases. This law has introduced a sort of reasonable accommodation, aimed at preserving the employment relationship of individuals suffering from such diseases. Art 1 of the aforementioned law provides that employees of public or private employers suffering from such conditions (ie cancer, disabling or chronic diseases, including rare diseases, resulting in a degree equal to or greater than 74 per cent of disability) may request a period of leave, continuous or split, that does not exceed twenty-four months in duration. During this period of leave, the employee is entitled to retain their job, is not entitled to remuneration, and may not perform any type of work. The leave is compatible with the concurrent enjoyment of any other economic or legal benefits and it begins when the other periods of justified absence, with or without remuneration, to which the employee is entitled for any reason, have been exhausted.

The period of leave guaranteed by this provision is not counted towards seniority or social security purposes. However, the employee may redeem the period of leave by paying the relevant contributions, in accordance with the provisions for voluntary continuation under current legislation. In any event, this provision is without prejudice to more favorable provisions contained in collective bargaining agreements or in any regulations applicable to the employment relationship. The former often provide for an extension of the period of sick leave, thus safeguarding not only the employment relationship, but also the worker's right to receive remuneration.

Confirming what was said above, it is noteworthy that the certification of illnesses protected under paragraph 1 is issued under Art 1, para 2, of legge no 106/2025 by a general practitioner or specialist doctor working in a public or accredited private healthcare facility who is treating the worker. Therefore, it remains necessary for the

[57] P. Lambertucci, n 51 above, 247, reminds that, based on Case C-270/16 *Carlos Enrique Ruiz Conejero* v *Ferroser Servicios Auxiliares SA and Ministerio Fiscal*, Judgement of 18 January 2018, available at www.eur-lex.europa.eu, which considered discriminatory a dismissal grounded on absences due to illnesses caused by disability, a judicial dispute has developed concerning the legitimacy of the same or a differentiated application of a protected period ('periodo di comporto' in Italian) for absences due to disability. The dispute has also been widely echoed in Italian doctrine (see Lambertucci for bibliographical references) and has recently been resolved by the Supreme Court, according to which the application of the ordinary protected period ('periodo di comporto') to a disabled worker may constitute a case of indirect discrimination, since the disabled worker is exposed to the additional risk of absences due to a disability-related illness with the consequence of reaching more easily the maximum limits for job preservation (see again Corte di Cassazione 31 March 2023 no 9095).

workers to inform their employer by providing them with certification relating to the disabling or chronic illness they are suffering from.

It is obvious, but worth reiterating (particularly considering the different orientation of the Supreme Court) that the conduct of both parties must comply with the general rule of good faith and fairness, which imposes a duty of mutual cooperation on both parties (debtor and creditor) to a contractual relationship.[58] Therefore, a disclosure will be considered incomplete and insufficient if it was made in such a way as to prevent an employer from understanding the cause of the illness suffered and the disability condition that constitutes the reason for the relevant aggravation such as to require an increase in the period of sick leave or, in those cases covered by the recent legge no 106/2025, the adoption of a period of unpaid leave in addition to the first.

Once the employee has fulfilled the above-mentioned information requirements, the employer must take steps to make reasonable accommodations, which must be functional and, therefore, appropriate to enable the worker to retain their job, subject to them not imposing a disproportionate burden on the employer. The relevant burden imposed on the employer should be measured not only on the basis of the costs involved in the proposed accommodations, but also on the size of the employer's organisation and its economic capacity. As such, this process will inevitably be a case-by-case assessment.

Therefore, any accommodation should not go as far as ruling out the possibility of dismissing a disabled worker. An accommodation should place the disabled worker on an equal footing with other workers. This means that, insofar as any period of sick leave can be exceeded, an accommodation must aim to neutralise the disadvantage suffered by a worker who is forced to take more frequent leave due to illnesses caused by their disability. As far as other difficulties are concerned, the accommodation must enable the disabled worker to continue to carry out their work on an equal footing with other workers, subject to the exception for measures that impose a disproportionate burden on the employer.

However, the Court of Cassation has remained firm in its position regarding the applicability of prohibitions on discrimination on an objective basis, irrespective of whether the employer is aware of the worker's disability. It has also recently reaffirmed this stance, albeit tempering it be reference to the stipulation that the employee's disability must be capable of being known to the employer, using ordinary diligence.[59] This position is mutual, bearing in mind the need for good

[58] See again A. Riccardi, n 23 above, 199.

[59] Corte di Cassazione-Sezione lavoro 7 January 2025 no 170, available at https://tinyurl.com/46rnxa2u (last visited 31 January 2026): 'in the context of a dismissal, the application of the ordinary period of absence allowed for a non-disabled worker to a worker who is disabled under EU law constitutes indirect discrimination; knowledge of the employee's state of disability - or the possibility of knowing it with ordinary diligence - on the part of the employer gives rise to the employer's duty - which cannot be matched by obstructive conduct on the part of the employee - to obtain, before dismissing the employee, information as to whether the

faith behaviour, to which one assumes the employee is also bound. In other words, alongside the employer's obligation to inform itself of the potential of a disability, having applied ordinary diligence, one must also recognise a similar obligation of good faith on the part of the employee, which imposes a duty on them to inform the employer of their disability. Of course, it is worth repeating that good faith will never mean that an employer can plead ignorance of a state of disability that ought to have been known to them having applied ordinary diligence. In that way, a simple lack of knowledge can therefore never function as a blanket screen justifying discriminatory conduct.[60]

VI. Are Reasonable Accommodations Necessarily Individualised Measures, Tailored to the Specific Case of Each Disabled Worker?

The preceding discussion and the very concept of reasonable accommodation might lead one to believe prima facie that a reasonable accommodation will always demand the application of customised measures that take into account the individual worker's disability and its impact on his or her ability to work and sick leave. In principle, in most cases, such a belief would be well-founded. However, in reality, a reasonable accommodation does not always have to consist of measures tailored to the individual employee's situation. Instead, the concept itself can be considered compatible with general, standardised and uncustomised solutions. As shown by the adjustments to the period of time off work under existing collective bargaining agreements and as confirmed by the recent intervention of the legislature in legge no 106/2025, it is also reasonable to imagine the standardisation of reasonable accommodations, which, at least in some cases, makes it possible to reduce the uncertainties associated with case-by-case judgments.

The accommodations, therefore, may also sometimes consist of measures of a general nature, as is typically the case for those relating to the extent of tolerable absences from work, ie those that do not prejudice the preservation of the employment relationship.[61] If these measures are determined by collective

employee's sick leave is connected with his state of disability, in order to identify possible reasonable accommodation imposed by Art 3, paragraph 3-*bis*, decreto legislativo no 216/2003'. The cited judgment follows in the footsteps of Corte di Cassazione-Sezione lavoro 22 May 2024 no 14316, available at www.italianequalitynetwork.it with a brief comment by F. Cusa, 'Discriminazione per disabilità: per risolvere il nodo della conoscenza della disabilità la Cassazione punta sul dialogo' and in *Diritto delle Relazioni Industriali*, 1171 (2024), with a comment by V. Luciani, 'Il comporto nel licenziamento del disabile "europeo" tra tutela antidiscriminatoria e accorgimenti ragionevoli'. Along the same lines as the Supreme Court also seems O. Bonardi, 'Le soluzioni ragionevoli' n 43 above, 376, 388-391.

[60] General Comment no 6 (para 24 letter b) of the Convention on the Rights of Persons with Disabilities (CRPD) confirm this approach. For the Italian legal system see G. Della Rocca, 'La questione della conoscenza o conoscibilità dello status di disabilità' *Lavoro Diritti Europa*, 2 (2025).

[61] In this sense, see also the observations of the Supreme Court of Cassation, which seems to be in favour of adopting an extended leave of absence where, while acknowledging that the application

bargaining, questions as to the adequacy of the balance struck would not escape judicial scrutiny. It can be assumed, albeit, that the judiciary would proceed with great caution before declaring the measures provided for by collective bargaining to be inadequate.[62] The issue of the need for a differentiated periods of sick leave for disabled persons has recently been before the European Court of Justice, which therefore confirmed the legal validity of standardised reasonable accommodation measures.[63]

Apart from tolerable absences due to illness that fall within the protected ('comporto') period (which may be extended on a case-by-case basis depending on the type of disability of the worker or by adding the period of unpaid leave of absence referred to in Art 1 of legge no 106/2025) it does not seem possible to speak of standardising reasonable accommodation.

Rather, one could imagine a 'catalogue' of possible accommodations applicable to typical situations, which would then have to be assessed and, where appropriate, adapted to the needs of the specific case. This approach seems to be the intention of the Italian lawmaker itself, which in Art 4(1)(q) of decreto legislativo no 20/2024 indicated that included within the range of tasks of the newly established National

of the same period of absence determines an indirect discrimination, it clarifies that this 'does not mean that a maximum limit in terms of days of absence due to illness of the disabled worker cannot or should not be fixed. Such a discretionary choice of the legislature or of the social partners, in so far as it is within their competence, also for the purpose of combating absenteeism due to excessive morbidity, may integrate (...) a legitimate employment policy purpose, and in that sense objectively justify certain criteria or practices in the matter' (see again Corte di Cassazione-Sezione lavoro 31 March 2023 no 9095).

[62] A recent example is given by Corte di Cassazione-Sezione lavoro 23 May 2024 no 14402, available at www.italianequalitynetwork.it with a brief comment by G.A. Recchia, 'Disabilità e periodo di comporto: la Cassazione consolida la propria posizione sulla possibile discriminatorietà delle clausole collettive'. The Court of Cassation confirms the possible discriminatory nature of collective clauses in the perspective of an adequate protection of the subjective condition of disability. An employee with a 50 per cent disability who had been ordered to be dismissed for exceeding the protected period ('periodo di comporto' in Italian) laid down in Art 32 of the Gas-Water National Collective Labour Agreement. This collective agreement does not provide for a different term for disabled workers, but states that 'where the period of retention of employment is exceeded as a result of a particularly serious illness, intended to continue after the term, the worker may, upon request and appropriate written certification to be submitted before the expiry of the term, be granted a period of leave of absence not exceeding 12 months during which pay and seniority shall not be due'. A treatment that is undoubtedly inferior to that provided for non-disabled workers in case of illness, since this additional leave period does not provide for the worker's salary, which is, on the other hand, guaranteed for absences due to illness during the 'comporto' period. The solution of the Court of Cassation, which considers the provision of Art 32 of the Gas-Water National Collective Labour Agreement to be discriminatory, does indeed also raise some questions as to the legitimacy of the period of unpaid leave of absence provided for today by Art 1 legge no 106/2025.

[63] See Case C-5/24 *Pauni*, Judgement of 11 September 2025, available at www.eur-lex.europa.eu and Tribunale di Ravenna order 4 January 2023, available at www.italianequalitynetwork.it. On the possible adequacy of the ordinary protected sick leave period ('comporto') also for disabled workers see A. Pileggi, 'Tutela lavoristica versus tutela antidiscriminatoria', para 3.3, available at https://tinyurl.com/yck8d93j (last visited 31 January 2026), 77, and in *Diritto antidiscriminatorio e trasformazioni del lavoro. XXI Congresso nazionale AIDLaSS Messina 23-25 maggio 2024* (Piacenza: La Tribuna, 2025), 463, 500.

Authority Guarantor of the Rights of Persons with Disabilities is the obligation of defining and disseminating codes of good practice on the protection of the rights of persons with disabilities and models of reasonable accommodation. This 'catalogue' is also one that collective bargaining could well take care of, and it is intended to have the positive effect of reducing uncertainty and facilitating dialogue between the parties as a means of identifying specific solutions that will avoid the termination of employment. At present, the said 'catalogue' has not yet been developed by the National Guarantor, nor has it been fully implemented in collective bargaining, even though, as mentioned before,[64] in many cases the latter makes use of existing legal instruments, such as the potential to transform the employment relationship from a full-time to part-time status, by categorising such a conversion as a reasonable accommodation.

However, the perspective adopted by the Italian legislature in passing decreto legislativo no 62/2024 involves referring the question of reasonable accommodations to the worker instead of their working environment and circumstances. It is clear from the wording of Art 18 et seq decreto legislativo no 62/2024 that reasonable accommodations are measures related to an individual worker and their disability outside the specific situations in which the disabled person may find themselves. And indeed, the measures are identified by taking into account first of all the person and their needs and aspirations, with reference to the various contexts in which they are potentially useful, and without taking into account any dealings or relations they may have with other persons whom they may come into contact with.

This approach makes it clear that the accommodations are not so much linked to the organisational situation of the company, but function as an instrument of equality that directly and immediately concerns the disabled person, enabling the rebalancing of their living conditions by compensating for the disadvantages deriving from the specific disability. The standpoint from which the 2024 legislature views the disabled person is therefore first and foremost that of their difficulties and the need to eliminate or, at least, reduce them. This also explains why in drawing up the Life Project, which Art 18 of decreto legislativo no 62/2024 deals with, reasonable accommodations are identified as a process that do not include the disabled person's employer, who could nevertheless be usefully listened to. The legislature deals with the disabled person at a time that comes before and outside the employment context, imagining the construction of a system that aims to include the disabled person and enable their full participation 'in the different spheres of life'.

The foregoing obviously does not entail the obliteration of the characteristics and capabilities of the employer, given that national and European regulations clearly indicate that reasonable accommodations must not impose a disproportionate burden on the employer. And there is no doubt that the requisite proportionality of the burden on the employer and the reasonableness of the accommodation, depends

[64] See the end of para IV.

not only on the cost in itself of the proposed accommodation, but also on the organisational and entrepreneurial size of the employer and its economic capacity.

VII. The Refusal to Provide Reasonable Accommodations

Prior to the coming into force of the decreto legislativo no 62/2024, under Italian national law the consequences and sanctions for a refusal to provide reasonable accommodation were unclear. It was also not explicitly made clear in Italian national law whether such a refusal would constitute disability discrimination under Art 2 of Convention on the Rights of Persons with Disabilities (CRPD). Decreto legislativo no 216/2003 did not explicitly specify the consequences of failing to comply with the obligation of reasonable accommodation, nor did other laws provide specific sanctions or direct enforcement mechanisms, eg via particular bodies.

The Italian Supreme Court has recently confirmed that the refusal of smart working as a reasonable accommodation can be considered to be direct discrimination. More specifically, the Court stated that

> 'where there is no agreement between the parties on the reasonable accommodation measures to be applied, it is up to the judge of first instance to identify measures capable of making the working environment compatible with the psychological and physical condition of the disabled worker. If smart working is considered a suitable measure for this purpose, the employer's refusal to grant it constitutes direct discrimination under Art 3(3-*bis*) of decreto legislativo no 216/2003, unless the employer can demonstrate that the adoption of the aforementioned measure would entail a disproportionate and excessive burden'.[65]

As such, under Art 5-bis of legge no 104/92, in the case of a refusal, the applicant or relevant associations can ask for the discriminatory nature of the refusal to be confirmed[66] and can seek remedies. These remedies include initiating a disability discrimination claim or submitting a request to the newly established National Guarantor Authority for the Rights of Persons with Disabilities (established by decreto legislativo 5 February 2024 no 20).[67] The Guarantor has the power to

[65] Corte di Cassazione-Sezione lavoro 10 January 2025 no 605, forthcoming on *Rivista Italiana di Diritto del Lavoro*, II, 7 (2025), with a comment by M. Chiaramonte. UNCRPD General comment no 8 (2022) on the right of persons with disabilities to work and employment, 7 October 2022, para 13, 3 also explicitly considers the denial of reasonable accommodation to be a discrimination. This does not mean, of course, that provisions that are the same for all workers cannot be regarded as indirect discrimination of disabled workers, as in the case, already discussed, dealt with by Corte di Cassazione-Sezione lavoro 23 May 2024 no 14402 n 62 above.

[66] See paras 9-10-11 of Art 5-*bis* legge no 104/92.

[67] The numerous functions of the Guarantor are listed in Art 4 of decreto legislativo no 20/2024. The Guarantor, *inter alia*, a) monitors respect for the rights and compliance with the principles established by the CRPD and other international treaties on the protection of the rights of persons

verify potential discrimination stemming from the refusal of accommodation and propose solutions, albeit that the Guarantor's powers are currently limited, particularly towards private entities, and do not appear to include any direct sanctioning authority or procedural legitimacy in case of non-compliance (see above para 1, and below in this same paragraph). In other words, different consequences are provided for the refusal to provide a reasonable accommodation, depending on whether the subject refusing reasonable accommodation is a public administration, a public service concessionaire, or a private entity.

Where the employer is a public administration, under Art 5-*bis*, para 7, legge no 104/92, in making its final decision, it has to take into account

> 'the needs of the person with disabilities, including through personalised meetings, and shall conclude the procedure with a reasoned refusal, where it is not possible to grant the proposed reasonable accommodation, indicating the accommodation in accordance with the principles set out in paragraph 5'.

An appeal may be lodged against the reasoned refusal of reasonable accommodation by the public administration, or against the reasoned refusal of the accommodation proposed under Art 5-*bis*, para 3, pursuant to Arts 3 and 4 of legge 1 March 2006 no 67. This law contains measures for the legal protection of persons with disabilities who are victims of discrimination and its Art 3 expressly refers to Art 28 of decreto legislativo 1 September 2011 no 150, which is the provision applicable in the case of discrimination disputes and is particularly relevant, as

with disabilities, as well as by the Constitution, State laws and regulations; b) combats discrimination and harassment on the grounds of disability and the refusal of reasonable accommodation; c) promotes the effective enjoyment of the fundamental rights and freedoms of persons with disabilities; d) receives complaints submitted by persons with disabilities, their family members, those representing them, associations and bodies empowered to act in defence of persons with disabilities, individual citizens, public administrations, and the delegated political authority on disability; e) carries out verifications, also *ex officio*, on the existence of discriminatory phenomena; f) requests the administrations and public service concessionaires to supply the information and documents necessary to carry out the functions falling within its competence; g) formulates recommendations and opinions concerning the reports collected from the administrations and public service concessionaires concerned, also in relation to specific situations and with respect to individual entities, proposing or soliciting interventions, measures or reasonable accommodations suitable to overcome the criticalities encountered; h) promotes a culture of respect for the rights of persons with disabilities through awareness-raising campaigns; i) promotes, within the scope of its respective competences, relations of collaboration with guarantors and other public bodies however denominated to which specific competences are attributed, at the regional or local level, in relation to the protection of the rights of persons with disabilities; l) ensures consultation with the organizations and associations representing persons with disabilities on the issues addressed and on communication and awareness-raising campaigns and actions; m) transmits by September 30 of each year, a report to the Houses of Parliament and to the President of the Council of Ministers or to the Delegated Political Authority on Disability on the activity carried out; q) defines and disseminates codes and collections of good practices on the protection of the rights of persons with disabilities as well as models of reasonable accommodation; r) cooperates with the independent national bodies in carrying out their respective tasks (the letters are those of Art 4 of decreto legislativo no 20/2024).

will be seen below.

Furthermore, the applicant and the associations entitled to take action pursuant to Art 4 of legge 1 March 2006 no 67[68] have the right to request the National Authority for the Rights of Persons with Disabilities to confirm the occurrence of discrimination attributable to the refusal of reasonable accommodation by the public administration and also to formulate a proposal for reasonable accommodation.[69] In this way, there is a second opportunity for the disabled person to be heard and to have an evaluation of their proposal for reasonable accommodation.

In the event that a public service concessionaire refuses to provide reasonable accommodation under Art 5-*bis*, para 3, legge no 104/1992, the applicant and the associations entitled to take action under Art 4 of legge 1 March 2006 no 67[70] (without prejudice to the right to take legal action pursuant to Art 3 of the same law) may ask the National Authority for the Rights of Persons with Disabilities to confirm the occurrence of discrimination attributable to the refusal of reasonable accommodation, by proposing or requesting, including through the relevant sectoral or supervisory authority, reasonable accommodations that are suitable to overcome the critical issues encountered.[71]

As highlighted in para I of this article, there are some differences when it is a private employer that refuses the reasonable accommodation pursuant to Art 5-*bis*, para 3, comes from.[72] In this case, without prejudice to the right to take legal action, the applicant and the associations entitled to take action may ask the National Authority for the Rights of Persons with Disabilities to confirm the occurrence of discrimination attributable to the refusal of reasonable accommodation. However, the National Authority cannot intervene by proposing a specific solution for reasonable accommodation. Bearing in mind that the Authority does have the power 'to formulate a proposal for reasonable accommodation' with regard to public administrations, the exclusion of this power with regard to private employers may be intended to respect the entrepreneur's prerogative to set the organisation of work.[73] Therefore, the only solution would be to make a judicial claim, in which the National Authority's opinion on whether discrimination has occurred would be taken into account.

In any case, whether the employer is a public administration, a public service concessionaire or a private entity, the rules governing legal proceedings, as also stated in Art 3 of legge 1 March 2006 no 67, are laid down in Art 28 of decreto legislativo 1 September 2011 no 150. The latter is an article that prescribes a

[68] Associations and bodies for the protection of the rights of persons with disabilities, identified by decree of the Minister for Equal Opportunities, in agreement with the Minister of Labour and Social Policies, on the basis of their statutory purpose and organisational stability.

[69] See Art 5-*bis*, para 9, legge no 104/92.

[70] See n 68 above.

[71] See Art 5-*bis* para 10, legge no 104/92.

[72] ibid para 11.

[73] As already pointed out above in para I.

simplified procedure for discrimination proceedings. As mentioned above, the explicit reference made by the current text of Art 3 of legge no 67/2006 to Art 28 of decreto legislativo no 150/2011 is relevant, since under Art 28, para 5

> 'the judge may order the defendant to pay compensation for damages, including non-pecuniary damages, and order the cessation of the discriminatory behaviour, conduct or act, *adopting, even against the public administration, any other measure suitable for removing its effects*. In order to prevent the recurrence of discrimination, *the judge may order the adoption, within a specific time limit, of a plan to remove the discrimination found*'.

Although not made explicit, it is clear that Art 28, para 5, of decreto legislativo no 150/2011 gives the judge the power to order reasonable accommodations. In fact, it allows the judge to order not only the cessation of discriminatory behaviour, but also to specify what can be considered reasonable accommodations, irrespective of whether they are aimed at removing the effects of active or passive discriminatory behaviour or at eliminating the discrimination itself. In this sense, since the introduction of this article in 2011, it should be stressed that Italian legislation has included a provision aimed at ensuring that disabled persons who are discriminated against can obtain reasonable accommodations through recourse to the courts.

In addition to what has been said so far, the consequences arising from a refusal to make reasonable accommodations, where it is unjustified and therefore illegitimate, can go as far as to invalidate the dismissal that the employer imposes on the disabled employee.[74] Today there is no longer any doubt that the refusal of reasonable accommodation constitutes direct discrimination[75] and, therefore, the resulting dismissal must be considered null and void in all cases, ie both in small and large companies, irrespective of whether the employee was hired before or after 7 March 2025 (in Italian law, the penalty regime for dismissal varies depending on the number of employees employed by the employer and on the date of employment of the employees themselves).

This conclusion considerably simplifies the system of protection against the dismissal of a disabled worker in all cases in which it is linked to the unjustified refusal of reasonable accommodation and overcomes, with regard to this specific case, the inconsistencies in the regulation of the dismissal of disabled persons resulting from the disorderly succession of non-organic reforms of the Italian system of protection against unjustified dismissal.[76]

Consequently, in any case in which a disabled worker is dismissed due to the employer's refusal to adopt a reasonable accommodation, the worker who is

[74] See D. Garofalo, n 3 above, 52-53, for the specific issue discussed in the text above.

[75] See, most recently, the aforementioned Corte di Cassazione 10 January 2025, no 605, forthcoming on *Rivista Italiana di Diritto del Lavoro*, II, 7 (2025), with a comment by M. Chiaramonte.

[76] See again D. Garofalo, n 3 above, 52-53, for the confused regulation of the dismissal of a disabled worker if it is not discriminatory.

successful in contesting the dismissal will be entitled to reinstatement in his job and to damages commensurate with all the remuneration lost from the day of the unlawful dismissal to the day of actual reinstatement. More precisely, the said indemnity must be

> 'commensurate with the last overall remuneration accrued from the day of dismissal until the day of actual reinstatement, less what has been received, during the period of dismissal, for the performance of other work activities'.[77]

Finally, with regard to the burden of proof, since this is a case of discrimination, the general reversal of the burden of proof provided for in Art 28(4) of decreto legislativo no 150/2011 will apply. According to this article,

> 'when the plaintiff provides factual evidence, including statistical data, from which the existence of discriminatory acts, agreements or conduct may be presumed, the burden of proving the non-existence of discrimination shall be on the defendant'.

This rule perfectly reflects the principle expressed in Art 10(1) of Directive no 2000/78, according to which

> 'Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment'.

The Italian Supreme Court of Cassation has also recently reiterated that 'on the subject of discriminatory dismissal, by virtue of the relaxation of the ordinary rules of evidence introduced by the transposition of Directives no 2000/78/EC, no 2006/54/EC and no 2000/43/EC, as interpreted by the ECJ, it is for the employee to allege and prove the risk factor and the treatment he claims to be less favourable than that reserved to persons in comparable conditions, at the same time inferring a significant correlation between these elements, while the employer must infer and prove unequivocal circumstances capable of excluding, by precision, gravity and concordance of meaning, the discriminatory nature' of the said treatment.[78] In dismissal cases where a worker becomes incapable of performing their duties due to disability, the employer has the burden of proving the employee's inability to perform, the impossibility of redeploying them, and the impossibility, unreasonableness, or

[77] This is the text of Art 18(2) of Law 300/1970 (the so-called Italian Workers' Statute) in its current wording.

[78] See again Corte di Cassazione-Sezione lavoro 31 March 2023 no 9095.

disproportionality of alternative organizational solutions (ie reasonable accommodations). As can be seen, these are principles and interpretative guidelines that are fully in line with the anti-discrimination law of the European Union, in relation to which the Italian system would not appear to present any noteworthy peculiarities.

VIII. Final Remarks

There is no doubt that the 2024 reform has resolved a number of problems in the Italian system of reasonable accommodations. Decreto no 62 of 2024 'restructures' the concept of significant disability and finally introduces a comprehensive concept of reasonable accommodations into the Italian legal system. Even in a system in which the Constitution itself places limits on the possibility of burdening employers with welfare-related costs, the 2024 reform has made the system of reasonable accommodations, their nature, and the range of potential beneficiaries much clearer and better defined.

Nevertheless, some issues remain unresolved. Among these, it is certainly worth mentioning the persistent centrality of medical assessment certifying disability. The legislator has appropriately assigned exclusive competence to the basic assessment units at INPS, thus marking a further step towards a more systematic and organic system of disability protection. However, the fact that medical certification of disability remains fundamental despite the introduction of a biopsychosocial concept of disability into the legal system continues to mark a significant difference between national and international and European regulations, which are 'decoupled' from medical certification of disability. The application of the new regulations in case law will reveal the extent to which the biopsychosocial concept of disability has truly penetrated the national legal system and the extent to which the requirement for a medical assessment still constitutes a limitation on the protection of persons with disabilities.

In any case, it should be noted that the relevance of the medical certification of disability produced in the basic assessment cannot be understood as a limitation on the right to reasonable accommodations. This right, at least as far as the preservation of the employment relationship is concerned, acts as a barrier to the employer's power to dismiss an employee whenever they become unfit for the tasks assigned to them, regardless of whether or not medical certification of that unfitness has been provided.

Finally, the consolidation of the idea that refusal to make reasonable accommodations constitutes a form of direct discrimination appears to be of extreme importance. This conclusion makes it possible to overcome the fragmented nature of the forms of protection against unfair dismissal that unfortunately characterize the Italian legal system today, by classifying as null and void and without effect, because discriminatory, any dismissal related to the refusal to adopt

reasonable accommodations or, one might also say, directly or indirectly justified by the situation resulting from that refusal.

The system of reasonable accommodations shares the expansive power of anti-discrimination law, which, from many points of view, has proven capable of extending its sphere of influence and scope of application both subjectively and objectively, and its extension is confirmed by the Italian reform and by the national regulations that underpin and support its structure. The Italian legal system, despite its lack of coherence until this 2024 reform, has in fact experienced an osmotic relationship with European and international sources, absorbing their innovative scope and civilizational achievements, sometimes giving rise, as in the case of caregivers, to innovative developments that have subsequently been confirmed by the European legal system.[79]

[79] I am referring to the very recent ruling ECJ Case C-38/24 *GL* v *AB spa* n 49 above.