



## **Written Comments**

submitted by

**Regional Network for Inclusive Education in Latin  
America**

**Stoian v. Romania**  
Application No. 289/14

European Court of Human Rights

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### **I. INTRODUCTION**

1. These written comments are submitted by the Regional Network for Inclusive Education in Latin America pursuant to leave granted by the President of the Court in accordance with Rule 44(3)(a) of the Rules of Court.
2. Founded in 2015, the Regional Network for Inclusive Education in Latin America (Red Regional por la Educación Inclusiva Latinoamérica) is a coalition of 14 organizations and networks<sup>1</sup> of persons with disabilities and human rights organizations from seven different countries in Latin America, which advocate for the right to inclusive education. RREI aims to have an impact in the national, regional and international level to ensure States fulfill their obligation to guarantee access of persons with disabilities to regular schools and classrooms, while raising awareness about the benefits and values brought by inclusive education.
3. The present case raises important issues concerning fundamental rights of persons with disabilities, in particular their right to inclusive education, to health, and to equality and non discrimination. The outcome of this case will have a significant impact on how States conceive their obligations towards persons with disabilities and in the way society views disability itself. In this sense, the Court has -through this case- the opportunity to show the importance of removing the barriers that continue to exclude persons with disabilities from the enjoyment of their fundamental rights and to ensure a harmonised approach by the European Court of Human Rights (hereinafter the 'Court') and the UN Committee on the Rights of Persons with Disabilities (hereinafter the 'CRPD Committee') in an important effort to uphold the development and coherence of international human rights law.

### **II. BACKGROUND: FROM THE MEDICAL MODEL TO THE SOCIAL MODEL OF DISABILITY**

4. Throughout history, persons with disabilities -traditionally viewed as welfare recipients and objects of charity- have been denied their right to receive quality education in equal conditions. There have been different approaches education systems have adopted when faced with disability: exclusion, segregation and integration. In words of the CRPD Committee, "*Exclusion occurs when students are directly or indirectly prevented from or denied access to education in any form. Segregation occurs when the education of students with disabilities is provided in separate environments designed or used to respond to a particular impairment or to various impairments, in isolation from students without disabilities. Integration is the process of placing*

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<sup>1</sup> The Regional Network for Inclusive Education is currently integrated by the following organizations and coalitions: Article 24 Group for Inclusive Education (Argentina), the Brazilian Federation of Down Syndrome Associations (Brazil), the Brazilian Association for the Rights of Persons with Autism - Abraça (Brazil), the Down Syndrome Foundation (Brazil), Down 21 (Chile), the Colombian Association of Down Syndrome - ASDOWN (Colombia), the Caribbean Down Syndrome Foundation - Fundown Caribe (Colombia), Saraki Foundation (Paraguay), the Peruvian Society of Down Syndrome - SPSD (Perú), Society and Disability - SODIS (Perú), the Coalition for the Right to Inclusive Education (Perú), the Archive and Access to Public Information Center - CAinfo (Uruguay), the Inter-american Institute on Disability and Inclusive Development - iiDi (Uruguay) and the Workgroup about Inclusive Education - GT-EI (Uruguay).

*persons with disabilities in existing mainstream educational institutions with the understanding that they can adjust to the standardized requirements of such institutions*".<sup>2</sup>

5. The Convention on the Rights of Persons with Disabilities (hereinafter the 'Convention') has brought a deep paradigm shift in the conception of disability. The disabling factors impeding equal enjoyment of rights for this group are no longer in the individual's impairment (medical model) but in society (social model), which is guided by normalizing visions and not ready to face diversity. Under this human rights approach, it is the environment the one that has to adapt to persons with disabilities' needs and not the other way around.
6. This new conception has its projection in education: persons with disabilities do not have to be integrated in the mainstream education system but included. Inclusion implies a process of deep and systemic reform, in which education systems implement structural changes to embrace diversity, under the consideration that children do not have to be forced to fit in schools, but schools have to be prepared to receive everyone. In this sense, it has been said that "*The right to inclusive education encompasses a transformation in culture, policy and practice in all formal and informal educational environments to accommodate the differing requirements and identities of individual students, together with a commitment to remove the barriers that impede that possibility. It involves strengthening the capacity of the education system to reach out to all learners. It focuses on the full and effective participation, accessibility, attendance and achievement of all students, especially those who, for different reasons, are excluded or at risk of being marginalized*".<sup>3</sup>
7. Although article 24 of the Convention obliges States to "*ensure an inclusive education system at all levels*" and to guarantee that "*persons with disabilities are not excluded from the general education system on the basis of disability*", "*many millions of persons with disabilities continue to be denied a right to education, and for many more, education is available only in settings where they are isolated from their peers and receive an inferior quality of provision*".<sup>4</sup> Even when attending regular schools, they rarely receive the support and reasonable accommodations they need and they hardly obtain equal certificates. In general, they are not given equal opportunities and supports to complete the compulsory levels of education. School personnel usually has low expectations regarding their potential and students without disability are not encouraged to adopt positive attitudes towards them. This situation blocks their possibility of having an inclusive learning experience, making friends and being included in the community. As a result of lack of access to inclusive classrooms, persons with disabilities are frequently condemned to have low-paid jobs, to live in isolation and in poverty.
8. The barriers that are in the origin of this problem are multiple and diverse. Legislation permitting discriminatory practices, prejudices about the potential of persons with disabilities, lack of information and technical knowledge about inclusive education, lack of supports for inclusion, and absence of effective legal remedies and mechanisms to enforce the right to inclusive education are some of them.

### **III. INCLUSION AS A WAY OF COMBATTING DISCRIMINATION AND ENSURING QUALITY EDUCATION**

9. Inclusive education is inextricably linked to the protection and effective realization of all human rights, and is essential to guarantee a good quality education. The CRPD Committee has expressed that "*inclusive education is central to achieving high quality education for all learners, including those with disabilities, and for the development of inclusive, peaceful and fair societies*".<sup>5</sup> If persons with disabilities are excluded from education, segregated in special

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<sup>2</sup> Committee on the Rights of Persons with Disability, General Comment no. 4, paragraph 11.

<sup>3</sup> *Ibid*, paragraph 9.

<sup>4</sup> *Ibid*, paragraph 3.

<sup>5</sup> *Ibid.*, paragraph 2.

schools or even integrated in the mainstream education system, the different components of the human right to education -universality and quality- are certainly not fulfilled.

10. Universality requires an education system accessible to all, and -therefore- non discriminatory. This means that persons with disabilities -as everyone- should be able to choose the school they want to attend, without being rejected on the basis of discriminatory criteria such as disability. But it also means that -once inside the school- they should be given the possibility to learn and to participate in equal conditions, feeling respected, valued and listened to. In this sense, the Committee argues that “*The right to non-discrimination includes the right not to be segregated and to be provided with reasonable accommodation and must be understood in the context of the duty to provide accessible learning environments and reasonable accommodation*”, while the the Office of the United Nations High Commissioner for Human Rights affirms that “*inclusive education has been acknowledged as the most appropriate modality for States to guarantee universality and non-discrimination in the right to education (...) and, consequently, the right to education is a right to inclusive education*”.<sup>6</sup>
11. On the other hand, quality education is only achieved through the promotion and respect of human rights and the appreciation for diversity. Societies tend to analyse the success of education systems under standardized and homogenized criteria, requiring that every student acquires the same contents, in the same time and using numerical methods qualification. Nevertheless, high quality schools are those that combat discrimination, prejudices and harmful stereotypes and maintain high expectations towards all, while focusing on the well-being, learning and participation of every student in equal conditions.
12. Inclusive education benefits every student. Those with disabilities improve their academic and social performance, strengthen their self-esteem, avoid feeling stigmatised, acquire tools to continue their education and to have good jobs, and increase their possibilities of being included and participating effectively in their communities. Additionally, students without disabilities are allowed to learn skills from those with disabilities, to feel comfortable with helping others, to develop understanding and respect for every person and group, and to view diversity as an opportunity for growing and enrichment, instead of fearing or despising it. Inclusive schools are definitely the most effective way to build inclusive, plural and fair societies.
13. In line with this idea, the Office of the United Nations High Commissioner for Human Rights has expressed that “*Inclusive education is socially important because it provides a sound platform for countering stigmatization and discrimination. A mixed learning environment that includes persons with disabilities allows their contributions to be valued, and prejudices and misconceptions to be progressively challenged and dismantled. Inclusive education also enhances quality education for all by leading to wider-ranging curricula and instructional strategies which contribute to the overall development of capacities and skills. This nexus of learning and development -when inclusive of a diversity of participants with varying abilities- introduces new perspectives for achieving objectives and self-esteem, and empowering individuals to build a society based on mutual respect and rights*”.<sup>7</sup>
14. The CRPD Committee has expressed that to fulfill the obligation of ensuring inclusive and quality education the education system must comprise four interrelated features: availability, accessibility, acceptability and adaptability.<sup>8</sup> Availability means that “*public and private educational institutions and programmes must be available in sufficient quantity and quality*”. Accessibility requires that “*educational institutions and programmes must be accessible to everyone, without discrimination*”<sup>9</sup>. Acceptability “*is the obligation to design and implement all education-related facilities, goods and services taking fully into account and respecting the*

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<sup>6</sup> Office of the United Nations High Commissioner for Human Rights, Thematic Study on the Right of Persons with Disabilities to Education, paragraph 3.

<sup>7</sup> *Ibid.*, paragraph 8.

<sup>8</sup> Committee on the Rights of Persons with Disability, *op. cit.*, paragraph 20.

<sup>9</sup> *Ibid.*, paragraph 22.

*requirements, cultures, views and languages of persons with disabilities*<sup>10</sup>. Finally, adaptability implies developing adaptable learning environments to meet the diverse needs of all learners, recognizing each student learns in a unique manner, developing flexible ways to learn, creating an engaging classroom environment, maintaining high expectations for all students while allowing for multiple ways to meet expectations, empowering teachers to think differently about their own teaching, and focusing on educational outcomes for all, including persons with disabilities.<sup>11</sup>

#### **IV. ACCESSIBILITY, SUPPORT AND REASONABLE ACCOMMODATION: INTERNATIONAL STANDARDS**

15. In considering the responsibility of member states to uphold the rights of persons with disabilities and eliminate all the structural disadvantages that obstruct their right to inclusive education, the Court is encouraged to have regard for the latest international standards on accessibility, support and reasonable accommodation, which can be found in the Convention on the Rights of Persons with Disabilities, in General Comment no. 4 -the instrument that serves to integrate and interpret this treaty- and in the Thematic Study on the Right of Persons with Disabilities to education.
16. Essential components of inclusive education are accessibility, support and reasonable accommodation. Inclusion is not only allowing students with disabilities to share the same classrooms with others. It is about guaranteeing everyone has a meaningful learning experience in accessible, safe and friendly environments. To achieve an inclusive education system it is necessary to build flexible institutions, capable of admitting and promoting changes in physical space, teaching and learning strategies, curriculum and evaluation methods in order to provide a personalized educational approach.
17. The general obligation of ensuring accessibility to the physical environment, to transportation, to information and communications and to other facilities and services open or provided to the public (article 9 of the Convention) undoubtedly applies to educational services. According to General Comment no. 4, "*the entire education system must be accessible, including buildings, information and communication, comprising ambient or frequency modulation assistive systems, curriculum, education materials, teaching methods, assessment and language and support services. The environment of students with disabilities must be designed to foster inclusion and guarantee their equality throughout their education, for example, school transport, which should be inclusive, accessible and safe; water and sanitation facilities, including hygiene and toilet facilities; school cafeterias; and recreational spaces*".<sup>12</sup> Mobility within schools must be guaranteed to every student, including those with severe physical impairments.
18. The obligation to provide support (article 24, paragraph 2 (d) and (e) of the Convention), is complementary and connected to accessibility measures. The Office of the United Nations High Commissioner for Human Rights specifies that "*There may be numerous support measures based on individual education plans, ranging from the provision of compensatory aids, special learning aids, assistive and information technology and the application of special education procedures. One of the most important measures is the use of a learning support assistant, either shared or on a one-to-one basis, depending on the needs of the student*".<sup>13</sup> The lack of provision of support, such as a support teacher, a learning or a personal assistant or the prohibition of his or her entrance is a discrimination according to the Convention.
19. While accessibility benefits groups of the population and is based on a set of standards that are implemented gradually, reasonable accommodation relates to an individual and is complementary to the accessibility duty.<sup>14</sup> Reasonable accommodation is not subject to

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<sup>10</sup> *Ibid.*, paragraph 25.

<sup>11</sup> *Ibid.*, paragraph 26.

<sup>12</sup> *Ibid.*, paragraph 21.

<sup>13</sup> Office of the United Nations High Commissioner for Human Rights, *op. cit.*, paragraph 48.

<sup>14</sup> Committee on the Rights of Persons with Disability, *op. cit.*, paragraph 28.

progressive realization. On the contrary, it must be provided with immediate effect and its denial constitutes a violation of the Convention and a discrimination on disability grounds. These accommodations -that do not have to entail additional costs for learners with disabilities- have to be monitored and redressed if students or their families consider that they have been inadequately provided.<sup>15</sup> Families have to be heard and considered as a part of the education process.

20. The Convention prohibits the exclusion of persons with disabilities from the general education system, with independence of the “degree” of their impairment<sup>16</sup>. The refusal to provide support and reasonable accommodation using arguments based on the “non educability” of the students or the “extent of their potential” and pressuring the families to go to a special school or do home schooling are therefore non admissible under the Convention.
21. The Convention “*also requires that persons with disabilities are able to attend primary and secondary schools within the communities where they live. Students should not be sent away from home. The educational environment must be within safe physical reach for persons with disabilities, including safe and secure transport, or accessible via information communication technology*”.<sup>17</sup>
22. Inclusive education also requires a safe and friendly environment where all the students can learn and where relationships of acceptance, fellowship and friendship can be built. Thus, it is extremely important to adopt measures to prevent bullying, hostile behaviours, humiliating practices and any other forms of violence towards students with disabilities and ensure they are not excluded from excursions, recreation, sports and other extracurricular activities, which have a significant impact on their socialisation.<sup>18</sup> In connection with this, article 8.2 (b) of the Convention establishes that -in order to raise awareness- States Parties should adopt measures to foster an attitude of respect for the rights of persons with disabilities at all levels of the education system, including in all children from an early age. School personnel has a key role in creating a safe and friendly atmosphere, and should consequently be formed not to marginalize, but to include.
23. States Parties also have to guarantee that there are legal remedies and complaint mechanisms in case the right to inclusive education is violated. These mechanisms have to be independent, effective, accessible, transparent, safe and enforceable<sup>19</sup>. The intervention of organisms belonging to the public administration or to the judiciary branch cannot be obstacles themselves nor can their intervention discourage people with disabilities and their families from claiming for the respect of their rights. States Parties have the obligation to eliminate barriers and dismantle discriminatory practices.

## V. LAW AND PRACTICES IN LATIN AMERICA

24. Most of the countries in the Latin American region signed and ratified the Convention on the Rights of Persons with Disabilities. The adoption of this international obligation marked the beginning of processes to implement this treaty, which imply the revision, modification and adoption of new domestic laws and public policies regarding the situation of persons with disabilities within the education systems. Both legislation and practices -conceived under the medical model of disability- were challenged by the new paradigm brought up by the Convention.
25. This led some countries not only to enact adequate legislation to protect the rights of persons with disabilities in general but also to adopt “*Inclusive Education National Acts*” to fulfill the obligation established in article 24. This is the case of Brazil, Colombia and Paraguay, where legislations advanced in the recognition of regular schools -equipped with adequate supports and attending the particular needs of students- as the suitable place where persons with disabilities

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<sup>15</sup> *Ibid.*, paragraphs 30 and 40.

<sup>16</sup> *Ibid.*, paragraph 18.

<sup>17</sup> *Ibid.*, *op. cit.*, paragraph 26.

<sup>18</sup> *Ibid.*, paragraphs 33 and 56.

<sup>19</sup> *Ibid.*, paragraph 63.

should receive education. Even though legislation in some countries of the region still contemplates special education for persons with disabilities, all of them are going through a process (at different levels) to implement inclusive education and turn segregated schools into resources to provide support, reasonable accommodation and appropriate tools to guarantee the inclusion of students with disabilities in regular settings.

26. Many countries in the region have created mechanisms to provide reasonable accommodations and supports in order to guarantee the access to regular schools and the removal of barriers in every stage of the school trajectory. As in for supports, they are mainly focused on -but not limited to- human resources assisting the students in the process of inclusion. Different systems are established in the region:
  - a) Support teachers: Specialized teachers who are assigned upon the request of a child with disabilities' family to guarantee their inclusion in regular classrooms. This is the case of Argentina (Federal Regulation 311/16 and local rules)<sup>20</sup>, El Salvador (Law 888/2010)<sup>21</sup>, Uruguay (Law 18561/2010)<sup>22</sup>.
  - b) Multidisciplinary teams of support and multidisciplinary teams of inclusion: Groups of professionals from a variety of backgrounds and areas which intervene in regular schools. They might be either school based or itinerant. This is what happens in Argentina (Federal Regulation 311/16), Brazil (Law 13146/2015<sup>23</sup> and Law 12746/2012)<sup>24</sup>, Chile (Law 20422/2010)<sup>25</sup>, Colombia (Law 1618/2013<sup>26</sup>, Regulation 366/2009<sup>27</sup>, Regulation 1429/2017<sup>28</sup>), Costa Rica (Law 7600/1996)<sup>29</sup>, El Salvador<sup>30</sup>, Paraguay (Law 5136/2013)<sup>31</sup>, Perú ( Law 29973)<sup>32</sup>
  - c) Other supports that are not directly involved in helping with pedagogic strategies, such as personal assistants.
27. States have not only regulated the functioning of supports for inclusive education but they have also allocated resources to fund them. In some cases, they are state funded. For instance, multidisciplinary teams of support in Perú, Uruguay, Colombia, Paraguay and Chile are created, supervised and provided through the Ministry of Education. In other cases, governments allot a contribution for schools to obtain the specific supports that students with disabilities might need. Finally, they might be provided through health and social security systems, so they are partially covered by the state and the individual.
28. However, the solely recognition in legislation and the mechanisms established in public policies are frequently not enough to reverse disparities and discriminatory practices towards persons with disabilities and consequently many cases still reach the judiciary branch in the national level. In general, this cases are related to the exclusion of persons with disabilities from regular schools and the absence of accessibility, support or reasonable accommodation, or their insufficient or

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<sup>20</sup>Regulation 311/16 "Promotion, Accreditation, Certification and Degrees of students with disabilities", adopted by the Federal Council of Education on December 15, 2016.

<sup>21</sup> Equal Opportunities for Persons with Disabilities Act, published on April 27, 2002.

<sup>22</sup> Integral Protection for Persons with Disabilities Act, published on March 9, 2010.

<sup>23</sup> Brazilian Act for Inclusion of persons with disabilities, published on July 6, 2015.

<sup>24</sup> Public policy for the protection of the rights of persons with autism spectrum disorder, adopted in December 27, 2012.

<sup>25</sup> Equal Opportunities and Social Inclusion for Persons with Disabilities Act, published on February 10, 2010.

<sup>26</sup> Individuals with Disabilities Act published on February 27, 2013.

<sup>27</sup> Organization of Educational Supports for the Assistance of Students with Disabilities and Students with Exceptional Talents within the Inclusive Education Framework Regulation, published on February 9th, 2009.

<sup>28</sup> Educational assistance of students with disabilities within the Inclusive Education Framework Regulation, published on August, 29, 2017.

<sup>29</sup> Equal Opportunities for Persons with Disabilities, published on May 29, 1996.

<sup>30</sup> Inclusive Education Public Policy issued by El Salvador government on December 2010.

<sup>31</sup> Inclusive Education Act, published on December 22, 2014.

<sup>32</sup> Individuals with Disabilities Act, published on December 24, 2012.

inadequate provision. Here is where the courts have the essential role of restoring the rights to inclusive education and equality. In Brazil for example, a group of private schools pursued an action<sup>33</sup> to challenge the constitutionality of the Brazilian Act of Inclusion (Law 13146/2015). The Federal Superior Court rejected the action, on the basis of the duty to respect equality, the importance of inclusive education for children without disabilities and of building non discriminatory environments and fair societies.

29. The Colombian Constitutional Court solved in 2006 the case of a blind person whose enrollment in a program offered by the National Service of Learning (SENA<sup>34</sup>) was refused under the argument that it was no longer available for people with visual impairments. In that opportunity, the tribunal held: *“States have the obligation to take differentiated measures in favor of persons with disabilities in order for them to achieve the full realization of their rights on equal basis and without barriers impeding their exercise”*.<sup>35</sup> The Court ruled the National Service for Learning (SENA) must provide the program requested by the petitioner in its inclusive modality (for persons with and without visual impairments) and the entity shall refrain from suspend the service availability again.<sup>36</sup>
30. Moreover, in the case of a deafblind person who requested the local government to allocate an interpreter to render support and let him culminate his higher education studies, this Court reaffirmed: *“Regarding the situation of persons with disabilities, education should be served on equal basis, considering the particular features of each case [...] It means, these persons should be guaranteed inclusive education, which lies in broadening the inclusion spectrum for persons with special education needs, beyond the access to regular schools”*<sup>37</sup>. In this case, the Constitutional Court overturned the decision which denied him the supports, compelling the local government to *“adopt within 15 days financial, planning, programming and organization measures of the institutional academic offer that will guarantee the petitioner and other deaf students in town the effective access to education and supports to ensure their inclusion [...]”*<sup>38</sup>
31. The Colombian Constitutional Court also received the case of a deaf-blind person who was studying at a private university with the assistance of a couple of interpreters afforded by a private foundation. These professionals were removed due to financial issues experienced by the referred entity. When this occurred, the university refused to provide adequate support, which led the person to initiate a lawsuit, compelling the Ministry of Education to provide the supports for the entire period of time the person will require them. Despite this decision, the Ministry of Education did not comply its obligation. The Court therefore considered there was no doubt the individual had the right to receive education in conditions of adaptability. Considering his particular situation, this implied not only the access to an educational institution but also other affirmative measures that will guarantee -both in a real and material spheres- his right to education, such as the service and support of the interpreters.<sup>39</sup> In that regard, the tribunal ruled that: *“It is the responsibility of educational institutions: (i) to help and support persons with disabilities along with the government, through reasonable adjustments which will allow them to effectively access, remain and finalize their higher education (ii) to allocate resources from their*

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<sup>33</sup> Constitutional Court of Brazil, Case 5357-2015, Action to challenge the Brazilian Act of Inclusion brought by the National Confederation of Private Schools, published on November 20, 2015.

<sup>34</sup> Public entity affiliated to the Colombian Ministry of Labor which offers training on technical and technological programs for free.

<sup>35</sup> Colombian Constitutional Court, Sentence T-884/06 (Case T-1388746), Amparo Ruben Dario Pichica Oidor v. National Service of Learning (SENA) - Regional Valle, published on October 26, 2006.

<sup>36</sup> *Ibíd.*

<sup>37</sup> Colombian Constitutional Court, Sentence T-851/11 (Case T-2650168), Amparo Julio David Pérez Lambraño v. Alcaldía de Montería, published on February 04, 2011.

<sup>38</sup> *Ibíd.*

<sup>39</sup> Colombian Constitutional Court, Sentence T-850/14 (Case T-4.375.942), Amparo Samuel Ferney Valencia v. Manuela Beltrán de Bogotá University, published on November 26, 2014.

*budgets to link the professional personnel and they can count on technological resources that support actual inclusive education for persons with disabilities within their academic plans”.*<sup>40</sup>

32. In Argentina, there are several decisions that enforce the right to inclusive education, and the right to receive the supports needed. For example, a judge of the city of Buenos Aires ordered a precautionary measure to compel a private school to guarantee supports for a 12 year-old girl with TGD. The school had refused the entrance of her personal assistant claiming that as she had not a teacher diploma she couldn't be in the classroom. To justify her decision, the judge argued that the educative process was affected by the absence of supports.
33. In Perú, the Constitutional Court set a standard for the adapted evaluation methods compelling a private university to implement a differentiated evaluation for a person who was enrolled in a graduate school and could not take a regular test due to her visual impairment.<sup>41</sup> With a similar approach, a Court of Appeal in Argentina condemned a university to adapt evaluation methods to guarantee the right of a person using a wheelchair to study to become education professor, under the consideration that denying reasonable accommodation constitutes a way of discrimination, prohibited by the Convention on the Rights of Persons with Disabilities and violating the obligation of ensuring equal opportunities and that State Parties in the Convention must guarantee an inclusive educative system in every level.<sup>42</sup>
34. Accessibility of schools has also developed in local case law, the District Court compelled the government of the City of Buenos Aires to comply with an accessibility plan for schools as a result of a lawsuit brought to Court originated in multiple complaints of families who could not enroll their children due to the lack of accessibility in regular schools<sup>43</sup>.
35. “*Endrew F. v. Douglas County School District*”<sup>44</sup> is a relevant case in the USA. A student with autism was attending a public school and was later transferred to a private institution because his parents argued he was not receiving free and appropriate public education (FAPE)<sup>45</sup>. Hence, they sought reimbursement for tuition. The United States Supreme Court in analyzing the level of educational benefits that school districts must confere on children with disabilities to provide them with free appropriate public education held the Individuals with Disabilities Education Act (IDEA) demands a standard which goes further than “*merely more than de minimis*”<sup>46</sup> “*it requires an educational program (IEP) reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances*”. In accordance with that assertion, the Court states the following regarding one his previous decisions: “*We declined to hold in Rowley, and do not hold today, that “every handicapped child who is advancing from grade to grade . . . is automatically receiving a (FAPE).*”<sup>47</sup>
36. At the regional level, the Inter-American Court of Human Rights has been developing a line of case law aligned with the standards adopted by the United Nations. The social model of disability was brought up in analysis for the first time in the case of *Sebastián Furlán v. Argentina*, where the Court held: “*The Court notes that in the aforementioned Conventions [the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities and the UN Convention] the social model for disability is taken into account, which implies that disability is not only defined by the presence of a physical, mental, intellectual or sensory*

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<sup>40</sup> *Ibíd.*

<sup>41</sup> Peruvian Constitutional Court, Case 02362-2012-PA/TC, Gisela Elva Tejada Aguirre v. Peruvian University of Applied Sciences.

<sup>42</sup> Case 18040126/2011, Naranjo Emiliano Pablo v. La Matanza University, published on March 17, 2014.

<sup>43</sup> Case 23728/0 “Acceso Ya Foundation v. Government of the City of Buenos, published on December 22, 2009.

<sup>44</sup> United States Supreme Court, *Endrew F. v. Douglas County School District*, 580 U.S. 15 (2017).

<sup>45</sup> Individuals with Disabilities Education Act (IDEA) provides that if a free public school cannot meet the educational needs of a disabled student, the parents are allowed to enroll their child in a private school and seek reimbursement.

<sup>46</sup> Test applied by the Tenth Circuit Court.

<sup>47</sup> United States Supreme Court, *Board of Ed. of Hendrick Hudson Central School Dist., Westchester Cty. v. Rowley*, 458 U. S. 176, 203, n. 25 (1982).

*impairment, but is interrelated with the barriers or limitations that exist socially for persons to exercise their rights effectively*<sup>48</sup>. This statement is fundamental since it enables the incorporation and harmonic interpretation of international treaties standards to the regional case law. As a result, an holistic approach is undertaken, allowing the application of better standards to cases regarding persons with disabilities. Subsequently, the Court has been adopting the new paradigm in cases such as: *Artavia Murillo v. Costa*<sup>49</sup>, *Gonzalez Lluy v. Ecuador*<sup>50</sup>, *Chinchilla Sandoval v. Guatemala*<sup>51</sup>.

37. In 2016, the Inter-American Court of Human Rights ordered a precautionary measure<sup>52</sup> in favour of a 12-year-old girl with disabilities, ordering Argentina to ensure and protect her right to life, to personal integrity and to health. The measure had been requested in 2015 by CEJIL and REDI. Both organisations were motivated by the fact that the medical treatments and therapeutic assistants that Irene<sup>53</sup> needed to improve her health and attend school were suspended in several occasions, which had put her in an urgent and critical situation risking her life and her health. The Commission, therefore, ordered the Argentine State to adopt the necessary measures to preserve her life and personal integrity, taking into account her disability and her health situation, so that she could have access to special supports recommended by specialists, according to the international standards relevant to the case and to arrange those measures with the beneficiary and her representatives.

## VI. CONCLUSION

38. After going through the main standards recognized in international human rights law and some good experiences in Latin America, we reaffirm that inclusive education is the way to guarantee that persons with disabilities receive education on an equal basis with others. The Regional Network for Inclusive Education considers extremely important that international standards are harmonized with the regional ones. After all, human rights should be guaranteed to every person and cannot differ from one region to the other. Additionally, the decision of the Court will have a strong impact on the understanding and interpretation of the right to inclusive education, both at the regional and international level. Actually, the American regional system of human rights frequently makes reference and takes into consideration the standards developed by the European Court of Human Rights. The Court has -through this case- the opportunity to pronounce a fundamental precedent to advance in fulfillment of article 24 of the Convention on the Rights of Persons with Disabilities.

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<sup>48</sup> Inter-American Court of Human Rights, Case of Furlan and family v. Argentina, Judgment of August 31, 2012, para. 133.

<sup>49</sup> Inter-American Court of Human Rights, Case of Artavia Murillo and others (In vitro fertilization) v. Costa Rica, Judgment of November 28, 2012.

<sup>50</sup> Inter-American Court of Human Rights, Case of Gonzales Lluy v. Ecuador, Judgment of September 1, 2015.

<sup>51</sup> Inter-American Court of Human Rights, Case of Chinchilla Sandoval v. Guatemala, Judgment of February 29, 2016.

<sup>52</sup> Inter-American Commission on Human Rights, Precautionary measure 376/15 (Resolution 2016), published on July 7, 2016.

<sup>53</sup> Name adopted to preserve her identity.