



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

6 December 2017

Case Document No. 5

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

**OBSERVATIONS BY UNIA, INTERFEDERAL CENTRE FOR
EQUAL OPPORTUNITIES AND OPPOSITION TO RACISM AND
DISCRIMINATION**

Registered at the Secretariat on 15 November 2017



Centre interfédéral
pour l'égalité des chances

Collective complaint No. 141/2017

International Federation for Human
Rights (FIDH) and Inclusion Europe
v. Belgium

Subject: *Observations under Article 32A§1 of the Rules of Procedure of
the European Committee of Social Rights*

Author: *UNIA, Interfederal Centre for Equal Opportunities and
Opposition to Racism and Discrimination*

Date: *15 November 2017*

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I. Introduction: author and basis for the observations

1. 1. Author of the observations

Unia, the Interfederal Centre for Equal Opportunities and Opposition to Racism and Discrimination, is submitting these observations in its dual capacity as:

- (1) An independent interfederal public service responsible for combating discrimination and promoting equal opportunities;
- (2) An independent mechanism tasked with monitoring compliance with the United Nations Convention on the Rights of Persons with Disabilities (hereafter the “CRPD”) within the meaning of Article 33§2 of the CRPD.

(1) In the French Community, the Decree of the French Community of 12 December 2008 on measures to combat certain forms of discrimination (hereafter the “Antidiscrimination Decree”)¹ provides the regulatory framework for Unia.

(2) The CRPD, which was adopted by the UN General Assembly on 13 December 2006, was ratified by Belgium on 2 July 2009 and entered into force throughout Belgium on 1 August 2009.²

The monitoring mission of Unia, as an independent mechanism, includes assessing whether regional, Community and federal legislation, policy and practice are in keeping with the CRPD.

In accordance with Article 36 of the CRPD, Belgium submitted its first periodic report to the UN Committee on the Rights of Persons with Disabilities (hereafter “the Committee on the Rights of Persons with Disabilities”) in June 2011.³ The Belgian report was followed by a parallel report from Unia⁴ and shadow reports from civil society. The Committee on the Rights of Persons with Disabilities issued its concluding observations on Belgium on 1 October 2014.⁵

1.2. Basis for the observations

The collective complaint alleges that there is a failure to make sufficient efforts to promote the inclusion of children with mental disabilities in mainstream primary and secondary education in the French Community (Wallonia-Brussels Federation), in breach of the obligations under Article E of the European Social Charter, in conjunction with Articles 15 and 17 of the revised European Social Charter.

¹ Decree of the Parliament of the French Community of 12 December 2008 on measures to combat certain forms of discrimination, *Moniteur Belge*, 13 January 2009 (http://www.gallilex.cfwb.be/document/pdf/33730_000.pdf).

² The Parliament of the French Community adopted the “Decree assenting to the Convention on the Rights of Persons with Disabilities and to the Optional Protocol to the Convention on the Rights of Persons with Disabilities” on 26 March 2009.

³ https://www.aviq.be/handicap/pdf/AWIPH/handicap_Belgique/conventionONU/Rapport-BE_convention-ONU.pdf, last accessed on 10 November 2017.

⁴ <http://www.unia.be/fr/publications-et-statistiques/publications/rapport-parallele-convention-des-nations-unies-relative-aux-droits-des-personnes-handicapees>, last accessed on 10 November 2017.

⁵ http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fBEL%2fCO%2f1&Lang=en, last accessed on 10 November 2017.

In order to guide the Committee in the performance of its task, Unia seeks to provide an impartial and independent viewpoint on the question of the implementation in the French Community of the fundamental rights of pupils with a mental disability within the meaning of the CRPD insofar as the latter brings together and firmly reiterates the international standards and principles inherent in the fundamental rights of people with disabilities. The CRPD does not enshrine any new basic rights, but clarifies and elaborates on the content of fundamental rights so that people with disabilities can enjoy and exercise the same rights as everyone else.

Unia wishes to draw attention in particular to the obligations entered into by Belgium under Article 24 of the CRPD (education), the wording of which ties in with the legal basis for the collective complaint, but which Belgium does not mention in its submissions on the merits of the complaint.

The observations here will study Article 24 of the CRPD through:

- the general principles that underpin the CRPD as a whole, in particular the principle of non-discrimination, full and effective participation and integration in society, respect for difference and respect for the evolving capacities of children with disabilities (Art. 3, CRPD);
- the drafting work for the CRPD;⁶
- General comment No. 4 (2016) on the right to inclusive education⁷.

⁶ Working Group of the Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, *Report of the Working Group to the Ad Hoc Committee*,
http://www.un.org/ga/search/http://www.un.org/ga/search/view_doc.asp?symbol=A/AC.265/2004/WG.1_doc.asp?symbol=A/AC.265/2004/WG.1

⁷ Committee on the Rights of Persons with Disabilities, *General comment No. 4 on the right to inclusive education*, 25 November 2016, CRPD/C/GC/4, see:
https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/GC/4&Lang=en

II. Article 24 of the CRPD: Belgium's obligation to move towards inclusive education, a fundamental right of all children with disabilities

II.1. Introduction

Under Article 1 of the CRPD, Belgium has undertaken to promote, protect and ensure the full and equal enjoyment of all fundamental freedoms by all persons with disabilities, including children with long-term mental and intellectual impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

In terms of education, Belgium is required to respect, protect and implement a fundamental right to inclusive education in accordance with Article 24 of the CRPD.

II.2. Article 24 of the CRPD: fundamental right to inclusive education

a) Right to education = right to inclusive education

Under Article 24 of the CRPD, States Parties must ensure the realisation of the right of persons with disabilities to education through an inclusive education system at all levels.⁸

The right to education is not therefore the only core principle of Article 24 of the CRPD.

Alongside the immediate obligation to ensure that people with disabilities are not excluded from education and have the right to reasonable accommodation,⁹ Belgium is required to provide them with inclusive education. The CRPD recognises inclusive education systems as the only means to ensure the right to education to all students, including persons with disabilities, without discrimination and on equal terms with others. In other words, the Convention underscores that *“the right to education is in fact the right to inclusive education”*.¹⁰ In so doing, it enshrines inclusion, which has been increasingly recognised *“over the past 30 years (...) as the key to achieving the right to education”*.¹¹

Comparison of the various proposals for Article 24 during the drafting work shows the choice that was made not to keep the right to education as the core principle but to replace it with the right to inclusive education.¹²

⁸ Idem, p. 3, §8.

⁹ Committee on the Rights of Persons with Disabilities, *General comment No. 4 on the right to inclusive education*, 25 November 2016, CRPD/C/GC/4, §41.

¹⁰ United Nations General Assembly, Human Rights Council, *Report of the Office of the United Nations High Commissioner for Human Rights, “Thematic study on the right of persons with disabilities to education”*, 18 December 2013, pp. 4 and 5, see: http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Documents/A-HRC-25-29_EN.DOC

¹¹ Committee on the Rights of Persons with Disabilities, *General comment No. 4 on the right to inclusive education*, 25 November 2016, CRPD/C/GC/4, §2.

¹² For comparison between the various proposals for Article 24 (initially Art. 17), see in particular:

b) Inclusion versus integration and segregation

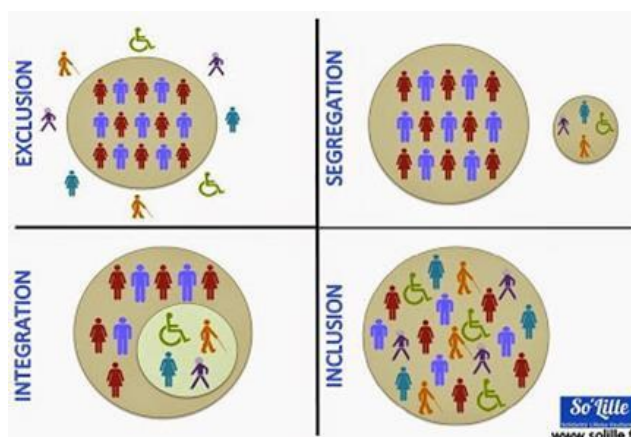
In its General comment No. 4 on the right to inclusive education, the Committee on the Rights of Persons with Disabilities pointed out what was meant by “inclusion”, underlining the differences in relation to the concepts of segregation and integration:¹³

“**Segregation** occurs when the education of students with disabilities is provided in separate environments designed or used to respond to a particular impairment or to various impairments, in isolation from students without disabilities.

Integration is the process of placing persons with disabilities in existing mainstream educational institutions with the understanding that they can adjust to the standardised requirements of such institutions.

Inclusion involves a process of systemic reform embodying changes and modifications in content, teaching methods, approaches, structures and strategies in education to overcome barriers with a vision serving to provide all students of the relevant age range with an equitable and participatory learning experience and the environment that best corresponds to their requirements and preferences. **Placing students with disabilities within mainstream classes without accompanying structural changes to, for example, organisation, curriculum and teaching and learning strategies, does not constitute inclusion.** Furthermore, integration does not automatically guarantee the transition from segregation to inclusion” (our emphasis).

The table below illustrates the difference between the concepts:



An education system which provides education for children with disabilities in special classes is thus a segregated system and does not therefore meet the requirements of Article 24 of the CRPD.

- Version 1 (“States Parties recognise the right of all persons with disabilities to education. [...]”): Working Group of the Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, *Report of the Working Group to the Ad Hoc Committee*, http://www.un.org/ga/search/view_doc.asp?symbol=A/AC.265/2004/WG.1.

- Version 7 (“States Parties shall ensure an inclusive education system at all levels [...]”), Ad hoc Committee, seventh session, http://www.un.org/ga/search/view_doc.asp?symbol=A/AC.265/2006/2

¹³ General comment No. 4 of the UN Committee on the right to inclusive education, November 2016, § 11, p. 3.

In a recent report, the Council of Europe Commissioner for Human Rights noted that:¹⁴

“School segregation is at variance with international and European human rights standards, which enshrine a positive obligation for states to secure the right of every child to quality education without discrimination.

Therefore, the Commissioner for Human Rights calls on member states of the Council of Europe to tackle this persistent phenomenon in their education systems by making progress in introducing genuinely inclusive education.”

c) Raison d’être of inclusive education

As stressed by the Committee on the Rights of Persons with Disabilities,¹⁵ inclusive education is central:

- to achieving high-quality education for all learners, including those with disabilities;
- and for the development of inclusive, peaceful and fair societies.

Inclusive education recognises the ability of persons with disabilities “to effectively be included in and contribute to society”.¹⁶ It is integral to the realisation of the general principles of the CRPD, in particular to ensuring people with disabilities’ full and effective participation and inclusion in society and putting a stop to prejudice against them.

The Council of Europe Commissioner for Human Rights pointed out that:¹⁷

“School segregation is one of the worst forms of discrimination and a serious violation of the rights of the children concerned, as their learning opportunities are seriously harmed by isolation and lack of inclusion in mainstream schools (...).

The Commissioner has consistently stressed that school segregation of children with disabilities can only perpetuate the marginalisation of persons with disabilities in society and reinforce prejudices against them”.

d) Obligations arising from Article 24 of the CRPD for Belgium

In ratifying the CRPD, Belgium therefore undertook:

- to avoid measures that hinder the enjoyment of the right to inclusive education (obligation to respect);
- to take measures that prevent third parties from interfering with the enjoyment of the right (obligation to protect);

¹⁴ Council of Europe Commissioner for Human Rights, [Fighting school segregation in Europe through inclusive education: a position paper](#), September 2017, page 19.

¹⁵ General comment No. 4 of the UN Committee on the right to inclusive education, November 2016, §2.

¹⁶ Idem, §10.

¹⁷ Council of Europe Commissioner for Human Rights, [Fighting school segregation in Europe through inclusive education: a position paper](#), September 2017, pages 5 and 8.

- take measures that enable pupils with disabilities to enjoy the right to inclusive education (obligation to fulfil).

Without prejudice to obligations which are immediately applicable such as that on reasonable accommodation, implementation of inclusive education is covered by the principle of progressive realisation provided for in Article 4 §2 of the CRPD. According to the Committee on Persons with Disabilities:¹⁸

“Progressive realisation means that States parties have a specific and continuing obligation to move as expeditiously and effectively as possible towards the full realisation of article 24”.

The Committee makes it clear that:

“This is not compatible with sustaining two systems of education: a mainstream education system and a special/segregated education system”.

¹⁸ General comment No. 4 of the UN Committee on the right to inclusive education, November 2016, §40.

III. Situation of education for pupils with disabilities in the French Community

III.1. Legislation

Under the legislation, pupils with disabilities may follow: (1) special education, (2) mainstream education with integration measures or (3) mainstream education.

Regardless of the category followed, the right to reasonable accommodation is protected by the Decree of the French Community of 12 December 2008 on measures to combat certain forms of discrimination (hereafter the “Antidiscrimination Decree”).

In practice, we will see that pupils with mental disabilities are almost all in special education.

Unia will return to the issue of the legislation in the light of the CRPD in section IV below.

(1) Special education

The **decree of 3 March 2004 on special education** provides for eight types of special education broken down according to the child’s medical impairments.¹⁹ Pupils with a mental disability are mainly in the following types of education:

- type 1 for pupils with a mild mental disability,
- type 2 for pupils with a moderate or severe mental disability.

(2) Mainstream education with integration measures

Since 2009, the **decree of 3 March 2004 on special education** has included provisions on the integration of pupils with special needs in mainstream education. Integration involves a partnership between a special school, in which a pupil is officially enrolled, and a mainstream school into which the pupil is partly or totally integrated, with assistance from various parties.

(3) Mainstream education

Mainstream education is governed by the **decree on missions**,²⁰ under which pupils may not be denied enrolment on the grounds of disability. The decree provides that the overall approach or strategy of each school must take account of the needs of the pupils enrolled and must lay down the teaching choices and the priority measures implemented to help integrate pupils with special needs.²¹ Parents’ right to enrol a child with a disability in mainstream education is also enshrined in the **antidiscrimination decree**.

¹⁹Type 1: mild mental disability, type 2: moderate or severe mental disability, type 3: behavioural and/or personality disorders, type 4: physical disabilities, type 5: hospitalised children, type 6: visual impairments, type 7: hearing impairments, type 8: serious learning difficulties.

²⁰Decree of the French Community of 24 July 1997 defining the priority missions of nursery, primary and secondary education and establishing the structures needed to accomplish them.

²¹Art. 67 of the missions decree.

III.2. Distribution of pupils between mainstream and special education: figures

a) Summary table

Based on the figures from the French Community, the table below indicates:²²

- the distribution of primary and secondary pupils for the year 2014-2015,
- the share of pupils in special education compared to mainstream education at primary and secondary level in 2005-2006 and 2014 and 2015 (up, see b)),
- the number of pupils integrated (primary and secondary level combined) (up, see c)).

	Number of pupils (2014-2016)		Share in special education	
	Mainstream	Special	2005-2006	2014-2015
Primary	317 370 pupils	17 656 pupils Including: - 25% type 1 - 14% type 2 - 39% type 8	4.9%	5.3%
Secondary	344 235 pupils	17 538 pupils Including: - 52% type 1 - 20% type 2 - 18% type 3 Including: 6% in "form" 4 (the only one which issues certificates and diplomas equivalent to those issued in mainstream education)	3.9%	4.7%
Total	661 605 pupils	35 194 pupils		
Integration		Including 2 043 integrated pupils ↙ (5.8%) Including: - 32.5% type 1 (661 pupils) - under 2% types 2 and 5 (57 pupils)		

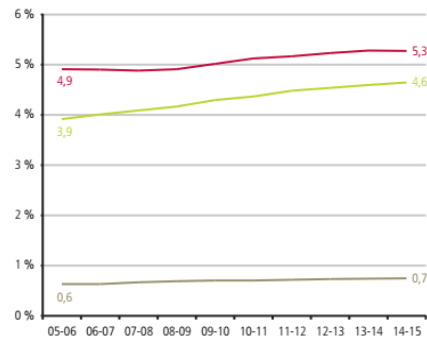
²² Les indicateurs de l'enseignement 2016, 11th edition, April 2017, see: <http://www.enseignement.be/index.php?page=0&navi=2264>

b) Increase in the share of special education from 2005 to 2015

Special education's share in each of the levels of education in the French Community has risen steadily over the past 10 years, as indicated in the figures from the above table (from 4.9% to 5.3% at primary level and 3.9% to 4.7% at secondary level) and the chart below:²³

[6.3 Trend in special education's share according to education level from 2005-2006 to 2014-2015] [In 2014-2015, 5.3% of primary pupils were in special education.] [Nursery/Primary/Secondary]

6.3 Évolution de la part de l'enseignement spécialisé selon les différents niveaux d'enseignement de 2005-2006 à 2014-2015



En 2014-2015, 5,3 % des élèves scolarisés dans l'enseignement primaire fréquentent l'enseignement spécialisé.

c) Integration and breakdown by type of education

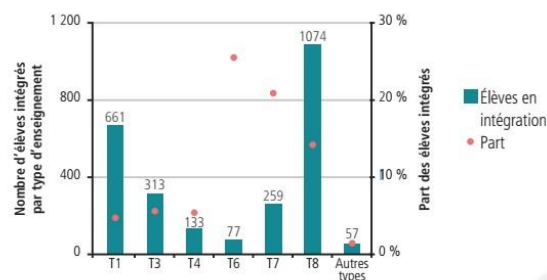
The number of pupils with disabilities covered by integration measures in mainstream schools has increased significantly year on year, from:

- 188 in the school year 2004-2005,²⁴
- to 3 685 as at 15 January 2017.²⁵

The breakdown by education types is, however, quite unequal:²⁶

[7.4 Number of pupils integrated and share of integrated pupils in special education by education type in 2014-2015][Number of integrated pupils by education type] [Share of integrated pupils] [Integrated pupils] [Share] [Other types] [In 2014-2015, 14% of pupils in type-8 education were integrated, corresponding to 1 074 pupils.]

7.4 Nombre d'élèves en intégration et part de l'intégration dans l'enseignement spécialisé par type d'enseignement en 2014-2015



En 2014-2015, parmi les élèves relevant de l'enseignement de type 8, 14 % sont en intégration, ce qui correspond à 1 074 élèves.

²³ [Indicateurs de l'enseignement 2016](#), page 23.

²⁴ [Bulletin des questions et réponses du parlement de la Communauté française](#), 20 September 2017, Question No. 632 by Mr Mouyard of 2 May 2017, page 211.

²⁵ Idem, Question No. 660 by Ms Morreale of 4 May 2017, page 227.

²⁶ [Indicateurs de l'enseignement 2016](#), pages 24 and 25.

For the year 2014-2015, of the 2 043 pupils covered by integration measures:

- 1 074 were type 8 (i.e. over half),
- 661 were type 1 (roughly 32.5%),
- 57 were types 2 and 5, with no breakdown possible between the two types.

As at 15 January 2017, of the 3 685 pupils covered by integration measures only 55 were type 2, broken down as follows: 33 in nursery, 21 in primary and one in secondary education.²⁷

III.3. Study of reports received by Unia (2016)

As part of its remit as an independent mechanism, Unia has been tasked with protecting the fundamental rights of persons with disabilities (Art. 33.2, CRPD). Likewise, as an independent inter-federal public service responsible for promoting equal opportunities and combating discrimination, Unia is qualified “to receive reports, process them and carry out any steps towards reconciliation or mediation that it deems necessary”.²⁸

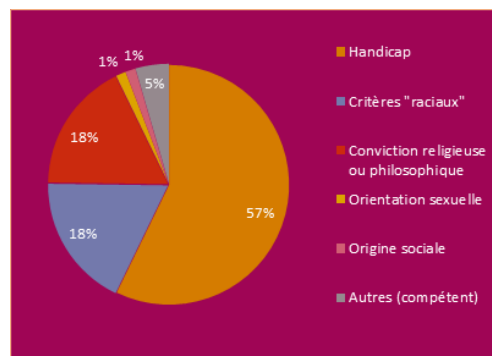
Any approaches made to Unia concerning antidiscrimination legislation or fundamental rights of persons with disabilities are termed “reports”.

When Unia deems it has competence to deal with a report and the latter goes beyond a mere information request, a “file” is opened.

Below, Unia provides an overview of the reports received and files opened in the area of education based on the disability criterion for 2016.

a) Share of disability files in the files concerning education

Of all files lodged in the education sector, over half concerned the criterion of discrimination based on disability (57%).



[Disability/"Racial" criteria/Religious or philosophical conviction/Sexual orientation/Social origin/Other (where competent)]

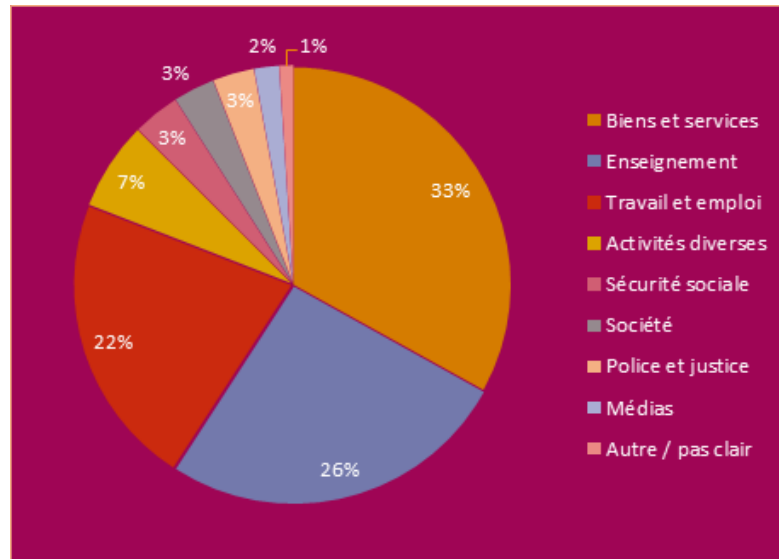
²⁷ Parliament of the French Community, *Bulletin des questions et réponses*, 20 September 2017, page 234, Question No. 672 by Ms Morreale of 12 May concerning integration and inclusion of type-2 children, see: http://archive.pfwb.be/100000002078030_5.140.

²⁸ Art. 6.§2 of the Co-operation Agreement of 12 June 2013 between the Federal Authority, the Regions and Communities for creating an Inter-federal Centre for Equal Opportunities and Opposition to Racism and Discrimination in the form of a joint institution, within the meaning of Article 92bis of the Special Institutional Reform Act of 8 August 1980.

b) Share of education files in the files concerning disability

In 2016, Unia registered 852 reports and 487 files concerning the disability criterion in all fields combined.

Of the 487 disability files, 127 concerned education (26%).

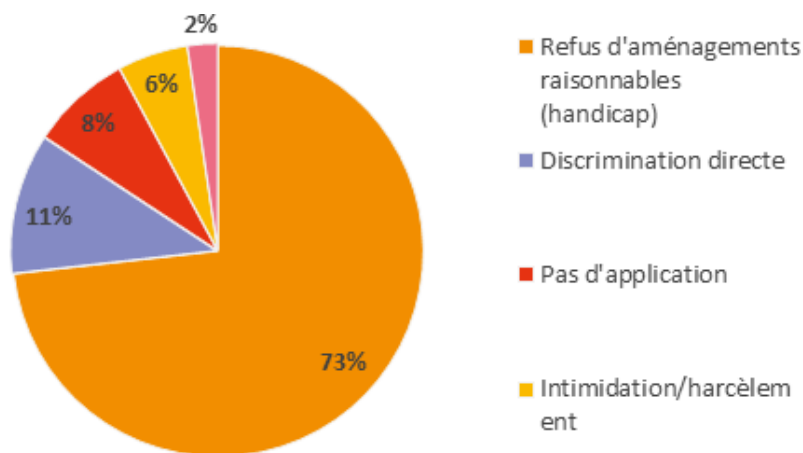


[Goods and services/Education/Work and employment/Miscellaneous activities/Social security/Society/Police and justice/Media/Other-unclear]

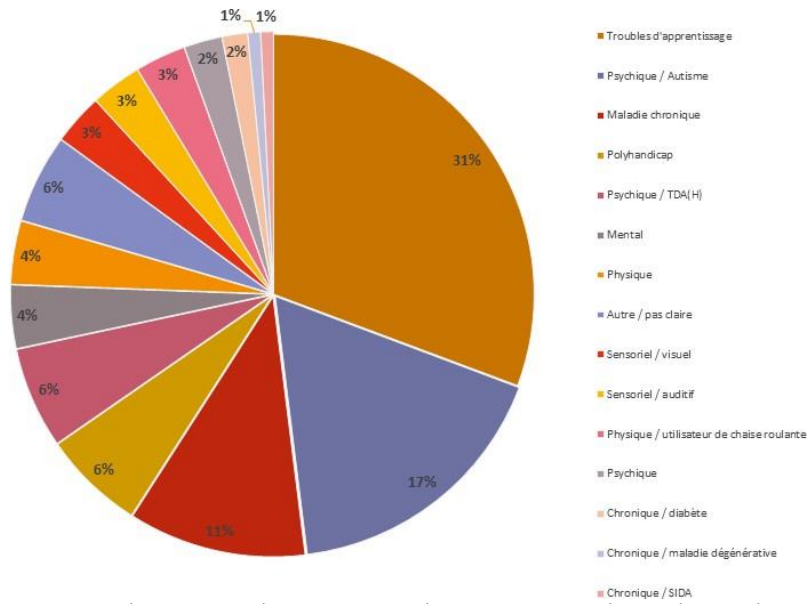
Of the 127 disability files in the education field:

- 93 files involved discrimination on the ground of refusal of reasonable accommodation (73%).

[Refusal of reasonable accommodation (disability) / Direct discrimination / N.A. / Intimidation-harassment]

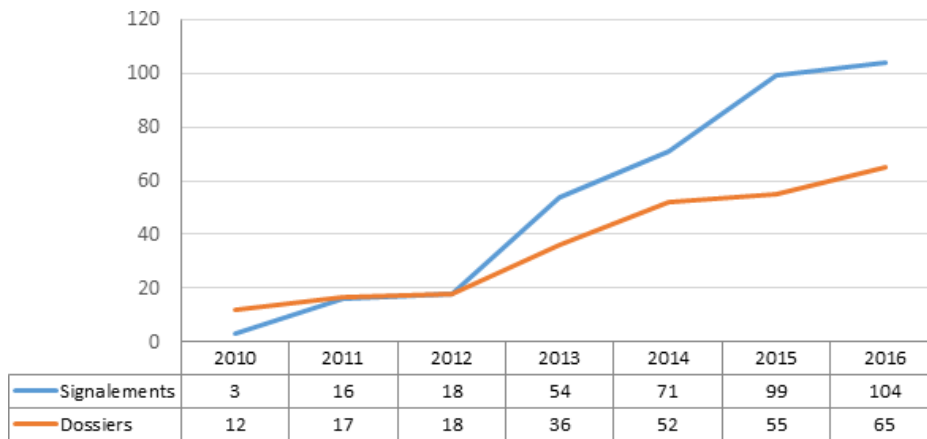


- 22 files concerned pupils with psychological disorders or autism (17%), eight concerned pupils with a psychological disorder/ADHD (6%), five concerned pupils with a mental disability (4%) and eight concerned pupils with multiple disabilities (physical and mental)



[Learning difficulties/Psychological-Autism/Chronic illness/Multiple disability/Psychological-ADHD/Mental/Physical/Other-unclear/Sensory-visual/Sensory-hearing/Physical-Wheelchair user/Psychological/Chronic-Diabetes/Chronic-Degenerative/Chronic-AIDS]

- The number of disability reports and files in the education sector in the French Community is rising steadily.



[Reports][Files]

IV. Analysis of education in the French Community in the light of the fundamental rights of pupils with mental disabilities

IV.1. Segregated education (not, “on principle, inclusive”) with low level of integration

The legislation in the French Community in theory ensures that pupils with disabilities are not excluded from mainstream education and have access to reasonable accommodation (missions decree and antidiscrimination decree).

Since 2009, there has also been an integration process to enable pupils in special education to attend mainstream schools on a full-time or part-time basis. This integration process marks a step forward in terms of pupils with disabilities following mainstream education, and the figures show that more and more are doing so.

However, as shown by the distribution of pupils between special and mainstream education and upon examination of the reports made to Unia:

- The share of pupils in special education has grown steadily over the past 10 years;²⁹
- A number of pupils with disabilities are able to enter mainstream education through reasonable accommodation measures provided by schools, but this is not without difficulties, as demonstrated by the increasing number of reports made to Unia concerning reasonable accommodation in education (73% of disability – education files in 2016);³⁰
- 5.8%³¹ of them are integrated in mainstream schools through integration measures provided by the authorities (with only around 50 being type 2).

In practice, only pupils who are deemed capable of adapting to the standardised requirements of mainstream schools have any chance of being integrated. There are no structural changes towards genuine inclusion.

Consequently, education in the French Community cannot be regarded as inclusive.

It is a segregated system (with pupils with disabilities attending special schools) in which only a small proportion of them are integrated in mainstream education, for the reasons which we will examine in section IV.2 below.

As we will see in section IV.3, the French Community has made no undertakings to move towards a genuinely inclusive education system in compliance with Article 24 of the CRPD.

²⁹ See summary table on page 11 and chart on page 12.

³⁰ See chart on page 15.

³¹ See figures for 2014-2015 (summary table on page 11 and chart on page 12) and figures for 2017 on page 13.

IV. 2. Analysis of the measures to improve the integration of pupils with a mental disability

a) Current measures

The current measures are insufficient to ensure high-quality integration of pupils with mental disabilities. The reasons are follows:

(1) Regarding the right to enrolment and the right to reasonable accommodation (antidiscrimination decree)

Although refusal to enrol pupils because of disability and refusal to provide reasonable accommodation measures are both prohibited under the antidiscrimination decree, Unia would point out that:

- the differentiated approach required under the missions decree is not applied in practice by all schools,
- education professionals are often unfamiliar with the provisions of the antidiscrimination decree or interpret them incorrectly,
- teachers are not trained to deal with pupils with disabilities, in particular mental disabilities,
- there is still no legislation governing the introduction of reasonable accommodation in schools. However, it is necessary to have structural arrangements and clear procedures for requests for reasonable accommodation and forums for consultation and decision-making on the types of reasonable accommodation possible and the reasonableness of the measures.³²

The applications for injunctions provided for in the antidiscrimination decree and highlighted by Belgium in its submissions on the merits of the complaint are not an effective remedy when parents are met with refusal to grant reasonable accommodation. Apart from the costs related to lawyers' fees (the restrictive conditions for legal aid confine it to the most disadvantaged groups), the time needed for decisions to be taken (between 1½ and 2½ years)³³ means that the children concerned are not able to return to school within a period that is reasonable for their schooling. Moreover, parents usually do not want their children to attend schools against which they have brought legal proceedings.

³² See here, Council of Europe Commissioner for Human Rights, [Fighting school segregation in Europe through inclusive education: a position paper](#), September 2017, page 23. "However, setting up clear rules regarding processes of admission will be ineffective unless robust monitoring mechanisms are in place. The authorities must introduce clear standards and strong inspection mechanisms to ensure that school admissions are carried out in full compliance with the law. In addition, a system of sanctions should be established to prevent and deter fraud in the process."

³³ "The average length of the proceedings is continuing to increase and now can easily be between 1½ and 2½ years, if not more, at first instance"; excerpt from evaluation report on the antidiscrimination and antiracism legislation, Unia, 2017, p 36
[http://unia.be/files/Documenten/Publicaties_docs/Evaluation_2e_version_LAR_LAD_Unia_PDF_\(Francophone\).pdf](http://unia.be/files/Documenten/Publicaties_docs/Evaluation_2e_version_LAR_LAD_Unia_PDF_(Francophone).pdf).

A proposal for a decree introducing a procedure for providing reasonable accommodation measures is being drawn up in the Parliament of the French Community.

Although Unia welcomes the proposal, it currently only provides that pupils whose “situation neither justifies nor necessitates special education provision” will be entitled to reasonable accommodation, which may suggest that pupils with a mental disability will not in practice be covered by the future decree’s provisions.³⁴

The accommodation measures that have to be put in place to meet the specific needs of pupils with mental disabilities are therefore quickly deemed unreasonable and families, who are often already worn out by the struggles of daily life, are only rarely equipped to bring court proceedings which in any case would not allow the desired return to mainstream education.

(2) Regarding the missions decree management plans

The management plans due to enter into force in September 2018 will not provide a response to the problems encountered on the ground, as they will only involve an obligation on schools to indicate their strategies concerning at least 13 subjects, including their strategies on the integration of pupils and reasonable accommodation for pupils with special needs.³⁵ As the quantified targets in the appendix are confidential, assessment by third parties will be complex.

(3) Regarding the integration process (chapter 10 of the decree on special education)

The obstacles are as follows:

- The number of special support periods provided for in the decree is sometimes inadequate to meet the child’s needs, i.e. four periods for nursery/primary and secondary education.

It should be noted that for persons who do not have mental disabilities (i.e. pupils in types 4, 5 or 7), provision is made for 16 periods for pupils in the fifth and sixth years of secondary education. Pupils in types 1, 2 and 3 used to be entitled to 16 periods like the other pupils, but the periods were reduced in 2015.³⁶

³⁴ For more details of Unia’s criticisms of the proposal for a decree, see: <https://www.unia.be/fr/legislation-et-recommandations/recommandations-dunia/federation-wallonie-bruxelles-proposition-de-decret-du-3-mai-2016-relative-a-laccueil-et-laccompagnement-dans-lenseignement-ordinaire-obligatoire-des-eleves-presentant-des-besoins-specifiques-avis>.

³⁵ Art. 67 § 2 a) to m) of the missions decree, the strategy on integration and reasonable accommodation being point f.

³⁶ Programme decree of 14 July 2015 on various measures relating to compulsory education, Culture, the Higher Education and Research Federation (ARES), the funding of university and non-university higher education and the guarantee provided by the French Community, Article 10.

- The need for parents who want their child integrated in a mainstream school to obtain the consent of (1) the special school where the child will be enrolled (2) the psycho-medico-social centre of that school, (3) the mainstream school where the child is due to be integrated and (4) the psycho-medico-social centre of that school; refusal by any one of them will prevent the child being integrated.³⁷
- The deadline for applying for integration (15 January).
- Insofar as the child has to enrol in a special school for the purpose of integration, the risk of the child being required to attend the special school when the application for full permanent integration is refused or integration comes to an end (especially since there is no legal remedy in the event of refusal).

(4) Regarding the decree on special education

At present, special education offers parents provision better suited to the needs of children with mental disabilities, but it still involves segregation. They are entitled to school transport (although under conditions often criticised) and to speech therapy, the costs of which are not reimbursed when children attend mainstream schools, unless they are proven to have an IQ of over 86.³⁸ In these circumstances, in the absence of real measures to allow quality integration, parents often have no option other than enrolling their children in special education.

In its submissions, Belgium states that with effect from 2015,³⁹ the reports on which enrolment of pupils in schools of types 1, 3 and 8 depends must show that the reasonable accommodation measures in mainstream schools have proven inadequate.

Pupils in type 2 are not affected by this change.

(5) Other initiatives mentioned in Belgium's submissions

The measures below mentioned in Belgium's submissions are not actually solutions for the integration of pupils with a mental disability:

- The good practices in terms of the adjustments to exams for the certificate of basic education (CEB) (point 4.2.4): contrary to what is stated in the submissions, the adjustments do not concern all types of special needs because no arrangements are made for pupils with a mental disability.
- The decree of 30 April 2009 on differentiated management (point 4.2.3.), which is a general funding measure for certain schools depending on the pupils' neighbourhoods, without reference to the issue of disability.

³⁷ Article 134 of the decree of 3 March 2004 on special education.

³⁸ In this connection, see Unia's criticisms in its opinion: <http://unia.be/fr/legislation-et-recommandations/recommandations-dunia/le-remboursement-des-frais-de-logopedie-par-lassurance-soins-de-sante>.

³⁹ Programme decree of 14 July 2015 on various measures relating to compulsory education, Culture, the Higher Education and Research Federation (ARES), the funding of university and non-university higher education and the guarantee provided by the French Community.

b) Measures set out in the Pact for Excellence

The French Community is currently working on a new education policy entitled “Pact for Excellence in Education”, which was initiated in 2015. The planned reforms are set out in a draft opinion of the task force of 7 March 2017,⁴⁰ one section of which is aimed at fostering the integration of pupils with special needs. These measures have not yet entered into force and it is not certain that they will do so.

Whatever the case, Unia⁴¹ welcomes the consensus of the Pact stakeholders in terms of fostering initiatives aimed at keeping pupils with disabilities in mainstream education, drawing on mainstream and special education resources. Unia also welcomes the clear intention to reform initial teacher training.

However, pupils with a moderate or severe intellectual disability are not covered by the measures in the Pact aimed at integration, which mainly concern pupils in types 1, 3 and 8.

In addition, the Pact seems to seek to introduce a category of recommended reasonable accommodation measures and refers to their progressive implementation. Yet the right to reasonable accommodation, as enshrined in the antidiscrimination decree and the CRPD, is mandatory and is immediately applicable.

IV. 3. Analysis of the measures aimed at the progressive realisation of inclusive education

a) Current measures

To comply with its international obligations concerning fundamental rights, Belgium must foster integration and also progressively completely overhaul its legislation and policies governing education systems so as to secure the right to quality inclusive education to all pupils with disabilities.

Unia would point out that:

- Even though some measures are described as inclusive, there are **no political or legislative initiatives** which have given effect to the French Community’s obligation to introduce as swiftly and effectively as possible inclusive education at primary and secondary level within the meaning of the CRPD.
- **No school desegregation policy** has been introduced, contrary to the recommendations of:
 - o the Committee on the Rights of Persons with Disabilities, which in 2014 called on Belgium to implement “*a coherent inclusive education strategy for children with disabilities in the mainstream system and ensure the provision of adequate financial, material and human resources*”.⁴²

⁴⁰ Pact for Excellence in Education, Opinion No. 3 of the task force, 7 March 2017, available at: http://www.pactedexcellence.be/wp-content/uploads/2017/05/PACTE-Avis3_versionfinale.pdf

⁴¹ Unia’s opinion concerning the Pact for Excellence in Education, as regards strand 4 of draft opinion No. 3 of the task force, <http://unia.be/fr/legislation-et-recommandations/recommandations-dunia/pacte-dexcellence-concernant-les-eleves-en-situation-de-handicap-peut-mieux>.

⁴² [Concluding observations on the initial report of Belgium](#), October 2014, CRPD/C/BEL/CO/1, pp 6-7.

- the Council of Europe Commissioner for Human Rights, according to whom states “*should instead adopt comprehensive desegregation strategies with clear targets, sufficient resources to implement them and a clear and an ambitious timetable. The commitment to desegregation should be supported at the highest level of state authorities*”.⁴³

b) Measures set out in the Pact for Excellence

The Pact for Excellence could have been an opportunity to make a clear commitment towards inclusive education, as called for by the Council of Europe Commissioner for Human Rights in 2016.⁴⁴

However, the Pact, which seeks to “foster inclusive education”, is actually aimed at fostering integration for certain pupils with disabilities through reasonable accommodation measures, as indicated by the definition of an inclusive school: “*a school which enables pupils with special needs to be schooled in mainstream education through the provision of special accommodation measures (...)*”⁴⁵ and the goal pursued of reducing “*the percentage of pupils in special education to 2004 levels by 2030*”.⁴⁶

Moreover, as explained above, it is mainly pupils in education types 1, 3 and 8 who are covered by the Pact, not those in type 2.

c) Lack of commitment to inclusive education

In practice, however, examination of the Pact for Excellence and Belgium’s submissions worryingly shows that the continuation of segregated education is not being called into question and that there are no indications that thought will be given to the progressive introduction of the same type of education for everyone, with no distinction between mainstream and special, as required under Article 24 of the CRPD.

Under the Pact for Excellence,

- type 8 special education is to be extended until the end of the core curriculum;⁴⁷
- “the key aspect of the reform of special education is not to alter this type of education, which is generally deemed to be of high quality, but to open it up and refocus it on pupils for whom it is really suited”;⁴⁸
- the goal is reducing “the percentage of pupils in special education to 2004 levels by 2030.”⁴⁹

⁴³ Council of Europe Commissioner for Human Rights, [Fighting school segregation in Europe through inclusive education: a position paper](#), September 2017, pages 20-21.

⁴⁴ Report of 28 January 2016 by Nils Muižnieks, Council of Europe Commissioner for Human Rights, following his visit to Belgium from 14 to 18 September 2015, § 111, “[The Commissioner] takes note of the intention expressed by the authorities of this community to develop a new educational policy and he hopes that this will lead to a clear commitment towards inclusive education (...)”.

⁴⁵ Pact for Excellence in Education, Opinion No. 3 of the task force, 7 March 2017, p. 240 et seq.

⁴⁶ Idem, p. 250.

⁴⁷ Idem, p. 254.

⁴⁸ Idem, p. 250.

Belgium's submissions:

- make no reference to the CRPD;
- maintain that the continuation of special education is justified by the overriding imperatives of (1) the best interests of children with disabilities and (2) respect for the right to education of pupils attending mainstream schools.⁵⁰

No consideration is being given to the impact of segregation on pupils with or without disabilities.

However, in his 2016 report following his visit to Belgium, the Council of Europe Commissioner for Human Rights stressed that: *"irrespective of the quality of education provided in specialised schools, separate education leads to a lack of equal opportunities that has long-lasting detrimental effects on the lives and possibilities to be included in society of persons with disabilities"*.⁵¹

d) No paradigm shift

The arguments put forward by Belgium to justify the continuation of separate education for pupils with a mental disability, namely their interests and those of children without disabilities, demonstrate that Belgium is far from the change in attitudes and ending of prejudices needed to achieve respect for the right to inclusive education.

As the Council of Europe Commissioner for Human Rights points out:

"inclusive education requires a mentality shift at societal level, from seeing certain children as a problem to identifying the existing needs and improving the education systems themselves. It is crucial that society at large, decision-makers and all the actors involved in the field of education fully understand the need for this paradigm shift".⁵²

Yet it is precisely prejudices concerning people with mental disabilities that must be combated in accordance with Article 8 of the CRPD, which, in conjunction with Article 24 of the CRPD, requires states to *"adopt measures to build a culture of diversity, participation and involvement in community life and to highlight inclusive education as a means of achieving a quality education for all students, with and without disabilities, parents, teachers and school administrations, as well as the community and society"*.⁵³

⁴⁹ Idem.

⁵⁰ European Committee of Social Rights, Complaint No. 141/2017, Submissions by Belgium on the merits of the complaint, in particular page 26, point 4.3.2.

⁵¹ Report of 28 January 2016 by Nils Muižnieks, Council of Europe Commissioner for Human Rights, following his visit to Belgium from 14 to 18 September 2015, §103.

⁵² Report, summer 2017 (page 22).

⁵³ *General comment No. 4 on the right to inclusive education*, Committee on the Rights of Persons with Disabilities, 25 November 2016, CRPD/C/GC/4, §48.

IV.4. Analysis by the UN Committee on the Rights of Persons with Disabilities and the Council of Europe Commissioner for Human Rights

a) Committee on Persons with Disabilities: concluding observations concerning Belgium (October 2014)⁵⁴

Commenting specifically on Article 24 of the CRPD, the Committee says it is “concerned at reports that many students with disabilities are referred to and obliged to attend special schools because of the lack of reasonable accommodation in the mainstream education system. **As inclusive education is not guaranteed**, the special education system remains an all too frequent option for children with disabilities. The Committee is also concerned about poor accessibility in schools.”

Also, in terms of recommendations, the Committee “requests that the State party implement a coherent inclusive education strategy for children with disabilities in the mainstream system and ensure the provision of adequate financial, material and human resources. It recommends that the State party ensure that children with disabilities receive the educational support they need, in particular through the provision of accessible school environments, reasonable accommodation, individual learning plans, assistive technology in classrooms, and accessible and adapted materials and curricula (...).”

b) Council of Europe Commissioner for Human Rights

The above analysis is shared by the Council of Europe Commissioner for Human Rights in his report of 28 January 2016 following his visit to Belgium, the passages in which concerning education for children with disabilities have been referred to throughout these observations.⁵⁵

⁵⁴ [Concluding observations on the initial report of Belgium](#), October 2014, CRPD/C/BEL/CO/1, pp. 6-7.

⁵⁵ Report of 28 January 2016 by Nils Muižnieks, Council of Europe Commissioner for Human Rights, following his visit to Belgium from 14 to 18 September 2015, pages 22 et seq. See, in particular, §101,103,113 and 114.

IV. Conclusion

In ratifying the United Nations Convention on the Rights of Persons with Disabilities, the Belgian State and its federate entities pledged to pursue a policy which respects the right to education of children with disabilities in order to enable them to live independently and be included in the community.

At present in the French Community, even though children with disabilities have the right to enrol in mainstream schools and measures do exist to foster their integration, there are a whole range of obstacles which seriously undermine the effective enjoyment of this right. In practice, parents of children with mental disabilities are deprived of this possibility in the absence of coherent and sufficient measures to meet their children's needs. It is available only to a few financially and socially privileged families who find a school willing to accept their children (without any guarantee of continuation).

Special education therefore remains an all too frequent option.

Three years after this finding shared by the UN Committee on the Rights of Persons with Disabilities in its 2014 Concluding Observations, the steps taken to date by the French Community to improve the situation of pupils with a mental disability are completely insignificant. While some measures are planned under the Pact for Excellence, if they actually are adopted, they will mainly concern other children with disabilities.

Moreover, there has been no discussion of a national action plan with clear objectives and an adequate budget for genuinely inclusive education.

On the contrary, the French Community favours the continuation of segregated education and justifies its position with the best interests of children with disabilities and of other children.

This all reflects the lack of a shift in attitudes among the authorities towards mental disability. As stressed by the UN Committee on the Rights of Persons with Disabilities in its Draft General Comment No. 6 on Article 5 of the CRPD:⁵⁶

“(...) Persons with disabilities are faced with discrimination leading to continued (...) segregation and lack of redress, particularly (...) children (...) with disabilities, persons with psychosocial and intellectual disabilities and those with high support requirements (...). The Committee notes that much of this disability-based differential treatment of persons with disabilities with humiliating consequences in terms of legal recognition of disabilities continues with the acquiescence of public authorities. **The Committee has observed that often disability-based discrimination, such as (...) segregation are incorrectly not regarded as discrimination and are wrongly justified as being carried out among others in order to allegedly protect or care for the person with a disability in question, in his or her best interests, or in the interest of public order. Such practices are in direct contravention of the Convention and its principles, including the respect for the inherent dignity, autonomy, and freedom to make one's choices” (our emphasis).**

⁵⁶ Draft General Comment No. 6 on Article 5 of the CRPD by the UN Committee on the Rights of Persons with Disabilities, §4, page 2, <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/CallPersonsDisabilitiesEqualityResponsability.aspx> (last accessed on 10 November 2017).