



**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX**

5 February 2015

Case Document No. 3

Mental Disability Advocacy Center (MDAC) v. Belgium
Complaint No.109/2014

**RESPONSE FROM MDAC
TO THE GOVERNMENT'S SUBMISSIONS
ON ADMISSIBILITY AND THE MERITS**

Registered at the Secretariat on 15 January 2015



Secretariat of the European Social Charter
DGI – Directorate of Human Rights
Council of Europe
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APPLICANT'S RESPONSE TO THE KINGDOM OF BELGIUM'S
SUBMISSIONS ON THE MERITS
(of 7 November 2014)

The Mental Disability Advocacy Centre

v.

The Kingdom of Belgium

Collective Complaint No. 109/2014

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The Mental Disability Advocacy Centre (MDAC, hereinafter the "Applicant") welcomes the comments of the Belgian Government (hereinafter the "Respondent Government") on the merits (hereinafter the "Government's Comments") of Collective Complaint no. 109/2014.

The Government's Comments deplore that MDAC has filed this complaint without allowing the proposed new Parliament Decree regarding measures for pupils with special educational needs (hereinafter the "M-Decree") to be fully implemented and requests that the complaint be declared unfounded on this basis. On the contrary, the Applicant argues that it is not necessary to await the outcome of implementation of the M-Decree to determine that the Belgian Government is in violation of the Revised European Social Charter (hereinafter the "Charter") because the Applicant argues that the provisions of the M-Decree themselves are insufficient to remedy the violations and will in certain respects help to perpetuate them. The provisions of the M-Decree do not conform with the requirements of the Charter nor of the United Nations Convention on the Rights of Persons with Disabilities (hereinafter the "CRPD").

Moreover, the Applicant would like to note that the Government's Comments to the Collective Complaint are in large part limited to an explanation of the M-Decree. The Applicant has already demonstrated in its original submissions that the M-Decree falls short of compliance with the Charter but will take the opportunity of this response to further those arguments as they relate directly to the counter-arguments raised by the Respondent Government, ensuring as little repetition as possible of those points already set out in its original submissions. However, by focusing almost entirely on the M-Decree, the Respondent Government has failed to provide a response to significant portions of the Applicant's original submissions setting out the violations by the Belgian Government of Article E in relation to Articles 15 and 17 of the Revised Social Charter.

Further, MDAC is disappointed that the Belgian Government's Comments admit both that, "the Flemish Government is aware that currently most of the pupils with disabilities go to special schools" and that "about 75% of all pupils with disabilities attend special schools" yet continues to contest MDAC's allegations in this complaint.¹

¹ In its State report to the CRPD in July 2011, the Respondent Government states that "The development of special education over the past 40 years has meant that pupils with disabilities are usually catered for in a non-inclusive education system: 0.78 per cent (nursery education), 6.79 per cent (primary education) and 4.24 per cent (secondary education)." Belgium, Initial reports submitted by States parties under article 35 of the Convention, CRPD/C/BEL/1, 13 March 2013, para 108. In its Concluding Observations on the report of Belgium in December 2014, the UN Committee on Economic, Social and Cultural Rights noted with concern "that many children with disabilities in the State party still attend special schools and are not included in the mainstream education system", Committee on Economic, Social and Cultural Rights, Concluding Observations concerning the fourth periodic report of Belgium, 2013, E/C.12/BEL/CO/4, 23 December, 2013, at para. 23. In absolute numerical terms, the number of pupils referred to special education continues to increase and rose again for the new school year in September 2014.

Indeed, the Government proposes the latter statistic as a counter-argument to MDAC's allegation that almost 85% of children with pupils with special needs are excluded from inclusive education, implying that 75% is an acceptable number of children to exclude. MDAC wishes to state that it finds such arguments superfluous and an obfuscation of the central issue: the violation of the rights of children with disabilities in Belgium in contravention of the Revised Social Charter.

In accordance with Rule 31§2 of the Rules of the European Committee of Social Rights (*hereinafter* the "ECSR"), the Applicant hereby submits its response.

i) The M-Decree does not satisfy the requirements of progressive realisation

The proposed M-Decree does not remedy the failure to progressively realise the rights under Articles 15 and 17 for children with mental disabilities nor ensure that the right to education of children with disabilities will be protected in the future.

The Government's Comments state that the Flemish Government has been investing in integrated education since 1986 in attempts to make its educational system more inclusive. DPOs have made clear the deficiencies in the area of inclusive education more than 15 years ago. It has been over five years since the CRPD entered into force in Belgium. Yet, the M-Decree is the latest in a line of iterations of proposed legislative changes and three successive Ministers of Education have made no progress in changing the reality for children with mental disabilities.

The Respondent Government nevertheless argues that this represents progressive realisation of the social rights of persons with disabilities. The Applicant submits that a thirty-year timeframe cannot be seen as progressive realisation: it is neither a reasonable time nor consistent with maximum use of Belgium's available resources. Most of the proposed legislative changes over the last 30 years have not been enacted and the M-Decree itself is still not in force. There has thus been no measurable progress over this period. Further, the Respondent Government states that, even after entry into force of this Decree it "needs some time to prove its effects". While it states that there will be an annual progress report, the M-Decree does not include and neither do the Government's Comments provide any detail on how progress in implementing the Charter rights will be measured or against what timeline.

Progressive realisation takes into account the impact of the State's choices on groups with heightened vulnerabilities, such as children with disabilities.² Thirty years, with additional time for the M-Decree to "prove its effects", represents the educational years of several generations of children with disabilities whose rights have been violated and who will continue to suffer the life-long effects of the denial of education.

² *Autism-Europe v. France*, Complaint No. 13/2000, Decision on the merits of 4 November 2003, §53.

In addition, the M-Decree itself does not lay solid foundations for progressive realisation of the Charter rights. The Decree reflects a continued preference for integrated education based on the need to follow a common curriculum over inclusive education which allows children to follow an individual curriculum where necessary. In fact, it is striking that the M-Decree continues to speak of a "special education report" ('verslag buitengewoon onderwijs') where a student is unable to follow the common curriculum with reasonable accommodations. This language confirms the continuing understanding of the Government that special education is the first and default solution for students with a disability. The Interfederal Centre for Equal Opportunities comments that, although the M-Decree "is a further step in the direction of a Flemish inclusive education system, it lacks a systematic approach. Such plan is however an essential expectation within the concept of 'progressive realisation'...".³ This sentiment echoes similar statements by Gauthier de Beco on the matter.⁴

- ii) *The M-Decree continues to include medical model assessments of disability to justify segregation of certain children with disabilities into special schools and fails to provide sufficient safeguards in the assessment process*

Currently, as set out in the Applicant's original submissions, a student's placement in mainstream, integrated or special education is established on the basis of a report by the Pupil Guidance Center (CLB). These reports are mostly based on a medical assessment according to typology of disability.⁵ The Government's Comments set out, at section 2.1, certain provisions of the M-Decree which support the transition from a medical to a social model of disability in the context of the identification of pupils with special education needs. While the Applicant welcomes the efforts of the Respondent Government in this regard, the continuing use of the classification system by medical definitions of disability undermines the ostensible move towards a social model approach and in fact reinforces the medical model approach. Paragraph 2, sub-section (e) of the Government's Comments further confirms that the assessment will continue to be guided by the typology of the student's disability (representing a continuation of the medical model approach over individualised assessments⁶) and that, "for a number of types this is still based on medical criteria." The Government's Comments do not specify which types of disability will result in a full medical model assessment of a given child's educational needs. In fact, the M-Decree actually creates a new medicalised 'type' of disability for the purposes of assessment – pupils with autism who have no intellectual disability which promotes the Interfederal Centre for

³ Interfederal Centre for Equal Opportunities (Interfederaal Gelijkekansencentrum), *Het ontwerp van decreet betreffende belangrijke en noodzakelijke maatregelen voor leerlingen met specifieke onderwijsbehoeften*, October 2013, See <http://www.diversiteit.be/het-ontwerp-van-decreet-betreffende-belangrijke-en-noodzakelijke-maatregelen-voor-leerlingen-met>

⁴ Gauthier de Beco, *Tijdschrift voor Onderwijsrecht en Onderwijsbeleid*, 2014, 1, p. 4-10 at p.8

⁵ See Applicant's original submissions at section ii.

⁶ See para. 1.1.1 of the Applicant's original submissions.

Equal Opportunities to express its concern that the M-Decree continues to expand special education and to further develop the divisions of a medical-oriented system.⁷

In our original submissions, the Applicant referred to Flemish research demonstrating that schools use the concept of capacity of care ('draagkrachtafweging') to refuse enrolment of students based solely on their disability without having met the students.⁸ It is clear that such refusals are often based on discriminatory attitudes on the part of teachers and/or principals whose stereotypes of children with disabilities in general lead to fear that a given child cannot be effectively included or educated in a mainstream setting. The M-Decree will remove capacity of care as a justification for refusing enrolment but allow schools to refuse admission on the basis that the accommodations required are unreasonable.

While this is, on the face of it, progressive, the M-Decree contains no measures to ensure that this criteria is applied in a less discriminatory way than the concept of capacity of care criteria has been to date. Neither do the Government's Comments refer to any other social, political, policy or practice amendments or measures which would support the implementation of this aspect of the Decree in a non-discriminatory manner. In short, the legislative changes embodied in the M-Decree which purport to protect the Charter rights fail to tackle the actual issue by addressing the stereotyping and discriminatory attitudes which are the current cause of exclusion from mainstream schooling, despite the fact that non-discrimination is a right of immediate effect and not subject to the principle of reasonable accommodation. Neither do they put in place appropriate safeguards to protect pupils from such discrimination.

In the context of assessing what reasonable accommodations are required in any particular case, General Comment No. 2 of the CRPD Committee in 2014 sets out that the individual's "dignity, autonomy and choices"⁹ must be taken into account. Assessments should not necessarily be carried out by medical personnel as they are not focused on assessing whether the child has a medical condition. They must include a process of engagement and consultation with individual children to identify the types of support or adjustment with which they feel most comfortable and by which they are enabled to participate most effectively, taking into account differences in personality and experience as well as differences in diagnosis. The Applicant's original submissions demonstrate that these requirements are not guaranteed in the drafting of CLB reports. The M-Decree does not ensure that assessments will be human rights compliant in the future or address the other practical issue surrounding the compilation of CLB reports set out in the Applicant's submissions.¹⁰

⁷ Interfederal Centre for Equal Opportunities, *Het ontwerp van decreet betreffende belangrijke en noodzakelijke maatregelen voor leerlingen met specifieke onderwijsbehoeften*.

⁸ Para. 32, Applicant's submissions.

⁹ Committee on the Rights of Persons with Disabilities, General comment No. 2 (2014), Article 9: Accessibility, CRPD/C/GC/2, 22 May 2014, para 26.

¹⁰ Paragraphs 30 – 35, Applicant's submissions.

The Children's Rights Commissioner has commented on this aspect of the M-Decree, stating that it offers little legal certainty for a pupil with a disability: "But contrary to what the explanatory memorandum states, the Children's Rights Commissioner believes that the wording in the Decree itself makes the right to reasonable accommodation insufficiently enforceable."¹¹ The Commissioner goes on to enumerate several minimum criteria which it feels are necessary but have not been included in the Decree. For example, there are no specific procedural requirements for the consultation between the school or class council, the CLB, the parents and the pupil. Further, there is no requirement to record in writing the outcome of this consultation regarding the accommodations which are necessary or document the decision as to whether these accommodations are deemed to be reasonable in a reasoned report.

Despite these deficiencies, such reports will remain effectively decisive in determining whether a child can attend mainstream schooling and what 'track' (e.g. technical, professional or general) they may attend within a mainstream school, thereby determining the effectiveness of their education and their ability to access higher education and, ultimately, employment.

iii) *The M-Decree does not solve on-going problems with the insufficient funding structure and supports*

One of the criteria which schools may apply in deciding whether a given accommodation is reasonable is the financial impact of the accommodation, taking into account possible supporting subsidies and the financial standing of those obliged to provide the accommodation. In its State report to the CRPD Committee in July 2011, the Respondent Government states that "In mainstream primary and secondary education, the school authorities may accept pupils holding a statement of special educational needs for disability types 1 to 7, subject to the *strict* condition that the school has sufficient resources to cater for the educational, therapeutic and care needs of the pupil in question. The school authorities may decide to refuse admission after consulting the parents and the pupil guidance centre that supports the school."¹² (Emphases added.)

As pointed out in the Applicant's original submissions, the M-Decree does not introduce any new funding to allow schools or localities to increase the number or range of supports they can provide to students. Machteld Verbruggen accuses the Decree of containing virtually no measures to improve support in mainstream education, suggesting that at present support in most cases is limited to the presence of a supervisor at the school for a few hours a week and that this discriminatory

¹¹ KRC, advice 14 Jan 2014, at <http://www.kinderrechtencommissariaat.be/advies/advies-ontwerp-van-decreet-over-maatregelen-voor-leerlingen-met-specifieke-onderwijsbehoeften>.

¹² Belgium, Initial reports submitted by States parties under article 35 of the Convention, CRPD/C/BEL/1, 13 March 2013, para 107.

allocation of supports (in contrast to what the same pupil would be offered in a special education school) denies many families any possibility of a real choice to send their child to mainstream schooling. Damningly, he states that the M-Decree in fact invests more in the development of special education.¹³

The M-Decree perpetuates the system whereby funding is linked to the school and not to the child so that different (in practice, more) resources are made available for the same pupil if s/he attends a special education school and not a mainstream school. The M-Decree effectively therefore allows schools to consider this shortage of support in mainstream schools as a factor rendering necessary accommodations for a given child unreasonable. This supports schools in making discriminatory decisions with the justification that to provide the accommodations required by children with disabilities would exceed the limit of what is reasonable financially in the context of a system which refuses to apply its available resources in a non-discriminatory manner.

The Government's Comments state that the only alternative to the current system of providing more support to special education schools than to mainstream schools is a differentiated financing system linked to the pupil. The Government finds this to be untenable unless the identification of those who qualify for additional funding can be done in "an objective manner", lending credence *a contrario* to the allegation that the current system allows subjective and discriminatory decision-making which will not be remedied by the simple change in criteria proposed by the M-Decree.

The Government's Comments go on to detail a "scheme of guarantee" for funding for support and accommodations whereby under-spends in one school year by special schools will be invested in supports in mainstream and special education in the same year. This reactionary rather than pro-active approach to funding is insufficient to promote and facilitate attendance in mainstream schooling. Without the availability of funding to increase attendance by children with disabilities in mainstream schools through the provision of reasonable accommodations there is little reason why special schools should have an under-spend in their yearly budgets.

In addition, this scheme of guarantee meets none of the criteria for the progressive realisation of the right to education of children with disabilities on a basis of equality and non-discrimination: it provides no timeframe for the shift in funding from discriminatory special schooling to the provision of reasonable accommodations in mainstream schooling; it sets out no benchmarks for progress in this regard or any method for measuring progress; and it clearly does not entail non-discriminatory application of maximum available resources towards realisation of Charter rights as very significant resources will continue to be applied in a discriminatory manner to the perpetuation of rights violations without any incentive to stimulate change in this regard.

¹³ Machteld Verbruggen, *Too little, too late: (g)een recht op inclusief onderwijs in Vlaanderen*. Tijdschrift voor Mensenrechten, 2014, 2, p 11-15 at p. 14 and 15.

While the Applicant is aware that there is a Working Group on the GON and ION education systems which could potentially have led to the development of measures for additional funding for children with more severe support needs, this Working Group is not currently functional as its work has been postponed.

The Government's Comments describe the M-Decree as "introducing the possibility to employ resources, expertise and people from special education to support pupils and teachers in mainstream education."¹⁴ The Charter obligations set out in Part I and the texts of Articles 15 and 17 place the Respondent Government under a positive obligation to pursue by all appropriate means the attainment of conditions in which the Charter rights can be effectively realised, to "take necessary measures to provide persons with disabilities with... education" and to "take all appropriate and necessary measures designed... to ensure that children and young persons... have... the education and the training they need...".¹⁵ In this context, the Government is thus under an obligation to ensure that its legislative framework contains a binding obligation to employ a maximum of available resources towards this goal – not to open up the possibility of doing so.

The financing system contained in the M-Decree is not consistent with the maximum use of available resources.¹⁶ However, in addition, recent spending cuts have undermined the provisions of the Decree in this regard even further. In autumn 2014, the new Minister for Education decided to reduce supports for 'competence development' and the 'second-line inclusion network' which were intended to facilitate inclusive education by providing supports to teachers to make reasonable accommodations. As a result, 20% savings have been made on the operating costs for 'competence development' while the 'second-line inclusion network' is in danger of ceasing to exist before it has even begun.

iv) The M-Decree fails to enshrine in law an explicit prohibition on discrimination in education or a presumption in favour of inclusive education

The Applicant reiterates its assertion in its original submissions that the Anti-Discrimination Act of 10 May 2007 prohibits discrimination on the basis of disability in employment and participation in economic, social, cultural or political activities but does not explicitly prohibit discrimination in education.¹⁷ This legal lacuna is not remedied by the M-Decree which likewise fails to include this express prohibition or guarantee of equality.

¹⁴ Submission of the Kingdom of Belgium on the merits, Conclusion, para 2

¹⁵ Revised European Social Charter, Part I and Articles 15(a) and 17(a).

¹⁶ *European Roman Rights Centre v. Bulgaria*, Complaint No. 31/2005, decision on the merits of 18 October 2006, para. 35.

¹⁷ Para 17.

Similarly, the M-Decree does not create a much needed presumption in favour of mainstream or inclusive education despite the Committee's repeated findings that inclusion of children with disabilities in mainstream schooling with the provision of reasonable accommodations should be the norm.¹⁸ Rather, as we indicate in this submission, it creates an implicit presumption in favour of special education for those children who require an individualised curriculum.

- v) *The M-Decree's provisions regarding collection of data on the total amount of refused admissions do not ensure adequate monitoring*

The Government's Comments argue that the M-Decree addresses the lack of data and information currently available to monitor how many children are refused admission to mainstream schooling in fact. However, the M-Decree does not in effect make any amendments to the previously extant situation under the GOK Decree. Schools are already obliged to notify the local consultation platform ("Lokale OverlegPlatform" or "LOP") of decisions to refuse enrolment but this has not, in practice, generated adequate data. Current practice indicates that a lot of schools refuse admission informally, in which case these 'decisions' are never recorded.¹⁹

Under the M-Decree the obligation is placed on parents to make a formal application for admission before schools are obliged to notify their refusal in a formal manner. Under general principles of international law as well as Part II of the Charter, the obligation to collect appropriate data and to monitor the implementation of the Charter falls on the Belgian Government as the State Party and its public agents and cannot be contingent on actions by the parents of children with disabilities. Further, the Government's Comments contain no information on safeguards to ensure that such formal admissions by parents are made consistently. There is no information on how parents are to be informed of this obligation on their part and the importance of doing so. There is no strategy for dissemination of information, sensitization of parents and/or schools or measures to dissuade schools from such informal refusals.

- vi) *The M-Decree does not sufficiently address the lack of appropriate procedural guarantees to ensure safeguard against discriminatory refusal of enrolment*

While the M-Decree does reinforce the review procedure under the Commission on Pupil's Rights and the Applicant welcomes such changes, this is insufficient to safeguard the right to inclusive education and prevent or remedy decisions of authorities to deny enrolment on discriminatory grounds. The M-Decree does not remedy the lack of a requirement to include disability organisations on local consultation platforms (LOPs), which are the bodies responsible for ensuring the right of enrolment and acting as intermediaries in case of conflicts, among other things. It also does not change the nature of an appeal to the Commission on Pupil's Rights

¹⁸ See Applicant's original submissions, para. 113.

¹⁹ For example, see VRT report, 'Koppen' of 4 December 2014.

which will remain an administrative procedure without the procedural guarantees which a full legal procedure would provide and without any possibility of appeal from its decision.

While a legal procedure may (arguable) be possible under the Anti-Discrimination law, it is rarely used as parents are not aware that it is an option open to them as the administrative procedure is the only one presented to them. The Government's Comments do not demonstrate any steps towards addressing this lack of information available to parents clarifying the options available²⁰ and many questions posed by parents when trying to register their children are dismissed or mishandled. Ultimately, the lack of transparency inherent in the entire system of mechanisms for challenging decisions on enrolment and the confusing or absent information provided to parents is in no way remedied by the M-Decree or any other Government measures.

vii) *The M-Decree entrenches discrimination against children with moderate or severe mental disabilities or who cannot follow the common curriculum due to their disability*

Currently, pupils with moderate or severe mental disabilities can enrol in mainstream education following an individual curriculum under the ION program. However, the school may decide whether the accommodations required by the student to enable them to follow this curriculum are reasonable and may reject their enrolment if they are deemed to be unreasonable.

The number of places in this program remains limited in law to 100 despite the M-Decree and, as pointed out in our original submissions, the number of children admitted remains at approximately this number despite an instruction by the Minister for Education in 2012 that all pupils who qualify for the program should be able to participate.²¹ In practice, children who require an individual curriculum are regularly excluded from mainstream schools as schools maintain that there is no obligation to even conduct a reasonable accommodation assessment where an individual curriculum is required.

The M-Decree introduces changes to the education system for those pupils who can follow the core curriculum in a mainstream school with the provision of reasonable accommodations. It does not, however, apply to children who require individual curricula. There is no right to inclusive education for these children in law or in practice and the M-Decree does not create such a right. The Interfederal Centre for Equal Opportunities states that the M-Decree leaves it to the goodwill of the school as to whether a student who requires an individual curriculum will be enrolled or not. It suggests that the right to inclusive education is dependent in fact on whether it is possible for the pupil in question to follow the common curriculum, which is contrary

²⁰ See Applicant's submissions, para. 41.

²¹ Ibid, para. 27.

to the basic concept of inclusive education²² as allowing inclusion of children into a common learning environment while learning according to their own standards of progress. Machteld Verbruggen goes further, stating that the restriction on the right of pupils to register in mainstream education on the basis of their inability to follow the common curriculum cannot be seen as other than discrimination on the grounds of disability²³ while Gauthier de Beco says that deviating from the common curriculum is effectively considered by definition to be an unreasonable adjustment, in contravention of the norms of the CRPD.²⁴ The Government's Comments do not provide any information as to how it plans to address these on-going violations and ensure the right to inclusive education for children with moderate or severe mental disabilities or who cannot follow the core curriculum due to their disability.

viii) *The Government's Comments do not address the denial of education to 'non-attenders'*

As set out at paragraph 55 – 57 of the Applicant's submissions, a number of children and young persons with a disability are exempt / excluded from compulsory schooling and attend day-centres or institutions instead of schools. As these services are not considered to be 'education', they are not at all affected by the M-Decree. The Government's Comments, however, do not deal with the exclusion of these children from inclusive education in any way or suggest that this is an issue with which the Respondent Government has concerned itself.

ix) *The Government's Comments do not address the allegations of discrimination on the basis of economic status*

At paragraph 53 of its submissions, the Applicant has argued that the burden of paying for necessary supports, such as monetary contributions for materials and therapists and the estimated cost of the time invested by parents themselves, is being shouldered by parents of children with disabilities and that children from families with lower income are disproportionately represented in segregated schooling, due to the lack of resources.

In the context of an analysis of the M-Decree, Machteld Verbruggen argues that inclusion in mainstream education continues to a large extent to be dictated by the socio-economic status of families – availed of by those who can afford to take the responsibility on themselves to make up the difference between the support provided and that which is necessary for the child's education.²⁵ The M-Decree takes no account of this intersectional discrimination nor makes any provision to alleviate the

²² Interfederal Centre for Equal Opportunities, *Het ontwerp van decreet betreffende belangrijke en noodzakelijke maatregelen voor leerlingen met specifieke onderwijsbehoeften*.

²³ Machteld Verbruggen, *Too little, too late: (g)een recht op inclusief onderwijs in Vlaanderen*, Tijdschrift voor Mensenrechten, 2014,2, p 11-15 at pg 14.

²⁴ Gauthier de Beco, *Tijdschrift voor Onderwijsrecht en Onderwijsbeleid*, 2014, 1, p. 4-10 at p.6.

²⁵ Machteld Verbruggen, *Too little, too late: (g)een recht op inclusief onderwijs in Vlaanderen*.

financial burden on parents of children with disabilities. The Government's Comments do not address this issue in any way or suggest that any measures are being taken or planned in this regard.

Conclusion

Debates at Government level do not differentiate between 'integration' and fully inclusive education in a common learning environment, leading to the assumption that there is a lack of understanding on this matter which would explain why the debates have not dealt specifically with key issues such as the exclusion of children who require an individual curriculum and the supports they require to do so.

As indicated above, in many areas the Government's submissions highlight a failure to adequately engage with the requirements of progressive realization to the maximum of available resources, particularly in the context of the clearly insufficient response to violations of Charter rights rooted in the discriminatory allocation of resources and supports.

It is the Applicant's position that these and other fundamental misinterpretations of the right to inclusive education and the principles of the Charter and the CRPD as set out in this and our previous submission, equally flaw the M-Decree which, at its core promotes integration into mainstream education and not the right to inclusive education as contained in the Charter.²⁶ This renders it an unfit instrument to remedy the violations of the rights of children with mental disabilities in Belgium.

Budapest, 15 January 2015



Ann Campbell
Litigation Director of MDAC
Representative of the Applicant

²⁶ See paragraphs 61 – 113 of the Applicant's original submissions, in particular paragraph 97.