



# The Best Interest of the Child in the Education of Children with Disabilities in Croatia – A Case Study

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**Abstract.** This study aims to provide an overview of the inclusive educational practices for students with developmental disabilities in Croatia from the perspective of the best interest of the child. The case study method was used to analyse the education of students with developmental disabilities in regular elementary schools. This study provides an overview and explanation of the leading principle of the Convention on the Rights of the Child: the principle of the best interest of the child. The presentation of the best interest of the child as a right, principle, and procedural rule was provided. The best interest of the child must take precedence when undertaking all activities and making all decisions related to the child, both in the public and private spheres. The concept of the best interest of children with developmental disabilities will be applied to the Croatian context and connected to inclusive educational practices.

**Keywords:** Croatia, children's rights, inclusive education, best interest of the child, case study

## 1. Introduction

Education is a fundamental human right that builds foundations for 'a successful participation in social, economic, cultural and political life of the community'. It is a powerful tool for combating social exclusion, facilitates a person's full-fledged participation in society, and is a key factor in the economic development of a country.<sup>1</sup>

Inclusive education is based on the universal right to quality education and focuses on vulnerable groups. The aim of inclusive education is to overcome

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1 Salaj, 2014, cited in Kiš-Glavaš *et al.*, 2012.

obstacles to all children's participation.<sup>2</sup> However, inclusion is not only a goal<sup>3</sup> but also a continuous process in which educational institutions attempt to respond to the needs of all pupils as individuals, each pupil feels welcome, and educational institutions facilitate research and communal problem-solving. Taking into account and accepting differences among children becomes an incentive rather than an obstacle to the teaching and learning process.<sup>4</sup> Inclusive education is the process of increasing the participation of all pupils to reduce their exclusion from the school environment, as well as from the cultural and broader social community.<sup>5</sup> Creating inclusive education not only enables the development of social competencies of all those included in the educational process but also results in a more active inclusion of children with disabilities in the educational system. This ensures the prerequisites for the development of social, emotional, and intellectual skills and behaviours, which are preconditions for the academic and social development of a person in line with their abilities.<sup>6</sup> Quality implementation of educational inclusion requires a change in attitudes, beliefs, knowledge, and skills based on which one understands and respects the different needs of children.<sup>7</sup>

Inclusive education is a process carried out by changing the approach to teaching and educational content as well as the educational system's structure and strategy. However, educational inclusion can only be realised following the implementation of certain changes in the overall educational practice.<sup>8</sup> Inclusive education requires that educational institutions adapt to all students. To ensure educational inclusion, it is important to have efficient support from institutional bodies and vocational guidance services, as well as a social welfare system, legal support from mobile teams and teaching assistants, and cooperation between parents and schools.<sup>9</sup> Therefore, the introduction and implementation of inclusion has become a demand within national educational policy and practice and not a specific intervention referring only to one marginalised group.

## 2. Inclusive Education in Croatia

Inclusive education gained importance within the Croatian educational policy in the 1990s. Through a series of legal norms and strategic documents, the Croatian regulatory and policy framework guarantees the right to inclusive education

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2 Ainscow, 1999.

3 Mittler, 2006.

4 Booth and Ainscow, 2014.

5 Id., 1998.

6 Milašin *et al.*, 2009.

7 Ivančić, 2010.

8 Mittler, 2006.

9 Igrić, Cvitković and Wagner Jakab, 2009; Igrić *et al.*, 2010; Stančić, Horvatić and Nikolić, 2011.

for children with disabilities. The United Nations Convention on the Rights of Persons with Disabilities (2007) and the United Nations Convention on the Rights of the Child (1989) constitute a framework for establishing national policies. By perceiving a disability as a combination of a person's characteristics and their social environment, the conventions emphasise activities empowering children and persons with disabilities aimed at realising their rights and personal potential and stress the elimination of physical, social, and other obstacles for their equal participation in society. In Croatia, the education of pupils with disabilities in primary and secondary schools is regulated by the Primary and Secondary School Education Act,<sup>10</sup> Vocational Education and Training Act,<sup>11</sup> state pedagogical standards,<sup>12</sup> and the Rulebook on Primary and Secondary Education of Pupils with Disabilities.<sup>13</sup>

The Report of the European Parliament on the Condition of Children with Disabilities in Croatia (2014) regards the lack of a separate legal framework that would regulate the rights of children with disabilities and the lack of a unique definition of persons with disabilities as obstacles to the implementation of educational policy. Consequently, precise disaggregated data on the number of students with disabilities cannot be obtained.<sup>14</sup> According to data from the Report on the Work of the Ombudsman for Children for 2022, the Croatian register of persons with disabilities includes 59,241 children aged 0–17 years (approximately 10% of all persons with disabilities). In the 2022–2023 school year, 25,414 pupils with disabilities attended regular primary schools, and 5,400 regular secondary schools. So-called special schools, social welfare institutions, and other organisations provided primary school education to 2,743 pupils and secondary school education to 337 pupils.<sup>15</sup>

The analysis of the Croatian implementation practice indicates that there are certain implementation deficits,<sup>16</sup> that is, problems in implementing educational policy. In its analysis of the position of children with disabilities in Croatia in the context of primary and secondary school education, the European Parliament emphasised several key problems. There is a significant implementation gap in educational policy because there is no statutory norm ensuring the availability of teaching assistants for children with disabilities, which leads to dysfunctional educational processes at the start of each school year. The same challenge is

10 Official Gazette (OG) 87/08, 86/0, 92/10, 105/10, 90/11, 16/12, 86/12, 126/12, 94/13, 152/14, 7/17, 68/18, 98/19, 64/20, 151/22, 156/23.

11 OG 30/09, 24/1, 22/13, 25/18, 69/22.

12 National Pedagogical Standard for Primary Education System (OG, 63/08, 90/10) and National Pedagogical Standard for Secondary Education System (OG, 63/08 and 90/10).

13 OG 24/2015.

14 Ivanković Tamamović, 2014.

15 Report on the Work of the Ombudsman for Children, 2022.

16 Pressman and Wildavski, 1984.

recognised in the annual report on the work of the Ombudsman for Children.<sup>17</sup> Furthermore, the aforementioned European Parliament report states that sincere efforts to increase the inclusion of children with disabilities in regular education have not been made, there are no coordinated activities of various institutions acting in the field of education, and educational system employees do not know how to respond to the various needs of children with disabilities.<sup>18</sup>

Based on data from the Report on the Work of the Ombudsman for Children, the Ombudsman warns that support for children with disabilities in the form of teaching assistants has still not been legally regulated within the Croatian primary school education system. A significant number of schools still lack architectural adaptations; schools are inadequately equipped with up-to-date teaching materials as well as the adaptive and assistive technology needed to work with children with disabilities, while classrooms and practical training classrooms cannot always respond to their specific needs, especially those of students with multiple disabilities. Overcrowded facilities and a large number of pupils in classrooms negatively impact the quality of teaching practices. The Ombudsman also emphasised that the Croatian educational system cannot ensure the right to adequate education for each child, and that inclusive principles have still not taken root in Croatian educational practice. In secondary schools, it is necessary to enable students to assess the quality of a school's educational services. Gaining insight into pupils' satisfaction with the quality of school services can affect not only their educational status but also the level and quality of their participation in decision-making processes regarding issues of interest. If pupils are perceived as education stakeholders with various needs and expectations, then it is necessary for schools to have well-established strategies to ensure that the necessary resources (a choice of programs, methods, equipment, employees' attitudes, the support system, and similar) enable schools to react and meet the needs of their pupils. Admitting the importance of the influence of users on the quality of services, as well as considering users' perspectives,<sup>19</sup> would enable the introduction of an evaluation of educational service quality by children with disabilities, which can contribute to a better analysis of the prerequisites for the development of inclusive education.<sup>20</sup>

## **2.1. Child Participation**

Children's participation rights are affected by the sociocultural context in which a child grows and the experience of the child in resolving problems with other persons, most commonly a parent or educator, that is, the teacher. In the context

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17 Report on the Work of the Ombudsman for Children, 2015, 2016, 2022.

18 Ivanković Tamamović, 2014.

19 Urbanec, Kletečki Radović and Delale, 2009; Zaviršek and Videmšek, 2009.

20 Report on the Work of the Ombudsman for Children, 2016, 2022.

of educational practice, interactions between pupils and teachers build the foundation for children's participation and the common resolution of problems or obstacles they face. Educational workers are supposed to support and encourage children's participation in decisions that affect them, which requires meeting a number of preconditions: a) giving the child the voice to express their opinion on education and their own participation in the teaching process; b) listening to the child; c) taking into consideration the child's opinion in the decision-making process whenever possible and when it is in the best interest of the child; and d) creating preconditions for the child's active participation and contribution to the educational process as well as the evaluation of teaching quality.

The level of participation should depend on the child's developmental abilities in such a way that the child gradually takes more responsibility for resolving a certain problem or making a particular decision in line with their age, maturity, and developmental abilities. Bronfenbrenner describes<sup>21</sup> child development as the gradual acquisition of the power to act and take over responsibility for one's own behaviour.<sup>22</sup> Adult persons in the context of education are those class teachers and subject teachers who slowly transgress from the role of a leader to the role of a facilitator. As a facilitator, a class teacher (subject teacher) provides pupils with support, trusts in their active participation, motivates them, directs them, encourages them not to give up, and provides them with the necessary information to empower them within the process.<sup>23</sup> Class (subject) teachers who believe in and support pupils' participation in creating quality educational practices appreciate pupils' efforts, knowledge, and interest invested in resolving a problem, and provide feedback to pupils on their contributions to resolving specific problems.

The manner in which children with disabilities participate in the teaching process depends on their individual needs, and it is not necessary to insist on practising all forms of participation<sup>24</sup> as explained by Hart's participation model.<sup>25</sup> In addition to the first three models of non-genuine participation (manipulation, decoration, and tokenism), another five levels refer to situations of genuine inclusion of pupils in work, ranging from a willing decision to participate in a certain project or activities initiated by adults to the highest level of participation, which implies the independent creation of ideas, planning, and implementation of a certain activity by a pupil, with the option of including adults as support.<sup>26</sup> Unlike Hart, Treseder maintains<sup>27</sup> that all forms of participation are

21 Bronfenbrenner, 1979.

22 Bronfenbrenner, 1979, cited in Smith, 2007.

23 Smith, 2007.

24 Treseder, 1997, cited in Thomas, 2007.

25 Hart, 1992.

26 Ibid.

27 Treseder, 1997.

equally valuable and should not be presented hierarchically because different participation conditions (e.g. different environments and material circumstances) as well as differing pupils' and teachers' personalities require different modes of participation, ranging from the simplest to the most complex.<sup>28</sup> Shier modified Hart's scale<sup>29</sup> and structured a model in which the initial level of participation implies giving pupils an opportunity to express their opinions, whereas the final level means that pupils and teachers share power and responsibility in the decision-making process.<sup>30</sup>

Most levels of pupil participation can be realised by including pupils into 'school life' as well as by introducing participation in the teaching methods. Pupils can be included in various events in the school and other forms of cooperation with the local community (performances, festivals, school open days, etc.), work on projects with other schools or institutions, research at the school level, make decisions related to extracurricular activities in their school, make decisions concerning cooperatives with which pupils are involved, decorate the school's interior and exterior (especially in the context of accommodation services), make decisions concerning health (meals), produce the school's promotional materials, and they can even be included in certain management segments (through pupils' representatives in management bodies).

In the context of Croatian education policy, active participation of pupils in the educational process is guaranteed by the Primary and Secondary School Education Act,<sup>31</sup> which regulates the pupils' right to be informed of all issues affecting them, the right to respect pupils' opinions, the right to pupils' participation in the work of pupils' councils and drafting and implementation of schoolhouse rules, and pupils' right to propose improvement of the educational process and work.

However, in the context of Croatian educational practice, there are insufficient empirical data on the role of pupils and their participation in the implementation of educational policies. Pupils' dissatisfaction with the level of participation and its effectiveness is corroborated by the results of the study on child participation in schools in Croatia conducted by the Office of the Ombudsman for Children in 2017,<sup>32</sup> as well as by the study on pupils' participation in the Croatian school environment conducted by the abovenamed Office within the project 'Evaluation of Legislation, Policy and Practice on Child Participation in the European Union'.<sup>33</sup> The low level of child participation in the decision-making process in schools and local communities is also confirmed by the results of research on the

28 Treseder, 1997, cited in Thomas, 2007.

29 Hart, 1992.

30 Shier, 2001.

31 OG 87/08, 86/0, 92/10, 105/10, 90/11, 16/12, 86/12, 126/12, 94/13, 152/14, 7/17, 68/18, 98/19, 64/20, 151/22, 156/23.

32 Borić *et al.*, 2019.

33 Report on the Work of the Ombudsman for Children, 2014.

opinions and attitudes of children regarding their rights in Croatia conducted by the Office on the 20<sup>th</sup> anniversary of the Office of the Ombudsman for Children in the Republic of Croatia.<sup>34</sup> In addition, the results of a study on the participation of children with disabilities in education show that pupils do not see themselves as equal partners in the decision-making process and that they do not have many opportunities to express their opinions in school.<sup>35</sup> These results have been confirmed in other studies conducted in Croatia.<sup>36</sup>

## **2.2. Defining the Best Interest of the Child**

The United Nations Convention on the Rights of the Child (hereinafter, the Convention) promotes an approach based on rights and requires a better understanding of children and their life experiences, as well as respect for the child's opinion and autonomy.<sup>37</sup> It introduces changes in the perception of the child because it does not perceive the child as an object but as a subject with rights; the child 'becomes an active and equal partner in making decisions affecting him or her'.<sup>38</sup> Therefore, Hart sees<sup>39</sup> the Convention as a strong indicator of increased social emphasis on participation, autonomy, and the right of the child to self-determination in balance with the protective and educational rights of children.

Parties to the Convention have committed to respect, protect, and enable the realisation of rights contained in the Convention in a way that all rights are ensured in line with the best interest of the child (Article 3); non-discrimination (Article 2); the child's right to life, survival, and development (Article 6); and the right of the child to participate in making decisions affecting him or her (Article 12). These four rights are crucial for the realisation of all other rights flowing from the Convention and because they are considered to be 'fundamental principles and rules of the Convention'.<sup>40</sup> These four principles are an inseparable part of the Convention and must be applied at the implementation and interpretation of all other articles.<sup>41</sup> A comprehensive understanding of the Convention requires the development of an approach based on the rights and participation of all stakeholders, with the aim of realising the physical, psychological, moral, and spiritual integrity of a child and promoting their dignity.<sup>42</sup>

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34 Salaj *et al.*, 2023.

35 Report on the Work of the Ombudsman for Children, 2016.

36 Milić and Marojević, 2014; Jeđud Borić *et al.*, 2017.

37 Alderson and Montgomery, 1996.

38 Guran, 2015, p. 11. Translation by the author. Unless otherwise specified in the footnotes, all translations quoted from non-English sources are by the author.

39 Hart, 1991.

40 Vučković Šahović, 2015, p. 15.

41 Guran, 2015.

42 Committee on the Rights of the Child, 2013.

There is a special connection between the principle of the best interest of the child and the principle of participation, as child participation is a ‘method’ used to realise the best interest of the child. It could be said that Article 3 in a certain way improves the functionality of Article 12, highlighting the key role of the child in all decisions affecting him or her.<sup>43</sup> According to Hassan Beshir,<sup>44</sup> the principle of the best interest of the child is an instrument that enables a connection between theory and practice; for that reason, some authors call it ‘the Convention’s servant’.<sup>45</sup>

The Committee on the Rights of the Child of the United Nations emphasises that ‘all rights guaranteed in the Convention are established in line with the best interest of the child’<sup>46</sup> and none of the rights can be endangered by a negative interpretation of the best interest of the child. To ensure a better understanding of the concept of the best interest of the child, the Committee in 2013 adopted General Comment No. 14 (2013) on the child’s right to have their best interest taken as a primary consideration,<sup>47</sup> which establishes the framework for assessment and determining the best interest of the child.

The Convention defines the best interest of the child as ‘the right of the child to have their best interests assessed and taken into account as a primary consideration in all actions or decisions affecting him or her, both in the public and private sphere’.<sup>48</sup> Simply put, the application of the best interest of the child means that the child is focused on the process of making decisions affecting him or her, that is, that the child’s interests have priority over other factors. The best interest of the child depends on the context and needs to be determined in each individual case, taking into consideration the personal situation and needs of the child.

The concept of the best interest of the child is ‘a threefold concept encompassing a substantive right, a legal principle and a rule of procedure’.<sup>49</sup> According to the committee’s interpretation, the substantive right of this concept refers to the obligation of a country to prioritise an assessment of the best interest of the child over other interests (those of other children, the public, parents, etc.) when making a decision on a certain question affecting a child. The legal principle stipulates that in situations in which one legal provision can be interpreted in more than one way, the interpretation to be chosen is the one that most effectively serves the child’s best interest. The rule of procedures for making decisions states that the obligatory phases in the decision-making process comprise the assessment of

43 Committee on the Rights of the Child, 2009, 2013.

44 Hassan Beshir, 2012.

45 Vučković Šahović, Doek and Zermatten, 2012, cited in Vučković Šahović, 2015, p. 15.

46 Committee on the Rights of the Child, 2013, p. 3.

47 General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration.

48 Committee on the Rights of the Child, 2013, p. 3.

49 Committee on the Rights of the Child, 2013, p. 4.



the best interest of the child and procedural guarantees. The assessment needs to include an evaluation of the possible impact of a certain decision on the child (positive or negative, short-term or long-term) and requires establishing procedural guarantees, that is, justification given by decision-makers of the way the best interests of the child have been explicitly taken into account.

### **3. Case Study from the Perspective of the Best Interest of the Child**

This section analyses the implementation of the principle of the best interest of the child in a specific case from the Croatian school practice that the Office of the Ombudsman for Children has acted on. The example used for this purpose is described in detail below. It presents the case of a pupil with physical disabilities attending a primary school in the capital of Croatia, Zagreb. The child has a physical disability and uses a wheelchair for movement. Initially, the child was enrolled in school without the support of a teaching assistant; however, soon after the school year began, the child was appointed.

#### **3.1. Case Presentation**

In the primary school in question, which for the purposes of this paper shall be named Primary School X, education of pupils with physical disabilities is a common practice. The school's professional services include a pedagogist and a professional assistant (educational rehabilitator) employed part-time. Regarding accessibility, the school meets the criteria in two ways: an entrance ramp and a sanitary facility. However, its entrance ramp is extremely steep, making its use in wheelchairs difficult. The school has one adapted sanitary facility (toilet cubicle) on the ground floor, pursuant to the National Pedagogical Standards for the Primary Education System, which<sup>50</sup> stipulates that the school needs to provide one sanitary facility for pupils with physical disabilities and a changing room where incontinent pupils can wash and change. Facilities not accessible to pupils with physical disabilities include the school canteen, the gymnasium for physical education, and the school playground. The school canteen is not accessible because the door is too narrow for a wheelchair. The pupil can enter the gymnasium only at the external back entrance, which means that they must exit the school, go around the building, and then enter the gymnasium through the back entrance. To get to the outdoor school playground, the pupil has to exit the school building, move along the pedestrian path to reach the ramp located at the back of the school playground, and use the ramp to descend to the playground.

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50 OG 63/08, 90/10.

According to the Decision on the Establishment of a Network of Primary and Secondary Schools, Dormitories, and Educational Programmes,<sup>51</sup> schools are listed among schools with spatial adjustments, although out of the six criteria for spatial adjustment (completely adjusted, an elevator, a ramp, a mobile platform, an entrance, and sanitary facilities), the school partially met only two criteria (a ramp and a sanitary facility) and fully only one criterion (an entrance). Therefore, schools do not meet most accessibility criteria according to the Rulebook on the Accessibility of Buildings for Persons with Disabilities and Reduced Mobility.<sup>52</sup>

Difficulties occur when a pupil with physical disabilities enters the upper grades, that is, at the beginning of subject teaching (from the fifth to the eighth grade). School practice is to place pupils attending subject teaching on the first floor and those taking part in class teaching (from first to fourth grade) on the ground floor. This practice places the pupil with physical disabilities in an unfavourable position based on his disability when his class moves to the first floor. According to the provisions of the Anti-Discrimination Act,<sup>53</sup> this seemingly neutral practice presents as indirect discrimination. To ensure accessibility, that is, the transition from the ground floor to the first floor (from fifth grade onwards), the pupil was provided with an electric wheelchair stair climber. The school borrowed aid from the association. However, problems arose when the stair climber broke because neither the school nor the association had funds allocated for maintenance. Consequently, the pupils used the stair climber for only one school year. The stair climber was unsuitable for the pupil in any case because of the pupil's kidney problems and because it did not meet the accessibility criteria of the abovementioned rulebook. To be precise, pursuant to Article 9 of the Rulebook on the Accessibility of Buildings for Persons with Disabilities and Reduced Mobility, a stair climber does not meet the accessibility criteria for overcoming height differences larger than 120 cm, that is from the ground floor to the first floor. Pursuant to the named article, appropriate accessibility elements include an elevator, a vertical lifting platform and an inclined folding platform. The school has failed to make sensible adjustments, as stipulated by the Anti-discrimination Act, since it has not moved the class of pupils with physical disabilities to the ground floor, thus providing them with an equal right to education, until the accessibility criteria stipulated by the named rulebook are met.

The school was of the opinion that it had provided all the preconditions for the education of students with physical disabilities, denying that it had failed to ensure sensible adjustments. It also denied indirect discrimination because, according to the school, all rooms and spaces were available to pupils with physical impairments.

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51 OG 70/11, 62/17.

52 OG 15/05, 61/07, 78/13, 153/13.

53 OG 85/08, 112/12.

The pupils' parents complained about communication with the school's headmistress and the pressure they (including the child) faced because of their request to realise the right to equal educational opportunities for the child. Parents of pupils attending lower grades and parents of pupils with physical disabilities, as well as the Parents' Council, addressed an open letter to a number of institutions in which they complained about the discrimination of the non-impaired pupils of the lower and upper grades. Their opinion was that by moving classes (the upper grade attended by pupils with physical disabilities was moved to the ground floor, and one lower grade was moved to the first floor), the rights of their children to appropriate education guaranteed by the Constitution of the Republic of Croatia were breached. As a sign of protest against the relocation of the class, parents of lower-grade pupils decided not to send their children to school for two days.

### **3.2. Implementation of the Best Interest of the Child for Educational Inclusion of Pupils with Disabilities in Primary Schools**

The committee proposes two phases – assessment and determination – for the implementation of the best interest of the child. According to the committee's recommendations, when evaluating a certain measure and determining the best interest of a child, it is necessary to determine the elements relevant to the assessment (1<sup>st</sup> phase – assessment) and conduct a procedure that ensures legal guarantees and corresponding applicable rights (2<sup>nd</sup> phase – determination). Strict adherence to these phases is not expected from persons who make decisions about children on a daily basis (e.g. parents, caregivers, professors, teachers, educators), while public authorities and organisations that make decisions affecting children are liable to fully respect them. A multidisciplinary team conducts an assessment of the best interest of the child with obligatory participation of the child, which consists of an evaluation and balancing of all the elements necessary to make a decision in a specific situation. The Committee recommends<sup>54</sup> paying special attention to the following elements: the child's opinion, the child's identity, preservation of the family environment and maintenance of relations, care, protection, and safety for the child, vulnerable situations, the child's right to health, and the child's right to education.

#### ***3.2.1. Conflicting Interests: The Child's Interest in Relation to the Interests of Others***

In situations where, during the assessment and determination of the best interest of the child, different interests conflict (e.g. the parents' and the child's interests),

<sup>54</sup> Committee on the Rights of the Child, 2013.

it is necessary to compare all factors and reach a solution in the best interest of the child. However, this comparison is often challenging. One should keep in mind that the best interest of a child must be prioritised. This means that the child's interests are not just one of the factors but also a priority, and thus, more weight should be given to what is best for the child. The Committee recommends that, in all situations in which there are conflicting interests, the child should be included in the assessment of their best interest, in line with their age and maturity. In General Comment No. 13 (2011) on the right of the child to freedom from all forms of violence, the Committee pointed out that 'an adult's judgment of a child's best interest cannot override the obligation to respect all the child's rights under the Convention'<sup>55</sup> and that persons making decisions have to be aware of the best interest of the child and create conditions to hear his or her opinions.

According to Hammarberg (2008),<sup>56</sup> three types of conflicts of interest can occur: a) when the interests of a child or a group of children are in conflict with the interests of other children, b) when the interests of a child are in conflict with the desires of one or both parents/guardians, and c) when the interests of a child or a group of children are in conflict with social interests (e.g. economic situation in the country).

In the abovenamed example, there are conflicts of interests on four levels: 1) the pupil with disabilities and his class; 2) the pupil with disabilities and the class of pupils attending class teaching (a lower grade); 3) the pupil with disabilities and parents of other pupils; 4) the pupil with disabilities and the inclusive school practice.

The first two levels refer to the first type of conflict according to Hammarberg;<sup>57</sup> the third level belongs to the second type of conflict, in which the child's interests conflict with the parents' interests; and the fourth level belongs to the last type of conflict, in which the best interest of the child is in conflict with inclusive school practice. All the levels are mutually intertwined and should be observed as a whole. In situations in which different interests are in conflict during the assessment and determination of the best interest of the child, it is necessary to compare all factors and reach a solution in the best interest of the child.

The first two levels of conflict of interest present a threat to the best interest of the pupil with physical disabilities because his best interests (remaining on the ground floor) conflict with the interests of lower-grade pupils (relocation to the first floor alongside older pupils), as well as with the interests of his peers (quality of teaching because, for instance, they do not have lessons in practical training classrooms). In such situations, it is necessary to balance various factors and ensure that no children are in an unfavourable position, while paying particular attention

55 Committee on the Rights of the Child, 2011, p. 23.

56 Hammarberg, 2008.

57 Ibid.

to children belonging to vulnerable groups (e.g. children with disabilities, children belonging to national minorities, asylum-seeking children, etc.). Simultaneously, it is necessary to carefully consider the interests of all stakeholders and compare the levels of benefits and harm to reach an appropriate compromise.

Pupils with disabilities have the right to education just as all other pupils of the school, and the school – that is, the system as a whole – is responsible for enabling them to realise that right. In the Republic of Croatia, only a few schools have fully adjusted for children with physical disabilities. However, it would be incorrect to claim that a lack of complete adjustment prevents the realisation of the right to education for children with disabilities. An inclusive environment must be flexible enough to satisfy the needs of various groups of children. In addition to human resources, the successful implementation of inclusion<sup>58</sup> requires the school's material resources. Material resources included the removal of architectural barriers, didactic and methodological equipment, and teaching aids for children with disabilities. Positive examples from practice prove that even with limited material resources, but with appropriate awareness and significant human resources, it is possible to realise quality inclusion. However, this should not be used by the state and the school founders as a cry for not realising their obligations towards children with disabilities and for failing to provide them with the support they need: accessibility to school and all its facilities, adjustment of the teaching process, teaching assistants, and so on.

The headmistress, as the person in charge of managing the school, was faced with a series of dilemmas in the process of making a decision on the continuation of education of the pupil in question and his class at the transition to subject teaching: whose responsibilities are adjustments for the pupil, how to plan and implement those adjustments, who will provide assistance, is it in the best interest of all other pupils, what is to be changed in the school, should parents be included in the decision-making, and how to establish cooperation with dissatisfied parents? Because of the nature of their jobs, headmasters are responsible for a large number of stakeholders: pupils, their parents, the institution they work for, teachers and professors, and professional associates. They are also liable to their founders (cities or counties) and the Ministry of Science and Education. Considering multiple responsibilities can help headmasters find a solution and contemplate available options and possibilities for resolving conflicts.<sup>59</sup> An intentional or unintentional disregard for ethical and professional responsibilities and a breach of children's rights violates their integrity. Understanding the importance of integrity requires headmasters, as decision-makers in their schools, to focus on their own professional behaviour because their behaviour significantly affects the quality of pupils' education. Furthermore, it is not appropriate for them to place

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58 Ainscow, 1999.

59 Drakulić, 2010.

their interests and protect their positions above those of schools and pupils. Self-deception and refusal to view the situation objectively, thereby generating the attitude that there is general responsibility for the case, is contrary to the application of standardised ethical and professional principles of headmasters and educational workers as a whole.

The inclusion of a child in a school, pursuant to the principle of the best interest of the child, has to be based not only on the child's well-being but also on the well-being of all other children at that school. Therefore, inclusion requires specific preconditions. It should not turn into a mere placement of a child with disabilities together with other children without adequate adjustments to their actual needs; the needs of the whole class must also be kept in view.

According to Galonja, the concept of the best interest of the child

enables and directs towards considering the position of each child in a specific context in which the child finds himself or herself, and it imposes creating a clear procedural framework which is to ensure that key factors are taken into consideration during the assessment of age, gender, maturity and experience of the child, presence/lack of care provided by parents and/or guardians, circumstances under which the child develops, as well as circumstances under which protection programmes take place.<sup>60</sup>

The above definition indicates the dynamic nature and broadness of this concept, those being its advantages because 'the concept is adjustable, in relation to time and space, and cultural and socio-economic specifics of various legal systems'.<sup>61</sup> Owing to its flexibility, 'the concept can offer solutions for individual situations and improve knowledge on child development'.<sup>62</sup>

The third level of conflict is the clash between the interests of the pupil with physical disabilities and the parents of his peers from his class, as well as the parents of pupils of the lower grade who needed to move to the first floor. A practical example attests to the fact that the school did not include pupils or parents in its decision-making process. Parents of the peers were recalcitrant because they considered that the quality of teaching for their children would be decreased if they stayed on the ground floor, while the parents of the children of the lower grade considered that their children would not be safe on the first floor alongside 'big pupils'. Both groups of parents expressed reasonable doubts about the safety of their children and the quality of teaching, and the school did not inform them about what it would undertake to reduce their fears and doubts or to eventually dispel those doubts. A possible solution for increasing the safety

60 Galonja, 2015, p. 21.

61 Hassan Beshir, 2012, p. 11.

62 Committee on the Rights of the Child, 2013, p. 9.

of children on the first floor is the introduction of teacher patrols during breaks. The fear of decreased quality of teaching because pupils do not have access to practical training classrooms on the ground floor is entirely unjustified because there is the option of occasionally transporting the child to the first floor of practical training classrooms using a stair climber. In addition, teachers could sometimes, when practicable, bring the needed equipment to the classroom on the ground floor and hold lessons there.

A significant precondition for inclusion was the attitude of the headmaster<sup>63</sup> and teachers.<sup>64</sup> However, the creation of an inclusive environment is affected by the attitudes of the parents of children with disabilities and their peers.<sup>65</sup> Openness in communication when creating activities is important for all participants in the educational process (headmasters, professional assistants, educational workers, pupils, and parents). A collaborative rapport between the school environment and parents is extremely important for a child's development and learning, and it is reflected in the way educational workers include families in the learning process and development of their children, as well as in the life of the class and school. Promoting an effective interaction between families, the school, and the community facilitates the understanding of a common responsibility for education and the future of children.<sup>66</sup>

The fourth level of conflict is the conflict between the best interest of the child with physical disabilities and school practice, that is, the inclusive education of children with disabilities. At this level of conflict, the problem is often the unresolved issue of resources. Costs for ensuring the best interest of the child can often be significant, which is a hindering factor in less developed countries (e.g. expensive health treatments for the child and architectural adjustments in institutions). Although such decisions will be painful and extremely difficult, it is necessary to look for the best possible solution within the set framework and financial possibilities at a country's disposal, while still respecting the principle that the best interests of the child have priority.

The present case shows that the school, in the spirit of an inclusive ideology, enrolled students with physical disabilities. Taking into consideration the type of the pupil's disabilities (physical impairment) and the use of a wheelchair, complete and quality inclusion also requires meeting certain objective prerequisites for such inclusion, such as accessibility of the school. The school, which belongs to the network of primary and secondary schools, dormitories, and educational programs in the city of Zagreb, has met two accessibility criteria. The issue of

63 Larivee and Cook, 1979, cited in Kiš-Glavaš *et al.*, 2003.

64 Lewis and Doorlag, 1987, Mavrin, Cavor and Levandovski, 1991; Levin 1992; Villa and Thousand, 1992; Thousand *et al.*, 1994; Mustău and Viciu, 1996; cited in Kiš-Glavaš *et al.*, 1997.

65 Oberman-Babić, 1996.

66 Livazović, Alispahić and Terović, 2010.



facilities which are not accessible, such as the canteen and the gymnasium, was resolved in the way that the pupil brought food into the classroom or had to exit the school in order to reach the gymnasium, which is not pleasant in rainy and cold weather. Initially, such difficulties were successfully resolved with the compromise between the pupil, his parents, and the school. However, the problem arose when the pupils started attending subject teaching because, in line with the existing practice of the school, the upper grades were located on the first floor. The child had been attending the school for four years, and the management of the school was aware of the upcoming problem, but the only thing they did was rent a stair climber from an association. The extent to which this school promotes an inclusive culture is questionable because, although it shows declarative acceptance of inclusive education, problems arise when it is time to take a particular action or initiative. Instead, the school invites competent institutions to resolve the problem, considering them liable to find solutions. Although the school enrolled pupils, it did not consider the adaptations that would enable quality education in a timely manner. According to the Convention on the Rights of Persons with Disabilities (2007), reasonable adaptation refers to necessary and appropriate modifications and adjustments that do not impose a disproportionate or undue burden on an institution (Article 2). The provision of a stair climber shows that adaptation was considered; however, the solution was not well understood. The decision-making process did not take into consideration the opinions of the parents who had been emphasising the pupil's additional health problems with the kidneys, to which the pupil has to often use sanitary facilities. The school has one sanitary facility on the ground floor. Pupils' need to go to the bathroom results in their absence from lessons and missing certain teaching content on a daily basis. For the school, this was insufficient for making an exception and leaving the class on the ground floor. This solution was the least financially demanding for the school and its founder (the city), especially if it was taken into consideration that, owing to frequent use, the stair climber broke after a very short time and had to be serviced. However, the school did not allocate funds for this purpose in its budget, and the stair climber was soon put out of use.

According to Ivančić and Stančić<sup>67</sup> an inclusion-oriented headmaster cooperates with school professionals and parents in order to be able to comprehend various viewpoints and perspectives and ensure psychological, pedagogical, organisational, didactic and methodological as well as social preconditions for inclusive activities in the school. In finding appropriate modalities of work organisation, the headmaster also cooperates with the local community as well as professional and administrative institutions. Such a headmaster has a positive viewpoint on the involvement of non-governmental organisations, cultural institutions, and local companies in the work of the school and sees

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67 Ivančić and Stančić, 2013.



them as facilitators in the process of removing various barriers.<sup>68</sup> In addition, an inclusion-oriented headmaster undertakes necessary activities for the evaluation of inclusive processes in the school to increase the quality of practice and recognise priorities in their activities.

### *3.2.2. The Best Interest of the Child and Child Participation*

Article 12 of the Convention gives children the right to express their opinions regarding all decisions affecting them. Montgomery<sup>69</sup> describes child participation as the transfer of legal power from adults (most commonly, parents) to their children. To assess and determine the best interest of children, it is necessary to create conditions in which their voices can be heard. However, a child's right to participate in decision-making does not mean that the child can take full responsibility for decision-making. The Convention requires child participation, discussions with children, consultations in the decision-making process, and not authorising the child to make decisions. This responsibility lies with the adults, and children can choose to what extent and in what way they participate in the decision-making process.<sup>70</sup> Creating conditions for child participation consists in including the child in the decision-making process, providing him or her with information, answering all questions, hearing their wishes and needs in a particular situation, understanding their feelings, and providing them with all the necessary support. If the decision maker does not include the child in the process of determining the best interest of the child, a decision will be made that assesses the best interest of the child from the perspective of adults, that is, in line with adults' opinions on what is best for the child.

In the decision-making process in the school in the above case, child participation was completely absent. Unfortunately, this is not an exception because, in Croatia, adults tend to discuss what is best for the child in all areas of the child's life (family, education, health, free time, play, etc.). In the abovenamed case, the school should have included children in the decision-making process. Their opinions were important. Although sometimes their wishes are not considered, it is important to give pupils the opportunity to say what they think about a certain situation and discuss further activities with them. Thus, future problems can be predicted, and pupils' fears can be heard, which can help schools better plan their activities and initiatives. When a decision is made without informing or including children in a timely fashion, without risk assessment, and without the proposal of measures for risk reduction, opposition to the decision can occur. If we want to raise children as autonomous and active persons, as individuals who see themselves as active

68 Ivančić and Stančić, 2013.

69 Montgomery, 1992.

70 Alderson and Montgomery, 1996; Alderson, 2000.

participants in the change process and not as passive victims of changes happening around them, then we need to create such environments. Too often, adults create an environment in which a child is in the position of an object, in which the adult appears as a dominant subject or a subject who knows what is best for the child without consulting the child about it. The children from the school in question did not have the choice of expressing their opinions; instead, they became passive observers who were used by their parents to fight their battles. Moreover, the school did not have adequate mechanisms to conduct educational inclusion for pupils with disabilities. Although raising awareness and education of all stakeholders in this story is a long process, and changing deeply rooted viewpoints and prejudices is sometimes a very difficult mission, it does not mean that attempts to do so should be discarded.

## **4. Conclusions**

All rights as defined by the Convention are equally important, interdependent, interrelated, universal, and inseparable. The best interest of the child is simultaneously included in the rights and principles of the Convention. Parties to the Convention are committed to providing full and efficient realisation of rights determined within the Convention to each child. In relation to the best interest of the child, this means that the countries which are parties to the Convention must always prioritise the best interest of the child in all activities related to children, regardless of whether they are conducted by state, public, private, or civil society organisations.

The presented case reveals inadequate school interventions and inconsistencies that occur within the process of inclusive education which are not in line with the best interest of the child: lack of understanding of adjustments for children with disabilities; inadequate capacities and expertise of school workers; poor communication with parents; insufficient provision of information on school's decisions to parents; lack of information flow between the headmaster and parents; discrimination of the pupil with disabilities; presenting the inclusion as an adjustment of the entire school to one child (distorted image of inclusion); the unsupportive attitude of the headmistress is mirrored in the school workers as well; requiring from 'someone else' (the founder) to resolve the inclusion difficulties; disregard and misinterpretation of the law and other regulations related to inclusive education and child rights; insufficient school initiative in making adjustments and finding a solution for technical difficulties; a lack of contact with other schools that have experience with inclusion, especially those that include children with physical disabilities; passive support to an intolerant attitude towards accepting children with disabilities; negative perception of

inclusion, inclusion as a 'forceful' placing of a child with disabilities in a class; unpreparedness of the school for inclusion; and the failure to include children in the decision-making process in the school.

The principle of the best interest of the child must be incorporated into the decision-making process in individual cases as well as in the process of shaping policies related to children. Facts and information on specific cases should be gathered by educated professionals with the support of a multidisciplinary team, and decisions regarding issues related to children should be resolved within the shortest possible time. The decisions need to be questioned at certain time intervals, and mechanisms for appeals and reviews of decisions relating to children should be established if they have not been conducted in line with the abovementioned principle of the best interest of the child. To realise the successful application of the principle of the best interest of the child in the process of inclusive education for children with disabilities, it is necessary to invest more effort into the education of adults. Such an education would result in the development of practical skills for listening and communicating with children. They would also master the methodology for assessment and determining the best interest of the child and learn about the process of systematic analysis of the consequences of recommended activities, that is, decisions made for a child or a group of children with disabilities.

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