



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF G.L. v. ITALY

(Application no. 59751/15)

JUDGMENT

Art 14 (+ Art 2 P1) • Discrimination • Right to education • Inability of an autistic child to receive specialist support at school as prescribed by law, for the first two years of primary schooling • Domestic law prescribing inclusive education for disabled children in ordinary schools with the support of specialised professionals • Domestic legislation providing *in abstracto* for making “reasonable accommodation” but lack of details on practical mode of implementation • Art 14 interpreted in the light of the United Nations Convention on the Rights of Disabled Persons and of European instruments • Difference of treatment due to the applicant’s disability • Argument of insufficient budgetary resources • Failure by the domestic authorities to determine the applicant’s real needs and possible solutions to enable her to attend primary school under equivalent conditions, as far as possible, to those enjoyed by other children, without imposing a disproportionate or undue burden on the authorities • Serious discrimination in view of the importance of primary education • Lack of due diligence on the part of the domestic authorities

STRASBOURG

10 September 2020

FINAL

10/12/2020

This judgment became final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of G.L. v. Italy,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Ksenija Turković, *President*,

Krzysztof Wojtyczek,

Aleš Pejchal,

Pauliine Koskelo,

Tim Eicke,

Jovan Ilievski,

Raffaele Sabato, *judges*,

and Abel Campos, *Section Registrar*,

Having regard to:

the application (no. 59751/15) against the Italian Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Italian national, Ms G.L. (“the applicant”), on 24 November 2015;

the decision of the Section President not to have the applicant’s name disclosed (Rule 47 § 4 of the Rules of Court);

Noting that on 16 March 2017 the Italian Government was notified of the application;

Having deliberated in private on 10 September 2020,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case concerns the fact that the applicant, a non-verbal autistic girl how is now thirteen years old, was unable to receive specialist support at school for her first two years of primary schooling (2010/2011 et 2011/2012).

THE FACTS

2. The applicant was born in 2004 and lives in Eboli. She was represented before the Court by Mr A. L. (her father) and Ms M.E. D’Amico, a lawyer practising in Milan.

3. The Italian Government (“the Government”) were represented by their former Agent, Mrs Spatafora, and her former coagent Mrs M. E. D’Amico, a lawyer practising in Milan.

4. The applicant was diagnosed with non-verbal autism.

5. On account of her disability, when she started nursery school in 2007 she received learning support for 24 hours a week from a support teacher with specialised assistance, in accordance with section 13 of Law no. 104 of 1992.

6. The specialised assistance service is aimed at helping children with disabilities to develop their autonomy and personal communication skills and to improve their learning processes, their relationships with others and their

integration at school, so that they do not become marginalised. Thus the specialist assistant was responsible for improving the applicant's integration and socialisation at school and in the classroom, as well as her autonomy (see paragraph 18 below).

7. During her first year at primary school (2010-2011) the applicant was no longer in receipt of such specialist assistance. At the end of the school year it was decided that she should repeat the preparatory class ("CP").

8. On 10 August 2011, in advance of the new school year, the applicant's parents requested that the Eboli municipality ensure that their daughter received the specialist assistance provided for in section 13 of Law no. 104 of 1992. Having received no reply from the municipal authorities, they reiterated their request on 30 January 2012.

9. On 21 February 2012, in view of the authorities' silence the applicant's parents requested access to their daughter's file.

10. From January 2012 they paid for private specialist assistance so that their daughter could nevertheless receive educational support.

11. On 19 March 2012 the authorities informed them that it would be difficult to organise specialist public assistance for the applicant again since it had only been scheduled up to the end of 2011, but that there was nonetheless a chance that she might shortly be in receipt of such assistance – this never transpired.

12. The Government affirmed that the applicant had received support defrayed by the school. In that regard, they failed to present any document signed by the headmaster stating that since the applicant had not been in receipt of specialist educational facilities in the school years 2010-2011 and 2011-2012, the school had provided her with basic assistance and physical aid and had tasked employees to provide material back-up to teaching staff. In support of those assertions the Government enclosed an invoice for 476.56 euros (EUR).

13. The applicant observed that the documents submitted by the Government failed to establish the veracity of its submissions. She pointed out, first of all, that the documents did not explain the type of assistance provided or the activities conducted, or whether the persons concerned had been competent and qualified to take care of an autistic child. She further submitted that the amount of the expenditure certified (EUR 476.56 for six employees, coming to an average outlay of EUR 80 per employee per year) showed that the support in question could certainly not have been considered as permanent.

14. On 15 May 2012 the applicant's parents, acting in her name and on her behalf, applied to the Administrative Court (the "TAR") of the Region of Campania. Complaining of the fact that their daughter had been unable to receive the specialist assistance to which she had been entitled under section 13 of Law no. 104 of 1992, they sought a finding of failure to respect that

right and asked the court to order the authorities to pay compensation to their daughter.

15. By judgment of 27 November 2012 the TAR dismissed that application. It held that the municipality taken all the necessary action in time, and pointed out that the region had had to cope with a cut in resources allocated by the State.

16. The applicant's parents appealed to the State Council against that judgment. By judgment deposited with the registry on 26 May 2015, the latter dismissed their appeal. It held that the claim for damages had been vague and had failed to demonstrate a causal link between the lack of specialist assistance and the alleged damage. It also ruled that the region's liability could not be incurred because it had had to cope with a cut in resources allocated by the State. It considered that there had been no reason to reimburse the applicant's parents for the costs incurred in paying for private specialist assistance, since no negligence had been attributable to the authorities. Finally, as regards the request that the Eboli municipality be ordered to provide the assistance provided for by law, the State Council pointed out that the judge could only have issued an order to the authorities if the case had fallen under the exclusive jurisdiction of the administrative court, which had not been the situation in the present case.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC LAW AND PRACTICE

A. Domestic legal system

17. Article 38 of the Constitution provides that persons with disabilities have a right to education and vocational training.

18. Framework Law no. 104 of 5 February 1992 on assistance for, the social integration of, and the protection of the rights of persons with disabilities ("Law no. 104 of 1992") includes the following provisions:

Article 3 – Entitled persons

"1. 'Person with a disability' means anyone presenting a physical, mental or sensorial impairment, whether stabilised or evolutive, which causes difficulties in learning, relationships with others occupational integration and leads to a social handicap or marginalisation.

..."

Article 8 – Social integration

"The social inclusion and integration of the person with a disability shall be ensured by means of:

..."

d) measures securing the disabled person's rights to information and to education, particularly as regards educational facilities and technologies, programmes, specialist languages, evaluation tests and the availability of specially qualified personnel, including both teachers and non-teaching staff.

..."

Article 12 – Right to education

"...

2. The right of persons with disabilities to education shall be guaranteed in all sections of nursery schools, in ordinary classes of schools at all levels and in universities and other institutes of higher education.

3. Integration at school is aimed at developing the disabled person's potential in the fields of learning, communication, relationships with others and socialisation.

4. The exercise of the right to education must not be impeded by learning difficulties or other difficulties stemming from a disability.

5 Where it is noted that a child, a pupil or a student suffers from a disability with the meaning of Article 3 above, an operational profile shall be drawn up in accordance with the criteria of the bio-psycho-social model of the International Classification of Functioning, Disability and Health (ICFDH) adopted by the World Health Organisation (WHO), for the purposes of designing the individual project laid down in section 14 of Law no. 328 of 8 November 2000 and drawing up a personalised educational plan.

..."

Article 13 – Integration at school

"1. The educational integration of persons with disabilities in [nursery school] sections and the ordinary classes of schools at all levels and in universities and other institutes of higher education is, in particular, without prejudice to the provisions of Law nos. 360 of 11 May 1976 and 517 of 4 August 1977 and their subsequent amendments, by the following means:

a) Ensuring coordination between school services, health, social, cultural, recreational and sports services and the other local and regional services administered by public or private agencies. To that end the local authorities, the school bodies and the local health units shall, in the framework of their respective competences, conclude the programme agreements set out in section 27 of Law no. 142 of 8 June 1990. Those agreements, the conclusion of which is governed by the guidelines laid down within three months of the entry into force of the present Law by decision of the Minister of Education in agreement with the Minister of Social Affairs and the Minister for Health, are aimed at drawing up, implementing and jointly reviewing personalised educational, rehabilitation and socialisation projects, as well as coordinating school and out-of-school activities. They shall also lay down the criteria to be fulfilled by the public and private agencies in question in order to participate in the aforementioned coordinated cooperative activities.

b) Supplying schools and universities with technical facilities, educational material and all requisite forms of technical assistance, independently from any general and functional assistance possibly guaranteed at the individual level for the purposes of the effective exercise of the right to education, in particular in the framework of agreements

concluded with specialist centres with a view to provision by the latter of educational consultancy and special educational materials produced or adapted by them.

...

2. For the purposes laid down in paragraph 1, the local authorities and local health units may also decide to adapt the organisation and functioning of day nurseries to the needs of children with disabilities in order to launch the rehabilitation, socialisation and integration process at as early an age as possible, and to assign teaching staff, operators and specialist assistants to them.

3. Without prejudice to the obligation on local authorities, pursuant to Presidential Decree No. 616 of 24 July 1977 and subsequent amendments thereto, to provide autonomy and personal communication assistance¹ for pupils with physical or sensory disabilities, access by such pupils to support activities is guaranteed in schools at all levels by assigning specialist teachers to the tasks in question.

4. Support teacher posts in secondary education shall be apportioned among staff who are serving on the date of entry into force of the presented law such as to ensure a ratio at least equal to that laid down for the other educational levels, within the limits of available financial resources as set out in section 42 (6) (h).

...

6. The support teacher² shares responsibility for the pupils with the teacher of the section or class in which he or she is operating, and therefore helps to develop educational activities and to devise and supervise activities related to the competence of inter-class advisors, class advisers and teaching teams.

...”

B. Relevant case-law of the Court of Cassation

19. The combined divisions of the Court of Cassation has delivered the following judgments in this sphere, the relevant sections of which are reproduced below.

Judgment no. 25011 of 25 November 2014:

“As regards support for pupils with disabilities, the personalised educational plan as defined in section 12 of Law no. 104 of 5 February 1992 requires the school authorities to guarantee the provision of the scheduled number of hours of support, allowing them no discretion to apply any reduced version of the measure on grounds of insufficient resources; this also applies to nursery schools even though they do not come under the compulsory schooling requirement. Thus a failure on the part of the authorities to ensure the provision of the support laid down in the plan restricts the disabled person’s right to equal opportunities in access to school services, and where such restriction is not

¹ Autonomy and communication assistants as provided for in section 13 (3) of Law no. 104 of 1992, are tasked under the applicable regulations with “eliminating barriers to perception and sensorial obstacles”, while educational assistants are responsible for supporting pupils with a view to promoting their autonomy and socialisation at school, as back-up to the support teacher. Their objectives include helping pupils with educational and recreational activities. They help them with personal hygiene and in the school canteen. They may accompany them for cultural and educational excursions. They are tasked with providing “basic assistance” for pupils with disabilities.

² A support teacher is a teacher specifically trained for dealing with all types of disability.

accompanied by a corresponding cut in the educational facilities provided for non-disabled pupils, that restriction will amount to indirect discrimination, a matter within the jurisdiction of the civil courts”

Judgment no. 25101 of 8 October 2019:

“Where, with the help of the teachers in the host school and public health staff, a personalised educational plan has been drawn up setting the number of hours of school support required for a pupil with a very severe disability, the school authorities have no discretionary power to revise or cancel, unilaterally, on the grounds of insufficient resources, the additional support measures set out in that plan. They are therefore required to appoint specialist teaching staff to support the pupil in question, if necessary by creating a support post in derogation from the standard pupil-teacher ratio. Where it has been established that the authorities have completely or partly failed in their duty to provide the necessary services, the disabled person’s fundamental right will have been restricted, and if the educational provision for [non-disabled] pupils has not been reduced to an equivalent extent, the situation will amount to indirect discrimination as prohibited under section 2 of Law no. 67 of 2006. Indeed, indirect discrimination can also stem from a failure to act on the part of the public authorities responsible for organising schooling to the detriment of pupils with disabilities as compared with other pupils. The civil courts therefore hold jurisdiction for such matters, and complainants do not have to explicitly argue in their applications for protection that the authorities in question engaged in discriminatory behaviour”.

Judgment no. 9966 of 20 April 2017, where the Court of Cassation reaffirmed the conclusion of judgment no. 25011 of 25 November 2014, adding the following:

“...private schools must provide disabled pupils with the same support services as those provided by state schools. State subsidies only partly cover the cost of such services. Thus, indirect discrimination attributable to the State authorities consists in a failure to honour the obligation to provide the aforementioned subsidies leading to a reduction in educational and social service provision by private schools, and not a refusal to cover the total cost of such service, which is not incumbent on the authorities.”

II. INTERNATIONAL LAW AND PRACTICE

20. The international materials relevant to the present case are described in *Çam v. Turkey* (no. 51500/08, §§ 37-38, 23 February 2016; see additionally *Zehnalová and Zehnal v. the Czech Republic* (dec.), no. 38621/97, ECHR 2002-V; *Mólka v. Poland* (dec.), no. 56550/00, ECHR 2006-IV; and *Farcaş v. Romania* (dec.), no. 32596/04, §§ 68-70, 14 September 2010).

A. International Covenant on Economic, Social and Cultural Rights

21. Article 13 of the International Covenant on Economic, Social and Cultural Rights provides:

“The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for

human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.”

Article 2 § 2 also provides:

“... the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

22. In General Comment no. 5: Persons with Disabilities, E/1995/22 of 9 December 1994, the UN Committee on Economic, Social and Cultural Rights explicitly stated the following:

“3. The obligation to eliminate discrimination on the grounds of disability

15. Both *de jure* and *de facto* discrimination against persons with disabilities have a long history and take various forms. They range from invidious discrimination, such as the denial of educational opportunities, to more ‘subtle’ forms of discrimination such as segregation and isolation achieved through the imposition of physical and social barriers. For the purposes of the Covenant, ‘disability-based discrimination’ may be defined as including any distinction, exclusion, restriction or preference, or denial of reasonable accommodation based on disability which has the effect of nullifying or impairing the recognition, enjoyment or exercise of economic, social or cultural rights. Through neglect, ignorance, prejudice and false assumptions, as well as through exclusion, distinction or separation, persons with disabilities have very often been prevented from exercising their economic, social or cultural rights on an equal basis with persons without disabilities. The effects of disability-based discrimination have been particularly severe in the fields of education, employment, housing, transport, cultural life, and access to public places and services.”

23. The UN Committee on Economic, Social and Cultural Rights reaffirmed its General Comment no. 5 in its General Comment no. 20: Non-discrimination in economic, social and cultural rights, E/C.12/GC/20 of 2 July 2009, as follows:

“B. Other status

24. The nature of discrimination varies according to context and evolves over time. A flexible approach to the ground of ‘other status’ is thus needed in order to capture other forms of differential treatment that cannot be reasonably and objectively justified and are of a comparable nature to the expressly recognized grounds in article 2, paragraph 2. These additional grounds are commonly recognized when they reflect the experience of social groups that are vulnerable and have suffered and continue to suffer marginalization. ...

Disability

25. In its general comment No. 5, the Committee defined discrimination against persons with disabilities as ‘any distinction, exclusion, restriction or preference, or denial of reasonable accommodation based on disability which has the effect of nullifying or impairing the recognition, enjoyment or exercise of economic, social or cultural rights’. The denial of reasonable accommodation should be included in national legislation as a prohibited form of discrimination on the basis of disability. States parties

should address discrimination, such as prohibitions on the right to education, and denial of reasonable accommodation in public places such as public health facilities and the workplace, as well as in private places, e.g. as long as spaces are designed and built in ways that make them inaccessible to wheelchairs, such users will be effectively denied their right to work.”

B. UN Convention on the Rights of Persons with Disabilities

26. Regard should also be had to the following passages from the Convention on the Rights of Persons with Disabilities (“CRPD”), adopted on 13 December 2006 by the United Nations General Assembly (United Nations Treaty Series, Vol. 2515, p. 3), which Italy signed on 30 March 2007 and ratified on 15 May 2009.

Article 2 – Definitions

“For the purposes of the present Convention:

‘Communication’ includes languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology;

‘Language’ includes spoken and signed languages and other forms of non-spoken languages;

‘Discrimination on the basis of disability’ means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation;

‘Reasonable accommodation’ means 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;

...”

Article 3 – General principles

“The principles of the present Convention shall be:

1. Respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons;

...”

Article 24 – Education

“1. States Parties recognize the right of persons with disabilities to education. With a view to realizing 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 realizing 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 individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.

3. States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. To this end, States Parties shall take appropriate measures, including:

a) Facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring;

..."

C. The Council of Europe

27. The European Social Charter (Revised) (ETS no. 163), which opened for signature on 3 May 1996 and was ratified by Italy on 5 July 1999, includes the following provision:

Article 15 – The right of persons with disabilities to independence, social integration and participation in the life of the community

"With a view to ensuring to persons with disabilities, irrespective of age and the nature and origin of their disabilities, 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 persons with disabilities with guidance, education and vocational training in the framework of general schemes wherever possible or, where this is not possible, through specialised bodies, public or private;

...

3. to promote their full social integration and participation in the life of the community in particular through measures, including technical aids, aiming to overcome barriers to communication and mobility and enabling access to transport, housing, cultural activities and leisure.”

Part V

Article E – Non-discrimination

“The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status.”

28. Recommendation No. R (92) 6 of the Committee of Ministers on a coherent policy for people with disabilities, adopted on 9 April 1992, invites member States to “guarantee the right of people with disabilities to an independent life and full integration into society” and to “recognise society’s duty to make this possible”, in order to ensure that people with disabilities have real “equality of opportunity” with other people. Public authority action must be aimed at ensuring that people with disabilities can “have as much mobility as possible, and access to buildings and means of transport”, “play a full role in society” and “take part in economic, social, leisure, recreational and cultural activities”.

29. Recommendation Rec(2006)5 of the Committee of Ministers to member States on the *Council of Europe Action Plan to promote the rights and full participation of people with disabilities in society: improving the quality of life of people with disabilities in Europe 2006-2015*, adopted on 5 April 2006, lays down several action lines, the fourth of which reads as follows:

Action line no. 4: Education

“3.4.1. Introduction

Education is a basic factor in ensuring social inclusion and independence for all people, including those with disabilities. Social influences, for example from families and friends, also contribute, but for the purposes of this action line education shall cover all stages of life, including pre-school, primary, secondary, high school education and professional training, as well as life-long learning. The creation of opportunities for disabled people to participate in mainstream education is not only important for disabled people but will also benefit non-disabled people’s understanding of human diversity. Most education systems provide access to mainstream education and specialised educational structures for disabled people, as appropriate. Mainstream and specialised structures should be encouraged to work together to support disabled people in their local communities, but this should be consistent with the goal of full inclusion.

3.4.2. Objectives

- i. To ensure that all persons, irrespective of the nature and degree of their impairment, have equal access to education, and develop their personality, talents, creativity and their intellectual and physical abilities to their full potential;

- ii. to ensure that disabled people have the opportunity to seek a place in mainstream education by encouraging relevant authorities to develop educational provision to meet the needs of their disabled population;
- iii. to support and promote lifelong learning for disabled people of all ages and facilitate efficient and effective transitions between each phase of their education and between education and employment;
- iv. to foster at all levels of the educational system, including in all children from an early age, an attitude of respect for the rights of people with disabilities.

3.4.3. Specific actions by member states

- i. To promote legislation, policies and planning to prevent discrimination against children, young people and adults with disabilities in the access to all phases of their education from early years through to adult provision. In doing so, consult with disabled users, parents, and carers, voluntary organisations, and other relevant professional bodies, if appropriate;
- ii. to encourage and support the development of a unified education system, including mainstream and specialised educational provision, which promotes the sharing of expertise and greater inclusion of disabled children, young people and adults in the community;
- iii. to enable the early appropriate assessment of the special educational needs of disabled children, young people and adults to inform their educational provision and planning;
- iv. to monitor the implementation of individual education plans and facilitate a co-ordinated approach to education provision throughout and towards employment;
- v. to ensure that people with disabilities, including children, receive the support required, within the mainstream education system, to facilitate their effective education. In exceptional circumstances, where their professionally-assessed special education needs are not met within the mainstream education system, member states will ensure that effective alternative support measures are provided consistent with the goal of full inclusion. All special and mainstream provisions should encourage the transition to mainstream education and reflect the same goals and standards;
- vi. to encourage the development of initial and ongoing training for all professionals and staff working across all phases of education to incorporate disability awareness and the use of appropriate educational techniques and materials to support disabled pupils and students where appropriate;
- vii. to ensure that all educational material and schemes provided through the general educational system are accessible to persons with disabilities;
- viii. to include, in school civic education syllabuses, subjects relating to people with disabilities as people who have the same rights as all other citizens;
- ix. to ensure that disability awareness is a key part of education programmes in mainstream schools and institutions;
- x. to take steps to make places of education and training accessible for persons with disabilities, including by the provision of personal support and of reasonable adjustments (including equipment) to meet their needs;
- xi. to ensure that parents of disabled children are active partners in the process of the development of the individualised education plans of their children;

xii. to ensure access to non-formal education allowing disabled youth to develop needed skills otherwise unattainable through formal education;

...”

30. For its part, the Parliamentary Assembly of the Council of Europe addressed these matters in its Recommendation 1185 (1992) on rehabilitation policies for the disabled, adopted on 7 May 1992. This text emphasises that “our societies have the duty to tailor their norms to the specific needs of disabled persons in order to ensure that they can live autonomous lives”. To that end, the governments and competent authorities are called upon “to seek and encourage effective and active participation by disabled people in community and social life” and therefore to ensure “the removal of architectural obstacles”.

31. On 30 January 2015 the Assembly adopted Recommendation 2064 (2015), titled “Equality and inclusion for people with disabilities”, which comprises the following passages:

“1. The Parliamentary Assembly refers to its Resolution 2039 (2015) on equality and inclusion for people with disabilities.

2. The Assembly welcomes the contribution of the Council of Europe Action Plan to promote the rights and full participation of people with disabilities in society: improving the quality of life of people with disabilities in Europe 2006-2015 to the development of national policies which take account of the rights of people with disabilities. The action plan has also helped to make people see disability as a human rights issue.

3. The Assembly notes, however, that the full enjoyment of the rights of people with disabilities has by no means been achieved in Council of Europe member States. The principles set out in international instruments are not reflected in the everyday reality experienced by people with disabilities. Resolute action by the Council of Europe and the member States in the area of disability is therefore necessary.

4. The Assembly therefore recommends that the Committee of Ministers:

4.1. evaluate the implementation of the Action Plan for people with disabilities 2006-2015 and draw lessons from the ten-year period during which it was implemented in the member States;

4.2. define on this basis a new road map for the period from 2016 to 2020, in close consultation with the organisations representing people with disabilities;

4.3. focus this new road map on priority issues such as the legal capacity of people with disabilities and the measures aimed at ensuring their dignity and full inclusion in society;

4.4. invite the Council of Europe Development Bank to make compliance with accessibility requirements a condition for granting loans for construction and renovation projects and not to finance the construction of large institutions for people with disabilities;

4.5. ensure that disability is taken into account in the specific activities conducted by the Council of Europe, in particular in Council of Europe activities and campaigns to combat violence and hate speech.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION READ IN CONJUNCTION WITH ARTICLE 2 OF PROTOCOL NO. 1

32. The applicant complained of an infringement of her right to education. In that connection it pointed out that for two whole school years she had been unable to receive the specialist assistance prescribed by law. She also considered that the State had failed in its positive obligation to ensure equal opportunities for persons with disabilities. She relied on Article 2 of Protocol No. 1, which reads as follows:

“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 in conformity with their own religious and philosophical convictions.”

33. The applicant also complained that she had sustained discriminatory treatment on account of her disability, in breach of Article 14 of the Convention. The provision reads as follows:

“The enjoyment of the rights and freedoms 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.”

A. Subject matter of the dispute

34. The Court considers that the core of the applicant’s complaint is the allegation that she sustained discriminatory treatment. She therefore considers that the case should primarily be examined under Article 14 of the Convention read in conjunction with Article 2 of Protocol No. 1 (see, for a similar approach, *Oršuš and Others v. Croatia* [GC], no. 15766/03, §§ 143-145, ECHR 2010, and *Ponomaryovi v. Bulgaria*, no. 5335/05, § 45, ECHR 2011; see also *Enver Şahin v. Turkey*, no. 23065/12, § 32, 30 January 2018), it being understood that the scope of Article 14 of the Convention also covers the prohibition of discrimination based on disability (see, for example, *Glor v. Switzerland*, no. 13444/04, § 80, ECHR 2009), but also the requirement for States to ensure “reasonable accommodation” that would help correct factual inequalities which are unjustified and therefore amount to discrimination.

B. Admissibility

35. The Government pleaded that the application had been lodged out of time. They submitted in particular that the final domestic decision had been

given on 25 May 2015 and that the date stamped on the application form was 30 November 2015.

36. The applicant contested that argument. She submitted that she had sent in her application on 24 November 2015, and that she had therefore applied to the Court on that date. In support of her submissions she presented copies of documents certifying that the application had been sent off on 24 November and, according to the acknowledgement of receipt of the registered letter, had arrived at the Court Registry on 27 November.

37. The Court reiterates that the date on which the six-month time-limit laid down in Article 35 § 1 of the Convention starts running (*dies a quo*) is the date on which the final domestic decision is served on the applicant (see, among many other authorities, *Sabri Güneş v. Turkey* [GC], no. 27396/06, § 60, 29 June 2012), and that, pursuant to Rule 47 § 6 (a) of the Rules of Court, the date on which the application is lodged for the purposes of calculating the six-month time-limit (*dies ad quem*) is the date when the form was dispatched, as shown by the postmark, and not the date stamped by the Registry on the application acknowledging receipt (see *Vasiliauskas v. Lithuania* [GC], no. 35343/05, § 117, ECHR 2015).

38. In the instant case, the Court observes that the final domestic decision was the judgment of the *Consiglio di Stato*. It further notes that the envelope containing the application was dispatched on 24 November 2015, according to the Italian postmark. The Court concludes therefore that the application was indeed lodged within six months of the final domestic decision and that, consequently, it was not submitted out of time.

39. It therefore rejects the Government's objection.

40. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

C. Merits

1. *The parties' submissions*

(a) The applicant

41. The applicant submitted that for two school years she had not been in receipt of the specialist assistance prescribed by Law no. 104 of 1992, despite her parents' many requests. She added that that two-year period, which she considered very lengthy, had coincided with her arrival at primary school, thus jeopardising her chances of progressing and integrating into the school system.

42. She further pleaded that the cost of providing the specialist educational services which she had needed would have had a very minimal impact on the municipal council's budget. She argued that in failing to allocate resources to finance specialist educational services, the local

authorities had chosen not to provide school support for children with disabilities.

43. Relying on the Court's case-law (see *Velyo Velevev v. Bulgaria*, no. 16032/07, ECHR 2014, and *Glor*, cited above), the applicant submitted that the safeguards on the right to education could not be impeded or restricted for budgetary reasons. She added that in the present case, the municipal council had had sufficient resources to introduce the measures to which she had been entitled. She also argued that it transpired from the Court's case-law that the margin of appreciation which the Contracting States enjoyed in balancing the right to education with other interests, in particular those of a financial nature, was considerably reduced, especially in the case of persons with disabilities (see *Glor*, cited above, § 84).

44. Finally, she submitted that budgetary considerations could not justify a violation of the fundamental right to education and that, therefore, the Government had put forward no valid argument in support of the authorities' failure to provide her with the assistance to which she had been entitled under national law, the Italian Constitution and the European Convention.

45. In conclusion, the applicant considered that the present case was essentially characterised by a systematic violation of her right to education.

(b) The Government

46. The Government explained that the reason why the applicant had, in the school years 2010/2011 and 2011/2012, been unable to benefit from all the types of support provided for in section 13 of Law no. 104 of 1992 related to the budgetary cuts laid down in the 2011 Finance Law (Law no. 220 of 13 December 2010), which had explicitly earmarked a specific sum to finance the provision of home help to persons suffering from amyotrophic lateral sclerosis ("ALS"). They pointed out that the amount allocated to the Campania Region (EUR 9,070,000) had proved insufficient to cover all the types of school support once the budget earmarked for ALS sufferers had been deducted. They submitted that that illness was much more serious than that suffered by the applicant.

47. Under those conditions, the Government submitted that the action taken at the local level had been consistent with what could reasonably have been expected of the authorities, having regard to their limited resources. They argued that several measures had been adopted to help the applicant to overcome the difficulties related to her disability and to facilitate her educational integration, submitting that a lack of resources at the regional level had led to a suspension, for two school years, of only one of those measures, which was insufficient to amount to a major infringement of the applicant's right to school support. Underlining, in particular, that the school attended by the applicant had used some of its own resources to provide her with assistance, the Government submitted that in view of the need to prioritise the needs of persons suffering from ALS, the situation had

amounted to a violation neither of Article 14 in conjunction with Article 2 of Protocol No. 1 nor, *a fortiori*, of Article 8 of the Convention.

48. Lastly, the Government argued that while the Court had on many occasions found a violation of the Convention on account of mismanagement or delayed allocation of funds, it had never done so in cases of non-existent funds. Furthermore, even though the region had faced a lack of resources for two successive school years, the school had managed to cope with the situation and had succeeded, under its own steam/by means of its own resources, to provide support to the applicant, who had consistently received the type of support to which she had been entitled for twenty-four hours per week.

1. The Court's assessment

(a) General principles

49. The Court reiterates that it has already had occasion to point out that in a democratic society, the right to education is indispensable to the furtherance of human rights and plays a fundamental role (see *Velyo Velev*, cited above, § 33), and that education is one of the most important public services in a modern State. However, it also acknowledges that education is an activity that is complex to organise and expensive to run, whereas the resources that the authorities can devote to it are necessarily finite. It is also true that in deciding how to regulate access to education, a State must strike a balance between, on the one hand, the educational needs of those under its jurisdiction and, on the other, its limited capacity to accommodate them. However, the Court cannot overlook the fact that, unlike some other public services, education is a right that enjoys direct protection under the Convention (*ibid.*).

50. The Court reaffirms that, in interpreting and applying Article 2 of Protocol No. 1, it must have regard to the fact that the Convention is to be read as a whole, and interpreted in such a way as to promote internal consistency and harmony between its various provisions (see *Stec and Others v. the United Kingdom* (dec.) [GC], nos. 65731/01 and 65900/01, § 48, ECHR 2005-X, and *Austin and Others v. the United Kingdom* [GC], nos. 39692/09 and 2 others, § 54, ECHR 2012). Accordingly, Article 2 of Protocol No. 1 must be interpreted in the light, in particular, of Article 8 of the Convention, which safeguards everyone's right to respect for his or her private life» (see *Catan and Others v. the Republic of Moldova and Russia* [GC], nos. 43370/04 and 2 others, §§ 136 and 143, ECHR 2012).

51. The Court reiterates that in interpreting and applying Article 2 of Protocol No. 1, account must also be taken of any relevant rules and principles of international law applicable in relations between the Contracting Parties and the Convention should so far as possible be interpreted in harmony with other rules of international law of which it forms part (*ibid.*, § 136). Regard

must therefore be had in the instant case to the provisions relating to the right to education set out in instruments such as the European Social Charter (Revised) or the UN Convention on the Rights of Persons with Disabilities (see *Timishev v. Russia*, nos. 55762/00 and 55974/00, § 64, ECHR 2005-XII; *Catan and Others*, cited above, § 136; and *Çam*, cited above, § 53).

52. As regards the prohibition set forth in Article 14 of the Convention, the Court reiterates that discrimination means treating differently, without an objective and reasonable justification, persons in similar situations, and that “no objective and reasonable justification” means that the distinction in issue does not pursue a “legitimate aim” or that there is not a “reasonable relationship of proportionality between the means employed and the aim sought to be realised” (see *Biao v. Denmark* [GC], no. 38590/10, §§ 90 and 93, 24 May 2016; *Molla Sali v. Greece* [GC], no. 20452/14, §§ 135-136, 19 December 2018, and *Çam*, cited above, § 54). However, Article 14 does not prohibit member States from treating groups differently in order to correct “factual inequalities between them”; indeed in certain circumstances a failure to attempt to correct inequality through different treatment may in itself give rise to a breach of the Article (see, among other judgments, *Guberina v. Croatia*, no. 23682/13, § 72, 22 March 2016). Furthermore, the Contracting State enjoys a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment (see *Vallianatos and Others v. Greece* [GC], nos. 29381/09 and 32684/09, § 76, ECHR 2013).

53. When examining a case under Article 14 of the Convention, the Court must have regard to developments in international and European law and respond, for example, to any emerging consensus as to the standards to be achieved (see, *mutatis mutandis*, *Konstantin Markin v. Russia* [GC], no. 30078/06, § 126, ECHR 2012, and *Fabris v. France* [GC], no. 16574/08, § 56, ECHR 2013). To that effect, the Court notes the importance of the fundamental principles of universality and non-discrimination in the exercise of the right to education, which are enshrined in many international (see the relevant international materials in paragraphs 20-31 above). It further emphasises that those instruments have recognised inclusive education, aimed at promoting equal opportunities for all, particularly for persons with disabilities (see *Çam*, cited above, § 64, and the references therein). Inclusive education therefore forms part of the States’ international responsibility in this sphere (see *Enver Şahin v. Turkey* no. 23065/12, § 62, 30 January 2018).

54. The Court also reiterates that if a restriction on fundamental rights applies to a particularly vulnerable group in society, who have suffered considerable discrimination in the past, then the State’s margin of appreciation is substantially narrower and it must have very weighty reasons for the restriction in question. The Court has already identified a number of such vulnerable groups that suffered different treatment on account of their characteristics or status, including disability (see *Glor*, cited above, § 84;

Alajos Kiss v. Hungary, no. 38832/06, § 42, 20 May 2010; *Kiyutin v. Russia*, no. 2700/10, § 63, ECHR 2011; and *Guberina*, cited above, § 73). Moreover, any measure relating to children with disabilities must prioritise the best interests of the child (see paragraph 34 above, Article 7 § 2 CRPD). Nevertheless, in any event, regardless of the State's margin of appreciation, the final decision as to observance of the Convention's requirements rests with the Court (see, among other authorities, *Konstantin Markin v. Russia* [GC], no. 30078/06, § 126, ECHR 2012).

(a) Application of these principles to the present case

(i) Establishing the framework of the assessment

55. The Court observes at the outset that the Italian legal system secures the right of education for children with disabilities in the form of inclusive education in ordinary schools. In Italy all children attend a single type of school throughout their period of compulsory education: children with disabilities are integrated into ordinary classes in State schools, and the State has introduced educational psychology services responsible for ensuring the presence in the relevant classes of a “support” teacher to coordinate the assistants’ activities and co-operate with the class teacher, sharing responsibility with him or her. Where required by the pupil’s situation, other professionals can be called in as “autonomy and communication assistants” tasked with “eliminating barriers to perception and sensorial obstacles”, and educational assistants accompanying the pupil in order to promote his or her autonomy and socialisation (see paragraph 18 above).

56. In the present case the applicant, a non-verbal autistic child, alleged that she had been unable to receive the specialist assistance provided for by law.

57. The Court’s task is therefore to ascertain whether the national authorities effectively honoured their obligations under Article 14 of the Convention, read in conjunction with Article 2 of Protocol No. 1 to the Convention, in respect of the applicant, within their margin of appreciation, and whether they made reasonable accommodation so that she could benefit from the rights secured under Article 2 of Protocol No. 1 in conjunction with Article 14.

58. The Court must therefore assess the readiness of the authorities to react to the situation submitted to them.

(ii) Refusal to provide the applicant with specialist assistance

59. In the instant case the applicant submitted that her inability to receive specialist assistance for her first two years in primary school amounted to discriminatory treatment. On that point, the Court observes that at the material time various legislative provisions set forth the right to education of

children with disabilities and afforded them protection against discrimination (see section on relevant domestic law, paragraphs 17-18 above).

60. The Court emphasises that by providing for the inclusion of children with disabilities in ordinary schooling, the legislature had effected a choice in the framework of its margin of appreciation. It observed that the contents of the case file here show that even though the law provided, in an abstract manner, for making “reasonable accommodation”, without granting the authorities any leeway, the competent national bodies did not actually explain how such accommodation should be effected in the period from 2010 to 2012, and that the applicant was therefore unable to receive specialist assistance tailored to her specific educational needs during that time.

61. Reiterating that the Convention is intended to safeguard concrete and effective rights, the Court pointed out that in the present case it had to have regard to developments in international and European law and respond, for example, to any emerging consensus as to the standards to be achieved in the relevant sphere (see paragraphs 51 and 53 above).

62. The Court thus 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 (see paragraph 26 above). 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” (Article 2, see paragraph 26 above), 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*, cited above, §§ 65 and 67, 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 (see paragraph 54 above).

64. In the instant case, therefore, the Court must verify, in view of the fact that the State had decided to provide the possibility of inclusive education to children with disabilities, whether the authorities had had valid reasons for depriving the applicant of access to specialist assistance (see paragraph 34 above).

65. The Government based its pleadings primarily on the argument that since the only available funds had been earmarked for persons suffering from ALS, the authorities had not had any financial resources readily available for school support. They further submitted that in any event, the school in question had, at its own expense, made arrangements for specialist assistance to be provided by a number of its employees. Nevertheless, they supplied no information on the specific competences of those persons or on the support provided, and no details concerning the timescales involved. The Court further observes in that connection that according to the information communicated, the school had spent EUR 476.56 on the services provided by six persons for one school year.

66. Having regard to the Government's explanations, the Court considers that there can be no doubt that the applicant was unable to continue to attend primary school under conditions equivalent to those enjoyed by non-disabled pupils, and that that difference of treatment had been due to her disability. It can only note that for two whole school years, apart from private assistance paid for by her parents, and a number of interventions by school employees, concerning which the Government provided no further information, the applicant did not receive the specialist assistance to which she was entitled and which would have given her access to the educational and social services afforded by the school on an equal footing with the other pupils.

(i) Proceedings before the administrative courts

67. The administrative courts to which the applicant applied dismissed her claims. They held that the lack of financial resources had justified her inability to receive specialist assistance, without seeking to ascertain whether the authorities had struck a fair balance between her educational needs and the authorities' reduced capacity for meeting those needs, or whether her allegations of discrimination had been justified. In particular, they had failed to ascertain whether the budgetary restrictions relied on by the authorities had had the same impact on the educational services provided for both disabled and non-disabled children.

68. The Court notes that the national authorities had at no stage considered the possibility that the lack of resources or the urgent need to prioritise the treatment of persons suffering from a serious disease could be offset not by tampering with the reasonable accommodation measures guaranteeing equal opportunities for children with disabilities, but by reducing the level of educational provision in a manner divided equitably between the non-disabled and the disabled pupils, even though the Court of Cassation had already stressed that aspect in its judgments (see paragraph 19 above). The Court considers in this regard that, having regard, on the one hand, to the inclusive schooling model adopted in Italy, with a single stream for all pupils, and on the other, to the case-law of the Court of Cassation, any budgetary

restrictions should affect educational provision in an identical manner for both disabled and non-disabled pupils.

69. The Court reiterates in this connection that pursuant to Article 15 of the European Social Charter (Revised) (see paragraph 27 above), States should “promote [the] full social integration and participation [of persons with disabilities] in the life of the community in particular through measures, including technical aids, aiming to overcome barriers to communication and mobility” (see also, in paragraph 26 above, Articles 24 § 2 (c) and (d) and 24 § 3 (a) CRPD). In the present case, the applicant should have received specialist assistance aimed at promoting her personal autonomy and communication skills and improving her learning process, her relationships with others and her integration at school in order to prevent the risk of marginalisation. The Court reiterates that in its Recommendation Rec(2006)5 (see paragraph 29 above), the Committee of Ministers emphasised that “enabling persons with disabilities to participate in ordinary educational structures is important not only for them but also for non-disabled people, allowing the latter to learn about disability as a factor in human diversity”.

(i) *The Court’s conclusions*

70. In the light of all the foregoing considerations, the Court concludes that in the present case the authorities did not seek to determine the applicant’s real needs or possible solutions to enable her to attend primary school under conditions as similar as possible to those enjoyed by other children, without imposing a disproportionate or undue burden on the authorities (see, to converse effect, *Sanlisoy* cited above, in which the Court ruled that a private school’s refusal to enrol the applicant, who was a seven-year-old autistic child, had amounted neither to a systematic negation of his right to education on grounds of his autism, nor to a failure on the part of the State to honour its obligations under Article 2 of Protocol No. 1 read in conjunction with Article 14 of the Convention; and also *Stoian v. Romania* [Committee], no. 289/14, 25 June 2019, in which the Court considered that the national authorities had allocated resources to the schools attended by the applicant, a disabled child, such as to meet his special needs).

71. The Court further holds that the discrimination suffered by the applicant is particularly serious as it occurred in the framework of primary schooling, when the foundations are laid which provides the bases for overall education and social integration and the first experiences of living together – and which is compulsory in most countries (see, *mutatis mutandis*, *Ponomaryovi*, cited above, §§ 56-57).

72. Having regard to all those considerations, the Court concludes that in the present case the Government failed to demonstrate that the national authorities had reacted with the requisite diligence to ensure that the applicant could enjoy her right to education on an equal footing with the other pupils, such as to strike a fair balance between the competing interests.

There has therefore been a violation of Article 14 of the Convention taken in conjunction with Article 2 of Protocol No. 1.

73. Having regard to that conclusion, the Court considers it unnecessary to consider separately the complaint under Article 2 of Protocol No. 1 (see, *mutatis mutandis*, *Darby v. Sweden*, 23 October 1990, § 35, Series A no. 187; *Pla and Puncernau v. Andorra*, no. 69498/01, § 64, ECHR 2004-VIII; *Oršuš and Ithers*, cited above, § 186; and *Çam*, cited above, § 70).

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION IN CONJUNCTION WITH ARTICLE 14

74. The applicant also considered that she had sustained an infringement, which she deemed discriminatory, of her right to respect for her private life. She submitted that the fact that she had not benefited from specialist educational services had harmed her personal and intellectual development and undermined her present and future chances of leading a worthwhile life as a full member of the community.

75. For their part, the Government affirmed that the authorities had adopted appropriate support measures to guarantee the applicant's education, training, socialisation and integration at school.

76. The Court considers that that complaint is closely related to that which it has just examined and that it must therefore also be declared admissible. However, having regard to the observations set out in paragraphs 70 to 72 above, as well as to its finding in paragraph 73, it holds that there is no need to examine it separately.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

77. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Pecuniary damage

78. The applicant claimed 2,520 euros (EUR) in respect of pecuniary damage, explaining that that sum corresponded to the cost of the private specialist assistance paid for by her parents for the 2011/2012 school year.

79. She also requested that the Court award her an equitable amount in respect of non-pecuniary damage. She considered that having regard to the fact that her inability to receive appropriate assistance adequate had impeded her personal development and infringed her right to education and her right to respect for her private life, a sum of EUR 10,000 might be considered fair. However, she left that matter to the Court's discretion.

80. The Government submitted that the applicant's claims lacked any basis in law and that her parents had freely chosen to resort to private specialist assistance.

81. The Court discerned a causal link between the violation found and the pecuniary damage alleged, that is to say the costs incurred by the applicant's parents in providing their daughter with private specialist assistance for the 2011/2012 school year. Having regard to the documents in its possession, the Court considers it reasonable to award the applicant the sum of EUR 2,520 under that head.

82. Further considering that the fact that the applicant had been deprived of specialist assistance for two school years had caused her non-pecuniary damage, the Court considers it appropriate to award her the requested sum of 10 000 EUR under that head.

B. Costs and expenses

83 Submitting documentary evidence, the applicant claimed EUR 4,175 in respect of costs and expenses incurred in the framework of proceedings before the domestic courts, and EUR 8,000 in respect of costs and expenses incurred for the purposes of the proceedings before the Court, that amount having been calculated on the basis of the applicable national rates.

84. The Government considered that the claim for reimbursement of costs incurred in the framework of the domestic proceedings lacked any legal basis.

85. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicant the sum of EUR 4,175 in respect of costs and expenses incurred in the framework of the domestic proceedings, which sum corresponds to the costs paid for the purposes of the proceedings before the administrative courts. On the other hand, it rejects the claim concerning costs incurred for the purposes of the proceedings before it, as the applicant has failed to produce any evidence in support.

C. Default interest

86. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 14 of the Convention read in conjunction with Article 2 of Protocol No.1;
3. *Holds* that there is no need to examine separately the merits of the complaints under Article 2 of Protocol No. 1;
4. *Holds* that there is no need to examine separately the merits of the complaints under Article 8 of the Convention read in conjunction with Article 14;
5. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 2,520 (two thousand five hundred and twenty euros), plus any tax that may be chargeable, in respect of pecuniary damage;
 - (ii) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (iii) EUR 4,175 (four thousand one hundred and seventy-five euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Abel Campos
Registrar

Ksenija Turković
President

G.L. v. ITALY JUDGMENT

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Wojtyczek is annexed to this judgment.

K.T.U.
A.C.

CONCURRING OPINION OF JUDGE WOJTYCZEK

Translation

1. The reasoning of the present judgment gives rise to at least four reservations.

2. The principle of non-discrimination allows courts a very broad judicial discretion (see the dissenting opinion of Judges Pejchal and Wojtyczek appended to the judgment *J.D. and A v. the United Kingdom*, nos. 32949/17 and 34614/17, 24 October 2019). That being the case, more detailed case-law standards must be developed to flesh out the non-discrimination principle and guide the action of the national authorities.

Yet the reasoning adopted in the present judgment would appear hesitant as regards the exact content of the applicable standard. In paragraph 62 it sets out the following principle as a legal basis:

“The Court thus 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 (see paragraph 26 above). 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’ (Article 2, see paragraph 26 above), and discrimination on grounds of disability ‘includes all forms of discrimination, including denial of reasonable accommodation’.” (bold added)

In my view, this formulation is based on a proper interpretation of Article 14. In cases concerning the treatment of persons with disabilities, the principles of equality and non-discrimination require States to make the reasonable accommodation which persons with disabilities are entitled to expect; in other words, those principles require necessary and appropriate modifications and adjustments not imposing a disproportionate or undue burden, where needed in a particular case. I consider that in the present judgment that standard should have been set out and then consistently used throughout the Court’s reasoning.

However, the reasoning of the judgment includes several references to differently worded standards. Paragraph 66 mentions “attend[ing] primary school under conditions equivalent to those enjoyed by non-disabled pupils.” That approach is more demanding than requiring the implementation of reasonable accommodation. In the case of many disabilities, it is impossible, even with huge financial investment, to guarantee for the children in question conditions equivalent to those enjoyed by non-disabled children.

In paragraph 70, the “equivalent conditions” standard is *somewhat* qualified, accompanied by a number of reservations: “enable[-ing] her to attend primary school under equivalent conditions, as far as possible, to those

enjoyed by other children, without imposing a disproportionate or undue burden on the authorities.”

Paragraph 69 sets out yet another standard: “In the present case, the applicant should have received specialist assistance aimed at promoting her personal autonomy and communication skills and improving her learning process, her relationships with others and her integration at school in order to prevent the risk of marginalisation.” The aim here is not to ensure equivalent conditions, but more modestly, to prevent the risk of marginalisation, and nothing more.

3. The reasoning of the judgment highlights the rights secured to children with disabilities in Italy, emphasising the fact that Italian legislation was not applied in the instant case. Such an approach is controversial because it apparently links the violation of the Convention to a failure to comply with national legislation. Yet the issues of compliance with Article 14 and compliance with national legislation are two different matters. Article 14 can be breached without any violation of national legislation. Conversely, measures may be ruled in conformity with Article 14 while being deemed insufficient from the angle of domestic law.

4. In paragraph 68 the Court expresses its view on issues of “distributive” justice, setting out the following opinion on the distribution of available resources:

“The Court notes that the national authorities had at no stage considered the possibility that the lack of resources or the urgent need to prioritise the treatment of persons suffering from a serious disease could be offset not by tampering with the reasonable accommodation measures guaranteeing equal opportunities for children with disabilities, but by reducing the level of educational provision in a manner divided equitably between the non-disabled and the disabled pupils, even though the Court of Cassation had already stressed that aspect in its judgments (see paragraph 19 above). The Court considers in this regard that, having regard, on the one hand, to the inclusive schooling model adopted in Italy, with a single stream for all pupils, and the other, to the case-law of the Court of Cassation, any budgetary restrictions should affect educational provision in an identical manner for both disabled and non-disabled pupils.”

I find these comments problematic because they concern matters relevant to the management of budgetary resources and comprise specific recommendations on how available resources should be distributed. I think it would be better to refrain from putting forward recommendations in this field and to leave States free to choose the financial methods which they consider most appropriate to guarantee the proper enforcement of their obligations under the Convention. I would point out in this connection that in the judgment *Çam v. Turkey* (no. 51500/08, § 66, 23 February 2016), the Court emphasised that “it is not its task to define the resources to be implemented in order to meet the educational needs of children with disabilities” (cf. also the judgment in the case of *Stoian v. Romania*, no. 289/14, § 109, 25 June 2019).

5. The Court also takes a stance on how education should be organised for children with disabilities by expressing the following view:

“It [the Court] further emphasises that those international instruments have recognised inclusive education as the most appropriate means of guaranteeing the aforementioned fundamental principles, as such education is geared to promoting equal opportunities for all, including persons with disabilities (see *Çam*, cited above, § 64, and the references therein). Inclusive education thus indubitably forms part of the States’ international responsibility in this sphere (see *Enver Şahin v. Turkey*, no. 23065/12, § 62, 30 January 2018).”

Inclusive education is indubitably the optimum solution for many disabilities. Nevertheless, it does not always enable the specific needs of children suffering from certain types of disability to be taken into account (see, in particular, *Dupin v. France*, no. 2282/17, 24 January 2019). Some autistic children, in particular, may have special needs in terms of security, tranquillity and acceptance. Scientific research has shown that with such children inclusive education may cause great suffering and be detrimental to their personal development, whereas special schools achieve much better results and can reduce their suffering. Consequently, advocating inclusive education by presenting that approach as the most appropriate solution in general raises questions and prompts reservations.