# UNTANGLING THE WEB OF UNRESOLVED ISSUES IN THE ITALIAN LEGISLATION ON GENDER PAY DISCRIMINATION

ESTER VILLA
DOCTOR IN LABOUR LAW AND INDUSTRIAL RELATIONS,
UNIVERSITY OF BOLOGNA

# Italian Legislation against Gender Pay Discrimination : Main Features

1. Definition of Wage and Duty of Transparency provided by Italian Code of Equal Opportunity.
2. Extension of comparison between works in order to compare wages paid to female and male employees.
3. Limits of Anti Discrimination Law over Pay in cases involving Agency Work and Work under Procurement Contract.

# Definition of Wage

(art. 28, Code of Equal Opportunity)

- Art. 28 prohibits any discrimination regarding **“each aspect or condition”** of wage.
- Wide notion of wage which includes, for example: compensation based on seniority, for heavy work, ex gratia payments, merit pay etc.
- Result: it is possible to verify not only if are there any differences in basic wage, but also in other elements of salary due only to worker’s gender.

# Duty of Transparency

(art. 46, Code of Equal Opportunity)

- About:

a) The situation of male and female employees;

b) Wages effectively paid.

- Problems:

a) Provided only for firms with more than 100 employees;

b) The “prospectus” that the firms has to edit - introduced in 1996 - is “outdated” because it does not take into consideration changes occurred in the Labour Market since 1996

# To discover a discrimination it is necessary to compare female worker's pay to the one of a male worker who is employed in a "similar work".

- At the beginning the right for men and women to receive the same wage was recognised only if they were performing an **"equal work"**→ difficult that men and women were performing exactly the same work for reasons connected to women segregation in the labour market.
- Extension in the basis of comparison also to the cases in which men and women were performing a **"work of equal value"**.
- Is an "**hypothetical comparison"** possible (a comparison between the salary of a female worker and the one of a "hypothetical male worker")?

# Weaknesses of anti discrimination law in cases involving agency work and work under procurement contract

- **Lawrece** (ECJ, case 320/00):

A) contracting out (by County Council) of cleaning and catering services;

B) private undertakings, which have won catering and cleaning contracts, reemploy a number of female employees originally employed in the Council;

C) Female workers hired by these private firms found themselves employed at a lower pay level than the one they previously received working in the Council, and even lower than those paid by the Council to male employees employed in a work of equal value;

**Problem:** art. 141 EC Treaty enabled claimants employed by the private undertaking ("the specific employer") to compare their pays with those of men employed in the Council ("the general employer") who were performing a

- **Allonby** (ECJ, Case 256/01):

a) a College dismissed a part-time lecturer (Ms Allonby) and then hired her againg through the intermediacy of an Agency;

b) Ms Allonby - despite the fact she was performing the same job for the College – has received a lower pay than the one she had previously received.

c) Ms Allonby claim to receive an equal pay using as basis for comparison the remuneration received by a male lecturer still employed by the College.

# The ECJ stated that:

- Differences in pay conditions have to be attributed to a “single source”.
- In these cases the employers (the user and the agency in Allonby – the “general employer” and the “specific employer” in Lawrence) were not a “single source”→ they were separately responsible for terms and conditions of employment.

# Are there in the Italian system alternative instruments of protection?

1. In case of Agency Work (*Allonby*) there is a principle of equal pay between Agencies' and users' employees (art. 23, d. lgs. 276/03 – d. 2008/104).

2. In case of Work under Procurement Contract (*Lawrence*) Italian legislation does not provide alternative forms of protection.