

# Justice for All

**IAWJ 2014 Conference  
6th - 9th May 2014**



# IAWJ

Conference

6<sup>th</sup> - 9<sup>th</sup> May 2014 Arusha

The Tanzania Women Judges Association looks forward to welcoming you to Arusha International Conference Centre, Arusha - Tanzania for the IAWJ 12<sup>th</sup> Biennial Conference.

For further information visit -

Website: [www.iawj.org](http://www.iawj.org)

Email at: [office@iawj.org](mailto:office@iawj.org)

[tawjatza@gmail.com](mailto:tawjatza@gmail.com)

Telephone on: +(1) 202.2223.4455

+255.22.2121809

+255.22.2126973



**In this time of economic, social and moral crisis it becomes increasingly important the education of young people.**

**On the other hand, only through respect for elderly, the youth of yesterday, you can get a society that does not discriminate and evolves positively with eliminating discrimination.**

**The collected writings are intended as a contribution to the theme of "Justice for all"**

**12th IAWJ Biennial International Conference in Arusha, Tanzania – May 2014**

**[fernanda.cervetti@gmail.com](mailto:fernanda.cervetti@gmail.com)**

## **INDEX:**

### **Discrimination and Constitution's rights, a current issue**

*Hon. Ilaria Perinu - Public Prosecutor in Pavia - ITALY*

### **School, education and responsibility**

*Monica Spriano - Lawyer in Turin and Aosta - ITALY*

### **Economic crisis, young people and education**

*Hon. Fernanda Cervetti - Court of Appeal - Turin - ITALY-  
President of M.A.G.E.D. - IAWJ Member*

### **Violence against the elderly**

*Hon. Rosa Lima (IAWJ member)*

*Hon. Célia Cardoso (IAWJ member)  
- Portugal -*

### **Elderly and justice**

*Hon. Fernanda Cervetti - Court of Appeal - Turin - ITALY-  
President of M.A.G.E.D. - IAWJ Member*

*Presentation for the 12th IAWJ Biennial International  
Conference in Arusha, Tanzania*

### **The "Ageism": discrimination against elderly**

*Hon. Fernanda Cervetti - Court of Appeal - Turin - ITALY-  
President of M.A.G.E.D. - IAWJ Member*

## **Discrimination and Constitution's rights, a current issue**

*Hon. Ilaria Perinu - Public Prosecutor in Pavia - Italy*

My report focuses on "discrimination and Constitution's rights" I would say very topical issue in an increasingly competitive and characterized by highly discriminatory conduct and acceptable to the most vulnerable, women, foreigners, children, the elderly, the disabled.

The topic given to me is very broad, in agreement with the organizers of the conference, I have confined my remarks to discrimination affecting the right to personal liberty of citizens outside the EU. Just for today, October 4, 2013, the Chairman of the Board has declared a day of mourning nazionalea following the tragedy that occurred yesterday off the coast of the island of Lampedusa, which killed about 200 migrants, but the count is, unfortunately, only a partial estimate since many are lost at sea, who were on board the boat that caught fire a few miles from Italy. Among the many victims were children and there were so many pregnant women.

It is not, unfortunately, an isolated case, the statistical data collected by such organizations in Lampedusa are a war report<sup>1</sup> :

"Since 1994, in the Sicilian Channel are executed at least 7,065 people along the routes ranging from Libya (from Zuwarah, Tripoli and Misratah), Tunisia (from Kelibia, Sousse, Mahdia and Chebba) and Egypt (in particular the Alexandria area) to the islands of Lampedusa, Pantelleria, Malta and the south east coast of Sicily. More than half (5,218) are missing. 229 additional young people have drowned sailing from the city of Annaba, in Algeria, Sardinia. The year 2011 was the worst: dead or missing, they are missing in the Channel of Sicily at least 1,822 people. Or an average of 150 deaths per month, 5 day: a massacre. And without taking account of all ghost shipwrecks, of which we will never know anything. "

It is a daily tragedy that can not allow ourselves disinterested , the same Pope Bergoglio, 8 July , Lampedusa has chosen as the first half of his

---

<sup>1</sup>[www.fortresseurope.it](http://www.fortresseurope.it);

<http://www.agi.it>

apostolic journeys , focusing the world's attention on what he called " a shame " that repeats daily indifference to each of us " .... The spa culture , which leads us to think about ourselves , makes us insensitive to the cries of others, makes us live in bubbles, which are nice , but they are nothing have the illusion of futility , the provisional , which leads to indifference towards others , even leading to the globalization of indifference. Those of us who cry ..... for that reason and for events like this ? " For the death of these brothers and sisters? Who cried for these people who were in the boat ? For young mothers who brought their children ? For these men who wanted something to support their families ? We are a society that has forgotten the experience of the cry of " suffering with " the globalization of indifference ! ...

Our Republic " recognizes and guarantees the inviolable rights of man , as an individual or in social groups where he expresses his personality, and demands the fulfillment of the mandatory duties of political, economic and social " .

The fundamental human rights are the fundamental basis of our rule of law and form the inalienable heritage of man and not of the "citizen" : they also belong to the migrant , the stranger in conditions of equality as stated by the Constitutional Court in its judgment already nr 120 /67. The principle of equality and the prohibition of discrimination on grounds of sex , race, language , religion, political opinion, personal and social conditions , shall be deemed extended to foreigners when it is inviolable rights of man . On the issue of the right to health , the Constitutional Court in its judgment No. 252/2001 stated that:

" ... The right to health care necessary for the protection of health is " constitutionally conditioned " by the need to balance with other constitutionally protected interests , subject , however, the guarantee of" an irreducible core of the right to health protected by the Constitution as the scope of the inviolable human dignity , which requires to prevent the creation of situations without protection , which could in fact jeopardize the implementation of the law " (see , ex plurimis , judgment no. 509 of 2000, no. 309 in 1999 and n . 267, 1998). This " irreducible core " of health as a fundamental right of the person must be recognized , therefore, also for foreigners , whatever their position in relation to the rules governing the

entry and residence in the state, while the legislature could provide for different modes of operation of the same . "

In terms of personal freedom, the Constitutional Court has repeatedly held that the guarantees contained in Article 13 of the Constitution can not undergo attenuation compared to foreigners. Yet, in Italy, it is possible that a foreign national who has not committed a crime, be held on the Italian territory on the basis of a purely administrative measure within an identification center, coming to be so deprived of personal freedom, freedom of movement, freedom to communicate with the outside world for a second time that the legislation currently in force, can be up to 18 months.

One can not but agree with the Minister for Integration Cecile Kyenge that May 4th, 2013 said:

" You can not hold back 18 months, the people 'cause they do not have a document or because' are irregular. There are irregularities' and many things that need to be changed. The people in these places are like suspended, they have no rights, and sometimes are worse off than those who are in prison."<sup>2</sup>

The centers for identification and expulsion (CIE) <sup>3</sup>, previously known as detention centers (CPT), are structures established in accordance with requirements already provided for in Article 12 of the Turkish-Napolitano law (Law 40/1998) [1] to accommodate aliens "subject to expulsion and or rejection with forcible escort to the frontier" in the event that the decision is not immediately executable. Their function is to allow checks on the identity of the persons held in view of a possible expulsion, or to hold persons awaiting expulsion certain.

Directive 2008/115/EC configures the detention pending removal as a last resort (107), and may be adopted only if two conditions of non-effectiveness of other less coercive measures and the existence of the conditions required by Article 15. This stipulates that detention may be ordered only if there is a risk of absconding, or if the third-country national

---

<sup>2</sup><http://www.lastampa.it/2013/05/03/italia/politica/kyenge-sugli-immigrati-troppi-mesi-nei-cie-S0IEHjqL3ezDYHgi5a8hhI/pagina.html>

<sup>3</sup> *"immigrati, carcere e diritto penale"* - Gian Luigi Gatta – [www.penalecontemporaneo.it](http://www.penalecontemporaneo.it);

*"La disciplina dei «C.I.E.» è incostituzionale"* - Alberto di Martino - [www.penalecontemporaneo.it](http://www.penalecontemporaneo.it).

or avoid obstacles to the preparation of the return or the removal. In addition, the detention must be for the shortest period possible, having to be kept only for the time required for the return procedure, and must be intended solely for the preparation of the return and / or carry out the removal, given the nature of his instrumentality. The detention should be continued only as long as necessary to ensure the enforcement of the removal and until the conditions that legitimize, for a maximum period of 18 months. He comes to realize basically a form of para-incarceration sentence in which, however, the same foreigners do not enjoy the rights held that the prison system recognizes the inmates in the strict sense.

In 2011<sup>4</sup> Italy has been convicted for the unlawful detention of a woman into a CIE of Roma held in Ponte Galeria though she had given birth a few months, therefore, contrary to the law that prohibits the expulsion of a woman during the six months following childbirth . The child, unfortunately, died two months after giving birth.

The woman, resident in the hospital , having no identity documents and residence permits , was taken to the police station and three days after she was notified of a deportation order of the Prefect . The superintendent ordered her transfer to the detention center of Ponte Galeria and the decision was validated by a justice of the peace , despite the authorities were aware of the fact that the woman had given birth . The appellant filed an action to annul the expulsion order . The appeal was upheld by the Court of Rome, which it found that the deportation order was issued in violation of the prefectural art. 19 paragraph 2, letter . d Leg. n . 286/1998 , which is not allowed according to the expulsion of a woman during the six months following childbirth .

The appellant then appealed to the European Court of Human Rights alleging a breach of ' art . 5 § § 1, subpara . f for being unlawfully detained pending deportation and 5 of the ECHR for not having the right to obtain an equitable redress for the unlawful detention suffered. The Court upheld the appeal by recognizing the illegality of their expulsion in contrast with the national legislation prohibiting the expulsion within six months after the birth and then stated with regard to the right to fair compensation that given the absence in ' Italian law a provision that allows the plaintiff to

---

<sup>4</sup> Corte EDU, sez. II, sent. 8 febbraio 2011, Pres. Tulkens, ric. n. 12921/04, Seferovic c. Italia

make a claim for reparation for having been unjustly detained in the detention center , there is also a breach of Article . 5 § 5, and ordered Italy to pay € 7,500 in compensation for the damage suffered by the applicant .

This ruling opens the possibility for the national court to recognize the equitable redress for the unlawful detention in a CIE in the absence of a national rule which provides for such a right.

Finally, another case on which I wish to bring to your attention , in view of the fact that part of the conference will be devoted to the problems of the family and the crimes of harassment and stalking , concerns the discrimination suffered by a Turkish woman victim of prolonged ill-treatment by until the murder of her husband , by the latter , the mother-in-law . Unfortunately, it is a similar story in many episodes that shows us the daily news in our country .The Turkish state has been convicted of a violation of Article 2-3-14 ECHR had not introduced the necessary measures in order to protect the lives of individuals subject to its jurisdiction and in order to avoid that they suffer inhuman and degrading treatment

As often happens in our country , Ms. Opuz and her mother denounced the numerous and frequent ill-treatment of which he was the victim and her husband, but by the criminal proceedings were filed , as women, under the pressure of constant threats , withdrew the complaints filed against him. In 1998 , her husband invested the applicant's mother causing her serious injury and was sentenced to a fine. The escalation of violence in 2001 resulted in the murder of the mother of Mrs. Opuz , who was killed with a gun under the eyes of a passerby. For that offense Mr. H.O. he was sentenced to life imprisonment, but the Court of 'Appeals Turkish reduced the sentence to 15 years in prison, waiting for the "good behavior " held by Mr. HO during the trial and ordered the immediate release.

Ms Opuz is addressed to the Court of Human Rights , claiming a breach of Articles . 2:03 ECHR because the Turkish authorities have not been able to protect the life of his mother's murder by the behavior of her husband and did not intervene to counter the repeated physical and psychological violence suffered by herself . In addition, they denounce the violation Articles .6:13 ECHR , given the ineffectiveness of the criminal proceedings in Turkey against her husband . Finally, alleges infringement of Article 14



in conjunction with Article 14 ECHR by Turkish law considers women inferior to man, thus legitimizing discriminatory treatment against them.

The Court upheld the appeal on grounds that the Turkish authorities have not established measures to prevent, suppress and punish criminal acts committed by her husband, who took such severity as to be qualified as inhuman and degrading acts. With its inertia Turkey has allowed the acts of violence within the family, subjecting women to a greater vulnerability arising from the condition of subjection in which the woman is forced to live because of repeated abuse, such as to impair their ability of self-determination.

With regard to the violation of the principle of non-discrimination enshrined in Article 14 of the ECHR, the Court provided that "a Member State takes on discriminatory behavior, when it adopts legislation that internal regulations differently, without an objective and reasonable justification, persons in relevantly similar situations, or that have any adverse effects in respect of a particular social group "has decided to frame the case in question in the light of international standards concerning discrimination against women (CEDAW among all see, resol. n. 45/2003 UN) and some reports of non-governmental organizations.

In particular, Amnesty International statistics, alleged by the applicant, it appeared that the majority of domestic violence on women is made of Kurdish origin, illiterate and not financially independent, living in the region of the applicant. On the basis of these considerations, the Court of Human Rights considered that, although Turkish law n. 4320 of 1998 into force has not provided specific measures for the protection of women against domestic violence, he has not had, in this case, an adequate deterrent effect capable of ensuring the effective prevention of unlawful acts of HO against the personal integrity of the applicant and of his mother. Therefore, the Court has condemned Turkey for violation of Article 14 ECHR.

## **School, education and responsibility**

*Monica Spriano – Lawyer in Turin and Aosta - Italy*

" Children are born, we have to entrust them to the world: how should we to prepare them? How to welcome, protect and educate them, giving them the means to construct and build the future?"

(Philippe Meirieu)

Education is much more than to impose or propose the rules, it is first of all an art as well as a technique.

Literally 'e-ducere' means to lead out, means assisting the children to appreciate the profound value of the truth, allowing them to develop a personality of their own, to be able to help them successfully to enter into the society in which they live and will live.

It's a stimulus dynamic, capable of guiding the development of tomorrows' people independent and in harmony with their physical, moral, intellectual and spiritual qualities

The main task of education is to train them as a student, a professional and a citizen, and base capable of driving the dynamic development of a future person , improving more and more a sense of responsibility, the right use of freedom and active participation in social life.

Education is not something in itself, but must continually be put into interaction with the family, the state (school) and society.

Parents are the first and foremost educators. The family is the first school of social virtues.

They have a duty to create for their children a family environment and ensure the satisfaction of basic needs, to be able to infuse these cultural and moral values that make them independent and productive well-beings for themselves and for others.

As a rule, children assimilate the way in which parents interpret the world, make their own evaluations and the rules under which they live. Even the ideals of personality comes in large scale from the family.

To speak of the educational role of the family cannot be exempt from addressing current issues, where the traditional family is increasingly being challenged by the crisis with almost frantic search for experimental models.

The family is seen as instinctive-natural condition, as an social-historical expression. The vast panorama of studies on the subject is marked by inconsistency, uncertainty and confusion.

Today, however, a common approach is one that emphasizes the importance of relatedness in family life. The family remains the example role that all people try to imitate and inescapable remains the educational task entrusted to it. Despite the renovation, the family continues to exercise, however, a fundamental pedagogical role.

In traditional families, generally, parents draw educational purposes from their ideological, cultural or religious communities.

The situation is different where it lacks support from a traditional heritage, and all depends on opinions and ideologies underlying, related to contingent moment.

Whilst paying attention to new forms of family in society, the concept of the family "based on marriage" (Article 29 of the Constitution) should be maintained. In fact, the assumption of public responsibility on the part of the spouses must be a public acknowledgment by the company.

In all cases, parents are still required to ensure a peaceful psychological development, matured in a climate of positive growth, based on the harmony of feelings, constructive dialogue and guidance, acceptance and mutual respect, a deep solidarity and constant readiness, in an atmosphere of safety and security.

Indeed, the family is the first but not the only and exclusive educating community.

To the parental responsibility for the education of their children, along with the school, which offers professional help and training, although subsidiary.

Education is a fundamental part of education, which presupposes and complements the family, but certainly cannot replace that.

The duty of parents to educate their children should not and cannot be delegated to third parties, including the State in the guise of public education or the media.

Educate and train are not synonymous: the responsibility of parents is to educate, teachers have the duty to instruct in various subjects.

While education can also occur unintentionally through the example of life, the instruction indicates a purposeful part of education which is structured and organized on the basis of a systematic and formalized project. In this process, parents must interact with the school, a mutual collaboration and a vigilant control. The family and school have two different responsibilities, but complementary and interrelated, fundamental to the construction of the identity of the individual.

In the collaborative relationship that should exist between parents and teachers, in accordance with the specific roles, fundamental importance is the contribution that teachers can give to the family, from the point of view of methodologies, in order to support and strengthen the work of education of the family.

It is essential to respect the roles and responsibility of education, based on the principle of reciprocity between family and school, in defense of their distinctions and prerogatives.

It is important that the relationship between school and family will increasingly take on the function of a real pedagogical bridge.

The school can and must be able to be a reference point and comparison for families, capable of dialogue and interaction aimed at improving the educational service rendered to minors. Teachers can, in their meeting with the parents, propose a shared educational project and help where it is needed, to find strategies to solve educational problems and to achieve the priority objectives.

At the same time, teachers must know how to listen, questioning and self-evaluating their own work in relation to the just expectations of the families.

The education of young people , both in the family and in school, has an impact not only on those directly involved, but also on the community of life to which they belong and their future affects society as a whole .

Then the family is the primary place of accrual of personal identity and values the young , while the school will become the larger community in which they will compete with the others, on knowing more and more about the world around them.

The Constitution of our Republic recognizes the duty and right of parents to raise and educate their children. Interestingly , the regulatory text , the duty is placed before the law , as if to indicate some concern for this sensitive aspect of parental responsibility.

On the other hand, the school entrusts to the teachers "the full formation of the personality of the students".

The international legal order, recognizes the role of the family in the school.

At this point , it is essential to define the "Areas of expertise " that affect parents and teachers , given that there is a necessary interpenetration of tasks and responsibilities that should be highlighted and valued for their intrinsic potential.

The task of educating is the primary responsibility of the family therefore supported by the whole society, and the school is the social institution that meets this need, in a systematic and professional way, from the school it's required a commitment on the instructive cultural side. The educational relationship is distinguished from the role of parental education, for its characterization, based primarily on educational and communication training.

The current educational needs of children and young people, stay beyond the mere teaching of a discipline. The teachers must increasingly confront with psychological and social problems, arising from gaps left in the family.

The school is now an open field, where they are active not only processes of cultural transmission, but also training in the broad sense, such as education and value orientation.

The orientation is an action that assists to teach education attitudes and their limits , a knowing choose for themselves.

The school has its own responsibilities with respect to the onset of discomfort of the boys. And here too constructive confrontation between school and family can solve many problems emerging .

The school , therefore , cannot replace the family , as well as the parents cannot replace the teacher . We must rediscover our specific skills and at the same time learn to cooperate in mutual listening and respect.

Globalization , individualism, development of large globalized market , multiculturalism , communication networks have changed the face of our society and made it more crucial than ever teaching of civic education in schools. One can rightfully speak of a covenant needed between now and the school, which allows to renew and strengthen that great educational project that is citizenship education. It is important that the teaching models conform with a citizenship project , which reflects the cultural and political identity of our State and its internal dynamism, which is oriented to the strengthening of republican values and confirming our roots, explaining the pact of association from which the Italian Republic was made.

The school is not only the translation of socio-political orientations of a nation, nor can be an isolated vanguard.

Despite the apparent contradiction that may arise , the school must also be able to be reconciled with the cultural diversity now present in Italy, knowing balance between rights and duties , equality and openness, autonomy and ability to make choices, sense of responsibility and action .

Citizenship is a complex concept , which can be played at different levels (legal, political , social, cultural , moral ).

Educating for citizenship means morally educate , teach to obey the law and follow the rules, made sensitive to human rights, communicate concern for the environment , accept diversity.

Civic education must create integration between the transmission of knowledge and the formation of personality , according to moral directives, cognitive and emotional.

Life in a pluralistic world requires a citizen isn't indoctrinated , but capable of critical thinking and independent judgment. Democracy needs citizens rational and reasonable.

Cultural pluralism of today's world requires a profound change in the way we conceive education in a global perspective and intercultural openness, equality and social cohesion.

Gender discrimination continues to be a matter of fact, spread all over the world, in social, cultural and economic, if not also at the institutional level.

At the crossroads of the opportunity for change which our modern world suggests to us , we find many challenges that we and future generations will have to face. With the choices we make today, we have to build what will be tomorrow.

Cultural diversity is an asset and is, at the same time, a challenge for educational, social and political concerns and the model of integration and social cohesion that you want to build, in a cross-cultural perspective.

If you want to create future institutions, citizens and their organizations must share an active participation. It's necessary the re-establishment of the role and structure of political parties, through a transparent relationship with the economic power, the recognition of the plurality of ways of thinking and acting that exist in our society and the multilateral dialogue between the diversity of political spaces that are created worldwide, encouraging the organization of civil society and the most effective forms of deliberative and direct democracy, both in local contexts, as in the global context.

Educating citizens means to facilitate the understanding of interdependence of the problems facing the planet: the local level has global impact and vice versa. Nothing that we do or stop doing is stranger to the fate of others ; this makes us responsible for the fate of humanity and the planet , in a conception of global citizenship that integrates local and global dimensions.

Identities are built around different and multiple memberships and are dynamic. All this without forgetting our origins, our root values, ethics and morals of our country.

It is perhaps forgotten that only a good educational system can create the conditions for a good society and for the welfare of the individuals who make it.

In the past years, the family and school covered the entire period of the education of a young person.

Today you can count other educational types, sometimes with more weight than to carry their same family or school.

a. The means of social communication, which are passed by chains of information to real educational networks, creators of a new culture, and even if it's not a formal education in its intentions, it is a personality formation with a high percentage of influence.

b. The environments of leisure activities and free choice, which came multiplying, and which are not determined by a school program, but also exert an influence on the construction of the person and help to shape it.

c. The environments of socialization of youth, where they dispute and meet adults and peers, are places that are a kind of "university of life", which is being designed to see the existence and standards of behavior.

This is the first change: the new educational distribution. The school and the family continue to play an important role, but they are not the only ones involved in the educational process. We need to recognize that we now live in a climate of pluralism of ideas and that, therefore, the influences have to converge towards stimulus proposals parallel or convergent.

Hence, the need for new experiences in school is not merely a vehicle for information, data transmission, but true strength to witness to the values and the development of values that serve as a critical filter to the multiple influences which today beset especially young people.

It is essential to guide young people since junior high school towards the choice of studies to be undertaken.

Compulsory education should not just be attended, but deliver results in terms of education, culture, social and civic education, for students who will continue in their studies and for those who go on their way to an immediate profession (enter the working world).



We must do everything possible to try to give young people the certainty for the future, without hiding anything. One will have to use lot of guidance and seriousness , trying to understand and enhance the aspirations of each individual.

Teachers must be prepared and motivated.

The daily challenge they face is to be able to define its role in helping pupils to develop their sense of personal control, so that they are able to assume responsibility for their own actions, within a rewarding relationship with the teacher and classmates.

A careful analysis of our society highlights some of the phenomena of severe social disruption of values, such as the spread of aggressive behavior among pupils who have recently been indicated by the term bullying.

The violence that children implement in respect of their peers is certainly an expression of distress, the causes must be sought in the first instance in family's inefficiency educational and in the general carelessness with which the school, and in some ways the teachers, look to the existential problems of their students.

It has to therefore be put in evidence a more in-depth training of teachers, whose professionalism is given by the didactic knowledge, by continuous updates, as well as the indispensable use of communication techniques that take into account the back-ground cognitive and student's experience.

In essence, education and training can become teaching of evolution.

A recent study, conducted at the University of Padua, about evaluations of teachers from basic schools, has documented a profound change in the way we describe the school reality in just 10 years.

While in the past it was said:

- "Are distracted , doesn't pay attention" is now replaced by "has an attention disorder";
- "Reads haltingly" is now replaced by "dyslexic";
- "Never stands still" is now replaced by "hyperactive";

- "Does not want" is now replaced by "unmotivated";
- "One does not listen", challenges " is now replaced by "bullying";
- "Has ones head in the clouds" is now replaced by "has an attention disorder".

A linguistic transformation of this kind transforms the perception of the other and causes a profound change in the approach to teaching. How will a teacher who believes that a student has difficulty to read compared to another who believes this is a dyslexic boy?

In the first case , referring to a behavior problem ( hard to do – verb to do ), you may choose to use new teaching strategies and different communication patterns to facilitate the ability to read. In the second case the teacher , having a opinion related to the identity of the student (is dyslexic - verb to be ), thinks he can do very little for the child, except put him\her in a class or support group for recovery.

Just as in the case of a difficulty in concentration "has his head in the clouds", in theme of pedagogical / teaching this is very different from a disorder - "attention disorder "- has become a clinical relationship between an healthy adult and a sick boy .

The difficulties encountered in the education of the new generations and the inability of many teachers to know how to manage the implementation, often quite unconscious of various strategies to escape from their responsibilities , inevitably manifests itself in learning difficulties of teenagers.

Today our problems are not just political. They are moral and cultural.

The education in Europe, today, has the urgent task of building a more decent and ethical future for all young people, to convey the sense of justice and solidarity , for a respectful coexistence , which combine the necessary respect for the values and ideals of incorporation of the national community and the integration of complementary values , its minorities.

Educate personally when television and the Internet have been converted in the early educational agencies and almost no institution has the courage to go beyond the narrow technical knowledge or information to offer legal

values, meaning and hope to those who are open to life and integrate into society.

These facts pose new challenges in front of teachers, educators and politicians.

The philosopher Norberto Bobbio has reminded us with a few illuminating words: "Democracy thrives on good laws and good morals ". If you lack morals - that is, an ethic of responsibility - a law can also be good, but it will always be perceived as a foreign element of the social body: a system of rules to which are opposed to the antibodies of cunning and subterfuge, or just comply for the fear of sanctions that accompany the transgression.

**Economic crisis, young people and education**  
*Hon. Fernanda Cervetti – Court of Appeal – Turin – ITALY-  
President of M.A.G.E.D. - IAWJ Member*

The implementation of a generous welfare requires to impose heavy taxes and charges. This represents a significant difficulty , in times of economic crisis, for creating new jobs and opportunities for young people. The lack of adequate education makes it difficult to find an activity for those who began his working career . This will be an impact not only for the present but also for future generations . The progressive aging of the population makes it necessary to increase job applications , to make sustainable the weight of the charges that the state imposes in order to implement its economic and social policy . The lack of jobs is having serious repercussions on the family. The new generations do not tend to have effective autonomy, but continue living with the family, thereby depleting the family budget. The creation of new households leads to a higher propensity to have children, the future workforce necessary for economic growth.

Economists have estimated that the unmet demand for employment has grown, not only in the poorest countries, but even in those considered to be the richest. This will damage the economic dynamics, leads to a stagnation which has important consequences also on social justice. It was found that, systematically, during economic downturns, young people are the most affected by the crisis.

Globalization implies that the lack of jobs, at different cultural levels, impacts heavily and indiscriminately on all States. The mass migration, due to the wars and the lack of economic resources in their countries of origin, weighs very heavily on European countries and Italy in particular.

It is not just for individuals looking for a job, but of individuals deprived of education, and therefore culturally marginalized in such a way that they can not get employment specialized, as is currently required by the growing technologies. The social burden of these migrations is to further exacerbate the need for revenue from the state.

The first problem that arises is the progressive divergence of the gap between the supply of young's labor resource and the demand for professionalism on the part of industry and enterprise. Often, the job remains unfilled of candidates who have the correct skills required.

The most obvious reason for this gap is the poor basic education. For this reason, most advanced economies should help young people to have higher education specialized, adapted to the demands of the market.

There is therefore a close relationship between education and work . In France, a number of secondary schools allow students a real work experience. Even the universities of North Africa are focused in preparing their students through internships technicians.

A person without a job in Morocco , but with a higher level of education , according to the economic studies , has five times greater chance of finding a job than those with only primary education.

The economic crisis has another negative effect, directly linked with the difficult search for positive employment for young people. Businesses and companies have more difficulties to invest in training aimed at new labor force.

In Italy should therefore be encouraged sponsorship of schools by large firms , as is already the case for ' IBM in the U.S., McDonald's , Rolls-

Royce , the ' IT Infosys in India and Kuwait where students use half of their time at work and the rest at the college.

It should be added that the technology can bring new, less expensive solutions, in relation to the high cost of education. Young people can obtain virtual experiences working with programs suitable to be used on a computer. The McDonalds uses competitive video games to teach programming.

In addition, the technology makes it easier to give work to those who live in areas without their own labor resources.

What must be avoided on the lack of jobs for young people, it is the inactivity: they must be encouraged to enhance their education through courses of qualification and training. The category of "discouraged" who are willing to work, although not actively seeking a job, or do not try at all, should be discarded. The fact that young people are economically inactive has a major impact on the real economy of the state.

A major problem is the lack of jobs for women. In times of economic crisis, is even more difficult for them to obtain an activity appropriate to their abilities.

A new element, which has been inserted during the years of economic crisis in relation to the labor force of young people, is to use work informal or intermittent . Fixed-term contracts , which appeared to provide a kind of bridge between the lack of employment and the achievement of a steady job, has not reached the required target.

In fact, these contracts create instability and have not reached the goal of enabling greater professionalism for young people. This contributes very little to increased productivity and economic growth of the country.

In the event of a recession, young people are the first to be resigned. With this not only they deprive companies of new labor force, but don't offer innovative ideas that, especially the young, seem inclined to pursue. According to recent studies the number of young people out of work since 2007 has tripled.

A negative effect, which results from lack of work, is the increase in violent crime and illegal trafficking. Young people without adequate education in a society where they are bombarded by media messages, where consumerism and easy money are glorified, where there is a lot of negative examples. They are apt to forget the ethical and moral values which are the basis of a civil coexistence. This implies the need for a massive response of justice, to avoid class conflicts, in front of the division of society into a group of super-rich and a poor basis, erasing the middle class, which is the backbone of the economy, at least in Italy.

It is therefore necessary to reform the labor market, while taking into account the just demands of those who have already a long-term employment, offering young people the real possibility of a stable job, thus to be able to make their own family, removing the burden of unemployment by future generations. In this, education is an essential element not only at work, but for a correct interpretation regarding relationships between people, removing the abuses which create injustice, leading to incorrect interpersonal approach.

To condemn young people in a tight corner of exclusion is the sign of a political and economic myopia, which can have devastating effects in the

future. For this reason, should be encouraged, even by the government, the recruitment of young people, including through the allocation of substantial funds, to enhance their skills with courses, training and specific workshops.

A tight labor market does not favor the inclusion of young people. They should be put in position rather than personalized work plans to be directed forwards those given professions that are most in demand and for which it is more difficult to find, for companies and businesses, the worker requested.

It might be interesting to put side by side a young person and an older worker, pending retirement, in order to have a useful and immediate transition of knowledge.



**Violence against the elderly**  
*Hon. Rosa Lima (IAWJ member)*  
*Hon. Célia Cardoso (IAWJ member)*  
*-Portugal -*

Aging is inevitable....

With the increasing of life expectancy at birth and the decreasing of fecundity, the process of aging is ongoing. It's relevant to analyze old age as a new step to be lived, and not to be discriminated.

Violence against the elderly is one of the most important causes of injury, illness, loss of productivity, isolation and hopelessness.

Family and friends are among the main responsible ones for these offences.

However, ill-treatment and abuses, which are the most varied, are committed by public and private institutions. Violence against the elderly is a violation of human rights and it is actually one of the most serious social problems. It is up to the citizens to report the known situations and to the State to punish the criminals.

For the last two years, violence against the elderly increased substantially. Economic crisis seems to be the origin of these situations, since many children and other relatives survive due to the elderly retirement pension. The reports of these cases have also been increasing, but usually they are only known in extreme cases, many others are well "hidden" from us.

Many old people are abandoned, poorly fed, without medication, without personal hygiene and they turn up to hospitals to receive some comfort. Besides, it is in such situations when moving to the hospital

emergency room that the cases of ill-treatment are detected and then reported by health professionals.

In Portugal, violence against the elderly is now dealt by the Portuguese Penal Code as a domestic violent crime and laid down in article number 152, which says that “someone who, repeatedly or not, inflicts physical or psychological violence, including corporal punishment, deprivation of liberty and sexual offenses, to anyone particularly helpless, due to his/her age (...); is punished .... ”

If such a conduct, as described, is practiced in a common residence or at the victim’s home, the infraction agent is sentenced to 2 to 5 years imprisonment.

With this criminalization, it was expected (Américo Taipa de Carvalho, in Coimbra to Comment Penal Code, T-1, p. 329), to prevent the frequent and sometimes so subtle and harmful forms of violence within the family - for physical and psychological health and/or for the harmonious development of the personality or well-being.

The person as an individual and his dignity as a human being are legally protected, aiming health - legal complex that covers not only the physical health as well as the psychological and mental health, which may be affected by a multiplicity of behaviors, that prevent or hinder the normal and healthy development of the elderly personality.

Such behaviors that can origin humiliations, provocations, threats, physical or verbal insults, such as deprivation or arbitrary limitations of freedom or movement, the disrespect for the partner’s human condition, causing feelings of guilt or helplessness, but not necessarily a psychological suffering, are covered. The relevant is that psychological abuses are associated with a position of control or domination that the

assailant intends to exercise towards the victim, resulting from the position of greater vulnerability of the latter.

As you can read in the report by APAV from 09.08.2012 (non-profit association and volunteerism, which supports victims of crime, through a qualified and humanized manner, founded in 1990), complaints that domestic violence more than doubled in recent years; in fact, between 2000 and 2011, 76.582 victims of domestic violence appealed to the services of the APAV, 10.361 of them were elderly. Crimes against old people have increased in recent years, receiving that Association, an average of 19 complaints of domestic violence a day, being the victims, mainly women between 65 and 75 years of age.

This circumstance led to the implementation of a whole series of protective measures, in particular concerning the women and the elderly who are victims of such crimes; this type of behavior is also increasingly common, notwithstanding the numerous public campaigns that have been conducted to raise the community awareness to this problem. Unfortunately, it is far from being eradicated.

In a society increasingly made up of old people, new issues related to ageing populations emerge, which constitute a new challenge to Law. Portugal, like any other southern European country, has accelerated the aging process, as a result of low fertility and increasing longevity, and this phenomenon has caused a series of problems that have been blocking the fundamental rights of the elderly.

Violence against old people, inflicted in several ways, and social discrimination based only on age, in such areas as work, access to housing conditions and healthcare, among others, are increasing realities in our society, arising, due to the condition of the old people in current society,

marked by a devaluation of their role in the family and in society. But it is also the lack of legislation in this area which has been making this scenario worse. In fact, despite the achieved progress, both in the European Union and in Portugal (concerning the access to employment and to work), there is still much to do, since the legal available instruments are not suitable or sufficient.

We must find ways to pursue and strengthen the interventions to combat violence and discrimination and, in particular, in promoting equal treatment, contributing with alternative or complementary actions to the existing ones.

It's our understanding that the establishment and the legal status of the Elderly should prevail, including an effective protection to victims of violence and the elimination of attitudes and practices of discrimination on the basis of age.

Much has been done, but not yet enough so that the human being can, with dignity and security, get older, protected against criminals who seek in this condition an opportunity to act.

## **Elderly and justice**

*Hon. Fernanda Cervetti – Court of Appeal – Turin – ITALY-  
President of M.A.G.E.D. - IAWJ Member  
Presentation for the 12th IAWJ Biennial International  
Conference in Arusha, Tanzania*

The Law of January 9<sup>th</sup> - 2004 introduced the measure: “supports administration”, the nearest English equivalents being guardianship and protective jurisdictions - Articles 404-413 cod. Civ.

This provision adds to interdiction and incapacitation (Articles 414-433 cod. Civ. ).

The three measures have different effects on the ability of the elderly to act. In guardianship, or support's administration, disabled or sick persons are replaced by the guardian or administrator, in the performance of certain acts, and assisted, in the performance of other acts, by an administrator, while retaining the ability to act on all other acts (Article 405 , paragraph 5, civil cod.)

A mentally ill person is usually replaced by an administrator in the adoption of measures relating to him or her, with the exception of acts of ordinary administration that he or she is allowed to take without the intervention or assistance of the administrator ( Article 427, paragraph 1, civil cod. ).

In the event of incapacitation, the subject cannot do acts beyond ordinary administration without the assistance of an administrator, but may be authorized to perform certain acts without such assistance (Article 427, paragraph 1, civil cod.) .

Therefore, in guardianship or support's administration, the beneficiary retains a general capacity to act, but not for the acts for which a judge has decided that should be made with the administrator's assistance, while the person found to have incompetence or incapacitation has the capacity to act annulled or reduced in general. Advanced age in itself is not a disability, it can lead to physical and mental impairments and affect autonomy , so sometimes old people are no longer in a position to provide for themselves and their own interests.

The guardianship (“administration of the support”) may therefore be a measure of effective protection for the elderly person who does not think of his or her health, with danger to his or her daily life: he or she does not withdraw their pension or other income,

he or she does not buy what he or she needs to eat;

he or she does not clean the house;

he or she does not pay the rent or utilities or taxes with the consequences of eviction for non-payment or interruption of utilities or debt enforcement;

he or she does not buy clothes or does not heat the home;

he or she risks blowing up the apartment, because he or she forgets and leaves the gas throttle open. In any case, it appears that he or she needs assistance in managing assets to avoid becoming a victim of scams.

## **CONCEPT OF FAMILY ABUSE**

Abuse is the attack on the " physical or moral integrity or freedom " of another member of the group; the existence of a serious injury to body or morals or to the freedoms enjoyed by a family member. For family abuse , it is sufficient that the conduct is objectively and seriously detrimental to the psycho-physical , moral integrity or freedom of the agent.

### **Orders of protection against family abuse**

With the law April 4, 2001, n .154 the legislature has inserted inside of Book I of the Civil Code , Title IX bis, entitled " Orders of protection against family abuse". The legislature intended to address the problem of violence in family relationships, also known under the name of "domestic violence ." With this expression , we refer to various forms of violence (verbal, physical, psychological ) exercised by a family member against another and all of them united by the fact of representing the negation of the value of the person inside the group which should be the first to value them.

### **Domestic violence**

With this expression , we refer to various forms of violence (verbal, physical, psychological ) exercised by a family member against another and

all of them united by the fact of representing the negation of the value of the person inside the group which should be the first to value them.

With the provisions of art. 5 of the law in question, the legislature, then, expressed the desire to extend the protection from the abuse to every member of the family, including an enlarged group based on fact and characterized by the element of cohabitation, regardless of the existence of ties of kinship or affinity. This extension is only mitigated by the intervention by the court of protection, with respect to the conduct required or incurred by the other members.

The law of 2001 is characterized by the predominant orientation to the victim: in fact, it has sought to provide some protections for victims to inhibit any further violence and limiting further hardships and suffering resulting from the need to leave the family home to escape abuse.

It has been said, in this regard, that the measures against violence in family relations express the legal significance of priority accorded to the interests of the individual over those of the family, which is protected as a social formation (to time) as it can help give its members the full development of their personality.

The legislative formula can give rise to uncertainties in application, but had the undoubted merit of ensuring protection, for example, to elderly parents abused by adult children, often drug addicts (Court of Milan on 27 November 2002 in DI MARTINO). The core of the protection order is characterized by a negative order of cessation of violent conduct and a positive order to move away from the family home.

### **ABUSE OF ELDERLY CHRONICALLY-ILL, PATIENTS NOT SELF-SUFFICIENT IN SUPPORT FACILITIES (STRUCTURES)**

Abusive shelters are set up for the elderly and the sick: criminal dangers increase. The illegal facilities, in fact, operate illegally and freely outside of any control and therefore often are places where the elderly are mistreated.

Another case. Eight senior citizens, five men and three women, ranging in age between 75 and 85 years, all suffering from brain function damage related to age, were found in insanitary and inhumane conditions at a farm in the province of Rome.

Another case. Twenty elderly people were segregated in a hospital in the province of Ascoli Piceno, and found by police in unhygienic conditions. Six seniors were tied to their beds. It was found that the facility was

operating without the necessary permits and the fees paid to the managers arrested, was around € 1500 per month.

### **The severity of the criminal facts**

A person who takes care of an elderly patient who is not self-sufficient to provide treatment and care for them self, abuses his position of power and takes advantage from the dependency of the assisted;

### **The offenses most frequent**

- The crimes of neglect of disabled people;
- Abuse and personal injury;
- Death of the victim as a result of ill-treatment;
- The victim cannot defend him or herself and denounce the omission of treatment and care, and thus is more easily subjected to daily ill-treatment for a long period of time;
- Ill-treatment against a person already weakened by disease causing serious damage: their health worsens considerably and new diseases arise;
- Abandonment and abuse of dependent elderly in a care facility, as in the dramatic cases reported in the national press, the facts have a serious criminal relevance in view of the plurality of weak and defenseless victims admitted to a facility by payment and subject, however, to ill-treatment;
- The Supreme Court has upheld the conviction of the accused for the offense provided for in Article 591 of the Criminal Code in relation to cases of neglect of elderly patients at care institutions, especially due to the lack of suitable staff and the lack of care;
- The crime of abuse is provided for in Article 572 of the Criminal Code, entitled "Abuse in the family or against children ". We point out that, according to the article, (are punished) not only the abuse in the family but also the ill-treatment of assisted in care institutions is punished;
- This offence relates to: "Whoever mistreats a person in the family, or a child under fourteen years of age, or a person under his authority, or entrusted to him by reason of education, training, care, supervision or custody, or for the exercise of a profession or art".
- We note that the crime of abuse is more serious than the crime of abandonment of incapable persons and is characterized by the usual and oppressive behavior that is repeated several times against the same victim with the awareness that it will make her suffer . The law



does not specify what acts constitute the crime of abuse and leaves to the courts the task of assessing the unfair nature for all of the episodes that make up each individual case;

- In reference to mistreatments in elderly care facilities, we recall a case: the Court of Venice condemned seven nurses employed by a nursing home in Mestre for mistreatment of the dependent elderly hospitalized in the infirmary ward;
- The seven defendants were held responsible for the crime of abuse under Article 572 of the Penal Code for repeated acts of physical violence, threats, omissions of care and treatments, gestures and insulting words, and other oppressive behavior repeated for months against elderly patients;
- The Supreme Court (Sentence 31435/2004) established that a person, who insults and offends older people admitted to a nursing home can be sentenced for abuse and domestic violence. Attitudes and behaviors of contempt and rudeness in place by assistants in nursing homes, towards the guests in addition to being an absolute lack of professionalism, constitutes real ill-treatment for the suffering imposed on the defenseless people hospitalized there;
- the Court ruled against a woman who worked in a public facility (for elderly dependent patients) and that she had put in place a series of rude and arrogant behavior towards patients who, aware of their impotence and of the actual power exercised by the their assistant, fell into a state of despair and fear of retaliation so as to bring themselves to not want to talk about those episodes.

crimes perpetrated against the elderly the typology of the crimes perpetrated against the elderly are diverse:

- crimes against property,
- life and safety,
- personal freedom,
- the right to privacy,
- honor,

the forms of manifestation of the criminal imagination are so varied as to leave anyone stunned (cigarettes with anesthesia, the cat thrown to the ground in front of the car driven by an elderly person to simulate an accident, a fake flooding to induce the homeowner to open the door to the fake social workers, false employees of the gas, telephone, and electrical companies; false technicians asking for the balance of payment for the delivery of computers which had not been purchased by sons, etc..).

The law July 15th , 2009, n. 94, the SO-CALLED security package in [the] 2009, assessed the social alarm about the increase in the rate of crime against the elderly and has included age as a cause of greater vulnerability.

A specific aggravating circumstance for the crime of fraud has been introduced (Article 640, paragraph 2, no. 2 – bis, criminal code). The new special aggravating element for the crimes of theft and robbery is related to predatory conduct against people in the act of using the services of banks, post offices or ATMs used for cash withdrawal. This is especially directed towards elderly victims.

The analysis of cases shows that the tricks and scams in place to the detriment of older people rarely have a great degree of complexity as is usually necessary to overcome the distrust of the young or adults, who are well integrated into the social fabric and without intellectual deficit . Often the behavior in scams against seniors looks rather rudimentary and yet it is actually effective because it relies on the potential victimology of the people of the Third Age.

An intellectual weakness may occur with some frequency in the elderly, burdened by a decline in memory, or with serious neurodegenerative diseases and depressive syndromes, and various psychiatric illnesses. Advanced age, therefore, for the elderly can affect the dynamics of the crime , in the sense that the person can be misled. Sometimes the recurring deception plays a crucial role, through creating an "artificial" fiduciary relationship of between the offender and the victim.

In the most common scams against members of the Third Age, the dual morphology of artifice and deception allows the offender to identify the different psychological mechanisms that lead to deception and then to stealing assets, focusing on two "weak points" of the victims:

### **The fraud**

There is fraud in which a false representation of reality induced by artifice and deception is not perceived as such by the victim due to the decline in intellectual functioning arising from age-related factors or social isolation.

### **The scam**

The scam in which the offender offers to the victim an opportunity of profit or shows an non-existent necessity. The more widespread scam is an unrealistic promise, introducing himself as a wealthy person, entrepreneur, landowner of ancient lineage. Reference is made to the SO-

CALLED Tobler swindle, in which a self-proclaimed heir of the family of the famous Swiss chocolatiers proposes to the Elderly spotted on the street an exchange between a precious stone of great value and cash and tells a story of a compelling need for liquidity. The more frequent hypothesis is the sale ( by television, door to door, in the street) of fake jewelry . In such cases, the propensity of the elderly is generated by intellectual deficit combined with the need for 'easy' enrichment stemming from economic hardship related to the reduction in living standards.

There are scams where the same alteration of reality is procured by transient or persistent conditions of emotional vulnerability. In this context, there are the scams in which fake debt collectors of nonexistent claims, exhibiting contracts where the signature for acceptance appears similar to that of the victim, claim the payment of sums not due for services not rendered.

- the offender complains a non-existent damage (usually the side mirror of car broken, but also a damage to a watch or a cell phone) and claims compensation .
- In such cases, the propensity of the elderly victim as a result of physical factors (relaxation of reflexes, impaired reaction), combined with a sort of inferiority social complex , resulting from the loss of the active role in society, induces the elderly not to give sufficient weight to their “reason”, with respect to the claims of the other.
- Often the environmental context (isolated places and/or poorly lit) or personal (grim aspect of the offender) favours the insecurity of the elderly and produces a real intimidation by self-suggestion.
- into the second type of fraud, the perpetrator relies on the victim's family, suggesting knowledge, friendships and business relationships mostly invented.
- The supreme Court said that "For the purposes of the assessment of the aggravating circumstance in the offence, the advanced age of the victim of the offence, as a result of legislative changes introduced by Law no. 94 of 2009, is relevant in the sense that it requires the court to verify, if the offence is committed against an elderly person, if the criminal conduct has been brought into being and facilitated by the lack of clarity or inability to orientation of the victim in the understanding of events, according to criteria of normality. (Case about the crime against many people, all aged between sixty and eighty-years).

## Circumvention

- The crimes of fraud and circumvention are very similar and easily confused.
- In the scam, however, there is an "induction" into error through trickery or deception while in the circumvention there is suggestion or persuasion, which must be carried out against a person with little mental resistance. In other words, with the circumvention, the elder is induced to commit a detrimental act with his consent due to the lower defense (and not as a result of trickery or deception of the offender, as is the case in the scam).
- The circumvention (Article 643 of the Criminal Code) is an abuse of the "sphere of intellectual impairment, even temporary, strong-willed or emotional of the elderly, such as arising from the fragility of this person, from old age and any analogous situation that lends itself to abuse, independent from a specific framework morbid clinically identifiable in accordance with the common neurological or psychiatric classifications.
- So in the circumvention, the elderly do not have "mental illness" (cerebral arteriosclerosis and Alzheimer's and Parkinson's diseases), or "mental deficiency" , but their mental fragility results in a significant impairment of the faculty of discernment or of willful determination which deprives the victim of the ability to take care of his or her interests, or at least a reduction of capacity of counteract the influence of others (in sense partial or absolute )
- The elderly oppressed by loneliness, often barely or not self-sufficient, are deceived by careers (especially if they are young and attractive), by unscrupulous relatives or simply by statements of a false philanthropist , friend, benefactor, however, able to fill the existential void, the sense of futility, the depression from social isolation. For this reason it is frequently found ,between the tortuous acts of typical deception in older people, marriage, various gifts (including the sale only for one dollar), testamentary donations and the recognition of the other person's natural son.
- The offence involves any act of the passive subject which produces harmful legal effects upon them and therefore includes acts that in themselves do not have a patrimonial nature such as affiliation, adoption , recognition of natural child and the act of marriage. It's possible to recognize the potential of such acts and the ability to generate legal elderly take on the guise of passive subject and become instruments of action of the agent. The victim is in fact involved in the offense and puts in place a legal act .

## **Two elements are required for the offence: induction and abuse.**

They are closely linked and must be simultaneous

### **The induction**

Induction means to influence - through an appreciable activity of persuasion, suggestion, moral pressure - the process of formation of the will of the other person. The induction may not only give rise to decision for the subject receiving a request but can also strengthen a decision already taken.

According to the Supreme Court, the induction must be concentrated in an appreciable activity of suggestion, moral pressure or persuasion, aimed at influencing the subject. The psychological boost cannot be regarded as a pure and simple request to the passive subject. It can also be indirect or circumstantial and presumptive and arise from items serious, precise and concordant, like the nature of the acts and the undeniable prejudice derived from these. The agent, using appropriate means, induces the victim to perform the act. Such means shall take the form into a more or less appreciable coercion, suggestion or persuasion or determination. It has the suitability and effectiveness of inducing the elderly to do the harmful act.

The induction is therefore an alteration of the process of formation of will through abuse of the subjective state. It's important at this point to emphasize how, unlike the crime of fraud, the conduct of the deceit does not necessarily translate in exposure of a false reality, nor should it lead to the occurrence of an error in the recipient, but it is enough that the act committed involves harmful effects as a result of and due to the inductive action of others as a result of a suggestion.

### **The abuse**

In the present case, the abuse is the means that the agent puts in place to induce the victim to perform the act and consists of the advantage over the conditions of the victim and in a harmful fulfillment. There is a causal relationship which is manifested through induction. The abuse usually leads to a positive act and can also be a criminal omission which assumes importance when there is a legal obligation and a connected active behavior - Supreme Court, Sect. I, 31 March 2005, n. 16575

On the issue of circumvention of an incapable person, proof of the existence of the element of induction includes not only the conduct adopted by the accused at the time of the commission of acts prejudicial, but also

everything that has happened since then. This is an indicator of an antecedent ability to deceive the elderly person. Also the result can demonstrate the evidence of induction in terms of strengthening of a decision "in itinere" - Supreme Court, Sect. 5, n.29003 - 16/April/2012

For the purposes of configurability of the crime of circumvention of an incapable person the following conditions are required :

- a) to create an unbalanced relationship between victim and agent, the criminal person has the ability to manipulate the will of the victim, who, for specific reasons or situations, is unable to offer any resistance by the absence or reduction of critical capacity,
- b) induction to perform an act that has a harmful legal effect,
- c) the abuse as result of the vulnerability that occurs when the agent is aware of that state and exploits the weakness to achieve its goal and that is to procure for himself or others an advantage,
- d) the objective recognizability of scarce capacity of the elderly, so that anyone can abuse it to achieve its illegal ends

Supreme Court, Sect. 5 - 2237 -27/October/1978

For the existence of the crime of circumvention of an incapable person it is necessary that the situation of the victim's mental deficiency is objective and recognizable by all, so that anyone could abuse it for their own illicit purposes.

For the purposes of the crime of circumvention of an incapable person, the so-called psychological age does not always indicate a state of mental deficiency, but it is necessary to determine, case by case, whether the subject, due to advanced age, suffers from a mental weakness or other alterations mental, such as a mental handicap.

Supreme Court, Sect. 5, n. 6782 14/December/1977

In the crime of circumvention of an incapable person, the court, in order to ascertain the state of mental deficiency of the passive person may well give importance to the morbid passion that this person (a woman of advanced age) had for the agent (much younger) commingled with a constant exaltation mystical and sentimental, since it is known that, like the lack of affection, the strong presence of a dominant idea, laden with emotional content, together with a strong emotional tension, especially in the elderly and in individuals from weak personality, can adversely affect critical thinking and action, that affects the exercise of free will.

**In this regard, we can offer the experience of three cases:**

1) -An elderly lady in the hospital, is approached by a younger woman who shows friendship and starts to give her support in small everyday needs. She is a widow, nearly blind, the owner of an apartment left to her by her husband, a small fortune and a pension. Soon after learning of the bank balance the younger lady starts to engage in criminal activity for a transfer to her advantage. She is interested to pay taxes on the house who the elderly lady had inherited, has the signature for the account and is delegate to receive the pension, and then opens an account in her own name where she deposits the money of the woman. The victim can not control this because she is almost blind and sick. In this case the younger woman was convicted. There are abuses who fulfill the law's criteria in this case.

2) An elderly man with disabilities was contacted by a real estate agent who convinced him to sell his own home at very low price. He had an elevator for his disability, in own house. He would therefore have given up this opportunity, with grave problems in a new home. After signing the contract, the sons who have come to know the fact, denounced the criminal and they cancelled the contract. The real estate agent was convicted of circumvention of an incapable

3) A man 75-year old , who lived alone, is approached by a 45 year old woman who shows friendship . They start to see each other and to go out together for dinner. He reveals that he is the owner of his house and rents an apartment . She tells him of her work problems and he starts to make small loans to her. Unbeknownst to the man, the woman opens an association of the alleged aid to women at the home of man, then asks for loans of increasingly higher amounts. She isolates him, making him change his phone number and takes him to a psychiatrist , at her own expense , to declare that the man has the full mental capacity. She tried to open an account at a bank away from the house of this man, who has difficulty moving. She did not care about his health and cleanliness : the man lived in filth and ate canned dog food , as determined by the social services. She was charged, following a complaint to the authorities of the bank manager who became suspicious when she asked to credit 30,000 euro withdrawal from the man's account. She didn't give any justification for such payment, she claimed to be neither the girl friend nor the career of this man. The woman claimed to be his heir, but, at trial, the man denied that he had ever wanted to sign for her appointment as heir. The woman was convicted of circumvention of an incapable .

## **D.L. 98/2011 - right of the widow**

A set of rights and protections were introduced in Italy and in other European countries towards the last decades of the twentieth century, as part of the so-called "right of the widow", which addressed particularly women who did not have a pension of their own, and, after the death of the spouse, remained without a minimum income. The article 8, paragraph 5 of D.L. 98/2011 has introduced restrictions on the percentage of the pension payable to the surviving insured person or pensioner deceased, against the practice of so-called "marriages of convenience".

The reduction operates in cases where the marriage has been contracted by a pensioner over 70 years of age and the age difference between spouses is more than 20 years, for an amount equal to 10% for each year of marriage compared to the number 10.



**The “Ageism”: discrimination against elderly**  
*Hon. Fernanda Cervetti – Court of Appeal – Turin – ITALY-  
President of M.A.G.E.D. - IAWJ Member*

We need to have an alliance between young and old people together to achieve social justice and employment opportunities, in the future.

The rapid increase in the number of elderly people around the world is a precious achievement, as well as the result of the success of medicine. In many societies, especially in the south, the elderly can do good (reconciliation in South Africa) or bad (genocide in Rwanda).

Old people is the cultural heritage of the community. They have to transmit human link of knowledge, skills, different traditions and spiritual values. It's unthinkable the "retirement home". Economically the living conditions of the elderly are significantly lower than those of the active population. Therefore it is essential education about aging, starting from a young age. The elderly is fully understood as a natural process, that surgery or aesthetic image in society can not change. Meanwhile, the old must be respected, even if the lifestyle is slowest.

Over the next 50 years, it is expected that the number of older people will increase from the current 600 million to 2 billion. It is a true demographic revolution that must be answered by adopting effective policies that improve the health, independence, productivity, safety and social inclusion of people. If this does not happen it would create a strong generation gap with negative consequences for all. Industrial societies begun to consider the people of the third and fourth age as a burden and an obstacle to development.

On 1969, Robert N. Butler United States gerontologist defined “ageism” the discrimination about seniors.

The question was framed for the first time in the United Nations in 1982 during the First World Assembly on Ageing held in Vienna.

In this assembly was approved an International Plan of Action on Ageing. This document was used by Member States to safeguard the rights of the elderly, even in the wake of the International Covenant on Human Rights. These principles were reaffirmed 20 years later, during the Second World Assembly on Ageing, held in Madrid from 8 to 12 April 2002. Since 1982,

with the adoption of the 1st International Plan of Action, the main purpose of the United Nations Program on Ageing (UNPoA) was to create "a society suitable for all ages". This project took shape more concrete during the Assembly in Madrid in 2002. In the past twenty years many initiatives have contributed to growth in the international proposal:

- On December 14, 1990, the General Assembly, by resolution 45/106, proclaimed on October 1st "International Day of Older Persons."
- On 1991 United Nations General Assembly adopted [Resolution 46/91](#)
- On 1992 United Nations General Assembly adopted [Resolution 47/5](#)

During the "World Summit for Social Development" (Copenhagen - 1995) Member States explored the meaning of the idea of giving "a society for all ages". There were created conditions to ensure that "every individual, with rights and responsibilities, has an active role to play."

The 1999 was the International Year of Older Persons. It was also developed the concept of "a society for all ages" and was divided into four main tasks: the personal growth of individuals throughout their lives; intergenerational relations, mutual relationship between aging population and development.

During the European Council in Lisbon (2000), were identified four challenges' key like response from the European Union to ageing:

- 1) the management of the economic implications of ageing in order to maintain growth and ensure the sustainability of public finances,
- 2) the adaptation of the educational system and the production system for a population and workforce that are reduced in number,
- 3) ensuring adequate pensions;
- 4) health's insurance care quality and financial sustainability of services.

The International Plan on Ageing in 2002, agreed in Madrid, must ensure the worldwide human rights and fundamental freedoms. In particular, focalized itself on the age ability, with security and dignity, in order to

allow older people to continue to participate actively in society as citizens, with full rights and duties. Also, it was understood that basic priorities, associated with aging, are a tool to support the implementation of effective policies.

In November 2006, in Brussels, the European Economic and Social Committee held a conference entitled "Towards a multi-age: the cultural dimension of aging issues", organized by MOST (Management of Social Transformations – Program of UNESCO). Within the social sciences, the MOST program achieves the primary task of decanting the achievements of research in the field of social sciences. It takes on the role of political decisions.

The progress is based on human rights, on fight against age discrimination, security, against poverty, lifelong learning, participation, interdependence, solidarity between generations. It promoted the research on all aspects of aging, in order to address the universal demographic revolution like a sign of humanity's evolution. It's necessary integration of different age groups towards a society for all. The approach will become multi-generational, bringing a positive and holistic "maturation" of the international community.

In 2008, the Parliament and the Council of the European Union with the Decision no. 1098/2008/EC have designated 2010 the Year for Combating Poverty and Social Exclusion. With the Strategic Framework Document on "Priorities and guidelines for the activities of the European Year, 2010", European Commission implemented the decision, involving each Member State to prepare its National Program, to be submitted to the evaluation and approval of the European Commission .

### **Ageing populations: a global phenomenon**

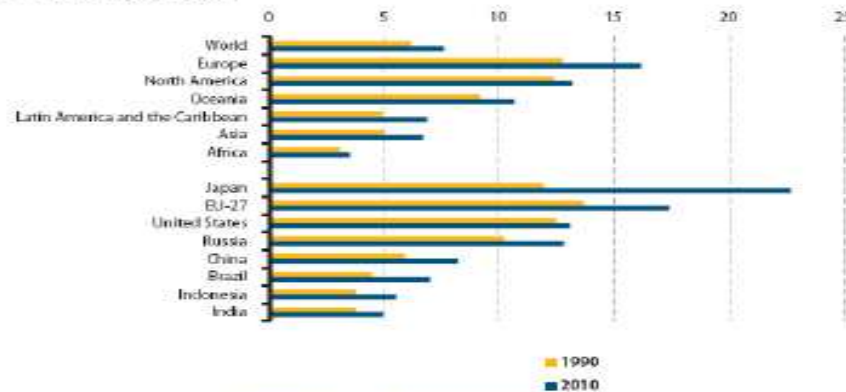
**According to the UN the world's population in 2010 was 6 billion and 895 million**

**The increase in percentage of the population 65 years and older is observable in all parts of the planet**

## L'invecchiamento demografico: Un fenomeno mondiale

Secondo le Nazioni Unite nel 2010 la popolazione mondiale ha raggiunto i 6 miliardi e 895 milioni in 2010. Il continente più popoloso è l'Asia dove vivono sei su 10 abitanti del pianeta. L'aumento percentuale della popolazione 65 anni e più è osservabile in tutte le parti del pianeta

Figure 1.3: Relative importance of elderly persons aged 65+  
(% share of total population)



Source: Eurostat (online data codes: demo\_gind and demo\_pjingroup) and United Nations, Department of Economic and Social Affairs, World population prospects: the 2010 revision

2012 was the European Year for Active Ageing and Solidarity between Generations. The European Year aims to raise awareness of the contribution that older people can make to society. It is proposed to encourage and urge policy makers and stakeholders to undertake, at every level, actions to improve the chances of remaining active aging and strengthening solidarity between generations.

- **Occupation** - with the increase in life expectancy across Europe also grows retirement age. Unfortunately, many are afraid of not being able to keep their current jobs or to find new employment until to acquire a decent pension. It is therefore our duty to offer the best opportunities for older workers in the labor market.
- Retirement does not mean becoming inactive. We often do not take into account the valuable contribution made by older people, who provide care to those who need it, taking care of family members (parents, spouse and grandchildren) or doing volunteer work. The European Year aims to emphasize the social wealth represented by the elderly, who are turning initiatives in 2012 designed to provide their conditions of life more rewarding.
- **Autonomy** - our health status is worsening with ageing, and that 's a matter of fact indeed.

But we have a lot of resources to slow this natural phenomenon, and we can ensure a more peaceful environment for people who suffer from health problems or disabilities. Active aging means also give us the ability to keep control of our lives for as long as possible.

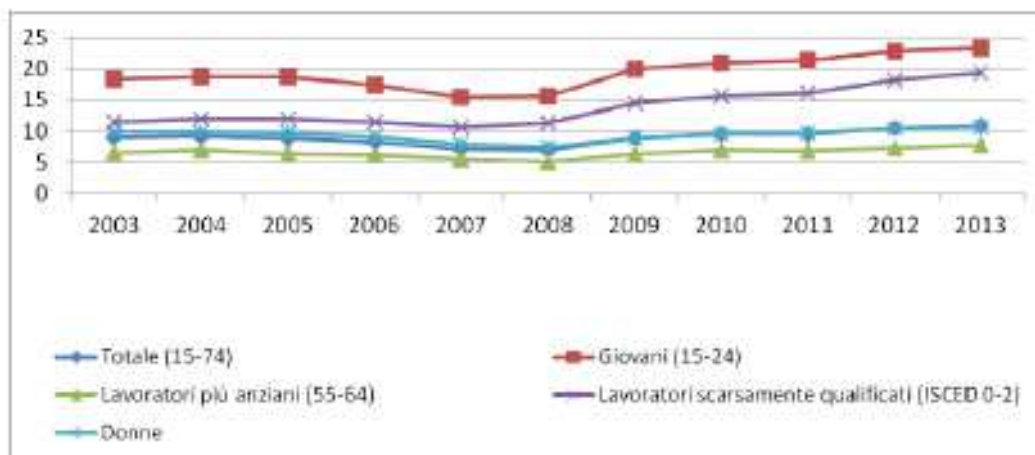
Active aging means healthy aging, to participate fully in community life and to feel more fulfilled at work: it means to be more independent in everyday life and more engaged in society. Whatever our age, we can play an active role in society and enjoy a better quality of life. The goal is to take full advantage of the enormous potential that we continue to have even if we are old. policies to promote employment and employability and to improve the ability of individuals to have longer careers are "essential"

we have to invest in welfare services, health care and the right to work to promote social justice for young and old people.

### Unemployment rates in the EU-28 from 2003 to 2013:

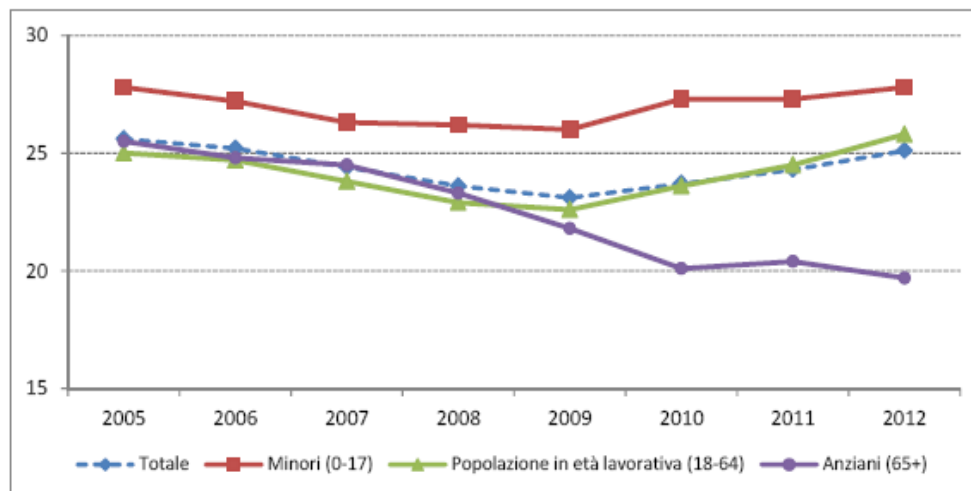
#### Total - young people - women - older workers - low-skilled workers

Figura 1: Andamento dei tassi di disoccupazione dal 2003 nell'UE-28: totale, giovani, lavoratori più anziani e lavoratori scarsamente qualificati



#### Rate developments risk of poverty and social exclusion (AROPE) in the EU since 2005: total - young people - working age population (18/64) - Senior 65 +

**Figura 11: Andamento dei tassi di rischio di povertà o di esclusione sociale (AROPE) nell'UE-28 a partire dal 2005: totale, minori, popolazione in età lavorativa e anziani**



Fonte: Eurostat, indagine UE-SILC. Media dell'UE-27 per il periodo 2005-2009; media dell'UE-28 per il periodo 2010-2012; stima relativa al 2012.

"The adequacy of retirement incomes can be a problem" for future generations and the "working careers intermittent, low-paid and precarious jobs are more vulnerable to the risk of poverty in old age"

In the United States a law of 1967, the Age Discrimination in Employment Act, ADEA, protects seniors by prohibiting employers to implement discriminatory measures against employees, especially layoffs, on account of age.

The Supreme Court of the United States, by judgment of 12 June 2000 (Est O'Connor) upheld an appeal about age discrimination, stating that, in the presence of other elements, such as advanced age of the worker and his replacement by another employee and subsequent assumption, the groundlessness of the justification given by the company for the dismissal was an element of decisive importance for ascertaining the discriminatory nature of the measure.

The discriminatory intent pursued in violation of ADEA - the Court held - can usually be proved only by elements of presumption, being very difficult to have eyewitness testimony about the mental processes of the entrepreneur.

It improve the quality of life of patients and in a sustainable manner, the health and quality of life (especially older people)ensure the sustainability

and efficiency of health and welfare systems in the long run improve the competitiveness of European business, with an expansion to new markets;

The physician is not required to comply with the directives that conflict with the care needs of the patient. It does not degrade the profession and its mission in assessing only the costs

The indicator of the years of healthy life is an index developed by the EU effective in helping you to age in a healthy way.

It is based on a combination of life expectancy (mortality) and health status (disability) to give a general indication of the years that can be spent in good health. The European Commission is committed to protecting the health and dignity in old age.

By 2025, over 20% of Europeans will be 65 or older and will rapidly increase the number of octogenarians.

The lengthening of life expectancy is obviously a positive effect of progress, but it also implies a greater risk of physical, sensory and mental disabilities.

By minimizing this risk, we can ensure that even in old age, we can maintain a decent quality of life, remain independent and continue to play an active role in society and in the family.

In 2012 is born in Italy The Society of Geriatric Cardiology (SICGe) against the ageism. This institution wants to merge the geriatric culture and cardiology to identify frail elderly heart patients most in need of innovative and personalized care.

Therapeutic adherence to treatment after a heart attack by 80% each year could prevent the deaths of 200 "young elderly" (between 65-74 years) and 2700 over 75, with an annual savings of 15 million euro for admissions .

Through the process of protection and social integration, the European Union encourages Member States to take steps to combat poverty and social exclusion, and to reform the social protection systems based on policy exchanges and mutual learning.

It was created a European partnership for innovation on "Ageing remain active and in good health“;

This pilot project aims to increase the average life of two years in good health of Europeans in 2020.

On average, in the 10 new EU countries, the elderly are less numerous and have a shorter life span than the 15 old member states. In almost all countries, elderly population has a greater risk of poverty and women more than men. Among all the groups considered, the over 75 women have the most risk of poverty. The collaboration between the European Commission, the EU countries, regions, companies in the sector, health care and social organizations, representing the elderly and patients, aims to improve the lives of the elderly, helping them to play an active role in society and to reduce pressure on social and welfare systems, to ultimately contribute to sustainable growth.

The adequacy of retirement incomes can be a problem" for future generations and the working careers with intermittent, low-paid and precarious jobs are more vulnerable to the risk of poverty in old age. The latest report by Silver Thread Auser, presents a negative picture, confirming the absolute growth of poverty especially for the over-65s , which reduces consumption for basic necessities, like food and clothing, while other expenses increase.

It is a problem that exists on a universal level, partly because of the economic crisis, but, in some countries, the situation is more serious than others, because dragging old issues related to the management of community needs.

In Italy, 13.3% of retired receives less than 500 Euros per month, 30.8% between 500 and 1,000, 23.1% between 1,000 and 1,500 Euros and the remaining 32.8% perceives a higher amount 1,500 Euros. This is what emerges from the latest survey published by ISTAT.

Many older people have reduced by one the daily meals, many of radiators, in this last winter, were turned off, they have less and less money to warm up, and now, on their heads, lies yet another nightmare: the eviction. From the data obtained in 2012 Eurispes, in 15 years, the purchasing power of pensions decreased by 30% and many people can no longer pay the rent.



The ideas emerged and repeatedly emphasized are the need for progress based on human rights, the fight against age discrimination, security, the fight against poverty, lifelong learning, participation, interdependence, solidarity between generations and the promotion of research on all aspects of aging in order to address the demographic revolution as a sign of the evolution of humanity.

The National Program of Italy, prepared by the Ministry of Labour and Social Policy, provides for the updating of the strategy to combat poverty in the context of the current economic and social situation and the new address of the social policies of the government. The National Strategy Report 2008-2010 against poverty and the White Paper on the future of the social model have focused on the levers of social participation, accountability widespread throughout the community in the prevention and fight against poverty, with activation of a process active inclusion.

The abuse against older people is widespread, though not denounced, and is committed to and from both genders. Generally this type of violence fall into three categories: physical, psychological and economic. It is difficult to get accurate information about the actual size, but the data from the National Elder Abuse Incidence Study (NEAIS) reports a phenomenon increasing in frequency (in the U.S. there has been an increase of 150% in 10 years). The United Nations, during the Madrid Assembly in 2002, presented a report entitled "Abuse of Older Person 2002" examines the ill-treatment to which they are subject seniors from all over the world, and in the same year, the World Health Organization publishes the 1st World Report on "Violence and Health" a long chapter devoted to the topic.

The NEAIS has identified several high-risk groups: women, old old people (over eighty), elderly people with mental or physical frailty. A high percentage of elderly people who suffer abuse (about 3 out of 4) are subject to physical and mental frailty and can not take care of themselves. The magnitude of the problem has prompted the WHO to take action focused on three themes: awareness, education and defense. For elderly migrants will have to prepare better access to social protection;

Developing measures to maintain the safety and economic health of the elderly;

Establish centers for the elderly (especially for the poor and migrants);

Helping families to share living spaces with seniors who need it.

- The number of elderly foreigners in Italy has increased, because many migrant workers, during the 50s and 60s, now are reaching the retirement age. Europe responds slowly to these radical changes, partly due to the global economic crisis, and often the migrant senior tight low-income families and receive a reduced pension.
- Among the initiatives undertaken at European level in favor of older migrants to mention the birth of an organization that deals with studies, research and interventions for older migrants, or the ENAE (European Network on Ageing and Ethnicity) based in Edinburgh England.

As regards international strategies, in 2000, the Standing Committee of the UNHCR (United Nations High Commissioner for Refugees) approved its policy for immigrants belonging to the third and fourth age. The policy in question, which is based on the United Nations Principles for older persons approved in 1991, stands out by current opinion that considers the refugees only as receptors for assistance, identifying them as resources that have much to offer because of their knowledge and the enormous wealth of experience that they bring.

The older refugees, in fact, sometimes they have assumed the role of leader in the community, actively participating in decisions and collective activities and helping to implement measures for peace. Social innovation, online service, elderly: the European Life 2.0 puts them together in the belief that new technologies can help the weaker sections of the population, such as the elderly, to achieve greater independence and a better quality of life. In the pilot project developed in Aalborg (Denmark) by Anelia Ivanova Mitzeva the goal was to create a network among the older population, and teaching them how to publish ads on the online platform. New technologies may in fact be a support in the search for leisure activities or even help.

### **Older in figures In Italy :**

**12.3 million over 65 in Italy (Istat, 2012)**

**20 million over 65 in Italy in 2065 ( projection Istat)**

**1.6 million older people in relative poverty in 2009**

( Italy - Istat)

**647 000 older people in absolute poverty in 2009 ( Italy - Istat)**

**375 000 seniors working in Italy in 2010 ( Istat)**

**36 million** people in the world suffering from **dementia** ( Adi , 2011)

**66 million** people in the world who will be living with **dementia in 2030**

( projection

Adi , 2011)

**115 million** people in the world who will be living with **dementia in 2050**

( projection Adi , 2011)

**1 million** **Alzheimer's** patients in Italy ( Adi , 2011)

**250 000** people living with **Parkinson's** disease in Italy ( AIP , 2007)

**over 2 million frail elderly** ( Italy - Ministry of Labour and Social Policy , 2011)

**13,207** the residential social care and social health, in Italy December 31,2009

(Istat, 2012)

**429 220** Beds in the residential social care and social health in Italy,

December 31, 2009 (Istat, 2012)

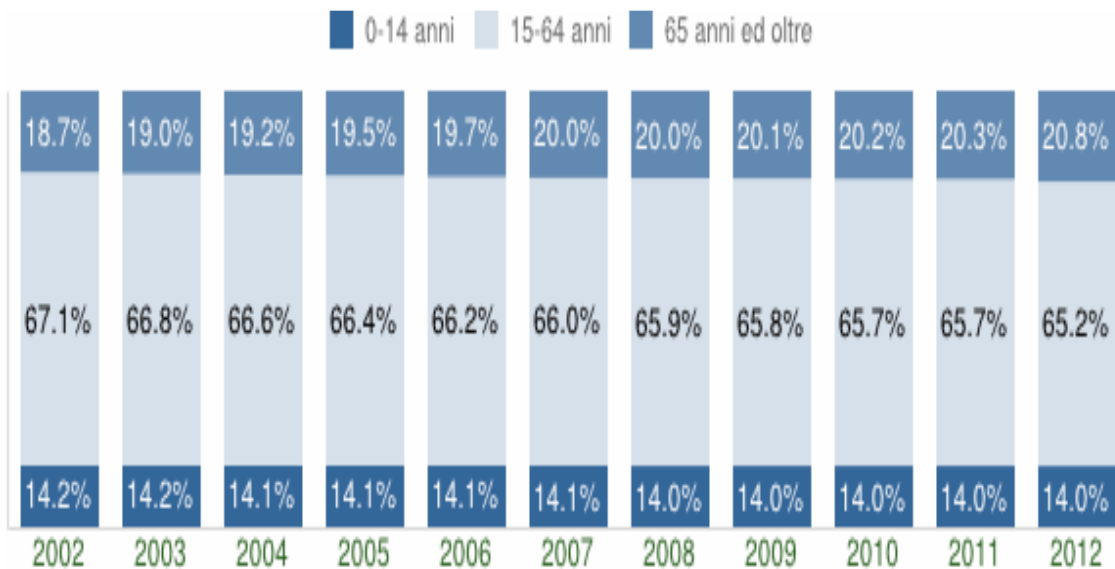
- **404 170** Guests of the residential structures in Italy December 31, 2009 (Istat, 2012) **300 000 are old over 65 anni (il 74%), 75.868 self-sufficient e 225.182 not self-sufficient** **Elements of priorities to combat ageism in the health care field. Ethics of medical acts**
- **Access to new technologies**
- **Access to new services, new drugs tested for the elderly**
- **Access to clinical trials**
- **Corresponding information and documentation**

## Age structure of the population in Italy

The analysis of the age structure of a population considers three age groups: young people 0-14 years, 15-64 years and older adults aged 65 and over. According to the different proportions of these age groups, the structure of a population are labeled as progressive, stationary or regressive depending on whether the young population is greater than, equal to or less than the elderly.

The study of these relationships is important to assess the impact on the social system, such as work system or the health sector.

## Age structure of the population in Italy



### Struttura per età della popolazione

ITALIA - Dati ISTAT al 1° gennaio di ogni anno - Elaborazione TUTTITALIA.IT

In Italy, 411 000 employed people between 50 and 69 years who, while sensing already a pension from work, they are deliberately prolonging the work. In 2012, in Italy, 27.1% of those over 65 said they had made at least one training activity in the 12 months preceding the interview. In Italy, more than 286 000 businessmen with more than 70 years. Of these, 77,573 are women (27.1% of the total).

- France has never boasted so many grandparents. A Frenchman every 4 has grandchildren. For a total of 15.1 million grand-parents.
- Volunteering helps older people to grow old gracefully.
- The European paper of the rights and responsibilities of older people have developed a common reference guide throughout the

European Union to promote the welfare and dignity of dependent elderly people in need of long-term care

**Rights of the elderly:**

- Right to dignity, physical and mental integrity, liberty and security.
- Right to self-determination.
- Right to privacy.
- Right to appropriate care and high quality.
- Right for custom information and advised and informed consent.
- Right to receive notices
- Right to Participate in social life and to cultural activities . Right to palliative care and support
- Right to Dignity and respect in the agony and death.
- Right to compensation

**Responsibility for the elderly**

Responsibility for the elderly, awareness and need for older people to respect the rights of those who live with them or work for them.

They need to know their duties, to give them clear instructions to get them working in good condition, treating them with respect.

Should be prevented the abuse with clear instructions on what to do, paying attention to the causes and nature of the behavior. A person with severe dementia can become dangerous, agitated and aggressive towards others, but it is not abuse.

You can no longer manage the problem of the elderly as if it were a separate category, as indeed can not be solved the problem of the status of women and youth. Addressing these issues is to choose the social model and means making choices that determine the pattern of life and society. In conclusion, the “humanity” and “existential rights” of older people and their families must be respected, in order to organize their best assistance.