



Right to education: depriving autistic pupil of statutory specialised learning support amounted to discrimination based on her disability

In today's **Chamber** judgment¹ in the case of [G.L. v. Italy](#) (application no. 59751/15) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 14 (prohibition of discrimination) of the European Convention on Human Rights, in conjunction with Article 2 of Protocol No. 1 (right to education) to the Convention.

The case concerned the inability for a young girl suffering from nonverbal autism (G.L.) to receive specialised learning support during her first two years of primary education (between 2010 and 2012) even though the support was provided for by law. The Government relied, in particular, on a lack of financial resources.

The Court found that G.L. had not been able to continue attending primary school in equivalent conditions to those available to other children and that this difference was due to her disability.

The authorities had not sought to determine the young girl's real needs and provide tailored support in order to allow her to continue her primary education in conditions that would, as far as possible, be equivalent to those in which other children attended the same school. In particular, the authorities had never considered the possibility that a lack of resources could be compensated for by a reduction in the overall educational provision, so that it would be distributed equally between non-disabled and disabled pupils.

The Court further noted that the discrimination suffered by the young girl was all the more serious as it had taken place in the context of primary education, which formed the foundation of child education and social integration, giving children their first experience of living together in a community.

Principal facts

The applicant, G.L., is an Italian national who was born in 2004 and lives in Eboli (Italy).

From the time she started nursery school in 2007, G.L. received learning support for 24 hours a week from a support teacher with specialised assistance, in accordance with Law no. 104 of 1992, in order to improve her inclusion and socialisation – at school and in the classroom – and also her autonomy.

However, this specialised assistance was discontinued during her first year of primary school (2010-2011), at the end of which she repeated her year. In August 2011 and January 2012, the girl's parents twice asked the Eboli municipality to ensure that their daughter would once again receive the specialised assistance provided for by law, but the authority did not respond to their request.

From January 2012 the parents paid for private specialised assistance for their daughter so that she could receive learning support. Two months later, the authority informed them that it would be difficult to restore the specialised assistance provided by the State.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

In May 2012 the parents applied to the Administrative Court and requested that the authority be ordered to pay compensation to their daughter for the failure to respect her right to receive the special assistance provided for by law. Their request was rejected in November 2012. They appealed against this judgment before the *Consiglio di Stato*, which dismissed their appeal in May 2015.

Complaints, procedure and composition of the Court

Relying in particular on Article 14 (prohibition of discrimination) of the Convention in conjunction with Article 2 of Protocol No. 1 (right to education) to the Convention, G.L. complained that, for two school years, she had not received the specialised assistance provided for by law. She also argued that Italy had failed in its positive obligation to guarantee equal opportunities for disabled people.

The application was lodged with the European Court of Human Rights on 24 November 2015.

Judgment was given by a Chamber of seven judges, composed as follows:

Ksenija **Turković** (Croatia), *President*,
Krzysztof **Wojtyczek** (Poland),
Aleš **Pejchal** (the Czech Republic),
Pauline **Koskelo** (Finland),
Tim **Eicke** (the United Kingdom),
Jovan **Ilievski** (North Macedonia),
Raffaele **Sabato** (Italy),

and also Abel **Campos**, *Section Registrar*.

Decision of the Court

[Article 14 \(prohibition of discrimination\) in conjunction with Article 2 of Protocol No. 1 \(right to education\)](#)

The Italian legal system guaranteed the right to education for children with disabilities in the form of inclusive education in mainstream schools. In Italy, all children were enrolled in one type of school for the entire duration of compulsory education: children with disabilities were integrated into the ordinary classes of the State school, and the State had established psycho-pedagogical services to ensure the presence in these classes of a “support teacher”, who coordinated the work of assistants, working with the class teacher and sharing responsibility for the class. In the present case, however, G.L. complained that for two school years she had not received the specialised assistance provided for by law.

As regards the authorities’ refusal to provide G.L. with specialised assistance between 2010 and 2012, the Government had submitted that the authorities did not have sufficient financial resources; they had also stated that the school administration had set up, at its own expense, specialised assistance provided by school employees. According to the information in the file, the school had spent 476.56 euros on the services provided by six people during one school year.

The Court took the view that G.L. had not been able to continue attending primary school in conditions equivalent to those enjoyed by non-disabled students and that this difference in treatment was due to her disability. Thus, for two school years, apart from the private assistance paid for by G.L.’s parents and a few interventions by school employees, about which the Government did not provide any details, G.L. had not received the specialised assistance to which she was entitled and which should have enabled her to benefit from the school’s educational and social facilities in the same conditions as the other pupils.

As regards the proceedings before the administrative courts, those courts had taken the view that the lack of financial resources had explained the failure to provide specialised assistance, without investigating whether the authorities had struck a fair balance between G.L.'s educational needs and the school administration's limited capacity to meet them, or whether G.L.'s allegations of discrimination were well-founded. In particular, they had not enquired as to whether the budgetary restrictions relied on by the authorities had had the same impact on the provision of education for non-disabled and disabled children alike. At no time had the national authorities considered the possibility that the lack of resources or the exceptional need to give priority to the care of persons suffering from a serious condition might be compensated for, not by reasonable adaptations to ensure equal opportunities for children with disabilities, but by a reduction in the overall educational provision so that it was distributed equally between non-disabled and disabled pupils, as the Court of Cassation had already emphasised in its judgments.

The Court found that, taking into account the model of inclusive education adopted in Italy, where all pupils were enrolled in the same classes, and the case-law of the Court of Cassation, any budgetary restrictions had to have an equivalent impact on the provision of education for disabled and non-disabled pupils alike. It also reiterated that, under Article 15 of the Revised European Social Charter, States were required to "to promote [the] full social integration and participation in the life of the community [of persons with disabilities] in particular through measures, including technical aids, aiming to overcome barriers to communication and mobility". Thus G.L. should have benefited from specialised assistance to promote her autonomy and personal communication and to improve her learning, her interaction with others and her integration at school, in order to avoid the risk of being marginalised.

In conclusion, the authorities had not sought to determine the young girl's real needs and provide support tailored to them in order to allow her to continue her primary education in conditions that would, as far as possible, be equivalent to those in which other children attended the same school, without imposing a disproportionate or undue burden on the school administration. The discrimination sustained by the young girl was all the more serious as it had taken place in the context of primary education, which formed the foundation of child education and social integration, giving children their first experience of living together in a community, and which was compulsory in most countries. The Government had not therefore shown that the national authorities had reacted with the requisite diligence to secure to G.L. the enjoyment of her right to education on an equal footing with the other pupils, such as to strike a fair balance between the competing interests at stake. There had thus been a violation of Article 14 in conjunction with Article 2 of Protocol No. 1.

Just satisfaction (Article 41)

The Court held that Italy was to pay G.L. 2,520 euros (EUR) in respect of pecuniary damage, EUR 10,000 in respect of non-pecuniary damage and EUR 4,175 for costs and expenses.

Separate opinion

Judge Woktyczek expressed a separate opinion which is annexed to the judgment.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.