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

6 December 2018

**Case Document No. 6**

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

**OBSERVATIONS BY THE GENERAL DELEGATE OF THE  
FRENCH COMMUNITY FOR THE RIGHTS OF THE CHILD**

**Registered at the Secretariat on 24 November 2017**





**DROITS DE  
L'ENFANT**  
Le Délégué général

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: General Delegate of the French Community for the Rights of  
the Child

Date: 22 November 2017

# **1. Introduction: author and basis for the observations**

## **1.1. Author of the observations**

The institution of the General Delegate of the French Community for the Rights of the Child is governed by a decree dated 20 June 2002 (as amended by the decree of 7 December 2007) and an order dated 19 December 2002.

It is an independent body with the general task of ensuring the protection of children's rights and interests. In performing this task, the General Delegate may in particular:

- provide information about children's rights and interests and promote their rights and interests;
- check that the legislation and regulations concerning children are properly enforced;
- receive information, complaints or requests for mediation concerning infringements of children's rights and interests;
- submit to the Government, Parliament or any authority responsible for children proposals to adapt the existing regulations with a view to ensuring more comprehensive and more effective protection of children's rights.

## **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, 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.

As an independent institution having many contacts with the children and families concerned, the General Delegate wishes to submit his views and observations on the situation as currently experienced in the French Community. He also wishes to underline the commitments entered into by the French Community on account of ratification of the International Convention on the Rights of the Child (ICRC).



## **2. International Convention on the Rights of the Child**

The ICRC entered into force in Belgium on 15 January 1992. Various articles come into play in connection with the subject of these observations.

In particular, Article 2 recommends that States Parties take all appropriate measures to ensure that children are protected against all forms of discrimination.

Article 3 recommends that the best interests of the child shall be a primary consideration in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies.

Article 23 recommends that States Parties recognise that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

In addition, in its General Comment No. 9 of 27 February 2007 on the rights of children with disabilities,<sup>1</sup> the Committee on the Rights of the Child specifically asked the States Parties to fund programmes aimed at including children with disabilities into mainstream education and provide the necessary protection while maintaining their inclusion in such education.

On the subject of "inclusive education", the Committee states that "inclusive education should be the goal of educating children with disabilities. The manner and form of inclusion must be dictated by the individual educational needs of the child, since the education of some children with disabilities requires a kind of support which may not be readily available in the regular school system. The Committee notes the explicit commitment towards the goal of inclusive education contained in the draft convention on the rights of persons with disabilities and the obligation for States to ensure that persons including children with disabilities are not excluded from the general education system on the basis of disability and that they receive the support required, within the general education system, to facilitate their effective education. It encourages States parties which have not yet begun a programme towards inclusion to introduce the necessary measures to achieve this goal. (...)

The movement towards inclusive education has received much support in recent years. However, the term inclusive may have different meanings. At its core, inclusive education is a set of values, principles and practices that seeks meaningful, effective, and quality education for all students, that does justice to the diversity of learning conditions and requirements not only of children with disabilities, but for all students. This goal can be achieved by different organisational means which respect the diversity of children. Inclusion may range from full-time placement of all students with disabilities into one regular classroom or placement into the regular classroom with varying degrees of inclusion, including a certain portion of special education. It is important to understand that inclusion should not be understood nor practised as simply integrating children with disabilities into the regular system regardless of their challenges and needs. Close co-operation among

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<sup>1</sup> General comment No. 9 of 27 February 2007, CRC/C.GC/9

special educators and regular educators is essential. Schools' curricula must be re-evaluated and developed to meet the needs of children with and without disabilities. Modification in training programmes for teachers and other personnel involved in the educational system must be achieved in order to fully implement the philosophy of inclusive education."

The specific reference by the Committee on the Rights of the Child to the Convention on the Rights of Persons with Disabilities (CRPD) is vital to the understanding of the texts. Integration and, still more, inclusion are concepts which emerged after the drafting of the ICRC. Even though they are not clearly included as such in the ICRC, the reference by the Committee acknowledges that Article 24 of the CRPD, which secures the fundamental right of all children with disabilities to inclusive education, de facto entails a fresh interpretation of the provisions of the ICRC.

Similarly, the Council of Europe Commissioner for Human Rights has underlined that "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" and called on states to make progress in introducing genuinely inclusive education.<sup>2</sup>

Lastly, in the Concluding Observations addressed to Belgium in June 2010,<sup>3</sup> further to the submission of the third and fourth periodic reports, the Committee on the Rights of the Child urged Belgium to "take more practical actions to ensure inclusive education for children with disabilities".

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<sup>2</sup> Council of Europe Commissioner for Human Rights, *Fighting school segregation in Europe through inclusive education: a position paper*, September 2017, page 19.

<sup>3</sup> *Concluding observations concerning Belgium's third and fourth periodic reports*, June 2010, CRC/C/BEL/CO/3-4, page 10.

### **3. Situation in the French Community**

Compulsory education is divided between special education, mainstream education and various forms of integration into mainstream education for children with disabilities.

Special education is broken down into eight types, depending on the disability. Most children with mental disabilities come under type 1 (mild mental disability) or type 2 (moderate or severe mental disability). The latter type is of most interest to us here because, although it concerns children with a mild mental disability, type 1 mainly includes children with learning difficulties, children from disadvantaged socio-economic backgrounds and children not proficient in the language of instruction.

Moreover, the French Community adopted an “antidiscrimination” decree in 2008, granting every pupil the right to reasonable accommodation measures. In this connection, and contrary to what is often maintained in the French Community, the provision of special education cannot in any circumstance be equated with reasonable accommodation.

The education indicators published annually clearly show that, far from declining as called for in all the relevant international instruments, special education provision has continued to grow and in 2014 accounted for 5.3% of education in general at primary level and 4.7% of secondary education.<sup>4</sup>

Moreover, while the number of pupils integrated into mainstream education rose from 188 in 2004-2005 to 3 685 in 2017, in the context of interest to us, it is worth noting that only around 50 type-2 pupils are involved, whereas they are obviously those most directly concerned by the complaint lodged.

Analysis of the complaints received in our institution shows a sharp increase in cases involving the refusal of integration in general and, more particularly, as regards children with moderate or severe mental disabilities.

At present, the approximately 50 children who have been integrated into mainstream education under the decree allowing the procedure are almost all in nursery school or the early years of primary school. As far as we know, only two children are currently genuinely included in mainstream secondary education and this is possible only because they come from socio-economically advantaged families who can employ private (and hence fee-paying) support services, in the absence of any structural support provided for in legislation.

At the same time, reference should be made to so-called integrated classes, which enable children enrolled in type-2 special education to attend mainstream schools in special classes set up in the mainstream system. Measures of this kind have been increasing in number over the last two years and, given the way mainstream education is currently organised, very clearly do respond to the needs of many children. However, their numbers are still too limited, and they cannot hide the need to establish genuine inclusion processes.

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<sup>4</sup> In 2005, the figures were 4.9% and 3.9% respectively.



Such processes currently exist in all too few schools that make efforts and demonstrate creativity of an exemplary nature. These schools, which lead the way in respecting the rights of children and people with disabilities, are nevertheless taking substantial risks in deviating from the rules of the French Community's key decrees.

In its submission, Belgium also refers to the risk of the lowering of educational standards as a result of children with mental disabilities studying in mainstream schools. This presupposition, which flies in the face of all the academic research conducted on the subject, demonstrates a profound lack of understanding of the issues.

The references to a whole range of decrees that are completely unrelated to the subject of the complaint reflect the same lack of understanding (adaptations to CEB primary school exam, adjustments during first two years of secondary school, procedure in the event of enrolment being refused, etc.).

In addition, the references to the opinion of 7 March 2017 concerning the Pact for Excellence in Education, which in no way involve legislation currently in force but merely concern declarations of intent by some players in the education sector, provide no guarantees whatsoever of future improvements in the situation – especially since no mention of any kind is made of the situation of pupils covered in principle by type 2.

Similarly, the fact that the pact sets the objective of reducing “the percentage of pupils in special education to 2004 levels by 2030” once again shows the lack of determination to come into line with the international instruments that Belgium actually ratified long ago.

The original purpose of the concept of the best interests of the child, as set out in Article 3 of the ICRC and emphasised in Belgium's submissions, is completely distorted here. To counter this reasoning, we can turn to the report drawn up in 2016 by the Council of Europe Commissioner for Human Rights: “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.”<sup>5</sup>

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<sup>5</sup> Report of 28 January 2016 by the Council of Europe Commissioner for Human Rights following his visit to Belgium from 14 to 18 September 2015, §103.

## 4. Conclusion

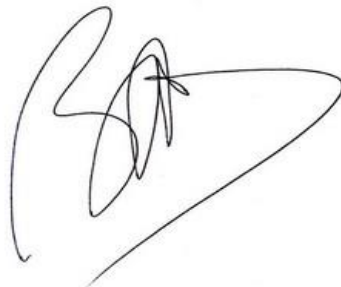
Many years after the ratification of the ICRC and the CRPD, Belgium and, in this case, more specifically, the French Community, are still not honouring their commitments.

In the absence of coherent measures, simplification of procedures, reasonable accommodation and a clear political will to promote the inclusion of children with proven mental disabilities at *all* levels of compulsory education, we cannot but agree with the complaint addressed in these observations.

The inclusion of such children is currently an exception confined to privileged families who can afford to make specific arrangements in all too few schools whose heads and teaching staff dare to disregard the existing legislation. This situation, which helps to maintain segregated education without taking any account whatsoever of the individual needs of the children concerned, cannot be allowed to continue.

Done at Brussels, 22 November 2017,

The General Delegate for the Rights of the Child

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the bottom.

Bernard De Vos