

Warsaw, 31 July 2019

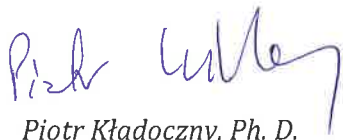
1127/2019/PSP/JJ

**Mr. Jon Fridrik Kjølbro**  
**The European Court of Human Rights**  
**President of the Fourth Section**  
Section IV  
Council of Europe  
67075 Strasbourg-Cedex  
France

**Ref. *M.C. and Others against Romania***  
**Application no. 44654/18**

Pursuant to the letter from Ms. Marialena Tsirli, the Section Registrar of the Fourth Section of the European Court of Human Rights (hereinafter also referred to as "ECtHR", "Court") dated 27 June 2019 and the letter from Ms. Andrea Tamietti, the Deputy Section Registrar of the Fourth Section of the ECtHR dated 12 July 2019, granting leave to make written submission to the High Court by the 1 August 2019, the Helsinki Foundation for Human Rights and the Forum for Human Rights would like to respectfully present their written comments on the case *M.C. and Others against Romania* (application no. 44654/18).

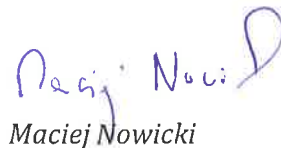
On behalf of  
the Helsinki Foundation for Human Rights and the Forum for Human Rights,



*Piotr Kładoczny, Ph. D.*

Secretary of the Board

Helsinki Foundation for Human Rights



*Maciej Nowicki*

Vice-President of the Board

Helsinki Foundation for Human Rights

Warsaw, 31 July 2019

***M.C. and Others against Romania***  
**Application no. 44654/18**

**WRITTEN COMMENTS**  
**BY**  
**THE HELSINKI FOUNDATION FOR HUMAN RIGHTS**  
**AND THE FORUM FOR HUMAN RIGHTS**

**Executive summary**

- Persons with disabilities, especially children, find themselves often in vulnerable and disadvantaged situations and therefore states must undertake actions in order to enhance their participation in the society and their healthy development. One of the spheres in which such measures of support are particularly necessary is education;
- Right of students with disabilities to have access to inclusive education is protected by the international law, in particular the Convention on the Rights of Persons with Disabilities and the Convention on the Rights of the Child. Both treaties impose on the states also positive obligations to prevent school violence;
- Polish and Czech law provide several forms of education adjusted to special needs of children with disabilities. However, in practice access to them is hindered by various problems;
- In both countries, bullying of children with disabilities seems to be a serious problem, which not only threaten the children's with disabilities right to education, but also their health and dignity;
- The Court's judgment in the present case may develop standards helping children with disabilities with their inclusion in the standard school environment. It has a potential to influence many jurisdictions, in line with contemporary human rights standards.

**1. INTRODUCTION**

1. This third party intervention is submitted by the Helsinki Foundation for Human Rights (HFHR) and the Forum for Human Rights (FORUM), pursuant to the leave granted by the President of the European Court of Human Rights on 27 June 2019.

2. HFHR is a non-governmental organisation established in 1989 in order to promote human rights and the rule of law as well as to contribute to the development of an open society in Poland. One of the activities of HFHR includes participating in legal actions undertaken for the public interest such as representing parties and preparing legal submissions to national and international courts and tribunals. In the past HFHR had submitted *amicus curiae* opinions not only in cases against Poland, but also those against other countries, which in our opinion, concerned legal problems important also from the perspective of protection of human rights in Poland (e.g. *Levada Centre against Russia*, app. no. 16094/17; request of the French Court of Cassation for advisory opinion, ref. no. P16-2018-001).

3. The Forum for Human Rights (FORUM) is a non-governmental human rights organisation active in the Central European region. It provides support to domestic and international human rights organisations in advocacy and litigation and also leads domestic and international litigation activities. FORUM has been supporting a number of cases pending before domestic

judicial authorities and before the European Court of Human Rights. FORUM authored and co-authored number of reports and information with the UN and Council of Europe bodies on the situation in the Czech Republic and Slovakia.

4. HFHR and FORUM have extensive experience with regards to the rights of the child, including in the sphere of education. Since 1993 HFHR has been running a program „*Rights of the Child*“. Within the program HFHR carry out activities in the field of education, intervention and monitoring. The Legal Department of the Helsinki Foundation for Human Rights has made a number of actions aimed at monitoring child rights at the court's proceedings and has also observed parliament work connected with legislation, which may affect the rights of children. Similarly, FORUM has been working extensively on the issue of inclusive education and discrimination of persons with disabilities, litigating cases in the Czech Republic and Slovakia and continuously advocating before UN bodies.

5. Although the present case concerns directly only Romania, HFHR and FORUM believe that the potential impact of the Court's judgment could be significantly broader. Especially, the present case opens up questions of specific obligations of the State under Article 3 of the European Convention on Human Rights with respect to access to justice for extremely vulnerable victims of alleged ill-treatment and necessary procedural accommodations to their specific needs.

6. Our written comments, in accordance with the letter of Section Registrar of 27 June 2019, are focused only on legal aspects which, in our opinion, are relevant for the adjudication in the case pending before the Court. We do not refer to any factual circumstances of the case.

## **2. INTERNATIONAL STANDARDS**

7. Right of student with disability to have access to high quality inclusive education belongs to universally accepted human rights. The most important standards in this area are set in the Convention on the Rights of Persons with Disabilities (“CRPD”) and the Convention on the Rights of the Child (“CRC”).

8. According to Article 24 § 1 of the CRPD, “States Parties recognize the right of persons with disabilities to education”. The CRPD provides that in order to implement this provision state must establish an inclusive education system directed to, among others “The full development of human potential and sense of dignity and self-worth (...)” and “The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential”. States must ensure that students with disabilities are not excluded from the general education system, have access to “an inclusive, quality and free primary education and secondary education on an equal basis with others”, and are provided with necessary reasonable accommodations and support. Persons with disabilities should be also able to learn “life and social development skills”.

9. Standards set in Article 24 of the CRPD were further developed by the Committee on the Rights of Persons with Disabilities (“Committee”) in its General comment No. 4 dedicated to the right to inclusive education.<sup>1</sup> The Committee defined “inclusiveness” of education as a “process of systemic reform embodying changes and modifications in content, teaching methods, approaches, structures and strategies in education to overcome barriers with a vision serving to provide all students of the relevant age range with an equitable and participatory learning experience and the environment that best corresponds to their requirements and preferences”<sup>2</sup>. Crucial characteristic of inclusive education should be the “whole person approach” which implies, among others, ending segregation in educational settings.<sup>3</sup> Educational system must be also based on the respect for dignity of students and so “Effective measures to prevent abuse

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<sup>1</sup> CRPD, General comment No. 4 (2016) on the right to inclusive education, 25 November 2016, CRPD/C/GC/4.

<sup>2</sup> Ibid., para. 11.

<sup>3</sup> Ibid., para. 12(c).

and bullying” must be provided.<sup>4</sup> Inclusive schools must focus not on impairments of students, but on giving them opportunities to develop their strengths and talents.<sup>5</sup> According to the Committee, the CRPD requires that educational system is based on four features: availability (sufficient quantity and quality), accessibility, acceptability (“obligation to design and implement all education-related facilities, goods and services taking fully into account and respecting the requirements, cultures, views and languages of persons with disabilities”) and adaptability (universal design and reasonable accommodations).<sup>6</sup> The Committee underlines that states are obliged to provide students with disabilities with reasonable accommodations, which may have both material and non-material form.<sup>7</sup> The Committee noted that Article 24 is connected to Article 16 of the CRPD which guarantees persons with disabilities freedom from exploitation, violence and abuse<sup>8</sup>. States must therefore introduce accessible mechanisms of protection against, among others, bullying.

10. Also the CRC imposes on the states obligations to ensure that students with disabilities have access to inclusive educational system and are protected against bullying. First of all, Article 23 § 1 provides that “States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child’s active participation in the community.” Moreover, states must ensure that children with disabilities and their parents have access to adequate assistance designed, among others, to guarantee that children receive education. Obligations of the states with regards to children with disabilities must be interpreted in the light of more general provisions of the CRC, applicable to all children. In this context particularly important is Article 28 which guarantees children the right to education and provide, among others, that primary and secondary education are accessible to all children. The Committee on the Rights of the Child underlined that “Children with disabilities have the same right to education as all other children and shall enjoy this right without any discrimination and on the basis of equal opportunity as stipulated in the Convention”.<sup>9</sup> Education should be inclusive.<sup>10</sup> The Committee on the Rights of the Child emphasised also obligations of the states with regards to protection of students with disabilities against bullying, taking into account their vulnerability.<sup>11</sup>

### **3. ACCESS TO INCLUSIVE EDUCATION IN POLAND AND THE CZECH REPUBLIC**

#### **3.1. Poland**

11. According to Article 70 of The Constitution of Poland<sup>12</sup>, everyone has the right to education. Moreover, education shall be compulsory to the age of 18. The Constitution also specifies that the manner of fulfilment of schooling obligations shall be specified by a statute.

12. On that basis Polish Law on Education<sup>13</sup> determines that: teaching program, organization and methods of learning shall be adjusted to physical capabilities of students with disabilities and ensure them the possibility of benefiting from psychological and pedagogical help and special methods of teaching<sup>14</sup>. Students with disabilities, students who are not socially adjusted or are in danger of maladjustment are also allowed to attend all types of schools, in accordance

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<sup>4</sup> Ibid., para. 12(e).

<sup>5</sup> Ibid., para. 16.

<sup>6</sup> Ibid., paras. 20-39.

<sup>7</sup> Ibid., para. 30.

<sup>8</sup> Ibid., para. 51.

<sup>9</sup> Committee on the Rights of the Child, General Comment No. 9 (2006): The rights of children with disabilities, 27 February 2007, CRC/C/GC/9, para. 62.

<sup>10</sup> Ibid., para. 67.

<sup>11</sup> Ibid., para 43(e).

<sup>12</sup> The Constitution of the Republic of Poland of 2nd April 1997 as published in Dz. U. nr 78 poz. 483

<sup>13</sup> Law on Education of 14<sup>th</sup> December 2016 as published in Dz.U. z 2019 r. poz. 1148.

<sup>14</sup> Article 1 point 5 of the Law on Education.

with their individual needs and capabilities<sup>15</sup>. Furthermore, those schools are obliged to ensure a proper care for them through revalidation classes and implementation of the learning program which is adjusted to their needs<sup>16</sup>. To fulfil all these requirements Polish legal system established 3 special models of organization of the teaching process: special education, individual schooling and psychological-pedagogical support.

#### *Special education*

13. According to the Regulation of the Minister of National Education of 9 August 2017 on conditions of organization of teaching process, upbringing and care for children and youth with disabilities, socially non-adjusted and in danger of maladjustment (further: Regulation on special education)<sup>17</sup> system of special education is dedicated for students with disabilities (those who are deaf, hearing-impaired, blind, visually-impaired, motor-impaired, who have aphasia, profound and moderate and mild intellectual disability – including autism and Asperger's syndrome and with multiple disability), as well as students who are not socially adjusted or are in danger of maladjustment, who require special organisation of education and work<sup>18</sup>. For those children psychological-pedagogical counselling public centre issues a decision on special education need<sup>19</sup>. This decision is then delivered to school where a team of teachers and experts, who conduct the classes with this student, prepares a Psychological-Pedagogical Individual Program<sup>20</sup> ("IPET") which contains all the adjustments of teaching process that have to be provided for student with disabilities.

Special education may be provided by an access to:

- a) general kindergartens, schools and pre-school units in primary schools;
- b) integrative kindergartens, pre-school units in primary schools, schools and units: designed to teach students with and without disabilities in the atmosphere of mutual respect and tolerance and support their full integration,
- c) special kindergartens, schools and units: attended only by students with disabilities and are adjusted to their needs;
- d) Education Centres for Youths, Social-Therapy Centres for Youths, Special Educational Centres and in Centres for Education and Revalidation: designed for students with profound intellectual disability and with multiple disability<sup>21</sup>.

14. In these units basic model of teaching process is modified in order to comply with the special educational needs of children. Director of school, on the basis of decision on special education need, is allowed to delay the start of education process<sup>22</sup> and to provide education up to the year in which student turns 20 years old (in case of primary school) and 24 years old (in case of secondary school<sup>23</sup>). Furthermore, school is obliged to provide a necessary special equipment and educational tools for children. Director, pursuant to IPET, organizes individual classes or classes in small groups in order to ensure an increased teacher's attention on student with disabilities during acquiring the knowledge that is especially difficult for them. Student is allowed to learn with all other children what promotes the integration process. Children with disabilities may also attend other classes which are oriented to meet their special educational, physical needs. Additionally, children with disabilities are entitled to receive support from

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<sup>15</sup> Article 1 point 6 of the Law on Education.

<sup>16</sup> Article 1 point 7 of the Law on Education.

<sup>17</sup> Dz.U. z 2017 r. poz. 1578.

<sup>18</sup> §1 of Regulation on special education.

<sup>19</sup> §3 section 2 point 2 of Regulation of the Minister of National Education of 1 February 2013 on specific operation principles of psychological-pedagogical counselling public center, including specialist clinics (Dz.U. z 2013 r. poz. 199).

<sup>20</sup> Article 127 section 3 of the Law on Education.

<sup>21</sup> §2 of Regulation on special education.

<sup>22</sup> Article 38 section 1 of the Law on Education.

<sup>23</sup> §4 of Regulation on special education.

additional teaching staff who are qualified in the field of special education and employed to help organize teaching process<sup>24</sup>. At least twice per year team of teachers and specialists draw a multidisciplinary assessment of student needs<sup>25</sup> which may lead to change of IPET in order to better fulfil student's needs. Moreover, Teacher's Council, after being given a permission by parents or an adult student, is allowed to extend the learning period<sup>26</sup>. In some cases it is also possible to resign from some compulsory classes within teaching program<sup>27</sup>.

#### *Individual schooling and individual one-year compulsory pre-school education*

15. In accordance with Regulation of Minister of National Education of 9 August 2017 on individual one-year compulsory pre-school education and individual schooling for children and youths (further: Regulation on individual schooling)<sup>28</sup> this type of schooling is designed for children whose health status makes it impossible or highly difficult to attend to school<sup>29</sup> what is declared by psychological-pedagogical counselling public centre in a proper decision<sup>30</sup>. In consequence a student takes lessons only in his home<sup>31</sup>.

16. It is worth to emphasize that individual schooling and individual one-year compulsory pre-school education cannot be used as an instrument to exclude children with special educational needs whose behaviour is inappropriate from school<sup>32</sup>. Moreover, director of school takes actions to create a platform of contact between a student and his school friends. Director can also allow student to attend to different types of classes which are focused on developing talents and to participate in school events and festivities.<sup>33</sup> Furthermore, director can cancel or suspend individual schooling and individual one-year compulsory pre-school education on the basis of medical statement, after a proper motion from parents or adult student<sup>34</sup>.

#### *Psychological-pedagogical support*

17. Another important legal act concerning the issue of students with disabilities is Regulation of the Minister of National Education of 9 August 2017 on rules of providing and organizing psychological and pedagogical support in public kindergartens, schools and institutions (further: Regulation on psychological and pedagogical support)<sup>35</sup>. It ensures the flexibility of the system because this support is not only designed for students with a decision of psychological-pedagogical counselling public centre but also for children with e. g. an opinion about a specific difficulties in learning process or even for students without any decision or opinion but who are in need of such support<sup>36</sup>. The abovementioned support consists of many different educational tools that can be used by a director to adjust teaching program to special educational needs of students, without excluding students from their school life.

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<sup>24</sup> §7 of Regulation on special education.

<sup>25</sup> §6 section 9 of Regulation on special education.

<sup>26</sup> §5 section 1-2 of Regulation of the Minister of National Education of 28 March 2017 on framework of teaching program (Dz.U. z 2017 r., poz. 703).

<sup>27</sup> Article 44d of School Education Act of 7 September 1991 (Dz.U. 1991 Nr 95, poz. 425 t.j. Dz.U. z 2018 r. poz. 1457).

<sup>28</sup> Dz.U. z 2017 r. poz. 1616

<sup>29</sup> §1 of Regulation on individual schooling.

<sup>30</sup> §3 section 2 point 2 of Regulation of the Minister of National Education of 1 February 2013 on specific operation principles of psychological-pedagogical counselling public center, including specialist clinics (Dz.U. z 2013 r. poz. 199).

<sup>31</sup> §5 of Regulation on individual schooling.

<sup>32</sup> Answer of the Minister of National Education from 18 July 2018 to the Polish Ombudsman <https://www.rpo.gov.pl/sites/default/files/Odpowied%C5%BA%20%20MEN%20na%20%20wyst%C4%85pienie%20ws.%20nauczania%20indywidualnego.pdf> (last access: 15 July 2019).

<sup>33</sup> §10 of Regulation on individual schooling.

<sup>34</sup> §11 and §12 of Regulation on individual schooling.

<sup>35</sup> Dz.U. z 2017 r. poz. 1591.

<sup>36</sup> §2 of Regulation on psychological and pedagogical support.

*Practical problems of students with disabilities and their parents in the Polish educational system*

18. One of the most serious problems is non-implementation or wrong implementation of decision and opinions of psychological-pedagogical counselling public centre in schools. Decisions of counselling public centres are characterized by high level of generality due to the opinion that schools are the most suitable to appropriately determine what student actually needs. In fact, schools do not comply both with recommendations which are specified in decision and with IPET. Polish Children's Ombudsman was informed about the situation that director of the school expressly refused to organize socio-therapeutic classes and he arbitrary deemed opinion of counselling public centre as inappropriate<sup>37</sup>. In other case<sup>38</sup> school did not prepare plan of psychological and pedagogical support and did not organize corrective-compensating classes. Instead, school authorities actually forbid him to go to a school trip by demanding permanent attendance and supervision of his mother during the trip. It was also reported that the director often demanded to pick up the child from school before the end of the classes. In other words school tried to transfer their responsibilities to the parents.

19. Schools often try to excuse themselves by pointing out staff limitations. Pursuant to the information on the results of the inspection of Supreme Chamber of Control on support for special education of students with disability in schools and kindergartens (further: NIK's report)<sup>39</sup> 50% of schools/kindergartens, which were controlled, did not comply with the requirements in terms of specialized employees. It was also raised that schools are unable to fully realize their obligations to children with disabilities due to the lack of proper infrastructure and equipment. According to NIK, only about 22% of controlled institutions were fully-adjusted to the needs of physically-impaired students<sup>40</sup>. At the same time schools did not spend all of the public funds that were dedicated for students with disabilities. In 2015 the controlled institutions did not spend 29% of available funds and in 2016 it was 34%.<sup>41</sup>

20. Children with disabilities often face discrimination throughout the recruitment process to educational facilities. Some schools create limitations in access for students with specific disabilities or by making a positive decision dependent on employing a proper specialist<sup>42</sup>. For instance, one of primary schools reviewed by NIK provided in its statute that children with movement disability, who are using a wheelchair, shall not be accepted into school. Other school claimed that an education in this institution is being provided for students with special education needs but only in so far as it is technically possible<sup>43</sup>. Additionally, pursuant to Children's Ombudsman report, such discrimination can also be detected in practice of school's functioning. For example, director of primary school stated that a student with movement disability will no longer be allowed to enter the school by using his electric wheelchair because this allegedly could put other children in danger<sup>44</sup>. These examples show that a student with special educational needs is being perceived in Poland as a problem and a threat. In consequence, schools often put a pressure on parents to transfer students who do not behave well to other schools. Moreover, up to 1 September 2017 when a new Regulation on individual schooling entered into force, individual schooling could have been conducted in schools or in student's home. In accordance with that it was possible to apply this system not only to students who were completely unable to attend to school but also to students with disabilities e. g. with autism. As a result Children's Ombudsman was informed about many situations in which a director tried to extort parent's decision on separating their children from other students

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<sup>37</sup> ZEW.441.1282.2016.KD.

<sup>38</sup> ZEW.441.975.2017.ES.

<sup>39</sup> <https://www.nik.gov.pl/plik/id,16353,vp,18878.pdf> (last access: 17 July 2019), p. 74.

<sup>40</sup> NIK's report, page 71.

<sup>41</sup> NIK's report, pages 83-90.

<sup>42</sup> Article 130 Section 5 of Law on Education.

<sup>43</sup> NIK's report, page 20.

<sup>44</sup> ZEW.441.936.2016.JBR.

within individual schooling only on the basis that their children misbehaved in classroom. In these cases parents were told that if they do not cooperate, director would file a motion for court's insight into family's situation<sup>45</sup> or even that a children will be expelled from school<sup>46</sup>. The situation has changed with aforementioned Regulation. Individual schooling is now designed only for children whose health status makes it impossible or highly difficult to attend to school and in consequence it can be conducted only in student's home and cannot be overused.

21. Also, it should be noted that there is no timely and specific procedure which can be applied when schools fail to realize their obligations to children with disabilities. Parents or legal carers can use a common complaint mechanism to the local Board of Education (pol. *Kuratorium Oświaty*), although it cannot ensure quick implementation of the needs of a child with disability.

### **3.2. Czechia**

22. The right to education is recognised by the Act No. 561/2004 Coll., Schools Act and one of the main principles laid down by the Act is equal access to education for all citizens without any discrimination based on grounds such as health condition or any other status. Other crucial principles set out in the Act are mutual respect, deference, toleration of opinions, and dignity of all parties in education and the principle of taking into consideration the educational needs of an individual.

23. Many years since the *D.H. and Others v. the Czech Republic* [GC] (13 November 2007, app. no. 57325/00) judgment has exposed the systemic deficiencies of an education system and following long-standing criticism, the legislation was amended eventually in 2016 with the aim to progressively include children with disabilities into mainstream schools as a preferred way of providing education to the children concerned and to stop segregation. At the present disabled children are reckoned by the Schools Act as children with special educational needs and the law provides them with special measures to balance their impairment to engage in school life on the equal basis as other children.

24. Children with special needs in Czechia are entitled to an education with the content, form and methods corresponding to their educational needs and possibilities. The supportive measures include the creation of necessary conditions enabling such education and the advisory assistance of the school and the school advisory facility and adaptation of the communication method. When admitting to school and evaluating disabled pupils or students, their disability or disadvantage must be taken into account. The supportive measures are incorporated in the implementing Decree No. 27/2016 Coll. on education of pupils with special needs and gifted pupils and the measures are provided free of charge.

## **4. BULLYING AGAINST CHILDREN WITH DISABILITIES**

### **4.1. Poland**

25. There are no comprehensive statistical data which would illustrate the scale of bullying against children with disabilities in Poland. However, the research conducted in selected areas of country suggest that it may be a serious problem. According to the report published in 2015, around 40% of children with disabilities studying in special primary schools and special gymnasiums in Łódź Voivodeship who participated in the survey, were victims of bullying at least once.<sup>47</sup> Around 12% of students were victimized four times and more. Around 18% of students experienced cyberbullying<sup>48</sup>. According to another report, 90% of students with autism

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<sup>45</sup> ZEW.441.461.2017.ES.

<sup>46</sup> ZEW.441.2139.2017.ES.

<sup>47</sup> J. Pyżalski, P. Plichta [in:] J. Pyżalski, D. Podgórska-Jachnik (eds.), *Raport końcowy Badanie potrzeb i satysfakcji z wybranych usług skierowanych do rodzin z dziećmi z orzeczoną niepełnosprawnością w wieku 8-16 lat zrealizowany przez Instytut Medycyny Pracy w Łodzi na zlecenie Regionalnego Centrum Polityki Społecznej w Łodzi*, Łódź 2015, p. 118.

<sup>48</sup> *Ibid.*, p. 119.



who participated in the survey experienced at least one form of bullying in the last year<sup>49</sup>. 27% of students claimed that they had suffered from acts of physical violence committed by other students often or sometimes<sup>50</sup>.

26. In 2017 the Minister of National Education published the "Procedures for responding to internal and external physical hazards at school". One of the procedures concerned reaction to aggressive behavior of students. In the context of physical aggression it is required to immediately stop actions of violent student and inform nurse, psychologist, school director and parents of perpetrator and victim of the incident. School psychologist or counsel must conduct a conversation with victim and perpetrator as well as their parents and prepare a note. Moreover, victim must be provided with appropriate therapeutic support and be educated with regards to contacts with other persons. Also witnesses of the incident require support and education. If perpetrator undertakes further violent actions, school must inform the Police and take other actions provided in its statute. Similar procedure was prepared with regards to instances of verbal aggression.

27. With regards to legal remedies, school violence may be punished in Poland mainly on the basis of criminal law, employment law and civil law. In accordance with Polish Criminal Code "the provisions of this code apply to anyone aged 17 or older who commits a prohibited act". At the same time those provisions are applicable only to minors aged 15 or older who commit one of the most serious prohibited acts which are set out in Article 10 §2<sup>51</sup>. As a result only an adult staff of school and students who turned 17 years old can be held liable under the Criminal Code for different types of violence against students with disabilities.

28. At the same time, children who were younger than 15 in the moment of commitment of prohibited act may be held liable for their actions on the basis of Act on Juvenile Delinquency Proceedings<sup>52</sup>. Article 2 of this Act provides that aforementioned proceedings are initiated when a juvenile shows signs of demoralization or commits a punishable act which is defined as crime or fiscal crime when it is committed by a juvenile who is between 13 and 17 years old<sup>53</sup>. In such cases a court may apply to them didactical and corrective measures with the most serious one which is placing in youth detention center.

29. The principles of disciplinary liability of teachers are specified in Chapter 10 of Teacher's Charter<sup>54</sup>. Any act of violence against the students may be deemed as a disciplinary tort. A Disciplinary Commission is able to punish teacher's through reprimand, dismissal, dismissal connected with prohibition of employment in teaching profession in a 3 year period after the verdict, permanent exclusion from teaching profession<sup>55</sup>.

30. The Civil Code of 24 April 1964 determines the rules of remedy of both material and immaterial damages. Pursuant to this Act a minor under thirteen years of age is not liable for damage caused, although it does not mean that no one will be held liable. In this cases the damages are going to be remedy mostly by those who are obliged to supervise a minor – parents in particular. After a child turns 13 he/she can be held liable for his own deeds.<sup>56</sup>

31. Despite all the legal protection, the phenomenon of school violence is still a great problem. Children's Ombudsman mentions cases involving slaps in face, back and verbal aggression<sup>57</sup>. Taking into account the scale of the problem, the Polish Commissioner for Human Rights

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<sup>49</sup> M. Płatos (ed.), *Ogólnopolski Spis Autyzmu Sytuacja młodzieży i dorosłych z autyzmem w Polsce*, Warszawa 2016, p. 43.

<sup>50</sup> *Ibid.*, p. 42.

<sup>51</sup> Article 10 of Criminal Code

<sup>52</sup> Dz.U. 1982 Nr 35, poz. 228 t.j. Dz.U. z 2018 r. poz. 969

<sup>53</sup> Article 1 Paragraph 2 of Act on Juvenile Delinquency Proceedings

<sup>54</sup> Dz.U. 1982 Nr 3, poz. 19 t.j. Dz.U. z 2018 r. poz. 967

<sup>55</sup> Article 76 of Teacher's Charter

<sup>56</sup> Article 448 of Civil Code

<sup>57</sup> Page 333 za 2017

underlined the need to introduce a comprehensive anti-discrimination education in schools.<sup>58</sup> Moreover, proposals are being made to implement a mediation as a tool which can both prevent and solve disputes between students and teachers. In accordance with Standards of Mediation in Schools<sup>59</sup> such mediation can be conducted by classmates – after a proper training- or by a member of school's staff.

#### 4.2. Czechia

32. School abuse, particularly bullying in school, is an extremely dangerous form of violence that puts fulfilment of the basic principles and goals of education at risk and in 2017 The Ministry of Education, Youth and Sports (hereinafter as "The Ministry") has expanded and clarified measures to tackle bullying and cyberbullying at schools, hand in hand with the amendment to the Schools Act which stresses the right to protection against such conduct.<sup>60</sup>

33. Some of recommended tools to face the bullying are use of preventive tools or adequate use of disciplinary measures as teacher's admonition. The Schools Act also defines conduct which establishes grave deliberate violation of duties set forth by the act and in which case the director of the school is obliged to expel the pupil who behaved that way. The behaviour addressed are culpable severe physical and mental attacks against other pupils and educational staff. In the most serious cases law on minor or criminal offences could apply.

34. One of the main responsibilities of educational staff is to protect the safety and health of the pupils and students and to prevent all forms of risky behaviour in schools. All educational institutions have a duty to prevent the emergence of socially pathological phenomena in education and activities related to it and while providing school services.

35. In the cases of pupils who perpetrated a conduct mentioned in paragraph 10, the director is required to contact the Child Protection Authority and the Public Prosecutor's Office, which will look into the case further in cooperation with the school and the pupil. The Ministry also provides guidance materials for schools which are to help teachers cope with the situations of bullying. Aside from that, the school has to always inform parents or other legal representatives of both – the perpetrator and of the victim about the harassment.

36. Other possibilities on how to deal with the bullying are individual education plans for pupils and certified programmes for the primary prevention of risky behaviour with involvement of all actors, the victim and perpetrator, parents and educational staff.

37. In the cases where bullying was suspected or already established and were not promptly and satisfactorily resolved by the competent educational staff, it is necessary to contact the school director. However, if the director is also inactive and the resolution of the problem is insufficient, it is possible to complain to the school founder or to file a complaint or a notice to the Czech School Inspectorate (hereinafter also as "Inspectorate"). It is possible to do so anonymously, however, it is important that all relevant circumstances, including school identification, are described in the complaint. Another possibility is to file a complaint to school ombudsman or to the Office of the Public Defender of the Rights (hereinafter also as "the Ombudsperson").

38. In a recent case concerning bullying of a pupil with Asperger's syndrome, the Ombudsperson found two main misconducts in the investigation carried out by the Czech School Inspectorate. Firstly, it was acting in violation of the principle of effectiveness when the Inspectorate did not even consider to execute an inspection in the school and the second misconduct lies in putting no effort to find out the real facts of the case and therefore acted in breach of the principle of material truth. The Inspectorate was asked to act by the mother of the bullied boy after the

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<sup>58</sup> Letter of the Commissioner for Human Rights to the Ministry of National Education, dated 17 March 2016, ref. no XI.800.15.2016.AK, available at: <http://www.sprawogeneralne.brpo.gov.pl/pdf/2016/3/XI.800.15.2016/687097.pdf>

<sup>59</sup> [http://brpd.gov.pl/sites/default/files/standardy\\_mediacji\\_rowiesniczej\\_i\\_szkolnej\\_w\\_szkolach\\_i\\_placowkach.pdf](http://brpd.gov.pl/sites/default/files/standardy_mediacji_rowiesniczej_i_szkolnej_w_szkolach_i_placowkach.pdf) (last access: 17 July 2019).

<sup>60</sup> Report of The Ministry of Education, Youth and Sports: <http://www.msmt.cz/ministerstvo/novinar/od-zari-budou-ucitele-lepe-chraneni-pred-sikanou>

elementary school failed to resolve the situation of her son who had to face verbal and physical attacks. Despite the mother's urging, the school did not take the bullying seriously and described it only as a "mischief" and the mother's reaction as exaggerated. Afterwards, the Inspectorate built its evaluation mostly on the statements of the school staff that were also considered by the Inspectorate as true without further verifications being included and without taking into consideration that one of the main aggressors was the son of a teacher working at that elementary school. Subsequently, the mother turned to the Ombudsperson who reproached the Inspectorate for the insufficient investigation and for the lengthy procedure. The Inspectorate acknowledged its misconduct and took the necessary rectifying measures.<sup>61</sup>

39. Another relevant complaint concerning bullying of a child with disability was dealt by the Ombudsperson in 2017. In this case, child's parents raised serious complaints of abuse by the class teacher and other pupils of their son on the basis of his disability, particularly ADHD. Due to the lack of the evidence and despite fact that the procedure of the Czech School Inspectorate had contributed to this situation, the Ombudsperson could not come to the conclusion other than that the bullying was not proved. The Inspectorate was criticized for not using the possibility to find out facts and evidence for or against bullying through the information acquired from other pupils and it only used statements of the class teacher and the teacher of a first grade as satisfactory evidence (the parents claimed that as a "punishment" sometimes their son was sent to the first grade class where instead of learning he was just placed next to the sink where he had to stand for a long time and he was excluded from being educated). However, in the reply of the superior authority to the Inspectorate (Central School Inspector) the process used by the Inspectorate was considered insufficient and not objective and the Central School Inspector promised to give an order to all the inspectorates to unify the procedure and to use the possibility to gain information from the pupils during the inspection when it is necessary. Ombudsman also concluded that if that information from other pupils would be obtained, other outcomes may be found. In the conclusion Ombudsman notified its intention to focus more intensively in the coming year on the work of the Czech School Inspectorate to examine bullying and discrimination more thoroughly and inter alia through the repetitive workshops for individual inspectors led by employees authorized by Ombudsman.<sup>62</sup>

40. Another major concern in the Czech Republic is the lack of available and accessible data on bullying of children with disabilities. It is not possible to establish the extent of this phenomena.

## 5. CONCLUSIONS

41. Students with disabilities find themselves often in vulnerable and disadvantaged situations and therefore mechanism to enhance their integration and establishing special protection measures are necessary to support their full participation in the society and their healthy development in order to provide them with an equal chance to build their future. In the light of the contemporary human rights standards, one of the spheres in which such measures of support are particularly necessary is education. Without access to high quality schools based on the principle of inclusiveness, children with disabilities would not be able to fully realize their potential what may lead to their discrimination and social marginalization. What is more, the authorities should undertake special steps in order to protect students with disabilities against school violence. The issue of bullying of children with disabilities in Central European countries indeed raises serious concern. It is an existing phenomenon which requires active role of state authorities in terms of their obligations of provision of reasonable accommodation in the school environment, due diligence and effective investigation obligation and adequate ex post reaction.

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<sup>61</sup> Article published on the website of the Public Defender of the Rights, 10. 8. 2018, <https://www.ochrance.cz/aktualne/tiskove-zpravy-2018/ceska-skolni-inspekce-podcenila-sikanu-na-zakladni-skole/>

<sup>62</sup> Opinion of the Public Defender of the Rights, No. 1922/2015/VOP/ZO, 10. 1. 2017, [https://www.ochrance.cz/fileadmin/user\\_upload/ESO/1922-2015-VOP-ZO-Z18.pdf](https://www.ochrance.cz/fileadmin/user_upload/ESO/1922-2015-VOP-ZO-Z18.pdf)