

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT **C**
CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS



**Country Report on Malta
for the Study on
Member States' Policies for
Children with Disabilities**

STUDY



DIRECTORATE GENERAL FOR INTERNAL POLICIES
POLICY DEPARTMENT C: CITIZENS' RIGHTS AND
CONSTITUTIONAL AFFAIRS

CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS

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Children with Disabilities

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Abstract

This study looks at the situation of children with disabilities in Malta to identify the gaps in the legal frameworks and its implementation, the obstacles faced by children with disabilities and best practices. This country study is part of a larger study which analyses 18 Member States. Based on a comparative analysis of the country studies, the report 'Study on Member States' Policies for Children with Disabilities' provides some recommendations for EU action to enhance the situation of children with disabilities.

This document was requested by the European Parliament's Committee on Civil Liberties, Justice and Home Affairs.

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LINGUISTIC VERSIONS

Original: EN

Translation: MT

ABOUT THE EDITOR

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European Parliament, manuscript completed in June 2013.

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LIST OF ABBREVIATIONS

Art.	Article
CFC	Commission for Children
Charter	The Charter of Fundamental Rights of the European Union
CJEU	Court of Justice of the European Union
CRC	United Nations Convention on the Rights of the Child
CRPD	United Nations Convention on the Rights of Persons with Disabilities
ECHR	Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms
EOCU	Equal Opportunities Compliance Unit
EU	The European Union
FRCS	Foundation for Respite Care Services
INCO	Inclusive Education Coordinator
LSA	Learning Support Assistant
MAP	Making Action Plans
KNPD	National Commission Persons with Disability
SMP	Statementing Moderating Panel
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
UN	United Nations
UNESCO	United Nations Education Science and Culture Organisation
WHO	World Health Organisation
YOURS	Young Offenders Rehabilitation Unit Services
YPU	Young People's Unit

EXECUTIVE SUMMARY

The two main pieces of legislation aimed at safeguarding the rights of children with disabilities are the Equal Opportunities (Persons with Disabilities) Act and the Commissioner for Children Act.

Inclusive education has been the main focus of national action with regards to children with disabilities. The State invests heavily in an inclusive education system where the vast majority of children with disabilities attend mainstream schools. This does not, however, mean that all children with disabilities are fully included in mainstream schools. Accordingly, the inclusion of a child with disability in a mainstream school depends often on the goodwill of the persons involved in his/her education (school principals, teachers, learning assistants, etc.). In fact, children with disabilities, including those with specific learning difficulties and challenging behaviour, remain at particular risk of exclusion from the mainstream education.

While the infrastructure for providing and supporting inclusive education has developed and improved significantly, support services for children with disabilities outside school, especially within the family home or in a residential setting, still need to be developed to ensure appropriate support. In terms of service provision, children with disabilities are entitled to free healthcare like all the population and to certain forms of financial and legal support.

Children with disabilities are not specifically catered for under Maltese law as the national legislation focuses either on persons with disabilities or on children but not on children with disabilities. Legislation addressing these groups includes the Education Act which ensures inclusive education and the Commissioner for Children Act which provides for the mechanisms for the promotion and protection of rights of all children. The Equal Opportunities (Persons with Disability) Act regulates the situation of persons with disabilities and covers discrimination in different aspects of life, including education, access to goods, services and facilities, and physical accessibility. In terms of safeguarding the rights of children with disabilities, it has been referred to mainly to address discrimination encountered in mainstream schools. The Equal Opportunities Act also empowers the National Commission Persons with Disability (KNPD) to investigate complaints of discrimination on the grounds of disability and to take action, including, if necessary, taking cases to court. Thus, KNPD is the body which is best equipped to safeguard the rights of children with disabilities.

Moreover, several other legal acts regulate rights of persons and/or children with disabilities. In particular, the Civil Code provides for the respect of the (best) interests of the child, right to be heard and (to the limited extent) evolving capacities of the child. The Foster Care Act regulates in details placement of children in foster care facilities. The Criminal Code and the Domestic Violence Act contain certain provisions to ensure freedom from violence for children. The Social Security Act provides for financial support for children with disabilities, including visually impaired children.

Malta signed the CRC on 26 January 1990 and ratified it on 30 September 1990. The CRPD was signed by Malta in March 2007 and the Convention and its Optional Protocol were ratified in October 2012, both coming into effect on 9 November 2012. Neither Convention

has been incorporated into Maltese legislation. Consequently, the implementation of these Conventions depends on the extent to which they coincide with existing Maltese laws.

INTRODUCTION

In December 2010, the European Union (EU) became a party to the United Nations Convention on the Rights of Persons with Disabilities (CRPD). In doing so, the EU recognised the challenges persons with disabilities face in securing their rights and highlighted the need for EU actions in that to be firmly on the agenda of the European Union and its Member States.

Children with disabilities are already vulnerable because they are children. Their disability renders them particularly vulnerable. As such, they deserve specific safeguards and protection from the EU and its Member States.

The key legal framework for EU action in this field is the EU Decision ratifying the CRPD, the requirement under Article 10 TFEU for the EU to combat discrimination based on disability as well as the EU objective of promoting the rights of the child found under Article 3 TEU. This framework provides the EU with a unique position to push forward for further protection of the rights of children with disabilities, and to develop legislative or policy initiatives. The UN Convention on the Rights of the Child (CRC) provides another basis for action in this area.¹

This country report for Malta is part of a larger study which aims at providing the European Parliament with an overview of the situation of children with disabilities in selected Member States, with a view to evaluating the need for European legislation to enhance the rights of children with disabilities in the European Union. The project reviews the existing legal, policy and institutional frameworks in 18 Member States. Each country report analyses the implementation of international principles and rights stemming from the CRPD and the CRC to uncover any particular issues that necessitate further policy and legislative actions at national and EU level. The results from the country reports also form the basis for the comparative analysis in the report 'Study on Member States' Policies for Children with Disabilities'.

The key elements deriving from the CRC and CRPD, with regard to children with disabilities include:

- The obligation to act in the best interests of the child;
- The right to non-discrimination;
- The consideration of the evolving capacities of the child;
- The right to participate / right to be heard;
- The right to be free from violence;
- The right to family life;
- The right to assistance;
- The right to education, including inclusive education.

¹ All the 27 Member States have ratified the CRC, and all 27 Member States have signed the CRPD (Finland, Ireland and the Netherlands have signed but not yet ratified).

Given their ratification of both UN Conventions, Member States are obliged to take necessary measures to ensure the respect of the rights set forth for each child or person with a disability within their jurisdiction. Member States should take the appropriate measures to ensure that children are protected against all forms of discrimination or violence, including adopting all appropriate legislative, administrative and other measures for the implementation of those rights. Moreover, the protection of the rights of children with disabilities should be mainstreamed in all policies and programmes in accordance with Article 4(3) of the CRPD on the involvement of persons with disabilities in all decision-making processes.

Due to the scale of this subject and the scarcity of materials available, the scope of this study does not cover in detail the wide range of issues arising from and relating to the situation of children with disabilities. It does not aim to provide an in-depth analysis but rather an overview of the situation of children with disabilities' rights in Malta. This study presents a snapshot of some of the major issues and obstacles faced by children with disabilities and their families, a legal analysis of the implementation of the main rights and principles recognised in the CRC and CRPD and relevant in the context of the situation of children with disabilities and points to some potential solutions at national and EU level to improve their situation.

Each country report is structured as follows: it first looks at the situation of children with disabilities at the national level. It describes the national legal and institutional framework for the protection of children with disabilities and analyses national implementation of principles and rights developed in the UN Conventions (CRC and CRPD). It then considers specific issues relevant to the situation of children with disabilities, including children as suspects, gender issues, violence and education. Finally, the report covers the mechanisms in place to implement the legal framework, highlighting gaps, problems, best practices, and recommendations found by the literature or via interviews with stakeholders.

1. OVERVIEW OF THE SITUATION AND CHALLENGES FOR CHILDREN WITH DISABILITIES IN MALTA

KEY FINDINGS

- The national action focuses on the following areas: early intervention, health services and inclusive education.
- The following gaps, problems and challenges have been identified: i) ensuring that inclusive education is truly inclusive for all children with disabilities, ii) providing support services for families of children with disabilities and community-based residential services where these are necessary.

1.1. Introduction to the situation of children with disabilities in Malta

The Maltese population stands at 401,846 inhabitants. Of these, around 8% have a disability. The population of children (from 0 to 18 years of age) accounts for 76,228, of which around 5% have a disability.² There are no specific laws aimed at children with disabilities. The rights of children with disabilities are protected by the **Equal Opportunities (Persons with Disability) Act** which covers discrimination in different aspects of life including, among others, physical accessibility, access to goods, services and facilities, and access to education.

Within the policy framework, the only policy which is aimed directly at children with disabilities is that of inclusive education. In other areas, these children benefit from policies and measures aimed at persons with disabilities (regardless of age) or are aimed at children. For example, the Draft National Children's Policy includes a section on the inclusion of children with disabilities.³

The two main institutions which safeguard the rights of children with disabilities in Malta are the **National Commission Persons with Disability** and the **Children's Commissioner**.⁴

In terms of service provision, children with disabilities are entitled to free health and education services on the same basis as other children. Parents of children with disabilities are also entitled to special children's allowances. Furthermore, there is a variety of state and non-governmental organisations which provide services specifically for children with disabilities or for people with disabilities, including children.

Inclusive education is arguably the area in which Malta has made the best progress in the disability sector. In 1993, Malta adopted an inclusive education policy.⁵ In addition, it is

² Statistics provided by the National Statistics Office, Valletta, Malta.

³ Ministry for Education, Employment and the Family, 'Draft Children's Policy', 2012, available from https://www.education.gov.mt/mediacenter.ashx?file=MediaCenter/Docs/1_child%20policy.pdf (last accessed 3rd October 2012).

⁴ 'National Commission Persons with Disability', available from <http://www.knpd.org> (last accessed 3rd October 2012). 'Commissioner for Children', available from <http://www.tfal.org.mt/> (last accessed 3rd October 2012).

a signatory to the Salamanca Statement.⁶ The right of children with disabilities to attend mainstream schools is also asserted in the Education Act (Chapter 327) and the Equal Opportunities (Persons with Disability) Act (Chapter 413). The inclusive education policy was further reinforced by the guidelines *Creating Inclusive Schools*⁷ and, more recently, the training and engagement of Inclusion Coordinators in mainstream schools⁸. In this document, the authors note that the adoption of the term 'individual educational needs' is in line with an approach that views 'all students as learners with equal rights but with a diversity of needs'.⁹

According to the *World Report on Disability*, Malta has one of the highest proportions of children with disabilities in inclusive education in the European Union. This has been achieved by the gradual building up of the inclusive education system since its inception in 1993.¹⁰ Support for children with disabilities in mainstream schools is mainly provided by a learning support assistant (LSA). Once the child with disabilities reaches school age, he or she is referred to the Statementing Moderating Panel (SMP) which issues a statement of individual educational needs. This statement specifies the level of support that the child is to receive in their mainstream school. Parents have recourse to appeal to the Statementing Appeals Board if they do not agree with the decision of the SMP. Apart from the support provided by the LSAs, the Student Services Department within the Directorate for Educational Services also provides a number of services in schools, namely the Early Intervention Service, Teachers for the Hearing and Visually Impaired, an Autism Spectrum Support Team, an Access to Communication and Technology Unit, Home Tuition and Hospital Classes.¹¹

However, despite this extensive support framework, not all children with disabilities are fully included in mainstream education and there are still hurdles to be overcome for this to happen. In other aspects of life outside school, progress has been observed but there are considerable gaps which are identified in the sections below in this report.

1.2. Review of issues and identification of possible regulatory gaps

Of all the issues of relevance to children with disabilities in Malta, inclusive education is the subject that has been most extensively researched. Even so, there is little published academic research on the topic, with most of the research being found in dissertations by students of the University of Malta.

⁵ National Commission Persons with Disability, 'National Policy on the Education of Persons with Disability', 1993. Available from <http://www.knpd.org/pubs/edupole.shtml> (last accessed 3rd October 2012).

⁶ UNESCO 'The Salamanca Statement and Framework for Action on Special Needs Education', 1994. Available from www.unesco.org/education/pdf/SALAMA_E.PDF (last accessed 3rd October 2012).

⁷ Bartolo, P.A., Agius Ferrante, C., Azzopardi, A., Bason, L., Grech L. & King M., 'Creating Inclusive Schools: guidelines for the implementation of the National Minimum Curriculum Policy on Inclusive Education', (Floriana, Malta: Ministry of Education. 2002).

⁸ Public Service Commission, 'Post of Inclusive Education Coordinator (INCO) in the Directorate for Educational Services (DES)', available from <https://www.education.gov.mt/Page.aspx?pid=588&depid=2&pageid=14> (last accessed 3rd October 2012).

⁹ Bartolo, P.A., Agius Ferrante, C., Azzopardi, A., Bason, L., Grech L. & King M. 'Creating Inclusive Schools: guidelines for the implementation of the National Minimum Curriculum Policy on Inclusive Education', (Floriana, Malta: Ministry of Education. 2002).

¹⁰ World Health Organisation, 'World Disability Report', available from http://www.who.int/disabilities/world_report/2011/en/index.html (last accessed 3rd October 2012).

¹¹ Student Services Department, available from <https://www.education.gov.mt/Page.aspx?pid=256&depid=2&pageid=14> (last accessed 3rd October 2012).

One of the issues that were looked into by researchers was the assistance received by children with disabilities attending mainstream schools. It has been found that the adequate training of teachers of classes including children with disabilities is one of the challenges.¹² According to literature, attending a mainstream school does not by itself imply that a child with disabilities is fully included.¹³ There are also indications that children with certain impairments face more difficulties in being fully included in mainstream schools than others. It appears that¹⁴ teachers are more likely to accept and respond to children with physical or intellectual impairments than children with behavioural and emotional difficulties. Students with social, emotional and behavioural difficulties tend to be isolated from their peers and feel excluded from school life.¹⁵ It is pointed in particular that autistic children are at the elevated risk of being taken out of the class and receiving lessons in an isolated setting within the mainstream school.¹⁶

Although children with disabilities do mostly attend mainstream schools, their inclusion is still perceived as a favour done to these children rather than their genuine right which hinders inclusion in the fullest sense of the word.

Other deficiencies with regard to the situation of children with disabilities in Malta have been recognised in the field of assistance for families raising children with disabilities. Accordingly, support services for families of children with disabilities and the provision of community-based residential services require significant improvements in order to meet special needs of children with disabilities and their parents.

¹² Bartolo, P.A., 'The Process of Teacher Education for Inclusion: the Maltese experience', *Journal of Research in Special Educational Needs*, Vol 10, No 1, pp 139-148, 2010.

¹³ Mercieca, (2008), cited in Abela, M., 'The Social Inclusion of Students with Moderate to Severe Disabilities in a Boys' Comprehensive Secondary School: a qualitative study', (Unpublished Masters dissertation, University of Malta, Msida, Malta, 2012).

¹⁴ Cefai, C. and Cooper, P. 'The Introduction of Nurture Groups in Maltese schools: a method of promoting inclusive education', (2011) *British Journal of Special Education*, Vol 38, No 2, pp 65-72.

¹⁵ Cefai, C. and Cooper, P., 'Students without Voices: The Unheard Accounts of Secondary School Students with Social, Emotional and Behaviour Difficulties', (2010) *European Journal of Special Needs Education*, Vol 25, No 2, pp 183-198.

2. OVERVIEW OF THE LEGAL FRAMEWORK IN MALTA

KEY FINDINGS

- Malta has a dualist legal system in which international agreements require ratification by the House of Representatives for their incorporation into domestic law. Malta has ratified both the CRC and the CRPD; however their provisions have not been incorporated into Maltase legislation. Hence, both conventions do not yet form part of Maltese law.
- Children with disabilities are not specifically catered for under Maltese law as legislation focuses on persons with disability or on children in general.
- The right of persons with disabilities to education is enshrined in the Constitution. The Education Act and implementing measures provide for a legal framework fostering inclusive education.
- Specific laws address issues such as discrimination of and social services for persons with disabilities and/or children.
- The National Commission Persons with Disability identifies, establishes and updates all national policies directly or indirectly related to disability issues and investigates the complaints.

2.1. General overview of the national legal and institutional framework

The Constitution of Malta (Chapter 0 Laws of Malta) is divided into eleven chapters setting out a series of laws laying down basic principles, rules on citizenship, fundamental rights and freedoms of the individual, as well as providing the legal framework for the President, Parliament, the Judiciary, the Executive, Finance and Public Service. While the Constitution is generally enforceable at law, the provisions in Chapter II entitled 'Declaration of Principles' are not justiciable.¹⁷

Maltese Law is constituted by a series of chapters (at present 523 chapters), including the Criminal Code (Chapter 9), the Civil Code (Chapter 16), the Code of Organisation and Civil Procedure (Chapter 12) and the Commercial Code (Chapter 13). The primary source of law is legislation, supplemented by jurisprudence and scholarly commentaries of comparative law jurisdictions where there is a lacuna in the law. Malta does not apply the doctrine of precedent although the previous judgements of courts have a persuasive influence on future judgements. Maltese courts look to consider the case-law of the European Court of Human Rights in interpreting proceedings regarding fundamental human rights but are not bound to decide in keeping with such case-law.

Malta has a dualist legal system where international conventions are not automatically applicable in domestic law. To render them applicable, the Parliament must integrate the

¹⁷ Constitution of Malta: 'Section 21 Guiding Principles are not Rights: The provisions of this Chapter shall not be enforceable in any court, but the principles therein contained are nevertheless fundamental to the governance of the country and it shall be the aim of the State to apply these principles in making laws.'

agreement into a chapter of law by an act. For example, Malta has incorporated the European Convention on Human Rights into Maltese law (Chapter 319) and the Hague Conventions relating respectively to the Civil Aspects of International Child Abduction and to the Recognition and Enforcement of Custody Decisions (Chapter 410) but has still to incorporate the CRC and the United Nations Convention on the Elimination of all Forms of Discrimination Against Women into domestic law.

The Courts of Malta are divided into Superior courts (Constitutional Court, the Court of Appeal, the Court of Criminal Appeal, the Criminal Court and the Civil Court) and Inferior courts (the Court of Magistrates (Malta) and the Court of Magistrates (Gozo)). The Maltese Constitution provides for a system of checks and balances which safeguard the independence of the judiciary.

There are two levels of government in Malta: the central administration and municipal or local councils. Issues relating to welfare are coordinated at central government level and funding is also determined by Parliament. The local councils may be entrusted with service delivery and engagement of personnel but statutory responsibility, particularly in the field of welfare issues, rests with the central administration. The legislature and the executive powers are also kept in check through the Constitution with a number of Boards and Commissions responsible directly to Parliament, some of which respond to a particular Ministry, which may affect their perceived and actual independence.

2.2. Children with disabilities specific legal and institutional framework

2.2.1. Legal framework

As mentioned in the sections above, there is no specific legal framework addressing the situation and rights of children with disabilities in Malta.

The **Constitution of Malta** provides for protection of persons with disabilities in terms of employment, education, social assistance and discrimination in Articles 17 and 45:

17. (1) Every citizen incapable of work and unprovided with the resources necessary for subsistence is entitled to maintenance and social assistance.

(2) Workers are entitled to reasonable insurance on a contributory basis for their requirements in case of accident, illness, disability, old-age and involuntary unemployment.

(3) Disabled persons and persons incapable of work are entitled to education and vocational training.

45. (1) Subject to the provisions of sub-articles (4), (5) and (7) of this article, no law shall make any provision that is discriminatory either of itself or in its effect.¹⁸

In 2011 an amendment to the Civil Code by Act XIV.2011 established **parental responsibility to maintain a child with a disability**. This obligation had been recognised and upheld by the courts in the context of court proceedings, but there was no legislation to reinforce it. The amended provisions refer to the obligation within the ambit of

¹⁸ Article 45(4) provides that Sub-article (1) does not apply where the restricting or advantaging law is 'reasonably justifiable in a democratic society'.

parental authority and separation or divorce of the parents. Accordingly, Article 3B of the Civil Code now reads:

(1) Marriage imposes on both spouses the obligation to look after, maintain, instruct and educate the children of the marriage taking into account the abilities, natural inclinations and aspirations of the children.

(2) The obligation of the parents to provide maintenance according to sub-article (1) also includes the obligation to continue to provide adequate maintenance to children, according to their means, and where it is not reasonably possible for the children, or any of them, to maintain themselves adequately, who: (a) are students who are participating in full-time education, training or learning and are under the age of twenty-three; or (b) have a disability, as defined in the Equal Opportunities (Persons with Disability) Act, whether such disability is physical or mental.

The responsibility towards children with disabilities remains whole in the event of the separation of the spouses.¹⁹

The Civil Code was also amended in 2012 by Act II.2012 to update the terminology used in relation to disability and this amendment is also applicable to children. Currently, the Civil Code provides that persons who have reached the age of majority and who are unable to manage their affairs owing to a mental condition may be interdicted from carrying out certain acts by law.²⁰

Furthermore, general articles relating to capacity to contract and succession are also dealt with in the Civil Code and mention children.²¹ These are complemented by the procedural aspect in provisions of the **Code of Organisation and Civil Procedure** which addresses the process for interdiction but only refers to children in relation to the transition from parental authority into curatorship under interdiction when the person was suffering from mental incapacity since childhood.²²

The **Social Security Act** guarantees entitlement to a Disability Pension to a person who:

(a) has attained the age of sixteen years; and

(b) is certified to be suffering from a mental severe subnormality or to be a severely disabled person in accordance with the provisions of this Act, or to be suffering from cerebral palsy; and

¹⁹ It is noteworthy that this provision relates solely to parents who are married.

²⁰ Article 189. (1) of the Civil Code: 'A major who is a person with a mental disorder or other condition, which renders him incapable of managing his own affairs, or who is insane or prodigal, may be interdicted or incapacitated from doing certain acts, as provided in articles 520 to 527 inclusive, of the Code of Organization and Civil Procedure. (2) The same shall apply in regard to the minor referred to in article 156. (3) The demand for interdiction or incapacitation may be made not only by the persons mentioned in article 521 of the Code of Organization and Civil Procedure, but also by any person related by affinity who, under the provisions of this Code, might be compelled to supply maintenance to the person who has a mental disorder or other condition, which renders him incapable of managing his own affairs, or is insane or prodigal. (4) For the purposes of this Title, and for the purposes of the provisions of articles 597, 752, 1034, 1035, 1036 and 1241: (a) "other condition", where used in the context of a condition that renders a person incapable of managing his own affairs, means a long-term physical, mental, intellectual or sensory impairment which in interaction with various barriers may hinder one's full and effective participation in society on an equal basis with others; and (b) "mental disorder" shall have the meaning assigned to it in the Mental Health Act: Provided that any reference in such definitions to "disability of mind" or "arrested or incomplete development of mind" shall not be construed to mean a mental disorder for the purposes of this Title and such provisions'.

²¹ Articles 189-192, 597,752,1034-1036,1241 of the Civil Code.

²² Articles 520-527 of the Code of Organisation and Civil Procedure.

(c) shows to the satisfaction of the Director²³ that he is a citizen of Malta and normally resides in Malta.

The Act also provides entitlement to a Pension for the Visually Impaired for a visually impaired person who:

- Has attained the age of fourteen years; and
- Produces such certificates regarding his visual impairment, as the Director²⁴ may, in particular cases, require; and
- Shows to the satisfaction of the Director²⁵ that he is a citizen of Malta and normally resides in Malta.

The **Education Act** obligates the State to promote, support, coordinate and ensure lifelong learning services and initiatives, including educational and cultural initiatives within the community, e-learning and distance learning, adult education, evening classes and other initiatives relating to complementary education and services for persons having specific learning difficulties.²⁶

Furthermore, the Education Act requires the State to provide 'resource centres' responding to individual educational needs of children who, due to physical, sensory, intellectual or psychological difficulties, cannot be taught in mainstream schools.²⁷

Under the Education Act, the Minister for Education is to ensure that the national policy on inclusive education is being applied in all schools and that there are sufficient resources, tools and facilities. This includes maintaining specialised centres of resources to support schools and colleges in the implementation of the policy of inclusive education. The centres offer services to students having specific learning difficulties, and others which provide education and training services to students with individual educational needs whose educational entitlement may be better achieved in such centres. These students may attend the centres on a full-time basis.

Under the **Equal Opportunities Act**, all employers are obliged to provide reasonable accommodation for persons with disabilities. The Act ensures also accessibility of persons with disabilities to public properties and facilities, transport, facilities for entertainment, etc.²⁸ Moreover, it is unlawful for an education institution to deny access for a student with disability to any benefit and/or facility provided by such institution. While there have not been any cases that reached court, the National Commission Persons with Disability has dealt with complaints of discrimination in this area which have been settled through negotiation.²⁹

The Minister may implement the obligation of reasonable accommodation by issuing directives and regulations on, *inter alia*, the multi-disciplinary assessment of the condition of children with individual educational needs, the statementing process and the formulating

²³ The term 'Director' means the Director General (Social Security) and includes any public officer of the Social Security Division designated by him or any public officer designated by the Minister for a particular purpose or class of purposes. "Minister" means the Minister from time to time in charge of the Social Security Division and includes any officer designated by the Minister for a particular purpose or class of purposes. (See: Part I (2) of the Social Security Act).

²⁴ Ibid.

²⁵ Ibid.

²⁶ Article 11(2)(h) of Chapter 327.

²⁷ Articles 45 and 48 of the Education Act.

²⁸ Article 13 of the Equal Opportunities (Persons with Disabilities) Act.

²⁹ See Equal Opportunities Acts reports, available from <http://www.knpd.org/legislation/eoa.html>.

and the application of an individual educational programme.³⁰ In practice, the multi-disciplinary assessment is carried out at the Child Development Assessment Unit. Following this assessment, the Statementing Moderating Panel meets the child, his/her parents and teachers and issues a statement of individual educational needs which identifies the support to be provided to the child, including, where necessary, the services of a Learning Support Assistant. Panel decisions can be appealed before the Statementing Appeals Board.

2.2.2. Institutions and authorities

Matters relating to persons with disabilities fall under the remit of:

- The **Ministry for Health** where this is related to assessment and service provision;
- The **Ministry for Family and Social Policy** which is entrusted with provision of support in and outside the home;
- The **Ministry for Education** which is responsible for statementing, provision of education and integration into education;
- The **Malta Environment and Planning Authority** being responsible for ensuring accessibility for persons with disabilities.

The **main authority** entrusted with responsibility for persons with disabilities and therefore for children with disabilities is the **National Commission Persons with Disability (KNPD)**.³¹ It has been appointed by the Independent Mechanism according to Article 33.2 of the CRPD;(the focal point is to be designated by the Ministry responsible for Social Policy). Under the Equal Opportunities (Persons With Disability) Act, the Commission is composed of seven officials representing the Ministries responsible for Social Policy, Labour, Health, Education, Housing and Economic Planning, and seven representatives of voluntary organisations working in the field of disability issues. At least one half of the total number of the members of the Commission must themselves be persons with a physical disability or family members of persons with a mental disability, and if possible, there should be a balanced representation of women and men.

The Commission is charged to identify, establish and update all national policies directly or indirectly related to disability issues and to report to the Ministry for Family and Social Policy. It is obligated to differentiate between the specific needs of men, women and children with disability. Furthermore the Commission is entitled to initiate investigations into complaints. It is noteworthy that the Commission in its reports makes reference to persons under 16 years of age and then 17-59 and 60 years and over, so presumably children between 16-18 years of age are grouped with adults.

The **Commissioner for Children**³² is responsible for the promotion and protection of rights of all children. The Act refers to children with disabilities in the provisions setting out the guiding principles for the Commissioner as follows: '[C]hildren with disabilities and

³⁰ The Minister can also issue directives and regulations on the following issues: special arrangements on the assessment, tests and examinations of concerned students, the programmes in specialised centres of resources or special schools, the application of therapies or the giving of medicines as prescribed by competent professional persons according to any law in force to students while at a school or centre and any other matter connected with the implementation of the policy on inclusive education.

³¹ Established under Article 21 of the Equal Opportunities (Persons With Disability) Act.

³² Established under the Commissioner for Children Act (Chapter 462).

children from a disadvantaged family or social circumstances should enjoy the same quality of life as all other children’.

There is no body specifically responsible for the protection of children with disabilities. The National Commission for Persons with Disability is the most relevant organisation which addresses their needs and advocates for their rights in terms of equality, non-discrimination and integration.

2.2.3. Definitions

The Constitution of Malta provides no definition of the term ‘**disability**’ although it makes reference to it in Articles 17 and 45.

The Equal Opportunities Act defines disability as ‘a physical or mental impairment that substantially limits one or more of the major life activities of a person and "impairment" in the context of disability, means any loss, restriction or abnormality of psychological, physiological, or anatomical structure or function’.³³

The Social Assistance Act defines a **person with severe disabilities** as a person ‘who still has a reasonable expectancy of life and who is incapable of supporting himself through full-time employment or self-occupation, or who will be rendered incapable when of age, owing to a permanent disability arising from total deafmutism’.³⁴

Under the Mental Health Act, ‘**mental disorder**’ is defined as ‘mental illness, arrested or incomplete development of mind, psychopathic disorder, and any other disorder or disability of mind’.³⁵ The Mental Health Act has been the subject of discussion for a number of years and although a number of amendments have been proposed, these have not yet been passed by Parliament.³⁶

The Civil Code defines a ‘**minor**’ as ‘a person of either sex who has not yet attained the age of eighteen years’.³⁷ A minor may marry at the age of sixteen which is also the age of termination of compulsory education.³⁸ The age of criminal responsibility starts at fourteen³⁹ and the right to be heard in family court proceedings is also set at age of

³³ Article 2 (interpretation clause) of Chapter 413.

³⁴ Article 2 (interpretation clause) of Chapter 318.

³⁵ ‘Psychopathic disorder’ is further defined as a ‘persistent disorder or disability of mind (whether or not including subnormality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the patient, and requires or is susceptible to medical treatment’. ‘Severe subnormality’ is ‘a state of arrested or incomplete development of mind which includes subnormality of intelligence and is of such nature or degree that the patient is incapable of living an independent life or of guarding himself against serious exploitation, or will be so incapable when of an age to do so’. ‘Subnormality’ is defined as a ‘state of arrested or incomplete development of mind (not amounting to severe subnormality) which includes subnormality of intelligence and is of a nature or degree which requires or is susceptible to medical treatment or other special care or training of the patient’.

³⁶ According to the suggested amendments to the Mental Health Act Draft Bill (2007), ‘intellectual disorder’ means a ‘significant mental or behavioural dysfunction, exhibited by signs and, or symptoms indicating a disruption of mental functioning, including disturbance of thought, mood, volition, perception, cognition, orientation or memory which are present to such a degree as to be considered pathological in accordance with internationally accepted medical and diagnostic standards and “mental illness” shall be construed accordingly’.

³⁷ Article 157 of Chapter 16.

³⁸ Article 2 of the Education Act: ‘compulsory school age means any age from five years to fifteen years, both inclusive, and accordingly a person shall be deemed to be of compulsory school age if he has attained the age of five years and has not attained the age of sixteen years; (...)’.

³⁹ Article 35 of the Criminal Code: ‘Minors under the age of nine years are exempt from criminal responsibility. Minors under 14 years of age shall likewise be exempted unless they have mischievous discretion. However, if a

fourteen years.⁴⁰ It should be pointed out that there are new amendments to the civil law⁴¹ establishing the possibility of the appointment of a guardian to assist a person with intellectual disability which include new definitions of 'disability' and 'mental disorder'.⁴²

minor who is above nine years but below 14 years, is found to have mischievous discretion, he/she can be held responsible but is given only the punishments established for contraventions. However, the court can impose the punishment allotted to that particular offence decreased by three years and under no circumstance can the punishment exceed four years imprisonment, if taking into account the age of the offender, his previous conduct, the gravity of the fact of which he has been convicted and the degree of the mischievous discretion, the court believes he/she should so warrant. If the offender is below 18 but above 14 years of age, upon conviction he/she will be sentenced to the punishment allocated to that offence diminished by one or two degrees.'

⁴⁰ Article 6A and Article 131(4) of the Civil Code:

6A(1): 'In case of any disagreement either spouse may apply to the competent court for its assistance and the presiding judge, after hearing the spouses and if deemed opportune any of the children above the age of fourteen years residing with the spouses, shall seek to bring about an amicable settlement of such disagreement.'

131(4)(4): 'The court, after hearing the parents and the child if the latter has reached the age of fourteen years, shall make those suggestions which it deems best in the interest of the child and the unity of the family.'

⁴¹ Act XXIV.2012.

⁴² According to the Codes (Guardianship) (Amendment) Act, 2012, an Act to amend the Code of Organisation and Civil Procedure and the Civil Code for the purpose of providing for Guardianship: '(i) "disability" shall have the same meaning as assigned to it in the Equal Opportunities (Persons with Disability) Act; (ii) "intellectual disorder" shall have the same meaning as assigned to it in the Mental Health Act. Provided that any reference in such definitions to "disability of mind" or to "arrested or incomplete development of mind" shall not be construed as a reference to an intellectual disorder for the purposes of this Sub-title'. (...) '(b) achondroplasia, hypopituitarism, osteogenesis imperfecta or other forms of dwarfism; or (c) one of the following diseases, namely: Multiple Sclerosis; Muscular Dystrophy; Spina Bifida; Systemic Lupus Erythematosus; Haemophilia or any other similar permanent disorder of the blood characterised by chronic or repeated bleeding; Hydrocephalus; Huntington's Chorea; Cystic Fibrosis; T C II Deficiency; Cerebellar Ataxia; Chronic-Granulomatous Disease; Leopard's Syndrome; or (d) permanent total paralysis or permanent total severe malfunction or permanent total disease, whether through amputation or otherwise, of both upper or lower limbs; or (e) epilepsy with a frequency of attacks exceeding four per month, which condition is confirmed by appropriate investigations including an electroencephalogram and so certified by a Government neurologist or psychiatrist provided that the person concerned is not in possession of a driving licence; or (f) congenital indifference to pain'.

3. LEGAL FRAMEWORK AND IMPLEMENTATION ASSESSMENT

KEY FINDINGS

- The legal framework is not child-focused and although there are a number of laws targeting persons with disabilities or children, the two issues do not often come together. An overview of child rights issues has already been identified as overdue and in need of consolidated legislation. Such a step would contribute towards acknowledgment of children with disabilities as a particular group whose rights deserve special protection and promotion.
- The main issue faced by children with disabilities in Malta is a continued lack of understanding and tolerance towards their particular vulnerability. This, in turn, leads to emphasis on targeting discrimination issues rather than focusing on mainstreamed child rights such as ensuring well-being and promoting participation rights. The introduction of a specific code of legislation for children as a group could help to strengthen the lobby among vulnerable child group such as children with disabilities.

3.1. Implementation of the provisions of the CRPD and CRC

Malta was one of the first countries to sign the CRPD in March 2007 and ratified it in October 2012.

Malta signed the CRC in January 1990 and ratified it in September 1990. The provisions of the CRC have not been incorporated into Maltese legislation. To date, Malta has presented just one report to the Committee on the CRC in May 2000 and has responded to some – but not all – of the recommendations of the Committee following that report (including the call for a clear policy on children with disabilities).⁴³ However, there were no policies or measures put in place that addressed the rights of children with disabilities. For the effective implementation of the CRC, it needs to be incorporated into Maltese law.

3.1.1. Best interests of the child (Art. 3 CRC; Art. 7 CRPD)

The principle of the best interests of the child is considered as a **basic tenet** of Maltese law and is invariably cited as motivating Court judgements. Indeed, the concept of interests of the child has consistently been adjudged as a matter of great relevance in the courts. Accordingly, interests of the child are referred to in case-law as being 'paramount', 'supreme' or 'important in deciding on matters which affect the family'. 'Welfare'

⁴³ Farrugia, R., 'Assessment of *Lacunae* in Maltese Legislation on Children Served by Appoġġ', Commonwealth Report (restricted access), 2010; Farrugia, R., (2011), 'Child Rights in Malta and the Impact of the UN CRC', Presentation at National Conference. Available from http://malta.academia.edu/RuthFarrugia/Talks/51362/Child_Rights_in_Malta_and_the_Impact_of_the_UN_CRC (last accessed 3rd October 2012).

incorporates every type of welfare ranging from physical, social, intellectual to moral welfare.

There is **no clearly identifiable definition or reference** of the term 'best interests' in Maltese law although numerous articles make reference to the welfare of the child, the interest or best interests of the child and on occasion they also mention that the interests of the child are of paramount consideration.

Provisions of the Civil Code law relating to separation and divorce make clear provision for the allocation of custody and access arrangements and are guided by the principle of best interests of the child.⁴⁴ There is also a blanket article within the Civil Code, which clearly sets out that 'notwithstanding any other provision of this Code, the court may, upon good cause being shown, give such directions as regards the person or the property of a minor as it may deem appropriate in the best interests of the child'.⁴⁵ There is no specific reference to the rights of the child with disability.

In the light of the Foster Care Act, foster care facilities should be carried out in the best interests of the child. Also the Criminal Code refers to the best interests of the child, e.g. when regulating proceedings carried out by the Police.

However, it is noteworthy that the CRC and the CRPD are not part of Maltese law, and since Malta is dualist country, the articles relating to best interests in these Conventions are not binding in domestic law, although they may have persuasive influence.

3.1.2. Non-discrimination (Art. 2 CRC; Arts. 3 and 5 CRPD)

The Constitution, in Article 14 and 45, contains prohibition of discrimination on a number of grounds, however, without explicit mention of disability. Although Article 14 is non-enforceable, Article 45 has full force of law.

The Gender Equality Act makes no mention of discrimination on grounds of disability. In 2012, the remit of the National Commission for the Promotion of Equality (NCPE) was extended to cover the promotion of equality on the basis of sexual orientation, age, religion or belief, racial or ethnic origin, and gender identity in employment, financial institutions and education but makes no mention of disability. The rights of children with disabilities against discrimination on the grounds of disability are protected by the **Equal Opportunities (Persons with Disability) Act**. This Act applies to employment, education and access to goods, facilities, services and accommodation. It also prohibits indirect discrimination based on disability.

The principle of **reasonable accommodation**⁴⁶ is applied in all aspects of the Equal Opportunities (Persons with Disability) Act. While not all titles of the Act use the words 'reasonable accommodation', the requirement is still applicable to all areas covered by it. In fact, the principle of reasonable accommodation is used to reach a solution to a situation of discrimination. The implementation of the right to non-discrimination is therefore complete.

⁴⁴ Articles 35-66 of the Civil Code.

⁴⁵ Article 149 of the Civil Code.

⁴⁶ The right to non-discrimination requires reasonable accommodation in the sense that 'necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, [must be made] where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms' (Article 2 CRPD). As a result, the application of the right to non-discrimination 'does not mean identical treatment', it may require 'taking special measures in order to diminish or eliminate conditions that cause discrimination'.

3.1.3. Evolving capacities of the child⁴⁷ (Art. 5 CRC and Art. 3 CRPD)

The concept of evolving capacities of the child is **not explicitly recognised** under Maltese law. The national law refers broadly to similar concepts, i.e. 'age and understanding' of the child and the 'abilities' of the child.

The Civil Code states that parents should provide maintenance for their children in accordance with the abilities, natural inclinations and aspirations of the children. Also in the light of the Civil Code, **age and level of understanding of a child** are factors that need to be taken by the court in adoption cases.

The Commissioner for Children addresses the concept of the evolving capacities of the child, to certain extent, by making distinctions between younger and older children in its policy documents and recommendations, and also in the resources available on its website for children in different age groups.⁴⁸

3.1.4. The right to participate / to be heard (Art. 12 CRC; Arts. 7 and 30 CRPD)

Freedom of expression is ensured under Article 32 of the Constitution and children fall under the scope of this article.

The child's **right to be heard** is ensured with regard to **civil proceedings** concerning certain spheres of children's life (e.g. adoption, custody).⁴⁹ As a rule, the Courts of Justice are bound to hear children who have reached the age of fourteen years when the matter is being decided in the context of family proceedings affecting present and future well-being of the child. A children's advocate may be appointed by the court in order to represent the interests of the child in the proceedings. The mediator and either spouse may also request such appointment and the court may also opt to hear the child. The institute of the office of the child advocate dates back to the introduction of the family court in 2003. Since that time, this institute has not been developed much as it is run by a small number of part-time advocates who are called to promote the best interests of the child while also representing children's wishes.

The right to be heard is also provided under the Children and Young Persons Care Orders Act⁵⁰ and the Foster Care Act.⁵¹ The **Criminal Code** provides that child victims can be present at the proceedings, engage a lawyer, examine or cross-examine witnesses and produce other evidence.

To date, a child still does not have the *locus standi* to ask to be included in court proceedings; notwithstanding recommendations by Parliament to promote child

⁴⁷ The concept of evolving capacities of the child establishes that as children acquire enhanced competencies and experience, there is a reduced need for direction and a greater capacity for children to take responsibility for decisions affecting their lives. In light of the CRC, the concept of evolving capacities of the child entails that parents (or persons legally responsible) should have the right to provide, in a manner consistent with the evolving capacities of the child, appropriate guidance in the exercise by the child of his/her rights. See the report 'Study on Member States' Policies for Children with Disabilities' for more details on this concept.

⁴⁸ See resources and documents available from the Commissioner for Children's website: <http://www.tfal.org.mt/> (last accessed 3rd October 2012).

⁴⁹ In adoption proceedings, children have the right to state their views and give or withhold consent from age of 11.

⁵⁰ Section 3(1) of the Children and Young Persons Care Orders Act.

⁵¹ Article 24 of the Foster care Act.

participation and notwithstanding suggestions to include the Council of Europe Guidelines on Child Friendly Justice into the EU Strategy on Children, which applies to Malta.

The Commissioner for Children Act makes specific mention of the duty of the Commissioner to promote and ensure child participation, however this right is considered to be problematic to enforce in practice.

According to the Education Act, the Directorate for Educational Services promotes, encourages and monitors the democratic governance of schools through School Councils with the active participation of parents, teachers and students.

There are no articles in Maltese legislation referring specifically to children with disabilities with regard to right to be heard and right to participate.

3.1.5. Freedom from violence (Art. 19 CRC; Art. 16 CRPD)

The Constitution of Malta, in Article 36, provides that no one can be subjected to inhuman or degrading punishment or treatment. Children fall under the scope of this provision.

The Criminal Code regulates and **penalises various forms of abuse against minors**, including sexual violence, child prostitution, abandoning or exposing a minor, ill-treatment, etc.

The Criminal Code establishes violence against a child and person with disabilities as an **aggravating circumstance**.⁵² In particular, Article 208AC the Criminal Code provides a long list of 'vulnerable' persons who, if subjected to sexual violence, incur a greater penalty to the perpetrator.

The Foster Care Act requires an accredited Agency to investigate any allegations of abuse in any foster care facility.

The Domestic Violence Act makes specific provision for responses to violence committed in family environment and regulates a system of assistance for persons falling victims of domestic abuse.

3.1.6. Right to family life (Art. 9 CRC; Art. 23(3) CRPD)

The Constitution of Malta makes direct reference to the right to family life. Furthermore, the European Convention for the Protection of Human Rights together with its first Protocol were incorporated into Maltese law by the enactment of the European Convention Act which is consistently applied by the Courts. The Schedule to the European Convention Act provides for the **right to family life and prohibition of interference with the family life**.

In the light of the national law, children separated from parents and placed in alternative care have a care plan drawn up in their best interests. Decisions regarding contact with parent(s) make up part of the care plan.

⁵² Articles 203, 204 and 208 of the Criminal Code.

There is no express reference to persons with disability in the national law regulating family life.

3.1.7. Right to assistance (Art. 23 CRC; Arts. 23(5), 26 and 28 CRPD)

According to Article 17 of the Constitution, every citizen incapable of work and lacking the resources necessary for subsistence is **entitled to maintenance and social assistance**.

Financial support for persons with disabilities, in a form of Disability Pension or Pension for the Visually Impaired, is ensured under the Social Security Act. In addition, **special allowances** are foreseen for children placed in foster care or in institutions.⁵³

The Equal Opportunities (Persons with Disabilities) Act guarantees the provision of assistance, including financial and legal support, to persons with disabilities enforcing their rights under this Act.

Health care is provided through the state funded health service, including the Child Development and Assessment Unit. All persons, including children with disabilities, are entitled to free health services and medical treatment although no special provisions for children with disabilities have been identified in this regard.

3.1.8. The right to inclusive education (Art. 28 CRC; Art. 24 CRPD)

The Constitution makes provision for the right to (primary) education and the right of persons with disabilities to education, however these articles are part of Chapter II of the Constitution, which is declaratory in nature and not enforceable.

The Education Act places an obligation on the Minister to ensure that the national policy on **inclusive education is being applied in all schools**. In the light of the Education Act, there should be established specialised centres of resources which support schools and Colleges in the implementation of the policy of inclusive education.

The Equal Opportunities Act prohibits discrimination on the grounds of disability in education, among other aspects of life. It also ensures **accessibility of persons with disabilities to education facilities**.⁵⁴

The right to inclusive education is applied in policy documents issued by the Ministry of Education.⁵⁵ For more details on the implementation of the right to inclusive education in Malta see Section 3.2.4. below.

⁵³ Article 76A of the Social Security Act.

⁵⁴ Article 13 of the Equal Opportunities (Persons with Disabilities) Act.

⁵⁵ Ministry of Education, 'Youth and Employment. For All Children to Succeed: a new network organisation for quality education in Malta', available from https://www.education.gov.mt/MediaCenter/Docs/2_for_all_children_to_succeed.pdf (last accessed 3rd October 2012).; MEYE, 2005, Debono, M., Camilleri, S., Galea, J. and Gravina, D., 'Career Guidance Policy for Schools', available from https://www.education.gov.mt/MediaCenter/Docs/2_career_guidance_policy.pdf (last accessed 3rd October 2012).

3.2. Specific issues faced by children with disabilities

The points raised and discussed in this section are based on information and data collected from published reports and other documents as well as the interviews conducted with three national stakeholders. These were as follows:

- A representative of the Commissioner for Children (CFC 2012);
- A representative of the Equal Partners Foundation, which provides educational and therapy services for children and young people with disabilities, and who is also the parent of a person with a disability (Equal Partners 2012);
- A representative of Aġenzija Sapport, which provides residential, community and day services for people with disabilities, and who is also the parent of a person with a disability (Aġenzija Sapport 2012).

3.2.1. Gender vulnerability

There are no legal regulations specifically targeting women or girls with disabilities. The Equality for Men and Women Act (Chapter 456) prohibits and regulates discrimination between men and women, especially in the employment sector. The Mental Health Act states that **sterilisation** or other invasive devices to modify sexual and emotional changes resulting from mental illness are prohibited in Malta.⁵⁶

Statistical research in the disability sector is disaggregated by gender and shows the difference between men and women with disabilities in marital status, level of education, employment situation, the type and quality of residence, access to the Internet and participation in sport. These statistics show that, in most of the areas researched, women are more disadvantaged than men.⁵⁷ Other research also shows that women, including girls, with disabilities face a risk of discrimination double as high as men and experience more disadvantages than men.⁵⁸ Parents of young women with intellectual disability find that their daughters are more vulnerable than men, especially in the area of sexuality. They believe that the response to this increased vulnerability must not be sterilisation but additional sheltering and protection for girls and women with disabilities.⁵⁹

In the interviews, the issue of **fear among parents of sexual abuse against girls** with disabilities was issued. However, it is difficult to ascertain whether in reality they are more at risk than boys. Another interviewee pointed out that his organisation comes across cases of abuse of both boys and girls with disabilities, and that their disabilities cause a greater risk than their gender.⁶⁰

⁵⁶ Article 31 (2) of the Mental Health Act.

⁵⁷ Bezzina, F., Callus, A.M., and Cardona, G., 'The Quality of Life of Disabled People in Malta: some answers from the 2005 census', available from <http://www.knpd.org/Issues/research.html>, 2009.; KNPd, 'Annual report 2011', (St Venera, Malta: Kummissjoni Nazzjonali Persuni B'Dizabilità), available from <http://www.knpd.org/issues.html> (last accessed 3rd October 2012). KNPd, 2012.

⁵⁸ M. Debono and V. Gauci, 2011, 'Gender and Disability'. Paper presented in Symposium on Multiple Discrimination, Sliema, Malta, 3rd November 2011.

⁵⁹ Azzopardi-Lane describes that persons with intellectual disability in Malta do sometimes receive sex education which is focused on teaching them how to recognise abuse and how to prevent it. Azzopardi-Lane, K., 'Sexuality and People with Learning Disability in Malta: realities and potential', (Ph.D thesis, University of Kent. 2011).

⁶⁰ Information collected through stakeholder consultation.

One of the interviewees emphasised the **need for better sex education** especially addressing the needs and levels of understanding of girls with intellectual disabilities.⁶¹ However, very often sex education lessons in mainstream schools are delivered to the whole class and the material is not adapted for children with intellectual disabilities.⁶²

It should be noted that Malta's government adopted a sexual health policy acknowledging gender-related vulnerability of women and referring to the importance of sexual health services being responsive to persons with disability.⁶³

3.2.2. Violence

Two interviewees referred to cases of abuse of children with disabilities that were reported to their respective organisations, both of which are authorised to intervene in and investigate such cases.

When violence is being committed in the family environment or within an institution, the Social Work Unit of Aġenzija Sapport assesses the situation and if it deems that further investigation is required, it refers the case to the Child Protection Unit of Aġenzija Appogg, the public entity that provides care and support to children and families in need.⁶⁴ Following the referral, the social workers of both units work jointly according to an established protocol.⁶⁵

Children with intellectual disability are said to be more at risk of abuse than other children with disabilities. One of the reasons may be that those children and their parents tend to accept more easily certain treatments that would never be considered acceptable for other children.⁶⁶

3.2.3. Children as vulnerable suspects

Under Maltese criminal law, minors under the age of nine are exempted from criminal responsibility. Between the age of nine and fourteen, children are deemed to be capable of malicious discretion (*doli capax*) and can be held responsible. From the age of fourteen to eighteen any criminal offence committed by a child is penalised to a lesser degree.⁶⁷ The Criminal Code provides the possibility of a custodial sentence being converted into a Care Order for a child who has committed an offence.⁶⁸ However, this provision has never been applied (allegedly because of the lack of suitable facility to accommodate juvenile offenders).

⁶¹ Information collected through stakeholder consultation.

⁶² Azzopardi-Lane, K., 'Sexuality and People with Learning Disability in Malta: realities and potential', (Ph.D thesis, University of Kent. 2011).

⁶³ Ministry for Health, the Elderly and Community Care, 'The National Sexual Health Policy for the Maltese Islands', (Valletta, Malta. 2010).

⁶⁴ Aġenzija Appogg, available from https://secure3.gov.mt/socialpolicy/SocProt/family/fsws/appogg/appogg_info.aspx (last accessed 10th January 2013).

⁶⁵ Information collected through stakeholder consultation.

⁶⁶ Information collected through stakeholder consultation.

⁶⁷ Article 36 of the Criminal Code.

⁶⁸ Article 37 of the Criminal Code.

The Criminal Code provides for a detailed regulation of criminal offences committed by **deaf-mute minors**.⁶⁹ For instance, deaf-mute children who at the time of the offence have not attained the age of fourteen years and who have acted without a mischievous discretion are exempt from any punishment.⁷⁰

The Juvenile Court Act (Chapter 287 Laws of Malta) regulates the **proceedings applying to juvenile offenders** until the age of sixteen. Pursuant to Article 8 of this Act, proceedings against children may be held behind closed doors and the publication of any information that may identify the child is prohibited.

No specific legislation regulating the interrogation or prosecution of suspects under the age of eighteen has been identified.

3.2.4. Inclusive education

The right to education for children with disabilities is enshrined in the Education Act as well as in the Equal Opportunities (Persons with Disability) Act which indicates education as one of the areas where discrimination on the grounds of disability is prohibited and which ensures access to education facilities. The Education Act obliges competent national authorities to ensure that the national policy on inclusive education is applied in all schools and that there are available the resources, tools and facilities required for this purpose.

In 2004, a **review of special and inclusive education system in Malta was carried out** by experts commissioned by the Ministry of Education, a decade after the initiation of the inclusive education policy. The report sets out a re-positioning plan with specific recommendations, many of which have been wholly or partly implemented.⁷¹ The recommendations that were implemented include the setting up of the Student Services Department⁷², the training and engagement of Inclusion Coordinators⁷³, the revision of the job description of Learning Support Assistants,⁷⁴ the setting up of a multi-disciplinary Statementing Moderating Panel, and the reform carried out to transform the former special schools into resource centres.⁷⁵

The report warns against 'the pitfalls of a culture of dependency' pointing out the importance of ensuring that students with individual educational needs contribute to decision-making processes affecting them directly.⁷⁶

⁶⁹ Article 39-40 of the Criminal Code.

⁷⁰ Article 39 m) of the Criminal Code.

⁷¹ Spiteri, L., Borg, G., Callus, A.M., and Sciberras, M., 'Inclusive and Special Education Review', (Valletta, Malta: Ministry of Education, Youth and Employment 2004).

⁷² Student Services Department, available from <https://www.education.gov.mt/Page.aspx?pid=256&depid=2&pageid=14> (last accessed 3rd October 2012).

⁷³ Directorate for Educational Services, 'Post of Inclusive Education Coordinator (INCO) in the Directorate for Educational Services (DES)', Floriana, Malta, available from www.education.gov.mt/mediacenter.ashx?file=MediaCenter/Docs/1_INCO%202011%20ENG.pdf (last accessed 3rd October 2012).

⁷⁴ Ministry of Education, Culture, Youth and Sport, 'Supporting Learners in Independent Schools', Floriana, Malta, 2007, available from www.education.gov.mt/MediaCenter/Docs/1_Supporting%20Learners.pdf (last accessed 3rd October 2012).

⁷⁵ Ministry of Education, Culture, Youth and Sport, 'Special Schools Reform', Floriana, Malta, 2010, available from https://www.education.gov.mt/MediaCenter/Docs/2_Special_Schools_Reform_ENG.pdf (last accessed 3rd October 2012).

⁷⁶ Spiteri, L., Borg, G., Callus, A.M., and Sciberras, M., 'Inclusive and Special Education Review', (Valletta, Malta: Ministry of Education, Youth and Employment 2004).

The Student Services Department implements practices that enable students with individual educational needs to be involved in drawing up their respective Individual Educational Programmes.⁷⁷ In key stages of the education of children with disabilities, **Making Action Plan** (MAPs) sessions can be carried out with the active contribution of the student concerned.⁷⁸ MAPs are based on the principles of person-centred planning and are to be responsive to 'the student's dreams, fears, interests, and needs'.⁷⁹ While MAPs sessions have been established as part of the tools used in the inclusion process, there has not been any research carried out evaluating the extent to which the principles of person-centred planning are adhered to in practice.

While considerable advances could be observed in including children with disabilities in mainstream schools in Malta, the inclusion appears to be unsystematic. The implementation of inclusive education is often left to the particular head of school and also strongly depends on the goodwill of teachers. In many cases the responsibility for the education of children with disabilities is left in the hands of the LSAs, and children with disabilities are only tolerated in classes but do not receive adequate education and attention from the side of the school staff.⁸⁰ The gaps between children with disabilities and other children are more evident in the secondary school years, both on an academic and on a social level. In the post-16 sectors, the gaps become even wider.⁸¹

Furthermore, according to the interviewees, the right of children with disabilities to education is not fully recognised in practice. For instance, children with disabilities absent from school are not reported to the competent authorities as happens in the case of children without disabilities. As a consequence, these children stay at home and miss out on their education. Moreover, if the LSA is temporarily absent, the child may not be accepted at school and has to stay at home. This is not necessarily acknowledged as a problem by the schools taking an approach of indifference to the absence of children with disabilities.⁸² It has been also reported that parents may feel that they are not in a position to complain if the LSA is not fulfilling his or her duties and obligations well.⁸³

3.2.5. Other particular issues faced by children with disabilities in Malta

Children with very challenging behaviour are at a **high risk of institutionalisation**. If it is considered beneficial for a child with a mental disability to be removed from the family, they are placed under a Care Order which is issued by the Minister. Following the Care Order, the Children & Young Person's Advisory Board, on behalf of the Minister, exercises parental authority over the child. It is the psychiatrist in charge of the situation of a particular child with disability who decides if the child is to be admitted to the psychiatric unit. The parents/carers can appeal to the decision on the child's status.⁸⁴ Under the Care Order, the child may be placed in a residential institution. In severe cases, the child is sent to the Young People's Unit (YPU), which is part of Mount Carmel Hospital, the state mental

⁷⁷ Directorate of Educational Services, 'Individual Education Programme', Floriana Malta.

⁷⁸ Directorate of Educational Services, 'Transition Document from Year 6 to Form 1', Floriana Malta.

⁷⁹ 'Making Action Plans: student centred transitional planning', available from <http://www.ric.edu/uap/publications/MAPS.pdf> (last accessed 3rd October 2012). Paul V. Sherlock Centre, 2001, p.1.

⁸⁰ Information collected through stakeholder consultation.

⁸¹ Information collected through stakeholder consultation.

⁸² Opinion expressed by one of the stakeholders consulted.

⁸³ Information collected through stakeholder consultation.

⁸⁴ Information collected through stakeholder consultation.

hospital in Malta (where there are currently eight children with disabilities⁸⁵) or to YOURS, the juvenile unit of the prison. With reference to the YPU, although the setup is different from that of the wards for adults, and although all efforts are made to remove children from the YPU into the community, this is not always possible because of a **lack of community-based services**.

In general, there is a **lack of residential services** for children with disabilities who, for various reasons, cannot continue to live in their family homes. Some efforts are made to increase the offer of services, such as the planned establishment of a residential service for children with disabilities at risk operated by the Aġenzija Sapport, which to date only offers residential services for adults with disability. The Richmond Foundation Malta also runs a residential service for children with severe emotional and behavioural difficulties. And the Foundation for Respite Care Services plans to provide a residential respite for persons with disabilities, including children with disabilities, especially those with intellectual disability.⁸⁶

Overall, children with challenging behaviour face an **increased risk of exclusion**, when compared to other children with disabilities and may be hindered from benefiting from the progress that has been registered in the disability sector in Malta.⁸⁷ This conclusion is consistent with the results of research published by Inclusion Europe.⁸⁸

There is a **need for coordination between different agencies, especially health and education**. For many parents of children with disabilities, especially when children are very young or are diagnosed at birth, the first point of reference is the health sector. Health staff needs to be trained and informed about services and benefits available as well as educational opportunities so that health care authorities can provide the right advice and support to parents.⁸⁹

Other issues faced by children with disabilities in Malta relate to their future as independent adults. The development of self-advocacy for people with intellectual disability in Malta has been subject to research. While the focus is on adults with disabilities, the findings are also relevant for children. The study shows how Maltese culture does not foster self-advocacy, but rather tends to create dependency especially on family members who are expected to continue looking after people with disabilities for as long as possible. The development of autonomy and self-determination skills in children with disabilities is therefore not necessarily seen as a priority.⁹⁰

Children with disabilities in Malta also face an **uncertain professional future** once they become adults. While post-secondary and vocational training opportunities become increasingly available for persons with disabilities, employment opportunities still remain scarce and the support services provided by the Employment and Training Corporation are in need of restructuring.⁹¹

⁸⁵ Information collected through stakeholder consultation.

⁸⁶ Dar il-Kaptan, available from <http://www.darilkaptan.org/> (last accessed 3rd October 2012).

⁸⁷ Bezzina, A., 'Girl Interrupted', Pink Magazine, January 2011. (Valletta, Malta. A. 2011).

⁸⁸ Inclusion Europe, 2006, 'The Specific Risks of Discrimination Against Persons in Situation of Major Dependence or with Complex Needs', available from ec.europa.eu/social/BlobServlet?docId=3009&langId=en (last accessed 3rd October 2012).

⁸⁹ Information collected through stakeholder consultation.

⁹⁰ Callus, A.M., 'A Qualitative Study of the Self-Advocacy Movement for People with the Label 'Intellectual Disability' in Malta', (Unpublished PhD Thesis, University of Leeds. 2011).

⁹¹ National Audit Office, 'Performance Audit: employment opportunities for registered disabled persons', Floriana, Malta, available from <http://www.nao.gov.mt/page.aspx?id=70> (last accessed 3rd October 2012).

4. ASSESSMENT OF THE PRACTICAL IMPLEMENTATION OF THE RIGHTS AND LEGAL PRINCIPLES

KEY FINDINGS

- Since there is no specific legal framework to address the rights and needs of children with disabilities, general provisions in various laws are applicable to the situation of children with disabilities. Individual cases of discrimination against children with disabilities may be dealt with effectively but overall systemic change has not yet been achieved.
- Reporting seems to be focused on the discriminatory provision of services and particularly on access to education. KNPD is entrusted with the drafting of policy, monitoring of infringements and with investigations into alleged violations. KNPD has developed into a respected advocate for persons with disabilities and is nationally recognised as a worthy reference point.
- In the field of education, considerable progress has been made towards including children with disabilities into mainstream education. However, it still remains a relatively discretionary policy and the Commissioner for Children's monitoring powers in this area appear to be severely restricted, possibly due to understaffing and internal policy decisions relating to the Office of the Commissioner for Children.
- The literature recommends: 1. understanding and promoting the perspectives of children with disabilities; 2. training professionals on issues related to working with children with disabilities and fostering cooperation between them; 3. paying special attention to the needs of children with disabilities who have behavioural difficulties.

4.1. Enforcement and reporting mechanisms

The **National Commission Persons with Disability** (KNPD) is the entity which is empowered by law to enforce anti-discrimination legislation in the disability sector. KNPD's competences result from the Equal Opportunities Act which covers discrimination against people with disabilities in education, employment, access to goods, services and facilities, housing, physical accessibility, and insurance. Through recent amendments to this Act, KNPD has been assigned also the role of an independent mechanism 'to protect, promote and monitor' the implementation of the CRPD, according to Article 33.2 of the Convention.

The **Equal Opportunities Compliance Unit** (EOCU) within KNPD receives complaints on discrimination and investigates them. Complaints are lodged by persons with disabilities, parents or relatives of persons (especially children) with disabilities or are referred to KNPD by other entities. This includes referrals from the Commissioner for Children, who is, pursuant to the Commissioner for Children Act, empowered to promote the rights of children.

As can be seen from the Equal Opportunities Act annual reports published by KNPD, the **majority of complaints involving children with disabilities focus on education** and difficulties encountered in mainstream education. In the first ten years of the EOA, KNPD

dealt with 228 cases of discrimination in education, being 21% of complaints overall.⁹² These included issues of transport for children with mobility impairments and those who need supervised transport; the refusal of accepting children with disabilities having challenging behaviour at mainstream schools; students who are kept at home because the LSA is absent or has not yet been recruited; arrangements for support during examinations; and physical accessibility to the school and to facilities within the school.

KNPD settles most cases through discussion and negotiation and very few cases are taken to court. Published reports on KNPD's implementation of the Equal Opportunities Act show that of 1074 cases of discrimination investigated from 2000 to 2011, only six were taken to court or a tribunal.⁹³ One of the few court cases concerned the administration of medicines to children with disabilities attending mainstream schools. Some parents of children with disabilities had to visit their children's schools every day in order to administer medicines to their children. KNPD filed a suit against the Education Ministry for failing to draw up a policy on this issue. The Education Ministry eventually adopted a policy ensuring that children with disability attending mainstream schools and needing medicines to be administered are attended to by qualified professionals.

Other complaints concerned educators (especially teachers and LSAs) regarding their duties *vis-à-vis* children with disability. When conflicts arise, these educators may turn to their union, the Malta Union of Teachers. Some of the Union directives were hindering the implementation of policies and practices aimed at achieving higher levels of inclusion.⁹⁴ To be more precise, one of the directives prohibited teachers and LSAs from preparing adapted examination papers for children with disability following an alternative curriculum. This practice is usually followed for children with intellectual disability. As a result of this directive, these children are not provided with an appropriate assessment scheme on an equal basis with their peers.

From the above it can be concluded that the national legal and policy frameworks protect the rights of children with disabilities, especially in the field of education, and enable them and their parents to have legal recourse to redress any breaches of rights.

4.2. Gaps, problems and issues in the implementation

More than ten years after the enactment of the Equal Opportunities Act and at a point in time when Malta has recently ratified the CRPD, there are still considerable gaps in the implementation of the rights of persons with disabilities, including children. In particular, in the educational context, children with disabilities in mainstream schools are tolerated rather than fully included.

The **situation of children with severe or behavioural disabilities is more complex** and problematic than position of children characterised by other types of disabilities. This includes children with intellectual disability; children with communication difficulties; children with complex dependency needs (such as multiple disabilities and challenging behaviour). Also **children with disabilities from ethnic minorities face greater**

⁹² KNPD, 'EOA Report 2011', (St Venera, Malta: Kummissjoni Nazzjonali Persuni B'Dizabilità. 2012), available from <http://www.knpd.org/legislation/eoa.html> (last accessed 3rd October 2012).

⁹³ KNPD, 'EOA Reports', available from <http://www.knpd.org/legislation/eoa.html> (last accessed 3rd October 2012).

⁹⁴ Malta Union of Teachers, 'Directives to LSAs'. Valletta, Malta, available from <http://www.mut.org.mt/files/Directives%20LSAs.pdf> (last accessed 3rd October 2012).

difficulties. The latter relates especially to the children of undocumented migrants who reach Maltese shores from North Africa.⁹⁵

Outside the field of education, children with disabilities need to be given adequate support, both within their families (e.g. effective system of legal and emotional counselling, early intervention, adequate social and legal assistance) and through the provision of appropriate community-based residential services for those who, for various reasons, cannot remain with their families of origin.⁹⁶

It is noteworthy that the situation of victims of discrimination has changed. The **increased number of complaints** lodged with KNPD over the years indicates the increased willingness and ability of persons with disabilities and their family members to lodge complaints rather than accept cases of discrimination. What may have previously been accepted as fate is increasingly being recognised as discrimination and the effects of national structure, systems and attitudes that do not take into account the needs of persons with disabilities. In this context, there is a move towards recognising that enacting the necessary changes in established structures and systems is a question of rights, not charity.⁹⁷⁹⁸

KNPD is the best-resourced entity to uphold the rights of people with disabilities, especially in the light of its role of monitoring the implementation of the Equal Opportunities Act since 2000 and its new role as Independent Mechanism of the CRPD as from 2012.

4.3. Best practices

There has been considerable progress in seeking to remove systemic barriers to inclusive education. Perhaps one of the most significant steps has been the recent **appointment of inclusion coordinators (INCOs) in mainstream schools.**⁹⁹ An inclusion coordinator is a staff member who is trained in the principles and practice of inclusive education and who works with the senior management team as well as with teachers and LSAs in the process of including individual children with disabilities. However, these INCOs are often not equipped to address all the issues faced by each child with a disability and to resolve each issue swiftly and effectively.¹⁰⁰

One particular school held by the Catholic Church adopted a whole-school approach to inclusive education, taking into account the individual needs of all children. Rather than LSAs taking care of individual children with disabilities, the class teacher supports all students and, at the same time, acts as key person for children with a statement of

⁹⁵ Information collected through stakeholder consultation.

⁹⁶ Information collected through stakeholder consultation.

⁹⁷ Camilleri, J., 'Introduction: living fully in the community'. KNPD, 'EOA Report 2010', (St Venera, Malta: Kummissjoni Nazzjonali Persuni B'Dizabilità. 2010), available from <http://www.knpd.org/legislation/eoa.html> (last accessed 3rd October 2012).

⁹⁸ Bezzina, F., 'Rights Not Charity: guidelines towards an inclusive society and a positive difference in the lives of Maltese and Gozitan disabled people', (St Venera, Malta: Kummissjoni Nazzjonali Persuni B'Dizabilità. 2007), available from http://www.knpd.org/pubs/pdf/dritijietmhuxkarita_e.pdf (last accessed 3rd October 2012).

⁹⁹ Directorate for Educational Services, 'Post of Inclusive Education Coordinator (INCO) in the Directorate for Educational Services (DES)', Floriana, Malta, available from www.education.gov.mt/mediacenter.ashx?file=MediaCenter/Docs/1_INCO%202011%20ENG.pdf (last accessed 3rd October 2012).

¹⁰⁰ Information collected through stakeholder consultation.

individual educational needs. Responsibility for the education of these children is, according to this model, shared by everyone.¹⁰¹

4.4. Data and monitoring mechanisms

The only available data on cases of discrimination against children with disabilities is accessible via KNPD's Equal Opportunities Acts reports. This study has focused on the complaints regarding education (see in Section 4.1 above). Statistics from 2007 to 2011 are provided in the table in Annex 2.

Malta has recently ratified the CRPD, and a monitoring mechanism has not yet been put in place. This task has been assigned to KNPD itself. KNPD is currently preparing a report on the implementation of the CRPD.¹⁰² It is worth noting that this report, pursuant to Article 7 of the CRPD, is considered to be a cross-cutting tool with relevance to the implementation of all the articles in the Convention.

4.5. Recommendations given by the literature

As pointed out in the above Sections, since research carried out on the situation of children with disabilities in Malta almost exclusively focuses on **inclusive education**, the recommendations emphasise mostly this subject. Recommendations by the literature on support and services provided to children outside school are conspicuous by their absence. However, the recommendations given on inclusive education are also relevant for improving the situation of children with disabilities in other areas of life.

A common issue present in the research studies is that successful outcomes in inclusive education are dependent on educators being willing to accept children with disabilities and their specific impairments. The research indicates that this applies especially to those children whose disabilities are associated with behaviours which challenge the established educational system. The **need for a better understanding of children with disabilities** is highlighted in the recommendations presented by various researchers in particular in relation to children with social and emotional behaviour difficulties,¹⁰³ children with ADHD¹⁰⁴, and children on the autistic spectrum.¹⁰⁵ The research also points the **importance of seeking ways of connecting with children with disabilities**, especially those who have communication difficulties.¹⁰⁶ There are instances where such connections are made successfully, sometimes not by professionals but by auxiliary staff and by classmates. The importance of the acceptance of children with autism is also a point raised with reference to society as a whole.¹⁰⁷ Fostering a positive attitude among children must

¹⁰¹ Information collected through stakeholder consultation.

¹⁰² KNPD, 'Working towards the Implementation of the CRPD', available from <http://www.knpd.org/> (last accessed 10th January 2013).

¹⁰³ Cefai, C. and Cooper, P., 'Students without Voices: The Unheard Accounts of Secondary School Students with Social, Emotional and Behaviour Difficulties', 2010 European Journal of Special Needs Education, Vol 25, No 2, pp 183-198.; Darmanin, M., 'The Learning Support Zone: teachers' perceptions and expectations' (Unpublished Masters dissertation, University of Malta, Msida, Malta. 2012).

¹⁰⁴ Said, J., 'The Social Aspects of Inclusion of Children with ADHD in Gozitan Primary Schools', Unpublished B.Ed (Hons) dissertation, (University of Malta, Msida, Malta. 2003).

¹⁰⁵ Agius, Marilyn., 'It's Not Just About One Person: how autism affects the family', Unpublished B.A. (Hons) Social Work dissertation, (University of Malta, Msida, Malta. Agius2011).

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

start from the teachers.¹⁰⁸ There is also a need for peer-preparation programmes and for teachers to encourage children without disabilities not only to accept children with autism but also to become their friends.¹⁰⁹

Reference is also made to the importance of continuing to **develop teacher training** so that it is ensured that they fully understand the principles of inclusive education and the implications and means of applying them in practice,¹¹⁰ and for diversity to be celebrated rather than perceived as a source of difficulties.¹¹¹ The importance of teachers being trained in differentiated teaching methods is also mentioned.¹¹² Another recommendation highlighted by the researchers is the importance of professionals working together, underlining the need for teachers to learn how to use the services available fully and effectively.¹¹³

With reference to the wider society, it is important for social workers and other professionals to work together and provide effective support for children with disabilities and their families.¹¹⁴

¹⁰⁸ Said, J., 'The Social Aspects of Inclusion of Children with ADHD in Gozitan Primary Schools', Unpublished B.Ed (Hons) dissertation, (University of Malta, Msida, Malta. 2003).

¹⁰⁹ Agius, Melissa., 'Making Primary Schools More Inclusive for Children on the Autistic Spectrum', Unpublished B.Ed (Hons) dissertation, (University of Malta, Msida, Malta).

¹¹⁰ Bartolo, P.A., 'The Process of Teacher Education for Inclusion: the Maltese experience', (2010), Journal of Research in Special Educational Needs, Vol 10, No 1, pp 139-148; Darmanin, M., 'The Learning Support Zone: teachers' perceptions and expectations', Unpublished Masters dissertation, (University of Malta, Msida, Malta. 2012).

¹¹¹ Agius, Melissa., 'Making Primary Schools More Inclusive for Children on the Autistic Spectrum', Unpublished B.Ed (Hons) dissertation, (University of Malta, Msida, Malta. 2012).

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5. CONCLUSIONS

The rights of children with disabilities in Malta are mainly safeguarded by the Equal Opportunities Act which deals with the prohibition of discrimination based on disability and establishes the requirement of reasonable accommodation as well as ensures accessibility of public facilities and services. The Commissioner for Children Act establishes competences of the Commissioner for Children who is responsible for the promotion and protection of rights of all children. Next to the Commissioner, the National Commission Persons with Disability is legally empowered to enforce anti-discrimination legislation in the disability sector.

The Social Security Act provides for financial assistance for persons with disabilities (in the form of Disability Pension and Pension for the Visually Impaired). The Education Act ensures access of children with disabilities to inclusive education and their attendance to mainstream schools together with children without disabilities. The Mental Health Act covers the rights of minors suffering from intellectual impairments. The Foster Care Act regulates the functioning and the organisation of foster care facilities. Numerous provisions of the Civil Code and Criminal Code ensure rights of children to be heard, to be free from various forms of violence and their best interests to be taken into account by public authorities in certain proceeding concerning children's lives.

However, there is no legislation that specifically addresses children with disabilities and their vulnerable situation in the social, public and economic life. Moreover, the CRPD and the CRC have not yet been incorporated into Maltese legislation. This is particularly problematic as Malta is a dualist country which means that in order for international agreements to be applicable, their provisions need to be implemented into national legal order by means of national legislation.

A heavy investment in the inclusive education system has been made in Malta. Consequently, most children with disabilities attend mainstream schools. However, the degree to which children with disabilities are included depends on the goodwill and commitment of their educators. Research shows that the children who face the highest risk of exclusion are children with severe disabilities and/or challenging behaviour.

Moreover, while the infrastructure for providing and supporting inclusive education has developed and improved significantly, much needs to be done for services for children with disabilities outside the school to develop to the same extent. This includes supporting children in the family home, and the provision of adequate and appropriate residential services for children with disabilities who cannot remain at home.

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ANNEX 1 – SUMMARY TABLE

Analysis of the legal implementation of the CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<i>Best interests of the child</i>	
<p>Article 47 of the Civil Code During the pendency of the action the court shall give such directions concerning the custody of the children as it may deem appropriate, and in so doing the paramount consideration shall be the welfare of the children.</p> <p>Article 56 of the Civil Code (1) On separation being pronounced the court shall also direct to which of the spouses custody of the children shall be entrusted, the paramount consideration being the welfare of the children. (4) The court may, at any time, revoke or vary such directions respecting the children, where the interests of the children so require.</p> <p>Article 57(3) of the Civil Code (3) It shall be lawful for the court entirely to forbid such access [of parents] to their minor children if it may be detrimental to the welfare of such minors.</p> <p>Article 58 of the Civil Code 58. (1) The court may, where it shall deem it expedient so to do in the interest of the spouses and the children, order the suspension of the action of separation for such time as it may deem proper, and give such interim directions as circumstances may require.</p> <p>Article 131 of the Civil Code (4) The court, after hearing the parents and the child if the latter has reached the age of fourteen years, shall make those suggestions which it deems best in the interest of the child</p>	<p>Incomplete implementation:</p> <p>There is no clearly identifiable legal definition or reference of the systematic consideration of the best interest of the child in Maltese law; however numerous articles make reference to the 'welfare of the child', 'the interest' or 'best interests of the child'. Court decisions are also guided by the principle.</p>

Analysis of the legal implementation of the CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>and the unity of the family.</p> <p>Part I(2) of the Foster Care Act "Foster care" means a service for a determinate period whereby a child is placed in the continuous care of a foster carer, and through which the child is brought up in a family environment according to his best interests.</p> <p>Article 543 of the Criminal Code It shall be lawful for the Police to institute proceedings even without the complaint of the private party in any of the following cases: (...) giving particular consideration to the best interests of any minors involved, and shall cause such request and decision to be registered in the records of the case.</p>	
<i>Non-discrimination</i>	
<p>Constitution of Malta 14. The State shall promote the equal right of men and women to enjoy all economic, social, cultural, civil and political rights and for this purpose shall take appropriate measures to eliminate all forms of discrimination between the sexes by any person, organisation or enterprise (...).</p> <p>45. (1) (...) no law shall make any provision that is discriminatory either of itself or in its effect. (2) (...) no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority. (3) In this article, the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour, creed or sex whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of</p>	<p>Effective implementation:</p> <p>Maltese law regulates discrimination based on disability and provides for specific enforcement mechanisms.</p>

Analysis of the legal implementation of the CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>another such description.</p> <p>Article 22 of the Equal Opportunities (Persons with Disability) Act The Commission, whilst paying particular attention to the different needs of children, women and men with disability, shall; (...)</p> <p>g) work towards the elimination of discrimination against people with disabilities; h) carry out general investigations with a view to determining whether the provisions of this Act are being complied with;</p> <p>Article 7 (2) of the Equal Opportunities (Persons with Disability) Act (2) For the purposes of sub-article (1) and without prejudice to the generality of Part II of this Act, an employer shall be considered to discriminate on the grounds of disability against a person as is referred to therein, if such employer unreasonably :</p> <p>(d) fails to make reasonable accommodation for the disability of such a person, unless the employer can prove that the required alterations would unduly prejudice the operation of the trade or business run by such employer;</p> <p>Article 12. of the Equal Opportunities (Persons with Disability) Act (...) it shall be unlawful for any person to discriminate against another person on the grounds of the disability of such other person (...):</p> <p>(a) by refusing to allow such other person access to, or the use of any property, or of any facilities within such premises, that the public or a sector of the public is entitled or allowed to enter or use.</p> <p>Article 13 of the Equal Opportunities (Persons with Disability) Act (...) no qualified person with a disability shall, on the grounds of disability, be excluded from participation in or be denied the benefits of the programmes or activities of any person or body</p>	

Analysis of the legal implementation of the CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
in relation to the goods, facilities or services to which this article applies or be discriminated against by any person or body providing such goods, facilities or services which the qualified person seeks to obtain or use.	
<i>Evolving capacities of the child</i>	
<p>Article 3B of the Civil Code (1) Marriage imposes on both spouses the obligation to look after, maintain, instruct and educate the children of the marriage taking into account the abilities, natural inclinations and aspirations of the children.</p> <p>Article 119 of the Civil Code (2) In determining whether an adoption decree if made will be for the welfare of the person to be adopted, the court shall have regard (among other things) to the health of the applicant (...) and shall give due consideration to the wishes of the person to be adopted, having regard to his age and understanding and to the religious persuasion of such person and of his parents.</p>	<p>Incomplete implementation:</p> <p>There is no explicit recognition of the concept of the evolving capacities of the child in the Maltese legislation. The national law refers to the concept of 'age and understanding' of the child and the 'abilities' of the child.</p>
<i>Right to participate /right to be heard</i>	
<p>Article 32 of the Constitution Whereas every person in Malta is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely - (...) (b) freedom of conscience, of expression and of peaceful assembly and association; (...).</p> <p>Article 9 of the Commissioner for Children Act The Commissioner shall have the following functions: (a) to promote and advocate for the rights and interests of children;</p>	<p>Incomplete implementation:</p> <p>Freedom of expression is ensured under the Constitution and children fall under the scope of this article.</p> <p>The child's right to be heard is ensured with regard to civil proceedings concerning certain spheres of children's life (e.g. adoption). The principle is also</p>

Analysis of the legal implementation of the CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>(b) to ensure that children are being given the opportunity to express their opinions and that these are in fact considered (...).</p> <p>Article 6A of the Civil Code 1) In case of any disagreement either spouse may apply to the competent court for its assistance and the presiding judge, after hearing the spouses and if deemed opportune any of the children above the age of fourteen years residing with the spouses, shall seek to bring about an amicable settlement of such disagreement.</p> <p>Article 131 of the Civil Code (4) The court, after hearing the parents and the child if the latter has reached the age of fourteen years, shall make those suggestions which it deems best in the interest of the child and the unity of the family.</p> <p>Section 3 of the Children and Young Persons Care Orders Act (1) If, on representations made to him in writing by the Director of the Department responsible for social welfare and after giving the parents and the guardian, if any, of the child or young person an opportunity to express their views, and after hearing any other person he may deem likely to assist him, the Minister is satisfied that that child or young person is in need of care, protection or control, it shall be the duty of the Minister by an order in writing under his hand to take such child or young person into his care.</p> <p>Article 24 of the Foster care Act (5) The foster care agreement, drawn up by the accredited agency, shall be signed by the accredited agency, the foster carer and the person having care and custody of the child. This agreement shall be drawn up after having heard the child to be fostered, according to his age and understanding, and any person caring for the child.</p>	<p>provided under the Children and Young Persons Care Orders Act and the Foster Care Act. The Criminal Code provides that child victims can be present at the proceedings, engage a lawyer, examine or cross-examine witnesses and produce other evidence.</p>

Analysis of the legal implementation of the CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>Article 11 of the Education Act (2) In particular, this Directorate [for Educational Services] shall: (...) (g) promote, encourage and monitor the democratic governance of schools through School Councils with the active participation of parents, teachers and students; (...).</p>	
<i>Right to be free from violence</i>	
<p>Article 36 of the Constitution of Malta: (1) No person shall be subjected to inhuman or degrading punishment or treatment.</p> <p>Article 203 of the Criminal Code (1) Whosoever, by lewd acts, defiles a minor of either sex, shall, on conviction, be liable to imprisonment for a term not exceeding three years (...).</p> <p>Article 204 of the Criminal Code (1) Whosoever in order to gratify the lust of any other person induces a person under age to practise prostitution, or instigates the defilement of such person, or encourages or facilitates the prostitution or defilement of such person, shall, on conviction, be liable to imprisonment for a term from eighteen months to four years (...).</p> <p>208AC of the Criminal Code (1) The punishment for the offences referred to in articles 204, 204A to 204D, both inclusive, 208A(1) and 208(1A), shall be increased by one to two degrees in each of the following cases: (a) where the offence results in harm to the physical or mental health of the person under age; (b) where the person under age is a vulnerable person within the meaning of subarticle (2); (2) For the purposes of this article a vulnerable person means: (a) any person under the age of fifteen years; or (b) any person suffering from a physical or mental infirmity.</p>	<p>Effective implementation:</p> <p>The Constitution provides that no one can be subjected to inhuman or degrading punishment or treatment; children fall under the scope of this Article. Furthermore, national law ensures protection of children from different forms of violence and abuse.</p> <p>The Foster Care Act requires an accredited Agency to investigate any allegations of abuse in any foster care facility.</p> <p>Section 208 of the Criminal Code establishes violence against a child and person with disabilities as an aggravating circumstance.</p>

Analysis of the legal implementation of the CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>Article 246 of the Criminal Code Whosoever shall be guilty of abandoning or exposing any child under the age of seven years shall be liable to imprisonment for a term from seven months to one year.</p> <p>Article 247A of the Criminal Code (1) Whosoever, having the responsibility of any child under twelve years of age, by means of persistent acts of commission or omission ill-treats the child or causes or allows the ill-treatment by similar means of the child shall, unless the fact constitutes a more serious offence under any other provision of this Code, be liable on conviction to imprisonment for a term not exceeding two years.</p> <p>Article 339 of the Criminal Code (1) Every person is guilty of a contravention against the person who (...) (j) being in duty bound to take care of children, or of other persons incapable of taking care of themselves.</p> <p>Article 17 of the Foster Care Act An accredited agency shall be responsible to: (k) investigate any allegations of abuse in any foster care placement, in accordance with the manual or procedures mentioned in article 18, and report as necessary to the competent authority.</p>	
<i>Right to family life</i>	
<p>Article 32 of the Constitution of Malta Whereas every person in Malta is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely (...)</p>	<p>Incomplete implementation: The general right to family life is ensured by the Constitution.</p>

Analysis of the legal implementation of the CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>(c) respect for his private and family life.</p> <p>Article 8 of the European Convention Act (1) Everyone has the right to respect for his private and family life, his home and his correspondence. (2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.</p>	<p>The Schedule to the European Convention Act provides for the family life and prohibition of interference with the family life.</p>
<i>Right to assistance</i>	
<p>Article 17 of the Constitution (1) Every citizen incapable of work and unprovided with the resources necessary for subsistence is entitled to maintenance and social assistance.</p> <p>Article 27 of the Social Security Act (1) Save as provided for in article 96 and subject to the other provisions of this Act, a person who - (a) has attained the age of sixteen years; and (b) is certified to be suffering from a mental severe subnormality or to be a severely disabled person in accordance with the provisions of this Act, or to be suffering from cerebral palsy; and (c) shows to the satisfaction of the Director that he is a citizen of Malta and normally resides in Malta, shall be entitled to a Disability Pension under this Act and the highest rate of which, including any increases in terms of the provisions of article 90, shall be such in accordance with Part III of the Sixth Schedule and with the provisions of sub-article (3). (2) Subject to the provisions of this Act, a visually impaired person who -</p>	<p>Effective implementation:</p> <p>The Constitution establishes a general right to assistance for persons with disabilities.</p> <p>Financial support for persons with disabilities is ensured under the Social security Act. Special allowances are foreseen for children placed in foster care or in institutions.</p> <p>Financial and legal support is ensured under the Equal Opportunities (Persons with Disabilities) Act.</p>

Analysis of the legal implementation of the CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>(a) has attained the age of fourteen years; and (b) produces such certificates regarding his visual impairment, as the Director may, in particular cases, require; and (c) shows to the satisfaction of the Director that he is a citizen of Malta and normally resides in Malta, shall be entitled to a Pension for the Visually Impaired under this Act in accordance with Part III of the Sixth Schedule and with the provisions of sub-article (3).</p> <p>Article 76A of the Social Security Act Subject to the provisions of this Act it shall be the right of every child who is certified by a competent authority, either as a fostered child, or is certified as being under care in an institution, to have an allowance paid out in his respect to the head of household who is an approved foster carer in accordance with the Foster Care Act or the head of the institution, as the case may be, at the rates specified in Part VIII of the Fourteenth Schedule to this Act.</p> <p>Article 22 of the Equal Opportunities (Persons with Disabilities) Act The Commission, whilst paying particular attention to the different needs of children, women and men with disability, shall (...) (k) provide, where and as appropriate, assistance, including legal and financial assistance, to persons with disabilities in enforcing their rights under this Act; (...).</p>	
<i>Right to education (including inclusive education)</i>	
<p>Article 17 of the Constitution (3) Disabled persons and persons incapable of work are entitled to education and vocational training.</p> <p>Article 58 of the Education Act (1) The Minister shall ensure that the national policy on inclusive education is being applied in</p>	<p>Effective implementation:</p> <p>The Constitution makes provision for the right to (primary) education and the right of persons with disabilities to education, but these articles are part of</p>

Analysis of the legal implementation of the CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>all schools and that there are available the resources, tools and facilities required so that this may be given as effectively as possible.</p> <p>(2) The Minister shall ensure the existence of specialised centres of resources which support schools and Colleges in the implementation of the policy of inclusive education, which give a service to students having specific learning difficulties, and others which provide education and training services to students with individual educational needs whose educational entitlement may be better achieved in such centres.</p> <p>Article 55 of the Education Act In each College there shall be a Council of Heads of school forming the College to be presided by the Principal. The Council shall:</p> <p>(d) ensure that the national policies on matters of education, including those relating to (...) inclusive education (...) are well understood by all the teaching and non-teaching staff, and that they are being effectively followed; (...).</p> <p>Article 11of the Education Act (2) In particular, this Directorate shall: (...)</p> <p>(h) promote, support, coordinate and ensure lifelong learning services and initiatives, including educational and cultural initiatives within the community, e-learning and distance learning, adult education, evening classes and other initiatives relating to complementary education and services for persons having specific learning difficulties; (...)</p> <p>(l) in conjunction with Colleges and schools, provide the resources required for inclusive and special educational programmes and for other schemes related to individual educational needs.</p> <p>Article 11 of the Equal Opportunities (Persons with Disabilities) Act (...) it shall be unlawful for an educational authority or institution to discriminate against -</p>	<p>Chapter II of the Constitution, which is declaratory in nature and not enforceable. The Education Act places an obligation on the Minister to ensure that the national policy on inclusive education is being applied in all schools.</p> <p>According to the Education Act, there should be established specialised centres of resources which support schools and Colleges in the implementation of the policy of inclusive education, which give a service to students having specific learning difficulties.</p> <p>The Equal Opportunities Act prohibits discrimination on the grounds of disability in education, among other aspects of life. It also ensures accessibility of persons with disabilities to education facilities.</p>

Analysis of the legal implementation of the CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>(a) an applicant for admission as a student on the grounds of his disability or a disability of any of his family members -</p> <p>(i) by refusing or failing to accept his application for such admission, or</p> <p>(ii) in the terms or conditions on which such educational authority or institution is prepared to admit him as a student; and, or,</p> <p>(b) a student on the grounds of his disability or disability of any of his family members by -</p> <p>(i) denying him access, or limiting his access, to any benefit, facility or service provided by such educational authority or institution; or</p> <p>(ii) expelling him from the educational institution he is attending.</p>	

ANNEX 2 – STATISTICAL INFORMATION

Number of violation Year	Violence	Gender discrimination	Other discrimination ¹¹⁵	Criminal suspects
2007	No data identified	No data identified	14	No data identified
2008	No data identified	No data identified	28	No data identified
2009	No data identified	No data identified	38	No data identified
2010	No data identified	No data identified	22	No data identified
2011	No data identified	No data identified	19	No data identified

¹¹⁵ These figures are taken from KNPD's Equal Opportunities Act Reports; available at: www.knpd.org/legislation.

ANNEX 3 - STUDY ON MEMBER STATES' POLICIES FOR CHILDREN WITH DISABILITIES - EXECUTIVE SUMMARY

There are about 100 million children in the European Union and about 80 million European persons with disabilities. While the number of children and the number of persons with disabilities is well documented, the same cannot be said of children with disabilities. Children with disabilities combine different factors of vulnerability. As children the protection of their rights requires the adoption of special measures that are recognised by the UN Convention on the Rights of the Child (CRC). As individuals with disabilities, they are particularly vulnerable EU citizens who deserve specific safeguards and protection as acknowledged by the UN Convention on the Rights of Persons with Disabilities (CRPD).

Children with disabilities and their families face on a daily basis specific problems such as the lack of assistance and support for their inclusion in schools, experiences of violence and the lack of proper tools for reporting them, difficulties in accessing buildings or services or troubles in being heard and participating in decisions affecting their lives.

The Conventions include provisions addressing these concerns and providing protection to the right to enjoy all human rights and freedoms with no discrimination ensuring

- equality of opportunities and accessibility,
- the best interests of the child as a consideration in all actions concerning them,
- the evolving capacities of children with disabilities as a consideration in decisions affecting them,
- the right to be heard in proceedings and decision-making processes affecting the child and the right to a full and effective participation,
- the right to family life,
- the right to effective access to education and inclusive education,
- the right to health care,
- the right to assistance, and
- freedom from violence.

This study is structured to mirror the requirements of both conventions reflecting the main rights of children with disabilities to be implemented generally in the EU due to the high rate of ratification by EU Member States. Moreover, in December 2010, the European Union became a party to the CRPD. In doing so, the EU recognised the challenges persons with disabilities face in securing the fulfilment of their rights and assumed the responsibility for its implementation alongside Member States. The EU's responsibility towards the implementation of the CRC is of a different scale. Despite the lack of ratification by the EU, the CRC rights and principles guide the EU policies and action since the Treaty recognises the rights of the child as an EU objective.

This study assesses the current situation with respect to the rights of children with disabilities in the EU and the need for EU legislation or for other measures. The options to act at EU level are framed within the extent of the competences conferred by the Treaties, which can be exclusive, shared or supporting competences (Article 2 TFEU).

The current EU legislative and policy framework give recognition to the Conventions' rights and principles applicable to children with disabilities and a certain degree of implementation. However, the existing EU legislation relevant to this area is mainly sectoral (i.e., employment or immigration). The legislation addresses the situation of persons with disabilities separately from the rights of the child, whereas there is a need to consider children with disabilities as they face multiple discrimination, on the basis of age as well as disability, and to tailor measures to ensure that their rights are respected.

A. Comparative analysis of national legal frameworks

The comparative analysis of the national legal frameworks on children with disabilities' rights in 18 Member States¹¹⁶ is based on a set of criteria developed to enable an assessment of comparable data reported in each national study. The criteria are based on the requirements within each right and principles identified as pertinent to the situation of children with disabilities.¹¹⁷ The criteria are derived from the text of both conventions and the CRC General Comments on their interpretation.

Overall, the 18 Member States have in place comprehensive legal frameworks reflecting the main aspects of the rights and principles identified under the CRPD and CRC. While it may be stated that the rights of children with disabilities are broadly recognised under national legal systems either through general or specific legislation, their practical implementation revealed to be problematic in most Member States.

Consideration of the **principle of best interests of the child** is generally recognised under national laws. However, implementation is mostly limited to family and social protection decisions affecting children and the specific needs of children with disabilities are not recognised. The country studies found a lack of understanding of what the principle entails, along with insufficient development of the concept through law or jurisprudence and an overall lack of implementing rules.

The **right to non-discrimination** based on disability or age is reflected in national legislations, however, the implementation of the right is generally only partial and the reasonable accommodation measures are generally insufficient to guarantee the right. In practice, accessibility remains a key problem in most Member States. Reference to the multi-discrimination factors faced by children with disabilities or girls with disabilities is rarely acknowledged. There is a lack of monitoring results and of data on cases of right's violations that could help define more effective measures.

Most countries partially take account of the **evolving capacities** of the child mainly on the basis of considerations of age, maturity and development of the child. However, the situation of children with disabilities is not specifically acknowledged. The implementation is limited to a certain type of decisions and Member States tend to primarily take into consideration the child's age, which for children with disabilities may not be relevant and which can effectively exclude them from decision making processes that affect them.

¹¹⁶ For this study 18 Member States legal frameworks have been analysed: Belgium, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Ireland, the Netherlands, Malta, Poland, Romania, Slovenia, Spain, Sweden and the United Kingdom. Those countries have been selected by the European Parliament in the Terms of Specifications of this study.

¹¹⁷ 8 rights and principles have been identified as most relevant to the situation of children with disabilities: the best interests of the child, the right to non-discrimination, the consideration of evolving capacities, the right to participation/to be heard, the right to be free from violence, the right to family life, the right to assistance and the right to education.

The **rights to participation and to be heard** in decision making processes affecting children with disabilities are recognised under the legislation of the 18 Member States. However, their implementation is often limited to some sectoral procedures mostly regarding family law and at a certain extent in education. In practice, children with disabilities are not systematically involved and do not get to participate in public and private life at the same level than their able-peers.

In general **freedom from violence** is recognised by Member States' legislation. However, abuse against children with disabilities is a key problem acknowledged in all country reports. Violence occurring in institutions is of particular concern. The lack of systematic data and the difficulty for victims to report abuses do not allow an overview of the situation needed for the adoption of appropriate policies and measures.

The **right to family life** is widely recognised in the laws of the selected Member States. However, insufficient guidance and support to families for the integration of the child with disabilities and for helping them in their day to day lives is a key problem in most of the 18 Member States. Without proper assistance, families with difficulties might give up on their responsibility leading to a situation where alternative options are unlikely and institutionalisation is the only response available.

Overall the right to various forms of **assistance** (financial, social, health care, etc.) both for children with disabilities and for their families is recognised in legislation or regulatory rules. However, again in most cases assistance is sectoral (mainly social and health) and insufficient (financially and human assistance). The economic crisis is contributing to the removal and reduction of assistance in most Member States. Access to assistance is often perceived not as an instrument enabling protection of rights but rather as a discretionary measure subject to budget constraints.

All Member States recognise the **right to education** in their Constitutions or legal frameworks; however, the ability to access the school of choice for children with disabilities remains very challenging in practice. Mainstream schools remain largely inaccessible to children with disabilities in many Member States, while in other countries schools have insufficient resources and support for the child with disabilities is scarce. In addition, teachers in mainstream schools lack training and awareness on the needs of children with disabilities and programmes are not systematically adapted to them.

Compliance mechanisms are weak and lack adaptation to the situation of children with disabilities. Lack of information and guidance to families with children with disabilities on their rights, procedures and competent authorities decreases their ability to access these tools.

On the basis of these findings, the study sets forth conclusions and recommendations for EU action, taking into account the competence of the EU conferred by the Treaties on a range of policy areas, including disability and children's rights.

B.1 The role of the European Union

The EU has no explicit competence on children with disabilities. However the EU framework contains provisions recognising the EU's role to promote the protection of the rights of the child as an EU objective as well as its competence to combat discrimination based on disability. Furthermore, the Charter of Fundamental Rights of the European Union, with similar legal value as the Treaties, recognises the right to non-discrimination on ground of disability in Article 21 and the rights of the child under its Article 24. This recognition, while important, cannot extend the competences of the EU as conferred by the Treaties.

The EU, together with Member States in areas of shared competence or national competence, is bound by the CRPD obligations and is required to take the necessary measures to combat discrimination on the grounds of disability within the framework of Article 19 TFEU or in other matters falling within EU competence. Article 19(1) TFEU provides the legal basis for EU action (see among others the proposal for equal treatment Directive of 2008¹¹⁸) but the unanimity requirement makes achieving agreement under this legal base difficult. Article 19(2) provides the possibility for the EU to adopt basic principles and incentive measures to support Member States' action to combat discrimination through the ordinary legislative procedure.

Neither the above mentioned proposal for an equal treatment Directive nor any other EU measures provide for a **definition of disability**. Prior to the adoption of the CRPD, in a judgment in July 2006, the Court of Justice of the European Union (CJEU) defined disability in the same sense as the CRPD within the context of employment policy as 'a limitation which results in particular from physical, mental or psychological impairments and which hinders the participation of the person concerned in professional life'.¹¹⁹ Recently, the CJEU has further developed this concept¹²⁰ stating that disability results from barriers hindering the full and effective participation of the person concerned in professional life *on an equal basis with other workers* and calling on the employer to take reasonable accommodation measures.

EU action is also possible when linked to other policy areas of EU competence. Several issues related to the rights of the child with disabilities are linked to EU policies such as social policy, economic, social and territorial cohesion, transport, freedom, security and justice all of which are shared competence. In addition, the EU has the option to take action to support Member States policies in a number of areas affecting children with disabilities such as education, sports, youth or health.

B. 2 Existing relevant EU secondary legislation

The **best interests of the child as primary consideration in actions relating to children** is a fundamental requirement recognised in EU legislation. Article 7 of the Mediation Directive 2008/52¹²¹ requires the mediator to take into account the best interests of the child when deciding whether the child can give evidence in judicial proceedings. The

¹¹⁸ Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, COM/2008/0426 final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52008PC0426:en:NOT> (last accessed 6.5.13).

¹¹⁹ Judgment C-13/05 of the Court (Grand Chamber) of 11 July 2006, *Sonia Chacón Navas v Eurest Colectividades*, pt 43.

¹²⁰ Judgment of the Court, Joint cases C-335/11 and C-337/11 of 11 April 2013, *HK Danmark, acting on behalf of Jette Ring v Dansk almennyttigt Boligselskab* (C-335/11) and *HK Danmark, acting on behalf of Lone Skouboe Werge v Dansk Arbejdsgiverforening acting on behalf of Pro Display A/S* (C-337/11), pt 47.

¹²¹ Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters.

Family Reunification Directive¹²² requires Member States' authorities to consider the best interests of children when examining an application for family reunification (Article 5)¹²³. The protection of the best interests of the child is explicitly mentioned in Council Directive 2004/81/EC¹²⁴ on victims of trafficking in human beings.

Non-discrimination at EU level is currently addressed by four EU Directives to combat discrimination on the basis of protected grounds such as sex, racial or ethnic origin, religion or belief, age and sexual orientation, most of them restricted to the area of employment.¹²⁵ They lay down rules 'for combating discrimination (...) with a view to putting into effect in the Member States **the principle of equal treatment**'.¹²⁶ Disability is recognised as grounds for discrimination under Directive 2000/78/EC and, furthermore, protection of equality between men and women in matters of employment and occupation under Directive 2006/54/EC applies to persons with disabilities. Directive 2000/43/EC on equal treatment between persons irrespective of racial or ethnic origin does not include disability as a protected ground. Directive 2004/113/EC on equal treatment between women and men in access to supply of goods and services refers to discrimination on grounds of sex but not on age or disability.

The European Commission has acknowledged the differences of protection provided across the various grounds and published a proposal for a Directive in 2008 aiming at completing the legal framework on anti-discrimination law and providing for a more equal level of protection across the grounds¹²⁷.

Other measures in policy areas such as the internal market or transport have an impact on children with disabilities' access to services with no-discrimination. For example, Directive 2001/85/EC on the carriage of passengers, requires accessibility features for persons with reduced mobility and visually impaired persons. Other instruments cover rights of persons with disabilities when travelling by air, accessibility to lifts, in carrying out public procurement or in measures for telecommunication¹²⁸.

Within the remit of its competences, the EU's action to combat discrimination is complemented with activities by the EU Institutions to improve knowledge about discrimination (e.g. by raising awareness), support intermediary actors (e.g. NGOs, social partners and equality bodies) to improve their capacity to combat discrimination and to encourage the exchange of national good practices.

The consideration of children's **evolving capacities** is recognised in the Brussels IIbis

¹²² Council Directive 2003/86/EC, on the right to family reunification.

¹²³ 'Developing indicators for the protection, respect and promotion of the rights of the child in the European Union' FRA, March 2009, available at http://fra.europa.eu/sites/default/files/fra_uploads/358-RightsofChild_summary-report_en.pdf.

¹²⁴ Council Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who has been the subject of an action to facilitate illegal immigration.

¹²⁵ Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast directive); Directive 2004/113/EC on the principle of equal treatment between women and men in the access to and supply of goods and services; Directive 2000/43/EC on the principle of equal treatment between persons irrespective of racial or ethnic origin and Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation.

¹²⁶ Article 1 Directive 2000/43/EC.

¹²⁷ Proposal for a Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (COM(2008)426). It is currently blocked in the Council.

¹²⁸ 'Study on challenges and good practices in the implementation of the UN Convention on the Rights of Persons with Disabilities VC/2008/1214', European Commission, Brussels, 2010, Executive Summary available at http://www.efc.be/programmes_services/resources/Documents/UN_Convention_Summary_EN.pdf.

Regulation 2201/2003 which requires courts to hear the view of the child according to his/her age or degree of maturity. The same formulation is found in EU legislation concerning immigration and asylum in relation to unaccompanied minors.

Children's right to **participation** is recognised in some Commission strategic documents including the 2005 'European policies concerning youth', the 2006 'EU strategy on the rights of the child', the Youth in Action Programme and the EU Agenda for the Rights of the child of 2011. EU legislation on immigration and asylum recognise the right of the child to be heard during proceedings under the Brussels *Ibis* Regulation 2201/2003.

The EU has adopted a number of measures on the **protection of children from violence**¹²⁹ relating to child trafficking, to the sexual exploitation of children and to the protection of victims including several Directives¹³⁰ that have been adopted to replace some of these instruments. For example, the Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, focus on the protection of children which are more vulnerable than adults and establishes more severe penalties when the offence is committed against vulnerable persons such as children and persons with disabilities.

The Directive 2012/29/EU establishing minimum standards on the rights, support and protection of the victims of crime recognises that a victim of crime should be treated without discrimination based on any ground including age and disability. Lastly, Directive 2011/92/EU on combating sexual abuse, the sexual exploitation of children and child pornography¹³¹ provides the need for specific protection of children with disabilities.

The **right to family life** and the maintenance of the child in family context is at the heart of Council Regulation 2201/2003 Brussels *Ibis* (EC)¹³². In the field of immigration policies, the right of the child to family life is ensured by the rules on family reunification¹³³ and the provisions of the Directives on asylum¹³⁴ regarding unaccompanied minors and the respect for the family unit.

¹²⁹ Framework Decision 2002/629/JHA on combating trafficking in human beings; Council Directive 2004/81/EC on the residence permit issued to third-country nationals victims of trafficking in human beings; Council Framework Decision 2004/68/JHA on combating sexual exploitation of children and child pornography; Council Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings; Council Resolution 2001/C 283/01 on the contribution of civil society in finding missing or sexually exploited children. Decision No 1351/2008/EC establishing Safer Internet Programme 2009-2013.

¹³⁰ Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, Directive 2011/92/EU on combating the sexual abuse and sexual exploitation of children and child pornography and replacing Council Framework Decision 2004/68/JHA, Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

¹³¹ Article 1 Directive 2011/92/EU.

¹³² Council Regulation (EC) No 2201/2003, concerning jurisdiction, recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility.

¹³³ Council Directive 2003/86/EC on the right to family reunification; Council Regulation (EC) No 343/2003, establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national; Council Directive 2004/83/EC of on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who need international protection; Directive 2008/115/EC, on common standards and procedures in Member States for returning illegally staying third-country nationals.

¹³⁴ Council Directive 2001/55/EC on minimum standards for giving temporary protection in the event of a mass influx of displaced persons; Council Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers; Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals, stateless persons or refugees as persons who otherwise need international protection; Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting or withdrawing refugee status.

The principle of **maximum inclusion in society** of children with disabilities is reflected in strategy documents such as the Disability Strategy 2010-2020¹³⁵ and the EU 2020 Programme in relation to education and training¹³⁶. The 2003 Council Resolution on equal opportunities for Pupils and Students with Disabilities¹³⁷ addressed the problem of access to education by children with disabilities. In 2010, the Resolution of the European Parliament on mobility and inclusion of children with disabilities¹³⁸ stressed the need to ensure full respect for the rights of the child, including the right to education and the right to participate in community life of children with disabilities. The EU Institutions also support the **European Agency for Development in Special Needs Education**, the independent organisation acting as a platform for collaboration on special educational needs and the promotion of full participation within mainstream education and training¹³⁹.

C. Recommendations for EU action

When evaluating the need for specific recommendations aimed at improving the situation of children with disabilities, it is important to highlight that children with disabilities are first and foremost children with the same needs as any other children and who should be beneficiaries of all rights recognised by the CRC. Their intrinsic difference with their peers needs to be recognised for designing appropriate legislative and policy measures.

Horizontal issues

- As a first and general recommendation, all EU Member States which have not already done so should ratify the two conventions referred to in this study and implement their provisions by adopting national legislation and ensuring its practice.
- The European Commission, liaising with the UN Secretariat for the CRPD and the UN Secretariat for the CRC, should ensure Member States understanding and implementation of several definitions of the Conventions that are cornerstones for the implementation of the rights of children with disabilities, namely the definition of "disability", the "best interests of the child" and the "evolving capacities of the child". They should lead the development of initiatives to ensure that the specificities of children with disabilities are taken into account.

To that end, it is recommended that the Commission takes the initiative to provide clarification at EU level of the CRPD definition of "disability" as it is considered to be too broad in practice and its implementation at national level is therefore difficult. The development of guidance documents, exchange of best practices and promotion of existing manuals are recommended.

- The European Commission should take action to promote that children with disabilities are considered in existing mainstreaming initiatives for non-discrimination and equal treatment.
- The EP, the Council and the Commission should promote the development of national

¹³⁵ Area of action 5 of the Commission Communication European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe COM(2010) 636 final.

¹³⁶ Council Conclusions of 12 May 2009 on a strategic framework for European cooperation in education and training ('ET 2020'), 2009/C 119/02, OJ C 119/2, of 28 May 2005.

¹³⁷ Council Resolution of 5 May 2003 on equal opportunities for pupils and students with disabilities in education and training, 2003/C 134/04.

¹³⁸ European Parliament Resolution of 25 October 2011 on mobility and inclusion of people with disabilities and the European Disability Strategy 2010-2020 (2010/2272(INI)).

¹³⁹ European Agency for Development in Special Needs Education website available at <http://www.european-agency.org/about-us>.

information tools to assist families with children with disabilities to understand the legal frameworks applicable to them, including access to assistance measures, competent authorities, procedures and compliance mechanisms. Specific tools addressed to these families could include an EU web portal which could be linked, where possible, to national portals providing full information on rights, requirements, criteria for implementation, competent authorities, and coordination systems. This initiative could bring citizens closer to the EU.

- The EU Institutions should take a leading role in promoting awareness-raising on issues concerning the rights of children with disabilities, their interests and specific needs in order to promote the full implementation of the principle of best interests of children with disabilities. The EP and the Council could also use their budgetary powers to provide for financing of awareness-raising campaigns.

Best interests of the child

- While most countries have legislation recognising the principle of best interests of the child, only few Member States contain in their legislation a general requirement for its systematic consideration in all decisions affecting children. Some Member States (such as Sweden and the UK) have introduced child impact assessments of proposed legislation. It is recommended that the European Commission promotes the exchange of these initiatives and develops a guide on methodologies for carrying out these child impact assessments implementing the best interests of the child principle.

Right to non-discrimination

- The concept of reasonable accommodation in relation to the specific situation of children with disabilities needs clarification and further development to define the boundaries for the use of disproportionate burden. The EU, through the Commission, could support this through exchange of best practices at national level on the implementation of reasonable accommodation covering different situations. This would help defining the baselines from which the respect of the right requires public authorities' action and prevents it from being subject to arguments of disproportionate costs.
- The 2008 Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, if adopted, has the potential of addressing the situation of children with disabilities. Amendment 37 introduced by the European Parliament refers to multiple discrimination. Within this context, clarification could be introduced in the recitals of the proposed Directive in order to ensure that the situation of children with disabilities is considered as a part of its scope.
- The European Commission's draft for an upcoming European Accessibility Act should explicitly cover children with disabilities' access to goods and services, at least with a reference to multiple discrimination cases.

Evolving capacities of children with disabilities

- The EP should consider ways to raise awareness and promote taking into account the evolving capacities of children, including children with disabilities, with the aim to have the principle applied in all decision making processes affecting them.
- Any new legislation on child-friendly justice should include consideration of the ability of the child with disabilities to be heard in judicial proceedings affecting them. The

Commission should ensure that these provisions are included in the anticipated EU law on special safeguards for suspected or accused persons who are vulnerable, including children, or the anticipated EU law for the recognition and enforcement of decisions on parental responsibility.

- Furthermore, it is recommended that the European Commission, the Council and the EP promote the use of the Council of Europe Guidelines on child-friendly justice and support training for the relevant professionals at all levels.

Right of participation of children with disabilities

- The anticipated European Accessibility Act could provide for the development of tools to ensure the participation of children with disabilities in the consultation processes of the legislative and policy initiatives affecting them.
- The EP should explore ways to raise awareness on the requirements needed to ensure the right of participation of children with disabilities through concrete measures such as simulation of plenary meetings in the EP involving children with disabilities, guaranteeing physical access to the EP buildings or designing tools to ensure non-physical participation.

Right to be heard of children with disabilities

- In order to enable effective implementation of the right to be heard by children with disabilities, changes in the attitudes of judicial, administrative and enforcement officers are needed. To that end, the EP, the Council and the Commission should encourage Member States to develop awareness-raising actions and training addressed at public authorities.
- The Commission in preparing legislation on child-friendly justice, should ensure that adequate steps are taken to identify the ability of the child to express his/her views in judicial proceedings affecting them, enabling a climate of trust between the child and the judicial and enforcement officers and providing reasonable accommodation to ensure the effective right to be heard of children with disabilities.

Freedom from violence

- It is recommended that the EP, the Council and the Commission promote the development of statistical information on the situation of violence affecting children, and in particular children with disabilities. Furthermore, they should promote the development of indicators (such as disability, children, girls, family environment) to be mainstreamed in other policy or general surveys so as to provide systematic data on the situation of children with disabilities.
- The European Commission and the EP should promote FRA to examine the situation of violence against children, particularly in institutions, including children with disabilities as they are particularly vulnerable. The necessary funding should be proposed to the budgetary authority.
- The European Commission should consider in particular the need for measures at EU level aimed at reducing the number of cases of violence against children, especially children with disabilities, in Member States (both in a domestic context and in public institutions). The Commission could start preparatory work by organising working

groups with Member States experts to consider:

- proposals for ensuring that Member States set up preventive measures and proper monitoring systems to detect cases of violence and abuse against children,
 - the set up of control mechanisms and regular inspections,
 - peer reviews or the Open Method of Coordination for implementation of proposals,
 - access to information and communication services targeted at improving the system of complaints concerning children's right to freedom from violence.
- The Commission could promote the organisation of specialised EU-wide training and workshops amongst professionals to share knowledge on complaint procedures, reporting measures and accessibility of communication services for children with disabilities, especially for children with severe disabilities or intellectual impairments. The budgetary authority should provide adequate funding for these activities.

Right to family life of children with disabilities

- The Commission, the Council and the EP should encourage Member States to set up appropriate support structures for families with children with disabilities in order to reduce the risks of the child losing family life while safeguarding the best interests of children with disabilities.
- Within the Open Method of Coordination, the Commission should develop Guidelines on minimum requirements of residential institutions with regards to children with disabilities. The Guidelines would aim at ensuring that residential care centres have a small number of users and the capacity to host children with autism or with intellectual disabilities.
- The Commission should propose to the budgetary authority the use of EU funds for the protection of children's right to family life, prioritising funds for families while ensuring that the good quality of the institutions is maintained.

Access to assistance

- A special single national body (with regional offices) responsible for the management of services, budget and assistance of children and their families should be established in order to ensure consistency, coordination, effectiveness, increase accessibility and better guidance for families on the funding support available.
- The EP should continue to lead actions on children with disabilities to inform Member States on the negative impacts of budget cuts on implementation of their rights, especially in the field of education, social protection and health care.
- Within the European Semester process, the Commission should provide appropriate recommendations to Member States on how to use existing resources effectively instead of just cutting the necessary assistance for children with disabilities who belong to the most vulnerable citizens.

Access to inclusive education

- The Commission should develop actions to support Member States in improving education systems for children with disabilities through the Open Method of Coordination or peer review while respecting their general competence for matters

related to education. Action at EU level could include:

- Development of best practice guides and recommendations on the minimum type of resources needed in mainstreaming schools, and on the role of parents and children with disabilities in decision-making processes affecting children with disabilities or the development of education objectives;
- Promotion of training for teachers on better understanding of children with disabilities' needs and evolving capacities, teaching methodologies and handling of children with specific disabilities in a class together with their able-peers;
- Promotion of teaching tools that help the inclusion of children with disabilities in schools and outside of schools such as the Council of Europe's COMPASS manual;
- Promotion of anti-bullying and anti-stigmatisation initiatives, including awareness-raising campaigns promoting inclusion of children with disabilities; and
- Development of quality objectives for education offered to children with disabilities and the promotion of initiatives to maintain the support for higher education.

EU Funding

- The EP, the Council and the Commission should promote among Member States the use of the Structural Funds to foster the development of quality social services provided for children with disabilities, while facilitating the implementation of the Voluntary European Quality Framework for Social Services;
- The EP, the Council and the Commission should promote the development of family and community-based alternatives with the purpose of de-institutionalisation.
- The EP, the Council and the Commission should encourage the use of structural funds for improving accessibility and inclusive education.

ANNEX 4 - OVERVIEW OF RELATED STUDIES

Name of the Study	PE number	ISBN number
Study on Member States' Policies for Children with Disabilities	PE 474.416	978-92-823-4548-1
Country Report on Belgium for the Study on Member States' Policies for Children with Disabilities	PE 474.417	978-92-823-4542-9
Country Report on the Czech Republic for the Study on Member States' Policies for Children with Disabilities	PE 474.418	978-92-823-4549-8
Country Report on Estonia for the Study on Member States' Policies for Children with Disabilities	PE 474.419	978-92-823-4561-0
Country Report on Finland for the Study on Member States' Policies for Children with Disabilities	PE 474.420	978-92-823-4552-8
Country Report on France for the Study on Member States' Policies for Children with Disabilities	PE 474.421	978-92-823-4562-7
Country Report on Germany for the Study on Member States' Policies for Children with Disabilities	PE 474.422	978-92-823-4553-5
Country Report on Greece for the Study on Member States' Policies for Children with Disabilities	PE 474.423	978-92-823-4563-4
Country Report on Hungary for the Study on Member States' Policies for Children with Disabilities	PE 474.424	978-92-823-4554-2
Country Report on Ireland for the Study on Member States' Policies for Children with Disabilities	PE 474.425	978-92-823-4564-1
Country Report on Italy for the Study on Member States' Policies for Children with Disabilities	PE 474.426	978-92-823-4555-9
Country Report on Malta for the Study on Member States' Policies for Children with Disabilities	PE 474.427	978-92-823-4565-8
Country Report on the Netherlands for the Study on Member States' Policies for Children with Disabilities	PE 474.428	978-92-823-4556-6

Country Report on Poland for the Study on Member States' Policies for Children with Disabilities	PE 474.429	978-92-823-4566-5
Country Report on Romania for the Study on Member States' Policies for Children with Disabilities	PE 474.430	978-92-823-4567-2
Country Report on Slovenia for the Study on Member States' Policies for Children with Disabilities	PE 474.431	978-92-823-4557-3
Country Report on Spain for the Study on Member States' Policies for Children with Disabilities	PE 474.432	978-92-823-4558-0
Country Report on Sweden for the Study on Member States' Policies for Children with Disabilities	PE 474.433	978-92-823-4568-9
Country Report on England, Wales and Northern Ireland for the Study on Member States' Policies for Children with Disabilities	PE 474.434	978-92-823-4559-7

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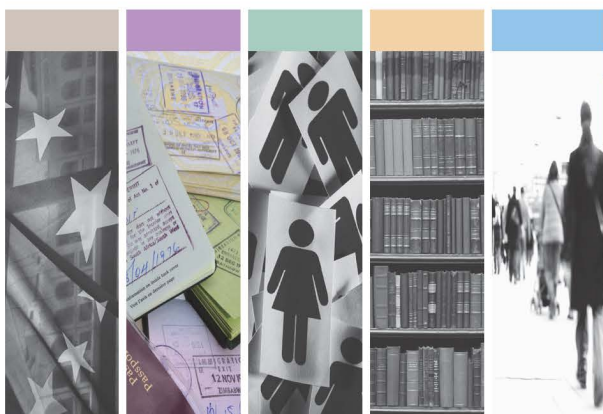
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ISBN: 978-92-823-4565-8

DOI: 10.2861/20597

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DRITTIJET TAČ-ĊITTADINI U AFFARIJET KOSTITUZZJONALI



**Rapport tal-Pajjizi dwar
Malta għall-Istudju dwar
il-Politiki tal-Istati Membri
għal Tfal b'Dizabilità**

STUDJU



DIRETTORAT ĠENERALI GĦALL-POLITIKI INTERNI
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VERŻONIJIET LINGWISTIĊI

Original: EN

Traduzzjoni: MT

DWAR L-EDITUR

Biex tikkuntattja d-Dipartiment tal-Politiki C jew biex tabbona fl-ittra ta' informazzjoni li toħroġ ta' kull xahar jekk jogħġbok ikteb lil:

poldep-citizens@europarl.europa.eu

Parlament Ewropew, il-manuskritt tlesta f'Ġunju 2013.

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- Karta** Karta tad-Drittijiet Fundamentali tal-Unjoni Ewropea
- QĠUE** Qorti tal-Ġustizzja tal-Unjoni Ewropea
- CRC** Konvenzjoni tan-Nazzjonijiet Uniti dwar id-Drittijiet tat-Tfal
- CRPD** Konvenzjoni tan-Nazzjonijiet Uniti dwar id-Drittijiet ta' Persuni b'Diżabilità
- KEDB** Konvenzjoni tal-Kunsill tal-Ewropa għall-Protezzjoni tad-Drittijiet tal-Bniedem u l-Libertajiet Fundamentali
- EOCU** Equal Opportunities Compliance Unit (Unità tal-Konformità għal Opportunitajiet Indaq)
- UE** L-Unjoni Ewropea
- FRCS** Foundation for Respite Care Services (Fondazzjoni għas-Servizzi tal-Kura tal-Mistrieħ)
- INCO** Koordinatur għall-Edukazzjoni Inkluziva
- LSA** Learning Support Assistant (Assistent ta' Appoġġ għat-Tagħlim)
- MAP** Making Action Plans (Tfassil ta' Pjanijiet ta' Azzjoni)
- KNPD** Kummissjoni Nazzjonali Persuni b'Diżabilità
- SMP** Statementing Moderating Panel (Bord għall-Moderazzjoni tad-Dikjarazzjonijiet)
- TUE** Trattat dwar l-Unjoni Ewropea
- TFUE** Trattat dwar il-Funzjonament tal-Unjoni Ewropea
- NU** Nazzjonijiet Uniti
- UNESCO** Organizzazzjoni tan-Nazzjonijiet Uniti għall-Edukazzjoni, ix-Xjenza u l-Kultura
- WHO** Organizzazzjoni Dinjija tas-Saħħa
- YOURS** Young Offenders Rehabilitation Unit Services (Servizzi tal-Unità ta' Riabilitazzjoni għal Trasgressuri Żgħażaġħ)
- YPU** Young People's Unit (Unità taż-Żgħażaġħ)

SOMMARJU EŻEKUTTIV

Iż-żewġ leġislazzjonijiet prinċipali li għandhom l-għan li jissalvagwardjaw id-drittijiet tat-tfal b'diżabilità huma l-Att dwar Opportunitajiet Indaqqs għal Persuni b'Diżabilità u l-Att dwar il-Kummissarju għat-Tfal.

L-edukazzjoni inklużiva kienet il-fok prinċipali tal-azzjoni nazzjonali fir-rigward tat-tfal b'diżabilità. L-Istat jinvesti ħafna f'sistema edukattiva inklużiva fejn il-maġġoranza l-kbira tat-tfal b'diżabilità jmorru fi skejjel regolari. Madankollu, dan ma jfissirx li t-tfal b'diżabilità kollha huma inklużi bis-sħiħ fi skejjel regolari. Għaldaqstant l-inklużjoni tat-tfal b'diżabilità fi skola regolari tiddependi ħafna drabi mir-rieda tal-persuni involuti fl-edukazzjoni tagħhom (il-prinċipali tal-iskola, l-għalliema, learning assistants, eċċ.). Fil-fatt, it-tfal b'diżabilità, inklużi dawk b'diffikultajiet speċifiċi fit-tagħlim u mgħiba diffiċli, jibqgħu f'riskju partikolari ta' esklużjoni mill-edukazzjoni regolari.

Filwaqt li l-infrastruttura għall-provvediment u l-appoġġ tal-edukazzjoni inklużiva żviluppat u tjebet b'mod sinifikanti, is-servizzi ta' appoġġ għat-tfal b'diżabilità 'l barra mill-iskola, b'mod speċjali fid-dar tal-familja jew f'ambjent residenzjali, jeħtieġ li jiġu żviluppati biex jiġi żgurati appoġġ xieraq. F'termini tal-provvediment ta' servizzi, it-tfal b'diżabilità għandhom dritt għal kura tas-saħħa b'xejn bħall-popolazzjoni kollha u għal ċerti forom ta' appoġġ finanzjarju u legali.

It-tfal b'diżabilità mhumiex koperti mil-liġi Maltija b'mod speċifiku peress li l-leġislazzjoni nazzjonali tiffoka jew fuq persuni b'diżabilità inkella fuq it-tfal imma mhux fuq it-tfal b'diżabilità. Il-leġislazzjoni li tindirizza lil dawn il-gruppi tinkludi l-Att dwar l-Edukazzjoni li jiżgura edukazzjoni inklużiva u l-Att dwar il-Kummissarju għat-Tfal li jipprevedi l-mekkaniżmi għall-promozzjoni u l-ħarsien tad-drittijiet tat-tfal kollha. L-Att dwar Opportunitajiet Indaqqs għal Persuni b'Diżabilità jirregola s-sitwazzjoni tal-persuni b'diżabilità u jkopri d-diskriminazzjoni f'aspetti differenti tal-ħajja, inklużi l-edukazzjoni, l-aċċess għall-oġġetti, is-servizzi u l-faċilitajiet, u l-aċċessibilità fiżika. F'dak li jirrigwarda s-salvagwardja tad-drittijiet tat-tfal b'diżabilità, dan saret referenza għalih prinċipalment biex tiġi indirizzata d-diskriminazzjoni fl-iskejjel regolari. L-Att dwar Opportunitajiet Indaqqs jagħti s-setgħa lill-Kummissjoni Nazzjonali Persuni b'Diżabilità (KNPD) biex tinvestiga lmenti ta' diskriminazzjoni abbażi ta' diżabilità u biex tiegħu azzjoni, inkluż, jekk neċessarju, tressaq każijiet il-qorti. Għaldaqstant, il-KNPD huwa l-korp l-aktar attrezzat biex jissalvagwardja d-drittijiet tat-tfal b'diżabilità.

Barra minn hekk, hemm diversi atti legali oħra li jirregolaw id-drittijiet tal-persuni u/jew tat-tfal b'diżabilità. B'mod partikolari, il-Kodiċi Ċivili jipprevedi r-rispett tal-(aħjar) interessi tat-tfal, id-dritt li jinstemgħu u (sa ċertu punt) il-kapaċità tat-tfal li jeżerċitaw id-drittijiet proprji tagħhom. L-Att dwar il-Foster Care jirregola fid-dettall it-tqegħid tat-tfal f'faċilitajiet ta' foster care. Il-Kodiċi Kriminali u l-Att dwar il-Vjolenza Domestika fihom ċerti dispożizzjonijiet li jiżguraw li t-tfal ikunu ħielsa mill-vjolenza. L-Att dwar is-Sigurtà Soċjali jipprevedi appoġġ finanzjarju għat-tfal b'diżabilità, inklużi t-tfal b'vista batuta.

Malta ffirmat is-CRC fis-26 ta' Jannar 1990 u rratifikata fit-30 ta' Settembru 1990. Is-CRPD giet iffirmata minn Malta f'Marzu 2007 u l-Konvenzjoni flimkien mal-Protokoll Fakultattiv tagħha ġew irratifikati f'Ottubru 2012, bit-tnejn li huma jidhru fis-sehħ fid-9 ta' Novembru 2012. L-ebda Konvenzjoni ma giet inkorporata fil-leġislazzjoni Maltija. Konsegwentement, l-implimentazzjoni ta' dawn il-Konvenzjonijiet tiddependi fuq kemm dawn jikkoincidu mal-liġijiet Maltin eżistenti.

DAFLA

F'Diċembru 2010, l-Unjoni Ewropea (UE) saret parti mill-Konvenzjoni tan-Nazzjonijiet Uniti dwar id-Drittijiet ta' Persuni b'Diżabilità (CRPD). Billi għamlet dan, l-UE rrikonoxxiet l-isfidi li jiffaċċjaw il-persuni b'diżabilità biex iħarsu d-drittijiet tagħhom u enfasizzat il-ħtieġa li azzjonijiet tal-UE dwar dan ikunu bis-sħiħ fuq l-aġenda tal-Unjoni Ewropea u tal-Istati Membri tagħha.

It-tfal b'diżabilità diġà huma vulnerabbli għax huma tfal. Id-diżabilità tagħhom tagħmilhom partikolarment vulnerabbli. Bħala tali, dawn jistħoqqilhom salvagwardji speċifiċi u ħarsien mill-UE u mill-Istati Membri tagħha.

Il-qafas legali ewlieni għal azzjoni tal-UE f'dan il-qasam huwa d-Deċiżjoni tal-UE li ttrattifika is-CRPD, ir-rekwiżit taħt l-Artikolu 10 TFUE li l-UE tiġġieled kontra d-diskriminazzjoni abbażi ta' diżabilità kif ukoll l-oġettiv tal-UE li tippromwovi d-drittijiet tat-tfal, li jinsab taħt l-Artikolu 3 TUE. Dan il-qafas jipprovdi lill-UE b'pożizzjoni unika biex tippromwovi aktar ħarsien tad-drittijiet tat-tfal b'diżabilità, u biex tiżviluppa inizzjattivi legiżlattivi jew ta' politika. Il-Konvenzjoni tan-NU dwar id-Drittijiet tat-Tfal (CRC) tipprovdi bażi oħra għal azzjoni f'dan il-qasam.¹

Dan ir-rapport tal-pajjiżi dwar Malta huwa parti minn studju akbar li għandu l-għan li jipprovdi lill-Parlament Ewropew b'ħarsa ġenerali lejn is-sitwazzjoni tat-tfal b'diżabilità fi Stati Membri magħżula, bil-għan li tiġi evalwata l-ħtieġa għal legiżlazzjoni Ewropea li ssaħħaħ id-drittijiet tat-tfal b'diżabilità fl-Unjoni Ewropea. Il-proġett janalizza l-oqfsa legali, ta' politika u istituzzjonali eżistenti fi 18-il Stat Membru. Kull rapport tal-pajjiżi janalizza l-implimentazzjoni tal-prinċipji internazzjonali u d-drittijiet li jirriżultaw mis-CRPD u s-CRC biex jiżvela kwalunkwe kwistjoni partikolari li teħtieġ aktar azzjonijiet ta' politika u legiżlattivi fil-livell nazzjonali u fil-livell tal-UE. Ir-riżultati mir-rapporti tal-pajjiżi jiffirmaw ukoll il-bażi għall-analiżi komparattiva fir-rapport "Studju dwar il-Politiki tal-Istati Membri għal Tfal b'Diżabilità".

L-elementi ewlenin li jirriżultaw mis-CRC u s-CRPD, fir-rigward tat-tfal b'diżabilità jinkludu:

- L-obbligu li wiehed jaġixxi fl-aħjar interessi tat-tfal;
- Id-dritt ta' nondiskriminazzjoni;
- Il-kunsiderazzjoni tal-kapaċità tat-tfal li jeżerċitaw id-drittijiet proprji tagħhom;
- Id-dritt tal-partecipazzjoni / li jinstemgħu;
- Id-dritt li jkunu ħielsa mill-vjolenza;
- Id-dritt għall-ħajja tal-familja;
- Id-dritt għall-għajnuna;
- Id-dritt għall-edukazzjoni, inkluża l-edukazzjoni inklużiva.

Peress li rratifikaw iż-żewġ Konvenzjonijiet tan-NU, l-Istati Membri huma obbligati li jieħdu l-miżuri neċessarji biex jiżguraw ir-rispett tad-drittijiet stabbiliti għal kull tifel jew tifla jew

¹ Is-27 Stat Membru kollha rratifikaw is-CRC, u s-27 Stat Membru kollha ffirmaw is-CRPD (il-Finlandja, l-Irlanda u l-Pajjiżi l-Baxxi ffirmaw imma għadhom ma rratifikawx).

persuni b'diżabilità fil-ġurisdizzjoni tagħhom. L-Istati Membri għandhom jieħdu l-miżuri xierqa biex jiżguraw li t-tfal ikunu mħarsa kontra l-forom ta' diskriminazzjoni jew vjolenza kollha, inkluż li jadottaw il-miżuri leġiżlattivi, amministrattivi jew oħrajn xierqa kollha għall-implimentazzjoni ta' dawk id-drittijiet. Barra minn hekk, il-ħarsien tad-drittijiet tat-tfal b'diżabilità għandu jiġi integrat fil-politiki u l-programmi kollha f'konformità mal-Artikolu 4(3) tas-CRPD dwar l-involviment tal-persuni b'diżabilità fil-proċessi ta' teħid ta' deċiżjonijiet kollha.

Minħabba l-iskala ta' dan is-sugġett u l-iskarsezza tal-materjali disponibbli, il-kamp ta' applikazzjoni ta' dan l-istudju ma jkoprix fid-dettall il-firxa wiesgħa ta' kwistjonijiet li jirriżultaw mis-sitwazzjoni tat-tfal b'diżabilità u relatati magħha. Dan m'għandux l-għan li jipprovdi analiżi fil-fond imma pjuttost li jipprovdi ħarsa ġenerali lejn is-sitwazzjoni tad-drittijiet tat-tfal b'diżabilità f'Malta. Dan l-istudju jippreżenta stampa ta' xi ftit mill-kwistjonijiet u l-ostakli prinċipali li jiffaċċjaw it-tfal b'diżabilità u l-familji tagħhom, analiżi legali tal-implimentazzjoni tad-drittijiet u l-prinċipji prinċipali rikonoxxuti fis-CRC u s-CRPD u rilevanti fil-kuntest tas-sitwazzjoni tat-tfal b'diżabilità u jirrimarka xi soluzzjonijiet potenzjali fil-livell nazzjonali u fil-livell tal-UE biex titjieb is-sitwazzjoni tagħhom.

Kull rapport tal-pajjiżi huwa strutturat kif ġej: l-ewwel jagħti ħarsa lejn is-sitwazzjoni tat-tfal b'diżabilità fil-livell nazzjonali. Jiddeskrivi l-qafas legali u istituzzjonali nazzjonali għall-ħarsien tat-tfal b'diżabilità u janalizza l-implimentazzjoni nazzjonali tal-prinċipji u d-drittijiet żviluppati fil-Konvenzjonijiet tan-NU (CRC u CRPD). Imbagħad jikkunsidra kwistjonijiet speċifiċi rilevanti għas-sitwazzjoni tat-tfal b'diżabilità, inklużi t-tfal bħala suspettati, il-kwistjonijiet tal-ugwaljanza tas-sessi, il-vjolenza u l-edukazzjoni. Fl-aħħar nett, ir-rapport ikopri l-mekkaniżmi fis-seħħ għall-implimentazzjoni tal-qafas legali, filwaqt li jenfasizza d-diskrepanzi, il-problemi, l-aħjar prattiki, u r-rakkomandazzjonijiet li nstabu fid-dokumentazzjoni jew permezz ta' intervisti mal-partijiet interessati.

1. HARSA ĠENERALI LEJN IS-SITWAZZJONI U L-ISFIDI GĦAT-TFAL B'DIŻABILITÀ F'MALTA

RIŻULTATI EWLENIN

- L-azzjoni nazzjonali tiffoka fuq l-oqsma li ġejjin: intervent bikri, servizzi tas-saħħa u edukazzjoni inklużiva.
- Ġew identifikati d-diskrepanzi, il-problemi u l-isfidi li ġejjin: i) li jiġi żgurat li l-edukazzjoni inklużiva hija verament inklużiva għat-tfal b'diżabilità kollha, ii) li jiġu pprovduti servizzi ta' appoġġ għall-familji tat-tfal b'diżabilità u servizzi residenzjali bbażati fil-komunità fejn dawn huma neċessarji.

1.1. Introduzzjoni għas-sitwazzjoni tat-tfal b'diżabilità f'Malta

Malta għandha popolazzjoni ta' 401 846 abitant. Madwar 8 % minnhom għandhom diżabilità. Il-popolazzjoni tat-tfal (mit-twelid sal-età ta' 18-il sena) tammonta għal 76 228, li madwar 5 % minnhom għandhom diżabilità.² Ma jeżistu l-ebda liġijiet speċifiċi mmirati lejn it-tfal b'diżabilità. Id-drittijiet tat-tfal b'diżabilità huma mharsa mill-**Att dwar Opportunitajiet Indaqs għal Persuni b'Diżabilità** li jkopri d-diskriminazzjoni f'aspetti differenti tal-ħajja inklużi, fost l-oħrajn, l-aċċessibilità fiżika, l-aċċess għall-oġġetti, is-servizzi u l-faċilitajiet, u l-aċċess għall-edukazzjoni.

Fil-qafas tal-politika, l-unika politika mmirata direttament lejn it-tfal b'diżabilità hija dik tal-edukazzjoni inklużiva. F'oqsma oħra, dawn it-tfal jibbenefikaw minn politiki u miżuri mmirati lejn il-persuni b'diżabilità (irrispettivament mill-età) jew immirati lejn it-tfal. Pereżempju, l-Abbozz tal-Politika Nazzjonali tat-Tfal jinkludi taqsima dwar l-inklużjoni tat-tfal b'diżabilità.³

Iż-żewġ istituzzjonijiet prinċipali li jissalvagwardjaw id-drittijiet tat-tfal b'diżabilità f'Malta huma **I-Kummissjoni Nazzjonali Persuni b'Diżabilità** u **I-Kummissarju għat-Tfal**.⁴

F'termini ta' provvediment ta' servizz, it-tfal b'diżabilità għandhom dritt għal servizzi tas-saħħa u tal-edukazzjoni b'xejn l-istess bħal tfal oħra. Il-ġenituri tat-tfal b'diżabilità għandhom dritt ukoll għal benefiċċji tat-tfal speċjali. Barra minn hekk, jeżistu diversi organizzazzjonijiet tal-Istat u mhux tal-Istat li jipprovdu servizzi speċifiċi għal tfal b'diżabilità jew għal persuni b'diżabilità, inklużi t-tfal.

² Statistika pprovduta mill-Uffiċċju Nazzjonali tal-Istatistika, Valletta, Malta.

³ Ministeru għall-Edukazzjoni, ix-Xogħol u l-Familja, "L-Abbozz tal-Politika tat-Tfa", 2012, disponibbli fuq https://www.education.gov.mt/mediacenter.ashx?file=MediaCenter/Docs/2_Full%20Doc%20MT.PDF (l-aħħar aċċess sar fit-3 ta' Ottubru 2012).

⁴ "Il-Kummissjoni Nazzjonali Persuni b'Diżabilità", disponibbli fuq <http://www.knpd.org> (l-aħħar aċċess sar fit-3 ta' Ottubru 2012). "Il-Kummissarju għat-Tfal", disponibbli fuq <http://www.tfal.org.mt/> (l-aħħar aċċess sar fit-3 ta' Ottubru 2012).

L-edukazzjoni inkluziva hija forsi l-qasam li fih Malta għamlet l-aktar progress fis-settur tad-diżabilità. Fl-1993, Malta adottat politika ta' edukazzjoni inkluziva.⁵ Barra minn hekk, Malta hija firmatarja għad-Dikjarazzjoni ta' Salamanca.⁶ Id-dritt li t-tfal b'diżabilità jmorru fi skola regolari huwa żgurat ukoll mill-Att dwar l-Edukazzjoni (il-Kapitolu 327) u l-Att dwar Opportunitajiet Indaqs għal Persuni b'Diżabilità (il-Kapitolu 413). Il-politika ta' edukazzjoni inkluziva giet imsaħħa aktar permezz tal-linji gwida *Creating Inclusive Schools (Noħolqu Skejjel Inkluzivi)*⁷ u, aktar reċenti, it-taħriġ u r-reklutaġġ tal-Koordinaturi għall-Inkluzjoni fi skejjel regolari⁸. F'dan id-dokument, l-awturi jinnotaw li l-adozzjoni tat-terminu "bżonnijiet edukattivi individwali" huwa konformi ma' approċċ li jqis l-istudenti kollha bħala studenti bi drittijiet indaqs imma b'diversità ta' bżonnijiet.⁹

Skont *Ir-Rapport Dinji dwar id-Diżabilità*, Malta għandha wieħed mill-aktar proporzjonijiet għoljin ta' tfal b'diżabilità f'edukazzjoni inkluziva fl-Unjoni Ewropea. Dan inkiseb permezz tal-evoluzzjoni gradwali tas-sistema tal-edukazzjoni inkluziva mill-bidu tagħha fl-1993.¹⁰ L-appoġġ għat-tfal b'diżabilità fl-iskejjel regolari jiġi pprovdut prinċipalment mill-Learning Support Assistant (LSA). Ladarba t-tfal b'diżabilità jilħqu l-età tal-iskola, dawn jiġu riferuti lill-Istatementing Moderating Panel (SMP) li joħroġ statement ta' bżonnijiet edukattivi individwali. Dan l-istatement jispeċifika l-livell tal-appoġġ li t-tfal għandhom jirċievu fl-iskola regolari tagħhom. Il-ġenituri jistgħu jirrikorru għal appell permezz tal-Istatementing Appeals Board (Bord għall-Appelli tad-Dikjarazzjonijiet) jekk ma jaqblux mad-deċiżjoni tal-SMP. Minbarra l-appoġġ ipprovdut mill-LSAs, id-Dipartiment għas-Servizzi tal-Istudjanti fi hndan id-Direttorat għal Servizzi Edukattivi jipprovdwi wkoll għadd ta' servizzi fl-iskejjel, jiġifieri s-servizz ta' intervent bikri, għalliema għal dawk bi smiġ u vista batuti, grupp ta' appoġġ għad-disturb ġeneralizzat tal-awtizmu, **Access to Communication and Technology Unit** (Unità tal-Aċċess għall-Komunikazzjoni u t-Teknoloġija), tagħlim fid-djar u lezzjonijiet fl-isptarijiet.¹¹

Madankollu, minkejja dan il-qafas ta' appoġġ estensiv, mhux it-tfal b'diżabilità kollha huma inkluzi bis-siġħ fl-edukazzjoni regolari u għad hemm ostakli x'jinghelbu biex dan issejtn. F'aspetti oħra tal-ħajja 'l barra mill-iskola, gie osservat xi progress imma għad hemm diskrepanzi konsiderevoli identifikati fit-taqsimiet ta' hawn taħt f'dan ir-rapport.

⁵ Kummissjoni Nazzjonali Persuni b'Diżabilità, "Politka Nazzjonali dwar l-Edukazzjoni u l-Persuni b'Diżabilità", 1993. Disponibbli fuq <http://www.knpd.org/pubs/edupole.shtml> (l-aħħar aċċess sar fit-3 ta' Ottubru 2012).

⁶ UNESCO "The Salamanca Statement and Framework for Action on Special Needs Education" (Id-Dikjarazzjoni u l-Qafas ta' Salamanca għal Azzjoni dwar l-Edukazzjoni għal Persuni bi Bżonnijiet Speċjali), 1994. Disponibbli fuq www.unesco.org/education/pdf/SALAMA_E.PDF (l-aħħar aċċess sar fit-3 ta' Ottubru 2012).

⁷ Bartolo, P.A., Agius Ferrante, C., Azzopardi, A., Bason, L., Grech L. u King M., "Creating Inclusive Schools: guidelines for the implementation of the National Minimum Curriculum Policy on Inclusive Education", (il-Furjana, Malta: Ministeru għall-Edukazzjoni. 2002).

⁸ Kummissjoni dwar is-Servizz Pubbliku, "Post ta' Koordinatur għall-Edukazzjoni Inklussiva (INCO) fid-Direttorat Għal Servizzi Edukattivi (DSE)", disponibbli fuq <https://www.education.gov.mt/Page.aspx?pid=588&dapid=2&pageid=14> (l-aħħar aċċess sar fit-3 ta' Ottubru 2012).

⁹ Bartolo, P.A., Agius Ferrante, C., Azzopardi, A., Bason, L., Grech L. u King M., "Creating Inclusive Schools: guidelines for the implementation of the National Minimum Curriculum Policy on Inclusive Education", (il-Furjana, Malta: Ministeru għall-Edukazzjoni. 2002).

¹⁰ L-Organizzazzjoni Dinjija tas-Saħħa, "Ir-Rapport Dinji dwar id-Diżabilità", disponibbli fuq http://www.who.int/disabilities/world_report/2011/en/index.html (l-aħħar aċċess sar fit-3 ta' Ottubru 2012).

¹¹ Id-Dipartiment għas-Servizzi tal-Istudjanti, disponibbli fuq <https://www.education.gov.mt/Page.aspx?pid=256&dapid=2&pageid=14> (l-aħħar aċċess sar fit-3 ta' Ottubru 2012).

1.2. Analizi tal-kwistjonijiet u identifikazzjoni ta' diskrepanzi regolatorji possibbli

Mill-kwistjonijiet kollha rilevanti għat-tfal b'diżabilità f'Malta, l-edukazzjoni inklużiva hija l-aktar suġġett li saret riċerka dwaru b'mod estensiv. Minkejja dan, ftit hija r-riċerka akkademika ppubblikata dwar dan is-suġġett, bil-biċċa l-kbira tar-riċerka tkun fit-teżijiet tal-istudenti tal-Università ta' Malta.

Waħda mill-kwistjonijiet li daħlu fiha r-riċerkaturi kienet l-għajnuna li jirċievu t-tfal b'diżabilità li jmorru fi skejjel regolari. Irriżulta li waħda mill-isfidi hija t-taħriġ adegwat tal-għalliema ta' klassijiet li jinkludu tfal b'diżabilità.¹² Skont id-dokumentazzjoni, il-fatt li t-tfal b'diżabilità jmorru fi skola regolari ma jfissirx minnu nnifsu li dawn huma inklużi bis-sħiħ.¹³ Hemm ukoll indikazzjonijiet li tfal b'ċerti diżabilitajiet jiffaċċjaw aktar diffikultajiet biex jiġu inklużi bis-sħiħ fl-iskejjel regolari minn oħrajn. Jidher li¹⁴ l-għalliema x'aktarx jaċċettaw u jkunu aktar ta' rispons għal tfal b'diżabilità fiżika jew intellettuali milli għal tfal b'diffikultajiet ta' mgħiba u emozzjonijiet. L-istudenti b'diffikultajiet soċjali, emozzjonali u ta' mgħiba għandhom it-tendenza li jiġu iżolati minn sħabhom u jhossuhom esklużi mill-ħajja tal-iskola.¹⁵ Jiġi rrimarkat b'mod partikolari li t-tfal awtistiċi jinsabu f'riskju għoli li jinħarġu mill-klassi u jirċievu lezzjonijiet f'ambjent iżolat fl-iskola regolari.

Għalkemm it-tfal b'diżabilità, fil-biċċa l-kbira tagħhom, imorru fi skejjel regolari, l-inklużjoni tagħhom għadha titqies bħala pjaċir li qiegħed isir lil dawn it-tfal aktar milli bħala d-dritt ġenwin tagħhom, li jxekkel l-inklużjoni fis-sens sħiħ tagħha.

Ġew rikonoxxuti nuqqasijiet oħra fir-rigward tas-sitwazzjoni tat-tfal b'diżabilità f'Malta fil-qasam tal-għajnuna għall-familji li jrabbu tfal b'diżabilità. Għaldaqstant, is-servizzi ta' appoġġ għall-familji ta' tfal b'diżabilità u l-provvediment ta' servizzi residenzjali bbażati fil-komunità jeħtieġu titjib sinifikanti sabiex jissodisfaw il-bżonnijiet speċjali tat-tfal b'diżabilità u l-ġenituri tagħhom.

¹² Bartolo, P.A., "The Process of Teacher Education for Inclusion: the Maltese experience", *Journal of Research in Special Educational Needs*, Vol. 10, Nru 1, pp. 139-148, 2010.

¹³ Mercieca, (2008), ikkwotat f'Abela, M., "The Social Inclusion of Students with Moderate to Severe Disabilities in a Boys' Comprehensive Secondary School: a qualitative study", (Teżi tal-Master mhux ippubblikata, l-Università ta' Malta, l-Imsida, Malta, 2012).

¹⁴ Cefai, C. u Cooper, P. "The Introduction of Nurture Groups in Maltese schools: a method of promoting inclusive education", (2011) *British Journal of Special Education*, Vol. 38, Nru 2, pp. 65-72.

¹⁵ Cefai, C. u Cooper, P., "Students without Voices: The Unheard Accounts of Secondary School Students with Social, Emotional and Behaviour Difficulties", (2010) *European Journal of Special Needs Education*, Vol. 25, Nru 2, pp. 183-198.

2. HARSA ĠENERALI LEJN IL-QAFAS LEGALI F'MALTA

RIŻULTATI EWLENIN

- Malta għandha sistema legali duwalista li fiha l-ftehimiet internazzjonali jeħtieġu ratifikazzjoni mill-Kamra tad-Deputati sabiex jiġu inkorporati fil-liġi domestika. Malta rratifikat kemm is-CRC kif ukoll is-CRPD; madankollu d-dispożizzjonijiet tagħhom ma ġewx inkorporati fil-leġiżlazzjoni Maltija. Għaldaqstant, iż-żewġ konvenzjonijiet għadhom ma jiffurmawx parti mil-liġi Maltija.
- It-tfal b'diżabilità mhumiex koperti mil-liġi Maltija b'mod speċifiku peress li l-leġiżlazzjoni tiffoka fuq il-persuni b'diżabilità jew fuq it-tfal b'mod ġenerali.
- Id-drittijiet tal-persuni b'diżabilità għall-edukazzjoni huma stabbiliti fil-Kostituzzjoni. L-Att dwar l-Edukazzjoni u l-miżuri ta' implimentazzjoni jipprevedu qafas legali li jrawwem l-edukazzjoni inklużiva.
- Liġijiet speċifiċi jindirizzaw kwistjonijiet bħad-diskriminazzjoni tal-persuni b'diżabilità u/jew it-tfal u s-servizzi soċjali għalihom.
- Il-Kummissjoni Nazzjonali Persuni b'Diżabilità tidentifika, tistabilixxi u taggorna l-politiki nazzjonali kollha relatati direttament jew indirettament mal-kwistjonijiet ta' diżabilità u tinvestiga l-ilmenti.

2.1. Harsa ġenerali lejn il-qafas legali u istituzzjonali nazzjonali

Il-Kostituzzjoni ta' Malta (il-Kapitolu 0 tal-Liġijiet ta' Malta) hija maqsuma fi 11-il kapitolu li jinkludu serje ta' liġijiet li jstabilixxu prinċipji bażiċi, regoli dwar iċ-ċittadinanza, drittijiet u libertajiet fundamentali tal-individwu, kif ukoll jipprovdu l-qafas legali għall-President, il-Parlament, il-Ġudikatura, l-Eżekuttiv, il-Finanzi u s-Servizz Pubbliku. Filwaqt li b'mod ġenerali l-Kostituzzjoni hija infurzata bil-liġi, id-dispożizzjonijiet fil-Kapitolu II intitolat "Dikjarazzjoni ta' Prinċipji" mhumiex ġustizzjabbli.¹⁶

Il-Liġi Maltija tikkonsisti minn serje ta' kapitoli (attwalment 523 kapitolu), li jinkludu l-Kodiċi Kriminali (il-Kapitolu 9), il-Kodiċi Ċivili (il-Kapitolu 16), il-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili (il-Kapitolu 12) u l-Kodiċi tal-Kummerċ (il-Kapitolu 13). Is-sors primarju tal-liġi huwa l-leġiżlazzjoni, ikkomplementata minn ġurisprudenza u kummenti akkademici ta' ġurisdizzjonijiet ta' liġi komparattiva fejn hemm lakuna fil-liġi. Malta ma tapplikax il-prinċipju ta' preċedent għalkemm is-sentenzi preċedenti tal-qrati għandhom influwenza persważiva fuq sentenzi futuri. Il-qrati Maltin ifittxu li jikkunsidraw il-każistika tal-Qorti Ewropea tad-Drittijiet tal-Bniedem fl-interpretazzjoni tal-proċeduri li jirrigwardaw id-drittijiet fundamentali tal-bniedem imma mhumiex marbuta li jzommu ma' tali każistika fid-deċiżjonijiet tagħhom.

¹⁶ Il-Kostituzzjoni ta' Malta: Taqsima 21 Il-Prinċipji ta' direzzjoni mhumiex Drittijiet: "Id-dispożizzjonijiet ta' dan il-Kapitolu ma jkunux esegwibbli f'xi qorti, iżda l-prinċipji li hemm fihom huma b'dan kollu fundamentali għall-iggvernar tal-pajjiż u jkun l-iskop tal-Istat li japplika dwn il-prinċipji fl-għemil ta' liġijiet."

Malta għandha sistema legali duwalista fejn il-konvenzjonijiet internazzjonali mhumiex applikabbli awtomatikament fil-liġi domestika. Biex dawn isiru applikabbli, il-Parlament irid jintegra l-ftehim f'kapitolu tal-liġi permezz ta' att. Pereżempju, Malta inkorporat il-Konvenzjoni Ewropea dwar id-Drittijiet tal-Bniedem fil-liġi Maltija (il-Kapitolu 319) u l-Konvenzjonijiet tal-Aja relatati mal-Aspetti Ċivili tas-Sekwestru Internazzjonali tat-Tfal u mar-Rikonoxximent u l-Infurzar ta' Deċiżjonijiet li għandhom x'jaqsmu mal-Kustodja (il-Kapitolu 410) rispettivament, imma għadha trid tinkorpora fil-liġi domestika s-CRC u l-Konvenzjoni tan-Nazzjonijiet Uniti dwar l-Eliminazzjoni ta' Kull Forma ta' Diskriminazzjoni kontra n-Nisa.

Il-Qrati ta' Malta huma maqsuma fi Qrati Superjuri (il-Qorti Kostituzzjonali, il-Qorti tal-Appell, il-Qorti tal-Appell Kriminali, il-Qorti Kriminali u l-Qorti Ċivili) u Qrati Inferjuri (il-Qorti tal-Maġistrati (Malta) u l-Qorti tal-Maġistrati (Għawdex)). Il-Kostituzzjoni Maltija tipprevedi sistema ta' kontrolli u bilanċi li tissalvagwardja l-indipendenza tal-gudikatura.

F'Malta jeżistu żewġ livelli ta' gvern: l-amministrazzjoni ċentrali u l-kunsilli municipali jew lokali. Il-kwistjonijiet relatati mal-għajjnuna soċjali jiġu kkoordinati fil-livell tal-gvern ċentrali u l-finanzjament jiġi determinat ukoll mill-Parlament. Il-kunsilli lokali jistgħu jiġu inkarigati mill-għoti tas-servizzi u r-reklutaġġ tal-persunal imma r-responsabilità statutorja, b'mod partikolari fil-qasam tal-kwistjonijiet tal-għajjnuna soċjali, tibqa' f'idejn l-amministrazzjoni ċentrali. Il-legiżlatura u s-setgħat eżekuttivi wkoll jiġu kkontrollati mill-Kostituzzjoni permezz ta' għadd ta' Bordijiet u Kummissjonijiet responsabbli direttament quddiem il-Parlament, b'xi wħud minnhom jaqgħu taħt Ministeru partikolari, li jista' jaffettwa l-indipendenza vera tagħhom u x'jaħsbu n-nies dwar din l-indipendenza.

2.2. Qafas legali u istituzzjonali speċifiku għat-tfal b'diżabilità

2.2.1. Qafas legali

Kif imsemmi fit-taqsimiet ta' hawn fuq, ma jeżisti l-ebda qafas legali speċifiku li jindirizza s-sitwazzjoni u d-drittijiet tat-tfal b'diżabilità f'Malta.

Il-Kostituzzjoni ta' Malta tipprevedi l-ħarsien tal-persuni b'diżabilità f'termini ta' impjegji, edukazzjoni, għajjnuna soċjali u diskriminazzjoni fl-Artikoli 17 u 45:

17. (1) Kull ċittadin li ma jkunx kapaċi għal xogħol u li ma jkunx provdut bir-riżorsi meħtieġa għall-għajxien għandu dritt għal manteniment u għajjnuna soċjali.

(2) Il-ħaddiema għandhom dritt għal assigurazzjoni xierqa fuq bażi kontributorja għall-ħtiġiet tagħhom f'każ ta' disgrazzja, mard, inkapaċità, xjuħija u diżimpieg involontarju.

(3) Persuni inkapaċitati u persuni li ma jkunux kapaċi għal xogħol għandhom dritt għal edukazzjoni u tħarriġ ta' vokazzjoni.

45. (1) Bla ħsara għad-dispożizzjonijiet tas-subartikoli (4), (5) u (7) ta' dan l-artikolu, ebda liġi ma għandha tagħmel xi dispożizzjoni li tkun diskriminatorja sew fiha nnifisha jew fl-effett tagħha.¹⁷

¹⁷ L-Artikolu 45(4) jipprovdi li s-Subartikolu (1) ma japplikax fejn il-liġi ta' limitazzjoni jew vantaġġuza hija "raġonevolment ġustifikabbli f'soċjetà demokratika".

Fl-2011 saret emenda għall-Kodiċi Ċivili bl-Att XIV.2001 li stabbilixxa **r-responsabilità tal-ġenituri li jmantnu t-tfal b'diżabilità**. Dan l-obbligu ġie rikonoxxut u milqugħ mill-qrati fil-kuntest tal-proċeduri tal-qorti, imma ma kien hemm l-ebda leġiżlazzjoni biex jiġi infurzat. Id-dispożizzjonijiet emendati jirreferu għall-obbligu li jaqa' fl-ambitu tal-awtorità tal-ġenituri u s-separazzjoni jew id-divorzju tal-ġenituri. Għaldaqstant, l-Artikolu 3B tal-Kodiċi Ċivili issa jinqara:

(1) Iż-żwieġ jimponi fuq il-miżżewġin l-obbligu li jieħdu ħsieb, imantnu, jgħallmu u jedukaw lill-ulied li jiġu miż-żwieġ skont il-ħila, xeħtiet naturali u aspirazzjonijiet tal-ulied.

(2) L-obbligu li l-ġenituri għandhom li jipprovdu l-manteniment skont is-subartikolu (1) jinkludi wkoll l-obbligu illi, skont il-mezzi tagħhom, u fejn ma jkunx raġonevolment possibbli li l-ulied, jew min minnhom, imantnu lilhom infushom kif xieraq, ikomplu jipprovdu manteniment adegwat lill-ulied: (a) li jkunu studenti li qegħdin jipparteċipaw f'edukazzjoni, taħriġ jew tagħlim full-time u huma taħt l-età ta' tlieta u għoxrin sena; jew (b) li jkollhom diżabilità, kif imfissra fl-Att dwar Opportunitajiet Indaqs għal Persuni b'Diżabilità, kemm jekk hija fiżika jew mentali.

Ir-responsabilità lejn it-tfal b'diżabilità tibqa' tgħodd bis-sħiħ fil-każ li l-ġenituri jisseparaw.¹⁸

Il-Kodiċi Ċivili ġie emendat ukoll fl-2012 bl-Att II.2012 biex tiġi aġġornata t-terminoloġija użata fir-rigward tad-diżabilità u din l-emenda hija applikabbli wkoll għat-tfal. Attwalment, il-Kodiċi Ċivili jipprovdi li persuni li laħqu l-età maġġuri u li huma inkapaċi li jieħdu ħsieb hwejjigħom minħabba kundizzjoni mentali jistgħu jiġu interdetti mil-Liġi milli jwettqu xi atti.¹⁹

Barra minn hekk, l-artikoli ġenerali relatati mal-kapaċità li wieħed jikkuntrattata u mal-wirt jiġu wkoll ittrattati fil-Kodiċi Ċivili u jsemmu lit-tfal.²⁰ Dawn huma kkomplementati mill-aspett proċedurali fid-dispożizzjonijiet tal-**Kodiċi ta' Organizzazzjoni u Proċedura Ċivili** li jindirizza l-proċess għall-interdizzjoni imma jirreferi biss għat-tfal fir-rigward tat-tranzizzjoni mill-awtorità tal-ġenituri għall-kurazija taħt interdizzjoni meta l-persuna kienet issufri minn inkapaċità mentali mit-tfulija.²¹

L-Att dwar is-Sigurtà Soċjali jiżgura d-dritt għal Pensjoni għal Diżabilità lil persuna li:
(a) ikollha l-età ta' sittax-il sena; u

¹⁸ Ta' min jinnota li din id-dispożizzjoni tgħodd biss għal ġenituri miżżewġin.

¹⁹ L-Artikolu 189(1) tal-Kodiċi Ċivili: "Persuna tal-età li tkun persuna b'diżordni mentali jew kundizzjoni oħra, li tagħmilha inkapaċi li tiegħu ħsieb hwejjigħa, jew li tkun miġnuna jew ħalja, tista' tiġi interdetta jew inabilitata milli tagħmel xi atti, kif jingħad fl-artikoli 520 sal-527 inklużivament tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili. (2) Dan jgħodd ukoll għall-minuri msemmi fl-artikolu 156. (3) It-talba għall-interdizzjoni jew inabilitazzjoni tista' ssir mhux biss mill-persuni msemmijin fl-artikolu 521 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili, iżda wkoll mill-qarib bi żwieġ li, taħt id-dispożizzjonijiet ta' dan il-Kodiċi, jista' jkun imġiegħel jagħti l-manteniment lill-persuna b'diżordni mentali jew kundizzjoni oħra, li tagħmilha inkapaċi li tiegħu ħsieb hwejjigħa, jew miġnuna jew ħalja. (4) Għall-finijiet ta' dan it-Titolu, u għall-finijiet tad-dispożizzjonijiet tal-artikoli 597, 752, 1034, 1035, 1036 u 1241: (a) "kundizzjoni oħra", meta użata fil-kuntest ta' kundizzjoni li tagħmel persuna inkapaċi li tiegħu ħsieb hwejjigħa, tfisser nuqqas fiżiku, mentali, intellettuali jew sensorju għal żmien twil li flimkien ma' ostakoli diversi, jista' jillimita lil persuna milli tipparteċipa b'mod sħiħ u effettiv fis-soċjetà b'mod ugwali daqs l-oħrajn; u (b) "diżordni mentali" għandu jkollha t-tifsira mogħtija lilha fl-Att dwar is-Saħħa Mentali: Iżda kull referenza f'dawn it-tifsiriet għal "diżabilità tal-moħħ" jew "żvilupp imwaqqaf jew mhux komplet tal-moħħ" m'għandhiex tinftiehem li tfisser diżordni mentali għall-finijiet ta' dan it-Titolu u dawk id-dispożizzjonijiet".

²⁰ L-Artikoli 189-192, 597, 752, 1034-1036, 1241 tal-Kodiċi Ċivili.

²¹ L-Artikoli 520-527 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili.

(b) tkun ċertifikata li qed issofri minn subnormalità mentali severa jew li tkun persuna gravament diżabilitata skont id-dispożizzjonijiet ta' dan l-Att, jew li qed issofri minn *palsy* ċerebrali; u

(c) turi għas-sodisfazzjon tad-Direttur²² li tkun ċittadin ta' Malta u li normalment tirisjedi f'Malta.

L-Att jipprovdi wkoll dritt għal Pensjoni għal Persuna b'Vista Batuta għal persuna b'vista batuta li:

- ikollha l-età ta' erbatax-il sena; u
- tipproduċi ċertifikati li juru li għandha vista batuta kif id-Direttur²³ jista', f'każijiet partikolari, jeħtieġ; u
- turi għas-sodisfazzjoni tad-Direttur²⁴ li tkun ċittadin ta' Malta u normalment tirisjedi f'Malta.

L-Att dwar l-Edukazzjoni jobbliga lill-Istat jippromwovi, jappoġġa, jikkoordina u jiżgura servizzi u inizjattivi ta' tagħlim tul il-ħajja, inklużi inizjattivi edukattivi u kulturali fil-komunità, tagħlim b'mod elettroniku u tagħlim mill-bogħod, edukazzjoni għall-adulti, klassijiet ta' filgħaxija u inizjattivi oħra relatati ma' edukazzjoni komplimentari u servizzi għal persuni b'diffikultajiet speċifiċi fit-tagħlim.²⁵

Barra minn hekk, l-Att dwar l-Edukazzjoni jeħtieġ li l-Istat jipprovdi "ċentri ta' riżorsi" li jipprovdu għall-bżonnijiet edukattivi individwali ta' tfal li, minħabba diffikultajiet fiżiċi, sensorji, intellettuali jew psikoloġiċi, ma jistgħux jiġu mgħallma fi skejjel regolari.²⁶

Skont l-Att dwar l-Edukazzjoni, il-Ministru għall-Edukazzjoni għandu jiżgura li l-politika nazzjonali dwar l-edukazzjoni inklużiva qed tiġi applikata fl-iskejjel kollha u li hemm riżorsi, għodod u faċilitajiet suffiċjenti. Dan jinkludi l-manteniment ta' ċentri ta' riżorsi speċjalizzati biex jappoġġaw lill-iskejjel u l-kulleġġi fl-implimentazzjoni tal-politika tal-edukazzjoni inklużiva. Iċ-ċentri joffru servizzi għal studenti b'diffikultajiet speċifiċi fit-tagħlim, u oħrajn li jipprovdu servizzi ta' edukazzjoni u taħriġ lil studenti bi bżonnijiet edukattivi individwali li d-dritt tagħhom għall-edukazzjoni jkun jista' jinkiseb aħjar f'tali ċentri. Dawn l-istudenti jistgħu jmorru f'dawn iċ-ċentri fuq bażi full-time.

Skont **l-Att dwar l-Opportunitajiet Indaq**, kull min iħaddem għandu l-obbligu li jipprovdi akkomodazzjoni raġonevoli għall-persuni b'diżabilità. L-Att jiżgura wkoll l-aċċessibilità tal-persuni b'diżabilità għall-proprjetajiet u faċilitajiet pubbliċi, it-trasport, il-faċilitajiet għal divertiment, eċċ.²⁷ Barra minn hekk, huwa illegali li istituzzjoni edukattiva tiċhad l-aċċess lil student b'diżabilità għal kwalunkwe benefiċċju u/jew faċilità pprovduti minn tali istituzzjoni. Filwaqt li ma kien hemm l-ebda każ imressaq il-qorti, il-Kummissjoni Nazzjonali Persuni b'Diżabilità ttrattat ilmenti ta' diskriminazzjoni f'dan il-qasam li ġew solvuti permezz ta' negozjati.²⁸

²² It-terminu "Direttur" ifisser id-Direttur Ġenerali (is-Sigurtà Soċjali) u jinkludi kull uffiċjal pubbliku tad-Divizjoni tas-Sigurtà Soċjali maħtur minnu jew kull uffiċjal pubbliku maħtur mill-Ministru għal għan partikolari jew għal klassi ta' għanijiet. "Ministru" tfisser il-Ministru li minn żmien għal żmien ikun inkarigat mid-Divizjoni tas-Sigurtà Soċjali u tinkludi kull uffiċjal maħtur mill-Ministru għal għan partikolari jew klassi ta' għanijiet. (Ara: it-Taqsima I(2) tal-Att dwar is-Sigurtà Soċjali).

²³ Ibid.

²⁴ Ibid.

²⁵ L-Artikolu 11(2)(h) tal-Kapitolu 327.

²⁶ L-Artikoli 45 u 48 tal-Att dwar l-Edukazzjoni.

²⁷ L-Artikolu 13 tal-Att dwar l-Opportunitajiet Indaq għal Persuni b'Diżabilità.

²⁸ Ara r-rapporti dwar l-Att dwar l-Opportunitajiet Indaq, disponibbli fuq <http://www.knpd.org/legislation/ea.html>.

Il-Ministru jista' jimplementa l-obbligu ta' akkomodazzjoni raġonevoli billi joħroġ direttivi u regolamenti dwar, fost l-oħrajn, il-valutazzjoni multidixxiplinarja tal-kundizzjoni tat-tfal bi bżonnijiet edukattivi individwali, il-proċess ta' statementing u l-formolazzjoni u l-applikazzjoni ta' programm edukattiv individwali.²⁹ Fil-prattika, il-valutazzjoni multidixxiplinarja titwettaq fi ħdan iċ-Child Development Assessment Unit (Unità għall-Valutazzjoni tal-Iżvilupp tat-Tfal). Wara din il-valutazzjoni, l-Istatementing Moderating Panel jiltaqa' mat-tfal, il-ġenituri u l-għalliema tagħhom u toħroġ dikjarazzjoni dwaribżonnijiet edukattivi individwali li tidentifika l-appoġġ li għandu jiġi pprovdut lit-tfal, inklużi, fejn neċessarju, is-servizzi ta' Learning Support Assistant. Id-deċiżjonijiet tal-Panel jistgħu jiġu appellati quddiem l-Istatementing Appeals Board.

2.2.2. Istituzzjonijiet u awtoritajiet

Il-kwistjonijiet relatati mal-persuni b'diżabilità jaqgħu taħt ir-responsabilità tal-:

- **Ministeru għas-Saħħa** meta tkun kwistjoni ta' valutazzjoni u provvediment ta' servizz;
- **Ministeru għall-Familja u l-Politika Soċjali** li huwa inkarigat mill-provvediment ta' appoġġ fid-dar u 'l barra mid-dar;
- **Ministeru għall-Edukazzjoni** li huwa responsabbli għall-istatementing, il-provvediment tal-edukazzjoni u l-integrazzjoni fl-edukazzjoni;
- **Awtorità ta' Malta Dwar l-Ambjent u l-Ippjanar** li hija responsabbli li tiżgura aċċessibilità għal persuni b'diżabilità.

L-awtorità prinċipali inkarigata mir-responsabilità għall-persuni b'diżabilità u għaldaqstant għat-tfal b'diżabilità hija **l-Kummissjoni Nazzjonali Persuni b'Diżabilità** (KNPD).³⁰ Din ġiet imwaqqfa mill-Mekkaniżmu Indipendenti skont l-Artikolu 33.2 tas-CRPD; (il-punt ċentrali għandu jintgħażel mill-Ministru responsabbli għall-Politika Soċjali). Skont l-Att dwar Opportunitajiet Indaqgħal Persuni b'Diżabilità, il-Kummissjoni tkun magħmula minn seba' uffiċjali li jirrapprezentaw il-Ministeri responsabbli għall-Politika Soċjali, ix-Xogħol, is-Saħħa, l-Edukazzjoni, id-Djar u l-Ippjanar Ekonomiku, u seba' rappreżentanti ta' organizzazzjonijiet volontarji li jaħdmu fil-qasam tal-kwistjonijiet ta' diżabilità. Minn tal-anqas, nofs in-numru totali tal-membri tal-Kummissjoni għandhom ikunu huma stess persuni b'diżabilità fiżika jew qraba ta' persuni b'diżabilità mentali, u jekk possibbli, għandu jkun hemm rappreżentazzjoni bbilancjata ta' nisa u rġiel.

Il-Kummissjoni hija inkarigata biex tidentifika, tistabilixxi u taggorna l-politiki nazzjonali kollha relatati direttament jew indirettament mal-kwistjonijiet ta' diżabilità u tirrapporta lill-Ministeru għall-Familja u l-Politika Soċjali. Għandha l-obbligu li tagħmel differenza bejn il-bżonnijiet speċifiċi tal-irġiel, in-nisa u t-tfal b'diżabilità. Barra minn hekk, il-Kummissjoni għandha d-dritt li tibda investigazzjonijiet dwar l-ilmenti. Ta' min jinnota li l-Kummissjoni, fir-rapporti tagħha, tirreferi għal persuni taħt is-16-il sena mbagħad għal persuni minn 17-

²⁹ Il-Ministru jista' joħroġ ukoll direttivi u regolamenti dwar il-kwistjonijiet li ġejjin: arrangamenti speċjali dwar il-valutazzjoni, it-testijiet u l-eżamijiet tal-istudenti kkonċernati, il-programmi fiċ-ċentri ta' riżorsi speċjalizzati jew fl-iskejjel speċjali, l-applikazzjoni tat-terapiji jew l-għoti ta' mediċini, kif ordnat minn persuni professjonali kompetenti skont kull liġi fis-seħħ, lil studenti waqt li jkun l-iskola jew iċ-ċentru u kwalunkwe kwistjoni oħra marbuta mal-implimentazzjoni tal-politika dwar l-edukazzjoni inklużiva.

³⁰ Stabbilita skont l-Artikolu 21 tal-Att dwar Opportunitajiet Indaqgħal Persuni b'Diżabilità.

59 sena u minn 60 sena 'l fuq, jiġifieri preżumibbilment, it-tfal ta' bejn is-16 u t-18-il sena jaqgħu fil-grupp tal-adulti.

Il-Kummissarju għat-Tfal³¹ huwa responsabbli għall-promozzjoni u l-harsien tad-drittijiet tat-tfal kollha. L-Att jirreferi għat-tfal b'diżabilità fid-dispożizzjonijiet li jstabbilixxu l-prinċipji ta' direzzjoni għall-Kummissarju kif ġej: "[T]fal b'diżabilità u tfal li jgħixu f'ċirkostanzi familjari jew soċjali żvantaġġati għandhom igawdu l-istess kwalità ta' haġja bħat-tfal l-oħra kollha".

Ma jeżisti l-ebda korp responsabbli b'mod speċifiku għall-harsien tat-tfal b'diżabilità. Il-Kummissjoni Nazzjonali Persuni b'Diżabilità hija l-aktar organizzazzjoni rilevanti li tindirizza l-bżonnijiet tagħhom u tiddefendi d-drittijiet tagħhom f'termini ta' ugwaljanza, nondiskriminazzjoni u integrazzjoni.

2.2.3. Definizzjonijiet

Il-Kostituzzjoni ta' Malta ma tipprovdi l-ebda definizzjoni tat-terminu "**diżabilità**" għalkemm tirreferi għaliha fl-Artikoli 17 u 45.

L-Att dwar Opportunitajiet Indaqs jiddefinixxi d-diżabilità bħala nuqqas fiżiku jew mentali li jillimita b'mod sostanzjali waħda mill-attivitajiet prinċipali tal-ħajja, jew aktar, ta' persuna u "nuqqas", fil-kuntest ta' diżabilità, tfisser kull telfien, restrizzjoni jew anormalità ta' funzjoni psikoloġika, fiżjoloġika jew struttura anatomika".³²

L-Att dwar is-Sigurtà Soċjali jiddefinixxi **persuna gravament diżabilitata** bħala persuna "li għad għandha tul ta' haġja raġonevoli u li ma tkunx tista' żżomm lilha nnifisha b'impieg jew xogħol għal rasha *full-time*, jew li ssir hekk inkapaċi meta jkollha l-età li tagħmel hekk, minħabba diżabilità permanenti".³³

Skont l-Att dwar is-Saħħa Mentali, "**diżordni mentali**" hija definita bħala "mard tal-moħħ, żvilupp imwaqqaf jew mhux komplet tal-moħħ, diżordni psikopatiku, u kull diżordni jew inkapaċità oħra tal-moħħ".³⁴ L-Att dwar is-Saħħa Mentali kien ilu s-sugġett ta' diskussjonijiet għal numru ta' snin u għalkemm ġew proposti għadd ta' emendi, dawn m'għaddewx mill-Parlament.³⁵

³¹ Stabbilit skont l-Att dwar il-Kummissarju għat-Tfal (il-Kapitolu 462).

³² L-Artikolu 2 (il-klawżola tat-tifsir) tal-Kapitolu 413.

³³ L-Artikolu 2 (il-klawżola tat-tifsir) tal-Kapitolu 318.

³⁴ "diżordni psikopatiku" huwa mbagħad definit bħala "diżordni jew inkapaċità persistenti tal-moħħ (sew jekk tinkludi intelliġenza taħt in-normal sew jekk le) li minnha tirriżulta mgħiba aggressiva mhux normali jew imġiba irresponsabbli serjament min-naħa tal-pazjent, u li teħtieġ jew li tista' ssirilha kura medika". "[S]ubnormalità qawwija" hija "stat ta' żvilupp imwaqqaf jew mhux komplet tal-moħħ li jinkludi intelliġenza taħt in-normal u li jkun ta' xorta jew grad li l-pazjent ma jkunx jista' jgħix haġja indipendenti jew li ma jkunx jista' jħares lilu nnifsu minn sfruttament serju, jew ma jkunx hekk jista' meta jkun tal-età li jagħmel hekk". "[S]ubnormalità" hija definita bħala "stat ta' żvilupp imwaqqaf jew mhux komplet tal-moħħ (li ma jkunx subnormalità qawwija) li jinkludi subnormalità ta' intelliġenza u li jkun ta' xorta jew grad li jkun jeħtieġ jew jista' jsirlu kura medika jew ħarsien jew taħriġ ieħor speċjali tal-pazjent".

³⁵ Skont l-emendi rrakkomandati għall-Abbozz ta' Liġi (2007) dwar l-Att dwar is-Saħħa Mentali, "diżordni mentali" tfisser "disfunzjoni mentali jew ta' mgħiba sinifikanti, murija b'sinjali u, jew sintomi li jindikaw distorsjoni fil-funzjonament mentali, inkluż disturbi tal-ħsieb, burdati, rieda, perċezzjoni, fehma, orjentazzjoni jew memorja li jkunu daqstant preżenti hekk li jitqiesu li jkunu patoloġiċi kif klassifikati fi *standards* mediċi u dijanjostiċi aċċettati internazzjonalment u "mard mentali" għandha tinftiehem b'dan il-mod".

Il-Kodiċi Ċivili jiddefinixxi **"taħt l-età"** bħala "persuna tas-sess il-wieħed jew l-ieħor li tkun għad ma għalqetx tmintax-il sena".³⁶ Persuna taħt l-età tista' tiżżewweġ ta' 16-il sena li hija wkoll l-età obligatorja għat-terminazzjoni tal-iskola.³⁷ Ir-responsabilità kriminali tibda mill-età ta' 14-il sena³⁸ u d-dritt li wieħed jinstema' fil-proċeduri tal-qorti dwar il-kustodja huwa wkoll stabbilit għall-età ta' 14-il sena.³⁹ Ta' min jirrimarka li jeżistu emendi ġodda għal-liġi ċivili⁴⁰ li jistabbilixxu l-possibilità li jinħatar tutur biex jgħin lil persuna b'diżabilità intellettuali u li jinkludu definizzjonijiet ġodda ta' "diżabilità" u "diżordni mentali".⁴¹

³⁶ L-Artikolu 157 tal-Kapitolu 16.

³⁷ L-Artikolu 2 tal-Att dwar l-Edukazzjoni: "l-età obligatorja għall-iskola" tfisser kull età bejn il-ħames snin u l-ħmistax-il sena, it-tnejn inkluzi, u għalhekk persuna titqies li hi tal-età obligatorja għall-iskola jekk għalqet l-età ta' ħames snin u ma għalqitx l-età ta' sittax-il sena; (...)"

³⁸ L-Artikolu 35 tal-Kodiċi Kriminali: Il-minuri ta' taħt id-disa' snin ikunu eżenti minn responsabilità kriminali. Il-minuri ta' taħt l-erbatax-il sena għandhom jkunu wkoll eżenti ħlief jekk l-atti kienu magħmula b'ħażen. Madankollu, jekk jirriżulta li minuri ta' aktar minn disa' snin imma ta' anqas minn erbatax-il sena għamlu atti b'ħażen, dawn jinżammu responsabbli imma jingħataw biss il-pieni stabbiliti għal kontravvenzjonijiet. Madankollu, il-qorti tista' timponi piena assenjata għal dak ir-reat partikolari mnaqqsa bi tliet snin u l-piena ma tista' taħt l-ebda ċirkostanza taqbeż l-erba' snin priġunerija, jekk wara li jitqiesu l-età tal-awturi, il-kondotta preċedenti tagħhom, il-gravità tal-fatt li tiegħu nstabu hatja u l-grad ta' ħażen, il-qorti temmen li jisthoqqilhom dan. Jekk l-awturi għandhom inqas minn 18-il sena imma aktar minn 14-il sena, malli jinsabu hatja jiġu kkundannati għall-piena allokata għal dak ir-reat imnaqqsa bi grad jew tnejn.

³⁹ L-Artikoli 6A u 131(4) tal-Kodiċi Ċivili:

6A(1): "Fil-każ ta' nuqqas ta' qbil bejn il-miżżewġin kull parti tista' tirreferi l-kwistjoni għall-għajjnuna tal-qorti kompetenti u l-imħallef li jippresjedi għandu, wara li jisma' lill-miżżewġin u jekk jidhirlu xieraq lil kull wild 'il fuq mill-età ta' erbatax-il sena li jkunu joqogħdu mal-miżżewġin, jipprova jwassal għal ftehim bi qbil dwar dik il-kwistjoni."

131(4)(4): "Il-qorti, wara li tkun semgħet lill-ġenituri u lit-tifel jekk dan ikun laħaq l-età ta' erbatax-il sena, għandha tagħmel dawk is-suġġerimenti li jidhrilha l-aħjar fl-interess tat-tifel u l-għaqda tal-familja."

⁴⁰ L-Att XXIV.2012.

⁴¹ Skont l-Att dwar il-Kodiċi (Kustodja) (Emenda), 2012, Att biex jemenda l-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili u l-Kodiċi Ċivili u sabiex jipprovdi għal Tutela: (i) "diżabilità" għandu jkollha l-istess tifsira kif mogħtija lilha fl-Att dwar Opportunitajiet Indaqs għal Persuni b'Diżabilità; (ii) "diżordni mentali" għandu jkollha l-istess tifsira kif mogħtija lilha fl-Att dwar is-Saħħa Mentali. Iżda kull referenza f'dawk it-tifsiriet għal "inkapaċità tal-moħħ" jew għal "Żvilupp imwaqqaf jew mhux komplet tal-moħħ" ma għandhomx jinftiehem bħala referenza għal diżordni mentali għall-finijiet ta' dan is-Subtitolu."(...) "(b) minn *achondroplasia*, *hypopituitarism*, *osteogenesis imperfecta* jew xi xort'oħra ta' nanuiżmu; jew (c) waħda mill-mard li ġejjin, jiġifieri: *Multiple Sclerosis*; *Muscular Dystrophy*; *Spina Bifida*; *Systemic Lupus Erythematosus*; *Haemophilia* jew diżordnijiet permanenti simili oħra tad-demem karatterizzati bi tnixxija ta' demem kronika jew ripetuta; *Hydrocephalus*; *Huntington's Chorea*; *Cystic Fibrosis*; *T C II Deficiency*; *Cerebellar Ataxia*; *Chronic-Granulomatous Disease*; *Leopard's Syndrome*; jew (d) minn paralisi totali permanenti jew malfunzjoni gravi totali permanenti jew marda totali permanenti, sew jekk inhi kawżata b'amputazzjoni jew mod ieħor, taż-żewġ idejn jew riglejn; jew (e) epilessija bi frekwenza ta' attacchi f'għadd ta' iktar minn erbgha fix-xahar, b'dan li din il-kundizzjoni tiġi konfermata b'investigazzjonijiet xierqa inkluża elettroencefalogramma u li tiġi hekk ċertifikata minn newrologu jew psikjatra li jkun jaħdem mal-Gvern, kemm-il darba li dik il-persuna investigata ma jkollhiex liċenzja tas-sewqan; jew (f) indifferenza kongenitali lejn l-uġiġħ".

3. VALUTAZZJONI TAL-QAFAS LEGALI U L-IMPLIMENTAZZJONI

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- Il-qafas legali ma jiffokax fuq it-tfal u għalkemm jeżistu għadd ta' liġijiet li għandhom fil-mira tagħhom lill-persuni b'diżabilità jew it-tfal, iż-żewġ kwistjonijiet ħafna drabi ma jiltaqgħux flimkien. Gie identifikat li suppost digà nġhatat ħarsa ġenerali lejn il-kwistjonijiet tad-drittijiet tat-tfal u li din teħtieġ leġiżlazzjoni konsolidata. Tali pass jikkontribwixxi lejn ir-rikonoxximent tat-tfal b'diżabilità bħala grupp partikolari li d-drittijiet tiegħu jisthoqqilhom ħarsien u promozzjoni speċjali.
- Il-kwistjoni prinċipali li jiffaċċjaw it-tfal b'diżabilità f'Malta huwa n-nuqqas kontinwu ta' fehim u tolleranza tal-vulnerabilità partikolari tagħhom. Dan, min-naħa tiegħu, iwassal biex jenfasizza li wieħed għandu jimmira lejn il-kwistjonijiet ta' diskriminazzjoni aktar milli jiffoka fuq id-drittijiet tat-tfal fl-iskejjel regolari bħall-iżgurar tal-benesseri u l-promozzjoni tad-drittijiet tal-partecipazzjoni. L-introduzzjoni ta' kodiċi ta' leġiżlazzjoni speċifiku għat-tfal bħala grupp tista' tgħin biex issaħħaħ l-interess fost il-gruppi ta' tfal disponibbli bħat-tfal b'diżabilità.

3.1. Implimentazzjoni tad-dispożizzjonijiet tas-CRPD u s-CRC

Malta kienet waħda mill-ewwel pajjiżi li ffirmat is-CRPD f'Marzu 2007 u rratifikata f'Ottubru 2012.

Malta ffirmat is-CRC f'Jannar 1990 u rratifikata f'Settembru 1990. Id-dispożizzjonijiet tas-CRC ma ġewx inkorporati fil-leġiżlazzjoni Maltija. Sa issa, Malta pprezentat rapport wieħed biss lill-Kumitat dwar is-CRC f'Mejju 2000 u rrispondiet għal xi ftit – imma mhux għal kollha – mir-rakkomandazzjonijiet tal-Kumitat wara dak ir-rapport (inkluża t-talba għal politika ċara dwar it-tfal b'diżabilità).⁴² Mandakollu, ma ddaħħlu fis-seħħ l-ebda politiki jew miżuri li indirizzaw id-drittijiet tat-tfal b'diżabilità. Biex is-CRC tiġi implimentata b'mod effettiv, din teħtieġ li tiġi inkorporata fil-liġi Maltija.

3.1.1. L-aħjar interessi tat-tfal (l-Art. 3 CRC; l-Art. 7 CRPD)

Il-prinċipju tal-aħjar interessi tat-tfal huwa kkunsidrat bħala **prinċipju bażiku** tal-liġi Maltija u jiġi kkwotat b'mod kostanti bħala motivazzjoni għas-sentenzi tal-Qorti. Fil-fatt, il-kuncett tal-interessi tat-tfal kien iġġudikat b'mod kostanti bħala kwistjoni ta' rilevanza kbira fil-qradi. Għaldaqstant, fil-każistika ssir referenza għall-interessi tat-tfal bħala ta' importanza kbira, supremi jew importanti fit-teħid ta' deċiżjonijiet dwar kwistjonijiet li

⁴² Farrugia, R., "Assessment of *Lacunae* in Maltese Legislation on Children Served by Appoġġ", Rapport tal-Commonwealth (aċċess ristrett), 2010; Farrugia, R., (2011), "Child Rights in Malta and the Impact of the UN CRC", Prezentazzjoni f'Konferenza Nazzjonali. Disponibbli fuq http://malta.academia.edu/RuthFarrugia/Talks/51362/Child_Rights_in_Malta_and_the_Impact_of_the_UN_CRC (l-aħħar aċċess sar fit-3 ta' Ottubru 2012).

jaffettwaw lill-familja. Il-benesseri jinkorpora kull tip ta' benessere, minn benessere fiżiku, soċjali u intellettuali sa benessere morali.

Ma teżisti **l-ebda definizzjoni jew referenza identifikabbli b'mod ċar** tat-terminu "l-aħjar interessi" fil-liġi Maltija għalkemm bosta artikoli jirreferu għall-benesseri tat-tfal, l-interess jew l-aħjar interessi tat-tfal u xi kultant isemmu wkoll li huwa importanti ħafna li l-interessi tat-tfal jiġu kkunsidrati.

Id-dispożizzjonijiet tal-liġi tal-Kodiċi Ċivili relatati mas-separazzjoni u d-divorzju jagħmlu dispożizzjoni ċara għall-allokkazzjoni tal-kustodja u l-arranġamenti għall-aċċess u huma ggwidati mill-prinċipju tal-aħjar interessi tat-tfal.⁴³ Jeżisti wkoll artikolu komprensiv fil-Kodiċi Ċivili, li jistabbilixxi b'mod ċar li "[b]'dak kollu li jinsab f'kull dispożizzjoni oħra ta' dan il-Kodiċi, il-qorti tista', jekk tiġi murija raġuni tajba, tagħti dawk l-ordnijiet dwar il-persuna jew il-proprjetà ta' persuna li tkun taħt l-età kif jidhrilha xieraq fl-aħjar interessi tat-tifel".⁴⁴ Ma hemm l-ebda referenza speċifika għad-drittijiet tat-tfal b'diżabilità.

Fid-dawl tal-Att dwar il-*Foster Care*, il-facilitajiet ta' foster care għandhom ikunu fl-aħjar interessi tat-tfal. Il-Kodiċi Kriminali jirreferi wkoll għall-aħjar interessi tat-tfal, eż. meta jirregola l-proċeduri mwettqa mill-Pulizija.

Madankollu, ta' min jinnota li s-CRC u s-CRPD mhumiex parti mil-liġi Maltija, u peress li Malta hija pajjiż duwalista, l-artikoli relatati mal-aħjar interessi f'dawn il-Konvenzjonijiet mhumiex vinkolanti fil-liġi domestika, għalkemm jista' jkollhom influwenza persważiva.

3.1.2. Nondiskriminazzjoni (l-Art. 2 CRC; l-Art. 3 u 5 CRPD)

Il-Kostituzzjoni, fl-Artikoli 14 u 45, tinkludi l-projbizzjoni tad-diskriminazzjoni f'diversi kategoriji, madankollu, ma ssemmix b'mod esplicitu d-diżabilità. Għalkemm l-Artikolu 14 mhuwiex eżekwibbli, l-Artikolu 45 huwa eżekwibbli legalment b'mod sħiħ.

L-Att dwar l-Ugwaljanza għall-Irġiel u n-Nisa ma jsemmi qatt id-diskriminazzjoni abbażi ta' diżabilità. Fl-2012, ir-responsabilità tal-Kummissjoni Nazzjonali għall-Promozzjoni tal-Ugwaljanza (NCPE) ġiet estiża biex tkopri l-promozzjoni tal-ugwaljanza abbażi ta' orjentazzjoni sesswali, età, reliġjon jew twemmin, oriġini razzjali jew etnika, u identità tal-generu fl-impjeg, l-istituzzjonijiet finanzjarji u l-edukazzjoni imma qatt ma tissemma' d-diżabilità. Id-drittijiet tat-tfal b'diżabilità kontra d-diskriminazzjoni abbażi ta' diżabilità huma mħarsa mill-**Att dwar Opportunitajiet Indaqgħal Persuni b'Diżabilità**. Dan l-Att japplika għall-impjeg, l-edukazzjoni u l-aċċess għall-oġġetti, il-facilitajiet, is-servizzi u l-akkomodazzjoni. Dan jipprojbixxi wkoll diskriminazzjoni abbażi ta' diżabilità indiretta.

Il-prinċipju ta' **akkomodazzjoni raġonevoli**⁴⁵ huwa applikat fl-aspetti kollha tal-Att dwar Opportunitajiet Indaqgħal Persuni b'Diżabilità. Filwaqt li mhux it-titoli kollha tal-Att jużaw il-kliem "akkomodazzjoni raġonevoli", ir-rekwiżit xorta huwa applikabbli għall-oqsma kollha koperti minnu. Fil-fatt, il-prinċipju ta' akkomodazzjoni raġonevoli jintuża biex tinstab

⁴³ L-Artikoli 35-66 tal-Kodiċi Ċivili.

⁴⁴ L-Artikolu 149 tal-Kodiċi Ċivili.

⁴⁵ Id-dritt ta' nondiskriminazzjoni jehtieg akkomodazzjoni raġonevoli fis-sens li għandhom isiru modifiki u aġġustamenti neċessarji u xierqa mingħajr ma jimponu ostakolu sproporzjonat jew bla bżonn fejn meħtieġ f'każ partikolari, sabiex jiġi żgurat li l-persuni b'diżabilità jgawdu jew jeżerċitaw bħall-persuni l-oħra d-drittijiet tal-bniedem u l-libertajiet fundamentali kollha (l-Artikolu 2 CRPD). B'riżultat ta' dan, l-applikazzjoni tad-dritt ta' nondiskriminazzjoni ma tfissirx trattament identiku, imma jista' jkun meħtieġ li jittiehdu miżuri speċjali sabiex jitnaqqsu jew jiġu eliminati l-kundizzjonijiet li jikkawżaw diskriminazzjoni.

soluzzjoni għal sitwazzjoni ta' diskriminazzjoni. L-implimentazzjoni tad-dritt ta' nondiskriminazzjoni hija għaldaqstant kompleta.

3.1.3. Il-kapaċità tat-tfal li jeżerċitaw id-drittijiet proprji tagħhom⁴⁶ (I-Art. 5 CRC u I-Art. 3 CRPD)

Il-kunċett tal-kapaċità tat-tfal li jeżerċitaw id-drittijiet proprji tagħhom **mhuwiex rikonoxxut b'mod esplicitu** fil-liġi Maltija. Il-liġi nazzjonali tirreferi b'mod ġenerali għal kunċetti simili, jiġifieri "l-età u l-ħila" tat-tfal u l-"ħila" tat-tfal.

Il-Kodiċi Ċivili jiddikjara li l-ġenituri għandhom jipprovdu manteniment għat-tfal tagħhom skont il-ħiliet, ix-xeħtiet naturali u l-aspirazzjonijiet tat-tfal. Fid-dawl tal-Kodiċi Ċivili, **l-età u l-livell ta' ħila tat-tfal** huma fatturi li jeħtieġu wkoll li jitqiesu mill-qorti fil-każijiet ta' adożzjoni.

Il-Kummissarju għat-Tfal jindirizza l-kunċett tal-kapaċità tat-tfal li jeżerċitaw id-drittijiet proprji tagħhom, sa ċertu punt, billi jagħmel distinzjoni bejn tfal żgħar u kbar fid-dokumenti ta' politika u r-rakkomandazzjonijiet tiegħu, u wkoll fir-rizorsi disponibbli fuq is-sit tiegħu għal tfal fi gruppi ta' età differenti.⁴⁷

3.1.4. Id-dritt tal-partecipazzjoni / li jinstemgħu (I-Art. 12 CRC; I-Art. 7 u 30 CRPD)

Il-liberta tal-espressjoni hija żgurata taħt l-Artikolu 32 tal-Kostituzzjoni u t-tfal jaqgħu taħt il-kamp ta' applikazzjoni ta' dan l-Artikolu.

Fir-rigward tal-**proċeduri ċivili** li jikkonċernaw ċerti sferi tal-ħajja tat-tfal (eż. adożzjoni, kustodja), **id-dritt tat-tfal li jinstemgħu** huwa żgurat.⁴⁸ Bħala regola, il-Qrati tal-Ġustizzja huma marbuta li jisimgħu lit-tfal li għalqu 14-il sena meta l-kwistjoni tkun qed tiġi deċiża fil-kuntest ta' proċeduri familjari li jaffettwaw il-benesseri attwali u futur tat-tfal. Jista' jinħatar mill-qorti avukat għat-tfal sabiex jirrappreżenta l-interessi tat-tfal fil-proċeduri. Il-medjatur u kwalunkwe wieħed mill-miżżewġin jistgħu jitolbu wkoll tali ħatra u l-qorti tista' tagħzel ukoll li tisma' lit-tfal. L-istabbiliment tal-kariga tal-avukat għat-tfal imur lura għall-introduzzjoni tal-Qorti tal-Familja fl-2003. Minn dak iż-żmien, din il-kariga ma tantx giet żviluppata peress li hija mħaddna minn numru żgħir ta' avukati part-time li jintalbu jippromwovu l-aħjar interessi tat-tfal filwaqt li jirrappreżentaw ukoll ix-xewqat tagħhom.

Id-dritt li jinstemgħu huwa pprovdut ukoll fl-Att dwar Tfal u Żgħażaġh (Ordinijiet għall-Ħarsien)⁴⁹ u l-Att dwar il-*Foster Care*.⁵⁰ **Il-Kodiċi Ċivili** jipprovdi li vittmi tfal jistgħu jkunu

⁴⁶ Il-kunċett tal-kapaċità tat-tfal li jeżerċitaw id-drittijiet proprji tagħhom jistabilixxi li hekk kif it-tfal jakkwistaw kompetenzi u esperjenzi msaħħa, ikun hemm anqas ħtieġa ta' direzzjoni u aktar kapaċità min-naħa tat-tfal li jkunu responsabbli għal deċiżjonijiet li jaffettwawhom haġġithom. Fid-dawl tas-CRC, il-kunċett tal-kapaċità tat-tfal li jeżerċitaw id-drittijiet proprji tagħhom jinkludi li l-ġenituri (jew il-persuni legalment responsabbli) għandu jkollhom id-dritt li jipprovdu, b'mod konsistenti mal-kapaċità tat-tfal li jeżerċitaw id-drittijiet proprji tagħhom, gwida xierqa fl-eżerċitar tad-drittijiet min-naħa tat-tfal. Ara r-rapport "Study on Member States' Policies for Children with Disabilities" (Studju dwar il-Politiki tal-Istati Membri għal Tfal b'Diżabilità) għal aktar dettalji dwar dan il-kunċett.

⁴⁷ Ara r-rizorsi u d-dokumenti disponibbli fuq is-sit tal-Kummissarju għat-Tfal: <http://www.tfal.org.mt/> (l-aħħar aċċess sar fit-3 ta' Ottubru 2012).

⁴⁸ Fi proċeduri ta' adożzjoni, it-tfal għandhom dritt li jiddikjaraw il-perspettivi tagħhom u jagħtu jew iżommu kunsens mill-età ta' 11-il sena.

⁴⁹ It-Taqsima 3(1) tal-Att dwar Tfal u Żgħażaġh (Ordinijiet għall-Ħarsien).

preżenti fil-proċeduri, jaħtru avukat, jeżaminaw jew jagħmlu kontroezami tax-xhieda u jipproduċu evidenza oħra.

Sa issa, it-tfal għad m'għandhomx *locus standi* biex jitolbu jiġu inklużi fi proċeduri tal-qorti; minkejja rakkomandazzjonijiet mill-Parlament biex tiġi promossa l-partecipazzjoni tat-tfal u minkejja sugġerimenti biex jiġu inklużi l-Linji Gwida tal-Kunsill tal-Ewropa dwar Ġustizzja favur it-Tfal fl-Istrateġija tal-UE dwar it-Tfal, li tapplika għal Malta.

L-Att dwar il-Kummissarju għat-Tfal isemmi b'mod speċifiku l-obbligu tal-Kummissarju li jippromwovi u jiżgura l-partecipazzjoni tat-tfal, madankollu dan id-dritt huwa kkunsidrat problematiku biex jiġu infurzat fil-prattika.

Skont l-Att dwar l-Edukazzjoni, id-Direttorat għal Servizzi Edukattivi jippromwovi, ihegġeg u jimmonitorja l-amministrazzjoni demokratika tal-iskejjel permezz tal-Kunsilli fl-Iskejjel bil-partecipazzjoni attiva tal-ġenituri, l-għalliema u l-istudenti.

Ma jeżistu l-ebda artikoli fil-leġiżlazzjoni Maltija li jirreferu b'mod speċifiku għat-tfal b'diżabilità fir-rigward tad-dritt li jinstemgħu u d-dritt tal-partecipazzjoni.

3.1.5. Helsien mill-vjolenza (l-Art. 19 CRC; l-Art. 16 CRPD)

Il-Kostituzzjoni ta' Malta, fl-Artikolu 36, tipprovdi li hadd ma jista' jiġi sugġett għal piena jew trattament inuman jew degradanti. It-tfal jaqgħu taħt il-kamp ta' applikazzjoni ta' din id-dispożizzjoni.

Il-Kodiċi Kriminali jirregola u **jippenalizza diversi forom ta' abbuż kontra l-minuri**, inklużi vjolenza sesswali, prostituzzjoni tat-tfal, abbandun jew espożizzjoni tal-minuri, trattamenti ħżiena, eċċ.

Il-Kodiċi Kriminali jistabbilixxi l-vjolenza kontra t-tfal u l-persuni b'diżabilità bħala **ċirkostanza aggravanti**.⁵¹ B'mod partikolari, l-Artikolu 208AC tal-Kodiċi Kriminali jipprovdi lista twila ta' persuni "vulnerabbli" li, jekk jiġu sugġetti għal vjolenza sesswali, iwasslu għal piena akbar għall-awtur tar-reat.

L-Att dwar il-*Foster Care* jehtieg Aġenzija akkreditata biex tinvestigva kwalunkwe allegazzjoni ta' abbuż fi kwalunkwe faċilità ta' foster care.

L-Att dwar il-Vjolenza Domestika jagħmel dispożizzjoni speċifika għar-rispons għal vjolenza mwettqa fl-ambjent tal-familja u jirregola sistema ta' għajjnuna għall-persuni li jisfaw vittmi ta' abbuż domestiku.

3.1.6. Dritt għall-ħajja tal-familja (l-Art. 9 CRC; l-Art. 23(3) CRPD)

Il-Kostituzzjoni ta' Malta tirreferi direttament għad-dritt għall-ħajja tal-familja. Barra minn hekk, il-Konvenzjoni Ewropea dwar id-Drittijiet tal-Bniedem flimkien mal-ewwel Protokoll tagħha ġew inkorporati fil-liġi Maltija billi għadda l-Att dwar il-Konvenzjoni Ewropea, li l-

⁵⁰ L-Artikolu 24 tal-Att dwar il-*Foster Care*.

⁵¹ L-Artikoli 203, 204 u 208 tal-Kodiċi Kriminali.

Qrati japplikaw b'mod kostanti. L-Iskeda għall-Att dwar il-Konvenzjoni Ewropea tipprevedi **d-dritt għall-ħajja tal-familja u l-projbizzjoni tal-indħil fil-ħajja tal-familja**.

Fid-dawl tal-liġi nazzjonali, għandu jittfassal pjan ta' kura fl-aħjar interessi tat-tfal separati mill-ġenituri u mqiegħda fi trottija alternattiva. Id-deċiżjonijiet fir-rigward tal-kuntatt mal-ġenitur(i) għandhom jagħmlu parti mill-pjan ta' kura.

Ma hemm l-ebda referenza esplicita għall-persuni b'diżabilità fil-liġi nazzjonali li tirregola l-ħajja tal-familja.

3.1.7. Dritt għall-għajnuna (l-Art. 23 CRC; l-Art. 23(5), 26 u 28 CRPD)

Skont l-Artikolu 17 tal-Kostituzzjoni, kull ċittadin li ma jkunx kapaċi għal xogħol u li ma jkollux ir-riżorsi neċessarji għall-għajxien **għandu dritt għal manteniment u għajnuna soċjali**.

L-appoġġ finanzjarju għall-persuni b'diżabilità, fil-forma ta' Pensjoni għal Diżabilità jew Pensjoni għal Persuna b'Vista Batuta, huwa żgurat taħt l-Att dwar is-Sigurtà Soċjali. Barra minn hekk, huma previsti **allowances speċjali** għat-tfal taħt foster care jew fl-istituzzjonijiet.⁵²

L-Att dwar Opportunitajiet Indaqs għal Persuni b'Diżabilità jiżgura l-provvediment ta' għajnuna, inkluż appoġġ finanzjarju u legali, lill-persuni b'diżabilità, li jsaħħaħ id-drittijiet tagħhom taħt dan l-Att.

Il-kura tas-saħħa tiġi pprovduta permezz tas-servizz tas-saħħa ffinanzjat mill-Istat, inkluża ċ-Child Development and Assessment Unit. Kulhadd, inklużi t-tfal b'diżabilità, għandu dritt għal servizzi tas-saħħa u trattament mediku b'xejn għalkemm l-ebda dispożizzjoni speċjali għat-tfal b'diżabilità ma giet identifikata f'dan ir-rigward.

3.1.8. Dritt għall-edukazzjoni inklużiva (l-Art. 28 CRC; l-Art. 24 CRPD)

Il-Kostituzzjoni tagħmel dispożizzjoni għad-dritt għall-edukazzjoni (primarja) u d-dritt tal-persuni b'diżabilità għall-edukazzjoni, madankollu dawn l-Artikoli jagħmlu parti mill-Kapitolu II tal-Kostituzzjoni, li fin-natura tiegħu huwa dikjaratorju u mhux eżekwibbli.

L-Att dwar l-Edukazzjoni jpoġġi obbligu fuq il-Ministru biex jiżgura li l-politika nazzjonali dwar **l-edukazzjoni inklużiva qed tiġi applikata fl-iskejjel kollha**. Fid-dawl tal-Att dwar l-Edukazzjoni, għandhom jiġu stabbiliti ċentri ta' riżorsi speċjalizzati li jappoġġaw lill-iskejjel u l-Kulleġġi fl-implimentazzjoni tal-politika tal-edukazzjoni inklużiva.

L-Att dwar Opportunitajiet Indaqs jipprojbixxi diskriminazzjoni abbażi ta' diżabilità fl-edukazzjoni, fost aspetti oħra tal-ħajja. Dan jiżgura wkoll **l-aċċessibilità tal-persuni b'diżabilità għall-faċilitajiet ta' edukazzjoni**.⁵³

⁵² L-Artikolu 76A tal-Att dwar is-Sigurtà Soċjali.

⁵³ L-Artikolu 13 tal-Att dwar Opportunitajiet Indaqs għal Persuni b'Diżabilità.

Id-dritt għal edukazzjoni inklużiva huwa applikat fid-dokumenti ta' politika maħruġa mill-Ministeru għall-Edukazzjoni.⁵⁴ Għal aktar dettalji dwar l-implimentazzjoni tad-dritt għal edukazzjoni inklużiva f'Malta, ara t-Taqsima 3.2.4 ta' hawn taħt.

3.2. Kwistjonijiet speċifiċi li jiffaċċjaw it-tfal b'diżabilità

Il-punti mqajma u diskussi f'din it-taqsimha huma bbażati fuq informazzjoni u dejta miġbura minn rapporti ppubblikati u dokumenti oħra kif ukoll mill-intervisti mwettqa ma' tliet partijiet interessati nazzjonali. Dawn kienu kif ġej:

- Rappreżentant tal-Kummissarju għat-Tfal (CFC 2012);
- Rappreżentant tal-Equal Partners Foundation (Fondazzjoni Sħab Indaqs), li tipprovdi servizzi edukattivi u ta' terapija għat-tfal u ż-żgħażaġh b'diżabilità, u li huwa wkoll il-ġenitur ta' persuna b'diżabilità (Equal Partners 2012);
- Rappreżentant tal-Aġenzija Sapport, li tipprovdi servizzi residenzjali, komunitarji u ta' matul il-ġurnata għall-persuni b'diżabilità, u li huwa wkoll il-ġenitur ta' persuna b'diżabilità (Aġenzija Sapport 2012).

3.2.1. Vulnerabilità tal-ġeneru

Ma jeżistu l-ebda regolamenti legali li jimmiraw b'mod speċifiku lin-nisa jew lill-bniet b'diżabilità. L-Att dwar l-Ugwaljanza għall-Irġiel u n-Nisa (il-Kapitolu 456) jipprojbixxi u jirregola d-diskriminazzjoni bejn l-irġiel u n-nisa, b'mod speċjali fis-settur tal-impjieg. L-Att dwar is-Saħħa Mentali jiddikjara li **l-isterilizzazzjoni** jew mezzi invażivi oħra li jimmodifikaw it-tibdil sesswali u emozzjonali li jirriżulta minn mard mentali huma pprojbiti f'Malta.⁵⁵

Ir-riċerka statistika fis-settur tad-diżabilità hija diżaggregata skont is-sess u turi d-differenza bejn l-irġiel u n-nisa b'diżabilità fl-istat ċivili, il-livell ta' edukazzjoni, is-sitwazzjoni tal-impjieg, it-tip u l-kwalità ta' residenza, l-aċċess għall-Internet u l-partecipazzjoni fl-isport. Din l-istatistika turi li, f'hafna mill-oqsma riċerkati, in-nisa huma aktar żvantaġġati mill-irġiel.⁵⁶ Riċerka oħra turi li n-nisa, inklużi l-bniet, b'diżabilità jiffaċċjaw riskju ta' diskriminazzjoni għoli d-doppju minn dak tal-irġiel u jesperjenzaw aktar żvantaġġi mill-irġiel.⁵⁷ Il-ġenituri ta' żgħażaġh nisa b'diżabilità intellettuali jsibu li wliedhom huma aktar vulnerabbli mill-irġiel, b'mod speċjali fil-qasam tas-sesswalità. Jemmnu li r-

⁵⁴ Il-Ministeru għall-Edukazzjoni, iż-Żgħażaġh u x-Xogħol. "For All Children to Succeed: a new network organisation for quality education in Malta" (Żgħażaġh u Impjieg. Biex jirnexxu t-Tfal Kollha: organizzazzjoni ġdida ta' networks għal edukazzjoni ta' kwalità f'Malta), disponibbli fuq https://www.education.gov.mt/MediaCenter/Docs/2_for_all_children_to_succeed.pdf (l-aħħar aċċess sar fit-3 ta' Ottubru 2012).; MEYE, 2005, Debono, M., Camilleri, S., Galea, J. u Gravina, D., "Career Guidance Policy for Schools" (Politika ta' Gwida tal-Karriera għall-Iskejjel), disponibbli fuq https://www.education.gov.mt/MediaCenter/Docs/2_career_guidance_policy.pdf (l-aħħar aċċess sar fit-3 ta' Ottubru 2012).

⁵⁵ L-Artikolu 31(2) tal-Att dwar is-Saħħa Mentali.

⁵⁶ Bezzina, F., Callus, A.M., u Cardona, G., "The Quality of Life of Disabled People in Malta: some answers from the 2005 census", disponibbli fuq <http://www.knpd.org/Issues/research.html>, 2009.; KNPd, "Rapport ta' Hidma 2011", (St. Venera, Malta: Kummissjoni Nazzjonali Persuni b'Diżabilità), disponibbli fuq <http://www.knpd.org/issues.html> (l-aħħar aċċess sar fit-3 ta' Ottubru 2012). KNPd, 2012.

⁵⁷ M. Debono u V. Gauci, 2011, "Gender and Disability". Studju pprezentat fis-Symposium on Multiple Discrimination, Ta' Sliema, Malta, 3 ta' Novembru 2011.

rispons għal din iż-żieda fil-vulnerabilità m'għandhiex tkun l-isterilizzazzjoni imma aktar ħarsien għall-bniet u n-nisa b'diżabilità.⁵⁸

Fl-intervisti ħarġet **fost il-ġenituri** l-kwistjoni tal-**biza' ta' abbuż sesswali kontra l-bniet** b'diżabilità. Madankollu, huwa diffiċli li jiġi aċċertat jekk fir-realtà dawn humiex aktar f'riskju mis-subien. Persuna oħra intervistata rrimarkat li l-organizzazzjoni tiegħu tiltaqa' ma' każijiet ta' abbuż kemm ta' subien kif ukoll ta' bniet b'diżabilità, u li d-diżabilità tagħhom tikkawża aktar riskju mill-ġeneru.⁵⁹

Waħda mill-persuni intervistati enfasizzat **il-htieġa għal edukazzjoni sesswali aħjar** li tindirizza b'mod speċjali l-bżonnijiet u l-livelli ta' ħila tal-bniet b'diżabilità intellettuali.⁶⁰ Madankollu, ħafna d-drabi l-lezzjonijiet tal-edukazzjoni sesswali fl-iskejjel regolari jingħataw lill-klassi kollha u l-materjal ma jiġix adattat għat-tfal b'diżabilità intellettuali.⁶¹

Ta' min jinnota li l-Gvern ta' Malta adotta politika ta' saħħa sesswali li tirrikonoxxi l-vulnerabilità relatata mal-ġeneru tan-nisa u li tirreferi għall-importanza li s-servizzi tas-saħħa sesswali jkunu adatti għall-persuni b'diżabilità.⁶²

3.2.2. Vjolenza

Tnejn mill-persuni intervistati rreferew għal każijiet ta' abbuż fuq tfal b'diżabilità li ġew irrapportati lill-organizzazzjonijiet rispettivi tagħhom, li t-tnejn li huma huma awtorizzati li jintervjenu f'tali każijiet u jinvestigawhom.

Meta l-vjolenza tkun qed issir fl-ambjent tal-familja jew f'istituzzjoni, is-Social Work Unit (Unità għall-Ħidma Soċjali) tal-Aġenzija Sapport tivvaluta s-sitwazzjoni u jekk tqis li hija meħtieġa aktar investigazzjoni, din tirreferi l-każ liċ-Child Protection Unit (Unità għall-Ħarsien tat-Tfal) tal-Aġenzija Appoġġ, l-entità pubblika li tipprovdi kura u appoġġ lit-tfal u l-familji fil-bżonn.⁶³ Wara r-riferiment, l-assistenti soċjali taż-żewġ unitajiet jaħdmu flimkien skont protokoll stabbilit.⁶⁴

Jingħad li t-tfal b'diżabilità intellettuali huma aktar f'riskju ta' abbuż minn tfal oħra b'diżabilità. Waħda mir-raġunijiet tista' tkun li dawn it-tfal u l-ġenituri tagħhom għandhom it-tendenza li jaċċettaw b'mod aktar faċli ċerti trattamenti li lanqas biss jiġu kkunsidrati aċċettabbli għal tfal oħra.⁶⁵

⁵⁸ Azzopardi-Lane tiddekrivi li l-persuni b'diżabilità intellettuali f'Malta, fil-fatt, jirċievu xi kultant edukazzjoni sesswali li tiffoka fuq tagħlim dwar l-għarfien u l-prevenzjoni tal-abbuż. Azzopardi-Lane, K., "Sexuality and People with Learning Disability in Malta: realities and potential", (Teżi tad-Dottorat, l-Università ta' Kent. 2011).

⁵⁹ Informazzjoni miġbura permezz tal-konsultazzjoni mal-partijiet interessati.

⁶⁰ Informazzjoni miġbura permezz tal-konsultazzjoni mal-partijiet interessati.

⁶¹ Azzopardi-Lane, K., "Sexuality and People with Learning Disability in Malta: realities and potential", (Teżi tad-Dottorat, l-Università ta' Kent. 2011).

⁶² Il-Ministeru għas-Saħħa, l-Anzjani u l-Kura fil-Komunità, "The National Sexual Health Policy for the Maltese Islands", (Valletta, Malta. 2010).

⁶³ L-Aġenzija Appoġġ, disponibbli fuq https://secure3.gov.mt/socialpolicy/SocProt/family/fsws/appogg/appogg_info.aspx (l-aħħar aċċess sar fl-10 ta' Jannar 2013).

⁶⁴ Informazzjoni miġbura permezz tal-konsultazzjoni mal-partijiet interessati.

⁶⁵ Informazzjoni miġbura permezz tal-konsultazzjoni mal-partijiet interessati.

3.2.3. It-tfal b'ħala suspettati vulnerabbli

Skont il-liġi kriminali Maltija, il-minuri taħt l-età ta' disa' snin huma eżenti mir-responsabilità kriminali. Bejn l-età ta' disa' snin u 14-il sena, it-tfal jitqiesu kapaċi għal reat magħmul b'ħażen (*doli capax*) u jistgħu jinżammu responsabbli. Mill-età ta' 14 sa 18-il sena, kull reat kriminali mwettaq mit-tfal jingħata piena ta' grad inqas.⁶⁶ Il-Kodiċi Kriminali jipprovdni l-possibilità li għal tfal li jkunu wettqu reat, sentenza ta' kustodja tinbidel f'Ordni għall-Ħarsien.⁶⁷ Madankollu, din id-dispożizzjoni qatt ma giet applikata (allegatament minħabba n-nuqqas ta' faċilità xierqa li takkomoda trasgressuri żgħażaġħ).

Il-Kodiċi Kriminali jipprevedi regolamentazzjoni ddettaljata tar-reati kriminali mwettqa minn **minuri torox-muti**.⁶⁸ Pereżempju, tfal torox-muti li fiż-żmien tar-reat ma jkunux għalqu l-età ta' 14-il sena u li jkunu mxew bla ħażen ikunu eżenti minn kull piena.⁶⁹

L-Att dwar il-Qorti tal-Minorenni (il-Kapitolu 287 tal-Kostituzzjoni ta' Malta) jirregola **l-proċeduri li japplikaw għall-ħatja minorenni** sal-età ta' 16-il sena. Skont l-Artikolu 8 ta' dan l-Att, il-proċeduri kontra t-tfal jistgħu jsiru bil-biben magħluqin u l-pubblikazzjoni ta' kwalunkwe informazzjoni li tista' tidentifika lit-tfal hija pprojbita.

Ma giet identifikata l-ebda leġiżlazzjoni speċifika li tirregola l-interrogazzjoni jew il-prosekuzzjoni ta' suspettati taħt l-età ta' 18-il sena.

3.2.4. Edukazzjoni inklużiva

Id-dritt għall-edukazzjoni għat-tfal b'diżabilità huwa stabbilit fl-Att dwar l-Edukazzjoni kif ukoll fl-Att dwar Opportunitajiet Indaq għal Persuni b'Diżabilità li jindika l-edukazzjoni b'ħala waħda mill-oqsma fejn id-diskriminazzjoni abbażi ta' diżabilità hija pprojbita u li jiżgura aċċess għall-faċilitajiet ta' edukazzjoni. L-Att dwar l-Edukazzjoni jobbliga lill-awtoritajiet nazzjonali kompetenti jiżguraw li l-politika nazzjonali dwar l-edukazzjoni inklużiva tiġi applikata fl-iskejjel kollha u li jkunu disponibbli r-riżorsi, l-għodod u l-faċilitajiet meħtieġa għal dan il-għan.

Fl-2004, **twettqet analiżi tas-sistema ta' edukazzjoni speċjali u inklużiva f'Malta** minn esperti kkummissjonati mill-Ministeru għall-Edukazzjoni, deċennju wara li nbdiel il-politika ta' edukazzjoni inklużiva. Ir-rapport jistabbilixxi pjan biex tittiehed pożizzjoni mill-ġdid b'rakkomandazzjonijiet speċifiċi, li ħafna minnhom ġew implimentati bis-sħiħ jew parzjalment.⁷⁰ Ir-rakkomandazzjonijiet li ġew implimentati jinkludu t-twaqqif tad-Dipartiment għas-Servizzi tal-Istudjanti⁷¹, it-taħriġ u r-reklutaġġ tal-Koordinaturi għall-Inklużjoni⁷², ir-reviżjoni tad-deskrizzjoni tal-impjeg tal-Learning Support Assistants,⁷³ it-

⁶⁶ L-Artikolu 36 tal-Kodiċi Kriminali.

⁶⁷ L-Artikolu 37 tal-Kodiċi Kriminali.

⁶⁸ L-Artikoli 39-40 tal-Kodiċi Kriminali.

⁶⁹ L-Artikolu 39m tal-Kodiċi Kriminali.

⁷⁰ Spiteri, L., Borg, G., Callus, A.M., u Sciberras, M., "Inclusive and Special Education Review", (Valletta, Malta: Il-Ministeru għall-Edukazzjoni, iż-Żgħażaġħ u x-Xogħol 2004).

⁷¹ Id-Dipartiment għas-Servizzi tal-Istudjanti, disponibbli fuq <https://www.education.gov.mt/Page.aspx?pid=256&depid=2&pageid=14> (l-aħħar aċċess sar fit-3 ta' Ottubru 2012).

⁷² Id-Direttorat għal Servizzi Edukattivi, "Post ta' Koordinatur għall-Edukazzjoni Inklussiva fid-Direttorat għal Servizzi Edukattivi (DSE)", il-Furjana, Malta, disponibbli fuq https://www.education.gov.mt/mediacenter.ashx?file=MediaCenter/Docs/1_INCO_2011_MLT.pdf (l-aħħar aċċess sar fit-3 ta' Ottubru 2012).

⁷³ Il-Ministeru għall-Edukazzjoni, il-Kultura, iż-Żgħażaġħ u l-Ispport, "Supporting Learners in Independent Schools", il-Furjana, Malta, 2007, disponibbli fuq www.education.gov.mt/MediaCenter/Docs/1_Supporting%20Learners.pdf (l-aħħar aċċess sar fit-3 ta' Ottubru 2012).

twaqqif ta' Statementing Moderating Panel multidixxiplinarju, u r-riforma li twettqet biex l-iskejjel speċjali preċedenti jinbidlu f'ċentri ta' riżorsi.⁷⁴

Ir-rapport iwissi kontra l-perikli ta' kultura ta' dipendenza u jirrimarka l-importanza li jiġi żgurat li l-istudenti bi bżonnijiet edukattivi individwali jikkontribwixxu fil-proċessi ta' teħid ta' deċiżjonijiet li jolqtuom direttament.⁷⁵

Id-Dipartiment għas-Servizzi tal-Istudjanti jimplimenta prattiki li jippermettu li l-istudenti bi bżonnijiet edukattivi individwali jiġu involuti fit-tfassil tal-Programmi Edukattivi Individwali rispettivi tagħhom.⁷⁶ Fi stadji ewlenin tal-edukazzjoni tat-tfal b'diżabilità, jistgħu jitwettqu sessjonijiet ta' **Making Action Plan** (MAPs) bil-kontribut attiv tal-istudent ikkonċernat.⁷⁷ Il-MAPs huma bbażati fuq il-prinċipji ta' ppjanar iffokat fuq il-persuna u għandhom ikunu adatti għall-ħolm, il-biżgħat, l-interessi u l-bżonnijiet tal-istudent.⁷⁸ Filwaqt li s-sessjonijiet ta' MAPs ġew stabbiliti bħala parti mill-għodod użati fil-proċess ta' inkluzjoni, ma twettqet l-ebda riċerka li tevalwa kemm fil-prattika hemm konformità mal-prinċipji ta' ppjanar iffokat fuq il-persuna.

Filwaqt li jista' jiġi osservat progress konsiderevoli fl-inkluzjoni tat-tfal b'diżabilità fl-iskejjel regolari f'Malta, l-inkluzjoni tidher li mhijiex sistematika. L-implimentazzjoni tal-edukazzjoni inkluziva ħafna drabi tithalla f'idejn il-kap tal-iskola partikolari u tiddependi ħafna fuq ir-rieda tajba tal-għalliema. F'ħafna każijiet, ir-responsabilità għall-edukazzjoni tat-tfal b'diżabilità tithalla f'idejn l-LSAs, u t-tfal b'diżabilità huma biss ittollerati fil-klassijiet imma ma jirċevux edukazzjoni u attenzjoni adegwata min-naħa tal-persunal tal-iskola.⁷⁹ Id-diskrepanzi bejn tfal b'diżabilità u tfal oħra huma aktar evidenti fis-snin tal-iskola sekondarja, kemm fil-livell akkademiku kif ukoll fil-livell soċjali. Fis-setturi ta' wara s-16-il sena, id-diskrepanzi jsiru usa'.⁸⁰

Barra minn hekk, skont il-persuni intervistati, id-dritt tat-tfal b'diżabilità għall-edukazzjoni mhux rikonoxxut bis-sħiħ fil-prattika. Pereżempju, tfal b'diżabilità assenti mill-iskola ma jiġux irrapporati lill-awtoritajiet kompetenti kif jiġri fil-każ ta' tfal mingħajr diżabilità. B'konsegwenza ta' dan, dawn it-tfal jibqgħu d-dar u jtilfu mill-edukazzjoni tagħhom. Barra minn hekk, jekk l-LSA ikun assenti għal żmien temporanju, it-tfal jistgħu ma jiġux aċċettati fl-iskola u jkollhom jibqgħu d-dar. Dan mhux neċessarjament li jiġi rikonoxxut bħala problema mill-iskejjel li jadottaw approċċ ta' indifferenza lejn l-assenza tat-tfal b'diżabilità.⁸¹ Ġie rrapportat ukoll li l-ġenituri jistgħu jhossuom li mhumiex f'pożizzjoni li jilmentaw jekk l-LSAs ma jkunux qed jissodisfaw l-obbligi tagħhom tajjeb.⁸²

⁷⁴ Il-Ministeru għall-Edukazzjoni, il-Kultura, iż-Żgħażaġh u l-Ispirt, "Special Schools Reform", il-Furjana, Malta, 2010, disponibbli fuq https://www.education.gov.mt/MediaCenter/Docs/2_Special_Schools_Reform_ENG.pdf (l-aħħar aċċess sar fit-3 ta' Ottubru 2012).

⁷⁵ Spiteri, L., Borg, G., Callus, A.M., u Sciberras, M., "Inclusive and Special Education Review", (Valletta, Malta: Il-Ministeru għall-Edukazzjoni, iż-Żgħażaġh u x-Xogħol 2004).

⁷⁶ Id-Direttorat għal Servizzi Edukattivi, "Individual Education Programme" (Programm ta' Edukazzjoni Individwali), il-Furjana, Malta.

⁷⁷ Id-Direttorat għal Servizzi Edukattivi, "Transition Document from Year 6 to Form 1" (Dokument ta' Tranzizzjoni mis-sitt sena tal-Primarja għall-ewwel sena tas-Sekondarja), il-Furjana, Malta.

⁷⁸ "Making Action Plans: student centred transitional planning" (Tfassil tal-Pjanijiet ta' Azzjoni: ippjanar tranzizzjonali ffokat fuq l-istudent), disponibbli fuq <http://www.ric.edu/uap/publications/MAPS.pdf> (l-aħħar aċċess sar fit-3 ta' Ottubru 2012). iċ-Ċentru Paul V. Sherlock, 2001, p. 1.

⁷⁹ Informazzjoni miġbura permezz tal-konsultazzjoni mal-partijiet interessati.

⁸⁰ Informazzjoni miġbura permezz tal-konsultazzjoni mal-partijiet interessati.

⁸¹ Opinjoni espressa minn wiehed mill-partijiet interessati kkonsultati.

⁸² Informazzjoni miġbura permezz tal-konsultazzjoni mal-partijiet interessati.

3.2.5. Kwistjonijiet partikolari oħra li jiffaċċjaw it-tfal b'diżabilità f'Malta

Tfal b'imġiba diffiċli ħafna jinsabu **f'riskju għoli li jiġu istituzzjonalizzati**. Jekk il-fatt li jitneħħew mill-familja jiġi kkunsidrat ta' benefiċċju għat-tfal b'diżabilità mentali, dawn jitqiegħdu taħt Ordni għall-Ħarsien li tinħareġ mill-Ministru. Wara l-Ordni għall-Ħarsien, il-Bord Konsultattiv dwar it-Tfal u ż-Żgħażaġh, f'isem il-Ministru, jeżerċita l-awtorità tal-ġenituri fuq it-tfal. Hija l-psikjatra inkarigata mis-sitwazzjoni partikolari tat-tfal b'diżabilità li tiddeċiedi jekk it-tfal għandhomx jiddaħħlu fl-unità psikjatrika. Il-ġenituri/persuni li jindukraw jistgħu jappellaw għad-deċiżjoni dwar l-istat tat-tfal.⁸³ Taħt l-Ordni għall-Ħarsien, it-tfal jistgħu jitqiegħdu f'istituzzjoni residenzjali. F'każijiet severi, it-tfal jintbagħtu fil-Young People's Unit (YPU), li tagħmel parti mill-Isptar Monte Carmeli, l-isptar mentali tal-Istat f'Malta (fejn attwalment hemm tmint itfal b'diżabilità⁸⁴) jew f'YOURS, l-unità tal-ħabs għall-minorenni. B'referenza għall-YPU, għalkemm l-istruttura hija differenti minn dik tas-swali għall-adulti, u għalkemm isiru l-isforzi kollha biex it-tfal jitneħħew mill-YPU u jitqiegħdu fil-komunità, dan mhux dejjem huwa possibbli minħabba **nuqqas ta' servizzi bbażati fil-komunità**.

B'mod ġenerali, hemm **nuqqas ta' servizzi residenzjali** għal tfal b'diżabilità li, għal raġunijiet diversi, ma jistgħux ikomplu jgħixu fid-djar tal-familja tagħhom. Qed isiru xi sforzi biex jiżiedu s-servizzi offruti, bħat-twaqqif ippjanat ta' servizz residenzjali għal tfal b'diżabilità f'riskju operat mill-Aġenzija Sapport, li sa issa toffri biss servizzi residenzjali għall-adulti b'diżabilità. Il-Fondazzjoni Richmond Malta topera wkoll servizz residenzjali għal tfal b'diffikultajiet emozzjonali u ta' mġiba severi. U l-Foundation for Respite Care Services qed tippjana li tipprovdi mistrieħ għall-persuni b'diżabilità, inklużi t-tfal b'diżabilità, b'mod speċjali dawk b'diżabilità intellettuali.⁸⁵

B'mod ġenerali, it-tfal bi mġiba diffiċli jiffaċċjaw **riskju akbar ta' esklużjoni**, meta mqabbla ma' tfal oħra b'diżabilità u jistgħu jiġu mxekkla milli jibbenefikaw mill-progress li ġie rreġistrat fis-settur tad-diżabilità f'Malta.⁸⁶ Din il-konklużjoni hija konsistenti mar-riżultati tar-riċerka ppubblikata minn Inclusion Europe.⁸⁷

Hemm **il-ħtieġa għal koordinazzjoni bejn l-aġenziji differenti, b'mod speċjali s-saħħa u l-edukazzjoni**. Għal ħafna ġenituri ta' tfal b'diżabilità, b'mod speċjali meta t-tfal ikunu żgħar ħafna jew iddijanostikati mat-twelid, l-ewwel punt ta' referenza huwa s-settur tas-saħħa. Il-persunal tas-saħħa jeħtieġ ikun imħarreġ u informat dwar is-servizzi u l-benefiċċji disponibbli kif ukoll dwar l-opportunitajiet edukattivi sabiex l-awtoritajiet tal-kura tas-saħħa jkunu jistgħu jipprovdu parir u appoġġ tajjeb lill-ġenituri.⁸⁸

Kwistjonijiet oħra li jiffaċċjaw it-tfal b'diżabilità f'Malta huma relatati mal-futur tagħhom bħala adulti indipendenti. L-iżvilupp tal-awtodifiża (self-advocacy) għall-persuni b'diżabilità intellettuali f'Malta kien suġġett għal riċerka. Filwaqt li l-fok huwa fuq l-adulti b'diżabilità, ir-riżultati huma rilevanti wkoll għat-tfal. L-istudju juri kif il-kultura Maltija ma trawwimx l-awtodifiża, imma pjuttost għandha t-tendenza li toħloq dipendenza, b'mod speċjali fuq il-graba, li huma mistennija jkomplu jieħdu ħsieb il-persuni b'diżabilità sakemm possibbli.

⁸³ Informazzjoni miġbura permezz tal-konsultazzjoni mal-partijiet interessati.

⁸⁴ Informazzjoni miġbura permezz tal-konsultazzjoni mal-partijiet interessati.

⁸⁵ Dar il-Kaptan, disponibbli fuq <http://www.darilkaptan.org/> (l-aħħar aċċess sar fit-3 ta' Ottubru 2012).

⁸⁶ Bezzina, A., "Girl Interrupted", ir-Rivista Pink, Jannar 2011. (Valletta, Malta. A. 2011).

⁸⁷ Inclusion Europe, 2006, "The Specific Risks of Discrimination Against Persons in Situation of Major Dependence or with Complex Needs", disponibbli fuq ec.europa.eu/social/BlobServlet?docId=3009&langId=en (l-aħħar aċċess sar fit-3 ta' Ottubru 2012).

⁸⁸ Informazzjoni miġbura permezz tal-konsultazzjoni mal-partijiet interessati.

Għaldaqstant l-iżvilupp tal-ħiliet ta' awtonomija u awtodeterminazzjoni fit-tfal b'diżabilità ma jitqiesx neċessarjament bħala prijorità.⁸⁹

It-tfal b'diżabilità f'Malta jiffaċċjaw ukoll **futur professjonali inċert** ladarba jsiru adulti. Filwaqt li opportunitajiet postsekondarji u ta' taħriġ vokazzjonali qed isiru aktar disponibbli għall-persuni b'diżabilità, l-opportunitajiet ta' impjieg għadhom skarsi u s-servizzi ta' appoġġ ipprovdu ti mill-Korporazzjoni għall-Impjieg u t-Taħriġ jeħtieġ li jiġu ristrutturati.⁹⁰

⁸⁹ Callus, A.M., "A Qualitative Study of the Self-Advocacy Movement for People with the Label 'Intellectual Disability' in Malta", (Tezi tad-Dottorat mhux ippubblikata, l-Università ta' Leeds. 2011).

⁹⁰ L-Uffiċċju Nazzjonali tal-Verifika, "Performance Audit: employment opportunities for registered disabled persons", il-Furjana, Malta, disponibbli fuq <http://www.nao.gov.mt/page.aspx?id=70> (l-aħħar aċċess sar fit-3 ta' Ottubru 2012).

4. VALUTAZZJONI TAL-IMPLIMENTAZZJONI PRATTIKA TAD-DRITTIJET U L-PRINĊIPJI LEGALI

RIŻULTATI EWLENIN

- Peress li ma jeżisti l-ebda qafas legali speċifiku li jindirizza d-drittijiet u l-bżonnijiet tat-tfal b'diżabilità, huma applikabbli għas-sitwazzjoni tat-tfal b'diżabilità dispożizzjonijiet ġenerali f'liġijiet diversi. Każijiet individwali ta' diskriminazzjoni kontra tfal b'diżabilità jistgħu jiġu ttrattati b'mod effettiv imma għadu ma nkisibx tibdil sistematiku kumplessiv.
- Ir-rapportar jidher li huwa ffokat fuq il-provvediment diskriminatorju tas-servizzi u b'mod partikolari fuq l-aċċess għall-edukazzjoni. Il-KNPD hija inkarigata mill-abbozzar ta' politika, il-monitoraġġ ta' ksur u l-investigazzjonijiet ta' ksur allegat. Għall-persuni b'diżabilità, il-KNPD żviluppat f'konsulenza legali rrispettata u hija rikonoxxuta fuq bażi nazzjonali bħala punt ta' referenza affidabbli.
- Fil-qasam tal-edukazzjoni, sar progress konsiderevoli lejn l-inklużjoni tat-tfal b'diżabilità fl-edukazzjoni regolari. Madankollu, din tibqa' politika relattivament diskrezzjonali u s-setgħat ta' monitoraġġ tal-Kummissarju għat-Tfal f'dan il-qasam jidher li huma ristretti b'mod sever, possibilment minhabba nuqqas ta' persunal u deċiżjonijiet ta' politika interna relatati mal-Uffiċċju tal-Kummissarju għat-Tfal.
- Id-dokumentazzjoni tirrakkomanda: 1. fehim u promozzjoni tal-perspettivi tat-tfal b'diżabilità; 2. taħriġ tal-professjonisti dwar kwistjonijiet relatati mal-ħidma ma' tfal b'diżabilità u trawwim ta' kooperazzjoni bejniethom; 3. għoti ta' attenzjoni speċjali lill-bżonnijiet tat-tfal b'diżabilità li għandhom diffikultajiet ta' mgħiba.

4.1. Mekkanizmi ta' infurzar u rapportar

Il-Kummissjoni Nazzjonali Persuni b'Diżabilità (KNPD) hija l-entità li għandha s-setgħa legali li tinforza leġiżlazzjoni kontra d-diskriminazzjoni fis-settur tad-diżabilità. Il-kompetenzi tal-KNPD jirriżultaw mill-Att dwar Opportunitajiet Indaq li jkopri d-diskriminazzjoni kontra l-persuni b'diżabilità fl-edukazzjoni, l-impjieg, l-aċċess għall-oġġetti, is-servizzi u l-facilitajiet, id-djar, l-aċċessibilità fiżika, u l-assigurazzjoni. Permezz ta' emendi reċenti għal dan l-Att, il-KNPD giet assenjata wkoll ir-rwol ta' mekkanizmu indipendenti li jħares, jippromwovi u jimmonitorja l-implimentazzjoni tas-CRPD, skont l-Artikolu 33.2 tal-Konvenzjoni.

L-Equal Opportunities Compliance Unit (EOCU) fi hdan il-KNPD tirċievi l-ilmenti dwar id-diskriminazzjoni u tinvestigahom. L-ilmenti jiġu pprezentati minn persuni b'diżabilità, ġenituri jew qraba ta' persuni (b'mod speċjali tfal) b'diżabilità jew jiġu rriferuti lill-KNPD minn entitajiet oħra. Dawn jinkludu riferimenti mill-Kummissarju għat-Tfal, li, skont l-Att dwar il-Kummissarju għat-Tfal, għandu s-setgħa jippromwovi d-drittijiet tat-tfal.

Kif jista' jiġi osservat mir-rapporti annwali dwar l-Att dwar Opportunitajiet Indaq ippubblikati mill-KNPD, **il-maġġoranza tal-ilmenti li jinvolvu t-tfal b'diżabilità**

jiffokaw fuq l-edukazzjoni u d-diffikultajiet li jiltaqgħu magħhom fl-edukazzjoni regolari. Fl-ewwel għaxar snin tal-Att dwar Opportunitajiet Indaq, il-KNPD ittrattat 228 każ ta' diskriminazzjoni fl-edukazzjoni, li globalment jammontaw għal 21 % tal-ilmenti.⁹¹ Dawn inkludew kwistjonijiet ta' trasport għal tfal b'diżabilità ta' mobilità u dawk li jeħtieġu superviżjoni waqt it-trasport; tfal b'diżabilità li għandhom imġiba diffiċli ma jiġux aċċettati fl-iskejjel regolari; studenti jinżammu d-dar għax l-LSA jkun assenti jew ikun għadu ma ġiex impjegat; arrangamenti għal appoġġ waqt l-eżamijiet; u aċċessibilità fiżika għall-iskola u l-faċilitajiet fl-iskola.

Il-KNPD issolvi l-biċċa l-kbira tal-każijiet permezz ta' diskussjonijiet u negozjati u ftit ħafna huma l-każi li jittressqu l-qorti. Rapporti ppubblikati dwar l-implimentazzjoni tal-Att dwar Opportunitajiet Indaq min-naħa tal-KNPD juru li mill-1 074 każ ta' diskriminazzjoni investigati bejn l-2000 u l-2011, sitta biss tressqu l-qorti jew it-tribunal.⁹² Wieħed mill-ftit każijiet li tressqu l-qorti kien jikkonċerna l-għoti ta' mediċina lil tfal b'diżabilità li jmorru fi skejjel regolari. Xi ġenituri ta' tfal b'diżabilità kellhom imorru fl-iskola ta' wliedhom kuljum sabiex jagħtuhom il-mediċina. Il-KNPD ressqet każ il-qorti kontra l-Ministeru għall-Edukazzjoni talli naqas milli jfassal politika dwar din il-kwistjoni. Eventwalment, il-Ministeru għall-Edukazzjoni adotta politika li tiżgura li jkun hemm professjonisti kkwalifikati biex jieħdu ħsieb it-tfal b'diżabilità li jmorru fi skejjel regolari u li jeħtieġu li tingħatalhom mediċina.

Ilmenti oħra kienu jikkonċernaw lill-edukaturi (b'mod speċjali l-għalliema u l-LSAs) fir-rigward tal-obbligi tagħhom lejn tfal b'diżabilità. Meta jitqajmu xi kunflitti, dawn l-edukaturi jistgħu jirrikorru għall-unjin tagħhom, il-Malta Union of Teachers (Unjin Maltija tal-Għalliema). Xi ftit mid-direttivi tal-Unjin kienu qed ixekklu l-implimentazzjoni ta' politiki u prattiki mmirati biex jinkisbu livelli ta' inkluzjoni ogħla.⁹³ Biex inkunu aktar preċiżi, waħda mid-direttivi pprojbixxiet lill-għalliema u l-LSAs milli jippreparaw karti tal-eżamijiet adattati għal tfal b'diżabilità li jsegwu kurrikulu alternattiv. Din il-prattika normalment tiġi segwita għal tfal b'diżabilità intellettuali. Bħala riżultat ta' din id-direttiva, dawn it-tfal ma jiġux ipprovduti bi skema ta' valutazzjoni xierqa l-istess bħal sħabhom.

Minn dan ta' hawn fuq jista' jiġi konkluz li l-oqfsa legali u ta' politika nazzjonali jharsu d-drittijiet tat-tfal b'diżabilità, b'mod speċjali fil-qasam tal-edukazzjoni, u jippermettu lilhom u lill-ġenituri tagħhom rikors legali għal rimedju ta' kull ksur tad-drittijiet.

4.2. Diskrepanzi, problemi u kwistjonijiet fl-implimentazzjoni

Aktar minn għaxar snin wara li għadda l-Att dwar Opportunitajiet Indaq u fi żmien meta Malta reċentament irratifikat is-CRPD, għad hemm diskrepanzi konsiderevoli fl-implimentazzjoni tad-drittijiet tal-persuni b'diżabilità, inklużi t-tfal. B'mod partikolari, fil-kuntest tal-edukazzjoni, it-tfal b'diżabilità fl-iskejjel regolari huma ttollerati aktar milli inklużi bis-sħiħ.

Is-sitwazzjoni tat-tfal b'diżabilità severa jew ta' mġiba hija aktar kumplessa u problematika mill-pożizzjoni tat-tfal ikkaratterizzati minn tipi oħra ta' diżabilità. Dan jinkludi

⁹¹ KNPDP, "EOA Report 2011" (Rapport Annwali 2011), (St. Venera, Malta: Kummissjoni Nazzjonali Persuni b'Diżabilità), disponibbli fuq <http://www.knppd.org/legislation/EOA.html> (l-aħħar aċċess sar fit-3 ta' Ottubru 2012).

⁹² KNPDP, "Rapporti Annwali", disponibbli fuq <http://www.knppd.org/legislation/EOA.html> (l-aħħar aċċess sar fit-3 ta' Ottubru 2012).

⁹³ Malta Union of Teachers, "Directives to LSAs". Valletta, Malta, disponibbli fuq <http://www.mut.org.mt/files/Directives%20LSAs.pdf> (l-aħħar aċċess sar fit-3 ta' Ottubru 2012).

tfal b'diżabilità intellettuali; tfal b'diffikultà fil-komunikazzjoni; tfal bi bżonnijiet ta' dipendenza kumplessi (bħal diżabilitajiet multipli u mgħiba diffiċli). **Barra minn hekk it-tfal b'diżabilità li għejjin minn minoranzi etniċi jiffaċċjaw diffikultajiet akbar.** Dan huwa relatat b'mod speċjali mat-tfal ta' immigranti mingħajr dokumenti li jaslu fix-xtajtiet Maltin mill-Afrika ta' Fuq.⁹⁴

Il barra mill-qasam tal-edukazzjoni, it-tfal b'diżabilità jeħtieġ li jingħataw appoġġ adegwat, kemm fil-familja tagħhom (eż. sistema effettiva ta' konsulenza legali u emozzjonali, intervent bikri, għajnuna soċjali u legali adegwata) kif ukoll permezz ta' provvediment ta' servizzi residenzjali bbażati fil-komunità xierqa għal dawk li, għal raġunijiet diversi, ma jistgħux jibqgħu fil-familja ta' orijini tagħhom.⁹⁵

Ta' min jinnota li s-sitwazzjoni tal-vittmi ta' diskriminazzjoni nbidlet. **Iż-żieda fin-numru ta' lmenti** ppreżentati lill-KNPD matul is-snin tindika ż-żieda fir-rieda u l-ħila tal-persuni b'diżabilità u tal-qraba tagħhom li jipprezentaw ilmenti aktar milli jaċċettaw każijiet ta' diskriminazzjoni. Dak li precedentement seta' kien jiġi aċċettat bħala destin qiegħed jiġi rikonoxxut aktar bħala diskriminazzjoni u l-effett ta' struttura, sistemi u attitudnijiet nazzjonali li ma jiħdux inkunsiderazzjoni l-bżonnijiet tal-persuni b'diżabilità. F'dan il-kuntest, qed naslu biex nirrikonoxxu li t-twettiq tal-bidliet neċessarji fi strutturi u sistemi stabbiliti hija kwistjoni ta' drittijiet, mhux karità.^{96,97}

Il-KNPD hija l-entità bl-aqwa riżorsi biex tħares id-drittijiet tal-persuni b'diżabilità, b'mod speċjali fid-dawl tar-rwol tagħha li timmonitorja l-implimentazzjoni tal-Att dwar Opportunitajiet Indaq mill-2000 'il quddiem u r-rwol il-ġdid tagħha bħala Mekkanizmu Indipendenti tas-CRPD mill-2012 'il quddiem.

4.3. L-aħjar prattiki

Sar progress konsiderevoli li fittex li jitneħhew ostakli sistematiċi għall-edukazzjoni inklużiva. Forsi wieħed mill-passi l-aktar sinifikanti kienet **il-ħatra reċenti tal-koordinaturi għall-inklużjoni (INCOs) fl-iskejjel regolari.**⁹⁸ Koordinatur għall-inklużjoni huwa membru tal-persunal li jkun imħarreg fil-prinċipji u l-prattika ta' edukazzjoni inklużiva u li jaħdem mat-tim għoli ta' tmexxija kif ukoll mal-għalliema u l-LSAs fil-proċess ta' inklużjoni ta' tfal b'diżabilità individwali. Madankollu, dawn l-INCOs ħafna drabi mhumiex mgħammra biex jindirizzaw il-kwistjonijiet kollha li jiffaċċja kull tifel u tifla b'diżabilità u biex jirrimedjaw kull kwistjoni malajr u b'mod effettiv.⁹⁹

Skola partikolari tal-Knisja adottat approċċ ta' skola sħiħa għall-edukazzjoni inklużiva li jieħu inkunsiderazzjoni l-bżonnijiet individwali tat-tfal kollha. Aktar milli LSAs li jieħdu ħsieb

⁹⁴ Informazzjoni miġbura permezz tal-konsultazzjoni mal-partijiet interessati.

⁹⁵ Informazzjoni miġbura permezz tal-konsultazzjoni mal-partijiet interessati.

⁹⁶ Camilleri, J., "Daħla: Nghixu bis-sħiħ fil-Komunità". KNPD, "Rapport Annwali 2010", (St. Venera, Malta: Kummissjoni Nazzjonali Persuni b'Diżabilità. 2010), disponibbli fuq <http://www.knpd.org/legislation/ea.html> (l-aħħar aċċess sar fit-3 ta' Ottubru 2012).

⁹⁷ Bezzina, F., "Drittijiet, mhux karità: Linji gwida lejn attitudni aktar pożittiva li tissarraf f'azzjoni konkreta għat-titjib fil-kwalità tal-ħajja tal-persuni b'diżabilità", (St. Venera, Malta: Kummissjoni Nazzjonali Persuni b'Diżabilità. 2007), disponibbli fuq http://www.knpd.org/pubs/pdf/drittijietmhuxkarita_m.pdf (l-aħħar aċċess sar fit-3 ta' Ottubru 2012).

⁹⁸ Direttorat għal Servizzi Edukattivi, "Post ta' Koordinatur għall-Edukazzjoni Inklussiva fid-Direttorat għal Servizzi Edukattivi (DSE)", il-Furjana, Malta, disponibbli fuq https://www.education.gov.mt/mediacenter.ashx?file=MediaCenter/Docs/1_INCO_2011_MLT.pdf (l-aħħar aċċess sar fit-3 ta' Ottubru 2012).

⁹⁹ Informazzjoni miġbura permezz tal-konsultazzjoni mal-partijiet interessati.

tfal b'diżabilità individwali, l-għalliema tal-klassi tappoġġa lill-istudenti kollha u, fl-istess ħin, tkun il-persuna ewlenija għal tfal b'dikjarazzjoni dwar bżonnijiet edukattivi individwali. Ir-responsabilità għall-edukazzjoni ta' dawn it-tfal, skont dan il-mudell, hija maqsuma bejn kulhadd.¹⁰⁰

4.4. Dejta u mekkanizmi ta' monitoraġġ

L-unika dejta disponibbli dwar il-każijiet ta' diskriminazzjoni kontra t-tfal b'diżabilità hija aċċessibbli permezz tar-rapporti dwar l-Att dwar Opportunjiet Indaqs tal-KNPD. Dan l-istudju ffoka fuq l-ilmenti fir-rigward tal-edukazzjoni (ara t-Taqsima 4.1 ta' hawn fuq). L-istatistika ta' bejn l-2007 u l-2011 hija pprovduta fit-tabella fl-Anness 2.

Reċentament Malta rratifikat is-CRPD, u għadu ma ddaħħalx fis-seħħ mekkanizmu ta' monitoraġġ. Dan il-kompitu ġie assenjat lill-KNPD stess. Attwalment il-KNPD qed tipprepara rapport dwar l-implimentazzjoni tas-CRPD.¹⁰¹ Ta' min jinnota li dan ir-rapport, skont l-Artikolu 7 tas-CRPD, huwa kkunsidrat bħala għodda trażversali b'rilevanza għall-implimentazzjoni tal-artikoli kollha fil-Konvenzjoni.

4.5. Rakkomandazzjonijiet mid-dokumentazzjoni

Kif irrimarkat fit-Taqsimiet ta' hawn fuq, peress li r-riċerka mwettqa dwar is-sitwazzjoni tat-tfal b'diżabilità f'Malta tiffoka kwazi b'mod esklussiv fuq **l-edukazzjoni inklużiva**, ir-rakkomandazzjonijiet jenfasizzaw l-aktar dan is-sugġett. In-nuqqas ta' rakkomandazzjonijiet mid-dokumentazzjoni dwar appoġġ u servizzi pprovduti lit-tfal 'il barra mill-iskola huwa evidenti. Madankollu, ir-rakkomandazzjonijiet dwar l-edukazzjoni inklużiva huma rilevanti wkoll biex titjeb is-sitwazzjoni tat-tfal b'diżabilità f'oqsma oħra tal-hajja.

Kwistjoni komuni preżenti fl-istudji ta' riċerka hija li riżultati tajbin fl-edukazzjoni inklużiva huma dipendenti fuq ir-rieda tal-edukaturi li jaċċettaw lit-tfal b'diżabilità u d-diżabilità speċifika tagħhom. Ir-riċerka tindika li dan japplika b'mod speċjali għal dawk it-tfal li d-diżabilità tagħhom hija assoċjata ma' mġiba li tkun ta' sfida għas-sistema edukattiva stabbilita. **Il-ħtieġa li t-tfal b'diżabilità jkunu mifhuma aktar** hija enfasizzata fir-rakkomandazzjonijiet ipprezentati minn diversi riċerkaturi b'mod partikolari fir-rigward ta' tfal b'diffikultajiet ta' mġiba soċjali u emozzjonali,¹⁰² tfal bl-ADHD¹⁰³, u tfal awtistiċi.¹⁰⁴ Ir-riċerka tindika wkoll **l-importanza li jinstabu mezzi għal komunikazzjoni mat-tfal b'diżabilità**, b'mod speċjali dawk li għandhom diffikultajiet fil-komunikazzjoni.¹⁰⁵ Jeżistu każijiet fejn tali komunikazzjoni tkun ta' suċċess, xi kultant mhux permezz ta' professjonisti imma permezz ta' persunal awżiljarju u tfal oħra tal-klassi. L-importanza li tfal awtistiċi jiġu

¹⁰⁰ Informazzjoni miġbura permezz tal-konsultazzjoni mal-partijiet interessati.

¹⁰¹ KNPD, "Working towards the Implementation of the CRPD" (Naħdmu lejn l-Implimentazzjoni tas-CRPD), disponibbli fuq <http://www.knpd.org/> (l-aħħar aċċess sar fl-10 ta' Jannar 2013).

¹⁰² Cefai, C. u Cooper, P., "Students without Voices: The Unheard Accounts of Secondary School Students with Social, Emotional and Behaviour Difficulties", 2010 European Journal of Special Needs Education, Vol. 25, Nru 2, pp. 183-198.; Darmanin, M., "The Learning Support Zone: teachers' perceptions and expectations" (Teżi tal-Master mhux ippubblikata, l-Università ta' Malta, l-Imsida, Malta. 2012).

¹⁰³ Said, J., "The Social Aspects of Inclusion of Children with ADHD in Gozitan Primary Schools", Teżi tal-B.Ed. (Hons) mhux ippubblikata, (l-Università ta' Malta, l-Imsida, Malta. 2003).

¹⁰⁴ Agius, Marilyn., "It's Not Just About One Person: how autism affects the family", Teżi tal-B.A. (Hons) Social Work mhux ippubblikata, (l-Università ta' Malta, l-Imsida, Malta. Agius 2011).

¹⁰⁵ Ibid.

aċċettati huwa wkoll punt imqajjem b'referenza għas-soċjetà kollha.¹⁰⁶ It-trawwim ta' attitudni pożittiva fost it-tfal għandu jibda mill-għalliema.¹⁰⁷ Hemm ukoll ħtieġa għal programmi ta' preparazzjoni għal sħab il-persuni b'diżabilità u li l-għalliema jheggu lit-tfal mingħajr diżabilità biex mhux biss jaċċettaw lit-tfal bl-awtizmu imma wkoll biex isiru ħbieb magħhom.¹⁰⁸

Saret referenza wkoll għall-importanza li jitkompla **l-iżvilupp tat-taħriġ tal-għalliema** sabiex jiġi żgurat li dawn jifhmu bis-sħiħ il-prinċipji tal-edukazzjoni inklużiva u l-implikazzjonijiet u l-mezzi biex japplikawhom fil-prattika,¹⁰⁹ u sabiex id-diversità tiġi mfaħħra aktar milli titqies bħala sors ta' diffikultajiet.¹¹⁰ Tissemma' wkoll l-importanza li l-għalliema jiġu mħarrġa f'metodi ta' taġħlim differenzjat.¹¹¹ Rakkomandazzjoni oħra enfasizzata mir-riċerkaturi hija l-importanza tal-fatt li l-professjonisti jaħdmu flimkien, li jenfasizza l-ħtieġa li l-għalliema jitgħallmu kif jużaw is-servizzi disponibbli bis-sħiħ u b'mod effettiv.¹¹²

B'referenza għas-soċjetà ingenerali, huwa importanti li l-assistenti soċjali u professjonisti oħra jaħdmu flimkien u jipprovdu appoġġ effettiv għat-tfal b'diżabilità u l-familji tagħhom.¹¹³

¹⁰⁶ Ibid.

¹⁰⁷ Said, J., "The Social Aspects of Inclusion of Children with ADHD in Gozitan Primary Schools", Teżi tal-B.Ed. (Hons) mhux ippubblikata, (l-Università ta' Malta, l-Imsida, Malta. 2003).

¹⁰⁸ Agius, Melissa., "Making Primary Schools More Inclusive for Children on the Autistic Spectrum", Teżi tal-B.Ed. (Hons) mhux ippubblikata, (l-Università ta' Malta, l-Imsida, Malta).

¹⁰⁹ Bartolo, P.A., "The Process of Teacher Education for Inclusion: the Maltese experience" *Journal of Research in Special Educational Needs*, Vol. 10, Nru 1, pp. 139-148; Darmanin, M., "The Learning Support Zone: teachers' perceptions and expectations", Teżi tal-Master mhux ippubblikata, (l-Università ta' Malta, l-Imsida, Malta. 2012).

¹¹⁰ Agius, Melissa., "Making Primary Schools More Inclusive for Children on the Autistic Spectrum", Teżi tal-B.Ed. (Hons) mhux ippubblikata, (l-Università ta' Malta, l-Imsida, Malta. 2012).

¹¹¹ Ibid.

¹¹² Darmanin, M., "The Learning Support Zone: teachers' perceptions and expectations", Teżi tal-Master mhux ippubblikata, (l-Università ta' Malta, l-Imsida, Malta. 2012).

¹¹³ Agius, Marilyn., "It's Not Just About One Person: how autism affects the family", Teżi tal-B.A. (Hons) Social Work mhux ippubblikata, (l-Università ta' Malta, l-Imsida, Malta. 2011)

5. KONKLUŻJONIJIET

Id-drittijiet tat-tfal b'diżabilità f'Malta huma salvagwardjati prinċipalment mill-Att dwar Opportunitajiet Indaq li jittratta l-projbizzjoni tad-diskriminazzjoni abbażi ta' diżabilità u jistabbilixxi r-rekwiżit ta' akkomodazzjoni raġonevoli kif ukoll jiżgura l-aċċessibilità tal-faċilitajiet u s-servizzi pubbliċi. L-Att dwar il-Kummissarju għat-Tfal jistabbilixxi l-kompetenzi tal-Kummissarju għat-Tfal li huwa responsabbli għall-promozzjoni u l-ħarsien tad-drittijiet tat-tfal kollha. Flimkien mal-Kummissarju, il-Kummissjoni Nazzjonali Persuni b'Diżabilità għandha s-setgħa legali li tinforza leġiżlazzjoni kontra d-diskriminazzjoni fis-settur tad-diżabilità.

L-Att dwar is-Sigurtà Soċjali jipprevedi għajjuna finanzjarja għall-persuni b'diżabilità (fil-forma ta' Pensjoni għal Diżabilità u Pensjoni għal Persuna b'Vista Batuta). L-Att dwar l-Edukazzjoni jiżgura l-aċċess tat-tfal b'diżabilità għal edukazzjoni inklużiva u li dawn imorru fi skola regolari flimkien ma' tfal mingħajr diżabilità. L-Att dwar is-Saħħa Mentali jkopri d-drittijiet tal-minuri li jsofru minn diżabilità intellettuali. L-Att dwar il-Foster Care jirregola l-funzjonament u l-organizzazzjoni tal-faċilitajiet ta' foster care. Bosta dispożizzjonijiet tal-Kodiċi Ċivili u l-Kodiċi Kriminali jiżguraw id-dritt tat-tfal li jinstemgħu, li jkunu ħielsa minn diversi forom ta' vjolenza u li l-aħjar interessi tagħhom jittiegħdu inkunsiderazzjoni mill-awtoritajiet pubbliċi f'ċerti proċeduri li jikkonċernaw il-ħajja tat-tfal.

Madankollu, ma teżisti l-ebda leġiżlazzjoni li tindirizza b'mod speċifiku t-tfal b'diżabilità u s-sitwazzjoni vulnerabbli tagħhom fil-ħajja soċjali, pubblika u ekonomika. Barra minn hekk, is-CRPD u s-CRC għadhom ma ġewx inkorporati fil-leġiżlazzjoni Maltija. Dan huwa problematiku b'mod partikolari peress li Malta hija pajjiż duwalista li jfisser li sabiex il-ftehimiet internazzjonali jkunu applikabbli, id-dispożizzjonijiet tagħhom jeħtieġ li jiġu implimentati fl-ordni legali nazzjonali permezz tal-leġiżlazzjoni nazzjonali.

F'Malta sar investiment kbir f'sistema edukattiva inklużiva. Konsegwentement, il-biċċa l-kbira tat-tfal b'diżabilità jmorru fi skejjel regolari. Madankollu, il-grad sa fejn jiġu inklużi t-tfal b'diżabilità, jiddependi mir-rieda tajba u l-impenn tal-edukaturi. Ir-riċerka turi li t-tfal li jiffaċċjaw l-oġġla riskju ta' esklużjoni huma t-tfal b'diżabilità severa u/jew b'imġiba diffiċli.

Barra minn hekk, filwaqt li l-infrastruttura għall-provvediment u l-appoġġ tal-edukazzjoni inklużiva żviluppat u tjebet b'mod sinifikanti, għad hemm ħafna xi jsir fir-rigward tas-servizzi għat-tfal b'diżabilità 'l barra mill-iskola biex dawn jiżviluppaw sal-istess punt. Dan jinkludi appoġġ lit-tfal fid-dar tal-familja, u l-provvediment ta' servizzi residenzjali adegwati u xierqa għat-tfal b'diżabilità li ma jistgħux jibqgħu d-dar.

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ANNEX 1 – TABELLA TA' SOMMARJU

Analizi tal-implimentazzjoni legali tad-drittijiet u l-prinċipji tas-CRPD u s-CRC	
Leġislazzjoni nazzjonali	Kummenti dwar/valutazzjoni tal-implimentazzjoni
<i>L-aħjar interessi tat-tfal</i>	
<p>L-Artikolu 47 tal-Kodiċi Ċivili Fiż-żmien li tkun miexja l-kawża l-qorti għandha tagħti dawk l-ordnijiet dwar min jieħu hsieb it-tfal kif jidhrilha xieraq, u meta tkun qed tagħmel hekk għandha tqis bħala l-iktar konsiderazzjoni importanti l-ġid tal-ulied.</p> <p>L-Artikolu 56 tal-Kodiċi Ċivili (1) Meta tagħti s-sentenza tal-firda, il-qorti għandha tordna wkoll lil liema waħda mill-partijiet għandha tiġi fdata l-kustodja tat-tfal u l-konsiderazzjoni ewlenija tkun il-ġid tal-ulied. (4) Il-qorti tista', f'kull żmien, tirrevoka jew tibdel dawk l-ordnijiet dwar l-ulied, meta l-interessi tal-ulied hekk jitolbu.</p> <p>L-Artikolu 57(3) tal-Kodiċi Ċivili (3) Il-qorti tista' tipprojbixxi għalkollox lill-missier jew lill-omm li jkollhom aċċess għall-ulied minuri tagħhom, meta dan jista' jkun ta' hsara għall-ġid tal-istess minuri.</p> <p>L-Artikolu 58 tal-Kodiċi Ċivili 58. (1) Il-qorti tista', meta jidhrilha li hu xieraq għall-ġid tal-mara u tar-raġel u tat-tfal, tordna s-sospensjoni tal-kawża tal-firda għal dak iż-żmien li jidhrilha sewwa, u tagħti dawk il-provvedimenti provviżorji li jkunu meħtieġa miċ-ċirkostanzi.</p> <p>L-Artikolu 131 tal-Kodiċi Ċivili (4) Il-qorti, wara li tkun semgħet lill-ġenituri u lit-tifel jekk dan ikun laħaq l-età ta' erbatax-il sena, għandha tagħmel dawk is-suggerimenti li jidhrilha l-aħjar fl-interess tat-tifel u l-għaqda tal-familja.</p>	<p>Implimentazzjoni inkompleta:</p> <p>Ma teżisti l-ebda definizzjoni jew referenza legali identifikabbli b'mod ċar tal-konsiderazzjoni sistematika tal-aħjar interessi tat-tfal fil-liġi Maltija; madankollu diversi artikoli jirreferu għall-"ġid" tat-tfal, "l-interess" jew "l-aħjar interessi" tat-tfal. Id-deċiżjonijiet tal-qorti huma ggwidati wkoll mill-prinċipju.</p>

Analizi tal-implimentazzjoni legali tad-drittijiet u l-prinċipji tas-CRPD u s-CRC	
Leġiżlazzjoni nazzjonali	Kummenti dwar/valutazzjoni tal-implimentazzjoni
<p>It-Taqsima I(2) tal-Att dwar il-<i>Foster Care</i> “<i>foster care</i>” tfisser servizz għal perjodu determinat li bih tifel jew tifla jitqiegħdu fil-kura kontinwa ta’ <i>foster carer</i>, u li permezz tiegħu t-tifel jew it-tifla jitrabbew f’ambjent ta’ familja skont l-aħjar interessi tat-tifel jew tat-tifla konċernati.</p> <p>L-Artikolu 543 tal-Kodiċi Kriminali II-pulizija tista’ taġixxi, ukoll mingħajr il-kwerela privata, f’kull wiehed mill-każijiet li ġejjin: (...) filwaqt li tingħata konsiderazzjoni partikolari għall-aħjar interessi tal-minuri involuti, u għandha tordna li dik it-talba u deċiżjoni jiġu registrati fl-inkartamenti tal-każ.</p>	
Nondiskriminazzjoni	
<p>Il-Kostituzzjoni ta’ Malta</p> <p>14. L-Istat għandu jippromwovi dritt ugwali ta’ rġiel u nisa li jgawdu d-drittijiet ekonomiċi, soċjali, kulturali, ċivili u politiċi kollha u għal dan il-għan għandu jieħu dawk il-miżuri li jkunu indikati biex jelimina kull forma ta’ diskriminazzjoni bejn is-sessi, minn kull persuna, organizzazzjoni jew azjenda (...).</p> <p>45. (1) (...) ebda liġi ma għandha tagħmel xi dispożizzjoni li tkun diskriminatorja sew fiha nnifisha jew fl-effett tagħha.</p> <p>(2) (...) hadd ma għandu jiġi trattat b’mod diskriminatorju minn xi persuna li taġixxi bis-saħħa ta’ xi liġi miktuba jew fil-qadi tal-funzjonijiet ta’ xi kariga pubblika jew xi awtorità pubblika.</p> <p>(3) F’dan l-artikolu, il-kelma “diskriminatorju” tfisser għoti ta’ trattament differenti lil persuni differenti attribwibbli għalkollox jew prinċipalment għad-deskrizzjoni tagħhom rispettiva skont ir-razza, post ta’ oriġini, opinjonijiet politiċi, kulur, fidi jew sess li minhabba fihom persuni ta’ deskrizzjoni waħda bħal dawn ikunu sugġetti għal inkapaċitajiet jew restrizzjonijiet li persuni ta’ deskrizzjoni oħra bħal dawn ma jkunux sugġetti għalihom jew ikunu mogħtija privileġġi jew vantaġġi li ma jkunux mogħtija lil persuni ta’ deskrizzjoni oħra bħal dawn.</p> <p>L-Artikolu 22 tal-Att dwar Opportunitajiet Indaqgħal Persuni b’Dizabilità.</p> <p>Il-Kummissjoni, filwaqt li tagħti attenzjoni speċjali għal bżonnijiet differenti ta’ tfal, nisa u rġiel</p>	<p>Implimentazzjoni effettiva:</p> <p>Il-liġi Maltija tirregola d-diskriminazzjoni abbażi ta’ diżabilità u tipprevedi mekkaniżmi ta’ infurzar speċifiċi.</p>

Analizi tal-implimentazzjoni legali tad-drittijiet u l-prinċipji tas-CRPD u s-CRC	
Legiżlazzjoni nazzjonali	Kummenti dwar/valutazzjoni tal-implimentazzjoni
<p>b'diżabilità, għandha - (...)</p> <p>g) taħdem biex titneħħa kull diskriminazzjoni kontra persuni b'diżabilità;</p> <p>h) twettaq investigazzjonijiet ġenerali bil-għan li tistabbilixxi jekk id-dispożizzjonijiet ta' dan l-Att ikunux qegħdin jitharsu;</p> <p>L-Artikolu 7(2) tal-Att dwar Opportunitajiet Indaqgħal Persuni b'Diżabilità (2) Għall-għanijiet tas-subartikolu (1) u mingħajr preġudizzju għall-ġeneralità tat-Taqsima II ta' dan l-Att, prinċipal jitqies li jkun qed jiddiskrimina minhabba f'diżabilità kontra persuna kif hemm imsemmi, jekk dak il-prinċipal b'mod li mhux raġonevoli - (d) jonqos milli jipprovdi akkomodazzjoni raġonevoli għad-diżabilità ta' dik il-persuna, hliet jekk il-prinċipal jista' jgħib prova li t-tibdil meħtieġ ser jippreġudika b'mod mhux xieraq, it-tħaddim tas-sengħa jew tan-negożju li dak il-prinċipal jiġġestixxi;</p> <p>L-Artikolu 12 tal-Att dwar Opportunitajiet Indaqgħal Persuni b'Diżabilità (...) hadd ma jista' jiddiskrimina kontra persuna oħra minhabba fid-diżabilità ta' dik il-persuna l-oħra jew f'diżabilità (...) ta' dik il-persuna l-oħra - (a) billi jiċhad milli jhalli lil dik il-persuna l-oħra milli tidhol ġewwa jew tuża xi proprjetà, jew xi faċilitajiet li jkunu jinsabu f'dak il-post, li l-pubbliku jew settur tal-pubbliku jkollhom jedd jew permess biex jidhlu fih jew jużawh (...);</p> <p>L-Artikolu 13 tal-Att dwar Opportunitajiet Indaqgħal Persuni b'Diżabilità (...) ebda persuna b'diżabilità kwalifikata m'għandha, minhabba f'diżabilità, tkun eskluża milli tippartecipa fi jew tiċċaħħad mill-benefiċċji tal-programmi jew attivitajiet ta' xi persuna jew korp għar-rigward tal-oġġetti, faċilitajiet jew servizzi li dan l-artikolu japplika għalihom jew li ssir diskriminazzjoni kontriom minn xi persuna jew korp li jkunu jipprovdu dawn l-oġġetti, faċilitajiet jew servizzi li l-persuna kwalifikata tkun qiegħda tfittex li tikseb jew li tuża.</p>	

Analizi tal-implimentazzjoni legali tad-drittijiet u l-prinċipji tas-CRPD u s-CRC	
Legiżlazzjoni nazzjonali	Kummenti dwar/valutazzjoni tal-implimentazzjoni
<i>Il-kapaċità tat-tfal li jeżerċitaw id-drittijiet proprji tagħhom</i>	
<p>L-Artikolu 3B tal-Kodiċi Ċivili (1) Iż-żwieġ jimponi fuq il-miżżewġin l-obbligu li jieħdu hsieb, imantnu, jgħallmu u jedukaw lill-ulied li jiġu miż-żwieġ skont il-ħila, xeħtiet naturali u aspirazzjonijiet tal-ulied.</p> <p>L-Artikolu 119 tal-Kodiċi Ċivili (2) Biex tiddecidi jekk digriet ta' adozzjoni jekk jiġi mogħti jkunx għall-ġid tal-persuna li tkun se tiġi adottata, il-qorti għandha tieħu qies (fost hwejjeg oħra) tas-saħħa tar-rikorrent (...) u għandha tieħu kont xieraq tax-xewqat tal-persuna li tkun se tiġi adottata, wara li tqis l-età u l-ħila li tifhem dik il-persuna u t-twemmin reliġjuż ta' dik il-persuna u ta' ommha u missierha.</p>	<p>Implimentazzjoni inkompleta:</p> <p>Ma hemm l-ebda rikonoxximent esplicitu fil-legiżlazzjoni Maltija tal-kunċett tal-kapaċità tat-tfal li jeżerċitaw id-drittijiet proprji tagħhom. Il-liġi nazzjonali tirreferi għall-kunċett ta' "l-età u l-ħila" tat-tfal u l-"ħila" tat-tfal.</p>
<i>Dritt tal-parteciċipazzjoni / li jinstemgħu</i>	
<p>L-Artikolu 32 tal-Kostituzzjoni Billi kull persuna f'Malta hija intitolata għad-drittijiet u libertajiet fundamentali tal-individwu, jiġifieri, id-dritt, tkun xi tkun ir-razza, post ta' oriġini, fehmiel političi, kulur, twemmin jew sess tagħha, iżda suġġett għar-rispett tad-drittijiet u l-libertajiet ta' oħrajn u tal-interess pubbliku, għal kull waħda u kollha kemm huma dawn li ġejjin, jiġifieri- (...)</p> <p>(b) il-libertà ta' kuxjenza, ta' espressjoni u ta' għaqda u assoċjazzjoni paċifika; (...).</p> <p>L-Artikolu 9 tal-Att dwar il-Kummissarju għat-Tfal Il-Kummissarju għandu jkollu dawn il-funzjonijiet li ġejjin: (a) li jippromwovi u jaqbez għad-drittijiet u l-interessi tat-tfal; (b) li jiżgura li t-tfal ikunu qed jingħataw l-oportunità li jesprimu l-fehmiel tagħhom u li dawn fil-fatt jiġu kkunsidrati (...).</p> <p>L-Artikolu 6A tal-Kodiċi Ċivili 1) Fil-każ ta' nuqqas ta' qbil bejn il-miżżewġin kull parti tista' tirreferi l-kwistjoni għall-għajjnuna tal-qorti kompetenti u l-imħallef li jippresjedi għandu, wara li jisma' lill-miżżewġin u jekk</p>	<p>Implimentazzjoni inkompleta:</p> <p>Il-liberta tal-espressjoni hija żgurata taħt il-Kostituzzjoni u t-tfal jaqgħu taħt il-kamp ta' applikazzjoni ta' dan l-Artikolu.</p> <p>Id-dritt tat-tfal li jinstemgħu huwa żgurat fir-rigward ta' proċeduri ċivili li jikkoncernaw ċerti sferi tal-ħajja tat-tfal (eż. l-adozzjoni). Il-prinċipju huwa pprovdut ukoll taħt l-Att dwar Tfal u Żgħażaġħ (Ordnijiet għall-Ħarsien) u l-Att dwar il-Foster Care. Il-Kodiċi Kriminali jipprovdi li vittmi tfal jistgħu jkunu preżenti waqt il-proċeduri, jaħtru</p>

Analizi tal-implimentazzjoni legali tad-drittijiet u l-prinċipji tas-CRPD u s-CRC	
Legiżlazzjoni nazzjonali	Kummenti dwar/valutazzjoni tal-implimentazzjoni
<p>jidhirlu xieraq lil kull wild 'il fuq mill-età ta' erbatax-il sena li jkunu joqogħdu mal-miżżewġin, jipprova jwassal għal ftehim bi qbil dwar dik il-kwistjoni.</p> <p>L-Artikolu 131 tal-Kodiċi Ċivili (4) Il-qorti, wara li tkun semgħet lill-ġenituri u lit-tifel jekk dan ikun laħaq l-età ta' erbatax-il sena, għandha tagħmel dawk is-suggerimenti li jidhirlha l-aħjar fl-interess tat-tifel u l-għaqda tal-familja.</p> <p>It-Taqsima 3 tal-Att dwar Tfal u Żgħażaġh (Ordinijiet għall-Ħarsien). (1) Jekk, wara li jsirulu rappreżentazzjonijiet bil-miktub mid-Direttur tad-Dipartiment responsabbli għall-Ħarsien Soċjali u wara li jagħti lill-ġenituri u lill-kustodju, jekk ikun hemm, tat-tifel jew taż-żagħżuġh opportunità li jagħtu l-fehmiet tagħhom, u wara li jisma' lil kull persuna oħra li x'aktarx tista' tgħinu, il-Ministru jkun sodisfatt li dak it-tifel jew żagħżuġh ikun jinhtiegħ ħarsien, protezzjoni jew kontroll, ikun id-dmir tal-Ministru b'ordni bil-miktub iffirmit minnu li jieħu lil dak it-tifel jew żagħżuġh taħt il-ħarsien tiegħu.</p> <p>L-Artikolu 24 tal-Att dwar il-Foster Care (5) Il-ftehim ta' <i>foster care</i>, magħmul mill-aġenzija akkreditata, għandu jiġi ffirmit mill-aġenzija akkreditata, mill-<i>foster carer</i> u mill-persuna li għandha l-kura u l-kustodja tat-tifel jew tifla. Dan il-ftehim għandu jkun magħmul wara li jkunu nstemgħu t-tifel jew it-tifla li jkunu ser jitqiegħdu taħt <i>foster care</i>, skont l-età u l-fehm tagħhom, u kull persuna li tkun qiegħda tieħu ħsiebhom.</p> <p>L-Artikolu 11 tal-Att dwar l-Edukazzjoni (2) B'mod partikolari dan id-Direttorat [għal Servizzi Edukattivi] għandu: (...) (g) jippromwovi, jinkoraġġixxi u jsegwi t-tmexxija demokratika tal-iskejjel permezz ta' Kunsilli fl-iskejjel bil-partecipazzjoni attiva tal-ġenituri, għalliema, u studenti; (...).</p>	<p>avukat, jeżaminaw jew jagħmlu kontroezami tax-xhieda u jipproduċu evidenza oħra.</p>

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Legiżlazzjoni nazzjonali	Kummenti dwar/valutazzjoni tal-implimentazzjoni
<i>Dritt li jkunu ħielsa mill-vjolenza</i>	
<p>L-Artikolu 36 tal-Kostituzzjoni ta' Malta: (1) Hadd ma għandu jkun assogġettat għal piena jew trattament inuman jew degradanti.</p> <p>L-Artikolu 203 tal-Kodiċi Kriminali (1) Kull min, b'għemil żieni, jikkorrompi persuna ta' taht l-età, tas-sess il-wiehed jew l-iehor, jehel, meta jinsab hati, il-piena ta' prigunerija għal żmien mhux iżjed minn tliet snin (...).</p> <p>L-Artikolu 204 tal-Kodiċi Kriminali (1) Kull min, biex jissodisfa ż-żina ta' haddiehor, iħajjar għall-prostituzzjoni persuna ta' taht l-età, jew jeċċita l-korruzzjoni tagħha, jew jgħin jew jiffacilita din il-prostituzzjoni jew korruzzjoni, jehel, meta jinsab hati, il-piena ta' prigunerija minn tmintax-il xahar sa erba' snin (...).</p> <p>208AĊ tal-Kodiċi Kriminali (1) Il-piena għar-reati msemmija fl-artikoli 204, 204A sa 204D, it-tnejn inklużi, 208A(1) u 208(1A), għandha tiżdied bi grad jew b'żewġ gradi, f'kull każ minn dawn li ġejjin: (a) meta r-reat jirriżulta li jagħmel ħsara lis-saħħa fiżika jew mentali tal-persuna ta' taht l-età; (b) meta l-persuna ta' taht l-età hija persuna vulnerabbli fi hdan it-tifsira tas-subartikolu (2); (2) Għall-finijiet ta' dan l-artikolu persuna vulnerabbli tfisser: (a) kull persuna ta' taht il-ħmistax-il sena; jew (b) kull persuna li ssufri minn mard fiżiku jew mentali;</p> <p>L-Artikolu 246 tal-Kodiċi Kriminali Kull min ikun hati li abbanduna jew halla espost tifel ta' età anqas minn seba' snin, jehel il-piena ta' prigunerija minn seba' xhur sa sena.</p> <p>L-Artikolu 247A tal-Kodiċi Kriminali (1) Kull min ikollu r-responsabbiltà ta' tifel ta' taht it-tnax-il sena u b'atti persistenti ta' għemil</p>	<p>Implimentazzjoni effettiva:</p> <p>Il-Kostituzzjoni tipprovdi li hadd ma jista' jkun sugġett għal piena jew trattament inuman jew degradanti; it-tfal jaqgħu taht il-kamp ta' applikazzjoni ta' dan l-Artikolu. Barra minn hekk, il-ligi nazzjonali tiżgura l-ħarsien tat-tfal minn forom differenti ta' vjolenza u abbuż.</p> <p>L-Att dwar il-<i>Foster Care</i> li Aġenzija akkreditata tinvestiga kull allegazzjoni ta' abbuż fi kwalunkwe faċilità ta' foster care.</p> <p>It-Taqsima 208 tal-Kodiċi Kriminali tistabbilixxi l-vjolenza kontra t-tfal u l-persuni b'diżabbiltà bħala ċirkostanza aggravanti.</p>

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Legiżlazzjoni nazzjonali	Kummenti dwar/valutazzjoni tal-implimentazzjoni
<p>jew ta' nuqqas ta' għemil jaħqar lit-tifel jew iġiegħel jew jippermetti l-moħqrija tat-tifel b'mezzi simili, jehel, meta jinsab ħati, kemm-il darba l-fatt ma jkunx jikkostitwixxi reat aktar gravi taħt xi dispożizzjoni oħra ta' dan il-Kodiċi, il-piena ta' prigunerija għal żmien ta' mhux iżjed minn sentejn.</p> <p>L-Artikolu 339 tal-Kodiċi Kriminali (1) Huwa ħati ta' kontravvenzjoni kontra l-persuna, kull min (...) (j) meta hu fid-dmir li jieħu l-ħsieb ta' tfal, jew ta' persuni oħra li ma jkunux kapaci li jieħdu ħsieb tagħhom infushom,</p> <p>L-Artikolu 17 tal-Att dwar il-Foster Care Aġenzija akkreditata tkun responsabbli biex: (k) tinvestiga kull allegazzjoni ta' abbuż fit-tqeghid taħt <i>foster care</i>, skont il-manwal jew proċeduri msemmija fl-artikolu 18, u tagħmel rapport skont kif ikun meħtieġ lill-awtorità kompetenti;</p>	
Dritt għall-ħajja tal-familja	
<p>L-Artikolu 32 tal-Kostituzzjoni ta' Malta Billi kull persuna f'Malta hija intitolata għad-drittijiet u libertajiet fundamentali tal-individwu, jiġifieri, id-dritt, tkun xi tkun ir-razza, post ta' oriġini, fehmiet politici, kulur, twemmin jew sess tagħha, iżda sugġett għar-rispett tad-drittijiet u l-libertajiet ta' oħrajn u tal-interess pubbliku, għal kull waħda u kollha kemm huma dawn li ġejjin, jiġifieri (...) (ċ) ir-rispett għall-ħajja privata u familjari tiegħu,</p> <p>L-Artikolu 8 tal-Att dwar il-Konvenzjoni Ewropea (1) Kulhadd għandu d-dritt għar-rispett tal-ħajja privata tiegħu u tal-familja tiegħu, ta' daru u tal-korrispondenza tiegħu. (2) Ma għandux ikun hemm indhil minn awtorità pubblika dwar l-eżercizzju ta' dan id-dritt hlief dak li jkun skont il-liġi u li jkun meħtieġ f'soċjetà demokratika fl-interessi tas-sigurtà nazzjonali,</p>	<p>Implimentazzjoni inkompleta:</p> <p>Id-dritt ġenerali għall-ħajja tal-familja huwa żgurat mill-Kostituzzjoni.</p> <p>L-Iskeda għall-Att dwar il-Konvenzjoni Ewropea tipprevedi l-ħajja tal-familja u l-projbizzjoni tal-indhil fil-ħajja tal-familja.</p>

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Leġiżlazzjoni nazzjonali	Kummenti dwar/valutazzjoni tal-implimentazzjoni
<p>sigurtà pubblika jew il-ġid ekonomiku tal-pajjiż, biex jiġi evitat id-diżordni jew l-għemil ta' delitti, għall-protezzjoni tas-saħħa jew tal-morali, jew għall-protezzjoni tad-drittijiet u libertajiet ta' haddiehor.</p>	
Dritt għall-għajjnuna	
<p>L-Artikolu 17 tal-Kostituzzjoni (1) Kull ċittadin li ma jkunx kapaċi għal xogħol u li ma jkunx provdut bir-riżorsi meħtieġa għall-għajxien għandu dritt għal manteniment u għajjnuna soċjali.</p> <p>L-Artikolu 27 tal-Att dwar is-Sigurtà Soċjali (1) Bla ħsara għad-dispożizzjonijiet tal-artikolu 96 u bla ħsara għad-dispożizzjonijiet l-oħra ta' dan l-Att, persuna li - (a) ikollha l-età ta' sittax-il sena; u (b) tkun ċertifikata li qed issofri minn subnormalità mentali severa jew li tkun persuna gravament diżabilitata skont id-dispożizzjonijiet ta' dan l-Att, jew li qed issofri minn <i>palsy</i> ċerebrali; u (ċ) turi għas-sodisfazzjon tad-Direttur li tkun ċittadin ta' Malta u normalment tirrisjedi f'Malta, tkun intitolata għal Pensjoni għal Diżabilità taħt dan l-Att u l-oġġla rata tagħha, inklużi ż-żidiet kollha skont id-dispożizzjonijiet tal-artikolu 90, għandha tkun dik skont it-Taqsima III tas-Sitt Skeda u skont id-dispożizzjonijiet tas-subartikolu (3).</p> <p>(2) Bla ħsara għad-dispożizzjonijiet ta' dan l-Att, persuna b'vista batuta li - (a) ikollha l-età ta' erbatax-il sena; u (b) tipproduċi ċertifikati li juru li għandha vista batuta kif id-Direttur jista', f'każijiet partikolari, jeħtieġ; u (ċ) turi għas-sodisfazzjon tad-Direttur li tkun ċittadin ta' Malta u normalment tirrisjedi f'Malta, tkun intitolata għal Pensjoni għal Persuna b'Vista Batuta taħt dan l-Att skont it-Taqsima III tas-Sitt Skeda u skont id-dispożizzjonijiet tas-subartikolu (3).</p> <p>L-Artikolu 76A tal-Att dwar is-Sigurtà Soċjali</p>	<p>Implimentazzjoni effettiva:</p> <p>Il-Kostituzzjoni tistabilixxi dritt ġenerali għall-għajjnuna għall-persuni b'diżabilità.</p> <p>L-appoġġ finanzjarju għall-persuni b'diżabilità huwa żgurat taħt l-Att dwar is-Sigurtà Soċjali. Huma previsti allowances speċjali għal tfal imqiegħda taħt foster care jew f'istituzzjonijiet.</p> <p>L-appoġġ finanzjarju u legali huwa żgurat taħt l-Att dwar Opportunitajiet Indaqs għal Persuni b'Diżabilità.</p>

Analizi tal-implimentazzjoni legali tad-drittijiet u l-prinċipji tas-CRPD u s-CRC	
Legiżlazzjoni nazzjonali	Kummenti dwar/valutazzjoni tal-implimentazzjoni
<p>Bla ħsara għad-dispożizzjonijiet ta' dan l-Att ikun id-dritt ta' kull tifel jew tifla li jkunu ċċertifikati minn awtorità kompetenti, sew bħala tifel jew tifla f'affidament, jew li jkunu ċċertifikati bħala li jkunu taht tutela f'xi istituzzjoni, li jkollhom <i>allowance</i> li tithallsilhom fir-rigward tal-kap tal-familja li jkun il-kuranti b'affidament approvat skont l-Att dwar il-Foster Care jew il-kap tal-istituzzjoni skont il-każ bir-rata speċifikata fit-Taqsima VIII tal-Erbatax-il Skeda li tinsab ma' dan l-Att.</p> <p>L-Artikolu 22 tal-Att dwar Opportunitajiet Indaqgħal Persuni b'Diżabilità Il-Kummissjoni, filwaqt li tagħti attenzjoni speċjali għal bżonnijiet differenti ta' tfal, nisa u rġiel b'diżabilità, għandha (...) (k) tipprovdi għajnuna, skont iċ-ċirkostanzi, inkluża għajnuna legali u finanzjarja lil persuni b'diżabilità fil-ksib ta' jeddijietom bis-saħħa ta' dan l-Att; (...).</p>	
Dritt għall-edukazzjoni (inkluża l-edukazzjoni inklużiva)	
<p>L-Artikolu 17 tal-Kostituzzjoni (3) Persuni inkapaċitati u persuni li ma jkunux kapaċi għal xogħol għandhom dritt għal edukazzjoni u tharriġ ta' vokazzjoni.</p> <p>L-Artikolu 58 tal-Att dwar l-Edukazzjoni (1) Il-Ministru għandu jara li l-politika nazzjonali dwar l-edukazzjoni inklużiva qed tiġi applikata f'kull skola u li jkun hemm ir-riżorsi, l-ghodda u l-facilitajiet meħtieġa biex din tingħata b'mod effettiv. (2) Il-Ministru għandu jara li jkun hemm ċentri speċjalizzati ta' riżorsi li jappoġġaw il-Kulleġġi u l-iskejjel fit-tweġġ tal-politika ta' edukazzjoni inklużiva, li jagħtu servizz lil studenti b'diffikultajiet speċifiċi fit-tagħlim, u oħrajn li jipprovdu servizzi ta' edukazzjoni u tharriġ lil studenti bi bżonnijiet edukattivi individwali li jistgħu jiksbu d-drittijiet tagħhom edukattivi aħjar f'centri bħal dawn.</p> <p>L-Artikolu 55 tal-Att dwar l-Edukazzjoni</p>	<p>Implimentazzjoni effettiva:</p> <p>Il-Kostituzzjoni tagħmel dispożizzjoni għad-dritt għall-edukazzjoni (primarja) u d-dritt tal-persuni b'diżabilità għall-edukazzjoni, imma dawn l-Artikoli jagħmlu parti mill-Kapitolu II tal-Kostituzzjoni, li fin-natura tiegħu huwa dikjaratorju u mhux eżekwibbli. L-Att dwar l-Edukazzjoni jpoġġi obbligu fuq il-Ministru biex jiżgura li l-politika nazzjonali dwar l-edukazzjoni inklużiva qed tiġi applikata fl-iskejjel kollha.</p> <p>Skont l-Att dwar l-Edukazzjoni,</p>

Analizi tal-implimentazzjoni legali tad-drittijiet u l-prinċipji tas-CRPD u s-CRC	
Legiżlazzjoni nazzjonali	Kummenti dwar/valutazzjoni tal-implimentazzjoni
<p>Ikun hemm f'kull Kulleġġ Kunsill tal-Kapijiet tal-Iskejjel li jiffurmaw il-Kulleġġ u li jkun presedut mill-Prinċipal. Il-Kunsill għandu:</p> <p>(d) jara li l-<i>polices</i> nazzjonali dwar materji ta' edukazzjoni, inklużi dawk dwar (...) l-edukazzjoni inklużiva</p> <p>(...) huma magħrufa sew minn kull għalliem jew hađdiema fi skola, u li jkunu qegħdin jiġu segwiti b'mod effettiv; (...).</p> <p>L-Artikolu 11 tal-Att dwar l-Edukazzjoni</p> <p>(2) B'mod partikolari, dan id-Direttorat għandu: (...)</p> <p>h) jippromwovi, jappoġġa, jikkordina u jiżgura servizzi u inizjattivi ta' taġħlim tul il-ħajja, inklużi inizjattivi edukattivi u kulturali fil-komunità, taġħlim minn distanza u dak elettroniku, edukazzjoni għall-adulti, klassijiet ta' filgħaxija u inizjattivi oħra ta' edukazzjoni komplimentari u servizzi għal dawk b'diffikultajiet speċifiċi fit-taġħlim; (...)</p> <p>(l) flimkien mal-Kulleġġi u l-iskejjel jipprovdi r-riżorsi meħtieġa għal programmi ta' edukazzjoni inklużiva u speċjali u għal skemi oħra relatati ma' bżonnijiet individwali edukattivi;</p> <p>L-Artikolu 11 tal-Att dwar Opportunitajiet Indaqgħ għal Persuni b'Diżabilità</p> <p>(...) awtorità jew istituzzjoni edukattiva ma tistax tiddiskrimina kontra -</p> <p>(a) min japplika biex jiddaħħal bħala student minħabba f'xi diżabilità tiegħu jew xi diżabilità ta' xi wieħed mill-membri tal-familja tiegħu -</p> <p>(i) billi tiċhadlu jew tonqos milli tilqa' l-applikazzjoni tiegħu għal dak id-dħul, jew</p> <p>(ii) fil-patti jew kondizzjonijiet li bihom dik l-awtorità jew istituzzjoni edukattiva tkun lesta li ddaħħlu bħala student; u, jew,</p> <p>(b) student minħabba f'xi diżabilità tiegħu jew xi diżabilità ta' xi wieħed mill-membri tal-familja tiegħu billi -</p> <p>(i) tiċhadlu l-jedd għal xi benefiċċju, faċilità jew servizz provdut minn dik l-awtorità jew istituzzjoni edukattiva jew tillimalu l-jedd tiegħu għal dak il-benefiċċju; jew</p> <p>(ii) tkeċċih mill-istituzzjoni edukattiva fejn huwa jkun qiegħed jattendi.</p>	<p>għandhom jiġu stabbiliti ċentri ta' riżorsi speċjalizzati li jappoġġaw lill-iskejjel u l-Kulleġġi fl-implimentazzjoni tal-politika tal-edukazzjoni inklużiva, li jipprovdu servizz lil studenti b'diffikultajiet speċifiċi fit-taġħlim.</p> <p>L-Att dwar Opportunitajiet Indaqgħ jipprojbixxi diskriminazzjoni abbażi ta' diżabilità fl-edukazzjoni, fost aspetti oħra tal-ħajja. Dan jiżgura wkoll l-aċċessibilità tal-persuni b'diżabilità għall-faċilitajiet ta' edukazzjoni.</p>

ANNEX 2 – INFORMAZZJONI STATISTIKA

Numru tal-ksur	Vjolenza	Diskriminazzjoni bejn is-sessi	Diskriminazzjoni oħra ¹¹⁴	Suspetti kriminali
Sena				
2007	L-ebda dejta identifikata	L-ebda dejta identifikata	14	L-ebda dejta identifikata
2008	L-ebda dejta identifikata	L-ebda dejta identifikata	28	L-ebda dejta identifikata
2009	L-ebda dejta identifikata	L-ebda dejta identifikata	38	L-ebda dejta identifikata
2010	L-ebda dejta identifikata	L-ebda dejta identifikata	22	L-ebda dejta identifikata
2011	L-ebda dejta identifikata	L-ebda dejta identifikata	19	L-ebda dejta identifikata

¹¹⁴ Dawn iċ-ċifri huma meħuda mir-Rapporti dwar l-Att dwar Opportunitajiet Indaqgħal tal-KNPD; disponibbli fuq: www.knpd.org/legislation.

ANNEX 3 - STUDJU DWAR IL-POLITIKI TAL-ISTATI MEMBRI GĦAL TĦAL B'DIŻABILITÀ - SOMMARJU EŻEKUTTIV

Fl-Unjoni Ewropea jgħixu madwar 100 miljun tifel u tifla u madwar 80 miljun persuna Ewropea b'diżabilità. Filwaqt li n-numru ta' tfaġli u n-numru ta' persuni b'diżabilità huma ddokumentati tajjeb, ma jistax jingħad l-istess għal tfaġli b'diżabilità. It-tfaġli b'diżabilità jgħaqqdu flimkien fatturi ta' vulnerabilità differenti. Bħala tfaġli, il-ħarsien tad-drittijiet tagħhom jeħtieġ l-adozzjoni ta' miżuri speċjali li huma rikonoxxuti mill-Konvenzjoni tan-NU dwar id-Drittijiet tat-Tfaġli (CRC). Bħala persuni b'diżabilità, huma ċittadini tal-UE partikolarment vulnerabbli li jisthoqqilhom salvagwardji speċifiċi u ħarsien kif rikonoxxut mill-Konvenzjoni tan-NU dwar id-Drittijiet ta' Persuni b'Diżabilità (CRPD).

It-tfaġli b'diżabilità u l-familji tagħhom jiffaċċjaw problemi speċifiċi bażiċi ta' kuljum bħan-nuqqas ta' għajjnuna u appoġġ għall-inkluzjoni tagħhom fl-iskejjel, esperjenzi ta' vjolenza u n-nuqqas ta' għodod xierqa biex dawn jiġu rrapportati, diffikultajiet fl-aċċess għal bini jew servizzi jew diffikultajiet biex jinstemgħu u jipparteċipaw f'deċiżjonijiet li jaffettwawilhom haġġithom.

Il-Konvenzjonijiet jinkludu dispożizzjonijiet li jindirizzaw dan it-tħassib u jipprovdu ħarsien għad-dritt tat-tgawdija tad-drittijiet tal-bniedem u l-libertajiet kollha mingħajr l-ebda diskriminazzjoni filwaqt li jiżguraw:

opportunitajiet u aċċessibilità ugwali,

l-aħjar interessi tat-tfaġli bħala kunsiderazzjoni fl-azzjonijiet kollha li jikkonċernawhom,

il-kapaċità tat-tfaġli b'diżabilità li jeżerċitaw id-drittijiet proprji tagħhom bħala kunsiderazzjoni fid-deċiżjonijiet li jaffettwawhom,

id-dritt li jinstemgħu fi proċeduri u proċessi ta' teħid ta' deċiżjonijiet li jaffettwaw it-tfaġli u d-dritt tal-partecipazzjoni sħiħa u effettiva,

id-dritt għall-ħajja tal-familja,

id-dritt għal aċċess effettiv għall-edukazzjoni u l-edukazzjoni inkluziva,

id-dritt għall-kura tas-saħħa,

id-dritt għall-għajjnuna, u

ħelsien mill-vjolenza.

Dan l-istudju huwa strutturat biex jirrifletti l-ħtiġijiet taż-żewġ konvenzjonijiet li min-naħa tagħhom jirriflettu d-drittijiet prinċipali tat-tfaġli b'diżabilità li għandhom jiġu implimentati b'mod ġenerali fl-UE minħabba r-rata għolja ta' ratifikazzjoni mill-Istati Membri tal-UE. Barra minn hekk, f'Diċembru 2010, l-Unjoni Ewropea saret parti mis-CRPD. Billi għamlet dan, l-UE rrikonoxxiet l-isfidi li jiffaċċjaw il-persuni b'diżabilità biex jaraw li d-drittijiet tagħhom jitwettqu u assumiet ir-responsabilità għall-implimentazzjoni tagħha flimkien mal-Istati Membri. Ir-responsabilità tal-UE fir-rigward tal-implimentazzjoni tas-CRC hija ta' skala differenti. Minkejja n-nuqqas ta' ratifikazzjoni mill-UE, id-drittijiet u l-prinċipji tas-CRC xorta jiggwidaw il-politiki u l-azzjoni tal-UE peress li t-Trattat jirrikonoxxi d-drittijiet tat-tfaġli bħala objettiv tal-UE.

Dan l-istudju jivvaluta s-sitwazzjoni attwali fir-rigward tad-drittijiet tat-tfal b'diżabilità fl-UE u l-ħtieġa għal leġiżlazzjoni tal-UE jew miżuri oħra. L-għażliet għal azzjoni fil-livell tal-UE huma mfassla fil-limitu tal-kompetenzi mogħtija mit-Trattati, li jistgħu jkunu kompetenzi esklużivi, kondiviżi jew ta' appoġġ (l-Artikolu 2 TFUE).

Il-qafas leġiżlattiv u ta' politika attwali tal-UE jirrikonoxxi d-drittijiet u l-prinċipji tal-Konvenzjonijiet applikabbli għal tfal b'diżabilità u ċertu livell ta' implimentazzjoni. Madankollu, il-leġiżlazzjoni tal-UE eżistenti rilevanti għal dan il-qasam hija prinċipalment settorjali (jiġifieri, l-impjeg jew l-immigrazzjoni). Il-leġiżlazzjoni tindirizza s-sitwazzjoni tal-persuni b'diżabilità separatament mid-drittijiet tat-tfal, filwaqt li jeħtieġ li t-tfal b'diżabilità jiġu kkunsidrati peress li huma jiffaċċjaw diskriminazzjoni multipla, abbażi ta' età kif ukoll diżabilità, u li jiġu mfassla miżuri apposta biex jiżguraw li d-drittijiet tagħhom jiġu rrispettati.

A. Analizi komparattiva tal-oqfsa legali nazzjonali

L-analizi komparattiva tal-oqfsa legali nazzjonali dwar id-drittijiet tat-tfal b'diżabilità fi 18-il Stat Membru¹¹⁵ hija bbażata fuq sett ta' kriterji żviluppatti biex jippermettu valutazzjoni tad-dejta komparabbli rrapportata f'kull studju nazzjonali. Il-kriterji huma bbażati fuq ir-rekwiżiti f'kull dritt u prinċipju identifikat bħala rilevanti għas-sitwazzjoni tat-tfal b'diżabilità.¹¹⁶ Il-kriterji jirriżultaw mit-testi taż-żewġ konvenzjonijiet u mill-Kummenti Ġenerali tas-CRC dwar l-implimentazzjoni tagħhom.

B'mod kumplessiv, it-18-il Stat Membru għandhom fis-seħħ oqfsa legali komprensivi li jirriflettu l-aspetti prinċipali tad-drittijiet u l-prinċipji identifikati taħt is-CRPD u s-CRC. Filwaqt li jista' jingħad li d-drittijiet tat-tfal b'diżabilità huma rikonoxxuti b'mod wiesa' taħt is-sistemi legali nazzjonali jew permezz ta' leġiżlazzjoni ġenerali jew inkella speċifika, l-implimentazzjoni Prattika tagħhom dehret li kienet problematika f'ħafna mill-Istati Membri.

B'mod ġenerali, il-kunsiderazzjoni tal-**prinċipju tal-aħjar interessi tat-tfal** hija rikonoxxuta taħt il-liġijiet nazzjonali. Madankollu, l-implimentazzjoni hija ħafna drabi limitata għal deċiżjonijiet familjari u ta' protezzjoni soċjali li jaffettwaw lit-tfal u l-bżonnijiet speċifiċi tat-tfal b'diżabilità mhumiex rikonoxxuti. L-istudji tal-pajjiżi sabu nuqqas ta' fehim dwar x'jinkludi l-prinċipju, flimkien ma' żvilupp insuffiċjenti tal-kunċett permezz ta' liġi jew ġurisprudenza u nuqqas kumplessiv ta' regoli ta' implimentazzjoni.

Id-dritt ta' nondiskriminazzjoni abbażi ta' diżabilità jew età huwa rifless fil-leġiżlazzjonijiet nazzjonali, madankollu, b'mod ġenerali, l-implimentazzjoni tad-dritt hija biss parzjali u b'mod ġenerali l-miżuri ta' akkomodazzjoni raġonevoli huma insuffiċjenti biex jiżguraw id-dritt. Fil-prattika, l-aċċessibilità tibqa' problema ewlenija f'ħafna mill-Istati Membri. Ir-referenza għall-fatturi ta' multidiskriminazzjoni li jiffaċċjaw it-tfal b'diżabilità jew il-bniet b'diżabilità rarament tiġi rikonoxxuta. Hemm nuqqas ta' riżultati ta' monitoraġġ u ta' dejta dwar każijiet ta' ksur tad-drittijiet li kieku jistgħu jgħinu jiddefinixxu miżuri aktar effettivi.

¹¹⁵ Għal dan l-istudju ġew analizzati l-oqfsa legali ta' 18-il Stat Membru: il-Belġju, ir-Repubblika Ċeka, l-Estonja, il-Finlandja, Franza, il-Germanja, il-Greċja, l-Ungerija, l-Italja, l-Irlanda, il-Pajjiżi l-Baxxi, Malta, il-Polonja, ir-Rumanija, is-Slovenja, Spanja, l-Isvezja u r-Renju Unit. Dawn il-pajjiżi ġew magħzula mill-Parlament Ewropew fit-Termini ta' Speċifikazzjoni ta' dan l-istudju.

¹¹⁶ Ġew identifikati tmien drittijiet u prinċipji bħala l-aktar rilevanti għas-sitwazzjoni tat-tfal b'diżabilità: l-aħjar interessi tat-tfal, id-dritt ta' nondiskriminazzjoni, il-kunsiderazzjoni tal-kapaċità tat-tfal li jeżerċitaw id-drittijiet proprji tagħhom, id-dritt tal-partecipazzjoni/li jinstemgħu, id-dritt li jkunu ħielsa mill-vjolenza, id-dritt għall-ħajja tal-familja, id-dritt għall-għajnuna u d-dritt għall-edukazzjoni.

Ħafna mill-pajjiżi jieħdu inkunsiderazzjoni **l-kapaċità** tat-tfal **li jeżerċitaw id-drittijiet proprji tagħhom** b'mod parzjali, prinċipalment abbażi tal-kunsiderazzjoni tal-età, il-maturità, u l-iżvilupp tat-tfal. Madankollu, is-sitwazzjoni tat-tfal b'diżabilità mhijiex rikonossuta b'mod speċifiku. L-implimentazzjoni hija limitata għal ċertu tip ta' deċiżjonijiet u l-Istati Membri għandhom it-tendenza li jieħdu inkunsiderazzjoni primarjament l-età tat-tfal, li għal tfal b'diżabilità tista' ma tkunx rilevanti u li tista' fil-fatt teskludihom mill-proċessi ta' teħid ta' deċiżjonijiet li jaffettwawhom.

Id-drittijiet tal-parteciċipazzjoni u li jinstemgħu fil-proċessi ta' teħid ta' deċiżjonijiet li jaffettwaw lit-tfal b'diżabilità huma rikonossuti taħt il-leġiżlazzjoni tat-18-il Stat Membru. Madankollu, l-implimentazzjoni tagħhom ħafna drabi hija limitata għal ftit proċeduri settorjali li ħafna minnhom jirrigwardaw il-liġi tal-familja u, sa ċertu punt, l-edukazzjoni. Fil-prattika, it-tfal b'diżabilità ma jiġux involuti b'mod sistematiku u ma jaslux biex jipparteciċipaw fil-ħajja pubblika u privata fl-istess livell ta' shabhom mingħajr diżabilità.

B'mod ġenerali, **il-ħelsien mill-vjolenza** huwa rikonossut mil-leġiżlazzjoni tal-Istati Membri. Madankollu, l-abbuż kontra t-tfal b'diżabilità hija problema ewlenija rikonossuta fir-rapporti tal-pajjiżi kollha. Ta' tħassib partikolari hija l-vjolenza li sseħħ fl-istituzzjonijiet. In-nuqqas ta' dejta sistematika u d-diffikultà li jsibu l-vittmi biex jirrapportaw l-abbużi ma jippermettux ħarsa ġenerali meħtieġa lejn is-sitwazzjoni sabiex jiġu adottati politiki u miżuri xierqa.

Id-dritt għall-ħajja tal-familja huwa rikonossut b'mod wiesa' fil-liġijiet tal-Istati Membri magħżula. Madankollu, gwida u appoġġ insuffiċjenti għall-familji biex it-tfal b'diżabilità jiġu integrati u megħjuna fil-ħajja ta' kuljum tagħhom hija problema ewlenija f'ħafna mit-18-il Stat Membru. Mingħajr għajnuna xierqa, il-familji b'diffikultà jistgħu jaqtgħu qalbhom mir-responsabilità tagħhom li jwassal għal sitwazzjoni fejn għażliet alternattivi ma jkunux probabbli u l-istituzzjonalizzazzjoni tkun l-uniku rispons disponibbli.

B'mod kumplessiv, id-dritt għal diversi forom ta' **għajnuna** (finanzjarja, soċjali, kura tas-saħħa, eċċ.) kemm għat-tfal b'diżabilità kif ukoll għall-familji tagħhom huwa rikonossut fil-leġiżlazzjoni jew fir-regoli regolatorji. Madankollu, għal darba oħra, f'ħafna mill-każijiet l-għajnuna hija settorjali (prinċipalment soċjali u tas-saħħa) u insuffiċjenti (finanzjarjament u għajnuna umana). Il-kriżi ekonomika qed tikkontribwixxi għat-tneħħija u t-tnaqqis tal-għajnuna f'ħafna mill-Istati Membri. L-aċċess għall-għajnuna ħafna drabi ma jitqiesx bħala strument li jippermetti l-ħarsien tad-drittijiet imma jitqies pjuttost bħala miżura diskrezzjonali sugġetta għal restrizzjonijiet baġitarji.

L-Istati Membri kollha jirrikonossu **d-dritt għall-edukazzjoni** fil-Kostituzzjonijiet jew l-oqfsa legali tagħhom; madankollu, fil-prattika l-kapaċità li t-tfal b'diżabilità jkollhom aċċess għall-iskola tal-għażla tagħhom tibqa' sfida kbira. F'ħafna Stati Membri, l-iskejjel regolari jibqgħu ħafna drabi inaċċessibbli għat-tfal b'diżabilità, filwaqt li f'pajjiżi oħra l-iskejjel m'għandhomx riżorsi suffiċjenti u l-appoġġ għat-tfal b'diżabilità huwa skars. Barra minn hekk, l-għalliema fl-iskejjel regolari m'għandhomx taħriġ u kuxjenza suffiċjenti dwar il-bżonnijiet tat-tfal b'diżabilità u l-programmi mhumiex adattati għalihom b'mod sistematiku.

Il-mekkanizmi ta' konformità huma dgħajfa u nieqsa minn adattament għas-sitwazzjoni tat-tfal b'diżabilità. In-nuqqas ta' informazzjoni u gwida għall-familji bi tfal b'diżabilità dwar id-drittijiet tagħhom, il-proċeduri u l-awtoritajiet kompetenti jnaqqas il-kapaċità tagħhom li jaċċessaw dawn l-għodod.

Abbażi ta' dawn ir-riżultati, l-istudju jstabbilixxi konklużjonijiet u rakkomandazzjonijiet għal

azzjoni tal-UE, filwaqt li jieħu inkunsiderazzjoni l-kompetenza tal-UE mogħtija mit-Trattati dwar firxa ta' oqsma ta' politika, inklużi d-diżabilità u d-drittijiet tat-tfal.

B.1. Ir-rwol tal-Unjoni Ewropea

L-UE m'għandha l-ebda kompetenza esplicita dwar it-tfal b'diżabilità. Madankollu l-qafas tal-UE fih dispożizzjonijiet li jirrikonoxxu r-rwol tal-UE li tippromwovi l-ħarsien tad-drittijiet tat-tfal bħala objettiv tal-UE kif ukoll il-kompetenza tagħha li tiġġieled kontra d-diskriminazzjoni abbażi ta' diżabilità. Barra minn hekk, il-Karta tad-Drittijiet Fundamentali tal-Unjoni Ewropea, b'valur legali simili għat-Trattati, tirrikonoxxi d-dritt ta' nondiskriminazzjoni abbażi ta' diżabilità fl-Artikolu 21 u d-drittijiet tat-tfal taħt l-Artikolu 24 tagħha. Dan ir-rikonoxximent, filwaqt li huwa importanti, ma jistax jestendi l-kompetenzi tal-UE kif mogħtija mit-Trattati.

L-UE, flimkien mal-Istati Membri, f'oqsma ta' kompetenza kondiviża jew kompetenza nazzjonali, hija marbuta mill-obbligi tas-CRPD u hija meħtieġa tiegħu l-miżuri neċessarji biex tiġġieled kontra d-diskriminazzjoni abbażi ta' diżabilità fi ħdan il-qafas tal-Artikolu 19 TFUE jew fi kwistjonijiet oħra li jaqgħu fi ħdan il-kompetenza tal-UE. L-Artikolu 19(1) TFUE jipprovdi l-bażi legali għall-azzjoni tal-UE (ara fost l-oħrajn il-proposta għad-Direttiva dwar it-trattament ugwali tal-2008¹¹⁷) imma r-rekwiżit ta' unanimità jagħmilha diffiċli biex jintlaħaq ftehim taħt din il-bażi legali. L-Artikolu 19(2) jipprovdi l-possibilità għall-UE li tadotta prinċipji bażiċi u miżuri ta' incentivi biex tappoġġa l-azzjoni tal-Istati Membri fil-ġlieda kontra d-diskriminazzjoni permezz tal-proċedura leġislattiva ordinarja.

La l-proposta għal-Direttiva dwar it-trattament ugwali msemija hawn fuq u lanqas kwalunkwe miżura oħra tal-UE ma jipprevedu **definizzjoni tad-diżabilità**. Qabel l-adozzjoni tas-CRPD, f'sentenza ta' Lulju 2006, il-Qorti tal-Ġustizzja tal-Unjoni Ewropea (QĠUE) iddefinixxiet id-diżabilità fil-kuntest tal-politika tal-impjegi fl-istess sens tas-CRPD bħala "limitazzjoni, ikkawżata b'mod partikolari minn deficijenzi fiżiċi, mentali jew psiċiċi li jxekklu l-partecipazzjoni tal-persuna kkonċernata fil-ħajja professjonali".¹¹⁸ Reċentament, il-QĠUE żviluppat aktar dan il-kuncett¹¹⁹ billi ddikjarat li d-diżabilità tirriżulta minn ostakli li jxekklu l-partecipazzjoni sħiħa u effettiva tal-persuna kkonċernata fil-ħajja professjonali *fuq il-bażi tal-ugwaljanza mal-ħaddiema l-oħra* u tistieden lill-persuni li jimpjegaw biex jieħdu miżuri ta' akkomodazzjoni raġonevoli.

L-azzjoni tal-UE hija possibbli wkoll f'rabta ma' oqsma ta' politika oħra fil-kompetenza tal-UE. Diversi kwistjonijiet relatati mad-drittijiet tat-tfal b'diżabilità huma marbuta ma' politiki tal-UE bħall-politika soċjali, il-koeżjoni ekonomika, soċjali u territorjali, it-trasport, il-libertà, is-sigurtà u l-ġustizzja, li kollha kemm huma kompetenza kondiviża. Barra minn hekk, l-UE għandha l-għażla li tiegħu azzjoni biex tappoġġa l-politiki tal-Istati Membri f'għadd ta' oqsma li jaffettwaw lit-tfal b'diżabilità bħall-edukazzjoni, l-isport, iż-żgħażaġh jew is-saħħa.

¹¹⁷ Proposta għal Direttiva tal-Kunsill dwar l-implimentazzjoni tal-prinċipju ta' trattament ugwali bejn il-persuni irrispettivament mir-reliġjon jew it-twemmin, id-diżabilità, l-età jew l-orjentazzjoni sesswali, KUMM/2008/0426 finali, disponibbli fuq: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52008PC0426:mt:NOT> (l-aħħar aċċess sar fis-6.5.13).

¹¹⁸ Is-Sentenza C-13/05 tal-Qorti tal-Ġustizzja (Awla Manja) tal-11 ta' Lulju 2006, *Chacón Navas vs Eures Colectividades*, punt 43.

¹¹⁹ Is-Sentenza tal-Qorti tal-Ġustizzja, il-Kawżi magħquda C-335/11 u C-337/11 tal-11 ta' April 2013, *HK Danmark, li qed taġixxi għal Jette Ring vs Dansk almennyttigt Boligselskab* (C-335/11) u *HK Danmark, li qed taġixxi għal Lone Skouboe Werge vs Dansk Arbejdsgiverforening li qed taġixxi għal Pro Display A/S* (C-337/11), punt 47.

B. 2 Leġislazzjoni sekondarja eżistenti tal-UE rilevanti

L-aħjar interessi tat-tfal bħala kunsiderazzjoni primarja fl-azzjonijiet relatati mat-tfal huwa rekwiżit fundamentali rikonoxxut fil-leġislazzjoni tal-UE. L-Artikolu 7 tad-Direttiva 2008/52¹²⁰ dwar il-Medjazzjoni jeħtieġ li l-medjatur jiehu inkunsiderazzjoni l-aħjar interessi tat-tfal fid-deċiżjoni tiegħu dwar jekk it-tfal jistgħux jagħtu xhieda fi proċeduri ġudizzjarji. Id-Direttiva dwar id-dritt għal riunifikazzjoni tal-familja¹²¹ teħtieġ li l-awtoritajiet tal-Istati Membri jikkunsidraw l-aħjar interessi tat-tfal meta jeżaminaw applikazzjoni għal riunifikazzjoni tal-familja (l-Artikolu 5)¹²². Il-ħarsien tal-aħjar interessi tat-tfal huwa msemmi b'mod espliċitu fid-Direttiva tal-Kunsill 2004/81/KE¹²³ dwar vittmi tat-traffikar fi bnedmin.

Attwalment, fil-livell tal-UE, **in-nondiskriminazzjoni** qed tiġi indirizzata minn erba' Direttivi tal-UE biex tiġi miġġielda d-diskriminazzjoni abbażi ta' kategoriji mħarsa bħas-sess, l-oriġini razzjali jew etnika, ir-reliġjon jew it-twemmin, l-età u l-orjentazzjoni sesswali, li ħafna minnhom huma limitati għall-qasam tal-impjiegi.¹²⁴ Dawn jistabbilixu regoli "sabiex tiġi kkumbattuta d-diskriminazzjoni (...) bl-għan li jseħħ fl-Istati Membri l-prinċipju ta' **trattament ugwali**".¹²⁵ Id-diżabilità hija rikonoxxuta bħala raġuni għal diskriminazzjoni taħt id-Direttiva 2000/78/KE u, barra minn hekk, il-ħarsien tal-ugwaljanza bejn l-irġiel u n-nisa fi kwistjonijiet ta' impjiegi u xogħol taħt id-Direttiva 2006/54/KE japplika għall-persuni b'diżabilità. Id-Direttiva 2000/43/KE dwar trattament ugwali bejn il-persuni irrispettivament mill-oriġini tar-razza jew l-etniċità ma tinkludix id-diżabilità bħala kategorija mħarsa. Id-Direttiva 2004/113/KE dwar trattament ugwali bejn l-irġiel u n-nisa fl-aċċess għall-provvista ta' merkanzija u servizzi tirreferi għad-diskriminazzjoni abbażi ta' sess imma mhux abbażi ta' età jew diżabilità.

Il-Kummissjoni Ewropea rikonoxxiet id-differenzi fil-ħarsien ipprovdut għad-diversi kategoriji u ppubblikat proposta għal Direttiva fl-2008 bil-għan li jiġi kkompletat il-qafas legali dwar il-liġi kontra d-diskriminazzjoni u jiġi previst livell aktar ugwali ta' ħarsien fost id-diversi kategoriji¹²⁶.

Miżuri oħra fl-oqsma ta' politika bħas-suq intern u t-trasport għandhom impatt fuq l-aċċess tat-tfal b'diżabilità għal servizzi mingħajr diskriminazzjoni. Pereżempju, id-Direttiva 2001/85/KE dwar it-trasport ta' passiġġieri, teħtieġ karatteristiċi ta' aċċessibilità għal persuni b'mobilità mnaqqsa u persuni b'vista batuta. Strumenti oħra jkopru d-drittijiet tal-persuni b'diżabilità meta jivvjaġġaw bl-ajru, l-aċċessibilità għal-lifts, fl-akkwist pubbliku

¹²⁰ Id-Direttiva 2008/52/KE dwar ċerti aspetti ta' medjazzjoni f'materji ċivili u kummerċjali.

¹²¹ Id-Direttiva tal-Kunsill 2003/86/KE dwar id-dritt għal riunifikazzjoni tal-familja.

¹²² "Developing indicators for the protection, respect and promotion of the rights of the child in the European Union" (L-iżvilupp ta' indikaturi għall-ħarsien, ir-rispett u l-promozzjoni tad-drittijiet tat-tfal fl-Unjoni Ewropea) FRA, Marzu 2009, disponibbli fuq http://fra.europa.eu/sites/default/files/fra_uploads/358-RightsOfChild_summary-report_en.pdf.

¹²³ Id-Direttiva tal-Kunsill 2004/81/KE dwar il-permess ta' residenza maħruġ lil ċittadini ta' pajjiżi terzi li huma vittmi tat-traffikar fi bnedmin jew li kienu s-suġġett ta' azzjoni għall-facilitazzjoni ta' immigrazzjoni illegali.

¹²⁴ Id-Direttiva 2006/54/KE dwar l-implimentazzjoni tal-prinċipju ta' opportunitajiet indaqs u ta' trattament ugwali bejn l-irġiel u n-nisa fi kwistjonijiet ta' impjiegi u xogħol (Direttiva mfassla mill-ġdid); id-Direttiva 2004/113/KE li timplimenta l-prinċipju ta' trattament ugwali bejn l-irġiel u n-nisa fl-aċċess għal u l-provvista ta' merkanzija u servizzi; id-Direttiva 2000/43/KE li timplimenta l-prinċipju tat-trattament ugwali bejn il-persuni irrispettivament mill-oriġini tar-razza jew l-etniċità u d-Direttiva 2000/78/KE li tistabbilixxi qafas ġenerali għall-ugwaljanza fit-trattament fl-impjiegi u fix-xogħol.

¹²⁵ L-Artikolu 1 tad-Direttiva 2000/43/KE.

¹²⁶ Il-proposta għal Direttiva dwar l-implimentazzjoni tal-prinċipju ta' trattament ugwali bejn il-persuni irrispettivament mir-reliġjon jew it-twemmin, id-diżabilità, l-età jew l-orjentazzjoni sesswali (KUMM(2008) 426). Attwalment din tinsab imblukkata fil-Kunsill.

jew f'miżuri għat-telekomunikazzjoni¹²⁷.

Fil-limiti tar-responsabilità tal-kompetenzi tagħha, l-azzjoni tal-UE għall-ġlieda kontra d-diskriminazzjoni tiġi kkomplimentata mill-attivitajiet tal-Istituzzjonijiet tal-UE biex jitjeb l-għarfien dwar id-diskriminazzjoni (eż. billi titqajjem kuxjenza), biex jiġu appoġġati atturi intermedjarji (eż. NGOs, imsieħba soċjali u korpi għall-ugwaljanza) biex titjeb il-kapaċità tagħhom li jiġġieldu kontra d-diskriminazzjoni u biex jithegġeġ l-iskambju ta' prattiki nazzjonali tajba.

Il-kunsiderazzjoni tal-**kapaċità** tat-tfal **li jeżerċitaw id-drittijiet proprji tagħhom** hija rikonoxxuta fir-Regolament 2201/2003 "Brussell IIa" li jeħtieġ li l-qrati jisimgħu l-perspettiva tat-tfal skont l-età jew il-grad ta' maturità tagħhom. L-istess formolazzjoni tinsab fil-leġiżlazzjoni tal-UE li tikkonċerna l-immigrazzjoni u l-asil fir-rigward ta' minorenni mhux akkumpanjati.

Id-dritt tat-tfal **għall-parteciġazzjoni** huwa rikonoxxut f'xi dokumenti ta' strateġija tal-Kummissjoni inklużi, "Politiki Ewropej dwar iż-żgħażaġh" tal-2005, "Strateġija tal-UE dwar id-Drittijiet tat-tfal" tal-2006, il-programm "Żgħażaġh fl-Azzjoni" u l-Aġenda tal-UE dwar id-Drittijiet tat-Tfal tal-2011. Il-leġiżlazzjoni tal-UE dwar l-immigrazzjoni u l-asil tirrikonoxxi d-dritt tat-tfal li jinstemgħu waqt il-proċeduri taħt ir-Regolament 2201/2003 "Brussell IIa".

L-UE adottat għadd ta' miżuri dwar **il-ħarsien tat-tfal mill-vjolenza**¹²⁸ fir-rigward tat-traffikar tat-tfal, l-isfruttament sesswali tat-tfal u l-ħarsien tal-vittmi, inklużi diversi Direttivi¹²⁹ li ġew adottati biex jissostitwixxu xi ftit minn dawk l-istrumenti. Pereżempju, id-Direttiva 2011/36/UE dwar il-prevenzjoni u l-ġlieda kontra t-traffikar tal-bnedmin u l-protezzjoni tal-vittmi tiegħu, tiffoka fuq il-ħarsien tat-tfal li huma aktar vulnerabbli mill-adulti u tistabbilixxi pieni aktar severi meta r-reat jitwettaq kontra persuni vulnerabbli bħat-tfal u l-persuni b'diżabilità.

Id-Direttiva 2012/29/UE li tistabbilixxi standards minimi fir-rigward tad-drittijiet, l-appoġġ u l-protezzjoni tal-vittmi tal-kriminalità tirrikonoxxi li l-vittma tal-kriminalità għandha tiġi ttrattata mingħajr diskriminazzjoni abbażi ta' kwalunkwe kategorija, inklużi l-età u d-diżabilità. Fl-aħħar nett, id-Direttiva 2011/92/UE dwar il-ġlieda kontra l-abbuż sesswali u l-isfruttament sesswali tat-tfal u l-pedopornografija¹³⁰ tipprovdli l-ħtieġa għal ħarsien speċifiku tat-tfal b'diżabilità.

Id-dritt għall-ħajja tal-familja u l-manteniment tat-tfal fil-kuntast tal-familja jinsab fil-

¹²⁷ "Study on challenges and good practices in the implementation of the UN Convention on the Rights of Persons with Disabilities VC/2008/1214" (Studju dwar l-isfidi u l-prattiki tajba fl-implimentazzjoni tal-Konvenzjoni tan-NU dwar id-Drittijiet ta' Persuni b'Diżabilità VC/2008/1214), il-Kummissjoni Ewropea, Brussell, 2010, Sommarju Eżekuttiv disponibbli fuq http://www.efc.be/programmes_services/resources/Documents/UN_Convention_Summary_EN.pdf.

¹²⁸ Id-Deciżjoni kwadru 2002/629/JHA dwar il-ġlieda kontra t-traffikar tal-bnedmin; id-Direttiva tal-Kunsill 2004/81/KE dwar il-permess ta' residenza maħruġ lil ċittadini ta' pajjiżi terzi li huma vittmi tat-traffikar fi bnedmin; id-Deciżjoni kwadru tal-Kunsill 2004/68/JHA dwar il-ġlieda kontra l-isfruttament sesswali tat-tfal u l-pornografija tat-tfal; id-Deciżjoni Kwadru tal-Kunsill 2001/220/JHA dwar id-drittijiet tal-vittmi fil-proċeduri kriminali; ir-Riżoluzzjoni tal-Kunsill 2001/C 283/01 dwar il-kontribut tas-soċjetà civili fit-tfittxija ta' tfal nieqsa jew sfruttati sesswalment. Id-Deciżjoni Nru 1351/2008/KE li tistabbilixxi l-programm Internet Aktar Sikur 2009-2013.

¹²⁹ Id-Direttiva 2011/36/UE dwar il-prevenzjoni u l-ġlieda kontra t-traffikar tal-bnedmin u l-protezzjoni tal-vittmi tiegħu, u li tissostitwixxi d-Deciżjoni Qafas tal-Kunsill 2002/629/GAI, id-Direttiva 2011/92/UE dwar il-ġlieda kontra l-abbuż sesswali u l-isfruttament sesswali tat-tfal u l-pedopornografija, u li tissostitwixxi d-Deciżjoni Kwadru tal-Kunsill 2004/68/GAI, id-Direttiva 2012/29/UE li tistabbilixxi standards minimi fir-rigward tad-drittijiet, l-appoġġ u l-protezzjoni tal-vittmi tal-kriminalità, u li tissostitwixxi d-Deciżjoni Qafas tal-Kunsill 2001/220/GAI.

¹³⁰ L-Artikolu 1 tad-Direttiva 2011/92/UE.

qalba tar-Regolament tal-Kunsill 2201/2003 "Brussell IIa" (KE)¹³¹. Fil-qasam tal-politiki tal-immigrazzjoni, id-dritt tat-tfal għall-ħajja tal-familja huwa żgurat mir-regoli dwar ir-riunifikazzjoni tal-familja¹³² u d-dispożizzjonijiet tad-Direttivi dwar l-asil¹³³ fir-rigward ta' minorenni mhux akkumpanjati u r-rispett għall-unità tal-familja.

Il-prinċipju ta' **inklużjoni massima fis-soċjetà** ta' tfal b'diżabilità huwa rifless f'dokumenti ta' strateġija bħall-Istrateġija tad-Diżabilità 2010-2020¹³⁴ u l-Programm UE 2020 fir-rigward tal-edukazzjoni u t-taħriġ¹³⁵. Ir-Riżoluzzjoni tal-Kunsill tal-2003 dwar opportunitajiet indaqs għal Studenti b'Diżabilità¹³⁶ tindirizza l-problema tal-aċċess għall-edukazzjoni minn tfal b'diżabilità. Fl-2010, ir-Riżoluzzjoni tal-Parlament Ewropew dwar il-mobilità u l-inklużjoni ta' tfal b'diżabilità¹³⁷ enfasizzat il-ħtieġa li jiġi żgurat rispett sħiħ għad-drittijiet tat-tfal, inklużi d-dritt għall-edukazzjoni u d-dritt li t-tfal b'diżabilità jipparteċipaw fil-ħajja komunitarja. L-Istituzzjonijiet tal-UE jappoġġaw ukoll lill-**Aġenzija Ewropea għall-Iżvilupp tal-Edukazzjoni ta' Persuni bi Bżonnijiet Edukattivi Speċjali**, l-organizzazzjoni indipendenti li taġixxi bħala pjattaforma għal kollaborazzjoni dwar persuni bi bżonnijiet edukattivi speċjali u l-promozzjoni ta' parteċipazzjoni sħiħa fl-edukazzjoni regolatorja u t-taħriġ¹³⁸.

C. Rakkomandazzjonijiet għall-azzjoni tal-UE

Meta tiġi vvalutata l-ħtieġa għal rakkomandazzjonijiet speċifiċi bil-għan li titjieb is-sitwazzjoni tat-tfal b'diżabilità, huwa importanti li jiġi enfasizzat li t-tfal b'diżabilità huma l-ewwel u qabel kollox tfal bl-istess bżonnijiet bħal kwalunkwe tifel jew tifla oħra u li għandhom jibbenefikaw mid-drittijiet kollha rikonnoxxuti mis-CRC. Id-differenza intrinsika tagħhom minn sħabhom teħtieġ tiġi rikonnoxxuta sabiex jiġu mfasla miżuri leġiżlattivi u ta' politika xierqa.

Kwistjonijiet orizzontali

Bħala l-ewwel rakkomandazzjoni ġenerali, l-Istati Membri kollha tal-UE li għadhom m'għamlux dan, għandhom jirratifikaw iż-żewġ konvenzjonijiet li saret referenza

¹³¹ Ir-Regolament tal-Kunsill (KE) Nru 2201/2003 dwar il-ġurisdizzjoni u r-rikonoxximent u l-infurzar ta' sentenzi fi kwistjonijiet matrimonjali u kwistjonijiet ta' responsabbiltà tal-ġenituri.

¹³² Id-Direttiva tal-Kunsill Nru 2003/86/KE dwar id-dritt għal riunifikazzjoni tal-familja; ir-Regolament tal-Kunsill (KE) Nru 343/2003 li jstabbilixxi l-kriterji u l-mekkaniżmi biex ikun iddeterminat l-Istat Membru responsabbli biex jeżamina applikazzjoni għall-ażil iddepożitata f'wiehed mill-Istati Membri minn ċittadin ta' pajjiż terzi; id-Direttiva tal-Kunsill 2004/83/KE dwar livelli stabbiliti minimi għall-kwalifika u l-istat ta' ċittadini nazzjonali ta' pajjiżi terzi jew persuni mingħajr stat bħala refuġjati jew bħala persuni li nkella jeħtieġu protezzjoni internazzjonali; id-Direttiva 2008/115/KE dwar standards u proċeduri komuni fl-Istati Membri għar-ritorn ta' ċittadini ta' pajjiżi terzi li jkunu qegħdin fil-pajjiż illegalment.

¹³³ Id-Direttiva tal-Kunsill 2001/55/KE dwar l-istandards minimi sabiex tingħata protezzjoni temporanja fl-eventwalità ta' influż bil-massa ta' persuni spostati; id-Direttiva tal-Kunsill 2003/9/KE li tistabbilixxi standards minimi għall-akkoljenza ta' dawk li jfittxu aži; id-Direttiva tal-Kunsill 2004/83/KE dwar livelli stabbiliti minimi għall-kwalifika u l-istat ta' ċittadini nazzjonali ta' pajjiżi terzi jew persuni mingħajr stat bħala refuġjati jew bħala persuni li nkella jeħtieġu protezzjoni internazzjonali; id-Direttiva tal-Kunsill 2005/85/KE dwar standards minimi għal proċeduri fl-Istati Membri għall-ghoti u l-irtirar tal-istatus ta' rifuġjat.

¹³⁴ Il-qasam ta' azzjoni 5 tal-Komunikazzjoni tal-Kummissjoni Strateġija Ewropea tad-Diżabilità 2010-2020: Impenn mill-Ġdid għal Ewropa Mingħajr Ostakoli KUMM(2010) 636 finali.

¹³⁵ Il-Konkluzjonijiet tal-Kunsill tat-12 ta' Mejju 2009 dwar qafas strateġiku għall-kooperazzjoni Ewropea fl-edukazzjoni u t-taħriġ ("ET 2020"), 2009/C 119/02, GU C 119/2, tat-28 ta' Mejju 2005.

¹³⁶ Ir-Riżoluzzjoni tal-Kunsill tal-5 ta' Mejju 2003 dwar opportunitajiet indaqs għal studenti b'diżabilità fl-edukazzjoni u t-taħriġ, 2003/C 134/04.

¹³⁷ Ir-Riżoluzzjoni tal-Parlament Ewropew tal-25 ta' Ottubru 2011 dwar il-mobilità u l-inklużjoni ta' persuni b'diżabilità u l-Istrateġija Ewropea dwar id-Diżabilità 2010-2020 (2010/2272(INI)).

¹³⁸ Is-sit tal-Aġenzija Ewropea għall-Iżvilupp tal-Edukazzjoni ta' Persuni bi Bżonnijiet Edukattivi Speċjali, disponibbli fuq <http://www.european-agency.org/about-us>.

għalihom f'dan l-istudju u jimplimentaw id-dispożizzjonijiet tagħhom billi jadottaw leġislazzjoni nazzjonali u jiżguraw li tiġi pprattikata.

Il-Kummissjoni Ewropea, b'koordinazzjoni mas-Segretarjat tan-NU għas-CRPD u s-Segretarjat tan-NU għas-CRC, għandha tiżgura li l-Istati Membri jifhmu u jimplimentaw diversi definizzjonijiet tal-Konvenzjonijiet li huma l-pedamenti għall-implimentazzjoni tad-drittijiet tat-tfal b'diżabilità, jiġifieri d-definizzjoni ta' "diżabilità", "l-aħjar interessi tat-tfal" u "l-kapaċità tat-tfal li jeżerċitaw id-drittijiet proprji tagħhom". Dawn għandhom imexxu l-iżvilupp ta' inizjattivi li jiżgura li l-ispeċifikitajiet tat-tfal b'diżabilità jittieħdu inkunsiderazzjoni.

Għal dan il-għan, huwa rrakkomandat li l-Kummissjoni tiegħu inizjattivi biex tipprovdi kjarifika fil-livell tal-UE tad-definizzjoni ta' "diżabilità" tas-CRPD peress li hija kkunsidrata ġenerali ħafna fil-prattika u l-implimentazzjoni tagħha fil-livell nazzjonali hija għaldaqstant diffiċli. Huma rrakkomandati l-iżvilupp ta' dokumenti ta' gwida, l-iskambju tal-aħjar prattiki u l-promozzjoni ta' manwali eżistenti.

Il-Kummissjoni Ewropea għandha tiegħu azzjoni biex tippromwovi l-fatt li t-tfal b'diżabilità jiġu kkunsidrati f'inizjattivi regolatorji eżistenti għan-nondiskriminazzjoni u t-trattament ugwali.

Il-PE, il-Kunsill u l-Kummissjoni għandhom jippromwovu l-iżvilupp ta' għodod ta' informazzjoni nazzjonali biex jgħinu lill-familji bi tfal b'diżabilità jifhmu l-oqfsa legali applikabbli għalihom, inkluż aċċess għal miżuri ta' għajjnuna, awtoritajiet kompetenti, proċeduri u mekkaniżmi ta' konformità. L-għodod speċifiċi indirizzati għal dawn il-familji jistgħu jinkludu portal tal-internet tal-UE li jista jkun marbut, fejn possibbli ma' portali nazzjonali li jipprovdu informazzjoni sħiħa dwar id-drittijiet, ir-rekwiżiti, il-kriterji għall-implimentazzjoni, l-awtoritajiet kompetenti, u s-sistemi ta' koordinazzjoni. Din l-inizjattiva tista' tqarreb aktar liċ-ċittadini lejn l-UE.

L-Istituzzjonijiet tal-UE għandu jkollhom rwol ewlieni fil-promozzjoni biex titqajjem kuxjenza dwar kwistjonijiet li jikkonċernaw id-drittijiet tat-tfal b'diżabilità, l-interessi u l-bżonnijiet speċifiċi tagħhom sabiex tiġi promossa l-implimentazzjoni sħiħa tal-prinċipju tal-aħjar interessi tat-tfal b'diżabilità. Il-PE u l-Kunsill jistgħu wkoll jużaw is-setgħat baġitarji tagħhom biex jipprevedu l-finanzjament ta' kampanji li jqajmu kuxjenza.

L-aħjar interessi tat-tfal

Filwaqt li ħafna mill-pajjiżi għandhom leġislazzjoni li tirrikonoxxi l-prinċipju tal-aħjar interessi tat-tfal, ftit Stati Membri biss għandhom fil-leġislazzjoni tagħhom rekwiżit ġenerali għall-koordinazzjoni sistematika tiegħu fid-deċiżjonijiet kollha li jaffettwaw lit-tfal. Xi Stati Membri (bħall-Isvezja u r-Renju Unit) introduċew valutazzjoni tal-impatt fuq it-tfal ta' leġislazzjoni proposta. Huwa rrakkomandat li l-Kummissjoni Ewropea tippromwovi l-iskambju ta' dawn l-inizjattivi u tiżviluppa gwida dwar metodoloġiji għat-twettiq ta' dawn il-valutazzjonijiet tal-impatt fuq it-tfal u li jimplimentaw il-prinċipju tal-aħjar interessi tat-tfal.

Dritt ta' nondiskriminazzjoni

Il-kuncett ta' akkomodazzjoni raġonevoli fir-rigward tas-sitwazzjoni speċifika tat-tfal b'diżabilità jeħtieġ kjarifika u aktar żvilupp biex jiġu definiti l-limiti għall-użu tal-piż sproporzjonat. L-UE, permezz tal-Kummissjoni, tista' tappoġġa dan permezz tal-iskambju tal-aħjar prattiki, fil-livell nazzjonali, dwar l-implimentazzjoni ta' akkomodazzjoni raġonevoli li tkopri sitwazzjonijiet differenti. Dan jgħin biex tiġi definita

l-baži li minnha r-rispett tad-dritt jeħtieġ azzjoni mill-awtoritajiet pubbliċi u jipprevenih milli jiġi sugġett għal argumenti ta' spejjeż sproporzjonati.

Il-Proposta għal Direttiva tal-Kunsill tal-2008 dwar l-implimentazzjoni tal-prinċipju ta' trattament ugwali bejn il-persuni irrispettivament mir-religjon jew it-twemmin, id-dizabilità, l-età jew l-orjentazzjoni sesswali, jekk tiġi adottata, għandha l-potenzjal li tindirizza s-sitwazzjoni tat-tfal b'dizabilità. L-Emenda 37 li introduċa l-Parlament Ewropew tirreferi għal diskriminazzjoni multipla. F'dan il-kuntest, tista' tiġi introdotta kjarifika fil-premessi tad-Direttiva proposta sabiex jiġi żgurat li s-sitwazzjoni tat-tfal b'dizabilità tiġi kkunsidrata bħala parti mill-kamp ta' applikazzjoni tagħha.

L-abbozz tal-Kummissjoni Ewropea għall-Att Ewropew dwar l-Aċċessibilità li jmiss għandu jkopri b'mod espliċitu l-aċċess tat-tfal b'dizabilità għal oġġetti u servizzi, minn tal-anqas b'referenza għall-każijiet ta' diskriminazzjoni multipla.

Il-kapaċità tat-tfal b'dizabilità li jeżerċitaw id-drittijiet proprji tagħhom

Il-PE għandu jikkunsidra mezzi biex iqajjem kuxjenza dwar il-fatt li l-kapaċità tat-tfal, inklużi tfal b'dizabilità, li jeżerċitaw id-drittijiet proprji tagħhom għandha tittiehed inkunsiderazzjoni u jippromwovi dan bil-għan li l-prinċipju jiġi applikat fil-proċessi ta' teħid ta' deċiżjonijiet li jaffettwawhom kollha.

Kull leġiżlazzjoni dwar ġustizzja favur it-tfal ġdida għandha tinkludi kunsiderazzjoni tal-kapaċità tat-tfal b'dizabilità li jinstemghu fi proċeduri ġudizzjarji li jaffettwawhom. Il-Kummissjoni għandha tiżgura li dawn id-dispożizzjonijiet jiġu inklużi fil-liġi prevista tal-UE dwar salvagwardji speċjali għal persuni suspettati jew akkużati li huma vulnerabbli, inklużi tfal, jew il-liġi prevista tal-UE għar-rikonoxximent u l-infurzar ta' deċiżjonijiet dwar ir-responsabilità tal-ġenituri.

Barra minn hekk, huwa rrakkomandat li l-Kummissjoni Ewropea, il-Kunsill u l-PE jippromwovu l-użu tal-Linji Gwida tal-Kunsill tal-Ewropa dwar ġustizzja favur it-tfal u jappoġġaw taħriġ għall-professjonisti rilevanti fil-livelli kollha.

Dritt tat-tfal b'dizabilità għall-parteeċipazzjoni

L-Att Ewropew dwar l-Aċċessibilità previst jista' jipprevedi l-iżvilupp ta' għodod biex tiġi żgurata l-parteeċipazzjoni tat-tfal b'dizabilità fil-proċessi ta' konsultazzjoni tal-inizjattivi leġiżlattivi u ta' politika li jaffettwawhom.

Il-PE għandu jistudja mezzi biex titqajjem kuxjenza dwar ir-rekwiżiti meħtieġa biex jiġi żgurat id-dritt tat-tfal b'dizabilità għall-parteeċipazzjoni permezz ta' miżuri konkreti bħas-simulazzjoni ta' laqgħat plenarji fil-PE li jinvolvu tfal b'dizabilità, li jiżgura aċċess fiżiku għall-bini tal-PE jew it-tfassil ta' għodod biex tiġi żgurata l-parteeċipazzjoni mhux fiżika.

Dritt tat-tfal b'dizabilità li jinstemghu

Sabiex implimentazzjoni effettiva tad-dritt tat-tfal b'dizabilità li jinstemghu tkun possibbli, huwa meħtieġ tibdil fl-attitudnijiet tal-uffiċjali ġudizzjarji, amministrattivi u tal-infurzar. Għal dan il-għan, il-PE, il-Kunsill u l-Kummissjoni għandhom iħeġġu lill-Istati Membri jiżviluppaw azzjonijiet li jqajmu kuxjenza u taħriġ indirizzat lill-awtoritajiet pubbliċi.

Fil-preparazzjoni ta' leġiżlazzjoni dwar ġustizzja favur it-tfal, il-Kummissjoni għandha tiżgura li jittieħdu l-passi adegwati biex tiġi identifikata l-kapaċità tat-tfal li jesprimu l-

perspettivi tagħhom fi proċeduri ġudizzjarji li jaffettwawhom, li jippermettu klima ta' fiduċja bejn it-tfal u l-uffiċjali ġudizzjarji u tal-infurzar u jipprovdu akkomodazzjoni raġonevoli biex jiġi żgurat id-dritt effettiv tat-tfal b'diżabilità li jinstemgħu.

Helsien mill-vjolenza

Huwa rrakomandat li l-PE, il-Kunsill u l-Kummissjoni jippromwovu l-iżvilupp ta' informazzjoni statistika dwar is-sitwazzjoni tal-vjolenza li taffettwa t-tfal, u b'mod partikolari t-tfal b'diżabilità. Barra minn hekk, dawn għandhom jippromwovu l-iżvilupp ta' indikaturi (bħad-diżabilità, it-tfal, il-bniet, l-ambjent familjari) biex jiġu integrati fi sħarriġ ta' politika jew ġenerali ieħor sabiex tiġi pprovduta dejta sistematika dwar is-sitwazzjoni tat-tfal b'diżabilità.

Il-Kummissjoni Ewropea u l-PE għandhom ihegġu lil FRA teżamina s-sitwazzjoni tal-vjolenza kontra t-tfal, b'mod partikolari fl-istituzzjonijiet, inklużi t-tfal b'diżabilità peress li huma partikolarment vulnerabbli. Il-finanzjament neċessarju għandu jiġi propost lill-awtorità baġitarja.

Il-Kummissjoni għandha tikkunsidra b'mod partikolari l-ħtieġa għal miżuri fil-livell tal-UE bil-għan li jitnaqqas in-numru ta' każijiet ta' vjolenza kontra t-tfal, b'mod speċjali t-tfal b'diżabilità, fl-Istati Membri (kemm f'kuntast domestiku kif ukoll f'istituzzjonijiet pubbliċi). Il-Kummissjoni tista' tibda ħidma preparatorja billi torganizza gruppi ta' ħidma mal-esperti tal-Istati Membri biex tikkunsidra:

proposti li jiżguraw li l-Istati Membri jistabbilixxu miżuri preventivi u sistemi ta' monitoraġġ xierqa biex jiġu identifikati l-każijiet ta' vjolenza u abbuż kontra t-tfal,

l-istabbiliment ta' mekkaniżmi ta' kontroll u spezzjonijiet regolari,

evalwazzjonijiet bejn il-pari jew Metodu Miftuħ ta' Koordinazzjoni għall-implimentazzjoni tal-proposti,

aċċess għall-informazzjoni u s-servizzi tal-komunikazzjoni mmirat biex titjeb is-sistema ta' lmenti li jikkonċernaw id-drittijiet tat-tfal għall-helsien mill-vjolenza.

Il-Kummissjoni tista' tippromwovi l-organizzazzjoni ta' taħriġ u sessjonijiet ta' ħidma speċjalizzati madwar l-UE kollha fost il-professjonisti sabiex isir skambju ta' għarfien dwar il-proċeduri tal-ilmenti, il-miżuri ta' rapportar u l-aċċessibilità tas-servizzi tal-komunikazzjoni għal tfal b'diżabilità, b'mod speċjali tfal b'diżabilità severa jew diżabilità intellettuali. L-awtorità baġitarja għandha tipprovdi finanzjament adegwat għal dawn l-attivitajiet.

Dritt tat-tfal b'diżabilità għall-ħajja tal-familja

Il-Kummissjoni, il-Kunsill u l-PE għandhom ihegġu lill-Istati Membri jistabbilixxu strutturi ta' appoġġ xierqa għall-familji bi tfal b'diżabilità sabiex jitnaqqas ir-riskju li t-tfal jitilfu l-ħajja tal-familja filwaqt li jiġu salvagwardjati l-aħjar interessi tat-tfal b'diżabilità.

Fi ħdan il-Metodu Miftuħ ta' Koordinazzjoni, il-Kummissjoni għandha tiżviluppa Linji gwida dwar ir-rekwiżiti minimi tal-istituzzjonijiet residenzjali fir-rigward tat-tfal b'diżabilità. Il-Linji gwida jkollhom l-għan li jiżguraw li ċ-ċentri ta' kura residenzjali jkollhom numru żgħir ta' utenti u l-kapaċità li jospitaw tfal bl-awtizmu jew b'diżabilità intellettuali.

Il-Kummissjoni għandha tipproponi lill-awtorità baġitarja l-użu tal-fondi tal-UE għall-

ħarsien tad-dritt tat-tfal għall-ħajja tal-familja, u li l-fondi jingħataw bi prijorità lill-familji filwaqt li jiġi żgurat li tinzamm il-kwalità tajba tal-istituzzjonijiet.

Aċċess għall-għajjnuna

Għandu jiġi stabbilit korp nazzjonali uniku speċjali (b'uffiċċji reġjonali) responsabbli għall-immaniġġjar tas-servizzi, il-baġit u l-għajjnuna tat-tfal u l-familji tagħhom sabiex jiġu żgurati l-konsistenza, il-koordinazzjoni, l-effettività, aktar aċċessibilità u gwida aħjar għall-familji fir-rigward tal-appoġġ finanzjarju disponibbli.

Il-PE għandu jkompli jmexxi azzjonijiet dwar it-tfal b'diżabilità biex jinforma lill-Istati Membri dwar l-impatti negattivi tat-tnaqqis fil-baġit fuq l-implimentazzjoni tad-drittijiet tagħhom, b'mod speċjali fil-qasam tal-edukazzjoni, il-protezzjoni soċjali u l-kura tas-saħħa.

Fil-proċess tas-Semestru Ewropew, il-Kummissjoni għandha tipprovdi rakkomandazzjonijiet xierqa lill-Istati Membri dwar kif jużaw ir-riżorsi eżistenti b'mod effettiv minflok inaqqsu l-għajjnuna neċessarja għat-tfal b'diżabilità li jagħmlu parti miċ-ċittadini l-aktar vulnerabbli.

Aċċess għall-edukazzjoni inklużiva

Il-Kummissjoni għandha tiżviluppa azzjonijiet biex tappoġġa lill-Istati Membri fit-titjib tas-sistemi edukattivi għat-tfal b'diżabilità permezz tal-Metodu Miftuħ ta' Koordinazzjoni jew l-evalwazzjoni bejn il-pari filwaqt li tirrispetta l-kompetenza ġenerali tagħhom għal kwistjonijiet relatati mal-edukazzjoni. L-azzjoni fil-livell tal-UE tista' tinkludi:

Żvilupp ta' gwidi u rakkomandazzjonijiet tal-aħjar prattika dwar it-tip minimu ta' riżorsi meħtieġa fl-iskejjel regolari, u dwar ir-rwol tal-ġenituri u t-tfal b'diżabilità fi proċessi ta' teħid ta' deċiżjonijiet li jaffettwaw lit-tfal b'diżabilità jew l-iżvilupp tal-oġettivi edukattivi;

Promozzjoni ta' taħriġ għall-għalliema dwar kif jifhmu aħjar il-bżonnijiet tat-tfal b'diżabilità u l-kapaċità tagħhom li jeżerċitaw id-drittijiet proprji tagħhom, metodoloġiji ta' tagħlim u l-immaniġġjar ta' tfal b'diżabilità speċifika fi klassi flimkien ma' sħabhom mingħajr diżabilità;

Promozzjoni ta' għodod ta' tagħlim li jgħinu l-inklużjoni tat-tfal b'diżabilità fl-iskejjel u 'l barra mill-iskejjel bħall-manwal COMPASS tal-Kunsill tal-Ewropa;

Promozzjoni ta' inizjattivi kontra l-bullying u kontra l-istigmatizzazzjoni, inklużi kampanji li jqajmu kuxjenza li jippromwovu l-inklużjoni tat-tfal b'diżabilità; u

Żvilupp ta' oġettivi ta' kwalità għall-edukazzjoni offruta lit-tfal b'diżabilità u l-promozzjoni ta' inizjattivi biex jinżamm l-appoġġ għall-edukazzjoni għolja.

Finanzjament tal-UE

Il-PE, il-Kunsill u l-Kummissjoni għandhom jippromwovu fost l-Istati Membri l-użu tal-Fondi Strutturali biex irawmu l-iżvilupp ta' servizzi soċjali pprovduti għal tfal b'diżabilità ta' kwalità, filwaqt li jiffaċilitaw l-implimentazzjoni tal-Qafas ta' Kwalità Volontarju Ewropew għas-Servizzi Soċjali;

Il-PE, il-Kunsill u l-Kummissjoni għandhom jippromwovu l-iżvilupp ta' alternattivi

bbażati fil-familja u fil-komunità bil-għan ta' deistituzzjonalizzazzjoni.

Il-PE, il-Kunsill u l-Kummissjoni għandhom iħeġġu l-użu ta' fondi strutturali għat-titjib tal-aċċessibilità u l-edukazzjoni inklużiva.

ANNEX 4 – HARSJA ĠENERALI LEJN L-ISTUDJI RELATATI

L-Isem tal-Istudju	Numru PE	Numru ISBN
Studju dwar il-Politiki tal-Istati Membri għal Tfal b'Diżabilità	PE 474.416	978-92-823-4548-1
Rapport tal-Pajjiżi dwar il-Belġju għall-Istudju dwar il-Politiki tal-Istati Membri għal Tfal b'Diżabilità	PE 474.417	978-92-823-4542-9
Rapport tal-Pajjiżi dwar ir-Repubblika Ċeka għall-Istudju dwar il-Politiki tal-Istati Membri għal Tfal b'Diżabilità	PE 474.418	978-92-823-4549-8
Rapport tal-Pajjiżi dwar l-Estonja għall-Istudju dwar il-Politiki tal-Istati Membri għal Tfal b'Diżabilità	PE 474.419	978-92-823-4561-0
Rapport tal-Pajjiżi dwar il-Finlandja għall-Istudju dwar il-Politiki tal-Istati Membri għal Tfal b'Diżabilità	PE 474.420	978-92-823-4552-8
Rapport tal-Pajjiżi dwar Franza għall-Istudju dwar il-Politiki tal-Istati Membri għal Tfal b'Diżabilità	PE 474.421	978-92-823-4562-7
Rapport tal-Pajjiżi dwar il-Ġermanja għall-Istudju dwar il-Politiki tal-Istati Membri għal Tfal b'Diżabilità	PE 474.422	978-92-823-4553-5
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Žur il-websajt tal-Parlament Ewropew: <http://www.europarl.europa.eu/studies>

PETIZZJONIJET:
iStock International Inc.



ISBN: 978-92-823-4679-2

DOI: 10.2861/31126



L-Ufficcju tal-Pubblikazzjonijiet