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

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Case Document No. 6

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

Additional information from MDAC on the "M Decree"

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Secretariat of the European Social Charter
DGI – Directorate of Human Rights
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Applicant's response to the Belgian Government's additional
information on the implementation of the M-Decree
(of 1 June 2017)

The Mental Disability Advocacy Centre

v.

The Kingdom of Belgium

Collective Complaint No. 109/2014

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The Mental Disability Advocacy Centre (MDAC, *hereinafter* the "Applicant") respectfully submits this further information on the implementation of the M-Decree pursuant to leave granted by the President of the European Committee of Social Rights on 5 July 2017. In this present submission, MDAC wishes to react to the Belgian Government's (*hereinafter* the "Respondent Government") submission of 1 June 2017.

In providing the Committee with up-to date information in relation to the implementation of the M-Decree, MDAC has been assisted by GRIP vzw (Equal Rights for Each Person with a disability), a Flemish organisation for persons with disabilities working extensively for the realisation of the right to inclusive education and therefore closely monitoring the implementation of the M-Decree.

In its original submission and its response to the Government's submissions on the merits, the Applicant has already pointed out how the M-Decree falls short of compliance with the Revised Social Charter and other international human rights law instruments. In this present submission, MDAC wishes not only to comment on particular points made by the Belgian Government in its submission of 1 June 2017 but also to outline the most concerning aspects of the Flemish education law and practice that continue to act as a barrier to full, effective inclusion of children with disabilities in education even after the entry into force of the M-Decree on 1 September 2015.

1) Effect of the M-Decree in practice

The Government has shared its preliminary observations on variations in the rate of children with disabilities attending mainstream or special schools since the entry into force of the M-Decree and the Applicant hereby submits its comments on those observations.

The Government claims that there are less students with disabilities in special education since the beginning of 2014. To justify this, it relies on the number of students in special education with reference to the total number of students attending mainstream and special education. However, a blanket analysis such as this overlooks several key issues:

1. The M-Decree has had little to no effect for students with intellectual disabilities in terms of enhancing their access to inclusive education: Overall for this group, no significant change can be observed and, for one form of segregated secondary schooling (type 2, form 1), there were in fact more students enrolled for the school year 2016-2017 (3043) as compared to 2014-2015 (3014).¹
2. Media reports indicate that there was an increase in 2016 – 2017 as compared to 2015 - 2016 in students leaving mainstream schooling and instead enrolling in

¹ Department of Education and Training, Meta-evaluatie M-decreet, table 8., page 35., available at <https://onderwijs.vlaanderen.be/sites/default/files/atoms/files/Synthese%20tussentijdse%20evaluatie%20M-decreet.pdf> (last accessed on 14 August 2017).

segregated special schools during the school year: The difference in enrolment figures between 1 October 2016 and 1 February 2017 shows that 1,270 students (158 young children, 770 primary school students and 342 secondary school students) left mainstream schools to enroll in segregated education.² During the previous year, approximately 320 students left mainstream schools for segregated schools. According to developmental psychologist and M-decree expert Wim Van den Broeck (VUB), "some students have now noticed that they did not get the necessary support in ordinary education," and "This seems to be a reality check for the M decree."³ Stefan Grielens, Director at the Dome of the Free Centers for Student Coaching noted that this may be the consequence of the defeasance clause being applied or parents realising that their child will not get the same support in mainstream schools as in segregated schools.⁴ A statement by Minister Crevits reinforces the Government's continuing mis-understanding that inclusive education is a right and that segregated education is a form of discrimination: "there is a lot of expertise in special education and if that is the best place for students with a specific educational requirement, then it is important that those students can attend classes. If schools from ordinary education, together with the parents and the CLB determine during the year that a student benefits from special education, that student can make the transition."⁵

3. The overall decrease in the number of children in segregated education referred to by the Government can primarily be traced to a change in rates at the primary school level but is not equally borne out at the secondary school level: At primary school level (age 6-12), there has been a small decrease from 6,27% of children in segregated education in 2014-2015 to 5,39% in 2016-2017.⁶ However, at secondary school level, the decrease is almost negligible over the same time period, dropping from 4,72% to 4,55%.⁷ In addition to this, the overall decrease was noticeably more significant the first year after entry into force of the M-Decree's implementation than in the second year, leading to fears that this is a trend towards less and less impact towards achieving inclusive education in reality. It is therefore crucial that consistent monitoring and evaluation of the impact of the M-Decree is ensured.

² De Morgen, Realitycheck voor M-decreet: meer kinderen keren terug naar buitengewoon onderwijs, 08.06.2017, <https://www.demorgen.be/dmselect/realitycheck-voor-m-decreet-meer-kinderen-keren-terug-naar-buitengewoon-onderwijs-b71a8e15/> (last accessed on 14 August 2017).

³ Ibid.

⁴ Ibid.

⁵ Ibid.

⁶ Department of Education and Training, Meta-evaluatie M-decreet, table 7., page 32., available at <https://onderwijs.vlaanderen.be/sites/default/files/atoms/files/Synthese%20tussentijdse%20evaluatie%20M-decreet.pdf> (last accessed on 14 August 2017).

⁷ Department of Education and Training, Meta-evaluatie M-decreet, table 7., page 32., available at <https://onderwijs.vlaanderen.be/sites/default/files/atoms/files/Synthese%20tussentijdse%20evaluatie%20M-decreet.pdf> (last accessed on 14 August 2017).

2) Lack of a comprehensive policy framework and lack of commitment for inclusion for all

Despite the legislative changes of the last 15 years, Flanders still lacks a fundamental framework for inclusive education. As Bruno Vanobbergen, Flanders' Children's Rights Commissioner, noted with concern in November 2016, not even the M-Decree has "led to a coherent policy."⁸ The underlying principle of the current education policy - "inclusive education if possible, special education if needed"⁹ - makes clear that the Government is not in favour of the full inclusion of children with disabilities in the mainstream education system. At present, it continues to be possible and frequent in practice for children with complex support needs to be redirected to special education schools. Although the Flemish Government claims that it has been taking steps towards inclusive education since the adoption of the M-Decree in 2014, the Government of Flanders contradicted this in a statement on 10 January 2017 in which it stated that the system of segregated special schools should remain in place in the long term as for some children education in a specialized setting will best serve their best interest and right to education.¹⁰ Further, the Flanders Government continues to insist that maintaining a segregated special school system is in accordance with the UN Convention on the Rights of People with Disabilities,¹¹ despite the fact that many critics - including Van den Broeck, D'Espallier, the Children's Rights Commissioner or the Interfederal Centre for Equal Opportunities (UNIA) - have already pointed out that maintaining such a system is in clear conflict with both the letter and spirit of Article 24 of the CRPD and with the new General Comment No. 4 adopted by the CRPD Committee in 2016.¹² UNIA believes that the lack of a coherent strategy and insufficient use of available resources to support inclusion and to achieve an inclusive education

⁸ Flanders Today, M decree hasn't led to 'coherent policy', says children's commissioner, 17 November 2016, available at

<http://www.flanderstoday.eu/education/m-decree-hasnt-led-coherent-policy-says-childrens-commissioner> (last accessed on 14 August 2017).

⁹ See the statement made by Minister Pascale Smet - the Minister of Education at that time - during the plenary meeting of the Flemish Parliament that adopted the M-Decree on 12 March 2014. He also stated that it is not in the best interest of each child to end up in mainstream education as for some children special education is better. The transcript of the debate is available at <https://www.vlaamsparlement.be/plenaire-vergaderingen/913896/verslag/916977> (last accessed on 14 August 2017).

¹⁰ Cabinet of Hilde Crevits (Deputy Prime Minister of the Flemish Government and Flemish Minister of Education), Note to the Flemish Education Council, pages 2 and 3, available at https://pincette.vsko.be/meta/properties/dc-identifier/2017_01_11_LER_ondersteuningsmodel_advies%20VLOR (last accessed on 16 August 2017).

¹¹ The Note states that the analysis of the UN CRPD by the Support point of law and education in 2009 confirms that special education can continue to exist as a specialized learning place. Ibid, page 2.

¹² Department of Education and Training, Meta-evaluatie M-decreet, pages 24-25., available at <https://onderwijs.vlaanderen.be/sites/default/files/atoms/files/Synthese%20tussentijdse%20evaluatie%20M-decreet.pdf> (last accessed on 14 August 2017).

system inhibits the required transition from a medical to a social model of disability and prevents the realisation of a quality inclusive education system in Flanders.¹³ Critics agree that proper efforts need to be made to achieve structural and attitudinal changes towards a fully inclusive education system.¹⁴

3) Exclusion from mainstream schooling of children who cannot follow the common curriculum

The M-Decree recognises in principle a right of every child to enroll in mainstream schooling but only where it is "possible" with reasonable accommodations. There has been much uncertainty as to whether this right will be applied in practice for children who are unable to follow the common curriculum. It was feared that such children – mostly children with significant intellectual disabilities – would be *a priori* excluded from mainstream education in a discriminatory way.¹⁵ As implementation of the M-Decree evolves, it has become clear that, although students who follow an individually adapted curriculum do indeed have a right to enroll in a mainstream school,¹⁶ their enrolment is precarious and subject to reversal or dissolution in a discriminatory manner at any time.

Students who require an individualised curriculum may only be enrolled under a 'defeasance clause' in the legislation. Their registration may, therefore, be annulled if the school deems the accommodations required to meet the child's needs are unreasonable. In theory, there must be prior consultation with the child's parents and the CLB (Pupil Guidance Centre) but, as Steunpunt voor Inclusie (Support Point for Inclusion) noted, registration under the defeasance clause is, in practice, a "waiting station" with parents being given insufficient information about the future of their child's education.¹⁷ In practice, Steunpunt voor Inclusie has experienced that parents are not effectively consulted and are not notified within a reasonable period of the outcomes. A student's registration can be annulled like this immediately after registration or after they have been in school for some time, on the basis that their support needs have changed. The Applicant maintains its position outlined in previous submissions that the ability to reject or expel students who are unable to follow the common curriculum contradicts the basic concept of inclusive education and constitutes discrimination on the basis of disability.

Further, fears of *a priori* exclusion seem to be borne out in practice despite the apparent intent of the law. Several sources, including the Child Rights Commission and UNIA,

¹³ Ibid.

¹⁴ Ibid.

¹⁵ See for example Submission by GRIP vzw, 12th session of the Committee on the Rights of Persons with Disabilities - Dialogue with Belgium, 18 – 19 September 2014, page 8, available at http://tbinternet.ohchr.org/Treaties/CRPD/Shared%20Documents/BEL/INT_CRPD_CSS_BEL_18084_O.pdf (last accessed on 14 August 2017).

¹⁶ Hilde Crevits, The ABC of the M-Decree, 13 February 2015, available at <http://www.hildecrevits.be/nl/het-abc-van-het-m-decreet> (last accessed on 14 August 2017).

¹⁷ Department of Education and Training, Meta-evaluatie M-decreet, page 46.

indicate that in some cases schools do not respect the right to enrolment.¹⁸ A consultation conducted by UNIA, reported that parents experienced schools' responses to be unpredictable when they were approached with applications for enrolment of students under the defeasance clause or for provision of reasonable accommodations. Parents called for greater legal certainty and more clarity about the rights of both the parents and students.¹⁹ According to UNIA, schools continue to argue that "special education is a better place for this child"²⁰ and, as reported by the Support Point for Inclusion, they also continue to justify exclusion based on the carrying capacity of the school in the same way as before the entry into force of the M-decree.²¹

According to recent complaints, schools continue to refuse to enroll children in practice without making any formal decision on the matter or providing any justification. Parents often contact schools informally before seeking to formally register their child and an exploratory conversation with the school is common. The school then decides who to invite to the discussions that took place before the school reaches its decision and the CLB often does not participate in such discussions. This is particularly common in the case of students who do not follow the common curriculum or who have moderate or severe mental disabilities (Type 2). In many cases schools have already 'formed their judgment.'²² It is also reported that parents often doubt their choice to seek inclusive education following these conversations as the school "suggests" that special education would better suit their child.²³ Often, at the end of the exploratory conversation, there is no clear agreement on how and when the school will decide and when they will reconnect with the parents, leaving the parents in uncertainty and with no formal refusal to challenge.

The Government so far has failed in its obligation to collect disaggregated data that would allow monitoring of comprehensive statistics concerning the number of children refused admission to inclusive education. In the absence of official statistics, NGO reports indicate the extent of enrolment refusals. GO! Parents conducted a survey of 397 parents one year after the introduction of the M-decree. 27.5% were parents of a student in mainstream education and 12.5% of these said that they had been refused enrolment by a mainstream school.²⁴ For most of them, the rejection occurred prior to the introduction of the M-Decree, but one in four of these parents reported that the refusal took place after 1 September 2014.²⁵ None of these parents have received a reasoned refusal.

¹⁸ Department of Education and Training, Meta-evaluatie M-decreet, page 45.

¹⁹ Department of Education and Training, Meta-evaluatie M-decreet, page 45.

²⁰ Department of Education and Training, Meta-evaluatie M-decreet, page 45.

²¹ Ibid.

²² Ibid, page 46.

²³ Ibid, page 46.

²⁴ Department of Education and Training, Meta-evaluatie M-decreet, page 45.

²⁵ Ibid.

In its submission of 1 June 2017, the Government claimed that three complaints were brought before the Commission of Pupil Rights concerning the dissolution of enrolment in a mainstream school. In light of the number of refusals indicated by the GO! Parents survey, the low number of complaints suggests that this remedy is not effective. Parents often decide not to challenge the rejection because they have lost faith in that school, because their priority at that time is to find a school that is willing to accept their child, and/or because they do not want to deepen the conflict with the school for fear of wider negative effects. According to the Steunpunt voor Inclusie, there have been no major changes in this regard since the introduction of the M-Decree.²⁶ In addition, it is worth noting that, in any event, the Commission does not have any legal power to remedy the violation of the student's rights.

4) Exclusion of children with high support needs from education

As admitted in the Government's submission of 1 June 2017, a number of children with complex support needs are excluded from the requirement to receive an education because they are considered to be 'ineducable' or receiving home education (this latter included children living in residential institutions). According to GRIP's estimations, approximately 1,000 children in Flanders do not attend school due because of this exclusion. The Government accepts that a commission of academics and policy experts set up in 2015 recommended that this system of exclusion be replaced with one allowing individual educational and care-plans.²⁷ The commission refuted the concept that certain children are "ineducable", finding no scientific grounds for this assumption, and insisting that efforts to provide education are consequently not only possible but compulsory. It is very concerning that although the commission has indicated clear requirements for inclusive education, the Government has taken no action so far to act on this recommendation. The Government's statement that "this challenge is to be taken up further by the education and welfare policy domains in the coming years"²⁸ suggests that the Government does not plan to take immediate, targeted steps to address the *de facto* denial of education for children with complex needs which has been an on-going and serious violation of the Revised Social Charter and other international human rights law instruments.

5) Lack of necessary support in mainstream schools

As to the financing of necessary supports for children with disabilities in mainstream schools, the Applicant welcomes the allocation of the additional 15.2 million EUR guaranteed for education in mainstream schools from September 2017 under the new model for support ('nieuw ondersteuningsmodel'). The model purports to ensure that every child will get the support they need in mainstream schooling.²⁹ It combines the

²⁶ Ibid, page 46.

²⁷ Belgian Government's submission of 1 June 2017, point 11., page 5.

²⁸ Ibid.

²⁹ Klasse.be, Extra zorg in de klas: nieuwe regels schooljaar 2017-2018, available at <https://webcache.googleusercontent.com/search?q=cache:Bh6anN7Q9SoJ:https://www.klasse.be/83>

resources allocated for the GON program and the scheme of guarantee, and provides additional funding for specific purposes. It seeks to be more flexible and provide more targeted support through the introduction of the automatic preliminary budget. However, despite this change in financing, more resources continue to be made available for a pupil attending segregated education than for a child attending a mainstream school.³⁰ Further, GRIP vzw has experienced that when parents apply for a personal assistance budget at the Ministry of Welfare to ensure inclusive education for their child, it is rarely awarded or only after a long delay.³¹ Currently more than 1,000 children and young people are on the waiting list to receive this support.³²

As to professional support provided to children in mainstream schools, the Applicant welcomes the reinforcement of the 'waarborg' project in September 2016, which shifts staff from special education to providing support in mainstream schools, and the resultant increase in professional support in mainstream schools. The Applicant also recognises the efforts of the Government to capacity-build school teams via in-service trainings. Nevertheless, participation in the five capacity-building projects remains optional, many more staff remain to be removed from segregated schools into mainstream schools and more needs to be done to prepare all teachers to provide necessary accommodations for inclusive education.³³

Finally, in its submission of 1 June 2017, the Government states that Steunpunt voor Inclusie was set up to support parents who decide to enroll their children in mainstream schools. The Applicant wishes to clarify that this platform, which is financed by the Ministry for Equal Opportunities and the Ministry of Education, is intended only as a temporary measure (the project is due to expire in September 2018 unless it is extended) and is extremely under-staffed with only one full-time and one part-time staff member currently employed.

6) Lack of evaluation and monitoring

Adequate monitoring and evaluation, especially with the inclusion of parents and parents' associations, has been and continues to be crucially missing from the system.

[201/verhoogde-zorg-in-de-klas-nieuwe-regels-schooljaar-2017-2018/+&cd=1&hl=hu&ct=clnk&gl=hu](#) (last accessed on 14 August 2017).

³⁰ "The public cost of a student in special education is easily double of those in mainstream education, and then the significant costs of the transport of students to special education itself still has not been taken into account. The support of a student with a disability in mainstream education by ION-or GON-measures is minimal." See in Machteld Verbruggen, *Zijn kinderen met een beperking beter af met het M-Decreet?*, page 4, available at http://uitgeverijlarcier.larciergroup.com/generique/ouvrages/imprimer.php?ed_spec_id=31671 (last accessed on 14 August 2017).

³¹ See GRIP, #mijnassistent, available at <http://www.gripvzw.be/onderwijs/1179-mijn-assistent.html> (last accessed on 14 August 2017).

³² Ibid.

³³ European Commission, Education and Training Monitor, 2016, Belgium, page 5., https://ec.europa.eu/education/sites/education/files/monitor2016-be_en.pdf (last accessed on 14 August 2017).

Conclusion

Flanders continues to lack a coherent inclusive education strategy, without which it is impossible to ensure that children with mental disabilities are fully included and supported in a common learning environment as required by international human rights law, including the Revised Social Charter and the UN CRPD.

As demonstrated above, the adoption of the M-Decree has not resulted in an attitudinal or structural change. The education law and policy are not founded on the principle of full inclusion for all children and continue to consider that segregated, special education is necessary for children with higher support needs. In practice, two years after the entry into force of the M-Decree, enrolment in special education frequently remains the only available option for children with mental disabilities. In addition to segregated education, a considerable number of children continue to be left without any education at all. The Government has also failed to make adequate progress in ensuring the provision of sufficient financial and human resources for inclusive education consistent with the maximum use of its available resources.

The long-term survival of a separate system of special education, in addition to a limited option of integration in mainstream education, is not compatible with the Revised Social Charter or the UN CRPD. In the light of the above, the Applicant maintains its position that the M-Decree is an unfit instrument to remedy the violations of the rights of children with mental disabilities in Flanders.

Budapest, 16 August 2017

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