

Iwona Wrońska

University of Białystok

wronska@uwb.edu.pl

ORCID ID: <https://orcid.org/0000-0002-8945-3545>

Children with Disabilities in the Committee Ministers of the Council of Europe's Soft Law

Abstract: The rights and freedoms of disabled children have for a long time been a very important subject for the international protection. The Council of Europe actively participates in this process creating a legal standard to respect the rights of this special social group. A very important contribution is assigned to the Committee of Ministers of the Council of Europe, which, as a statutory body, issued a recommendation for member states according to which states should create legal protection for disabled children. The subject of the following article is to analyse legislative acts. Although they are the acts of the so called soft law, they play an important role in creating the legal standard for the rights and freedoms of disabled children. The role of these documents is a lot bigger if you consider the fact that there is nowadays no treaty that pays attention to the issue of protection of disabled children and discusses these issues in any great detail. Therefore, recommendations detail international legal regulations, i.e. the Convention on the children's rights or the Convention on the rights of disabled people referring to the protection of the rights of disabled children only to a minor extent. The analysis included three recommendations of the Committee of Ministers, which focused on the subject of disabled children in the following areas: their integration in social life, deinstitutionalisation, education and integration of children with autism spectrum disorders.

Key words: disability, disabled children, social integration, deinstitutionalisation

The notion of disability has been changing throughout history. It was largely dependent on historical, socio-cultural, and geographical factors as well as knowledge of society and the values that dominate in it. The disabled, despite their constant presence in societies, have often been considered outsiders¹. As sick individuals, they were often stigmatized and isolated from society as in ancient Inca, or literally physically suppressed as in ancient Sparta. More recent times put a gloomy shadow of

1 G. Borowski, Sposoby wspierania osób niepełnosprawnych na przestrzeni dziejów – wybrane przykłady, „Niepełnosprawność – zagadnienia, problemy, rozwiązania”, 2012, no. IV (5)/99, p. 2; B. Seyda, Dzieje medycyny w zarysie, Warszawa 1973, p. 26.

the Second World War and the criminal activity of Nazi Germany on whose territory (and the territory of the occupied countries) there was a systematic extermination of the population, including many people with physical or mental disabilities.

Very special groups of people with disabilities include children who for many years, and even until recently, have been treated as “the accident”, social “margin” without the opportunity for normal education, therapy or socialisation. Children with physical and mental defects “were given” to closed institutions, health centers or private care centers. With the post-war development of human rights law, both in the area of national law systems and the international law systems, children with disabilities were entitled to legal protection as a group especially vulnerable to discrimination due to their physical and mental deficits². In Europe, in the system of the international human rights law, the legal protection of disabled children is implemented by both international regional organisations, the Council of Europe, the European Union and Organization for Security and Co-operation in Europe as well as the UN – the organisation of universal i.e. global extent³.

The subject of the following considerations is the law-making activity of the Committee of Ministers of the Council of Europe (hereinafter: CMCoE) on the protection of the rights of children with disabilities. Three latest CMCoE recommendations regarding the protection of the rights of children with disabilities have been analysed. It should be stressed that the Council of Europe has quite a rich practice in implementing issues related to the protection of children’s rights, including disabled children in the process of establishing soft law. The category includes legal acts issued by the statutory organs of the Council of Europe, i.e.: the Committee of Ministers and the Parliamentary Assembly, as well as by treaty bodies established in treaties adopted by member states under the aegis of the Council of Europe (e.g. the European Social Committee).

The recommendations of the Committee of Ministers of the Council of Europe play a very special role in the legal protection of children with disabilities. This is influenced by a few aspects, surely by the fact that in the legal system of the Council

2 M. K. Pallab, G. L. Darmstadt, *Childhood Disability in Low- and Middle Income Countries: Overview of screening, prevention, services, legislation, and epidemiology*, „Pediatrics“, vol. 120, Supplement 1, July 2007, p. S21; D. Mont, *Measuring Disability Prevalence*, Social Protection Discussion Paper no. 0706, The World Bank, Washington, D.C., March 2007, p. 35.

3 More: B. Byrne, *Hidden contradictions and conditionality: conceptualisations of inclusive education in international human rights law*, „Disability & Society”, 2003, no. 28(2), p. 232-244; C. Latimier, J. Šiška, *Children’s rights for all! Implementation of the UN Convention on the Rights of the Child for children with intellectual disabilities*, Brussels 2011, Inclusion Europe, p. 26.; UNICEF, *Promoting the rights of children with disabilities*, „Innocenti Digest“, 2007, no. 13, p. 17; J. Arsenjeva, *Briefing paper: “Implementation of the UN Convention on the Rights of Persons with Disabilities in the EU External Relations”*, European Parliament 2013, p. 11; M. Ballesteros, K. Jurkiewicz, N. Meurens, *Member States Policies for Children with Disabilities*, European Parliament 2013.

of Europe, no treaty dedicated solely to the protection of the rights and freedoms of children with disabilities has yet been established. There are, however, treaty obligations regarding in general the rights of children and people with disabilities. The regulations refer to the legal and recent situation and problems of disabled children, which do not change the fact that there is a lack of comprehensive regulation regarding the protection of the rights and freedoms of children with disabilities. Therefore, nowadays, The Council of Europe has a regulative mosaic in this scope which consists of the acts referring to the rights and freedoms of children with disabilities, thus, often in a limited form – this is a catalogue of legal acts and documents from treaty law to soft law⁴ to the declarations and positions acts placed at the summits of the Council of Europe⁵. It seems to be a very important argument that is in favour of choosing the subject because the recommendations significantly show the problem of the lack of unification of legal standards of protection of children with disabilities in the system of the Council of Europe. It is visible in the numerous references to legal acts and documents on the protection of the rights and freedoms of children with disabilities that appear in the recommendations of CMCoE. Regardless of this, all soft law acts make codes of good practice, they affect legal systems of the member states and encourage in their activities to apply different legal and non-legislative solutions, which involve the actions that improve the legal and actual situation of disabled children.

4 For example, recommendations of the Parliamentary Assembly of the Council of Europe, particularly: Recommendation 1666 (2004) on “A Europe-wide ban on corporal punishment of children”, Recommendations 1601 (2003) on “Improving the lot of abandoned children in institutions” and Recommendation 1698 (2005) on “The rights of children in institutions: follow-up to Recommendation 1601 (2003)”. http://website-pace.net/en_GB/web/apce/documents (access 17.12.2018).

5 Declarations and rules adapted during the conference and summits taking place in the Council of Europe and other documents: International Classification of Functioning, Disability and Health (ICF) (2001), and to the International Classification of Diseases (ICD-10) of the World Health Organisation; Final Declaration of the 2nd European Conference of Ministers responsible for Integration Policies for People with Disabilities held in 2003 in Malaga, Spain, “Progressing towards full participation as citizens”; The Third Summit of Heads of State and Government of the Council of Europe (Warsaw, 16-17 May 2005); Declaration of the European Ministers responsible for Family Affairs at their 28th session (Lisbon, Portugal, 2006), which underlines the necessity to adopt programmes aimed at providing appropriate support for families with children with disabilities; Report of the High Level Task Force on Social Cohesion in the 21st century (2007), which attaches a fundamental role to human rights as the cornerstone for cohesive societies along with human dignity and recognition, with particular attention to the interests of vulnerable or potentially vulnerable groups; “Building a Europe for and with children” 2009-2011 Strategy, which pursues and enhances the Council of Europe’s commitment to children’s rights and the eradication of violence against children, with special focus on particularly vulnerable children, without parental care and/or with disabilities; Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (as adopted on 17 November 2010) and Guidelines on child-friendly health care (as adopted on 21 September 2011). www.coe.int (access 15.12.2018)

1. Integration as a chance to normalise the life of children with disabilities as an objective recommendation of the Committee of Ministers of the Council of Europe.

Integration which refers to disabled children may be viewed in a narrow sense as a guarantee for these people to the right to education and work in the normal social structures. In the broad sense, integration is a process that prepares disabled children for life in society as well as shaping proper interpersonal relations between capable and disabled people. Literature stresses that integration is viewed in a mutual treatment of capable and disabled children in which the same rights are respected, in which the identical conditions for maximum overall development are created for both groups of people⁶. The aim of integration is to enable the people with disabilities to lead a normal life on the same principles as for other members of the particular social groups. Integration suggests enabling all levels of education – elementary, general, and vocational to all handicapped youth⁷. It also enables cultural achievements and various forms of active pastime that healthy young people practise. The main aim of integration is to prepare disabled people for a dignified life in the open community and actively undertaking various social, family, professional and cultural roles. CMCoE recommendations indulge these values and integration aims. It is worth stressing that all CMCoE recommendations⁸ are built on the mutual

6 A. Solish, P. Minnes, A. Kupferschmidt, *Integration of Children with Developmental Disabilities in Social Activities*, „Journal on Developmental Disabilities“, 2003, Vol. 10, no. 1, p. 115-122; O. Sinyavskaya, S. Vassin, *Social Integration of Youth with Disabilities*. Papers prepared for the UN workshop on “Social Integration of Youth with Disabilities”, Independent Institute for Social Policy, St. Petersburg December 22-24, 2003, p. 1-49, http://www.socpol.ru/eng/publications/pdf/Disability_eng.pdf (access 14.12.2018).

7 D. A. White, R. A. Dodder, *The relationship of adaptive and maladaptive behaviour to social outcomes for individuals with developmental disabilities*, „Disability & Society“, 2000, no. 15(6), 897-908.

8 Resolutions and recommendations of the Committee of Ministers of the Council of Europe, notably: Resolution (77) 33 on placement of children, which stresses that placement should be avoided as far as possible through preventive measures of support to families in accordance with their special problems and needs; Recommendation No. R (79) 17 concerning the protection of children against ill-treatment; Recommendation No. R (84) 4 on parental responsibilities; Recommendation No. R (87) 6 on foster families; Recommendation No. R (94) 14 on coherent and integrated family policies; Recommendation No. R (98) 8 on children's participation in family and social life; Recommendation Rec(2002)8 on child day-care; Resolution ResChS(2004)1 on collective complaint No. 13/2002 by Autisme-Europe against France and the decision of the European Committee of Social Rights on the merits of the complaint; The Revised Strategy for Social Cohesion (2004); Resolution ResAP(2005)1 on safeguarding adults and children with disabilities against abuse; Recommendation Rec(2005)5 on the rights of children living in residential institutions; Recommendation Rec(2006)19 on policy to support positive parenting; Recommendation Rec(2006)5 of the Committee of Ministers to member States, referred to as the Council of Europe Disability Action Plan 2006-2015; Recommendation CM/Rec(2009)8 of

legal basis which directly or indirectly protects the rights and freedoms of disabled children. Preamble recommendations make reference to legal acts and they can be divided into two groups: standards of the Council of Europe and the United Nations⁹. Treaties of the Council of Europe, notably: the terms of Article 15.b of the Statute of the Council of Europe¹⁰, The Convention for the Protection of Human Rights and Fundamental Freedoms¹¹, European Social Charter (Revised)¹², The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment¹³, The European Convention on the Exercise of Children's Rights¹⁴ and The Convention on Contact concerning Children¹⁵. Treaties of the United Nations, notably: The Convention on the Rights of the Child¹⁶ and The Convention on the Rights of Persons with Disabilities¹⁷.

2. Recommendation CM/Rec (2013)2 of the Committee of Ministers to member States on ensuring full inclusion of children and young persons with disabilities into society.

Recommendation (2013)2¹⁸ concerns the problem of inclusion of children and young people with disabilities into society. Both literature and practice have long been showing that disabled people, including children, have to be aware of the rights and

the Committee of Ministers to member States on achieving full participation through Universal Design; Strategy and Council of Europe Action Plan for Social Cohesion, as adopted by the Committee of Ministers in 2010; Recommendation CM/Rec(2011)12 of the Committee of Ministers to member states on children's rights and social services friendly to children and families; Recommendation CM/Rec(2012)13 of the Committee of Ministers to member States on ensuring quality education; The Council of Europe Strategy for the Rights of the Child 2012-2015 (now is: Council of Europe Strategy for the Rights of the Child (2016-2021)). <https://www.coe.int/en/web/children/legal-standards> (access 12.09.2018).

9 For example: the United Nations: Standard Rules on the Equalisation of Opportunities for Persons with Disabilities (1993).

10 Statute of the Council Of Europe 5.05.1949, European Treaty Series no. 1.

11 The Convention for the Protection of Human Rights and Fundamental Freedoms , European Treaty Series no. 1.

12 The European Social Charter (Revised), European Treaty Series no. 163.

13 The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, European Treaty Series no. 126.

14 The European Convention on the Exercise of Children's Rights, European Treaty Series no. 160.

15 The Convention on Contact concerning Children, European Treaty Series no. 192.

16 The Convention on the Rights of the Child, United Nations Treaty Series vol.1577, p. 3.

17 The Convention on the Rights of Persons with Disabilities, United Nations Treaty Series vol. 1577, p. 3.

18 Recommendation CM/Rec (2013)2 of the Committee of Ministers to member States on ensuring full inclusion of children and young persons with disabilities into society, CM/Del/Dec(2013)1181/6.2.

obligations that stem from full participation in social life. The Recommendation in its first adnotations stresses that children and young people with disabilities should take an active part in social life and be at the same time its integrative part¹⁹. They should have the chance for: social and professional development, getting a job, establishing strong social and family bonds with the respect of having equal status of an equal citizen²⁰. Unfortunately, discrimination of disabled children (often multilayered), including the lack of access to appropriate sources and support in development of their perspectives often limit the chances of developing their abilities and contribution in social life. Therefore, it is very important to build a strategic approach by states coordinated by various sectors²¹, e.g. education, professional inclusion, and cultural life of disabled people so that they can become autonomous and active participants in society²². The subject scope of the recommendation covers four areas: promoting their full inclusion in society, their participation in the selection and decision making, support for the empowerment of children and young people with disabilities and inclusive education that facilitates full citizenship.

Promoting full affiliation in society. Recommendation strictly emphasises the basic principle of the system of protection of human rights in the Council of Europe, namely stressing that protection and respect for human rights of all people with disabilities is a fundamental duty of each and every member state. It is stressed that violation of the rights of disabled people, including children and young people, makes them disadvantaged and hinders their active participation in society in all its aspects: political, public, economic, social or cultural²³. This often translates directly to their level of life, sometimes even in poverty. Reviewing literature as regards poverty, it can be assumed that disability can be one of the social risk factors that significantly affects the quality of life of a particular person and his/her family²⁴.

This aspect plays an important role in the activities of the countries which should aim for strengthening a social role and the position of children with disabilities in their early life thanks to positive program actions, incentive and other ways like education on human rights.

19 Zob. szerzej: B. Olszewska, *Integracja dzieci i młodzieży niepełnosprawnej szansą na normalizację życia społecznego*, w: (red.) G. Dryżalowskiej, H. Żuraw, *Integracja społeczna osób niepełnosprawnych*, Warszawa 2004, p.113.

20 Point 1 Recommendation CM/Rec (2013)2.

21 N. Groce, et al., *Disability and Poverty: The need for a more nuanced understanding of implications for development policy and practice*, „Third World Quarterly“, vol. 32, no. 8, 2011, pp. 1493-1513.

22 Points 2 and 3 Recommendation CM/Rec (2013)2.

23 Point 4 Recommendation CM/Rec (2013)2.

24 J. J. Bleszyński, M. Orłowska, *Poziom partycypacji społecznej rodzin z dziećmi ze spektrum zaburzenia autyzmu*, in: S. Neslušanová, M. Niklová, E. Jarosz (ed.), *Sociální pedagogika ve světle společenského, institucionálního a individuálního ohrožení*, Brno 2015, p. 649.

Participation in choosing decisions and making them. Recommendation emphasises the fact that children and young disabled people should have a chance in making decisions about their life. This concerns both active political, public, economic, social and cultural life. Here there is a role of parents, caretaker, educators, etc. It is especially important in supporting and making mutual decisions about their life.

Support for empowerment of children and young disabled people. The aspect of the so called empowerment concerns appropriate education (applied to their age and possibilities) on the rights and duties of disabled children as well as realising about the ethical and cultural norms that are present in a given society²⁵. Building awareness in disabled children plays a significant role in promoting social integration and the possibility of using their potential²⁶.

Inclusive education and facilitating full citizenship. The Recommendation emphasises that all children and young people with disabilities have the same aspirations and aims as people without disabilities in the areas of education, work, vocational training and independent living. Therefore, it is crucial that schools and educational institutions, parents, guardians, etc. recognise the importance of meeting the aspirations of children and young people with disabilities²⁷. The process of social integration between healthy and disabled children requires two-way educational interactions²⁸, i.e. developing and strengthening a positive attitude and behaviour of capable children towards disabled children and strengthening self-esteem in a disabled child, his/her motivation and the ability to have contact and build relationships with other children, and positive emotional attitude to them²⁹. It is worth noting that the concept of inclusive education was included in several important international documents, i.e.: The Salamanca statement on principles, policy and practice in special needs education (1994)³⁰, Standard Rules on the

25 Point 7 Recommendation CM/Rec (2013)2.

26 Point 10 Recommendation CM/Rec (2013)2.

27 Points 13 Recommendation CM/Rec (2013)2.

28 O. Abosi, T. L. Koay, Attaining Development Goals of Children with Disabilities: Implications for Inclusive Education, „International Journal of Special Education“, 2008, vol. 23, p. 1-10.

29 A. Maciarz, Z teorii badań społecznej integracji dzieci niepełnosprawnych, Kraków 1990, s. 67 i nast.; J. Zabłocki, Integracja szansą wychowania nowego pokolenia, Płock 2002, p. 76 and next.

30 More than 300 participants representing 92 governments and 25 international organisations met in Salamanca in 1994 to further the objective of Education for All by considering the fundamental policy shifts required to promote the approach of inclusive education, namely enabling schools to serve all children, particularly those with special educational needs. Organised by the Government of Spain in co-operation with UNESCO, the Conference brought together senior education officials, administrators, policy-makers and specialists, as well as representatives of the United Nations and the Specialised Agencies, other international governmental organisations, non-governmental organisations and donor agencies. The Conference adopted the Salamanca

Equalization of Opportunities for Persons with Disabilities (1993)³¹, The Convention on the Rights of Persons with Disabilities *and its* Optional Protocol (2006)³² and European Disability Strategy in the European Union (2010-2020)³³.

The idea of inclusive education has also been confirmed in the revised European Social Charter of the Council of Europe as well as in the Council of Europe Disability Action Plan 2006-2015³⁴ and in the next document – Council of Europe Disability Strategy 2017-2023³⁵.

3. Recommendation CM/Rec(2010)2 on deinstitutionalisation and community living of children with disabilities

The Recommendation CM/Rec(2010)2³⁶ concerns the mainstream of migration in the member states of the Council of Europe from institutional care to local care (deinstitutionalisation) with respect to disabled children. In Europe, hundreds of thousands of children with various physical and mental impairments, often abandoned or neglected children, live in large, isolated centers. By definition, the institutions are to provide care, food and shelter; however, the evidence delivered over the years indicates that they are unable to provide services for the people or support that guarantees full social inclusion. Physical separation from local communities and families drastically limits the ability and readiness of people living or growing in such

Statement on Principles, Policy and Practice in Special Needs Education and a Framework for Action. These documents are informed by the principle of inclusion, by recognition of the need to work towards “schools for all” – institutions which include everybody, celebrate differences, support learning, and respond to individual needs. <http://www.right-to-education.org/resource/salamanca-statement-and-framework-action-special-needs-education> (access 20.09.2018) More information, see: Better Education forAll: WhenWe’re Included Too A Global Report People with an Intellectual Disability and their Families Speak out on Education forAll, Disability and Inclusive Education, by Instituto Universitario de Integración en la Comunidad (INICO), Salamanca 2009, Spain.

31 Among the major outcomes of the Decade of Disabled Persons was the adoption of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities by the General Assembly of the United Nations on 20 December 1993 (resolution 48/96 annex). <https://www.un.org/development/desa/disabilities/standard-rules-on-the-equalization-of-opportunities-for-persons-with-disabilities.html> (access 20.09.2018)

32 A/RES/61/106, <http://www.un.org/disabilities/documents/convention/convoptprot-e.pdf> (access 20.09.2018)

33 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3Aem0047> (access 20.09.2018)

34 <https://www.coe.int/en/web/disability/action-plan-2006-2015> (access 20.09.2018)

35 <https://www.coe.int/en/web/disability/strategy-2017-2023> (access 20.09.2018)

36 <https://www.coe.int/en/web/disability/adopted-texts> (access 20.09.2018)

places to fully participate in general life³⁷. "Four decades of work on improving the living conditions of children with disabilities has taught us that there is no such thing as a good institution" (Professor Gunnar Dybwad, an activist who fights for the rights of people with disabilities)³⁸. Placing a disabled child in a specialised institution is a common practice and is a basic way to deal with the problem in many countries of the Council of Europe. Institutionalisation of help often means "cutting off" the child from the natural environment and family which causes irreversible damage to his/her psyche.

According to international legal instruments of the Council of Europe and Article 3 of the UN Convention on children's rights, it is the child's good that is most important. Whereas, one should realise that placing children in institutionalised care centers raises serious concerns that this may impinge upon the children's good will and respect for their rights. Therefore, the Recommendation asks the member states to take appropriate legal measures to replace institutional services with environmental services. It is underlined that deinstitutionalisation requires a series of general actions which support a strategic approach at the national level involving all interested persons. Deinstitutionalisation is a long process that should cover all policies that affect the lives of children with disabilities³⁹. This process indicates that the following pivotal aspects should be taken into consideration: building a national system which identifies the needs of disabled children, drafting mutual support programs for parents, provision of various services (support for families, psychosocial support, financial support, educational support, pedagogical support, etc.), appropriate consideration of the individual needs of children and their families, availability of various means for families to enable them to temporarily deprive themselves of care for disabled children, which is to prevent psychosocial crises and, thus, prevent crises, continual planning in relation to disabled children from pre-school age, through education in all levels to adulthood, promoting and supporting active family involvement and responsibility (Annex, point 21-2.7). The actions of public authorities, strategic planning, co-ordination on national, regional and local level in the context process of deinstitutionalisation should include four main strategies: preventing institutionalisation, preventing any prolongation of the anticipated short-term stay in a particular institution, deinstitutionalisation of the children with disabilities who are currently in institutions and making social services

37 See more: S. Shah, M. Priestley, *Disability and social change – private lives and public policies*, Bristol 2011; Z. Woźniak, *Niepełnosprawność i niepełnosprawni w polityce społecznej – społeczny kontekst medycznego problemu*, Warszawa 2008; A. Wójtowicz-Pomierna, *Polityka państwa wobec osób niepełnosprawnych: dylematy systemowe*, w: A.I. Brzezińska, R. Kaczan i K. Smoczyńska (red.), *Diagnoza potrzeb i modele pomocy dla osób z ograniczeniami sprawności*, Warszawa 2010.

38 *Ibidem*.

39 Point 2, Appendix to Recommendation CM/Rec(2010)2.

available⁴⁰. It is altogether stressed that deinstitutionalisation is to be treated as a continual process which is rescheduled and evaluated⁴¹. In particular cases, when there is child abuse and negligence and the child cannot live in the family or foster family, a small home environment, similar to the natural home environment, should become an alternative for deinstitutionalised care forms⁴².

The Recommendation also implies the need of important financing and support for numerous environmental services for disabled children and their families so that they are not placed in these institutions. This concerns: regular assessment of the needs of disabled children and their families, co-ordinated healthcare and social care, early intervention programmes and the actions of general and specialised education⁴³.

4. Recommendation CM/Rec(2009)9 of the Committee of Ministers to member states on the education and social inclusion of children and young people with autism spectrum disorders.

Recommendation (2009)⁹⁴⁴ was prepared by the Committee ad hoc, i.e. the Committee of Experts on education and children with autism, which was established in 2004 as a consequence of the decision of the European Committee of Social Rights on infringement of laws in France related to the rights of people with autism⁴⁵. The Committee conducted broad research regarding the notion of autism in the member states of the European Union, the analysis of statistics regarding the situation of children with autism, especially in the education sector, and exchange of information and experience at national level. It all enabled to draft recommendations for the education and integration of children with autism⁴⁶.

The Recommendation emphasises that there is universality, indivisibility and interdependence of all human rights and fundamental freedoms and the need for people with autism disorders to be guaranteed full use of them without any

40 Point 4, Appendix to Recommendation CM/Rec(2010)2.

41 Point 5, Appendix to Recommendation CM/Rec(2010)2.

42 Point 12, Appendix to Recommendation CM/Rec(2010)2.

43 Points 22.1-22.4, Appendix to Recommendation CM/Rec(2010)2.

44 Recommendation CM/Rec(2009)9 of the Committee of Ministers to member states on the education and social inclusion of children and young people with autism spectrum disorders, <https://www.coe.int/en/web/disability/adopted-texts> (access 15.11.2018).

45 The European Committee of Social Rights, Decision 13/2002 of November 2003 in the case *Autisme – Europe v. France*. https://www.coe.int/en/web/turin-european-social-charter/processed-complaints/-/asset_publisher/5GEFkJmH2bYG/content/no-13-2002-international-association-autism-europe-iaae-v-france?inheritRedirect=false (access 25.09.2018).

46 G. Palmisano, *The Protection of People with Autism in the Framework of the Council of Europe and the European Union*, in: V. D. Fina, R. Cera (ed.), *Protecting the Rights of People with Autism in the Fields of Education and Employment International, European and National Perspectives*, New York – Dordrecht – London 2015, p.15

discrimination (preamble). It points out that the lack of promotion of citizens' rights with autism disorders and the lack of equal opportunities for them is a violation of their human dignity. Therefore, the Recommendation indicates the Council of Europe member states to encourage the education and social integration of children and adolescents with autism disorders by: integrating children with autism into their policies, legislation and practice, including the involvement of non-governmental organizations representing children and adolescents with autism disorders and their families in implementing and monitoring the measures introduced and promoting the integration of children with autism in the areas that are not under the direct responsibility of public authorities, but in which they have a specific impact or play a particular role. The annex to the Recommendation points out that people with autism disorders are full members of Europe and having a particular level of education they may be included into society and be actively present in it. Consequently, autism is a category of development disorders, often causes dysfunction of social integration of those who suffer from it and their families and environment. People with autism have specific needs, they need a special approach and understanding⁴⁷. Therefore, the member states should establish the proper law and policy and provide structures which facilitate the illness and social integration, improvement in life conditions and promoting development and independence of people with this illness⁴⁸. According to the legal instruments of the Council of Europe and the UN Convention on disabled people's rights, member states ought to place a ban on discrimination, including people with autism, not only in education but also in social care and other public policies, they should also support broad early identification and analysis, individual assessment of such people, develop a sense of social awareness on autism, and introduce training for parents and experts. Further, they should offer support for equal education opportunities and support for social inclusion⁴⁹.

5. Summary

In conclusion, the Committee of Ministers on protection of disabled children's rights is the answer not only to changing attitudes and social awareness, but also on the increasing number of disabled children and, thus, on growing needs in the implementation of their rights and freedoms. Disabled children are a part of every society, they should find a place in it and the possibility to meet needs and promote development. The recommendations of the Committee of Ministers of the Council of Europe are clearly focused on two objectives. The first is a better understanding of the concept of integration, which concerns not only children with disabilities, but also

47 Part I, point 1-2, Appendix to Recommendation CM/Rec(2009)9.

48 Part II, point 1, Appendix to Recommendation CM/Rec(2009)9.

49 Part II, point 2-3, Appendix to Recommendation CM/Rec(2009)9.

their families and the community in which they live. The second is the presentation of measures relating to different areas of life that should be taken into consideration to ensure full social participation of children with disabilities and their multidirectional development. In addition to international standards and undertaken declarations and initiatives to which they make recommendations, they show a proper social model of disability in which obstacles faced by people with disabilities are eliminated. They are evidence of the humanitarian trend of social change on these people, opposing their isolation and discrimination. Certainly, the development of the idea of integration of disabled children is due to an increase of social awareness, better preparation and maturity of the educators, development of psychological and pedagogical science, law improvement, greater parental awareness of disabled children and necessity due to many children with different disabilities.

BIBLIOGRAPHY

- Abosi O., Koay T. L., Attaining Development Goals of Children with Disabilities: Implications for Inclusive Education, „International Journal of Special Education“, 2008, vol. 23.
- Arsenjeva J., Briefing paper: “Implementation of the UN Convention on the Rights of Persons with Disabilities in the EU External Relations”, European Parliament 2013.
- Ballesteros M., Jurkiewicz K., Meurens N., Member States Policies for Children with Disabilities, European Parliament 2013.
- Better Education for All: When We’re Included Too A Global Report People with an Intellectual Disability and their Families Speak out on Education forAll, Disability and Inclusive Education, by Instituto Universitario de Integración en la Comunidad (INICO), Salamanca 2009, Spain.
- Błaszcyński J.J., Orłowska M., Poziom partycypacji społecznej rodzin z dziećmi ze spektrum zaburzenia autyzmu, in: S. Neslušanová, M. Niklová, E. Jarosz (ed.), Sociální pedagogika ve světle společenského, institucionálního a individuálního ohrožení, Brno 2015.
- Borowski G., Sposoby wspierania osób niepełnosprawnych na przestrzeni dziejów – wybrane przykłady, „Niepełnosprawność – zagadnienia, problemy, rozwiązania”, 2012, no. IV (5)/99.
- Byrne B., Hidden contradictions and conditionality: conceptualisations of inclusive education in international human rights law, „Disability & Society”, 2003, no. 28(2).
- Byrne B., Hidden contradictions and conditionality: conceptualisations of inclusive education in international human rights law, „Disability & Society“, 2013, vol. 28
- Groce N., et al., Disability and Poverty: The need for a more nuanced understanding of implications for development policy and practice, „Third World Quarterly“, vol. 32, no. 8, 2011.
- Latimier C., Šiška J., Children’s rights for all! Implementation of the UN Convention on the Rights of the Child for children with intellectual disabilities, Brussels 2011, Inclusion Europe.
- Maciarz A., Z teorii badań społecznej integracji dzieci niepełnosprawnych, Kraków 1990.
- Mont D., Measuring Disability Prevalence, Social Protection Discussion Paper no. 0706, The World Bank, Washington, D.C., March 2007.

- Olszewska B., *Integracja dzieci i młodzieży niepełnosprawnej szansą na normalizację życia społecznego*, w: (red.) G. Dryżalowskiej, H. Żuraw, *Integracja społeczna osób niepełnosprawnych*, Warszawa 2004.
- Pallab M. K., Darmstadt G. L., *Childhood Disability in Low- and MiddleIncome Countries: Overview of screening, prevention, services, legislation, and epidemiology*, „*Pediatrics*“, vol. 120, Supplement 1, July 2007.
- Palmisano G., *The Protection of People with Autism in the Framework of the Council of Europe and the European Union*, in: V. D. Fina, R. Cera (ed.), *Protecting the Rights of People with Autism in the Fields of Education and Employment International, European and National Perspectives*, New York – Dordrecht – London 2015.
- Seyda S., *Dzieje medycyny w zarysie*, Warszawa 1973.
- Shah S., Priestley M., *Disability and social change – private lives and public policies*, Bristol 2011.
- Sinyavskaya O., Vassin S., *Social Integration of Youth with Disabilities. Papers prepared for the UN workshop on “Social Integration of Youth with Disabilities”*, Independent Institute for Social Policy, St. Petersburg December 22-24, 2003, p. 1-49.
- http://www.socpol.ru/eng/publications/pdf/Disability_eng.pdf.
- Solish A., Minnes P., Kupferschmidt A., *Integration of Children with Developmental Disabilities in Social Activities*, „*Journal on Developmental Disabilities*“, 2003, Vol. 10, no. 1.
- The European Committee of Social Rights, Decision 13/2002 of November 2003 in the case *Autisme – Europe v. France*.
- UNICEF, *Promoting the rights of children with disabilities*, Innocenti Digest 2007, no. 13.
- White D. A., Dodder R.A., *The relationship of adaptive and maladaptive behaviour to social outcomes for individuals with developmental disabilities*, „*Disability & Society*“, 2000, no. 15(6).
- Wójtowicz-Pomierna A., *Polityka państwa wobec osób niepełnosprawnych: dylematy systemowe*, w: A.I. Brzezińska, R. Kaczan i K. Smoczyńska (red.), *Diagnoza potrzeb i modele pomocy dla osób z ograniczeniami sprawności*, Warszawa 2010.
- Wołoszuk B., *Integracja osób z niepełnosprawnością – możliwości i bariery*, „*Rozprawy Społeczne*“ 2013, nr 1 -69.
- Woźniak Z., *Niepełnosprawność i niepełnosprawni w polityce społecznej – społeczny kontekst medycznego problemu*, Warszawa 2008.
- Zabłocki J., *Integracja szansą wychowania nowego pokolenia*, Płock 2002.

Treaties:

- Statute of the Council Of Europe 5.05.1949, European Treaty Series No. 1.
- The Convention for the Protection of Human Rights and Fundamental Freedoms 4.11.1950, European Treaty Series no. 1.
- The Convention on Contact concerning Children, European Treaty Series no. 192.
- The Convention on the Rights of the Child, United Nations Treaty Series vol. 1577, p. 3.
- The Convention on the Rights of Persons with Disabilities, United Nations Treaty Series vol.1577, p. 3.

The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, European Treaty Series no. 126.

The European Convention on the Exercise of Children's Rights, European Treaty Series no. 160.

The European Social Charter (Revised), European Treaty Series no. 163.

Recommendation and resolutions of the Committee of Ministers of the Council of Europe.

Recommendation No. R (79) 17 concerning the protection of children against ill-treatment.

Recommendation No. R (84) 4 on parental responsibilities.

Recommendation No. R (87) 6 on foster families.

Recommendation No. R (94) 14 on coherent and integrated family policies.

Recommendation No. R (98) 8 on children's participation in family and social life.

Recommendation Rec(2002)8 on child day-care.

Recommendation Rec(2006)19 on policy to support positive parenting.

Recommendation Rec(2006)5 of the Committee of Ministers to member States, referred to as the Council of Europe Disability Action Plan 2006-2015.

Recommendation CM/Rec(2009)8 of the Committee of Ministers to member States on achieving full participation through Universal Design; Strategy and Council of Europe Action Plan for Social Cohesion, as adopted by the Committee of Ministers in 2010.

Recommendation CM/Rec(2011)12 of the Committee of Ministers to member states on children's rights and social services friendly to children and families.

Recommendation CM/Rec(2012)13 of the Committee of Ministers to member States on ensuring quality education.

Recommendation CM/Rec (2013)2 of the Committee of Ministers to member States on ensuring full inclusion of children and young persons with disabilities into society, CM/Del/Dec(2013)1181/6.2.

Resolution (77) 33 on placement of children, which stresses that placement should be avoided as far as possible through preventive measures of support to families in accordance with their special problems and needs.

Resolution ResChS(2004)1 on collective complaint No. 13/2002 by Autisme-Europe against France and the decision of the European Committee of Social Rights on the merits of the complaint; The Revised Strategy for Social Cohesion (2004).

Resolution ResAP(2005)1 on safeguarding adults and children with disabilities against abuse; Recommendation Rec(2005)5 on the rights of children living in residential institutions.

The Council of Europe Strategy for the Rights of the Child 2012-2015 (now is: Council of Europe Strategy for the Rights of the Child (2016-2021)).

Recommendations of the Parliamentary Assembly of the Council of Europe

Recommendations 1601 (2003) on "Improving the lot of abandoned children in institutions".

Recommendation 1666 (2004) on "A Europe-wide ban on corporal punishment of children".

Recommendation 1698 (2005) on "The rights of children in institutions: follow-up to Recommendation 1601 (2003)".

Declarations and rules adapted during the conference and summits taking place in the Council of Europe and other documents

International Classification of Functioning, Disability and Health (ICF) (2001) and to the

International Classification of Diseases (ICD-10) of the World Health Organisation.

Final Declaration of the 2nd European Conference of Ministers responsible for Integration Policies for People with Disabilities held in 2003 in Malaga, Spain, "Progressing towards full participation as citizens".

The Third Summit of Heads of State and Government of the Council of Europe, Warsaw 16-17 May 2005.

Declaration of the European Ministers responsible for Family Affairs at their 28th session, Lisbon, Portugal, 2006.

Report of the High Level Task Force on Social Cohesion in the 21st century (2007).

"Building a Europe for and with children" 2009-2011.

Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (as adopted on 17 November 2010).

Guidelines on child-friendly health care (as adopted on 21 September 2011).

European Disability Strategy in the European Union (2010-2020).

United Nations' documents

Standard Rules on the Equalisation of Opportunities for Persons with Disabilities (1993).

Standard Rules on the Equalization of Opportunities for Persons with Disabilities (1993).

The Salamanca statement on principles, policy and practice in special needs education (1994).

