

## Right to Education (Children with Disabilities)

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### Abstract

All people have rights and freedoms, recognized by number of international agreements, the Universal Declaration of Human Rights, and subsequent treaties. Protection and promotion of human rights is the main task for all the states who are members of the United Nations. Despite the progress achieved throughout decades, it is necessary to continue consistent work in order, to further advance human rights protection in the world.

The following papers focuses on the rights of the most vulnerable in our society – people with disabilities. While it is equally important for everyone within the society to realize their rights, it is even more so for persons with disabilities, who are often at risk to experience multiple forms intersectional discrimination. In order to achieve their goals, it is essential for the persons with disabilities to receive proper education, which is naturally followed by a decent job and full realization of their potential. With this on mind the paper emphasizes once again the importance of the inclusive education and the practical challenges that might arise for the states to provide proper inclusive education for all within their jurisdictions.

The following paper studies, observes, and identifies the legal framework of the right to education of children with disabilities and existing results according to Europe, the UN, the USA, and Georgia.

**Keywords:** Right to education, Europe, CRPD, Georgia, USA, children with disabilities, inclusion

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## **Introduction**

All countries in the world strive to improve the education system for children with disabilities. Despite the challenges in the field of the right to education, planning appropriate strategies and effective approaches for children with disabilities are priorities on the agenda globally.

Children with disabilities might encounter barriers to education from a very young age, starting from kindergartens to higher levels of education at universities, but international organizations and states with national instruments are trying to find effective solutions. The situation varies according to national laws, governmental policies, economic opportunities, and other factors in Europe, the US, and other countries.

According to UN, World Health Organization, and World Bank, one billion people have some form of disability. Out of this, 93 to 150 million are children, and their conditions are not comparable with the situation of other children (Ravassard, 2023). For example, children with disabilities have obstacles to going to school; specifically 90% of these children live in developing countries where incomes are low or lower middle (Ravassard, 2023).

The committee on the rights of the child concluded that for children with disabilities, inclusive education should be the aim (Education C. f., 2020). This became the basis for the future development of processes, and inclusive education, with many related factors, received recognition in the scope of the convention on the rights of persons with disabilities. According to Article 24 Paragraph 1, CRPD states have to ensure an inclusive education for all people without any discrimination and in view of equal opportunities that encourage and stimulate the global education process in a developed, peaceful, stable, and fair-minded society (Office, 2017). According to the to the Convention states have a direct obligation and responsibility to take measures in order to make educational institutions adapted and accessible to persons with

disabilities, for instance, by building the whole education system, which consists of information, communication, helpful systems, curriculum, teaching materials, different approaches, language, and support services. The main goal is that the entire learning environment should be organized in such a way as to promote the inclusion of students with disabilities and maximize their equality during education. Article 24(2)(b) ensures that states have to promote and provide inclusive, quality, free primary education, safety (for example, transport), and, of course, secondary education for children with disabilities (Office, 2017). Article 24(2)(c) of the Convention determines the necessity of supporting students by creating appropriate accommodation in order to enable them to receive an inclusive education in the same way as other students, on the basis of the principle of equality. Support for children with disabilities may include providing accommodations, providing materials in an alternative format or using assistive technologies, or being non-material, such as giving students more time.

## **UN Convention on the Rights of Persons with Disabilities**

The United Nations Convention on the Rights of Persons with Disabilities is a binding international agreement, the main objective of which is to ensure the equal enjoyment of all rights and freedoms by children and adults with disabilities. The CRPD works alongside the Universal Declaration of Human Rights and the UN Convention on the Rights of the Child. The Convention on the Rights of Persons with Disabilities outlines the rights of all persons with disabilities. Since the adoption of the Convention, UN countries have activated and started to plan and implement relevant policies. It represents a revolutionary change in approaches to disability. The Convention defines and applies existing human rights principles to persons with disabilities,

provides a strong, internationally agreed basis for domestic legislation and policy development, and establishes national and international mechanisms for more effective monitoring of the rights of persons with disabilities. The Convention is comprehensive and provides the full applicability of all civil, cultural, economic, political, and social rights. In the scope of CRPD, children with disabilities have the right to receive individualized support and an appropriate school environment adapted to their needs, as well as adapted teaching methods, materials, and programs, the provision of assistive technologies, and alternative examination formats. Therefore, it is important to work effectively on children's language skills and access to alternative international and inclusive means. Protecting children with disabilities and working on all factors for improvement is one of the most important tasks of the CRPD from the beginning. The CRPD has an important role in facilitating and improving the participation of persons with disabilities in all public processes.

The Convention does not establish new human rights but clarifies the legal obligations of states to respect and ensure the equal enjoyment of all human rights of persons with disabilities. The agreement defines areas such as accessibility, inclusion, participation, and non-discrimination. It improves the existing mechanisms for monitoring international human rights treaties and creates only the Committee on the Rights of Persons with Disabilities, which monitors implementation and reviews periodic reports of States Parties.

According to CRPD Persons with disabilities, include those with physical, mental, intellectual, or sensory impairments whose interaction with various obstacles may prevent their full and effective participation in public life on equal terms with others. The CRPD considers disability as the process of interaction between persons that is hampered by behavioral and environmental barriers in a full and effective public life. This framework shifts from the individual/medical model to the human rights model, according to which society must become fully inclusive of all people without discrimination.

In 2018, the CRPD Committee and the UN Committee on the Rights of the Child (CRC) formed a Joint Working Group (JWG) to work on finding new ways to help children with disabilities (Committee, 2018). Assistive technology (AT) is of great importance in the process of the full participation of persons with disabilities in society and the realization of rights approved by the Convention on the Rights of Persons with Disabilities (Fiala-Butora, 2024).

An inclusive educational system is meaningful in the case of children with disabilities. Inclusion refers to the process of systemic reform in teaching methods, approaches, structures, and strategies to overcome barriers for students of all age groups. The CRPD Committee issued General Comment No. 4 in 2016 to emphasize and eliminate the ambiguity surrounding the term "inclusive education" (UN, 2008). The right to inclusive education belongs to the category of social, economic, and cultural rights, and for the first time in the history of international human rights law, it is included in Article 24 of the CRPD. No other human rights treaty protected the right to inclusive education before the CRPD. The right to education has been naturally protected since the adoption of the Universal Declaration of Human Rights (UDHR). It also appears in key international human rights instruments such as the International Covenant on Economic, Social, and Cultural Rights (Article 13) (Affairs D. o., 2023); Convention on the elimination of all forms of discrimination against women (Article 10) or the Convention on the Rights of the Child (Articles 28–29), although none of them specifically provide for the right to inclusive education. In General Comment No. 13, the Committee on Social, Economic, and Cultural Rights (CESCR) presented the already widely recognized characteristics that should be present in all areas of education (UN, 2023).

The CRPD includes many features for building inclusive education systems. For example, non-exclusion, accessibility, support, reasonable concerted action, and progressive implementation. Article 24(2)(a) of the CRPD prohibits exclusion on the grounds of disability and

stipulates that this obligation must be implemented in both the free and compulsory primary education system and the secondary education system. Therefore, enrollment in regular schools should be accessible to all people with disabilities (UN, 2008). Refusal to register is a form of discrimination, which is equally prohibited by Article 5(2) of the CRPD. Ensuring accessibility is of utmost importance. Article 24(2)(b) of the CRPD emphasizes that inclusive education must be accessible in communities where persons with disabilities live (UN, 2008). This commitment was further developed by the CRPD Committee, which recommends that children with disabilities should be included in the educational process through safe means of transport or, alternatively, digital technologies, as needed, which means that this will not be the only means.

The CRPD is a very powerful tool for protecting the best interests of children with disabilities. Implementation of the CRC and CRPD provides highly effective results. Specifically, under Article 12 of the CRC, children have the right to be heard and understood. Within the framework of Article 4(3) of the CRPD, states shall consult and communicate with children with disabilities through appropriate channels in the process of developing and implementing legislation and policies (Nighswander & A.Blair, 2022).

The human rights disability model provides a framework for understanding disability as a social construction. Protection against disability discrimination applies to all children who have problems living in society and being involved. Also, with this approach, it is determined that placing children with disabilities in separate special residential homes away from their parents is perceived as discrimination by the family.

Basically, ensuring and improving the accessibility of inclusive educational processes, which implies a sufficient number of educational institutions and programs, non-discriminatory and physical and economic accessibility, refinement and development of appropriate forms and content of education, adaptation, and flexibility of education systems according to the needs of

societies and diverse communities, are supporting steps for children with disabilities. Being able to attend school alone is not enough to realize the right to education; a complex approach is needed. Quality, which plays a crucial role, has been relatively less emphasized in recent decades, for the reason that access to education has been a major issue. The importance of the quality of education is emphasized in Article 29(1) of the Convention on the Rights of the Child (CRC), according to which the purpose of education is to help children maximize their talents and prospects with cognitive, creative, social, and emotional capacities (Rights, 2023). This is especially true for the educational process of vulnerable people, such as children with disabilities or refugees, when the right to inclusive education becomes of great importance.

The CRPD Committee emphasizes importance of elaboration of individual education plans with the direct involvement of children with disabilities and in cooperation with the child's family and relevant third parties. Also, the Committee notes that the employment of qualified personnel in the fields of sign languages and Braille is separately defined in Article 24(4) of the CRPD (UN, 2008). According to the CRPD, teachers should receive regular training on inclusive education and the rights of people with disabilities. The role of teachers with disabilities is also determined. According to the CRPD, the presence of teachers with disabilities in schools at all levels of the education system ensures the promotion of equal rights for persons with disabilities, which positively affects the elimination of problems. The main idea is to ensure equal rights and freedoms for people with disabilities. This means that under the CRPD, the goal remains to fully protect and realize the right to inclusive education within a reasonable time frame.

It is also important to avoid stigmatization, inform children with disabilities and their parents about opportunities in detail, and control and monitor schools and educational

institutions regarding the strategy and attitude in relation to children with disabilities.

### **Right to Education in Europe**

In 2019, the European Commission decided to register the European citizens' initiative "Europe CARES," the purpose of which was to offer inclusive quality education to children with disabilities. The initiative says that while more than 70 million EU citizens have a disability and 15 million children have special educational needs, active involvement is needed to help (Commission, 2019).

According to the protocol of the European Convention for the Protection of Human Rights and Fundamental Freedoms no one shall be denied the right to education. In the scope of the European Social Charter, all parties involved agree to promote and ensure the social integration of persons with disabilities and their involvement in public life and undertake all necessary measures to improve the standard of living of people with disabilities, especially in the direction of education and vocational training. According to the European Union Charter of Fundamental Rights, all people have the right to get an education without any kind of discrimination, and all have equal opportunities (INTERNATIONAL INSTRUMENTS - Right to Education, 2014).

The European legal framework underlines that children with disabilities have the same rights and needs as other children. They have the right to be full members of society, to express their opinions, to participate in decision-making, to receive inclusive education, and to be protected from violence. The Council of Europe makes an effort to promote the rights of people with disabilities and their full inclusion in public life. According to the recommendation of the Council of Europe, in order to ensure the full inclusion of children and young people in society, it is necessary to find and solve the difficulties faced by young people with disabilities. Based on the European Convention on Human Rights, the Council of Europe strives to strengthen equal

opportunities, improve the quality of life of persons with disabilities, and ensure greater independence and freedom.

On March 3, 2021, the European Commission adopted the 2021–2030 EU Disability Rights Strategy, which aims to fully support all people with disabilities in the EU, including access to education (Parliament, 2023). The aim of the EU strategy and the Charter of Fundamental Rights of the European Union is to enable persons with disabilities to fully enjoy their rights and participate in public life by ensuring the right to education. For this, the EU strategy defines access, equality, employment, the provision of education and training, and social protection. The EU strategy implements this through awareness-raising, financial support, data collection, and monitoring mechanisms as required under the UN CRPD. Mobility for students with disabilities and exchange programs through Erasmus+ are effective and is regarded as one of the successful tools for the integration of children with disabilities.

Inclusion is a process of systemic reform that involves changes and modifications in the education system, teaching methods, approaches, structures, and strategies in order to overcome barriers and ensure that all students of the relevant age range are provided with equal environmental conditions that best suit their needs. The aspects of the inclusive education system are present in all member states of the European Union, and successful examples and results can be traced. (Forum, 2023).

For the European Union, the UN CRPD entered into force on January 22, 2011, therefore, all EU member states have signed and ratified the Convention and are obliged to implement it in practice within their jurisdictions.

The EU Strategy on the Rights of the Child 2021–2024 provides guidelines for EU action aimed at further promoting and protecting children's rights. This includes overall interrelated processes, actions to implement, and recommendations for other EU institutions, countries, and other interested parties. Inclusive education involves a continuous process of

learning, innovation, and improvement in policy, practice, and school culture, focused on adapting and supporting children's needs.

The Council of Europe adopted its new Strategy on the Rights of Persons with Disabilities 2017–2023 on November 30, 2016, in collaboration with Council of Europe member states, civil society, and other stakeholders (Europe C. o., 2017). The strategy aims to promote the protection of all human rights, democracy, and the rule of law. Protection of rights protected and guaranteed by the European Convention on Human Rights applies to everyone, including persons with disabilities.

Organizations such as UNICEF are constantly calling for a renewed commitment to inclusive education, including revising national policies and legislation to prohibit all forms of discrimination, segregation, and violence in education (Pasic, 2024).

### **Legal Framework: Right to education of children with disabilities in USA**

In the scope of the United States of America, the Individuals with Disabilities Education Act (IDEA) ensures that public education is provided with all the accommodations children need. Within the framework of IDEA, the work of relevant, responsible agencies is regulated. According to the data for 2022–2023, more than 8 million children with and without disabilities in US received appropriate services (Education U. D., 2023). Early intervention services are provided when it is necessary. The information centers are also actively supporting the parents.

According to American legislation, disabilities are a natural part of human life. Improving the educational processes and achievement of children with disabilities is an important component of the US national policy. Accordingly, the creation of equal opportunities for disabled persons, ensuring the degree of their independence, and strengthening their economic conditions are the main tasks. The Office for Civil Rights works against student and child

discrimination, which is prohibited by Section 504 of the Rehabilitation Act of 1973 (Education U. D., 2023). All regulations set forth by OCR apply to all state educational agencies, elementary and secondary school systems, colleges and universities, vocational schools, charter schools, state vocational rehabilitation agencies, libraries, and museums funded by the US Department of Education. It also includes aid, academic programs, student treatment and services, counseling and guidance, vocational education, physical education, housing, and employment. OCR also has responsibilities under Title II of the Americans with Disabilities Act of 1990, a law prohibiting disability discrimination by public agencies. The US Department of Education's Office for Civil Rights protects the interests of individuals with disabilities and their families by providing additional resources as needed (Education U. D., 2023).

Section 504 of federal law prohibits discrimination against individuals with disabilities by any state agency or institution that receives federal financial aid, grants, or student loans. Title II of the Americans with Disabilities Act prohibits discrimination against individuals with disabilities in state and local organizations, public schools, public colleges, public libraries, and universities. Generally, the discrimination standards of Section 504 and Title II are the same, and actions that violate Section 504 also violate Title II. Section 504 and Title II protect not only children from discrimination but all persons with disabilities, including parents, students, employees, etc. (U.S. Department of Education, 2023).

OCR works on disability discrimination cases related to issues such as unequal access to advanced academic programs, extracurricular activities, technology, the provision of a free, appropriate public education for elementary and middle school students, discriminatory practices, harassment of people with disabilities and required assistive devices, and cases of denial of services. All school districts, colleges, and universities receiving federal financial aid are required to designate at least one official to coordinate and

monitor that all obligations under Section 504 are met and implemented. Schools, colleges, and universities have a direct responsibility to support students and other disabled people, such as parents. Access to programs or activities, use of academic buildings, sports facilities, and parking spaces should not be a problem for persons with disabilities. If a problem arises in this area, it is seen as being solved by moving the training program to an accessible part of the building or to another building that is accessible. Schools and universities should also ensure that students with disabilities have equal access to the educational benefits and opportunities provided by online and other digital programs (U.S. Department of Education, 2023). Also, schools have an obligation to provide physical therapy or speech-language therapy for children with disabilities if necessary.

#### **Legal framework: Children with disabilities in Georgia**

Georgia signed the 2006 United Nations Convention on the Rights of Persons with Disabilities in 2009, and since 2014, the Convention has been in force for Georgia. In 2020 the law on the rights of persons with disabilities was adopted. In 2021, the Interagency Coordination Committee for the Implementation of the Convention on the Rights of Persons with Disabilities was formed, which is responsible for the implementation of the Law of Georgia and the United Nations Convention on the Rights of Persons with Disabilities (Georgia P. d., 2022). In 2023, the National Human Rights Strategy was adopted which puts special emphasis on inclusive education. Furthermore, persons with disabilities councils are established at the local level in all municipalities. Other than creating the implementation framework the state provides medical, professional, and social rehabilitation programs for disabled persons and creates the necessary conditions that disabled persons need in the process of education and professional training.

In 2023, the United Nations Committee on the Rights of Persons with Disabilities presented its conclusion on the initial report on Georgia's implementation of the United Nations Convention on the Rights of Persons with Disabilities. The conclusions of the UN Committee reveal positive aspects and concrete recommendations. The report emphatically mentions the importance of the measures taken by Georgia for its implementation at the national level after the ratification of the Convention in 2014 (UN C., 2023). Also, the Committee positively assesses the legislative and practical measures taken to promote the rights of persons with disabilities. These measures include the Law on the Rights of Persons with Disabilities adopted in 2020 and the Human Rights Strategy covering the period 2022–2030, the Law on the Elimination of All Forms of Discrimination, the Law on Social Protection of Persons with Disabilities, the Law on Gender Equality, and a resolution on the technical regulation of the arrangement of space and architectural and planning elements for persons with disabilities, which provides for the creation of standards of the physical environment accessible to persons with disabilities (UN C., 2023). The report positively mentions the issue of improving the institutional and political framework in Georgia for the effective implementation of the Convention, including the creation of an inter-agency coordination committee in the government administration.

Despite the positive aspects, the Committee also identifies the challenges that require consistent work. The UN committee, recommends to increase the scope of programs at the national and municipal levels, to ensure the compliance of living standards of children with disabilities with their physical, mental and moral development, and to develop disability-related quality standards and requirements for all programs that appropriately respond to barriers to the participation of children with disabilities, for example, through accessible formats such as adapted texts ("Easy Read"), magnifying devices, and other forms of communication (UN C., 2023).

Defining standards and action plans for the training and employment of sign language interpreters is also important for the Committee for considering sign language interpreters in schools and public services. The Committee also pays attention to the importance of desegregated data and asks the state collect information on the enrollment and graduation in educational institutions, disaggregated by disability status. The committee's report also recommends that Georgia ensures the implementation of necessary measures to increase the number of qualified teachers with appropriate skills and teaching methodologies in inclusive education.

Georgia ensures that, within the framework of the implementation of the unified national strategy of education and science of Georgia for 2022–2030, quality inclusive education for persons with disabilities is promoted (UN C., 2023). Organizations of persons with disabilities should be involved in the periodic monitoring of the progress of the implementation of the strategy. The state intends to implement access to inclusive education for all children with disabilities, including by developing simplified procedures for enrollment in educational institutions and with the participation of students with disabilities ensures the development of forms of support appropriate to their requirements. Periodically, it should evaluate inclusive measures in early and preschool education. Georgia is requested to pay more attention to the elimination of intersectional forms of discrimination against girls with disabilities and students with disabilities from ethnic and religious minority groups in education.

## Conclusion

Although the progress on the implementation of the CRPD standards worldwide is visible, there is still much work to be done to ensure that persons with disabilities are able to fully enjoy all human rights and freedoms. People's disabilities cannot be a reason for denying or limiting their rights. Every country faces similar challenges; therefore,

the response to these challenges must be coordinated. One thing that we learn from the UN convention of persons with disabilities is that in order to improve the situation of persons with disabilities it is not enough to focus on one or two spheres of development, rather the approach must be holistic – states should pay equal attention to the civil, political, economic, social and cultural rights of persons with disabilities.

Education plays a special role in our lives. This path leads to the personal success and healthy society. For the person with disabilities to have the same chances in life inclusive education shall ensure the quality of education and social development of people with disabilities. It is more than placing students with disabilities in educational institutions but rather should focus on values that enhance person's ability to achieve goals and take advantage of all opportunities.

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