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SPECIFIC LEARNING DIFFICULTIES: BETWEEN NORMATIVE CONFUSION AND DENIED EXCLUSIVE PROTECTION

The exhausting and continuous relationship between individual need and the performance expected by the State leads to personalized answers that are based on “selective” social politics, which is no less fair. All of this is imposed by the Constitution of the Italian Republic.

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Some children are often mistaken for inattentive, listless and disabled subjects. Many times they are victims of derision when they read out loud and stumble over letters and numbers. The Italian school system is not always ready to support these people and this does not simplify their social inclusion and psychological growth.

But this is not a case of inattentiveness or a handicap: these people are affected by “specific learning difficulties”. **The law of 8th October 2010, n.170** recognises dyslexia, dysgraphia, dysorthography and dyscalculia as **specific learning difficulties**, the so-called SpLDs, “*which arise from adequate cognitive abilities in the absence of neurological pathologies and sensory deficit, but they can constitute an important limitation to some activities of daily living*” (art.1). This normative follows a series of legislative acts based on a regional level from 2007. Law n.170 is a “light” law, i.e. a framework legislation that expresses general principles rather than specific and detailed directions. However, a breakthrough was made in this field. The title of this law is quite eloquent: **New norms concerning specific learning difficulties in a school environment**. Law 170/2010 introduces a kind of exception in Europe and probably in the whole world. It is one of those laws, if not the only one, which specifically guarantees equal rights to all the students affected by SpLDs. For the first time in history a specific and different law deals with SpLDs.

Art.1 of law 170/2010 defines the right of the student diagnosed with SpLDs “*to use adequate compensatory measures of educational flexibility during their education and training and academic studies*”. In July 2011, the implementation decree and the guidelines associated to it were published; the latter explain clearly and in detail all the actions that the Regional Education Offices, schools and families have to take to protect and support subjects diagnosed with SpLDs.

Art.3 refers to the premature recognition of SpLDs, even by the school, upon official notice to the families. It then highlights how the local health authorities (the Italian ASL) have to issue the necessary certifications, while the Ministry is entitled to open the door to screening in schools to identify those children who are at risk and whose result is not the diagnosis.

Art.4 defines the educational activities that the managerial and teaching staff have to consider in order to possess adequate teaching, methodological and assessment preparation for the problems related to SpLDs.

Art.5 is also important. It specifies instructional methods and academic support like the use of individualized and personalized teaching or the introduction of compensatory approaches, including alternative learning approaches and information technologies, as well as dispensatory measures for the performance that is not essential for the quality of the concepts to be learned. Foreign language teaching and the use of compensatory strategies that support verbal communication are also expected. Furthermore, students with SpLDs are entitled to suitable forms of examination and assessment (the execution of exams takes a bit longer), including state exams and admissions tests, as well as university exams.

In addition, art.7 foresees flexible working hours for the parents of students with SpLDs up to the end of middle school, so that they can help their children with their homework at home. In any case, this flexibility should be defined by collective labour agreements.

Law 170/2010, which so far is the only form of protection for students with SpLDs, is rather general. It defines those principles that still have to be created by particular laws. It is difficult to evaluate in detail how law 170 acts towards pleasantness, accessibility, functionality, adjustment, inclusion; however, its analysis is incomplete. In fact, law 170 does not even explore teaching: it is a field that the law does not consider. This is proved by the complete absence of a Personal Learning Plan (PLP). Law 170 simply promotes dyslexic students' right to accessibility and education and introduces the first dispensatory and compensatory measures.

But can SpLDs be considered as forms of impairment or handicap from a scientific and legal point of view?

In spite of not willing to enter the psychological, medical and sociological sectors, the law needs science to answer this question in order to protect those interests that are worth protecting.

When talking about SpLDs, we refer to those difficulties that concern some specific abilities and occur independently of an intellectual disability or other neurological pathologies. They do not allow complete self-sufficiency in the learning process since they arise in activities such as reading, writing, calculating. In particular, dyslexia compromises reading abilities in many aspects like precision, speed and reading comprehension. It is typical of children and it appears at the beginning of school, generally at the end of second grade. The dyslexic child finds it difficult to learn the correspondence between grapheme and phoneme, to accelerate this process and to decode morphological units. The child who cannot learn the grapheme-to-phoneme conversion mechanism or cannot apply it automatically, if learnt, is not able to efficiently read new words and to build that type of orthographic lexicon that makes reading correct. The diagnosis is made by considering the child's reading level as inferior to the expected level for their age, intelligence and kind of education. This disorder significantly interferes with school learning and the activities of daily living that require reading skills. The aetiology of this disorder is still not completely known, even if the existence of a significant genetic component is quite certain; it is believed that real forms of dyslexia have been genetically inherited, some scientists think that the endocrine system is involved in the origin of this pathology.

Dysorthography is a combination of difficulties concerning writing abilities. In particular, it consists of the difficulty in converting sounds into graphic symbols (the alphabet).

Dyscalculia is a specific difficulty in learning mathematical and logical concepts; it includes different forms of disorder, all of which share a deficit in numerical and calculation abilities, with considerable differences concerning the type of deficit and the specific skills that are compromised: from the comprehension of mathematical symbols to the comprehension of the quantitative value of numbers; from the choice of data to solve a problem to column alignment; from the memorization of number combinations (as in the case of multiplication tables) to the use of calculation procedures. The aim of law 170/2010 is to: guarantee the right to education; support school success; promote the development of the child's potential; reduce the relational and emotional distress due to the disorder; adapt testing and assessment to the students' educational needs; prepare teachers and raise parents' awareness of the problems related to specific learning difficulties; support premature diagnosis and rehabilitation teaching; increase

communication between family, school and health services during the learning process; ensure equal opportunities for the development of students' skills in a social and professional environment.

The causes of SpLDs have been discussed in the last years. Recent research confirms the hypothesis that SpLDs are constitutional in origin: a genetic and biological basis may cause this disorder, even if its mechanisms have not been specified yet. The environment, including the parents' emotional and socio-cultural environment, significantly influences this basis by amplifying or containing the disorder.

An accurate family and physiological anamnesis is necessary for a diagnosis of these difficulties in order to evaluate the child's social conditions and education and the absence of major neurological pathologies. In addition, it is important to evaluate general intelligence by using a psychometric test and, in specific cases, integrated tests aimed to the evaluation of visual-spatial, motor and graphic-spatial skills, the efficiency of visual and auditory memory, attention skills, motor skills, dominant side, language skills and planning skills. There are different therapeutic approaches; the main treatments used in wards follow neuropsychological and psycho-pedagogical models, in other words, psycholinguistic models. Rehabilitation should be intensive in the first years of school and it should be followed by periodical supervisions, introducing the use of compensatory tools, e.g. talking books, calculators, recorders, computers, in other words, educational tools to reduce children's effort. Furthermore, the rehabilitation programme should always help the parents and inform the teachers in order to make them aware of the problem and to teach them how to help the children. All of this should be done by multidisciplinary teams that are highly specialized in science as well as compassionate.

The reader will clearly understand how a specific learning difficulty could have a bad influence on the activities that are typical of the subject's age by considering how the disability affects language and school learning, sports and recreational activities, peer relations, activities that occur during the child's growth and shape their personality.

What does the term disability mean from a legal point of view?

According to "UN Convention on the rights of persons with disabilities" - which was

approved on 13th December 2006 and it was ratified by Italy with the law of 3rd March 2009, n.18 - *"Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others"*.

Article 3 of Law 104/1992 defines the "handicapped person" as *"the one having a physical, psychic or sensory handicap, which can be either stabilised or progressive and causes learning, relational or work integration difficulties, thus leading to social disadvantage or exclusion"*. This definition focuses on the limitation on abilities (impairments) and the social disadvantage that comes from the impairments (handicap), i.e. those elements that have a negative influence on the life of the disabled person. Therefore, in the definition contained in Law 104/1992, there is no reference to the environment where the disabled person lives and interacts, in relation to which the disabilities have to be considered.

In short, the law recognises that the impairments determine the handicap but what turns the impairment into a problematic condition for the person is the "social disadvantage" it creates, i.e. an inequality with other people that becomes a "handicap". The automatism according to which a handicap is the result of impairment has been strongly criticized, since a person on a wheelchair is not put at a disadvantage in an environment without barriers.

On the other hand, handicapped people are defined as *"those citizens who are affected by congenital or acquired impairment, even in a progressive way, [...] who underwent a permanent decrease in the ability to work that is not inferior to a third or who have strong difficulties in doing those tasks that are typical of their age, if they are minors"* (art. 2, law n.118 of March 30th 1971). Instead, disabled subjects are *"affected by physical, psychic and sensory impairments involving developmental, learning, work and social integration difficulties, including the difficulty in school integration, which represents the most important institution along with family from 3 to 18 years old"* (Sentence of the Italian Constitutional Court n. 215 of June 3rd 1987).

In a manual of international classification of impairments, disabilities and handicaps,

World Health Organization (WHO) identifies three moments in the disabling process:

- Impairment,
- Disability,
- Handicap.

An impairment is an organic damage, a pathology that involves the non-existence or malfunction of a limb or a body part, any loss or abnormality concerning a structure or a psychological, physiological or anatomical function.

A disability is the loss of functions following the impairment, i.e. any limitation or loss of abilities to carry out an activity in a way that is normal for a human being.

A handicap is the difficulty that the disabled person goes through when comparing themselves to others, the social distress that derives from a loss of functions or abilities, the condition of disadvantage consequent to an impairment or a disability that limits or prevents them from carrying out a normal activity relating to the their age, gender and sociocultural factors.

By contrast, amputee and invalid civilians are *"those citizens who are affected by congenital or acquired impairments, even in a progressive way, who underwent a permanent decrease in the ability to work that is not inferior to a third or who have strong difficulties in doing those tasks that are typical of their age, if they are minors"* (art. 2, law 118/1971).

It is worth pointing out that discussing whether SpLDs are disabilities, disorders, pathologies or impairments is not a matter of diagnosis or terminology, but a matter of law. Since the main aim of the law is to protect citizens' rights, considering SpLDs as forms of disability would automatically open the door to the legal protection to which disabled people are entitled. Consequently, subjects with SpLDs easily enter society and their families receive economic and social support, even if many people believe that SpLDs should not be associated to disabilities.

Comparing SpLDs to disabilities seems to be understandable to a degree, because students and adults with SpLDs experience "a condition of disadvantage" compared to

the individuals defined by the law as "people with a normal intelligence". As a result, SpLDs are immediately protected by the State and are entitled to the same measures as the ones applied to disabled people: waiting for the creation of new laws is not necessary.

On the other hand, the scientific community and dyslexia associations discussed the validity of this juxtaposition.

Even in the legal field, criticising the association between SpLDs and disabilities cannot be considered as strange: the abovementioned law 170 defines SpLDs as a manifestation of *"adequate cognitive abilities in the absence of neurological pathologies and sensory deficits"*. Therefore, how can we define those difficulties as invalidity, handicap or impairment? This forced combination stands in stark contrast to all the regulations regarding disabilities, starting from UN Convention on disabilities – which talks about *"long-term physical, mental, intellectual or sensory impairments"* to define disability – and continue with law 104 – which defines the handicapped person by talking about *"physical, psychic or sensory impairments that can be stabilized or progressive"* – and with law 118 – which talks about *"congenital or acquired impairments, even in a progressive way, [...] who had a permanent decrease in the ability to work"*.

Consequently, from a legal point of view, the association between SpLDs and disabilities appears to be debatable.

The reasons why professionals of this field approve this association are mainly historical and legal. All European countries introduced laws that protect disabled people before making regulations concerning SpLDs. The disabilities protected by these first laws were visible and common disabilities, characterized by more or less serious physical or mental impairments. These laws followed the medical model of disability. When it was felt necessary to consider SpLDs as well, the applicable legislation concerning disabilities was integrated with some regulations about SpLDs.

However, laws that specifically focus on SpLDs were not created. This may be considered as positive because many laws would have been rewritten without making a real difference, except for the declaration that SpLDs are not a disability. Additionally, legal protection that is different from the one already available for disabled people would

have been modified. Therefore, defining SpLDs as a disability appeared to be the easiest and cheapest way in terms of legislative effort: simply put, the spectrum of legal protection was widened, which is not a negative thing if we think about the quality and quantity of legal protection that already exists for disabled people.

Nevertheless, identifying a case *ex ante* does not seem to be the best legal approach. For example, consider two individuals with the same level of dyslexia and imagine that one works as a lawyer and the other one as a house painter. It is obvious that a lawyer has to quickly read a great number of pages and deal with an archive made of written pages. A painter, instead, will only have to deal with written texts when issuing an invoice or ordering materials for his job. As can be seen, the same level of dyslexia creates two different levels of difficulty: the former is serious, while the latter is limited. The environment where the lawyer works could consider dyslexia as such a serious disability that carrying out daily work activities becomes difficult. On the other hand, the painter's environment might not take the problem into consideration, since it is not a problem for this type of environment.

Therefore, it will be better to introduce different forms of protection that focus on the individual and their personality – including their distress – in order to find the most suitable forms of protection for the environment in which they work, without identifying a case and its corresponding legislation *ex ante*.

However, the legislator made matters worse.

An example is given by **law n. 289 of 1990** (edits to the discipline of attendance allowance stated in **law n. 508 of 21st November 1988**, which contains integrative norms concerning economic support to invalid, blind and deaf civilians), thanks to which the monthly indemnity claim frequency of 279.47€ was created. To receive this type of indemnity, the following conditions are required: being under-18 amputee and invalid civilians; being an Italian or EU citizen living in Italy, or being an extra-communitarian citizen with EU long-term residence permit; being recognised as "*a minor with persistent difficulties in doing activities that are typical of their age*" or "*a minor with deafness above 60 decibel and frequencies of 500, 1000, 2000 Hertz*"; attending a rehabilitation centre, professional training centres, working centres or any kind of school; not having an

annual salary that is higher than 4,805.19€. The aim is to help directly low-income families and indirectly the disabled person to ensure that the latter undergoes periodic or continuous rehabilitation or therapeutic treatments.

As we can see, the conditions to follow appear to be a double-edged sword: not considering SpLDs as forms of invalidity could lead to a denial for the families with minors having those difficulties, since they would not be in the situations foreseen by law 289/90. Yet, how can we deny that a person affected by SpLDs could not be a minor *"with persistent difficulties in doing the activities that are typical of their age"*?

In this case, the historical and legal aspects play their parts: the indemnity claim frequency from which under-18 invalid civilians can benefit was introduced because the law of 1971 on invalidity and law n.289 of 1990 concerning the indemnity claim frequency precede law n.170 of 2010. This means that the indemnity claim frequency was created before dealing with SpLDs and there was a lack of legislative coordination which determined this confusion.

In light of the present analysis, **this matter should be clarified to ensure that SpLDs are recognised and are isolated from the concept of disability, with their specific legal protection deriving from art.3 of the Italian Constitution**, which states that: *"All citizens have equal social dignity and are equal before the law, without distinction of gender, race, language, religion, public opinions, personal and social conditions."*

Indeed, it is up to the Italian Republic to remove the economic and social obstacles that do not allow the full development of the human being and the effective participation of all workers in the country's political, economic and social organization by limiting their freedom and equality".