



COMMISSIONER FOR HUMAN RIGHTS
COMMISSAIRE AUX DROITS DE L'HOMME



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**Third party intervention
by the Council of Europe Commissioner for Human Rights**

under Article 36, paragraph 3, of the European Convention on Human Rights

Application No. 289/14

Ștefan-Moshe Stoian and Luminița Stoian v. Romania

Introduction

1. On 5 September 2017, the Council of Europe Commissioner for Human Rights (hereinafter: 'the Commissioner') informed the European Court of Human Rights (hereinafter: 'the Court') of his decision to intervene as a third party in the Court's proceedings, in accordance with Article 36, paragraph 3 of the European Convention on Human Rights (hereinafter: 'the Convention'), and to submit written observations concerning the case of Ștefan-Moshe Stoian and Luminița Stoian v. Romania. The case concerns access to education of a young student with a physical disability.
2. According to his mandate, the Commissioner fosters the effective observance of human rights; assists member states in the implementation of Council of Europe human rights instruments, in particular the Convention; identifies possible shortcomings in the law and practice concerning human rights; and provides advice and information regarding the protection of human rights across the region.¹
3. The protection of the human rights of persons with disabilities has been a priority issue for the Commissioner, who has addressed it extensively in the framework of both his country monitoring and thematic work. The Commissioner has, in particular, repeatedly stressed the need to ensure that children with disabilities have equal access to quality education and to actively work towards ending school segregation of these children with a view to their full and effective inclusion in mainstream schools.
4. This intervention is based on the Commissioner's work on the right of children with disabilities to inclusive education in thirteen countries, a Position Paper he published on this issue in September 2017² and his report of 2014 following his visit to Romania in which he analysed the situation in this regard and made recommendations to the Romanian authorities.³
5. Section I of the present written submission summarises the Commissioner's work on the right of children with disabilities to education without discrimination and on the basis of equal opportunity in member states of the Council of Europe; Section II focuses on the implementation of this right in Romania; Section III contains observations of the Commissioner on some substantive aspects of this right, notably the rights to inclusive education; to reasonable accommodation and support, including individualised support where necessary; and to an effective remedy in case of violation of these rights. It is followed by the Commissioner's conclusions.

I. The right of persons with disabilities to education without discrimination and on the basis of equal opportunity: overview of the situation in member states of the Council of Europe

6. The Commissioner has selected issues pertaining to equal access to education of children with disabilities for examination in thirteen of his country visits and reports between April 2012 and October 2017.⁴ As mentioned above, building on the findings of his country work, in September 2017 the Commissioner issued a Position Paper on combating school segregation in Europe through inclusive education. The paper focuses in particular on the situation of the three groups of children most affected by school segregation in Europe: children with disabilities, Roma and

¹ [Resolution \(99\)50](#) on the Council of Europe Commissioner for Human Rights, adopted by the Committee of Ministers on 7 May 1999.

² Commissioner for Human Rights (2017), [Position Paper](#) on "Fighting school segregation in Europe through inclusive education".

³ [Report](#) of the Commissioner for Human Rights following his visit to Romania from 31 March to 4 April 2014; CommDH(2014)14, 8 July 2014.

⁴ See the Commissioner reports on: Belgium (2016), Bulgaria (2015), Czech Republic (2013), France (2015), Ireland (2017), Latvia (2016), Lithuania (2017), Montenegro (2014), the Netherlands (2015), Romania (2014), Slovakia (2016) and Spain (2013). See also press release following his visit to Andorra (2016).

Traveller children and children with a migrant background. It provides guidance with a view to eradicating segregation and promoting more inclusive education systems for all children.

7. On the basis of his country visits and continuous monitoring, the Commissioner has noted that in the majority of member states, equal access to education for children with disabilities is hampered by serious shortcomings in law and practice. Separate schooling of these children remains widespread throughout Europe and the view that they are best educated in segregated settings is still widely accepted in society. In some countries, he noted with concern that segregation was even on the rise. He has repeatedly emphasised that segregation amounts to a serious form of discrimination against the students concerned, as also established by the Court in its case-law pertaining to school segregation affecting Roma children.⁵
8. Segregation takes different forms: children with disabilities are often taught in completely separate settings, where they have no interaction with other children and the rest of society.
9. When children with disabilities are educated in mainstream schools, they do not necessarily enjoy full inclusion. They are often separated from their peers in practice, educated only part time or excluded from extended day programmes, including extra-curricular activities. Abuse and violence against these children by peers and educators is also frequently reported. In a 2015 report on violence against children with disabilities, the European Union Agency for Fundamental Rights (FRA) indicated that “schools remain a common setting for abuse against children with disabilities, with bullying and verbal insults particularly widespread in educational settings”.⁶
10. Another form of segregation occurs when children with disabilities are entirely deprived of access to school education. This is in particular the case of children living in institutions and children for whom home schooling is the only option made available to them, notably children with high support needs. Such situations amount to a denial of access to education and have been found by the European Committee of Social Rights to be in breach of the European Social Charter in several collective complaints.⁷
11. The Commissioner has noted how authorities in member states often tend to treat their obligations on the right of children with disabilities to education without discrimination and on the basis of equal opportunity, enshrined in the UN Convention on the Rights of Persons with Disabilities (CRPD), as not fully enforceable or programmatic in nature. In practice, inclusion in mainstream education is often denied to children with disabilities on grounds of lack of sufficient resources to provide individual support and non-accessibility of the school environment (see section III below).
12. Reasons for the lack of inclusion are multi-faceted: the Commissioner has repeatedly highlighted the existence of strong vested interests in maintaining segregated education systems, inadequate funding systems (see section III below) and the frequent opposition of parents and school authorities to the enrolment of children with disabilities in mainstream education. Crucially, at the root of these barriers lie deeply-engrained prejudices against persons with disabilities.
13. In his Position Paper, the Commissioner exposed the negative consequences of the lack of inclusive education, for both the children concerned and societies as a whole. He highlighted

⁵ See *inter alia* [DH and Others v. the Czech Republic](#), Application no. 57325/00, Judgment of 13 November 2007, paragraphs 207-210; and [Horváth and Kiss v. Hungary](#), App. No. 1146/11, Judgment of 29 January 2013, paragraph 128.

⁶ EU Fundamental Rights Agency (2015), Violence against children with disabilities: legislation, policies and programmes in the EU, see in particular Section 3.3.2.

⁷ See European Committee of Social Rights, collective complaints, notably the following ones: Mental Disability Advocacy Centre (MDAC) v. Bulgaria, Complaint No. 41/2007, [Decision on the Merits](#) of 3 June 2008; Médecins du Monde International v. France, Complaint No. 67/2011, [Decision on the Merits](#) of 11 September 2012; European Association of the Disabled (EAD) v. France, Complaint No. 81/2012, [Decision on the Merits](#) of 11 September 2013; [Autism Europe v. France](#), Complaint No. 13/2002, Decision on the Merits of 4 November 2003.

that school segregation violates the human rights of the children concerned because it both deprives them of their right to access education without discrimination and seriously harms their chances of acquiring essential life skills in contact with others.

14. In addition, education provided in segregated settings is often of lower quality. Children with disabilities have high drop-out rates and, when they complete their studies, often do not obtain a recognised diploma. Even though data in this regard are often missing, transfers from specialised to mainstream education are reported to be rare.
15. The Commissioner has repeatedly emphasised that the lack of inclusion in mainstream education and school segregation lead to a lack of equal opportunities which has long-lasting detrimental effects on the lives of persons with disabilities and their opportunities for inclusion in society. Separation of children with disabilities in education is often the beginning of a life of exclusion and discrimination.

II. Implementation of the right of persons with disabilities to education in Romania

16. During his 2014 visit to Romania, the Commissioner focused on the human rights of persons with disabilities and, in particular, on their right to inclusive education. As is the case in many member states, in Romania there is insufficient awareness among decision-makers and in society in general about the right to inclusive education enshrined in the CRPD and its implications. In the report issued after his visit, the Commissioner stressed the long tradition of separate education of children with disabilities in Romania.⁸
17. In Romania, three types of education provision co-exist: mainstream schools; special schools for children with disabilities (including schools that were renamed “inclusive education centres” even though they continue to provide segregated education); and distance learning, or home schooling. Official statistics quoted by the Commissioner indicated that, in 2013, 60% of children with disabilities were included in mainstream education.⁹ However, other reliable sources, also referred to in the Commissioner’s report, indicated that the rate of inclusion in mainstream education could be as low as 38%, pointing to many inconsistencies in official statistics.¹⁰ The Commissioner notes that official figures of the Ministry of Education of Romania for the school year 2015-2016 indicate a rate of inclusion of 59%.¹¹
18. In his report, the Commissioner deplored that only few children with disabilities had access to higher secondary and tertiary education and that their early drop-out rates were, at the time of the Commissioner’s visit, double those of the general student population.¹² He also noted that, in special schools, the majority of the children lacked personal development and career prospects, despite the better resources existing in such schools.¹³ Moreover, the Commissioner is informed that only limited numbers of children reportedly manage to be transferred from special to mainstream schools. In this respect, he notes a study of 2015 which indicated that between 2010 and 2015, only 39 students out of a total of about 3 000 children with disabilities educated in Bucharest were transferred to mainstream education.¹⁴
19. The Commissioner highlighted as main reasons for the lack of inclusion into mainstream education the following: the widespread belief that children with disabilities should be educated separately; the resistance to inclusion displayed by professionals from the special education

⁸ Report on the Commissioner’s visit to Romania, *op. cit.*, paragraph 57.

⁹ Report on the Commissioner’s visit to Romania, *op. cit.*, paragraph 58.

¹⁰ Institutul pentru Politici Publice, “Monitoring report on Romania’s readiness to enforce the UN Convention on the Rights of Persons with Disabilities”, December 2013, p. 17, quoted in the report on the Commissioner’s visit to Romania, *ibid.*, paragraph 58.

¹¹ Romanian Ministry of Education, [Raport privind starea învățământului preuniversitar din România](#), 2016.

¹² Report on the Commissioner’s visit to Romania, *op. cit.*, paragraph 59.

¹³ *Ibid*, paragraph 63.

¹⁴ Centrul European pentru Drepturile Copiilor cu Dizabilități (2015), *Isolated among us, Dimension of children with special needs’ participation in Romanian educational support*, pp. 49-50.

sector; the process of decentralisation of education initiated in 2011, which resulted in small and poorer municipalities having insufficient funding available to meet educational needs of children with disabilities; a lack of trained teachers, adapted equipment and teaching methods to meet the needs of children with disabilities; and a general lack of preparedness of schools for inclusion. Moreover, the Commissioner notes with concern the results of an inquiry carried out by the Ministry of Labour in 2016 on the accessibility of schools which indicated that only 7% of the institutions visited were accessible, a figure which reportedly went up to 21% following the investigation.¹⁵

20. Consequently, the provision of individual support in mainstream schools is at best funded by non-governmental organisations, while parents are often compelled to bear these costs themselves.¹⁶ The Commissioner was also informed that parents of children with disabilities are mostly unable to get adequate information on options available to their children, that they find it difficult to communicate with the authorities and, in general, to participate in the education of their children.¹⁷
21. The Commissioner also deplored that parents of non-disabled children were sometimes exercising pressure against the inclusion of children with disabilities in mainstream education, resulting in enrolment denials. He noted reports that it was difficult for parents to challenge such denials.¹⁸
22. The Commissioner urged the authorities to ensure that children with special educational needs effectively benefit from individualised support and reasonable accommodation in mainstream schools, in accordance with Article 24 UN CRPD. To this end, he encouraged them to adopt provisions establishing an enforceable obligation on mainstream schools to provide reasonable accommodation to these children.
23. In addition, cases of ill-treatment of children with disabilities by educators and peer students have been reported in Romania, like in other member states.¹⁹ The Commissioner called on the Romanian authorities to ensure effective protection of these children against all forms of ill-treatment.

III. General observations on the right of children with disabilities to education without discrimination and on the basis of equal opportunity

24. For children with disabilities, the right to education without discrimination and on the basis of equal opportunity requires that they have access to existing educational institutions on an equal footing with other children. This right imposes on states a corresponding obligation not only to tackle any form of school segregation but also to provide the necessary support and adjustments so as to correct *de facto* inequalities.
25. In his work regarding the rights of persons with disabilities, the Commissioner consistently refers to the CRPD as the international benchmark and legal reference point in all matters pertaining to disability. This instrument is the most advanced document protecting the rights of persons with disabilities, in large part thanks to the involvement of the representative organisations of persons with disabilities in its negotiation, and represents the culmination of decades of advocacy by persons with disabilities. This convention embodies the paradigm shift in attitudes and approaches to persons with disabilities, without which their rights cannot be effectively protected. It requires a move from the medical model to the social model of disability which entails, among others, viewing persons with disabilities as active subjects with equal

¹⁵ Ministry of Labour and Justice of Romania (2017), [Raport tematic național privind Campania națională de control](#).

¹⁶ Report on the Commissioner's visit to Romania, *op. cit.*, paragraph 62.

¹⁷ *Ibid*, paragraph 65.

¹⁸ *Ibid*, paragraph 66.

¹⁹ *Ibid*.

rights, capable of taking their own decisions and contributing to societies rather than as objects of charity and medical treatment.

26. The Commissioner also relies on the European Social Charter, notably its article 15, which contains a similar paradigm of inclusion as the CRPD as it protects the right of persons with disabilities to independence, social integration and participation in the life of the community.

A. The right of children with disabilities to inclusive education

27. In light of the rights and principles enshrined in the CRPD, and in particular the right to full inclusion of persons with disabilities in society, the right to equal access to education for children with disabilities can only be implemented through inclusive education.
28. Therefore, the Commissioner has consistently recommended that member states fully comply with the requirements of Article 24 of the CRPD, which provides that “with a view to realizing [the right to education] without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and lifelong learning”, notably directed to the development by persons with disabilities of their personality, talents, creativity and abilities to their fullest potential, as well as to the development of their sense of dignity and self-worth.
29. Inclusive education places a responsibility on states to educate all children without discrimination within the mainstream system. Therefore, it requires eliminating segregation and providing the necessary adjustments, including accessibility, reasonable accommodation and individualised supports, so as to enable children with disabilities to access mainstream education. But it also goes beyond that: a fully inclusive education system acknowledges that inclusive education is beneficial for all children, not only those with special needs, as it provides all children with a school environment in which they can learn about human diversity and acquire essential life skills in contact with others.²⁰
30. The right to inclusive education is closely interrelated with other rights protected in the CRPD, notably the right to live independently and be included in the community (Article 19). The Commissioner has repeatedly stressed that exclusion from mainstream education is often the beginning of a lifetime of exclusion of persons with disabilities from society. It perpetuates their marginalisation and reinforces prejudices against them. Consequently, the inclusion of persons with disabilities in society, in line with the CRPD, necessarily implies providing them with access to mainstream inclusive education.
31. However, the majority of member states are still a long way from fully internalising their obligation to provide inclusive education, in conformity with the CRPD. All too often, their priority has been making minor adjustments to existing systems which are fundamentally non-compliant with the CRPD, rather than reforming those systems from the ground up. The Commissioner has noted, for example that in some countries segregated settings continue to exist under more acceptable terminology, such as “inclusive education centres” or “centres of appropriate education”. The still prevailing perception that persons with disabilities are better educated in separate settings prevents the necessary reforms and allows for the perpetuation of separate systems, in which children with disabilities are deprived of contacts with other children and have only limited opportunities to transfer to mainstream education. A number of Council of Europe member states parties to the CRPD have yet to enshrine the right to inclusive education in their legal framework. A comprehensive prohibition of school segregation in all its forms is also frequently lacking.
32. The mere physical presence of children with disabilities in mainstream schools, even when they are educated in the same classroom as other children, does not in itself guarantee full inclusion. Inclusion also requires a safe and inclusive atmosphere where children with disabilities can develop their fullest potential. Unfortunately, harassment, bullying and abuse of children with

²⁰ Commissioner for Human Rights (2017), Position Paper, *op. cit.*

disabilities in mainstream schools remain a widespread phenomenon, including on behalf of school administrations, educators, peers and families of non-disabled children. States often neglect their role in providing guidance to schools as to how to foster an inclusive atmosphere, to detect and counteract any such manifestation of prejudice, and to ensure the safety and dignity of children with disabilities. Failing this, parents may become reluctant to pursue equal educational opportunities for their children with disabilities.

33. Moving towards truly inclusive education systems requires a clear commitment from the authorities and ambitious national strategies, with clear goals, appropriate means and incentives for change. In his Position Paper, the Commissioner has pointed to a number of indispensable steps to move towards more inclusive education systems. They include improving existing domestic legislation so as to ensure that the right to inclusive education and to reasonable accommodation are effectively safeguarded and that school segregation is clearly prohibited in all its forms. It is also essential to raise awareness of society about the meaning and value of inclusive education.

B. Inclusion into mainstream education requires reasonable accommodation and adequate supports

34. A vital element in ensuring the right to inclusive education is the provision of reasonable accommodation, defined in the CRPD as the necessary adjustments and means required to ensure that persons with disabilities can enjoy their rights on an equal footing with others, while not imposing a disproportionate or undue burden. Reasonable accommodation is an individual right, which must be directly implemented without undue delays.
35. The CRPD also specifies that persons with disabilities should receive the support they require to facilitate their education, including effective individualised support measures. Where such supports are necessary to ensure academic and social development on an equal footing with others, in particular owing to a lack of accessibility, withholding them can void the right to education of its substance.
36. In many of the countries the Commissioner visited, the main factor hindering the realisation of the right to inclusive education is a failure to provide reasonable accommodation and individual supports. Reasonable accommodation is often not considered as an enforceable right with a corresponding obligation for the authorities to provide it, in contradiction with the CRPD which establishes that it forms an integral part of the right not to be discriminated against.²¹ The Court also acknowledged, in *Çam v. Turkey*, that “discrimination on grounds of disability also covers refusal to make reasonable accommodation”.²²
37. In practice, the Commissioner has deplored in several member states that domestic legislation regulating access to mainstream education leaves too wide a margin of discretion to schools to decide whether the support and adjustments required for a child with a disability to attend mainstream education represent an unreasonable burden. Consequently, schools routinely resort to economic arguments to refuse to provide reasonable accommodation or support, or even to deny enrolment to children with disabilities, a practice which is clearly discriminating against them on grounds of their disability. The Commissioner found that budgetary restrictions imposed as part of austerity measures have, in several countries, had a very detrimental impact on the provision of support for inclusion in mainstream education.
38. Existing financial arrangements for the funding of education also play a role in the lack of provision of individualised support. Many countries keep two streams of education - mainstream and specialised -, which prevents sufficient transfers of funds and specialised teaching staff to enable inclusion into mainstream education. The decentralisation of educational systems also results in the most economically deprived local authorities being unable to allocate sufficient

²¹ See Article 5 paragraph 3 of the CRPD.

²² European Court of Human Rights, *Çam v. Turkey*, App. No. 51500/08, Judgment of 23 February 2016, paragraph 67.

resources for the support of children with disabilities. Additionally, decentralisation can strengthen vested interests at regional level in maintaining a segregated education system.

39. In many member states, resources required to provide adequate individualised support, such as adequately trained teachers and teaching assistants, material arrangements and adapted curricula, are often insufficient or completely lacking. Where individual support is provided, it is sometimes inadequate as it is not based on individualised needs assessment. Furthermore, even in cases where individualised support is provided in the classroom, it is often not available to enable children to attend extra-curricular and non-compulsory education, such as after-school activities.
40. The lack of adequate support in school can also result in bullying and ill-treatment of children with disabilities. The above-mentioned 2015 FRA study²³ indicated that the lack of appropriate mechanisms to ensure a safe environment in processes of inclusion into mainstream education was one of the factors triggering violence against children with disabilities.
41. The Commissioner has stressed that member states should establish reasonable accommodation and the provision of adequate supports as an unequivocal and enforceable obligation for mainstream schools and that its compliance should be monitored. Schools should not be able to use arguments such as the lack of resources or of specialised means to refuse to provide reasonable accommodation to children with disabilities.
42. Lastly, the lack of accessibility of buildings and of the school environment remains a widespread problem in many member states, due notably to a lack of timely implementation of laws on universal design.²⁴ The lack of accessibility is an additional factor hindering the transition to inclusive education. It also increases the need for individualised supports. The Commissioner has recommended eliminating barriers limiting access to mainstream schools for children with disabilities, in line with article 9 of the CRPD.

C. Availability of effective remedies

43. The Commissioner has noted that in several member states, parents of children with disabilities have limited access to effective remedies in order to challenge decisions concerning the access of their children to education without discrimination, especially as regards denials of reasonable accommodation, enrolment denials and inaccessibility of the learning environment. Parents often lack clear and reliable information about their children's rights and existing remedies; communication with school authorities on these issues is often reported to be of poor quality.
44. Moreover, as mentioned above, anti-discrimination legislation in force in many member states still suffers from many gaps and shortcomings regarding the prohibition of all forms of school segregation and the obligation to provide reasonable accommodation. The implementation of laws on accessibility is often unduly delayed. Clear regulations on school admission are also often lacking or their implementation is not sufficiently monitored. The resulting lack of legal certainty, coupled with a widespread lack of understanding of the right to inclusive education as enshrined in the CRPD, makes it difficult for parents to challenge decisions infringing the right to education of their children and in particular to make a case of discrimination in this context.
45. In addition, the Commissioner stresses that promptness and diligence are elements of particular relevance when considering whether a remedy to a violation of children's rights, such as the right to education, can be considered effective. Lengthy proceedings can have an irreversible impact on children. Not being able to obtain redress for violations of the right to education in an expedient manner can lead to dropout, a complete lack of access to school education, or placement in a segregated setting, all of which have long-lasting detrimental

²³ FRA (2015), *op. cit.*

²⁴ Under the CRPD (Article 2: Definitions), "Universal design" means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design.

effects on the life of the person concerned. In other words, children should be able to obtain redress for rights violations at an age at which they can still attend school.

46. In this respect, the Commissioner wishes to draw attention to the Council of Europe Guidelines for child-friendly justice, which establish that “in all proceedings involving children, the urgency principle should be applied to provide a speedy response and protect the best interests of the child, while respecting the rule of law.²⁵ The UN Committee on the Rights of the Child has also stated that “delays in or prolonged decision-making have particularly adverse effects on children as they evolve. It is therefore advisable that procedures or processes regarding or impacting children be prioritized and completed in the shortest time possible”.²⁶
47. Stigmatisation, bullying, harassment and abuse of persons with disabilities by peers, teachers and staff are unfortunately very common occurrences which, in addition to being an infringement of the right to education without discrimination and on the basis of equal opportunity, often amount to ill-treatment. It is therefore particularly important that appropriate mechanisms be in place for children with disabilities to report such occurrences in a safe manner and for schools to prevent and counteract them swiftly and without lengthy or bureaucratic procedures.

IV. Conclusions

48. A majority of member states of the Council of Europe still fail to guarantee access without discrimination to quality education to children with disabilities. This failure manifests itself in practices which discriminate against these children on grounds of their disability, including the placement in segregated educational settings; enrolment denials, denials of reasonable accommodation and necessary supports in mainstream education; and home-schooling proposed as the only available option.
49. These discriminatory practices have long-lasting detrimental effects on the children concerned. They seriously jeopardise their chances of being included in the community and of becoming active members of society on an equal footing with others.
50. Moreover, remedies to challenge violations of the right to education without discrimination are often either unavailable, difficult to access or ineffective, making it difficult for this right to be enforced in practice when it comes to children with disabilities. The lack of prompt and effective remedies for violations of the right to education has particularly detrimental effects on children who, due to the passing of time, might lose any opportunity of receiving quality education during their childhood.
51. The situation in Romania provides a revealing illustration of a more general pattern prevailing in Europe: in practice, inclusive education, reasonable accommodation and individual supports function more as uncertain possibilities than enforceable rights; children with disabilities continue to face enrolment denials and denials of reasonable accommodation and to have home schooling or the placement in segregated settings as the only available options; when included in mainstream education, the lack of individual support and reluctance of professionals, parents and peers towards inclusive education sometimes translates into hostility and ill-treatment. Available remedies in case of violations of the rights of children with disabilities in the educational sphere are of limited effectiveness.
52. In conclusion, the Commissioner is of the opinion that:
 - as regards persons with disabilities, Article 2 of Protocol 1 of the Convention should be interpreted in the light of Article 24 of the CRPD which provides that the right of these persons to education without discrimination and on the basis of equal opportunities is to be implemented through inclusive education;

²⁵ Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, 2010, pp. 28-29.

²⁶ UN Committee on the Rights of the Child, General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1); paragraph 93.

- the widespread practice of refusing to provide reasonable accommodation amounts to discrimination; moreover, withholding the support required to guarantee the right of children with disabilities to education on an equal footing with other children voids their right to education of its substance. These practices can also result in other infringements of the rights of children with disabilities, including their right to be included in the community and to be protected from violence and ill-treatment;
- in the absence of prompt and effective remedies to challenge allegations of rights violations in the area of education, the right of children with disabilities to access education without discrimination remains illusory and theoretical, a situation not in line with the principle of effectiveness in which the Convention is grounded.