

PROTECTION OF RIGHTS OF CHILDREN  
WITH DISABILITIES IN LIGHT OF NON-DISCRIMINATION  
– ANALYSIS OF RECOMMENDATION CM/REC(2013)2  
OF THE COMMITTEE OF MINISTERS  
OF THE COUNCIL OF EUROPE

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**Summary.** The main purpose of this study was the soft law analysis of the Council of Europe Committee of Ministers based on Recommendation CM/Rec(2013)2 of the Committee of Ministers to member states on ensuring full integration of disabled children and young people into social life. The considerations concerned issues referring to the indication that the soft law of the Committee of Ministers should be read broadly as legal acts protecting against discrimination as well as against other negative social phenomena such as stereotyping, prejudice, social isolation, social exclusion, and social stigmatization.

**Key words:** children, discrimination, disability, stereotype, stereotypization, prejudice, social isolation and social exclusion, social stigmatisation

Disability is a socially common phenomenon. Children need to be considered as a special group of persons with disabilities as they are more vulnerable to discrimination for their physical and mental deficits. In Europe in the system of international law of human rights legal protection of children with disabilities is implemented by both international and regional organizations: the Council of Europe, the European Union, the OSCE as well as the UN – an organization of a universal, that is worldwide reach.

The fundamental purpose of this study involves an attempt to answer two basic questions. The first one, whether *soft law* of the Committee of Ministers of the Council of Europe addresses only protection of children and young persons with disabilities against discrimination prohibited by law, or whether it should be interpreted more broadly as legal acts protecting them as a weaker (protected) group, both against discrimination and other negative social phenomena such as stereotyping, prejudice, social isolation, social exclusion, social stigmatisation, etc.? The second question, whether taking the above as a basis it can be concluded that discrimination, given the aspect of accumulation of social phenomena, may be also defined as a result of a cause and effect relationship between them? Such research objectives required first an analysis of the meaning of those terms. However, given that these reflections have the nature of a legal analysis, the reflections were based on the legal scholarship as well as the abundant achievements of so-

biological studies presenting research results adopted there. The analysis addresses 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 which concerns protection of rights of children with disabilities. It needs to be noted that the Council of Europe has quite an abundant practice of including issues of protection of rights of children, including children with disabilities, in the process of making *soft law*. In the contexts of protection of children with disabilities the Council of Europe's soft law has a special importance in the absence of treaty regulations addressing strictly this category of individuals, though, which should be emphasized, there are treaty norms concerning right of children and persons with disabilities *in genere*.<sup>1</sup>

### 1. CHARACTERISTICS OF NEGATIVE SOCIAL PHENOMENA AND THEIR IMPACT ON DEFINING DISCRIMINATION

According to the World Health Organization, a disabled person means any person unable to ensure by himself or herself, wholly or partly, the necessities of a normal individual and/or social life, as a result of a deficiency, either congenital or not, in his or her physical or mental capabilities. This affects his or her condition and taking action in order to combat the health impairment by searching competent support.<sup>2</sup> Social barriers usually largely impede disabled persons' normal and active functioning in society. Disability is perceived in various ways as a punishment, social stigma or a challenge often taking negative forms in social treatment such as stereotypization, prejudice, segregation, social isolation, social exclusion, social stigmatization or even self-stigmatization [Biel-Ziółek 2017, 17]. These phenomena are subject to broad scholarly analyses, especially in the field of sociology, though legal scholarship refers to them especially in the context of anti-discrimination law which also concerns the group of disabled persons.

From the sociological and psychological point of view, the process of perceiving people is a categorization process. It is one of the fundamental forms of exploratory structuring of information coming from the environment. One of the consequences of categorization means that "it may bring about a certain pool of

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<sup>1</sup> The catalogue of the Council of Europe *soft law* addressing the situation of children with disabilities is composed of legal acts issued both by statutory bodies of the Council of Europe, i.e. Committee of Ministers and the Parliamentary Assembly, as well as treaty bodies established under international agreements adopted by member States under the aegis of the Council of Europe (e.g. European Economic and Social Committee).

<sup>2</sup> See: [www.unic.un.org.pl/niepehnosprawnosci/](http://www.unic.un.org.pl/niepehnosprawnosci/) [accessed: 26.09.2016]. Disease means a dynamic reaction of the body to the action of a pathogenic agent, leading to disturbances in the natural interaction of organs and tissues, and as a result – to functional disorders and organic changes in organs and the body. Health is defined as "the proper functioning of the body as a biological whole, while disease means a disruption in its proper functioning." Whereas the World Health Organization writes that "health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity." See: Constitution of the World Health Organization, [https://www.who.int/governance/eb/who\\_constitution\\_en.pdf](https://www.who.int/governance/eb/who_constitution_en.pdf) [accessed: 26.09.2016].

specific data, that is stereotypes, which then direct our expectations” [Aronson 1995, 177]. One of the most widespread ways of categorising people involves a division into “my” group and “alien” group. Despite stereotypes being a form of categorization, they should not be identified with it. A stereotype features, among others, a lesser adequacy in terms of the reality (simplification), a social character as well as rigidity and permanence. Apart from the exploratory function, stereotypes play an adaptation role: reinforcing and safeguarding values, rationalization of hostility and aggression towards certain object [Mądrzycki 1986, 170]. An inclination to apply stereotypes is called stereotypization. Speaking more strictly, it is using the stereotype of a category in the process of perceiving its individual representatives [Macrae, Stanger, and Hewstone 1999, 223].

From the point of view of this study differentiation of the stereotypization process is an interesting issue. As it turns out, if opinions and judgements address a group as a whole – the disabled, then a resulting conviction has the character of a label for a given category of persons. Whereas if these opinions concern specific group members then they are not labels but take the form of specific features attributed to individual persons. Differentiation of the stereotypization process is an interesting issue from the point of view of the subject of this study. As it turns out, if opinions and judgements are directed at a group as a whole – disabled persons, then the resulting belief has the nature of a label attributed to a category of persons. Whereas, if these opinions refer to individual members of the group then they cease to be labels and take the form of specific features attributed to individual persons.

Another notion related to the issues of unequal treatment of individuals in society involves prejudices. When defining the term “prejudice” the literature lists such elements as: inflexibility, irrationalism, overgeneralization and unfairness which are a manifestation of the tendency to treat attitudes as emotional responses [Waszczak 2000, 94]. Some psychologists assume that each negative attitude is a prejudice [ibid.]. E. Aronson defines prejudice as “a hostile or negative attitude towards a certain definable group, based on generalizations interpreted out of false or incomplete information” [Aronson 2009, 359]. Representatives of social scholarship believe that prejudices foster discrimination, entice it and often justify it. Discrimination is thus a direct outcome of prejudice and involves “negative behaviour towards members of a socially defined group, driven by the discriminated persons’ membership in this group” [Stephan and Stephan 1999, 44–45]. The relationship between stereotypes, prejudices and discrimination results in stereotypes possibly leading to discrimination irrespective of negative attitudes, that is prejudices. Nevertheless, prejudices are believed to be the main factor determining discriminatory behaviour. Scholarly writings include the following as main causes of prejudices: economic competition, displaced aggression, maintenance of status or self-image and conformity to social norms [Aronson 2009, 389].

Social exclusion is another essential notion in the context of the discussed subject matter. The notion of social exclusion was first used in a 1988 European

Commission document. A year later this term appeared in the preamble of the European Social Charter. A few years later this term reappeared in an EU Commission document.<sup>3</sup> It featured a statement that a fight with social exclusion is extremely important for maintaining social solidarity. Defining social exclusion is not an easy task. According to a definition proposed by P. Moio, to be socially included means that an individual, family, or even a whole group are excluded from a way of living, resources and the usual conditions of life accepted for a given community [Moio 2002, 40]. Whereas according to J. Estivill, “Social exclusion may therefore be understood as an accumulation of confluent processes with successive ruptures arising from the heart of the economy, politics and society, which gradually distances and places persons, groups, communities and territories in a position of inferiority in relation to centres of power, resources and pre-vailing values” [Estivill 2003, 40]. Groups vulnerable to social exclusion include: children and young persons from neglected environments, children raised outside of the family, single mothers, women outside the labour market, victims of dysfunctional family life, persons with low qualifications, unemployed persons, persons living in very harsh housing conditions, disabled persons [Biel-Ziółek 2017, 18–19] and chronically ill persons, persons with mental illnesses, lonely seniors, prison leavers, immigrants, or members of the Romani ethnic minority [Belcer 2013, 11–12]. Social exclusion is a dynamic process which may undergo accumulation. Negative cause-and-effect incidents and their confluence in time may effect the exclusion process. Disability may be – as pointed out by R. Kruszka – an onset of moving towards the “exclusion track,” a reason for breaking friendship, social and then family ties, for non-involvement in political activity, for alcoholism, drug addiction, deterioration of health, etc. but it does not automatically entail being on the margin of society [Kruszka 2008, 51–52].

The phenomenon of stigmatization is also well worth noting in the context of perceiving persons with disabilities. Stigmatization, in other words social stigma, means a process involving labelling individuals and social groups which results in them behaving according to the “label” given to them [Biel-Ziółek 2017, 19]. Stigmatization often serves stereotypization and the features and behaviours included in the label also derive from prejudices and untested myths, and not from reliable and verifiable knowledge about a given person [ibid.]. Giving social labels most often involves attributing negative names and serves to depreciate individuals. A label once given is difficult to get rid of since a person was precisely categorized or “pigeonholed.” All which serves to deny a label will still be interpreted as confirming the legitimacy of the social stigma [Aronson 2009, 39]. Stereotypization and stigmatization are synonymous though not the same. Stigmatization is a fuller term since it is a process where the following elements occur: a) labelling, that is distinguishing people and labelling differences between them; b)

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<sup>3</sup> EU Commission, Towards a Europe of Solidarity in 1992. Intensifying the fight against social exclusion, fostering integration, COM(92) 542 final.

stereotypization, that is associating labels with undesirable attributes that make up the negative stereotype; c) cognitive distancing of “we” and “they”; d) loss of status and economic deprivation associated with discrimination and exclusion, thus rejecting those recognized as alien and inferior [Link and Phelan 2001, 366–68]. Social stigmatization is then a complex phenomenon with a source in other phenomena such as labelling, stereotypization or discrimination. It is worth outlining the four main features of stigmatization manifested in social interactions: active negative stereotypes, social rejection as well as two other that are derivatives of the first two, i.e. social discrimination and economic deprivation [Hebl and Dovidio 2005, 156ff].

Moving on to discrimination it is worth emphasizing that the notion of discrimination, despite being present in treaty regulations and soft law of international public law, does not have a legal definition. Non-discrimination is seen in binding treaties as a natural consequence of the principle of equality and has gained general normative and scholarly approval in this aspect. Discrimination is defined broadly in the legal scholarship as a negative phenomenon, often addressed in a broader framework of legal analysis. This is evidenced by the view of W. Burek and W. Klaus who point out that causes of discrimination are most often claimed to be social and cultural models based on superstition, customs, stereotypes, prejudices and other practices related to a belief about inferiority and superiority of one group over another, it means a different treatment of persons in the same legal or factual situation, the aim or effect of which is to limit resources or deny access to them (e.g. refusal for rational facilities for disabled persons) or to the enjoyment of rights, or lack of adequate protection, without rational and objective justification or in violation of the principle of proportional representation, in particular due to sex, age, disability, race, nationality, religion, belief, etc. regardless of the real or presumed possession of a given feature or through association with a person that has it [Burek and Klaus 2013, 89].

Whereas according to J. Sozański discrimination means any act refusing certain persons equal treatment compared with other persons, e.g. due to membership in a specific social group [Sozański 2005, 198]. The nature of perceiving discrimination as a negative and complex phenomenon is also presented by M. Resigl. The author believes that discrimination means putting persons believed to be different to others in an inferior situation [Resigl 2010, 28]. The above analysis shows that this multitude of voices has not lead to developing a single universally accepted definition of discrimination. However, a review of scholarly definitions does not leave any doubt that discrimination in legal language means unequal treatment due to a specific, legally protected feature, e.g. sex, nationality, disability, etc. This allows for a formulation of a position that discrimination, due to the aspect of accumulation of social phenomena, may be also defined as a result of the cause and effect relationship between them (the so-called discrimination chain), which ultimately causes a legally prohibited differentiation due to a given characteristic (attribute), here: disability. On the one hand, negative social pheno-

mena allow for deriving the understanding of the notion of discrimination from a strictly sociological angle where the social and cultural determinants of unequal treatment are pointed to. Given the above, it is legitimate to note that while appreciating the importance of defining discrimination in a sociological angle whose target and ultimate shape was specified in the presented manner, it needs to be emphasized that non-discrimination's high rank in the social axiological system does not mean that it can be investigated outside the legal system. Regulating this idea is an important contribution to perceiving the principle of equality, especially in the social dimension where social and cultural norms must adhere to it. In this context, referring the reconstructed notion of discrimination to the situation of children with disabilities is an interesting plane for interpretations and analyses carried out with regard to legal norms, both of treaty law and *soft law* nature, particularly in the scope of functions they are supposed to exercise.

## 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 CM/Rec(2013)2 refers to the issue of inclusion of children and young persons with disabilities into society, thereby corroborating the improper exercise of the rights of children with disabilities in member States of the Council of Europe.

It is recommended that the governments of member States, with due regard for their own national, regional or local structures and respective responsibilities, should ensure full inclusion of children and young persons with disabilities in society. Such inclusion is to constitute being a factual – and not an illusory part of society, with all the consequences that this entails [Olszewska 2004, 113]. Children and young persons with disabilities should be able to fully enjoy human rights and fundamental freedoms on an equal basis with their peers from birth. The Recommendation in its preamble refers to treaty obligations of member States of the Council of Europe, i.e. the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms<sup>4</sup> and the European Social Charter (Revised),<sup>5</sup> the 1989 Convention on the Rights of the Child or the Convention on the Rights of Persons with Disabilities adopted under the aegis of the UN, which emphasize the important dimension of legal protection of persons with disabilities in exercising the principle of equality and the principle of non-discrimination.

It is worth noting that the provisions of the Recommendation are only of a guiding nature, being only a political commitment for member States of the Council of Europe to undertake specific actions. However, it should not be denied the im-

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<sup>4</sup> European Treaty Series No. 5.

<sup>5</sup> European Treaty Series ETS No. 163.

portant role it plays in building a better standard of protection of the rights of children with disabilities. The perspective of a lack of treaty regulation referring strictly to the rights of children with disabilities gives this act an important role to play in the aspect of integrating children with disabilities in society. Namely, it is a postulate of a broader interpretation of the regulatory scope of Recommendation CM/Rec(2013)2 as referring not only to fighting discrimination against children with disabilities, but also as a legal instrument aimed at eliminating other negative social phenomena that may directly or indirectly affect the actual exercise of rights of these children. At the beginning of the analysis of the Recommendation it should be pointed out that this legal act literally refers first and foremost to non-discrimination. Yet, such a state of affairs cannot decide about the broader reference of this regulation to other social phenomena, particularly stereotyping, prejudices, social exclusion or social stigmatization.

At the beginning the Recommendation formulates three most important aspects related to equal treatment of children and young people with disabilities. It is pointed out that to participate and to be included in society and to live a quality life is an aspiration for all children and young people in Europe, both boys and girls, including those with disabilities. However, developing social and professional skills, getting jobs, building up strong social and family ties and attaining a sense of oneself as an equal citizen can be more difficult for young persons with disabilities; these difficulties have their source in the barriers which young persons with disabilities may encounter from a very early age, and which hinder their full participation in society and the fulfilment of their personal potential (sect. 1). The term “barriers” mentioned here, although not defined, makes it possible to presume that they can be taken as the phenomena of the functioning of social stereotypes, prejudices, social exclusion or social stigmatization. In subsequent paragraphs the Recommendation directly refers to the concept of discrimination, where it is emphasized that discrimination against persons with disabilities, a lack of accessibility and appropriate support, prospects – including learning opportunities – and reasonable accommodation for children and young persons with disabilities often limits their chances to develop their capacities and to contribute to society; strategic approaches co-ordinated among the different sectors involved, which result in empowering children and young persons with disabilities to become autonomous and active participants in society, are urgently needed (sect. 2). However, in the sect. 3 of the Recommendation – the Committee of Ministers emphasizes the fact that with regard to persons subject to multiple discrimination, appropriate measures are required to ensure their full and equal enjoyment of human rights and fundamental freedoms. The term “multiple discrimination” can be interpreted as a variety of behaviours and activities of members of society and the state, which lead to a negative form of discrimination due to the attribute of disability. A broad interpretation process can be performed again on the basis of this regulation, one which takes into account the postulated inclusion of undesi-

rable social phenomena as determining or directly contributing to the discrimination of the protected group, i.e. children and young people with disabilities.

Adopting the postulate formulated at the beginning that discrimination is the sum of social phenomena, the outcome of a cause and effect relationship between them, should be considered as a well-founded interpretation of the Recommendation in the indicated broader perspective, both for the purpose of legal protection and its subject-matter scope. Much broader legal protection results out of seemingly general provisions, not only against discrimination but also against the phenomena of stereotypization, prejudice, social isolation, social exclusion, social stigmatization etc.

The Recommendation comprises a subject-matter catalogue, which consists of four main areas: promoting full belonging to society, participation, choice and decision making, support to empower children and young persons with disabilities, and inclusive education facilitating full citizenship.

The first area which concerns promoting full belonging to society particularly clearly refers to the fight against negative social phenomena that can appear in relation to children and young people with disabilities, although literally there is no direct reference to them (stereotypization, prejudice, social isolation, social exclusion, social stigmatization etc.). First of all, the Recommendation emphasizes that “protecting and fulfilling human rights of all persons with disabilities is a fundamental duty of every Council of Europe member State; breach of the rights of persons with disabilities, including children and young persons, leaves many of them disadvantaged and hampers their active participation in the community in all its aspects: political, public, economic, social, cultural and leisure; ensuring accessibility in line with the principles of Universal Design<sup>6</sup> and provision of reasonable accommodation reinforce the right to independent living” (sect. 4). The Recommendation also addresses the important issue of deinstitutionalisation of people with disabilities, indicating that “many European countries have already committed themselves to deinstitutionalisation,<sup>7</sup> however, the necessary alternative community-based support services, such as accessible housing and support services, have not always been put into place” (sect. 5). The Recommendation also takes a stand on the issue of poverty. The literature indicates that disability may be one of the social risk factors that significantly affects the quality of life of such a person and his or her family, often being the cause of impoverishment or increase of poverty.<sup>8</sup> The Committee of Ministers of the Council of Europe takes notice of this problem, pointing out that “some children and young persons with disabilities have low self-esteem, insufficient education and restricted

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<sup>6</sup> See more: Recommendation CM/Rec(2009)8 of the Committee of Ministers to member states on achieving full participation through Universal Design, [www.coe.int](http://www.coe.int) [accessed: 28.11.2019].

<sup>7</sup> See more: Recommendation CM/Rec(2010)2 of the Committee of Ministers to member states on deinstitutionalisation and life of disabled children in the local community, [www.coe.int](http://www.coe.int) [accessed: 28.11.2019].

<sup>8</sup> More about disability as a social risk factors: Błeszyński and Orłowska 2015, 649.



employment opportunities that can lead them to live below the poverty level as adults” (sect. 6). A key response to these problems consists in enhancing the social roles of children with disabilities at a very early age, thanks to positive action programmes, incentives and other measures such as human rights education, which is vital (sect. 6). At the same time the CoE CM emphasizes that it is essential to undertake awareness-raising campaigns on the rights and needs of children and young persons with disabilities to encourage their inclusion in society and prevent discrimination, segregation and institutionalization, which is to prevent the negative phenomenon of poverty.

The second subject-matter area, concerning participation, choice and decision making, points to the fact that “children and young persons with disabilities – both boys and girls – call for the chance to make decisions in relation to their own lives, in accordance with their evolving capacities, and not just in disability-specific matters, but on every aspect of political, public, economic, social and cultural life” (sect. 7). “Children and young persons with disabilities run a higher risk of having their rights violated; it is therefore important that parents, guardians, educators, trusted influencers, persons with disabilities, carers and service providers empower children and young persons with disabilities and support them to make choices about their lives” (sect. 7). “Empowerment includes learning about rights and duties in an accessible and age-appropriate language and format, as well as discussing openly communities’ cultural and ethical norms and expectations” (sect. 7). It has long been noted in scholarly writings and practice that people with disabilities, including children, must be aware of their rights and obligations resulting from full participation in society [Wołoskiuk 2013, 73]. Knowledge of what discrimination based on disability is, what lies at the root of this phenomenon, spreading the idea of empowerment and developing the perspective of looking at the problem of disability from the point of view of human rights should be the most important element of social discourse, which sees the opportunity for a more effective fight against discrimination on grounds of disability and for the elimination of associated negative social phenomena (stereotypization, prejudice, social isolation, social exclusion, social stigmatization or self-stigmatization). Unfortunately, as raised in the Recommendation, accessible and age-appropriate information for children and young persons with disabilities is rare, while being extremely vital in enabling them to make informed choices especially at key times, for example at the point of diagnosis and at other major transition periods, such as the shift from education to employment (sect. 8). And here the problem of social stereotypes or prejudices becomes evident. The CoE CM points to the fact that children and young persons with disabilities, their families, carers, and other support networks are not always recognised and respected as partners with professionals in decision-making processes (e.g. procedures for admission to services, for devising individual support plans or for advocacy services and complaints procedures are not routinely accessible to children and young persons with disabilities). Innovative, targeted and individualised approaches are required

to ensure that children and young persons with disabilities, including those with communication difficulties, mental health problems, learning difficulties or complex health or dependency needs, are listened to, heard and responded to (sect. 9).

The third area to which this Recommendation refers is support to empower children and young persons with disabilities, where the subject of regulation involves the issue of access to services. The CoE CM indicates that the main aim of services to be provided to children and young persons with disabilities<sup>9</sup> is to enable them to fully enjoy their human rights and to be active citizens on an equal basis with others. It is emphasized that services have a crucial role in promoting the autonomy, inclusion and well-being of children and young persons with disabilities; they will enable children and young persons with disabilities to fulfil their potential and make their contribution to an inclusive society (sect. 10). The location and delivery of disability-specific services may not always take account of how best to fit in with various aspects of the person's life, such as going to school, having friends or enjoying sporting, cultural, social and leisure activities (sect. 11). All these areas are simultaneously of great importance in the exercise of basic human rights – affecting active, proper participation in society, which impacts the development of children with disabilities. For example, in the context of the right to participation in cultural life,<sup>10</sup> this right gained a regulatory character in international law first in the catalogue of human rights of the 1948 Universal Declaration of Human Rights.<sup>11</sup> Art. 27 of the Declaration provides that “Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.” The International Covenant on Economic, Social and Cultural Rights adopted by the United Nations in 1966 regulates the right to participation in cultural life in its Art. 15 according to which state parties to the Covenant acknowledge the right of everyone to: a) take part in cultural life; b) enjoy the benefits of scientific progress and its applications; c) benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.<sup>12</sup> Thus, the Covenant regulates expressly the right to culture as a uni-

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<sup>9</sup> Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (adopted on 17 November 2010), Guidelines on child-friendly health care (adopted on 21 September 2011), and 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.

<sup>10</sup> See more: Wieruszewski 1990, 1018ff.

<sup>11</sup> Universal Declaration of Human Rights (adopted and proclaimed by UN General Assembly resolution 217 A (III) on 10 December 1948).

<sup>12</sup> Art. 15, sect. 2–4 of the International Covenant on Economic, Social and Cultural Rights oblige states parties to take steps “to achieve the full realization of this right” which “shall include those necessary for the conservation, the development and the diffusion of science and culture,” to respect the freedom indispensable for scientific research and creative activity and declare recognition of the benefits resulting from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

versal right (afforded to everyone) and understood as the right to participate in cultural life, not defining either the concept of culture or the categories of this participation, which proves that this concept means both active participation (co-creating cultural life) and a division understood as access to cultural life (that is being an audience, reader and observer of this life), not differentiating these forms of participation in culture [Młynarska–Sobaczewska 2013, 29–30].

Given the above it is essential for service providers to have appropriate knowledge and competences to an approach not based on care towards children with disabilities, but one based on human rights applicable in various contexts of life which is ensured by support for the exercise of individual rights of every child or young person with disabilities on an equal basis with others. The Recommendation clearly emphasized that in the disability realm such a shift will only be possible if adequate measures are put in place and sufficient long-term financial and in-kind support to key players in the provision of human rights-based services is allowed to facilitate the mainstreaming process and to guarantee the availability, affordability, accessibility, quality, sustainability and innovation of the services supporting persons with disabilities (sect. 12).

The last, fourth subject-matter area of the Recommendation addresses inclusive education facilitating full citizenship. The Recommendation stresses that all children and young persons with disabilities have the same aspirations and goals as those without a disability in terms of education, work, vocational training and independent living. This is why it is crucial that schools and educational environments, parents, carers, etc. recognise the importance of fulfilling the aspirations of children and young persons with disabilities. The process of social integration between children without disabilities and those with disabilities requires two-way educational measures, i.e. developing and reinforcing a positive attitude and behaviour of children without disabilities towards a child with a disability and strengthening self-esteem of a disabled child, his motivation and skills in socialising and creating bonds with other children as well as a positive emotional attitude towards them [Maciarz 1990, 67ff; Zabłocki 2002, 76ff]. It is worth emphasizing that the idea of inclusive education was included in a number of significant international documents to which the CoE CM recommendation refers directly, i.e.: the Salamanca Statement on principles, policy and practice in special needs education (1994),<sup>13</sup> the UN Standard Rules on the Equalization of Opportunities for

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<sup>13</sup> The Salamanca Statement and Framework for Action on Special Needs Education were adopted by the World Conference on Special Needs Education: Access and Quality, organized by the government of Spain in cooperation with UNESCO in Spain on 7–10 June 1994. It was attended by 92 states and 25 international organizations in order to express their support for the objective of “Education for All.” See [http://www.unesco.org/education/pdf/SALAMA\\_E.PDF](http://www.unesco.org/education/pdf/SALAMA_E.PDF) [accessed: 28.11.2019]. More: *Better Education for All: When We're Included Too A Global Report People with an Intellectual Disability and their Families Speak out on Education for All, Disability and Inclusive Education*, Instituto Universitario de Integración en la Comunidad (INICO), Salamanca, Spain 2009.

Persons with Disabilities (1993),<sup>14</sup> the UN Convention on the Rights of Persons with Disabilities<sup>15</sup> and the European Disability Strategy 2010–2020.<sup>16</sup> This idea was also strongly emphasized in the Revised European Social Charter (1996)<sup>17</sup> and in the Council of Europe Disability Action Plan 2006–2015<sup>18</sup> and the Council of Europe Disability Strategy 2017–2023.<sup>19</sup> Nevertheless, as highlighted in the Recommendation, a large share of the CoE member States have not fully implemented inclusive education. It is important as inclusive education is something different to integration in mainstream schools: in the integrational model it is the student who needs to adapt to the education system, while in the inclusive model it is the education system that is to adapt to the needs of all pupils, respecting people's diversity. In order to achieve the inclusive education model a true change in the way of thinking and culture of teaching is necessary.

## CONCLUSION

To sum up, the CM/Rec(2013)2 Recommendation of the Committee of Ministers is a response to the problem of unequal treatment of children and young persons with disabilities, who still are one of the most marginalised social groups. Implementing integration of disabled persons with the community of persons without disabilities still encounters numerous barriers embedded in the social environment as well as in state solutions, which generates the emergence and functioning of negative social phenomena, ultimately resulting in discrimination [Maciarz 1990, 40–41, 44]. The catalogue of barriers in equal treatment of children with disabilities pointed to in the Recommendation is composed of: social barriers as stereotypical attitudes towards persons with disabilities, which restrict their activity in social life and do not consider their life capabilities; architectural barriers occurring in the disabled children's surroundings, e.g. in construction, transport and technical devices, which preclude their full access to participation in social activities; cultural barriers referring to a specific behaviour based on stereotypes and prejudices in terms of physique, appearance as well as values of health and ability; and finally, educational barriers present in educational institutions, which directly affect the level of education and further perspectives of de-

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<sup>14</sup> 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> [accessed: 28.11.2019].

<sup>15</sup> A/RES/61/106, <http://www.un.org/disabilities/documents/convention/convoptprot-e.pdf> [accessed: 28.11.2019].

<sup>16</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3Aem0047> [accessed: 28.11.2019].

<sup>17</sup> <https://www.coe.int/en/web/turin-european-social-charter> [accessed: 28.11.2019].

<sup>18</sup> <https://www.coe.int/en/web/disability/action-plan-2006-2015> [accessed: 28.11.2019].

<sup>19</sup> <https://www.coe.int/en/web/disability/strategy-2017-2023> [accessed: 28.11.2019].

velopment, especially in the labour market, which are an important instrument of the fight with social stigmatization of persons with disabilities.

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OCHRONA PRAW DZIECI Z NIEPEŁNOSPRAWNOŚCIAMI  
W ŚWIETLE ZAKAZU DYSKRYMINACJI – ANALIZA ZALECENIA  
CM/REC(2013)2 KOMITETU MINISTRÓW RADY EUROPY

**Streszczenie.** Zasadniczym celem niniejszych badań była analiza *soft law* Komitetu Ministrów Rady Europy w oparciu o Zalecenie CM/Rec(2013)2 Komitetu Ministrów dla państw członkowskich w sprawie zapewnienia pełnego włączenia dzieci i młodzieży niepełnosprawnej do życia społecznego. Rozważania dotyczyły kwestii odnoszących się do wskazania, iż *soft law* Komitetu Ministrów należy odczytywać szeroko, jako akty normatywne chroniące zarówno przed dyskryminacją, jak i przed innymi negatywnymi zjawiskami społecznymi, takimi jak stereotypizacja, uprzedzenie, izolacja społeczna, wykluczenie społeczne, stygmatyzacja społeczna.

**Słowa kluczowe:** dziecko, dyskryminacja, niepełnosprawność, stereotyp, stereotypizacja, uprzedzenie, izolacja społeczna i wykluczenie społeczne

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