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**Written Comments on Draft General Comment no. 4**

**on the right to inclusive education, article 24 of**

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

**submitted to**

**the UN Committee on the Rights of Persons with Disabilities**

xx January 2016

**Introduction**

**1.** The National Federation of Disabled Persons’ Associations (hereinafter: MEOSZ), established by persons with physical disability in 1981, is an independent, non-profit, non-governmental umbrella organisation. MEOSZ represents 90 member associations made up of 850 local groups, and 190.000 individual members from all over Hungary. The overall goal of MEOSZ is to achieve equal opportunities and full participation in the society for all persons with physical disability living in Hungary by representing, protecting and promoting their interests and advocating for their rights.

**2.** MEOSZ welcomes the Draft General Comment no. 4 on the right to inclusive education, article 24 of the UN Convention on the Rights of Persons with Disabilities (hereinafter: CRPD) and applauds the work of the UN Committee on the Rights of Persons with Disabilities (hereinafter: Committee) in formulating an effective measure to assist the interpretation and promotion of the right of persons with disabilities to inclusive education.

**3.** In order to be able to bring the voices of Hungarian persons with physical disabilities to the Committee, MEOSZ translated the Draft General Comment into Hungarian, [published it on its website](http://meosz.hu/doc/UN_DraftGC_Education_MAGYARUL%2021205.doc) and [launched a call for comments](http://www.meosz.hu/new_index_0v_hirek_one.php?mcs=meoszvezer&rec_azonosit=d_meoszvezer_hirek_273) to all its member associations and individual members. The following written comments strongly rely on the observations and suggestions coming from Hungarian persons with physical disabilities and their organisations.

**Observations and Suggestions**

**4.** Paragraph 5 of the Draft General Comment identifies a non-exhaustive list of barriers which keep persons with disabilities out of inclusive education in disproportionately large numbers. According to our experiences, another relevant obstacle is when parents overprotect their children with disabilities and want them to attend to special school. Parents consider segregated education as a protective environment which can prevent abuse, bullying and ill-treatment of and violence against students with disabilities. States simply rely on this position and may say that “we do not want to interfere with family life; eventually, deciding on schooling is the choice of the parents”. As for MEOSZ, these arguments of parents and States are widespread and shall be explicitly addressed in the General Comment.

*Proposed text to be added to paragraph 5:*

Barriers which keep persons with disabilities out of education in disproportionately large numbers can be attributed to multiple factors, including:

**Parents often overprotect their children with disabilities and want them to attend to special school. Parents tend to consider segregated education as a protective environment which can prevent abuse, bullying and ill-treatment of and violence against students with disabilities. States tend to simply rely on this position and may say that they do not want to interfere with family life and deciding on schooling is the choice of the parents. These arguments of parents and States parties support the segregation of persons with disabilities which cannot be accepted in an inclusive education system.**

**5.** Concerning paragraph 5 of the Draft General Comment, another barrier that keeps persons with disabilities out of inclusive education is the label of “special educational needs” which lead to lowered expectations towards persons with disabilities.[[1]](#footnote-1) Although the concept of “students with special educational needs” is still widespread and based on the medical model of disability, the Draft General Comment is silent on this phenomenon. According to MEOSZ, society often looks at students with disabilities as “abnormal learners” who have special or extra needs, however we are convinced that in the framework of inclusive education all needs are human and ‘normal’ and the way these needs are met shall be special. Moreover, high expectations shall be established for all students including for students with disabilities. This means, inter alia, that every student feels that they attend a school in which the highest achievements are possible; all students are encouraged to have high aspirations about their learning; staff should avoid viewing students as having a fixed ability based on their current achievements.[[2]](#footnote-2)

*Proposed text to be added to paragraph 5:*

Barriers which keep persons with disabilities out of education in disproportionately large numbers can be attributed to multiple factors, including:

**The label of “special educational needs” which lead to lowered expectations towards persons with disabilities.** **Society often looks at students with disabilities as “abnormal learners” who have special or extra needs,** **however in the framework of inclusive education all needs are human and “normal” and the way these needs are met shall be special. Moreover, high expectations shall be established for all students, including for students with disabilities, which means, inter alia, that every student is encouraged to have high aspirations about their learning, and staff should avoid viewing students as having a fixed ability based on their current achievements.[[3]](#footnote-3)**

**6.** Paragraph 12 of the Draft General Comment lists the core features of inclusive education. In our view, these features focus only on the implementation and monitoring phases of the process aiming to achieve inclusive education and do not concentrate on the planning phase. MEOSZ would welcome if core features of inclusive education could include another element addressing this deficiency.

*Proposed text to be added to paragraph 12:*

**Planning: legislation, policies, other decision-making processes and programmes concerning inclusive education must be planned in accordance with the principle of 'nothing about us without us', preambulatory Paragraph (o) and Article 4(3) of the CRPD. This requires States Parties to closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organisations.**

**7.** MEOSZ is of the opinion that paragraph 12(a) and (b) of the Draft General Comment shall be more specific in line with the following proposals.

*Proposed text to be added to paragraph 12(a):*

(…) and any interface with the local community or wider public. **Moreover, educational environment should be understood in a broad sense and thus, technical staff should also have positive and inclusive attitudes towards persons with disabilities.**

*Proposed text to be added to paragraph 12(b):*

(…) recognition is given to the capacity of every child or adult to learn**,** regardless of the nature or level of any impairment. **At the same time, high expectations, which are mentioned in paragraph 5, shall be established for all students including for students with disabilities.** Accordingly, inclusive education offers flexible curricula (…) it places the obligation on the education system to provide a personalized educational response, rather than expecting the student to fit the system. **Besides, in line with Article 9 of the CRPD, the ‘whole person approach’ includes the identification and elimination of obstacles and barriers to accessibility to schools in order to enable persons with disabilities to participate in an inclusive education system.**

**8.** Paragraph 20 of the Draft General Comment states that

“Availability - functioning educational institutions and programmes must be available in sufficient quantity within the jurisdiction of the State Party. The particular requirements to render them *functional for persons with disabilities* will depend on the developmental context in which they operate (…).”

The wording of paragraph 20 of the Draft General Comment is similar to paragraph 6 (a) of the General Comment no. 13 on the right to education issued by the Committee on Economic, Social and Cultural Rights (CESCR ). However, the CESCR General Comment says that *functioning* of educational institutions and programmes depends upon numerous factors, including the developmental context within which they operate. Thus, taking the Draft General Comment and the CESCR General Comment into consideration, a situation might be imagined in which the developmental context renders educational institutions and programmes functional for persons without disabilities but fails to render them functional for persons with disabilities. MEOSZ believes that this kind of situation should not be supported by the Committee’s General Comment on the right to inclusive education.

*Proposed amended text to paragraph 20:*

Availability - functioning educational institutions and programmes must be available **for persons with disabilities on an equal basis with others** in sufficient quantity within the jurisdiction of the State Party. **What they require to function depends upon numerous factors, including the developmental context within which they operate.** ~~The particular requirements to render them functional for persons with disabilities will depend on the developmental context in which they operate~~ ~~but will include, for example, a requirement to have accurate data on persons with disabilities, in order to guarantee the necessary number of available educational places, and teaching staff at all levels.~~

**9.** We welcome the Committee’s approach to refer to concrete examples when explains certain aspects of inclusive education. These examples will definitely facilitate the meaningful implementation of the right to inclusive education. We want to highlight particularly that the example used in paragraph 29 of the Draft General Comment, according to which reasonable accommodations may include changing the location of a class, is very important for MEOSZ because we had a case recently in which a person with physical disability was denied the accommodation of moving the classroom from the inaccessible upstairs to the accessible one downstairs. MEOSZ would welcome one more example here as indicated below.

*Proposed amended text to paragraph 29:*

(…) Accommodations may include changing the location of a class, **providing students with personal assistants**, providing different forms of in-class communication (…)

**10.** Paragraph 35 of the Draft General Comment addresses the importance of employing teachers with the necessary skills to teach in inclusive education environments. MEOSZ would welcome an explicit reference to the human rights model of disability when it comes to teacher training.

*Proposed amended text to paragraph 35:*

(…) States parties need to invest in the inclusion of **human rights model of** disability in initial teacher training in order that all teachers acquire the commitment, skills and competence necessary to work in inclusive environments with students who have a diverse range of abilities (…).

**11.** Paragraph 38 of the Draft General Comment mentions availability, accessibility, acceptability, adaptability as the essential features of education. Although “quality” is listed in Article 24(2)(b) of the CRPD and in paragraph 26 of the Draft General Comment as an important feature of education, it is not mentioned under paragraph 38.

*Proposed amended text to paragraph 38:*

The right to inclusive education imposes obligations on States parties to respect, protect and fulfil each of the essential features of education: availability, accessibility, acceptability, adaptability **and quality** (…).

**12.** Paragraph 38 of the Draft General Comment states that measures that enable and assist persons with disabilities to enjoy the right to education, including accessible schools, fall under “affirmative action”. We would like to point out that neither the CRPD, nor the Draft General Comment defines the meaning of affirmative action. In his 2002 report on the concept and practice of affirmative action, requested by the Sub-Commission on the Promotion and Protection of Human Rights, Special Rapporteur Marc Bossuyt defines “affirmative action” as consisting in “a coherent packet of measures, of a temporary character, aimed specifically at correcting the position of members of a target group in one or more aspects of their social life, in order to obtain effective equality.”[[4]](#footnote-4)

MEOSZ would like to point out that “the concept of affirmative action is generally referred to in international law as ‘special measures’.”[[5]](#footnote-5) The CRPD uses the term “specific measures” in its Article 5(4); however, during the negotiations of the CRPD several terms were coined to be used instead of “specific measures”, such as “special measures”, “positive measures”, “measures of affirmative action”, “positive discrimination” and “positive action”.[[6]](#footnote-6) Either of these terms is used, affirmative action does not have any obligatory nature.[[7]](#footnote-7)

Based on the above thoughts, MEOSZ’s standpoint is that affirmative action measures/specific measures are necessary but not sufficient steps in order for States parties to meet their obligations regarding fulfilling each of the essential features of education: availability, accessibility, acceptability, adaptability. States’ obligations go much beyond than taking affirmative actions and ensuring that schools are accessible does not fall under affirmative actions.

*Proposed amended text to paragraph 38:*

(…) The obligation to *fulfil* requires States partiesto take ~~affirmative action~~ **all appropriate** measures that enable and assist persons with disabilities to enjoy the right to education, for example, that schools are accessible and that education systems are adapted ~~appropriately~~ **properly** with the necessary resources and services provided. **Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities in the field of education are also welcomed and shall not be considered discrimination in line with Article 5(4) of the CRPD.**

**13.** Paragraph 50 of the Draft General Comment highlights the links between the right to inclusive education and (1) Article 16 on freedom from exploitation, violence and abuse and (2) Article 15 on freedom from torture or cruel, inhuman or degrading treatment or punishment. While Article 16 is explicitly mentioned, Article 15 is not spelled out. MEOSZ would like to emphasise the importance of explicit mention of Article 15 of the CRPD.

*Proposed amended text to paragraph 50:*

(…) States parties must prohibit all forms of corporal punishment, and cruel, inhuman and degrading treatment in all settings, including schools, and ensure effective sanctions against perpetrators. **This is in line with Article 15 which claims that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.** ~~It~~ **The Committee** also encourages (…).

**14.** Chapter 4 of the Draft General Comment addresses the relation of the right to inclusive education with other provisions of the CRPD; however, the link between Articles 22 (Respect for privacy) and 24 of the Convention is not mentioned in the Draft General Comment. A recent Hungarian research pointed out that children with disabilities studying in special schools do not have enough time for intimate discussions due to constant supervision of adults. In special schools for “children with a higher degree of physical disability” educators spend the whole day together with the students, therefor there is very little time for uncontrolled interactions between children, for example, adolescents do not have opportunity to share their “secrets of love” with each other.[[8]](#footnote-8) MEOSZ would welcome if the General Comment could address this particular topic.

*Proposed text to be added to chapter 4:*

**Article 22 lays down, inter alia, that no person with disabilities shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence or other types of communication. The Committee underlines that attitudes of teachers and educators towards students with disabilities shall respect the right to privacy of the person concerned. It means, for example, that support coming from teachers and educators, on the one hand, shall always be proportional and tailored to the person’s circumstances, but on the other hand must not amount to constant supervision of students.**

**15.** Paragraph 56 of the Draft General Comment addresses the link between Articles 29 (Participation in political and public life) and Article 24 of the CRPD and almost literally repeats Article 29(b). MEOSZ thinks that a mere repetition of the text of the CRPD in a general comment is not useful for States parties. We do think however, that public affairs include formation of and participation in student organisations such as student self-governments, students' union, guild of students etc. MEOSZ believes that States parties shall promote actively an environment in which persons with disabilities can form, join and effectively and fully participate in such student organisations.

*Proposed text to be added to paragraph 56:*

The opportunity for persons with disabilities (…) forming and joining organisations of persons with disabilities to represent persons with disabilities at international, national, regional and local levels. **The Committee draws the attention of States parties to the fact that public affairs include formation of and participation in student organisations such as student self-governments, students' union, guild of students etc. States parties shall promote actively an environment in which persons with disabilities can form, join and effectively and fully participate in such student organisations. This approach is in line with the principle of 'nothing about us without us'.**

**16.** Paragraph 63(d) of the Draft General Comment highlights that key elements for inclusive education include “a requirement for all new schools to be designed and built to acceptable standards of accessibility, together with a time frame for adaptation of existing schools.” MEOSZ thinks that paragraph 21 of the Draft General Comment gives a useful definition of Universal Design and we believe that paragraph 63(d) would be more appropriate if it referred to the notion of Universal Design.

*Proposed amended text to paragraph 63(d):*

A requirement for all new schools to be designed and built **by using Universal Design** ~~to acceptable standards of accessibility~~, together with a time frame for adaptation of existing schools.

1. BOOTH, Tony & AINSCOW, Mel: Index for Inclusion – Developing Learning and Participation in Schools. Centre for Studies on Inclusive Education, Bristol, 2002. 4-5. [↑](#footnote-ref-1)
2. Ibid., 49. [↑](#footnote-ref-2)
3. Ibid. [↑](#footnote-ref-3)
4. The concept and practice of affirmative action. Final report submitted by Mr. Marc Bossuyt, Special Rapporteur, in accordance with Resolution 1998/5 of the Sub-Commission on the Promotion and Protection of Human Rights, E/CN.4/Sub.2/2002/21, 17 June 2002. para 6. [↑](#footnote-ref-4)
5. Ibid., para 40. [↑](#footnote-ref-5)
6. See: Background Documents to Article 5 - Equality and non-discrimination. [↑](#footnote-ref-6)
7. CRAVEN, Matthew: *The International Covenant on Economic, Social and Cultural Rights, a perspective on its development*. Clarendon Press, Oxford, 1995. 186. [↑](#footnote-ref-7)
8. CSUKA, Viktória – NÁDASDI, Zsófia – KELEMEN, Anna: Cerebrális parézissel élõ gyermekek szorongásának és viselkedésének felmérése integrált és speciális iskolai környezetben (Anxiety and Conduct Disorders in Integrated and Segregated Environment of Children with Cerebral Palsy). *Gyógypedagógiai Szemle*, 42(1): 2014, 43-44. [↑](#footnote-ref-8)