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Unveiling the Challenges in the Implementation of Article 24 CRPD on the Right to Inclusive Education. A Case-Study from Italy

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Abstract: Since the 1970s, Italy has undertaken a process of inclusion of children with disabilities in mainstream schools, has implemented an anti-discriminatory educational policy, and abandoned segregated educational practices. In September 2014, the Italian Government initiated a process of “modernization” of the whole educational system, and attempted to fully align domestic legislation with the wide-ranging obligations enshrined in Article 24 CRPD. Law No. 107/2015 on the reform of the educational system empowered the Government to adopt legislative decrees to promote *inter alia* an effective and inclusive education for persons with disabilities. After a long and somewhat troubled process, a legislative decree on inclusive education was finally adopted in April 2017. This article, building upon previous research, critically discusses the innovations brought by this recent reform, situating them in the broader Italian legislative framework on the rights of people with disabilities. By focusing on Italy as a case-study, this article aims to reflect on the challenges surrounding the creation of an inclusionary educational system that goes beyond a mere integration in mainstream schools and ensures full and effective participation of all learners, meeting the standards imposed by Article 24 CRPD.

Keywords: UN Convention on the Rights of Persons with Disabilities; inclusive education; support teacher; Law No 104/1992; Law No 107/2015; legislative decree No 66/2017

1. Introduction

Italy has long implemented an anti-discriminatory educational policy, and abandoned segregated practices in education, by advancing a policy known as “school integration” (*integrazione scolastica*) since the 1970s (Caldin 2013). As noted elsewhere (Ferri 2017), even before the ratification of the UN Convention on the Rights of Persons with Disabilities (CRPD), in 2009,¹ the Italian legislative and policy framework was characterised by a relatively high standard of protection of the right to education of pupils with disabilities (Rossi et al. 2016; Addis 2015; Troilo 2012, 2016; Busatta 2016; Penasa 2014). Despite a progressive legal framework, however, numerous shortfalls have slowly emerged in the Italian school system. In the last few years, several complaints have been brought to court by parents of pupils with disabilities seeking to enforce the right to education, to combat alleged discrimination of disabled pupils at school, and ultimately to challenge the lack of implementation or the incorrect implementation of the legislation in place. The UN Committee on the Rights of Persons with Disabilities (CRPD Committee), in its Concluding Observations (COs) to the Italian Initial Report on the implementation of the Convention (CRPD Committee 2016a), while commending Italy for

¹ Law of 3 March 2009 No 18 ‘Ratifica ed esecuzione della Convenzione delle Nazioni Unite sui diritti delle persone con disabilità, con Protocollo opzionale, fatta a New York il 13 dicembre 2006 e istituzione dell’Osservatorio nazionale sulla condizione delle persone con disabilità’ in Gazzetta Ufficiale (OJ) of 14 March 2009 No 6.

the long-standing commitment in realizing inclusive education for persons with disabilities, has also identified legislative gaps and practical challenges to be addressed in order to fully implement Article 24 CRPD.

In 2014, a new² reorganisation of the Italian educational system was triggered under the government led by Prime Minister Matteo Renzi. The Law No. 107/2015,³ so called “*LaBuonaScuola*” (TheGoodSchool) has commenced a process of reform of various aspects of the educational provision in order to improve its efficiency, to enhance autonomy of schools (Cocconi 2015a, 2015b), and to boost the overall quality of education. It has set forth the criteria and principles that the Government must follow when adopting legislative decrees that regulate specific aspects of the educational system. Law No. 107/2015 also has *inter alia* engaged with many aspects related to the education of students with disabilities, empowering the Government to adopt a legislative decree on inclusive education. This Decree (No 66/2017)⁴ on inclusive education was finally adopted in April 2017, after a relatively long and somewhat troubled process. Against this background, this article, building upon previous research (Ferri 2017, 2018a), aims to discuss the innovations brought by the Law No 107/2015 and its implementing Legislative Decree No. 66/2017, situating them in the broader Italian legislative framework. By focusing on Italy as a case-study, it endeavours to provide a timely reflection on the challenges surrounding the creation of an inclusionary educational system that goes beyond a mere integration in mainstream schools and ensures full and effective participation of all learners as envisaged by Article 24 CRPD. After this introduction, the remainder of this article is divided into five sections. Building on the broad array of literature on the topic (Arnardóttir 2011; Broderick 2014; De Beco 2014; Shaw 2014; Cera 2015; Della Fina 2017), Section 2 begins with a short account of the obligations laid down in Article 24 CRPD, and examines the normative meaning of the concept of “inclusive education” purported by this provision. Section 3 briefly presents the Italian legal framework on the right to education of persons with disabilities. Section 4 discusses the most salient features of educational policy for persons with disabilities, and critically analyses its practical implementation in light of domestic case law. Section 5 examines the most recent developments: the new Law No. 107/2015 and the Legislative Decree No. 66/2017. This section does not discuss the new reform in its entirety. Rather it focuses on those provisions that purport innovations in respect to the inclusion of pupils with disabilities in schools. Taking into account the extreme complexity and intricacy of the Italian system, the section does not delve into the technicalities of the Decree, but aims to highlight in a general fashion some of the most notable provisions, assessing them vis a vis Article 24 CRPD. Section 6 concludes by reflecting on the challenges in the implementation of an inclusive and rights-based educational system encountered in Italy and by highlighting the extent to which the new Italian legislation might provide an example of good practice to other States Parties.

2. The Right to Inclusive Education in the UN Convention on the Rights of Persons with Disabilities

2.1. Inclusive Education in Article 24 CRPD

The CRPD recasts disability as a social construction and “brings a human rights dimension to disability issues” (De Beco 2014, p. 269). It embraces the view that disability stems primarily from the failure of the social environment to meet the needs and aspirations of people with disabilities, and is underpinned by the principles of non-discrimination and equality, which encompass the right to reasonable accommodation (Seatzu 2008; Kayess and French 2008). Its innovative character arises from its elaboration of existing human rights within the disability context. The CRPD does not simply

² The Renzi reform is the latest (and probably the most ambitious) of a series of reforms of the educational system that have been launched since the late '1990s. An account of these reforms until 2011 has been traced by Grimaldi and Serpieri (2012).

³ In OJ of 15 July 2015 No 162.

⁴ In OJ of 16 May 2017 No. 122.

prohibit discrimination on the grounds of disability, but covers the whole spectrum of civil, political, economic, cultural and social rights. The CRPD specifically proclaims the right of persons with disabilities to education in Article 24. This provision is very wide and must not be interpreted in isolation. Rather, it must be read in conjunction with other rights provided in the text and in light of the general principles of the Convention, enunciated in Article 3.⁵ The overall obligation Article 24 purports is the realization of an inclusive education system at all levels.

Article 24 CRPD, which is the first international legally binding instrument to contain a reference to the concept of quality inclusive education (Broderick 2014), builds on established soft law, such as the Jomtien World Declaration on Education for All (1990), the United Nations Standard Rules on Equalization of Opportunities for Persons with Disabilities (1993), and the Salamanca Declaration and Framework for Action (1994). However, Article 24 CRPD does not give a normative definition of inclusive education. The CRPD Committee has tried to fill this *lacuna*. It seems to have embraced the view of inclusion as “a dynamic approach of responding positively to pupil diversity and of seeing individual differences not as problems, but as opportunities for enriching learning”, already advanced by the UNESCO (UNESCO 2005, p. 12), and has conceptualised inclusive education (CRPD Committee 2016b, para. 10) as

- (a) A fundamental human right of all learners. Notably, education is the right of the individual learner and not, in the case of children, the right of a parent or caregiver. Parental responsibilities in this regard are subordinate to the rights of the child;
- (b) A principle that values the well-being of all students, respects their inherent dignity and autonomy, and acknowledges individuals’ requirements and their ability to effectively be included in and contribute to society;
- (c) A means of realizing other human rights. It is the primary means by which persons with disabilities can lift themselves out of poverty, obtain the means to participate fully in their communities and be safeguarded from exploitation. It is also the primary means of achieving inclusive societies;
- (d) The result of a process of continuing and proactive commitment to eliminating barriers impeding the right to education, together with changes to culture, policy and practice of regular schools to accommodate and effectively include all students.

In its General Comment No 4, the CRPD Committee has also sought to trace the boundaries among the concepts of exclusion, segregation, integration and inclusion in education, and clarified which actions are needed to ensure that children with disabilities participate within the mainstream education system and to fully fulfil the obligation included in Article 24 (CRPD Committee 2016b, para. 11). According to the Committee, exclusion “occurs when students are directly or indirectly prevented from or denied access to education in any form”, while segregated education is “provided in separate environments designed or used to respond to a particular or various impairments, in isolation from students without disabilities”. The Committee also contrasted integration as a “process of placing persons with disabilities in existing mainstream educational institutions, as long as the former can adjust to the standardized requirements of such institutions”, with inclusion. The latter “involves a process of systemic reform embodying changes and modifications in content, teaching methods, approaches, structures and strategies in education to overcome barriers with a vision serving to provide all students of the relevant age range with an equitable and participatory learning experience and environment that best corresponds to their requirements and preferences”. The Committee also made it clear that placing students with disabilities within mainstream schools, without accompanying support

⁵ Article 3 enunciates the Convention’s general principles, which include: respect for individual dignity, autonomy, and independence; respect for difference and acceptance of disability as human diversity; non-discrimination; equal opportunity; complete and meaningful participation; accessibility; gender equality; and respect for children’s rights and support for their evolving capabilities.

and structural changes to the curriculum and teaching and learning strategies, does not accomplish the obligations laid down in Article 24 CRPD.

As highlighted by [De Beco \(2014, p. 287\)](#) Article 24 CRPD closely follows the social model of disability, since it requires Parties to achieve a truly inclusive non-discriminatory educational system by removing all the barriers to participation. In other words, in order to achieve an inclusive educational system States Parties must ensure that persons with disabilities can access an inclusive, quality and free primary and secondary education on an equal basis with others.

2.2. Overview of the Obligations of States Parties under Article 24 CRPD

Article 24(1) CRPD requires States Parties to guarantee inclusive education for all persons with disabilities at all levels and to ensure inclusive lifelong learning opportunities. Article 24(2) lists a series of measures that States Parties are required to adopt to create an inclusive educational system. As noted in a study of the Office of the High Commissioner for Human Rights ([OHCHR 2013](#)), these measures are not to be read separately one another, rather must be interpreted jointly, and in light of other provisions of the Convention. Without providing a detailed discussion (for further details see: [Della Fina 2017](#); [Broderick 2014](#)), we limit ourselves to highlight that Article 24(2)(b) CRPD, read in conjunction with the general principle of accessibility, prescribes that the entire education system is accessible, “including buildings, information and communication, comprising ambient or frequency modulation assistive systems, curriculum, education materials, teaching methods, assessment and language and support services”. An inclusive system should reflect “Universal Design”, which is recognised by the CRPD, and should be accessible to all students, to the greatest extent possible, without the need for specific adaptation. However, reasonable accommodation must be provided to students with disabilities when needed (Article 24(2)(c) CRPD), together with “effective individualized support measures . . . in environments that maximize academic and social development, consistent with the goal of full inclusion” (Article 24(2)(e) CRPD). Reasonable accommodation is designed to meet the specific needs of a person with a disability in a particular case, and concerned with the removal of the specific disadvantage to which a disabled student would otherwise be subjected by standard educational practices or systems. The CRPD Committee has clarified that accommodations include “changing the location of a class, providing different forms of in-class communication, enlarging print, materials and/or subjects in sign, or providing all handouts in an alternative format, providing students with a note-taker, or a language interpreter or allowing students to use assistive technology in learning and assessment situations” or “allowing a student more time, reducing levels of background noise” ([CRPD Committee 2016b](#), para. 30). Support measures appear to be methods that “supplement the reasonable accommodations and add a human rights dimension to the right to education of persons with disabilities” ([De Beco 2014](#)). Examples of the latter according to the Committee are “the provision of sufficient trained and supported teaching staff, school counsellors, psychologists, and other relevant health and social service professionals, as well as access to scholarships and financial resources” ([CRPD Committee 2016b](#), para. 32).

Article 24(3) CRPD requires State Parties to “enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education”, including Braille and sign-language, and to “train professionals and staff who work at all levels of education”. Notably, this provision places a specific emphasis on the promotion of the linguistic identity of Deaf people, which is also mentioned in Article 30(4) CRPD⁶. According to [Della Fina \(2017, p. 455\)](#), the purpose of Article 24(3) is to guarantee that people with sensory impairments are not excluded from the

⁶ Article 30 CRPD, which provides the right of persons with disabilities to participate in cultural life, requires Parties to the Convention to take all appropriate measures to ensure that persons with disabilities have access to cultural materials, television programmes, films, theatre and other cultural activities, but also to places for cultural performances or services, monuments and sites. This Article provides for recognition and support of specific cultural and linguistic identity of persons with disabilities, including sign languages and deaf culture (for further discussion see [Ferri 2014](#)).

mainstream education system and receive instruction in the appropriate languages, modes, and means of communication in environments that maximize their development. This provision sets forth the only exception to inclusive education, allowing the education of blind, deaf, and deafblind children in special schools (Della Fina 2017; De Beco 2014; Broderick 2014). As discussed by Arnardóttir (2011), Article 24 CRPD confers the right to *choose* an inclusive education, thus attempting to strike a balance between the goal of full inclusion and the need, in very limited cases, of special education to meet specific needs of learners with disabilities.

Article 24(4) CRPD requires States Parties to take appropriate measures to employ qualified teachers having skills to teach in an inclusive environment. The CRPD Committee has stated that to fully implement this particular obligation, “States parties must ensure that all teachers are trained in inclusive education and that that training is based on the human rights model of disability” (CRPD Committee 2016b, para. 36). It has also affirmed that

States parties must invest in and support the recruitment and continuous education of teachers with disabilities. This includes removing any legislative or policy barriers requiring candidates to fulfil specific medical eligibility criteria and the provision of reasonable accommodations for their participation as teachers. Their presence will serve to promote equal rights for persons with disabilities to enter the teaching profession, bring unique expertise and skills into learning environments, contribute to breaking down barriers and serve as important role models. (CRPD Committee 2016b, para. 37)

Lastly, Article 24(5) CRPD reaffirms the right of persons with disabilities to access to general tertiary education, vocational training, adult education and lifelong learning, on an equal basis with others.

All in all, Article 24 CRPD adopts a holistic approach (Palmer 2013). It places on State Parties various obligations, which require them to value the diversity of students with disabilities and to support different abilities in mainstream schools. While being subject to progressive realization within the maximum available resources, as stated by Article 4(2) CRPD, the implementation of the right to education must in fact be assured through the effective allocation of adequate financial and human resources, and the establishment of monitoring mechanisms (Broderick 2014).

3. The Right to Education of Persons with Disabilities in Italy: Overview of the Legal Framework

3.1. The Constitutional Framework

The general principle of protection and promotion of the rights of persons with disabilities, and in particular of their right to education, is anchored to Article 2 of the Italian Constitution (IC), which recognizes and guarantees “the inviolable rights of the person, both as an individual and in the social groups where human personality is expressed”.⁷ It is also informed by Article 3(1) IC, that provides for the principle of non-discrimination on the grounds of sex, race, language, religion, political opinion, and personal and social conditions, and by Article 3(2) IC, which establishes the principle of substantive equality. According to the latter provision, the State is called to remove the social and economic obstacles that limit the freedom and equality of the citizens and prevent the full development of the human being.

The right to education of persons with disabilities stems from different constitutional provisions, which must be read in combination, in light of the constitutional principles laid out in Articles 2 and 3 IC. Article 33 IC obliges the State to provide a State-school system accessible to all children and affirms the freedom for organisations and individuals to set up private schools with no cost for the

⁷ The English translation of the Italian Constitution is published by the Parliamentary Information, Archives and Publications Office of the Senate Service for Official Reports and Communication and can be found at http://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf (accessed on 1 September 2017).

State. Article 34 IC establishes in general terms that “[s]chools are open to everyone”, and that primary education, offered for at least eight years, is compulsory and free of tuition fees. Article 38(3) IC affirms that “disabled and handicapped persons are entitled to receive education and vocational training”. A wide interpretation of the latter provision in combination with Articles 2 and 3 IC, has led the Italian Constitutional Court to shift from a paternalistic-charitable model of care to a social model oriented view of disability around the mid-eighties, and to spell out a wide-ranging right to inclusive education for people with disabilities (Colapietro 2011).

Since Italy is a regional State, besides the abovementioned provisions concerning the right to education, the IC sets forth the division of competence over educational matters between the State and the Regions. Art 117(1)(n) IC confers on the State the exclusive power to lay down “general provisions on education”.⁸ The Constitutional Court has established that these “general provisions on education” are concerned with the “basic characteristics” of the educational system,⁹ and comprise: the general organisation of the system, the protection and promotion of the autonomy of each educational institution (Cocconi 2015b), the freedom to open private schools and parity between public and private (non-governmental) schools, minimum numbers of school hours per year, the teacher/student ratio, State financial resources, and also the inclusion of people with disabilities (Troilo 2012). When legislating on the basic characteristics of the school system, the State also addresses (and manages through the Ministry of Education, University and Research), two core components: teachers’ qualifications and recruitment, as well as salaries.¹⁰

3.2. The Right to Education of Students with Disabilities in National Legislation

Within this constitutional framework, and long before the approval of the CRPD, when the global scene was still dominated by segregation policies, Italy represented an exceptional example of non-discriminatory educational legislation. The first provisions laying down the conditions and instruments necessary to ensure school integration of pupils with disabilities date back to the 70s. In particular Art. 28 of Law No. 118/71,¹¹ as interpreted by the Italian Constitutional Court in its decision No. 215/1987, and Law No. 517/77¹² (Addis 2015). The latter piece of legislation has been deemed to purport a change in society by stimulating acceptance of disability as part of human diversity (OECD 2007).

Law No. 104/1992 (“Framework Law for Care, Social Integration and Rights of Persons with Disabilities”),¹³ which aims to remove obstacles, improve access and make it possible for disabled people to enjoy mainstream services and facilities (Siclari 2015), re-affirms the right to education and pursues “*integrazione scolastica*” in order to develop the abilities of person with disabilities. This piece of legislation also requires individualized plans for students with disabilities (*Piano educativo individualizzato—PEI*)¹⁴ and the supply of didactic tools and assistive technology to schools, as well as

⁸ This Article must be read in conjunction with Article 33(3) IC that affirms that ‘[t]he Republic lays down general rules for education’.

⁹ Italian Constitutional Court, Judgment No 200/2009.

¹⁰ In addition, Art 117(1)(m) IC empowers the State to determine ‘the basic level of benefits relating to civil and social entitlements to be guaranteed throughout the national territory’. The latter competence is aimed at ensuring equality of treatment among users who benefit from the educational services (and more generally social services) across the national territory. Such a cross-cutting national competence implies that whenever a regional law provides for benefits related to social rights (including the right to education), it must be subordinated to the national law that establishes the minimum standards with regard to those rights.

¹¹ Law of 30 March 1971 No. 118, ‘Conversione in legge del D.L. 30 gennaio 1971 n. 5 e nuove norme in favore dei mutilati ed invalidi civili’ in OJ 2 April 1971 No 82.

¹² Law of 4 August 1977 No 517 ‘Norme sulla valutazione degli alunni e sull’abolizione degli esami di riparazione nonché altre norme di modifica dell’ordinamento scolastico’ in OJ 18 August 1977 No 224.

¹³ Law of 5 February 1992 No 104, ‘Legge-quadro per l’assistenza, l’integrazione sociale e i diritti delle persone handicappate’ in OJ 17 February 1992 No 39.

¹⁴ This article will use the Italian acronym *PEI* in subsequent sections, as the acronym is commonly used in Italian scholarship on the topic.

other forms of technical assistance, when needed. Inclusion is, in practice, ensured by support teachers who provide additional individual instruction and educational support in order to meet the needs of each student with a disability.¹⁵ As national courts have affirmed in different occasions, the support teacher's role is complementary to that of the classroom teacher (Manca 2010, pp. 337–38). Law No. 104/1992 also recognizes homeschooling for those who are temporarily unable to attend school.

In 2010, Law No. 170/2010¹⁶ was passed in order to ensure the right to education to children with “specific learning difficulties” (*Difficoltà Specifiche di Apprendimento*—DSA), i.e., children with difficulties in reading (Dyslexia), writing (Graphic Dyslogia and Dysorthography), or in computing (Discalculia or numeracy problems). The general objective of this act is to give these children equal educational opportunities to successful and efficient education in accordance with their needs and abilities in mainstream schools, implementing teachers' preparation, ensuring a collaboration among teachers, parents and experts of the health services, envisaging targeted flexible educational plans. This law affirms the need for specialized training for teachers in supporting learners with these disabilities, recognizing that it is one of the major challenges to the full and effective inclusion of persons with disabilities in the education system.

Since its inception, no major changes to this framework have been introduced. The main previous reform of the education system (Law No 53/2003¹⁷) did not include any specific provision on the education of people with disabilities, and limited itself to making explicit reference to Law No 104/1992. In 2008, the Budget Law 2008,¹⁸ as part of general austerity measures and budget cuts, fixed a maximum number of support teachers for children with disabilities who attend classes in public schools, and abolished the possibility (provided for in Article 40(l) of Law No 104/1992) of hiring additional support teachers under fixed-term contracts, who would provide specific educational assistance to children with severe disabilities. However, these provisos were referred to the Italian Constitutional Court (ICC) upon the request of the Sicilian Administrative Council. In its judgment, No 80/2010, the ICC declared them unconstitutional and affirmed that they infringed the fundamental right of education of children with disabilities, set forth in Art 38(3)(4) IC, and violated the principle of equality. Interestingly, the ICC in defining the ‘content’ of the fundamental right to education for persons with disabilities referred to Article 24 CRPD, in support of its reasoning. Overall, the Court argued that the core minimum guarantees to make the right to education of students with disabilities effective cannot be subject to financial conditions. The ICC pointed out that it is for the legislature to provide appropriate tools to implement the right to education, but underlined that legislative provisions cannot undermine the realisation of a fundamental right by making it conditional on the availability of financial resources (Ferri 2014, 2018b; Ferrari 2012). A recent case, which was decided by the ICC, reaffirmed that the right to education of people with disabilities must be effectively ensured, and that financial constraints cannot undermine the enjoyment of this fundamental right for people with disabilities.¹⁹ In essence, the ICC reiterated that a formal recognition of the right by the legislation is not sufficient if the right is not guaranteed in practice (Blando 2017). The case concerned the transport of students with disabilities to school and their assistance. The Abruzzo regional law provided for a grant to be given to local authorities so that they could ensure transport and assistance to students with disabilities only “within the limits of available funds determined by the annual budget law”. In doing so, the law made the regional contribution aimed at implementing the right of students with disabilities to transport services conditional and subject to budget constraints. The ICC, in line with its decision No. 80/2010, held

¹⁵ Support teachers are qualified teachers who must also obtain further specialized postgraduate training, the requirements of which are established in various bylaws, mainly ministerial decrees.

¹⁶ Law of 8 October 2010 No 170 ‘Nuove norme in materia di disturbi specifici di apprendimento in ambito scolastico’ in OJ 18 October 2010 No 244.

¹⁷ Law of 28 March 2003 No 53 ‘Delega al Governo per la definizione delle norme generali sull’istruzione e dei livelli essenziali delle prestazioni in materia di istruzione e di formazione professionale’ in OJ 2 April 2003 No 77.

¹⁸ Namely Art 2 paras 413 and 414 of the Law 24 December 2007 No 244 in OJ 28 December 2007 No 285.

¹⁹ Italian Constitutional Court, Judgment No 275/2016.

the regional provision to be unconstitutional. In particular, the Court believed that transportation services for students with disabilities are necessary to guarantee the right to inclusion for persons with disabilities and are an essential element in ensuring the participation of these pupils within the educational process.

4. Italian Educational Policies in a Nutshell and Their (Challenging) Implementation

In spite of the progressive legislative framework, highlighted above, and despite the role played by the ICC in safeguarding the full enjoyment of the right to education for students with disabilities, territorial divides (ISTAT 2016) and flaws have emerged in educational provision and in the actual implementation of Law No. 104/1992.

Territorial differences and mixed practices are partially due to the fact that Italian educational policy system is highly decentralised, and informed by the principle of subsidiarity and the principle of autonomy of schools and educational institutions.²⁰ The Ministry of Education, University and Research (MIUR) is generally responsible for educational policy at a national level. Regional School Offices—RSOs, local authorities and schools play a substantive role in the actual provision of educational services. Schools, in particular, are ultimately responsible for the practical implementation of inclusive education. They define curricula and educational offerings, organise teaching, assign support teachers, allocate hours of support and lay down the individualized education plan (PEI). Empirical research has shown that the autonomy of schools has *de facto* led to inclusive practices to be extremely heterogeneous across the territory (Anastasiou et al. 2015). In 2009, after the ratification of the CRPD, the Ministry adopted new “Guidelines on School Inclusion of Pupils with disabilities”,²¹ which collate a set of recommendations to improve the inclusion of children with disabilities (inspired by the CRPD), and to orient the action of both RSOs, and schools. Despite these guidelines and the MIUR’s attempt to centrally orient the action of schools, Dovigo (2016) affirms that inclusion too often depends on the single educational setting, on “local customs”. This author also claims that inclusive education is essentially “shaped” by individual school managers and teachers, and the interpretation of what constitutes an inclusive setting “differs widely among schools, and sometimes even among classes in the same school”.

Statistic data have shown that there are gaps in educational provision and a lack of continuity in the support provided by teachers in schools (ISTAT 2016; Ferri 2018a). Lack of continuity in the support offered by support teachers is also due to the fact roughly 30% of support teachers ask for redeployment as main classroom teachers five years after obtaining their qualification (Devecchi et al. 2012). The reasons behind requests of redeployment are various, but educational research highlights that working conditions of support teachers are often draining and relationship with children, families, other teachers, and other professionals is, in several cases, problematic (Devecchi et al. 2012; Janes et al. 2014).

Limited gaps in the legislation have emerged mainly in regards to accessibility of information and communication and accessibility of educational content, and in respect to the lack of legal recognition of alternatives modes of communication (CSS 2016), and Italian Sign language (*Lingua Italiana dei Segni—LIS*). The CRPD Committee, in its COs to the Italian Initial Report on the implementation of the Convention (CRPD Committee 2016a), also highlighted the lack of availability with regard to accessible learning materials and the lack of assistive technology. In addition, the Committee acknowledged that deaf children are not provided with LIS interpreters in school, and recommended Italy “desist from recommending general communication assistants as an exclusive alternative”.

The most serious flaws concern the lack of provision of adequate support to students and are due to the failure to properly implement the legislation in place. This has been highlighted by the shadow

²⁰ These principles are established in the Italian Constitution. The principle of autonomy of schools is implemented by means of the Decree of the President of the Republic No 275 of 8 March 1999 in OJ 10 August 1999 No 186 providing schools with didactic, organisational and research autonomy.

²¹ Ministero dell’Istruzione, Prot.n 4274.

report on the implementation of the CRPD of the Italian Disability Forum to the CRPD Committee (IDF 2016a, 2016b). The Italian National Observatory on the Situation of Persons with Disabilities²² also underlined need to improve the operation of the existing system, and to make sure that the right to inclusive education is fully enjoyed by people with disabilities in practice in their everyday life.²³ Gaps have emerged through a series of court cases, mostly initiated by parents of children with learning or intellectual disabilities, in which the parents challenged the appropriateness of existing provision for their children. The National Statistic Office (ISTAT) detected that approximately 8% of families of primary school pupils and 5% of those in the secondary school level have appealed to the District Court or the Regional Administrative Court to obtain an increase in support hours. In almost all the cases that ended up in Italian administrative courts, the applicants asked for the annulment of the individual educational plan (PEI) adopted by the public educational institution limiting the number of support teacher hours available to the relevant student (Lottini 2011). Usually, the applicants claimed their right to benefit from the support teacher either for a greater amount of time or for the entire time of school attendance. In some cases, the applicant alleged *inter alia* the violation of the CRPD as ratified by Law No 18/2009.²⁴ In the majority of cases, administrative courts have annulled the contested measures and held that the ‘*quantum*’ of the teaching support essential to enjoying that right has to be determined exclusively in relation to the need of the student with disabilities, and no other interests can be taken into consideration, not even in case of understaffed administrations.²⁵ In general, the ordinary district courts were asked to decide cases in which the applicants had filed a complaint outlining discrimination on the grounds of disability. Primarily, the applicants challenged decisions made by public schools to reduce the employment contract of a support teacher to a limited number of hours due to budgetary concerns, and maintained that these constituted an unlawful discrimination and infringements of the fundamental right to education. So far, Italian courts have held that the constitutional and legislative framework in place, read in conjunction or in light of the CRPD, effectively guarantees disabled students the support measures necessary to substantially enjoy the right to education, but make evident a failure to properly implement the legislation in force (Ferri 2017, 2018a, 2018b).

5. The Reform of the Educational System and Inclusive Education: A Step Change?

5.1. Law No. 107/2015 and Inclusive Education

As mentioned above in the Introduction, in September 2014, the Italian Government initiated a process of modernization of the whole Italian educational system and put on the table an additional funding of €3 billion to recruit school teachers and additional staff, but also to innovate facilities and introduce high-speed internet and Wi-Fi in all schools. Law No. 107/2015 (*Riforma del sistema nazionale di istruzione e formazione e delega per il riordino delle disposizioni legislative vigenti*), so called

²² The Italian National Observatory on the Situation of Persons with Disabilities (*Osservatorio Nazionale sulla condizione delle persone con disabilità*) was created in order to implement Article 33(2) CRPD. It was meant to constitute the independent mechanism, but is organisationally placed within the Ministry of Labour and Social Policies, which finances it, and is chaired by the Ministry. It includes representatives of various ministries, including the MIUR, local authorities, Social Security Institutions, the National Statistics Institute, social partners (trade unions and industry organisations), as well as independent experts and DPOs. While it has monitoring tasks, the National Observatory is also a consultative body in charge of technical support for the elaboration and supervision of national disability policies. It promotes the implementation of the Convention, and prepares cross-cutting biannual action plans for promoting the rights of persons with disabilities across the whole range of policies, with a view to achieving the objectives established by the CRPD and by the European Disability Strategy. The First Bi-annual Action Plan on Disability was adopted by the National Observatory in 2013 (Decree of the President of the Republic of 4 October 2013 ‘*Programma di azione biennale per la promozione dei diritti e l’integrazione delle persone con disabilità*’ OJ 28 December 2013 No 303).

²³ Decree of the President of the Republic of 4 October 2013 ‘*Programma di azione biennale per la promozione dei diritti e l’integrazione delle persone con disabilità*’ OJ 28 December 2013 No 303.

²⁴ E.g., TAR Lombardia, Sez. 3, No 1895/2014.

²⁵ E.g., TAR Calabria, Sez. 3, No 831/2011.

“*LaBuonaScuola*” (TheGoodSchool) has started an overall reform of Italian schools touching upon different aspects of the educational provision, including that of inclusive education (Cocconi 2015a). Being a delegation law,²⁶ Law No. 107/2015 provides for general principles and benchmarks that the Government must respect and follow when adopting legislative decrees (which have the same rank as ordinary laws) laying down detailed provisions.

Law No. 107/2015, along the lines traced by Law No. 104/1992, and similarly to its predecessors, aims to ensure that persons with disabilities are not excluded from the mainstream education system on the basis of disability, but included into regular schools and provided with adequate support for their inclusion. It is evident that this reform Law situates itself in continuity with precedent legislation on education and must be read in light and in combination with Law No. 104/1992.²⁷ Under Law No. 107/2015, schools remains responsible for defining educational offerings, organising teaching, assigning support teachers, allocating hours of support and laying down the *PEI* for each student with a disability. Article 1(14) of Law No 107/2015 requires schools to take into account the number of students with disabilities when indicating the overall number of support teachers needed and when organizing teaching activities. School directors have the power to reduce the number of students per class “in order to improve the teaching quality, also in relation to the needs of pupils with disabilities” (Art. 1(84)). These provisions are clearly aimed to ensure an effective education for students with disabilities. They seem, as envisaged by the CRPD Committee,²⁸ to require schools to fully respect the well-being of all students and to adequately assess the individuals’ requirements and needs.

Article 1(24) of the Law explicitly states that teaching provided to students with disabilities will be ensured through the recognition of different modes of communication. Law No 104/1992 refers, in Article 13(1)(a), to assistive and technical devices to ensure the right to education, and, in Article 13(3) includes a generic reference to the duty of schools to provide “assistance for the autonomy and personal communication of pupils with physical or sensory handicaps”. However, it does not mention augmentative and alternative forms of communication. Hence, Article 1(24) seems to fill a legal vacuum and appears to be innovative. It seems also to implement (at least partially) the obligation included in Article 24(3) CRPD. This provision could also be seen as a gateway to ensure *LIS* interpreters in schools, which had been so far neglected, as noted by the CRPD Committee (CRPD Committee 2016a).²⁹ This provision will soon be complemented by the law on the formal recognition of *LIS* and of Deaf people as a linguistic community, currently under discussion in the Italian parliament.³⁰ Once approved, this law will further guarantee the teaching of the sign language in primary and secondary primary schools, as well as the use of the *LIS* interpreters in high schools and universities. Regrettably, Article 1(24) makes it clear that the implementation of different communication modes must occur “without new or increased burdens on public finance”. Interestingly, this formulation is very similar to the one adopted in respect to reasonable accommodations in public employment contexts. It is worth recalling that reasonable accommodation duties were included in anti-discrimination legislation only in 2013 (Ferri and Lawson 2016),³¹ following the ruling of the CJEU in *Commission v Italy*.³² The new provision

²⁶ Article 76 of the Italian Constitution allows the Government to exercise legislative functions only when delegated by Parliament for a limited time and for specified purposes. The Parliament delegates to the Government the exercise of legislative functions through a delegation law that establishes the principles and criteria that the Government must follow and comply with when exercising the legislative function. The delegation law empowers the Government to adopt one or more legislative decrees, which are deliberated upon by the Council of Ministers.

²⁷ It is important to note that the La 104/1992 remains the cornerstone of Italian disability law and policy, and the point of reference for any legislative reform which touches upon the rights of persons with disabilities.

²⁸ See *supra* Section 2.

²⁹ See above Section 4.

³⁰ The bill was approved on the 3rd of October 2017 by the Italian Senate, is now under the examination of the Chamber of Deputies.

³¹ Law decree 28 June 2013 No. 76, OJ No 150 of 28 June 2013, then converted into Law 9 August 2013, No. 99, G.U. of 22 August 2013, No. 196, concerning ‘Preliminary Urgent Measures for the promotion of employment, in particular of youngsters, of social cohesion and on and other Urgent financial measures’.

³² *Commission v Italy*, Case C-312/11, 4 July 2013, not yet published.

requires employers to adopt reasonable accommodations, however public employers must implement the duty “without new or increased burdens on public finance and human resources, financial and available under current legislation”. This latter provision and Article 1(24) of Law No 107/2015 are clearly dictated by the very same need to contain public expenditures, in a time of harsh economic crisis. However, it is doubtful that such prescriptions comply with the CRPD.³³

As mentioned above, Law No 107/2015 has empowered the Government to adopt a detailed legislative decree to promote the inclusion of students with disabilities in schools. Article 1(181) gives the mandate to the Government to adopt specific norms on inclusive education and reiterates the commitment towards the realization of a truly inclusive educational system within the legislative framework laid down in Law No 104/1992. It also restates the role of support teachers as the cornerstone of the Italian inclusive educational system. However, it calls the Government to redefine the role of the support teacher and of teaching staff to foster inclusion of students with disabilities, and to reform training and qualification systems for teachers. Article 1(181) also requires the Government to set forth specific provisions to ensure that curricular teachers, schools principals, and administrative staff undertake training on inclusion, thus recognizing that often one of the most obvious barriers to inclusive education are the lack of awareness and adequate training of school staff. Law No 107/2015 also takes stock the systemic flaws emerged in practice, such as the lack of continuity in the support offered by support teachers, and Article 1(181) requires the Government to make sure that pupils to enjoy the same support teacher across the course of their studies. Finally, Law No 107/2015 recognizes the dearth of data on inclusion and Article 1(181) calls the Government on elaborating specific indicators to evaluate the level of school inclusion. This latter aspect could help overcome the criticism expressed by the CRPD Committee in its COs ([CRPD Committee 2016a](#)) in relation to the lack of reliable data on the quality of education and the inclusion of students with disabilities. All in all, Article 1(181) of Law 107/2015 has given the Government a clear mandate to innovate the way in which the educational provision is administered, and to improve the way in which inclusive education is realized.

5.2. Legislative Decree No. 66/2017 on the Promotion of School Inclusion for Students with Disabilities: Lights and Shadows

Legislative Decree No. 66/2017 on school inclusion for students with disabilities (Norme per la promozione dell’inclusione scolastica degli studenti con disabilità’, a norma dell’articolo 1, commi 180 e 181, lettera c), della legge 13 luglio 2015, n. 107) was approved on the 7th April 2017 and entered into force in May 2017. The process of approval was relatively short, but not smooth. The initial draft decree released by the Government on the 14th January 2017 was severely criticised by DPOs, which also questioned their lack of involvement in the process of elaboration of the text ([Ferri 2018a](#)), and encountered fierce opposition outside parliament from trade unions. In February 2017, the newly appointed Minister for Education declared that the text of the draft was to be modified in order to take into account the criticism raised, and claimed that inclusion remains a priority for the government ([Ufficio Stampa MIUR 2017](#)). On 16th March 2017, the Parliamentary Commissions in charge of the examination of the draft decree released a positive opinion on it, suggesting additional few modifications. The final text, composed by 20 articles preceded by a Preamble, along the lines traced by the Law No 107/2015, regulates the performance and quality of school inclusion indicators; certification procedures for school inclusion; school organisation, resource allocation; planning and design inclusion; and initial training of teachers for educational support. It attempts to implement the obligations laid down in the CRPD, which is mentioned in the Preamble, just after the relevant provisions of the Italian Constitution. Some provisions of the Decree have a limited innovative character, being more aimed to clarify and put order in what was already provided in various and scattered existing pieces

³³ It also doubtful that Article 1(24) could survive a constitutional review if a case is brought, as the ICC has so far been quite clear in stating that financial constraints cannot be used as an excuse to undermine the enjoyment of the fundamental right to education.

of legislation. This is for instance the case of Article 3, which better defines the role of local and regional entities in the provision of inclusive educational settings. The Decree however, presents undoubtedly, a number of positive innovative features, which nevertheless bring limited changes to the current system.

Article 1 of the Decree laying down the aims of the decree, attempts to define “inclusive education” and affirms that it “concerns all pupils and students, meets the different educational needs and is accomplished through educational and teaching strategies aimed at developing the potential of each individual” (Article 1(1)(a)). Significantly, the Decree uses only and quite consistently the term “inclusion”, and defines it in manner that can be considered compliant to the CRPD. In this respect, the Decree makes a clear attempt, on the one hand, to avoid the use of the word “school integration” (*integrazione scolastica*) used in former legislation, and, on the other hand, to fully align the terminology used by Italian law with the wording of the CRPD. The CRPD Committee has contrasted integration, as a process of placing persons with disabilities in existing mainstream educational institutions without adjustments, with inclusion (CRPD Committee 2016b). Arguably, the Decree aims to put an end at the blurring and interchangeable use of those different terms in Italian laws and policies (*inter alia* D’Alessio 2011, 2013), and to place Italian educational policies in line with the CRPD, by recalling the role of accommodating different educational needs. The wording of Article 1 evokes Article 24(2)(e) CRPD, and the obligation to provide students with disability with access to “effective individualized support measures [. . .] in environments that maximize academic and social development, consistent with the goal of full inclusion”. The Decree, in Article 1(1)(c), also affirms that inclusive education is a “fundamental commitment” for all those who participate in the educational settings. This *alinea* somewhat matches the words of the CRPD Committee that defined inclusive education as “the result of a process of continuing and proactive commitment to eliminating barriers impeding the right to education” (CRPD Committee 2016a).³⁴

Article 2(2) states that inclusion is realised through the definition of the *PEI*. In this respect, unsurprisingly, Decree No 66/2017 locates itself in continuity with Law No. 104/1992, which already prescribed the adoption of the *PEI* as inclusion tool. The rationale behind the *PEI* is that of tailoring educational strategies and tools on the need of the student with disability, and to offer students an effective education, as prescribed by Article 24 CRPD. The Decree, however, clarifies that the number of hours of support enjoyed by the student will be decided by the school director only after the *PEI* is laid down and adopted in collaboration with the family. The number of hours, hence, will not anymore be included in the *PEI* itself, which will only highlight in general terms the support needed to adequately foster the potential of the student. This innovation seems clearly aimed to limit the complaints to courts and to put an end to the avalanche of judicial cases seeking the annulment of *PEI* in front of administrative courts because of the insufficient number of hours assigned to the student. This innovation leaves to the school greater autonomy, but also greater discretion in deciding the amount of hours of support after the *PEI* is adopted. This discretion is likely to escape the limit of judicial review of administrative courts.

In addition, by virtue of Article 7(2)(h) of the Decree, the *PEI* must be subject to “to periodic reviews during the year in order to ascertain the achievement of objectives and make any changes” which may prove necessary. The *PEI* has now become integral part of the broader “Individual Project” for the person with a disability, which is elaborated by the (territorially competent) local authority and is meant to tailor health and social services to the specific needs of the person. The Decree, hence, explicitly locates inclusive education within a broader individual strategy to ensure social inclusion and independent living for people with disabilities. The “Individual Project” was already prescribed by Article 14 of the Framework Law No 328/2000³⁵ concerning social services addressed to individuals

³⁴ See above Section 2.

³⁵ Law of 8 November 2000 No 328 ‘*Legge quadro per la realizzazione del sistema integrato di interventi e servizi sociali*’ in G.U. of 13 November 2000 No 265.

and household, with a view to ensure “... full integration of disabled people in family and social life, as well as in educational and vocational education and training”. It is now mentioned Article 1(1)(b), which clarifies the important role of schools in the elaboration of the overall individual project, in collaboration with families, DPOs, and local authorities.³⁶

Interestingly, Article 1(1) also mentions reasonable accommodation as an essential component of inclusive education. The wording of this provision is explicitly inspired by the CRPD, and highly innovative. In fact, although forms of reasonable accommodation were not unknown in the school system (Ferri 2018b), previous Italian legislation on education did not mention neither define this concept.

Another significant novelty is that the number of pupils with disabilities and their gender will be considered when establishing the number of non-teaching staff for each school (Article 3(2)(b) and (c)). According to Cocconi (2017), this means that the needs of students with disabilities must be seriously and effectively taken into account when allocating administrative and teaching staff to each school institution. The reference to gender seems quite notable as it is clearly meant to tackle intersectional disadvantage, in compliance with Article 6 CRPD.³⁷ In addition, this provision confirms that education provision cannot be governed just on the basis of efficiency and financial viability, but must respond to the needs of students, especially those with disabilities. It limits the discretion of State in identifying the necessary organizational, financial and personal resources.

Notably, school inclusion will now form integral part of the overall evaluation process of the quality of school institutions. In other words, the level of inclusiveness of the school will become one of the parameter to assess the overall quality of the same school. This is a positive development which must be welcomed as it might potentially nudge schools to pay more attention to the way in which, in practice, they realize inclusive settings.

The Decree, however, presents a few weaknesses. Although the Decree requires all the teachers (curricular teachers) to receive training on inclusive education, their role in enhancing inclusive education remains *de facto* marginal, being that mostly ensured by the support teacher. It is also unclear what training curricular teachers are in fact expected to undertake. Article 12 lays down rules for access to the teaching career for educational support in the kindergarten and primary school, and new requirements for support teachers in secondary schools. It requires support teachers to acquire a more solid grounding in social inclusion, after the achievement of the qualifying degree in education as a basic requirement for the teaching function. This should significantly contribute to improve the quality and inclusiveness of the educational system, but, in reality, the Decree has introduced a distinction between teaching qualifications for primary and secondary schools, whose rationale remains unclear. In addition, the Decree attempts to put an end to the turnover of support teachers that endangers the learning experience of students with disabilities and has long been criticised by parents of students with disabilities. However, Article 14 limits itself to provide a generic obligation to guarantee continuous and stable support to students with disabilities. The main novelty included in Article 14 is that fix-term contracts of fully qualified support teachers can be renewed by the school upon the request of the family of the disabled student. No systemic solutions have been adopted.³⁸

³⁶ In this respect, Decree No 66/2017 has also intervened to amend Article 14, which, in its revised formulation, establishes that the “Individual Project” includes the care and rehabilitation services provided by the National Health Service, the Individual Education Plan provided by the school institutions, the personal services provided by the local municipality, as well as the economic allowances designed to overcome situations poverty, marginalization and social exclusion. See also Article 6 of Decree No. 66/2017.

³⁷ Article 6 “Women with disabilities” reads as follows: “1. States Parties recognize that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms. 2. States Parties shall take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention”.

³⁸ The draft text originally included an obligation on support teachers to remain within the role for ten years. The provision raised harsh criticism because, *ex littera lege*, the provision obliged teachers to stay in the support role, but not to remain in the same school or institution, thus being useless to ensure continuity of education and unduly forcing teachers to remain in a role. The final text removed this provision.

The most remarkable limit of the Decree (and probably of the whole reform) is, however, that the funding, which has been assigned to concretely implement the provisions included in the Decree, remains limited. The CRPD Committee has identified among the main barriers to the implementation of Article 24 CRPD “inappropriate and inadequate funding mechanisms to provide incentives and reasonable accommodations for the inclusion of students with disabilities” (CRPD Committee 2016b). In a country where education has been traditionally poorly funded, the lack of funding seems to be an obstacle to the full implementation of the CRPD. In this context, the ambitious definition of inclusive education laid down in Article 1 of the Decree runs the risk to remain a paper tiger, and the practical problems encountered so far are likely to remain unsolved.

6. Concluding Remarks

The CRPD Committee, in its General Comment No. 4 (CRPD Committee 2016b), acknowledged that, for many persons with disabilities around the world education is still available only in segregated settings, where they are isolated from their peers and where the education they receive is of an inferior quality. In this respect, it is undeniable that Italy has provided and still provides an important example of non-discriminatory educational system to be looked at (Kanter et al. 2014). Children with disabilities in Italy have the right to access free primary education and secondary education on an equal basis with others, in the communities in which they live. The legislation, as interpreted by the Constitutional Court, ensures to persons with disabilities the effective enjoyment of the right to education. Italian courts have so far acted as watchdogs, and have played a seminal role in unveiling the inefficiencies in the implementation of the legislation. They have provided an important example of the role judicial institutions can play in the realization of more equitable and accessible educational settings, and in ensuring that a progressive legislation is actually implemented.

Despite the important role of courts, as noted by Dovigo (2016), the evolution of the Italian school system shows that the abolition of special schools does not automatically lead to the full, meaningful inclusion of all pupils in mainstream education. The persistent gaps in actually providing an inclusive education emerged in the last few years have thus prompted a legislative reform of the education system. The ratification of the CRPD has also made evident the need to fully align Italian educational policies with Article 24 CRPD. Italy has shown a political commitment to ensure inclusive education, and this cannot go unnoticed. However, the new Law No. 107/2015 and the recent Legislative Decree No. 66/2017 merely attempt, without questioning the system itself, to improve its functionality. In compliance with the principles set forth in Law No 107/2015, Decree No. 66/2017 updates, reorganizes and rationalizes the legal framework in relation to the education of people with disabilities. It introduces some notable changes, but these appear mostly “cosmetic”, even though they take into account Article 24 CRPD. The Decree undoubtedly endeavours to meet (some of) the recommendations of the CRPD Committee, and to solve some of the problems that emerged in case law and that were highlighted by DPOs, especially in relation to the practical support ensured to students with disabilities by support teachers. The text presents also weaknesses, especially when it comes to ensuring training for all teachers. Overall, it remains to be seen whether the changes will be sufficient to meet overall goal of creating a truly inclusive system, and how effective the changes introduced will be. In August 2017, the Ministry has clarified that the most innovative provisions (such as those on the *PEI*) will enter into force in 2019. This delay will allow schools to become familiar with the renewed system, and to put in place all the necessary procedural changes. However, it will, once again, postpone the full realization of a truly inclusive system.

All in all, the Italian case-study shows that inclusive education requires continuous efforts. Law No. 107/2015 and its correlated legislative decree will not (most likely) conclude a process of reform of inclusive education, rather offer additional impetus to continue on the reform and ultimately achieve the objectives of the CRPD. It also highlights that progressive legislation is never sufficient alone, but must be followed by the concrete development of inclusive educational practices.

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