



**EUROPEAN COMMITTEE OF SOCIAL RIGHTS  
COMITÉ EUROPÉEN DES DROITS SOCIAUX**

30 May 2022

**Case Document No. 4**

***Associazione Professionale e Sindacale (ANIEF) v. Italy***  
Complaint No. 200/2021

**SUBMISSIONS BY THE GOVERNMENT  
ON THE MERITS**

**Registered at the Secretariat on 20 May 2022**



*Ufficio dell' Agente del Governo  
davanti alla Corte europea dei diritti dell' uomo*

**AVVOCATURA GENERALE DELLO STATO**

**European Committee of Social Rights (ECSR)**

*Collective complaint n. 200/2021*

*Associazione Professionale e Sindacale (ANIEF) vs Italy*

**OBSERVATIONS OF THE ITALIAN GOVERNMENT  
ON THE MERITS OF THE COMPLAINT**

Ct 25088/21

Proc. Andrea Lipari

Proc. Adele Berti Suman



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**I. Introduction**

1. In compliance with the Secretariat of the European Social Charter request, the Italian Government submit the following observations.

**II. Subject Matter of the Complaint.**

2. According to the complainant association, the situation of school support for children with disabilities in Italy is in breach of several provisions of the European Social Charter.

3. In particular, ANIEF contests the lack of the necessary teaching specialisation of most of the support teachers, the fact that families have to take legal action to obtain a support teacher for their disabled children, and the discontinuity of the students' education, which is considered seriously detrimental to disabled students and their families.

**III. Articles concerned.**

4. The complainant association seeks a declaration of infringement of Articles 1(1) and (2) (right to work), Article 15 (right of persons with disabilities to independence, social integration and participation in the community), and Article E of the European Social Charter, social integration and participation in the life of the community), and Article E of Part Five of the Charter (non-discrimination), as well as Part One of the preamble to the Charter.

**IV. On the merits of the complaint.**

4. The complaint should be rejected as unfounded.

**IV.1 Domestic law and practice**

5. Preliminarily, it should be pointed out how the Italian legal system has evolved over time, on the subject of the inclusion of the disabled in school.

Indeed, the Italian legislation moved from a system of special schools and differential classes to an inclusive approach, with Law 104/1992 and more recently with Legislative Decree 66/2017. According to the current system, it is not the child with disability who must integrate into the class; on the contrary, it is the school that must welcome him, remodelling its own teaching approach and valuing diversity.



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6. As regards the tools that the school has at its disposal to ensure the inclusion of the disabled person, Legislative Decree No. 66/2017, as amended by Legislative Decree No. 96/2019, includes:

**A) the Individual Project** (art. 4, paragraph 2, L. 328/2000): it is prepared by the Municipality, in agreement with the ASL, and must indicate the various social, health and welfare interventions that the person with a disability may need in order to ensure full school integration. It is prepared on the basis of the Functioning Plan, i.e. on the basis of the severity of the disability, measured according to the criteria of the bio-psycho-social model of the International Classification ICF adopted by the World Health Organisation (WHO). This document indicates the support measures and also the structural resources needed for inclusion;

**B) the Individualised Educational Plan (P.E.I.):** in addition to the Functional Plan, the Individual Project must contain the PEI (Individualised Educational Plan) carried out, as of 2019, by the Operational Working Group (OWG) for inclusion which, taking into account the disability certification and the Functioning Profile, carries out the following activities: (a) planning, in collaboration with the support teacher, the parents and the operators of the local health authorities; (b) identification of the educational and didactic objectives, consisting of tools, strategies and methods to achieve a learning environment in the dimensions of relationships, socialisation, communication, interaction, orientation and autonomy, also on the basis of the educational co-responsibility interventions undertaken by the entire school community for the fulfilment of the identified educational needs.

7. Furthermore, the PEI sets out the methods of didactic support.

It includes the proposal of the number of hours of support for the class, the methods of verification, the assessment criteria, the inclusion interventions carried out by the teaching staff within the class and in specific projects, the assessment in relation to individualised planning.

It also outlines the hygienic and essential assistance interventions carried out by the auxiliary staff within the school plexus and the proposal of professional resources to be allocated to assistance, autonomy and communication, according to the implementation methods and quality standards provided.



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The Individualised Educational Plan is drawn up provisionally by June and definitively, as a rule, no later than the month of October, starting from the pre-school, and is updated in the presence of new and supervening conditions. In the transfer between school levels, contact is ensured between the teachers of the school of origin and those of the destination school. In the case of transfer of enrolment, interlocution between the educational institutions concerned is guaranteed and is redefined on the basis of any different contextual conditions of the destination school.

The "PEI" is subject to periodical checks during the school year in order to ascertain the achievement of the objectives and to make any changes and additions;

C) the **Plan for Inclusion**: finally, Decree No. 66/2017 provides for the Plan for Inclusion (PI), the school's main programmatic document on the subject, which is prepared by each school within the three-year Plan for the provision of education, of which it is an integral part, in order to define the methods for the coordinated use of resources and to plan interventions to improve the quality of school inclusion.

8. As a demonstration of the legislator's attention to this delicate matter, mention must finally be made of Legislative Decree No. 96/2019, which made amendments and additions to Legislative Decree No. 66/2017. Among its main innovations, it is worth mentioning in Article 7 the strengthening of the "principle of reasonable accommodation" as a guiding principle for the use of resources for PEI support.

9. As stated in the Illustrative Report, the legislative decree in the context of the strategy for the promotion of inclusion recovers and systematises interventions in support of school inclusion, to harmonise and enhance the inclusive policies and culture of all the actors involved, intervening in particular on the revision of the certification methods and criteria, the recognition of the services concerning school inclusion provided for by the regulations in force, the modification of the initial training of support teachers, and the obligation of training on inclusion issues for school personnel.

10. The Italian State safeguards not only children with ascertained disabilities, but also increasingly large groups of children with special needs (BES).



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11. In fact, on 20 July 2011, the implementing decree of Law no. 170 of 8 October 2010 on Specific Learning Disorders (DSA) was presented, with the related Guidelines, for the right to study of pupils and students with DSA. These are disorders, such as dyslexia, dysorthography, dysgraphia, dyscalculia, for which the law provides, even without medical certification, customised teaching interventions and compensatory tools, dispensatory measures and appropriate forms of verification and assessment.

12. On the level of the necessary 'further professionalisation' of teachers, there is then a special training required of teachers.

Legislative Decree No. 66/2017 introduced new regulations for access to the teaching support career in pre-school and primary schools. In particular, from 2019, it is envisaged that, for access to the specialisation course in pedagogy and special didactics for educational support and inclusion activities, 60 university training credits relating to inclusion didactics must be obtained in advance, in addition to those already envisaged in the degree course in primary education sciences. In concrete terms, a more solid training on inclusion issues is envisaged, without prejudice to the basic degree requirement. Access to the one-year specialisation course is subject to passing a test prepared by the universities (TFA sostegno).

13. The method of access for support in secondary schools is provided for by Law 59/2017, which was affected by the 2019 "*Legge di Bilancio*", which provides that for teaching posts on support the specialisation is an access qualification, in addition to the qualification for a common post or a university degree plus 24 training credits.

14. In particular, Article 1, Paragraph 961 of Law No. 178 of 30 December 2020 concerning the 'State Budget for the financial year 2021 and multi-year budget for the three-year period 2021-2023', provided for the allocation of specific funding aimed at the implementation of compulsory training interventions for teaching staff working in classes with pupils with disabilities, aimed at school inclusion and ensuring the principle of co-responsibility in taking care of the disabled student.

15. The same Article 1, Paragraph 961 of the aforesaid Law No. 178/2020, also provided that a decree of the Minister of Education shall establish the implementing procedures. In particular, the decree of the Minister of Education must provide for the prohibition of exemption from



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teaching, the criteria for distribution, the conditions for reserving training to personnel not in possession of the specialisation qualification in support, the determination of training units in any case not less than 25 hours of total commitment, and the criteria and procedures for monitoring the training activities.

16. The fund referred to in Article 1, paragraph 125, of Law No. 107 of 13 July 2015 is increased by 10 million euros for the year 2021, earmarked for the implementation of compulsory training interventions for teaching staff engaged in classes with students with disabilities.

The resulting training is aimed at the school inclusion of children with disabilities and at guaranteeing the principle of co-responsibility in taking care of the students.

It appears evident, therefore, that the regulatory and factual interventions that have taken place from the entry into force of Law 107/2015 to date have made the reasons for continuity of learning, selection on the basis of merit during recruitment, the valorisation of service provided on a fixed-term basis, and the need to facilitate, in line with European legislation, the exit from precarious employment of the largest number of school professionals more stringent.

17. For permanent teachers, the matter is governed by the supplementary national collective agreement on the mobility of teaching, educational and A.T.A. staff, which was signed on 6.3.2019 for the school years 2019/20, 2020/21, 2021/22.

18. The contractual provision, which confirms the five-year constraint on the support post, responds to the need to ensure, as a priority, the implementation of the right to study of students with disabilities both through teaching continuity (provided for by Legislative Decree no. 297/94 art. 316, paragraph 1) and through the continuity guaranteed by a stable contingent of support teachers within the same school grade (art. 15 Legislative Decree no. 104/2013 as amended by Law no. 128/13 conversion).

19. The contractual provisions are, therefore, consistent with the aforementioned legislation and with the objective, identified by Law 107/2015, of guaranteeing a stable contingent of support teachers through a specific competitive procedure for recruitment (art. 1, paragraph 109, letter b)) and of making it possible for the student to benefit from the same support teacher for the entire order and grade of education (art. 1, paragraph 181, letter c).



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20. By Ministerial Decree No. 95 of 12 February 2020, the Minister of Universities and Research activated, pursuant to the regulations outlined in Ministerial Decree No. 249/2010, the training courses for obtaining specialisation in school support activities for children with disabilities. At the same time, it authorised individual universities for a total of 19,585 places, as per the Table attached to the aforementioned Decree of 12 February 2020. With regard to the modalities and admission requirements for aspirants to training for schools of all levels, reference was made to Ministerial Decree No. 92/2019.

21. The occurrence of the Covid-19 epidemiological emergency has, however, necessitated the postponement of the dates for holding the tests for access to the aforementioned training courses, which a subsequent ministerial decree (no. 41 of 28 April 2020) redetermined according to a new schedule. However, the conclusion of the procedure was set for July 2021.

22. Decree-Law No. 22 of 8 April 2020, on Urgent measures on the regular conclusion and orderly start of the school year and on the conduct of State examinations (( as well as on competition and qualification procedures and for the continuity of academic management)), converted, with amendments, by Law No. 41, provided, in Article 2(8): '*For the purposes of access to the pathways for obtaining specialisation for support activities provided for in the regulation referred to in the Decree of the Minister of Education, University and Research of 10 September 2010, no. 249 of 10 September 2010, in recognition of the specific experience gained, starting from the fifth cycle, subjects who, in the previous ten school years, have completed at least three years of service, even if not consecutive, are assessable as such under Article 11, paragraph 14, of Law No. 124 of 3 May 1999, on the specific support post of the grade to which the procedure refers, directly access the written tests*').

23. This legislative provision was implemented by Ministerial Decree no. 90 of 7 August 2020, containing 'Provisions concerning access tests for specialisation courses in support of pupils with disabilities'.

24. Decree Law no. 22/2020 pursued the objective of an overall revision, to be implemented in order to a greater speed and efficiency, of the mechanisms governing the identification of substitute staff, regulated, most recently, by Ministerial Order no. 60 of 10 July 2020.





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25. The aforementioned Decree-Law no. 22/2020 has therefore provided for the provincialisation (and simultaneous devolution to the territorial offices of the reference school area), of school rankings and their computerised management. It has also provided for the establishment of a specific provincial ranking list, aimed at the allocation of the related substitute teaching positions, to be allocated to persons in possession of a specialisation qualification in teaching support.

26. Previously, Decree-Law No. 126/2019, converted, with amendments, by Law No. 159 of 20 December 2019, Article 1, authorised the Ministry of Education to launch ordinary and extraordinary competitive procedures aimed at recruitment in first and second grade secondary schools. This was in response to a twofold rationale (the need to remedy the widespread shortage of specialised teachers for disability support activities; the need, shared at an institutional and collective level, to facilitate the stabilisation of fixed-term teachers with years of service on support posts without the required specialisation qualification).

27. At the same time, an ordinary competition for pre-school and primary schools was provided for in implementation of Article 4, paragraph 1-quater, letter c), of Decree-Law No. 87 of 12 July 2018, converted with amendments by Law No. 96 of 9 August 2018.

28. The aforementioned competition procedures were launched during the year 2020 by the departmental decrees referred to below:

- Decree No. 510/2020, "Extraordinary procedure, based on qualifications and examinations, for the recruitment of first and second grade secondary school teaching staff on common and support posts" with the additions and amendments set out in Departmental Decrees No. 639 of 27 May 2020 and No. 783 of 8 July 2020. The competition tests have been completed and the merit lists will be used for recruitment in the 2021/22 school year;

- Decree no. 499/2020, "Ordinary competition, for qualifications and examinations, aimed at recruiting teaching staff for common and support posts in first and second grade secondary schools", as supplemented by Decree no. 649/2020 (in G.U. 4a serie speciale, Concorsi ed esami, no. 44 of 9.06.2020), and by Decree no. 749/2020 (in G.U. 4a serie speciale, Concorsi ed esami, no. 51 of 3.07.2020);



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- Decree no. 498/2020, "Ordinary competition for qualifications and examinations aimed at recruiting teaching staff for common and support posts in pre-school and primary schools".

29. For all of the above-mentioned competition procedures, admission with reserve to the procedure for support posts was also envisaged for those enrolled in specialisation courses for teaching on the specific type of post started by 29 December 2019, a reserve that is positively dissolved if the relative specialisation qualification is obtained by 15 July 2020.

30. With Ministerial Decree no. 755 of 6 July 2021 and Ministerial Decree no. 333 of 31 March 2022, the Ministry of University and Research announced, respectively, the 6th and 7th cycles of specialisation courses (TFA) on teaching support.

31. In this regard, it should be noted that, at the same time as the authorisation of the sixth training cycle for an additional 15,809 places with respect to the programming already authorised for the three-year period 2018/2020 (originally, 40,000 places in total), training courses were authorised for the three-year period 2021/2024 for 91,034 additional support posts, with 25,874 places for specialisation on the last cycle alone.

32. This, in consideration of the legislative news introduced by Paragraph 960 of Article 1 of Law No. 178 of 30 December 2020, which inserted Paragraph 366-bis to Article 1 of Law No. 232 of 11 December 2016, concerning the increase in the number of support staff by 5,000 posts starting from the 2021/2022 school year, by 11,000 support posts starting from the 2022/2023 school year and, originally, by 9,000 support posts starting from the 2023/2024 school year.

33. The quantification made of the needs derives, also considering the increase in the number of posts set up to ensure the full protection of school integration, from the consistent recourse to the conferral of substitutions to teachers without the specialisation qualification in question (for a total of 87,585 substitutions, of which 41,224 for pre-school and primary schools and 46,361 for first and second grade secondary schools).

34. On the other hand, with regard to the represented need for families to resort to legal action to obtain recognition of the otherwise denied right to a support teacher, it must be claimed, on the contrary, the work of the Administration following the known events relating to the application of Article 1, paragraphs 413 and 414, Law 244/2007.



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35. In fact, as is well known, with sentence no. 80/2010 the Constitutional Court declared the constitutional illegitimacy of paragraph 413 cited in the part in which it set a maximum limit to the number of support teachers' posts, and of paragraph 414 in the part in which it excluded the possibility of hiring support teachers as an exception. Following the intervention of the Constitutional Court, art. 19, paragraph 11 of Decree Law no. 98/2011 (Law no. 111/2011) provided that the number of support posts is determined by applying the provisions of art. 2, paragraphs 413 and 414 of Law no. 244/2007, but with the possibility of establishing posts in derogation in relation to particularly serious situations, and that it is assigned overall to the school or to the networks of schools specifically established, considering one teacher for every two disabled pupils. It also provided that the teaching and integration of disabled students are ensured by both support teachers and class teachers.

36. Consequently, the Ministry of Education has instituted a progressively increasing number of places in derogation, as can be seen by reading the data in the table below, which shows a growth of 1,860.87% in the interval between the 2010/11 and 2019/20 school years, as the table below shows.

Anno scolastico	Posti di organico di diritto	Posti di organico di fatto	Totale
2010/11	90.469	3.961	94.430
2011/12	90.469	7.167	97.636
2012/13	90.469	10.832	101.301
2013/14	90.469	19.747	110.216
2014/15	90.469	27.204	117.673
2015/16	90.034	38.893	128.927
2016/17	96.480	46.469	142.949
2017/18	100.080	54.352	154.432
2018/19	100.080	65.890	165.970
2019/20	100.080	77.670	177.750

37. The increase in the number of exempted posts is part of the Administration's more extensive project to implement and stabilise the number of support staff, which, in the period between the 2010/11 school year and the 2019/20 school year, has made it possible to meet the inclusion needs of users with an overall increase in the number of staff of 88.23%, a trend also confirmed by the authorisations for the last two school years.



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38. And, in fact, for the school year 2020/21 the support posts established by decree were 101,170 and the exceptions (de facto staff) were 83,664, while for the school year 2021/22 the support posts established by decree were 106,170 and the exceptions were 91,034.

39. Finally, for the school year 2022/23, an increase of a further 11,000 was provided for, raising the quota of support teaching posts from 106,170 to 117,170.

**IV.2 Allocation of school support resources (chairs)**

40. All that premising for how much it concerns the reference regulatory framework, it is necessary to point out the following.

41. The allocation of school support resources (chairs) in the individual territories is carried out according to a precise procedure, divided into phases and coordinated by the Regional School Offices, on the basis of the annual quota allocation made by the Ministry of Education.

42. The systemic path for the allocation of these resources, adopted by the Regional School Offices, is divided into the following three phases dictated, in terms of timing, by the need to ensure the orderly start of the school year (mobility operations of teaching staff: transfers on the permanent staff, assignments and utilisations on the de facto staff), in compliance with the provisions of art. 7 c. 2 letter g) of Legislative Decree 66/2017 as amended by Legislative Decree 96 of 2019, which provides, in relation to the preparation of the P.E.I., the following indication “*shall be drawn up provisionally by June and definitively, as a rule, no later than the month of October*”. They are:

1. Determination of the “*Organico di Diritto*”;
2. Adjustment phase for the “*Organico di Fatto*”;
3. Subsequent allocations of additional posts on an exceptional basis.

43. The first two operational phases are conducted in a project and collegial dimension and see the involvement of the entire provincial school system in its various bodies and plans. They conclude with the allocation of the chairs for support activities to each school institution, based on the following criteria:

- severity of the psychophysical disability on the basis of the communicated diagnostic code, according to the WHO classifications IDC9, ICD 10 e DSM IV, for all students attending every order and grade;



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- assessment of the need for support resources for pupils with sensory disabilities (blindness; deafness);

- appreciation of the type of code, which makes it possible, at this stage, to commensurate the allocation of resources on the basis of the presence of pupils in situations of seriousness and therefore beneficiaries of law no. 104/92 art. 3 par. 3;

- consideration of the state of complexity of the school based on the number of plexuses or sites that make it up, the number of students entitled to support under Law no. 104/92 and the presence of additional resources provided by the local authorities such as Specialistic Assistants for secondary schools and OEPA/fAEC for nursery, primary and secondary schools (formerly middle schools).

44. The third phase, that of further derogations, takes into consideration the requests sent to the attention of this Office by the School Managers.

45. In consideration of the quota allocated by the Ministry of Education, the overall reconnaissance and consequent distribution of resources among the individual schools, by the Regional School Offices, takes into account the fact that the allocation of support staff for the inclusion of students with disabilities does not imply the automatic allocation of an entire support desk (18 hours for secondary school I and II grade; 22 hours + 2 for primary school; 25 hours for kindergarten) for each student in a serious situation.

46. Furthermore, it should be pointed out that, pursuant to art. 13, par. 6 of Law 104/92, the support teacher is assigned to the class: therefore, this teacher is co-responsible with the other teachers in order to implement the inclusion project for the whole class group and is not assigned exclusively to the certified disabled pupil in it.

47. This is underlined because “*school inclusion*” (“*inclusione scolastica*”) must be the focus of an evolutionary movement towards the quality of everyday schooling and not be evaluated according to quantity (teaching hours of the support teacher alone). The work with several subjects working in the class group favours the process of autonomy and independence, unlike what happens in a 1:1 ratio (one teacher – one student), where, on the other hand, the educational-affective relationship can be enclosed by a confrontation limited to a few subjects,



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creating an environment that does not favour self-improvement processes because it is exclusive to only two subjects.

**VI.3. Specificity of the support teacher and inclusion of students with disabilities**

48. It is important to point out that “*school integration*” of students with disabilities is one of the strengths of the Italian school, which aims to be a welcoming community in which all students, regardless of their functional diversity, can experience individual and social growth.

49. School inclusion, originally called “*integration*”, was originally created to guarantee the right to education and educational success of disabled minors but, today, it represents a fundamental and founding value of the very identity of individual school institutions, whether they are state or equal, valid for all pupils and students.

50. The full inclusion of students with disabilities is a mission that the school pursues through intense and articulated planning, making the most of internal professionalism and the resources offered by the territory. The Ministry of Education, (MI) implements various accompanying measures to foster integration: support teachers, funding of projects and activities for integration, training initiatives for support and curricular teaching staff as well as administrative, technical and auxiliary staff.

51. School inclusion, today, is identified as the cornerstone of the cultural, educational and planning identity of schools, characterising their educational mission in depth, through the direct and cooperative involvement of all the school components. It is therefore developed and valorised within the fundamental documents of school life, such as the Three-Year Educational Offer Plan (PTOF), which characterises the cultural and educational identity of the individual school institutions. In the face of the new vision of an inclusive school, in which educational success concerns all students, no one excluded, the legislator, as seen, has taken steps to renew, and adapt, the specific strategies put in place for students with disabilities under Law 104 of 1992, in particular with the aforementioned Legislative Decree 66/2017 then further amended by Legislative Decree 96/2019.

52. In particular, for 2019/20 school year, due to the Covid pandemic, extraordinary measures have been taken in favour of students with disabilities. In fact, article 1, paragraph 4-ter, of Decree-Law no. 22 of 8 April 2020 (so called *School Decree*), converted with amendments by



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Law no. 41 of 6 June 2020, provided that “*limited to the 2019/2020 school year, for 2019/2020 school year, for supervening conditions related to the epidemiological situation by COVID19, the school directors, on the basis of specific and motivated requests by the families of pupils with disabilities, having consulted the class councils and acquired the opinion of the Operative Working Group for Inclusion at school level, assess the advisability of allowing the re-enrolment of the pupil in the same course year attended in the 2019/2020 school year pursuant to Article 14, paragraph 1, letter c), of Law no. 104 of 5 February 1992, limited to cases in which it has been ascertained and recorded that the achievement of the educational and inclusive objectives for autonomy, established in the individualised educational plan*”. Specifically, headmasters, considering the special nature of this school year, may accept the requests of families of pupils with disabilities and allow the re-enrolment of the pupil in the same year, after hearing the Class Councils and acquiring the opinion of their school's Inclusion Working Group. This will make it possible to make up for the non-achievement of the educational and inclusive objectives for autonomy, established in the P.E.I.

53. The "*Guidelines for the school integration of students with disabilities*", is also clearly envisaged by the reference legislation and is perfectly in line with the definition of disability expressed in the United Nations Convention on the Rights of Persons with Disabilities, which “*...recognises that disability is an evolving concept and that disability is the result of the interaction between persons with impairments and behavioural and environmental barriers, which prevent their full and effective participation in society on an equal basis with others*”.

The following are the normative references that confirm this:

– The third part of the "*Guidelines for the school integration of students with disabilities*" is completely dedicated to the school's inclusive dimension. In particular, paragraph 2.5, concerning the teacher assigned to support activities, specifies: "*The assignment of the teacher for class support activities, as provided by the Consolidation Act L. 297/94, represents the "true" nature of the role he/she plays in the integration process. In fact, it is the whole school community that must be involved in the process in question and not just a specific professional figure to whom the task of integration is exclusively delegated. The greatest limitation of this approach lies in the fact that in the hours when the teacher is not present for support activities,*



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*there is a real risk that the disabled pupil will not be afforded the necessary protection with regard to the right to study. Instead, the logic must be systemic, i.e. that the teacher in question is "assigned to the class for support activities", in the sense that in addition to intervening on the basis of specific preparation, during classroom hours he or she collaborates with the curricular teacher and with the Class Council so that the pupil's educational process can continue even in his or her absence. This logic must inform the work of the groups provided for in the regulations and the integrated planning".*

– The art. 13 co. 6 of Law 104/92 "*.....Support teachers take co-ownership of the sections and classes in which they work, they participate in educational and didactic planning and in the development and verification of the activities falling within the competence of interclass councils, class councils and teachers' boards.*" In sentence no. 25011 of 2014 - *United Sections of the Court of Cassation - the specialised teacher is thus defined as "... a figure who - assuming co-ownership of the class or sections in which he or she works, participating fully in the educational and didactic planning - is called upon to carry out his or her activity, not relating in isolation to the disabled pupil, but to promote, in collaboration with the curricular teacher, integration with the whole class".*

– The art. 1 c. 1 of Legislative Decree no. 66 of 2017 on the promotion of the school inclusion of students with disabilities, as amended by Legislative Decree no. 96 of 2019 reads as follows: "*Art. 1 Principles and aims ..... c) is a fundamental commitment of all the components of the school community which, within the scope of their specific roles and responsibilities, contribute to ensuring the educational success of girls and boys, pupils and students".*

– The art. 7 c. 2 letter d) of Legislative Decree 66/2017 as amended by Legislative Decree 96/2019 in reference to the P.E.I. specifies that "*.....explains the methods of educational support, including the proposal of the number of hours of support for the class, the methods of verification, the evaluation criteria, the inclusion interventions carried out by the teaching staff within the class and in specific projects,.....*".

– The art. 10 c. 1 of Legislative Decree 66/2017 as amended by Legislative Decree 96/2019 which obliges the school leaders to take into account, when preparing the request for support to be sent to the competent Offices, in addition to the indications included in the P.E.I. also "*of*





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*the teaching, instrumental and structural resources present in the school, as well as of the presence of other support measures, in order to create a learning environment favourable to the development of the autonomy of children, pupils and students with ascertained conditions of developmental disabilities for the purposes of school inclusion".*

54. Also, in the light of this systemic logic, the assignment of the Educational Assistant (OEPA/ AEC) within the competence of the Local Authority must also be considered. This figure, envisaged by Article 13 of Law 104/92, participates in the educational action in synergy with the teachers and collaborates in implementing the school inclusion system, within the framework of the right to education and education protected by the Constitution.

55. ANIEF's assertion that there is a "*system for allocating support teaching posts based on judicial appeals*" must therefore be contested, given that the allocation of support hours is, as we have seen, traceable to well-defined procedures and depends on a real assessment of the context in inclusive terms and on the basis of educational co-responsibility interventions undertaken by the entire school community, in order to meet identified educational needs and teaching objectives, in accordance with the provisions of the current law.

\* \* \*

In conclusion, the legislative framework described above, and the precise way it is applied by the school administration, demonstrates, therefore, that the Italian system of support teachers, contrary to ANIEF's assertions, is an efficient system capable of responding to the protection needs of minors with disabilities. The Italian Government has in fact activated the appropriate procedures to guarantee the well-being and the right to study of students with disabilities.

Having said that, the counterparty complaint should be rejected.

\* \* \*

**CONCLUSIONS**

In light of the present observations, the Italian Government insists for the rejection of the complaint.

Rome, 20<sup>th</sup> May 2022



*Ufficio dell' Agente del Governo  
davanti alla Corte europea dei diritti dell' uomo*

**AVVOCATURA GENERALE DELLO STATO**

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