



## European network of legal experts in gender equality and non-discrimination

### NEWS REPORT

<b>Country:</b>	Cyprus
<b>Title:</b>	Report of the Commissioner for children's rights regarding the decision of a public school to lower the grades of a disabled student who had benefited from facilitation measures
<b>Date:</b>	8 June 2017
<b>Expert:</b>	Corina Demetriou
<b><u>Context</u></b>	
<b>Issue at stake:</b>	The Commissioner for children's rights slams the decision of a school to lower the grades of a disabled student who had benefited from facilitation measures so as to be at par with other students who did not benefit from any such measures
<b>Ground of discrimination:</b>	Disability
<b>Source:</b>	Finding of the Commissioner for children's rights, January 2017, file no. G.E.P. 11.17.07.05.217
<b>Field:</b>	Education
<b>Applicable law:</b>	UN Convention on the rights of the child, article 2; CRC Committee (2003), General Comment No.5: General Measures of Implementation of the Convention of the Rights of the Child, para.12

### Content

**Case:** The Commissioner for the rights of the Child ('the Commissioner') received a complaint from the mother of a student with a visual disability ('K') whose grade was reduced by the school so as to be brought at par with another student ('E') who had no disability and therefore received no accommodation measures. By reducing the grades of K, the two students were announced as jointly best graduates of the school. The justification of the teachers for reducing K's grades was that K had benefited from facilitation measures whilst E had not and it would therefore be 'unfair' on E if K had won the title of the best graduate alone. The teachers argued that the reasonable accommodation measures afforded to students with disability are not aimed at offering preferential treatment over other students but only to ensure equality. This position was supported by the Director of Secondary Education of the Ministry of Education whose response to the Commissioner was that the Ministry aims primarily at promoting 'the values and virtues of humility, the recognition of the value of others and the willingness to share credits with our fellow human beings'.

**The Commissioner's decision:** The Commissioner found that the right to non-discrimination, as safeguarded in the Convention on the Rights of the Child and in the EU acquis, does not merely mean 'same treatment'. Citing the 2010 FRA non-discrimination manual,<sup>1</sup> the Commissioner stated that equal opportunities and fair access to

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<sup>1</sup> FRA (2010) Handbook on European non-discrimination law, available at [http://fra.europa.eu/sites/default/files/fra\\_uploads/1510-fra-case-law-handbook\\_en.pdf](http://fra.europa.eu/sites/default/files/fra_uploads/1510-fra-case-law-handbook_en.pdf).

opportunities means that persons in the same situation must receive same treatment and not be subjected to disadvantageous treatment due to a protected characteristic; at the same time, persons in different situations must be subjected to different treatment to the extent that this is necessary in order for them to be able to utilize specific practices and services on an equal basis with other persons. Therefore, discrimination may occur not only as a result of differential treatment of persons in same circumstances but also due to the same treatment of persons in different situations.

The actions of the teachers and of the Ministry of Education gave the impression to K that the accommodation given to him by the school (in this case his exemption from certain classes) had the distorted result of giving him an unfair advantage over other students, which had to be balanced off through the reduction of his grades. In essence, the accommodation which the school granted to him served at the same time as punishment because it was the reason he was penalized through the reduction of his grades. The Commissioner was particularly critical of the position of the Ministry of Education, which essentially suggested that K should be prepared to share the title of the best graduate with E as a matter of humility and charity.

The Commissioner recommended that special attention be paid where children with disabilities are involved and the rights-based approach must replace the charitable approach. The provision of facilities to students because of a disability does not bring injustice to the rest of the students; on the contrary, the measures are granted with the aim of securing equal opportunities in accessing education, so as to enable children with disabilities to effectively respond on an equal basis. Such a treatment would not give a comparable advantage to children with disabilities over other children but would merely enable children with disabilities to start on an equal footing with other children.

**Key points of analysis:** The approach taken by the teachers and by the Ministry of Education appears to be in line with previous official positions on the issue of reasonable accommodation which fail to encompass the wide scope of this right as foreseen in the CRPD. In particular:

- In 2008 the Equality Body criticised the authorities for the inadequacy of accommodation measures granted to disabled applicants taking an entry exam. The examination board at the time granted a blind applicant an extra 30 minutes and then took away 30 minutes from the break; in essence cancelling the advantage of the extra 30 minutes granted.<sup>2</sup>
- In 2006 the Equality Body criticised once again the procedure for granting accommodation facilities to dyslectic students at exams.<sup>3</sup> The criteria foreseen in the relevant legislation on which the special committee relied in order to determine what accommodating measures were to be given were two: that the measures should not give the dyslectic student favourable treatment or advantage over other students; and to preserve the validity and credibility of the exam. Following the Equality Body's intervention, the law was amended to add a new criterion: that the measures should aim at safeguarding the rights of persons with 'special needs', but the other two criteria still remained.<sup>4</sup>

Against this background it is clear that official policy is permeated by the restrictive logic of 'positive measures v. equality', found also in judicial practice of previous decades, even though this was repeatedly challenged by the Equality Body and delegitimised by the ECtHR.<sup>5</sup>

<sup>2</sup> Cyprus, Anti-discrimination Authority (2008), Report ref. A.K.I. 37/2008, 8 October 2008.

<sup>3</sup> Cyprus, Anti-discrimination Authority (2006), Report ref. A.K.I. 24/2006, A.K.I. 27/2006, 31 October 2006.

<sup>4</sup> Cyprus, Law on carrying out Pancyprian exams of 2006 (*Ο περί Διεξαγωγής των Παγκύπριων Εξετάσεων Νόμος του 2006*) N. 22(I)/2006 as amended by Law N 51(I)/2007, article 22A, available at [http://cyllaw.org/nomoi/enop/non-ind/2006\\_1\\_22/index.html](http://cyllaw.org/nomoi/enop/non-ind/2006_1_22/index.html).

<sup>5</sup> ECtHR, Thlimmenos v Greece (2006), Application no. 34369/97 of 6 April 2006, available at <http://wri-irg.org/node/9170>.

The Commissioner's reasoning, which is focused on the rights of children and the impact which such decisions may have on children, essentially adopts the ECtHR approach and takes the rights-based position a step further, beyond access to education, to cover the rewarding of top performance in education, highlighting the need for justice rather than humility and sharing, as suggested by the Ministry. The Commissioner's conclusions as regards the duty to provide reasonable accommodation provide useful insight into the applicability of this concept in other fields, such as employment, where the failure to create a mandatory regime breach of which would amount to discrimination, has recently attracted criticism from the UN Committee on the CRPD.<sup>6</sup>

**Internet link source:**

[www.childcom.org.cy/ccr/ccr.nsf/All/26811A7ED4D65F27C22580C000213A1F/\\$file/11%2017%2007%2005%20217\\_%CE%A0%CF%8C%CF%81%CE%B9%CF%83%CE%BC%CE%B1\\_%CE%BC%CE%B5%CE%AF%CF%89%CF%83%CE%B7%20%CE%B2%CE%B1%CE%B8%CE%BC%CE%BF%CE%BB%CE%BF%CE%B3%CE%AF%CE%B1%CF%82%20%CE%BB%CF%8C%CE%B3%CF%89%20%CE%B1%CE%BD%CE%B1%CF%80%CE%B7%CF%81%CE%AF%CE%B1%CF%82-final\\_to\\_publish.docx](http://www.childcom.org.cy/ccr/ccr.nsf/All/26811A7ED4D65F27C22580C000213A1F/$file/11%2017%2007%2005%20217_%CE%A0%CF%8C%CF%81%CE%B9%CF%83%CE%BC%CE%B1_%CE%BC%CE%B5%CE%AF%CF%89%CF%83%CE%B7%20%CE%B2%CE%B1%CE%B8%CE%BC%CE%BF%CE%BB%CE%BF%CE%B3%CE%AF%CE%B1%CF%82%20%CE%BB%CF%8C%CE%B3%CF%89%20%CE%B1%CE%BD%CE%B1%CF%80%CE%B7%CF%81%CE%AF%CE%B1%CF%82-final_to_publish.docx), last accessed 31/05/2017.

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<sup>6</sup> Concluding observations of the UN Committee on the Rights of Persons with Disabilities on the initial report of Cyprus, 12 April 2017, available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fCYP%2fC%2fO%2f1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fCYP%2fC%2fO%2f1&Lang=en).