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The Principle of Equality and Implementation of EU Anti-Discrimination Law in Italian Labor Law: Minimal Notes

1. The "ontological" connection between equality and labor in Article 1 of the Italian Constitution

The interconnection between equality and work unfolds through a subtle weave, threaded among various articles of the Italian Constitution, starting from Article 1, paragraph 1, according to which "Italy is a democratic Republic founded on work."[1] This formula, proposed by Amintore Fanfani, prevailed over the one suggested by Palmiro Togliatti, aimed at characterizing Italy as a Republic "of workers."

From a certain point of view, even this choice appears more consistent with the principle of equality, in that it clears the field of any possible misunderstanding regarding the consideration of a privileged social class at the center of the new constitutional project.

Article 2, along the same lines, ties the recognition of inviolable human rights to the simultaneous adherence to non-negotiable duties of political, economic, and social solidarity, rejecting both totalitarian conceptions of the State and purely individualistic logic.

However, the connection between inviolable rights and non-derogable duties requires the adoption of a criterion identifying the social value of the person, and such a criterion is identified, not by chance, in "work," the sole title of dignity for the citizen but also a duty, since it is through one's own activity that each contributes to the material or spiritual progress of society.

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[1] See: M.S. Giannini, *Rilevanza costituzionale del lavoro*, "Rivista Giuridica del Lavoro e della Previdenza Sociale" 1949, n. 1, p. 1 ff.; C. Mortati, *Il lavoro nella Costituzione*, "Diritto del Lavoro" 1954, n. 1, p. 149, and now in *idem*, *Raccolta di scritti*, vol. 3, Milano 1972, p. 237. More recently, see: M. Luciani, *Radici e conseguenze della scelta costituzionale di fondare la repubblica democratica sul lavoro*, "Argomenti di Diritto del Lavoro" 2010, n. 3, p. 628. See also: L. Zoppoli, *L'idea di lavoro nella Costituzione italiana* [in:] *Idee di lavoro e di ozio per la nostra civiltà*, eds. G. Mari, F. Ammannati, S. Brogi, T. Faitini, A. Fermani, F. Seghezzi, A. Tonarelli, Firenze 2024, p. 1285 ff.

Besides being the most effective instrument for asserting human personality, work is a factor of equality as it requires everyone to make an effort to work, regardless of the greater or lesser personal satisfaction that effort may yield.

Although in a preliminary sense, it seems possible to affirm that the value of work is not only intimately connected to that of equality, but even ends up assuming, in the constitutional framework, a semantic value expressive of the same principle.

This consideration helps to contextualize the affirmation of the principle of equality in the subsequent Article 3 of the Constitution, which does not merely advocate formal equality in a static dimension but guarantees substantive equality in a dynamic perspective.[2]

It is no coincidence that associated with work as the foundational value of the Republic in Article 1, paragraph 1, of the Constitution, its democratic character is also mentioned: democracy, understood as the freedom to choose one's governors and the democratic nature of decision-making processes (sovereignty belongs to the people, as stated in the subsequent paragraph 2), synthesizes the other foundational value of the Republic, which complements equality, namely, freedom.

The subtle interweaving of equality and work mentioned at the beginning of this section emblematically concludes in Article 139 of the Constitution, according to which "the republican form cannot be the object of constitutional revision." The republican form referred to here is that of Article 1, democratic and founded on work, that is, on the values of freedom (inherent in its democratic character) and equality (encapsulated in the value of work), further reaffirmed and specified in subsequent articles.

These initial coordinates can constitute a starting point for further exploration of the connection between work and equality through other articles of the Constitution, which address work or, more specifically, workers' rights[3]: the right to work (Article 4); protection of work in all its forms and applications, as well as the professional elevation of workers (Article 35); the right to fair remuneration, maximum duration of the working day, weekly rest, and holidays (Article 36); equal dignity of work for women and minors (Article 37); the right of workers to adequate means for their life needs in case of accident, illness, disability, old age, or involuntary unemployment (Article 38, paragraph 2). Also relevant are provisions on trade union freedom and collective self-defense (Articles 39 and 40) and the limits placed on private economic initiative by Article 41, paragraph 2.[4]

In this context, it is not possible, of course, to delve into all these aspects, and I limit myself to some brief reflections, necessarily concise and without any claim

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[2] See: C. Pinelli, *Cittadinanza europea* [in:] *Enciclopedia del Diritto*, Annali I, Milano 2007, p. 194. Here the author affirms "Equality is a principle not so much to be respected, but rather to be guaranteed and, if necessary, promoted."

[3] See: E. Ghera, A. Pace, *L'attualità dei principi fondamentali della Costituzione in materia di lavoro*, Napoli 2009.

[4] Labor law has, not by chance, also been defined as "a law of constitutional implementation" by R. Del Punta in *Lezioni di diritto del lavoro*, Milano 2006, p. 48.

to completeness or exhaustiveness, focusing only on a couple of classic themes in labor law traditionally linked to the principle of equality: those of equal treatment in contractual matters and the prohibition of discrimination.

Above all, however, it is appropriate to at least mention the enduring role that labor law should play in a context where inequalities are increasingly prevalent.

2. The function of labor law, vertical equality, and horizontal equality. Protecting the dignity of the working person as a non-negotiable value

The close connection of labor law with the principle of equality is not only shown by the intimate relationship that binds this principle in the Constitution to the very subject matter of this branch of law.

Long before the Constitution, labor law emerged and developed thanks to union struggles aimed at gradually eliminating the inequalities that characterized socio-economic contexts at the dawn of the industrial revolution.

This is because, as has been pointed out, "the workplace is the site of the maximum refraction of inequalities,"[5] and collective actions aimed at negotiating better working conditions have often led to the subsequent legalization of specific protective measures, after these had already been recognized informally.

The function of labor law has always been to protect the worker,[6] who, due to his/her juridical condition of subordination, finds him/herself subject to the unilateral exercise of employers' powers within a relationship not amenable to regulation by the general law of contracts, unlike any other relationship.

If the issue of equality is also a matter of progress, any increase in inequalities can only produce dismay.[7] Nevertheless, it must be acknowledged that today, substantive equality is particularly endangered by the widening gap between the affluent and the less affluent in an Italy increasingly divided between economically developed regions and persistently backward areas, between generations of the employed and generations of the unemployed, between citizens and disadvantaged residents, and between secure workers and precarious workers.

These considerations prompt reflection on the traditional dimensions of the principle of equality with which labor law traditionally grapples: the vertical and the horizontal. The former pertains to the need to rebalance the power relationship

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5 U. Romagnoli, *Il diritto del lavoro nel prisma del principio d'eguaglianza* [in:] *Costituzione, lavoro, pluralismo sociale*, ed. M. Napoli, Milano 1998, p. 15 ff.

6 F. Santoro-Passarelli, *Spirito del diritto del lavoro* [in:] *idem*, *Saggi di diritto civile*, Napoli 1961, p. 1071. The author emphasizes that, whereas all other contracts relate to the possessions of the parties, the employment contract-though it concerns the employer's assets- pertains, for the worker, to their very being: a fundamental good that constitutes the precondition for possessing anything else.

7 A. Occhino, *La questione dell'eguaglianza nel diritto del lavoro*, "Rivista Italiana di Diritto del Lavoro" 2011, n. 1, p. 95.

between employer and worker; the latter concerns the distribution of income, opportunities, and benefits available in access to work or in connection with a relationship of employment.

This second perspective often ends up justifying legislative interventions aimed at reducing the protective status of subordinate labor in favor of macroeconomic objectives related to increasing employment levels: "the rediscovery of horizontal equality occurs at the expense of the vertical dimension."[8]

The so-called Fornero Law initially, and subsequently the Jobs Act, are emblematic of this trend insofar as they have attenuated many guarantees of the individual employment relationship to attract greater investments and increase employment levels.

The narrowing of the scope of reinstatement as a penalty against wrongful dismissal based solely on the date of hiring then opens up another issue: that of inequalities among "protected" workers. Certainly, at least concerning the regime of wrongful dismissal, such inequalities are particularly pronounced today under current law, given the numerous rulings of the Constitutional Court and the Court of Cassation concerning Article 18 of the Workers' Statute as amended by the Fornero Law.[9]

The idea of work sustainability framed in terms of business sustainability should not overshadow what remains the central theme: the sustainability of work from the perspective of the individual worker.

This prompts us to question whether the protection of labor, from this latter standpoint, is not a paramount value compared to economic freedom, and, consequently, whether the sustainability of work for the enterprise can or cannot be equated with the imperative to safeguard the dignity and safety of the working individual for the purpose of balancing constitutional values.

This is not to suggest that labor law should not engage with social realities or adapt to economic and geopolitical contexts, nor that the values defining labor law should be rigidly immutable. On the contrary, labor law, more than any other, is profoundly influenced by the mutability of economic contexts and reference values. However, the traditional function of labor law must be reaffirmed even today, despite the economic crisis of recent years and legislative interventions in labor matters that directly or indirectly stem from it, which raise questions about scaling back certain protections and revisiting traditional safeguard techniques to promote greater employment.[10]

The economic sustainability of work for businesses and the protection of the dignity and safety of the working individual may indeed evolve according to flexible balances, but they cannot be treated as co-equal for the purpose of reconciling constitutional

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[8] M. Barbera, *Discriminazioni e pari opportunità* [in:] *Enciclopedia del Diritto*, Annali VII, Milano 2014, p. 378.

[9] G. Santoro-Passarelli, *Diritto dei lavori e dell'occupazione*, Torino 2022, p. 463. See also: D. Mezzacapo, *Brevi note sulle tutele in caso di licenzia mento ingiustificato tra norma scritta e interpretazione giurisprudenziale*, "Lavoro Diritti Europa" 2022, n. 3.

[10] See: G. Santoro-Passarelli, *Appunti sulla funzione delle categorie civilistiche nel Diritto del lavoro dopo il Jobs Act*, WP CSDLE "Massimo D'Antona".IT 2016, n. 290.

values, at least if one wishes to preserve the distinctive nature that defines labor law's *raison d'être*.[11]

Certainly, the specificity of labor law would be undermined if it were asserted that safeguarding the dignity of the working person is no longer the foundational and preeminent value of this autonomous discipline. From this perspective, labor law would risk being absorbed into other branches of law: commercial law, bankruptcy law, and economic law, among others.

3. Equality, equal contractual treatment in case of equal work and prohibition of discrimination

Reaffirming the role of labor law, it is now time to focus on the margins that private autonomy has in differentiating treatment among workers: the issue concerns equal contractual treatment for equal work, and consequently, discrimination.

When asked whether there is a recognized principle of equal treatment in employment relationships, some students impulsively respond, "Certainly, it must be recognized, for the principle of equality!"

It could be argued that equal contractual treatment is not even recognized in the Gospel, considering that the vineyard workers of the first hour end up being paid the same as those of the last hour![12]

This is obviously not the place to reflect on the religious meaning of this parable; in fact, far from justifying wrongs, here it is important to remember that, legally speaking, private autonomy can indeed differentiate the treatment of others.[13]

In general, and in the absence of an explicit legal provision, private autonomy does not need to be justified, because the reasons that inspire private actions are usually irrelevant,[14] unless the action conflicts with other interests deserving of protection. In such cases, safeguarding these interests involves the well-known legal technique in labor law of identifying external limits[15] to private autonomy, limits established by specific legal norms.

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[11] On this subject, see: F. Santoro-Passarelli, *Spirito del diritto del lavoro*, "Annali del Seminario giuridico dell'Università di Catania" 1947–1948, p. 3; R. Scognamiglio, *La specialità del diritto del lavoro*, "Rivista Giuridica del Lavoro" 1960, n. 1, p. 83.

[12] Matthew 20: 1–16.

[13] In this sense, after some disorientation, Cass., SS.UU., 29 May 1993, n. 6030. According to M. Barbera in *Discriminazioni e pari opportunità*… this sentence even marks the *de profundis* of the principle of equality.

[14] See: F. Santoro-Passarelli, *Dottrine generali del diritto civile*, Napoli 2002, pp. 128, 160, 178.

[15] G. Minervini, *Contro la funzionalizzazione dell'impresa privata*, "Rivista di Diritto Civile" 1958, n. 1, p. 618 ff.; G. Oppo, *L'iniziativa economica*, "Rivista di Diritto Civile" 1988, n. 1, pp. 324–325; M. Persiani, *Diritto del lavoro e razionalità*, "Argomenti di Diritto del Lavoro" 1995, n. 1, pp. 1–34.

It is not merely coincidental that the protection of the working individual is implemented in labor law through the legislative technique of non-derogable norms aimed at limiting the exercise of managerial powers.

External limits are those contemplated by Article 41, paragraph 2, concerning the freedom of private economic initiative and must be specified by appropriate legal norms.[16]

The principle of equal contractual treatment is expressly provided by law only in public employment, for obvious budgetary reasons; in the private sector, differentiated treatments are possible within the limits established by non-derogable legal norms and equally non-derogable clauses in collective agreements aimed at setting thresholds below which differentiation is no longer permissible. Under this perspective, the non-derogable norm "remains a useful technique for the principle of equality, especially when focused on fundamental minimum protections (particularly in matters of safety, illness, maternity), thereby contributing to the establishment of a guarantee of an essential core of protection for individuals in employment relationships."[17]

The issue of equal contractual treatment for equal work is traditionally linked to the prohibition of discrimination. In our legal system, alongside the absence of a general principle of equal contractual treatment for equal work, subject to the minimum non-derogable provisions of law and collective agreement, specific prohibitions on discrimination operate as limits to private autonomy.

However, these are distinct aspects: the above-mentioned equal treatment is measured among individuals who have the same qualifications; the prohibition of discrimination, on the other hand, considers individuals with different qualifications, preventing differences in qualification from justifying different treatment.[18]

4. The evolution of anti-discrimination law

Anti-discrimination legislation finds its ideal reference point in the principle of equality outlined in Article 3 of the Constitution.[19] This constitutional provision not only establishes that all citizens have equal social dignity and are equal before the law, but also adds "without distinction of sex, race, language, religion, political opinions, and personal and social conditions." Such factors of differentiation cannot justify unequal treatment and enjoy reinforced protection because of the implication of other constitutionally protected values, primarily the dignity of the worker.

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16 G. Santoro-Passarelli, *La parità di trattamento retributivo nell'ordinamento italiano e nella prospettiva dell'ordinamento comunitario*, "Giurisprudenza Italiana" 1994, n. 1, p. 913.

17 A. Occhino, *La questione dell'eguaglianza nel diritto del lavoro*…, p. 110.

18 G. Santoro-Passarelli, *Diritto dei lavori e dell'occupazione*…, p. 363.

19 See: P. Bellocchi, *Divieti di discriminazione, interventi di contrasto e sanzioni specifiche contro gli atti discriminatori* [in:] *Diritto e processo del lavoro e della previdenza sociale. Privato e pubblico*, ed. G. Santoro-Passarelli, Torino 2020, p. 852.

In addition to the Constitution, especially in more recent times, the Treaty on the Functioning of the European Union[20] and the Charter of Fundamental Rights of the European Union,[21] which has the same legal value as the Treaties after the Treaty of Lisbon,[22] serve as further ideal references for national anti-discrimination legislation.

Based on a series of specific directives[23], European law identifies additional discriminatory grounds beyond those indicated by the Constitution, which have also been incorporated into domestic legislation: nationality, ethnic origin, personal beliefs, disability, age, and sexual orientation.

Currently, anti-discrimination legislation protecting workers is varied and dispersed across a series of different regulatory acts. However, Article 15 of the Workers' Statute, in its text as implemented by subsequent European legislation, continues to stand out in terms of the relevance of the specified discriminatory grounds and the comprehensiveness of the punishable behaviors.[24]

Alongside the Workers' Statute, there are additional measures, not without some areas of overlap, particularly: the Consolidated Immigration Act (Legislative Decree No. 286 of 25 July 1998), which prohibits discrimination based on racial, ethnic, national, or religious grounds, providing protections for workers discriminated against because of their belonging to a race, an ethnic or linguistic group, a religious faith, or nationality; Legislative Decree No. 215 of 2003, implementing Directive 2000/43/EC for equal treatment of persons irrespective of race and ethnic origin, also with reference to access to employment and working conditions; Legislative Decree No. 216 of 2003, implementing Directive 2000/78/EC for equal treatment in employment and working conditions, which reiterates the prohibition in these contexts of discrimination on the grounds of religion, personal beliefs, disabilities, age, or sexual orientation; the so-called Code of Equal Opportunities between Men and Women (Legislative Decree No. 198 of April 11, 2006), which regulates, among other things, equal opportunities in the workplace with a comprehensive set of anti-discrimination prohibitions and provision for positive actions; and Legislative Decree No. 150 of 2011, containing provisions for the reduction and simplification of civil procedures, which outlines a summary cognition procedure for disputes concerning discrimination, aimed at strengthening the effectiveness of protection.

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20 See: Articles 18, 19, and 45.

21 See: Article 21, Charter of Fundamental Rights of the European Union.

22 Article 6, Treaty on European Union.

23 See: Directives 2000/43/CE, 2000/78/CE, 2002/73 CE, modifying Directive 76/207/CEE (both consolidated in Directive 2006/54/CE).

24 Any agreement or act aimed at a) making the employment of a worker conditional on joining or not joining a trade union, or ceasing to be a member of one; b) dismissing a worker, discriminating against them in the assignment of qualifications or tasks, in transfers, in disciplinary measures, or otherwise harming them because of their trade union membership or activities, or their participation in a strike, is null and void. The provisions of the preceding paragraph also apply to agreements or acts aimed at discrimination on political, religious, and racial grounds, and grounds of language, gender, disability, age, nationality, sexual orientation, or personal belief.

Most recently, the new frontier of anti-discrimination protection, following the recent enactment of Legislative Decree No. 104 of 2022, is achieved through transparency obligations, whereby non-compliance is considered discriminatory, marking a significant step forward in the effectiveness of protection, including the entirely new issue of so-called algorithmic discrimination.

Employers are required to provide workers and trade union representatives with a range of information, including the control measures adopted for automated decisions, any correction processes, the level of accuracy, robustness, and cybersecurity of the systems, and the metrics used to measure these parameters, as well as the potentially discriminatory impacts of the metrics themselves.[25]

Finally, transparency as a tool to combat discrimination is also considered by the recent directive on gender pay transparency.[26]

5. Common elements of anti-discrimination laws

Without aiming to cover all aspects of the mentioned regulations, it is worth briefly focusing on some common points: a) the reasons for discrimination and notions of discrimination; b) the exceptions; c) the measures to ensure the effectiveness of protection; and d) the sanctions provided for discriminatory acts.

a) Regarding reasons for discrimination, Article 15 of the Workers' Statute, as previously highlighted, remains an essential model. This provision categorically identifies a series of discriminatory grounds but leaves open the behaviors that may constitute such discrimination.

It is important to note that despite the *numerus clausus* of discriminatory grounds, the Court of Justice allows for an atypical discriminatory factor to be subsumed under an expressly specified one; for example, obesity is not an explicitly specified factor but could be related to disability, which is explicitly covered.[27]

The notion of discrimination is transversal and follows the same scheme in different regulations, distinguishing between direct and indirect discrimination.

Generally, the former occurs when a person is disadvantaged because of a certain factor;[28] the latter occurs when apparently neutral rules or behaviors put some individuals at a particular disadvantage compared to others because of a specific factor.[29]

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[25] Article 1-*bis*, letters *e* and *f*, Legislative Decree No. 152/1997, introduced by Legislative Decree No. 104/2022.

[26] See the recent Directive 2023/970/UE.

[27] CJEU, 18 December 2014, (C-354/13).

[28] Article 43, paragraph 1, Legislative Decree No. 286/1998; Article 2, paragraph 1, letter *a*, Legislative Decree No. 215/2003; Article 2, paragraph 1, letter *a*, Legislative Decree No. 216/2003; Article 25, paragraph 1, Legislative Decree No. 198/2006.

[29] Article 43, paragraph 1, Legislative Decree No. 286/1998; Article 2, paragraph 1, letter *b*, Legislative Decree No. 215/2003; Article 2, paragraph 1, letter *b*, Legislative Decree No. 216/2003; Article 25, paragraph 2, Legislative Decree No. 198/2006.

Harassment is also considered discrimination, defined as unwanted behaviors related to the risk factor in question, intended to violate or resulting in violating the worker's dignity and creating an intimidating, hostile, degrading, humiliating, or offensive environment.[30]

Sexual harassment also assumes particular significance in the Code of Equal Opportunities, defined as unwanted behaviors of a sexual nature, expressed in physical, verbal, or non-verbal form, with the same purposes, effects, and aims as "regular" harassment.[31]

b) Diversity of treatment does not constitute discrimination if, despite the presence of a risk factor, it is justified by an objective reason, respecting the principles of proportionality and reasonableness, and provided that the purpose is legitimate. This occurs, for example, when a requirement is essential and determining for the performance of the work activity, given the nature of the activity itself or the context in which it is carried out.[32]

The law explicitly considers legitimate differences in treatment related to sex, when they concern particularly strenuous tasks identified through collective bargaining or in sectors such as fashion, art, and entertainment, where gender is essential for the nature of the work or performance.[33]

c) Procedural facilitation measures are very important in the context of anti-discrimination protection, both regarding the burden of proof and the procedures involved.

The burden of proof is often the main obstacle for those seeking to assert their rights. In theory, proving a discriminatory act would require demonstrating discriminatory intent, a notoriously difficult task with reference to a psychological intent.[34]

Anti-discrimination legislation eases the burden of proof on the worker, allowing him/her to present factual elements, including statistical data that suggest the existence of discriminatory acts. In such cases, a judge can order a reversal of the burden of proof, requiring the defendant employer to demonstrate the absence of discrimination.[35]

Regarding procedure, anti-discrimination legislation provides for streamlined procedures, such as precautionary measures, to ensure faster resolution of disputes.[36]

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[30] Article 2, paragraph 3, Legislative Decree No. 215/2003; Article 2, paragraph 3, Legislative Decree No. 216/2003; Article 26, paragraph 1, Legislative Decree No. 198/2006.

[31] Article 26, paragraph 2, Legislative Decree No. 198/2006.

[32] Article 3, paragraph 3, Legislative Decree No. 215/2003; Article 3, paragraph 3, Legislative Decree No. 216/2003; Article 25, paragraphs 2 and 27, paragraph 5, Legislative Decree No. 198/2006.

[33] Article 27, paragraph 6, Legislative Decree No. 198/2006. For example, it is possible that advertising products aimed at a female audience may require the use of a female spokesperson, and vice versa.

[34] G. Santoro-Passarelli, *Diritto dei lavori e dell'occupazione*…, p. 308.

[35] Article 28, paragraph 4, Legislative Decree No. 150/2011; Article 40, Legislative Decree No. 298/2006.

[36] See: Article 27, Legislative Decree No. 150/2011; Article 38, Legislative Decree No. 298/2006, and Article 28, Workers' Statute.

Since the individual discriminated against may often hesitate to act, mechanisms are provided to ensure protection regardless of the worker's action, or to allow the worker to be assisted in taking action.

For example, Article 28 of the Workers' Statute entitles local bodies of national associations to take action within the summary procedure outlined by the same provision: a worker discriminated against for trade union reasons, therefore, might not have to file an individual action and can benefit from the outcomes of the action taken by the union.

Legislative Decrees No. 215 and 216 of 2003 allow certain entities and associations to act in the name and on behalf of or in support of the victim of discrimination.[37]

The Code of Equal Opportunities, on the other hand, provides for the possibility for Equality Advisors to act on behalf of the worker, or even directly in the absence of a delegation,[38] or to intervene in proceedings initiated by the worker.

d) Finally, the sanction regime for discriminatory acts is significant.

A discriminatory act is null and void, thus sanctioned with the strictest form of invalidity, which prevents any effectiveness of the act.[39] However, in many situations, discrimination can also be manifest through omissions, for which nullity does not provide adequate protection.

Therefore, the nullity regime is accompanied by criminal sanctions,[40] which are much more suitable in terms of discouraging employers from adopting discriminatory behaviors.

Furthermore, once discrimination has been established and the employer convicted, the judge can order the publication of the decision in a national newspaper at the defendant's expense as an additional deterrent.[41]

The effectiveness of protection is also ensured in terms of compensation for damages suffered due to discrimination. The judge can order the employer to compensate for the damage, including non-pecuniary damage, and mandate the cessation of the discriminatory behavior, adopting any necessary measures to eliminate its consequences.[42] Compensation for non-pecuniary damage is particularly important, considering that discriminatory acts often harm the worker's dignity.

In any case, according to the decisions of the Supreme Court[43], non-pecuniary damage, even when resulting from the violation of inviolable rights of the person, constitutes consequential damage that must be alleged and proven.

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37 Article 5 of both Decrees.

38 Article 36, paragraph 2, Legislative Decree No. 198/2006.

39 Article 15, Workers' Statute; Article 26, paragraph 3 and 3-*bis*, Legislative Decree No. 198/2006.

40 See, for example: Article 15, letter *a*, Workers' Statute, in conjunction with Article 38, paragraphs 1 and 2 of the Workers' Statute.

41 Article 28, paragraph 7, Legislative Decree No. 150/2011. Note that even in the case of a criminal conviction, the publication of the sentence is provided for under Article 38, paragraph 4, Workers' Statute.

42 Article 28, paragraph 5, Legislative Decree No. 150/2011.

43 Cass. civ., SS.UU., 11 November 2008, n. 26972. In this sense, Cass. civ., sez. III, 17 January 2017, n. 917.

It is the worker's responsibility to demonstrate the damage with the usual means of proof, although in these cases presumptive evidence may often be the only basis for forming the judge's conviction.

Moreover, to prevent future discrimination, the judge can impose the drafting of a plan to eliminate the established discrimination.[44]

6. The new dimension of transparency as a tool to combat gender pay discrimination

It is in the realm of transparency, however, that the most recent advancements in anti-discrimination protection are making notable and significant strides towards enhanced effectiveness.

Following in the footsteps of the previous Directive 2019/1152/EU on transparent and predictable working conditions in the European Union, transparency is increasingly seen as an indispensable tool for guaranteeing certain rights through the knowability of situations in which these rights may arise.

The new Directive 2023/970/EU aims to strengthen the principle of equal pay for men and women for the same work or work of equal value, in light of a persistent thirteen per cent pay gap, which has remained essentially unchanged over the past ten years.[45] Pay transparency, according to the Directive, thus, becomes a tool to identify, highlight, and eliminate the gender pay gap and to enable victims of discrimination to assert their right to equal pay.[46] To this end, the Directive establishes a series of informational obligations regarding various aspects of remuneration, requiring that any differences be justified based on objective and neutral criteria to avoid any form of direct or indirect gender discrimination.[47] For companies with at least 100 employees, further communication obligations regarding the gender pay gap are provided, with the requirement to remedy any unjustified disparities within a reasonable period in close collaboration with workers' representatives, the labor inspectorate, and/or the equality body.[48] Additionally, in the case of an unjustified gender pay gap of at least five per cent, a joint pay assessment is required to identify, correct, and prevent pay differences between male and female workers.[49]

The Directive, which must be implemented by 2026, introduces significant new provisions regarding the burden of proof,[50] surpassing the traditional reversal of the burden of proof based on statistical data.

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44 See also: Article 37, paragraph 1, Legislative Decree No. 198/2006.
45 Considerando 15 Directive 2023/970/EU.
46 Considerando 16 Directive 2023/970/EU.
47 Article 4, Directive 2023/970/EU.
48 Article 9, paragraph 10, Directive 2023/970/EU.
49 Article 10, Directive 2023/970/EU.
50 Article 18, Directive 2023/970/EU.

The violation of the specific pay transparency obligations automatically determines the reversal of the burden of proof, and it will be up to the employer to demonstrate that there was no discrimination.[51] This is a highly significant boost to the effectiveness of anti-discrimination protection in terms of gender pay equality, highlighting the instrumental value of the right to information and enshrining its autonomous relevance for achieving not only formal but substantive equality.

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Summary

Domenico Mezzacapo

The Principle of Equality and Implementation of EU Anti-Discrimination Law in Italian Labor Law: Minimal Notes

This article aims to highlight, without claiming completeness, some links between the principle of equality and labor law. My analysis takes as its starting point the prominence of labor as a founding value of the Italian Republic and proposes some reflections on the function of labor law and issues such as equal contractual treatment for equal work and the prohibition of discrimination. The final part of the article addresses the prominence of transparency as a tool for combating discrimination, emphasizing further steps forward in achieving the effectiveness of protection because of the automatic reversal of the burden of proof in the event of any violation of rights to information.

Keywords: equality, anti-discrimination, transparency, gender pay gap, EU law, workers' rights.

Streszczenie

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Zasada równości i implementacja unijnego prawa antydyskryminacyjnego we włoskim prawie pracy – uwagi wstępne

Niniejszy artykuł ma na celu zbadanie złożonej relacji między zasadą równości a prawem pracy we Włoszech, ze szczególnym uwzględnieniem unijnych dyrektyw antydyskryminacyjnych. Autor podkreśla konstytucyjne powiązanie między pracą a równością, koncentrując się na takich tematach, jak równe traktowanie kontraktowe za równą pracę i zakaz dyskryminacji. Przedmiot analiz obejmuje również ewolucję prawa antydyskryminacyjnego, szczególnie w odniesieniu do transparentności wynagrodzeń ze względu na płeć oraz jej implikacje dla stosunków pracy, kładąc nacisk na nowy wymiar transparentności jako kluczowe narzędzie w walce z dyskryminacją w stosunkach pracy.

Słowa kluczowe: równość, antydyskryminacja, transparentność, luka płacowa, prawo UE, prawa pracownicze.