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INCLUSION AT THE UNIVERSITY FROM A LEGAL POINT OF VIEW

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ABSTRACT:

Purpose: This study examines the international and European legal framework governing integration in education, with a particular focus on higher education institutions and the protection of students with disabilities and other vulnerable groups. The study traces the evolution of integration from a social concept to a legally recognized principle based on equality, accessibility, participation, and non-discrimination.

Materials and Methods: The study employs a comprehensive normative, historical, and comparative legal methodology. International legal instruments, including the Convention on the Rights of Persons with Disabilities, UNESCO and UNICEF standards, European Union law, and the case law of the European Court of Human Rights and the Court of Justice of the European Union, were analyzed to assess legal standards regarding inclusive education and reasonable accommodations.

Results: The analysis shows that inclusive education has become an essential element of the right to education under international and European human rights law. The case law of the ECHR establishes that the lack of reasonable accommodations, accessibility, and individualized support may constitute discrimination and a violation of the right to education.

Conclusion: Inclusive education is evolving into a multidimensional legal standard that requires not only formal equality but also effective participation, institutional support, an accessible environment, and systemic measures aimed at ensuring equal educational opportunities for all students in higher education.

Keywords: inclusion, university, legislation, case law,

INTRODUCTION:

The word "inclusion" derives from the Latin "includere" – "to include, to integrate, to encompass ". In the contemporary social and legal context, it means: the inclusion of all people in society without discrimination. General meaning inclusion means equal access, participation, removal of barriers, non-discrimination. In order to examine the international and European legal framework governing inclusion in education, and in particular in higher education institutions, a number of international legal sources were analyzed.

International legal definition of inclusion

Convention on the Rights of Persons with Disabilities (CRPD). *The United Nations* has adopted the Convention on the Rights of Persons with Disabilities, which is the most significant international instrument regulating the rights of persons with disabilities. The Convention does not contain an explicit legal definition of the term "inclusion" as a standalone concept, but it does include normative provisions regarding inclusion. Article 3 of the Convention sets forth the principles of inclusion [1]:

a) Respect for inherent dignity, individual autonomy, including the freedom to make one's own choices, and independence of persons;

b) Non-discrimination;

c) Full and effective participation and inclusion in society;

d) Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;

e) Equality of opportunity;

f) Accessibility;

g) Equality between men and women;

h) Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

Article 24 of the Convention addresses the right to inclusive education. It requires States Parties to ensure an inclusive education system at all levels and lifelong learning without discrimination and on an equal basis with others, including through reasonable accommodation and the provision of effective, individualized support. This interpretation is also supported by O'Callaghan et al., who state that "Article 24 of the UNCRPD provides an explicit right to 'inclusive education' for people with disabilities in the tertiary or higher education sector." [2]

Inclusion International's Position on the Draft Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities.

Inclusion "Inclusion refers to the opportunity for persons with disabilities to participate fully in all of the educational, employment, consumer, recreational, community and domestic activities that typify everyday society" (Inclusion International). Inclusion requires a paradigm shift in society's current view of people with a disability as people who require special conditions to people who must be enabled to fully participate in society, with their disability being accepted as part of their unique humanity. In other words, a person with a disability has the right to fully participate in the life of their community and to be treated with dignity and respect, regardless of any disability they may or may not have.

General comment No. 4 on Article 24 - the right to inclusive education [3]. According to the official interpretation of Article 24 of the Convention:

"Inclusion involves systemic reform encompassing content, methods, structures, and strategies in education," and further, "Inclusion means overcoming the barriers that limit participation." Inclusion involves access to and progress in high-quality formal and informal education without discrimination. Inclusion seeks to enable communities, systems and structures to combat discrimination, including harmful stereotypes, recognize diversity, promote participation and overcome barriers to learning and participation for all by focusing on the well-being and success of students with disabilities. It requires an in-depth transformation of education systems in legislation, policy and the mechanisms for financing, administering, designing, delivering and monitoring education. The legal development of the concept is further supported by Byrne, who concludes that "the right to inclusive education has become more focused," while identifying continuing concerns regarding its implementation. [4]

UNESCO and the inclusion in education.

UNESCO investigates and promotes inclusion in higher education because persistent and intersecting barriers—poverty, geographic isolation, gender, language barriers, disability, ethnicity, religion, migration and displacement—continue to deny millions their right to learn and limit universities' ability to serve diverse societies; by documenting systemic exclusion, assessing intersecting vulnerabilities (including the increased displacement of migrant and refugee learners and inequalities exacerbated by crises such as COVID-19), and providing evidence-based policy guidance and standards, UNESCO helps universities remove structural, financial, cultural, physical and pedagogical obstacles, broaden access to underrepresented talent, enhance learning outcomes through diverse perspectives, uphold the right to education, and prepare graduates to contribute ethically and effectively to plural societies. Despite significant progress in the last decade, millions are still denied their right to education, and learning opportunities continue to be unequally distributed. Globally, one in five children, adolescents and youth are entirely excluded from education. Poverty, location, gender, language, disability, ethnicity, religion, migration or displacement status are among the factors that continue to dictate and limit opportunities.

UNICEF and inclusive education.

Inclusive education means all children in the same classrooms, in the same schools. It means real learning opportunities for groups who have traditionally been excluded – not only children with disabilities, but speakers of minority languages too. Inclusive systems value the unique contributions students of all backgrounds bring to the classroom and allow diverse groups to grow side by side, to the benefit of all. Inclusive education allows students of all backgrounds to learn and grow side by side, to the benefit of all.

The Council of Europe and the European court of human rights

The Convention for the Protection of Human Rights and Fundamental Freedoms is an international treaty signed in 1950 and entered into force in 1953 for the founding member states of the Council of Europe. The main difference between the Convention and other international human rights treaties is the mechanism established under it to protect the rights enshrined therein—the European Court of Human Rights, which hears individual complaints from citizens of member states regarding violations of the Convention. The Council of Europe is a political international organization of European countries (so-called "Greater Europe"—47 member states) that works toward the goals of European integration. The organization promotes cooperation among all countries in Europe in the fields of law, human rights, democratic development, and cultural cooperation. The organization is a fully independent body, existing separately from the EU. Unlike the EU, the Council of Europe has no authority to create directly applicable legal norms for member states.

The European Court of Human Rights in Strasbourg addresses education in connection with Article 2 of Protocol No. 1 "right to education", Article 14 of the European Convention on Human Rights establishes a "prohibition of discrimination" [5]. A key principle under the Convention on Human Rights is the right to education, which must be "real and effective," not merely formal.

Incorporation into EU lawof the charter of fundamental rights of the European Union.

The charter systematizes fundamental rights within the EU, dividing them into six main categories: dignity, freedom, equality, solidarity, citizens' rights, and justice. It covers classic rights (such as the right to life, liberty, and security), but also includes contemporary rights related to social protection, data protection, and non-discrimination.

Non-discrimination occupies a central place in the charter, as set forth in Article 21 – Non-discrimination. It states:

1. Any form of discrimination based on sex, race, color, ethnic or social origin, genetic characteristics, language, religion or belief, political or other opinions, membership in a national minority, property, birth, disability, age, or sexual orientation.

2. Within the scope of application of the Treaties and without prejudice to their specific provisions, any form of discrimination based on nationality is prohibited.

The integration of people with disabilities is regulated by Article 26 of the Charter, which states: the Union recognizes and respects the right of people with disabilities to benefit from measures that ensure their autonomy, their social and professional integration, and their participation in the life of the community.

Transposition into EU law: Directive 2000/78/EC

Directive 2000/78/EC of the European Union establishes a general framework for equal treatment in employment and occupation [6]. Adopted in 2000, it is a key piece of EU anti-discrimination legislation prohibiting discrimination on the grounds of religion, disability, age, or sexual orientation in the workplace. The Directive prohibits direct and indirect discrimination, as well as harassment. It covers access to employment, training, professional membership, and working conditions. It also introduces an obligation to provide "reasonable accommodations" for people with disabilities to ensure effective equality.

Art. 2, §1: "For the purposes of this Directive, 'principle of equal treatment' means the absence of any direct or indirect discrimination…" [6]

Art. 2, §2, (a): "Direct discrimination occurs when a person is treated less favorably…"

Art. 2, §2, (b): "Indirect discrimination occurs when an apparently neutral provision… places persons… at a disadvantage…" [6]

Article 5 – Reasonable Accommodations for Persons with Disabilities

"In order to ensure compliance with the principle of equal treatment with regard to persons with disabilities, reasonable accommodations shall be provided. This means that employers shall take appropriate measures, where necessary in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden…" [6].

Integration of EU law into EU policies

The European Higher Education Area (EHEA) is a framework for cooperation among European countries in the field of higher education. Its main objective is "to create a compatible, comparable, and competitive higher education system in Europe." Forty-five countries participate in the Bologna Process; it is not part of EU law and is not an international treaty. The EHEA has no direct binding force, but it influences the national legislation of participating countries. The Bologna Process emphasizes that higher education must be accessible to all.

What does inclusion mean in the EHEA. In a legal and political sense, there is equal access, participation of all groups, removal of barriers and support for vulnerable groups. It includes people with disabilities, socially disadvantaged individuals, ethnic minorities, and students from diverse backgrounds. There is no explicit prohibition against discrimination, but there is a clearly stated principle of equality and equitable access, as higher education must reflect the diversity of society. In practice, the inclusion is implemented through national policies, university strategies, social programs such as scholarships, an accessible environment, and support for students with disabilities.

European Higher Education Area, established through the Bologna Process, is a "soft law" framework aimed at harmonizing higher education systems in Europe. Although it does not contain directly binding legal provisions, it upholds the principles of equal access, social justice, and inclusion. A number of communiqués, including those from Paris (2018) and Rome (2020), explicitly emphasize the need to build inclusive education systems that ensure the participation of all social groups and reduce inequalities.

European Disability Strategy

The European Disability Strategy 2021–2030 is a key "soft law" instrument; it does not create direct rights, is not binding, but it upholds the principles of inclusion, equality, and non-discrimination, thereby exerting a significant influence on the development of national policies and legal standards in the fields of education and social inclusion. The strategy is aimed at Member States, EU institutions, universities, and employers. Through the strategy, it seeks to make inclusion a political priority and to establish a legal standard.

MATERIALS AND METHODS:

The aim of this study is to examine and analyze the integration of individuals in universities from a legal perspective. To achieve this objective, a comprehensive research method was applied, incorporating normative, historical, and comparative approaches based on the principle of mutual complementarity. Through the application of the historical-comparative method, the development of integration in education and its international regulation was traced. Using the normative and comparative legal methods, an analysis was conducted of the relevant international norms regarding integration in education; the powers and practices of the main international jurisdictions, as well as those of international courts, regarding the integration of all students were analyzed.

RESULTS AND DISCUSSION:

The case law of the European Court of Human Rights has consistently affirmed that inclusive education is an integral part of the right to education and the principle of non-discrimination, as enshrined in Article 2 of Protocol No. 1 and Article 14 of the European Convention on Human Rights. An analysis of case law shows that the court has examined over a hundred cases and proceedings related to various forms of inclusion, including equal access to education for children with disabilities, ethnic and cultural inclusion, language rights, social integration, desegregation, and the provision of reasonable accommodations in the educational environment. A significant proportion of these cases concern the lack of adequate support for students with special educational needs. In decisions such as Çam v. Turkey, Enver Sahin v. Turkey, Stoian v. Romania, G.L. v. Italy, and T.H. v. Bulgaria, the European Court of

Human Rights has developed the understanding that the right to inclusive education requires states to actively ensure equal access, reasonable accommodations, an accessible educational environment, and effective support for students with disabilities, as the absence of such measures may constitute a form of discrimination and a violation of the right to education. In this way, the case law of the European Court of Human Rights is gradually shaping a European standard for inclusive education, based on human dignity, equality, and social cohesion.

For analytical clarity, the judgments should be read as a developing but not uniform standard: the Court examines whether the applicant's individual needs were identified and whether the authorities took practical, effective and proportionate steps to secure access and participation. The UN Committee on the Rights of Persons with Disabilities further explains that equality and non-discrimination require a shift towards a human-rights model, while the European Commission's Strategy for the Rights of Persons with Disabilities 2021–2030 places accessibility and independent participation among continuing policy priorities [17,18]. The European Higher Education Area's Rome Ministerial Communiqué also commits participating countries to inclusive and equitable higher education, although it is a policy commitment rather than a directly enforceable treaty obligation [19].

Çam v. Turkey (2016) [7]

The applicant in the case is Ayse Çam, a Turkish citizen who is completely blind. She brought the case against Turkey. The applicant applied to a music academy (higher education), successfully passed the entrance exams, but was nevertheless denied admission to the academy solely because of her blindness. The music academy's argument is that she is "not suitable" for the program without examining whether the curriculum could be adapted or whether accommodations were possible. The applicant claims she is a victim of discrimination and that her right to education has been violated.

The court examined the case under Article 2 of Protocol No. 1 to the European Court of Human Rights, which regulates the right to education, and in conjunction with Article 14 of the ECHR, which prohibits discrimination. The European Court of Human Rights found a violation of Article 14 in conjunction with Article 2 of Protocol No. 1. The Court's main reasoning is that the refusal was based exclusively on the disability.

In its reasoning, the court held that the refusal was based on the disability and that the refusal to provide reasonable accommodations constituted discrimination. The music academy and the national authorities in Turkey failed to assess the student's specific capabilities and did not consider or seek alternatives for her. The court held that the state has an obligation to ensure accommodation, access, and meaningful participation. In this case, Turkey was found guilty of discrimination for violating the right to education and was ordered to pay monetary compensation for damages. This approach is consistent with Cameron et al., who emphasize the importance of "procedures that secure individual decisions, rather than blanket policies or approaches" when universities assess their obligations toward students with disabilities. [8]

Enver Sahin v. Turkey [9]

The applicant in the case is Enver Sahin, a student with several disabilities (paraplegia—paralysis of the lower limbs). The respondent in the case is Turkey. The case was brought under Article 34 of the European Convention on Human Rights, which provides that an applicant may be an individual, a non-governmental organization, or a group of individuals who claim to be victims of one of the member states that have ratified the Convention.

Background: During his studies, the applicant suffered an accident that left him disabled. The main problem for the applicant is that the university buildings are not accessible to people with disabilities, and the applicant cannot attend lectures or participate in classes. He submitted a request to the university to adapt the buildings and ensure accessibility. The university's response is that there are insufficient funds and it is impossible to make such changes, so they offer him a personal assistant. The complainant claims that he is discriminated against on the basis of his disability.

The court examined the case under Article 2 of Protocol No. 1 to the ECHR, which guarantees the right to education, and in conjunction with Article 14 of the ECHR, which prohibits discrimination. The European Court of Human Rights ruled that there was discrimination in access to education, as the court found a lack of an individual assessment of the student's needs. The court emphasized that the proposed assistance (an assistant) was inadequate because it did not guarantee independence and did not resolve the actual problem (lack of access).

Stoian v. Romania [10]

The applicants are Stoian—a student with a severe disability (spastic quadriplegia)—and his mother (as his legal representative), and the respondent in the case is Romania. The applicant has a severe mobility impairment and uses a wheelchair. The main problem is that the school environment is not adapted; he faces difficulties moving around, accessing classrooms, and participating in lessons. His mother is forced to carry him in her arms; there is a lack of adequate care and support. The state's position: The authorities claim that measures have been taken, support has been provided, and the environment has been adapted. In filing the case, the complainants allege a violation of the right to education, discrimination, and a violation of their right to privacy.

In its judgment, the European Court of Human Rights ruled that there was no violation of the Convention. The court found that the authorities had taken reasonable measures to ensure access to education. The court considered that there was an educational program in place, services were provided, and efforts were made to accommodate the applicant. The court found neither direct nor indirect discrimination and found no violation of the right to private life. The court reached a very important conclusion that the state is not obliged to provide perfect conditions, and it is sufficient to make "reasonable efforts".

The ECHR thoroughly examines whether the state

has made efforts to include the child in the education system. The main measures taken by the state are: 1. Ensuring access to education: the child is enrolled in a mainstream school rather than a specialized one, and has an individualized education program; 2. Appointment of support staff: a personal assistant has been provided, and there is a resource teacher, with the aim of assisting the student in learning and adapting to the educational process; 3. Medical and social support—social services are provided, social assistance is granted, and access to medical care is ensured; 4. School accommodations—partial architectural modifications have been made, and access to certain facilities is ensured. These measures were not entirely sufficient; not all parts of the building are accessible to the child, and the child cannot move around independently. What assistance was provided to the mother? The mother received social assistance, institutional support, and the opportunity to participate in the child's care; however, in reality, she was forced to carry the child up the stairs by herself and be present at all times, which means she is not independent and her personal life is being interfered with.

What has changed since the case: 1. Limitation of previous case law: following the Çam v. Turkey case, "inclusion" was strongly upheld; following Stoian v. Romania, there is a balance—according to the court, a violation does not always occur; 2. The practical significance of the case is that states can defend themselves if they demonstrate efforts and have adapted curricula; 3. Criticism in theory—the case has been heavily criticized because it weakens the defence.

The judgment in Stoian v. Romania highlights the limits of the concept of inclusive education in the practice of the ECHR, emphasizing that the state fulfils its obligations when it takes reasonable measures, even if they do not lead to full and effective inclusion. The judgment demonstrates the tension between the concept of inclusion and the limitations arising from the state's resources and discretion.

G.L. v. Italy (2020) [11]

The applicant is a child, G.L., who has nonverbal autism. The case was brought by her parents against the Italian government. Main issue: The child is entitled (under Italian law) to a support teacher; she receives support in kindergarten, but this support was discontinued in elementary school. During the first two years of school, there is no specialized support, and the parents are forced to pay for private assistance themselves, with the state's argument being a lack of sufficient financial resources. The complainants argue that the child is deprived of effective access to education, does not receive the necessary support, and is placed at a disadvantage.

The court examined the case under Article 2 of Protocol No. 1 to the ECHR, which guarantees the right to education, and in conjunction with Article 14 of the ECHR, which prohibits discrimination. The ECtHR ruled that discrimination had occurred and that the right to education had been violated. The court finds that the state failed to provide the necessary specialized support and categorically rejects budgetary constraints as an excuse. A key principle in the case is that financial constraints cannot lead to unequal treatment. According to the Court, equality does not mean identical treatment, but rather accommodation. Reasonable accommodations are a legal obligation, not an option.

The ECHR ordered Italy to pay compensation, acknowledging the violation.

T.H. v. Bulgaria [12]

The applicant is a child (student) with behavioural and health difficulties (including attention-deficit/hyperactivity disorder), and the case has been brought against Bulgaria. The applicant started school in Bulgaria; he has special educational needs. The main issues the student faces are difficulties integrating into the school environment, behavioral problems, and a need for special support. The school took various measures, provided certain support, and made attempts at adaptation, but according to the applicant, these measures were insufficient and ineffective.

The applicant claims that he is not receiving an adequate education, that he is not integrated, and that he is being discriminated against. The court examines the case under Article 2 of Protocol No. 1 to the ECHR, which regulates the right to education, and in connection with Article 14 of the ECHR, which prohibits discrimination.

The main question before the court is whether the measures taken by the state to ensure the inclusion of a child with special needs are sufficient. The ECHR ruled that there was no violation of the Convention, with the court's primary reasoning being that the school had provided sufficient reasonable accommodations. The court found that there were educational measures, pedagogical support, and an institutional response. Regarding discrimination, the court held that there was no discrimination because there was no less favourable treatment and efforts were made toward inclusion.

The judgment in the case of T.H. v. Bulgaria shows that the European Court of Human Rights does not require full and effective inclusion but considers reasonable efforts on the part of the state to be sufficient, even when they do not guarantee actual equality.

Binding Nature of the Acts of the United Nations, UNESCO, UNICEF, and the EU

International organizations such as the UN, UNESCO, and UNICEF adopt a number of international instruments, like conventions, commentaries, and general policies, the serve as sources of law, but they are not directly applicable to member states, and we cannot directly invoke them if they conflict with national legal norms. The EU has its own sources of European legislation; some are binding, others are non-binding; some are directly applicable, while others require transposition into national law. The regulation has a general application. It is binding in its entirety and directly applicable in all Member States.

The Directive is binding as to the result to be achieved by each Member State to which it is addressed, but leaves it to the national authorities to choose the form and methods by which to achieve it. The Directive is binding as to the result that must be achieved within the time limit specified in the Directive. The Directive enters into force upon publication and notification to the Member

States. The (individual) decision is binding in its entirety on those to whom it is addressed. Recommendations, opinions, and the Charter of Fundamental Rights of the EU are of a recommendatory nature but are not directly applicable in the Member States.

There are over 100 cases pending before the Court of Justice of the European Union concerning the application and interpretation of Directive 2000/78/EC, but only about 5 of these cases relate to training, because training under the Directive is linked to individuals' professional development.

HK Danmark (Ring and Skouboe Werge) (C-355/11) [13].

The case was brought by a union against employers, the reason: the two female employees were dismissed; they suffer from health issues and have been absent from work for an extended period. The employers dismissed them under national regulations—after 120 days of sick leave '! shortened notice period. The Union argues that the employers should have provided reasonable accommodation, such as reduced working hours. In its lawsuit, the Union seeks the finding of discrimination and compensation for the dismissed employees. The issues raised in this case are what constitutes "disability" and "reasonable accommodation."

The ECJ ruling broadens the definition of disability, stating that "disability includes a condition caused by an illness… if it is long-term," thereby establishing a genuine obligation to accommodate. This is revolutionary because an illness can be considered a disability if it limits participation. According to the court ruling, reasonable accommodations may include a reduction in working hours, and this measure may be defined as "reasonable accommodation." The court ruled that dismissal during prolonged sick leave is permissible, but not if the absences are due to a disability and no accommodations have been provided. According to the EU court, dismissal may constitute discrimination if the employer has not provided reasonable accommodation. This ruling effectively broadens the definition of disability.

Daouidi v Bootes Plus SL (C-395/15) is a case before the Court of Justice of the European Union that interprets European Union law regarding discrimination against workers with disabilities [14]. The judgment clarifies when a long-term illness may be considered a "disability" within the meaning of Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation.

Key Question: Can a temporary illness constitute a "disability" under Directive 2000/78/EC?

Context and Background: Mohamed Daouidi, a restaurant worker in Spain, was dismissed shortly after sustaining a serious ankle injury. He challenged the dismissal as discriminatory, arguing that his condition constitutes a disability. The National Court in Barcelona has referred a question to the Court of Justice of the European Union for a preliminary ruling on the interpretation of the concept of "disability" under European anti-discrimination law.

The ruling expands protections for workers with long-term illnesses in the EU by requiring national courts to assess not only the duration but also the prognosis of the condition. The case strengthens the application of the principle of equal treatment and influences labor law and disability practices throughout the European Union.

Legal Issues and the Court's Opinion: The Court of Justice of the European Union has ruled that the concept of "disability" encompasses not only permanent but also long-term physical, mental, or psychological impairments that prevent a person from participating in professional life on an equal footing with others. Temporary incapacity for work may qualify as a disability if it is sufficiently long-lasting in nature or likelihood.

Significance and Impact: The ruling expands protection for workers with long-term illnesses in the EU by requiring national courts to assess not only the duration but also the prognosis of the condition. The case strengthens the application of the principle of equal treatment and influences labor law and disability practice throughout the European Union.

Coleman v Attridge Law (C-303/06) is a landmark 2008 ruling by the Court of Justice of the European Union that expands protection against discrimination in the workplace [15]. The case establishes the principle that Directive 2000/78/EC prohibits not only direct discrimination against people with disabilities, but also unfavorable treatment of persons associated with them.

Key concept: "Discrimination by association"

Background: Sharon Coleman claims that her employer treated her less favourably because she is the primary caregiver for her child with a disability. She does not have a disability herself but believes she has been the victim of discrimination related to her child's disability. The case raises the question of whether such "associated" discrimination falls within the scope of European law.

Judgment and Legal Consequences: The Court ruled that the protection under Directive 2000/78/EC applies even when the unfavourable treatment is motivated by the employee's association with a person with a disability. The decision introduces the concept of "discrimination by association" into EU law and serves as a basis for a broader interpretation of equality in employment.

Significance and Impact - Following the ruling, Member States are reviewing and adapting their national anti-discrimination legislation. The case has a long-term impact on the practices of employers and courts, affirming that protection against discrimination in employment relations also extends to individuals who care for vulnerable members of society.

VL v Szpital Kliniczny (C-16/19), the plaintiff is VL (an employee with a disability), and the defendant is Szpital Kliniczny (a university hospital in Krakow, Poland) [16]. The case reached the Court of Justice of the European Union via a preliminary ruling request from a Polish court, and the Court of Justice of the European Union issued its ruling in 2021.

The employer introduced an additional payment (bonus), but only for employees who submitted a disability certificate after a certain date. VL already had a disability, but had submitted the document earlier, as a result of

which he did not receive the bonus.

The plaintiff claims that there is discrimination on the basis of disability, not against able-bodied individuals, but against other individuals with disabilities, and asks the court to recognize that there is unequal treatment and that the principle of equality has been violated.

In its ruling, the Court of Justice of the European Union held that it is possible for persons with disabilities to be treated less favourably than other persons with disabilities. The court broadened this approach to allow comparisons between different groups of persons with disabilities. In the future, employers must be mindful not only of whether they are discriminating but also of how they treat different people with disabilities.

This case has no direct connection to education, but it indirectly shows universities that it is not enough for people with disabilities to have access; they must also be treated equally within the group. If students with different disabilities are treated differently, there may be discrimination among them.

The case law of the Court of Justice of the European Union regarding Directive 2000/78/EC treats education solely as an element of employment integration, rather than as a standalone right to education; consequently, there is no case law specifically addressing the university environment. Legal protection for inclusion in universities is not based on Directive 2000/78/EC, but on the Convention on the Rights of Persons with Disabilities and the Charter of Fundamental Rights of the EU; however, these do not have the binding nature for Member States that the Directive possesses. The case law of the Court of Justice of the EU on Directive 2000/78/EC develops the concept of disability and the obligation to provide reasonable accommodations, but remains limited to the sphere of employment, without directly covering higher education, which remains within the competence of the Member States.

Table 1. Summary of selected case law on inclusion and the right to education

Case	Context and legal issue	Outcome	Relevance to inclusive education
Çam v. Turkey (2016), no. 51500/08	Blind applicant passed entrance examinations but was refused admission to a music academy because of her disability.	Violation of Article 14 in conjunction with Article 2 of Protocol No. 1.	Authorities must assess individual ability and consider reasonable accommodation rather than rely on blanket assumptions. [7]
Enver Cahin v. Turkey (2018), no. 23065/12	A student with paraplegia could not access university premises; the university offered personal assistance instead of making an individual assessment of access needs.	Violation of Article 14 in conjunction with Article 2 of Protocol No. 1.	An alternative measure is not necessarily sufficient if it fails to secure autonomy, dignity and effective access. [9]
Stoian v. Romania (2019), no. 289/14	A child with severe mobility impairments challenged the adequacy of educational and support measures.	No violation found on the facts of the case.	The Court assesses the measures taken as a whole and the margin of appreciation; not every imperfection automatically constitutes a violation. [10]
G.L. v. Italy (2020), no. 59751/15	A child with non-verbal autism did not receive statutory specialised support during the first years of primary education.	Violation of Article 14 in conjunction with Article 2 of Protocol No. 1.	Failure to determine and provide the support actually needed may amount to disability discrimination. [11]
T.H. v. Bulgaria (2023), no. 46519/20	A child with behavioural and developmental difficulties alleged that school support and accommodation were inadequate.	No violation found on the facts of the case.	The Court examined the measures and institutional response in the specific circumstances; the case illustrates the importance of individual assessment. [12]

CONCLUSIONS

The present study demonstrates that inclusion in education has evolved from a social and pedagogical concept into a fundamental legal principle grounded in human dignity, equality, accessibility, and non-discrimination. Contemporary inclusion extends beyond formal access to education and increasingly requires states and educational institutions to ensure effective participation, reasonable accommodation, institutional support, and the removal of structural barriers affecting vulnerable groups. International instruments such as the Convention on the Rights of Persons with Disabilities, General Comment No. 4, and the standards developed by UNESCO and UNICEF establish inclusion as a multidimensional legal and institutional obligation requiring systemic transformation of educational systems.

The jurisprudence of the European Court of Human Rights has played a central role in shaping inclusive education as a justiciable human rights standard under Article 2 of Protocol No. 1 and Article 14 of the European Convention on Human Rights. Through cases such as Çam v. Turkey, Enver Sahin v. Turkey, G.L. v. Italy, Stoian v. Romania, and T.H. v. Bulgaria, the Court has developed a fact-sensitive approach [20] and has held that the absence of reasonable accommodation, accessibility, or individualized support may constitute discrimination and a violation of the right to education. At the same time, the court's case law reflects a balanced approach, granting Member States discretion when reasonable efforts toward inclusion have been made.

The analysis further shows that EU law addresses inclusion primarily in the context of equality in employment under Directive 2000/78/EC, while higher education remains largely within the competence of Member States. Consequently, the legal protection of inclusion in universities continues to depend mainly on international human rights standards and soft law mechanisms, as well as on the national legislation of individual countries. Inclusive education in Europe is evolving as a multifaceted legal standard, the effective implementation of which requires not only formal legal guarantees but also a sustained institutional commitment, an accessible environment, and a substantive understanding of equality capable of ensuring the participation of all learners in higher education

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