



WRITTEN COMMENTS

submitted by

MENTAL DISABILITY ADVOCACY CENTER

Stoian. v. Romania

Application No. 289/14

European Court of Human Rights

Submitted by fax and by hand

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INTRODUCTION

1. These written comments are submitted by the Mental Disability Advocacy Center ('MDAC') pursuant to leave granted by the President of the Court under Rule 44(3), Rules of Court.
2. Founded in 2002, MDAC is an international human rights NGO which is independent of all governments. It has participatory status with the Council of Europe, a special consultative status with the United Nations Economic and Social Council and it has standing to lodge collective complaints under the European Social Charter. It works to advance the human rights of children and adults with actual or perceived intellectual or psycho-social disabilities (mental health disabilities). MDAC operates at the global level as well as regional and domestic levels in Europe and Africa. MDAC has previously served as a third party intervener in a number of cases before the European Court of Human Rights ('the Court'), including *Kędzior v. Poland* (no. 45026/07, judgment of 16 October 2012), *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* (no. 47848/08, judgment of 17 July 2014), *ZH v. Hungary* (no. 28973/11, judgment of 8 November 2012) and *Blokhin v. Russia* (no. 47152/06). It seeks in this intervention to assist the Chamber, in accordance with the Rules of Court and the terms of the Deputy Registrar's letter of 31 October 2014.

I. BACKGROUND INFORMATION: CHILDREN WITH DISABILITIES AND EDUCATION

3. According to the 2011 World Report on Disability one billion people worldwide have a form of disability: that is, 15% of the global population,¹ including 80 to 120 million Europeans.² It is estimated that 150 million of these people are children.³

¹ World Health Organisation and World Bank, *World Report on Disability*, 2011, p. xi; p. 44; p. 261.

² Commissioner for Human Rights, *Issue Paper: Human Rights and Disability: Equal rights for all*, 2008; European Commission, *People with disabilities have equal rights: The European Disability Strategy 2010-2020*, 2010.

4. Children with disabilities arguably form the largest group of readily identifiable children who have been and continue to be persistently excluded from education. The World Bank estimates that of the 115 million children worldwide who are not in school, 30-40 % are children with disabilities.⁴
5. In Europe, around 15 million children have special educational needs. The 2012 expert report drafted for the European Commission shows that in some cases children with disabilities are deprived of educational and employment opportunities altogether. Children with special educational needs who do go to school frequently leave school with few or no qualifications, before moving into specialist training which can, in some cases, impair rather than increase their job prospects. People with disabilities or special educational needs are much more likely to be unemployed or economically inactive, and even those who are relatively successful in the job market often earn less than their non-disabled counterparts, the report states.⁵
6. Discrimination against people with disabilities has been long-term and widespread with a number of significant effects.⁶ Persons with disabilities have been prevented from accessing rights that are freely available to other members of society, particularly in the area of education. Failure to access education, combined with prejudice and rejection, has resulted in economic and social exclusion and marginalisation for children and adults with disabilities.
7. Where services have been provided, they have most commonly been provided in segregated, “special” schools, to a minority of children in urban areas.⁷ The 2012 report shows that there are marked discrepancies between countries with regard to their use of special schools,⁸ even though progress towards greater use of mainstream placements is evident in the majority of developed countries. Inclusive education⁹ should clearly be the goal in education for children with disabilities.¹⁰

³ Committee on the Rights of the Child (CRC), General Comment No. 9, The rights of children with disabilities (Forty-third session, 2006), U.N. Doc. CRC/C/GC/9 (2007), para 1.

⁴ World Bank, *The Education for All: Including Children with Disabilities. Education Notes*, August 2003, available at: <https://openknowledge.worldbank.org/bitstream/handle/10986/10380/266020BRI0REPL1100EdNotesDisability.pdf?sequence=1> (last accessed: 20 November 2014).

⁵ See press release of the European Commission of 10 July 2012, available at http://europa.eu/rapid/press-release_IP-12-761_en.htm (last accessed: 20 November 2014) The report is available at <http://www.nesse.fr/nesse/activities/reports/activities/reports/disability-special-needs-1> (last accessed: 20 November 2014).

⁶ *Kiss v. Hungary*, no. 38832/06, 20 May 2010, para. 42.

⁷ UNESCO, *Towards Inclusive Education for Children with Disabilities*, Guidelines (UNESCO 2009) p. 8, available at <http://www.uis.unesco.org/Library/Documents/disabchild09-en.pdf> (last accessed: 20 November 2014).

⁸ NESSE, Education and disability/special needs. Policies and practices in education, training and employment for students with disabilities and special educational needs in the EU. An independent report prepared for the European Commission by the NESSE network of experts, 2012, p. 18, available at <http://www.nesetweb.eu/sites/default/files/NESSE-disability-special-needs-report-2012.pdf> (last accessed: 20 November 2014).

⁹ The UNESCO *Guidelines for Inclusion: Ensuring Access to Education for All* provides the following definition: “Inclusion is seen as a process of addressing and responding to the diversity of needs of all learners through increasing participation in learning, cultures and communities, and reducing exclusion within and from education. It involves changes and modifications in content, approaches, structures and strategies, with a common vision which covers all children of the appropriate age range

8. Even though data from European countries shows a more pro-inclusive approach, with respect to children with mental disabilities, the study reports that it is common across European countries for teachers to be less willing to include children with severe behavioural or learning difficulties, who continue to be placed in special settings.¹¹
9. The core element of inclusive education is the provision of adequate support. The UN Committee on the Rights of the Child noted in this respect that "(...) *inclusion should not be understood nor practiced as simply integrating children with disabilities into the regular system regardless of their challenges and needs.*"¹² Numerous individualised support measures to achieve inclusiveness can be identified.¹³ Furthermore, according to experts, the involvement of parents of children with special educational needs is highlighted as a vital factor in inclusive schooling,¹⁴ especially in the process of individual planning to map curricular goals, required curricular adaptations, and benchmarks and assessment strategies that correspond to the particular child's learning needs.¹⁵

II. LEGAL PRINCIPLES

A. The right to inclusive education

a) The right to inclusive education at UN level

10. The right to education is guaranteed by Article 26 of the Universal Declaration of Human Rights (UDHR) adopted by the UN in 1948. Under the UDHR, the right to education is a right of all persons. According to Article 26(1) "*everyone has the right to education.*" Educational aims are emphasized in Article 26(2): "*education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms.*" In the 1966 Covenants, the right to education is defined as both a civil and social right: the right to education is framed prohibitively and in terms of liberty in Article 18(4) of the International Covenant on Civil and Political Rights (ICCPR) which provides that States shall not impede the right to education and secures the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions. The right to education as a social right is guaranteed by Article 13(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR).
11. The UN Committee for Economic, Social and Cultural Rights (CESCR Committee) introduced minimum core obligations for the right to education, first in its General Comment No. 3, in which the Committee clarifies that States have a minimum core obligation to ensure the satisfaction of, at the very least, the minimum essential level of

and a conviction that it is the responsibility of the regular system to educate all children. (...) Inclusion is concerned with the identification and removal of barriers." UNESCO, *Guidelines for Inclusion: Ensuring Access to Education for All* (UNESCO 2005), pp. 13 and 15, available at: <http://unesdoc.unesco.org/images/0014/001402/140224e.pdf> (last accessed: 20 November 2014)

¹⁰ CRC, General Comment No. 9 (2006), para. 66

¹¹ NESSE, supra note 8, p. 20.

¹² CRC, General Comment No. 9 (2006), Section D. Inclusive education, para 24.

¹³ OHCHR, *Monitoring the Convention on Rights of Persons with Disabilities*, p. 22., para. 48., available at http://www.ohchr.org/documents/Publications/disabilities_training_17en.pdf (last accessed: 20 November 2014)

¹⁴ NESSE supra note 8, p. 47.

¹⁵ UNESCO, supra note 7, p. 70.

each of the rights in the Covenant, including “*the most basic forms of education*”.¹⁶ In General Comment No. 13 on the right to education, the CESCR Committee elaborated on this concept of a minimum core regarding the right to education.¹⁷ It includes an obligation:

- i) to ensure the right of access to public educational institutions and programmes on a non-discriminatory basis;
- ii) to ensure that education conforms to the objectives set out in Article 13(1);
- iii) to provide primary education for all in accordance with Article 13(2)(a);
- iv) to adopt and implement a national educational strategy which includes provision for secondary, higher and fundamental education; and
- v) to ensure free choice of education without interference from the State or third parties, subject to conformity with “minimum educational standards” (Articles 13(3) and (4)).

12. According to the CESCR Committee, the minimum core obligation includes accessibility of education on a non-discriminatory basis. Reading this in conjunction with the core obligation to provide primary education for all in accordance with Article 13(2), so that “*primary education shall be compulsory and available free to all*”, this plainly includes children with mental disabilities. If a State deprives individuals of this very minimum or essential level of the right to education, it fails, *prima facie*, to discharge its obligations under the Covenant.¹⁸ CESCR General Comment no. 5 on Persons with disabilities explicitly recognises inclusive education under the Covenant, situating it within this framework of obligations.¹⁹
13. Regarding children, the right to education is laid down in Article 29 of the Convention on the Rights of the Child (CRC). Despite the fact that this provision does not make any reference to children with disabilities, the Committee on the Rights of the Child (CRC Committee) has emphasised the inextricably interconnected nature of the Convention’s provisions, in this case Article 29 with Article 2 (non-discrimination) and Article 23 (rights of the children with disabilities).²⁰
14. Article 2 of the CRC prohibits discrimination of any kind and disability is explicitly mentioned as a prohibited ground. According to the CRC Committee, discrimination on the basis of any of the grounds listed in Article 2 of the Convention, whether it is overt or hidden, offends the human dignity of the child and is capable of undermining or even destroying the capacity of the child to benefit from educational opportunities.²¹ While denying a child’s access to educational opportunities is primarily a matter which relates to Article 28 of the Convention, there are many ways in which failure to comply with the principles contained in Article 29 (1) can have a similar effect.

¹⁶ CESCR, General Comment No. 3. The nature of States parties obligations (Art. 2, par.1), U.N. Doc. 14/12/90, para. 10.

¹⁷ CESCR, General Comment No. 13, The right to education (Article 13), U.N. Doc. E/C.12/1999/10, para. 57.

¹⁸ CESCR, General Comment No. 3, The nature of States parties obligations (Art. 2, par.1), U.N. Doc. 14/12/90, para. 10. See also, ESCR, *MDAC v. Bulgaria*, application no. 41/2007, ECSR decision of 3 June 2008, where the Committee found violation of the right to education of children with intellectual disabilities in similar situation.

¹⁹ CESCR, General Comment No. 5. Persons with disabilities, U.N. Doc. 09/12/94, para. 35.

²⁰ CRC, General Comment No. 1, The Aims of Education, 17 April 2001 (HRI/GEN/1/Rev.5), para. 6.

²¹ *Ibid*, para. 10.

15. The meaning of discrimination is fleshed out by Article 23(3) which requires State Parties to recognise *“the special needs of a disabled child ... to ensure that the disabled child has effective access to and receives education”*. Article 23(1) recognizes that a *“mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community”*, and that assistance should be designed *“in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development”*. The wording of Article 23 implicitly imposes an obligation to provide inclusive education.²² In 2007, the CRC Committee emphasised the obligation to provide inclusive education in General Comment no. 9.
16. After the CRC was adopted in 1990, the World Conference on Education for All was organized in Jomtien. Delegates from 155 States adopted the World Declaration on Education for All, with a general aim of *“Education for All”*. These three words became a motto and demonstrated further movement towards inclusive education. The Vienna Declaration and Program of Action – adopted during the World Conference on Human Rights in Vienna in 1993 – recognised that *“all human rights and fundamental freedoms are universal and thus unreservedly include persons with disabilities. The place of disabled persons is everywhere. Persons with disabilities should be guaranteed equal opportunity through the elimination of all socially determined barriers, be they physical, financial, social or psychological, which exclude or restrict full participation in society”*.²³
17. Several months later the UN General Assembly adopted the Standard Rules on the Equalization of Opportunities for Persons with Disabilities.²⁴ Rule no. 6 of the Standard Rules concern education. According to this Rule, States should recognize the *“principle of equal primary, secondary and tertiary educational opportunities for children, youth and adults with disabilities, in integrated settings”*. According to this rule, *“in situations where the general school system does not yet adequately meet the needs of all persons with disabilities, special education may be considered”*, however *“it should be aimed at preparing students for education in the general school system”*. This approach was reformulated in the well-known Salamanca Statement and Framework of Action on Special Needs Education of 1994.²⁵ According to the Statement, the delegates of the World Conference on Special Needs Education were *“recognizing the necessity and urgency of providing education for children, youth and adults with special educational needs within the regular education system”*.²⁶ The Framework for Action formulates its guiding principle so *“schools should accommodate all children regardless of their physical, intellectual, social, emotional, linguistic or other conditions”*.²⁷ The Framework further emphasises that *“schools have to find ways of successfully educating all children, including those who have serious disadvantages and disabilities”*.²⁸

²² See, Baser, L. A., *Realizing the Right to Education for Children with Disabilities*, The Journal of Gender, Race & Justice, 2004-2005, s. 537.

²³ Vienna Declaration and Programme of Action. World Conference on Human Rights. Vienna, 14-25 June 1993. A/CONF.157/29, 12 July 1993, paras. 63-64.

²⁴ UN General Assembly, The Standard Rules on the Equalization of Opportunities for Persons with Disabilities, UN GA res. no. 48/96, 20 December 1993.

²⁵ UNESCO, Salamanca Statement on Principles, Policy and Practice in Special Needs Education. Statement and Framework, available at http://www.unesco.org/education/pdf/SALAMA_E.PDF (last accessed: 20 November 2014).

²⁶ Ibid, para. 1.

²⁷ Framework for Action on Special Needs Education, para. 3.

²⁸ Ibid.

18. In 2006, the UN General Assembly adopted the Convention on the Rights of Persons with Disabilities (CRPD). The CRPD recognizes the right to inclusive education as a human right under Article 24, headlined "Education". Under Article 24(1), *"with a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels"*. Under Article 24(2)(a) State Parties have to *"ensure that persons with disabilities are not excluded from the general education system on the basis of disability"*, and under Article 24(2)(b) State Parties have to further guarantee that *"persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live"*. The CRPD gave a legally binding status to the concept of "inclusive education systems", and recognised that they were the only means to ensure the right to education to all students, including persons with disabilities, without discrimination and on equal terms with others. In other words, the CRPD underscored that the right to education is in fact the right to inclusive education.²⁹

b) The right to inclusive education on the Council of Europe level

19. The right to education is guaranteed by the European Convention on Human Rights and Fundamental Freedoms (ECHR) under Article 2 Protocol 1. The right to education is formulated as a negative right, so *"no person shall be denied the right to education"*. The second sentence of Article 2 Protocol 1 of the Convention highlights the role of the parents and their liberty to choose the education of their children. The European Court of Human Rights interprets the right to education in respect of both negative and positive State obligations,³⁰ reading both sentences of Article 2 Protocol 1 in conjunction with each other and interlinked with other provisions, especially Articles 8, 9, 10 and 14.

20. The 1996 Revised European Social Charter is also clear about the right to inclusive education. Under Article 15(1) State Parties are obliged to take *"the necessary measures to provide persons with disabilities with (...) education (...) in the framework of general schemes (...)"*. In 2006 the Committee of Ministers adopted the Council of Europe Disability Action Plan 2006-2015 which reaffirmed the universality, indivisibility and interdependence of all human rights and fundamental freedoms and the need for people with disabilities to be guaranteed their full enjoyment without any discrimination, with regard to the ECHR and the Revised Social Charter.³¹ One of the objectives of the Action Plan was to *"ensure that disabled people have the opportunity to seek a place in mainstream education by encouraging relevant authorities to develop educational provision to meet the needs of their disabled population"*.³²

²⁹ OHCHR, Thematic study on the right of persons with disabilities to education, UN Doc. A/HRC/25/29 Para.6. available at <http://www.ohchr.org/EN/Issues/Disability/Pages/ThematicStudies.aspx> (last accessed: 20 November 2014).

³⁰ *Belgian linguistic case*, Applications no. 1474/62; 1677/62; 1691/62; 1769/63; 1994/63; 2126/64, decision of 23 June 1968, B, para. 3.

³¹ CoE Committee of Ministers, Council of Europe Action Plan to promote the rights and full participation of people with disabilities in society: improving the quality of life of people with disabilities in Europe 2006-2015, Recommendation no. Rec (2006)5, 5 April 2006, preamble.

³² *Ibid*, para. 3.4.1(ii).

21. In its recent Recommendation on ensuring full inclusion of children and young persons with disabilities into society,³³ the Committee of Ministers explicitly recognised the right to inclusive education differentiating it from integration and recommended that *“Children and young persons with disabilities should be able to fully enjoy fundamental rights and freedoms on an equal basis with their peers from birth”* and that *„Denial of reasonable accommodation should be considered and treated as discrimination against persons with disabilities”*.³⁴

c) The right to inclusive education in the European Union

22. Education of children with disabilities at the EU level was first reflected in a European Council Resolution from May 1990 concerning the integration of children and young people with disabilities into ordinary systems of education.³⁵ According to paragraph 1 of the Resolution, Member States have agreed to *“intensify, where necessary, their efforts to integrate or encourage integration of pupils and students with disabilities, in all appropriate cases, into the ordinary education system”*.

23. The right to education is also recognized in Article 14 of the Charter of Fundamental Rights of the European Union (the Charter). It can be found under Chapter II, “Freedoms”, and has been positively formulated, so *“everyone has the right to education and to have access to vocational and continuing training”*. The Charter recognises the rights of persons with disabilities in Article 26, under Chapter III, “Equality”, heading “Integration of persons with disabilities”. According to Article 26, the EU *“recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community”*. Inclusive education can definitely be considered as such a measure, despite the use of the term “integration” instead of “inclusion”.

d) The right to education means the right to inclusive education

24. In light of these binding international human rights documents and according to the conclusion of the UN Office of the High Commissioner for Human Rights (OHCHR) that the right to education should be recognised as encompassing inclusive education, it is clear that there is an international acknowledgement that inclusive education is *“the most appropriate modality for States to guarantee universality and non-discrimination in the right to education”*.³⁶ Referring to the CRPD, the report of the OHCHR goes on to state that *“(…) consequently, the right to education is a right to inclusive education.”*³⁷

B. The positive obligation of a right to inclusive education

25. The right to education encompasses a positive obligation on the State to take action to prevent or remove discriminatory practices that hamper or annul the availability of

³³ CoE Committee of Ministers, Recommendation to Member States on ensuring full inclusion of children and young persons with disabilities into society, Recommendation CM/Rec(2013)2. 16 October 2013.

³⁴ Ibid, para 15 (a) and (b).

³⁵ Resolution of the Council and the Ministers for Education meeting with the Council of 31 May 1990 concerning integration of children and young people with disabilities into ordinary systems of education (OJ C 162, 03.07.1990).

³⁶ Human Rights Council, Thematic study on the right of persons with disabilities to education, Report of the Office of the United Nations High Commissioner for Human Rights, A/HRC/25/29, para 3

³⁷ Ibid.

inclusive education. In *Horvath and Kiss v. Hungary*, the European Court of Human Rights emphasised the positive obligation of the State to “undo a history of racial segregation in special schools”³⁸ and “[I]n light of the recognised bias in past placement procedures” the Court says “that the State has specific positive obligations to avoid the perpetuation of past discrimination or discriminative practices disguised in allegedly neutral tests.”³⁹

26. In order to undo similar past discriminatory practices that have marginalised children with disabilities, it is necessary to provide reasonable accommodation, firstly on the general level ensuring that the national educational framework does not perpetuate discriminatory practices and secondly, on the individual level, by providing individualised support and a supportive schooling environment in order to ensure that the right to education in inclusive settings is both available and feasible.

C. The requirement of reasonable accommodation in the education context: *Article 14 of the ECHR in conjunction with Article 2 of Protocol No. 1*

27. The European Court has recognised that the Convention and its Protocols are a living instrument and should be interpreted in light of present-day conditions,⁴⁰ which means also in light of the prohibition of discrimination under the CRPD.⁴¹ The Court also acknowledged that there is a European and worldwide consensus on the need to protect people with disabilities from discriminatory treatment⁴² - by the recognition and application of the reasonable accommodation principle under Article 14 of the European Convention.

28. The principle of non-discrimination in conjunction with the right to inclusive education means that education must be accessible to *all*, especially to the most vulnerable groups.⁴³ The enjoyment of rights and freedoms on an equal footing, however, does not mean identical treatment in every instance, “equal treatment” is not equivalent to “identical treatment”.⁴⁴

29. The CRPD defines discrimination on the basis of disability in Article 2 under “Definitions”. Discrimination “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”.

³⁸ *Horváth and Kiss v Hungary*, application no. 11146/11, judgment of 29 January 2013, para. 127.

³⁹ *Ibid*, para. 116.

⁴⁰ See *Marckx v. Belgium*, 13 June 1979, § 41, Series A no. 31, and many subsequent cases, such as *Vo v. France* [GC], no 53924/00, § 82, ECHR 2004-VIII, and *Emonet and Others v. Switzerland*, Application no. 39051/03, § 66, 13 December 2007

⁴¹ *Glor v Switzerland*, Application no. 13444/04, 6 November 2009

⁴² *Ibid*, para. 53.

⁴³ CESCR, General Comment No. 13, para. 6.

⁴⁴ HRC, General Comment No. 18, Non-discrimination, 10.11.1989, para. 8; The Equal Rights Trust, Declaration of Principles on Equality, 2008, para. 2. Available at <http://www.equalrightstrust.org/ertdocumentbank/Pages%20from%20Declaration%20perfect%20principle.pdf> (last accessed: 20 November 2014)

30. Courts have already addressed the question of discrimination in relation to access to education in cases of race segregation in the USA,⁴⁵ Roma segregation in special schools in countries of Central and Southern Europe,⁴⁶ and children residing in the territory of the State without legal status.⁴⁷ Regarding legal tests, the European Court has established that discrimination occurs when people in relevantly similar situations are treated differently without an objective and reasonable justification.⁴⁸ However, this does not prohibit treating certain groups differently in order to correct “factual inequalities” between them.⁴⁹ If the State recognises that if the State fails to afford different treatment to overcome such inequalities or fails to attempt to correct inequality through different treatment, this may in itself give rise to a breach of Article 14 of the European Convention.⁵⁰
31. Further it has also been established by the European Court of Human Rights that, in certain circumstances, the protection of people on the basis of disability may require reasonable accommodations to be made,⁵¹ which means that States are required to actively take individualised steps. Failure to provide alternatives or to adapt to the individual’s circumstances and needs has resulted in findings of violations of the rights of persons with disabilities, in other words violations of reasonable accommodation⁵² and consequently discrimination against persons with disabilities.

Conclusion

32. It is widely recognised under international law that the right to education is a right to inclusive education. This right will frequently necessitate reasonable accommodations to ensure those with disabilities are afforded effective and inclusive participation in the education system on a basis of equality and non-discrimination. This will often require both individualised and structural accommodations.

⁴⁵ *Brown v. Board of Education*, 347 US 483 (1954). Case law cited according to Coomans, F. Justiciability of the right to education, *Erasmus Law Review*, Vol. 2, Issue 04, 2009, pp. 434-437.

⁴⁶ ECtHR Grand Chamber decisions: *D.H. v. the Czech Republic*, application no. 57325/00, decision of 13 November 2007; *Orsus v. Croatia*, application no. 15766/03, decision of 16 March 2010.

⁴⁷ *Plyler v. Doe*, 457 US 202 (1982), II A; *Yean and Bosico v. The Dominican Republic*, decision of 8 September 2005, C, no. 130.

⁴⁸ *Belgian Linguistics case*, para. 10; *Willis v. UK*, application No. 36042/97, para. 48, ECHR 2002-IV; and *Okpiz v. Germany*, application No. 59140/00, para. 33, 25 October 2005 among many others.

⁴⁹ *Thlimmenos v. Greece*, [GC], application No. 34369/97, ECHR 2000-IV, para. 44

⁵⁰ *Belgian Linguistics case*; *Thlimmenos v. Greece*, para 44; *Stec and Others v. the United Kingdom* [GC], Application No. 65731/01, para. 51, ECHR 2006-VI; and *Horváth and Kiss v. Hungary*, Application No. 11146/11, para. 101.

⁵¹ *Glor v Switzerland*, application no. 13444/04, 6 November 2009.

⁵² In this respect, jurisprudence is very well developed in context of detention. See especially *Z.H. v. Hungary*, application no. 28973/11, judgment of 8 November 2012 and *Semikhvostov v Russia*, application no. 2689/12, judgment of 6 February 2014.