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

30 August 2022

**Case Document No. 5**

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

**RESPONSE FROM USB TO THE GOVERNMENT'S  
SUBMISSIONS ON THE MERITS**

**Registered at the Secretariat on 9 August 2022**

**Directorate of General  
Human rights and rule of law  
Department of the European social charter**

**Complaint No. 200/2021**

**Professional and Trade Union Association ANIEF v/ Italy**

**Replies to the Observations of the Italian Government of 20 May 2022**

With its observations, the Italian government has proudly claimed the "Italian way to include pupils with disabilities", whose guiding principles are rooted in the Constitution of the Italian Republic.

But these inspiring principles, as the result of the jurisprudential elaboration of the Constitutional Court, in recent decades have been thwarted by the application practices and subsequent regulatory interventions that were inspired by short-sighted needs for cost savings or have remained so in the absence of the implementation decrees envisaged by the law itself, and never enacted.

Here below, we summarize the main problems that have translated the much celebrated Italian path to inclusion into "an empty simulacrum of formal compliance with the law" (thus the sentence of the Council of State no. 245 of 17 October 2000: [All. 1](#)).

In particular:

**1. ON THE REINTRODUCTION OF THE MAXIMUM LIMIT TO THE NUMBER OF POSITIONS FOR SUPPORT TEACHERS, ALREADY DECLARED UNCONSTITUTIONAL BY THE JUDGMENT OF THE CONSTITUTIONAL COURT No. 80 OF 2010.**

As the Italian Government recalled, the legislative provision of a maximum and mandatory number of support teachers had been declared unconstitutional by the Constitutional Court ruling no. 80 of 2010.

The ruling of the Council referred to the relevant legislation both at national and international level: the Convention of the United Nations on the Rights of Persons

with Disabilities (ratified and enforced with Law No. 18 of March 3<sup>rd</sup>, 2009), which, in recognizing to art.24 "the right of people with disability to education", in par.2, lett. (c) of the same article, in particular affirms that it must also be implemented through "a reasonable adjustment according to the needs of each one", and the L. February 5<sup>th</sup>, 1992, n.104 (Framework Law for assistance, the social integration and the rights of persons with disabilities), which, in implementation of art.38, paragraph 3, Constitution 7, establishes the right for education as well as the scholastic integration of disabled people.

In light of this premise, the Court expressly configured the disabled person's right to receive education as a "fundamental right", being usable thanks to "integration and support measures suitable for guaranteeing disabled people attendance at educational institutions", including the provision of "specialized teaching staff, called precisely to fulfill the" ineliminable forms of integration (also at constitutional level) and support "in favor of disabled pupils must be included".

The provisions subject to constitutional review, according to the aforementioned sentence of the Constitutional Court, *"are in contrast" with the "international, constitutional and ordinary legal framework", and also with the consolidated constitutional jurisprudence, precisely because they establish "a maximum limit in determining the number of support teachers ».*

As a result of the sentence of the Constitutional Court n. 80 of 2010, therefore, the criterion for determining the support staff should be that of the "actual needs identified" introduced by art. 1, paragraph 605, lett. b), of the law of 27<sup>th</sup> December 2006, n. 296.

Except **that Article 7, paragraph 2-bis, of Legislative Decree no. 66 of 2017, as amended by Legislative Decree 7<sup>th</sup> August 2019, n. 96**

[https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2017-04-13;66,](https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2017-04-13;66)

*has provided that "The implementation of the measures, referred to in paragraph 2 [n.d.r. that is, the preparation of the Individualized Educational Plan with the concrete determination of the hours of didactic support] takes place with expenditure invariance and in compliance with the limit of the teaching staff and*

*ATA assigned at regional level and the overall staffing cannot be increased as a result of the interventions activated and envisaged by the aforementioned paragraph 2, therein including the adaptation of the staff of the educational institutions to actual situations".*

The law, therefore, **revived the maximum limit to the number of places for support teachers already declared unconstitutional by the Constitutional Court ruling no. 80 of 2010.**

It should be noted that, based on art. 136 of the Italian Constitution, the legislator is precluded from the possibility of keeping alive or restoring, albeit indirectly, the effects of a legislative discipline that has been the subject of a ruling of constitutional illegitimacy (for all, sentence no.5 of 2017). The Constitutional Court specified that the constitutional judgment is violated not only when the legislator issues a provision that constitutes a mere reproduction of the one already declared illegitimate, but also when the new discipline aims to pursue and achieve, even if indirectly, corresponding outcomes (including the others, judgments no.164 of 2020, no.57 of 2019, no.101 of 2018, n. 252, n. 250 and n. 5 of 2017).

It is also necessary to reiterate that the constraint of financial resources cannot justify the abolition of that flexibility mechanism which, in the presence of actual needs identified through the necessary certifications, it has allowed in the past to guarantee the allocation of support teaching hours, to the beyond the staffing facilities, to the extent suitable for achieving the purpose of the service.

The Italian Constitutional Court, in fact, has clarified that *"the right to education of the disabled people is a fundamental right and that the use of this right is ensured, in particular, through ... the presence of specialized teaching staff, called to comply with the ineliminable forms of integration and support in favour of disabled students ... without the principle that the legislator in identifying the necessary measures to protect the rights of disabled people enjoys discretion, as this discretion is not absolute and finds a limit in compliance with an unfailing core of guarantees for the interested parties. "* (Constitutional Court, judgment no. 80/2010, and in a consistent sense: Constitutional Court sentt. n. 215 of 1987, 406 of 1992, 52, 226 of 2000, 251, 431 of 2008, and ord. n. 269 of 2009).

More recently, the Constitutional Court, with sentence no. 83 of 2019 stressed that the right to education and integration of people with disabilities cannot depend on financial choices that the legislator makes with forecasts that leave "the extent of the contribution uncertain in the *an* and *quantum*" (in this sense also Constitutional Court, sentence no. 275 of 2016).

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## **2. ON THE REGULATORY VACUUM DETERMINED BY THE FAILURE TO APPROVE THE GUIDELINES FOR THE DRAFTING OF THE "OPERATING**

The legislative decree 13<sup>th</sup> April 2017, n. 66, containing "Rules for the promotion of scholastic inclusion of students with disabilities, pursuant to article 1, paragraphs 180 and 181, letter c), of law no. 107 of 13<sup>th</sup> July 2015", intended to update all the provisions in force on the subject, taking into account the new bio-psycho-social and ecological perspective of the scholastic inclusion of pupils with disabilities which is inspired by the ICF anthropology (international classification of functioning, disability and health) adopted by the World Health Organization.

The legislative decree of 7<sup>th</sup> August 2019, n. 96, subsequently introduced supplementary and corrective provisions of Legislative Decree 66/2017 with the aim, among others, of redefining the documents supporting the school inclusion process by overcoming the dichotomy "functional diagnosis - dynamic-functional profile".

Art. 5 of the legislative decree of 7<sup>th</sup> August 2019, more precisely, n. 96 provided:

■ in paragraph 2, that *"In accordance with the law of 5<sup>th</sup> February 1992, no. 104, the following amendments are made: b) to article 12, paragraph 5 is replaced by the following:*

*"5. At the same time as the assessment provided for in Article 4 for girls and boys, male and female students, the medical commissions referred to in Law No. 295 of 15 October 1990, carry out, where required by parents of the child, the student certified in accordance with the aforementioned article 4, or by whoever exercises parental responsibility, the assessment of the condition of disability in developmental age for the purposes of school inclusion. This assessment is preliminary to the preparation of the operating profile, prepared according to the criteria of the bio-psycho-social model of the International Classification of Functioning, Disability and Health (ICF) of the World Health Organization (WHO), for the purposes of formulating of the Individualized Education Plan (PEI) which is part of the individual project referred to article 14 of the law of 8<sup>th</sup> November*

2000, n. 328 "";

- *in paragraph 3, "The operating profile referred to in article 12, paragraph 5, of law no. 104, which includes the functional diagnosis and the dynamic-functional profile, as amended by this decree, is drawn up by a multidisciplinary evaluation unit, within the NHS, composed of: a) a specialist in child neuropsychiatry or a specialist doctor, expert in the pathology that connotes the state of health of the minor; b) at least two of the following figures: a health professional in the area of rehabilitation, a psychologist of the developmental age, a social worker or a pedagogue or another delegate, in possession of specific professional qualifications, representing the local authority competence.*
- *in paragraph 4, that "The operating profile referred to in article 12, paragraph 5, of the law 5<sup>th</sup> February 1992, n. 104, as amended by this decree:*
  - a) *it is the preparatory and necessary document for the preparation of the Individualized Education Plan (IEP) and the Individual Project; b) also defines the professional skills and the type of support measures and structural resources useful for school inclusion; c) is drawn up with the collaboration of the parents of the child, the pupil or the pupil, as well as, in compliance with the right of self-determination to the maximum extent possible, of the student or student with disabilities, with the participation of the head teacher or of a teacher specialized in didactic support, of the school where the girl or boy is enrolled, the pupil or the pupil, the student or the student; d) is updated to the passage of every level of education, starting from kindergarten, as well as in the presence of new and supervening conditions of functioning of the person in question.*
- *in paragraph 5, that "The parents or whoever exercises parental responsibility transmit the operating profile referred to in paragraph 4, to the school institution and the competent local authority, respectively for the purposes of preparing the IEP and the individual project, if requested "*
- *in paragraph 6, that "By decree of the Minister of Health, in agreement with the Ministers of Education, University and Research, Labor and Social Policies, Economy and Finance, for the Family and Disabilities, for regional affairs and autonomies, having consulted the Permanent Observatory for school inclusion referred to in article 15 of this decree, subject to agreement in the Unified Conference referred to in article 3 and article 9 of the legislative decree of 28*

*August 1997 , no. 281, to be adopted within 180 days from the date of entry into force of this decree, the Guidelines are defined containing: a) the criteria, contents and methods of drafting the certification of disability in developmental age for the purposes of school inclusion, taking into account the International Classification of Diseases (ICD) and the WHO International Classification of Functioning, Disability and Health (ICF); b) the criteria, contents and methods of drafting the Operating Profile, taking into account the WHO ICF classification.*

***Although the 180-day term provided for by art. 6, paragraph 6, of the legislative decree n. 66 of 2017, the Ministers of Education, University and Research, Labor and Social Rights, Economy and Finance, Family and Disabilities, Regional Affairs and Autonomies, have not yet adopted the decree containing the guidelines regarding: a) the criteria, contents and procedures for drafting the certification of disability in developmental age for the purposes of school inclusion, taking into account the International Classification of Diseases (ICD) and the International Classification of WHO Functioning, Disability and Health (ICF); b) the criteria, contents and methods of drafting of the operating profile, taking into account the WHO ICF classification.***

*The regulatory gap caused by the lack of approval of the guidelines for the drafting of the "Operating Profile" makes it impossible to write the Individualized Education Plans according to the new bio-psycho-social perspective at the basis of the ICF classification of the WHO desired by the legislator.*

***The absence of the preparatory and necessary "Operating Profile" therefore reduces the Individualized Education Plan into an empty simulacrum of didactic and educational design.***

In fact, after the legislative activity of the parliament begins at a later time, just as important, but longer and more complex. In fact, practical, bureaucratic and technical aspects necessary to apply and implement the laws are often entrusted to other institutional subjects, mainly the Government (which approves the so-called Legislative Decree, which implements an enabling act) or the Ministries

(in the event of a law or legislative decree). The latter must deal with the so-called implementing decrees, measures necessary to complete the effects of the regulation itself (for a brief discussion of the point with specific reference to the Italian legal system, see: <https://www.openpolis.it/parole/che-cosa-sono-i-decreti-attuativi/>), which, in the absence of these fundamental interventions, remains written in the sand.

**The Lazio Regional Administrative Court**, in fact, **with the recent sentence no. 9795 of 09/14/2021 (All. 2)** noted that *"in the absence of an effective changes of the methods of ascertaining disability in developmental age and of the descendant certifications, the provisions of which are currently firm at the regulatory level having not yet been implemented by the Government, it seems to lack on factual level if not also on the juridical level, the necessary prerequisite for the adoption of the decree [foreseen by art. 7, paragraph 2 ter, of the legislative decree n. 66 of 2017 and containing the new IEP model based on ICF, to be used in all educational institutions] ", resulting in nullification of both the objective pursued by the delegated law no. 107/2015 of "Promoting the scholastic inclusion of students with disabilities" is of the objectives declared by the consequent legislative decree of 7<sup>th</sup> August 2019, n. 96 and consisting in "raising the national quality standards of school inclusion".*

Therefore, the precise reconstruction made by the Italian government clashes with the factual reality that does not see as implemented, in practice, the good intentions of the legislator, however, adopted only following the interventions of the Constitutional Court and administrative judges.

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### **3. ON THE NUMBER OF PRECARY TEACHERS. INADEQUACY OF THE SOLUTIONS PROVIDED BY THE ITALIAN STATE.**

In the collective complaint, Anief pointed out that **over 56% of the total staff of support teachers is made up of teachers hired on a fixed-term contract**, i.e. hired during the year and then dismissed in June (see report of the meeting between the Minister of Education and the trade unions, taken from an article in the specialized magazine *"La Tecnica della Scuola"* (doc. 17 of the



complaint).

According to the latest report delivered by the Ministry of Education to the representative trade unions for teachers (doc. 3 attached to these replies), in the school year 2021/2022 there were as **many as 91,000 teachers placed in the so-called "de facto staff"**, i.e. the 'staff to which can be conferred only **assignments until the end of the teaching activity, or from September to June** (see, in particular, in the "support" sheet, column "V" which indicates the difference between the concrete and needed staff for the optimal functioning of the system (col. "T") and that one provided "by law, or according to the legislation in force (col." U ").

In addition to these 91,000 permanent jobs occupied by precarious teachers, we must add **the 30,000 support jobs left vacant in the small and undersized "staff by law", that is, in the staff that can be used for permanent recruitment** (source: <https://www.orizzontescuola.it/posti-di-sostegno-30mila-liberi-dopo-movimenti-ecco-dove-per-provincia-e-ordine-di-scuola/>).

According to a study by the CISL Scuola - trade union, most of the vacancies are located in the regions of northern Italy, with **7 vacancies for every 10 (63%)**.

As effectively denounced by the investigative **book by Andrea Gavosto, "The blocked school", Editori Laterza, (pp. 83-84 - All. 4-5)** *"The number of teachers hired on a temporary basis has grown impressively in recent years (Fig. 3), despite the declared intention of many governments to eliminate once and for all the phenomenon of precarious work in schools. In 2021-22, the number of temporary teachers reached an incredible **225,000, over a fifth of the total**, despite the creation of simplified permanent employment channels. One problem within the problem is the presence **among the alternates of 122,000 support teachers for students** with certified disabilities, who would instead need teachers with particular expertise and continuity of teaching; today only **one third of the support jobs are assigned to qualified teachers, while the rest is covered by supply teachers.***

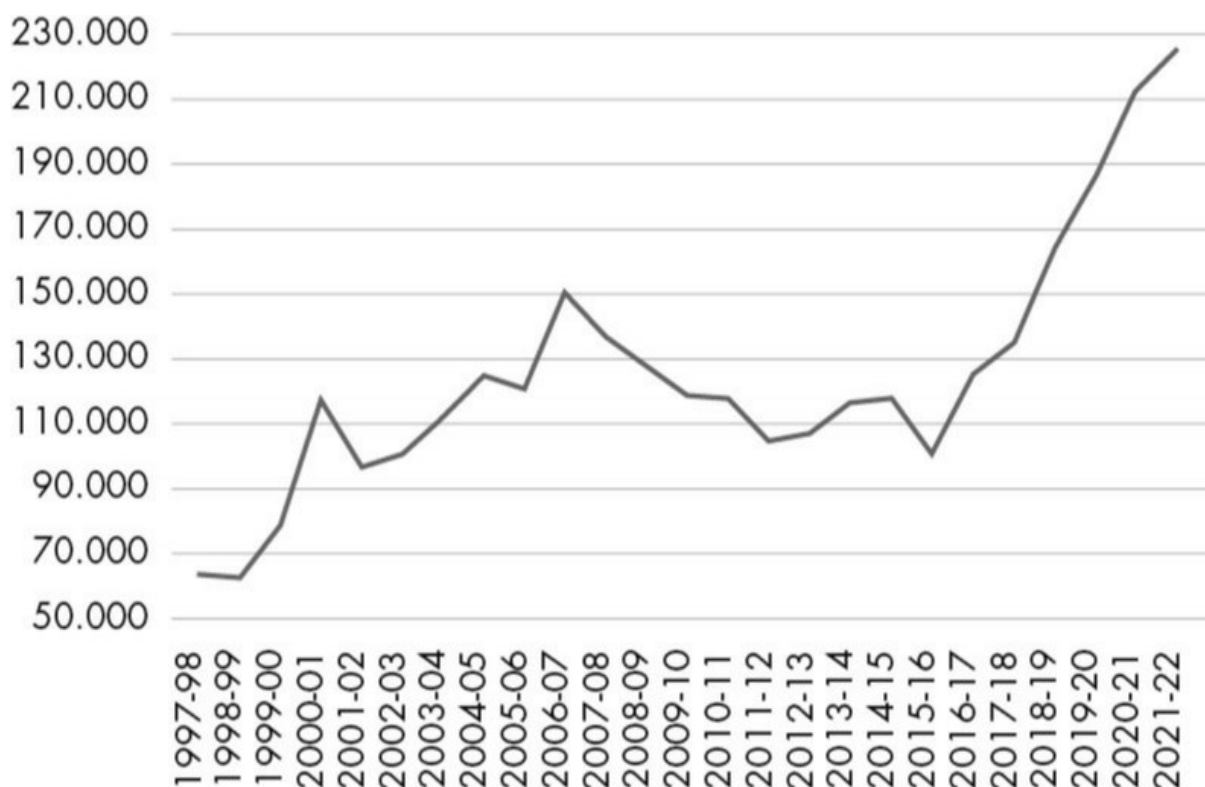


Figure 3. Teachers with annual fixed-term contracts. Source: Agnelli Foundation elaborations on Ministry of Education data.

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**The competitions launched by the Ministry of Education to cover the gaps in the legal staff have proved to be completely unsuccessful.** And so, just to cite an example, **of the 6,882 support jobs foreseen for childhood and primary schools, 5,389 will certainly remain vacant, equal to 78.3%, almost eight out of ten.** (<https://www.tuttoscuola.com/concorsi-infanzia-e-primaria-8-posti-disostegno-vacanti-su-10-e-possibile-recuperare/>).

The abnormal number of precarious support teachers placed in the "de facto staff" (staff usable only for temporary hires) and the impossibility of covering the holidays of the undersized "staff by law" (staff usable for recruitment to indefinite period), indeed, depend on two structural causes: the **failure to investigate the actual needs** of support teachers and **the absence of a sufficient number of specialized teachers** for teaching support activities (i.e. teachers in possession of the teaching specialization necessary for participate in public competitions).

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#### **4. ON THE DETERMINATION OF THE STABLE SUPPORT STAFF WITH REFERENCE TO THE NUMBER OF PUPILS WITH DISABILITIES ESTABLISHED IN THE 2006/2007 SCHOOL YEAR**

As has already been pointed out in the collective complaint, the enormous number of precarious support teachers depends above all on the fact that the **Ministry of Education from 2006 until today continues to determine the stable support staff (i.e. the so-called staff of law) in a fixed way, without carrying out any investigation on the real needs of scholastic integration of disabled pupils, but with reference to the minimum staff necessary in the distant 2006/2007 school year.**

As the Italian Government pointed out in point 35 of its observations, in fact, the current staffing plan of support teachers is determined "***being understood that the number of support jobs is determined by applying the provisions of art. 2, paragraphs 413 and 414 of Law no. 244/2007***", that is, according to the regulatory provision that reads as follows: "*The organic endowment of law relating to support teachers is progressively redetermined, in the three-year period 2008 - 2010, until reaching, in the school year 2010 / 2011, of an organic consistency equal to 70 percent of the total number of support places activated in the 2006/2007 school year*".

**This means that the current stable support staff is legally defined with reference to a predetermined percentage of places based on the enrollments of pupils with disabilities recorded in the distant 2006/2007 school year.**

In truth, in the last seven years **the number of students with disabilities enrolled in Italian schools has doubled** from 156 thousand units (3.4% in the 2015/2016 academic year compared to 2.7% in the 2005/2016 academic year / 2005) to 300 thousand units (3.6%) in the academic year. 2021/2022 as attested by the same ministerial data provided by ISTAT [v.https://www.istat.it/it/files//2022/01/REPORT-ALUNNI-CON-DISABILITA.pdf](https://www.istat.it/it/files//2022/01/REPORT-ALUNNI-CON-DISABILITA.pdf)), **and this in the face of a legal staff that has remained unchanged.**

This explains why in the face of 106,170 permanent support teachers, the Ministry of Education, to guarantee the right to inclusion, **must authorize positions in derogation for 92,034, as the Italian Government itself admits in point 38 of the observations.**

The Italian legislation, therefore, prevents the effective revision of the staff by law in line with the current enrollment number of pupils with disabilities and prevents continuity in learning for mere budgetary reasons that lead to the call for ten months a year of the half of the teaching staff with fixed-term contracts.

And precisely for this reason, **the Administrative Court of Lazio, with final judgment no. 149 of 7.1.2019**, (doc. 22 of the complaint), accepted the appeal lodged by specialized teachers regarding the systematic discrepancy between the forecast staff (by law, on which it is possible to arrange permanent hires) and actual staff (usable only for substitutes) from the point of view of the excess of power due to lack of preliminary investigation, as ***"since the number of teachers needed cannot be crystallized in 2006/2007, in a constitutionally oriented reading of the provision to protect the student disabled, it is up to the administration to acquire the data in order to achieve what the aforementioned paragraph 413 provides, i.e. identifying criteria and methods with reference to the actual needs identified, ensuring the development of integration processes for disabled students also through appropriate compensation between provinces different so as not to exceed a national average ratio of a teacher every two students with disabilities. This does not automatically mean that the staffing jobs in derogation must merge with those of law, but simply that the identification of this last endowment cannot be anchored sic et simpliciter to what existed more than a decade ago, instead having to promptly and carefully monitor the situation due to the evident increase in the pathologies identified as relevant.***

*In this context, the obligation of the administration translates into **the need for a careful investigation, also verifying the concrete existence of the conditions legitimizing the need for support teachers, since it cannot be left to the experimentation of protection tools to bring back to legitimacy, given the particular condition of the school population with disabilities.** The appeal must therefore be accepted, with annulment of the acts*

*in the epigraph in the part in which they do not correlate the number of staff positions and as an exception to a timely investigation in the light of the results emerging year by year, limiting itself to an automatic application, so to speak ".*

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## **5. ON THE ABSENCE OF SPECIALIZED TEACHERS FOR EDUCATIONAL SUPPORT ACTIVITIES. TERRITORIAL INSPIRATION AND ABSENCE OF DETECTION OF NEEDS**

In the collective complaint, Anief highlighted that the impossibility of hiring for a permanent period in the reduced "staff in right to support" also depends on the serious shortage of specialized teachers, i.e. teachers in possession of the qualification required by the Ministry of Education for participation in competitions.

According to the dossier of the CISL Scuola trade union (doc. 20 complaint), **over 79% of precarious teachers engaged in teaching pupils in need of support do not have the necessary didactic specialization**, thus undermining the purpose of the legislation on assistance to pupils at the root. who need special care in learning and teaching.

From the reading of the latest ISTAT report "*The school inclusion of pupils with disabilities - school year 2020/21*" - v. <https://www.istat.it/it/files//2022/01/REPORT-ALUNNI-CON-DISABILITA.pdf> - it emerges that **one in three support teachers is not specialized and that less than one in four has attended courses training on inclusivity.**

The shortage of qualified teachers is often accompanied by a delay in assigning teachers for support. In fact, one month after starting school, according to the ISTAT report, about 20% of teachers for support were not yet assigned. This share rises to 27% in the North-West regions and reaches its highest points in Lombardy (29%) and Liguria (34%).

It is true that ninety thousand new specialization jobs are planned for the next three years, of which 25,874 for the first year. However, **the inequality in the access to specialized courses that is found at the territorial level remains, with sometimes very marked differences that cannot be explained or justified. The vast majority of the places to be activated, in**

**fact, concern universities in the centre and south. For the north universities, however, the numbers are very limited.** Once again, therefore, in addition to the disastrous general situation that has been described, a territorial inhomogeneity that is really difficult to understand is proposed again; it is even more difficult to understand how interventions on university programs are not possible to determine a necessary turnaround.

*Sotto il profilo comparativo, la sproporzione dedotta, rispetto alla quale risulta fondata la deduzione di carenze istruttoria svolta, emerge con evidenza: a titolo esemplificativo alla Regione Calabria dove, a fronte di un fabbisogno di soli 91 insegnanti specializzati sono stati autorizzati ben 1.150 posti; ancora, ad esempio, emerge la totale assenza di posti di specializzazione didattica*

The inferred territorial inequality of the authorized posts with respect to the real needs expressed, especially in relation to the lack of investigation and motivation, was also ascertained by the **Council of State which, with sentence no. 3655/2021 (Doc. 6 attached to these replies)**, stressed that *"In Piedmont, in fact, the need for teachers to specialize in 2018 amounted to 4,657 places, but only 200 places were authorized in the last cycle of TFA. In Emilia - Romagna, the need for teachers to specialize amounted to 4,860 places (today they have become 6,000), but only 320 were authorized in the last cycle of TFA.*

From a comparative point of view, the disproportion deduced, with respect to which the deduction of a lack of investigation carried out is founded, clearly emerges: by way of example, to the Calabria Region where, in the face of a need for only 91 specialized teachers, as many as 1,150 places were authorized; again, for example, the total absence of teaching specialization posts emerges *authorized for the current school year by the University of Bologna, while at the same time the University of Messina alone has provided 2,000 specialization places and the University of Enna has provided 1,125.*

2.3 *The reported lack of investigation appears to be confirmed, in terms of procedural defects, where some regional areas have not been duly and promptly involved* ".

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## **6. ON THE VIOLATION OF ART. 2, PAR. 1 AND 2 OF THE PAPER**

In addition to the situation described so far, as mentioned in the complaint (paragraph E, page 25 et seq.), the abnormal number of precarious support teachers (80,000 indicated on page 28 of the complaint and, in this memo, as we have seen, specified in 91.034 on the basis of the documentation produced today, provided by the same Ministry of Education: the aforementioned attachment 3), has consequences not only on the general situation of the disabled, but also on the procedures for carrying out the support teacher work.

Law no. 107/2015 (so-called Good School law), in paragraph 181, lett. C), point 2, affirms the principle of *"guarantee the continuity of the right to study of pupils with disabilities, so as to make it possible for the student to benefit from the same support teacher for the entire order or degree of education"*.

The application decree of this law (see Article 14 of Legislative Decree No. 66/2017) also reaffirms this concept but, even if the same art. 14, paragraph IV, affirms the need for the continuity of only one teacher during the same school year, in fact this does not happen.

Mention has already been made of the **opinion of 7<sup>th</sup> July 2020 of this Committee** made on the complaint 146/2017 presented by the undersigned trade union, where the violation of Article 1§2 of the Charter was found as regards the public education staff registered in the GaE lists and hired with subsequent contracts for a total duration exceeding 36 months and the violation of Article 1§2 of the Charter against public education personnel not registered in the GaE lists and hired with subsequent contracts with interruptions for a longer overall duration at 36 months.

But such violations, already serious in themselves, are far greater for support teachers. In the opinion, in fact, the Committee observes that "89. *The Committee notes however that the situation is different for public education staff who are not registered on the ERE lists and therefore are not eligible to annual contracts but can only be appointed on fixed-term contracts for periods shorter than a calendar year, covering de facto vacancies during the school-year from September to the end of June, or shorter periods*".

This implies that, since the vacant chairs are intended for support and the teachers identified from scratch year by year, the rule is that not always (indeed: rarely) the same teacher is able to resume service in the same chair.

This implies that the teacher is forced, on the one hand, to interrupt the training course followed the previous year, leaving the weak pupils to another subject and, on the other hand, to take over - in another chair, if not in another institution - to the previous teacher, interrupting in both cases that continuity which is an essential element to make the scholastic integration of the pupil with disabilities effective.

**The Italian Council of State, with sentence no. 3104/2009 (Annex 7),** highlighting how "*the continuous change of the support teacher and the educator, (with the obvious repercussions in terms of regression of the experiences and learnings made by the child) has compromised the homogeneity and the continuity of the individual intervention in favor of the disabled person*" established that "***the supplementary activities of socio-educational value (and among these the individualized support in favor of the assisted subject provided by the educator) must be provided in a suitable manner for achieving the development of the pupil's personality and to guarantee the stable presence of an educator who constantly follows the pupil with disabilities in the integration process***".

The **TAR – Sicily Regional Administrative Court, in turn, canceled, with sentence 1813/2011,** the provision with which the school administration had replaced the support teacher following the factual situation related to recruitment of personnel not registered in the ERE (All. 8).

Now, the situation of recruitment of school staff included in the staff has in fact already been censored by this Committee, but even more so it should be further censored with reference to support teachers.



The choice to fill this role is given not only by the desire and aptitude for teaching, but it is characterized by something more, or by the aspiration to make oneself useful, with one's work, for a fundamental purpose that concerns the principle of equality, making possible the social inclusion of individuals who would otherwise remain isolated in society.

It is clear that this activity must necessarily be carried out with the cooperation of the state, as education is one of the essential activities of public action, as it is unimaginable that it will be carried out and organized by individual teachers alone.

It is useless to explain to this Committee that this choice makes the teaching activity more difficult but, apart from this aspect, which is the result of a personal choice, the impossibility of completing the care and education of people with disabilities due to the lack of continuity of assignment to the same class, albeit legally foreseen and in fact possible but not actually implemented, is a source of profound frustration for those who have based their working activity on this commitment of significant and social importance, with the aim of facilitating social inclusion of the weakest subjects and is not put in a position to achieve his goal.

It therefore seems evident the violation of the worker's right to earn a living with a job freely undertaken, since this concept cannot ignore the hypothesis that the organization of the administrative structure is implemented in such a way as to prevent the carrying out of the important social role of the support teacher, assumed in the awareness of the burden of commitment that the role itself imposes on the teacher, is, in fact, rendered useless for problems whose need and purpose is not understood and which are already were considered contrary to the Charter in the previous opinion on complaint 146/2017.

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For all these reasons, the Committee is asked to accept the complaint.

We remain at your disposal for any further clarification you may need.

By the end of this month, these comments will be sent with English translation.

Please find attached, as anticipated in the narration:

1. Decision of the Council of State no. 245 of 17 October 2000;
2. Judgment TAR LAZIO n. 9795 of 09/14/2021;
3. Monitoring objective OD-OF 2021 22 to 08112021;
- 4 and 5. Investigation book by Andrea Gavosto, "The blocked school", Editori Laterza;
6. Decision of the Council of State no. 3655\_2021;
7. Decision of the Council of State no. 3104\_2009
8. Judgment of the Sicily Regional Administrative Court no. 1813 2011

Rome, 10<sup>th</sup> August 2022

Sergio Galleano

Walter Miceli

Fabio Ganci

Marcello Pacifico