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*Abstract*

The position of persons with disabilities has adequate constitutional protection in the frame of social justice outlined by our constitutional charter in favor of weak people, and directed to pursue the effective *social inclusion* and *direct participation of persons with disabilities to working life*, especially at school and work, through a non-discriminatory, but supportive and emancipatory, legislative framework.

In particular, in our Constitution the “recognition” and the “guarantee” (art. 2) of the rights of persons with disabilities, for the achievement of their “equal social dignity” (art. 3 al. Const.) that allows the “complete development of the human being” (art. 3 cpv. Const.), have a firm foundation precisely in that *expansive parameter* offered by the Constitution and represented by the *completeness of the development of a human being*. In this type of case, with particular reference to the persons with disabilities, precisely because of their natural *diversity*, all *rights to the reduction of the inequalities* should be recognized. It is a condition that cannot be disregarded: the realization of their *right to equal opportunities*, even in the light of those “binding duties of political, economic and social solidarity”, whose fulfillment is peremptorily required by art. 2 of the Constitution.

The greatest contribution to a more precise definition of the protection of the rights of persons with disabilities has come from the incessant work of constitutional jurisprudence to guarantee and promote

the rights of persons with disabilities. The Constitutional Court, in fact, has reinterpreted the provisions of the Constitution, in the light of the evolution of social conscience and legislation on the subject, and has ended up offering people with disabilities full protection at constitutional level, also explaining new dimensions, hitherto unknown, but expressive of values already underlying the same constitutional dictates. Expression of this trend is the innovative line of constitutional jurisprudence aimed at strengthening the protection of persons with disabilities that goes beyond their primary needs for material assistance, and which affirms the “new right” to “socialization” and effective participation in the social life of persons with disabilities.

That’s a “meta-right” mostly based on the real recognition of the fundamental right to education.

In order to guarantee the fundamental right to education of persons with disabilities both the ordinary courts and the administrative ones can be appealed. The Joint Chambers of the Supreme Court affirmed the jurisdiction of ordinary courts, while the Plenary Assembly of the Council of State affirmed that the jurisdiction belongs to administrative courts. However, these two Supreme Judges have evaluated different cases. The scarcity of available resources does not justify weakening the protection provided by this fundamental right.

However, it is necessary to be aware that, in order that a discourse about real recognition and guarantee of the inviolable rights of that mass of *disenfranchised* constituted by the marginalized and the socially excluded – indeed, such as the persons with disabilities – be met, their *meta-fundamental and inviolable right to enjoy rights*, which is the right of per-

sons with disabilities to enjoy the *minimum conditions for a free and, above all, dignified existence*, traceable to the evolution of the meaning of the constitutional provisions under articles 2 and 3 of the Constitution, should be prejudicially ensured.