2019

**APPLICATION NO 44654/18**

**CASE OF M.C. AND A.C. v. ROMANIA**

WRITTEN SUBMISSION BY:

European Disability Forum

Consiliul National al Dizabilitatii din Romania

**JULY 2019**

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# Introduction

These written comments are submitted by the European Disability Forum (EDF) and the Consiliul National al Dizabilitatii din Romania (CNDR), pursuant to leave granted by the President of the Fourth Section of the European Court of Human Rights in accordance with Rule 44(3)(a) of the Rules of Court, on 27 June 2019.

The present case concerns allegation of ill-treatment and bullying of a child with psychosocial disabilities at school by teacher and other pupils, as well as, more generally, the issue of access to inclusive education of children with disabilities. The child’s parents complained that they were blamed by the courts for having caused their son’s problems and they were pressured to remove him from the State’s school.

This case presents the European Court of Human Rights (hereinafter the ‘Court’) with a new opportunity to examine States’ obligations under the Convention and the Additional Protocol No 1 (hereinafter ‘Protocol No 1’) to guarantee the right of every child to *inclusive* education (Protocol No. 1), free from degrading treatment (article 3 of the Convention) and discrimination (article 14 of the Convention). This case allows the Court to condemn bullying as a form of degrading treatment and discrimination on the grounds of disability, and to elaborate on the right to inclusive education of children with disabilities.

This submission aims at informing the Court of States’ obligations to effectively combat bullying as a form of degrading treatment and discrimination, and to fully ensure the right to *inclusive* education of all children. It refers to the latest international human rights standards set by the United Convention of the Rights of Persons with Disabilities (hereinafter ‘CRPD’), as well as to other international human rights treaties, the jurisprudence of the Court, and national legislation.

# International standards on the rights of persons with disabilities: the United Nations Convention on the Rights of Persons with Disabilities

It has been established in ***Opuz v Turkey*** that in interpreting the provisions of the Convention and the scope of the States’ obligations in specific cases, the Court will look “*for any consensus and common values emerging from the practices of European States and specialised international instruments... as well as giving heed to the evolution of norms and principles in international law.*”[[1]](#footnote-1) It is respectfully submitted that standards enshrined in international law and accepted by consensus in European countries, should inform the Court’s interpretation in this case.

In considering cases of alleged violation of rights of persons, including children with disabilities, the Court is encouraged to have regard to the most recent international standards on the human rights of persons with disabilities, in particular the provisions of the **United Nations Convention on the Rights of Persons with Disabilities** and its guiding principles. Its principles include respect for inherent dignity, non-discrimination, full and effective participation in society, respect for difference, equality of opportunity, and accessibility.[[2]](#footnote-2)

To date, the CRPD counts 177 ratifications/accessions including Romania which ratified it on 31 January 2011. Within the Council of Europe, 46 of the 47 members are States parties to the CRPD.[[3]](#footnote-3) The European Union and all its member states have ratified or acceded to the CRPD.[[4]](#footnote-4)

In 2009, the Court recognised in ***Glor v. Switzerland*** that the CRPD reflects “an European and worldwide consensus on the need to protect people with disabilities from discriminatory treatment.”[[5]](#footnote-5) More recently, in ***Çam v. Turkey***[[6]](#footnote-6)and ***Enver Şahin v. Turkey[[7]](#footnote-7)*** related to education of persons with disabilities, the Court reiterated that the Convention and Protocol No 1 have to be interpreted in the light of relevant international law, including the CRPD.[[8]](#footnote-8)

In consideration to bullying in school, **General Comment No 4 on the right to inclusive education**[[9]](#footnote-9) and **General Comment No 6 on equality and non-discrimination**[[10]](#footnote-10) adopted by the Committee on the Rights of Persons with Disabilities (hereinafter the ‘CRPD Committee’) are of particular importance.

In addition to the CRPD, the **United Nations Convention on the Rights of the Child** (hereinafter ‘CRC’) also referred to in this submission is ratified by 196 states. All member states of the Council of Europe ratified/acceded to the CRC.

# States’ obligation to prevent, prohibit and condemn bullying of persons with disabilities as a form of degrading treatment and discrimination

Bullying is defined by the United Nations as:

‘intentional and aggressive behaviour occurring repeatedly against a victim where there is a real or perceived power imbalance, and where the victim feels vulnerable and powerless to defend himself or herself. The unwanted behaviour is hurtful: it can be physical, including hitting, kicking and the destruction of property; verbal, such as teasing, insults and threats; or relational, through the spreading of rumours and exclusion from a group.’[[11]](#footnote-11)

Bullying affects millions of children worldwide. Children from marginalised groups, in particular children with disabilities, are at higher risks of violence and harassment, including bullying.[[12]](#footnote-12) Children with psychosocial[[13]](#footnote-13) or intellectual disabilities often face even more severely the negative impact of bullying, ill-treatment and harassment.

The **Council of Europe Strategy on the Rights of the Child 2016-2021** highlighted the importance to tackle bullying, cyber-bullying and harassment at school. At the international level, the CRPD Committee,[[14]](#footnote-14) the CRC Committee[[15]](#footnote-15) and the UN Committee on Elimination of Discrimination Against Women (thereinafter ‘CEDAW Committee’)[[16]](#footnote-16) addressed bullying in their general comments and recommendations to States. The 2030 Agenda for Sustainable Development set a specific target to end abuse, exploitation, trafficking and all forms of violence against and torture of children,[[17]](#footnote-17) under which falls bullying.[[18]](#footnote-18)

## Recognition of bullying as a form of degrading treatment and potential violation of the right of private and family life

The Court recognises that frequent harassment may qualify as degrading treatment falling within the scope of article 3 of the Convention. In the case ***Đorđević v. Croatia***, the Court ruled that the harassment faced by a person with intellectual and physical disabilities “which on at least one occasion also caused him physical injuries, combined with feelings of fear and helplessness – was sufficiently serious to reach the level of severity required to fall within the scope of Article 3 of the Convention.”[[19]](#footnote-19)

In addition, bullying may also negatively impact the right of private and family life of the victim and/or his direct relatives. In ***Đorđević v. Croatia***, the Court reiterated that “the concept of private life includes a person’s psychological integrity” and ruled that the ongoing harassment had affected his and his mother’s right to private and family life which constituted a violation of article 8 of the Convention.[[20]](#footnote-20)

The CRC Committee in its **General Comment No.** **13 (2011) on the right of the child to freedom from all forms of violence** classifies bullying both as mental[[21]](#footnote-21) and physical violence.[[22]](#footnote-22)

## Recognition of bullying on the ground of disability as a form of discrimination and hate crime

### Duty of the Court to examine whether acts of bullying are motivated by a protected grounds

When examining alleged violations of the rights of persons with disabilities, the Court often considers whether the behaviour against the victim is based on his or her disability, and thus constitutes a form of discrimination (for instance see ***Guberina v. Croatia[[23]](#footnote-23)*** and ***Đorđević v. Croatia***). The Court stated at multiple occasions that article 14 of the Convention “plays an important role by complementing the other provisions of the Convention and its Protocols, since it protects individuals placed in similar situations from any discrimination in the enjoyment of the rights set forth in those other provisions.”[[24]](#footnote-24) It is also important to recall that the Court recognises that “even in a situation where the substantive provision is not applicable, Article 14 may still be applicable.”[[25]](#footnote-25)

Regarding the margin of appreciation of the State, the Court stressed in ***Guberina v. Croatia*** that:

**if a restriction on fundamental rights applies to a particularly vulnerable group in society that has suffered considerable discrimination in the past, then the State’s margin of appreciation is substantially narrower** and it must have very weighty reasons for the restrictions in question. The reason for this approach, which questions certain classifications *per se*, is that such groups were historically subject to prejudice with lasting consequences, resulting in their social exclusion. Such prejudice could entail legislative stereotyping which prohibits the individualised evaluation of their capacities and needs. The Court has already identified a number of such vulnerable groups that suffered different treatment on account of their characteristic or status, including **disability** (see *Glor*, cited above, § 84;*Alajos Kiss v. Hungary*, no.[38832/06](https://hudoc.echr.coe.int/eng#{%22appno%22:[%2238832/06%22]}), § 42, 20 May 2010; and *Kiyutin v. Russia*, no. [2700/10](https://hudoc.echr.coe.int/eng#{%22appno%22:[%222700/10%22]}), § 63, ECHR 2011). Moreover, **with regard to all actions concerning children with disabilities the best interest of the child must be a primary consideration** (see paragraph 34 above; Article 7(2) CRPD). In any case, however, irrespective of the scope of the State’s margin of appreciation the final decision as to the observance of the Convention’s requirements rests with the Court (see, *inter alia*, *Konstantin Markin v. Russia*[GC], no. [30078/06](https://hudoc.echr.coe.int/eng#{%22appno%22:[%2230078/06%22]}), § 126, ECHR 2012 (extracts)).[[26]](#footnote-26)

### Bullying as a form of discrimination under international and national law

Equality and non-discrimination are fundamental principles enshrined in the Convention on the Rights of Persons with Disabilities. The **CRPD Committee’s** **General Comment No. 5 on equality and non-discrimination**, that elaborates on Article 5 of the CRPD on the right to equality and non-discrimination, recognises bullying of persons with disabilities as a form of discrimination, falling under harassment. In addition, the Committee emphasises that bullying, cyberbullying and cyberhate “constitute particularly violent and harmful forms of hate crimes.”[[27]](#footnote-27) Consequently, bullying of persons with disabilities should be combatted as a form of discrimination and violence against a marginalised group, constituting hate crime.

In its **General Comment No 13 on the right of the child to freedom from all forms of violence**, the CRC Committee stresses that risks factors such as “discrimination and marginalisation” may put some category of children at higher risk of violence,[[28]](#footnote-28) including bullying.[[29]](#footnote-29)

Similarly, as under the CRPD, the **United Kingdom** recognises that when bullying is “linked to a protected characteristic that violates someone’s dignity or creates an offensive environment for them” it then falls under harassment, and thus is a form of discrimination.[[30]](#footnote-30)

## Positive obligation of States to prevent, prohibit and condemn bullying and harassment

The Court recognises the positive obligation of States to prevent, prohibit and condemn bullying and harassment. In the case ***Király and Dömötör v. Hungary***, the Court stated that the government “should afford effective protection against harassment, threats and verbal abuse.”[[31]](#footnote-31) In ***O’Keeffe v. Ireland***, the Court ruled that having regarding to “the particularly vulnerable nature of children, it is an inherent obligation of government to ensure their protection from ill-treatment, especially in a primary education context, through the adoption, as necessary, of special measures and safeguards.”[[32]](#footnote-32)

In ***Đorđević v. Croatia***, the Court reiterated that States are required “to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment or punishment, including such ill-treatment administered by private individuals”, including in cases of ill-treatment inflicted by non-State parties.[[33]](#footnote-33) In addition, the Court stressed that the measures adopted “should provide **effective protection, in particular, of children and other vulnerable persons**, and include reasonable steps to prevent ill-treatment of which the authorities had or ought to have had knowledge.”[[34]](#footnote-34)

At the international level, both the **CRPD and the CRC Committees** called States to adopt measures to prevent and combat bullying.[[35]](#footnote-35) For instance, the CRPD Committee recommended that States strengthen measures to prevent bullying, hate speech and hate crime against children with disabilities[[36]](#footnote-36) and implement anti-bullying programmes.[[37]](#footnote-37) In 2017, the CRC Committee specifically called Romania to “take necessary nationwide measures for awareness-raising, prevention and intervention in the cases of school violence and bullying, involving the training of professionals, parents and children.”[[38]](#footnote-38)

At the European level, the **Council of Europe Charter on Education for Democratic Citizenship and Human Rights** which all 47 member states of the Council of Europe adopted, identified bullying as a form of violence and discrimination. Consequently, the Council of Europe recommended all members states to “combat all forms of discrimination and violence, especially bullying and harassment.”[[39]](#footnote-39)

In a case of 2009, a **French court** recognised that the lack of actions taken by the school to combat bullying engaged the responsibility of the French government. Bullying at school was also recognised as falling within the scope of the legislation on harassment in the field of employment prohibited by article 222-33-2 of the Penal Code.[[40]](#footnote-40) Similarly in **Belgium**, bullying is also considered to fall under harassment legislation in the Penal Code.[[41]](#footnote-41) In addition to prohibition of bullying, many European countries adopted policies in school and helpline to support children and adolescents victim of bullying.

# States’ obligation to ensure the right to inclusive education of children with disabilities

The right to education has been widely recognised in international and regional human rights instruments since the Universal Declaration of Human Rights.[[42]](#footnote-42) The United Nations Committee on Economic, Social and Cultural Rights elaborated on the main components of this right: availability, accessibility, adaptability and quality.[[43]](#footnote-43) Accessibility includes geographical accessibility, affordability and non-discrimination in the exercise of the right to education.[[44]](#footnote-44)

Despite this recognition, persons with disabilities continue to be denied the right to education[[45]](#footnote-45) and have generally a lower level of educational attainment than the rest of the population. In some countries, discrimination against children with psychosocial and/or intellectual disabilities particularly hinder their access to education.[[46]](#footnote-46) This leads to lower participation rates in employment, as well as higher levels of unemployment.[[47]](#footnote-47) Recent development in international law, in particular, the **CRPD Article 24** and the **CRPD Committee’s General Comment No 4** clarify States’ obligations to ensure the right to inclusive education to persons with disabilities. Combatting discrimination, including bullying, and providing reasonable accommodation to all learners with disabilities is crucial in ensuring the right to inclusive education of all children.

In its case ***Çam v Turkey***, the Court particularly stressed “the importance of the fundamental principles of universality and non-discrimination in the exercise of the right to education, which are enshrined in many international texts” emphasising that “those international instruments have recognised inclusive education as the most appropriate means of guaranteeing the aforementioned fundamental principles.”[[48]](#footnote-48)

Inclusive education has also found great support in the adoption the **2030 Agenda for Sustainable Development**[[49]](#footnote-49) and in the **Education 2030 Incheon Declaration and Framework for Action**.[[50]](#footnote-50)

## Importance to combat bullying to ensure right to inclusive education of children with disabilities

In its **General Comment No. 4 on the right to inclusive education**, the CRPD Committee recognise the *respect and value of diversity* as a core feature of inclusive education. Under this feature, it notes that effective measures to prevent abuse and bullying must be in place.[[51]](#footnote-51)

The CRPD Committee emphasised on the relationship between protection from violence and the right to inclusive education. Because persons with disabilities are at a higher risk of violence and abuse, “including physical and humiliating punishments by educational personnel, for example through the use of restraints and seclusion and bullying by others in and en route to school,” States are required to take all appropriate measures to provide protection from and prevent all forms of exploitation, violence and abuse of learners with disabilities.[[52]](#footnote-52)

In addition, General Comment No. 4 indicates the importance of implementing awareness-raising initiatives to address stigma and discrimination, in particular bullying in educational settings.[[53]](#footnote-53) Pupils with disabilities themselves should be involved in the development of policies, including accessible protection mechanisms, to address disciplinary measures and bullying.[[54]](#footnote-54)

## Additional requirements to ensure the right to inclusive education of children with psychosocial disabilities: support services and reasonable accommodations

### Inclusive education under international law

**Article 24 of the CRPD** requires States parties to “ensure an ***inclusive*** education system at all levels and lifelong learning” without discrimination and on the basis of equal opportunity.[[55]](#footnote-55) Children with disabilities are often excluded from inclusive education due a variety of factors, including lack of support and reasonable accommodation. This may, as a consequence, put the child in a difficult situation, and even more prone to violation of his or her rights, including to bullying by other classmates and/or school staff.

In its recommendations to States, the CRPD Committee stressed that governments must ensure and enforce a **non-rejection policy** and guarantee quality inclusive education for all students with disabilities.[[56]](#footnote-56) The CRPD Committee also emphasises that “the exclusion of persons with disabilities from the general education system should be prohibited, including through any legislative or regulatory provisions that limit their inclusion on the basis of their impairment or the degree of that impairment, such as by conditioning inclusion on the extent of the potential of the individual or by alleging a disproportionate and undue burden to evade the obligation to provide reasonable accommodation.”[[57]](#footnote-57)

In addition, in order to ensure inclusive education States must adopt measures, including through non-discrimination legislation binding on private as well as public bodies, to guarantee that **accessibility, support services[[58]](#footnote-58) and reasonable accommodation**[[59]](#footnote-59) are provided to learners with disabilities. All reasonable accommodation measures provided to remove barriers encountered by a specific student with disabilities must be free of cost.[[60]](#footnote-60) The denial of reasonable accommodation constitutes a form of discrimination.[[61]](#footnote-61) The CRPD Committee stressed that *reasonableness* of the measures is “the result of a contextual test that involves an analysis of the relevance and the effectiveness of the accommodation and the expected goal of countering discrimination”.[[62]](#footnote-62) Availability of resources and financial implication of the measures are taken into consideration.[[63]](#footnote-63) Reasonable accommodation measures are enforceable from the moment a request has been made.[[64]](#footnote-64)

Supported teachers, properly trained for inclusive education, are also part of the core features of inclusive education.[[65]](#footnote-65) Teachers and other staff working in education settings must receive adequate training to ensure quality education of students with disabilities.[[66]](#footnote-66) Furthermore, a key obligation to ensure inclusive education is the provision of adequate, continuous and personalised support.[[67]](#footnote-67)

### Application of international standards by the European Court of Human Rights

The obligation to provide reasonable accommodation and support services to learners with disabilities, as enshrined in the CRPD, is in line with the Court’s approach that failing to treat differently persons who are in significantly different situations contradicts the right to equality and non-discrimination (see ***Thlimmenos v Greece***case).[[68]](#footnote-68) This approach has also been adopted by the European Committee of Social Rights which affirmed that “discrimination may arise by failing to take adequate steps to ensure that the rights and collective advantages that are open to all are genuinely accessible by and to all.”[[69]](#footnote-69)

In its jurisprudence, the Court assessed that while “it is not its task to define the resources to be implemented in order to meet the educational needs of children with disabilities, […] it is important for the States to be particularly careful in making their choices in this sphere, having regard to the impact of the latter on children with disabilities, whose particular vulnerability cannot be overlooked (***Çam v Turkey***).”[[70]](#footnote-70) In the case ***Enver Şahin v. Turkey***, the Court emphasised that when States define reasonable accommodations, they should “take great care with the choices they make in this sphere, in view of the impact of those choices on persons with disabilities, whose particular vulnerability cannot be ignored.”[[71]](#footnote-71) The Court had also recognised that “discrimination on grounds of disability also covers refusal to make reasonable accommodation.”[[72]](#footnote-72)

# Conclusion

This written submission aims at highlighting how, in line with the most recent international human rights standards and the Court’s jurisprudence, States Parties have a duty to prevent, prohibit and condemn bullying of pupils with disabilities as a form of degrading treatment and discrimination on the ground of disability. This obligation is also linked to the right to inclusive education that, in addition, requires States to adopt necessary measures to ensure that accessibility, reasonable accommodation and support services are fully provided to all learners with disabilities.

Consequently, in line with established jurisprudence on the rights of persons with disabilities and the growing trend across Europe to adopt positive measures to ensure the equal access to inclusive education of learners with disabilities, the European Disability Forum and the National Council of Persons with Disability of Romania encourage the Court to enhance the protection of the right to inclusive education, together with the right to equality and non-discrimination, and protection against violence and ill-treatment. **We call on the Court to address any failure of States parties to ensure inclusive education and to protect pupils with disabilities from degrading treatment and harassment .**

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# Annex: Statement of Interest of EDF and CNDR

The European Disability Forum (EDF) is the independent European umbrella organisation of persons with disabilities defending the interests of more than 80 million persons with disabilities in Europe. EDF is the only European pan-disability platform run by persons with disabilities and their families. Created in 1996 by its member organisations, EDF ensures that decisions concerning persons with disabilities are taken with and by persons with disabilities. It is a member of the International Disability Alliance.

The Consiliul National al Dizabilitatii din Romania (CNDR) is the member of the EDF at the national level in Romania.

EDF advocates for the rights of persons with disabilities on the national, regional and international planes, including before the Court. The organisation has previously submitted third party interventions to the Court in *Dordevic v Croatia* (Application No 41526/10), *Gauer and Others v France* (Application no 61521/08), *DG v Poland* (Application no. 45705/07) of which the two latter were submitted jointly with IDA and other NGOs. EDF has also jointly intervened with the International Disability Alliance in *HP v Denmark (*Application no 55607/09), *Guberina v Croatia* (Application no 23682/13), Mihailovs *v Latvia* (Application no 35939/10), *Semikhvostov v Russia* (Application no 2689/12), *Koroviny v Russia* (Application no 31974/11), *Stankov v Bulgaria* (Application no 25820/07), *Stoian v Romania* (Application no 289/14), along with other organisations of persons with disabilities.

The organisations’ participation in third party interventions is aimed at bringing the Court’s attention to the most recent international human rights standards concerning persons with disabilities. This is key to ensuring a harmonised approach by the Court and the UN Committee on the Rights of Persons with Disabilities (CRPD) in an important effort to uphold the development and coherence of international human rights law.

The issues being raised in the present case are topics with which the organisations are familiar. EDF has been a key actor in the negotiation of the relevant provisions of the Convention on the Rights of Persons with Disabilities (CRPD), and since the CRPD came into force, working directly on the implementation of these provisions, including the right to equality and non-discrimination (Article 5 CRPD) and the right to inclusive education (Article 24).

1. *Opuz v Turkey*, Application no 33401/02, judgment of 9 June 2009, para 164. [↑](#footnote-ref-1)
2. Convention on the Rights of Persons with Disabilities, adopted Jan. 24, 2007, art. 3, G.A. Res. 61/106, U.N. Doc. A/RES/61/106. [↑](#footnote-ref-2)
3. Liechtenstein has neither signed nor ratified the CRPD. [↑](#footnote-ref-3)
4. the CRPD is the first international human rights instrument to which an regional integration body is a party, i.e. the European Union, which acceded to it on 23 December 2010 [↑](#footnote-ref-4)
5. *Glor v Switzerland*, Application no 13444/04, 30 April 2009, para 53. The Court made explicit reference to the CRPD in the *Glor* case even though Switzerland had not ratified the CRPD at that time (it finally did it on 15 April 2014).  [↑](#footnote-ref-5)
6. *Çam v. Turkey* (application no. 51500/08), 23 February 2016. [↑](#footnote-ref-6)
7. *Enver Şahin v. Turkey* (application no.23065/12*)*, 30 January 2018. [↑](#footnote-ref-7)
8. *Çam v. Turkey* (application no. 51500/08), 23 February 2016, para. 54; *Enver Şahin v. Turkey* (application no.23065/12*)*, 30 January 2018, paras. 19 and 60. [↑](#footnote-ref-8)
9. CRPD Committee, General Comment No 4 on the right to inclusive education, CRPD/C/GC/4, 25 November 2016. [↑](#footnote-ref-9)
10. CRPD Committee, General Comment No 6 on equality and non-discrimination, CRPD/C/GC/6, 26 April 2018. [↑](#footnote-ref-10)
11. Report of the Secretary-General of the United Nations on Protecting children against bullying, A/73/265, 30 July 2018. [↑](#footnote-ref-11)
12. CRC Committee, General Comment No. 13 (2011) on the right of the child to freedom from all forms of violence, CRC/C/GC/13, section VI, (g). [↑](#footnote-ref-12)
13. In its report *Promoting rights and community living for children with psychosocial disabilities*, the World Health Organisation (WHO) defines psychosocial disabilities as “disabilities of children with either diagnosed or perceived mental health conditions and/or intellectual impairments, which may also be caused by stigma, discrimination and exclusion”. WHO and Fundacao Calouste Gulbenkian, *Promoting rights and community living for children with psychosocial disabilities*, 2015, page 13. [↑](#footnote-ref-13)
14. For instance, see CRPD Committee, General Comment No. 4, paras. 12 and 51 [↑](#footnote-ref-14)
15. As example, see CRC Committee, 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) and General Comment No. 20 (2016) on the implementation of the rights of the child during adolescence. [↑](#footnote-ref-15)
16. For example, see CEDAW Committee, General recommendation No. 36 (2017) on the right of girls and women to education. [↑](#footnote-ref-16)
17. 2030 Agenda for Sustainable Development, A/RES/70/1, Goal 16.2. [↑](#footnote-ref-17)
18. <https://sustainabledevelopment.un.org/topics/violenceagainstchildren> [↑](#footnote-ref-18)
19. *Đorđević v. Croatia*, Application no 41526/10, 29 July 2012, para 96. [↑](#footnote-ref-19)
20. Ibid, paras 151-153. [↑](#footnote-ref-20)
21. CRC Committee, General Comment No. 13 (2011) on the right of the child to freedom from all forms of violence: “psychological bullying and hazing by adults or other children, including via information and communication technologies (ICTs) such as mobile phones and the Internet (known as “cyberbullying”)” constitutes a form of mental violence. [↑](#footnote-ref-21)
22. CRC Committee, General Comment No. 13 (2011) on the right of the child to freedom from all forms of violence: “Physical bullying and hazingby adults and by other children” constitutes a form of physical violence. [↑](#footnote-ref-22)
23. *Guberina v. Croatia,* Application no 23682/13, 22 March 2016. [↑](#footnote-ref-23)
24. *Đorđević v. Croatia*, Application no 41526/10, 29 July 2012, para 157. [↑](#footnote-ref-24)
25. Ibid, para 158. [↑](#footnote-ref-25)
26. *Guberina v. Croatia,* Application no 23682/13, 22 March 2016, para 73. [↑](#footnote-ref-26)
27. CRPD Committee, General Comment No 6 on equality and non-discrimination, para 18(d). [↑](#footnote-ref-27)
28. CRC Committee, General Comment No. 13 (2011) on the right of the child to freedom from all forms of violence, Section 6 (f). [↑](#footnote-ref-28)
29. Ibid, section IV (A), ‘violence among children’. [↑](#footnote-ref-29)
30. UK Equality Act 2010, Section 26. Read more at: <https://www.gov.uk/discrimination-your-rights>. [↑](#footnote-ref-30)
31. *Király and Dömötör v. Hungary*, 10851/13, 17 January 2017,para 80. [↑](#footnote-ref-31)
32. *O’Keeffe v. Ireland*, Application no 35810/09, 28 July 2014, para 146. [↑](#footnote-ref-32)
33. *Đorđević v. Croatia*, Application no 41526/10, 29 July 2012, para 138. [↑](#footnote-ref-33)
34. Ibid. Also see *mutatis mutandis*, *Osman v. the United Kingdom*, 28 October 1998, § 116, *Reports* 1998-VIII, and *E. and Others v. the United Kingdom*, no. [33218/96](https://hudoc.echr.coe.int/eng#{%22appno%22:[%2233218/96%22]}), § 88, 26 November 2002. [↑](#footnote-ref-34)
35. See CRPD, General Comment No. 4 and General Comment No. 6; CRC Committee, General Comment No. 13. [↑](#footnote-ref-35)
36. CRPD Committee, Concluding observations to the United Kingdom of Great Britain and Northern Ireland, CRPD/C/GBR/CO/1, para 21. [↑](#footnote-ref-36)
37. CRPD Committee, Concluding observations to New Zealand, CRPD/C/NZL/CO/1, para 50. [↑](#footnote-ref-37)
38. CRC Committee, Concluding observations to Romania, CRC/C/ROU/CO/5, para 38(g). [↑](#footnote-ref-38)
39. Recommendation CM/Rec(2010)7 of the Committee of Ministers to member states on the Council of Europe Charter on Education for Democratic Citizenship and Human Rights Education, para 13. [↑](#footnote-ref-39)
40. See Judgment of Tribunal des Enfants de Rouen, 12 février 2009 concerning a stuttering child who was bullied and ended up committing suicide; See also TA Rouen, 12 mai 2011 n°0901466, AJDA 2011 p.2431. Read more here: <https://www.huffingtonpost.fr/solene-debarre/quels-sont-les-outils-jur_1_b_4002991.html>. [↑](#footnote-ref-40)
41. Articles 442*bis* and 442*ter* of Belgian Penal Code. [↑](#footnote-ref-41)
42. *See* the UDHR Article 26(1), the International Covenant on Economic, Social and Cultural Rights, Articles 13 and 14, the Convention against Discrimination of the United Nations Educational, Scientific and Cultural Organisation, and the Convention on the Rights of the Child, Article 28 and 29, among others. [↑](#footnote-ref-42)
43. CESCR Committee General Comment no 13 on the right to education, E/C.12/1999/4, 1999, para 6. [↑](#footnote-ref-43)
44. *Ibid*. [↑](#footnote-ref-44)
45. CRPD Committee, General Comment No 4, para. 3. [↑](#footnote-ref-45)
46. CRPD Committee, Concluding observations to Sudan, CRPD/C/SDN/CO/1, para 47(c). [↑](#footnote-ref-46)
47. The Academic Network of European Disability experts (ANED), *The labour market situation of disabled people in European countries and implementation of employment policies: a summary of evidence from country reports and research studies*, April 2009, p 32. In particular, ANED observed that “the educational attainment level has an impact, so that for those [persons with disabilities] with only basic schooling only one out of five were in employment compared to 62% of those without restrictions. For persons with a tertiary level of education the difference was 48% compared to 85% (See p 12 of the Report cited) [↑](#footnote-ref-47)
48. *Çam v Turkey*, Application No 51500/08, 23 February 2016, para. 64. [↑](#footnote-ref-48)
49. 2030 Agenda for Sustainable Development, A/RES/70/1, Goal 4 “Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all.” [↑](#footnote-ref-49)
50. Available at <http://unesdoc.unesco.org/images/0024/002456/245656e.pdf> [↑](#footnote-ref-50)
51. CRPD Committee, General Comment No 4, para. 12(e). [↑](#footnote-ref-51)
52. Ibid, para. 51. [↑](#footnote-ref-52)
53. Ibid, para. 69. [↑](#footnote-ref-53)
54. Ibid, para. 51. [↑](#footnote-ref-54)
55. CRPD, Article 24(1) (emphasis added). [↑](#footnote-ref-55)
56. CRPD Committee, Concluding observations to the European Union, CRPD/C/EU/CO/1, para. 85. [↑](#footnote-ref-56)
57. CRPD Committee, General Comment No 4, para. 18. [↑](#footnote-ref-57)
58. CRPD Committee, General Comment No 4, para. 22. [↑](#footnote-ref-58)
59. CRPD Article 24(2)(c). [↑](#footnote-ref-59)
60. CRPD Committee, General Comment No 4, para. 24. *See* also CRPD Committee, Concluding Observations on Spain (2011), para. 44. [↑](#footnote-ref-60)
61. Article 2 CRPD. [↑](#footnote-ref-61)
62. Ibid, para. 28. [↑](#footnote-ref-62)
63. Ibid. [↑](#footnote-ref-63)
64. Committee on the Rights of Persons with Disabilities, General Comment No. 2, para. 26, and General Comment No 4, para. 28. [↑](#footnote-ref-64)
65. Ibid, para. 12(d). [↑](#footnote-ref-65)
66. Ibid. *See* also CRPD Committee, Concluding Observations on Denmark (2014), para. 53, and on Kenya (2015), para. 44(e). [↑](#footnote-ref-66)
67. CRPD Committee, General Comment No 4, para. 33. [↑](#footnote-ref-67)
68. *Thlimmenos v Greece* Application no 34369/97, judgment of 6 April 2000, para. 44. [↑](#footnote-ref-68)
69. European Committee of Social Rights, *European Action of the Disabled (AEH) v France*, No 81/2012, Decision on the Merits, 11 September 2013, para. 133. [↑](#footnote-ref-69)
70. *Çam v Turkey*, Application No 51500/08, 23 February 2016, paras 66-67. [↑](#footnote-ref-70)
71. *Enver Şahin v. Turkey* (application no.23065/12*)*, 30 January 2018, para. 61. [↑](#footnote-ref-71)
72. *Çam v Turkey*, Application No 51500/08, 23 February 2016, para. 67. [↑](#footnote-ref-72)