

File No.: C/N 789/2020

Report of the Office of the Commissioner for Administration and  
Protection of Human Rights as

*Independent Mechanism for the Protection, Promotion and Monitoring  
of the UN Convention for the Rights of Persons with Disabilities,*

*Equality Body*

Nicosia, May 21, 2020

## Complaint description

I received a letter by Mr. S.A, lawyer, dated May 20, 2020, which was addressed to the Minister of Education, Culture, Sport and Youth, regarding, *“The reopening of Primary schools on May 21, 2020 - Attendance of Children with Disabilities”*.

With the said letter, a complaint was submitted to my Office, with regards to the overall decisions made by the Ministry of Education, Culture, Sports and Youth (MECSY), on the issue of children with disabilities attending school, following their reopening on May 21, 2020.

Despite the fact that on May 19, 2020, the parents and guardians of children with disabilities, along with all other parents and guardians, received a relevant Guide on the Return of Children to School, following an Announcement dated May 20, 2020, by the competent Minister, they were informed that, for their children, separate conditions and procedures will apply in terms of their return to schools.

The said Announcement by the Ministry of Education, Culture, Sport and Youth (MECSY) stipulated that,

*“Taking into account that the reopening of Primary Schools and Gymnasiums and that the attendance of students in the classrooms is related to the implementation of Health Protocols, in particular with regards to the health safety of children attending the School Special Units, or who have serious health and adjustment problems, which are met by school assistants/escorts, special or enhanced protective measures should be taken before these students return to schools for their studies.*

*The MECSY, following a consultation and guidance from the Ministry of Health, informed that the following procedures will apply,*

*- A special committee will be set up at the MECSY, made up of doctors from the Ministry of Health, which will examine every single case, their special characteristics and the protective health measures that must be put in place. Parents and guardians of children that fall into these categories shall submit a medical evaluation on their health condition by their physician. Based in the data presented, the committee will decide on the possibility of a child attending school, as well as the protective health measures that need to be taken.”*

*- In case it is decided that children who fall in these categories will attend school, according to the Ministry of Health's recommendations, a laboratory test will be performed on children and educators, for the detection of SARS-CoV-2 which causes COVID-19.*

*-The above procedure will also apply for children attending Special Education Schools.*

*- Relevant instructions will be given to the parents, teachers, as well other staff, on the procedures to be followed, as well as announcements regarding the possible reopening of the Special Education Schools.”*

As Mr. S.A. indicated, the abovementioned procedures put in place by the MECSY, are impossible to follow and as a result, children with disabilities are not able to return to school at the same time as the rest of the student body. In addition, with the said Announcement, children with disabilities are subject to discrimination, since, based on what it is required, these children are considered potential carriers of the COVID-19 virus, who must undergo lab testing to return to school and resume their education, which is not the case with other able-bodied children.

Furthermore, Mr. S.A. points out that many children with disabilities cannot undergo the laboratory test for the detection of the virus or other related testing, due to hypersensitivity and other intense sensory issues. In addition, persons who fall within the autism spectrum need to be prepared to go through any process (eg transition to treatment, excursion, travel, etc.), and while they were preparing to return to school, this perspective is now upturned.

Mr. S.A. indicates that, considering the abovementioned actions of the Ministry and after consultation with teachers and therapists involved in special education, it seems that there was no action plan put in place for the return of children with disabilities back to school. He concluded that children with disabilities have been discriminated against and that their rights under the UN Conventions, on the Rights of the Child and on the Rights of Persons with Disabilities, have been violated.

According to publications in the press, a strong dissatisfaction has also been expressed on the same subject by organized bodies for the rights of children with disabilities.

## Legal Framework

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

The basic principle governing the UN Convention on the Rights of Persons with Disabilities is the principle of **non-discrimination**. Based on the convention:

*“Discrimination on the basis of disability” means, “any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of **impairing** or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation”.*

At the same time, Article 24 of the Convention, guarantees the right of persons with disabilities to education, by stipulating that Member States must recognize the right of persons with disabilities to education, while taking any necessary measures in order for persons to exercise this right, without discrimination and on the basis of equal opportunity, while ensuring an inclusive education system at all levels and lifelong learning.

### **The Persons with Disabilities Law (L. 127 (I)/2000) and**

### **The Combating of Racism and Other Discrimination (Commissioner) Law (L. 42(I)/2004)**

In addition to the above, the Persons with Disabilities Law (L. 127 (I)/2000), also guarantees the principle of equality and non-discrimination and in particular, defines that the principle of equal treatment of disabled persons, implies that there will be no discrimination whatsoever against any person on grounds of disability.

According to the said Law, discrimination on grounds of disability means that one person is treated less favourably due to his disability than another person is treated in a comparable situation. One of the rights also protected under Article 4 of the Law, is accessibility to inclusive education according to the persons' needs.

In relation to Article 9C of Law 127(I)/2000, any person who considers himself wronged from a breach of this Law regarding discrimination, may submit a complaint to the Commissioner for Administration who has jurisdiction to examine the complaint in accordance with the Combating of Racial and Certain Other Discrimination (Commissioner) [Law (L. 42(I)/2004].

Based on Article 6 of Law 42(I)/2004, any treatment or behavior, provision, term, criterion or practice which, within the framework of activities in the public/private sector, be specially provided for, prohibited or disallowed by any law or regulations in force for the time being in accordance with their provisions, constitutes **direct or indirect discrimination for reasons of, among others, disability** and it is prohibited by Law. Discrimination may also be prohibited by law within the aforementioned concept, concerning any matter, including the one pertaining to education.

## **Conclusions**

In light of the above legislative provisions and based on my competencies as the Independent Mechanism for the Protection, Promotion and Monitoring of the UN Convention for the Rights of Persons with Disabilities and the Equality Body, I have decided to proceed immediately with this intervention/report to the Ministry of Education, Culture, Sports and Youth, noting the following:

Without ignoring the need for reciprocal protection of both students and teachers and all participants in the effort to reopen schools under the state of emergency caused by the COVID-19 pandemic, I cannot fail to note the violation of the principle of equal treatment and non-discrimination resulting from the Ministry's announcement.

Specifically, the announcement regarding the attendance of children with disabilities during the reopening of schools shows that, under the current conditions and without the submission of any experts' opinion, different terms and procedures apply for students with disabilities in order to gain access to primary and secondary education, compared to what applies to all other children.

The terms and procedures that were put in place and must be fulfilled in order for children to return to school, require time and preparation for an indefinite period of time. By the time the procedures are completed, there might not be any time left for children to return to school, especially given the fact that there are only two weeks

left, for each student, until the end of the school year. The risk of wasted time and the possibility of complete deprivation of education is in itself a discriminatory treatment of children with disabilities.

Furthermore, if the setting up of the committee was deemed necessary on the basis of securing the opinion of experts, this should have taken place long before the issuance of the Announcement for the reopening of schools, as to provide the opportunity for timely preparation, without running the risk of children missing out on their educational time.

Based on the aforementioned legal framework, any less favorable treatment of children with disabilities is also in itself a reason for discrimination, especially when there are additional conditions imposed in terms of returning back to school, which were not justified on the basis of scientific opinion and which in any case, were not just limited for them and their teachers/escorts to be tested for the COVID-19 virus.

Lastly, with regards to the announcement's reference for examining the special characteristics of every child, it is noted that these are already known to the Ministry in advance. If these characteristics do not fall into the vulnerable group criteria, as predetermined for everyone, I must then agree with the complainers that the announcement regards children with disabilities as a vulnerable group in an arbitrary and absolute manner.

Hence, if the procedures set in place, at the time they were announced and in particular, just the day before the reopening of schools, remain the same, it is impossible for these children to return to their schools.

In case the measures announced by the Ministry, are not revoked and reexamined, children with disabilities will be deprived of their right to education. Not only should these children not have any additional burdens to attend school, they should have also been treated in more favorable terms, in order to be in an equal basis with the rest of the student population.

## **Findings - Suggestions**

In light of all of the above, it is clear that there was discriminatory treatment and therefore, a violation of both the state obligations arising from the UN Convention on the Rights of Persons with Disabilities and the Persons with Disabilities Law, in conjunction with the Combating of Racism and Other Discrimination (Commissioner) Law. Not only because no individualized support measures were provided in time in order for children with disabilities to return to school, but also because these children were treated in a less favorable terms compared to other children in a comparable situation. At the same time, they faced additional hurdles that related to all the conditions that had to be fulfilled in order to return to school.

Consequently, I suggest that the Ministry's Announcement dated May 20, 2020, and the requirements it stipulates relating to the return of children with disabilities back to school, be immediately re-examined and that any decisions made must include a more favourable treatment of children with disabilities, must ensure no further delays and provide for the access of all students to education, without any discrimination.

This report is submitted to the Minister of Education, Culture, Sports and Youth, in order to take appropriate action.

Maria Stylianou - Lottides

Commissioner for Administration and Protection of Human Rights (Ombudsman)

**Independent Mechanism for the Protection, Promotion and Monitoring of the UN Convention for the Rights of Persons with Disabilities,**

**Equality Body**