

CHILD'S RIGHT TO INCLUSIVE EDUCATION

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ABSTRACT

International and European human rights laws increasingly recognise inclusive education as an essential requirement for a successful exercise of the right to education. This article discusses the normative basis of the child's right to inclusive education, relying on international treaty norms and the European Court of Human Rights' jurisprudence. It claims that states carry main responsibility for creating inclusive educational systems. The findings show that, despite strong legal guarantees, many children, particularly those with disabilities, continue to encounter severe impediments to fair and good-quality education. The article continues by addressing the structural adjustments required to turn inclusive education from a declarative commitment to an enforceable and practical reality.

Key words: children's rights, right to education, inclusive education, capabilities, equality of opportunity, ECtHR case law, CRPD, CRC, discrimination.

1. INTRODUCTION

The right to education is, in its essence, a child's right, whose purpose is the acquisition of progressively developing knowledge that serves the individual and forms a prerequisite for future success in life.¹ Therefore, family law theory considers it as an inherent and fundamental child's right.² Disabled children have historically been denied the effective enjoyment of their right to educa-

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¹ Hrabar, D.: Obiteljskopравни odnosi roditelja i djece, in: Hrabar, D., et al. (eds.): *Obiteljsko pravo*, Zagreb: Narodne novine d.d., 2021, p. 225.

² Hrabar, D.: Prava djece u Europskoj uniji – pravni okvir, in: Bodiroga-Vukobrat, N., et al. (eds.): *Europsko obiteljsko pravo*, Zagreb: Narodne novine d.d., 2013, p. 62.

tion.³ In many parts of the world, they still do not have access to education. Even in high-income countries, where access to education is formally guaranteed, children with disabilities are frequently referred to special schools that often provide lower academic standards and limit future life opportunities.⁴

A persistent structural problem lies in the insufficient allocation of resources necessary to support disabled children within mainstream schools. Educational institutions often lack adequate funding, specialised personnel, assistive technologies, and adapted curricula to meet diverse needs.⁵ Teachers, in turn, frequently report feeling unprepared to address disability-related issues within inclusive classroom environments.⁶ Consequently, disabled children are perceived as unable to “fit” within the mainstream education system. They are therefore often denied admission to regular schools or, when admitted, exposed to harassment, marginalisation, and bullying.⁷

Regarding to these inequalities, the capabilities approach could be implemented as a normative framework for evaluating and improving the access to education for children with disabilities. Originally elaborated by Amartya Sen, the capabilities approach argues that justice requires arranging social institutions in a way that enhances individuals’ real freedoms, understood as their genuine opportunities to achieve valuable “functioning.”⁸ The approach recognises that the mere distribution of resources is insufficient; attention must also be paid to personal, social, and environmental factors that affect the conversion of resources into meaningful life outcomes.⁹ According to Nussbaum, justice requires that each individual reach at least a minimum threshold level in essential capabilities that are necessary for a life worthy of human dignity.¹⁰ These theories provide a foundation for inclusive education which ensures equal access to educational opportunities to all children, no matter what the differences between them are.

³ Today it is estimated that 240 million children worldwide have disabilities, which is approximately 1 in 10 children. UNESCO: *The Right to Education – Past, Present and Future Directions*, Paris: UNESCO Publishing, 2025, p. 52.

⁴ Ibid.

⁵ Jardinez, J., Natividad, L.: The Advantages and Challenges of Inclusive Education: Striving for Equity in the Classroom. *Shanlax International Journal of Education*, 12(2) 2024, p. 59.

⁶ Ibid., pp. 59-60.

⁷ Ibid., p. 59.

⁸ Sen, A.: Capability and Well-Being, in: Nussbaum, M., Sen, A. (eds.): *The Quality of Life* (pp. 30-53), Oxford: Clarendon Press, 1993, p.31.

⁹ Ibid., p. 45.

¹⁰ Nussbaum, M.: *Creating Capabilities*, Cambridge: Harvard University Press, 2011, pp. 33-34.

Although normative acts guarantee inclusive education and oblige states to provide ensuring equal access to educational opportunities to all children, the case law of the European Court of Human Rights (ECtHR) reveals that violations of children's right to inclusive education persist, which is highlighting gaps between normative guarantees and their practical implementation.

In this paper, the author will analyse the normative framework for the protection of the right to inclusive education, as well as selected ECtHR judgements that may be useful guidelines for enhancing the efficient implementation of this fundamental right.

2. NORMATIVE FRAMEWORK FOR THE RIGHT TO INCLUSIVE EDUCATION

Education is not only a fundamental human right but also a critical enabler for the enjoyment of other rights, including civil, political, social, and economic rights.¹¹ This dual character—education as both a right and an enabling condition—has been consistently affirmed across universal and regional instruments.

The Universal Declaration of Human Rights (UDHR) provides the earliest comprehensive articulation of the right to education, establishing in Article 26 that everyone has the right to education, that primary education shall be free and compulsory, and that education must be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms.¹² Article 26(3) further recognises that parents have a prior right to choose the kind of education that shall be given to their children, a principle reaffirmed in multiple instruments, including the Convention against Discrimination in Education (1960), the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the First Protocol to the European Convention on Human Rights.¹³ The universal-

¹¹ UN Committee on Economic, Social and Cultural Rights (CESCR): *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)*, E/C.12/1999/10, 08.12.1999, §1.

¹² Narodne novine-Međunarodni ugovori: *Opća deklaracija o ljudskim pravima*, Zagreb: Narodne novine d.d., 12/2009, Art. 26.

¹³ Narodne novine-Međunarodni ugovori: *Konvencija o borbi protiv diskriminacije u oblasti prosvjete*, Zagreb: Narodne novine d.d., 12-27/1993, Art. 5; Narodne novine-Međunarodni ugovori: *Međunarodni pakt o građanskim i političkim pravima*, Zagreb: Narodne novine d.d., 11-60/1995, Art. 18(4)-(5); Narodne novine-Međunarodni ugovori: *Međunarodni pakt o ekonomskim, socijalnim i kulturnim pravima*, Zagreb: Narodne novine d.d., 12-27/1993, Arts.

ity of previously mentioned normative acts and its provisions demonstrates that parental choice in education has attained the status of customary international law, subject to the overarching objectives of education.¹⁴ Embedding parental participation and feedback into school governance and policy development therefore finds a clear legal basis, particularly in systems designed to promote inclusion and protect the rights of marginalised and vulnerable groups such as children with disabilities.

The International Covenant on Economic, Social and Cultural Rights (ICESCR) elaborates the normative content of the right to education by emphasising its central role in human development and social inclusion. Article 13 requires that education be directed to the full development of the human personality, promote dignity, and enable participation in a free society while fostering understanding, tolerance, and friendship among all groups.¹⁵ The ICESCR introduces the principle of progressive realisation under Article 2(1), obliging states to take deliberate, concrete, and targeted steps toward the full implementation of the right to education. Certain obligations, however, such as non-discrimination and free and compulsory primary education, are of immediate effect.¹⁶ These provisions have direct implications on inclusive education, as states cannot justify the exclusion of children with disabilities because of limited resources. The Special Rapporteur on the right to education has consistently highlighted that the right to education is meaningful only when it is inclusive, emphasising in reports from 2017 and 2019 that inclusive education constitutes a legal obligation under ICESCR and related treaties rather than a discretionary policy choice.¹⁷

The United Nations 2030 Agenda for Sustainable Development, notably Goal 4 (SDG 4), reinforces the worldwide commitment to the right to education

13-14; UN General Assembly: *International Convention of the Protection of the Rights of All Migrant Workers and Members of Their Families*, A/RES/45/158, 18.12.1990, entered into force 1 July 2003, Arts. 30-31, Narodne novine-Međunarodni ugovori: *Protokol br. 1. uz Konvenciju o temeljnim ljudskim pravima i slobodama*, Zagreb: Narodne novine d.d., 18/1997, 6/1999, 14/2002, 13/2003, 9/05, 1/2006, 2/2010, 13/2017, Art. 2.

¹⁴ Schabas, W. A.: *The Customary International Law of Human Rights*, Oxford: Oxford University Press, 2021, p. 320.

¹⁵ Narodne novine-Međunarodni ugovori: *Međunarodni pakt o ekonomskim, socijalnim i kulturnim pravima*, Zagreb: Narodne novine d.d., 12-27/1993, Arts. 13-14.

¹⁶ Narodne novine-Međunarodni ugovori: *Međunarodni pakt o ekonomskim, socijalnim i kulturnim pravima*, Zagreb: Narodne novine d.d., 12-27/1993, Art. 2(1); UN Committee on Economic, Social and Cultural Rights (CESCR): *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)*, E/C.12/1999/10, 08.12.1999.

¹⁷ UN General Assembly: *Right to education – Note by the Secretary General*, A/72/496, 27.09.2017; UN General Assembly: *Right to Education*, A/74/243, 26.07.2019.

by attempting to ensure inclusive and equitable quality education as well as encourage lifelong learning opportunities for all.¹⁸ The Incheon Declaration (2015) developed the implementation framework for this goal, emphasising the importance of inclusion and equality in ensuring good education.¹⁹ States that have adopted this declaration have pledged to addressing all forms of exclusion and marginalisation, regarding inclusive education as a policy choice rather than a precondition for social justice and democratic growth.²⁰

The Convention on the Rights of the Child (CRC) provides the most detailed articulation of educational rights for children.²¹ Article 28 obliges states to ensure free and compulsory primary education, accessible secondary education, and higher education based on capacity, while Article 29 specifies the aims of education, including the development of the child's personality, talents, and abilities, respect for human rights, and preparation for responsible life in a free society. Article 23 specifically addresses children with disabilities, requiring states to ensure "effective access to and receipt of education" and to promote the "fullest possible social integration and individual development although the term "inclusive education" is not used explicitly in the CRC, the Committee on the Rights of the Child acknowledge that it is the model that is most effectively consistent with the Convention's principles and objectives.²² The principle of the child's best interests, as prescribed in Article 3(1) of the CRC, reinforces the obligation of state to provide inclusive educational systems. In accordance with the Committee's General Comment No. 14, the best interest's principle serves as a substantive right, an interpretative standard, and a procedural rule that guidelines all decisions affecting children, emphasizing that all rights are interdependent and that no right may be compromised in determining what is best for a child.²³

European normative acts complement the global one. The European Union has, over the past decade, sought to elevate the overall standard of human-rights

¹⁸ UNESCO: *Incheon Declaration and Framework for Action for the Implementation of Sustainable Development Goal 4: Ensure Inclusive and Equitable Quality Education and Promote Lifelong Learning Opportunities for All*, Paris: UNESCO Publishing, 2015.

¹⁹ *Ibid.*, p. 22.

²⁰ *Ibid.*, p. 23.

²¹ Narodne novine-Međunarodni ugovori: *Konvencija o pravima djeteta*, Zagreb: Narodne novine d.d., 12/1993, Arts. 23, 28-29.

²² UN Committee on the Rights of the Child: *General Comment No. 9: The Rights of Children with Disabilities*, CRC/C/GC/9, 27.02.2007, §§. 1, 22-24.

²³ 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)*, CRC/C/GC/14, 29.05.2013, §§. 4-5.

protection for its citizens, including children.²⁴ Article 2 of Protocol No. 1 to the European Convention on Human Rights (ECHR) guarantees the right to education and recognizes parents' right to ensure education in accordance with their religious and philosophical beliefs. It is the only child-oriented right in the ECHR.²⁵ The European Court of Human Rights (ECtHR) has developed significant jurisprudence on educational discrimination, particularly in respect of Roma children and children with disabilities, thus impacting the European normative framework for inclusive education.²⁶ The Revised European Social Charter enhances these norms through establishing safeguards for children and young people, such as a minimum working age, prohibitions on hazardous labour, and provisions to ensure that employment does not interfere with compulsory education.²⁷

Such provisions underscore the primacy of education in the lives of children and the corresponding obligation of states to safeguard their holistic development and well-being.

The Convention on the Rights of Persons with Disabilities (CRPD) provides the most comprehensive and authoritative legal framework for inclusive education.²⁸ Article 24 obliges states to ensure that persons with disabilities are not excluded from the general education system, that children with disabilities have access to free and compulsory primary education, and that all learners enjoy inclusive, good-quality primary, secondary, and tertiary education on an equal basis with others. States must provide reasonable accommodation, individualised support, accessible environments, and teacher training in inclusive pedagogies. The CRPD Committee, in General Comment No. 4, describes inclusive education as a systemic reform requiring modifications in content, teaching methods, approaches, structures, and strategies to overcome barriers and provide equitable and participatory learning opportunities for all stu-

²⁴ Majstorović, I.: *Europski obiteljskopравни sustav zaštite prava djece*, in: Hrabar, D. (ed.): *Prava djece – multidisciplinarni pristup*, Zagreb: Pravni fakultet Sveučilišta u Zagrebu, 2016, p. 59.

²⁵ Fenton-Glynn, C.: *Children and the European Court of Human Rights*, Oxford: Oxford University Press, 2020, p. 146.

²⁶ European Court of Human Rights: *Key Theme – Article 2 of Protocol No. 1: Discrimination in Access to Education*, 2025.

²⁷ Narodne novine-Međunarodni ugovori: *Europska socijalna povelja*, Zagreb: Narodne novine d.d., 15/2002, Arts. 7, 10, 17.

²⁸ Narodne novine-Međunarodni ugovori: *Konvencija o pravima osoba s invaliditetom*, Zagreb: Narodne novine d.d., 6/2007.

dents.²⁹ Article 7 further imposes a child-specific obligation, requiring states to ensure that children with disabilities enjoy all human rights on an equal basis with others, that their best interests are a primary consideration, and that they are able to express their views freely in all matters affecting them.³⁰ Structural indicators are essential for ensuring that inclusive education is implemented effectively. The Report on governance and the right to education recommends that states implement indicators for monitoring obligations under treaties, national educational goals, and the sustainable development goals; collect detailed, disaggregated data for evaluating whether vulnerable populations are served; and incorporate human rights indicators into education governance, including disability inclusion, equitable outcomes, participation, transparency, and accountability.³¹ These indicators provide states with tools for monitoring compliance, evaluating institutional effectiveness, and ensuring that inclusive education meets human rights standards.

Another essential element of inclusive education is the quality of education. Katarina Tomasevski, the first UN Special Rapporteur on the Right to Education, presented the influential 4A framework—availability, accessibility, acceptability, and adaptability—as a guideline for evaluating educational quality.³² Education must be accessible to all, free of prejudice, relevant and culturally appropriate, and adaptive to learners' needs, local circumstances, and changing societal demands.³³ The Council of Europe's Recommendation CM/Rec(2012)13 expands onto this approach by determining member states' responsibility to provide quality education in both public and private institutions.³⁴

²⁹ Committee on the Rights of Persons with Disabilities, *General Comment No. 4 (2016) on the Right to Inclusive Education*, CRPD/C/GC/4, 02.09.2016, §. 11.

³⁰ Narodne novine-Međunarodni ugovori: *Konvencija o pravima osoba s invaliditetom*, Zagreb: Narodne novine d.d., 6/2007, Arts. 7(1)-(3); Art. 24(2)(a)-(e).

³¹ UN Human Rights Council: *Report of the Special Rapporteur on the right to education – Governance and the right to education*, A/HRC/38/32, 09.05.2018, §§. 89-91.

³² Tomaševski, K.: *Human Rights Obligations in Education: The 4-A Scheme*, Nijmegen: Wolf Legal Publishers, 2006.

³³ UN General Assembly: *Right to education – Note by the Secretary General*, A/72/496, 27.09.2017, §§ 19-21.

³⁴ Council of Europe: Recommendation CM/Rec(2012)13 of the Committee of Ministers to Member States on Ensuring Quality Education, 12.12.2012.

3. JUDICIAL PRACTICE OF THE EUROPEAN COURT OF HUMAN RIGHTS ON INCLUSIVE EDUCATION: A CAPABILITIES-BASED PERSPECTIVE

The right to education under Article 2 of Protocol No. 1 to the European Convention on Human Rights (ECHR) has become an important doctrinal tool for advancing the educational rights of children with disabilities. Although the provision is framed in negative terms, the European Court of Human Rights (ECtHR) has consistently interpreted it as containing substantive positive obligations. The Court has emphasised that the right to education possesses inherent substance and entails corresponding duties on the part of the state, thereby rejecting any minimalist reading of its scope.³⁵ This interpretative approach is particularly significant for children with disabilities, whose access to education is often prevented not by formal exclusion but by structural barriers, insufficient support, and the absence of reasonable accommodation.

The ECtHR has repeatedly emphasized in its case law that education is important for personal development, autonomy, and social participation. It has stressed that primary and secondary education constitute a foundational stage in a child's development and prospects, a consideration that acquires an enhanced relevance for children with disabilities, for whom exclusion from mainstream education has lifelong consequences.³⁶ The Court's jurisprudence aligns with the UN Convention on the Rights of Persons with Disabilities (CRPD), which recognises inclusive education as the normative standard. In its case law, the ECtHR has declared that inclusive education represents the most appropriate means of ensuring universality and non-discrimination in the education.³⁷ This has had an impact on the understanding of the right to education, moving from a formal model of access toward a substantive one, that requires states to eliminate barriers and provide individualised support.

This change in the ECtHR reasoning can be observed through the lens of the capabilities approach, developed by Amartya Sen and expanded by Martha Nussbaum. Sen argues that justice requires enhancing individuals' real freedoms, understood as their genuine opportunities to achieve valuable "functionings", rather than merely distributing resources.³⁸ On the other hand, Nussbaum identifies human capabilities necessary for a life worthy of human dignity, including bodily integrity, practical reason, affiliation, and control over

³⁵ Council of Europe: *Guide on Article 2 of Protocol No. 1 to the European Convention on Human Rights – Right to Education*, Strasbourg, 2025, § 4.

³⁶ *Ibid.*, §12.

³⁷ *Ibid.*, §55.

³⁸ Sen, A.: *Development as Freedom*, Oxford: Oxford University Press, 1999, pp. 3-34, 74-76.

one's environment.³⁹ Education is a primary mechanism through which many of these capabilities are developed and exercised and when the ECtHR concludes that children with disabilities must be able to attend school "in equivalent conditions to their non-disabled peers", as in *G.L. v Italy*, it is effectively demanding that states secure the real, not merely formal, opportunity to develop these capabilities.⁴⁰ The Court's rejection of budgetary justifications in providing inclusive education corresponds with Nussbaum's point of view that a "decent society" must ensure a minimum threshold of capabilities for all individuals, including those with disabilities.⁴¹

An important ECtHR change toward substantive equality is the doctrine of reasonable accommodation. The Court has defined reasonable accommodation as the necessary and appropriate modifications and adjustments that do not impose a disproportionate or undue burden,⁴² thereby incorporating the CRPD's conceptual framework into the normative interpretation of ECHR. The Court's jurisprudence in *Çam v. Turkey*, *Enver Şahin v. Turkey*, and *G.L. v. Italy* demonstrates the operationalisation of this doctrine. In *Çam v. Turkey*, the ECtHR concluded for the first time that denial of reasonable accommodation constitutes discrimination under Article 14 ECHR.⁴³ This represents a doctrinal breakthrough as the Court explicitly recognised that discrimination extends beyond differential treatment to include the failure to remove barriers that prevent equal participation.⁴⁴ The Music Academy's refusal to enrol a blind student, despite demonstrated musical ability, was found discriminatory because the authorities failed to identify her needs or consider adaptations.⁴⁵ The inclusivity and non-discrimination were the fundamental principles in this judgement.⁴⁶ Thus, this judgment was grounded on the doctrine of substantive equality which has its focus on real opportunities rather than formal entitlements.

³⁹ Nussbaum, M.: *Creating Capabilities*, Cambridge: Harvard University Press, 2011, p. 18

⁴⁰ Council of Europe: *Guide on Article 2 of Protocol No. 1 to the European Convention on Human Rights – Right to Education*, Strasbourg, 2025, §§ 54, 70.

⁴¹ Nussbaum, M.: *Frontiers of Justice: Disability, Nationality, Species Membership*, Cambridge: Harvard University Press, 2007, pp. 76-77.

⁴² Council of Europe: *Guide on Article 2 of Protocol No. 1 to the European Convention on Human Rights – Right to Education*, Strasbourg, 2025, §55.

⁴³ ECtHR: *Çam v. Turkey*, no. 51500/08, 23.02.2016, § 69.

⁴⁴ Damamme, J.: Disability discrimination because of denial of "reasonable accommodations": a very positive connection between the ECHR and the UNCRPD in *Çam v. Turkey*, *Strasbourg Observers*, 01.04.2016.

⁴⁵ ECtHR: *Çam v. Turkey*, no. 51500/08, 23.02.2016, § 54.

⁴⁶ Fenton-Glynn, C.: *Children and the European Court of Human Rights*, Oxford: Oxford University Press, 2020, p. 152.

The ECtHR further developed this doctrine in *Enver Şahin v. Turkey*, where a paraplegic student was unable to access university buildings.⁴⁷ The Court noted that the accessibility issue had remained unresolved for years due to financial constraints, revealing a systemic failure to prioritise accessibility.⁴⁸ It highlights that the Court distinguished between acceptable and unacceptable forms of personal assistance, emphasising that carrying a student up the stairs is incompatible with dignity, autonomy, and safety.⁴⁹ Importantly, it introduces a distinction between reasonable accommodation (individual, reactive) and accessibility (group-based, anticipatory), drawing on CRPD Committee General Comment No. 2.⁵⁰ When this judgement is read in the light of the capabilities doctrine, accessibility ensures that the environment does not prevent the development of essential capabilities (e.g. bodily integrity, affiliation, and control over one's environment).

The ECtHR judgment in *G.L. v. Italy* follows a similar path as in this case, concerning a child with non-verbal autism who was denied specialised assistance guaranteed by domestic law.⁵¹ The Court held that child could not attend school “in equivalent conditions to her non-disabled peers”, which constituted discrimination under Article 14 ECHR in conjunction with Article 2 of Protocol No. 1.⁵² It emphasizes the Court's finding that budgetary constraints cannot justify the failure to provide reasonable accommodation and that any resource limitations must affect disabled and non-disabled pupils equally.⁵³ This reasoning can be also interpreted in the light of substantive equality, which means that the state is obliged to ensure that budgetary constraints do not disproportionately burden children with disabilities. The Court also reaffirmed that children with disabilities constitute a particularly vulnerable group, thereby narrowing the state's margin of appreciation and heightening its positive obligations.⁵⁴ From a capability's perspective, this judgment affirms that the state

⁴⁷ ECtHR: *Enver Şahin v. Turkey*, no. 23065/12, 30.01.2018.

⁴⁸ Council of Europe: *Guide on Article 2 of Protocol No. 1 to the European Convention on Human Rights – Right to Education*, Strasbourg, 2025, §57.

⁴⁹ Damamme, J.: Disability discrimination because of denial of “reasonable accommodations”: a very positive connection between the ECHR and the UNCRPD in *Çam v. Turkey*, *Strasbourg Observers*, 01.04.2016.

⁵⁰ *Ibid.*

⁵¹ ECtHR: *G.L. v. Italy*, no. 59751/15, 10.09.2020, §§ 2-16.

⁵² Council of Europe: *Guide on Article 2 of Protocol No. 1 to the European Convention on Human Rights – Right to Education*, Strasbourg, 2025, §54., § 57.

⁵³ Vrancken, M.: *Substantive equality as the driving force behind reasonable accommodations for pupils with disabilities: the case of G.L. v. Italy*, *Strasbourg Observers*, 01.10.2020, § 68.

⁵⁴ ECtHR: *G.L. v. Italy*, no. 59751/15, 10.09.2020, § 60.

must secure the minimum threshold of capabilities for all children, regardless of budgetary constraints. Otherwise, when a child would be denied the support necessary to participate meaningfully in education, the deprivation would not only affect the educational aspect, but it would also represent a deprivation of its ability to develop fundamental capabilities.

The ECtHR judgement in *Dupin v. France* shows a departure from previous judgment. The *Dupin v. France* case dealt with a child who has autism spectrum disorder and whose mother had sought his inclusion in a general school, while French authorities insisted on placement in a specialised *Institut médico-éducatif*.⁵⁵ The Court acknowledged the importance of inclusive education and the state's obligation to consider the impact of their choices on vulnerable groups.⁵⁶ Yet, it found no violation of Article 2 of Protocol No. 1, accepting the French authorities' judgement that the child's needs could not be adequately met in mainstream schooling.⁵⁷ It seems like the ECtHR interpreted inclusive education as favour that state gives to disabled children rather than their subjective right.⁵⁸ The Court's reasoning in *Dupin v. France* appears to give way to an older, more deferential approach, granting states a wide margin of appreciation and refraining from applying the CRPD-informed priority of inclusive education as we may notice in cases *Çam v. Turkey*, *Enver Şahin v. Turkey*, and *G.L. v. Italy*.⁵⁹ Unlike those cases, the Court did not explicitly engage with the CRPD, nor did it articulate inclusive education as a presumptive norm. Instead, it formally prioritises inclusion, even though the child was excluded from mainstream schooling which suggests the Court's reliance on an integrationist rather than inclusive model.⁶⁰

From a capabilities perspective, *Dupin v. France* is troubling, as the ECtHR acceptance of institutionalisation without considering whether reasonable accommodations were seriously examined significantly prevents the child's ability to develop central capabilities like affiliation (e.g. being able to engage in various forms of social interactions), which represents a departure from the substantive equality that previous ECtHR judgments (*Çam v. Turkey*, *Enver Şahin v. Turkey*, and *G.L. v. Italy*) had begun to accomplish.⁶¹

⁵⁵ ECtHR: *Dupin v. France*, no. 2282/17, 18.12.2018, § 5.

⁵⁶ *Ibid.*, §§ 27-28.

⁵⁷ *Ibid.*, § 33.

⁵⁸ Fenton-Glynn, C.: *Children and the European Court of Human Rights*, Oxford: Oxford University Press, 2020, p. 153.

⁵⁹ Lievens, J., Spinoy, M.: *Dupin v. France: The ECtHR Going Old School in Its Appraisal of Inclusive Education?*, Strasbourg Observers, 11.02.2019.

⁶⁰ *Ibid.*

⁶¹ Nussbaum, M., *op.cit.*, note 40, p. 34.

According to Sen, inequality must be assessed in terms of real freedoms, not formal entitlements.⁶² Although the child in *Dupin v. France* formally retained access to education, his actual opportunities for affiliation, communication, and participation in a shared educational environment were severely curtailed by institutional placement. On the other hand, Nussbaum's framework underscores that capabilities such as affiliation and control over one's environment can only be developed through meaningful interaction with others in inclusive settings.⁶³ By accepting institutionalisation without scrutinising whether reasonable accommodations had been meaningfully explored, the ECtHR effectively endorsed a model that restricts the child's ability to develop these capabilities which represents a shift away from the substantive equality that earlier cases had begun to embrace.

The following case of *Stoian v. Romania* highlights this retreat. The applicants, a child with serious physical disability (spastic quadriplegia) and wheelchair-bound, and his mother, claimed that the child did not have access to his physical environment, particularly the school grounds, that no reasonable accommodation had been made for him despite his condition, and that both applicants had been subjected to discrimination and lacked an effective remedy for introducing their grievances before domestic authorities.⁶⁴ The ECtHR emphasised that reasonable accommodation in education may take diverse physical, organisational, or pedagogical forms and can operate as an interim measure where accessibility is lacking.⁶⁵ The Court concluded that in this particular case the authorities had pursued alternative solutions for the applicant, and that he had not been deprived of education, as he continued attending school and progressing through the curriculum.⁶⁶ The Court further found that the authorities were aware of their obligations and that domestic courts repeatedly ordered concrete accommodations, which the administrative bodies sought to implement although the difficulties in securing a personal assistant were present.⁶⁷ The ECtHR also observed that several support measures were rendered ineffective due to the second applicant's refusals.⁶⁸ As the state's margin of appreciation in allocating educational resources, the Court concluded that the authorities had taken steps to address the applicant's needs through

⁶² Sen, A., *op.cit.*, note 39, pp. 3-4.

⁶³ Nussbaum, M., *op.cit.*, note 40, p. 34.

⁶⁴ ECtHR: *Stoian v. Romania*, no. 289/14, 25.06.2019, § 3, § 10, §§ 80-83.

⁶⁵ *Ibid.*, §103.

⁶⁶ *Ibid.*, §104, §105.

⁶⁷ *Ibid.*, §106, §107.

⁶⁸ *Ibid.*, §108.

infrastructural adaptations and support services and the state had fulfilled its duty to provide reasonable accommodation without imposing a disproportionate burden and therefore found no violation of Article 8 or Article 2 of Protocol No. 1, alone or with Article 14.⁶⁹

Although the ECtHR eventually found no violation, its rationale differed significantly from that of *Dupin v. France*. The ECtHR in *Stoian v. Romania* recognized that the child had remained in mainstream education, had been evaluated, and had progressed through the curriculum. It emphasized the authorities' "efforts" to find and maintain a personal assistant, even if they were eventually unsuccessful. This approach contrasts strongly with the more demanding standard applied in *G.L. v. Italy*, where the Court determined that state must ensure that children with disabilities can attend school "in equivalent conditions" to their peers, and that budgetary constraints cannot justify the absence of specialised support.⁷⁰ Read alongside *Stoian v. Romania*, *Dupin v. France* reveals a clear pattern: in both cases, the Court retreats from the more robust, CRPD-aligned standard it had begun to develop in *Çam v. Turkey*, *Enver Şahin v. Turkey*, and *G.L. v. Italy*.

These concerns become more distinguished in judgments *T.H. v Bulgaria* and *S. v the Czech Republic*.⁷¹ In *T.H. v Bulgaria*, the ECtHR examined whether a primary school had made appropriate reasonable accommodations for a student diagnosed with hyperkinetic and scholastic-skills disorders.⁷² The child demonstrated violent and disruptive behaviour, forcing the school to implement a variety of measures to support him while simultaneously protecting the safety and meeting educational requirements of his peers.⁷³ The Court recognized that the school had made "a series of reasonable adjustments", and that the head teacher and class teacher had not "turned a blind eye" to the child's disability or special needs.⁷⁴ The Court underlined the difficult task of balancing the applicant's interests with those of his classmates, particularly their

⁶⁹ Ibid., §109, §110, §111.

⁷⁰ Vrancken, M.: *Substantive equality as the driving force behind reasonable accommodations for pupils with disabilities: the case of G.L. v. Italy*, Strasbourg Observers, 01.10.2020; ECtHR: *G.L. v. Italy*, no. 59751/15, 10.09.2020, §§ 69-70.

⁷¹ ECtHR: *T.H. v. Bulgaria*, no. 46519/20, 11.07.2023, ECtHR: *S. v. the Czech Republic*, no. 37614/22, 7.02.2025.

⁷² ECtHR: *T.H. v. Bulgaria*, no. 46519/20, 11.07.2023, § 113.

⁷³ Ibid., § 112.

⁷⁴ Ibid., § 122.

safety, well-being, and effective schooling and it determined that there was no breach of Article 14 in connection with Article 2 of Protocol No. 1.⁷⁵

However, the *T.H. v Bulgaria* judgement diverges from previous ECtHR judgements by lacking any substantive interaction connection with the CRPD, as it is failing to adequately articulate the principle of inclusive education.⁷⁶ Unlike *Çam v. Turkey*, *Enver Şahin v. Turkey*, and *G.L. v. Italy*, the Court did not focus its reasoning within the broader context of the state's duty to provide inclusive education as it limited itself to determining whether the school's procedures were appropriate in light of the child's behaviour and the competing interests at stake. In this manner, the Court's omission is significant, as without mentioning inclusive education, it risks reducing reasonable accommodation to a collection of discretionary measures rather than a rights-based responsibility founded on equality. The judgement additionally demonstrates conceptual ambiguity in the Court's distinction between direct discrimination and reasonable accommodation, because it interpreted the same set of facts—such as disciplinary measures imposed on the child—as both potentially discriminatory and part of the school's reasonable accommodation efforts.⁷⁷ This dual description produces a paradox: the child is seen to be in a “relevantly similar circumstance” to his classmates for direct discrimination, but in a “relevantly different situation” for reasonable accommodation.⁷⁸

A similar pattern emerges in *S. v. Czech Republic* judgement, when the ECtHR evaluated whether a primary school was adequately conscientious in meeting the educational needs of a child with autism spectrum disorder.⁷⁹ The applicant's parents requested reasonable accommodations, however there were delays in developing and approving an individual integration plan.⁸⁰ The Court agreed that some delays were due to systemic problems, and that the school could have proceeded more rapidly after the child's needs were identified.⁸¹ Nonetheless, it determined that the school had taken enough measures and that the parents' lack of cooperation exacerbated the difficulties and it thus found no breach of Article 14 in connection with Article 2 of Protocol No. 1.⁸² There-

⁷⁵ Ibid., § 122.

⁷⁶ Vrancken, M.: *Not the Court's finest work: inclusive education and reasonable accommodations for pupils with disabilities in T.H. v. Bulgaria*, Strasbourg Observers, 20.07.2023.

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ ECtHR: *S. v. the Czech Republic*, no. 37614/22, 7.02.2025, §§ 8-20, §§ 72-78.

⁸⁰ Ibid., §§ 15-18, § 74.

⁸¹ Ibid., §§ 74-76.

⁸² Ibid., § 90.

fore, the analysis of *S. v. Czech Republic* demonstrates the Court's continued reliance on the medical model of impairment, despite its declared commitment to interpreting the ECHR in accordance with the CRPD.⁸³

When *T.H. v Bulgaria* and *S. v. Czech Republic* judgements are compared to *Dupin v. France* and *Stoian v. Romania*, a concern pattern emerges as the ECtHR tends to be more willing to adhere to national authorities' choices, even when they violate the ideals of inclusive education and reasonable accommodation. This regard can be challenging to reconcile with the ECtHR previous judgements, which recognized inclusive education as the most effective way to ensure universality and non-discrimination. This leads to doctrinal uncertainty, and it is challenging for the states as they cannot reliably identify what the ECHR requires in terms of disability and education, and applicants cannot forecast how the ECtHR will rule on their claims.

4. INCLUSIVE EDUCATION IN THE CROATIAN LEGAL FRAMEWORK

The right to inclusive education in the Republic of Croatia is grounded in a normative framework that has its normative base in the Constitution of the Republic of Croatia. The Constitution prescribes that "a child who is physically or mentally impaired or socially neglected shall have the right to special care, education and welfare."⁸⁴ This constitutional provision forms part of the system of social rights and is based on the principles of social security and social justice.

International instruments further oblige the Republic of Croatia to develop an inclusive educational system. The Convention on the Rights of the Child (CRC) affirms that every child has the right to education in accordance with his or her abilities,⁸⁵ while the Convention on the Rights of Persons with Disabilities (CRPD), in Article 24, obliges the Republic of Croatia to ensure an inclusive education system at all levels, prohibit exclusion from the general education system, and provide reasonable accommodation.⁸⁶

⁸³ Vrancken, M.: *Reasonable accommodation in schools in S. v. the Czech Republic: How the ECtHR's position on the CRPD has become untenable*, Strasbourg Observers, 04.02.2025.

⁸⁴ Narodne novine: *Ustav Republike Hrvatske*, Zagreb: Narodne novine d.d., 56/1990, 135/1997, 08/1998, 113/2000, 124/2000, 28/2001, 41/2001, 55/2001, 76/2010, 85/2010, 05/2014, Art. 63.

⁸⁵ Narodne novine-Međunarodni ugovori: *Konvencija o pravima djeteta*, Zagreb: Narodne novine d.d., 12/1993, Arts. 23, 28-29.

⁸⁶ Narodne novine-Međunarodni ugovori: *Konvencija o pravima osoba s invaliditetom*, Zagreb: Narodne novine d.d., 6/2007, 5/2008, Arts. 23, 28-29.

The normative framework elaborates these international obligations through several key legislative acts. The Act on Education in Primary and Secondary Schools defines students with special educational needs as gifted students and students with disabilities⁸⁷ and classifies them into three groups: students with developmental disabilities, students with learning difficulties and emotional-behavioural problems, and students whose difficulties are conditioned by social, economic, and cultural factors.⁸⁸ The Preschool Education Act regulates the inclusion of children with disabilities in kindergartens, including priority enrolment, mandatory initial interviews, and the possibility of employing a third educator or an assistant.⁸⁹ Furthermore, the Act on Textbooks and Other Educational Materials prescribes the obligation to provide adapted textbooks and other educational materials.⁹⁰

The implementation of statutory provisions is further regulated by secondary legislation, notably the Ordinance on Primary and Secondary Education of Students with Developmental Disabilities, the Ordinance on Teaching Assistants and Professional Communication Intermediaries, the Ordinance on the Number of Students in Regular and Combined Class Sections and Educational Groups in Primary School, and the Ordinance on the Required Qualifications of Teachers and Professional Associates in Primary Schools.⁹¹

From a normative perspective, the Republic of Croatia has made significant reform progress over recent decades in integrating children with disabilities into the mainstream education system. Research indicates a gradual decline in the number of special schools and a strengthening of integration and individ-

⁸⁷ Narodne novine: *Zakon o odgoju i obrazovanju u osnovnoj i srednjoj školi*, Zagreb: Narodne novine d.d., 87/2008, 86/2009, 92/2010, 105/2010, 90/2011, 5/2012, 16/12, 86/2012, 126/2012, 94/2013, 152/2014, 7/2017, 68/2018, 98/2019, 64/2020, 133/2020, 151/2022, 155/2023, 156/2023, Art. 62.

⁸⁸ Ibid., Art. 65.

⁸⁹ Narodne novine: *Zakon o predškolskom odgoju i obrazovanju*, Zagreb: Narodne novine d.d., 10/1997, 107/2007, 94/2013, 98/2019, 57/2022, 101/2023, 145/2023, 145/2024, 146/2025, Arts. 20, 24a.

⁹⁰ Narodne novine: *Zakon o udžbenicima i drugim obrazovnim materijalima*, Zagreb: Narodne novine d.d., 116/2018, 85/2022, 149/2022, 92/2024, 145/2024, 105/2025, Art. 12.

⁹¹ Narodne novine: *Pravilnik o osnovnoškolskom i srednjoškolskom odgoju i obrazovanju učenika s teškoćama u razvoju*, Zagreb: Narodne novine: *Pravilnik o pomoćnicima u nastavi i stručnim komunikacijskim posrednicima*, Zagreb: Narodne novine d.d., 85/2004; Narodne novine: *Pravilnik o broju učenika u redovitom i kombiniranom razrednom odjelu i odgojno-obrazovnoj skupini u osnovnoj školi*, Zagreb: Narodne novine d.d., 124/2009, 73/2010; Narodne novine: *Pravilnik o odgovarajućoj vrsti obrazovanja učitelja i stručnih suradnika u osnovnoj školi*, Zagreb: Narodne novine d.d., 06/2019, 75/2020.

ualized instruction models.⁹² Mainstream schools increasingly apply individualized curricula, adapted teaching materials, and multidisciplinary approaches to students with disabilities.⁹³

According to data from the Croatian Institute of Public Health, the Register of Persons with Disabilities recorded 69,613 children with developmental disabilities aged 0–17 as of 28 January 2025, which is representing an increase compared to the 2024.⁹⁴ Boys account for 60% of the total, and the largest age group is 14–17 years (31%).⁹⁵ The highest proportion of children with disabilities resides in the City of Zagreb (23%) and Split-Dalmatia County (12%).⁹⁶ By type of disability, the most prevalent are speech and language communication disorders (29%), central nervous system impairments (19%), and multiple impairments (18%).⁹⁷

Despite a normative framework, empirical research confirms structural challenges that highlight that parents of children with disabilities in the preschool system frequently encounter enrolment refusals, insufficient professional support, and discriminatory practices.⁹⁸

According to the 2024 Report of the Ombudsperson for Children of the Republic of Croatia, 213 complaints concerning violations of the rights of children with developmental disabilities in the field of education were received, representing an increase of almost 14% compared to the previous year.⁹⁹ The most frequent violations relate to the inability to enrol children in kindergartens, shortened attendance periods, lack of teaching assistants, difficulties in drafting and implementing individualized curricula, and insufficient competences of educational staff in working with students with disabilities.¹⁰⁰ Within the secondary education system, difficulties have also been identified in implementing appropriate educational programmes.¹⁰¹

⁹² Vican, D., Karamatić Brčić, M.: Educational inclusion in the context of the world and national education policy – referring to Croatian educational reality. *Život i škola*, LIX(30) 2013, pp. 48-65.

⁹³ Ibid.

⁹⁴ Pravobranitelj za djecu Republike Hrvatske: *Izvešće o radu pravobraniteljice za djecu za 2024. godinu*, Zagreb: Pravobranitelj za djecu Republike Hrvatske, ožujak 2025.

⁹⁵ Ibid.

⁹⁶ Ibid.

⁹⁷ Ibid.

⁹⁸ Milić Babić, M., Tkalec, S., Cheatham, L.: The Right to Education for Children with Disabilities from the Earliest Age. *Croatian Journal of Education*, 20(1) 2018, pp. 233-263.

⁹⁹ Pravobranitelj za djecu Republike Hrvatske, *op. cit.*, note 92, p. 62.

¹⁰⁰ Ibid., pp. 85-87.

¹⁰¹ Ibid., p. 85.

Recommendations include the development of a protocol for the enrolment of children with disabilities in preschool institutions, additional training for educational staff, reconsideration of restrictions on the number of assistants in special class groups and strengthening intersectoral cooperation.¹⁰²

All the above confirms that, although the Croatian normative framework is formally aligned with international standards and the principles of inclusive education, its practical implementation continues to face significant challenges.

The increased number of reported violations, insufficient professional capacities, and organisational challenges highlight the need for stronger institutional support and consistent application of legal provisions to ensure genuine inclusion and equal access to education for all children.

5. CONCLUSION

The analysis of normative framework suggests that the child's right to inclusive education is extensively rooted in international and European human rights legislation, as well as ECtHR jurisprudence. Across universal and regional instruments, from the CRC and ICESCR to the CRPD and ECHR, the states are expected not only to provide equal access to education, but also to promote the substantive environment needed for effective participation in education. In other words, this normative framework promotes substantive equality through encouraging the states to remove fundamental obstacles of inclusive education while respecting the child's best interests.

The ECtHR's jurisprudence, such as *Çam v Turkey*, *Enver Şahin v Turkey*, and *G.L. v Italy*, indicate a substantive equality approach that is closely connected with Sen and Nussbaum's capabilities theory, „as disabled children are a particularly vulnerable group and the state has a narrow margin of appreciation in instances that concern their fundamental rights”¹⁰³.

In *Dupin v. France* and *Stoian v. Romania* judgements, the Court failed to conform to the strict requirements established by earlier rulings, instead giving the states a wide margin of appreciation which opens the possibility for a state to shift from strong commitment to the principles of the CRPD that aim to guarantee inclusive education.¹⁰⁴

¹⁰² Ibid., p. 89.

¹⁰³ Vrancken, M.: *Substantive equality as the driving force behind reasonable accommodations for pupils with disabilities: the case of G.L. v. Italy*, Strasbourg Observers, 01.10.2020.

¹⁰⁴ Ibid.

Exclusion from regular schooling, or participation without sufficient encouragement, is both an infringement of the child right to education and an infringement of the true freedom needed for flourishing in life. Thus, to close the ongoing gap between normative commitments and reality, the states must implement institutional changes that include consistent funding for accessibility and support services, extensive teacher training in inclusive pedagogies, child-centred, individualized planning, systematic data collection and monitoring, and significant participation by parents, children, and disability organizations in educational governance.¹⁰⁵ A few initiatives are necessary to turn inclusive education into a legally binding realities rather than a philosophical goal.

In the end, inclusive education is an indicator of democratic development. It indicates a society's commitment to acknowledge every child as a rights bearer and to develop institutions that will guarantee that all children, regardless of disabilities, may achieve their full potential, participate fully in society, and live with dignity. The transformative power of inclusive education can only be accomplished alongside an intense dedication to substantive equality.

In that manner, first, the funding for support services, including teaching assistants, specialized staff, and accessible learning materials, needs to be consistent and adequate to strengthen the Croatian institutional foundations of inclusive education. The reform is mandated by the CRPD, but the current uneven implementation of inclusive education undermines equality of opportunity. Second, to provide educators the resources they require to effectively teach in diverse classrooms, educator training must be focused on inclusive pedagogies. Third, the child's best interests and right to be heard ought to be fully considered in all decision-making processes concerning educational placement and support. Fourth, to ensure that educational policies regarding inclusive participation of children with disabilities in mainstream education mirror everyday situations they are facing, it is essential to consider the meaningful engagement of parents, children, and disability organizations within educational governance. By implementing these policies, Croatia may ensure that every child has the real opportunity to learn, participate, and thrive in an inclusive educational system while becoming closer to achieving its commitments under the CRPD, CRC, and ECHR.

¹⁰⁵ The similar recommendation can be found in Incheon Declaration and SDG 4 Framework for Action: "We will ensure that teachers and educators are empowered, adequately recruited, well-trained, professionally qualified, motivated and supported within well-resourced, efficient and effectively governed systems". See: UNESCO: *Incheon Declaration and Framework for Action for the Implementation of Sustainable Development Goal 4: Ensure Inclusive and Equitable Quality Education and Promote Lifelong Learning Opportunities for All*, Paris: UNESCO Publishing, 2015, p. 8.

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