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EUROPEAN SOCIAL CHARTER

Observations by Validity Foundation (Mental
Disability Advocacy Centre)

on the 14th report on the implementation of
the European Social Charter

submitted by

THE GOVERNMENT OF BELGIUM

Follow-up to collective complaints:

No. 62/2010, No. 75/2011, No. 98/2013, No. 109/2014

Report registered by the Secretariat on

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CYCLE 2019

European Committee on Social Rights
Council of Europe
67075 Strasbourg-Cedex
France



30 June 2020

Comments on the follow-up

to the European Committee of Social Rights Decision

The Mental Disability Advocacy Centre (MDAC) v. Belgium

(no. 109/2014)

filed in response to the Belgian Government report submitted on 19 December 2019

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I.

Introduction and Summary

1. GRIP and Validity submit the present report for the consideration of the European Committee of Social Rights (hereafter, “the Committee”) on the implementation of its Decision in the case *the Mental Disability Advocacy Centre (MDAC) v. Belgium* (complaint no. 109/2014, published on 29 March 2018, conclusions adopted by the Resolution of the Committee of Ministers CM/ResChS(2018)3 of 4 July 2018).
2. On 19 December 2019 the Belgian Government submitted a report to the Committee in which it outlined their progress in the implementation of the Committee's decisions, including the aforementioned. In the view of the authors, the Government report as well as other facts demonstrate that the Flemish Government is not taking adequate and timely steps to implement inclusive education for all children, including children with intellectual disabilities, and thus fails to comply with the Committee's decision.

II.

Summary of the European Committee of Social Rights Conclusions and Council of Ministers Resolution

3. In the complaint registered on 30 April 2014, relying on Articles 15§1, 17§§ 1 and 2 and Article E of the Revised European Charter, MDAC (now called “Validity”) alleged that the Flemish Community of Belgium denies access to mainstream education to children with disabilities, in particular to children with intellectual disabilities, and fails to provide necessary reasonable accommodations to ensure inclusion of children with disabilities in mainstream education.
4. The Belgian Government's defence in the case rested predominantly on the argument that the since 1 September 2015, the Flemish Community adopted a so-called M-Decree, a law introducing measures aiming to support inclusion of children with disabilities in mainstream education, including reasonable accommodations.
5. The Committee nevertheless found the measures implemented through the M-Decree insufficient, insisting that “*the eligibility requirements for admission to mainstream education according to the M-Decree, .., are based on the notion of integration rather than inclusion*”. The Committee concluded that “*there are serious and numerous restrictions to the right of inclusive education by excluding pupils who are “unable to follow the common curriculum”*”. The Committee found that there is no effective guarantee of inclusive education for children with disabilities and no legitimate aim for refusing enrolment of children with disabilities in mainstream education. According to the Committee, the M-Decree contains no timeframe for achieving inclusive education and no indicators of success for measurable progress. The Committee found that the Government is not using the maximum available resources to ensure inclusive education, has not put in place any permanent monitoring and evaluation measures to ensure inclusive education and non-discrimination, and discriminates against children with disabilities by failing to provide them with providing reasonable accommodation in mainstream education.

6. Particularly, the Committee found that the Government gave no explanation as to how inclusive education would be provided for those children with disabilities who cannot follow the common curriculum. It found also that the Government discriminates against children with severe disabilities by treating them less favourably. Finally, the Committee found that mainstream schools and curricula are not accessible to children with disabilities and there is no effective remedy against refusal of enrolment. The Committee concluded that there was a violation of Article 15§1 and 17§§2 of the Revised Social Charter.
7. On 4 July 2018, the Committee of Ministers adopted a resolution based on the Decision (Resolution CM/ResChS(2018)3), in which it also takes note of the commitment of the Belgian Government to bring the situation into conformity with the Charter and the information it has communicated in this regard. Despite the Committee's findings in relation to the M-Decree, the Committee of Ministers considered in this respect, that the M-Decree is a step in the right direction and invited the Belgian Government to submit on the next reporting occasion on any new developments regarding implementation.

III.

The Implementation of the decision and the Government report

8. The Committee in the *MDAC v. Belgium* Decision concluded that even if well-implemented, the M-decree would not ensure inclusive education as required by the Revised Social Charter for all children, because it still conditions the inclusion of some children in mainstream education by their "capability to participate in the joint curriculum". Nevertheless, the Committee of Ministers considered the information from the Belgian Government (Annex to the Resolution) on the extent of available support measures, the right to enrolment of each child, as well as the decreasing number of pupils in special education and slightly increasing number of pupils in mainstream education.
9. There have been indeed some positive developments since the Decision in that challenges submitted to the Commission (Commissie Leerlingenrechten) to the refusal to enrol children with disabilities in mainstream schools have increased, and in most cases they have been successful. In addition, the new Minister for Education has indicated a willingness to collaborate with civil society by creating a common platform to discuss the issues of inclusive education. Currently, however, the decision to create the platform has been postponed.
10. Despite the partial developments however, in practice the Government appears set to further entrench the rights violations identified by the Committee. Far from establishing an effective guarantee of inclusive education for children with disabilities as the Committee's Decision requires, and despite the findings that there is no legitimate aim for refusing to enrol children with disabilities in mainstream, on 11 January 2017, Government representatives publicly denied its full support to inclusive education, saying that a system of segregated special needs schools needs to be kept in place in the long term.¹ This was reiterated in the Belgian Government report

¹ The information is available in Flemish at: https://pincette.katholiekonderwijs.vlaanderen/meta/properties/dc-identificer/2017_01_11_LER_ondersteuningsmodel_advies%20VLOR

of 19 December 2019, submitted to the Committee, which explicitly refuses to accept the Committee's Decision that denial of inclusive education violates the Charter. The Flemish Government reportedly adopts a "pragmatic and realistic approach: special education when needed, inclusive education when possible".

11. As stated in the Government report, the M-decree will be replaced by a new guidance decree. The aim and contents of the new guidance decree are as yet unknown, but it is not expected to enter into force before September 2021 at the earliest. The statements of the Flemish Government suggest that the new guidance decree will be a further step back and that it will strengthen the segregated education system for children with intellectual disabilities who are largely deemed "unfit" to participate in the common curriculum. It is expected that eligibility requirements for admission to mainstream education will continue to remain based on a concept of integration rather than inclusion. With clear Government opposition to the right to inclusive education *per se*, it is likely that the new guidance decree will not include a timeframe or indicators of success for measurable progress towards inclusive education for all children as required under Articles 15 and 17. Moreover, the continuing commitment to maintaining the discriminatory segregated education system means that the Government will not be shifting its budgeting to allocate maximum available resources for the achievement of inclusive education as it should.
12. In practice, no significant steps have been taken by the Government to implement inclusive education since adoption of the Committee's Decision. Parents and children remain in legal uncertainty in terms of the right to enrolment in mainstream education. There is no clarity about availability of appeals against enrolment decisions. No measures have been adopted to clearly communicate the right to enrolment to all schools and ensure legal certainty and availability of remedies in case this right is not respected. Moreover, for those children who are integrated into mainstream schools, the extent and accessibility of support is, from the experience of GRIP, insufficient in practice. Access to supports and reasonable accommodations for pupils in mainstream schools remains inadequate, with long waiting lists for access to personal assistance budgets. In addition, there are still no permanent monitoring and evaluation measures to ensure inclusive education and non-discrimination in practice.
13. The lack of commitment to inclusive education is demonstrated also by the numbers of children with intellectual disabilities ("type 2 pupils") in mainstream and special education. The number of children in mainstream education only slightly increased (from 339 to 429 children between 2018 and 2019) and the increase is likely due, not to an actual increase in inclusion, but to a wider definition of "type 2 pupils" which was expanded to also include children whose IQ is determined to be above 60 but below 70. This is consistent with the fact that the number of children with intellectual disabilities in special education increased as well (from 10 122 to 10 167 children in the same period).
14. Indeed, in 2019, 429 children with intellectual disabilities were educated in mainstream schools, as opposed to 10,167 children with intellectual disabilities in special schools (data from the Government report). Moreover, approximately 500 children who have complex support needs are still completely denied education. Another approximately 500 children, who are provided care in residential care centers, receive only "home education". This demonstrates that there are no

effective measures in Flanders to make inclusive education the rule and special education the exception.

IV.

Conclusion

15. GRIP and Validity continue to observe that there is neither a commitment by the Flemish Government nor a clear plan to implement inclusive education. The M-decree, as a form of 'inclusion-light', did not suffice to realise inclusive education as required by the *MDAC v. Belgium* Decision and the subsequent Committee of Ministers Resolution. Integration rather than inclusion and continued discriminatory exclusion in segregated schools remains explicit Government policy in direct contravention with the Committee's binding Decision.
16. Legal certainty in exercising their right to enrol in mainstream education remains lacking for those children who are entitled to it. The accommodations ensured at schools continue to be insufficient in practice. The data supports the fact that the overwhelming majority of children with intellectual disabilities continue to be educated in special schools, and these numbers are actually increasing.
17. Clearly, the Flemish government continues to pursue a twin-track policy: a strong commitment to discriminatory special education and, in addition, limited opportunities for inclusive education. GRIP and Validity foundation submit that this approach is contrary to the right of all children to inclusive education and runs against the Committee's conclusions in *MDAC v. Belgium*.



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