EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX

DECISION ON THE MERITS

Adoption: 19 March 2025

Notification: 21 August 2025

Publicity: 22 December 2025

***Associazione Professionale e Sindacale* (ANIEF) v. Italy**

Complaint No. 200/2021

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter ("the Committee"), during its 347th session, in the following composition:

Aoife NOLAN, President
Tatiana PUIU, Vice-President
George THEODOSIS, Vice-President
Kristine DUPATE, General Rapporteur
Karin Møhl LARSEN
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Franz MARHOLD
Alla FEDOROVA
Grega STRBAN
Olivier DE SCHUTTER
Kristina KOLDINSKÁ
Carmen-Constantina NENU

Assisted by Henrik KRISTENSEN, Executive Secretary,

Having deliberated on 23 January and 19 March 2025,

On the basis of the report presented by Carmen SALCEDO BELTRÁN,

Delivers the following decision, adopted on the latter date:

PROCEDURE

1. The complaint submitted by *Associazione Professionale e Sindacale* (ANIEF) was registered on 21 June 2021.

2. ANIEF alleges that the system established in Italy to provide educational assistance to pupils with disabilities breaches Articles 1§§1 and 2 (right to work) and Article 15 (right of persons with disabilities to independence, social integration and participation in the life of the community), and Article E (non-discrimination) of the revised European Social Charter due to:

- the precarious employment of the majority of support teachers for pupils in need of educational assistance (over 56% of them are recruited under contracts that end every 30 June);
- the fact that most (79%) of these support teachers are not specialised in teaching pupils with disabilities;
- the systematic replacement of support teachers every school year, affecting 170 000 pupils with disabilities (59% of all of these pupils), and the consequent lack of educational continuity for these pupils;
- the fact that many families of pupils with disabilities have to go to court every year for the assignment of a support teacher or more hours of educational assistance.

3. On 24 March 2022, the Committee declared the complaint admissible.

4. Referring to Article 7§1 of the 1995 Protocol providing for a system of collective complaints (“the Protocol”), the Committee invited the Government to make written submissions on the merits of the complaint by 13 May 2022.

5. Referring to Article 7§§1, 2 of the Protocol and pursuant to Rule 32§§1, 2 of its Rules (“the Rules”), the Committee invited the States Parties to the Protocol, the States having made a declaration in accordance with Article D§2 of the Charter, as well as the international organisations of employers or trade unions referred to in Article 27§2 of the 1961 Charter, if they so wished, to submit observations on the merits of the complaint by 13 May 2022.

6. On 18 May 2022, the Government asked for an extension to the deadline for submitting its submissions on the merits of the complaint. The President of the Committee set 20 May 2022 as a new deadline.

7. The Government's submissions on the merits of the complaint were registered on 20 May 2022. Pursuant to Rule 31§2 of the Rules, ANIEF was invited to submit a response to the Government's submissions by 10 August 2022.

8. ANIEF's response to the Government's submissions was registered on 9 August 2022.

9. Pursuant to Rule 31§3 of the Rules, the Government was invited to submit a reply to ANIEF's response by 31 October 2022. The Government did not submit a reply to ANIEF's response.

10. On 12 March 2024, ANIEF submitted further information and expressed its willingness to provide further clarifications at a public hearing if necessary.

11. Pursuant to Rule 28§3 of the Rules, the President of the Committee invited the Government to submit a response to ANIEF's further observations by 15 May 2024.

12. The Government's response to ANIEF's further observations was registered on 15 May 2024.

13. Pursuant to Rule 33§1 of the Rules, during its 341st session (13-17 May 2024), the Committee decided a public hearing was not needed, and pursuant to Rule 31§4 of the Rules, the President of the Committee decided to close the written proceedings on 29 May 2024.

SUBMISSIONS OF THE PARTIES

A – The complainant organisation

14. ANIEF alleges that the system in place in Italy to provide educational assistance to pupils with disabilities breaches the Charter because of the precarious employment of a majority (over 56%) of support teachers, i.e. teachers assigned to a class with one or more pupils with disabilities in order to facilitate their inclusion. According to ANIEF, the fact that most support teachers are in precarious employment creates a vicious circle which hinders both the right of these teachers to stable and freely chosen work and the right of pupils with disabilities to inclusive education.

15. ANIEF also alleges that more than 79% of support teachers in a situation of precarious employment do not have the necessary specialised teaching skills. It points out that training courses on the needs of pupils with disabilities are run mainly in regions where needs are lowest. As a result, vacant statutory posts are not assigned to tenured teachers who have received this training. This leads to the recruitment of

untrained substitute teachers to act as support teachers on a temporary basis (for one school year at a time).

16. According to ANIEF, the precarious employment of most support teachers and their lack of specialisation undermine educational continuity for pupils with disabilities.

17. Relying on figures compiled in 2018 by the Italian Federation for Overcoming Disability (FISH), ANIEF alleges that the support teachers of 90% of pupils with disabilities were replaced from one year to the next, those of 80% of these pupils were replaced twice during the course of the school year, and those of 6% were replaced five times. The complainant organisation alleges that replacement of a support teacher often means that the pupils with disabilities concerned, especially those with a severe disability, lose a vital point of reference. For these pupils, this loss of touch with the main contact person within the school entails educational discontinuity which hinders their inclusive education.

18. Referring to the February 2020 report of the National Statistics Institute (ISTAT), ANIEF states that in 2020/21, 20% of support teachers did not yet know which school they would be assigned to a month after the start of the new school year. ANIEF underlines that as a result of this, some families launch legal proceedings to be assigned a support teacher or for more hours of educational assistance to be allocated. This situation hinders the inclusive education of pupils with disabilities as a whole and in the long term, affects their right to independence, social integration and participation in the life of the community.

19. In view of this, ANIEF asked the Committee to find the situation in Italy in breach of Articles 1§§1 and 2 (right to work), 15 (right of persons with disabilities to independence, social integration and participation in the life of the community) and Article E (non-discrimination) read in conjunction with each of the aforementioned provisions of the Charter.

B – The respondent Government

20. The Government asserts that provision for the education of pupils with disabilities in mainstream schooling has been in place for a very long time (since 1977). The adoption of Law No. 104 of 1992 then established a detailed framework to ensure that the school system would be inclusive. Since 2011, this framework has covered not only pupils with disabilities, but also pupils with special educational needs (dyslexia, dysgraphia, dyscalculia) or other needs (resulting from social exclusion, for instance). The Government explains that Law No. 104 was supplemented in particular through the adoption of legislative decrees 66/2017 and 96/2019, which make provision for special tools to achieve inclusive education.

21. The Government highlights the fact that support teachers are essential in guaranteeing an inclusive school system in Italy but also underlines that they must not be seen as being assigned specifically to one or more pupils who require educational assistance. Support teachers are assigned to the class in which the pupils in need of support are enrolled. They must work together with all teaching staff to ensure that these pupils are included. Inclusive education is a matter for the whole school: the

individual education plans prepared for each pupil certified as disabled must be incorporated into the inclusion plan prepared by all schools every three years (see legal framework below, § 33).

22. The Government also states that because of the growing demand for support teachers resulting from the increase in the number of pupils with disabilities, more specialised training in this field has been made available. The Government underlines the importance of training for teachers who wish to dedicate themselves to providing educational assistance to pupils with disabilities given that this role requires special skills in addition to those needed to become a teacher.

23. Lastly, the Government acknowledges that a large number of support teachers are in precarious employment but points out that the use of fixed-term contracts in the education sector in general and in the field of support in particular, is partly inevitable given the difficulty of predicting specific needs in advance because of numerous variables such as the number of pupils with disabilities/special needs arriving at and/or leaving the school, teachers' requests for transfers, sick leave, retirements, etc. The Government therefore considers that the procedures in place to adjust needs in terms of *de jure* (statutory) and *de facto* support teachers (see legal framework below §§ 77-78) guarantee continuity of the educational assistance necessary for pupils with disabilities or special educational needs.

24. The Government therefore asked the Committee to declare all aspects of the complaint unfounded.

RELEVANT DOMESTIC LAW AND PRACTICE

A – Constitution and the case law of the Constitutional Court

25. The following articles of the Constitution of the Italian Republic are central to this complaint:

> **Article 1**
> "Italy is a democratic Republic founded on labour. (…)"
>
> **Article 2**
> "The Republic recognises and guarantees the inviolable rights of the person, both as an individual and as a member of the social groups where human personality is expressed. The Republic expects the fundamental duties of political, economic and social solidarity to be fulfilled."
>
> **Article 3**
> "All citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinions or personal or social conditions. It is the duty of the Republic to remove those obstacles of an economic or social nature which constrain the freedom and equality of citizens, thereby impeding the full development of the human person and the effective participation of all workers in the country's political, economic and social organisation."

Article 4
"The Republic recognises the right of all citizens to work and promotes those conditions which render this right effective. Every citizen has the duty, according to personal potential and individual choice, to perform an activity or a function that contributes to the material or spiritual progress of society."

Article 38
(…) "Persons with incapacities or disabilities are entitled to education and vocational training. The measures provided for in this article shall be implemented by bodies and institutions established or supported by the State."

Article 97
"Public services shall be organised as provided by law so as to ensure the smooth running and impartiality of administration. (…)
Appointments to posts within public authorities shall be made through competitive processes, except where otherwise provided by law."

Article 117:
(…) "Legislative power shall be exercised by the State and the Regions in accordance with the Constitution and the constraints arising out of Community regulations and international obligations."

26. The Italian Constitutional Court ruled on several cases concerning inclusive education:

Judgment No. 80 of 22 February 2010

27. In this judgment, the Constitutional Court reiterates that *"the right of persons with disabilities to education is a fundamental right. (…). Among the various measures considered by lawmakers, one should highlight that of teaching staff specialised in disability, called upon specifically to apply 'ineluctable models of integration and support' for pupils with disabilities that cannot be waived (even from a constitutional standpoint)".* The Court regards any limit placed on the number of hours of educational assistance that can be provided to a pupil with disabilities as unconstitutional. It points out that these hours are not applied generally to all pupils with disabilities; rather, due regard must be had to the specific type of disability.

Judgment No. 275 of 19 October 2016

28. In this judgment, the Constitutional Court points out that when the fundamental right of pupils with disabilities to education is implemented, lawmakers must provide the means needed, including financial means, for its application in practice. The Court states in paragraph 11 of its judgment that *"the essential core of minimum guarantees giving effect to the right of pupils with disabilities to education cannot be subjected to financial constraints in absolute and general terms* (…) *it is the need to guarantee inviolable rights which should determine the budget, and not the need to balance the budget which determines spending".*

Judgment No. 83 of 11 April 2019

29. In this judgment, the Constitutional Court reiterates that for the right to education of pupils with physical and sensory disabilities to be given effect, adequate funds and equipment must be provided. The Court reaffirms the principle that services which transpose constitutional rights must be provided *"without interruption, so as to ensure effective access for persons with disabilities to their right to education and school integration".*

B – Provisions regarding inclusive education and the role of support teachers

Law No. 517 of 4 August 1977 – Provisions concerning pupil assessment (…) and other rules altering the school system (in force, last amended in May 1982)

30. Article 7 of this law stipulates that pupils with disabilities must be included in mainstream classes and provides that a dedicated support teacher must be assigned to any class in which pupils with disabilities are enrolled. This provision also states that these teachers must be authorised to teach, must therefore be appointed on a permanent basis and must have a specialised qualification for this job.. The cap on the number of hours of support originally set in this article, which was six per week, was abolished in 1982.

Law No. 104 of 5 February 1992 – Framework law on assistance for persons with disabilities, their social integration and the protection of their rights (in force, last amended in May 2024)

31. This law establishes the framework for assistance for persons with disabilities in order to ensure their social integration and guarantee their rights in general. The following provisions are of particular relevance to this complaint:

> **Article 3 – Entitled persons**
> "1. A person with a disability is any person with a stabilised or progressive physical, mental or sensory impairment which causes difficulties with learning, relationships with others or employment and which gives rise to a social disadvantage or marginalisation.
> (...)"
>
> **Article 8 – Integration and social inclusion**
> "The integration and social inclusion of persons with disabilities shall be ensured through:
> (...)
> d) measures giving effect to the right to information and the right to education of persons with disabilities, including in relation to educational and technical equipment, programmes, specialised languages, assessment tests and the availability of specially qualified teaching and non-teaching personnel. (...)"
>
> **Article 12 – Right to education and training**
> "(...)
> 2. The right of persons with disabilities to education is guaranteed in all infant school sections, in mainstream classes in schools of all levels and at universities.

3. The aim of school integration is to develop the potential of persons with disabilities in the areas of learning, communication, relationships with others and socialisation.
4. The exercise of the right to education and training must not be hindered by learning difficulties or other difficulties resulting from a disability-related problem.
5. Where it has been found that a child, pupil or student has a disability within the meaning of Article 3 [above], a functional profile shall be drawn up on the basis of the criteria set out in the biopsychosocial model of the International Classification of Functioning, Disability and Health (ICF) adopted by the World Health Organisation (WHO), for the purposes of drawing up the individual plan referred to in Article 14 of Law No. 328 of 8 November 2000 and the individualised education plan (IEP). (...)"

Article 13 – School integration
"1. The school integration of persons with disabilities into the sections of infant schools and the mainstream classes of schools of all levels and at university shall also be secured, without prejudice to the provisions of Law No. 360 of 11 May 1976 and Law No. 517 of 4 August 1977 as amended, by the following means:
a) The co-ordination of school, healthcare, social, cultural, recreational and sport services and other regional services administered by public or private bodies. To this end, local authorities, school organisations and local healthcare facilities shall, within the limits of their respective powers, negotiate the programme agreements referred to in Article 27 of Law No. 142 of 8 June 1990. The purposes of these agreements, which shall be entered into in accordance with guidelines to be laid down within three months after this law enters into force by order of the Minister of National Education in agreement with the Minister of Social Affairs and the Minister of Health, are to draw up, implement and jointly review tailor-made educational, rehabilitation and socialisation plans and to co-ordinate school and out-of-school activities. They also set out the criteria that public and private bodies must meet in order to participate in co-ordinated collaborative activities.
(...)
3. Without prejudice to the obligation of local authorities, pursuant to Presidential Decree No. 616 of 24 July 1977 as amended, to help pupils with physical or sensory disabilities become more independent and communicate more effectively, access for these pupils to support activities shall be guaranteed in all schools at all levels through the assignment of specialised teachers.
4. Support teacher posts in secondary education shall be allocated among staff who are serving on the date when this law enters into force in such a way as to ensure a ratio at least equal to the one stipulated for other levels of education, within the limits of the available financial resources referred to in Article 42, paragraph 6, letter h.
(...)
6. Support teachers (i.e. teachers with specific training in all forms of disability) shall share responsibility for pupils with the teacher of the section or class in which (s)he works, and thus help to develop educational and teaching activities and devise and review activities falling within the remit of inter-class councils, class councils and teaching teams.

32. The individual life plan provided for by Article 14 of Law No. 328 of 8 November 2000 (Framework law on the implementation of the integrated system of social interventions and services) was updated in 2021, in accordance with Article 12 cited above, by Article 2 of Law No. 227 of 22 December 2021. Article 2§2, letter c, paragraph 9, provides that individual life plans (now known as "individual, personalised and participatory life plans") *"shall identify all the human, professional, technological, instrumental and economic resources in the public or private sector, which can also be activated within the local community and the system of informal support, in order to implement the plan itself (…)"* and introduces an obligation to report on this implementation according to the criteria set in the plan itself.

33. Article 40 (School staff) of Law No. 449 of 27 December 1997 (Measures to stabilise public finances) lays down the following rules regarding the process of ascertaining support teacher needs:

> "1. The number of employees in the school sector at the end of 1999 should be 3% lower than it was at the end of 1997, without prejudice to the numbers of support teachers necessary to meet the national need for school integration. This number is the upper limit on serving staff. Employees to be considered for planning purposes shall include annual substitute teachers and temporary substitute teachers, except for those required to carry out short-term replacements. (…) In accordance with the general principles laid down by Law No. 104 of 5 February 1992, the integration of pupils with disabilities into school shall be carried out through measures tailored to the type and severity of the disability, including recourse to the broad organisational and functional flexibility of classes provided for in Article 21, paragraphs 8 and 9, of Law No. 59 of 15 March 1997 (...) without prejudice to the constraint referred to in the first sentence of this paragraph. (…)
> (…)
> 3. The ratio of support teachers for the integration of pupils with disabilities shall be set at one teacher for every 138 pupils attending state schools in the province, though there shall be a gradual increase, in a proportion not exceeding 80%, in the statutory and actual numbers of posts in existence for the 1997-1998 school year, subject to the constraint referred to in the first sentence of paragraph 1. The criteria for the allocation of support teachers between the different levels of school and, where appropriate, between different secondary school subjects, and for allocation to each school, shall be set in the decrees referred to in paragraph 1, with educational continuity of support teachers being maintained at every school level. Plans to test successful models of integration into mainstream classes intended to foster educational success for pupils with particular types of disability shall be approved by directors of studies, who may make provision for the allocation of the human and financial resources necessary to purchase the technical tools and teaching aids needed to develop these pupils' potential and refresher training for staff. The experience gained shall be made available to other schools."

34. The 2007 Finance Law (Law No. 296 of 27 December 2006) lays down the following rules regarding an exceptional quota of support teachers:

> **Article 1 – 605**
> "To provide stronger back-up for school management's tasks and activities through measures and investments, including ones of a structural nature, which allow for rational spending and make the education system more effective and efficient, the Minister of Public Education shall adopt one or more orders introducing measures for: (…)
> b) the ongoing replacement of the criterion referred to in Article 40, paragraph 3, of Law No. 449 of 27 December 1997 through the identification of staff who meet actual defined needs, thanks to close co-operation between regions, regional school offices, local health authorities and educational institutions, through appropriate certification to identify suitable training;" (…)

35. These "exceptional" support posts (additional to statutory – *de jure* -posts), will be assigned to substitutes to be recruited from exhaustive GAE lists or provincial GPS lists. The first assessment of needs is carried out in August. During the school year, the number of posts can increase if families request more hours of support (these are set out in the individual education plan drawn up between June and October – see §38 below).

36. The 2008 Finance Law (Law No. 244 of 24 December 2007) introduces the following methodology for calculating/recalculating the number of *de jure* statutory *posts* :

> **Article 2 – 414**
> "The statutory number of support teachers shall be gradually recalculated over the 2008-2010 three-year period until, in the 2010/2011 school year, it reaches a level equal to 70% of the total number of support posts that existed in the 2006-2007 school year, subject to the recruitment authorisation rules set out in Article 39, paragraph 3 bis, of Law No. 449 of 27 December 1997. The aforementioned percentage shall be recalculated for the 2013-2014 and 2014-2015 school years at a level equal to 75% and 90% respectively and 100% from the 2015-2016 school year onwards."

Legislative Decree No. 66/2017 – Rules for the promotion of the inclusive education of pupils with disabilities in accordance with Article 1, paragraphs 180 and 181, letter c), of Law No. 107 of 13 July 2015 (in force)

37. Article 6§6 made provision for the adoption of Guidelines for the certification of developmental disabilities for inclusive education purposes 180 days after the 2017 decree entered into force. These were adopted in September 2022 and explain how operational profiles should be drawn up for inclusive education purposes (as set out in Article 12§5 of Law No. 104/1992). They state that operational profiles must be updated when each level of education is completed, from infant school onwards, or when the person's functional circumstances change.

38. Article 7§2 (as amended by Legislative Decree No. 96/2019) provides that individual education plans (as also provided for by Article 12§5 of Law No. 104/1992 cited above):

> d) shall state the arrangements for educational assistance, including the proposed number of hours of support for the class, the assessment methods, the evaluation criteria, the inclusion activities to be conducted by teaching staff during ordinary class time and specific projects, assessment in connection with individual planning, the basic hygiene and assistance activities to be carried out by auxiliary staff on school premises and the professional resources that it is proposed to allocate to assistance, independence and communication, as per the implementing arrangements and quality standards set out in the agreement referred to in paragraph 5 bis of Article 3; (…)
> g) shall be drawn up on a provisional basis by June and ultimately, in most cases, by October (…); they shall be prepared from infant school onwards and updated whenever the person's functional circumstances change. When they progress from one level of education to another, the teachers in the school the pupil is leaving and the one he/she is now joining shall engage in dialogue. If children are transferred from one school to another, there shall be dialogue between the educational institutions concerned and plans shall be adjusted in line with the contextual circumstances in the pupil's new school;

C – Provisions on training for support teachers and their recruitment

39. Article 12§1 of Legislative Decree 66/2017 provides that those who complete the course in specialised teaching and education for assistance activities for pupils with disabilities and inclusive education shall gain a qualification enabling them to access posts as support teachers for pupils with disabilities at infant and primary schools. By decree, the Minister of Education, Universities and Research (MEUR) decides on the study programmes and arrangements for the implementation and organisation of the

course for this specialisation, as well as the training credits required for enrolment on the course.

40. With regard to upper and lower secondary schools, Article 12§2 of the same decree provides that specialisation is achieved through completion of a course of specialisation in teaching and education relating specifically to educational assistance activities for pupils with disabilities and inclusive education. The course is planned at national level by the MEUR, taking account of the needs and requirements of the national education and training system, and is run at universities authorised by the MEUR. The course, which takes one year, is worth 60 university training credits (CFUs), and includes at least 300 hours of work experience, worth 12 CFUs. To be admitted, candidates must pass an entrance examination organised by the relevant universities. Article 12§3 states that access is reserved solely for holders of a *"laurea magistrale a ciclo unico"* (single-cycle degree) in primary school teaching who have earned 60 CFUs in courses on inclusion-related teaching activities in addition to the credits are already provided for by the course.

41. As regards access to training to become a support teacher, Article 18-bis, paragraph 2, of Legislative Decree No. 59 of 13 April 2017 on the "reorganisation, adjustment and simplification of the system of initial training and access to teaching roles in secondary schools for the social and cultural enhancement of the profession" provides that the support teacher training course is open to *"those, including teachers recruited on a permanent basis to state posts, who have worked for at least three out of the last five years in a support post in schools within the national education system, including private schools and regional vocational training providers, and who hold a valid teaching qualification"*.

42. With regard to the recruitment of support teachers, Ministerial Decree No. 259 of 30 September 2022 makes provision for a national competition to be held at regional level for teachers specialised in providing educational assistance for pupils with disabilities. Candidates can apply for only one region. This competition is based on assessment of qualifications against a table of specific points. The results of the competition are used to determine regional ranking lists (*graduatorie,* GPS), which are updated every two years. These lists are used to fill tenured posts (permanent appointments) if other ranking lists are exhausted. Candidates who pass the competition must undergo a year of training and complete a trial period which includes a final test. Teachers who successfully complete the year of training and pass the final examination are assigned to a permanent post. The final test includes a subject test, and those who fail it are excluded from the competition and the support teacher rankings and cannot participate again.

43. After the complainant organisation submitted its final additional observations (Case doc. No. 6) and its response to those of the Government (Case doc. No. 7), Decree-Law No. 71 of 31 May 2024, which was converted with amendments into Law No. 106 of 29 July 2024, made provision for urgent measures in relation to the specialisation of support teachers. The following article is of particular relevance in the context of this complaint:

Article 6 – Strengthening of specialisation courses for educational support activities for pupils with disabilities

1. To meet current needs for support teachers, on an exceptional and temporary basis, in addition to the specialised support courses that are normally run by universities in accordance with current legislation, specialisation in educational support activities for pupils with disabilities shall be achieved, until 31 December 2025, by successfully completing the training courses run by the National Institute for Documentation, Innovation and Research in Education (INDIRE) referred to in Article 19, paragraph 1, of Decree-Law No. 98 of 6 July 2011, as amended by Law No. 111 of 15 July 2011. At least 30 training credits are needed to access the courses referred to in this paragraph. Universities can, in all circumstances, run the courses referred to in this paragraph independently or by agreement with INDIRE.

2. Courses run under this article (;;;) are open to persons who have been in service on a support post in a public or private educational institution for at least three school years in total out of the last five.

3., Decisions on the job profile for specialist teachers, the training credit content of the training courses run pursuant to this article, the requirements and the arrangements for the running of courses, the maximum costs, the final examination and the make-up of the final examination board, which shall have one external member appointed by the Regional School Board from among serving technical, school or administrative managers, shall be adopted by decree of the MEUR, following an opinion of the Ministers for Disabilities and for Universities and Research and the Inclusive Education Permanent Monitoring Centre to be adopted within 30 days from the date on which this decree entered into force. The costs of giving effect to this article shall be borne by participants.

4. Every year, by the deadline specified in paragraph 1, the MEUR shall gauge the need to call upon specialist teachers to support pupils with disabilities with a view to organising the courses referred to in this article. The needs referred to in the first sentence shall be identified, for each level of education, on the basis of the National Education System's teaching staff plan. If the number of applications for places on courses exceeds requirements, access to training courses shall be determined on the basis of the criteria identified in the decree referred to in paragraph 3.

5. Effect shall be given to this article by means of the human, financial and instrumental resources available in accordance with current legislation.

44. Provision is therefore now made for the following specialisation courses enabling candidates to become support teachers:

- The regular course worth 60 credits (*TFA Sostegno*) for teachers wishing to achieve full specialisation, including theory classes, practical workshops and work experience, with at least eight months of training.
- A fast-track course (available on an exceptional basis until the end of 2025) worth 30 credits, run by INDIRE, for teachers who have already gained three years' experience in support posts within the last five years. The purpose of this course is to address the shortage of specialist teachers quickly.

D – Provisions regarding access to teacher posts in the state education system (pre-school, primary and secondary)

45. Under Legislative Decree No. 297/1994 (a single law containing all the current legislative provisions on education relating to schools of all levels), tenured teacher posts with indefinite-duration contracts are accessed on a "twin-track" basis, meaning that the available posts are allocated as follows:

- 50% on the basis of recruitment competition ranking lists (*graduatorie di merito*), i.e. ranking lists drawn up following national competitions based on qualifications and examinations (Articles 399§1 and 400) to be held at regional level every three years in order to fill all vacant and available posts;
- 50% through the selection of candidates from GAE (*graduatorie ad esaurimento*) lists in the order in which they are ranked (Article 399§1).

46. Fixed-term contracts (substitute teachers) may be accessed in the following different ways:
- *annual replacements* (from 1 September to 31 August) on teaching posts that are fully vacant and available (i.e. “statutory vacant posts” on which nobody has tenure, e.g. following a permanent transfer) up to 31 December and are expected to remain so throughout the school year (Articles 4§1 and 4§6 of Law No. 124/1999);
- *temporary replacements* (from 1 September to 30 June) on teaching posts which are not vacant but available in practice (i.e. “actual vacant posts”, whose holders are temporarily employed elsewhere) up to 31 December and expected to remain so throughout the school year, or to provide teaching hours which do not form part of the timetable associated with a post (Articles 4§2 and 4§6 of Law No. 124/1999);
- *Other situations* (shorter contracts) (Article 4§3 of Law No. 124/1999).

RELEVANT INTERNATIONAL MATERIAL

A – The United Nations

UN Convention on the Rights of Persons with Disabilities (CRDP)

47. The United Nations Convention on the Rights of Persons with Disabilities of 13 December 2006 was ratified by Italy by way of Law No. 18 of 3 March 2009. Article 3 of this law makes provision for the establishment of the National Monitoring Centre for the Situation of Persons with Disabilities. The aims of this monitoring centre include drawing up a (three-year) programme of action to promote the rights and integration of persons with disabilities pursuant to national and international legislation, and to promote the collection of statistics illustrating the situation of these persons, with reference also being made to the situations in different regions.

48. Article 24 CRDP establishes the right to inclusive education as follows:

> 1. States Parties recognise the right of persons with disabilities to education. With a view to realising this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and lifelong learning directed to:

a) The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;
b) The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;
c) Enabling persons with disabilities to participate effectively in a free society.

2. In realising this right, States Parties shall ensure that:
a) Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;
b) Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;
c) Reasonable accommodation of the individual's requirements is provided;
d) Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;
e) Effective individualised support measures are provided in environments that maximise academic and social development, consistent with the goal of full inclusion.
(…)

49. It should be noted that General comment No. 4 (2016) concerns the right to inclusive education (Article 24 as quoted below) and that with regard to the comments on the implementation of this article by Italy, the Committee on the Rights of Persons with Disabilities stated as follows:

> "55. The Committee is concerned about the absence of data and indicators to monitor the quality of education and inclusion of students with disabilities in mainstream schools and classes; the quality of teachers' education, including pre-service and in-service training on inclusive education; and the lack of implementation of laws, decrees and regulations on inclusive education.
> 56. The Committee recommends that the State party implement an action plan – with sufficient resources, timelines and specific goals – aimed at monitoring the implementation of laws, decrees and regulations to improve the quality of inclusive education in classrooms, support provisions and teacher training across all levels. It also recommends that the State party be guided by article 24 of the Convention, including its general comment No. 4 (2016) on the right to inclusive education, in implementing targets 4.5 and 4 (a) of the Sustainable Development Goals, to ensure equal access to all levels of education and vocational training, and build and upgrade education facilities that are disability-sensitive and safe."

50. In August 2022, in the context of the communication submitted by S.M. Bellini in a case against Italy (CRDP/C/27/D/51/2018, §7.4), the Committee on the Rights of Persons with Disabilities also pointed out that, in its General comment No. 5 (2017) on living independently and being included in the community, it had underlined that:

> "Individualised support services must be considered a right rather than a form of medical, social or charity care. Persons with disabilities therefore have the right to choose services and service providers according to their individual requirements and personal preferences, and individualised support should be flexible enough to adapt to the requirements of the "users" and not the other way around. The Committee has further concluded that the obligation to facilitate full enjoyment by persons with disabilities of the right to live in the community requires States to promote, facilitate and provide appropriate legislative, administrative, budgetary, judicial

programmatic, promotional and other measures to ensure the full realisation of the right to live independently and be included in the community as enshrined in the Convention."

B – Council of Europe

Convention for the Protection of Human Rights and Fundamental Freedoms

Article 14 -Prohibition of discrimination
The enjoyment of the rights and freedom as set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Additional Protocol 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms

Article 2- Right to education
No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching is in conformity with their own religious and philosophical convictions.

51. The European Court of Human Rights held in the case of G.L. v. Italy (judgment of 10 December 2020) that depriving an autistic pupil of the specialised learning support provided for by law [due to the lack of financial resources] violates Article 14 of the ECHR read in conjunction with Article 2 of Protocol No. 1. In particular:

"62. The Court (…) considers that Article 14 of the Convention should be interpreted in the light of the requirements set out in the aforementioned texts, particularly the CRPD (…). The latter instrument provides that the "reasonable accommodation" which persons with disabilities are entitled to expect are "necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms" (…), and discrimination on grounds of disability "includes all forms of discrimination, including denial of reasonable accommodation". Indeed, reasonable accommodation measures are aimed at correcting factual inequalities (see paragraph 26 above; see also, *mutatis mutandis*, *Çam v. Turkey* , (no 51500/08), §§ 65 and 67, 23 February 2016 and *Şanlısoy v. Turkey* (dec.), no. 77023/12, § 60, 8 November 2016).
63. Clearly it is not the Court's task to define the "reasonable accommodation" – which can take on different material and non-material forms – to be implemented in the educational sphere in response to the educational needs of persons with disabilities; the national authorities are much better placed than it to do so (see, for example, *Çam*, cited above, § 66). However, it is important for States to pay particular attention to their choices in this sphere in view of their impact on children with disabilities, whose high level of vulnerability cannot be overlooked. (…)
69. The Court recalls (…) that, according to Article 15 of the Revised European Social Charter (…), States must 'promote the full integration and participation in social life [of persons with disabilities], in particular by means of measures, including technical aids, aimed at overcoming obstacles to communication and mobility' (see also, …, Articles 24 § 2 (c) and (d) and 24 § 3 (a) of the CRPD). In the present case, the applicant should have benefited from specialised assistance aimed at promoting her autonomy and personal communication and at improving her learning, her relational life and her integration into school, in order to avoid the risk of marginalisation."

C – European Union

Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP – ANNEX: ETUC, UNICE and CEEP Framework agreement on fixed-term work

"(…) **Purpose (clause 1)**
The purpose of this framework agreement is to:
(…)
b) establish a framework to prevent abuse arising from the use of successive fixed-term employment contracts or relationships.
(…)

Definitions (clause 3)
For the purpose of this agreement:
1. the term "fixed-term worker" means a person having an employment contract or relationship entered into directly between an employer and a worker where the end of the employment contract or relationship is determined by objective conditions such as reaching a specific date, completing a specific task, or the occurrence of a specific event;
(…)

Measures to prevent abuse (clause 5)
1. To prevent abuse arising from the use of successive fixed-term employment contracts or relationships, Member States, after consultation with social partners in accordance with national law, collective agreements or practice, and/or the social partners, shall, where there are no equivalent legal measures to prevent abuse, introduce in a manner which takes account of the needs of specific sectors and/or categories of workers, one or more of the following measures:
a) objective reasons justifying the renewal of such contracts or relationships;
b) the maximum total duration of successive fixed-term employment contracts or relationships;
c) the number of renewals of such contracts or relationships.
2. Member States after consultation with the social partners and/or the social partners shall, where appropriate, determine under what conditions fixed-term employment contracts or relationships:
a) shall be regarded as "successive";
b) shall be deemed to be contracts or relationships of indefinite duration.(…)"

Court of Justice of the European Union (CJEU)

52. As pointed out by the Committee in the context of other collective complaints against Italy (*Confederazione Generale Sindacale* (CGS) v. Italy, Complaint No. 144/2017, decision on the merits of 9 September 2020; *Associazione Professionale e Sindacale* (ANIEF) v. Italy, Complaint No. 146/2017, decision on the merits of 7 July 2020, *Unione Nazionale Dirigenti dello Stato* (UNADIS) v. Italy, Complaint No. 147/2017, decision on the merits of 30 June 2021 and ; *Associazione Professionale e Sindacale* (ANIEF) v. Italy, Complaint No. 159/2018, decision on the merits of 22 March 2022) , several actions have been brought before the Court of Justice of the European Union (CJEU) in relation to the interpretation of the framework agreement on fixed-term work mentioned below in order to obtain findings that the use of successive fixed-term contracts by a public-sector employer was abusive. In these cases, the CJEU held that Italian regulations were not compliant with EU law insofar as they authorised,

"pending the completion of competitive selection procedures for the recruitment of tenured staff of schools administered by the State, (…) the renewal of fixed-term employment contracts to fill posts of teachers and administrative, technical and auxiliary staff that are vacant and unfilled without stating a definite period for the completion of those procedures and while excluding any possibility, for those teachers and staff, of obtaining compensation for any damage suffered on account of such a renewal. It appears, subject to the checks to be carried out by the referring courts, that such legislation, first, does not permit objective and transparent criteria to be identified in order to verify whether the renewal of those contracts actually responds to a genuine need, is capable of achieving the objective pursued and is necessary for that purpose, and second, does not contain any other measure intended to prevent and punish the misuse of successive fixed-term employment contracts" (Cases C-22/13, C-61/13 to C-63/13 and C-418/13, Raffaella Mascolo and Others v. *Ministero dell'Istruzione, dell'Università e della Ricerca* and *Comune di Napoli*, CJEU judgment of 26 November 2014).

53. In a press release of 3 October 2024, the European Commission announced its decision to refer Italy to the CJEU [INFR(2014)4231] *"for failing to end the abusive use of fixed-term contracts and discriminatory employment conditions* (Council Directive 1999/70/EC)" in relation to administrative, technical and auxiliary staff of state schools. This is the final stage of an infringement procedure against Italy which began with the sending of a letter of formal notice in July 2019, followed by an additional letter of formal notice in December 2020 and a reasoned opinion in April 2023.

THE LAW

PRELIMINARY CONSIDERATIONS

54. To facilitate the reading of this decision, the Committee makes the following distinctions as regards the situation of support teachers in Italy:

- The term "support teacher" covers all support teachers actually carrying out this work, whether they have the required qualification or not;
- A "specialised" support teacher is one who exercises this profession having obtained the degree qualifying them to do so;
- A "substitute" support teacher is a person exercising the profession of support teacher in practice even if they have not followed the required training.

As to the relevant domestic legislation and practice

55. The Committee notes that the domestic legal system has evolved since the date on which the complaint was lodged. The relevant changes are reflected above, in the

section entitled "Relevant domestic and international law". Of particular note are:

- The adoption of guidelines for drawing up the operational profile (*"profilo di funzionamento*") of the pupil with a disability, to be attached to the individual education plan (IEP) which, among other things, identifies the needs of the pupil with a disability in terms of educational assistance;
- An increase in the number of places available to specialise in support teaching;
- The establishment of a fast-track training course (available on an exceptional basis until the end of 2025) so that teachers in insecure employment situations who have supported pupils with disabilities can obtain specialised certification as a support teacher, taking their experience into account;
- The possibility, under certain conditions, for pupils with disabilities and their families to request that the same support teacher continue teaching them from one school year to the next, as from the 2025/26 school year.

56. The Committee reiterates that it rules according to the legal situation in force on the date of adoption of its decision (*Conseil européen des syndicats de police* (CESP) v. France, Complaint No. 57/2009, decision on the merits of 1 December 2010, §52). Accordingly, it will examine the developments referred to above and their impact on the complaint in question.

As to the provisions of the Charter at stake

57. The Committee notes that the complaint focuses mainly on the precarious employment status of a large number of support teachers and on the lack of the required pedagogical specialisation for most of them. The complaint also points out that this situation has a negative impact on the inclusive education of pupils with disabilities. In this respect, the complainant organisation alleges violations of Article 1§§1 and 2 (right to work), Article 15 (right of persons with disabilities to independence, social integration and participation in the life of the community) of the Charter and Article E (non-discrimination) read in conjunction with these provisions.

58. With regard to Article 1 (right to work), the Committee notes that ANIEF's allegations are not sufficiently substantiated to allow a separate assessment under Article 1§1 (policy of full employment). The Committee will therefore confine itself to examining the allegations from the angle of Article 1§2 (right to earn one's living by work freely entered into) in view of the reasoning developed concerning the precariousness of the work of most support teachers and the shortcomings in terms of specific training for the latter.

59. With regard to Article 15 (right of persons with disabilities to independence, social integration and participation in the life of the community), ANIEF does not specify whether the alleged violations fall under paragraph 1, 2 or 3 of this Article. In view of the information provided (the educational discontinuity for pupils with disabilities resulting from the precarious situation of most support teachers and the lack of specific training for most of them), the Committee has decided to examine the allegations under

Article 15§1 (right to inclusive education), as it already did, inter alia, in Mental Disability Advocacy Center (MDAC) v. Belgium, Complaint No. 109/2014, decision on admissibility and merits of 16 October 2017, §72.

60. With regard to the right to inclusive education, the Committee reiterates that inclusive education requires persons with disabilities to be provided with the support and reasonable accommodation they are entitled to expect in order to have effective access to institutions. Such reasonable accommodation relates to the individual and helps to redress factual inequalities (MDAC v. Belgium, Complaint No. 109/2014, op. cit., §72). These may include adaptations relating to the classroom and its location, the use of alternative forms of communication and teaching materials, and the use of human assistance or technical aids in learning and assessment situations. Non-material accommodations may also be considered, such as giving extra time to a student, reducing background noise levels (sensitivity to sensory saturation), applying alternative assessment methods or replacing one element of the curriculum with another. States Parties are required to provide the staff necessary for the educational progress of the persons concerned. In any case, the choices made and the means used must not deprive the enshrined right of its effectiveness and turn it into a theoretical right (European Action of the Disabled (AEH) v. France, Complaint No. 81/2012, decision on the merits of 11 September 2013, §81).

61. The Committee notes that, in the context of this complaint, the complainant organisation confines itself to providing information on human assistance (alleging that that those who provide it are mostly in a situation of precarious employment and do not have specific training in inclusive education) and on the way in which the shortcomings of this assistance affect the educational continuity of pupils with disabilities. This is therefore the basis on which the Committee will assess the situation with regard to Article 15§1.

62. With regard to the alleged violation of Article E (non-discrimination), read in conjunction with Articles 1§2 and 15§1 of the Charter, the Committee points out:

- with regard to discrimination in employment, that there is no need to examine Article 1§2 in conjunction with Article E, since Article 1§2 alone prohibits this type of discrimination (*Fellesforbundet for Sjøfolk* (FFFS) v. Norway, Complaint No. 74/2011, decision on the merits of 2 July 2013, §§ 116-117).
- that the right of persons with disabilities to independence, social integration and participation in the life of the community guaranteed by Article 15 cannot be dissociated from protection against discrimination on the grounds of disability and that the wording of Article 15 necessarily envisages the prohibition of discrimination on the grounds of disability. The Committee therefore considers that it is not necessary to examine separately whether there has been a violation of Article E in conjunction with Article 15§1 of the Charter (European Disability Forum (EDF) and Inclusion Europe v. France, Complaint No. 168/2018, decision on the merits of 19 October 2022).

63. In the present case, the allegations concerning discrimination are nonetheless not substantiated. The Committee cannot therefore examine the merits of these allegations in this decision.

64. In the light of all the information at its disposal and in view of these preliminary considerations, the Committee decides to assess this complaint from the angle of Article 1§2 and Article 15§1 of the Charter.

I. ALLEGED VIOLATION OF ARTICLE 1§2 OF THE CHARTER

65. Article 1§2 of the Charter reads as follows:

> **Article 1 - Right to work**
>
> Part I: "Everyone should have the opportunity to gain his living by work which he freely undertakes".
>
> Part II: "With a view to ensuring the effective exercise of the right to work, the Parties undertake:
> (...)
> 2. to protect effectively the right of the worker to earn his living by work which he freely undertakes; (...)".

A – Arguments of the parties

1. The complainant organisation

As to the precarious status of the majority of support teachers

66. ANIEF points out first of all that the Committee has already found a violation of Article 1§2 of the Charter by Italy in the context of a previous complaint (ANIEF v. Italy, Complaint No. 146/2017, op. cit.) concerning the precariousness of employment of teachers in general. In the present complaint, ANIEF alleges that the job insecurity of support teachers in particular is at odds with the Charter.

67. In this respect, the complainant organisation states that according to data from the Ministry of Education, over the 2020/21 school year, 900,000 teachers were working in Italian state schools. Of these 213,000 were recruited on temporary contracts and of these 104,000 were support teachers; more specifically:

- 21,491 teachers were recruited on contracts expiring on 31 August to cover posts on the *de jure* staffing chart;
- 82,509 teachers were recruited on contracts expiring on 30 June to cover posts on the *de facto* staffing chart.

68. ANIEF points out that only 76,679 support teachers had permanent contracts. Out of a total of 183,679 support teachers (specialised and substitute teachers), 56% were contract staff, hired for periods running from September to June, then made redundant and often recruited again the following school year, but not necessarily in the same school.

69. ANIEF notes that this situation results from the fact that each year, the *de jure* staffing chart (which may give rise to permanent recruitment) is established on the basis of obsolete estimates resulting from the calculation mechanism provided for by Article 2, paragraph 414, of Law 244/2007 (see §36 above), which no longer reflects actual staffing needs. According to ANIEF, this discrepancy with actual needs has led to the renewal of fixed-term contracts, since *de jure* staffing levels are never sufficient, making it necessary to hire from the *de facto* staffing chart. In this respect, the complainant organisation refers to a final judgment of the Lazio Tribunal (No. 149 of 7 January 2019), which found a discrepancy between de jure and de facto staffing levels in an action brought by support teachers in this region of Italy.

70. ANIEF argues that budgetary constraints should not take precedence over obligations regarding the right to inclusive education. In this respect, it refers in particular to Ruling No. 80 of 2010 of the Italian Constitutional Court (see §27), which declared it unconstitutional to set an enrolment ceiling to be applied automatically over the years.

71. ANIEF acknowledges the recent efforts made by the authorities to organise competitions to enable support teachers to become permanent teachers, but points out that the results of these efforts are still highly insufficient, as a very large number of permanent posts remain vacant, particularly in Italy's northern regions. A very large number of teachers' working as support teachers therefore continues to be in a situation of precarious employment and as a result, as already denounced in *Associazione Professionale e Sindacale (ANIEF) v. Italy,* Complaint No. 146/2017, these teachers are not entitled to salary increases.

72. In view of all the above, ANIEF asked the Committee to find a violation of the right of support teachers to stable, freely chosen work in view of the very large number of support teachers on precarious contracts.

With regard to the lack of specialisation in disability and inclusive education for most support teachers

73. ANIEF also points out that in 2019-2020, 79% of support teachers were not qualified (i.e. had not followed the training courses to obtain the required specialisation). In the additional observations it provided in 2024, the complainant organisation observed that the shortage of teachers specialising in disability and inclusive education persisted because of the large number of substitute support teachers. In fact, only teachers who have obtained the specialisation in question can be given tenure as specialised support teachers and thus be offered a permanent contract. According to data included in the National Statistics Institute (ISTAT) report on inclusive education for pupils with disabilities in the 2022-2023 school year quoted by ANIEF, one in three support teachers did not have the required specialisation.

74. The complainant organisation also notes that although the supply of specialised training has increased over the years, it is very uneven, with a striking imbalance between supply in the north of Italy, where demand for training is low, and fewer opportunities in the south of Italy, where demand is high. This has an impact on the precarious nature of contracts (because without specialisation, recruitment cannot be permanent), particularly in the south, where workers wishing to specialise cannot do so for lack of supply (i.e. of places on specialised training courses, which are selective). In this respect, ANIEF points out that in the context of a national procedure that it initiated before the Council of State (ruling No. 3655/2021 of 21 May 2021), it was acknowledged that in 2018, in the Piedmont region, there was a need for 4,657 support teachers but the training to specialise (TFA) was open only for 200 candidates. Similarly, in Emilia Romagna there were 4,860 vacancies for support teachers, but the TFA course was only open to 320 candidates. According to ANIEF, the mismatch between the need for educational assistance and the availability of training to enable those wishing to devote themselves to it is also a concrete obstacle to access to this profession.

75. In view of all the above, ANIEF asked the Committee to find a violation of the right of support teachers to stable, freely chosen work.

2. The respondent Government

As to the precarious status of the majority of support teachers

76. The Government argues that Italy has been committed to the development of inclusive schools since the late 1970s and that the process for allocating resources for this purpose is complex but well-defined and in line with Italy's constitutional and international obligations.

77. With regard to determining the number of support teachers needed, the Government explains that the process involves the following three phases:

- drawing up the *de jure* staffing chart ("*Organico di Diritto*"), which takes place before the start of each school year;
- adjustment of this staffing chart with a *de facto* staffing forecast ("*Organico di Fatto*"), which takes place after verification of the number of pupils enrolled before the summer;
- additional allocation of so-called "exceptional" posts *("posti in deroga*") to meet exceptional needs based on late certifications.

78. The Government is of the opinion that this staffing system is flexible and makes it possible to meet the pupils' real inclusion needs in accordance with the legal obligations in force, because it guarantees the flexibility needed to meet the growing demands for specialised teaching support. It therefore strongly refutes the argument that there is a discrepancy between the staffing numbers established and actual needs.

79. The Government moreover demonstrates that, over the years, support posts have been increased in response to the growing number of pupils with disabilities

requiring a support teacher. In particular, the Government points out that the change between the 2010/11 school year and the 2019/20 school year shows an overall increase of 88.23% in teaching staff dedicated to providing educational assistance for pupils with disabilities.

80. The Government points out that it is not possible to guarantee exact synchronisation between the number of pupils with disabilities and the number of staff dedicated to supporting them, as the role of support teachers is to accompany the whole class in the inclusion process, not just the pupil with a disability. According to the authorities, this approach fosters effective inclusive education rather than creating dependency on the support teacher. They also argue that this approach helps pupils with disabilities to cope with a change of support teacher if necessary.

81. In view of the foregoing, the Government asked the Committee to find no violation of the Charter.

As to the lack of specialisation in disability and inclusive education for most of the support teachers

82. First of all, the Government stresses that in-service training is compulsory for all teachers in contact with pupils with disabilities, given that inclusive education is an objective to be achieved together (i.e. it does not rely solely on support teachers). In this respect, the Government points out that in view of the growing demand for support posts, since the adoption of the State budget for the financial year 2021, additional funds have been allocated to finance this in-service training and to organise additional cycles of specific training.

83. The Government then describes the mechanism set up for the activation of specific training courses (in particular the "*TFA Sostegno*") pursuant to Legislative Decree 66/2017 (see legal framework §§ 41-44 above.). It stresses that this specialised course in teaching skills and didactics for support and inclusion activities is compulsory and that the number of places to access it is determined according to support teacher needs. The Government also points out that the number of places available on these specific training courses has been considerably increased in response to growing needs, especially following the Covid-19 pandemic.

84. In view of the foregoing, the Government asked the Committee to find no violations of the Charter.

B – Assessment of the Committee

As to the precarious status of the majority of support teachers

85. The Committee recalls that it has already found that recourse to fixed-term contracts may be necessary to allow a degree of flexibility and to adapt staffing levels to needs, particularly in the education sector, which may be subject to fluctuations linked to the number of enrolments for each level of education throughout the country

(CGS v. Italy, Complaint No. 144/2017, op. cit., §112). However, the Committee has also maintained that a fair balance must be struck between the need for flexibility and the right of workers to earn their living by work freely undertaken. In particular, fixed-term employment contracts must not be used as a means of circumventing the stricter rules applicable to open-ended employment contracts. To this end, adequate legal safeguards must be provided to prevent abuses resulting from the use of successive fixed-term employment contracts. Moreover, in the event of abuse, adequate, proportionate and dissuasive redress must be effectively available in law and in practice (CGS v. Italy, Complaint No. 144/2017, op. cit., §113).

86. In the context of Complaints CGS v. Italy, Complaint No. 144/2017, op. cit., and ANIEF v. Italy, Complaint No. 146, op. cit., the Committee noted the lack of effective preventive and corrective guarantees against abuses arising from the unjustified use of fixed-term contracts in the recruitment of teachers and the limited opportunities for teachers to obtain permanent contracts. In its follow-up to the two decisions in these complaints in 2023, the Committee was unable to observe any improvement in the situation, which was thus still considered to be in breach of Article 1§2 of the Charter.

87. In this complaint, the Committee notes that according to figures in ISTAT's Report on inclusive education of pupils with disabilities for the school year 2022-2023, there were 139,000 pupils with disabilities in the 2010/2011 school year and 338,000 in the 2022/2023 school year, meaning that there was an increase of 243% over this period. Over the same period, according to information provided by the Government, the number of support teachers rose from 94,430 in 2010/2011 to 234,460 in 2022/2023, which is an increase of 248%. This demonstrates a significant effort on the part of the Government to meet the demand for support for a growing number of pupils with disabilities.

88. However, this increase in staff numbers is largely the result of a very sharp rise in temporary contracts to provide educational assistance for pupils with disabilities (from a proportion of 4.19% in 2010/2011 to 46.18% in 2023/2024). As the number of staff on permanent contracts has risen by around 10,000 in ten years (from 2010 to 2020), the Ministry of Education has had to resort to increasingly large-scale temporary recruitment to cope with the exponential growth in the number of pupils with disabilities over this period. The Committee notes that without this extensive use of fixed-term contracts, the number of support teachers would have risen from 90,469 in 2010/2011 to 126,170 in 2022/2023 (based in both cases on the number of *de jure* teachers alone), i.e. an increase of 139%, which would not have been enough to cope with the increase in the number of pupils with disabilities over the same period (243%). While praising the efforts made to ensure that there are enough support teachers to cope with the increase in the number of pupils with disabilities requiring educational assistance, the Committee notes that the percentage of teachers acting as support teachers on fixed-term contracts has not fallen and remains very high.

89. The Committee notes that for the 2024/2025 school year, an extraordinary recruitment procedure was set up to help reduce the precarious nature of support teachers' employment (see legal framework §§ 43-44 above). Under this procedure, teachers registered in the first category of the *Graduatorie Provinciali per le Supplenze* (*GPS*) for support posts can be recruited to vacant posts with a fixed-term contract valid until 31 August 2025. If vacancies remain after contracts have been awarded, a *fast-track* procedure known as "*mini call veloce*" will enable candidates to apply in other regions and eventually be offered a stable contract.

90. The Committee understands that under this new procedure, teachers recruited on a contract until 31 August, who have completed the required training and passed the tests at the end of their probationary period, will be confirmed in permanent posts from 1 September 2025, with legal retroactivity to 2024. The teachers in question will therefore be given tenure and it is planned that they will remain in the same school for three years before being allowed to request a transfer or accept other posts (see legal framework §§ 43-44 above).

91. As this new procedure has not yet been fully implemented, the Committee has no means of assessing its impact on the tenure of the teachers in question. Nor does the Committee have information on the qualifications obtained as a result of the shortened training programme (30 credits instead of 60).

92. The Committee therefore holds that the continued temporary employment of a high proportion of support teachers for pupils with disabilities constitutes a violation of Article 1§2 of the Charter.

As to the lack of specialisation in disability and inclusive education for most of the support teachers

93. Firstly, the Committee notes that the Government does not dispute the high percentage of support teachers who do not have the required specialisation. However it also observes that the number of places available on specialisation courses was indeed increased over the years, which the complainant organisation in turn acknowledges.

94. The Committee further notes that the Government does not respond directly to ANIEF's assertions regarding the territorial distribution of the supply of places to specialise in educational assistance for pupils with disabilities. The Government explains instead that the supply is determined on the basis of estimated staffing needs over a three-year period, taking into account the upward trend in the number of pupils requiring educational assistance.

95. While recognising the efforts to increase the supply of training and to simplify access to it for teachers who have already worked as support teachers and comply with certain conditions, the Committee notes that, according to official ISTAT data from February 2024, one in three support teachers has not completed the required specialisation.

96. The Committee therefore holds that the high and undisputed proportion of support teachers for pupils with disabilities who have not yet been able to train for the profession of their choice is contrary to Article 1§2 of the Charter.

II. ALLEGED VIOLATION OF ARTICLE 15§1 OF THE CHARTER

97. Article 15§1 of the Charter reads as follows:

> **Article 15 - Right of persons with disabilities to independence, social integration and participation in the life of the community**
>
> "Part I: Every person with a disability has the right to independence, social integration and participation in the life of the community.
>
> "Part II: "With a view to guaranteeing to persons with disabilities, irrespective of their age or the nature and origin of their disability, the effective exercise of the right to independence, social integration and participation in the life of the community, the Parties undertake, in particular:
>
> 1. to take the necessary measures to provide guidance, education and vocational training for people with disabilities within the framework of ordinary law wherever possible or, if this is not the case, through specialised public or private institutions;
> (...). "

A – Arguments of the parties

1. The complainant organisation

As to educational discontinuity affecting pupils with disabilities

98. ANIEF is critical of the implementation of Italy's legislative and regulatory framework for inclusive education. Its main allegations are that the precarious employment situation of the majority of support teachers and the lack of specialisation among most of them are hindering educational continuity for pupils with disabilities.

99. In support of this allegation of educational discontinuity, the complainant organisation points out that, according to the ISTAT report on inclusive education of pupils with disabilities of 6 February 2020, in 2018-2019, 59% of all pupils with disabilities (i.e. 170,000 pupils with disabilities) did not have the same support teacher from one school year to the next. This trend is confirmed to be slightly on the rise in the ISTAT report of 2 February 2024, according to which 59.6% of pupils with disabilities did not have the same support teacher during the 2022-2023 school year, and 9% of pupils with disabilities changed support teachers during this school year.

100. Furthermore, referring to data collected by CISL *Scuola*, another teachers' union, ANIEF denounces the fact that 20% of teachers learn of their assignment only after the school year has started. The fact that they are not informed of the school to which they will be assigned until later means that they are not aware in due time of the specific needs of the pupils they will be supporting. Having to prepare in a hurry prevents them

from carrying out their duties properly, which negatively affects inclusive education.

101. According to ANIEF, even if it is understood that the support teacher is assigned to a class with one or more pupils with disabilities and not to these pupils specifically, it is these pupils who will lose their main point of reference at school if this teacher changes frequently. It is not only from a pedagogical viewpoint that support teachers help pupils with disabilities. They also play an essential role in consolidating their links with other pupils and teachers. ANIEF sees support teachers as cornerstones of successful inclusive education, helping to overcome the personal and social malaise that often affects pupils requiring educational assistance.

102. ANIEF points out that the severity of the disability plays a key role in allocating resources and determining the accommodation required. In this respect, a crucial point is the preparation of the "operational profile" ("*Profilo di funzionamento"*), which forms the basis for justifying the choice of the educational objectives, teaching methods and type of support considered necessary for the pupil with a disability whose profile is being drawn up. The smooth running of the disability certification process and the drafting of individual education plans (IEPs) are essential for the effective implementation of inclusive education. Bearing this in mind, ANIEF condemns the failure to adopt executive directives in due time to ensure that the "operational profile" is drafted consistently at national level. Failure to adopt these directives potentially makes drafting of IEPs very disparate, making it more difficult to identify the educational assistance needs of certain pupils with disabilities.

As to legal action for the assignment of a support teacher or more hours of educational assistance

103. Lastly, ANIEF also points out that some families are obliged to take legal action to obtain the assignment of a support teacher or more hours of pedagogical assistance. This stems from the late allocation of a large number of support teachers for the reasons described above, namely their recruitment on precarious contracts and the fact that the way in which the needs of pupils with disabilities is determined is somewhat inconsistent due to the lack of guidelines identifying uniform criteria for the preparation of operational profiles. This situation hampers effective inclusive education, especially as some of the families of children with disabilities might not have the means to appeal and might decide to withdraw their children from school.

104. In view of the above, ANIEF asked the Committee to find a violation of the right of pupils with disabilities to an inclusive education.

2. The respondent Government

As to educational discontinuity affecting pupils with disabilities

105. The Government alleges that since the adoption of Law 104/1992, Italy has progressively favoured an inclusive approach, replacing special schools and differential classes with the integration of all pupils with disabilities into mainstream schools. The authorities stress that the guiding principle of this approach is to work towards adapting the school to the needs of each pupil with a disability, rather than the other way round. The Government reiterates that a number of tools are designed to support the effective implementation of inclusive education. The law stipulates that the individual education plan (IEP), which sets out the educational objectives for each pupil with a disability, should be revised periodically to take account of new needs and thus ensure that inclusion objectives are achieved over time.

106. The Government reiterates that support teachers are important for the well-being and education of all pupils in the class and should therefore not be seen as being allocated solely to pupils with disabilities. In this respect, it also reiterates the tangible measures taken to ensure an increase in staff numbers stressing that support teachers, who have been given granted tenure (with an open-ended contract) must remain in the same school for 5 years. The situation of those who work as support teachers on temporary contracts is obviously different, but in this respect the authorities point to the efforts made to make them permanent by relaxing the conditions for their access to specialised training (*TFA Sostegno*), which will then enable them to take the competitive examination for accreditation (see legal framework above).

As to legal action for the assignment of a support teacher or more hours of educational assistance

107. Finally, the Government admits that the number of support teachers on temporary contracts remains high but disputes the allegation that families must systematically resort to legal action for the assignment of support teachers or more hours of educational assistance, pointing specifically to the system of adjusting staffing levels during the school year to meet the needs of pupils with disabilities (see legal framework above).

108. In view of the foregoing, the Government asked the Committee to find no violation of the Charter.

B – Assessment of the Committee

109. The Committee points out that, with a view to ensuring the independence, social integration and participation in the life of the community of persons with disabilities, Article 15§1 of the Charter establishes, among other things, the obligation of States Parties to give priority to their education in the mainstream education system. They must also demonstrate that tangible progress is being made in setting up inclusive and adapted education systems (General Introduction, Conclusions 2020, Interpretative Comment Article 15§1).

110. The Committee notes that since the end of the 1970s, Italy has opted for mainstream education for all pupils with disabilities and notes that the complainant

organisation recognises that the Italian legislative framework aims to guarantee inclusive education. The concerns of the complainant organisation relate to its implementation, specifically with regard to educational assistance, given the frequent change of support teachers and the lack of specific training for most of them.

111. The Committee reiterates that the implementation of the Charter requires States Parties to take not only legal but also practical measures to give full effect to the rights enshrined in the Charter (International Commission of Jurists v. Portugal, Complaint No. 1/1998, decision on the merits of 9 September 1999, §32).

112. The Committee recalls that human assistance plays an important role in the context of schools' fundamental objective to help all pupils to achieve their full potential, whatever their possibilities, and to find their own way and achieve self-fulfilment in accordance with their capacities and aspirations (*Action européenne des handicapés* AEH v. France, Complaint No. 81/2012, decision on the merits of 11 September 2013, §91).

As to educational discontinuity affecting pupils with disabilities

113. The Committee noted above that a large number of support teachers are still in a precarious employment situation and that most of them lack specialised training. From the viewpoint of Article 15§1, the Committee previously made clear that human assistance is a particularly important means of being able to keep pupils with disabilities in mainstream schools (AEH v. France, Complaint No. 81/2012, op. cit., §85). The State's failure to provide a continuous service throughout the school life of the children concerned might hamper the education of pupils with disabilities and drive those pupils away from such schools (European Disability Forum (EDF) and Inclusion Europe v. France, Complaint No. 168/2018, op. cit., §251). The fact that those who have to provide the educational assistance needed by pupils with disabilities are not equipped to do so will also hinder the full realisation of the right to inclusive education.

114. The Committee reiterates that when the realisation of one of the rights in question is exceptionally complex and particularly costly to resolve, a State Party must take measures enabling it to achieve the objectives of the Charter within a reasonable timeframe, with measurable progress and funding to the extent compatible with the maximum use of available resources (Autisme-Europe v. France, Complaint No. 13/2002, decision of the merits of 4 November 2003, §53; AEH v. France, Complaint No. 81/2012, op. cit. §79, EDF and Inclusion Europe v. France, Complaint No. 168/2018, op. cit., §180).

115. The Committee notes that Framework Law No. 104/1992 specifies that the support teachers are teachers with specific training. The Committee notes, however, that it was not until 25 years later, in 2017, that the provisions for activating this training were adopted (see legal framework above, §§ 39-40) For a quarter of a century, pupils

with disabilities therefore had not fully benefited from specialised educational assistance. As noted above, because of the still largely temporary contracts for a significant proportion of support teachers, pupils with disabilities often change support teachers, which strongly contributes to educational discontinuity for the pupils concerned.

116. With regard to support teachers' training, the Committee notes the tangible measures taken in terms of offering more places in activated specialisation pathways and notes that the ISTAT reports highlight that over the last three school years, the proportion of specialised support teachers has increased from 63% in the 2019-2020 school year to 68% in the 2021-2022 school year (ISTAT, Report of 2 December 2022 on " Inclusive education for pupils with disabilities - school year 2021-2022", p. 3) and 70% in the 2022-2023 school year (ISTAT, Report of 2 February 2024 on "Inclusive education for pupils with disabilities - school year 2022-2023", p. 4). In its latest report, however, ISTAT points out that very few support teachers (whether temporary or permanent) know how to use the technological tools that could facilitate the inclusion of pupils with disabilities (ISTAT, Report of 2 February 2024 on "Inclusive education for pupils with disabilities - school year 2022-2023", p. 6.) and concludes that notwithstanding the progress made in terms of specific training on inclusive education issues, the shortage of specialist support teachers remains a critical problem.

117. Finally, the Committee takes note that in May and July 2024, the Government adopted urgent provisions to address the issue of the high percentage of substitute support teachers. Specific training courses have been established with the aim of appointing substitute support teachers with three school years of experience in the field over the last five years to a statutory position. However the Committee understands that this possibility will only remain open until 31 December 2025, leaving the situation uncertain for subsequent years. It is also unclear what the situation is with regard to the so-called "historic" substitute support teachers who have the required experience but did not necessarily gain it in the last five school years.

118. The Committee therefore holds that the ongoing employment insecurity of a significant proportion of support teachers strongly contributes to a lack of educational continuity for the pupils concerned. This, combined with the lack of specialisation in inclusive education for one in three support teachers, hinders access of pupils with disabilities to inclusive education and thus constitutes a violation of Article 15§1 of the Charter.

As to legal action for the assignment of a support teacher or additional support hours

119. The Committee also notes that ANIEF draws attention to the 2,314 appeals lodged in Sicily in 2016 and points out that a 2018 Court of Auditors report found that 8.5% of the families of pupils with disabilities had lodged an appeal to be assigned more hours of educational assistance. The Committee notes in this respect that the

latest ISTAT report states that this percentage has fallen to 4% in the 2022-2023 school year. However, the report also notes a lack of information about possible remedies for 11% of pupils with disabilities.

120. In view of the lack of information on this subject, the Committee is not in a position to assess the situation in this respect. The Committee therefore holds that there is no violation in this respect.

CONCLUSION

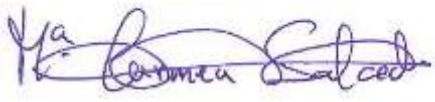
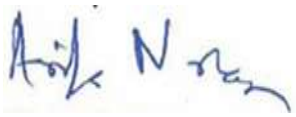
For these reasons, the Committee concludes:

- Unanimously that there is a violation of Article 1§2 of the Charter on the ground that a high proportion of support teachers for pupils with disabilities are employed under precarious conditions;

- Unanimously that there is a violation of Article 1§2 of the Charter on the ground that a high proportion of support teachers for pupils with disabilities lack the required specialisation in inclusive education;

- Unanimously that there is a violation of Article 15§1 of the Charter on the ground that access of pupils with disabilities to inclusive education is hindered by the ongoing employment insecurity of a significant proportion of support teachers and a lack of specialisation in inclusive education for one in three support teachers;

- Unanimously that there is no violation of Article 15§1 of the Charter as regards legal action for the assignment of a support teacher or additional educational assistance hours.


Carmen SALCEDO BELTRÁN	Aoife NOLAN	Henrik KRISTENSEN
Rapporteur	President	Executive Secretary