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EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX

15 December 2011

Case Document No 1

International Federation for Human Rights (FIDH)
v. Belgium
Complaint No 75/2011

COMPLAINT

Registered at the secretariat on 13 December 2011

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Secretariat of the European Social Charter
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Collective complaint

International Federation for Human Rights v. Belgium

For lack of effective access to social and medical assistance, social services and housing

for violation of the right to independence, social integration and participation in the life of the community,

for lack of social, legal and economic protection and protection against poverty and social exclusion

of highly dependent disabled adults and their families, owing to the shortage of care and accommodation solutions

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Violation of Articles 13 to 16 and of Article 30 of the revised European Social Charter

CONTENTS

PART I. Admissibility of the complaint and parties to the case

1. The complainant organisation

The International Federation for Human Rights (hereafter "FIDH") is an international organisation for the defence of human rights and is included on the list of organisations entitled to submit collective complaints to the European Committee of Social Rights.

Under its Statutes, FIDH is an association for the defence and promotion of all human rights at international level and carries out activities, including judicial activities, throughout the world to establish violations of fundamental rights (see **Appendix 1**). FIDH has, moreover, already submitted collective complaints to the Committee in connection with Article 13 of the revised European Social Charter (hereafter "RESC"), on the right to social and medical assistance (FIDH v. France, n°14/2003), and in connection with Article 16 of the RESC on the right of the family to social, legal and economic protection and Article 30 on the right to protection from poverty and social exclusion (FIDH v. Belgium, n°62/2010), which were both declared admissible by the Committee.

In ratifying the Social Charter, Belgium accepted the obligations in Articles 13 to 16 and 30 of the Charter.

This complaint is therefore admissible.

FIDH is supported in this collective complaint by the following Belgian associations, all active in defence of the fundamental rights of persons with disabilities and representing the disability sector in the country's three regions:

a. **AFrAHM** (French-speaking association for assistance to persons with mental disabilities)
b. **Altéo** (Social movement of persons suffering from illness or disability and able-bodied persons)
c. **ANAHM** (National association for assistance to persons with mental disabilities)
d. **AP³** (Association of parents and professionals to help persons with multiple disabilities)
e. **APEM-T21** (Association of persons with Down syndrome, their parents and the professionals who care for them)
f. **APEPA** (Association of parents for the development of persons with autism)
g. **ASPH** (Socialist association for persons with disabilities)
h. **FOVIG vzw** (Federation of parents' committees and user councils in institutions for persons with disabilities)
i. **GAMP** (Action group militating against the shortage of places for highly dependent persons with disabilities)
j. **Inclusie Vlaanderen vzw:** association defending the rights and interests of persons with disabilities
k. **Inforautisme:** association defending the rights of persons with autism and their families

l. **La Braise:** association specialising in long-term support for adults with acquired brain injuries

m. **Les Briques du GAMP:** association formed to follow up the concrete progress achieved by the GAMP (see above)
n. **La Ligue des Droits de l'Homme:** has been fighting injustice and infringements of fundamental rights in Belgium's French Community for over a century
o. **Opvang Tekort** vzw: defends the rights of all persons awaiting a care solution from the VAPH
p. **Vie Féminine:** feminist adult education movement working to emancipate women individually and collectively and build an inclusive, egalitarian and fair society
q. **Vlaamse Vereniging voor Autisme (VVA)** vzw: Flemish autism association

2. The respondent state

This complaint is directed against the Belgian state. In view of this state's federal nature, however, the situation in each of its regions (Flemish Region, Walloon Region and Brussels-Capital Region) will be briefly differentiated. Certain federated authorities have taken some, albeit highly inadequate, initiatives to help highly dependent adults with disabilities, while others are even more deficient in this area. Of course, as the Committee pointed out in the European Roma Rights Center v. Greece case, "*even if under domestic law local or regional authorities […] are responsible for exercising a particular function, states party to the Charter are still responsible, under their international obligations to ensure that such responsibilities are properly exercised. […] ultimate responsibility for implementation of official policy lies with the […] state*" (8 December 2004 (merits), Complaint No. 15/2003, §29).

On 2 March 2004, Belgium's federal, regional and community governments completed the process of ratifying the revised European Social Charter (RESC) and the Law of 15 March 2002 ratifying the Charter was published in the *Moniteur Belge*[1]. In all, Belgium has accepted 87 of the 98 paragraphs making up the revised European Social Charter, including Articles 13 to 16 and 30, which are relied on in this complaint.

Belgium has accepted the collective complaints procedure provided for under the Additional Protocol, which it ratified on 23 June 2003. The Charter is incorporated automatically into domestic law. This practice is supported by case-law (see in particular the *Le Ski* judgment, Belgian Court of Cassation, 27 May 1971).

Consequently, this complaint is also defensible in this respect.

Notes on the division of powers between the federal state and the various federated entities in Belgium regarding care solutions for highly dependent adults with disabilities

Under Article 1 of the Constitution, Belgium is a federal state composed of regions and communities. This means that decision-making power in Belgium is not centralised but divided between the federal state, three regions (Flemish, Walloon and Brussels) and three communities (Flemish, French and German-speaking). These three political levels

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[1] Law of 15 March 2002 ratifying the revised European Social Charter and its Appendix, done in Strasbourg on 3 May 1996, *Moniteur Belge*, 10 May 2004.

are autonomous, have significant powers and have equal competence with regard to international relations, including the conclusion of treaties on the subjects in question.

The Belgian federal government has delegated matters relating to personal welfare, such as care and support for persons with disabilities, to the communities or regions, which each have full responsibility for organising arrangements in this field. The different tiers of authority – federal state, regions and communities – must, however, jointly guarantee a sufficient number of varied, high-quality places in care by co-ordinating their efforts.

In the field of **social security**, for example, the **federal authorities** are responsible for a series of policy areas related to persons with disabilities, such as the payment of income replacement and integration allowances[2]. A state secretariat in the Ministry of Social Affairs has responsibility for developing innovative, cross-cutting policies to support disability management in the field of social security and other fields: taxation, employment (development of measures for to enable parents to reconcile employment, or continued employment, with caring for a child with disabilities), care facilities etc.

In accordance with Articles 6, 6 bis, 6 ter and 7 of the Special Law of 8 August 1980, the **regions** are responsible for **housing**, **particularly as regards the benefits available to persons with disabilities, for town planning, and for issues relating to mobility and accessibility**. The regions have their own budgets to finance their policies and the direct assistance they grant. Decisions taken by the regions are implemented by regional and local bodies.

The **communities** are responsible for **"person-related" matters**, including education, vocational training and **care** for persons with disabilities, and all issues relating to the **integration of persons with disabilities**. Employment for persons with disabilities, vocational training, the provision of technical aids, **care facilities**, and special and integrated education thus fall within the ambit of the communities. However, the French Community has transferred its responsibility to the Walloon Region and to the French Community Commission (COCOF) in the Brussels Region.

The **integration** of persons with disabilities is therefore managed by the Flemish Community, the Walloon Region, the German-speaking Community and the French Community Commission in the Brussels-Capital Region. The relevant institutions are:

- the **Agence wallonne pour l'intégration des personnes handicapées (AWIPH)**, for persons resident in the Walloon Region
- the **Dienststelle für Personen mit Behinderung** (**DPB**), for persons resident in the German-speaking Community
- the **Vlaams Agentschap voor Personen met een Handicap** (**VAPH**), for persons resident in Flanders and Dutch-speakers resident in the Brussels-Capital Region
- the **Service bruxellois Phare – Personne Handicapée Autonomie Retrouvée (PHARE)**, for French-speakers resident in the Brussels-Capital Region

More specifically, in the Brussels-Capital Region, the French Community Commission (COCOF) has set up the **Service Bruxellois Francophone des Personnes Handicapées (SBFPH)**, and the Joint Community Commission (COCOM) directly funds bilingual

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[2] See box below..

establishments. The VAPH, for its part, is responsible for the whole of the Flemish Community, including the Flemish part of Brussels.

Where funding is concerned, the three communities and regions are funded mainly by the federal government and grant an annual budget to their agencies (AWIPH, VAPH and DPB). The French Community grants an operational budget to the COCOF, which in turn subsidises its agency, the SBFPH. The COCOM receives subsidies from both the French and the Flemish Communities.

When the Belgian state was federalised, responsibility for care and management of persons with disabilities was transferred along with the recurrent annual expenditure, which is now borne by the communities. After this transfer, each community and region became responsible for funding any expansion in care for persons with disabilities from its own resources (eg by increasing its earmarked funds)[3].

The limited budgetary scope available to each of these authorities leads to shortfalls in matching provision to new demand for care.

It therefore needs to be stressed here that the fragmentation of responsibilities for the integration of persons with disabilities between the numerous federal and federated entities makes it extremely complicated for persons with disabilities and their families to find the right door to knock on, ie to identify the agency responsible for the realisation of their fundamental rights. This fragmentation of responsibilities is a serious obstacle to the effective implementation of legislation and policy choices, particularly because the limited budgets available to the regions and communities actually make it impossible to pursue an appropriate policy. In concrete terms, the great complexity of disability policy and its fragmentation between different levels of authority are obstacles to any significant budget increase; the various bodies responsible for care and management actually receive too little funding to offer an appropriate solution to every Belgian awaiting one. Yet the European Committee of Social Rights (hereafter "ECSR") has repeatedly stressed that "the aim and purpose of the Charter, being a human rights protection instrument, is to protect rights not merely theoretically, but also in fact". The rights enshrined in the rules of a federal or federated entity must therefore be fully implemented in order to meet the requirements of the Social Charter.

3. The population concerned

This collective complaint is being lodged against the Belgian state on the grounds of lack of effective access to social and medical assistance, social services and housing, violation

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[3] To illustrate the financial complexity which leads sometimes to underfunding of certain bodies and therefore hinders the full implementation of certain fundamental rights, mention should be made here of the transfers of funds back from the COCOF to the French Community in the name of solidarity between French-speakers. As a result of this, the funds corresponding to the powers transferred by the French Community to the COCOF and the Walloon Region are less than they should be, so it can be said that these two regional bodies contribute to the refinancing of the French Community by relinquishing part of their grant. See appendix "Budgetary prospects of the French Community Commission, 2011-2021", Cahier de recherche FUNDP, 2011/6, n°57, and specifically the chapter Receipts of the COCOF (particularly pp. 9 and 10 – Transfers from the French Community. In his Recommendation 2006-01 on budgetary problems in the disability sector, the ombudsman of the French Community emphasises the underfunding of the COCOF and the arrears due to it from the Walloon Region.

of the right to independence, social integration and participation in the life of the community, and lack of social, legal and economic protection against poverty and social exclusion, of **highly dependent adults with disabilities and their families**, owing to the **lack of care and accommodation solutions**.

By **highly dependent persons with disabilities** we mean "persons who need others to perform the ordinary daily activities essential to survival and/or who need others to pursue any life goal" [4].

This collective complaint has been submitted for the benefit of **adults** deprived of care, so blatant is the violation of their fundamental rights and so urgent the need for changes in Belgian policy. The complainant wishes to point out, however, that the problem of the lack of care solutions is also becoming critical in the case of highly dependent young persons with disabilities. There is an increase in demand from the earliest age owing to changes in the lifestyle of families (single-parent families, broken families etc) and the financial difficulties with which many of them are faced. Waiting lists are growing longer and an increase in the number of places and specialised facilities for children and adolescents is equally essential.

By **care and accommodation solutions** for highly dependent persons with disabilities, the complainant means:

- **day-care** places, to guarantee skills retention and the continuation of fulfilling and rewarding activities;
- **residential** places, including places in communal establishments;
- **personalised budgets** enabling individuals to purchase appropriate services so that they can live at home if they so wish without being dependent on family members;
- **respite provision** in conjunction with the other facilities and solutions.

This being independent of "general" services, which require further development and specialisation.

In the complainant's view, solutions proposed by the public authorities for highly dependent persons with disabilities and their families may only be regarded as being of high-quality if they meet the following requirements: local services, high-quality services with trained multidisciplinary personnel, services in which family representatives are guaranteed a structural place, and services enabling those families which so wish to continue to be involved in the life of their adult child. Any solution proposed for the care of a highly dependent person with disabilities must be the result of a choice made by the individual with due regard for his or her rights to dignity, independence and quality of life. These solutions must be subsidised by the state and accessible financially to all the families concerned.

In the complainant's view, there is a need for high-quality services which meet individuals' differing requirements and ages, which means diversifying provision. A detailed inventory of needs is therefore essential.

The complainant also wishes to point out that high-quality services depend on good practices. The latter are the result of experience in the field and data verified by research,

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[4] Bernard Ennuyer, "Les malentendus de la dépendance. De l'incapacité au lien social", Paris, Dunod, 2002.

are applied by properly trained practitioners, are geared to meeting individualised needs and comply with ethical values and dimensions applying to all the parties involved (researchers, clinical practitioners and patients/families). Close family involvement must be maintained. The quality of services is measured in terms of the individual's quality of life and calls for a culture of evaluation and rigorous control based on an individualised life plan.

a) In qualitative terms:

Highly dependent persons with disabilities may be divided into the following categories[5]:

- persons with multiple disabilities**:** *"Children with multiple disabilities suffer from a combination of disabling conditions in which severe mental deficiency is combined with motor disorders severely restricting their autonomy"*[6] ;
- persons with **autism:** "A*utism is a serious developmental disorder which sets in before the age of 3 and affects communication and social interaction skills to varying degrees. Its signs include narrow interests, strong resistance to change and, in many cases, behavioural disorders. Autism combined with mental retardation results in a high-dependency disability"*[7] ;
- persons with an acquired brain injury*: "Brain-damaged persons (cranial trauma: after a road accident, a fall or an assault; cerebrovascular accident, etc) sometimes have great difficulty in coping with everyday life. They may suffer from disorders of memory, concentration, initiative and orientation in time and space, personality and behavioural disorders, communication disorders, difficulty in controlling their emotions and physical and sensory deficiencies. A severe brain injury generally causes major disruption of everyday life with definite repercussions on the person's family, social and work environment"*[8] ;
- persons with severe cerebral palsy: *"Cerebral palsy is caused by damage to the brain during the prenatal or perinatal period (during pregnancy or childbirth or in the first few months of life). It affects the developing brain and produces a non-progressive motor disorder (paralysis, difficulties of co-ordination etc)"*[9] ;
- persons with a severe to profound mental disability**:** persons with an IQ of less than 50 requiring close support on a daily basis;
- persons with behavioural disorders coming on top of a pre-existing severe disability[10].

In addition, anyone in a situation of great dependency due to various causes such as genetic diseases, degenerative diseases, a combination of two or more disabilities etc, or in a situation of total physical dependency, should be regarded as highly dependent.

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[5] See GAMP, "Black Book".
[6] See Adepo
[7] See Inforautisme asbl
[8] See La Braise asbl
[9] APF - Association des Paralysés de France http://www.moteurline.apf.asso.fr/informations_medicales/pathologies/lesions_cerebrales/infirmite_motrice_cerebrale_IMC.htm#intro
[10] CTNERHI (Centre Technique National d'Études et de Recherche sur les Handicaps et les Inadaptations)

b) In qualitative terms:

By way of a preliminary observation, FIDH notes - **despite the clear responsibility of the public authorities for compiling statistics on vulnerable persons[11] - the lack of reliable figures, more particularly in the Walloon and Brussels Regions, concerning the number of highly dependent disabled adults residing in Belgium and requiring a care solution, whether on a day-care or residential basis.**

Faced with this shortage of figures, the associations active in defence of the fundamental rights of persons with disabilities are endeavouring to quantify needs despite not having the same resources as the state for data collection: the figures are therefore estimates.

As a starting point, FIDH therefore refers to the *partial survey* (see box) made by the Federal Ministry of Social Affairs of persons with disabilities according to their degree of autonomy or dependency. Indeed, the rate of the **disability allowances (income replacement and integration allowances)** paid by the Federal Ministry of Social Affairs to adults with disabilities is determined by their degree of dependence[12].

Glossary of allowances for persons with disabilities, the number of beneficiaries of which can be used to calculate the number of highly dependent persons with disabilities

Disability allowances are paid to persons who "have never had sufficient physical or mental capacity to obtain employment on the ordinary labour market, or who no longer have 'worker' status, or who manage to work on a partial basis despite their disability"[13]. These allowances are awarded on a *residual* basis only: they are reserved for persons with disabilities who, in the absence of other income entitlement (unemployment benefit, insurance claims), have few or no resources.

There are *three types of allowances* for persons with disabilities: ***the income replacement allowance*** **(ARR)*, the integration allowance*** **(AI)** ***and the allowance for assistance to the elderly*** **(APA)**. The ARR and the AI are payable to persons aged 21 to 64. From age 65 on, the APA takes over..

The ***income replacement allowance*** is a guaranteed minimum income designed to cover the beneficiary's basic needs. It is awarded to persons whose earning capacity is reduced, as a result of a physical or mental disability, to at least a third of what an able-bodied person is able to earn by working on the *general* labour market (excluding *sheltered* employment). Contrary to the position under the healthcare and benefits insurance scheme (see below), on the one hand the physical or mental disability need not be the cause of the person's non-participation in the labour market, and on the other, earning capacity is assessed neither by reference to the job the person was doing prior to stopping work nor by reference to the range of occupations in which the person might have engaged having regard to his or her age, training, experience etc.

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[11] See in this connection the comments below relating to ground no 3.

[12] The Ministry's statistics identify persons with disabilities by geographical area and category of dependency. See http://handicap.fgov.be/fr/index.htm

[13] J.-F. FUNCK, *Droit de la sécurité sociale,* Brussels, Larcier/De Boeck, 2006, pp. 585-586.

The ***integration allowance*** is awarded to persons with disabilities who, owing to their reduced autonomy, have to bear additional costs for their social integration: the allowance is designed to offset those costs and any assistance provided by third persons. In assessing the degree of autonomy, account is taken of the person's mobility and his or her ability to eat or prepare food, to wash and dress, to do cleaning and perform other domestic tasks, to live without supervision, be aware of dangers and avoid them, and to communicate and interact socially[14]. For each of these 6 types of activity, the physician reviews and assesses the degree of difficulty encountered by the person concerned - five different degrees of intensity for which "points" are allocated[15], creating five categories of persons with disabilities - and *ipso facto* his or her degree of autonomy[16] ; the amount of the integration allowance will depend on this.

More specifically, the physician allocates points according to the difficulties encountered:
- no difficulty: 0 points ;
- minor difficulties: 1 point ;
- major difficulties: 2 points ;
- impossible without another person's help: 3 points.

The total number of points (maximum 18) determines the category (1, 2, 3, 4 or 5) in which the person is placed.
A minimum of 7 is needed to belong to category 1; this is one of the conditions of eligibility for an integration allowance.

C**ategories 3, 4 and 5 correspond to higher levels of dependency**, viz :
- Category 3: 12 to14 points
- Category 4: 15 to 16 points
- Category 5: 17 to 18 points[17]

The income replacement and integration allowances may be paid concurrently and are assessed separately. Indeed, it is perfectly plausible that a person whose earning capacity is unimpaired or only slightly impaired may experience significant difficulties in functioning autonomously, and vice versa.

The *allowance for assistance to the elderly* is payable to persons over the age of 65 suffering from a "lack of autonomy", the degree of which will cause the amount of the allowance to vary, in the same way as for the integration allowance[18].

It should be noted here that, ideally, to calculate the number of highly dependent disabled adults as accurately as possible, it would be necessary to add to the number of beneficiaries of disability allowances in categories A3, A4 and A5 the number of persons in receipt of a **mutual insurance benefit** or **industrial injury benefit** following a brain injury suffered outside or at work respectively, since persons having

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[14] Art. 5, Royal Decree of 6 July 1987 on the income replacement allowance and the integration allowance, referred to hereafter as "Royal Decree of 6 July 1987".

[15] Art. 6, § 2, Law of 27 February 1987 on allowances for persons with disabilities, hereafter "Law of 27 February 1987". For each of these six factors, a number of points ranging from 0 to 3 is awarded according to the difficulties encountered by the person. The points obtained for each function are added together and, depending on the total obtained, the person is placed in a category. There are five categories.

[16] The degree of loss of autonomy has to be assessed according to the disabled person's ability to perform the function in question alone. Labour Court, Liège (3rd Chamber), 12 June 2001, R.G. n° 29.798/2001, unpublished.

[17] Reference: http://www.handicap.fgov.be/docs/ARR_AI_fr.pdf

[18] Art. 6, § 3, Law of 27 February 1987.

suffered such an injury are counted as highly dependent persons with disabilities.

The allowances for persons with disabilities differ from the mutual benefits insurance for workers who, at a certain point in their career, become incapable of working: in the latter case, the incapacity for work "is caused by the onset or aggravation of injuries or functional disorders"[19]. More specifically, "mutual" benefits insurance enables "mutual" benefits to be paid to offset the loss of income suffered by an employee or self-employed worker who has worked the number of days needed to qualify for the allowances[20] and who is no longer able to work for reasons of sickness or disability, which may include ABI.

Industrial injury insurance serves exclusively to offset losses resulting from an accident at work or on the way to work, which may also include ABI.

To evaluate the number of persons concerned, FIDH extrapolates figures from the Ministry of Social Affairs and compares them where appropriate with epidemiological data from disability prevalence studies. Figures for several years are set out below in order to establish statistical constants based on diachronic analysis.

In 2010, the overall prevalence of high-dependency disability stood at around 1.11% of the population aged 21-65. This is slightly more than the international prevalence of high-dependency disability, which is around 1%. It should be noted, however, that this international prevalence of 1% only includes perinatal disabilities and not disabilities acquired during life, such as brain injuries and the different degenerative diseases.

1) At national level

Estimated figures for high dependency in the Belgian population in 2010

Type of disability	International prevalence %[21]	Prevalence in the Belgian population aged 21 – 64, estimated at 6 584 760 in 2010	Number of high dependency ARR-AI beneficiaries aged 21-65 in 2010
Multiple disabilities of perinatal origin	0.2%	13 170	
Severe to profound mental retardation	0.38%	25 022	
Disability combined with behavioural	0.3%	19 754	

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[19] J.-F. FUNCK, *Droit de la sécurité sociale,* Brussels, Larcier/De Boeck, 2006, pp. 585-586.

[20] A full-time worker must have done 120 days' work in the 6 months preceding the sickness or disability, a part-time worker 400 hours.

[21] INSERM 2004 - Déficiences et handicaps d'origine périnatale – Dépistage et prise en charge – Chapter 2 : "Données internationales de prévalence" http://www.inserm.fr/content/download/.../déficiences+et+handicaps.pdf

disorders			
High dependency autism[22]	0.11%	7 243	
TOTAL	**0.99%**	**65 189** **0.99%**	**73 461**[23] **1.115%**

Demographic data do not provide a breakdown by age group until 2008, when there were 6 394 370 people aged 21 - 64 out of a total population of 10 666 866 in Belgium[24]. Given that Belgium had a total population of 10 984 468 in 2010, the population aged 21 to 64 in that year can be estimated at 6 584 760[25].

The number of beneficiaries of the ARR and AI in 2010 was 73 381 in categories 3, 4 and 5[26], comprising persons suffering from high dependency (category 3) and those suffering from very high dependency (categories 4 and 5)[27], which corresponds to 1.115% of the population aged 21 - 64.

It can therefore be legitimately assumed that **persons suffering from a high-dependency disability account for around 1.115 % of the adult Belgian population**.

Estimated figures for high dependency in the Belgian population in 2010, broken down by category and region [28]

	Walloon Region	German-speaking Community	Flemish Region	Brussels Region French-speakers	Brussels Region Dutch-speakers	TOT
cat 3	15607	333	20873	3 784	236	40833
cat 4	8106	167	10792	1715	121	20.901
cat 5	4408	68	6389	785	77	11727
TOT	28121	568	38054	6284	434	73461

2) In the Brussels-Capital Region

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[22] Etude Autirecherche, Inforautisme, 2006 : www.inforautisme.be/01qui/**AUTIRECHERCHE** rapport final.doc. This study was endorsed by the SUSA (Specialised University Department for Persons with Autism) in Mons, by Pr. Halewijck of the Orthopedagogics Department at the University of Mons and by the COCOF.

[23] Table for categories 3, 4 and 5 by region and community produced by the FPS Social Affairs.

[24] http://statbel.fgov.be/fr/modules/publications/statistiques/population/downloads/population_par_sexe_groupe_et_classe_d_ges_la_belgique_et_par_region.jsp

[25] X = 10.984.468 x 6.394.370 : 10.666.866)

[26] FPS Social Security, Directorate General for Persons with Disabilities, *Aperçu de l'année 2010 en chiffres*, 2011, p. 23.

[27] See "glossary" above.

[28] These figures were supplied informally to the complainant by the Social Affairs Administration in November 2011.

In the Brussels-Capital Region, in 2010, there were **6718 (6284 + 434) highly dependent disabled persons aged 21 to 65** (categories 3, 4 and 5)[29] in receipt of the ARR and AI out of a total population of 696 717 aged 18 to 64. This therefore rules out rigorous use of these figures because the two populations are not comparable over the same number of years.

However, if the figure of 1.115% for high-dependency disability is applied to the adult population of Brussels aged 18 - 64 (696 717 people), **the number of highly dependent disabled adults can reasonably be estimated at 7768.** The table below gives estimates of the number of disabled persons by type of high-dependency disability. It should be noted that the Federal Public Service (FPS) Social Affairs does not provide figures by type of disability, but only by degree of dependency.

Type of high-dependency disability	**Prevalence according to international epidemiological studies**	**Persons aged 18-64 concerned out of the total of 696 717[30]**	**Prevalence according to the FPS Social Affairs 1.115 %**
Multiple disabilities of perinatal origin	0.2%	1 393	Data unavailable
Severe to profound mental retardation	0.38%	2 648	Data unavailable
Disability combined with behavioural disorders	0.3%	2 090	Data unavailable
High-dependency autism	0.11%	766	Data unavailable
TOTAL perinatal disabilities	**0.99 %**	**6 897**	Data unavailable
Other disabilities and acquired disabilities	0.125%	871	Data unavailable
Total high-dependency disabilities	**1.115 %**	**7 768**	**7 768**

3) In the Walloon Region

In the Walloon Region, in 2010, there were 28 121 highly dependent disabled persons aged 21 - 65 (categories 3, 4 and 5)[31] in receipt of the ARR and the AI out of a total Walloon population aged 18 - 64 of 2 177 361. Applying the same principle as for Brussels above, here is a table giving estimates for the number of disabled persons by type of high-dependency disability.

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[29] Table for categories 3, 4 and 5 by region and community produced by the FPS Social Affairs.

[30] http://statbel.fgov.be/fr/statistiques/chiffres/population/structure/etatcivil/popreg/

[31] Table for categories 3, 4 and 5 by region and community produced by the FPS Social Affairs.

Type of high-dependency disability	**Prevalence according to international epidemiological studies**	**Persons aged 18-64 concerned out of the total of 2 177 361**[32]	**Prevalence according to the FPS Social Affairs 1.115 %**
Multiple disabilities of perinatal origin	0.2%	4 355	Data unavailable
Severe to profound mental retardation	0.38%	8 274	Data unavailable
Disability combined with behavioural disorders	0.3%	6 532	Data unavailable
High-dependency autism	0.11%	2 395	Data unavailable
TOTAL perinatal disabilities	**0.99 %**	**21 556**	Data unavailable
Other disabilities and acquired disabilities	0.125%	2 721	Data unavailable
Total high-dependency disabilities	**1.115 %**	**24 277**	**24 277**

4) In the Flemish Region

In the Flemish Region, in 2010, there were 38 054 highly dependent disabled persons aged 21 to 65 (categories 3, 4 and 5)[33] in receipt of the ARR and the AI out of a total Dutch-speaking population aged 18 – 64 of 3 891 512. Applying the same reasoning as for the other regions, here is a table giving estimates for the numbers of disabled persons by type of high-dependency disability.

Type of high-dependency disability	**Prevalence according to international epidemiological studies**	**Persons aged 18-64 concerned out of the total of 3 891 512**[34]	**Prevalence according to the FPS Social Affairs 1.115 %**
Multiple disabilities of perinatal origin	0.2%	7783	Data unavailable
Severe to profound mental retardation	0.38%	14788	Data unavailable
Disability combined with behavioural disorders	0.3%	11674	Data unavailable
High-dependency autism	0.11%	4281	Data unavailable
TOTAL perinatal disabilities	**0.99 %**	**38 526**	Data unavailable
Other disabilities and acquired disabilities	0.125%	4864	Data unavailable
Total high-	**1.115 %**	**43 390**	**43 390**

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[32] http://statbel.fgov.be/fr/statistiques/chiffres/population/structure/etatcivil/popreg/

[33] Table for categories 3, 4 and 5 by region and community produced by the FPS Social Affairs.

[34] http://statbel.fgov.be/fr/statistiques/chiffres/population/structure/etatcivil/popreg/

dependency disabilities			

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While all the figures set out above give a realistic idea of the number of highly dependent disabled adults in Belgium and in each of the three regions or communities, we have no data on the type of disability from which these persons suffer, and we cannot, therefore, reasonably evaluate their needs. A real determination on the part of the Belgian state (Social Affairs Administration) and its federated entities to pursue a policy of assistance to persons with disabilities should lead to co-operation on this issue between the various authorities, which has not been the case so far.

It should also be noted that **no official count is made, on a systematic annual basis, of the number of highly dependent disabled persons applying for places and services, either in the Walloon Region or in Brussels.** Here, the complainant can only extrapolate figures from those provided by the VAPH (Flemish agency) for the Flemish population (see below).

In **Brussels**, the association *Interface Grande Dépendance*[35] did however record, in 2009, 156[36], and in 2011, 216 highly dependent adults lacking a satisfactory, or indeed any, care solution (hospital, respite service only, etc), as well as 46 children (including 32 not attending school). An increase in the shortage of places must therefore be observed. It is important to note that the criteria for high dependency used in this association's surveys are very strict, because another 200 people are waiting for places but are considered insufficiently dependent to be included on the priority list[37]. It should also be emphasised that these are minimum figures, given that the authors of the survey only counted people who, in view of the shortage of places, have applied recently on their own initiative to PHARE. The authors therefore did not have access to all the various institutions' waiting lists.

No statistics are available for the number of highly dependent persons currently in care in the **Brussels Region**, which has a capacity of several hundred places, and in the Walloon Region, which cares for 600-700 disabled persons from Brussels under co-operation agreements.

Where the **Walloon Region** is concerned, we have no definite significant figures. The Walloon agency's sub-regional co-ordinating committee in Namur did however conduct a survey of unresolved problem situations between 1 November 2004 and 5 July 2005

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[35] Interface Grande Dépendance, integrated since May 2010 with the COCOF's "Phare" (autonomy for the disabled) department, was able to conduct a count of the number of highly dependent disabled persons in co-operation with the sector, but the figures cannot by any means be claimed to be exhaustive.

[36] Out of 156 adults, 82 are at home, without any solution, and 47 have found a precarious solution (rest home, psychiatric hospital, general hospital, other centres unsuited to their needs). See *Manque de places en hébergement et Budget d'Assistance Personnelle : Façades de bonnes intentions ?* , Proceedings of the Colloquy of 2 February 2010.

[37] Interface activity report – colloquy organised by Interface Grande Dépendance on 22/11/11, see Appendix X.

which showed that, out of the 141 persons interviewed[38], 41.8% pinpointed difficulty in finding an appropriate care centre as an "unresolved problem situation"[39]. Moreover, the agency began work in 2007 on a centralised waiting list of priority cases, but no figures are available. Some commentators suggest that there may be as many as 800 people awaiting a place in an institution for adults in the Walloon Region[40].

In the Flemish Region, the situation regarding the availability of statistics is less worrying given that the VAPH has had a centralised waiting list since 2001, although the data are incomplete and not always perfectly intelligible.

The June 2008 "*Zorgregierapport*" showed that the Flemish Region was faced with an increase in urgent applications (for assistance, home care or admittance to care) from persons with disabilities. The number had risen from 9085 – all disabilities and degrees of disability combined - on 30.6.2007 to 10 362 on 30.6.2008 ; half of the 10 362 applicants were receiving assistance, but not of the most appropriate kind[41]. The number of urgent applications subsequently increased from 10 508 on 30.6.2008 to 12 213 on 30.6.2009. On 1 July 2009, only 1487 applications had resulted in a solution involving the type of assistance requested[42].

In 2009, the VAPH (see above) recorded 11 complaints concerning the waiting period for an appropriate place in care or a personal assistance budget (in this connection, see below)[43].

Lastly, the "Zorgregierapport" of 31 December 2010 mentions a total of 14 155 (urgent) care applications received in the year just ended:

- 4124 applications involve a waiting period of over 2 years. In half of these cases, the waiting period even exceeds 3 years.
- 30% of these applications (with a waiting period of over 3 years) are applications submitted by adult disabled persons for admittance to a residential facility[44].

Based on the figures given in the "Zorgregierapport" of 31 December 2010, the following extrapolations can be made:

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[38] The majority of respondents live in the province of Namur and are parents of children with disabilities. But other players, such as mental health services, public social welfare centres and associated services, also participated in the survey.

[39] AWIPH sub-regional co-ordinating committee, Namur, *Enquête sur les situations-problèmes sans solution*, 2007, p. 6.

[40] According to A. Baudine, representative in the Walloon agency (AWIPH): "When I first came to AWIPH I asked myself 'How many disabled people do not have a place in care?' I couldn't find any way of getting a figure. Should we take a census of persons with disabilities? That is perhaps not the best solution. What we need is a system to evaluate the number of places needed, all systems combined. With the population growing older, we are short of 400 places". See "Manque de places en hébergement et Budget d'Assistance Personnelle : Façades de bonnes intentions ?", Proceedings of the Colloquy of 2 February 2010, p. 40.

[41] Jaarverslag 2008, Vlaamse ombudsdienst, hoofdstuk 11 "Welzijn en gezondheid", klachtenbeeld, personen met een handicap, pp. 243-245, section 11.2.2.

[42] Jaarverslag 2009, Vlaamse ombudsdienst, hoofdstuk 8 "Welzijn en gezondheid", klachtenbeeld, personen met een handicap, pp.66-168, section

[43] Jaarverslag 2010, Vlaamse ombudsdienst, Commissie voor Welzijn, Volksgezondheid, Gezin en Armoedebeleid en Commissie Jeugdzorg, Welzijn, Personen met een handicap-wachtlijsten, p. 9, section 2.1.

[44] Zorgregierapport 31 December 2010, VAPH, cel zorgregie (see in particular chapter III, p. 12 et seq.), section 3.3 (p.18).

http://statbel.fgov.be/nl/statistieken/cijfers/bevolking/structuur/burgerlijke_staat/geslacht-leeftijd-burgerlijke-staat-gewest/

Zorgregierapport 31/12/2010 : http://www.vaph.be/vlafo/download/nl/5214678/bestand = Flemish government plan for the Flemish Region and the 300.000 Dutch-speakers living in the Brussels-Capital Region

UC1&2 : solution within 6 months

UC3 : solution within 2 years

2010 waiting list (VAPH)	**Urgent (solution < 2 years)**		
Semi-residential for adults	**UC1&2**	**UC3**	>=UC4
Day centre	1399	283	233
Tehuis werkenden (Worker accommodation)	439	173	176
Bezigheidstehuis (Occupational accommodation)	1840	636	1308
Nursingtehuis (Accommodation with nursing)	1021	344	386

Numbers of Belgians (2010 figures) by region	**Region**	**Brussels (Dutch-speakers)**	**Total**
VAPH	6 251 983	300 000	6 551 983
AWIPH	3 498 384		3 498 384
Brussels-Capital Region	1 089 538	-300 000	789 538
Total	**10 839 905**		**10 839 905**

Places needed VAPH

Semi-residential adults	**Places available**	**Waiting list**	**Total need for care**	**Per 1000 inhabitants**
Day centre	3741	1682	5423	0.83
Worker accommodation	1169	612	1781	0.27
Occupational accommodation	4630	2476	7106	1.08
Accommodation with nursing	4749	1365	6114	0.93
Total	**14 289**	**6 135**	**20 424**	**3.12**

The table below is an extrapolation from the total need for care per 1000 inhabitants and the number of persons living in Belgium

Places needed in Belgium	**VAPH**	**AWIPH**	**Cocof/ Cocon**	**BELGIUM**
Day centre	**5423**	**2896**	**653**	**8972**
Worker accommodation	**1781**	**951**	**215**	**2947**
Occupational accommodation	**7106**	**3794**	**856**	**11 756**
Accommodation with nursing	**6114**	**3265**	**737**	**10 115**
Total	**20 424**	**10 905**	**2461**	**33 790**

Available places (2010)	VAPH	AWIPH	Cocof/ Cocon	BELGIUM
Day centre	3741	?	?	3741
Worker accommodation	1169	?	?	1169
Occupational accommodation	4630	?	?	4630
Accommodation with nursing	4749	?	?	4749
Total	14 289	0	0	14 289

Missing places	VAPH	AWIPH	Cocof/ Cocon	BELGIUM
Day centre	1682			
Worker accommodation	612			
Occupational accommodation	2476			
Accommodation with nursing	1365			
Total	6135			

Concluding remarks:

We have estimated the number of persons suffering from a high-dependency disability in Belgium in 2010 at approximately 73.461, or 1.115% of the resident population. Assuming that these 73.461 people are extremely vulnerable and should accordingly receive collective care, the Belgian state should be in a position to provide 73.461 appropriate care and accommodation solutions.

It is to be regretted, however, that there are only a few disparate figures for the number of people waiting officially for a care or accommodation solution. This is a blatant failing on the part of the public authorities as regards the quantification of needs. The fact that the Flemish Region has put in place a centralised waiting list for such requests highlights the reprehensible inaction of the Walloon Region and the COCOF in Brussels.

It should be constantly borne in mind, however, that even the official figures issued by the Flemish Region should be regarded as falling short of the reality, for several reasons. Firstly, there are parents who, out of resignation or exhaustion, no longer bother to register their adult child on a waiting list because they are aware of the serious shortage of places in both day and residential care ("you can't ask for something that doesn't exist"). Secondly, one should not overlook the importance of the cultural obstacles which prevent a mother, out of guilt, from accepting collective care of her child.

In the complainant's view, it can be estimated that, in Belgium, at least 50% of highly dependent disabled adults are deprived of an effective right of access to "care and accommodation solutions matching their needs" (day care, residential institution, respite place etc).

The situation is therefore highly problematical in terms of the number of persons concerned and there is an urgent need to adopt appropriate public policies.

It should also be stressed that a family with a child suffering from a high-dependency disability is a family seriously restricted in the enjoyment of its fundamental rights. The number of persons affected by the lack of the solutions referred to is therefore much greater in practice than the figures quoted above.

PART II. Subject of the complaint

1. *Fundamental rights referred to :*

- Article **13.3** of the revised European Social Charter (hereafter "the Charter"):

> ***"The right to social and medical assistance***
> *With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake:*
>
> *1 (...);*
>
> *2 (...);*
>
> *3 to provide that everyone may receive by appropriate public or private services such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want;*
>
> *4 (...)".*

- Article **14 of the Charter:**

> ***"The right to benefit from social welfare services***
> *With a view to ensuring the effective exercise of the right to benefit from social welfare services, the Parties undertake:*
>
> *1 to promote or provide services which, by using methods of social work, would contribute to the welfare and development of both individuals and groups in the community, and to their adjustment to the social environment;*
>
> *2 to encourage the participation of individuals and voluntary or other organisations in the establishment and maintenance of such services".*

- Article **15.3 of the Charter :**

> ***"The right of persons with disabilities to independence, social integration and participation in the life of the community***
> *With a view to ensuring to persons with disabilities, irrespective of age and the nature and origin of their disabilities, the effective exercise of the right to independence, social integration and participation in the life of the community, the Parties undertake, in particular:*
>
> *1 (...);*
>
> *2 (...);*
>
> *3 to promote their full social integration and participation in the life of the community in particular through measures, including technical aids, aiming to overcome*

> *barriers to communication and mobility and enabling access to transport, housing, cultural activities and leisure".*

- Article **16 of the Charter**:

> ***"The right of the family to social, legal and economic protection***
> *With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means".*

- Article **30 of the Charter**:

> "***The right to protection against poverty and social exclusion***

With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake:

a to take measures within the framework of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance;

b to review these measures with a view to their adaptation if necessary".

- Read in isolation or in conjunction with **Article E of the Charter**:

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

Article E means that all discrimination, including discrimination on grounds of disability, is prohibited. That implies equality of access for persons with disabilities to the rights safeguarded by the Charter. Article E prohibits not only direct discrimination but also all the forms of indirect discrimination which may be reflected in the inappropriate treatment of certain situations or inequality of access for persons in those situations and other citizens to various collective benefits.

2. Summary of grounds:

FIDH asks the European Committee of Social Rights (hereafter "the Committee") to find that Belgium does not satisfactorily apply **Articles 13.3, 14, 15.3 and 16 of the revised European Social Charter (hereafter "the Charter"), read in isolation or in conjunction with Article E,** on the grounds that highly dependent disabled adults are deprived of an effective right of access to "care and accommodation solutions adapted to their needs" and that they and their families suffer discrimination in enjoyment of the right to "social, legal and economic protection". This is because current Belgian policy does not take sufficient account of the urgent practical needs of highly dependent disabled adults given that the number of care solutions and/or facilities available is far from sufficient and several hundred families therefore find themselves without proper support as regards accommodation for their adult child. It should be noted here that improvements in intensive care and resuscitation techniques – which are to be welcomed – are "contributory" factors to high dependency because they increase the life expectancy of persons with severe disabilities[45]. It is vital that politicians take account of this new reality.

Consequently, highly dependent disabled adults experience extreme difficulty in finding care facilities where they can live in dignity. For this reason, they live in precarious circumstances from both the material standpoint - facilities in short supply (demand far outstrips supply) and sometimes totally unsuitable (placement in a psychiatric institution or even in the psychiatric wing of a prison) - and from the legal standpoint, in the sense that they are regularly refused places on the grounds that their disability is too severe. Severe disability is indeed difficult to manage under the current rules laid down by legislators. As a result, the most severely disabled people are often the first to be excluded from organised care. All too often, therefore, we are faced with the paradox that the people in greatest and most urgent need of specific support, appropriate stimulation and proper supervision are the first to be excluded from care.

More specifically, the following points give rise to a violation of Articles **13.3, 14, 15.3 and 16**, read in isolation or in conjunction with Article E :

- **the failure to offer a sufficient number and variety of care solutions**, which would enable highly dependent disabled adults to exercise their freedom of choice and not be obliged to live in a particular setting **(ground n°1)**;

- the **obstacles to inclusion on a waiting list for access to an appropriate care solution (ground n°2)**.

The articles of the revised Social Charter cited above must be read in the light of the UN Convention on the Rights of Persons with Disabilities, adopted in New York on 13 December 2006 and ratified by Belgium on 2 July 2009, and in particular:

> **Article 4.** 1. States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. To this end, States Parties undertake:
>
> a. To adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention;
> b. To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities;
> c. To take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes;
> d. To refrain from engaging in any act or practice that is inconsistent with the present Convention and to ensure that public authorities and institutions act in conformity with the present Convention;
> e. To take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise;

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[45] Although prenatal examinations limit the birth of children with certain disabilities, births of children with disabilities are not decreasing. Good neonatal care offers premature babies a better chance of survival and leads to an increase in the number of children with severe disabilities. An additional factor is the recognition of new disabilities such as autism and acquired brain injuries following an accident or a degenerative disease (MS, ALS, HD etc).

f. To undertake or promote research and development of universally designed goods, services, equipment and facilities, as defined in article 2 of the present Convention, which should require the minimum possible adaptation and the least cost to meet the specific needs of a person with disabilities, to promote their availability and use, and to promote universal design in the development of standards and guidelines;

Article 19. Living independently and being included in the community

States Parties to this Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that:

a. Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement;
b. Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;
c. Community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.

Article 24. Education

1. (…)
2. (…)
3. (…)
4. (…)
5. States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States Parties shall ensure that reasonable accommodation is provided to persons with disabilities.

The highly precarious circumstances in which the families of highly dependent disabled adults are forced to live in Belgium owing to the failure of the Belgian authorities to guarantee them appropriate social, legal and economic protection mean that they are also deprived of an effective right to protection against poverty and social exclusion. It should first be stressed that, because they are in constant need of help from others to perform all everyday acts, highly dependent disabled adults are the most disadvantaged members of our societies. The obstacles encountered by families in securing effective access to accommodation for their highly dependent disabled adult child (or brother or sister etc) also have negative repercussions as regards access for these families to employment, training, participation in social life etc, and generally as regards their integration into the socio-economic fabric. Families coping alone with caring for their adult child thus find themselves unable to work because home help services are either non-existent or inappropriate and expensive; furthermore, the employees of these services often lack the necessary training to deal with disability. Families forced to remain full time with their adult children often ruin their health in the process, can never take a holiday or engage in leisure pursuits and are cut off from all social contact. This situation also often has repercussions on conjugal life and seriously affects any brothers and sisters as the parents, who are already fully absorbed with the disabled child, cannot give other family members all the desired attention. In Belgium, economic hardship increasingly affects families already heavily penalised by their child’s disability, particularly women as mothers, but also the most economically disadvantaged families, single-parent families and immigrant families.

Hence, while some measures are being taken to support families (the - far from perfect – schemes to support family members who act as carers), there is a **failure** on the part of the Belgian authorities as a whole **to put in place an overall co-ordinated policy to combat the poverty and social exclusion which affect in particular highly dependent disabled adults and their families**. FIDH therefore asks the Committee to find that Belgium is not satisfactorily applying **Article 30 of the Charter either, read in isolation or in conjunction with Article E (ground no 3).**

Generally, the attitude of the Belgian authorities towards highly dependent disabled adults is indicative of institutional discrimination towards them, contrary to Article E of the Charter.

PART III. Grounds of complaint

1. The insufficient number and variety of care solutions (ground no 1) and the obstacles to inclusion on a waiting list for access to an appropriate care solution (ground no 2)

FIDH considers that the failure to offer a sufficient number and variety of care solutions, which would enable highly dependent disabled adults to exercise freedom of choice and not be obliged to live in a particular setting, constitutes a **violation of Articles 13.3, 14, 15.3 and 16 of the Charter, read in isolation or in conjunction with Article E**.

1.1. The principles established in the Committee's case-law

a. It has to be pointed out that, **of the 74 collective complaints submitted to the Committee between 1998 and 10 December 2011, only two relate to persons with disabilities**. Furthermore, they both concern children, not adults, and do not rely on the articles singled out in this complaint, but allege a violation of Articles 15.1 and 17 of the Charter.

Hence, following collective complaint n°41/2007 submitted by the *Mental Disability Advocacy Centre (MDAC) against Bulgaria,* the Committee concluded on 3 June 2008 that there had been a violation of Article 17.2 of the Charter in conjunction with Article E owing to the fact that children who live in homes for disabled children in Bulgaria do not receive an education.

Similarly, following collective complaint n°13/2002 submitted by *Autism-Europe against France*, the Committee delivered a decision on the merits on 4 November 2003 finding a violation of Article 15.1 and Article 17.1 (right of children and adolescents to social, legal and economic protection, including the right to education) taken both in isolation and in conjunction with Article E of the revised Charter. The Committee held that France had not made sufficient progress in the provision of education for persons with autism.

This decision of 4 November 2003 does however offer some interesting lessons concerning the scope of Articles 15 and E, which lend support to the claims made by the complainant in the present case:

48. As emphasised in the General Introduction to its Conclusions of 2003 (p. 10), the Committee views Article 15 of the Revised Charter as both reflecting and advancing a profound shift of values in all European countries over the past decade **away from treating them as objects of pity and towards respecting them as equal citizens** – an approach that the Council of Europe contributed to promote, with the adoption by the Committee of Ministers of Recommendation (92) 6 of 1992 on a coherent policy for people with disabilities. The underlying vision of Article 15 is one of equal citizenship for persons with disabilities and, fittingly, the primary rights are those of "**independence, social integration and participation in the life of the community**". (…) It should be noted that **Article 15 applies to all persons with disabilities regardless of the nature and origin of their disability and irrespective of their age.** It thus clearly covers both children and adults with autism.

51. The Committee considers that the insertion of Article E into a separate Article in the Revised Charter indicates the heightened importance the drafters paid to the principle of non-discrimination with respect to the achievement of the various substantive rights contained therein. It further considers that its function is to help secure the equal effective enjoyment of all the rights concerned regardless of difference. Therefore, it does not constitute an autonomous right which could in itself provide independent grounds for a complaint. It follows that the Committee understands the arguments of the complainant as implying that the situation as alleged violates Articles 15§1 and 17§1 when read in combination with Article E of the Revised Charter.
Although disability is not explicitly listed as a prohibited ground of discrimination under Article E, the Committee considers that it is adequately covered by the reference to "other status". Such an interpretative approach, which is justified in its own rights, is fully consistent with both the letter and the spirit of the Political Declaration adopted by the 2nd European conference of ministers responsible for integration policies for people with disabilities (Malaga, April, 2003), which reaffirmed the anti-discriminatory and human rights framework as the appropriate one for development of European policy in this field.

52. The Committee observes further that the wording of Article E is almost identical to the wording of Article 14 of the European Convention on Human Rights. As the European Court of Human Rights has repeatedly stressed in interpreting Article 14 and most recently in the Thlimmenos case [*Thlimmenos v. Greece* [GC], no 34369/97, ECHR 2000-IV, § 44)], the principle of equality that is reflected therein means treating equals equally and unequals unequally. In particular it is said in the above mentioned case:

"The right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is also violated when States without an objective and reasonable justification fail to treat
differently persons whose situations are significantly different."
In other words, human difference in a democratic society should not only be viewed positively but should be responded to with discernment in order to ensure real and effective equality.
In this regard, the Committee considers that Article E not only prohibits direct discrimination but also all forms of indirect discrimination. Such indirect discrimination may arise by failing to take due and positive account of all relevant differences or by failing to take adequate steps to ensure that the rights and collective advantages that are open to all are genuinely accessible by and to all.

53. The Committee recalls, as stated in its decision relative to Complaint No.1/1998 (International Commission of Jurist v. Portugal, § 32), that the implementation of the Charter **requires the State Parties to take not merely legal action but also practical action to give full effect to the rights recognised in the Charter. When the achievement of one of the rights in question is exceptionally complex and particularly expensive to resolve, a State Party must take measures that allows it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources.** ***States Parties must be particularly mindful of the impact that their choices will have for groups with heightened vulnerabilities as well as for others persons affected including, especially, their families on whom falls the heaviest burden in the event of institutional shortcomings.***
54. In the light of the afore-mentioned, the Committee notes that in the case of autistic children and adults, **notwithstanding a national debate going back more than twenty years about the number of persons concerned and the relevant strategies required**, and even after the enactment of the Disabled Persons Policy Act of 30 June 1975, France has failed to achieve sufficient progress in advancing the provision of education for persons with autism. (…)

The Committee has reiterated on several occasions the major lesson that measures taken by the state to achieve the aims of the revised Charter must meet the following three criteria: "(i) a reasonable timeframe, (ii) measurable progress and (iii) financing consistent with the maximum use of available resources."[46].

b. None of the 74 collective complaints submitted to the Committee between 1998 and 10 December 2011 has led to a finding of a violation of Articles 13.3, 14 and 15.3 of the Charter. These are provisions which have never been specifically relied on before the Committee (unlike Articles 13.1 or 2, or 15.1 or 2). Consequently, no specific lesson emerges from the Committee's case-law to which reference could be made in this connection.

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[46] See in particular *European Roma Rights Centre v. Bulgaria*, complaint n° 31/2005, decision on the merits of 18 October 2006, § 37 ; *Mental Disability Advocacy Centre (MDAC) against Bulgaria*, complaint n°41/2007, decision on the merits of 3 June 2008, § 39.

c. The Committee has, however, ruled several times on the scope of Article 16 of the Charter.

Article 16 of the Charter requires member states to guarantee the full development of the family through social and family benefits and the provision of housing. It follows from the wording of Article 16 that no family life is possible without adequate housing. The Committee has held that Article 16 also covers the provision of decent family housing[47]. This interpretation also derives from the integrated approach to the Charter developed by the Committee[48].

In its 2003 decision on the collective complaint against Greece, the Committee held that, in order to satisfy Article 16, states must:

> "promote the provision of an adequate supply of housing for families, take the needs of families into account in housing policies and ensure that existing housing be of an adequate standard and include essential services (such as heating and electricity). (…) [A]dequate housing refers not only to a dwelling which must not be sub-standard and must have essential amenities, but also to a dwelling of suitable size considering the composition of the family in residence. (…)"[49].

In its decision on the collective complaint ERRC v. Bulgaria, the Committee confirmed these principles and pointed out that:

> "Article 16 guarantees adequate housing for the family, which means a dwelling which is structurally secure; possesses all basic amenities, such as water, heating, waste disposal, sanitation facilities, electricity; is of a suitable size considering the composition of the family in residence; and with secure tenure supported by law (…).
> The temporary supply of shelter cannot be considered as adequate and individuals should be provided with adequate housing within a reasonable period."[50]

The implementation of Article 16 therefore presupposes positive action by the state: the state must take the necessary legal and practical measures to ensure effective enjoyment of the rights enshrined in that provision, in particular the right of access to suitable housing[51]. The Committee has also stressed that "*States must respect difference and ensure that social arrangements are not such as would effectively lead to or reinforce social exclusion*"[52].

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[47] *European Roma Rights Centre (ERRC) v. Greece*, complaint n°15/2003.

[48] N. BERNARD, "Le droit au logement dans la Charte sociale révisée: à propos de la condamnation de la France par le Comité européen des droits sociaux", *Revue trimestrielle des droits de l'homme*, 2009, pp. 1061 to 1089 ; J.-Fr. AKANDJI-KOMBÉ, "Charte sociale européenne et procédure de réclamations collectives (1998 – 1 July 2008)", *Journal de droit européen*, 2008, p. 219.

[49] ECSR, *European Roma Rights Centre v. Greece*, complaint 15/2003, decision on the merits of 8 December 2004, §24.

[50] ECSR, *European Roma Rights Centre v. Bulgaria*, complaint n° 31/2005, decision on the merits of 18 October 2006, §34.

[51] *European Roma Rights Centre v. Bulgaria*, § 35. See also *European Roma Rights Centre v. Greece*, §21.

[52] ECSR, *European Roma Rights Centre v. Greece,* §19.

It should also be noted that, by virtue of the Preamble to the Charter, the principle of equality and non-discrimination forms an integral part of Article 16[53], which, therefore, also entails an obligation to comply with the principle of non-discrimination. Furthermore, Article E of the Charter enshrines an obligation to ensure the enjoyment of the rights recognised in the Charter without any discrimination based, inter alia, on disability (other status). The Committee has stated that this provision prohibits two categories of discrimination: direct discrimination, ie different treatment of individuals or groups in identical situations without any objective and reasonable justification or without the means being proportional to the aim pursued, and indirect discrimination, ie identical treatment of individuals or groups in different situations[54]. Regarding the prohibition of indirect discrimination, the Committee has emphasised that:

> "in a democratic society, human difference should not only be viewed positively but should be responded to with discernment in order to ensure real and effective equality. In this regard, Article E prohibits also all forms of discrimination. Such discrimination may arise by failing to take due and positive account of all relevant differences or by failing to take adequate steps to ensure that the rights and collective advantages that are open to all are genuinely accessible by and to all (…)."[55]

1.2. The situation in Belgium

1.2.1. The Committee's findings of non-compliance in its Conclusions

The complainant will begin by considering whether or not there have been any findings of non-compliance by Belgium regarding the effective implementation of **Articles 13.3, 14, 15.3 and 16 of the Charter, read in isolation or in conjunction with Article E**, in respect of highly dependent disabled adults.

In its **December 2007 Conclusions**, the Committee commented inter alia on Belgium's compliance with Articles 14 and 15 of the revised Charter. The following excerpts are relevant in the context of this complaint:

> **Article 14 – Right to benefit from social welfare services**
> ***Paragraph 1 –Provision or promotion of social welfare services***
> The Committee takes note of the information in the Belgian report.
> ***Organisation of social services***
> The Committee notes that **the information received on both the French and the German speaking communities does not match with what it requested since it does not concern the services which are available for** children, **persons with disabilities** and drug addict. It therefore reiterates its request for information on general social services for the persons in need of them. If the necessary information is not provided in the next report, there will be nothing to show that the situation in Belgium is in conformity with Article 14§1 of the Revised Charter in this respect.

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[53] ECSR, *European Roma Rights Centre v. Greece*, §24.

[54] *European Roma Rights Centre v. France*, § 81; *Autism-Europe v. France*, complaint n°13/2002, decision on the merits of 4 November 2003, § 52.

[55] *European Roma Rights Centre v. France*, § 83.

> ***Quality of the services***
> The report provides figures on the number of staff and financing for the different social services in the Flemish Community, but not for beneficiaries. No such information is provided for the other two communities. The Committee reiterates its question with respect to the whole territory.
>
> As regards quality control, a new decree on the quality of health structures and social services has been adopted in 2003. The new text adds to the quality criteria established by the 1997 decree which any institution of social services must meet to receive agreement (Conclusions XV-2, Belgium, p. 106), the possibility of imposing sanctions to structures which are in breach of the rules. According to the seriousness of the breach, fines from 100 to 100 000 € may be imposed and the agreement can be withdrawn.
>
> The Committee asks whether new rules concerning the control of the quality of services have been adopted in the other communities, in particular what are the conditions which must be met by providers and what are the supervisory procedures in place to ensure that the conditions are met in practice
>
> ***Conclusions***
> Pending receipt of the requested information, the Committee defers its conclusion.
>
> **Article 15**
> The Committee also recalls that **policy measures to achieve the goals of social integration and full participation of persons with disabilities must be co-ordinated and asks the next report to provide information on the integrated programming of the policy for disabled persons.**
>
> *Forms of economic assistance empowering persons with disabilities*
> The report indicates that, in Flanders, financial assistance for buying individual instruments or the personal assistance budget (BAP) are available. The Committee asks whether there are other forms of economic assistances in Flanders and what is available in the Walloon Region and in the German-speaking community.

In its **November 2008 Conclusions**, in which it commented inter alia on Belgium's compliance with Article 1, the Committee asks:

> "for all the country's regions/communities, whether persons with disabilities are entitled to free technical aids or must contribute themselves to the cost. If an individual contribution is required, the Committee asks whether the state provides some financial contribution. It also asks whether disabled persons are entitled to free support services, such as personal assistance or home help, or have to meet some of the cost of such measures".

In its **November 2008 Conclusions**, in which it commented inter alia on Belgium's compliance with Article 14 of the revised Charter, the Committee notes:

> **Article 14 – Right to benefit from social welfare services**
> *Paragraph 1 – Provision or promotion of social welfare services*
> *Organisation of the social services*
> The report describes the social services and care available to adults and children with disabilities in the Flemish Community. These facilities provide accommodation, treatment and support services in the care sector on a residential basis (day and night care in homes, short-stay centres or licensed centres for persons who work or do not work), a semi-residential basis (day care and day centres for adults with disabilities who do not work) or in the community (supervised care in the community, including placement with foster families, domiciliary support services and sheltered housing schemes offering varying degrees of support).
> **The report still fails to provide any information on the services available to persons in need in the German- or French-speaking Communities. Under these circumstances, the Committee cannot appreciate the situation in Belgium with regard to Article 14§1 of the Revised Charter. It considers that the situation in Belgium is not in conformity with Article 14§1 of the Revised Charter on this point.**
>
> *Conclusion*
> The Committee concludes that the situation in Belgium is not in conformity with Article 14§1 of the Revised Charter on the grounds that it has not been established that:
> - services adapted to people's needs exist in the French and German-speaking Communities;
> - nationals of other States Parties have access to social services on an equal footing with nationals in these two Communities;
> - supervisory mechanisms have been set up to guarantee the quality of the social services provided by different agencies operating in the French and German-speaking Communities.

To sum up, FIDH notes from the Committee's Conclusions on Belgium between 2007 and 2010 that there is very little discussion of the issue of care solutions for highly dependent disabled adults. In December 2009, however, the Committee reached a finding of non-compliance by Belgium with Article 4.1 on the ground that the Belgian report still failed to provide any information about the services available, inter alia, to disabled adults in need in the German and French-speaking communities.

Moreover, the Committee has reached other findings of non-compliance by Belgium with the Charter, as regards respect for the fundamental social rights of persons with disabilities[56], and has repeatedly criticised the lack of figures concerning the needs of this population.

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[56] For example, the Committee adopted conclusions in 2007 to the effect that the situation in Belgium was not in conformity with Article 15 §2 and requested further information in order to assess compliance with Article 15 §1 (*vocational training for persons with disabilities).* In its 2008 conclusions on Article 15§2, "The Committee points out that it deferred its previous conclusion (Conclusions 2007) pending receipt of essential information such as the total number of persons with disabilities, the number of persons with disabilities of employment age and the number of persons with disabilities employed (in the ordinary market or in sheltered employment). As the Committee has not received these figures, it cannot be established that the situation is in conformity with Article 15§2 of the Revised Charter (…).The Committee concludes that the situation in Belgium is not in conformity with Article 15§2 of the Revised Charter on the ground that it has not been established that persons with disabilities are guaranteed effective equal access to employment."

1.2.2. The actual situation in Belgium

The complainant submits that at least 50 % of highly dependent disabled adults in Belgium are deprived of an effective right of access to "care and accommodation solutions matching their needs" subsidised by the public authorities (see above, pp. 8-20)).

It will be recalled[57] that, by **care and accommodation solutions** for highly dependent persons with disabilities, the complainant means:

- **day-care** places, to guarantee skills retention and the continuation of fulfilling and rewarding activities;
- **residential** places, including places in communal establishments;
- **personalised budgets** enabling individuals to purchase appropriate services so that they can live at home if they so wish without being dependent on family members;
- **respite provision** in conjunction with the other facilities and solutions.

In Belgium, any person with disabilities needing care or accommodation applies for recognition of his or her disability and registers – depending on his or her place of residence and/or language – with one of the 5 "federated" agencies mentioned above (AWIPH, PHARE, VAPH, etc). In theory, the person with disabilities can then seek an institution of his or her choice capable of providing the desired service. He or she is therefore free, in theory again, to choose from among the places available in an institution subsidised by an agency and known to provide the services required. Care provision for persons with disabilities is guided by demand: it is the task of each of the 5 agencies to ensure sufficient care and support capacity.

In principle, therefore, each of the 5 agencies responsible for persons with disabilities draws up an estimate of future needs. Each new place created must first be authorised and approved by the relevant agency before being subsidised.

However, the **Walloon Region**, in an order issued by the Walloon Government on 9 October 1997, placed a moratorium on the creation of new places (Art. 84), ruling out the approval and funding of new services and the funding of new places in existing services for persons suffering from mental deficiency. Persons in urgent need of care may however, while waiting for a place to become free, obtain an individual contract, issued by the AWIPH (Walloon Agency for the Integration of Persons with Disabilities), enabling them to take their own steps to find an approved institution willing to offer them an unsubsidised place[58]. That institution then receives the sum specified in the contract. To date, however, less than 200 individual contracts have been granted[59].

In the Walloon Region, therefore, one finds approved and subsidised accommodation centres alongside centres which are merely recognised (approved by the AWIPH

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[57] See above, p. 9.

[58] These unsubsidised places are described as "APC (care authorisation) places".

[59] By order 2006/555, the **COCOF** introduced the possibility of granting the same type of contract as from 1 January 2007. They may be granted only to residents of Brussels to fill as yet unsubsidised places in Brussels institutions, but there are no establishments adapted to persons with severe disabilities which can offer solutions in this region.

inspectorate) without any funding, which means that the needs unquestionably exist but are not funded by the public authorities. These unsubsidised institutions have a precarious existence: you never know which ones will be left next year.

Despite the lack of precise figures (see above, pp. 8-20), it can nevertheless be said that, in the **Brussels-Capital Region**, limited provision is combined with a serious shortage of funds to meet the full range of care and accommodation needs. For example, the region does not yet have a recognised institution for the care of adults suffering from a severe disability such as autism, multiple disabilities, acquired brain injuries or disabilities combined with serious behavioural disorders.

In the Brussels Region, families and professionals belonging to the GAMP (action group against the lack of places for highly dependent persons with disabilities) have staged 43 sit-ins since October 2005, aimed at various policymakers responsible for the integration of persons with disabilities, to protest against the critical shortage of care solutions for highly dependent persons. No substantial, tangible progress has been recorded, however, over this significant period of time between 2005 and 2011.

Oddly, no suitable provision is made for **persons suffering from serious behavioural disorders** in the disabled care sector, from which they are almost systematically excluded. The same is true of psychiatric provision: after receiving emergency care, patients are sent home. The close family of these highly dependent persons with disabilities must therefore dispense care which professionals are unable to provide. In parallel to this, **persons who have suffered a brain injury** cannot go back to their families after receiving treatment and support in a revalidation centre because they are in permanent need of specialist care. Owing to the shortage of places in the disability sector, they are cared for in rest and care homes, which, however, do not offer appropriate treatment. The Federal Expertise Centre for Healthcare has drawn up a report on this subject – Report 51A – which says that the federal administration needs to find a solution for 1.000 brain-damaged patients.

In Belgium, the majority of care or accommodation facilities for persons with disabilities are full. Places are only freed up when a patient leaves or dies. Because demand far outstrips supply, waiting lists are formed and grow longer as the number of recognised claimants and beneficiaries increases. The existence of waiting lists is causing growing concern among claimants, leading many people to put their names down on a pre-emptive basis[60].

It should be mentioned here that, in its initial report on Belgium's compliance with the UN Convention on the Rights of Persons with Disabilities, the Belgian state, after stating that "the federated entities realise how important it is to persons with disabilities to live independently and to participate fully in all aspects of life, on an equal footing with others", points out itself that "*this aspect will require further improvement in future, particularly as regards the waiting lists for access to the different services*"[61].

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[60] Another point which should be stressed here is the anxiety felt by many parents who, as they grow older, see that there is still no care solution for their child and therefore wonder what will become of him /her when they are no longer there or no longer capable of looking after him/her.

[61] See *Initial Belgian report on compliance with the UN Convention on the Rights of Persons with Disabilities,* 2011, n°81, p.25. Our underlining.

It should also be mentioned that the majority of **residential-type services**, helping persons with disabilities to find proper accommodation, particularly from the financial standpoint[62], are generally unsuited to the needs of highly dependent disabled persons. Similarly, **home-help services** are, in general, suitable only for persons with minor disabilities given that the aim is to help them to be more independent in their daily lives.

Where **personalised budgets** are concerned, they also warrant a cautious approach in the current context, not to mention the fact that this system is mainly suitable for persons whose disability does not place them in a situation of high dependency.

More specifically, in the **Flemish Region,** the VAPH offers a **personal assistance budget** (*persoonlijk-assistentiebudget - PAB*) to enable persons with disabilities to continue to live independently in their own homes, with the assistance of home-help staff. On 1 January 2011, there were **1808 PAB beneficiaries**[63]. The VAPH reports that, in 2010, 1768 BAPs were allocated and 5470 people were still on the waiting list.

The **Walloon Region** also offers a **personal assistance budget** (BAP) for persons with disabilities to enable them to continue living in their ordinary environment and organise their everyday lives, and to facilitate their family, social and occupational integration. This budget covers the cost of certain home-help services. The conditions for the award of a BAP are laid down in the Walloon Government Order of 14 May 2009. According to the complainant's estimates, however, only 80 BAPs have been allocated in the Walloon Region since the scheme was put in place, which is very little[64].

An equivalent initiative has been taken in Brussels by the **COCOM,** which is funding a pilot scheme to provide a certain number of disabled persons with a **personal assistance budget**. The aim is to offer them help with everyday living and social, educational and remedial support. According to the complainant's estimates, only 8 or 9 BAPs have been allocated in the Brussels Region[65].

See also article in Knack, "Vechten om zelfregie", 5 December 2010, cf. appendix n°X.
The article is about the fact that the waiting lists for care and support for persons with disabilities in Flanders have become a never-ending problem for every Flemish Minister for Well-being.

[62] For example, the Flemish government gives financial support to "*ADL-woningen*" (housing, including social housing, adapted for everyday activities) for persons with disabilities. These "*ADL-woningen*" housing projects include the construction of personalised housing units by the Flemish Social Housing Company (*Vlaamse Maatschappij voor Sociaal Wonen - VMSW*) and recognition and funding by the VAPH of assistance[62] and advice services to the tenants of these housing units. Furthermore, the Flemish Housing Code allows each municipality to identify one or more priority groups, such as persons with disabilities, in its rules for allocation of social housing.

[63] See *Initial Belgian report on compliance with the UN Convention on the Rights of Persons with Disabilities,* n°82.

[64] In its 2011 report the Belgian government points out that the Walloon Government Order of 14 May 2009 laying down the conditions and procedures for the provision of individual assistance towards the integration of persons with disabilities provides for various forms of financial aid to help cover the cost of home conversions, life assistance products and certain services to enable persons with disabilities to live as independently as possible. In 2009, over 7400 people apparently benefited from these various forms of aid, which include BAPs (n°84).

[65] The authorities record a total of 66 BAPs as having been allocated in the Brussels Region, but this is due to the fact that BAPs are only awarded for one year and their renewal inflates the figures.

So, even where laws exist, there is a quantitative shortfall in the solutions actually implemented. It must also be acknowledged that, however commendable the BAP might be, it comes in for much criticism, particularly from the mothers of highly dependent disabled persons, given that the scheme requires considerable intellectual and administrative input, often on the part of the mothers themselves, who are forced to live with their child owing to the shortage of outside care solutions. The introduction of the BAP is in line with the trend whereby the Walloon Government seems to be prioritising support for individual services rather than the creation of approved and subsidised places in care. The complainant therefore wishes to stress once again that personalised budgets can only really be encouraged as one measure among others (day or residential care etc) and only take on their full value if the person makes a positive choice in favour of this scheme while being free to choose another option.

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The shortage of subsidised public care facilities, leaving room for private initiatives (BAP etc) or facilities, means that many families are forced to show a certain degree of resourcefulness: at present, many parents of highly dependent adult children are forced to set up their own care institutions to remedy the government's failings in this field [66], and this requires years of investment[67].

In theory, highly dependent persons with disabilities, like persons suffering from illness, have a fundamental right to be cared for by the community. The GAMP therefore asks the following question in a 2006 memorandum: "Are the parents of seriously ill children or children suffering from cancer obliged to build and run a hospital before receiving regular subsidies? That appears unacceptable, and yet … the opening of new facilities, both in Brussels and in Wallonia, is left entirely to private initiative. There is no planning by the state or by the communities and regions".

The complainant has no choice but to condemn the failure to lift the moratorium on the creation of new places in care in the Walloon Region and to call for varied and flexible subsidised solutions which actually meet the needs (rest places, residential centres etc) and for the development of affordable, high-quality local services in sufficient numbers to meet demand. The complainant adds that these facilities must be of a high standard: they must be subjected to strict controls (particular as regards the initial and in-service training of their staff), pursue educational goals related to the development of personal autonomy and guarantee parental participation in decisions on all aspects (medical, paramedical, educational, support etc).

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[66] What prompts the setting up of a facility by isolated individuals is a real social and health emergency, not a parent of a highly dependent child with disabilities saying "I've got time, I've got money, I'm going to build an ideal facility for my child".

[67] In the Brussels-Capital Region, the three current projects which have been approved in principle by the COCOF have been under preparation for periods ranging from 5 to 11 years. The HOPPA project (day and residential care centre for 25 persons with multiple disabilities) and the Condorcet and Estreda projects (respectively, a residential centre and a day-care centre for persons with autism) have been delayed by problems relating to infrastructure and administrative constraints. Work has not yet been started. And once the infrastructure problem has been resolved, there will have to be guarantees that the COCOF can bear the cost of management.

The complainant stresses in particular the need for a legal framework to facilitate the **setting up of smaller, approved and subsidised facilities of a family nature designed to house 4-5 persons** and to foster the integration of persons with disabilities in cities and neighbourhoods.

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The conspicuous shortage of care and accommodation solutions in specialised centres has several **extremely prejudicial consequences** for highly dependent disabled adults and their families:

- Many highly dependent disabled adults are **forced to remain in their childhood** home, fully dependent on their family, which entails an increased risk of **impoverishment and exclusion** for the whole family unit[68]. It should be added that when persons with disabilities stay in the family home for too long, that hampers their socialisation and their adaptation to any potential future care solution, particularly in a care centre, which thus becomes all the more problematical;

- Persons with disabilities and their families are **deprived of any real choice** as regards the desired care solution (urban or rural setting, day care or day and night care, etc), whereas the exercise of this freedom of choice is a fundamental right[69]. This lack of choice is compounded by the fact that when people have a care solution, they are disinclined to go elsewhere because, however inadequate a solution may be, leaving it means being exposed to a very high probability of not finding another one;

- With demand far exceeding supply both in Brussels and in Wallonia, **persons with minor to moderate disabilities find places more easily,** while those with greater needs in terms of management and care (autism, multiple disabilities, acquired brain injury etc) are regularly turned down because they are very expensive for the facilities which accept them[70]. This cost element has dramatic consequences for persons in search of a residential facility and their families. We are witnessing a phenomenon of **lasting exclusion of the people with the most severe disabilities from care facilities unless the family contributes significantly towards the cost by making a donation to the recalcitrant institution.** The upshot of this is that only well-off parents eventually find a place in care for their child;

- The e**xclusion of persons with disabilities** from a care facility found only with great difficulty is a **frequent occurrence**; in the absence of sufficient alternatives and legislation affording proper protection to persons with disabilities, care centres, which, with supply falling short of demand, hold a dominant position, have a monopoly of power as regards the very future of their residents;

- Parents are sometimes resigned to accepting places for their adult children in **totally inappropriate facilities**:

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[68] Cf Part III, para 3.

[69] See UN Convention.

[70] It should be noted, however, that the reasons given by institutions themselves are usually a mismatch between the person's needs and the institution's educational goals and a lack of trained staff.

- The centre which is eventually found after years of waiting often lacks **equipment and sufficient staff trained** to deal with the particular type of disability and provide the necessary specialist services;
- Some highly dependent disabled adults are placed out of desperation in a psychiatric hospital, where they are sometimes subjected to harmful and totally inappropriate overmedication;
- Where a centre is found, it is often situated **very far from the person's home**[71]

Some personal testimonies by parents of highly dependent adult children in search of a care solution

The complainant asks the members of the Committee to read the 25 personal testimonies collected in 2011 and appended to this complaint, which all mention a long waiting period to find a care solution for a highly dependent disabled adult[72].

The following excerpts from personal testimonies are taken from national reports or articles published in the press.

"I've looked everywhere, but I've only found temporary solutions. The current care solution for the younger daughter will only be for one year, while I look for something else. If I don't get any help in finding a place for her, even if it's only financial help, the only thing left will be to reserve a cemetery plot. It's the only place where they won't refuse her." (mother of Anne-Christelle and Gaëlle, young autistic women with behavioural disorders).

"We have been looking unsuccessfully for a place for our child for 3 years" (parents of Lucie, age 18 , a girl suffering from multiple disabilities)

"We've all put so much time and effort into helping him to function properly. He learnt to read, took an interest in the weather and photos. He communicated. Here he is now, overmedicated, sedated with neuroleptics and reduced to a vegetable state. What an appalling waste." (foster family of Chophel, age 24, autistic with behavioural disorders, placed in a psychiatric hospital).

"My 18 year-old son Paul, who suffers from multiple disabilities, will have to leave his institution for young people soon and I'm going to lose my job because I haven't found a place in an adult institution." (mother of Paul, who suffers from multiple disabilities).

"Our son's future is a huge worry. Is it always for the parents to create what doesn't exist?" (mother of Pierre, aged 14, who suffers from a mental disability).

"There are no places in Brussels (10-year waiting list). I've visited 20 homes in Walloon Brabant. Everything is full up. My child is very withdrawn and suffers from anxiety and

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[71] See S. Donnay (PHARE), "Manque de places en hébergement et Budget d'Assistance Personnelle: Façades de bonnes intentions ? ", Proceedings of the Colloquy of 2 February 2010, p. 29.
For example, between 600 and 700 disabled persons from Brussels are living in institutions in Wallonia.
The complainant recalls that, in 2011, a person with disabilities was even sent back to his family in the Democratic Republic of Congo because of the lack of care prospects in Belgium.

[72] See appendix.

depression. Who'll help him when I'm no longer there? How can I be sure he'll be properly looked after?" (elderly mother of a 36-year-old epileptic man with autism)[73].

"I'm the mother of a 26-year-old with cerebral palsy. No more special dispensations have been granted in special education since 2004. Thomas was forced to leave school at the age of 21 and there were no places available in existing day-care facilities. So there was only one solution – to keep him at home without any contact with young people of his age. Young adults who stay at home lose what they have learnt and have no social life. The problem is even worse for the ones whose parents work.

We were a group of several parents without any solution because our children had been on long waiting lists for years. There have been no subsidies for the creation of new places since the moratorium was introduced in 1997.

Seeing the distress of the parents and the young adults, the director of the special education establishment set up a facility which is now attended by 30 young adults with disabilities. This facility has been approved since 2008 but is still not subsidised although it has been operating for 5 years. The parents' association has to show imagination when it comes to raising funds to pay for the equipment for the youngsters' daily activities. We get by thanks to donations and voluntary work, but for how long? Two ministers have already promised us subsidies, but we are still waiting.

It's not easy every day to be the parent of a child with disabilities and it's a pity that we're forced to fight constantly for things which should go without saying: a high-quality place for all persons with disabilities in residential or day care. When we look at politicians' programmes for the next elections, very few of them mention persons with disabilities. We hope to be heard and to see all the projects come to fruition." (Dominique)

"I am the mother of Isabelle, age 39. After she had attended a special school, in view of the shortage of places in day centres, teachers, psychologists and parents decided to open a care facility for around ten persons with disabilities. Pending the end of the moratorium, they worked with voluntary staff, but the situation lasted and there was no money for new institutions. After 5 years, it closed down. 15 000 hours of voluntary work for nothing. These disabled people who saw a rosy future ahead… It all fell apart… Isabelle was at home for 5 years and lost all her bearings and everything she had learnt. She's now in a centre which is approved but not subsidised. I'm afraid for her future." (Bernadette)[74].

"K is 25 years old. He suffers from Down syndrome and diabetes. When he left school at 21, he had a trial in a day-care centre, but they threw him out. Managing diabetes is too complicated for the teaching team. Ever since then, K has been in a psychiatric unit and is regressing a lot. His mother is desperate, none of the services contacted even wants to take him on a trial basis. The fact that he's in a psychiatric unit on top of the rest causes great concern, even after explaining that if he's there, it's because of a

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[73] All the above excerpts from personal testimonies are taken from Appendix 3 to the report "Memorandum Gamp", p. 17.

[74] The last two interviews were published in the magazine "Vie Féminine", December 2011.

shortage of places elsewhere, and not because of mental illness"[75].

"Parents in distress: Adrien 'not autistic enough' to be admitted to a centre. Placed in category B rather than C.

A situation which saddens the director of the centre. *"I very sincerely believed that Adrien was going to be put in category C",* says Marie-Claire Rens. *"He needs a lot of supervision and I'm not sure that an establishment which admits persons with type B autism can deal with a case like his. I am surprised and sad for the parents because I gave them hope. It's the first time something like this has happened. From now on I'll be more careful about what I say…".*

Carine and Philippe feel helpless. *"Adrien is at home all the time and very restless",* says a distraught Carine. *"Adrien needs a constant presence, day and night. And we have two other children we can't neglect. We're tired and we're not being offered any solutions".*

Parents in distress who don't understand why an institution like the AWIPH can't help them and show a little more humanity. *"It hides behind its strict rules, it's pathetic",* says Philippe. *"My wife and I are incapable of working because, psychologically, we're at the end of our tether. After 19 years of struggling, this place at the centre was like a light at the end of the tunnel. We were going to learn to live again. It's disgraceful to do that to us""*[76].

Highly dependent disabled adults suffering from a lack of care solutions have severely restricted opportunities for self-fulfilment, particularly as regards achieving greater independence and participating in social and community activities. All these shortcomings confirm disabled people in their disability and prevent them and their families from having access to the minimum of services that are essential to a life of dignity and greater autonomy.

2. ***The inadequacy of policies against poverty and exclusion, affecting highly dependent disabled adults and their families***

Article 30 requires the Belgian state to ensure the effective access, without discrimination, of all those who live or risk living in a situation of social exclusion and poverty, to housing, training, education, culture, employment and social and medical assistance, and to review these measures with a view to their adaptation if necessary. Highly dependent disabled adults and their families deprived of a place in a care home or any other type of accommodation unquestionably fall into this category. They are socially excluded, living more often than not in precarious circumstances in an exhausted family.

In the light of the provisions of Article 30, the Belgian state is, however, obliged to ensure their effective access to all the benefits listed in the provisions of the Charter. Consequently, this is not a virtual right, but a right which must be realised. This article

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[75] Presentation by Danielle Van den Bossche, director of the association "Haut regard", at an awareness-raising conference organised by the AFRAHM, on "The shortage of suitable places in the Walloon Region: the views of users and families".

[76] Source: Vers L'Avenir, 13 September 2011.

places a positive obligation on every state and the holders of this right are entitled to receive performance of that obligation. In its decision of 5 December 2007, *International Movement ATD Fourth World v. France*, the European Committee of Social Rights said that the measures should be adequate in their quality and quantity to the nature and extent of poverty and social exclusion in the country concerned. This means that, in the case of Belgium, the inadequacy of care and accommodation solutions for highly dependent disabled adults reveals the lack of a co-ordinated approach to promote the effective access of individuals who live or risk living in a situation of social exclusion, to housing and to social and medical assistance. We accordingly submit that it therefore constitutes a definite violation of Article 30 in that it defeats one of the objectives assigned to every state.

2.1. The principles established by the Committee

As specified by the Committee, Article 30 of the Charter requires states to:

> "to adopt an overall and coordinated approach, which shall consist of an analytical framework, a set of priorities and corresponding measures to prevent and remove obstacles to access to social rights as well as monitoring mechanisms involving all relevant actors, including civil society and persons affected by poverty and exclusion. It must link and integrate policies in a consistent way moving beyond a purely sectoral or target group approach."[77]

It follows from this and other statements made by the Committee in its conclusions on the periodical reports submitted by states and in its decisions on collective complaints that Article 30 places at least five obligations on states:

1. *To evaluate needs*

States must equip themselves with the measuring and knowledge-building instruments necessary to formulate and implement an effective policy for combating poverty and social exclusion. This means developing qualitative and quantitative tools for measuring poverty and exclusion, based on objective and pertinent criteria[78].

This also means identifying the most vulnerable groups and evaluating their situation and needs in consultation with the persons concerned.

2. *To establish priorities*

To formulate an effective and coherent policy, states must establish priorities among the situations of exclusion encountered by the different sections of the population, according to their urgency and seriousness. These priorities should allow states to focus their efforts on the most vulnerable sections of the population[79].

Continuous monitoring of the situation based on indicators of poverty and exclusion is an essential precondition for states being able to establish such priorities. But it is not a sufficient precondition: the measures adopted cannot be based solely on objective indicators and criteria of poverty and exclusion. They must also be based on a broad participatory process of public discussion and consultation. Decisions as to the direction of social policies should be the outcome of a participatory process allowing vulnerable groups in particular to make their voice heard.

3. *To eliminate the obstacles to the enjoyment of social rights*

States must take measures to "strengthen entitlement to social rights, their monitoring and enforcement". This means endeavouring to "improve the procedures and management of benefits and services, improve information about social rights and related

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[77] Conclusions 2003, France, p. 227.

[78] Conclusions 2003, France, pp. 227-228.

[79] See. Conclusions 2003, France, p. 227 : "specifically target the most vulnerable groups and regions".

benefits and services" and "combat psychological and socio-cultural obstacles to accessing rights"[80]. These rights include in particular, in the actual terms of Article 30, the rights to "employment, training, education, culture and social and medical assistance". But, as the Committee pointed out, "this list does not exhaust the areas in which measures must be taken to address the multidimensional poverty and exclusion phenomena."[81]

The authorities must therefore pay special attention to the specific obstacles to access to social rights encountered by certain vulnerable groups – be they legal, practical or socio-cultural obstacles. This applies in particular to highly dependent persons with disabilities who, owing to their heightened vulnerability, are faced with particular difficulties in gaining access to social rights.

4. *Monitoring machinery and involvement of civil society*

Policies against poverty and social exclusion must be accompanied by "monitoring mechanisms involving all relevant actors, including civil society and persons affected by poverty and exclusion."[82].

States must therefore carry out regular monitoring of these policies. Civil society, and in particular persons suffering from poverty and exclusion, must be involved in monitoring and scrutinising these policies.

5. *To put in place a coherent overall policy*

States must put in place, not only at national but also at regional and local level, policies that are comprehensive, coherent and tailored to identified needs. These policies must pay particular attention to the most vulnerable groups.

2.2. The situation in Belgium

i) Violation of Article 30 resulting from the failure of the Belgian authorities to put in place a co-ordinated policy for promoting effective access for highly dependent disabled adults to care solutions

In its decision on the complaint *European Roma Rights Centre (ERRC) v. France*, the Committee noted the absence in France of a co-ordinated policy for promoting the effective access to housing of travellers who live or risk living in a situation of social exclusion[83]. It therefore concluded that Article 30 of the Charter had been violated.

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[80] *Conclusions 2003*, France, p. 227.

[81] Ibid.

[82] Conclusions 2003, France, p. 227.

[83] ECSR, *European Roma Rights Centre v. France*, complaint n°51/2008, decision on the merits of 19 October 2009, §95. See also Collective Complaint n° 33/2006 *International Movement ATD Fourth World v. France*, Decision on the merits of 4 February 2008, § 169.

The arguments set out in sections 1 to 2, Part III, of this complaint clearly demonstrate Belgium's failure to put in place a co-ordinated overall policy for promoting the effective enjoyment by highly dependent disabled adults of their right to independent housing:

- The Belgian authorities have not put in place a co-ordinated overall policy aimed at guaranteeing the creation of an appropriate number of care and accommodation solutions for highly dependent disabled adults (see section 1).

- The Belgian authorities have not put in place a co-ordinated overall policy for reducing the obstacles to inclusion on a waiting list (see section 2).

By failing to take the necessary steps to guarantee that highly dependent disabled adults have access to a sufficient number of care and accommodation solutions (residential or day care, depending on the circumstances), and by failing to take action to save them from being regularly refused places on waiting lists, Belgium contributes towards keeping these people in poverty.

There has therefore been a violation of Article 30 of the Social Charter.

ii) Violation of Article 30 deriving from the lack of a co-ordinated overall policy against the poverty and social exclusion suffered by highly dependent disabled adults and their families.

Persons in a situation of high dependency account for only 1% of the population, but, given their extreme vulnerability, the failure to provide them with care solutions constitutes blatant exclusion.

It should first be pointed out that, as mentioned above, there are no **systematic official statistics** that can be used as a basis for establishing the number of highly dependent disabled adults with a pending application for an immediate or future care solution (or simply lacking a care solution). One can only deplore the lack of a "reference framework", measuring instruments and an accurate and credible survey of present demand and existing solutions, which are absolutely necessary to determine needs, plan action to meet them and schedule the funding necessary to pursue an effective social policy[84]. Furthermore, this lack of statistics is in itself contrary to Article 30 of the Social Charter, but also to Article 31 of the UN Convention on the rights of persons with disabilities[85].

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[84] E. Delruelle, Deputy Director of the Centre for Equal Opportunities and the Fight against Racism, has this to say about the lack of statistics: "If we do not have survey tools, statistical tools and tools for building knowledge, we cannot carry out social policies, or we carry them out badly. We need both overall, collective statistical tools and individual 'traceability', in other words we need to know what becomes of individuals from birth, or from the time a social problem arises, up to the time when a solution is found and up to the time when that solution is no longer suitable and another has to be found". See E Delruelle, "Manque de places en hébergement et Budget d'Assistance Personnelle : Façades de bonnes intentions ?", Proceedings of the Colloquy of 2 February 2010.

[85] See Article 31 – Statistics and data collection

1. States Parties undertake to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the present Convention. The process of collecting and maintaining this information shall:

a) Comply with legally established safeguards, including legislation on data protection, to ensure confidentiality and respect for the privacy of persons with disabilities;

At the same time, many families bear witness to the **lack of information concerning all existing services for persons with disabilities**, and to which they are entitled[86], which hinder these persons considerably in the enjoyment of their social rights and constitutes in itself a violation of Article 30 of the Social Charter. In the complainant's view, a social service should centralise information on the services available in order to make things easier for the parents of highly dependent disabled adults, because it is not possible in all jobs to use working time to conduct private business. This social service should of course **keep an up-to-date record of all changes in services and institutions** because information about a centre does not guarantee a vacant place.

Because they are excluded from existing care and accommodation services, every year many highly dependent disabled persons reach their majority with no other prospect than staying full time, day and night, in the family home. The only solution for many parents is therefore to **give up their job in order to devote themselves full time to caring for their adult child**. This leads to a **loss of earnings**, which often means **lasting poverty** for these unsupported families given the inadequacy of income replacement allowances in relation to, in particular, the high costs associated with disability (treatment etc).

Testimonies by parents of highly dependent adult children

"There are parents who have to stay at home to look after their child and who lose their jobs. I had to stop working and I'm lucky to have a husband who can work for two, but that's not the case in all families. There are many cases of single mothers and people who are unemployed. So you have to be very careful what you say and not make these parents feel guilty. Some of them have to support the whole family on their child's allowance. A place in a residential facility costs a lot of money, between 800 and 900 €. That swallows up the entire allowance, and then there's everything else". Cinzia Agoni[87]

In addition to economic hardship, the family and those around them are exposed to physical exhaustion (their adult child's transport needs, inadequacy of respite solutions, etc) and mental exhaustion (lack of holidays and of opportunities to have time for themselves or to engage in leisure pursuits, pressure on the family, marital problems, limited opportunities for other children etc – a set of factors which cause mental anguish and may lead to depression), and hence to desocialisation (constant presence at home

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b) Comply with internationally accepted norms to protect human rights and fundamental freedoms and ethical principles in the collection and use of statistics.
2. The information collected in accordance with this article shall be disaggregated, as appropriate, and used to help assess the implementation of States Parties' obligations under the present Convention and to identify and address the barriers faced by persons with disabilities in exercising their rights.
3. States Parties shall assume responsibility for the dissemination of these statistics and ensure their accessibility to persons with disabilities and others.

[86] Responsibilities in this field are fragmented (disability allowances are handled by one authority, specialist care by another, possible care and accommodation solutions by yet another, and so forth).

[87] See "Manque de places en hébergement et Budget d'Assistance Personnelle: Façades de bonnes intentions? ", Proceedings of the Colloquy of 2 February 2010, p. 88.

often required, drastic reduction in social contacts, etc). Parents experience the lack of places in care for their children as a trauma undermining their health because they worry profoundly about what lies in store for their child after their death. Mothers are particularly affected by this multiple insecurity.

It should also be noted that the parents and their child sometimes rely absolutely on the disability allowance to give them a more decent standard of living, and this creates a sense of mutual dependence which stands in the way of emancipation. Having given up their jobs, the parents are deprived of any social protection in their own name[88].

It should be noted here that the fact of living with a parent has no impact on the amount of the integration allowance. At the same time, the parent's income is not taken into account in calculating the amount of the income replacement allowance; on the other hand, an adult with disabilities living with a parent is only granted the basic income replacement allowance (see box below).

Entitlement to and amount of allowances for persons with disabilities

To be entitled to the allowances for persons with disabilities, claimants must however satisfy the following conditions[89] :

- in terms of *age*:
    - persons with disabilities are entitled to the income replacement and integration allowances from the age of 21[90]; the claim must be submitted before the age of 65; persons in receipt of these allowances before the age of 65 continue to receive them after their 65th birthday;
    - the allowance to assist elderly persons is, however, payable to persons who submit their claim after the age of 65;

- in terms of *nationality*: it is necessary to be of Belgian nationality or a nationality treated as equivalent[91], or be a refugee or stateless person, or not belong to any of those categories but have been entitled up to the age of 21 to a family allowance at the increased rate provided for under Belgian legislation for persons with disabilities;
- be *principally resident* in Belgium and actually be present there at the time of the claim and during the period for which the allowance is granted.

The claim for an allowance must be submitted to the mayor of the municipality in which the person with disabilities is entered on the population register or register of foreigners.

The income replacement allowance, the integration allowance and the allowance for assistance to the elderly are granted only if the income "attributed" to the claimant does not exceed certain upper

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[88] Except the integration income, which, however, is less than the poverty threshold.

[89] J.-F. FUNCK, *Droit de la sécurité sociale,* Brussels, Larcier/De Boeck, 2006, pp. 586-588.

[90] Up to the age of 21, persons with disabilities are entitled to family allowances at an increased rate. It should also be pointed out here that persons under the age of 21 who are or have been married or have at least one dependent child are treated in the same way as persons aged 21.

[91] Be a national of a European Union member state, Iceland, Norway, Liechtenstein or Switzerland; be an employed or self-employed worker, a spouse or surviving spouse, the dependent father, mother or child of such a worker; be of Moroccan, Algerian or Tunisian nationality and have "worker" status or be the child of a person belonging to that category. See Art. 4, Law of 27 February 1987. Moreover, the Constitutional Court had held that "Article 4 of the Law of 27 February 1987 on allowances for persons with disabilities violates Articles 10 and 11 of the Constitution read in conjunction with Article 191 thereof, Article 14 of the European Convention on Human Rights and Article 1 of the First Additional Protocol thereto, in that, under its terms, foreigners entered on the population register after being authorised to take up domicile in Belgium are excluded from the benefit of allowances for persons with disabilities". See Const. Court, 12 December 2007, judgment n° 153/2007.

limits; the portion of the person's income in excess of those limits is deducted from the *basic amount* of the allowances.

Income is understood as meaning the totality of the taxable income of the person with disabilities and the income of the person with whom the person with disabilities forms a *household*[92].

A household is formed by the cohabitation of two persons who are not 1st, 2nd or 3rd degree relatives by blood or marriage[93] : for these purposes, a household is defined exclusively as an "economic unit"[94]. A household is presumed to exist where two persons at least who are not 1st, 2nd or 3rd degree relatives by blood or marriage are principally resident at the same address [95].

It should be mentioned here, however, that if one of the members of the household is serving a prison sentence or is being held at a social defence institution, it will immediately be considered that the household no longer exists[96], even if the two persons are still registered as living at the same address[97].

Consequently, no account is taken of the income of members of the household of a person with disabilities who are 1st, 2nd or 3rd degree relatives, such as the income of a father, mother, brother or sister. Account will however be taken of the income of a spouse, partner or same-sex cohabitee with whom the person with disabilities forms a household[98].

The *basic rate* of *the income replacement allowance* is determined according to the composition of the household and the category to which it accordingly belongs.

Persons with disabilities who form part of a household or have one or more dependent children[99] fall into *category C.* They receive twice the basic rate. Only one person per household may receive the allowance at the rate prescribed for category C. If, in a household, two persons with disabilities fall into category C, each of them will receive the income replacement allowance at the rate corresponding to category B.

Persons with disabilities who live alone or do not fall into category C and have been living full time in an institution for at least three months belong to *category B.* Their allowance is one and half times the basic rate.

Lastly, persons with disabilities who belong neither to category B nor to category C fall into *category A* and receive the allowance at the basic rate.

The *basic rate* of the *integration allowance* varies, as mentioned previously, according to the number of points allocated to persons with disabilities. Persons with disabilities who live in an institution and whose costs are borne by the public authorities or by social security will receive, after three months' residence, an integration allowance limited to 72% of the usual rate[100]. The *ratio legis* for withholding 28 % (originally, one third) of the payment is as follows. Legislators took the view that, in most of

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[92] Art. 8, § 1, Royal Decree of 6 July 1987.

[93] Art. 7, § 3, para. 1, Law of 27 February 1987.

[94] J.-F. FUNCK, *Droit de la sécurité sociale,* Brussels, Larcier/De Boeck, 2006, n° 97, p. 119.

[95] Art. 7, § 3, para. 2, Law of 27 February 1987.

[96] Art. 7, § 3, para. 3, Law of 27 February1987 (introduced by Article 157 of the Programme Law of 9 July 2004).

[97] See in this connection Part I, chapter 2, of this document.

[98] For further details about reckonable income, see J.-F. FUNCK, *Droit de la sécurité sociale,* Brussels, Larcier/De Boeck, 2006, pp. 593-600.

[99] Art. 1, para. 6, Royal Decree of 6 July 1987. "Dependent child" is defined as any person under 25 years of age for whom the person with disabilities or the other member of the household receives family allowances or child support under a judgment or an agreement signed as part of a mutual-consent divorce procedure; or for whom the person with disabilities pays child support under a judgment or an agreement signed as part of a mutual-consent divorce procedure. E

[100] Art. 12, § 1, Law of 27 February 1987, recently amended by Article 38 of the Programme Law of 27 April 2007.

these institutions (hospitals, homes for the elderly, residential or day centres, foster families etc), there is a service which compensates for the restricted autonomy of persons with disabilities and fosters integration. The 28% corresponds to the portion of the integration allowance invested, where appropriate, in the assistance of a third person: where the person with disabilities lives in an institution subsidised by the public authorities, the assistance of a third person is assumed to be provided by the institution itself[101].

The rate of the *allowance for assistance to the elderly* also varies according to the degree of autonomy and the category to which the person with disabilities belongs. However, this allowance is considerably less than the integration allowance.

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[101] *Doc. parl.,* Ch. repr., 1985-1986, n° 448/1 and n° 448/4, p. 7 and p. 25.

Conclusions – operative part

In ratifying the revised European Social Charter, the Belgian Government signified that it intended to guarantee social rights fully to highly dependent disabled adults and their families living in Belgium.

However, the current serious shortage of care solutions deprives highly dependent disabled adults and their families of effective access to social and medical assistance, social services and housing, and of effective access to independence, social integration and participation in the life of the community, and this lack of legal and social protection exposes them to long-term poverty and exclusion.

The plight of these persons is often particularly dramatic. Structurally organised solutions must be found as a matter of urgency.

For these reasons,

the International Federation for Human Rights asks the European Committee of Social Rights to find:

- a violation of Article 13.3 of the revised European Social Charter;

- a violation of Article E read in conjunction with Article 13.3 ;

- a violation of Article 14 of the revised European Social Charter;

- a violation of Article E read in conjunction with Article 14 ;

- a violation of Article 15.3 of the revised European Social Charter;

- a violation of Article 16 of the revised European Social Charter;

- a violation of Article E read in conjunction with Article 16 ;

- a violation of Article 30 of the revised European Social Charter;

- a violation of Article E read in conjunction with Article 30.

The International Federation for Human Rights also asks the Committee to invite the Committee of Ministers to recommend that the Kingdom of Belgium pay the sum of 10.000 euros (provisional estimate) to the complainant by way of costs. A detailed budget will be supplied to the Committee in due course.

Brussels, 13 December 2011

Souhair Ben Hassen
Chair of the International Federation for Human Rights

Contact person for the case: Véronique van der Plancke