**In the European Court of Human Rights**

**(Application No 289/14)**

**Stoian and Stoian APPLICANTS**

**Against**

**Romania RESPONDENT**

**Written Comments Submitted Jointly**

**by**

**European Disability Forum**

**Consiliul National al Dizabilitatii din Romania (CNDR)**

**International Disability Alliance**

**October 2017**

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**I. INTRODUCTION**

These written comments are submitted by International Disability Alliance (IDA), the European Disability Forum (EDF) and the National Council of Persons with Disability of Romania, pursuant to leave granted by the President of the Fourth Section of the European Court of Human Rights on 22 September 2017 in accordance with Rule 44(3)(a) of the Rules of Court.

The present case concerns the lack of access to inclusive education of a child with physical disability. He claims a violation of his right to education due to the refusal of schools to admit him and constant failures to provide reasonable accommodation and individualised support, and to ensure accessibility to ensure the full enjoyment of his right. The case also raises issues of degrading treatment and violence in educational settings and lack of effective remedy. While both the child (the “first applicant”) and his mother (the “second applicant”) claim violations of their rights under the European Convention on Human Rights (hereinafter the ‘Convention’), these comments will mainly focus on the right to education of the first applicant.

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 non-discrimination and accessibility within the mainstream education system. While complex, this case allows the Court to embrace and uphold the right to inclusive education, elaborating also on the concepts of discrimination on the basis of disability and reasonable accommodation, and accessibility.

These comments set forth the latest international human rights standards with respect to the right of persons with disabilities to inclusive education, particularly regarding the obligation to enrol persons with disabilities in regular education, to provide reasonable accommodation (as part of non-discrimination) and individualised support, and to ensure accessibility of school facilities; in particular since the adoption by the Committee on the Rights of Persons with Disabilities (hereinafter the ‘Committee’) of General Comment No 4 on the right to inclusive education (hereinafter the ‘General Comment No 4’).[[1]](#footnote-1) They also aim to provide some information on laws, policies and practices pertaining to inclusive education.

It has been established 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.*”[[2]](#footnote-2) 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.

**II. INTERNATIONAL STANDARDS ON RIGHTS OF PERSONS WITH DISABILITIES**

**A. United Nations Convention on the Rights of Persons with Disabilities**

In considering the responsibility of member States to uphold the rights of persons with disabilities, the Court is encouraged to have regard to the latest international standards on the human rights of persons with disabilities, namely the provisions of the United Nations Convention on the Rights of Persons with Disabilities (hereinafter ‘CRPD’) and its guiding principles, which include respect for inherent dignity, non-discrimination, full and effective participation in society, respect for difference, equality of opportunity, and accessibility.[[3]](#footnote-3) Moreover, the **General Comment No 4 on the right to inclusive education** adopted by the Committee on 25 November 2016 is of particular importance to apprehend the concept of inclusive education.

To date, the CRPD counts 174 ratifications/accessions including Romania which ratified it on 31 January 2011. Further, 27 out of the 28 member States of the European Union have ratified or acceded to the CRPD,[[4]](#footnote-4) and 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. Within the Council of Europe, 44 of the 47 members are States parties to the CRPD.[[5]](#footnote-5) The Court recognised in 2009 in ***Glor v Switzerland*** that the CRPD reflects “an European and worldwide consensus on the need to protect people with disabilities from discriminatory treatment.”[[6]](#footnote-6) More recently, in ***Çam v. Turkey****,*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.[[7]](#footnote-7)

The CRPD represents a significant paradigm shift in the discourse on the rights of persons with disabilities, moving from a medical and charity based approach to disability, in which persons with disabilities were considered as objects of treatment or charity, to a social model and human rights approach which recognises persons with disabilities as subjects of their own rights and focuses on the attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others.[[8]](#footnote-8) Importantly, the CRPD acknowledges that concerted steps and specific measures are necessary to accelerate or achieve *de facto* equality of persons with disabilities in society.[[9]](#footnote-9)

**B. Key principles of the CRPD: accessibility, non-discrimination and reasonable accommodation**

***Non-discrimination and reasonable accommodation***

The CRPD presents a fully developed concept of equality which moves beyond formal equality of treating persons identically towards substantive equality, and encompasses the prohibition of all acts that have the “purpose or effect” of impairing or nullifying human rights, thereby covering both direct and indirect discrimination.[[10]](#footnote-10) Discrimination on the basis of disability” is defined as:

any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economical, social, cultural, civil or any other field. It includes all forms of discrimination, ***including denial of reasonable accommodation***.[[11]](#footnote-11)

The concept of reasonable accommodation is fundamental to combat discrimination. Article 5(3) of the CRPD sets out that “[i]n order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.” **This provision is part of the non-discrimination obligation on States, and as such is an obligation of immediate effect,** not subject to progressive realisation,[[12]](#footnote-12) as the CRPD Committee has elaborated, in particular concerning the right to inclusive education.[[13]](#footnote-13) Consequently, the failure to provide “reasonable accommodation” is a form of disability-based discrimination recognised by the CRPD.[[14]](#footnote-14)

Under Article 2 of the CRPD reasonable accommodation is defined as “necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.” The concept of reasonable accommodation has been internationally developed and recognised.

Originating in the USA law,[[15]](#footnote-15) reasonable accommodation raised to prominence in the context of disability by the *Americans with Disabilities Act*, in 1990.[[16]](#footnote-16) It was adopted into the international framework of human rights and appears in the CESCR Committee’s General Comment No 5 on persons with disabilities,[[17]](#footnote-17) and more recently in its General Comment No 20 on non-discrimination.[[18]](#footnote-18) On the same line, the CRPD Committee confirmed that adoption of reasonable accommodations is part of the “*minimum core obligation* to ensure the satisfaction of, at the very least, minimum essential levels of each aspect of the right to education.”[[19]](#footnote-19) The EU Framework directive on equal treatment in employment and occupation also requires providing reasonable accommodation to guarantee compliance with the principle of equal treatment in relation to persons with disabilities.[[20]](#footnote-20)

Recently, the Office of the High Commissioner for Human Rights developed the more thorough and detailed guidance at the international level in its Thematic Study on the Right to Equality and Non-Discrimination of Persons with Disabilities,[[21]](#footnote-21) which we highly encourage the Court to consider. Furthermore, it is important to point out that the CRPD Committee is developing its General Comment No. 6 on Article 5 of the CRPD, and there is already a draft available.[[22]](#footnote-22)

Provision of reasonable accommodation requires that considerations are made in response to a particular person’s situation. The obligation to provide reasonable accommodation is carried out on a case by case basis in order to offer a solution which corresponds to the individual concerned whose specific preferences and needs will vary from others. It “seeks to achieve individual justice in the sense that non-discrimination or equality is assured, taking the dignity, autonomy and choices of the individual into account”,[[23]](#footnote-23) recognizing that there is no one size fits all solution. Further, it aims to ensure a proportionate and reasonable means to remove a barrier by a duty bearer, and the nature of the obligation will vary according to the particular individual and circumstances, the barrier(s) and duty bearer involved.

***Accessibility***

Accessibility is enshrined as both a principle of the CRPD in its article 3(f) and a stand alone provision in article 9 which reflects the significance of removing barriers posed in society– be they physical, environmental, communicational, informational or attitudinal – to ensure access to and equal opportunities for the realisation of all human rights.[[24]](#footnote-24) Article 9 of the CRPD on accessibility, states:

To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia: (a) Buildings, roads, transportation and other indoor and outdoor facilities, ***including schools***, housing, medical facilities and workplaces; (…)[[25]](#footnote-25)

In 2014, the CRPD Committee adopted its General Comment No 2 on accessibility[[26]](#footnote-26) in which it states that “accessibility is a precondition for persons with disabilities to live independently and participate fully and equally in society”,[[27]](#footnote-27) and its absence entails for them unequal opportunities of participation.[[28]](#footnote-28) As such, accessibility is to be considered in connection with equality and non-discrimination.[[29]](#footnote-29) In fact, denial of access is considered a prohibited act of discrimination.[[30]](#footnote-30) In 2016, the Committee stressed the connection between accessibility and inclusive education in its General Comment No 4.[[31]](#footnote-31) The significance of accessibility has also been acknowledged by other UN treaty bodies as required to guarantee equalisation of opportunities and prevent marginalisation of persons with disabilities.[[32]](#footnote-32)

The CRPD Committee has consistently made recommendations on accessibility[[33]](#footnote-33) and identified, as a major obstacle, the lack of an adequate monitoring mechanism to ensure the practical implementation of relevant legislation.[[34]](#footnote-34) In *Szilvia Nyusti et al v Hungary*, the Committee highlighted that Article 9 paragraphs 2(a) and (b) require States to “take appropriate measures to develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility *of facilities and services open or provided to the public* [...], and ensure that *private entities that offer facilities and services* which are open or provided to the public take into account all aspects of accessibility for persons with disabilities.[[35]](#footnote-35)

Importantly, the CRPD Committee has stressed that **the obligation to implement accessibility is *unconditional****.[[36]](#footnote-36)* That is to say that the duty bearers cannot excuse their lack of implementation of accessibility measures alleging that they constitute a burden or a disproportionate cost.[[37]](#footnote-37)

***Intimate link and interactions between accessibility and the duty to provide reasonable accommodation***

Both accessibility, and reasonable accommodation as part of non-discrimination, aim at ensuring effective enjoyment of rights on an equal basis with others preventing restrictions or exclusion on the basis of disability, **yet they are still clearly distinct**. First, general accessibility measures are unconditional and must be implemented in anticipation of the accessibility needs of persons with disabilities.[[38]](#footnote-38) Instead, being part of non-discrimination applicable to all rights, **reasonable accommodation** consists of specific measures directed at a particular individual in a particular situation to ensure enjoyment of rights and is subject to a proportionality test.[[39]](#footnote-39)

The CRPD Committee stated: “[r]easonable accommodation can be used ***as a means of ensuring accessibility*** *for an individual with a disability in a particular situation*”[[40]](#footnote-40), functioning then as complementary to general accessibility measures. **However, the duty to provide reasonable accommodation never replaces the efforts due to achieve general accessibility across all sectors**. Certainly, there is an intimate link between accessibility and reasonable accommodation. The more that accessibility is implemented across the board, the less need there would be to provide reasonable accommodation **as a means of** ensuring accessibility (particularly in terms of environmental accessibility).

Second, reasonable accommodation **is not limited to the area of accessibility,** and its scope of application goes far beyond being “a means of ensuring accessibility.” For example, with respect to exercising the right to inclusive education, it could be required as a measure of reasonable accommodation to provide different forms of in class communication or using alternative evaluation methods and replacing an element of the curriculum with an alternative.[[41]](#footnote-41)

**C. Obligation to ensure the right to inclusive education**

***The right to education in international law***

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 UN Committee on Economic, Social and Cultural Rights (CESCR Committee) 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. This leads to lower participation rates in employment as well as higher levels of unemployment.[[46]](#footnote-46) Recent development in international law, in particular, the CRPD Article 24 and the CRPD Committee´s General Comment No 4 on the right to inclusive education clarify States’ obligations to ensure the right to inclusive education to persons with disabilities. Inclusive education has also found great support in the adoption the 2030 Agenda for Sustainable Development[[47]](#footnote-47) and in the Education 2030 Incheon Declaration and Framework for Action.[[48]](#footnote-48)

***Components of the right to inclusive education of persons with disabilities***

Article 24 of the CRPD requires State Parties to “ensure an ***inclusive*** education system at all levels and lifelong learning” without discrimination and on the basis of equal opportunity.[[49]](#footnote-49) The concept of inclusive education was further elaborated[[50]](#footnote-50) in General Comment No 4 adopted in 2016 which explicitly differentiate the concepts of exclusion, segregation and integration,[[51]](#footnote-51) being all of them not in line with CRPD.[[52]](#footnote-52) Special schools and separate environment designed and used to respond to particular impairments, such as special schools for blind and deaf students, are not conformed to article 24.

Inclusion, in opposition to *integration* which puts the burden on persons with disabilities to “adjust to the standardised requirements” of mainstream educational institutions,[[53]](#footnote-53) involves a “process of systemic reform embodying changes and modifications in content, teaching methods, approaches, structures and strategies in education.”[[54]](#footnote-54) It is based on a “whole person” approach, focusing on the “learners capacities and aspiration rather than on content when planning teaching activities.” [[55]](#footnote-55)

To ensure inclusive education, States must adopt measures to guarantee that **accessibility** is systematically incorporated into the entire education system, including **buildings**, information and communication tools, curriculum, educational materials, teaching methods, assessments and language and **support services**.[[56]](#footnote-56) Primary compulsory education should be free and education at all levels should be affordable for students with disabilities.[[57]](#footnote-57) Commitment to provide **universal design** is encouraged.[[58]](#footnote-58)

States must also introduce measures, including through non-discrimination legislation binding on private as well as public bodies, to ensure that, where necessary, including as a means to ensure accessibility, **reasonable accommodations** are provided to remove barriers encountered by a specific student with disabilities,[[59]](#footnote-59) free of cost.[[60]](#footnote-60) The CRPD Committee stressed that reasonableness 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”.[[61]](#footnote-61) Availability of resources and financial implication of the measures are taken into consideration.[[62]](#footnote-62) This 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.[[63]](#footnote-63) 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.”[[64]](#footnote-64) Reasonable accommodations are enforceable from the moment a request has been made.[[65]](#footnote-65)

Supported teachers, properly trained for inclusive education, are part of the core features of inclusive education.[[66]](#footnote-66) Teachers and other staff working in education settings must receive adequate training to ensure quality education of students with disabilities.[[67]](#footnote-67) In addition, a key obligation to ensure inclusive education of persons with disabilities is the provision of adequate, continuous and personalized support for students with disabilities.[[68]](#footnote-68)

It is crucial to recall that the Court, in ***Çam v. Turkey***, a case concerning the refusal to enrolment a blind student in music school, the Court acknowledged that “inclusive education is the most appropriate means” for guaranteeing “the principles of universality and non-discrimination in the enjoyment of the right to education.”[[69]](#footnote-69)

*Non-discrimination in education: No-rejection clause*

Denial of enrolment in regular education on the basis of disability is prohibited under article 24(2)(a) of the CRPD. The refusal of schools to admit students on the basis of disability constitutes a case of direct discrimination also prohibited under article 5 CRPD. The CRPD Committee expressly stated in its concluding observations that a “rejection clause”, including schools refusing admission to certain students with disabilities on the grounds of organisational and economic hardship,[[70]](#footnote-70) is prohibited, and requested the adoption and implementation of “non-rejection policy”.[[71]](#footnote-71)

The CRPD Committee has consolidated these criteria in its General Comment No. 4 by clearly stating that “For article 24 (2) (a) to be implemented, **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.”[[72]](#footnote-72)

*Provision of reasonable accommodation to prevent discrimination and exclusion: reasonable accommodation as a mean to request individualised support in a particular case*

Article 24(2)(d) of the CRPD requires that “[p]ersons with disabilities receive the support required, within the general education system, to facilitate their effective education”. On its turn, Article 24(2)(c) also requires the provision of reasonable accommodation, which as part of non-discrimination constitutes a measure of immediate obligation. Thus, depending on their impairments and the barriers of any kind within the educational settings, students with disabilities may legitimately request reasonable accommodation measures. In this sense, “as support systems or services may not yet be developed, reasonable accommodation may function as a means of providing support in a particular case.”[[73]](#footnote-73)

The CRPD Committee emphasised the need to provide individualised education plans identifying the reasonable accommodations and specific support measures required by students with disabilities.[[74]](#footnote-74) The plans must also address the transitions of student from segregated to mainstream settings and between levels of education. Their effectiveness should be “regularly monitored and evaluated with the direct involvement of the [student] concerned.”[[75]](#footnote-75)

Such individualised support measures may also address aspects not educational in nature but crucial to ensure the educational process for students with disabilities, in relation for instance to their health condition. The CRPD Committee noted that the fulfilment of the right to enjoy the highest standard of health without discrimination is “integral to the opportunity to benefit fully from education.”[[76]](#footnote-76) Because the right to inclusive education is compromised if there is no access to health or appropriate treatment, States parties should establish health programmes integrated into education services, including the constant monitoring of all health needs.[[77]](#footnote-77) States parties should also take measures to provide habilitation and rehabilitation services within the education system “including health-care, occupational, physical, social, counselling and other services” in line with article 26 CRPD.[[78]](#footnote-78)

**III. SOME COMPARATIVE LAW AND PRACTICES**

States composing the Council of Europe, and many others around the globe, have taken measures to ensure enrolment of children with disabilities in regular education and to swiftly advance towards full-fledged inclusive education systems, including at higher education levels.[[79]](#footnote-79)

For instance, **Ireland** has addressed this issue from the schools management perspective and developed an Inclusive Education Framework directed to schools directors in order to build schools´ capacity for inclusive education.[[80]](#footnote-80) In **Georgia**, the Ministry of Education has developed projects for inclusive education, including in different schools, including notably the activity of “formation and training of inclusive education supporting teams for targeted regions: regional coordinator, multidisciplinary team members”.[[81]](#footnote-81) In contexts where deinstitutionalisation of children with disabilities is addressed, being the parallel development of inclusive education is crucial. A holistic strategy was carried out in **Moldova** in which deinstitutionalisation plans of children with disabilities were prepared in parallel to the development of inclusive schools and training professionals, in particular teachers and social workers.[[82]](#footnote-82)

In **France**, as a common practice and based on legislation, the Ministry of Education employs “auxilier de vie scolaire” (AVS, supporter for school life) for children with disabilities to attend school.[[83]](#footnote-83) There are different kinds of AVS considering whether the support is provided to a group or just to an individual. Similarly, in **Switzerland**, the " assistants à l’intégration scolaire” (AIS) support students with disabilities in regular classrooms, in majority those blind and with visual impairment and those with physical disabilities.[[84]](#footnote-84)

In the area of **higher education**, many European States, and education institutions within them, have taken the lead and been developing practices that favour the right to inclusive education of persons with disabilities. For instance, legislation in **Slovakia** requires universities to “create appropriate conditions” for students with disabilities.[[85]](#footnote-85) Measures advanced in **Denmark** and **France** acknowledge and guarantee the provision of support to persons with disabilities in higher education.[[86]](#footnote-86)

While it has been widely documented that inclusive education systems are more cost-effective than special education,[[87]](#footnote-87) there are several specific challenges which should be addressed in ensuring adequate public financing for inclusive education. In this sense, emerging good practices in financing inclusive education for children with disabilities has been observed in per capita based State efforts **e.g., in Serbia.**[[88]](#footnote-88) Planning on a per student basis enabled the State to cost Minimum Service Packages for education in relation to health and social welfare for children with disabilities and Roma children.

In the recent years, **several courts** and other bodies have adopted similar criteria to this Court criteria in ***Çam v. Turkey***, upholding the right to inclusive education and strengthening its justiciability. Already in 2007, prior to CRPD ratification, the **Sofia District Court in Bulgaria** upheld the State’s obligation to provide a “supportive environment” for the education of persons with disabilities within mainstream schools[[89]](#footnote-89) and the failure to do so was recognised as unequal treatment on the grounds of disability amounting to indirect discrimination.

In 2010, the **Italian Constitutional Court** found that a provision which set restrictions on the provision of support for a student with high support needs was unconstitutional as it failed to respond to the needs of the individual learner. The Court held that the State`s discretion over the protection measures concerning persons with disabilities is not absolute and “is limited by the respect of a minimum core of guarantees”. Ensuring provision of an individualised support was here recognised as a minimum core guarantee to the right to education in reference to Article 24(2)(c) of the Convention as well as Article 38(3) of the Italian Constitution on the right to education of persons with disabilities.[[90]](#footnote-90)

In Spain, this year, the **Superior Tribunal of Justice of La Rioja** upheld the right to **inclusive education** of a child with disability and mandated that he should be enrolled in an ordinary school.[[91]](#footnote-91) In this vein, in connection with indirect discrimination, the European Committee of Social Rights stressed that “indirect discrimination may arise by failing to take due and positive account of all relevant differences or 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.” [[92]](#footnote-92) Further, this case underlined that the right to education in the context of children with intellectual disabilities requires inclusive education, including an explicit reference to Article 24 of the CRPD.[[93]](#footnote-93)

**CONCLUSIONS**

1. The latest developments of international human rights law demonstrate that States cannot evade nor delay their duties concerning access to inclusive education, including non-discrimination and reasonable accommodation, provision of individualised support and accessibility; and that the provision of reasonable accommodation constitutes an obligation of immediate effect, and its denial constitutes disability based discrimination. **The International Disability Alliance (IDA), the European Disability Forum (EDF) and the National Council of Persons with Disability of Romania respectfully encourage the Court to explicitly and fully endorse these criteria in its final decision.**
2. Furthermore, **the lack of proactive measures to ensure inclusive education**, including lack of immediate provision of reasonable accommodation (as a means to provide support and accessibility), impacting negatively on the development of the individual by limiting opportunities to fully experience and benefit from education, **constitutes a violation of the right to education and of the right to equality and non-discrimination of persons with disabilities**. This case is one among many which exemplifies the structural disadvantages faced in Europe by persons with disabilities which restrict or deny their rights and hinder their inclusion and participation in society. **The International Disability Alliance (IDA), the European Disability Forum (EDF) and the National Council of Persons with Disability of Romania, not discussing facts as presented in the Statement of Facts, respectfully encourage the Court to conclude that there have been violations of the rights to education and to equality and non-discrimination of a person with disability.**
3. Consistent with established jurisprudence on the rights of persons with disabilities and the growing trend across Europe to adopt positive measures to ensure their equal participation in education, **the International Disability Alliance (IDA), the European Disability Forum (EDF) and the National Council of Persons with Disability of Romania encourage the Court to enhance the protection of the right to education, together with the right to equality and non-discrimination**, by addressing the failure to ensure inclusive education, including lack of immediate provision of reasonable accommodation (as a means to provide support and accessibility), and **reinforce States’ human rights obligations on the matter**.

Statement of Interest of IDA, EDF and CNDR

The International Disability Alliance (IDA) is a unique international network of global and regional organisations of persons with disabilities, of which EDF is a member. Established in 1999, each IDA member represents a large number of national disabled persons’ organisations (DPOs) from around the globe, covering the whole range of disability constituencies. IDA thus represents the collective global voice of persons with disabilities counting among the more than one billion persons with disabilities worldwide, the world’s largest – and most frequently overlooked – minority group. IDA’s mission is to advance the human rights of persons with disabilities as a united voice of organisations of persons with disabilities utilising the Convention on the Rights of Persons with Disabilities and other human rights instruments.

The European Disability Forum (EDF) is the independent European umbrella organisation representing 80 million disabled Europeans. 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. The CNDR is the member of the EDF at the national level in Romania.

IDA and EDF work both individually and collectively to advocate for the rights of persons with disabilities on the national, regional and international planes, including before the Court: EDF 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 and IDA have also jointly intervened 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) 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 latest international human rights standards concerning persons with disabilities. The present case raises important issues in the area of education concerning the fundamental rights of persons with disabilities, and the laws and practices which continue to violate their rights and perpetuate their marginalisation in society. The outcome of this case will have a significant impact on how States view their obligations towards persons with disabilities, including regarding the right to inclusive education, and will be 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, both of which have been key actors 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 non-discrimination (Article 5, CRPD) and the right to inclusive education (Article 24).

1. CRPD Committee, General Comment No 4 on the right to inclusive education, CRPD/C/GC/4, 25 November 2016. [↑](#footnote-ref-1)
2. *Opuz v Turkey*, Application no 33401/02, judgment of 9 June 2009, para 164. [↑](#footnote-ref-2)
3. 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-3)
4. The last ones being Finland and the Netherlands who ratified the CRPD respectively on 11 May 2016 and 16 June 2016. Ireland signed the CRPD on 30 March 2007 but has yet to ratify it. [↑](#footnote-ref-4)
5. Ireland and Monaco have signed but not ratified the CRPD. Liechtenstein has neither signed nor ratified the CRPD. [↑](#footnote-ref-5)
6. *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-6)
7. *Çam v. Turkey* (application no. 51500/08), 23 February 2016, para. 54 [↑](#footnote-ref-7)
8. *See* CRPD, Preamble, para e. [↑](#footnote-ref-8)
9. *See* CRPD, Article 5(4). [↑](#footnote-ref-9)
10. CRPD, Article 2. [↑](#footnote-ref-10)
11. CRPD, Article 2 (emphasis added). [↑](#footnote-ref-11)
12. *See* CESCR Committee General Comment No 3 on the nature of States’ Party’s obligations: “while the Covenant provides for progressive realization and acknowledges the constraints due to the limits of available resources, it also imposes various obligations which are of immediate effect. Of these, two are of particular importance in understanding the precise nature of States parties obligations. One of these, which is dealt with in a separate general comment... is the "undertaking to guarantee" that relevant rights "will be exercised without discrimination..."; CESCR Committee General Comment No 20 on n-discrimination, 2009, E/C.12/GC/20, para 7: “Non-discrimination is an immediate and cross-cutting obligation in the Covenant.”  [↑](#footnote-ref-12)
13. CRPD Committee, General Comment No 4, paras. 31 and 41(a) and (b). *See* also CPRD Committee, Concluding Observations on Spain CRPD/C/ESP/CO/1, 2011, para 44 stating: “the duty to provide reasonable accommodation is immediately applicable and not subject to progressive realization”. [↑](#footnote-ref-13)
14. CRPD Article 2 and Article 5(3). [↑](#footnote-ref-14)
15. The concept of reasonable accommodation first emerged in the United States to combat discrimination on the basis of religion in the labour market with the obligation for employers to reasonably accommodate the religious practices of employees without undue hardship. [↑](#footnote-ref-15)
16. *See* Letícia de Campos Velho Martel, “Reasonable Accommodation: the New Concept from an Inclusive Constitutional Perspective”, *Sur International Journal on Human Rights*, June 2011. [↑](#footnote-ref-16)
17. CESCR Committee, General Comment No 5, Persons with Disabilities, E/1995/22, 15 December 1994, para 15. [↑](#footnote-ref-17)
18. CESCR Committee, General Comment No 20, Non-Discrimination in Economic, Social and Cultural Rights, E/C.12/GC/20, 2 July 2009, paras 9, 28. [↑](#footnote-ref-18)
19. CRPD Committee, General Comment No 4, para. 41(b) (emphasis added). [↑](#footnote-ref-19)
20. Council Directive 2000/78/EC of 27 November 2000, establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p 16), Article 5, “This means that employers shall take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer. This burden shall not be disproportionate when it is sufficiently remedied by measures existing within the framework of the disability policy of the Member State concerned.” Since its transposition, the concept of reasonable accommodation in employment and vocational training and has been present in all national jurisdictions of 27 Member States of the European Union. [↑](#footnote-ref-20)
21. See [A/HRC/34/26](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/34/26), available in the OHCHR website on disability. [↑](#footnote-ref-21)
22. [Draft General Comment on the right of persons with disabilities to equality and non-discrimination (article 5)](http://www.ohchr.org/documents/HRBodies/CRPD/GCArt5.docx), available on the CRPD Committee website. [↑](#footnote-ref-22)
23. CRPD Committee, General Comment No 2 on Article 9, para 26. [↑](#footnote-ref-23)
24. *See* also CRPD Preamble (v). [↑](#footnote-ref-24)
25. CRPD, Article 9, para 1 (emphasis added). [↑](#footnote-ref-25)
26. CRPD Committee, General Comment No 2 on Article 9: Accessibility, CRPD/C/GC/2, 11 April 2014. [↑](#footnote-ref-26)
27. *Ibid*, para. 1. [↑](#footnote-ref-27)
28. *Ibid*. [↑](#footnote-ref-28)
29. *Ibid*, paras 4 and 29. [↑](#footnote-ref-29)
30. *Ibid*, para. 29. [↑](#footnote-ref-30)
31. CRPD Committee, General Comment No 4 on the right to inclusive education, CRPD/C/GC/4, 25 November 2016, para. 17, paras. 22-24 and para. 49. [↑](#footnote-ref-31)
32. *See* CRPD Committee, General Comment no 2 on Article 9: Accessibility, CRPD/C/GC/2, 11 April 2014, para 6, referring to CESCR Committee general comments No. 5 (1994), on persons with disabilities, and No. 14 (2000), on the right to the highest attainable standard of health (Art. 12 of the Covenant), para 12; and to CRC Committee general comments No. 9 (2006), on the rights of children with disabilities, and No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art. 31). [↑](#footnote-ref-32)
33. CRPD Committee, General Comment No 2, para. 10. [↑](#footnote-ref-33)
34. *Ibid*. [↑](#footnote-ref-34)
35. CRPD Committee, *Szilvia Nyusti, Péter Takács and Tamás Fazekas v Hungary*, Communication No 1/2010, CRPD/C/9/D/1/2010, Views adopted on 16 April 2013 (emphasis added). [↑](#footnote-ref-35)
36. CRPD Committee, General Comment No 2, para. 25. [↑](#footnote-ref-36)
37. *Ibid*. [↑](#footnote-ref-37)
38. *Ibid*, para. 25. [↑](#footnote-ref-38)
39. *Ibid*. [↑](#footnote-ref-39)
40. *Ibid*, para. 26 (emphasis added). [↑](#footnote-ref-40)
41. CRPD Committee, General Comment No 4, para. 30. [↑](#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. 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-46)
47. 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-47)
48. Available at <http://unesdoc.unesco.org/images/0024/002456/245656e.pdf> [↑](#footnote-ref-48)
49. CRPD, Article 24(1) (emphasis added). [↑](#footnote-ref-49)
50. Already discussed in OHCHR-Office of the United Nations High Commissioner for Human Rights *Thematic study on the right of persons with disabilities to education* (UN Doc A/HRC/25/29), 18.12.2013, in particular see para. 7. [↑](#footnote-ref-50)
51. Confusion between integration and inclusion in the decision of the European Court of Human Rights was noted, *see* [Kalkanli c. Turquie (13/01/2009)](http://hudoc.echr.coe.int/eng?i=001-91079). UNICEF already made the distinction between the concepts in *The Right of Children with Disabilities to Education: A Rights-Based Approach to Inclusive Education in the CEECIS Region* (Background Note), 2011: [https://www.unicef.org/eca/Background\_NoteFINAL(1).pdf](https://www.unicef.org/eca/Background_NoteFINAL%281%29.pdf). [↑](#footnote-ref-51)
52. CRPD Committee, General Comment No 4, para. 11. [↑](#footnote-ref-52)
53. *Ibid*. [↑](#footnote-ref-53)
54. *Ibid*. [↑](#footnote-ref-54)
55. *Ibid*, para. 12(c). [↑](#footnote-ref-55)
56. CRPD Committee, General Comment No 4, para. 22. [↑](#footnote-ref-56)
57. *Ibid*, para. 24. [↑](#footnote-ref-57)
58. CRPD Committee, General Comment No 4, paras. 22 and 26. *See* definition in Article 2 CRPD: “‘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. ‘Universal design’ shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.” [↑](#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. *Ibid*, para. 28. [↑](#footnote-ref-61)
62. *Ibid*. [↑](#footnote-ref-62)
63. *Thlimmenos v Greece* Application no 34369/97, judgment of 6 April 2000, para. 44. [↑](#footnote-ref-63)
64. 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-64)
65. Committee on the Rights of Persons with Disabilities, General Comment No. 2, para. 26, and General Comment No 4, para. 28. [↑](#footnote-ref-65)
66. *Ibid*, para. 12(d). [↑](#footnote-ref-66)
67. *Ibid*. *See* also CRPD Committee, Concluding Observations on Denmark (2014), para. 53, and on Kenya (2015), para. 44(e). [↑](#footnote-ref-67)
68. CRPD Committee, General Comment No 4, para. 33. [↑](#footnote-ref-68)
69. *Çam v. Turkey*, no. 51500/08, §64, 23 February 2016. [↑](#footnote-ref-69)
70. CRPD Committee, Concluding Observations on Sweden (2014), paras. 47-48. [↑](#footnote-ref-70)
71. CRPD Committee, Concluding Observations on the European Union (2015), para. 85, and on Kenya (2015), para. 44. [↑](#footnote-ref-71)
72. CRPD Committee, General Comment No 4, para. 18. [↑](#footnote-ref-72)
73. See A/HRC/34/26, para. 34. [↑](#footnote-ref-73)
74. *Ibid*, para. 33. [↑](#footnote-ref-74)
75. *Ibid*. [↑](#footnote-ref-75)
76. *Ibid*, para. 54. [↑](#footnote-ref-76)
77. *Ibid*. [↑](#footnote-ref-77)
78. *Ibid*, para. 55. [↑](#footnote-ref-78)
79. Importantly, the provision of concrete examples of regulations, plans and practices **does not imply** fully endorsing other aspects of the given educational system that might be criticised from the perspective of inclusive education. Some practices that contribute to move towards inclusive education might be present in education systems which are conceived under other outdated education models, notably “integration”. [↑](#footnote-ref-79)
80. Available at <http://www.ncse.ie/researches/InclusiveEducationFramework_InteractiveVersion.pdf>. [↑](#footnote-ref-80)
81. See Website of the Ministry of Education and Science of Georgia, <http://mes.gov.ge/content.php?id=540&lang=eng>; also <http://mes.gov.ge/content.php?t=srch&search=inclusive%20education&id=7091&lang=eng> [↑](#footnote-ref-81)
82. See Lumos, “In our Lifetime: The Role of Donors in ending the Institutionalisation of Children”, 2014, p 20; http://zeroproject.org/practice/lumos-foundation-moldova/ [↑](#footnote-ref-82)
83. See France, Circulaire relative aux assistants d'éducation, <http://www.education.gouv.fr/bo/2003/25/MENP0301316C.htm>. [↑](#footnote-ref-83)
84. See, e.g., <https://edu.ge.ch/site/capintegration/acteurs-de-lecole/assistants-a-lintegration-scolaire-ais/>. [↑](#footnote-ref-84)
85. See Higher Education Act 131-2002, Section 100, available at <http://www.minedu.sk/data/att/5689.rtf>. [↑](#footnote-ref-85)
86. Denmark passed the Act on Special Educational Support in Higher Education (Lovbekendtgørelse nr. 584 af 1. juni 2014, available at <https://www.retsinformation.dk/Forms/R0710.aspx?id=163419> ) while the Danish Board of Equal Treatment has acknowledged that non-discrimination on the basis of disability applies to higher education (The decision is available at <http://www.ligebehandlingsnaevnet.dk/naevnsdatabase/afgoerelse.aspx?aid=1040&type=Afgoerelse>). In France, the Law of 11 February 2005 stipulates that higher education institutions enrol students with disabilities on the same basis as others and their education is ensured by providing the accommodations they need in organising, progressing in and receiving support for their studies (Loi 11 de février 2005, Article 20.I). [↑](#footnote-ref-86)
87. http://www.unesco.org/new/en/education/themes/strengthening-education-systems/inclusive-education/10-questions-on-inclusive-quality-education/ as well as Latimier, Camille, and Jan Šiška, ‘Children’s Rights for All!: Implementation of the United Nations Convention on the Rights of the Child for children with intellectual disabilities’, Inclusion Europe, Brussels, October 2011, p 21 cited in UNICEF, State of the World’s Children; Children with Disabilities, 2013, p 32 [↑](#footnote-ref-87)
88. Tünde Kovács-Cerović, Presentation entitled “Financing inclusive education in Serbia’’, available at [www.unicef.org/ceecis/2.Cerovic\_.ppt](http://www.unicef.org/ceecis/2.Cerovic_.ppt). [↑](#footnote-ref-88)
89. Case no 13789/06, Sofia District Court, 18 May 2007. [↑](#footnote-ref-89)
90. Decision no 80/2010 of the Constitutional Court of 22 February 2010, in Official Journal 3 March 2010. The decision can be found on the Constitutional Court website www.cortecostituzionale.it [↑](#footnote-ref-90)
91. Superior Tribunal of Justice of La Rioja, Spain, Decision 201/2017, 14 June 2017, available in Spanish at <http://www.poderjudicial.es/search/contenidos.action?action=contentpdf&databasematch=AN&reference=8111156&links=EDUCACION%20INCLUSIVA&optimize=20170801&publicinterface=true> [↑](#footnote-ref-91)
92. 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-92)
93. *Ibid*., para. 17. [↑](#footnote-ref-93)