



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

FLASH REPORT

Country:	Romania
Title:	National equality body rules in favour of special places for access to school for children with special educational needs
Date:	9 July 2020
Expert:	Iordache, Romanița
<u>Context</u>	
Issue at stake:	In the context of a methodology issued by the Ministry of Education to ensure special places for Roma children to access high school and university, the NCCD analysed the duty to adopt similar measures in relation to children with special educational needs
Grounds of discrimination:	Disability
Field of application:	Education
Source:	National equality body
Applicable law:	Romanian Anti-discrimination Law – the Governmental Ordinance no. 137/2000 Art. 2 alin. 1, Art. 2 alin.4, Art.2 alin.9, Art. 11 alin. 1

Content

Case development: The NGO Asociația Autism Europa Bistrița filed a petition with the National Council for Combating Discrimination (NCCD) against the Ministry of Education in relation to the Methodology for the organisation and the carrying out of the admission exam in high school and professional education for 2006-2007. This Methodology was adopted by the Ministry of Education in 2005 in order to ensure special places for Roma children in access to high schools and universities as a temporary measure meant to provide equal chances to education and renewed and applied subsequently. The claimant showed that pupils with special educational needs have access to adapted curricula, however during the national examinations they are not given the same chances as pupils without disabilities and they have to solve the same examinations just as the pupils who studied based on the standard curricula.

Decision: In its Decision No. 202 from 26 February 2020, the National Council for Combating Discrimination found that the Methodology for the organisation and the carrying out of the admission exam in high school and professional education for 2006-2007 adopted by the Ministry of Education in 2005 and used subsequently as the basis for annual Orders adopted by the Ministry to secure special places for Roma pupils in access to high schools and universities fails to take into consideration the particular needs of children with special educational needs. The NCCD argued that the state has a positive duty to adopt positive measures in relation with particularly vulnerable categories, including children with special educational needs. The NCCD stated that 'the situation of children with special educational needs obliges the state to adopt special measures in order to ensure access to the fundamental right to education. The pupils with special educational needs are confronted with a series of discriminations in access to education, starting from the

kindergarten and up to higher education. Even if the law provides for a series of duties for the state in providing support to children with special educational needs, they accumulate a series of disadvantages while following the educational stages, so that their presence is extremely reduced in high schools or universities. The disadvantages are triggered by the situation of these children, by the lack of resources of the state to fulfil the obligations provided in the law, by the lack of professional training of the teachers and by the biases of the society towards this category of persons. In order to compensate for the disadvantages that are present and accumulated by the children with special educational needs, and to ensure their access to exercising the right to education in high school and university, the Steering Board finds that the state has the duty to establish special places for this category of persons as well, as one of the means to ensure the constitutional principle of substantive equality... As long as the reality produces inequalities, affirmative action is needed so that the gaps which were artificially created can be recuperated, ensuring to these children access to education by establishing special places. The intervention is necessary not only to ensure social justice and social protection, but also in order to valorise, support and develop the potential of children with special educational needs through measures of intervention which are adapted and integrated in order to ensure access to education.'

The NCCD unanimously found that the failure to adopt measures providing for special places for children with special educational needs, similar to the measures adopted for Roma children amount to an infringement of the Governmental Ordinance 137/2000 Art. 2 alin. 1, Art. 2 alin.4, Art.2 alin.9, Art. 11 alin. 1 and as sanction issued a warning for the Ministry of Education recommending that the Ministry adopts measures so that children with special educational needs have access to special places in access to high schools and universities.

Key points of analysis: The NCCD decision reflects the failure of the Ministry of Education to secure effective access to higher education for children with special educational needs either through adapted procedures or through reserving special places. Though they could use an adapted curricula during primary and secondary education, the evaluation exams to be undertaken in grades VIII and XII/XIII and which lead to enrolment in high school/ professional education or in universities were not adapted and the topics were based on the standard curricula, thus barring children with special educational needs to continue their educational trajectory. The NCCD decision responds mostly to the argument of the claimant addressing the positive duty of the state to adopt temporary measures, but also mentions cursorily the topic of adapting the evaluation exams which is a correlated and equally important issue.