



HELLENIC REPUBLIC

GREEK NATIONAL COMMISSION FOR HUMAN RIGHTS

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GNCHR Recommendations on the Bill on Special Education

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“1. States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and lifelong learning [...].

2. *In realizing this right, States Parties shall ensure that: (a) persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability; (b) persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live; (c) reasonable accommodation of the individual’s requirements is provided[...].”*

Article 24, Convention on the Rights of Persons with Disabilities

“1. Any discrimination based on any ground such [...], disability [...].”

Article 21, Charter of Fundamental Rights of the European Union

“The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community”.

Article 26, Charter of Fundamental Rights of the European Union

“Everyone has the right to education and to have access to vocational and continuing training”.

Article 14, Charter of Fundamental Rights of the European Union

“People with disabilities have the right to benefit from measures ensuring their self-sufficiency, professional integration and participation in the social, economic and political life of the Country”.

Article 21(6), Constitution of Greece

I. Introduction

A. The GNCHR has previously formulated certain recommendations regarding the implementation of Law 3699/2008 on *Special Education of Persons with Disabilities or Special Educational Needs*², which were not only ignored, but also considerable retrogress has since been observed. Aiming at addressing issues which have rendered in practice difficult the access of persons with special educational needs (SEN) to education, the GNCHR had in fact organised a consultation with stakeholders.

Expressing its concern for the general dismantlement of Special Education and taking into consideration the concluding observations of the UN Committee on the Rights of the Child³, the GNCHR briefly restates its Opinion on the draft law on *Special Education*.

B. The draft law on *Special Education* was put to public consultation from 17 April 2014 to 9 May 2014 and has yet to be introduced into Parliament for debate⁴. Due to the importance of the issues adressed and the

¹ Adopted by the GNCHR’s Plenum in the session of 10 July 2014. Rapporteurs: K. Papaioannou, GNCHR President, E. Varchalama, GNCHR Second Vice-President, A. Tsampi, GNCHR Legal Officer and R. Fragou, GNCHR Legal Officer. It is also noted that the present Recommendations have been developed in collaboration with the Deputy Ombudsman in charge of children’s rights, G. Moschos.

² GNCHR, “Proposals regarding the implementation of Law 3699/2008 Special Education of Persons with Disabilities or Special Educational Needs”, Annual Report 2009.

³ Committee on the Rights of the Child, *Concluding Observations: Greece*, CRC/C/GRC/CO/2-3 (13.8.2012). The Committee particularly invites Greece to ensure that children with disabilities shall have the right to choose their preferred school or move between regular schools and special needs schools according to their best interests.

strong mobilisation of the stakeholders, the GNCHR deems necessary to return to the issue of special education and make concrete recommendations with regard both to the spirit and goals of the legislation in question and to the implementation of its specific principles. To this purpose and aiming at understanding issues which render in practice difficult the actual access of persons with special educational needs, the GNCHR organised a consultation with stakeholders.⁵

C. It is deemed necessary to note that the GNCHR's recommendations do not attempt a total and exhaustive approach on the organisation and management of Special Education, but the essential contribution to cultivating a general spirit of integration not only of students with special educational needs, but also of Special Education teachers. This pursuit, in combination with the need for effective implementation of the existing legal framework regulating persons' with disabilities access to education, is inevitably connected to the content of the State's obligations arising out of the Constitution and the country's international obligations.

Emphasizing issues related to persons with disabilities requires clarifying the concept of disability, the definition of which presents several difficulties, given that "it is a complex situation associated to both the current social conditions and the personality traits of the person bearing it"⁶. This complexity is reflected in the variety of formulations and definitions one may encounter both in international and in Greek bibliography⁷. The most widely accepted definition for disability is the one suggested by the World Health Organisation, as presented through the International Classification of Functioning, Disability and Health (ICF). The ICF allows for the definition and the classification of functionality and disability of persons with disabilities in a more systematic and analytical way, which can be more easily understood by all professionals engaged in the care of persons with disabilities. The specific classification is applied in all fields like in health, education and social relations⁸.

More specifically, regarding the concept of "special educational needs" the Greek legislator considers as persons with disabilities or/and special educational needs those who "*for the whole school life or for certain period of their school attendance have considerable learning difficulties due to sensory, intellectual, cognitive, developmental, mental problems and neuropsychiatric disorders which, according to the multidisciplinary assessment, affect the process of adaptation and learning in school. Among them are*

⁴ It is noted that the draft law on *Special Education* was not sent to the GNCHR by the competent Ministry. In a joint session of the second and fourth GNCHR sub-commissions, held on 30 June 2014, the recommended regulations of the draft law were discussed and it was decided to further analyse the issue.

⁵ The consultation was held on 30 June 2014, in a joint session of the second (Economical, Social and Educational Rights) and fourth (Promotion of Human Rights) GNCHR sub-commissions, with the participation of representatives from the Greek Ombudsman (Children's Rights Department and Social Protection, Health and Welfare Department), the National Confederation of Disabled People (ESAEA), the Greek Federation of Teachers in Private Teaching (OIELE) and the Centre for Educational Policy Development (KANEP-GSEE), as well as the Teachers and Psychologists with 67% and higher hearing loss. The GNCHR is also thankful to the stakeholders who have submitted their positions in writing, such as the Special Education Departments Alumni Association (SATEA) and the Greek Society for the Protection of Autistic People (EEPA), facilitating, thus, the demonstration of issues which call for particular attention. The GNCHR is also grateful to stakeholders and their representatives for the extremely interesting exchange of opinions, which allowed it to shape a clearer view on Special Education everyday issues.

⁶ See S. Sioutis, *Family and persons with special needs. Sociological, educational and institutional reflections. Pursuits and perspectives*, 2012, p.15.

⁷ According to certain authors, for instance, a person with disabilities or special educational needs is "the person who is not in a position to participate in all activities and enjoy all goods offered by the society he lives in to its other members, due to their condition or other psychosomatic or social traits". See E. Dimitropoulos, *Professional Formation of Mentally Retarded Persons in Greece. Problems of the didactic process. Effectiveness of Educational Programmes*, Doctoral Thesis, National and Kapodistrian University of Athens, School of Philosophy, Faculty of Philosophy, Pedagogy and Psychology, 1995.

⁸ World Health Organization, *International Classification of Functioning, Disability and Health (ICF)*, available at: <http://www.who.int/classifications/icf/en/>.

*included especially those with intellectual disability, visual sensory disability (blind, partially sighted with low vision), hearing, impairment sensory disability (deaf, hard-of-hearing), motion disabilities, chronic illnesses, disorders in speech, specific learning difficulties such as dyslexia, dysgrafia, dysarithmia, dysanagnwsia, dysorthografia, attention deficit syndrome with or without hyperactivity, pervasive developmental disorders (autism spectrum), mental disorders and multiple disabilities*⁹.

Subsequently, a more focused approach is attempted both of the protective framework of the persons' with disabilities right to education on an international and European level (II) and of the current legislation for the recognition and protection of the persons' with special educational needs right to education (III). This approach highlights the very important challenges the State and society have to face nowadays concerning the rights and protection of persons with disabilities (IV) and concludes with the formulation of Recommendations for taking appropriate and fruitful measures for addressing the problems and insufficiencies which have been observed (V).

II. Recognition of the right to education of people with SEN on an international and European level: the challenge of equal inclusive education

One of the most important texts of international conventional law in the field of protecting the rights of persons with disabilities, which provides specific rights to persons with disabilities, is the **International Convention on the Rights of Persons with Disabilities** (hereinafter ICRPD)¹⁰. More specifically, Article 7(1) of the ICRPD states that "*States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children*". At the same time, Article 24 of the ICRPD guarantees the right of persons with disabilities to education without discrimination and on the basis of equal opportunity, through an inclusive education system at all levels and lifelong learning, directed to the full development of human potential and the sense of dignity and self-worth as well as the strengthening of respect for human rights, fundamental freedoms and human diversity.

A necessary condition for realising this goal is to ensure, on the one hand, the persons' with disabilities access to an inclusive, quality and free primary education and, on the other hand, the reasonable accommodation to the needs of persons with disabilities. Protecting and promoting this right is achieved *inter alia*, according to Paragraph 4 of the same article, through employing teachers with disabilities qualified in sign language and/or Braille, as well as through specially oriented training of professionals and staff at all levels of education. Such training, according to ICRPD's provisions, shall incorporate disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities¹¹.

The International Convention on the Rights of Persons with Disabilities is the first human rights convention to be open for signature by regional integration organisations (Article 44 of the ICRPD). The European Union (hereafter EU) signed it on its opening day for signature on 30 March 2007¹² and it has since been

⁹ Article 3(1) Law 3699/2008 "Special Education and education of people with disability or special educational needs" (OJ 199/A 10.2.2008). The present draft law repeats the same definition in Article 3(1).

¹⁰ **The International Convention on the Rights of Persons with Disabilities** and the **Optional Protocol** were adopted with the UN General Assembly's Decision 61/611 in New York on 13 December 2006 and came into force on 4 May 2008. Greece signed the Convention on 3.30.2007 and the Protocol on 9.27.2010, while they were both ratified by Law 4074/2012 "Ratification of the UN Convention on the Rights of Persons with Disabilities and the Optional Protocol to the Convention on the Rights of Persons with Disabilities" (OJ 88(A)) and came into force on 6.30.2012. See at: <http://treaties.un.org/>.

¹¹ See Explanatory Report to the draft law on "Ratification of the Convention on the Rights of Persons with Disabilities and the Optional Protocol to the Convention on the Rights of Persons with Disabilities".

¹² Press release "EU ratifies UN Convention on disability rights" (IP/07/446), 5 January 2011, available at the EU

signed by all 28 EU member States. Upon completing the process of “formal confirmation”¹³ by the EU (22 December 2010) and putting it into force (22 January 2011), EU as a whole has been the first international organisation to become official member of the convention. This development reflects EU’s commitment that the ICRPD constitutes a point of reference for developing strategies for disability based on incorporating the dimension of disability across all economic and social policies. It also means that EU requirements towards member States will be increased as regards the development of comparable indicators and objectives corresponding to the implementation of the Convention, as it is stated in the European Disability Strategy¹⁴. Moreover, the ICRPD specifies the provisions of the Charter of Fundamental Rights of the EU, as well as those of the Constitution with regard to persons with disabilities.

The right of mentally or physically disabled children to a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community is also guaranteed by Article 23 of the **International Convention on the Rights of the Child (ICRC)**¹⁵. More specifically, the third paragraph of Article 23 of the ICRC specifically mentions the States Parties’ obligation to ensure that the disabled child has effective access to free education, continuous training and professional training in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

Every person’s access to appropriate and quality education is guaranteed in the most emblematic way by one more very important provision, Article 28 of the ICRC, which provides the States Parties’ obligation to guarantee free and compulsory basic education to all children. An education, which, according to the provisions of Article 29 of the ICRC, must aim at “*the development of the child's personality, talents and mental and physical abilities to their fullest potential*” and “*the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes[...]*”, within a child-centered educational system which adapts to its development and particular needs and empowers it towards an independent life in a society respectful to human rights¹⁶. In any case and regardless of more specific regulations, every child’s right to access education is indirectly deduced from the principle of non-discrimination towards children, as it is stated in Article 2 of the ICRC which actually repeats the provisions of Article 24 of the International Covenant on Civil and Political Rights (ICCPR) regarding special measures of protection for their status as minors and is equivalent to the principle of non-discrimination of Article 14 of the European Convention on Human Rights (ECHR).

As a civil and at the same time social right, the right to education is also guaranteed by the **International Covenant on Economic, Social and Cultural Rights (ICESCR)**, which in Article 13(1) recognises the right to free primary education and the obligation to encourage access to all levels, providing at the same time that “*education shall enable all persons to participate effectively in a free society*”¹⁷. The ICESCR Committee, in

official webpage: http://europa.eu/rapid/press-release_IP-11-4_el.htm.

¹³ In essence, it is the ICRPD ratification process by regional organisations according to Article 43 of the ICRPD.

¹⁴ See Press Release “[Creating a barrier-free Europe: European Commission seeks better access for 80 million people with disabilities](http://europa.eu/rapid/press-release_IP-10-1505_el.htm)” (IP/10/1505), 15 November 2010, available at the EU official webpage: http://europa.eu/rapid/press-release_IP-10-1505_el.htm.

¹⁵ The **International Convention on the Rights of the Child** was unanimously adopted by the UN General Assembly in 1989 and was put into force on 2 September 1990. It has been ratified by 191 states, all the states of the world, that is, apart from the United States and Somalia. It was ratified on 2 December 1992 with Law 2101/1992 by Greece and was put into force for Greece on 6.10.1993 (Announcement of the Ministry of Foreign Affairs A 166/9.28.1993) when it acquired supra-legislative status in line with Article 28(1) of the Constitution.

¹⁶ UN, ICRC Committee, General Comment No.1 (2001), *The Aims of Education*, GRC/GC/2001/1(1). Of equally great importance is also General Comment No.9 of the UN Committee on the Rights of the Child on the rights of children with disabilities, see General Comment No.9 (2007), *The Rights of Children with Disabilities*, GRC/C/GC/9(62-72), which focuses on the quality of inclusive education of children with disabilities. Available at: <http://www.ohchr.org/EN/HRBodies/Pages/TBGeneralComments.aspx>

¹⁷ The ICESCR was ratified with Law 1535/1985 (OJ A 25).

fact, upon analysis of the right to education, highlights that education must be characterised at all levels by: (a) *availability of resources* within the jurisdiction of the State party (sufficiency of schools, structures, teaching staff and material), (b) *accessibility* (without discrimination, either physical or economic), (c) *acceptability of curricula and teaching methods* (culturally appropriate and of good quality) and (d) *adaptability* to changing societies and the needs of students as formed within their social and cultural settings¹⁸. Steps towards this direction must be deliberate, concrete and targeted towards the full realisation of the right to education¹⁹. The State party's obligation to guarantee the actual exercise of the right to education without discrimination is of immediate effect²⁰.

Particular emphasis is, also, placed on the need to respect the principle of equal opportunities in education, as defined by **UN Standard Rule 6**²¹, according to which State parties must not only recognise the principle of equal opportunities in basic, secondary and higher education for children, youth and adults with disabilities, but also ensure, by means of positive actions, that education of persons with disabilities is an integral part of the educational system. More specifically, regarding equality of opportunities in education, Kishore Singh, UN Special Rapporteur on the right to education, stresses that **“given the mutually reinforcing nature of different forms of discrimination and inequality in the context of education, States should address multiple forms of inequality and discrimination through comprehensive policies.”** Through policies whose primary concern must be **“to respond to the need for making learning accessible for the most marginalised and vulnerable”**²². The quality of such education must reflect the same standards and aspirations as general education to which it must be closely linked. Educational budgets equal to the ones allocated to general education must basically be allocated to students with disabilities, taking into account special educational support measures in order for the latter to realise their right to education on an equal basis with their peers. Finally, the gradual introduction of special education services and support services into the general education system aiming at equal participation of all children must constitute priority and constant pursuit for every State Party.

Concerning the issue of children with disabilities or/and special educational needs participating in the general education system, the approach of the **UN Committee on the Rights of the Child** is particularly interesting since it states that equal inclusion constitutes **“a right, not a privilege”** of children with SEN.

¹⁸ UN, ICESCR Committee, General Comment 13, *The Right to Education (Article 13 of the ICESCR)*, E/C.12/1999/10, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G99/462/16/PDF/G9946216.pdf?OpenElement>, par. 6.

¹⁹ UN, ICESCR Committee, *General Comment 13, op.cit.*, par. 7 and 43.

²⁰ *Idem*, par. 43 and Article 2(2), ICESCR.

²¹ **Standard Rules on the Equilisation of Opportunities for Persons with Disabilities** were adopted by the UN General Assembly in 1993 and signal a new era for policy-making and promotion of programmes of action aiming at improving the quality of life of persons with disabilities. Although they lack any legally binding force, Standard Rules represent the moral and political commitment of Governments to take action to attain equalisation of opportunities for persons with disabilities.

Standard Rules, which were adopted by the Greek State under Law 2430/1996 (OJ A 156/7.10.1996), include 22 rules, which reflect the basic principles of the [World Programme of Action Concerning Disabled Persons](#). More specifically, these 22 Rules are grouped into four chapters: Preconditions for Equal Participation (I), Target Areas for Equal Participation (II), Implementation Measures (III) and Monitoring Mechanism (IV) and cover all aspects of life of persons with disabilities such as, indicatively, education, vocational training and employment, social inclusion, recreation, etc. See United Nations, General Assembly, *The Standard Rules of Equalisation of Opportunities for Persons with Disabilities*, 48th Session, Resolution 48/96, Annex, 12.20.1993, available at: <http://www.un.org/esa/socdev/enable/dissre00.htm>.

²² UN, Human Rights Council, Kishore Singh, UN Special Rapporteur on the right to education, “The promotion of equality of opportunity in education”, A/HRC/17/29 (18 April 2011), par.72(b).

Highlighting the necessary distinction between the terms “integration” and “inclusion”²³, the UN Committee insists on the need to implement an “inclusive education model”, considering that equal inclusion can only be effective through policies aiming at modifying school settings in order to satisfy the child’s needs and not vice versa²⁴. Vernor Muñoz, UN Special Rapporteur on the right to education, stresses that **“attempts to a simple integration into mainstream schools without accompanying structural changes have been shown, and will continue for a variety of reasons, to fail to meet the educational rights of persons with disabilities”**²⁵. The need for radical structural reforms for transitioning to inclusion is corroborated by current research which affirms that segregated education lacks effectiveness due to the multiple administrative bureaucratic structures and, mostly, due to lack of financial viability of special schools²⁶.

Given its double priority as civil and at the same time as social right, the right to education for all and at all levels, including vocational training, is established by the most comprehensive social rights protection mechanism of the Council of Europe: the **European Social Charter (ESC)**²⁷. The importance attached to the rights of persons with disabilities is evident and reflected in various provisions, including the right of persons with disabilities to vocational guidance (Article 9), technical and vocational training (Article 10) and independence, social integration and participation in community life (Article 15). In fact, in the Explanatory Report of the revised ESC, the European Committee of Social Rights commented, in Paragraphs 62-65 which specifically concern the amendment of Article 15, that this provision promotes a change in disability policy. A change which has occurred in the last decade through a more modern approach which preconditions inclusion and social integration of persons with disabilities. **This statement marks a turn in the rightful approach to disability.**²⁸

The goal of full inclusion of persons with disabilities is set by yet another body of the Council of Europe, the Committee of Ministers, which by means of *Recommendation to promote the rights and full participation of people with disabilities in society* and recognising that children and young people with disabilities still face considerable barriers in accessing all aspects of their life, including education, stresses that these issues can only be addressed “on the basis of a comprehensive strategy”²⁹. In the same *Recommendation*, particular emphasis is placed on the importance of education as a factor “of ensuring social inclusion and independence for all people, including those with disabilities”. An education which must “cover all stages of life, including pre-school, primary, secondary, high school education and professional training, as well as life-long learning”³⁰.

On a European Union level, the Treaty of Amsterdam, signed on 2 October 1997, radically changed the European policy on disability, including the latter in the reasons for discrimination and providing the legal

²³ The term “integration” refers to the need to adapt the child’s needs in order to be integrated into society, while the term “inclusion” preconditions the adaptation of the school environment in order to satisfy the needs of the child with SEN.

²⁴ See “Children with disabilities”, CRC/C/66, Annex V, 16th Session, 6 October 1997, available at: <http://www.ohchr.org/EN/HRBodies/CRC/Documents/Recommendations/disabled.pdf> par.335.

²⁵ UN, Human Rights Council, Vernor Muñoz, UN Special Rapporteur on the right to education, «The right to education of persons with disabilities », A/HRC/4/29 (2.19.2007), par. 12.

²⁶ Vernor Muñoz, *op.cit.*, par. 13. See also UN ICESCR Committee, General Comment No. 5, *Persons with Disabilities*, E/1995/22(SUPP), Annex IV, (12.9.1994), par. 35.

²⁷ Greece signed the European Social Charter on 18 October 1961 and ratified it on 6 June 1984 under Law 1426/1984 (21 March 1984) “Ratification of the European Social Charter” (OJ A 32/3.21.1984). On the contrary, it has not ratified yet the Revised European Social Charter which it has signed since 3 May 1996.

²⁸ Council of Europe, European Social Charter, *Explanatory Report*, par. 62-65, available at: <http://conventions.coe.int/Treaty/EN/Reports/HTML/163.htm>

²⁹ Council of Europe, Committee of Ministers, *Recommendation REC(2006)5 to member States on the Council of Europe Plan of Action to promote the rights and full participation of people with disabilities in society: improving the quality of life of people with disabilities in Europe:2006-2015*, 5 April 2006, Note 4.4, p.32

³⁰ *Idem*, Note 3.4.1, p.16

grounds for taking measures to combat discrimination on grounds of disability (Article 13 TEU). Moreover, it was recognised that when European Union bodies adopt legislation for combating discrimination against persons with disabilities in all aspects of social life (social model of disability), they shall take into account the needs of these people³¹. A requirement for combating discrimination, also on the grounds of disability, in all EU policies and actions, is already laid down by Article 10 of the TFEU, while Article 19 of the TFEU provides for the procedure according to which all the appropriate measures are taken. Prohibition of discrimination on grounds of disability is also included in the Charter of Fundamental Rights of the EU (Article 21(1) of the CFR), which further strengthens the regulation regarding the rights of persons with disabilities, establishing, in Article 26, “*the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community*”³².

Combating social exclusion, especially for disadvantaged groups, such as persons with disabilities, has been within the priorities of Regulation No. 1081/2006 of the European Parliament and the Council of 5 July 2006. The Regulation mentions the fields where targeted actions for persons with disabilities must be necessarily implemented through Operational Programmes co-funded by the European Social Fund (ESF). The field of Lifelong Learning Education is among these operational programmes³³.

Finally, the GNCHR also highlights the *European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe*, which launches a process of strengthening the position of persons with disabilities so as to be able to fully participate in society on an equal basis to others³⁴. Building upon all the possibilities offered by the EU Charter of Fundamental Rights, the Treaty on the Functioning of the EU and the UN Convention, the Strategy is founded on the following pillars:

- support to the national attempts through a strategic framework for European cooperation in education and training “ET 2020”³⁵ aiming at removing legal and organisational barriers for persons with disabilities to general education and life long learning systems.
- support for inclusive education and personalised learning, and early identification of special needs.
- adequate training and support for professionals working at all levels of education and
- submission of reports on participation rates and outcomes.

The EU institutions and the Member States are called upon to work together under this Strategy to build a barrier-free Europe for all and, more specifically, for promoting an education and lifelong learning without discrimination against persons with disabilities.

³¹ “22. Declaration regarding persons with a disability. The Conference agrees that, in drawing up measures under Article 100a of the Treaty establishing the European Community, the institutions of the Community shall take into account the needs of persons with a disability.” See Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and Certain Related Acts, Protocol in Article I.7 (22), p.135

³² The Charter of Fundamental Rights (CFR) was “declared” by the Parliament, the Council and the Commission during the Nice European Council on 7 December 2000 (2000/C 364/01), but it did not acquire legally binding force. Since 1 December 2009, with the Lisbon Treaty entering into force, it acquired the same legal force as the treaties, (new Article 6(1) of the TEU). The text was specifically published in the Official Journal of the EU (EE C 303/02, 12.14.2007, EE C 83/02, 3.30.2010).

³³ Regulation (EC) No 1081/2006 of the European Parliament and of the Council of 5 July 2006 on the European Social Fund and repealing Regulation (EC) No 1784/1999 2006, Article 3(2)(i).

³⁴ European Commission, *European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe*, Brussels, 11.15.2000, COM(2010) 636, p.5

³⁵ Council Conclusions of 12 May 2009 on a strategic framework for European cooperation in education and training (ET 2020), EE C 119, 5.28.2009, p.2.

III. The current national legislation promoting the right to education for persons with SEN: the challenge of equal inclusion or another missed opportunity?

In Greece, the right to education is guaranteed as a constitutional right surrounded by relevant increased guarantees. More specifically, Article 16(2-4) of the Constitution recongnizes the right to free education for all and sets a system of at least nine years of compulsory education. Apart from the State's obligation to respect and guarantee the right to free access to education, the obligation to support those in need of assistance or special protection is explicitly provided, such as on grounds of age or disability depending on their abilities³⁶.

The identification of the need to strengthen vulnerable groups, aiming at achieving the enjoyment of rights and equality in practice, resulted in the addition of Article 21(6) to the revised Constitution, which states that *"people with disabilities have the right to benefit from measures ensuring their self-sufficiency, professional integration and participation in the social, economic and political life of the Country"*. The objectives of this provision, however, are not fulfilled unless measures guaranteeing effective access to the right to education for children with disabilities are adopted and implemented. Nevertheless, compliance with this provision has been insufficient as it follows from the repeated, fragmented and without strategic planning relevant legislation.

Regarding the legislation on special education in Greece, the institution of integration of children with special educational needs in education is guaranteed by Law 2817/2000, which established integration classes and parallel support as individualised special educational support. This institutional framework was later completed by Law 3699/2008. More specifically, in Article 1(1) of Law 3699/2008 it is stated that *"the State is committed to safeguarding and constantly upgrading the compulsory character of special education as an inherent part of compulsory and free public education and to guaranteeing free public special education for persons with disabilities of all ages and at all stages of education"*. Inclusion, therefore, of special education in the general public and free education, foreseen under the following article (Article 2(1) of Law 3699/2008), constitutes a fundamental obligation of the State.

Moreover, Article 6(4) of Law 3699/2008 states that the education of students is provided within special education school units, in case attending general schools or integration classes is particularly difficult. The educational system, under the current circumstances, leaves room for doubt regarding the possibility to provide effective education to persons with special educational needs within general schools.

IV. Special Education in Greece

In the light of the aforementioned observations, the question which arises at this point, as consistently expressed in various opinions of stakeholders³⁷, is whether the Greek educational system, as regards special education, responds to the aforementioned principles of international and European law.

The GNCHR observes that, even though the issue of Special Education is everlasting, the Greek relevant legislation is marked by intertemporal institutional gaps, since it is not fully compatible with the right to education of children with disabilities. It is not only the content of Greek legislation which raises concern, but also its inadequate implementation. In practice, it is noted that discrimination against these children still exists and that the way the child's with disabilities special circumstances are addressed, in order for his/her rights to be satisfied on an equal basis with his/her peers, is not effective.

In its *Conclusions* dated 24 October 2008, the European Committee for Social Rights of the Council of Europe, upon examining the annual reports of state Members of the Council Europe, concluded that the

³⁶ Article 21(3) of the Constitution.

³⁷ See *supra*, Footnote No.5, p.2

situation in Greece is not in conformity with Article 15(1) of the ESC on the ground that there is no legislation explicitly protecting lifelong learning of persons with disabilities. More specifically, the Committee noted that there was no particular provision for persons with disabilities neither in the public educational system, nor later regarding the effectiveness of the right to vocational training, reintegration and social integration. In fact, in the same Report, the Committee of Social Rights highlighted the lack of and failure to present more specific statistical data which would allow to assess the country's compliance with the ESC requirements³⁸. The situation does not seem to have changed all that much, since in its most recent *Conclusions* as well, dated 7 December 2012, the Committee concluded that the absence of information required for the assessment of the situation of persons with disabilities in Greece and their ability to access education, which the Committee had repeatedly requested from the Greek State, amounts to a breach of the reporting obligation every member State has concerning the implementation of ESC provisions³⁹.

The current economic and social crisis exacerbates the chronic problems observed in the education of children with special needs. The GNCHR has already voiced its concern for the impact of austerity measures on the outbreak of discrimination on multiple levels and the sharp decline in social rights⁴⁰.

The current economic and social crisis exacerbates the chronic problems observed in the education of children special needs. According to the Unicef Report on *The State of the World's Children 2013*, the link between poverty and disability is very strong. More specifically, household survey data from 13 low- and middle-income countries showed that children with disabilities aged 6-17 years are significantly less likely to be enrolled in school than peers without disabilities⁴¹.

The Greek Ombudsman, as an actor for promoting the principle of equal treatment, in its latest Report⁴², notes this state of affairs and mentions a series of characteristic examples of chronic problems. Some of them are the school year delay in special schools, the constantly delayed appointment of substitute teachers instead of permanent educational and special educational staff, the significant delay or the non-appropriate provision for parallel support and the lack of its implementation, especially in kindergarten school and primary education, the insufficient staffing of integration classes and special schools, especially in the periphery, which result in hindering the equal access to education for many children with disabilities or/and special educational needs.

Another cause for concern is the State's insufficient, hesitant and delayed response to reactions coming from a part of the school community aiming at discouraging the enrollment and integration of children with special needs to general education. The State shares a wider responsibility concerning combating the marginalization of children with disabilities. The significant divergence between the rates of children's attendance to special kindergarten classes and the corresponding rates of attending elementary classes is yet

³⁸ Council of Europe, European Committee for Social Rights, *Conclusions XIX-1*, 24 October 2008, Articles 15, 15(1), available at: <http://hudoc.esc.coe.int/esc2008/query.asp?action=query×tamp=31325.77>.

³⁹ Council of Europe, European Committee for Social Rights, *Final Observations XX-1*, 7 December 2012, Article 15(1), available at: <http://hudoc.esc.coe.int/esc2008/query.asp?action=query×tamp=31325.77>.

⁴⁰ See GNCHR, "GNCHR Recommendation and decisions of international bodies on the conformity of austerity measures with international human rights standards", 6.27.2013, http://www.nchr.gr/images/pdf/apofaseis/oikonomikh_krish/eeda_metra_litothtas.pdf, GNCHR, "Decision on the need for constant respect of human rights during the implementation of the fiscal and social exit strategy from the debt crisis", 2010 *Report*, p.103 ff. and GNCHR "GNCHR Recommendation: On the imperative need to reverse the sharp decline in civil liberties and social rights", 2011 *Report*, p.119 ff.

⁴¹ More specifically, it is stated that "as long as children with disabilities are denied equal access to their local schools, governments cannot reach the Millennium Development Goal of achieving universal primary education (MDG 2), and States parties to the Convention on the Rights of Persons with Disabilities cannot fulfil their responsibilities under Article 24". See Unicef, *The state of the World's children 2013. Children with disabilities*, May 2013, available at: <http://www.unicef.gr/uploads/filemanager/PDF/info/swcr13.pdf>, p.20 ff.

⁴² The Greek Ombudsman, *Special Report 2013*, p.108

another cause for concern⁴³. The absence of special quality indicators towards this direction does not allow for clearly defining the factors which discourage parents from enrolling their children in kindergarten. As a result, important aspects of marginalisation in education of children with disabilities are left unseen.

Unicef, in its recent Report on the *State of World Children 2013*, notes that “exclusion denies children with disabilities the lifelong benefits of education: a better job, social and economic security, and opportunities for full participation in society”. In contrast, the same Report places particular emphasis on the fact that the investment in the education of children with disabilities can contribute to their future effectiveness as members of the labour force⁴⁴. Unfortunately, in Greece lack of supporting infrastructure for children with disabilities further extends to the fields of training, lifelong learning and professional placement, widening, thus, the social exclusion they experience. This illustrates the lack of connection between education and professional prospects, which cannot be deemed as covered by legislation on compulsory recruitment of persons with disabilities⁴⁵.

The GNCHR expresses its concern about the absence of data regarding the vocational training of children with disabilities, even within the context of third-degree studies.

V. GNCHR Recommendations on the fulfilment of compulsory special education based on the draft law

The draft law, which was recently submitted to Parliament, is invited to rearrange an issue which had previously been the object of a series of laws.

A. On the legislative process

Apart from the actual content of the provisions, it is the quality of the legislative process itself which raises concern.

The GNCHR stresses that prolonging **separate legislation** on the matter constitutes *per se* a form of discrimination against persons with special needs, which is to be added to the already existing social and educational inequalities of the Greek educational system. Special Education is not to be addressed as an alien or inferior *corpus* of wider education. The quality of persons' with special needs education defines and sets the pace for the quality of the Greek educational system as a whole.

Furthermore, the issues of Special Education have been the object of a variety of provisions, which inconsistently succeed one another. In fact, a series of more specific issues are not regulated by the legislator, who provides for issuing presidential decrees for the regulation hereof. The GNCHR highlights that **scattered provisions** generated by such practices afflict the rights of children with disabilities along with legal certainty.

The introduction of this new draft law to Parliament exacerbates this situation, even more so when there has been neither previous evaluation of the existing legislative framework nor justification of the need for new legislation.

⁴³ KANEP-GSEE, *The fundamentals of education – 2010*, Vol. A, January 2011, available at:<http://www.kanep-gsee.gr/ereynes-meletes-ekdoseis/ethsies-ektheseis-ekpaideushs/ethsia-ekthesh-gia-thn-typikh-ekpaideysh-2010>, p.15 and 20.

⁴⁴ See Unicef, *The state of the World's children 2013. Children with disabilities*, *op.cit.* p. 37. It is also mentioned that one year of schooling increases an individual's earnings by 10%. See United Nations Educational, Scientific and Cultural Organization, *Building Human Capacities in Least Developed Countries to Promote Poverty Eradication and Sustainable Development*, UNESCO, Paris, 2011, p.8.

⁴⁵ Law 2643/1998 (OJ 220/A/9.28.1998), as amended and in force.

Indeed, the draft law is not the fruit of constant and **essential consultation** between the Ministry of Education and the relevant stakeholders, in breach of Article 4(3) of the ICRPD, which states that “*the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organisations*”.

The GNCHR invites the State to **systematise legislation concerning Special Education** in a way that it guarantees its actual connection with the organisational structures of the general, public and free educational system.

Regarding the current draft law, the GNCHR deems that the State must particularly **specify which of the current scattered law or regulations for special education shall be abrogated and which shall be incorporated** into the new legislative framework.

The GNCHR also invites the legislator to **refrain from using presidential decrees or ministerial decisions for regulating simple or complex issues** concerning the organisation, structure and operation of the sub-system of special education, special education school units and Differential Diagnosis, Diagnosis and Support Centres (KEDDY).

In conclusion, the education of children with disabilities is not necessarily in need of a new law. It rather needs the identification of measurable objectives, the proportionate increase and rational absorption of the necessary resources for the effective implementation of special education and the equal allocation of resources in the field of education.

B. On the content of the current draft law

a. According to the explanatory report, the current draft law wishes to form an institutional framework for providing free general and special education to persons with disabilities of all ages and at all stages and educational levels. Thus, it shall re-define and declare the main objective of compulsory free and public education for students with disabilities or/and special educational needs so as to achieve full conformity with Article 24 of the ICRPD which guarantees persons' with disabilities right to education.

The GNCHR observes that from the general assessment of the suggested regulations does not entail that they can effectively serve the declared objective, risking, thus, that the incorporation of the International Convention for the Rights of Persons with Disabilities shall remain an empty promise. Occasionally, it does not serve the prospect of school and social integration of persons with disabilities or/and special educational needs and functions in a deterrent way for their integration.

By means of the new draft law, the State does not seem to seize the opportunity to improve the educational system **in a way that both different special educational needs across the country and different categories of disabilities are taken into consideration.**

Furthermore, no measures are provided for organising Early Intervention, for the promotion of which it is deemed necessary to establish and staff comprehensive public day centres responsible for planning and realising Early Intervention for children between a few months and 5 years of age.

On the contrary, the GNCHR observes that, while trying to regulate the organisation and operation of special education, the suggested legislative initiative reduces the quality of education as a whole, since not only does it not provide for mechanisms for monitoring and statistical representation of the indicator of participation in

education of pre-school children and students with disabilities or/and special educational needs on a national, regional and local level, but it also does not take any action towards increasing this participation⁴⁶.

The GNCHR also highlights the need for promoting in a coordinated way the integration of students with special educational needs into General Education. Towards this direction, the State must provide for the staffing of school units with special education teachers, special support and special education personnel when necessary, in order to provide suitable material resources and necessary infrastructure. It is also deemed necessary to create Integration Classes in all general schools, as well as increase authorizations for Parallel Support for children who can be integrated into general classes. Wherever integrating students with disabilities into General Education is not possible, it is suggested that special schools be interconnected with the general ones by means of organising sports or cultural activities or exchange visits.

The GNCHR also stresses that promoting the integration of students with disabilities or/and special educational needs into general schools should not undermine the need to improve special schools, which for certain students are irreplaceable. Special schools need both material infrastructure and the required personnel, as well as reducing the number of students per class by clearly setting the ratio up to three students per teacher.

The problem of bus transportation for students also requires a permanent solution, as every other matter related to the principle of accessibility. According to Article 9 of the ICRPD [Accessibility], “to enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures [...] which shall include the identification and elimination of obstacles and barriers to accessibility”, including at schools. Issues relating to the implementation in practice of the principle of accessibility for students with disabilities on behalf of the State require immediate and special consideration. For children with disabilities, moving in order to access school does not just constitute a condition of education, but a precondition for exercising their right to education and, in fact, an indispensable one. In this context, its quantitative-fiscal assessment must be conducted on the basis of special standards.

b. Great concern is also raised by the incorporation of discriminatory regulations, which do not comply with policies of social and educational inclusion of persons with special needs that ought to be promoted by the Ministry of Education and Religious Affairs. More specifically, under the prism of Article 24 (4) of the ICRPD⁴⁷, teachers with disabilities have the right to be employed in order to provide appropriate education and special educational support to students with disabilities attending general or special education units. In order to be employed, teachers need to dispose of the necessary formal and essential qualifications, provided that their placement aims at ensuring the exercise of the right to education for children with disabilities.

Nonetheless, according to its explanatory Report, the draft law attempts, under Chapter 3 which refers to “covering positions and functional needs of primary and secondary special education”, to introduce a new standard and **objective** procedure of appointing and recruiting teachers of Special Education and Special Support Staff. It is explicitly mentioned that “the first and foremost standard of selection is the qualifications and skills of the aforementioned, since they can be nothing less than **excellent**”. Under Article 21(7), a special regulation is introduced concerning teachers with disability of sixty-seven percent (67%) and higher who have vision or hearing loss and are quadriplegic - paraplegic. More specifically, it is provided that these

⁴⁶ For more information see OIELE, *Report during a session of the National Commission for Human Rights on the draft law on Special Education*, 30 June 2014, available at: <http://www.oiele.gr/eisigisi-tis-oiele-se-synedriasi-tis-ethnikis-epitropis-gia-ta-dikaio-mata-toy-anthropoy-me-the-ma>.

⁴⁷ Article 24(4) of the ICRPD: “In order to help ensure the realization of this right, States Parties shall take appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education. Such training shall incorporate disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities.”

teachers may teach “**only**” in school units with students who share the same disability with every each of them, because, as mentioned in the explanatory report, “the aforementioned teachers are not capable of teaching in all Special Education School Units (SESU) due to the particularity of their disability”.

In breach of the principle of equal treatment⁴⁸ and “reasonable accommodation”, as guaranteed by the EU law (Directive 2000/78) and the ICRPD⁴⁹, as well as by the Constitution (Article 21(6) combined with Article 4(1)), and despite the fact that the degree these teachers are holding gives them the right to work with students covering the whole range of special education, the present draft law excludes the aforementioned categories of Special Education teachers from access to other Special Education structures, where they can undoubtedly prove effective, as it has been the case for years. To this purpose, these teachers are excluded from the system of allocation of credit points and appointment applied on both teachers without disabilities and teachers with disabilities. For the application of this regulation, the classification in three different lists is provided; lists where the sensitive personal data of the type of disability shall appear and be made publicly available⁵⁰.

The GNCHR expresses its reservations concerning classifying and grouping teachers with particular disabilities, which result in drastic limitations being imposed on their access to work. Taking into account that persons with disabilities constitute an exceptionally heterogeneous population group, exactly due to the different categories or degrees of disability, the State’s actions ought to move towards eliminating these limitations and making the most of each individual’s potential.

Given the absence of any official information about developments regarding the present legislative initiative, the GNCHR is optimistic that the State shall take into consideration all its Recommendations, as expressed in the present text and in its Proposals dated 9 April 2009 on the implementation of Law 3699/2008 on *Special Education of people with disabilities or special educational needs*.

⁴⁸ Law 3304/2005 “On the implementation of the principle of equal treatment regardless of racial or ethnic origin, religious or other beliefs, disability, age or sexual orientation” (OJ 16 A/1.27.2005), which adapts Greek law to Directives 2000/43/EC and 2000/78/EC.

⁴⁹ “Reasonable accommodation” means 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. See Article 2 of the ICRPD as well as Article 24(2)(c) and (5) and Article 27 (1)(i). The provision of Article 5 of Directive 2000/78/EC is similar.

⁵⁰ At this point, the GNCHR wishes to specially mention the letter it received on 11 June 2014 by **Teachers of all levels of Primary and Secondary education and Psychologists with hearing loss of 67% and higher**, by means of which the issue of violating their labour rights was put under the GNCHR’s consideration. Through the letter in question and the document of 30 June 2014, Teachers and Psychologists with hearing loss of 67% and higher attempt to demonstrate the adverse consequences voting this draft law shall have on their labour rights, as well as the reasons why they deem that these regulations directly violate the ICRPD and the Constitution while, at the same time, they formulate recommendations towards the legislator.

