



Hatred of disabled people

by Stefano Chirico* and Salvatore Buscarino**

**Director of OSCAD Secretariat ** OSCAD Secretariat*

Editing: Mauro Valeri

Graphic design and typesetting: Fabio Coratella

Cartoons by Paolo Piccione

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Hatred of disabled people

1. Introduction by Vittorio Rizzi*

“I live with wheels on the ground, but I jump so high!” (Iacopo Melio)¹

In my capacity as President of the OSCAD Secretariat (OSCAD - Observatory for Security against Acts of Discrimination), I am often asked if it is possible to draw a ranking of the various forms of discrimination and if there is some form more serious than the others. But, in fact, who could decide whether an anti-Semitic offence is more serious than a homophobic attack or a racist action more abject than misogynistic violence? Any discrimination (ethnic, social, gender-related, religious, sexual orientation-motivated) must only be banned, as well as any physical or psychological violence against those who are considered “different”. Anyway, if, there cannot be a ranking, it is very true that acts of discrimination against disabled people, whether or not they are a real crime, are so vile that it is not necessary to invoke the principle of equality, which, before being included in International Charters and in national Constitutions, should be inherent in our conscience. Daily news, law enforcement activities, the commitment of social services and of the numerous associations active in this

¹ Freelance journalist, founder of the non-profit organization #Vorreiprendereiltreno, nominated in 2018 Knight of the Order of Merit of the Italian Republic “for his passionate contribution to the cause of the removal of architectural barriers and cultural stereotypes”.



field give evidence that disability is still too often humiliated, offended or simply ignored, since it is considered an unfortunate individual’s own problem and a personal tragedy. In view of this, the role of law enforcement services in this context cannot be limited to combating crimes committed against disabled people, also through the enforcement of those rules that have been included in our legal system thanks to an increased social awareness. Prevention and training should be priorities instead, since a knowledge of the relevant legislative framework is not sufficient; tools offered by psychology and sociology have to be known as well, in order to help the police personnel understand diversity, put themselves in the perspective of the disabled person and immediately intercept possible discriminatory behaviours. The uniform they wear must represent, now more than ever, not only a protection of legality but also a leaven of cultural growth to combat prejudices and stereotypes, thus contributing to the development of a social environment allowing disabled people to express fully their personality and gifts.

*Deputy Director General of Public Security,
OSCAD President.

GET UP, OLD FOGEY!
THIS IS A REST HOME, BUT IT'S
NOT YOUR HOME, YOU KNOW!
AND, BY THE WAY, I AM
THE BOSS HERE!!!



Paolo Piccioni

2. What is disability?

“When I woke up without legs I looked at the half that was left, not the half that was lost”

(Alex Zanardi - paralympic athlete)

According to the UN Convention on the Rights of Disabled People, “persons with disabilities include 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”². This definition includes the “social model of disability” that goes beyond the so-called “medical model” which focused attention on the physical or mental impairment or handicap of the person. The approach, also accepted by the UN Convention, which originated in the Anglo-Saxon world and then spread throughout the world, takes into consideration the relationship between the situation of the person and the surrounding environment and differentiates between the “impairment” which is the physical condition of the individual and the “disability”, caused by society, which plays a crucial role in promoting all the necessary interventions to improve the conditions of those experiencing a deficiency³.

² Article 1, paragraph 2 of the Convention adopted on 13th December 2006 and ratified by Italy with law no.18 of 3rd March 2009, n. 18.

³ Colin Barnes, Professor of Disability Studies at the Centre for Disability Studies, Faculty of Sociology and Social Policy, University of Leeds: “Understanding the Social Model of Disability” (<https://www.intersticios.es/article/view/2382/1893>).



3. Oscad, hate crime and disability

“We have learned to fly the air like birds and swim the sea like fish, but we have not learned the simple art of living together as brothers and sisters.”
(Martin Luther King)

The Observatory for Security against Acts of Discrimination (OSCAD) is an inter-agency body established, by decree of the Chief of Police - Director

General of Public Security, in September 2010 to respond operationally to the demand for security of people belonging to “vulnerable categories”, by systematizing and giving further impetus to the activities carried out by the Italian National Police and the Carabinieri in the field of prevention and fight against hate crimes. The OSCAD, set up within the Public Security Department - Criminal Police Central Directorate - is presided over by the Deputy Director General of Public Security - Central Director of Criminal Police and is composed of representatives of the State Police, the Carabinieri and the departmental units competent in this field (<https://www.interno.gov.it/it/ministero/osservatori/osservatorio-sicurezza-contro-atti-discriminatori-oscad>)⁴. Di-

⁴ The OSCAD is composed of: the Director of the General Affairs Office, the Director of the Technical-Legal and Litigation Office, the Director of the Criminal Analysis Service and the Director of the Staff Office of the Deputy Director General of Public Security (within the Criminal Police Central Directorate); the Director of the Service for the fight against extremism and internal terrorism (within the Prevention Police Central Directorate); the Director of the Immigration Service (within the Central Immigration and Border Police Directorate); the Director of the Postal and Communication Police Service (within the Central Directorate of Police Specialties); the Director of the Central Anticrime Service (within the Central Anticrime Service); the head of the II Department of the Carabinieri General Command.



scriminatory crimes – defined at an international level as “hate crimes” - are essentially characterized by the motivation of bias that the perpetrator has against one or more “protected characteristics”, real or alleged, of the victim: ethnic or “racial” origin, religious beliefs, sexual orientation, gender identi-

ty, disability and so on. Crimes against disabled people are therefore a typical ground of hate crimes; unlike what happens for other crimes in this context⁵, ho-

⁵ Consider, for example, Articles 604 bis and 604 ter of the Italian Criminal Code concerning crimes committed for racial, ethnic,

wever, the related incriminating rules do not require for their enforcement the discriminatory motive on the part of the offender, therefore, evidence to prove prejudice, discrimination or hatred motivations is not necessary.

4. Disability in international charters

Several international Charters include disability among the “characteristics” to be protected from the risk of discrimination. In the “Universal Declaration of Human Rights”⁶ and in the “Convention for the Protection of Human Rights and Fundamental Freedoms” (ECHR)⁷ disability can be found, in an interpretative way, in the open lists (“any other status”) referred to in Article 2⁸ of the Declaration and in Article 14⁹ of the Convention, respectively¹⁰. On the other hand, in Article 21 of the “Charter of Fundamental Rights of the EU”¹¹ - English version -, disability (the official translation into Italian is “handicap”) is explicitly included in the grounds in relation to which



discrimination is prohibited¹². The improvement of living conditions and the full participation of disabled people in social life are at the core of the aforementioned “UN Convention on the Rights of Persons with Disabilities” adopted in 2006, whose purpose is, pursuant to Article 1, paragraph 1, “to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity”. As regards police forces’ activities, the following Articles are of particular relevance: Article 3, paragraph 1 (b) which establishes the “non-discrimination principle”, and above all, Article 14, paragraph 1 (a) providing for the obligation for State Parties to ensure that persons with disabilities, on an equal basis with others, enjoy the right to liberty and security of person.

5. Disability in national law

At national level, the attention given to criminal conducts against disabled people finds its basis in Article 2 (inviolable rights) and Article 3 (equal social dignity before the law) of the Constitution. The Ita-

national or religious reasons.

6 Adopted by the United Nations General Assembly on 10 December 1948.

7 Signed in Rome in 1950, within the Council of Europe.

8 “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status ...”.

9 “The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”.

10 The European Court of Human Rights has taken this view, with judgment no. 13444/04 of 30 April 2009, *Glor v. Switzerland*.

11 So-called “Charter of Nice”, proclaimed on 7 December 2000, which, under the Lisbon Treaty, has assumed the same legal value, fully binding, of the Treaties.

12 Article 21 (Non-discrimination) paragraph 1: “Any discrimination based on any ground such as sex, race, colour or ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited”.



Seat of the Constitutional Court.

lian criminal law - in addition to the aggravating circumstance envisaged by Article 36 of Law 104/92 - contains various provisions setting up specific offenses against the disabled. In these articles, the status of disability is defined by using expressions that have changed over time, in parallel with the increasing awareness on this matter: physical/psychic impairment or deficiency; physical/psychic inferiority; handicap; mental or physical illness; disability.

Instead, as regards the criminal procedural law, it is important to highlight that Legislative Decree of 15 December 2015, no. 212¹³, implementing the so-called EU "Victims' Directive", introduced Article 90 quater of the Code of Criminal Procedure, thereby codifying, in a structural way, the condition of "particular vulnerability" of some victims, including disabled people¹⁴. The recognition of this condition creates a set of im-

¹³ "Which implements Directive 2012/29/EU of the European Parliament and of the Council, of 25 October 2012, establishing minimum standards on the rights, support and protection of victims of crime and replacing Council Framework Decision 2001/220/JHA".

¹⁴ In fact, this condition can be inferred, among other things, from the "physical infirmity or psychic deficiency" of the crime victim.

portant rights for particular vulnerable victims (corresponding to specific duties upon the judicial authority and the criminal police), besides the more general protection granted to all victims: their needs to receive information, to have an active role in criminal proceedings, to be respected, protected, heard, to be helped in accessing justice, to be financially compensated and psychologically supported¹⁵. As to judicial police activities, the status of particularly vulnerable victim results, in particular, in a strengthened protection during the taking of "preliminary statements": pursuant to Article 134, paragraph 4 of the Code of Criminal Procedure, judicial police is always permitted to make an audio-visual recording of the statements of the victim, who is always supported by a psychologist/psychiatrist, must not come into contact with the suspect when giving his/her statements and is not required to testify several times, except when strictly needed for investigation purposes (Article 351, par. 1 ter of the Code of Criminal Procedure).

¹⁵ In particular, as regards criminal police aspects, victims have the right to obtain, in a language they understand, information on: how to file the complaint/report, their role in the investigations and in the trial, the state of the proceedings, the possibility to obtain legal advice and legal aid, their right to have translation/interpretation into their language, protection measures, procedures to report violations of their rights and to obtain reimbursement of expenses (Article 90 bis of the Code of Criminal Procedures). In case of criminal offences committed with violence against the person, victims can ask to be informed about the release of the accused or convicted person or the termination of pre-trial measures imposed on them and must be promptly informed about their escape from custody or from pre-trial detention measures (Article 90 ter of the Code of Criminal Procedures).

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