



Rights of Children with Disabilities in International and Slovene Law

Jasna MURGEL

Judge, President of the Maribor District Court
Assistant Professor at the Doba Faculty of Applied Social Sciences, Maribor
E-mail address: jasnamura7@gmail.com

Abstract. Children with disabilities are among the most marginalised people in every society. They face various barriers that limit their ability to function, participate, and enjoy their rights on an equal basis with other children. These barriers include physical, communication, attitudinal, and environmental obstacles, rooted in stigma and discrimination. The United Nations Convention on the Rights of the Child and the United Nations Convention on the Rights of Persons with Disabilities are key international treaties safeguarding the human rights of all children, including those with disabilities. European legal instruments such as the European Social Charter (revised), European Convention on Human Rights, and Charter of Fundamental Rights of the European Union either explicitly protect or can be interpreted as safeguarding certain rights of persons with disabilities, including those of children with disabilities. Specific rights of children with disabilities are regulated by national legislation. Slovenia has implemented some of the principles of the main international instruments regarding children with disabilities. However, significant improvement in several domains is necessary to achieve genuine implementation of Slovenia's international legal obligations in this regard.

Keywords: children with disabilities, equal treatment, disability, human rights, Slovenia

1. Introduction

Fifteen percent of the world's population (at least one billion people) has some form of disability and nearly 240 million of them are children. According to the United Nations Children's Fund (UNICEF),¹ children with disabilities are among the most marginalised people in every society, facing various barriers limiting

1 UNICEF, Children with disabilities. <https://www.unicef.org/disabilities> (Accessed: 2 February 2024).

their ability to function, participate fully, and enjoy their rights on an equal basis with other children. These barriers include physical, communication, attitudinal, and environmental obstacles rooted in stigma and discrimination.

The United Nations Convention on the Rights of the Child (CRC) and the United Nations Convention on the Rights of Persons with Disabilities (CRPD) are two international treaties that recognise and protect the human rights of all children, including those with disabilities. The CRC states that every child has the right to life, survival, development, education, health, protection, participation, and non-discrimination, regardless of their disability status.

2. The Convention on the Rights of the Child

The CRC is a comprehensive international treaty that outlines the rights of children. Article 2 of the CRC emphasises the principle of non-discrimination, stating that all children, irrespective of their disability, are entitled to the rights enshrined in the Convention. In addition, Article 23 of the CRC addresses the rights of children with disabilities specifically, calling for effective access to rehabilitation, health services, and social security.

The CRC expressly guarantees children with disabilities the right to freedom from disability-based discrimination and has specific provisions regarding the rights of children with disabilities. The Convention expressly recognises the right to freedom from disability-based discrimination by listing disability among the prohibited grounds for discrimination (Article 2, para. 1).² The CRC recognises the rights of a child with disabilities to special care and the obligation of the state within its resources to ensure assistance to the child and those responsible for his or her care (Article 23, para. 2). Such assistance should, if and when possible, be provided free of charge, with consideration given to the financial resources of the parents or others caring for the child (Article 23, para. 3).³

According to the CRC, children with disabilities have the right to survival and development. They have the right to life and to grow up in an environment that supports their physical, mental, social, and emotional development. Children also have the right to express their opinions, to be heard, and to participate in decisions that affect them, according to their age and maturity (the ‘right to participation’). They also have the right to access quality and inclusive education that meets their needs and respects their dignity, potential, and abilities. The CRC requires states to adopt measures to ensure the full realisation of these rights by children with disabilities, such as by providing them with appropriate healthcare, rehabilitation, social services, accessibility, and support. The CRC

2 Chilemba, 2019, pp. 359–387.

3 Sandberg, 2019, pp. 193–194.

also urges states to cooperate with one another and with civil society to promote the rights of children with disabilities.

The Committee on the Rights of the Child (CRC Committee), established under Article 43 of the CRC to monitor the Convention's implementation, elaborated on the rights of children with disabilities in General Comment No. 9.⁴ The CRC Committee stated that the leading principle relating to the rights of children with disabilities is found in the first paragraph of Article 23 because it guarantees the right to inclusion and active participation in society. The CRC Committee highlighted that states must take measures aimed at including children with disabilities in society. In its concluding observations, the CRC Committee bemoaned the exclusion of children with disabilities, especially through their placement in institutions.⁵ The CRC Committee also emphasised the need for states parties to the CRC to provide care and assistance to children with disabilities and their families. The CRC Committee asserts that this assistance should be provided in forms such as social protection and poverty reduction programmes;⁶ adequate support payments and services for children with disabilities, including those with severe or profound disabilities;⁷ and 'services for children and parents and/or through financial support and assistance to parents who are unable to work and generate income because they provide constant care and assistance to a child with a disability'.⁸

3. The Convention on the Rights of Persons with Disabilities

In contrast to the CRC, which focuses on the rights of all children (including those with disabilities), the CRPD specifically focuses on the rights of persons with disabilities. The CRPD provides detailed guidance on how to ensure that persons with disabilities, including children with disabilities, attain the full and equal enjoyment of all human rights and fundamental freedoms. The CRPD also addresses specific issues relevant to children with disabilities, such as accessibility, reasonable accommodation, and support services. It recognises the importance of other rights for children with disabilities – such as the right to education, health, family life, participation, and protection from violence and

4 Committee on the Rights of the Child, General Comment No. 9 (2006), The rights of children with disabilities, CRC/C/GC/9, 27 February 2007.

5 Committee on the Rights of the Child, CRC/C/ROU/CO/5 Romania 2017j; CRC/C/SRB/CO/2–3 Serbia, 2017l.

6 Committee on the Rights of the Child, CRC/C/CAF/CO/2 Central African Republic, 2017e.

7 Committee on the Rights of the Child, CRC/C/EST/CO/2–4 Estonia, 2017f.

8 Chilemba, 2019, pp. 359–387. Translation by the author. Unless otherwise specified in the footnotes, all translations quoted from non-English sources are by the author.

abuse – and aims to promote the dignity, autonomy, and inclusion of children with disabilities in all aspects of society.

Although the CRPD does not focus on children, it recognises the unique vulnerabilities and needs of children with disabilities and includes provisions relevant to their rights and well-being. It prohibits discrimination based on disability and asserts the equal rights of all individuals – including children with disabilities – to enjoy all human rights and fundamental freedoms (Article 5), while emphasising the best interests of the child as a primary consideration in all actions concerning children with disabilities (Article 7).

Article 7 of the CRPD focuses on the rights of children with disabilities. This article highlights that state parties are obliged to take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on a basis equal to that of other children.² States parties are bound to ensure that children with disabilities have the right to express their views freely on all matters affecting them (with their views given due weight in accordance with their age and maturity) on a basis equal to that of other children and to be provided with disability and age-appropriate assistance to realise that right. State parties are also obliged to ensure that the best interests of the child are a primary consideration in all actions concerning children with disabilities and that children with disabilities have the right to preserve their identity – including nationality, name, and family relations – as recognised by law without unlawful interference.

Article 7 of the CRPD focuses on children with disabilities, requiring state parties to take all necessary measures to ensure their best interests, their right to express their views, and their full inclusion in society. A key distinction between Article 7 of the CRPD and Article 23 of the CRC is that the latter is subject to resource limitations. Article 7 of the CRPD sets out a new paradigm for child disability rights wherein resource constraints and progressive realisation are absent. States must commit ‘all necessary resources’ to realise the rights set out in Article 7. In fact, the resource limitation and progressive realisation components in Article 23 of the CRC must be deemed to have been eliminated through the adoption of Article 7 of the CRPD, as it constitutes a subsequent agreement or practice in accordance with Article 3, para. 3 (a) and (b) of the 1969 Vienna Convention on the Law of Treaties.⁹ Early treatment is a crucial policy measure. It has at least two distinct dimensions. The first concerns the early identification of disabilities in children; this should be combined with appropriate registration at birth (in accordance with Article 18, para. 2 of the CRPD), which also eliminates the likelihood of abandonment. Early identification further ensures that parents in societies where disability is stigmatised are provided with the information and support they require to care for their disabled child.¹⁰

9 Bantekas, 2018, p. 198.

10 Id., p. 208.

To ensure that children with disabilities benefit equally from all Convention rights as required by Article 7, para. 1, state parties to the CRPD are required to explicitly prohibit all forms of disability-based discrimination against children in their laws and policies. State parties to the CRPD should guarantee that children with disabilities have equal and effective legal protections against discrimination on all grounds. To that end, domestic authorities should establish monitoring mechanisms and provide effective redress for children with disabilities in cases of discrimination. In addition, state parties to the CRPD must take all necessary measures to ensure that their mainstream non-discrimination and equal treatment initiatives cover children with disabilities specifically. Children with disabilities are also entitled to the provision of reasonable accommodations in accordance with Article 2 and Article 5, para. 3 of the CRPD, as an integral component of protection against discrimination.¹¹ Article 23 of the CRC was criticised for requiring that disabled children ‘achieve the fullest possible social integration and individual development’. Article 7, para. 1 of the CRPD places the equality issue into proper perspective. Whereas other equality-based phraseology in the CRPD’s provisions refer to ‘an equal basis with others’, the comparison with ‘children’ (rather than ‘others’) in Article 7, para. 1 suggests a functional test whereby the rights enjoyed by non-disabled children should also be enjoyed by their disabled counterparts. It is the responsibility of each state party to achieve this functional goal. This may require a state party to use extra financial resources or invest in infrastructure. Whatever action the state adopts, its effect must be to enable a disabled child to enjoy access to a particular right in a manner enjoyed by a child without disabilities.¹²

The CRPD recognises the right to education of persons with disabilities, including children. It emphasises the need for an inclusive education system that accommodates the diverse needs of learners, promoting the full participation of children with disabilities in mainstream education (Article 24). Furthermore, it recognises the evolving capacities of children with disabilities and emphasises their right to express their views on matters affecting them, while highlighting the importance of considering a child’s age and maturity in decision-making processes (Article 7). The CRPD recognises the rights of persons with disabilities to family life and calls for appropriate support for the families of children with disabilities. This includes ensuring that such families have the resources and assistance they need to care for their children (Article 23) and addressing the right to healthcare of persons with disabilities, including children. It emphasises the need for accessible health services and information to ensure that children with disabilities have equal access to healthcare (Article 25). The Convention also underscores the rights of persons with disabilities, including children, to be

11 Broderick, 2018, pp. 201–202.

12 Bantekas, 2018, p. 208.

protected from exploitation, violence, and abuse, including measures to prevent and respond to all forms of abuse, neglect, and exploitation (Article 16).

Other provisions of the CRPD are also relevant in the context of implementation. For example, the obligation of state parties to raise awareness of the principles enshrined in the Convention (Article 8) is important. State parties are obliged to adopt immediate, effective, and appropriate measures for raising awareness throughout society, including at the family level, regarding persons with disabilities. These measures must foster respect for their rights and dignity; combat stereotypes, prejudices, and harmful practices relating to them; and promote awareness of their capabilities and contributions. Measures to this end include initiating and maintaining effective public awareness campaigns designed to nurture receptiveness to the rights of persons with disabilities, fostering at all levels of the education system – including among all children from an early age – an attitude of respect for the rights of persons with disabilities.¹³ The required action is ‘to raise awareness’. The CRPD indicates that the primary target is society as a whole (‘throughout society’), including at the family level. In General Comment No. 2, concerning accessibility, the United Nations Committee on the Rights of Persons with Disabilities acknowledges that awareness-raising is one of the preconditions for the effective implementation of the CRPD. Therefore, state parties should strive systematically and continuously to raise awareness about accessibility among all relevant stakeholders. The Committee also recognises that a lack of accessibility is often the result of insufficient awareness and technical know-how and that introducing policies that improve accessibility for persons with disabilities requires changing attitudes towards them and fighting against stigma and discrimination through ongoing education efforts, cultural campaigns, and communication.¹⁴ Article 8 calls for awareness raising at all levels of society and in all areas of life to bring about real change in the lives of people with disabilities. Tackling widespread ignorance, as well as debunking ‘stereotypes and prejudices’ associated with disability, is a necessary step towards the full recognition of people with disabilities as subjects with rights who are entitled to full participation in society. Awareness raising should promote positive perceptions of disability instead of focusing on a ‘preventive’ or ‘deficit’ model.¹⁵

Collecting relevant information on children with disabilities is an important aspect of Article 31, according to which state parties undertake to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies that give effect to the Convention. The importance of the obligations under Article 31 to effect change lies in how well the obligation will,

13 Ibid.

14 Bariffi, 2018, p. 229.

15 Baranger, 2017, p. 214.

over time, push various actors to collect the robust, consistent, and comparable data required to ensure that violations of rights are properly addressed.¹⁶

Maintaining accurate statistical data consistent with Article 7 of the CRPD has several practical dimensions. The data can be used to assess whether a state has reduced the number of disabled children in long-term institutions or has succeeded in placing high numbers in foster care or reintegrating them with their families. Disaggregated data can also allow policymakers to fully appreciate the situation of and discrimination faced by children with disabilities and thus formulate targeted programmes designed to tackle the exclusions they face.¹⁷

4. European Legal Framework

4.1. European Union law

Equality and non-discrimination are founding values of the European Union (EU). As stated in Article 2 of the Treaty on the European Union (TEU),¹⁸ the Union is founded on the values of respect for human dignity, freedom, democracy, equality, rule of law, and respect for human rights, including the rights of persons belonging to minorities. These principles are reflected in Article 10 of the Treaty on the Functioning of the European Union (TFEU).¹⁹ Furthermore, Article 19 of the TFEU sets out the competence of EU authorities (the Council of the EU and the European Parliament) to take anti-discrimination measures.²⁰

Article 21 of the Charter of Fundamental Rights of the European Union prohibits²¹ discrimination based on disability. Additionally, the Charter expressly stipulates the rights of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration, and participation in community life (Article 26). However, the Charter does not extend the field of application of EU law beyond the competences of the Union or create any new competence or task for the Union, neither does it modify powers and tasks as defined in the EU Treaties. In cases where it does not apply, the protection of fundamental rights is guaranteed in the constitutions or constitutional traditions of EU countries and in the international conventions they have ratified.²²

16 Pedersen, 2017, p. 557.

17 Bantekas, 2018, p. 207.

18 Consolidated version of the TEU, OJ C 326, 26.10.2012, p. 13–390.

19 Broderick and Ferri, 2019, p. 390.

20 Vernia, Discrimination on the grounds of disability: the UNCRPD of 13.12.2006 and EU law, http://www.era-comm.eu/oldoku/Adiskri/07_Disability/119DV65_Vernia_EN.pdf (11.4.2020).

21 Charter of Fundamental Rights of the EU, OJ C 326, 26.10.2012, p. 391–407.

22 Vernia, Discrimination on the grounds of disability: the UNCRPD of 13.12.2006 and EU law, http://www.era-comm.eu/oldoku/Adiskri/07_Disability/119DV65_Vernia_EN.pdf (Accessed: 11 January 2024).

The EU has been bound by the CRPD since 2011, as it participates in the Convention as a regional integration organisation²³ within the meaning of Article 44 of the CRPD. The CRPD is part of EU law and has a so-called ‘sub-constitutive’ status. It is subordinate to the TEU and TFEU, as well as to the EU Charter of Fundamental Rights, but is above secondary EU law (such as Directives) according to the hierarchy of rules. However, the EU has not yet acceded to the Optional Protocol to the CRPD.²⁴

4.2. Council of Europe

The legal standards of the Council of Europe (CoE) apply to all persons equally, including those with disabilities. The most important instrument for the protection of human rights within the framework of the CoE is the European Convention on Human Rights (ECHR).²⁵ Other legally binding standards relevant to the rights of persons with disabilities are contained in the European Social Charter, the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention), and the Council of Europe Convention on Action against Trafficking in Human Beings.²⁶

The ECHR and CRPD have different scopes *ratione materiae* and geographically. The CRPD is intended to protect the rights of persons with disabilities in all areas, whereas the ECHR is intended solely to protect civil and political rights (except for Protocol No. 1 on the right to property and the right to education).²⁷ The ECHR applies to states within the CoE, whereas the CRPD is not limited to European countries. The ECHR was the first international treaty aimed at protecting a wide range of civil and political rights, both in the form of a binding treaty for state parties and by establishing a system for monitoring the exercise of rights at the national level.²⁸ The ECHR does not explicitly relate to the rights of persons with disabilities, and disability is mentioned only in Article 5, para. 1(e); however, it is generally applicable to the human rights of all persons, including persons with disabilities.

23 Council Decision of 26 November 2009 concerning the conclusion, by the European Community, of the UNCRPD, OJ L 23, 27.1.2010.

24 Broderick and Ferri, 2019, p. 311.

25 Act ratifying the Convention for the Protection of Human Rights and Fundamental Freedoms, amended by Protocols No. 3, 5 and 8 and supplemented by Protocol No. 2, and its Protocols No. 1, 4, 6, 7, 9, 10 and 11, Official Gazette of the Republic of Slovenia – MP, No. 7/94.

26 Council of Europe, Rights of Persons with Disabilities. <https://www.coe.int/en/web/disability> (Accessed: 7 January 2024).

27 Broderick and Ferri, 2019, p. 427.

28 Gomien, 2009, p. 16.

4.2.1. Case Law of the European Court of Human Rights

The European Court of Human Rights (ECtHR) has developed comprehensive case law on the rights of persons with disabilities, and many cases are related specifically to children with disabilities. In the *Case of Glor v. Switzerland*,²⁹ the ECtHR interpreted Article 14 of the ECHR for the first time to mean that disability was considered to constitute a personal circumstance based on which discrimination may occur.³⁰

In recent years, the ECtHR has dealt with a significant number of cases related to children with disabilities and contributed to the development of international legal standards for the protection of their rights. The *Case of Guberina v. Croatia*³¹ concerned a complaint by the father of a severely disabled child about tax authorities' failure to consider the needs of his child when determining his eligibility for a tax exemption for the purchase of property adapted to his child's needs. The Court held that there had been a violation of Article 14 (prohibition of discrimination) of the Convention taken in conjunction with Article 1 (protection of property) of Protocol No. 1, finding that the Croatian State had provided no objective and reasonable justification for its failure to consider the inequality pertinent to the applicant's situation.

The ECtHR has also decided on the rights of persons with disabilities in relation to their right to family and private life. In several cases, it has decided that Article 8 of the ECHR should be construed as obliging States to take special measures in the case of 'vulnerable' persons.³² In the *Case of La Parola and others v. Italy*,³³ the Court considered the question of financial assistance to parents for the maintenance of a child with a disability. The applicants, who were unemployed, were the parents of the third applicant, a minor who had been disabled since birth, on whose behalf they acted. They alleged that the Italian State had violated his right to life and health by refusing him effective medical and financial assistance. The Court declared the application inadmissible, observing that the applicants were already in receipt of a benefit on a permanent basis intended to assist them in coping with their son's disabilities. The scale of this benefit showed that Italy was already discharging its positive obligations under Article 8 (right to respect for private and family life) of the Convention.

29 ECtHR, *Glor v. Switzerland*, Application No. 13444/04, Judgement of 30 April 2009.

30 Broderick and Ferri, 2019, p. 441.

31 ECtHR, *Guberina v. Croatia*, Application no. 23682/13, Judgement of 22 March 2016.

32 Broderick and Ferri, 2019, p. 435.

33 ECtHR, *Persons with disabilities and the European Convention on Human Rights*, Factsheet, March 2020. https://www.echr.coe.int/Documents/FS_Disabled_ENG.pdf, p. 18 (Accessed: 5 February 2024).

The right to education (Article 2 of Protocol No. 1 to the ECHR) of children with disabilities was considered in the *Case of Dupin v. France*.³⁴ The Court held that the complaint alleging a violation of the of the applicant's child's right to education was inadmissible as manifestly ill-founded, on the basis that the refusal to admit the child to a regular school constituted neither a failure by the State to fulfil its obligations under Article 2 of Protocol No. 1 nor a systematic negation of his right to education on account of his disability, and that the national authorities had regarded the child's condition as an obstacle to his education in a mainstream setting; after weighing the child's level of disability and the benefit he could derive from access to inclusive education, the state opted for an education that was tailored to his needs in a specialised setting. The *Case of G.L. v. Italy*³⁵ concerned the inability of the applicant, a young girl with nonverbal autism, to receive specialised learning support during her first two years of primary education, even though the support was required by law. The Court held that there had been a violation of Article 14 of the Convention in conjunction with Article 2 of Protocol No. 1, finding that the applicant had not been able to continue attending primary school in conditions equivalent to those available to other children and that this difference was due to her disability. The Court considered that the Italian authorities had not sought to determine the young girl's real needs and provide tailored support to allow her to continue her primary education in conditions that would, as far as possible, be equivalent to those in which other children attended the same school. In particular, the authorities had never considered the possibility that a lack of resources could be compensated for by reducing the overall educational provision so that it would be distributed equally between non-disabled and disabled pupils. In the *Case of T.H. v. Bulgaria*,³⁶ the applicant, an eight-year-old boy who had behavioural difficulties, had been diagnosed with a hyperkinetic disorder and a 'specific developmental disorder of scholastic skills'. He alleged that he had been discriminated against in his first two years of primary school by his teachers and the head teacher because of his disability. The Court held that there had been no violation of Article 14 (prohibition of discrimination) of the Convention taken in conjunction with Article 2 (right to education) of Protocol No. 1 to the Convention in respect of the applicant, noting that the available evidence did not suggest that the actions of the head teacher or the applicant's teachers had been unjustified, unreasonable, or disproportionate, or that the head teacher and other teachers had turned a blind eye to the applicant's disability and his resulting special needs; rather, it appeared that they had made a series of reasonable adjustments for him.

34 ECtHR, *Dupin v. France*, Application No. 2282/17, 18 December 2018.

35 ECtHR, *G.L. v. Italy*, Application No. 59751/15, Judgement of 10 September 2020.

36 ECtHR, *T.H. v. Bulgaria*, Application No. 46519/20, Judgement of 11 April 2023.

The *Case of Đorđević v. Croatia*³⁷ concerned a complaint by a mother and her mentally and physically disabled son that they had been harassed, both physically and verbally, for over four years by children living in their neighbourhood, and that the authorities had failed to protect them. The case concerned the State's positive obligations in a situation outside the sphere of criminal law, where the competent authorities were aware of serious harassment directed at a person with physical and mental disabilities. The Court found a violation of Article 3 (prohibition of inhuman or degrading treatment) of the Convention in respect of the child, finding that the Croatian authorities had done nothing to end the harassment despite knowing that the family had been systematically targeted and that future abuse was likely.

In one of the most recent judgments concerning children with disabilities, the *Case of N.M. and Others v. France*,³⁸ the ECtHR addressed the dismissal by the administrative courts of the arguments submitted by parents in their claim for compensation for the special costs arising from their child's disability, which had not been detected through prenatal diagnosis. The Court held that there had been a violation of Article 1 (protection of property) of Protocol No. 1 to the Convention with respect to the parent applicants.

4.2.2. European Committee of Social Rights

The revised European Social Charter (revised ESC) is another important international treaty in the CoE framework. The ESC's implementation was monitored by the European Committee of Social Rights (ECSR), among others. Complaints regarding this implementation can be submitted only by certain non-governmental organisations (NGO). A collective complaint may seek to address issues that may constitute an infringement of the ESC or the revised ESC.³⁹ In the *Case of International Association Autism-Europe (IAAE) v. France*,⁴⁰ the ECSR became concerned with inadequate regulation covering persons with autism and found that the proportion of children with autism, whether in full-time or special schools, was significantly lower than that of children without disabilities. It noted that the ESC requires countries not only to adopt regulations to ensure equal enjoyment of the right to education but also to take practical steps to ensure that these regulations are implemented effectively. In the *Case of Disability Advocacy*

37 ECtHR, *Đorđević v. Croatia*, Application No. 41526/10, Judgement of 24 July 2012.

38 ECtHR, *N.M. and Others v. France*, Application No., 66328/14, 3 February 2022.

39 CoE, ESC, Collective complaints procedure. <https://www.coe.int/en/web/european-social-charter/collective-complaints-procedure> (Accessed: 13 February 2024).

40 ECSR, *International Association Autism-Europe (IAAE) v. France*, Complaint No. 13/2002. https://www.coe.int/en/web/european-social-charter/processed-complaints/-/asset_publisher/5GEFkjmH2bYG/content/no-13-2002-international-association-autism-europe-iaae-v-france?inheritRedirect=false (Accessed: 1 February 2024).

Center (MDAC) v. Bulgaria,⁴¹ the ECSR concluded that the second paragraph of Article 7 had been violated independently or in conjunction with Article E of the revised ESC, as regular schools and their educational programmes were not accessible in practice, so children placed in institutions for mental disorders were denied the right to education based on their disability.

After the CRPD entered into force, the ECSR dealt with collective complaints concerning the right to education of persons with disabilities in the *Case of International Federation for Human Rights (FIDH) v. Belgium in 2011*⁴² and found that Belgium had failed to set up sufficient day- and night-care facilities to prevent many of the most dependent persons with disabilities from being excluded from services corresponding to their specific needs. A violation of ESC provisions was found in the collective complaint *Case of European Action of the Disabled v. France*⁴³ regarding the right to education of children and adolescents with autism and the right to vocational training for young adults with autism and in the *Case of MDAC v. Belgium*⁴⁴ regarding the right of children with disabilities to have access to mainstream schools.

5. Rights of Children with Special Needs in Slovenian Legislation

The rights of children with disabilities in Slovenia is an important topic that concerns the human rights and well-being of millions of children in the country. Slovenia ratified the CRC⁴⁵ and CRPD⁴⁶ and is thus bound by the provisions of those conventions relating to children. There is no unified term for children with disabilities in the Slovenian legal system. Various terms are used in Slovenian legislation concerning children who are in any way hindered in normal

41 ECSR, *MDAC v. Bulgaria*, Complaint No. 4/2007. https://www.coe.int/en/web/european-social-charter/processed-complaints/-/asset_publisher/5GEFkjmH2bYG/content/no-41-2007-mental-disability-advocacy-center-mdac-v-bulgaria?inheritRedirect=false (Accessed: 1 February 2024).

42 ECSR, *FIDH v. Belgium*, Complaint No. 75/2011. https://www.coe.int/en/web/european-social-charter/processed-complaints/-/asset_publisher/5GEFkjmH2bYG/content/no-75-2011-international-federation-of-human-rights-fidh-v-belgium?inheritRedirect=false (Accessed: 4 February 2024).

43 ECSR, *European Action of the Disabled (AEH) v. France*, Complaint No. 81/2012. [https://hudoc.esc.coe.int/eng/#/\["ESCDcIdentifier":\["cc-81-2012-dmerits-en"\]](https://hudoc.esc.coe.int/eng/#/[) (Accessed: 12 February 2024).

44 ECSR, *Mental disability Advocacy Center (MDAC) v. Belgium*, Complaint No. 109/2014. <https://www.coe.int/en/web/european-social-charter/-/no-109-2014-mental-disability-advocacy-center-mdac-v-belgium> (Accessed 01 February 2024).

45 Official Gazette of the SFRY, International Treaties, No. 15/90, Act on notification, Official Gazette of the Republic of Slovenia, International Treaties, No. 9/92.

46 Act Ratifying the Convention on the Rights of persons with Disabilities and Optional Protocol to the Convention on the Rights of Persons with Disabilities, Official Gazette of the Republic of Slovenia – International Treaties, No. 10/08.

development. The Constitution of the Republic of Slovenia mentions ‘children with physical or mental disorders’ (Article 52, para. 2). Regulations concerning healthcare use the same expression, whereas a slightly different expression – ‘a child in need of special care and protection’ – is used in regulations concerning social security. Since the adoption of the Placement of Children with Special Needs Act in 2003, the most accepted term has been ‘children with special needs’.⁴⁷

5.1. Early Treatment of Preschool Children with Special Needs

The Act Regulating the Integrated Early Treatment of Preschool Children with Special Needs (IET)⁴⁸ regulates the comprehensive early treatment of children with special needs and children with risk factors of preschool age. It involves the treatment of a child and his/her family in the child’s preschool age range with the aim of ensuring and promoting the child’s development, strengthening the capacity of the family, promoting the social inclusion of the family and child (Article 1), and defining the early intervention services provided for by law (Article 7).

The central pillar of the arrangements for the early treatment of children under the IET is the early treatment centre (Article 8), consisting of a multidisciplinary group of medical, social, and other professionals. For each child, the physician appoints a multidisciplinary team comprised of healthcare, education, and social care professionals who are important for assisting the child and family. The child’s parents are also part of the team (Article 10). The multidisciplinary team prepares an individual family plan, in which the appropriate medical, social, and pedagogical assistance is defined for each child and his/her family. In cases where the physician decides not to draw up an individual family plan, the necessary treatments and assistance for the family are determined in collaboration with the parents (Article 12).⁴⁹

An important role is played by the coordinator of the individual family plan, the multidisciplinary team member who monitors the implementation of early intervention services for the child and cooperates with the social work centre. The coordinator provides the family with information regarding social services and public powers in accordance with the sectoral legislation and other tasks assigned to social work centres by other regulations and also informs the family about other forms of assistance available to them under the applicable regulations.⁵⁰

47 Murgel, 2020, pp. 257–259.

48 Official Gazette of the Republic of Slovenia, No. 41/17.

49 Murgel, 2019, pp. 59–70.

50 Ibid.

5.2. Education of Children with Special Needs

In addition to the regulations governing education in general,⁵¹ the education of children with special needs is regulated specifically by the Placement of Children with Special Needs Act (PCSNA).⁵² This law does not define who children with special needs are but lists groups of children according to their disability. Pursuant to Article 2 of the Act, children with special needs are children with intellectual disabilities, blind and visually impaired children or children with impaired visual function, deaf and hard-of-hearing children, children with speech and language disorders, physically impaired children, chronically ill children, children with disabilities in specific areas of learning, children with autistic disorders, and children with emotional and behavioural disorders who need an adapted implementation of education programmes with additional professional assistance or adapted education programmes or special education programmes (Article 2).

The PCSNA regulates procedures for the placement of learners with special needs in the appropriate educational programmes. Depending on the learners' psychological and physical status, the Act enables their inclusion in education at all levels, from pre-primary to secondary education, based on the assumption that additional help from experts and adapted programme implementation will help learners achieve a comparable standard of knowledge. Learners with severe disorders can still attend special forms of education in schools for learners with special needs and in institutions for the education and training of learners with severe developmental difficulties.⁵³

Children with special needs who cannot be provided with education at their place of residence or with transport because of their distance from the place of education may join an institution for the education of children with special needs, a social care institution, or a pupils' home for children with special needs, or be placed in a foster family (Article 16, para. 1 of the PCSNA).

5.3. Parental and Family Benefits

The Parental Protection and Family Benefits Act (PPFB)⁵⁴ regulates certain rights of children in need of special care and their parents. According to Article 50 of the PPFB, parents have the right to work part-time in certain cases. One parent caring for and protecting a child up to the age of three years has the right to be a full-

51 Organisation and Financing of Education Act, Pre-Primary Institutions Act, Primary School Act, Vocational and Technical Education Act and Gymnasiums Act.

52 Official Gazette of the Republic of Slovenia, No. 58/11.

53 European Agency for Special Needs and Inclusive Education. <https://www.european-agency.org/country-information/slovenia/legislation-and-policy> (Accessed: 14 February 2024).

54 Official Gazette of the Republic of Slovenia, No. 26/14.

time or part-time employee. One parent caring for and protecting a moderately or severely impaired child or a child with moderate or severe intellectual disabilities is entitled to part-time employee status even after the child's third year of age but not after the child turns 18. In this case, the employer guarantees the employee the right to wages according to the employee's work obligations, and the state guarantees the full benefit of social security contributions from a proportion of the minimum wage. The state supports the contributions of the insured person and employer to the compulsory pension scheme, disability insurance, unemployment insurance, and parental care, as well as health insurance contributions in the event of illness and injuries sustained outside work to secure the right to health services and the reimbursement of travel expenses. The state pays these contributions at the rates set by law for social security contributions.

People with children in need of special care have a right to a cash allowance intended to cover the increased living costs incurred by the family for the maintenance and care of such children (Article 79 of the PPFB). A parent or other person is entitled to the childcare allowance if the child has a permanent or temporary residence in Slovenia and lives in the country (Article 80 of the PPFB).

The second benefit is a partial reimbursement for loss of earnings. This is received by a parent or another person when he or she leaves the labour market or starts working part-time instead of full-time to care for a child in need of special care. This right also rests with one parent or other person caring for and protecting two or more children with moderate or severe intellectual disabilities or moderate or severe motor impairment. A parent who works part-time instead of full-time is entitled to a proportionate part of the partial payment for the loss of earnings (Article 83). One parent or other person has the right to partial payment for the loss of income if the child and parent or other person has a permanent or temporary residence in the Republic of Slovenia and lives there (Article 84). One parent or other person has the right to partial payment for the loss of earnings if the conditions laid down in the Act are met or, at the latest, until the child turns 18 (Article 86 of the PPFB).

6. Challenges to Be Addressed

International conventions relating to the protection of the rights of children with special needs, especially the CRC and the CRPD, and international treaties at the European level represent only one step towards achieving the implementation of those rights in practice. Ensuring the rights of children with disabilities depends on the member states of the relevant international instruments. The international treaties are legally binding instruments that state parties must apply according to the *pacta sunt servanda* principle of international law.

Slovenia is an example of a CRPD member state that has implemented the obligations relating to children with disabilities only partially. In the Concluding Observations on the Initial Report on Slovenia from 2018, the CRPD Committee expressed concern about the lack of early assistance and placement of children with disabilities in residential treatment institutions, as well as the lack of mechanisms for ensuring the participation of children with disabilities in decision-making affecting their lives. The Committee recommended that Slovenia formulate a national strategy with benchmarks and human, technical, and financial resources aimed at ensuring the full inclusion of children with disabilities in society, paying attention to the development of inclusive settings in early assistance, education, housing, health, and community services.⁵⁵

Regarding awareness raising (Article 8 of the CRPD), the Committee expressed concern about negative societal attitudes in Slovenia towards persons with disabilities, including a lack of awareness regarding their capabilities and rights – particularly for persons with psychosocial and/or intellectual disabilities – and the lack of strategies such as awareness-raising campaigns for combating stereotypes and prejudice against persons with disabilities. It recommended that the state implement measures for raising public awareness of the rights of persons with disabilities in families, schools, and society and adopt an awareness-raising strategy.⁵⁶

According to the CRPD Committee, another concern regarding children with disabilities within the wider population of persons with disabilities is the lack of a systematic collection of disaggregated data on persons with disabilities and their social conditions, including the social barriers they face (Article 31 of the CRPD). The Committee recommended that Slovenia develop systematic data collection and reporting procedures and collect, analyse, and disseminate disaggregated data on the population of Slovenians with disabilities, including data disaggregated by sex, age, ethnicity, type of impairment, socioeconomic status, employment, and place of residence, as well as data on the social barriers faced by persons with disabilities and their poverty rates.⁵⁷

None of these recommendations have been implemented to date. The prevailing approach to disability in Slovenia remains medical rather than human-rights-based. Negative social attitudes towards disabilities, especially psychosocial and intellectual disabilities, remain an issue. Slovenia has a parallel education system for children with disabilities. Slovenia faces most of its challenges in this area because it lacks a strategy for fully including children with disabilities, fails to collect sufficient data related to this sensitive social group, and collects little to no data on children with special needs.

55 Committee on the Rights of Persons with Disabilities, CRPD/C/SVN/CO/1, 16 April 2018, p. 4.

56 *Id.*, p. 5.

57 *Id.*, p. 13.

7. Conclusions

Standards of international law on the protection of the rights of children with disabilities are well-developed and based on the modern human rights model of the protection of the rights of persons with disabilities. However, including children with disabilities in legally binding instruments is merely the first rung of the ladder to be climbed. The example of Slovenia illustrates that, although some rights of children with disabilities have been regulated by national legislation, many challenges and gaps in the implementation of the rights of children with disabilities remain to be addressed.

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