



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR EDUCATION, YOUTH, SPORT AND CULTURE

Directorate for Performance Management, Supervision and Resources
The Director

Brussels
EAC.R.1.002/RL/sml

Aldo Mucci,
Sindacato Generale di Base

Sent by e-mail only
a.mucci@sindacatosgb.it

Subject: Your letter from 24 September 2020, concerning the provision of personal care support to pupils with disabilities in Sicily

Dear Mr. Mucci,

I refer to your letter dated 24 September 2020, addressed to the President of the European Commission, Ms Ursula von der Leyen, and denouncing the changes in the provision of personal care support to pupils with disabilities in Sicily. Considering that the subject-matter of your query falls mainly within the remit of the Directorate-General for Education, Youth, Sport and Culture, we were asked to reply on her behalf.

In your correspondence, you state that personal care support for students with severe disabilities has been provided in schools by parents and other specialised assistants for decades. You point out that the Region of Sicily has decided to abolish funding for external collaborators, leaving the assistants without jobs and the pupils without proper assistance. In your view, this change is an unacceptable violation of the children's right to education. You refer to the UN Convention on the Rights of Persons with Disabilities (hereinafter: UNCRPD), to the Council of Europe's European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: ECHR) and to the Charter of Fundamental Rights of the EU (hereinafter: the Charter). Since you consider that sufficient protection of this right has not been provided at the national level, you request the President of the European Commission to intervene in an urgent and authoritative manner, to help resolve the situation described in your letter.

The issues detailed in your correspondence touch mostly upon the right of the child to education and incidentally also upon the right not to be discriminated against in the area of education on the ground of disability.

At the outset, I would like to point out that, in accordance with the principle of conferral of powers¹, the EU's action in specific areas is limited by the powers accorded to it by the Treaties. Pursuant to Article 6 of the Treaty on the Functioning of the EU (hereinafter: TFEU), in the area of education, the EU has only the power to support, coordinate or supplement Member States' actions. Accordingly, Article 165 TFEU stipulates that the Member States have exclusive competence over the content of the teaching and the organization of their education systems. This competence covers also the regulation of the right to education and the support arrangements for the pupils with disabilities. Article 165 TFEU explicitly excludes harmonisation, at EU level, of laws and regulations of the Member States in the area of education.

The result of such a division of powers is that, in the field of education, the Union may only help Member States achieve better results and it may adopt incentive measures to encourage the Member States' action in the area, but it may not pursue harmonisation of the laws and it cannot review national authorities' acts in the field.

Within the limits of its powers, the EU indeed emphasises the importance of inclusion of children with disabilities in schools. In its policy documents, communications and recommendations, the EU continuously invites the Member States to ensure access to quality education for children with disabilities, whose participation should not be hindered by the lack of appropriate support.² The choice and the means of support however remain within the competence of the Member States, inside which it may be transferred to regional or local levels.

Based on the information available, it appears that in Sicily the authorities have opted for a change in the support model, whereby the personal care support would in the future be provided by the existing, internal school staff, who should undergo a specific training in this regard. The Commission, however, is not in a position to question which form of assistance is more suitable, the one provided by external assistants or the one provided by the school staff. Member States are not only better placed to analyse the needs of their pupils in this regard but are, within the EU framework, legally the ones responsible for carrying out such assessments and providing care to pupils with disabilities. In other words, while the Commission considers that the choice should be guided by the pupils' wellbeing and should aim at enhancing participation of the pupils with disabilities in school and in social life, the Commission does not have the powers to impose a specific policy choice on the Member State.

With regard to the equal treatment of the persons with disability, Article 19 TFEU provides that the Union may take appropriate action to combat discrimination based on, *inter alia*, disability. On this basis, the Union has adopted (or proposed) a number of

¹ Under this fundamental principle of EU law, laid down in Article 5 of the Treaty on European Union, the EU acts only within the limits of the competences that EU countries have conferred upon it in the Treaties. These competences are defined in Articles 2–6 of the Treaty on the Functioning of the EU. Competences not conferred on the EU by the Treaties thus remain with EU countries.

² See, e.g. Council Recommendation of 22 May 2018 on promoting common values, inclusive education, and the European dimension of teaching, ST/9010/2018/INIT, OJ C 195, 7.6.2018, p. 1–5 and Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on achieving the European Education Area by 2025, COM/2020/625 final

legal instruments.³ However, no binding law has yet been adopted on the EU level that would prohibit discrimination based on disability in the field of education.

You correctly point out that Article 14 of the Charter recognises the right to education as one of the fundamental rights in the EU. However, the Charter does not apply to every situation of an alleged violation of fundamental rights. According to its Article 51(1), the Charter applies to Member States only when they are implementing European Union law. Moreover, Article 6(1) TEU states that, “[t]he provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties.” In other words, in order for the Charter to apply in a specific situation, there must be a provision or a principle of Union primary or secondary law that is directly relevant to that situation. In the present case, however – given the Member States’ exclusive responsibility for the organisation and the content of education in their territories and given the inexistence of non-discrimination law in the area of education – there is no EU law relevant to the situation in question. Since there is no EU law that Italy would be implementing when deciding on the support regime for the pupils with disabilities, the Charter does not apply to the situation described in your letter and there are no grounds for the EU oversight in the matter.

Furthermore, when it comes to obligations stemming from the international agreements, to which only the Member States are the parties (and not the EU), it must be stressed that the EU can neither scrutinise nor enforce the implementation thereof. Such is the case of the ECHR, which you invoke in your letter. This Convention is, in fact, a multilateral legal instrument created under the auspices of the Council of Europe (which is an international and not EU organisation) and which thus falls outside the EU’s purview. The EU, consequently, does not have the authority to question Italy’s compliance with the obligations arising from the ECHR.

The situation is somewhat different as regards the UNCRPD, to which both the Member States (on their own right) and the EU (as a whole) are parties. The UNCRPD commits parties to making sure that people with disabilities fully can enjoy their rights on an equal basis with all other citizens. For the EU, this means ensuring that all legislation, policies and programmes at EU level comply with the Convention’s provisions on disability rights, within the limits of EU responsibilities. The EU is required to have a basis to promote, protect and implement the UNCRPD in matters falling under the EU’s competence. This means that the EU is responsible for implementation of the Convention only to the extent of its competences that are defined in Council Decision 2010/48/EC or, more specifically, Annex II thereof.⁴ The Annex reiterates, once again, that the EU competences in the area of education remain limited to supporting and complementing Member States’ action. It thus follows that the EU cannot enforce the Convention in the Member States in the area of education.

³ Directive 2000/43/EC against discrimination on grounds of race and ethnic origin; Directive 2000/78/EC against discrimination at work on grounds of religion or belief, disability, age or sexual orientation; Directive 2006/54/EC on equal treatment for men and women in matters of employment and occupation; Directive 2004/113/EC on equal treatment for men and women in the access to and supply of goods and services, as well as the long-deadlocked Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, COM/2008/0426 final

⁴ Council Decision of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities, OJ L 23, 27.1.2010, p. 35–6

In conclusion, since there is no specific binding EU legislation that would apply in the areas of education and the non-discrimination based on disability in education, the Commission's powers in the situation such as that in Sicily remain limited to support initiatives, recommendations, coordination and monitoring. Intervention in the choice of assistance model in Sicily would thus go beyond the EU's powers in the matter.

Consequently, while understanding that this might disappoint you, I have to point out that your grievances cannot be addressed at the European level and that the Commission cannot act in the way requested in your letter.

I hope, nonetheless, that you will find the above explanations useful and I wish you and the organisation you represent all the best in your future endeavours.

Yours sincerely,

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