

Legislation in Italy

By Diversamente

ITALIAN CONSTITUTION

- Art. 3: "All citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinion, personal and social conditions. It is the duty of the Republic to remove obstacles of an economic and social order, which, by effectively limiting the freedom and equality of citizens, prevent the full development of the human person".
- Art. 32 Constitution: "The Republic shall protect health as a fundamental right of the individual and an interest of the community and shall guarantee free care to the indigent."

- L.104/92 (Assistance, social integration, and rights of handicapped persons)
This is a law that protects and regulates the subject matter relating to the rights and inclusion in social life of people with disabilities.

It is aimed at the person who has a physical, mental, intellectual, or sensory impairment, whether stabilized or progressive, which reduces his or her ability to learn, relate or integrate in the workplace and such as to result in social disadvantage and marginalization.

In addition, the law applies to family members of disabled persons, foreigners, stateless persons, residents, domiciled or having permanent residence in the national territory.

A key aspect concerns the protection of the person's social inclusion and integration, which is achieved through a series of socio-psycho-pedagogical interventions such as:

- personal aid services,

- removal of architectural barriers,
- right to information and right to study,
- adjustment of equipment and personnel of educational, sports, leisure, and social services,
- full integration into the labour market,
- total accessibility of public and private means of transportation,
- establishment and adaptation of social-rehabilitation and educational day care centres,
- organization and implementation of extracurricular activities.

TYPOLOGY OF INTERVENTIONS

Personalized plans, prepared in collaboration with families and, where necessary, with health services, may provide educational service, home care, permanence in day-care centres, permanence up to a year at authorized facilities/assisted living residences, sports and/or socialization activities.

Since the objective of L. 162/98 is to lighten the care burden of family members and to integrate the care resources provided by the family with the resources of public social and health services and the third sector the implementation of the financed services cannot be entrusted to cohabiting family members nor to family members required to provide alimony under Article 433 of the Civil Code.

The Entity shall prepare the plan in cooperation with the family of the person concerned and, if necessary, with the health services.

- LAW Aug. 18, 2015, no. 134
"Provisions on the diagnosis, treatment and habilitation of persons with ASD and assistance to families."

The law establishes the inclusion in the essential levels of care of treatments for autism, the updating of guidelines for prevention, diagnosis, and treatment, as well as research.

Key points include:

- Care also in adulthood: the law provides for the three-year update of the Guidelines for the improvement of the quality and appropriateness of care, extending them not only to the life of the child and young person with autism, but also to the adult. The goal is the improvement of living conditions through inclusion in the social and working life of people with ASD.
- Free or co-payment health services: the law stipulates that autism is included in the Essential Levels of Care (LEA), which means that health services are guaranteed to citizens with ASD free of charge or with the payment of a share of the health co-payment, to ensure early diagnosis and personalized care without disparities between regions.
- Both biological and genetic research on the causes of autism, extending it to rehabilitation and inclusion of the individual in social life.

- LAW No. 112/2016
"Provisions on assistance in favour of severely disabled persons without family support."

Art.3 paragraph 1

A Fund for assistance to severely disabled persons without family support was established in the budget of the Ministry of Labour and Social Policy.

Art.4

The Fund is intended for the implementation of the service objectives set forth in Article 2, paragraph 2, and for the following purposes:

(a) to activate and strengthen intervention programs aimed at fostering paths of deinstitutionalization and home support in dwellings or apartment groups that reproduce the living and relational conditions of the family home and that also consider the best opportunities offered by new technologies, in order to prevent the isolation of persons with severe disabilities referred to in Article 1, paragraph 2.

(b) implement, where necessary and, in any case, on a residual basis, in the best interest of persons with severe disabilities referred to in Article 1, paragraph 2, interventions for temporary permanence in an extra-family housing solution to cope with any emergency situations, respecting the wishes of persons with severe disabilities, where possible, their parents or those who protect their interests.

(c) to carry out innovative residential interventions for persons with severe disabilities referred to in Article 1, paragraph 2, aimed at the creation of family-type housing solutions and co-housing, which may include the payment of the charges for the purchase, rental, renovation and installation of the facilities and equipment necessary for the operation of such housing, including by supporting forms of mutual aid between persons with disabilities.

(d) to develop, for the purposes of (a) and (c), programs to increase awareness, empowerment, and development of skills for the management of daily life and for the achievement of the highest possible level of autonomy of persons with severe disabilities referred to in Article 1, paragraph 2.

In the financing of the programs and implementation of the interventions referred to in paragraph 1, in accordance with the principle of subsidiarity and their respective competencies, the regions, local authorities, third sector entities,

as well as other private law entities with proven experience in the field of assistance to persons with disabilities and families who associate for the purposes referred to in Article 1 may participate.

The planning activities of the interventions referred to in paragraph 1 include the involvement of representative organizations of persons with disabilities.

- LAW No. 328 of November 8, 2000.

"Framework law for the realization of the integrated system of interventions and social services"

It is the law for assistance, aimed at promoting social, welfare and sociomedical interventions that guarantee concrete help to people and families in difficulty. Italian citizens and citizens of states belonging to the European Union and their family members, as well as foreigners, identified in accordance with Article 41 of the Consolidated Text referred to in Legislative Decree No. 286 of July 25, 1998, have the right to use the benefits and services of the integrated system of interventions and social services. Refugees, foreigners, and stateless persons are guaranteed the measures of first assistance, referred to in Article 129, paragraph 1, letter h), of Legislative Decree No. 112 of March 31, 1998.

Law 328 intends to further overcome the welfarist concept of social intervention, in the sense that it considers the citizen not as a passive beneficiary, but as an active subject and as such a bearer of rights, to whom interventions aimed at removing situations of psycho-social distress and marginality must be allocated.

Chapter III lists provisions relating to the implementation of particular social interventions and more precisely in favour of the disabled, the non-self-sufficient elderly, and families.

In fact, provision is made for:

Individual projects for the disabled: municipalities, in agreement with local health units, prepare, at the request of the person concerned, an individual project.

The individual project includes:

- the diagnostic-functional assessment.

- the treatment and rehabilitation services paid for by the National Health Service.

- services to the person provided by the municipality in a direct or accredited form, with reference to recovery and social integration.

- home help and support services, including with economic benefits, particularly for families who take on tasks of care, care of the physically, mentally, and sensory disabled and other persons in difficulty, foster children, and the elderly.

- respite services, to support in the responsibility of care work the family, and in particular the members most engaged in the daily care of people in need of special care or to replace them in the same care responsibilities during working hours.

Law nr. 46/2006, of August 28th - Prohibits and punishes discrimination on the grounds of disability and aggravated risk to health (contains a specific norm on work and employment discrimination).

Legislation in Portugal

By Inovar Autismo

The Portuguese State recognizes to autistic citizens the full enjoyment of their rights and has made itself responsible to promote and adopt pedagogies that "oblige" society and respect people with disabilities.

Constitution of the Portuguese Republic:

Article 13 - Principle of equality - based on the dignity of the human person (does not mention any disability as an illegitimate discrimination factor): 1. All citizens have the same social dignity and are equal before the law.

Decree Law 54/2018

This diploma establishes the "right of each student to an inclusive education that meets their potential, expectations and needs within the framework of a common and plural educational project that provides everyone with participation and a sense of belonging in effective conditions of equity, thus contributing decisively to greater levels of social cohesion".

The main characteristics of this decree-law include the abandonment of systems for categorizing students, including the "category" of special educational needs, abandonment of the model of special legislation for special students and the establishment of a continuum of responses for all students. It has also shifted the focus from categories of learners to educational responses. It also advocates mobilising, where necessary and appropriate, resources from health, employment, vocational training and social security.

Regarding the Labor Code:

Law nr. 3/2011, February 15th, 2011 - Prohibits any discrimination in the access to and exercise of self-employment and transposes Council Directive nr. 2000/43/EC, June 29th, Council Directive nr. 2000/78/EC, November 27th, and European Parliament and Council Directive nr. 2006/54/EC, July 5th.

Law nr. 46/2006, of August 28th - Prohibits and punishes discrimination on the grounds of disability and aggravated risk to health (contains a specific norm on work and employment discrimination).

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Legislation Autism Europe

By Autism Europe

The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) is an international binding human rights treaty of the United Nations (UN) intended to protect the rights and dignity of persons with disabilities. Parties to the convention are usually states. Forty-five out of the forty-six countries of the Council of Europe have ratified the UNCRPD including all EU Member States as well as the European Union itself. Parties to the convention are required to promote, protect, and ensure the full enjoyment of human rights by persons with disabilities and ensure that persons with disabilities enjoy full equality under the law. Article 24 of the UNCRPD asks parties to guarantee the right of persons with disabilities to education. Paragraph 4 specifies that Parties of the UNCRPD “shall take appropriate measures (...) to train professionals and staff who work at all levels of education. Such training shall incorporate disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities” Augmentative and alternative communication as well as easy to read are vital for educating many autistic students.

To implement the UNCRPD at EU level, the European Commission launched in March 2021 its second Strategy for the Rights of Persons with Disabilities, which will run until 2030. The strategy lays out the state of play in different areas for people with disabilities and then gives concrete recommendations to the European Commission and EU Member States. On the topic of education it is stated that: “No sufficient systematic research has been carried out so far on the conditions necessary for learners with disabilities to succeed, including learners with invisible disabilities such as autism, dyslexia, or hyperactivity”, (p. 15). As recommendations, the European Commission in 2021 issued a toolkit for inclusion in early childhood education and care, which includes a specific chapter on children with disabilities. The European Commission will support EU Member

States to further develop their teacher education systems to address shortages of teachers in Special Needs Education and competences of all education professionals to manage diversity in the classroom and develop inclusive education. The European Commission calls on EU Member States to support the development of inclusive schools that can become a reference in inclusive and innovative teaching and learning across the EU along the objectives of the European Education Area and the Digital Education Action Plan. The European Commission calls on EU Member States to ensure that their education systems at all levels comply with the UNCRPD to advance on supported learning in inclusive mainstream settings (p. 16).

Source for the first paragraph:

UNCRPD (2006) Article 24 – Education

<https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-24-education.html>

Source for the second paragraph:

Communication from the Commission to the European Parliament, the Council, The European Economic and Social Committee and the Committee of the Regions (2021) Union of Equality: Strategy for the Rights of Persons with Disabilities 2021-2030 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021DC0101&from=EN>