EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX

12 October 2017

Case Document No. 3

International Federation for Human Rights (FIDH) and Inclusion Europe v. Belgium
Complaint No.141/2017

SUBMISSIONS BY THE GOVERNMENT ON THE MERITS

Registered at the Secretariat on 22 September 2017

COMPLAINT No. 141/2017 PHL/5788

EUROPEAN COMMITTEE OF SOCIAL RIGHTS

SUBMISSIONS ON THE MERITS OF THE COMPLAINT

FOR: THE KINGDOM OF BELGIUM,

RESPONDENT STATE,

Represented by Mr Paul RIETJENS, Director General of Legal Affairs, Agent for Belgium, whose offices are located at SPF Affaires étrangères, Rue des Petits Carmes, 15 (Egmont II), 1000 Brussels, Belgium.

AGAINST: 1) THE "INTERNATIONAL FEDERATION FOR HUMAN RIGHTS",

FIRST COMPLAINANT ORGANISATION,

Represented by Mr Dimitris CHRISTOPOULOS, President, whose offices are located at Passage de la Main d'Or, 17, 75011 Paris, France,

2) INCLUSION EUROPE,

SECOND COMPLAINANT ORGANISATION,

Represented by Ms Maureen PIGGOT, President, whose offices are located at rue d'Arlon, 22, 1040 Brussels, Belgium.

Having regard to the collective complaint lodged on 12 January 2017 by the "International Federation for Human Rights" and "Inclusion Europe".

Having regard to the Belgian Government's observations on admissibility dated 3 March 2017.

Having regard to the decision on admissibility adopted by the European Committee of Social Rights on 4 July 2017.

I. Subject of the complaint

1.1. In their collective complaint lodged on 12 January 2017, the complainant organisations:

> "*request the European Committee of Social Rights to rule that, in view of the lack of progress achieved in promoting access to mainstream education for children with an intellectual disability in the French Community, and by conversely allowing the situation to deteriorate, in breach of its commitments under the revised European Social Charter, Belgium has failed to comply with Articles 15 and 17 of the European Social Charter, read in isolation or in conjunction with Article E of the revised European Social Charter.*"[1]

In support of this claim, the complainant organisations make the following points:

- according to Article 12, § 1, of the "decree of the French Community of 3 March 2004 on the organisation of special education", the enrolment of pupils in special education is conditional upon the presentation of a report showing that the reasonable accommodation put in place within mainstream education is inadequate, a requirement that applies only in the case of special education types 1, 3 and 8;[2]

- the mechanisms introduced in Chapter X of the above-mentioned decree for the integration of special education pupils into mainstream education are not effective as the procedures involved are complex and uncertain.[3]

1.2. The complainant organisations infer from this that the manner in which foundation level and secondary education is organised in the French Community constitutes a violation of Articles 15, 17 and E of the revised European Social Charter ("the Charter") and that it is discriminatory on three distinct levels.

They point out that "*the approach based on a typology of different educational categories (the 8 "types"), which themselves correspond to different categories of disability, and the disproportionate number of children and young persons who are directed towards special education are indicative of the persistence of the "medical" model of disability within the organisation of education in the French Community, which breaches the international commitments made by Belgium [….]*".[4]

The discrimination to which it is alleged that the organisation of foundation level and secondary education in the French Community gives rise is as follows:

- discrimination on the ground of disability, as the latter leads to pupils being inexorably directed towards special education, not least because of the failure to cover the cost of mono-disciplinary speech therapy for children with a language development disorder or who suffer from dysphasia and who have an IQ lower than 86, to the detriment of an inclusive approach to the provision of education;

- discrimination on the ground of the nature of the disability, as the projects for integration into mainstream education are aimed primarily at pupils in special education types 1 (mild mental disability) and 8 (learning difficulties), whereas pupils in type 2 special education (moderate or severe mental disability) are, it is alleged, massively under-represented;

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[1] Collective complaint No. 141/2017, Conclusion.
[2] Collective complaint No. 141l2017, p. 8.
[3] Collective complaint No. 141l2017, p. 11.
[4] Collective complaint No. 141l2017, p.14.

- discrimination on the ground of socio-economic origin, as families on low incomes are unable to raise the funds that would enable their children to be placed in mainstream schools.

II. Exhaustion of domestic remedies: a sine qua non condition for internationalising a dispute, which has not been met in the instant case

2.1. It its decision of 4 July 2017, the European Committee of Social Rights (hereafter "the Committee") declared collective complaint No. 141/2017 admissible.

In its decision, the Committee notes that the formal admissibility requirements, as laid down in Articles 3, 4 and 5 of the Additional Protocol to the European Social Charter providing for a System of Collective Complaints ("the Protocol"), have been met.

Even before this decision, the Belgian Government, in a letter dated 3 March 2017, stated that it had no objections concerning the admissibility of the complaint lodged by FIDH and Inclusion Europe, without prejudice to any arguments it may wish to present at the merits stage.

2.2. Belgium notes that the preamble to the Protocol reads as follows:

> "*Resolved to take new measures to improve the effective enforcement of the social rights guaranteed by the Charter*;
>
> *Considering that this aim could be achieved in particular by the establishment of a collective complaints procedure, which, inter alia, would strengthen the participation of management and labour and of non-governmental organisations*".

Even though it is collective, the complaints system introduced by the Protocol is still governed by the relevant principles of international law regarding international complaints, as ultimately there arises the issue of states' international responsibility for internationally wrongful acts, in this case the alleged failure to comply with international obligations under the Charter.

At the admissibility stage, the Committee conducted a review to determine whether the admissibility requirements, as prescribed by the Protocol, had been formally met.

Belgium raised no objections, as it was merely a matter of establishing that the complainant organisations had standing to lodge a collective complaint under the Protocol and that the complaint had been duly substantiated in writing.

Irrespective of the issue of admissibility proper, Belgium notes that the Charter and the Additional Protocol are international treaties instituting a system of fundamental rights protection and that as such, they are to be understood in the light of the fundamental principles of public international law.

It follows that in order to have merit, the collective complaint must, in the first instance, comply with the relevant principles regarding international disputes, foremost among them the exhaustion of domestic remedies rule.

In matters relating to international complaints, however, especially in litigation relating to international human rights law, this principle is an essential condition for the internationalisation of any dispute, as it is founded on respect for state sovereignty.

The fact is, however, that no action has been brought by the complainant organisations before the appropriate domestic bodies, even though remedies are available under the Belgian institutional system in cases where there has been a failure by the competent national authorities, in particular as regards the enforcement of fundamental rights.

Belgium wishes to draw the Committee's attention to the fact that the responsibility of public authorities has long been recognised by the competent Belgian courts, under domestic law, when dealing with disputes relating to subjective rights, even where those rights are enshrined in an international legal instrument. According to Belgian law, moreover, the Court of Cassation, i.e. the highest Belgian court, grants courts the power to order reparation in kind, by requiring the administration to take steps to put an end to the wrongful act in question.[5]

Based on the foregoing, the complaint must be considered unfounded, as one of the essential conditions for internationalising the dispute and, consequently, for holding the Belgian Government accountable before an international body, has not been met.

2.3. Belgium notes that neither the Charter nor the Protocol expressly stipulates that for collective complaints to have merit, all domestic remedies must have been exhausted.

The fact remains, however, that the exhaustion of domestic remedies rule is a corollary of state sovereignty and as such, constitutes a fundamental principle of public international law.

Since neither the Charter nor the Protocol specifically derogates from it, it cannot be concluded that this principle does not apply. Restrictions upon the independence of states and, by extension, on their sovereignty, cannot be presumed.[6]

The requirement to exhaust domestic remedies is a customary rule which, generally speaking, applies to all international complaints. The International Court of Justice, for example, has emphasised that "*The rule that local remedies must be exhausted before international proceedings may be instituted is a well-established rule of customary international law*".[7] [8]

Although it originated in state practice regarding diplomatic protection, the requirement to exhaust domestic remedies now extends to all international complaints, unless otherwise expressly stipulated in the primary rule.

There is no reason to suppose, either, that the requirement does not apply to international human rights law given that, within the Council of Europe framework, the texts providing for the possibility of appeal to the Europe Court of Human Rights leave the principle of exhaustion of domestic remedies intact.[9]

International custom requiring evidence of a general practice accepted as law, Belgium notes that the human rights protection mechanisms, whether individual or collective,

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[5] M. UYTTENDAELE, *Précis de droit constitutionnel belge,* 3e édition, Bruylant, 2005, p. 658, paragraph 590.
[6] Permanent Court of International Justice, Series A, No. 10, Lotus case, 7 September 1927.
[7] *Interhandel case,* judgment of 21 March 1959, ICJ, Reports 1959, p. 6 et seq.
[8] See also: J. KLABBERS, *International Law,* Cambridge, 2013, p. 155.
[9] Article 34 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

enshrine the principle of exhaustion of domestic remedies.[10]

The work of the International Law Commission, to which the Committee refers in its case law, confirms this, moreover.

For in matters relating to international complaints, the Commission notes that a state's international responsibility cannot be invoked unless all available and effective domestic remedies have been exhausted, if the application is subject to the exhaustion of domestic remedies rule, which is unquestionably the case here.

The fact that the Charter or Protocol does not make collective complaints conditional upon the exhaustion of domestic remedies is irrelevant, therefore, since the principle is recognised by customary international law and exists in its own right, unless otherwise expressly stipulated.

Ⅲ. Scope of Belgium's international obligations under Articles 15, 17 and E of the Charter

3.1. In their complaint, the complainant organisations rely mainly on Articles 15, 17 and E of the Charter.

These provisions read as follows:

> **Article 15 – The right of persons with disabilities to independence, social integration and participation in the life of the community**
>
> With a view to ensuring to persons with disabilities, irrespective of age and the nature and origin of their disabilities, the effective exercise of the right to independence, social integration and participation in the life of the community, the Parties undertake, in particular:
>
> 1. to take the necessary measures to provide persons with disabilities with guidance, education and vocational training in the framework of general schemes wherever possible or, where this is not possible, through specialised bodies, public or private;
>
> 2. to promote their access to employment through all measures tending to encourage employers to hire and keep in employment persons with disabilities in the ordinary working environment and to adjust the working conditions to the needs of the disabled or, where this is not possible by reason of the disability, by arranging for or creating sheltered employment according to the level of disability. In certain cases, such measures may require recourse to specialised placement and support services;
>
> 3. to promote their full social integration and participation in the life of the community in particular through measures, including technical aids, aiming to overcome barriers to communication and mobility and enabling access to transport, housing, cultural activities and leisure.
>
> **Article 17 – The right of children and young persons to social, legal and economic protection**
>
> With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation

[10] As an example of relevant practice, see *inter alia*: Article 34 of the European Convention for the Protection of Human Rights and Fundamental Freedoms; Article 46 of the American Convention on Human Rights; Article 2 of the Optional Protocol to the International Covenant on Civil and Political Rights; Article 3 of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; Article 56 of the African Charter on Human and Peoples' Rights; Article 2 of the Optional Protocol to the Convention on the Rights of Persons with Disabilities.

with public and private organisations, to take all appropriate and necessary measures designed:

1 a to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose

b to protect children and young persons against negligence, violence or exploitation;

c to provide protection and special aid from the state for children and young persons temporarily or definitively deprived of their family's support;

2 to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools.

Article E – Non-discrimination

The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status.

3.2. Belgium considers it useful to begin with a reminder of the scope of the above-mentioned provisions, given that the complainant organisations have expressed criticism which is ultimately an attack on the very principle of special education for pupils with special needs.

Article 15.1 lays down an obligation of means when it notes that the States Parties to the Charter must take the necessary measures "*to provide persons with disabilities with guidance, education and vocational training in the framework of general schemes wherever possible or, where this is not possible, through specialised bodies, public or private*" (emphasis added).

Far from outlawing special education, therefore, the Charter promotes an inclusive vision of education, while at the same time recognising the right of States Parties to allow a system of special education geared to special needs pupils to continue operating alongside mainstream education.

The extent to which the situation in Belgium as regards the organisation of foundation level and secondary education for pupils with special needs complies with the Charter should be considered mainly in the light of the conclusions reached by the Committee in its case law, moreover.

From a careful reading of Complaint No. 141/2017 it will be observed that the key provisions which are alleged to have been violated are Articles 15.1 and E. The complainant organisations' reference to Article 17 is purely formal and they deduce no crucial arguments from it.

In its 2007 conclusions, the Committee observed that having regard to Article 15.1:

> *"the Committee therefore considers necessary the existence of non-discrimination legislation as an important tool for the advancement of the inclusion of children with disabilities into general or mainstream educational schemes. Such legislation should, as a minimum, require a compelling justification for special or segregated educational systems and confer an effective remedy on those who are found to have been unlawfully excluded or segregated or otherwise denied an effective right to education. Legislation may consist of general anti-discrimination legislation, specific*

legislation concerning education, or a combination of the two."[11]

As to the reference to Article E of the Charter, Belgium wishes to point out that this article has no independent existence in its own right.

As has been highlighted by the Committee, this provision must necessarily be invoked in conjunction with another provision of the Charter whose violation is alleged.[12]

Also, discrimination between individuals or a group of individuals in the enjoyment of the rights enshrined in the Charter may be said to have occurred only if it is established that there is no objective and reasonable justification for the difference in treatment.[13]

Ⅳ. The manner in which foundation level and secondary education is organised in French-speaking Belgium is compliant with Articles 15, 17 and E of the Charter

4.1.1. It is customary for the Committee, when assessing whether a situation is in conformity with the Charter, to first examine the situation in law to make sure that it is not an obstacle to the implementation of the rights provided for in the Charter, and then to determine whether the legal system put in place is effective.

This method is based on the idea that "*the aim and purpose of the Charter, being a human rights protection instrument, is to protect rights not merely theoretically, but also in fact*".[14]

As a result, "*the implementation of the Charter requires the States Parties to take not merely legal action, but also practical action to give full effect to the rights recognised in the Charter*".[15]

By "practical action", the Committee means making available the resources and introducing the operational procedures necessary to give full effect to the rights specified in the Charter.[16]

Where the issues in question are exceptionally complex and particularly expensive to resolve, the Committee concedes that a State Party "*must take measures that allow it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources*".[17]

4.1.2. In order to determine whether the organisation of foundation level and secondary education is in conformity with Articles 15, 17 and E of the Charter, it needs to be established firstly whether foundation level and secondary education, as organised in French-speaking Belgium, is in keeping with Belgium's international obligations with respect to inclusive education (A) and, secondly, whether there are compelling reasons for continuing to provide special education, alongside the mainstream education system (B).

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[11] European Committee of Social Rights, Conclusions 2007, Statement of Interpretation on Article 15.1.
[12] Autism-Europe v. France, Complaint No. 13/2000, decision on the merits of 4 November 2003.
[13] European Roma Rights Centre (ERRC) v. Italy, Complaint No. 27/2004, Decision on the merits of 7 December 2005.
[14] International Commission of Jurists (ICJ) v. Portugal, Complaint No. 1/1998, decision on the merits of 9 September 1999, paragraph 32.
[15] Autism-Europe v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003, paragraph 53.
[16] International Movement ATD Fourth World v. France, Complaint No. 33/2006, decision on the merits of 5 December 2007, paragraph 61.
[17] Autism-Europe v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003, paragraph 53.

A. The organisation of foundation level and secondary education in French-speaking Belgium, where inclusiveness is the rule

4.2.1. The arrangements for foundation level and secondary education in French-speaking Belgium are set out in the "decree of 24 July 1997 defining the priority missions of foundation level and secondary education and organising the structures necessary to achieve them" (hereafter the "missions decree").[18]

The education in question is general education within the meaning of Article 15.1 of the Charter.

Alongside this system, there is so-called "special" education, the arrangements for which are set out in the "decree of 3 March 2004 on the organisation of special education" (hereafter "the decree of 3 March 2004").

Both mainstream education and special education, whether at foundation or secondary level, come under the authority of the Minister with responsibility for education, thereby ensuring that the principle of compulsory schooling is observed.

4.2.2. Under these domestic law provisions, pupils are, in principle, directed towards mainstream education. Indeed, schools have an obligation to enrol pupils in mainstream education, as Article 80 of the "missions decree" states that:

> "*§ 1 Schools in the French Community shall be required to enrol any pupil who so requests no later than 30 September of the current academic year, provided he or she meets the requisite conditions for being a regular pupil.*
> *However, without prejudice to the provisions of Article 79, paragraphs 1,* 2, *4 and* 5, *and save in exceptional circumstances recognised as such by the Minister, schools in the French Community shall not be required to enrol, in the 1st phase including the second common year, pupils from another secondary school who have been referred for an additional year.*
> *Schools in the French Community shall not be required to enrol pupils of full age who refuse to sign the written document referred to in Article 76, paragraph 5. Nor shall they be required to enrol pupils of full age who have been permanently excluded from a school after reaching the age of 18 years.*
> *Where a school in the French Community is obliged, owing to lack of space, to limit the number of pupils it accepts, the head teacher shall notify the administration immediately.*
> *The Government departments shall carry out monitoring to ensure that head teachers comply with the present decree, in particular during the listing phases referred to in paragraph 4, sub-paragraphs 15 and 17, and in the implementation of paragraph 4, sub-paragraph 19.*
> *§ 1erbis. All nursery and/or primary schools in the French Community shall inform the Government departments of the number of places available per grade, at each location where they operate.*
> *This information shall be submitted at any time of the year in the case of the current academic year and from the month of January in the case of the following academic year.*
> *§* 2. *After 30 September, pupils who qualify for the exemption provided for in Article 79, § 1, sub-paragraph* 2, *and who wish to be enrolled in schools in the French Community shall submit their applications to the authorities. The latter shall decide in which schools the pupils may be enrolled. The authorities shall not be required to enrol in French Community schools pupils who have been excluded from subsidised educational institutions and who apply for enrolment after 30 September unless the pupils have exhausted the procedures laid down in Articles 89 and 90.*
> *§ 3 With the exception of the first phase of mainstream secondary education, regardless of the time of year, any head teacher who is unable to enrol a pupil who so requests shall issue him or her with an enrolment application attestation in such format as the Government shall prescribe. The head teacher shall immediately forward a copy of the attestation to one of the area committees responsible for enrolment in education in the French Community to be set up by the Government.*

[18] All the statutory texts can be found in the Justel database operated by the Belgian Federal Public Department of Justice: http:llwww.ejustice.justfgov.belcgi_Joilloi.pl

> *The enrolment application attestation shall include the reasons for refusal and indicate the administrative agency from which the pupil and his or her parents may seek assistance in enrolling the pupil in a French Community school or other institution ensuring compliance with the compulsory schooling requirement."*[19]

Under no circumstances may a pupil's special needs or the school's refusal to make reasonable accommodation (such as widening a door or installing a ramp) constitute grounds for denying admission to mainstream education.

It is surprising in this context that the complainant organisations should point to the fact that the decree of 12 December 2008 on measures to combat certain forms of discrimination requires the public authorities to make reasonable accommodation for pupils with special needs,[20] while at the same time omitting to mention the possibility of seeking an injunction (Article 50) which is also provided for in the decree.

Under this procedure, pupils with special needs (in practice their legal representative or representatives) can challenge decisions refusing them admission in the Belgian courts, if the reasons given for the refusal relate directly or indirectly to the person's disability:

> *Art. 50. § 1. At the request of the victim of discrimination, the bodies referred to in Article 37, one of the interest groups referred to in Article 39, the prosecution service or, depending on the nature of the act, the labour law auditor's office, the president of the court of first instance or, depending on the nature of the act, the president of the labour court or of the commercial court, shall confirm the existence and order the cessation of any act, even if punishable under criminal law, which infringes the provisions of the present decree.*
> *§ 2. At the request of the victim, the president of the court may grant him or her the flat-rate compensation referred to in Article 46, § 2.*
> *§ 3. The president of the court may require his or her decision or such summary as he or she may draft thereof to be posted, for such period as he or she shall determine, both outside and inside the infringer's establishments or premises, and order that his or her judgment or the summary thereof be published or disseminated in newspapers or by any other means, with all costs to be borne by the infringer.*
> *Such publicity measures may be prescribed only if they are likely to contribute to the cessation of the impugned act or the effects thereof.*
> *§ 4. Actions pursuant to § 1 shall be brought and examined under the summary application procedure.*
> *They may be brought in the form of a petition, drawn up in four copies and sent by registered letter or lodged with the registry of the competent court.*
> *In order to be valid, the petition shall contain:*
> *1° An indication of the day, month and year;*
> *2° The surname, first names, occupation and address of the petitioner;*
> *3° The name and address of the natural person or legal entity against whom the application is being made;*
> *4° The purpose of and grounds for the application.*
> *The registrar of the court shall immediately notify the other party by registered letter, to which shall be appended a copy of the petition, and shall invite him or her to appear not earlier than three days and not later than eight days after the date of despatch of the registered letter.*
> *The action shall be heard notwithstanding any proceedings which may be instituted in respect of the same acts before any criminal court.*
> *Where the facts submitted to the criminal court are the subject of an action for an injunction, no decision may be given in the criminal proceedings until a final decision has been rendered in*

[19] Schools subsidised by Belgium's French Community have a similar obligation under Articles 87 and 88 of the "missions decree". These are schools which belong to the official network or the "free" network and which receive grant aid from Belgium's French Community but which come under the umbrella of an Organising Authority other than the French Community.

[20] Complaint No. 141/2017, p. 8.

> *respect of the action for an injunction. The time-limit for prosecution shall be suspended during the deferral.*
> *The judgment shall be provisionally enforceable, notwithstanding appeal and without security. It shall be communicated by the registrar of the court forthwith to all the parties and to the Crown Prosecutor.*
> *§ 5. The provisions of the present article shall be without prejudice to the powers and responsibilities of the Council of State, as set out in the co-ordinated laws of 12 January 1973 on the Council of State.*

The action for an injunction thus described affords pupils with special needs a means to exercise their subjective right to be admitted to mainstream education and to overturn the school's decision denying them admission on the ground that it is unable to cater to the needs of pupils with disabilities or to make reasonable accommodation for them.

It will be observed that, provided circumstances are invoked which suggest that there has been discrimination on one of the protected grounds (such as disability),[21] the onus is on the defendant to show that no discrimination has occurred. The burden of proof, as provided for in general law, is effectively reversed in favour of the person discriminated against.[22]

Such proceedings, moreover, are instituted by means of a joint petition. This is an important point because it means that the costs are considerably lower, so the justice system is accessible, including for families on low incomes. Then there are the country-wide measures in the form of fully or partially free assistance from a lawyer and reduced registry costs, enabling even the poorest members of the community to obtain access to justice. The authorities have also produced an information pack which explains the relevant procedures in layman's terms.[23]

Given that there is anti-discrimination legislation in place to ensure pupils with special needs have access to mainstream education if they are denied admission, the situation in French-speaking Belgium cannot be considered to be in breach of the Charter.

4.2.3. On close inspection, it will be observed that the central issues raised in Complaint No. 141/2017 relate, for the most part, firstly to the issue of reasonable accommodation in mainstream education for pupils with special needs and, secondly, to the procedures for referring pupils to special education, as a measure of last resort.

On 4 February 2016, the French Community adopted a decree containing various provisions regarding education, which amends the "missions decree" by overhauling the way in which mainstream education is organised in terms of reasonable accommodation.

It is now accepted in law, something the complainant organisations have refrained from mentioning, that each school must set out in its strategy "*the teaching choices and the priority measures implemented to* ***help integrate pupils with special needs*** [i.e. pupils with disabilities], *after first consulting the basic liaison committee in the case of educational institutions organised by the French Community, the Local Joint Committee in the case of official educational institutions subsidised by the French Community or local consultation bodies or, failing that, the trade union delegations in the case of independent educational*

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[21] Decree of 12 December 2008 on measures to combat certain forms of discrimination, Article 2.
[22] Decree of 12 December 2008 on measures to combat certain forms of discrimination, Article 42.
[23] "Un meilleur accès à la justice", available at:
https:lljustice.belgium.belfrlpublicationslun_meilleur_acces_a_lajustice

institutions subsidised by the French Community."[24]

It will be recalled that in French-speaking Belgium, foundation level and secondary education is designed around a school strategy which each institution, whether in the official or independent network, is required to draw up. This strategy sets out all the teaching choices and specific measures which the school's educational staff intends to pursue.

In addition, the "missions decree" requires each school, by 1 September 2018 at the latest, to prepare a 6-year management plan setting out, at a minimum, the school's strategy for integrating pupils and "*the strategy regarding reasonable accommodation for pupils with recognised special needs".*[25]

The management plans are duly monitored by the competent authorities (General Inspectorate of the French Community), as Article 67 of the "missions decree" goes on to state:

> *"§ 4. The management plan shall be drawn up by the head teacher, in co-operation with the school's teaching and educational staff, and in consultation, where appropriate, with staff from the psycho-medico-social centre, having regard to the specific context of the school, the school strategy and available resources. In order to prepare the management plan, the school may enlist the support of the Pedagogical Advice and Support Service in education organised by the French Community and of the pedagogical advice and support centres in subsidised education, as referred to in Article 4 of the decree of 8 March 2007 relating to the General Inspectorate, the Pedagogical Advice and Support Service for teaching organised by the French Community, the pedagogical advice and support units for teaching subsidised by the French Community and the conditions of service of members of staff of the Inspectorate General and of school counsellors.*
>
> *The management plan shall be submitted, in accordance with the procedures and within the time-limits prescribed by the Government, to the General Inspectorate, following approval by the Organising Authority and after consultation with the local social consultation bodies and the Participation Council.*
>
> *The General Inspectorate shall check to ensure that the management plan complies with the provisions of paragraphs 2 to 7 of the present article and with its implementing decrees within 90 days following submission of the management plan. If the management plan is found to be compliant, it shall be sent back to the school, signed by the Government departments and shall be deemed, as such, to constitute an objective-setting contract concluded between the school and the Government.*
>
> *If the management plan is not found to be compliant, the General Inspectorate shall make recommendations to the school, in order that the plan might be modified and resubmitted to the General Inspectorate within 60 working days.*
>
> *§ 5. The management plan shall contain an appendix showing, in the manner specified by the Government, the multiannual quantitative targets to be achieved by the school in the light of its circumstances, within the framework of the general targets set by the Government, including notably for increasing the number of pupils who leave school with a certificate, reducing grade repetition and drop-out rates, improving individual student outcomes in terms of external and internal assessment in all subjects and increasing social diversity where necessary.*
>
> *This appendix, which shall be for the exclusive and confidential use of the educational staff, the management, the relevant Organising Authority and the Government departments, shall not be disclosed to parties outside the school, other than the representation and co-ordination body of the relevant organising authorities or in the cases specified by the*

[24] Article 67 of the "missions decree", as amended by the decree of 4 February 2016. Emphasis added.

[25] Article 67, §2, f) *in fine,* of the "missions decree", as amended by the decree of 4 February 2016.

Government, in particular for academic or scientific purposes. The recipients of this document shall have a duty of confidentiality.
§ 6. The management plan shall stipulate the type of annual assessment to be conducted by the school in accordance with the procedures prescribed by the Government. The management plan shall be adjusted, if necessary, after the annual assessment.
The management plan shall be assessed and amended every six years in the manner prescribed by the Government."

The management plan must contain multiannual quantified targets, so it will most certainly provide a means to gauge the qualitative and quantitative progress made in terms of inclusive education and reasonable accommodation.

For some mainstream schools, implementing the management plan is all the easier thanks to the "decree of 30 April 2009 introducing differentiated management within schools in Belgium's French Community to ensure that every pupil has equal opportunities for social emancipation in a high-quality educational environment".

Specifically, this decree states that full-time nursery, primary and secondary schools and psycho-medico-social centres are to be allocated, in a way that is objective and proportionate, significant additional human and financial resources based on objective, uniform socio-economic criteria with a view to promoting high-quality mainstream education.

This decree and its accompanying measures are proof of the Belgian authorities' determination to combat socio-economic inequality between pupils, contrary to what the complainant organisations imply.

4.2.4. Lastly, as an example of good practice designed to help visually impaired pupils, it will be noted that, with the introduction of reasonable accommodation, demand for alternative arrangements in exams leading to the award of the Certificate of Basic Education, which gives access to secondary school, has increased significantly since 2012.

	Number of requests 2012	**Number of requests 2013**	**Number of requests 2014**	**Number of requests 2015**	**Number of requests 2016**	**Number of requests 2017**
Requests for alternative exam arrangements	349	450	658	1 055	1 424	1 916
Braille question papers	2	0	5	5	0	3
Arial 20 format (paper)	282	383	464	319	145	330
Arial 14 format (paper)	49	34	139	648	1 134	1 320
Arial 14 format (electronic)	16	33	50	83	145	263

	2012	2013	2014	2015	2016	2017
Number of pupils entered for the exam	58 373	58 590	56 196	58 679	58 018	58 940

These figures show that there is a genuine policy of reasonable accommodation in Belgium's French Community to help visually impaired pupils.

It will further be noted that these alternative exam arrangements are available not only for blind and visually impaired pupils but also for pupils with specific cognitive disorders and associated learning disabilities, of which the best known are dyslexia, dyscalculia and dysorthographia.

The CEB[26] exams can be adapted to all these learning disabilities, e.g. by allowing students extra time to complete the papers.

The alternative arrangements for CEB exams cover all types of special needs, therefore, and are constantly evolving.

4.2.5. It having been established that mainstream education is, on principle, inclusive, given that there is a duty to enrol pupils, the task now is to clarify the arrangements under which pupils are directed, where appropriate, towards special education.

In French-speaking Belgium, special education is divided into eight types, each of which corresponds to a particular special need.[27] Types 2, 3, 4, 5, 6 and 7 are available at nursery, primary and secondary levels. Type 1 is available at primary and secondary levels and type 8 is available only at primary level.

In order to be directed towards special education types 1, 2, 3, 4 and 8, pupils must undergo a multi-disciplinary examination conducted by a psycho-medico-social centre[28] serving the mainstream education sector or by another agency offering the same expertise and recognised as such by Belgium's French Community.

Pupils may be directed towards special education types 6 and 7 either on the basis of a multi-disciplinary examination or on the basis of a medical examination.

In the case of type 5 special education (ill and/or convalescing pupils), referral is on the basis of a medical examination.

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[26] Certificate of Basic Education.

[27] Type 1 (mild mental disability) is available at primary and secondary levels; Type 2 (moderate or severe mental disability) is available at nursery, primary and secondary levels; Type 3 (behavioural difficulties) is available at nursery, primary and secondary levels; Type 4 (physical impairments) is available at nursery, primary and secondary levels; Type 5 (illness or convalescence) is available at nursery, primary and secondary levels; Type 6 (visual impairments) is available at nursery, primary and secondary levels; Type 7 (hearing impairments) is available at nursery, primary and secondary levels; Type 8 (learning difficulties) is available at primary level.

[28] PMS centres are governed by the decree of 14 July 2006 on the tasks, programmes and activity reports of psycho-medico-social centres. These centres cater to the needs of mainstream and special education pupils at nursery, primary and secondary levels. The idea is to foster the appropriate psychological, psycho-pedagogical, medical and social conditions, contribute to pupils' education process and support them in making plans for their future.

The conclusions of the multi-disciplinary assessments and examinations mentioned above are arrived at through the interpretation and dynamic interplay of medical, psychological, pedagogical and socio-family data.

Contrary to what the complainant organisations suppose, therefore, the medical criterion is not preponderant, except in the case of referrals for type 5 special education. This exception is wholly justified, moreover, as the children in question are ill and/or convalescing and the higher interests of the child demand that consideration be given first and foremost to their health.

All this information is entered in an enrolment report, on which admission to special education depends.
Contrary to what the complainant organisations imply, therefore, enrolment in a special education school is not a second-best solution.

Article 12 of the decree of 3 March 2004, which is the cornerstone of the special education referral system, reads as follows:

> "*§ 1. The enrolment of children and young persons in an institution, a school or an institute of special education shall be conditional upon the presentation of a report specifying the type of special education that satisfies the needs of the pupil and that is dispensed in the institution, school or institute concerned unless a derogation has been granted by the Government on a proposal from the Advisory Council responsible for integration issues in respect of the provisions contained in Articles 133, § 5, and 147bis or on a proposal from the General Council in respect of the provisions contained in Articles 133, § 4, and 147, sub-paragraph* 2.
>
> *On the basis of the enrolment report, an attestation and a supporting protocol are drawn up. The Government shall determine the template for the attestation and the supporting protocol and the procedures for communicating them. This report shall be drawn up:*
>
> *1° in the case of types 1, 2, 3, 4 and 8, on the basis of a multi-disciplinary examination conducted by a psycho-medico-social centre serving a mainstream educational institution or by any other body affording the same guarantees with respect to school or career guidance, organised, subsidised or recognised by the French Community. A list of these bodies shall be compiled annually by the Government and communicated to special education institutes, institutions and schools and also to the advisory committees on special education.*
>
> *The conclusions of the multi-disciplinary examinations and assessments entered in this enrolment report shall be arrived at through the interpretation and dynamic interplay of medical, psychological, pedagogical and socio-family data.*
>
> *In the case of types 1, 3 and 8, the enrolment report shall notably describe, in the manner specified by the government, any support and reasonable accommodation put in place in mainstream education and show that it has proven insufficient to ensure learning appropriate to the special needs of the pupil concerned.*
> *Lack of proficiency in the language of instruction or being from a disadvantaged background shall not constitute sufficient grounds for directing a pupil towards special education.*
>
> 2° *In the case of type 5, on the basis of a medical examination whose findings shall be entered in an enrolment report and which shall be conducted by a paediatrician or the referring physician from the paediatric department, clinic, hospital or medico-social institution recognised by the public authorities.*
>
> *3° in the case of types 6 and 7:*

a) Either on the basis of a multi-disciplinary examination conducted by a psycho-medico-social centre serving a mainstream educational institution or by any other body affording the same guarantees with respect to school or career guidance, organised, subsidised or recognised by the French Community. A list of these bodies shall be compiled annually by the Government and communicated to special education institutes, institutions and schools and also to the advisory commissions on special education.
The conclusions of this multi-disciplinary examination entered in an enrolment report shall be arrived at through the interpretation and dynamic interplay of the data provided by:

- *the medical examination;*
- *the psychological examination;*
- *the pedagogical examination;*
- *the social study.*

b) Or on the basis of a medical examination whose conclusions shall be entered in an enrolment report and which shall be conducted, in the case of type 6, by a physician specialising in ophthalmology and, in the case of type 7, by a physician specialising in otorhinolaryngology.

§ 2. The Government shall take all necessary measures to enable pupils in special education to receive ongoing guidance. This task shall be entrusted to the bodies and persons referred to in the present article.

§ 3. Where a pupil who has left (special) education seeks readmission to special education within a period of less than two years, there shall be no need to draw up a new enrolment report unless the pupil is redirected to a type of education different from the one mentioned in the original attestation. Nevertheless, at the request of the director of the special education institution, a brief report shall be supplied by the psycho-medico-social centre of the last school attended by the pupil".

As regards referral for special education types 1, 3 and 8, the requirement for the enrolment report to show that the support measures designed to ensure the pupil receives appropriate teaching are inadequate was introduced by the decree of 14 July 2015[29] and is proof that, in any event, referral to mainstream education is the norm. The preamble to the decree reads as follows:

"The amendments inserted in Article 12, §1, 1° are intended to improve the special education referral procedure in order to prevent pupils capable of attending mainstream schools from being sent to special schools. They therefore provide two important clarifications as to the content of the enrolment report in respect of pupils who would be directed towards special education types 1, 3 or 8. From September 2015, the enrolment report must specify the reasonable accommodation put in place in mainstream education to support the pupil with special needs and show that such accommodation has proven insufficient to ensure learning appropriate to the special needs of the pupil before he or she can be directed towards special education. It is also made clear that lack of proficiency in the language of instruction or being from a disadvantaged social background does not constitute sufficient grounds for referral to special education."[30]

[29] Article 7 of the programme decree introducing various measures relating to compulsory education, to Culture, to the Academy of Research and Higher Education, to the funding of university and non-university higher education and to the guarantee provided by the French Community.
[30] Parliament of the French Community, session 2014-2015, Draft programme decree, 147-1, explanatory

4.2.6. The arguments advanced by the complainant organisations in relation to the failure to cover the cost of mono-disciplinary speech therapy for children with a language development difficulty or who suffer from dysphasia and who have an IQ lower than 86 are of no relevance, furthermore.
The complainant organisations proceed from the mistaken assumption that the decision to send a child to a special school rests solely with the pupil's parents who, it is claimed, might be tempted to opt for special education in order to avoid having to pay for expensive speech therapy.

It is clear from Article 12 of the decree of 3 March 2004, however, that the decision to direct a pupil towards special education does not lie with the parents, but rather is based on a multi-disciplinary or medical examination (type 5 special education). Also, when asked about this matter in the Chamber of Representatives (lower house of the Belgian parliament), the Minister of Social Affairs and Public Health provided the following clarification:

> *"This limit (intellectual quotient of 86 or higher) has been set for the provision of mono-disciplinary speech therapy, in the list of reimbursable speech therapy services, and, as indeed you have pointed out, applies only to the provision of oral language development disorders and dysphasia. The reason for this is that, in the case of children with an IQ lower than 86, multi-disciplinary treatment is more appropriate and is more likely to succeed than mono-disciplinary treatment; the intention, therefore, is to direct the child towards the best solution for him or her, making optimum use of the funds available. In practical terms, these multi-disciplinary treatments are administered in Outpatient Rehabilitation Centres (known as CRAs, formerly referred to as ORL-PSY centres), where patients are split into "target groups", according, inter alia, to their IQ. At the same time, some of these children attend special schools where suitable paramedical care (including speech therapy) is also available. The National Higher Council for Persons with Disabilities Opinion 2016113 to which you refer certainly reiterates all of the above, and in particular the case for multi-disciplinary treatment, but it also criticises the fact that the facilities in question are too few in number, are widely dispersed geographically speaking and have very long waiting lists, or else offer treatment that is less intensive than what is required (at any rate, less intensive than the mono-disciplinary speech therapy featured in the list of reimbursable services). The opinion further draws attention to the requirements and recommendations produced by various international bodies and conventions, and with which Belgium is expected to comply, and I can assure you that I am well aware of these, too. With regard to the findings of the opinion, I have no competence in the areas concerned, in particular the Outpatient Rehabilitation Centres which have been the responsibility of the federated entities since the 6th state reform. Nor do I have any competence over special education (or indeed education in general) or support for people with disabilities, both of which have been a matter for the federated entities (Regions and/or Communities) for even longer. While very concerned about the well-being of the children concerned, I must take issue with the National Council and point out that mono-disciplinary speech therapy is not the answer for the children in question. As regards your question about the number of children with language development disorders or dysphasia who are not entitled to reimbursement for mono-disciplinary speech therapy services, I do have any information on that subject, precisely because these children are not receiving mono-disciplinary speech therapy (either because their applications have been turned down on the ground of an insufficiently high IQ or because no application was made) so the national institute for sickness-invalidity insurance has no statistics on this subject."*[31]

It follows that, contrary to what the complainant organisations contend, alternative solutions, including notably outpatient rehabilitation centres, are available at national level for the treatment, in non-special education settings, of pupils with language development disorders or dysphasia and whose IQ is lower than 86.

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memorandum, p. 5 (available at: http:llarchive.ptwb.bel1000000020170a5).
[31] Chamber of Representatives, legislature No. 54, QRVA 54-120, 7 June 2017, pp. 256-258 (available at: https:llwww.dekamer.belkvvcrlshowpage.cfm?section=qrva&language=fr&cfm=qrvaXml.cfm?legislat=54&dossierlD=54- b101-867-1268-2016201 713136.xml).

A look at the website of the Belgium-wide federation of outpatient rehabilitation centres reveals the following:

> **"Description of the sector**
>
> Despite the scientifically sound work that has been carried out by the centres and notwithstanding all the knowledge and expertise acquired over the years, there tends to be little awareness of the CRAs among the general public and even among those working in health care and assistance.
>
> At present, there are 98 outpatient rehabilitation centres in Belgium which have an agreement with the INAMI and which provide diagnostic services and specialised treatments for some 10,000 people, mostly children and adolescents.
>
> For more than 30 years, the core objective has been the social integration of people with developmental disorders (intellectual disability, learning, language, autism spectrum and motor co-ordination disorders), hearing impairments, speech impairments (laryngectomy, glossotomy, cleft lip), cerebral lesions, behavioural disorders, hyperactivity or stuttering.
>
> Rehabilitation is provided on an outpatient basis by a multi-disciplinary team. In total, over 2,000 therapists work in the centres, in various specialist areas: specialist physicians ((neuro-paediatricians, (paedo-), (neuro-)psychiatrists, ENT doctors), physiotherapists, speech therapists, occupational therapists, psychologists, remedial teachers, psychological assistants, social nurses and social workers.
>
> In Flanders, the CRAs work closely with the SIG. This non-profit-making organisation was set up, partly with help from the sector, to provide specialised, in-service training for staff and to give the rehabilitation programmes a scientific underpinning.
>
> Partnerships have been formed with various universities and colleges in Belgium and abroad and over the years, the sector has built a solid reputation in the specialist multi-disciplinary diagnosis and treatment of the disorders mentioned above."[32]

4.2.7. Some clarification is also in order as regards the complainant organisations' claims that the way in which special education is organised gives rise to discrimination on the ground of the nature of the disability, because the integration projects provided for in Chapter X of the decree of 3 March 2004 benefit mainly pupils in special education types 1 and 8.

The Belgian Government feels it is worth reiterating firstly that discrimination cannot be inferred *ipso facto* from a potential difference in treatment between two distinct groups of individuals.

The fact that the process of integrating special education pupils into mainstream education is conditional upon a procedure is not in itself discriminatory, just as discriminatory practice cannot be inferred solely from statistics showing that the majority of integration projects relate to pupils in special education types 1 and 8.

As can be seen from Belgian law, all integration projects are based on a procedure which involves taking into account the particular circumstances of the pupil with special needs.

The Belgian Government wishes to emphasise that the procedure, as provided for in

[32] http://www.fcra.be/secteur-presentation-70000-7.html

Chapter X of the decree of 3 March 2004, is conducted on a case-by-case basis and so, by definition, precludes any possibility of discrimination, since each integration project is unique.

At the same time, the complainant organisations are wrong to take issue with the fact that the heads of special education institutions are not obliged to approve all integration projects.

The principle of equality and its corollary, non-discrimination, require that regard be had to the particular circumstances of the individual with special needs, with care being taken to consult everyone involved in the integration project.

The exercise of the right to be educated in a mainstream setting is not absolute, as indeed the Charter acknowledges, and requires that consideration be given to all of the interests involved.[33]

The decree of 3 March 2004 accordingly requires that the opinions issued in response to requests for integration duly state the reasons on which they are based, as consideration must be given not only to the interests of the pupil with special needs but also to those of his or her future classmates.

Refusal to accept such an approach could potentially lead to reverse discrimination, insofar as integration projects are not always in the best interests of pupils with special needs.

It is possible, for example, that the child may feel rejected and “not part of the group”. A child with special needs may also struggle to cope with the academic pressures involved in mainstream education, potentially leading to behavioural disorders such as self-mutilation, violence and enuresis. If the reasonable accommodation is not such as to enable the pupil with special needs to be placed in a mainstream setting while at the same time ensuring he or she receives high-quality teaching, not continuing to provide special education in those circumstances could constitute a form of child abuse.

In certain extreme cases, integration at any price, of the kind called for by the complainant organisations, could also be harmful for mainstream education pupils attending the school in which the special needs pupil is placed, leading to further reverse discrimination.

The complainant organisations are wrong, therefore, to criticise the fact that pupils with special needs do not have an absolute right to integration in mainstream education and to hold that the integration procedures, as described in Chapter X of the decree of 3 March 2004, are at odds with Belgium’s international obligations under the Charter.

4.2.8. That said, mindful of the scope for improvement in terms of inclusive education, the French Community has devoted an entire section of its Pact for Excellence in Education to these issues.[34]

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[33] Although it is effectively a domestic court’s interpretation of international legal norms, Belgium wishes to refer the Committee to Constitutional Court judgment n/2014 which establishes to what extent restrictions on the right to education are acceptable (available at: http://www.const-court.bel). The Court’s reasoning in this case concerns access to higher education, but its conclusions can usefully be applied, by analogy, to the implementation of integration projects for pupils with special needs.

[34] All the information on this general policy document is available at: http://www.pactedexcellence.be/

A flagship document prepared by all the stakeholders, the Pact is intended to guide education policy over the coming years in French-speaking Belgium.

There are five strands to the Pact, one of which aims to "improve the role of education as a source of social emancipation while at the same time supporting excellence for all, to foster diversity and inclusive schooling throughout the education system while at the same time developing strategies for combating educational underachievement, dropout and grade repetition."

On 7 March 2017, the Task Force behind the Pact submitted Opinion No. 3, which includes the following information:

> ***Strand 4: To improve the role of education as a source of social emancipation while at the same time supporting excellence for all, to foster diversity and inclusive schooling throughout the education system while at the same time developing strategies for combating educational underachievement, dropout and grade repetition.***
>
> In terms of ensuring learning for all and moving away from social determinism, encouraging effort, fostering a love of learning and an appreciation of the value of pupils' work, promoting awareness and development of individuals' talents and providing positive guidance, combating school segregation is very important for our education system. As illustrated in our diagnosis, our system of schooling segregates – more so than in other countries – pupils according to their psycho-social characteristics, type of intelligence, social background and academic performance. When it comes to organising educational pathways, a number of factors are contributing to the widening gaps in performance between institutions. Yet equality is crucial for schools, as education is meant to be an instrument of social emancipation and a means of preparing students for life in society, ensuring fairness and delivering social change. The segregation process which affects pupils in all socio-economic categories has a disproportionately large impact on disadvantaged pupils: they are held back more, they drop out more, and they are more likely to be shunted into vocational education and to attend special schools.
>
> As an alternative to this segregation model, the Task Group proposes an **inclusive schooling model** while at the same time enabling educational staff to deal with greater diversity in the classroom. This ambition underpins the objectives described in the 4th strand of the Pact.
>
> ***Reducing grade repetition***
>
> The Pact seeks to ensure high-quality teaching and measures to reduce grade repetition undoubtedly have a part to play in this. In the OECD countries, the percentage of 15-year-old pupils who have already repeated at least one year was 13% in 2012, compared with 48% in the Wallonia-Brussels Federation and 27% in the Flemish Community. It is our contention that the repetition rate in French-speaking Belgium is not acceptable and that there is no excuse for the fact that it is higher than in *any* other European country. **We believe that combating educational underachievement and grade repetition is a key objective of the Pact which can be attained only through an integrated and multi-dimensional approach.** Various instruments must be deployed in order to achieve results in this area, as part of the wider process of empowering educational staff that is at the heart of the Pact. We have agreed to set a target of **reducing grade repetition by 50% by 2030 while at the same time improving pupils' average performance in terms of basic skills.** The target is voluntary, realistic and achievable given other

countries' experiences in this area and the realities of our school education system.

In order to achieve this target, numerous priorities will need to be pursued, under the various strands of the Pact: strengthening of the common core and a paradigm shift in assessment, improvement in the quality of pre-school education, etc. The kind of strategic approach to combating underachievement and grade repetition that we are proposing, however, also calls for **a number of specific responses to learning difficulties, as well as initiatives aimed at pupils and their parents**:

- build support among educational staff and the school's partners for a consistent approach to pedagogy based on differentiation and remedial action (see above) and the development of "preventive" and/or alternative tools which can help to rapidly detect any difficulties, specific needs or disabilities pupils may have. The pupil's personal file should provide a basis for ensuring that the pupil's learning difficulties and needs are assessed throughout his or her school career, starting from nursery education, and for identifying ways to address them in order to prevent underachievement.

- incorporate **a strategy for combating educational underachievement, grade repetition, truancy and dropout** into each school's management plan/objective-setting contract in order to allow co-ordinated action and secure the support of education stakeholders and partners, in particular the CPMSs.

- **enhanced dialogue with parents**, with special attention being given to families and pupils whose family culture is very different from the school culture and who are not familiar with all the codes relating to educational expectations, learning schemes and attitudes towards learning and school.

- **pedagogical innovation** through the development of digital media (platforms) and optimum use of research findings by adapting them to the specific needs of education stakeholders.

A plan for combating dropout

School dropout rates in the Wallonia-Brussels Federation, both in Wallonia and in Brussels, are around the highest in the EU. We propose that the Pact aim to achieve a 50% reduction in school dropout by 2030, through a single, integrated action plan based on:

- an effective system of data and intelligence gathering with a view to monitoring specific targets;

- redefinition of the roles and tasks of the various players and types of provision around the following focal points: improved dropout prevention within schools and PMS centres, intervention measures by mobile teams and mediators and compensatory arrangements in cases where pupils have dropped out (school reintegration service (SAS));

- creation of a more robust framework for the effective co-ordination of the different players/stakeholders and types of provision at area level;

- review of certain procedures, including exclusion from school.

Meeting the specific needs of pupils in mainstream education,

decompartmentalising and shifting the focus of special education

We believe it is essential to help pupils with special needs enter or remain in mainstream education, through reasonable accommodation, and to encourage the total or partial integration of special education pupils into mainstream education, thanks to specific support from those involved in delivering special education. To this end, we recommend the following:

- develop an open-ended approach to inclusive schooling, and review the procedure for assessing the pupil's special needs, making a fundamental distinction between the specific requirements of the educational challenge and the learning disability, and introduce a consistent approach to reasonable accommodation;

- promote systemic change so that each pupil can find the place that is right for him or her, thereby reducing the number of pupils in special education in favour of mainstream education. Our goal is to reduce the percentage of pupils in special education to 2004 levels by 2030. In order to do this, we believe that reform is needed on four fronts: reform of the educational guidance system; reform of the integration mechanism; overhaul of type 8 special education, and phasing out of the practice of sending DYS children to special schools;

- promote the occupational integration of vocational education students ("form" 3);

- continue the efforts to provide alternative arrangements for external exams and, in the case of certain pupils, do away with the current system whereby pupils move from one grade to the next without any certification;

- review the geographic spread of special education facilities in order to create more local provision for pupils.

Redeploying the CPMSs

The CPMSs are one of the main levers that will need to be pulled if schools are to become more diverse and inclusive. That will mean *inter alia*:

- refocusing CPMSs' tasks on the priority objectives assigned to the school system as a whole and on the specific objectives set by each school in its management plan;

- clarifying and improving psycho-medico-social support (CPMS, school health services, on the one hand, and mobile teams and mediators on the other) by optimising the psycho-medico-social support available from CPMSs so as to improve the support provided to all schools in the Wallonia-Brussels Federation, and by linking this provision to that of other psycho-medico-social service providers operating in the school education sector;

- improving the quality and diversity of support staff through more rigorous initial training and systematic provision of induction training, according to the staff, and by expanding the qualifications required for the post of head of CPMS, etc.;

- officially tasking the CPMSs with dealing with family-school relations and providing them with resources for that purpose.

Supporting underperforming schools

The new framework for managing schools should help to provide support and guidance for schools which are seriously underperforming in terms of pupil performance and pathways, the climate within the school and staff turnover. We propose that 50 schools be provided with support and guidance every year, based on an assessment carried out by the General Inspectorate and through the provision of extra resources within the Federations of Organising Authorities and the Administration.

Improving differentiated management

The Task Force believes that adopting individual socio-economic status scores will help to improve many education policies, making for a more effective and, crucially, fairer system: a precise measure of pupils' socio-economic background is needed in order to ensure that resources are allocated in a way that accurately reflects the different needs of pupils from different socio-economic backgrounds, and in order to manage the system.
The Task Force proposes:

- **that the system of differentiated management be reformed,** by setting priorities in order to prevent funds from being spread too thin. Consideration should likewise be given to the unintended and pernicious effects that may be engendered by funding criteria. It is also essential that these criteria be stable and simple, so that educational staff can develop sustainable arrangements based on an assessment of their circumstances and needs;

- promoting pedagogical innovation through the use of differentiated management methods and encouraging ground-breaking programmes which have proven effective and which use early intervention to reduce inequalities related to social origin, before they develop into educational inequalities.

Promoting social diversity

Whatever the impact of the enrolments decree which is currently undergoing evaluation, members of the Task Force agree that greater social diversity in schools and classrooms has to be an objective, but that it is not something which can be decreed.

When it comes to making schools more socially diverse, the Task Force believes there is much to be said for a pragmatic, bottom-up approach, starting from the local level, empowering the different members of the school community and facilitating the work of actors from different networks, while drawing inspiration from the "local consultation platforms" scheme introduced in Flanders.

As part of the effort to tackle educational inequality, and foster greater social diversity in schools, the challenge of recognising minoritised groups also needs to be addressed.

Improving proficiency in the language of instruction among all pupils

The Task Group proposes stepping up support and remedial teaching programmes for newly arrived and non-native-speaker pupils, with a special focus on tackling lack

> of proficiency in the language of instruction. We propose that adjustments be made to the reception and schooling arrangements for newly arrived pupils and to the way classes to help pupils learn the language of instruction are organised, and that additional resources be invested in specific schemes designed to reduce inequality in terms of language skills. The arrangements will need to be determined during the implementation phase of the Pact, based on programmes which have been shown to work, and as part of a systematic review of the resources deployed. Priority should also be given to action, starting in pre-school education, to reduce inequality in language skills according to social and cultural origin (see above)."[35]

4.2.9. Given the case law of the European Committee of Social Rights as set out above, it cannot be concluded that the French-speaking part of Belgium is moving backwards when it comes to inclusive education and is therefore in breach of Articles 15, 17 and E of the Charter.

The fact is that initiatives have been decreed and are currently being implemented through public policy on foundation level and secondary education, as reflected in the "Pact for Excellence in Education".

This shows that the competent authorities are making practical, measurable efforts to support a system of education which, as has already been pointed out, is inclusive as a matter of principle.

There is no basis, then, for the complainant organisations' allegations, given that French-speaking Belgium is making the necessary endeavours to support inclusive education and is developing the tools it needs to measure progress made in this area in the short and medium term.

B. Compelling reasons for continuing to provide special education

4.3.1. The Charter does not outlaw special education, but rather promotes inclusive education while allowing the States Parties to continue operating special schools for children with special needs alongside mainstream education. There are compelling reasons for maintaining the two systems in French-speaking Belgium, especially as the conditions under which children may be referred to special schools are tightly regulated by law.

4.3.2. These reasons include the need to consider the best interests of the child, by ensuring that the right to education is respected in all circumstances, while at the same time, however, preventing reverse discrimination of the kind described above in paragraph 4.2.7. Pupils' special needs cannot always be met by making reasonable accommodation and sometimes require, if the right to education is to be upheld in every instance, the setting-up of specialised institutions capable of providing an optimum environment for the pupils concerned. At the same time, the gradual integration into mainstream education of pupils with special needs cannot be pursued at any price and due care must be taken to respect the right to education of mainstream pupils attending the school in question. An inclusive education policy in keeping with the aim and purpose of the Charter necessarily means, as in French-speaking Belgium, opting for what is essentially a case-by-case approach, where children have access to mainstream education as a matter of principle.

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[35] Pact for Excellence, opinion no. 3 of 7 March 2007, pp. 22-27 (available at: http://www.pactedexcellence.be/).

4.3.3. Lastly, Belgium feels it is important to draw the Committee's attention to the fact that "bridges" exist between special foundation level education and mainstream secondary education insofar as, in certain circumstances, children who have completed special primary education can be awarded the certificate of basic education required for entry to mainstream secondary schools.

The decree of 3 March 2004 accordingly states:

> *"Art. 27. Where the Class Council finds that the competences acquired are equivalent to those specified in the decree of 19 July 2001 confirming the core competences referred to in Article 16 of the decree of 24 July 1997 determining the priority tasks of foundation level and secondary education and organising the structures necessary to achieve them and introducing a limited exemption procedure, the certificate of basic education shall be issued to pupils who have successfully completed such education.*
> *Art. 28. Any pupil leaving the school shall be entitled to a certificate of attendance issued by the director in the format prescribed by the Government.*
> *Art. 28/1. Without prejudice to Article 29, § 4, of the decree of 2 June 2006 on external assessment of pupils in compulsory education and on the Certificate of Basic Education awarded at the end of primary education, the Class Council referred to in Article 27 shall draw up, for each pupil leaving special primary education for mainstream secondary education without a certificate of basic education, a skills assessment report on proficiency in the core competences at the age of 12 years, in such format as shall be prescribed by the Government.*
> *The head of the primary school shall immediately forward to any secondary school which so requests the skills assessment report referred to in sub-paragraph 1 and the individual learning plan (PIA) referred to in Article 4, § 1."*

As regards special secondary education, Belgium notes that this is available in various "forms", including "forms" 3 and 4 which are vocational and help pupils develop into young adults capable of integrating into society, far more so than if they had been mainstreamed into traditional vocational education.

Article 46 of the decree of 3 March 2004 accordingly states:

> *"Art. 46. § 1. "Form" 1 special secondary education shall aim to provide pupils with social training enabling them to integrate into sheltered living environments. It shall be available in special education types 2, 3, 4, 5, 6 or 7, organised either jointly or separately.*
> *§ 2. "Form" 2 special secondary education shall aim to provide pupils with general, social and vocational training, enabling them to integrate into sheltered living and work environments. It shall be available in special education types 2, 3, 4, 5, 6 or 7, organised either jointly or separately.*
> *§ 3. "Form" 3 special secondary education shall aim to provide pupils with general, social and vocational training, enabling them to integrate into mainstream living and working environments. It shall be available in special education types 1, 3, 4, 5, 6 or 7, organised either jointly or separately.*
> *§ 4. "Form" 4 "transition" special secondary education shall prepare pupils to continue their studies until the end of upper secondary education while providing opportunities to enter the workplace. "Form" 4 "qualification" special secondary education shall prepare pupils to enter employment while at the same time offering them the opportunity to continue their studies until the end of upper secondary education.*
> *Such education shall be available in special education types 3, 4, 5, 6 or 7, organised*

jointly or separately, and shall not be available to pupils with a mental disability.

*

* *

FOR THESE REASONS,

The respondent State asks the European Committee of Social Rights to declare collective complaint No. 141/2017 unfounded.

For the Kingdom of Belgium,
Paul RIETJENS