



**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX**

24 May 2018

Case Document No. 1

European Disability Forum and Inclusion Europe v. France
Complaint No.168/2018

COMPLAINT

Registered at the Secretariat on 14 May 2018

European Disability Forum
Square de Meeus 35
B-1000 Brussels

and

Inclusion Europe
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B-1040 Brussels

For the attention of the Executive Secretary
of the European Committee of Social
Rights, acting on behalf of
the Secretary General of the Council of [Europe](#).

Department of the European Social
Charter and the European Code of
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Directorate General of Human Rights
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Collective complaint
European Disability Forum and Inclusion
Europe
v. France

for the violation of Articles

- 15§3 taken alone and/or in conjunction with Article E
- 30
- 14§1 taken alone and/or in conjunction with Article E
- 31§§1 and 3 taken alone and/or in conjunction with Article E
- 11§1 taken in conjunction with Article E
- 16 taken alone and/or in conjunction with Article E
- 27§1 taken alone and/or in conjunction with Article E

of the revised European Social Charter

Contents

Part 1: Admissibility of the complaint.....4

1.1. The complainant organisations.....4

1.2. The respondent State6

1.3. The subject of the complaint.....6

Part 2: Description of the violations of the Charter8

2.1. The lack of an independent life within the community for persons with disabilities living in France8

.....8

2.1.1. The protection arising from the Charter
8

2.1.2. The lack of a genuine independent life in the community for persons with disabilities living in France 9

 2.1.2.1. *The absence of an overall, co-ordinated policy for independent life within the community*..... 10

 2.1.2.2. *The impossibility for persons with disabilities to choose where they live*..... 16

 2.1.2.3. *Inadequate access to the range of special services needed to support independent living within the community* 20

 a) Insufficient access to specific community-based services 20

 b) Insufficient access to personal assistance 26

 2.1.2.4. *Insufficient access to services and facilities for the general public*.....29

 a) Insufficient access to services and facilities29

 b) Insufficient access to housing.....32

 c) Insufficient access to health care.....34

2.1.3. Violations of the Charter 36

 2.1.3.1 *Violation of the right of persons with disabilities to independence, social integration and participation in the life of the community – Article 15§3 taken alone and/or in conjunction with Article E on non-discrimination* 37

 2.1.3.2 *Violation of the right to protection against poverty and social exclusion – Article 30* 45

 2.1.3.3. *Violation of the right to benefit from social welfare services – Article 14§1 taken alone and/or in conjunction with Article E on non-discrimination*.....48

 2.1.3.4. *Violation of the right to housing – Article 31§§1 and 3 taken alone or in conjunction with Article on non-discrimination*.....55

2.1.3.5. <i>Violation of the right to health protection – Article 11§1 taken in conjunction with Article E on non-discrimination.....</i>	61
2.2. <i>The impact on families of the lack of a genuine independent life within the community for persons with disabilities</i>	63
2.2.1. The protection arising from the Charter	63
2.2.2. Consequences for families of the lack of a genuine independent life within the community for persons with disabilities.....	63
2.2.2.1. <i>Families placed in a vulnerable situation.....</i>	64
2.2.2.2. <i>Families faced with unequal opportunities and treatment at work.....</i>	67
2.2.3. Violations of the Charter	69
2.2.3.1. <i>The violation of the right of the family to social, legal and economic protection – Article 16, taken alone and/or in conjunction with Article E on non- discrimination.....</i>	69
2.2.3.2. <i>The violation of the right of workers with family responsibilities to equal opportunities and treatment – Article 27§1 taken alone and/or in conjunction with Article E on non-discrimination.....</i>	72
 Part 3: Conclusions and signatures	76
 Part 4 : List of appendices.....	77

Part 1: Admissibility of the complaint

1.1. The complainant organisations

Two international non-governmental organisations are jointly lodging this collective complaint:

European Disability Forum (EDF)

An international non-profit association governed by the provisions of Part III of the Belgian Law of 27 June 1921 on non-profit associations, international non-profit associations, and foundations, whose headquarters are located at:

Square de Meeus 35

1000 Brussels

Belgium,

Represented in this instance by its President, Ioannis Vardakastanis

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and

Inclusion Europe

An international non-profit association governed by the provisions of Part III of the Belgian Law of 27 June 1921 on non-profit associations, international non-profit associations, and foundations, whose headquarters are located at:

Rue d'Arlon 55

1040 Brussels

Belgium,

Represented in this instance by its President, Maureen Piggot

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Article 1 of the Additional Protocol to the European Social Charter providing for a system of collective complaints provides:

“The Contracting Parties to this Protocol recognise the right of the following organisations to submit complaints alleging unsatisfactory application of the Charter:

...

b. other international non-governmental organisations which have consultative status with the Council of Europe and have been put on a list established for this purpose by the Governmental Committee;

...”

EDF is an association governed by Belgian law and is on the list of international non-

governmental organisations entitled to submit collective complaints with the European Committee of Social Rights (“the Committee”) for the period from 1 January 2018 to 31 December 2021.¹

Under Article 3 of its statutes,² EDF is an association whose mission is “to ensure disabled people full access to fundamental and human rights through their active involvement in policy development and implementation in Europe”. It represents the interests and defends the rights of 80 million people with disabilities in the EU. It is a unique platform bringing together persons with disabilities and their representative organisations across Europe. EDF co-operates with the Council of Europe and other European partners to promote equal opportunities for persons with disabilities, along with accessibility, independent living and inclusion in the community. EDF’s purpose is to champion issues of common concern to all groups of disabled persons and act as a dependable spokesperson for citizens with disabilities, independent from the European Union. Through the issues it tackles, EDF is qualified, through both its terms of reference and its actual activities, to submit this collective complaint concerning the failure by France to comply with its obligations under the European Social Charter (the Charter) for the reasons referred to below. Its President, Ioannis Vardakastanis, is entitled to represent and commit the complainant organisation.³

Inclusion Europe is also an association governed by Belgian law and is on the list of international non-governmental organisations entitled to submit collective complaints with the European Committee of Social Rights for the period from 1 July 2014 to 30 June 2018.⁴

Under Article 4 of its Constitution,⁵ Inclusion Europe is an association whose objective is, in particular, “to advance the interests of persons with intellectual disability... by securing on their behalf, from all possible sources, the necessary support and services”. Under Article 5 of its Constitution, “to carry out these purposes Inclusion Europe shall ... co-operate with the European institutions and organisations whose aim is to help persons with intellectual disability [and] employ such other means the General Assembly and Board of Inclusion Europe shall from time to time determine”. Inclusion Europe represents 71 organisations in 38 European countries and co-operates with the Council of Europe on the participation of

Nota Bene: the documents referred to in the footnotes have been communicated in electronic form, either in the appendix or on a USB stick enclosed with the complaint

¹ **Appendix 1:** Document No. 1, Council of Europe, [List of International Non-Governmental Organisation \(INGOs\)](#) entitled to submit collective complaints – 1 January 2018

² **Appendix 1:** Document No. 2, [Statutes of the European Disability Forum](#), adopted by the General Assembly of the European Disability Forum on 15 May 2004, amended by the General Assembly on 5 October 2007, then again on 28 May 2011 – Article 3.

³ **Appendix 1 :**

- Document No. 2, [Statutes of the European Disability Forum](#), adopted by the General Assembly of the European Disability Forum on 15 May 2004, amended by the General Assembly on 5 October 2007, then again on 28 May 2011 – Article 26§1
- Document No. 3, Publication in the Belgian Official Gazette, the *Moniteur Belge*, of an extract from the minutes of the General Assembly of the European Disability Forum of 14 May 2017 concerning the election of Ioannis Vardakastanis to the Executive Committee as President
- Document No. 4, Extract of the Minutes of the European Disability Forum Executive meeting, 23 & 24 January 2018.

⁴ **Appendix 1:** Document No. 1, Council of Europe, [List of International Non-Governmental Organisation \(INGOs\)](#) entitled to submit collective complaints – 1 January 2018

⁵ **Appendix 1:** Document No. 5, [Constitution and Bylaws of Inclusion Europe](#), adopted by the General Assembly on 28 May 2004 – Articles 4 and 5

persons with disabilities in community life.⁶ Many member organisations of Inclusion Europe play a major role in the provision of services for persons with disabilities and conduct awareness-raising campaigns on their inclusion in the community. Through themes raised in the projects carried out by Inclusion Europe such as non-discrimination, social inclusion, independent living and accessibility,⁷ the complainant organisation is qualified, through both its terms of reference and its actual activities, to submit this collective complaint concerning the failure by France to comply with its obligations under the European Social Charter (the Charter) for the reasons referred to below. Its President, Maureen Piggot, is entitled to represent and commit the complainant organisation.⁸

1.2. The respondent State

France ratified the European Social Charter of 1961 on 9 March 1973 and the revised European Social Charter of 1996 on 7 May 1999. It has accepted all the provisions of the European Social Charter (hereinafter “the Charter”) referred to in this collective complaint.

On 7 May 1999 France ratified the Additional Protocol to the Charter providing for a system of collective complaints.

1.3. The subject of the complaint

This complaint is directed against France on the grounds that it is not satisfactorily fulfilling its obligations under:

- Article 15§3 of the Charter taken alone and/or in conjunction with Article E;
- Article 30 of the Charter;
- Article 14§1 of the Charter taken alone and/or in conjunction with Article E;
- Article 31§§1 and 3 of the Charter taken alone and/or in conjunction with Article E;
- Article 11§1 of the Charter taken in conjunction with Article E;
- Article 16 of the Charter taken alone and/or in conjunction with Article E;
- Article 27§1 of the Charter taken alone and/or in conjunction with Article E.

(a) The lack of effective access for persons with disabilities to an independent life within the community does not enable France to respect the right of persons with disabilities to

⁶ Particularly on the conversion of documents into easy to read and understand versions. See, for example the [Council of Europe Recommendation – How to make sure people with disabilities can take part in political and public life](#) (2012)

⁷ Inclusion Europe, website, “[Our main policies](#)”

⁸ **Appendix 1:**

- Document No. 5, [Constitution and Bylaws of Inclusion Europe](#), adopted by the General Assembly on 28 May 2004 – Articles 15 and 16
- Document No. 6, Minutes of Inclusion Europe Annual General Assembly 2014, 17 May 2014, items 11 and 12 on the election of Maureen Piggot to the Board as President
- Document No. 7, Excerpt of the Minutes of Inclusion Europe Board Meeting, 5 & 6 October 2017

independence, social integration and full participation in the life of the community. This situation also prevents the effective enjoyment by persons with disabilities of the following rights granted to all by the Charter: the right to protection from poverty and social exclusion, the right to benefit from social welfare services, the right to health and the right to housing. In many respects, the lack of effective access for persons with disabilities to an independent life within the community also constitutes discrimination.

These initial violations of the Charter will be examined in a first part of the complaint relating to the lack of access to an independent life within the community for persons with disabilities living in France (part 2.1 below).

(b) In addition, as the absence of effective access for persons with disabilities to an independent life within the community places many families in a vulnerable situation, this prevents France from respecting either the right of the family to social, legal and economic protection or the right of workers with family responsibilities to equal opportunities and treatment, and constitutes discrimination in both respects.

These violations will be examined in a second part of the complaint relating to the impact on families of the lack of a genuine independent life within the community for persons with disabilities living in France (part 2.2 below).

In the light of these violations of the rights of persons with disabilities and their families, as described in detail below, particularly persons with intellectual disabilities, EDF and Inclusion Europe would like to submit the following collective complaint, as they are entitled.

The European Committee of Social Rights will declare the complaint submitted by EDF and Inclusion Europe admissible.

Part 2: Description of the violations of the Charter

In France persons with disabilities and their families enjoy the protection of the European Social Charter, the United Nations Convention on the Rights of Persons with Disabilities (CRPD) and French legislation.

Under the terms of this legal framework, persons with disabilities are entitled to an independent life within the community. Yet, the fact is that in France, persons with disabilities do not have access to such a life (2.1.). The lack of a genuine independent life within the community for persons with disabilities living in France also has an impact on the rights of the families of persons with disabilities (2.2).

In the light of this situation, EDF and Inclusion Europe have decided to call on the European Committee of Social Rights to find the violations of the Charter in question.

2.1. The lack of an independent life within the community for persons with disabilities living in France

The right of persons with disabilities to an independent life within the community arises from the most fundamental human rights standards established by the Council of Europe and the United Nations systems.⁹

This right is protected by the Charter (2.1.1.). Despite this, it is not effective in France (2.1.2.). France therefore is in breach of its obligations under the Convention (2.1.3).

2.1.1. The protection arising from the Charter

The right to live independently and be included in the community is protected by the Charter through various provisions referred to in the collective complaint:

- Article 15 on the right of persons with disabilities to independence, social integration and participation in the life of the community, particularly paragraph 3;¹⁰
- Article 30 on the right to protection against poverty and social exclusion;¹¹

⁹ Council of Europe Commissioner for Human Rights, [The right of people with disabilities to live independently and be included in the community](#), 2012, p.8.

¹⁰ Article 15 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: ...

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”.

¹¹ Article 30 of the Charter – The right to protection against poverty and social exclusion:

- Article 14 on the right to benefit from social welfare services, particularly paragraph 1;¹²
- Article 11 on the right to protection of health, particularly paragraph 1;¹³
- Article 31 on the right to housing, particularly paragraphs 1 and 3;¹⁴
- and Article E on non-discrimination.¹⁵

EDF and Inclusion Europe consider that the situation of persons with disabilities in France as described below also raises doubts about the effectiveness for persons with disabilities of other rights set forth in the Charter such as the right of children and young persons to social, legal and economic protection (Article 17) and the right of elderly persons to social protection (Article 23). However, the complainant organisations have chosen to restrict this complaint to violations of Articles 15, 30, 14, 11, 31 and E to allow the Committee to assess the situation in France with regard to the right of persons with disabilities to independent life in the community as accurately as possible.

2.1.2. The lack of a genuine independent life in the community for persons with disabilities living in France

The provisions of the Charter require France to afford persons with disabilities effective access to independent life within the community through the special measures designed to be applied to them (Article 15) and equal access to the rights protected and guaranteed for all by the Charter (Articles 11, 14, 30 and 31).

In this connection, the Law of 11 February 2005 on equal rights and opportunities,

“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”.

¹² 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) ...”.

¹³ Article 11 of the Charter - The right to protection of health:

“With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in cooperation with public or private organisations, to take appropriate measures designed *inter alia*:

- 1/ to remove as far as possible the causes of ill-health; 2/ ...”.

¹⁴ Article 31 of the Charter – The right to housing:

“With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

- 1/ to promote access to housing of an adequate standard;

2/ ...

- 3/ to make the price of housing accessible to those without adequate resources.”

¹⁵ Article E of the Charter– Non-discrimination:

“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.”

participation and citizenship of persons with disabilities¹⁶ set the goal of securing access for persons with disabilities to fundamental rights, particularly by establishing a right to compensation for the consequences of disabilities. France therefore has guaranteed that this goal will be achieved.

Since then, following a paradigm shift introduced by the CRPD adopting an approach based on human rights and the social model of disability, which is also set forth in the Charter, one of the declared aims of French disability policy has been the inclusion of persons with disabilities.¹⁷ France ratified the CRPD on 18 February 2010. Article 19 establishes the right to living independently and being included in the community.¹⁸

Yet, despite the declared aims, and the rights granted to persons with disabilities, they still do not have access to an independent life within the community in France. We will begin by noting the lack of any overall, co-ordinated policy to this effect (1) before focusing on the lack of any possibility for persons with disabilities to choose the place in which they will live (2). The lack of sufficient access to the range of special services needed to support independent living within the community (3) and insufficient access to services and facilities for the general public (4) also prevent this right from being effective. These situations give rise to an infringement of the rights guaranteed by the Charter.

2.1.2.1. The absence of an overall, co-ordinated policy for independent life within the community

Living independently and being integrated into the community presupposes that a number of conditions are met for the right to be effective:¹⁹

- public awareness-raising about disability;
- anti-discrimination measures also covering women and children with disabilities;
- accessibility;
- a strategy for the establishment of tangible measures enabling all persons with disabilities to lead an independent life within the community in accordance with their own choices, through access to community-based services including personal assistance and access to services for the general public in all areas of life. This implies, alongside other measures, the de-institutionalisation²⁰ of existing services.

All of these themes should be brought together in an overall co-ordinated approach, geared

¹⁶ The provisions of the Law of 2005, its subsequent amendments and its implementing decrees have been codified in particular in the Social Welfare and Family Code (see Articles L114 to L114-2 and L146-3 et seq.). **Appendix 3 Applicable domestic and international law**

¹⁷ French government, [Press file of the Interdepartmental Disability Committee of 20 September 2017](#), p.3.

¹⁸ **Appendix 3 Applicable domestic and international law**

¹⁹ UN Committee on the Rights of Persons with Disabilities, General Comment No. 5 on the right to independent living. In this comment the Committee identifies the key features which have to be respected to secure independent living and integration into the community. See, in particular, §§ 38, 54 et seq., 71 et seq. and 97.

²⁰ European Expert Group on the Transition from Institutional to Community-based Care, “Guidelines on the transition from institutional to community-based care”, 2012, p.25: an institution should be understood to mean “any residential care where residents are isolated from the broader community and/or compelled to live together, residents do not have sufficient control over their lives and over decisions which affect them and the requirements of the organisation itself tend to take precedence over the residents’ individualised needs”.

towards securing independent living within the community so that there is full compliance with the Charter for persons with disabilities, particularly with **the right to protection against poverty and social exclusion set forth in Article 30**.

Yet, despite the declared aim of creating an inclusive society, this approach is missing from France's public disability policy. Since 1975, this policy has been built up through major statutory texts and their implementing decrees. It has been focusing on establishing rights but failing to make for the practical implementation of these rights. One example of this is the failure to publish certain implementing decrees, some of which have been pending for very many years.²¹

In addition to enacting legislation on rights, disability policy in France is characterised by a medical approach focusing on disabled persons' functional limitations and standard sector-specific responses based on spheres of life (e.g. housing, employment, etc.) or type or degree of disability.²² These responses were developed to meet various requirements (advocacy for associations, recommendations from European or international associations, a desire to "catch up" or the particular sensitivity of decision makers to certain themes) but fail to adopt any kind of all-embracing approach to situations of disability to guarantee that disabled persons will effectively enjoy fundamental rights on the same footing as any other human being. This situation results in the social exclusion of persons with disabilities in France.

There is no national strategy in France for the rights of persons with disabilities, still less a strategy based on an analytical framework and a coherent action plan drawing on an in-depth assessment of the obstacles barring their access to fundamental rights (particularly relevant figures). France's initial report on the implementation of the CRPD, submitted in May 2016 to the United Nations Committee on the Rights of Persons with Disabilities,²³ perfectly illustrates this lack of an overall, co-ordinated approach based on human rights.²⁴ Another example comes from the 3rd National Conference on Disability, which gave rise only to a series of conclusions amounting to no more than a juxtaposition of measures.²⁵ On her visit to France in October 2017, the UN Special Rapporteur on the Rights of Persons with Disabilities invited France to adopt a human rights-based approach and adopt a comprehensive national policy complete with a reference timetable, effective action plans and tax and budget measures.²⁶

²¹ Conseil d'Etat, decision 383070 of 24 February 2016 – in this decision the Government is called on to publish decrees on the funds for *départements* to compensate for disability.

²² The National Independence Support Fund (CNSA) website "What are social and medico-social services (ESMSs)?" The National Independence Support Fund is the public body tasked with funding support for elderly persons losing their independence and persons with disabilities, guaranteeing equal treatment throughout the country for all disabilities and cases of loss of independence, providing information and networking tools for elderly persons and persons with disabilities and their families and providing expertise and conducting research on questions linked to access to independence, regardless of persons' age or the source of their disability.

²³ France, [Initial report on the implementation of the UN Convention on the Rights of Persons with Disabilities](#), 2016 (in French only), see, in particular, paragraphs 51 to 71 and 159 to 174.

²⁴ Joint Committee of Representative Associations of Persons with Disabilities and Parents of Children with Disabilities and the French Council for Persons with Disabilities and European Issues, Joint Declaration on "The UN Convention on the Rights of Persons with Disabilities – France's tardiness", press release of 2 May 2016.

²⁵ National Conference on Disability, 2016, Conclusions of the National Conference of 19 May 2016 (in French only)

²⁶ Special Rapporteur on the Rights of Persons with Disabilities, preliminary comments by the Rapporteur, Ms Catalina Devandas-Aguilar, during her visit to France from 3 to 13 October 2017.

Despite the existence of a legal framework for the collection of data and statistics,²⁷ there is a lack of reliable statistics based on scientific indicators concerning the situation of persons with disabilities and their needs. This finding is reflected in many reports,²⁸ including that of the Council of Europe Commissioner for Human Rights.²⁹ Consequently, not enough is done to assess the activities to be set up to offer responses enabling persons with disabilities to lead an independent life within the community, and it is really difficult to come up with such solutions.³⁰

It should also be emphasised what little, if any, public awareness-raising there is on the subject of disability.³¹ France's initial report to the UN Committee on the Rights of Persons

²⁷ Articles L114-1, L114-2-1, 114-3-1, L146-3-1, L14-10-1 of the Social Welfare and Family Code apply in particular.

Appendix 3 Applicable domestic and international law

²⁸ See the following reports on this matter:

- Court of Audit, Report on the implementation of the tasks of the National Solidarity Fund for Autonomy (CNSA), 2013. Pages 46 to 50 highlight the lack of reliable statistics on needs.
- France, Initial report on the implementation of the United Nations Convention on the Rights of Persons with Disabilities, 2016. In paragraphs 316 et seq., this report describes the action taken to collect data and statistics. The surveys conducted often relate to very specific areas and most already date back several years.
- IGF-IGAS-IGEN-IGAENR, "[Education services in medico-social and health establishments](#)", 2014. On pages 84 et seq. and page 87, emphasis is placed on the difficulties of obtaining detailed data, whether on children with disabilities in or out of school or children with disabilities of school age in the much broader context of the lack of data available on persons with disabilities.
- Denis Piveteau, report on the collective duty to offer an uninterrupted life plan for persons with disabilities and their families ("[Zéro sans solution : le devoir collectif de permettre un parcours de vie sans rupture](#) pour les personnes en situation de handicap et leur proche", 2014. This report also notes a lack of available data.
- French Economic, Social and Environmental Council, Opinion on the economic and social cost of autism (Avis sur "Le coût économique et social de l'autisme"), 2012, p.5
- French Economic, Social and Environmental Council, Opinion on improved support and integration for persons with disabilities – a challenge and a necessity ([Avis "Mieux accompagner et inclure les personnes en situation de handicap : un défi, une nécessité"](#)), 2014, p.52
- Report by the French General Inspectorate of Social Affairs (IGAS) on the links between disability and poverty ("[Les liens entre handicap et pauvreté: les difficultés dans l'accès aux droits et aux ressources](#)"), 2014, p.12
- Rights Defender, [Decision No. 2017-257](#), 2017. This framework decision relating to general recommendations intended to improve statistical knowledge about the situation and needs of persons with disabilities details the shortcomings and inconsistencies in current measures to collect statistics (pp.7 et seq.).
- [United Nations Special Rapporteur on the Rights of Persons with Disabilities](#), preliminary comments by the Rapporteur, Ms Catalina Devandas-Aguilar, during her visit to France from 3 to 13 October 2017: "generally speaking, I have found that there is a severe lack of socio-demographic data and statistics broken down according to disability".

²⁹ Council of Europe Commissioner for Human Rights, [report by Nils Muižnieks following his visit to France from 22 to 26 September 2014](#), 2015. In paragraph 219, it is noted how difficult it is to obtain accurate recent figures reflecting the current situation in France.

³⁰ See, on this issue, the following reports:

- IGAS-IGF, "Establishments and services for persons with disabilities: demand and supply, funding arrangements" ("[Etablissements et services pour personnes handicapées : offres et besoins, modalités de financement](#)"), 2012. This report underlines the "lack of appropriate tools with which to gear facilities to persons' needs" (p.1) because there are not enough "sources of knowledge about situations of disability and the related trends" and a "lack of tools to assess situations of disability and translate these into needs in terms of assistance" (p.3);
- IGAS, "The advancing age of persons with disabilities. Contribution to the discussion" ("L'Avancée en âge des personnes handicapées. Contribution à la réflexion"), 2013, p.10;
- Defender of Rights, Report on "Employment for women with disabilities" ("L'emploi des femmes en situation de handicap"), 2016. On p. 5 of this report, attention is drawn to "the context of shortcomings where it comes to statistical knowledge about the situation and the needs of persons with disabilities and, in particular, a lack of gendered data, meaning that it is difficult to assess the effectiveness of the rights of women with disabilities". The lack of any national co-ordination or steering with regard to the recording, availability and exploitation of statistics and surveys on disability in France accounts for this deficiency (p. 55 et seq.);
- Defender of Rights, [Decision No. 2017-257](#), 2017. This framework decision comprising general recommendations for improving statistical knowledge about the situation and needs of persons with disabilities describes difficulties in assessing the effectiveness of rights because of a lack of reliable statistics (pp.22 et seq.).

³¹ United Nations Special Rapporteur on the Rights of Persons with Disabilities, preliminary comments by the Rapporteur, Ms Catalina Devandas-Aguilar, during her visit to France from 3 to 13 October 2017: she states that in France there is "a lack of social awareness of the rights of persons with disabilities to live independently in the community".

with Disabilities shows that few measures have been taken by the state to raise public awareness³² and, more generally speaking, that there is no overall co-ordinated disability policy which enables persons with disabilities to lead independent yet fully integrated lives. The separate treatment of persons with disabilities in public policy makes it difficult to implement an inclusive policy.³³

In this context, the measures taken by France to combat discrimination do not make it possible to reach the required aims: 20.8% of the discrimination claims addressed to the Rights Defender in 2018 were for discrimination on grounds of disability. This was the second most common ground after origin (23.7%) and ahead of state of health (13.3%).³⁴ It should also be noted in this connection that there is a failure to acknowledge the particular problems of women in this respect, despite the fact that they are exposed to numerous forms of discrimination.³⁵ Nor is anywhere near enough account taken of the situation of children with disabilities.³⁶

Another feature of French society is the lack of accessibility for persons with disabilities³⁷ despite the adoption of two laws, on 30 June 1975 and 11 February 2005, intended to promote accessibility. Yet, the assessment made of the Law of 2005 at the end of 2015³⁸ shows the inconsistency of this policy and its failure. No co-ordinated policy has been put in place to assist with and monitor accessibility measures in society as a whole, such as those to improve the accessibility of public buildings and spaces, roads, transport, individual or collective housing, new technologies and communication and information tools, despite the fact that accessibility is a prerequisite for the effective exercise of the fundamental rights of persons with disabilities.

³² France, Initial report on the implementation of the United Nations Convention on the Rights of Persons with Disabilities, 2016, paragraphs 83 and 84 on the implementation of Article 8 of the CRPD on awareness-raising.

³³ See, on this issue:

- United Nations Special Rapporteur on the Rights of Persons with Disabilities, preliminary comments by the Rapporteur, Ms Catalina Devandas-Aguilar, during her visit to France from 3 to 13 October 2017: she states that there is “a strong focus on addressing the individuals’ impairment rather than on transforming the society and its environment to ensure accessible and inclusive services as well as community-based support”;

- Rights Defender, Annual Activity Report 2017, 2018: p. 101, in which the Rights Defender regrets that there is a “backwards approach” to “taking account of disability”.

³⁴ Rights Defender, 2005-2015 report: “10 years of action to promote the rights of persons with disabilities” ([Rapport “2005 - 2015 : 10 ans d'actions pour la défense des droits des personnes handicapées”](#)), 2015, p.2.

³⁵ Rights Defender, Report on “The employment of women with disabilities” ([Rapport “L'emploi des femmes en situation de handicap”](#)), 2016. See, in particular, the recommendations on pp. 50 et seq.

³⁶ See, on this issue:

- Rights Defender, 2015 annual report on children’s rights, “Disability and child protection – rights for invisible children”, 2015, proposal No. 1, p. 13: “Many children with disabilities are now forced, in the absence of responses geared to their compensation needs, to stay at home or to be catered for by child protection facilities and are therefore denied some of their fundamental rights”;

- United Nations Committee on the Rights of the Child, Concluding observations on the fifth periodic report of France, 2016. Paragraphs 57 to 60, for example: “Persistent discrimination against children with disabilities, especially children with multiple disabilities, in accessing education, regarding equality with others”;

- UNICEF France, “Every child counts. Everywhere, all the time”, alternative report presented by UNICEF France and its partners in connection with France’s hearing by the United Nations Committee on the Rights of the Child, 2015. This report condemns the failure to respect the rights of children with disabilities, particularly in education (pp. 6, 9, 12, 19 and 20).

³⁷ United Nations Special Rapporteur on the Rights of Persons with Disabilities, preliminary comments by the Rapporteur, Ms Catalina Devandas-Aguilar, during her visit to France from 3 to 13 October 2017

³⁸ Rights Defender, 2005-2015 report: “10 years of action to promote the rights of persons with disabilities”, 2015. Page 2: “The institution criticised the delays in securing accessibility, which are the result of the inadequacy of the measures taken to achieve the aims of 1 January 2015. Awareness-raising efforts and the involvement of the stakeholders including the authorities failed to measure up to the task!”

Nor is there any overall strategy for the development of a range of appropriate, varied, inclusive and flexible, community-based, quality responses of a sufficient number, enabling all persons with disabilities to lead an independent life within the community thanks to the support in all areas of life of community-based services, whether specialised services, personal assistance or services for the general public.³⁹

The following are some illustrations of the lack of a strategy for the development of a range of community-based responses enabling persons with disabilities to lead a truly independent life within the community:

- As the Council of Europe Commissioner for Human Rights has stressed, the “priority given to inclusion in the community” by French legislation “is not synonymous with deinstitutionalisation”.⁴⁰ The change in paradigm whereby support services are converted into community-based services enabling persons with disabilities to take control of their lives and be integrated into the community has begun but is far from complete in France because of the lack of a de-institutionalisation strategy;⁴¹
- French procedures for the support of persons with disabilities are still centred on a medical, typological approach to these persons.⁴²

Among the consequences of this is that services are subject to a very strict regulatory framework⁴³, under which certification is granted in terms of number of places, and there is little flexibility.⁴⁴ It has also given rise to an ill-suited disability compensation system and fails to offer persons with disabilities genuine personal support;

- the funding system for services is not geared to the desired changes in the support

³⁹ United Nations Special Rapporteur on the Rights of Persons with Disabilities, preliminary comments by the Rapporteur, Ms Catalina Devandas-Aguilar, during her visit to France from 3 to 13 October 2017. In her comments, the Special Rapporteur calls on France to “transform the existing supply market of services for persons with disabilities into community-based services, including adequate housing”.

⁴⁰ Council of Europe Commissioner for Human Rights, [report by Nils Muižnieks following his visit to France from 22 to 26 September 2014](#), 2015, paragraph 224.

⁴¹ United Nations Special Rapporteur on the Rights of Persons with Disabilities, [preliminary comments by the Rapporteur, Ms Catalina Devandas-Aguilar, during her visit to France from 3 to 13 October 2017](#). In her comments, the Special Rapporteur calls on France to “revise and transform its system to be able to truly provide inclusive responses and solutions for all persons with disabilities ... and provide specialized services and support in the community on an equal basis with others”.

⁴² See, on this issue:

- The CNSA website “What are social and medico-social services (ESMSs)?”

- Order of 4 May 2017 setting the upper rates referred to in Article L. 314-3 of the Social Welfare and Family Code, which apply to the establishments and services referred to in sub-paragraph 5° I a of Article L. 312-1. Article 2 thereof provides: “... 2° For assisted employment establishments and services at which 70% or more of the users have cerebral motor disorders, the upper rate shall be €16 313; 3° For assisted employment establishments and services at which 70% or more of the users are persons with an autistic syndrome, the upper rate shall be €15 660; 4° For assisted employment establishments and services at which 70% or more of the users are persons whose disability stems from a head or brain injury, the upper rate shall be €13 703; 5° For assisted employment establishments and services at which 70% or more of the users are persons suffering from deteriorations in one or more physical functions, the upper rate shall be €13 703; ...”;

- United Nations Special Rapporteur on the Rights of Persons with Disabilities, [preliminary comments by the Rapporteur, Ms Catalina Devandas-Aguilar, during her visit to France from 3 to 13 October 2017](#) : she states that there is “a strong focus on addressing the individuals’ impairment rather than on transforming the society and its environment to ensure accessible and inclusive services as well as community-based support”.

⁴³ Denis Piveteau, op. cit., section 7.4, p.75 et seq.

⁴⁴ On this aspect, see the following reports:

- IGAS-IGF, “Establishments and services for persons with disabilities: demand and supply, funding arrangements” ([“Etablissements et services pour personnes handicapées : offres et besoins, modalités de financement”](#)), 2012, section 1.1.5.1.3., p.24;

- Denis Piveteau, op. cit., p.67 et seq.

measures to promote integration into the community;⁴⁵

- inequalities between geographical areas⁴⁶ result in equalities in the effectiveness of rights. This is the case for example with measures taken to meet the needs of persons with psychological disorders.⁴⁷ These inequalities are compounded by the financial disinvestment of the state vis-à-vis local and regional authorities prompting them to make budgetary choices that are detrimental to the rights of persons with disabilities.⁴⁸

Among the consequences of the absence of an overall co-ordinated strategy to promote an independent life within the community are the lack of any possibility for persons with disabilities to choose where they live, inadequate access to the range of special services needed to support independent living within the community and insufficient access to the services and facilities on offer to the general public.

More broadly speaking, the fact that there is no overall, co-ordinated strategy to promote an independent life within the community in France has the effect that persons with disabilities are highly exposed to social exclusion and poverty.⁴⁹ The lack of physical accessibility and access to information and communications, the inadequacy of payments and/or the unsuitability of provision to cover needs connected with disabilities (in the areas of home help, transport, support for parents, communication, etc.) are factors contributing to vulnerability. It is important to emphasise the difficulties encountered by persons with disabilities when attempting to access rights and resources as these difficulties increase their exposure to poverty.⁵⁰

In section 2.1.3., it will be shown that this lack of an overall co-ordinated policy to promote independent life within the community prevents France from respecting the right of persons with disabilities to protection against poverty and social exclusion, as set forth in the Charter and interpreted in the light of the CRPD.

2.1.2.2. The impossibility for persons with disabilities to choose where they live

⁴⁵ On this aspect, see the following reports:

- IGAS-IGF, "Establishments and services for persons with disabilities: demand and supply, funding arrangements", 2012, section 2, p.42;

- Denis Piveteau, op. cit., section 7.1.1, p.67, and section 7.4, p. 75 et seq.

⁴⁶ The National Independence Support Fund (CNSA), "Regions and autonomy policies. Extract from the 2015 CNSA annual report" ("[Territoires et politiques de l'autonomie. Extrait du rapport annuel 2015 de la CNSA](#)"), 2016, p.29.

⁴⁷ French Institute for Research and Documentation on Health Economics (IRDES), "Report No. 558 "Geographical disparities in the provision and organisation of psychiatric care in France – from a fragmented view to a systemic approach" ("[Les disparités territoriales d'offre et d'organisation des soins en psychiatrie en France : d'une vision segmentée à une approche systémique](#)"), 2014.

⁴⁸ See, for example:

– the *département* of Essonne: in the social welfare periodical, tsa-quotidien.fr, 24 March 2016: "Essonne – associations raise the bar";

– the *département* of le Nord: article in the social welfare periodical, tsa-quotidien.fr, 7 March 2016 "Nord – budget cuts are dragging the sector down".

⁴⁹ Directorate of Research, Studies, Evaluation and Statistics (DREES), Living standards of persons with disabilities – marked differences according to incapacities ([Le niveau de vie des personnes handicapées : des différences marquées selon les limitations](#)), 2017. This study shows that the median annual income of persons with disabilities aged 15 to 64 is €18 500, or €2 000 less than persons without disabilities. The greater the person's disability the greater the gap. As a result 30% of people with a severe mental disorder live below the poverty threshold. See p.1 and the graphs on p.4.

⁵⁰ IGAS report on the links between disability and poverty, "Les liens entre handicap et pauvreté: les difficultés dans l'accès aux droits et aux ressources", 2014, pp.24 et seq.

The right to an independent life within the community implies that it must be possible for persons with disabilities to choose where and with whom they will live.⁵¹ Yet France does not allow persons with disabilities to exercise their right to free choice of their place of residence fully, thus undermining **the right of persons with disabilities to independence, social integration and participation in the life of the community and access to social welfare services and housing (rights protected respectively by Articles 15, 14 and 31 of the Charter)**.

As already mentioned in section 2.1.2.1., French measures to support persons with disabilities are still centred on a medical and typological approach to these persons undermining their freedom to choose where they live.

When they are offered medico-social support, persons with disabilities are directed to a type of service which often corresponds to a fixed category. Once they have entered such structures, it can be difficult to get out of them when their wishes or needs change because there is no provision for sideways movement or the most suitable solution is simply not available. In fact, some people are forced to leave their place of residence when the facility to which they have been assigned cannot adapt to the changes in their needs. For example a person sent to an accommodation centre funded by a *département* council⁵² has to leave this place where he/she has lived for many years as soon as he/she requires regular medical assistance, as an accommodation centre cannot meet his/her new needs, which are provided for officially in facilities called medically-equipped residential establishments (FAMs)⁵³, financed both by the *département* council and by the French health insurance scheme. This illustrates clearly how the inflexibility of the regulatory and financial framework prevents people from choosing freely where they will live.⁵⁴

Furthermore, the inadequacy and unsuitability of the solutions proposed for persons with disabilities (described in detail in sections 2.1.2.3 and 2.1.2.4) can now be added to the problems faced. Insufficient access to the range of special services needed to support independent living within the community and to services and facilities for the general public also considerably undermine free choice of one's place of residence.

For instance, it might be impossible for an autistic child requiring educational, behavioural and developmental support to attend a local school because the medico-social support service providing this kind of support in schools, the SESSAD,⁵⁵ is not available. Furthermore, the lack of any adjustment to the teaching environment (such as the failure to provide a quiet space during breaks) would in any case prevent this child from attending this school. The child will be directed towards a special school, an IME,⁵⁶ but must board there because it is too far away from his/her family home.

⁵¹ See:

– **Appendix 3 Applicable domestic and international law:** Article 19a. of the United Nations Convention on the Rights of Persons with Disabilities;

– UN Committee on the Rights of Persons with Disabilities, General Comment No. 5 on the right to live independently and being included in the community, §§ 24 et seq.

⁵² The CNSA website “What are social and medico-social services (ESMSs)?”

⁵³ The CNSA website “What are social and medico-social services (ESMSs)?”

⁵⁴ IGAS-IGF, “Establishments and services for persons with disabilities: demand and supply, funding arrangements”, 2012, p. 60.

⁵⁵ The CNSA website “What are social and medico-social services (ESMSs)?”

⁵⁶ The CNSA website “What are social and medico-social services (ESMSs)?”

The most symbolic illustration of this problem of course is the nearly 6 800 persons with disabilities, 1451 of whom are children, who have been sent with French funding to facilities outside France.⁵⁷ In most cases, these persons and their families have been forced to go abroad, mainly to Belgium,⁵⁸ for want of a solution in France⁵⁹ and in breach of their freedom to choose where they live and, where the children are concerned, of their right to family life. Of the people sent to Belgium, over 4 000 are not “cross-border” travellers but come from about 50 different *départements* in France, some of which are over a thousand kilometres away from Belgium.⁶⁰ Despite France’s announcements concerning a plan to prevent and halt the forced departure of persons with disabilities to Belgium, the problem persists.⁶¹ The situation is made all the more intolerable by the fact that they are sometimes sent to establishments which actually fail to respect fundamental rights.⁶²

This situation has an impact on the family and private life of the persons concerned. In this connection, on 15 July 2015 the Paris Administrative Court held that the care of children in Belgium for want of suitable facilities in France constituted “non-pecuniary damage arising from removal from their family”.⁶³

Persons with disabilities are prevented from choosing their place of residence in a very large number of other circumstances linked to the inadequacy and unsuitability of the

⁵⁷ French Senate, Information report prepared on behalf of the Social Affairs Committee on the provision of care for persons with disabilities outside France, 2016, pp. 16 and 17.

⁵⁸ See the following reports and decisions:

– Council of Europe Commissioner for Human Rights, [report by Nils Muižnieks following his visit to France from 22 to 26 September 2014](#), 2015, paragraph 228;

– IGAS report on “The placement abroad of French persons with disabilities”, 2005;

– Cécile Gallez, report on “The accommodation of persons with disabilities and elderly persons in Belgium” ([Rapport “L’hébergement des personnes handicapées et âgées en Belgique”](#)), 2009;

– French Senate, Information report prepared on behalf of the Social Affairs Committee on the provision of care for persons with disabilities outside France, 2016;

– UN Committee on the Rights of Persons with Disabilities, [Concluding observations on the initial report of Belgium](#), 2014, paragraph 32: “The Committee is concerned about the policy on registration of institutions that care for French persons with disabilities, in particular children with disabilities, in the State party and the lack of monitoring of such institutions”.

The situation has also been regularly condemned by the French media. See for example:

– the file on the issue on the website of the newspaper Libération;

– the editorial of 3 January 2014 in the newspaper Le Monde.

⁵⁹ Many of these people have complex support needs and are persons with intellectual disabilities, multiple disabilities or psychological disorders, for whom no solution can be found in France. See, in this connection:

– IGAS report on “The placement abroad of French persons with disabilities”, 2015, particularly pp. 61 and 68;

– Cécile Gallez, report on “The accommodation of persons with disabilities and elderly persons in Belgium”, 2009, particularly pp. 37 and 38;

– French Senate, Information report prepared on behalf of the Social Affairs Committee on the provision of care for persons with disabilities outside France, 2016, see, in particular, pp.23 et seq.

⁶⁰ See:

– Cécile Gallez, report on “The accommodation of persons with disabilities and elderly persons in Belgium”, 2009, p.38;

– French Senate, Information report prepared on behalf of the Social Affairs Committee on the provision of care for persons with disabilities outside France, 2016, p.16.

⁶¹ See:

– IGAS, Support for the measures intended to put an end to the “forced departure” of persons with disabilities to Belgium, 2016, paragraphs 227 et seq.;

– Unapei, press release of 5 January 2017, “Persons with disabilities – how much longer do we have to wait before their forced exile to Belgium is halted?”.

⁶² See:

– Article in Libération on 24 April 2014, [“Disability – the dark side of the Belgian connection”](#);

– Senate, [Information report prepared on behalf of the Social Affairs Committee on the provision of care for persons with disabilities outside France](#), 2016, box on p.45.

⁶³ Paris Administrative Court, 15 July 2015, judgments Nos. [1416876/2-1](#) and [1422407/2-1](#), paragraph 8.

solutions provided for them, and the following are some examples of these:

- a case in which a person was obliged to move to the other side of the *département* because no suitable solution was offered in the place where they lived;⁶⁴
- the impossibility of leaving an accommodation centre to live in an ordinary flat because the support services for life in the community are unavailable;
- the fact that adult persons with disabilities remain in their parents' homes well beyond the average age of departure⁶⁵ because of the lack of alternatives. This forced cohabitation has many effects on the life of families, described in detail in section 2.2;
- the impossibility of making the necessary changes to accommodation or extra transport-related costs because of insufficient coverage by the disability compensation benefit (PCH), forcing the person concerned to move;
- no access to social housing;
- no accessible public transport serving the neighbourhood;
- etc.

Over and above France's shortcomings with regard to access to services for persons with disabilities, the more general problems of access to housing affecting the entire population of the country is another obstacle preventing persons with disabilities from being able to choose where they live, and this is even more of a problem for disabled persons. Persons with disabilities face exactly the same problems as an entire section of the general population with regard to access to housing⁶⁶ – problems whose existence the European Committee of Social Rights has corroborated.⁶⁷ In addition to the problems faced by the rest of the population, persons with disabilities face discrimination in access to housing, as established by the Rights Defender.⁶⁸

⁶⁴ Senate, Information Report prepared on behalf of the senatorial committee on the monitoring of the application of Law No. 2005-102 of 11 February 2005 for the equal rights and opportunities of persons with disabilities and their participation in citizenship, 2012. On p. 69 of this report it is stated that "some families no longer hesitate to move to the North of France to get nearer to the border or even to move to Belgium".

⁶⁵ See:

– Eurostat, press release of 16 April 2015, "What it means to be young in the European Union today", p. 5. In 2013 the average age at which people left their parents' home in France was 23.6;

– Unapei, "[The increasing age of persons with mental disabilities](#)", 2009, p.15. Persons with disabilities sometimes stay in their parents' homes until the last parent dies, but this is not because they choose to do so.

⁶⁶ See:

– Rights Defender, Report "[2005 - 2015: 10 years protecting the rights of persons with disabilities](#)", 2015, p. 21: "In his General Recommendation of 11 February 2013 (Decision MLD-2013-16), the Rights Defender notes that the effectiveness of the housing rights of persons with disabilities is affected by a shortage of housing to satisfy the needs of poorly housed people in general";

– Rights Defender, Factsheet on "[Housing, disability and the loss of independence](#)", 2014;

– European Committee of Social Rights, Conclusions 2016, France, Article 15§3, on access to housing for persons with disabilities.

⁶⁷ See:

– European Committee of Social Rights, Conclusions 2013, France, Article 30, on access to housing in general: "... access to housing is a major weakness in the services provided to vulnerable persons. Costs are increasing and the demand for housing is becoming more acute. There are significant numbers of people living rough or forced to live with a third party and access to housing of an adequate standard for those who live in poor housing or are homeless is not improving";

– European Committee of Social Rights, European Roma and Travellers Forum (ERTF) v. France, Collective Complaint No. 64/2011, decision on the merits of 24 January 2012, §137: "The Committee recalls that in Conclusions 2005 and 2011 it concluded that there is a shortage of social housing at an affordable price for the poorest people and low-income groups in France".

⁶⁸ See:

In section 2.1.3, it will be shown that the fact that it is impossible for persons with disabilities to choose where they live freely prevents France from respecting the right of persons with disabilities to independence, social integration and participation in the life of the community, the right to benefit from social welfare services and the right to housing, as set forth in the Charter and interpreted in the light of the United Nations Convention on the Rights of Persons with Disabilities.

2.1.2.3. Inadequate access to the range of special services needed to support independent living within the community

Access to social support services catering for the needs of persons with disabilities and their life choices is a prerequisite to respect for their right to independence. However, despite the existence of domestic legislation providing for a support system for persons with disabilities,⁶⁹ there is no effective access to these services in France.

There are problems with access both to community-based services (a) and to the personal assistance needed to live in the community and be integrated into it (b).

a) Insufficient access to specific community-based services

Persons with disabilities must have sufficient access to a range of social support services enabling them to live in the community and be integrated into it.⁷⁰ Only access of this type is capable of affording persons with disabilities respect for **the right to benefit from social welfare services, the right to protection of health and the right to housing (rights protected respectively by Articles 14, 11 and 31 of the Charter).**

Yet in France the ineffectiveness of the right of access to social welfare services has been a problem for many years,⁷¹ and French associations representing persons with disabilities have been denouncing this situation for just as long.⁷² The main problem is a lack of

– Rights Defender, Factsheet on [“Housing, disability and the loss of independence”](#), 2014, pp.2 and 3;
– Rights Defender, Report [“2005 - 2015: 10 years protecting the rights of persons with disabilities”](#), 2015, p.21: “Despite some progress, finding or holding on to adapted housing is difficult in practice for many persons with disabilities or age-related loss of autonomy and is sometimes indicative of discrimination. ... The Rights Defender is in an ideal position to know about the discrimination faced by persons with disabilities, particularly where it comes to housing, and notes that disability is the second most common ground of discrimination (just after person’s origins) in all the complaints submitted to him in relation to housing”.

⁶⁹ **Appendix 3 Applicable domestic and international law.** With regard to adults, see Articles L114-1-1 et L146-3. With regard, in particular, to schooling and support for children and young people with disabilities, reference should be made to Articles L242-1 and L242-4 of the Social Welfare and Family Code and Articles L111-1, L 111-2 and L351-1 to L352-1 of the Education Code.

⁷⁰ See:

– **Appendix 3 Applicable domestic and international law:** Article 19b. of the United Nations Convention on the Rights of Persons with Disabilities ;

– UN Committee on the Rights of Persons with Disabilities, General Comment No. 5 on the right to live independently and being included in the community, §§ 28 et seq.

⁷¹ IGAS, report on [“The placement abroad of French persons with disabilities”](#), 2005, p.1.

⁷² See, in particular:

– Joint Committee of Associations Representing Persons with Disabilities and their Families (Comité d’Entente des Associations Représentatives de Personnes Handicapées et de Parents d’Enfants Handicapés), media alert of 28 January 2008, Disability policy – [Joint Committee spokespersons reject draft government report as it stands and demand a new version](#);
– Joint Committee of Associations Representing Persons with Disabilities and their Families, press release of 9 December

services and the unsuitability of those that exist. The situation was condemned by the Council of Europe Commissioner for Human Rights and the UN Special Rapporteur for the Rights of Persons with Disabilities following their respective visits to France in September 2014⁷³ and October 2017.⁷⁴

By way of illustration, a number of examples can be cited and some of these relate to particular categories of disability as France's category-based approach to disability has resulted in shortcomings for certain persons in particular:

- a persistent lack of appropriate support for persons with autism, with the result that these persons are sent to psychiatric hospitals despite two decisions by the European Committee of Social Rights finding a violation of the Charter by France in 2004 and 2013, and three "autism plans";⁷⁵
- the lack of a support policy for ageing persons with disabilities, capable of meeting their needs and desires and designed to tailor measures to individual situations and foster inclusion;⁷⁶
- insufficient resources to assist persons with multiple disabilities. The shortage of

2014, [At the National Disability Conference, the French President must describe the main lines of his disability policy to give new impetus to the construction of an inclusive society](#);

- Joint Committee of Associations Representing Persons with Disabilities and their Families, press release of 20 October 2015, [Disability – bringing a halt to the forced exile of persons with disabilities and finding a suitable, community-based solution for everyone right away!](#).

⁷³ Council of Europe Commissioner for Human Rights, [report by Nils Muižnieks following his visit to France from 22 to 26 September 2014](#), 2015, paragraphs 218 to 263. The Commissioner notes in particular that setting up *département* centres for persons with disabilities (MDPHs) "has not made it possible to prevent a number of persons with disabilities from being left without an appropriate response to their situation, [or] to bring placements in inappropriate institutions to an end" (paragraph 226), especially because of "the unsuitability of the assessment tools to the needs of persons with disabilities and the significant delays which occurred in the processing of cases" (paragraph 227). "These resulted in a number of both disturbing and paradoxical situations, with some people being placed in institutions when they could have benefited from staying in the ordinary environment had they received the requisite personalised support, either because no appropriate assessment of their needs had been made, or because the appropriate medical/social services were not available. The freedom of choice said to be guaranteed by Article 19 of the Convention on the Rights of Persons with Disabilities was thus very much impeded" (paragraph 227). MDPHs are the only public services at *département* level designed to receive, inform, advise and support persons with disability.

⁷⁴ United Nations Special Rapporteur on the Rights of Persons with Disabilities, [preliminary comments by the Rapporteur, Ms Catalina Devandas-Aguilar, during her visit to France from 3 to 13 October 2017](#), "The ever-increasing demand for residential services arises from France's inability to provide a sufficient number of quality community support services".

⁷⁵ See:

- Council of Europe Commissioner for Human Rights, [report by Nils Muižnieks following his visit to France from 22 to 26 September 2014](#), 2015, particularly paragraphs 235 to 237 and 239;
- European Committee of Social Rights, [Assessment of the follow-up: Decision on the merits: International Association Autism-Europe \(IAAE\) v. France. Complaint No.13/2002](#), 2015, and [Assessment of the follow-up: Decision on the merits: European Action of the Disabled \(AEH\) v. France. Complaint No. 81/2012](#), 2015 – France has failed to bring the situation into conformity in response to either of these decisions;
- Court of Audit, Assessment of public policy vis-à-vis persons with disorders on the autism spectrum (Evaluation de la politique publique en direction des personnes présentant des troubles du spectre de l'autisme), 2017, summary pp. 9 to 15;
- The Guardian, article of 2 February 2018, 'France is 50 years behind': the 'state scandal' of French autism treatment;
- Rights Defender, annual activity report 2017, 2018, p.103;
- The French national autism strategy for 2018-2022, entitled, Stratégie nationale pour l'Autisme au sein des troubles du neuro-développement, follows on from the three "autism plans", but fails to offer any guarantee that autistic persons in France are given appropriate support. See the press release by Autism France of 10 April 2018, Dans l'attente du vrai plan autisme.

⁷⁶ See:

- IGAS, "The increasing age of persons with disabilities – contribution to the debate", (["L'Avancée en âge des personnes handicapées. Contribution à la réflexion"](#)), 2013, conclusions, p.32;
- Regional Centre for Studies, Campaigns and Information (CREAI), Rhône-Alpes, "Regional medico-social survey – Spotlight on ageing persons with disabilities" (["Observation médico-sociale régionale – Focus personnes handicapées vieillissantes"](#)), 2015, box 9, pp. 63 et seq.

suitable facilities gives rise to frequent interruptions in the care path of these persons who are left on society's sidelines;⁷⁷

- the lack of services dealing with persons with mental disabilities. A shortfall in suitable arrangements for the support of mentally disabled persons has given rise to housing problems, poor families being forced to provide accommodation, inappropriate hospitalisation and long-term treatment,⁷⁸ imprisonment⁷⁹ and persons living on the street.⁸⁰ In addition, treatment is often compulsory,⁸¹ and combined with abusive measures of seclusion or restraint,⁸² or governed by illegal internal rules;⁸³

⁷⁷ Unapei, White Paper on "Multiple disabilities and citizenship – a challenge for all" ("Polyhandicap et citoyenneté, un défi pour tous"), 2016, particularly pp.13 and 24.

⁷⁸ See:

– Denis Piveteau, op. cit., p.21;

– Institute for Research and Documentation in Health Economics (IRDES), *Questions d'économie de la santé* (Health Economics Issues) No. 202, "Long-term psychiatric hospitalisation – analysis and determinants of regional disparities" ("[L'hospitalisation au long cours en psychiatrie : analyse et déterminants de la variabilité territoriale](#)"), 2014, particularly the conclusions on pp. 7 and 8;

– Auvergne-Rhône-Alpes Regional Health Agency, "Long-term psychiatric hospitalisation in Rhône-Alpes", ("[Les hospitalisations psychiatriques au long cours en Rhône Alpes](#)"), 2016, particularly the conclusions on pp. 125 and 126.

⁷⁹ See:

– Health and Justice Working Group, "Mitigation and suspension of sentence for medical reasons" ("Aménagements et suspensions de peine pour raison médicale") 2013, particularly pp.17 et seq.

– Human Rights Watch, "[Double Punishment – Inadequate Conditions for Prisoners with Psychosocial Disabilities in France](#)", 2016. This report documents the lack of appropriate mental health care and the unsuitable conditions for prisoners with mental disorders;

– The National Union of Families and Friends of Persons with Mental Illnesses or Disabilities (Unafam), press release of 4 September 2017, "French prisons not equipped for the reception of persons with mental illnesses – the example of Château Thierry Prison (Aisne)" ("[Les prisons françaises inadaptées à l'accueil des malades psychiatriques : l'exemple de la prison de Château-Thierry \(Aisne\)](#)").

⁸⁰ Abbé Pierre Foundation for housing for disadvantaged people, "The state of bad housing in France – 21st annual report" ("[L'Etat du mal logement en France – 21e rapport annuel](#)"), 2016, pp.85 et seq.

⁸¹ See:

– IRDES, *Questions d'économie de la santé* No. 222 "Involuntary psychiatric treatment – results after four years of implementation of the Law of 5 July 2011" ("[Les soins sans consentement en psychiatrie : bilan après quatre années de mise en œuvre de la loi du 5 juillet 2011](#)"), 2017;

– Council of Europe Commissioner for Human Rights, [report by Nils Muižnieks following his visit to France from 22 to 26 September 2014](#), 2015, paragraphs 233 and 234.

⁸² See:

– French National Assembly, Information report to conclude the work of the assessment mission on Law No. 2013-869 of 27 September 2013 amending certain provisions arising from Law No. 2011-803 of 5 July 2011 on the rights and the protection of persons undergoing psychiatric treatment and the arrangements for their care, 2017, p.117 et seq.;

– Report by the General Controller of Places of Detention on "Seclusion and restraint in mental health establishments" ("[Isolement et contention dans les établissements de santé mentale](#)"), 2016;

– Council of Europe, Report to the Government of the French Republic on the visit to France by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 15 to 27 November 2015 (in French only) April 2017, paragraph 142;

– Council of Europe Commissioner for Human Rights, [report by Nils Muižnieks following his visit to France from 22 to 26 September 2014](#), 2015, paragraph 232;

– National Health Authority (HAS), Good practice recommendation on "Seclusion and restraint in general psychiatry units" ("[Recommandation de bonne pratique "Isolement et contention en psychiatrie générale"](#)"), 2017. This recommendation sets out the very limited conditions in which seclusion and mechanical restraint should be exercised (see in particular the keynote messages on p. 5);

– Unafam, press release of 22 March 2017, "At last clear regulations on seclusion and restraint for psychiatric patients" ("[Enfin une réglementation précise sur l'isolement et la contention en psychiatrie](#)"). Unafam emphasises that such measures must be very exceptional and points out that persons being cared for in psychiatric hospitals are already experiencing considerable hardship.

⁸³ Bordeaux Administrative Court of Appeal, 2nd Division, decision of 6 November 2012. The court set aside a decision by the director of a psychiatric hospital in which he refused to abrogate a provision of the internal rules which prohibited sexual relations within a psychiatric unit. The Court based its reasoning on Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, on respect for private and family life.

- the inadequacy of action to support disabled children at school, meaning that not all children have access to education. The Council of Europe Commissioner for Human Rights highlights the significant number of disabled children who are still excluded from education.⁸⁴ For example, nearly 80% of autistic children are excluded from France's mainstream education system.⁸⁵ This situation has been condemned in reports,⁸⁶ judicial decisions,⁸⁷ UN recommendations,⁸⁸ and two decisions by the European Committee of Social Rights;⁸⁹
- the insufficient development of support services in mainstream settings.⁹⁰ This is the case in particular with support services for housing,⁹¹ community life⁹² and parenting,⁹³ all of which are key factors where it comes to enabling persons with disabilities to lead independent lives within the community;
- reception of many children with disabilities in child protection facilities for want of better more suitable support arrangements;⁹⁴
- reception of several thousands of young adults with disabilities in facilities for children, pending a solution more suited to their lives as adults.⁹⁵

⁸⁴ Council of Europe Commissioner for Human Rights, [report by Nils Muižnieks following his visit to France from 22 to 26 September 2014](#), 2015, paragraph 251.

⁸⁵ Council of Europe Commissioner for Human Rights, Human Rights Comment, "[Respecting the human rights of persons with psychosocial and intellectual disabilities: an obligation not yet fully understood](#)", 2017.

⁸⁶ See:

- Report by Paul Blanc on education for children with disabilities, ("La scolarisation des enfants handicapés"), 2011, p.15;
- UNICEF France, "[Every child counts. Everywhere, all the time](#)", [alternative report presented by UNICEF France and its partners in connection with France's hearing by the United Nations Committee on the Rights of the Child](#), 2015, pp. 19 and 20;
- United Nations Special Rapporteur on the Rights of Persons with Disabilities, [preliminary comments by the Rapporteur, Ms Catalina Devandas-Aguilar, during her visit to France from 3 to 13 October 2017](#).

⁸⁷ See:

- Conseil d'Etat, decision No. 311434 of 8 April 2009;
- Pau Administrative Court, 21 February 2013, judgment No. 1200150, paragraph 6;
- Paris Administrative Court, 15 July 2015, judgment No. 1416876/2-1, paragraph 4;
- Versailles Administrative Court, 8 March 2018, judgment No. 1507496, paragraphs 9 to 11.

⁸⁸ UN Committee on the Rights of the Child, [Concluding observations on the fifth periodic report of France](#), 2016, paragraphs 57 to 60.

⁸⁹ European Committee of Social Rights, decisions on the merits in *Autism Europe v. France*, Collective Complaint No. 13/2002 and *AEH v. France*, Collective Complaint No. 81/2012.

⁹⁰ Denis Piveteau, *op. cit.*, pp.67 et seq.

⁹¹ French Directorate General for Social Cohesion, National survey on alternative/inclusive housing for persons with disabilities, elderly persons, or persons with a neurodegenerative disease or their helpers – Summary of results, 2017. According to this survey, a supply of alternative/inclusive housing for persons with disabilities is beginning to emerge but it is still limited and faces legal and financial obstacles. See, in particular, pp. 70 and 71.

⁹² See:

- CREAI Centre, Review of waiting lists for children, young people and adults with disabilities in the Centre region, 2014: in this region, on 31 December 2013, 785 people were receiving assistance from the community-life support services (SAVSs) but another 223 were on waiting lists (table, p. 31);
- On top of this shortage, those entitled to assistance from the SAVSs can be requested to make their own financial contribution and this dissuades some disabled persons from asking to benefit from them. See the article of 7 January 2015 in the magazine *Faire Face*, "Persons with disabilities – campaigning for SAVSs and Samsahs to be free of charge" ("[Personnes handicapées : pour la gratuité des SAVS et Samsahs](#)").

⁹³ There are many projects run by associations in this area but no public policies designed to help persons with disabilities cope with parenting.

⁹⁴ The Rights Defender's 2015 annual report on children's rights, entitled "Disability and child protection – rights for invisible children" ("[Handicap et protection de l'enfance : des droits pour des enfants invisible](#)"), see, in particular, p. 13, proposal No. 1.

⁹⁵ Directorate of Research, Studies, Evaluation and Statistics (DREES), "Creton Amendment – 6 000 young adults in establishments for children with disabilities" ("[Amendement Creton : 6 000 jeunes adultes dans des établissements pour enfants handicapés](#)"). 2016, pp.1 et seq.

Because of the lack of data and statistics on persons with disabilities in France,⁹⁶ it is difficult to quantify exactly how many of these people's needs are not met.⁹⁷ This was also noted by the European Committee of Social Rights in its 2016 Conclusions⁹⁸ and by the UN Special Rapporteur on the Rights of Persons with Disabilities⁹⁹ in connection with the number of persons with disabilities with no access to education. **Appendix 4, however, presents some data which make it possible to gain an overview of the lack of access for persons with disabilities to social support services. Appendices 4 and 5 include some examples of specific cases of persons with no access to a suitable service.**

The complainant organisations agree entirely with the report by Denis Piveteau, in which he argues that “irrespective of the diversity of disabilities and life circumstances”, the recurrent shortcomings in support for persons with disabilities make for a “systemic diagnosis” that the “facilities on offer are insufficient in both qualitative and quantitative terms”.¹⁰⁰

The French courts regularly highlight the shortcomings of the French authorities in individual cases.¹⁰¹ The judicial decisions taken often do not remedy the situation of the persons concerned however, as they occur several years later or they do not enable a satisfactory, long-term solution to be found because “no court judgment can ever compensate for a system's failings”.¹⁰² In the light of the texts that apply to the establishment of suitable services, courts do not have the authority to order the creation of such services. They cannot force the state or the authorities concerned to set up the facilities required. In most cases, the French courts may only award damages. It is found that rights have been violated but they are not subsequently made effective. Lastly, judicial decisions relate only to a single victim who has taken action and they cannot remedy the general situation of persons with disabilities, who generally do not have the means or the capacity to take action for their rights to be recognised, or are simply unaware of them.

Faced with all these difficulties with access to suitable facilities there is also a noticeable tendency for people not to claim their rights. Persons with disabilities no longer even ask for the assistance provided for by domestic law and no longer exercise their right to appeal when faced with the complexity of administrative procedures, problems with access to digital services and the failings of the state.¹⁰³

⁹⁶ France, [Comments by the Government of France on the report by the Council of Europe Commissioner for Human Rights](#), 2015, p. 39: “Despite the difficulty of collecting statistics on disabilities, it can be estimated that disability affects at least 2 million people”.

⁹⁷ Rights Defender, Decision No. 2017-257, 2017, pp.22 et seq.

⁹⁸ European Committee of Social Rights, [Conclusions 2016 – France – Article 15§1](#), 2016.

⁹⁹ United Nations Special Rapporteur on the Rights of Persons with Disabilities, [preliminary comments by the Rapporteur. Ms Catalina Devandas-Aguilar, during her visit to France from 3 to 13 October 2017](#), 2017: “I note with some concern that there are no official figures on the number of children excluded from the education system”.

¹⁰⁰ Denis Piveteau, op. cit., pp. 20 and 21.

¹⁰¹ See:

– Denis Piveteau, op. cit., pp.7 and 8;

– Article of 22 July 2015 in the newspaper Libération, “Autism: French state ordered to pay over €240 000 to 7 families” ([“Autisme : l'Etat condamné à versé plus de 240000 euros à sept familles”](#)).

¹⁰² Denis Piveteau, op. cit., pp. 8 to 11.

¹⁰³ See:

– Denis Piveteau, op. cit., p.13 (reference to “silent circumstances”);

– Rights Defender, [2016 annual activity report](#), 2017. The report describes the diminishing access to rights in France, particularly for persons with disabilities (see p.3 in particular).

There are many factors which explain the lack of effective access to specific community-based services. The medical, category-based approach has already been mentioned, as has the inflexibility of legal and financial frameworks, which, for example, prevent co-operation from being established that would enable complex needs to be met.¹⁰⁴ A shortage of statistics about persons with disabilities and ineffective means of assessing individual needs and expectations are also reasons for the lack of effective access to services.¹⁰⁵ Nor are professionals sufficiently trained in support for certain target groups,¹⁰⁶ especially because of the low value accorded to such skills and the shortage in funding for professional training.¹⁰⁷

Any drastic improvement in the situation would require an overall strategy for the development of a range of varied, inclusive, community-based, appropriate, flexible and high-quality responses in sufficient numbers to allow all persons with disabilities to lead an independent life within the community thanks to the support in all areas of life of community-based services, whether specialised services, personal assistances or services for the general public.

¹⁰⁴ Denis Piveteau, *op. cit.*, 2014, particularly pp. 53 et seq. and p. 85.

¹⁰⁵ See comments below on the subject of personal assistance, particularly in Appendix 6. The criticism concerning the assessment methods for entitlement to disability compensation benefit also applies to those used when directing people to support facilities.

¹⁰⁶ For example, persons with complex support needs such as autistic persons, persons with serious incapacitating mental disorders or persons with multiple disabilities.

¹⁰⁷ Denis Piveteau, *op. cit.*, particularly pp. 53 et seq. and p. 82.

To date France has neither engaged in a national strategy enabling an overall, co-ordinated approach to disability in France¹⁰⁸ nor allocated the necessary resources¹⁰⁹ to ensure that persons with disabilities have effective access to social welfare services. In his report of February 2015, the Council of Europe Commissioner for Human Rights criticised the slow progress of the reforms launched by the French Government and the lack of resources allocated for their implementation.¹¹⁰ Three years later, his findings and rulings are still valid¹¹¹ and have been reiterated by the UN Special Rapporteur for the Rights of Persons with Disabilities.¹¹²

In section 2.1.3., it will be shown that insufficient access to specific community-based services prevents France from respecting the right of persons with disabilities to benefit from social welfare services, along with the right to health protection and the right to housing, as set forth in the Charter and interpreted in the light of the United Nations Convention on the Rights of Persons with Disabilities.

¹⁰⁸United Nations Special Rapporteur on the Rights of Persons with Disabilities, [preliminary comments by the Rapporteur, Ms Catalina Devandas-Aguilar, during her visit to France from 3 to 13 October 2017](#), 2017. In her comments, the Special Rapporteur asks France to adopt a human rights-based approach and a comprehensive national policy complete with time-bound benchmarks, effective implementation plans and the necessary budgetary and fiscal measures and to “carefully revise and transform its system to be able to truly provide inclusive responses and solutions for all persons with disabilities ... and provide specialized services and support in the community on an equal basis with others”.

¹⁰⁹ On this matter:

- Neither the Multiannual Disability Programme 2008-2012 nor the three successive Autism Plans, which reflect the prevailing medical and typological approach, have resulted in sufficient access to special support services. See, on the CNSA website, [The result of the plans](#) (updated on 10 July 2017). The measures announced at the 2017 meeting of the Interministerial Disability Committee have not yet been implemented because no plan of action or other arrangements have been adopted for them to be put into practice. Nor do they make any plans at all for the necessary steps to be taken within a reasonable time to deal with the situation of tens or even hundreds of thousands of persons with no suitable solution or no solution at all available to them (see, on this subject, [The press file of the Interministerial Disability Committee of 20 September 2017](#), pp.12 to 14). Likewise the National Autism Strategy 2018-2022, entitled [Stratégie nationale pour l'Autisme au sein des troubles du neuro-développement](#) and following on from the three Autism Plans, provides no guarantee that autistic persons in France will at last be given appropriate support (see, on this matter, the Autism France press release of 10 April 2018, “Waiting for the real autism plan” (“[Dans l'attente du vrai plan autisme](#)”));
- At the same time, several budgets which should be used to fund support for the elderly and persons with disabilities (such as those of the CNSA) are used for other purposes. See for example GR31, press release of 16 December 2015, “Are the CNSA funds a horn of plenty?”;
- France has not made use of the resources placed at its disposal by the European Union through structural and investment funds. The transition from institutional to community-based services was part of the possible priorities for member states for the use of the 2014-2020 component of these funds (for more information see the [European Commission web page on transition from institutional to community-based services](#)). Yet, this priority was not included by France in its 2014-2020 Partnership Agreement with the European Union (2018, pp.139-141);
- French Senate, [Information report prepared on behalf of the Social Affairs Committee on care for persons with disabilities outside France](#), 2016: this report estimates the public spending linked to care for persons in Belgium at €400 million (p. 20). Considerably less money is provided to support persons with disabilities in France. For instance, in 2016, the French Government announced that it would earmark €180 million for 2017-2021 for the creation of places or new measures and for the facilities on offer to be overhauled (National Disability Conference, 2016, [Conclusions of 19 May 2016](#), 2016, p.1).

¹¹⁰ Council of Europe Commissioner for Human Rights, [report by Nils Muižnieks following his visit to France from 22 to 26 September 2014](#), 2015, paragraph 220.

¹¹¹ Council of Europe Commissioner for Human Rights, [report by Nils Muižnieks following his visit to France from 22 to 26 September 2014](#), 2015, paragraphs 218 to 263. The Commissioner particularly highlighted the need:

- to take measures to ensure that persons with disabilities have effective access to services;
- to build up community-based services;
- to improve the functioning of MDPHs to afford persons with disabilities effective access to suitable support;
- to end the transfer of persons with disabilities to Belgium;
- to persevere in the efforts to improve education facilities for children and young people with disabilities.

¹¹² United Nations Special Rapporteur on the Rights of Persons with Disabilities, [preliminary comments by the Rapporteur, Ms Catalina Devandas-Aguilar, during her visit to France from 3 to 13 October 2017](#), 2017.

b) Insufficient access to personal assistance

For sufficient access to be provided to a range of specific services needed to support independent life within the community, access must also be afforded to any personal assistance needed to be able to live in society and integrate into it. Without sufficient access to personal assistance, **the right of persons with disabilities to independence, social integration and full participation in the life of the community and the right to housing (protected respectively in Articles 15 and 31 of the Charter) cannot be guaranteed.**

Law No. 2005-102 of 11 February 2005 set up the disability compensation benefit (PCH). The provisions on the PCH were codified in Articles L245-1 to 12 of the Social Welfare and Family Code.¹¹³ The aim of the PCH is to finance disability-related spending linked to needs in the areas of personal assistance, technical aids, conversion of housing or vehicles, supplementary transport expenses and special or exceptional fees, and guide animals, within the limits of the rates and maximum amounts established by decree. The PCH may be paid to children in addition to the allowance awarded to the persons who assume responsibility for a child with disabilities, provided for by Article L541-1 of the Social Security Code, under specific conditions.¹¹⁴

Yet, this legal framework and its implementation do not afford persons with disabilities access to all the necessary personal assistance geared to each individual set of circumstances.

The barriers to such access are very numerous and pose a major problem, which is why detailed, documented examples have been provided in Appendix 6 to this complaint.

The following is a list of such obstacles without details:

- restrictive legislative and regulatory provisions on the assessment of personal assistance needs for which funding may be granted. These restrictions relate to persons with disabilities who may be entitled to individual assistance because of eligibility requirements introducing a form of discrimination depending on the type or seriousness of the disability: only persons with severe disabilities may claim disability compensation benefit. Restrictions also relate to the type of need: only a limited number of needs are covered and these have little to do with the real needs of people in all the areas of daily and social life;
- needs assessment procedures which interpret these needs very narrowly whether they consist of personal assistance, technical aids or housing conversion. For example, where personal assistance is concerned, there is a misunderstanding of the needs of persons with psychological disorders,¹¹⁵ an often excessively piecemeal assessment of needs because the assessment is generally based on an administrative

¹¹³ **Appendix 3 Applicable domestic and international law**

¹¹⁴ **Appendix 3 Applicable domestic and international law**

¹¹⁵ See:

– National Association of CREAIs (ANCREAI), Study on home help for adults with psychological disorders, 2016, pp. 38 et seq.
– National Public Health Board (HCSP), Opinion on the assessment of the needs of persons with disabilities and the development of solutions in MDPHs ([Avis relatif à l'évaluation des besoins des personnes handicapées et à l'élaboration des réponses au sein des maisons départementales des personnes handicapées \(MDPH\)](#)), 2015: p.7, Recommendation 6 on stepping up efforts for the assessment of psychological disorders.

file, an over-detailed quantification of needs restricting personal freedoms, downgrading of the seriousness of situations resulting in fewer hours of personal assistance whereas there has been no clear change in the person's circumstances, etc.;

- over-strict conditions for the public funding of personal assistance, technical aids,¹¹⁶ support for housing conversion work, coverage of extra transport costs or coverage of specific or exceptional burdens entailing significant costs for the persons concerned. This constitutes a restriction on access to aids in certain situations (with persons running up debts to access the remedy to their needs) or even simply an obstacle to making use of such aids. These difficulties, which are often the result of extremely low upper limits on the amount of aid available, are compounded by a lack of public management, which prevents practices from being standardised, costs from being reduced or synergies from being created for the benefit of the persons concerned with regard to the various types of funding available;
- administrative practices leading to restrictions in or even the denial of rights, including long treatment delays, ultimately depriving persons of the assistance they need, wrongful rejection of applications for failure to supply supporting documents which are not actually required or are no longer valid because of long treatment delays, various practices arising from deliberate misinterpretation of the relevant texts to reduce the amounts allocated or to reclaim large overpayments, etc. These practices often dissuade people from asserting their rights,¹¹⁷ especially as the authorities are known to use delaying tactics when judicial proceedings are initiated. Such practices can even place persons with disabilities in extreme difficulty and at risk of financial hardship;
- persons with disabilities not knowing about their rights and hence having no information about how to access them.¹¹⁸

Therefore, most persons with disabilities receive insufficient financial support if they are awarded any at all, thus blocking all access to personal assistance.¹¹⁹ Even where costs are covered, the system does not really enable the solution to be geared to the actual situation of the person and the response does not cover all areas of the person's life.

Reports from representative associations in the disability field condemn this denial of access to personal assistance which is encountered daily by children, adults and elderly people with disabilities throughout France. The authorities are also perfectly well aware of the situation as it is described in numerous public reports.¹²⁰ One of the Rights Defender's

¹¹⁶ European Committee of Social Rights, Conclusions 2016 – France - Article 15§3: “*Technical aids. The Committee previously noted that Law No. 2005/102 provides, inter alia, for the payment of the cost of certain technical aids and asked for information about the financial contributions which persons with disabilities must make themselves and about any aids to which they may be entitled free of charge (Conclusions 2008, 2012). Insofar as the report still does not answer these questions, the Committee considers that it has not been established that the situation is in conformity with the Charter in this respect*”.

¹¹⁷ APF (association for the disabled), “From the right to compensation to the recognition of a dependency risk – personal experiences” (“Du droit à la compensation... à la reconnaissance du risque autonomie – Témoignages”), 2011, p.19.

¹¹⁸ ANCREAI, Study on home help for adults with psychological disorders, (Etude sur l'accompagnement à domicile des personnes adultes en situation de handicap psychique) 2016, pp. 46 and 107.

¹¹⁹ IGAS, Changes in the disability compensation benefit (PCH) (Evolution de la prestation de compensation du handicap (PCH)), volume 1, 2016. See, in particular, p. 18, on inequalities linked to the criteria for entitlement to PCH and pp. 63 et seq. on sums to be covered by patients.

¹²⁰ See:

- IGAS report on “The links between disability and poverty – difficulties in accessing rights and resources” (“Les liens entre handicap et pauvreté: les difficultés dans l'accès aux droits et aux ressources”), 2014, pp.25 and 26,

reports expands on this: “The Rights Defender has identified problems in the following areas in particular: – delays in the processing of application by MDPHs; – assessment of incapacity rates; – geographical disparities in the recognition of rights; – coverage of costs of technical aids and personal assistance under the disability compensation benefit (PCH); – ...; – failure to take account of life projects when assessing compensation needs; – failure to give reasons for decisions”.¹²¹

In France therefore, persons with disabilities are frequently excluded from individual social benefits enabling them to access independent living and exercise their fundamental rights. France is perfectly well informed of the fact that the current system does not make the rights of persons with disabilities effective as the situation has been highlighted and criticised for years by associations and has been described in numerous public reports, **as illustrated in Appendix 6**. Despite all of this, for many years, no effective system has been set up to remedy this situation in practice.

In truth, the shortcomings of the French system of individual benefits reflect a fault in the design of France’s disability policy, namely a medical approach to disability which is not based on human rights and hence takes little account of the personal assistance needs that have to be met for people to be able to live in society and integrate into it. France’s individual benefits system does not equate to a true right to personal assistance in all areas of life to be able to achieve this independence and integration.

In section 2.1.3., it will be shown that the approach adopted by France towards personal assistance prevents it from respecting either the right of persons with disabilities to independence, social integration and full participation in the life of the community or the right to housing, as set forth in the Charter and interpreted in the light of the United Nations Convention on the Rights of Persons with Disabilities.

2.1.2.4. Insufficient access to services and facilities for the general public

a) Insufficient access to services and facilities

Access to services and facilities for the general public is a prerequisite for respect for the right of persons with disabilities to independence. However, in France no effective access of this type exists. **In this way the right of persons with disabilities to independence, social integration and full participation in the life of the community and the right to benefit from social welfare services are being flouted (rights protected respectively by Article 15 and 14 of the Charter).**

Poor accessibility constitutes a barrier to access for persons with disabilities to services and facilities for the general public. For decades the right of persons with disabilities to independence has been impeded by France’s failure to take account of the right to

§2.1.2 Compensation of disability-linked costs is inadequate or inappropriate;
- IGAS, [Evolution de la prestation de compensation du handicap \(PCH\)](#), Volume 1, 2016, summary on pp.3 et seq.;
- Rights Defender, [Annual Activity Report 2017](#), 2018, p.102;
- **Appendix 6 No effective access to personal assistance.**

¹²¹ Report by the Rights Defender, “2005-2015 – 10 years of action to promote the rights of persons with disabilities” ([“2005 - 2015 : 10 ans d’actions pour la défense des droits des personnes handicapées”](#)), 2015, box on p.23.

accessibility in the living environment.¹²² In his report of February 2015,¹²³ the Council of Europe Commissioner for Human Rights argued that “France is lagging significantly behind in terms of accessibility of public places and means of transport” and “many persons with disabilities remain isolated within their own social environment because of the inaccessibility of health facilities and means of transport, and the difficulty of accessing employment, which perpetuate those persons’ social exclusion and marginalisation”. In October 2017, the UN Special Rapporteur on the Rights of Persons with Disabilities also noted the poor accessibility to the physical environment, information and communication.¹²⁴

Since 1975 French legislation has included a requirement to make society more accessible, and this was fleshed out in 2010 by Articles 9 and 21 of the CRPD.¹²⁵ In view of the failure to render this requirement effective over a 30 year-span, the Law of 11 February 2005 reiterated it and established a 10-year time limit for public establishments to make existing buildings accessible and an obligation to construct new accessible buildings. France’s initial report on the implementation of the CRPD states that “in view of the number of partners and the amount of funds to be assembled, it has not been possible to achieve this goal, however desirable it is”.¹²⁶ This failure can be accounted for primarily by the lack of a concerted policy to organise and promote the increased accessibility of society.¹²⁷ The only solution that France could find in 2014 “to remedy this situation”¹²⁸ was to do away with the 10-year limit set by the law of 11 February 2005, make the system more flexible and exempt those who had not introduced accessibility measures from the penalties initially provided for failure to meet these obligations.¹²⁹ This situation was criticised by the Rights Defender.¹³⁰ Associations of persons with disabilities also reacted¹³¹ but unfortunately the

¹²² Article in the newspaper Le Monde of 21 July 2015, “Accessibility for persons with disabilities – a problem yet to be resolved” (“[L’accessibilité des handicapés, un problème toujours pas résolu](#)”).

¹²³ Council of Europe Commissioner for Human Rights, [report by Nils Muižnieks following his visit to France from 22 to 26 September 2014](#), 2015, paragraphs 239 and 240.

¹²⁴ United Nations Special Rapporteur on the Rights of Persons with Disabilities, [preliminary comments by the Rapporteur, Ms Catalina Devandas-Aguilar, during her visit to France from 3 to 13 October 2017](#).

¹²⁵ **Appendix 3 Applicable domestic and international law**

¹²⁶ France, [Initial report on the implementation of the UN Convention on the Rights of Persons with Disabilities](#), 2016 (in French only), paragraph 46

¹²⁷ See:

– Report by the Rights Defender, “2005-2015 – 10 years of action to promote the rights of persons with disabilities” (“[2005 - 2015 : 10 ans d’actions pour la défense des droits des personnes handicapées](#)”), 2015, editor’s comment, p.2: “*The Defender regrets the delays in achieving accessibility, which derive from the inadequacy of the system set up to achieve the goal of 1 January 2015. Efforts to raise awareness among partners including the authorities and stir them into action failed to live up to the task in hand*”;

– Reports by the Senate in 2012 and 2014 included major criticism of the Law of 2005 such as the lack of data and assessment tools, delays in making facilities accessible, numerous attempts to derogate from the principle of accessibility and, more generally, a lack of political commitment in this area:

– Senate, Information Report prepared on behalf of the Senatorial Committee on the monitoring of the application of Law No. 2005-102 [of 11 February 2005 for the equal rights and opportunities of persons with disabilities and their participation in citizenship](#), 2012, pp. 99 et seq.

– Senate, [Report on the bill authorising the Government to adopt legislation to make public establishments, public transport, residential buildings and roads accessible to persons with disabilities](#), 2014.

¹²⁸ France, [Initial report on the implementation of the UN Convention on the Rights of Persons with Disabilities](#), 2016 (in French only), paragraph 46.

¹²⁹ [Order No. 2014-1090 of 26 September 2014 on the accessibility for persons with disabilities of public establishments, public transport, residential buildings and roads](#).

¹³⁰ Report by the Rights Defender, “2005-2015 – 10 years of action to promote the rights of persons with disabilities” (“[2005 - 2015 : 10 ans d’actions pour la défense des droits des personnes handicapées](#)”), 2015, pp. 19 and 20.

¹³¹ See:

– the [Collective for an accessible France](#) was set up the day after it was announced that the 2015 deadline for the implementation of accessibility in France was to be extended. See, in particular, the press release of 30 October 2014, “Launch

legal action they brought was only very partly successful, if at all.¹³²

Faced with this situation, the Council of Europe Commissioner for Human Rights highlighted the need to ensure that the commitments entered into with regard to accessibility would be fully implemented and to tolerate no further delays in the arrangements that needed to be made to combat the isolation of persons with disabilities.¹³³

Yet since this time, the lack of political direction has persisted. For example, a report by the French National Assembly notes that in 2016, work to make higher education establishments accessible were postponed despite the fact that funds had been released for universities to be able to carry out this work.¹³⁴ As to the accessibility of housing, the bill on the future development of housing, planning and digital technology, known as the ELAN bill and tabled in the National Assembly on 4 April 2018, reneges on the requirement for new housing to be accessible by establishing a quota of only 10%.¹³⁵

In addition to this lack of commitment to the physical accessibility of buildings, there is a noticeable reticence in France vis-à-vis universal accessibility, which enables everyone to enjoy access to everything, including public and private buildings, housing, transport, roads, recreation, education, employment, health services, consumer products and services, and information and communication technologies.¹³⁶

Accessibility is a broader concept than access to the physical environment and also includes the ability to understand and be provided with information, a service, a benefit or a good, at all stages in life and regardless of the type of disability, whatever each person's capacities

of a national collective for an accessible France for all" (["Lancement d'un collectif national pour une France accessible à tous"](#));

– National Advisory Council for Disabled Persons, [Opinion of 29 September 2015 on the report by the Government to parliament on the national disability policy](#), p.9 (opinion, p.7 of the pdf).

¹³² See:

– Conseil d'Etat, [Decision No. 385354 of 22 October 2015](#);

– Conseil d'Etat, [Decision No. 386951 of 3 February 2016](#);

– Conseil d'Etat, [Decision No. 386985 of 3 February 2016](#);

– Conseil d'Etat, [Decision No. 380267 of 16 March 2016](#);

– Conseil d'Etat, [Decision No. 387876 of 6 July 2016](#);

– Conseil d'Etat, [Decision No. 397360 of 22 February 2018](#). In this decision, the Conseil d'Etat dismissed some of the applicants' arguments on the ground that the additional measures necessary to apply the relevant provisions of the CRPD had not been taken by the state, making these provisions, such as the definition of "universal design" in Article 2 of the CRPD, impossible to rely on because they had no direct effect (paragraphs 8, 10 and 12). The state's failure to act therefore prevented the rights of persons with disabilities from being effective.

¹³³ Council of Europe Commissioner for Human Rights, [report by Nils Muižnieks following his visit to France from 22 to 26 September 2014](#), 2015, paragraph 260.

¹³⁴ French National Assembly, [Report prepared on behalf of the Committee on Finances, General Economics and Budgetary Supervision on the bill tabled after the launch of the accelerated procedure on the settlement of the budget and the approval of the accounts of 2016 \(No. 5\), Volume II, Commentary on the Annual Performance Reports](#), 2017, p.236.

¹³⁵ See:

– French National Assembly, [Bill on the future development of housing, planning and digital technology](#), 4 April 2018, Article 18, pp.60 and 61;

– Rights Defender, [Opinion No. 18-06](#), 2018, p.9: "By replacing the rule that 100% of new dwellings must be accessible by a 10% quota, the measure undermines the principle of universal accessibility established in the Law of 2005 and in the [CRPD] along with the need to take account of all forms of disability";

– Joint Committee of Associations Representing Persons with Disabilities and their Families, press release of 4 April 2018, "The government fails to deliver on its promise to provide accessible new housing" (["Le gouvernement donne un mauvais ELAN à l'offre de logements neufs accessibles"](#)).

¹³⁶ The Collective for an accessible France, [Plea for the presidential elections in 2017, "Let's work together to make France accessible" \("Ensemble, rendons la France accessible"\)](#), 2016, p.5.

and specific characteristics.¹³⁷ For example persons with intellectual disabilities require adapted information and approaches such as easy-to-read and easy-to-understand language, and an effort to cater for these needs on the part of the persons they are dealing with. This would help them to exercise their right to an independent life and inclusion in the community more effectively,¹³⁸ but unfortunately, this aspect of accessibility is very under-developed in France.¹³⁹

In this general context, services and facilities for the general public such as social services,¹⁴⁰ public transport,¹⁴¹ services for children, education and training,¹⁴² and employment services are not accessible.

The failure to raise awareness about disability in French society, the lack of training on disability for professionals in various sectors and the absence in French law of a reasonable accommodation requirement (except in employment) compound these problems with access to services and facilities for the general public as these services and facilities are not always inclusive.¹⁴³

A new problem has arisen in recent years as public services are increasingly available only on-line. This undermines the autonomy of persons with disabilities in their contacts with these services when they encounter obstacles linked to the accessibility of digital services, their lack of computing skills or the impossibility of seeking help from another person.¹⁴⁴

Problems with access to housing and health very substantially undermine the right of persons with disabilities to an independent life within the community. These are outlined below.

¹³⁷ The Collective for an accessible France, [Plea for the presidential elections in 2017, "Let's work together to make France accessible" \("Ensemble, rendons la France accessible"\)](#), 2016, pp.5 and 6.

¹³⁸ Unapei, [Practical guide to accessibility](#), 2010.

¹³⁹ Unapei, [Manifesto for an accessible society for persons with mental disabilities](#), 2010.

¹⁴⁰ French Senate, [Succeeding in 2015. Accessibility of housing, public establishments, transport, roads and public spaces for persons with disabilities](#), 2013, section 3.3.2.3.

¹⁴¹ European Committee of Social Rights, [Conclusions 2016 – France - Article 15§3](#), on access to housing for persons with disabilities: the Committee notes that "most public transport is still inaccessible for persons with disabilities or reduced mobility, in spite of the objectives laid down in the 2005 law" and "therefore considers that the situation in this respect is not in conformity with Article 15§3 of the Charter on the ground that persons with disabilities are not guaranteed effective access to transport".

¹⁴² French Senate, [Succeeding in 2015. Accessibility of housing, public establishments, transport, roads and public spaces for persons with disabilities](#), 2013, section 3.3.2.2.

¹⁴³ See:

– Report by the Rights Defender, "2005-2015 – 10 years of action to promote the rights of persons with disabilities" ("[2005 - 2015 : 10 ans d'actions pour la défense des droits des personnes handicapées](#)"), 2015. This report gives many examples of problems faced by persons with disabilities in access to services and facilities for the general public;

– French Senate, [Succeeding in 2015. Accessibility of housing, public establishments, transport, roads and public spaces for persons with disabilities](#), 2013. In section 2.1.1. "Involving society as a whole", pp. 34 et seq., this report emphasises the need to improve both awareness-raising and training on accessibility and disability;

– French Senate, [Culture and disability – a democratic requirement](#), 2017. This report also highlights the progress that needs to be made on awareness-raising (pp. 31 et seq.) and the need to train cultural partners on disability issues (p. 46).

¹⁴⁴ See:

– Research Centre for the Study and Observation of Living Conditions (CREDOC), E-administration, the double punishment of persons suffering from hardship, 2017. This study points out that it is less common for persons with disabilities to be able to use digital tools (p.1) and many such persons feel that they are incapable of using a computer (p.2). For persons with disabilities using the Family Allowance Fund (which pays benefits including the disabled adult allowance), the need for human mediation is far more important than the possibility of being able to carry out all formalities using the Internet (p.4);

– Rights Defender, [Opinion No. 18-06](#), 2018, p.10.

b) Insufficient access to housing

Among the services and facilities designed for the general public, those facilitating access to housing are especially crucial for respect of the right to independence of persons with disabilities. If sufficient access is not provided, **the right to housing protected by Article 31 of the Charter is not respected.**

In France, the Besson Law of 31 May 1990 established the right to housing. Subsequently, in 1995, the Constitutional Council stated that the possibility for everyone to have decent housing was a constitutional goal.¹⁴⁵ Lastly, the Law of 5 March 2007 introduced an enforceable right to housing¹⁴⁶ aimed at priority groups such as persons with disabilities. These provisions and those relating to the accessibility of dwelling buildings were codified in the Building and Housing Code.¹⁴⁷ Articles 9, 19 and 28 of the CRPD complement this legislative framework.¹⁴⁸

However, despite these measures, persons with disabilities face major difficulties in gaining access to social housing, and much more so than those without disabilities.

The Rights Defender highlights the following problems in particular:¹⁴⁹

- problems of accessibility, linked especially with a failure to adapt housing or communal parts of buildings or with works which fail to take account of disabilities and therefore prevent persons suffering from them from using their dwelling or the amenities in the building;
- more broadly speaking, a failure to align the supply of suitable social housing with the demands of persons with disabilities;
- a failure to take account of the priority granted to persons with disabilities applying for social housing, leading to particularly long waiting times.

These issues should be placed in the context of a general shortage of housing to meet the demands of all poorly housed people. These difficulties are compounded for persons with disabilities with the result that waiting times for them are longer than for other applicants.¹⁵⁰

Yet, at the same time, people with mental or intellectual disabilities have greater housing needs, which are the result both of new aspirations and of de-institutionalisation in the mental health field and growing economic and social vulnerability. As the Rights Defender states “these problems are revealed in particular by the large percentage (30%) of persons suffering from serious mental disorders among persons living permanently on the

¹⁴⁵ Constitutional Council, [Decision No. 94-359 DC of 19 January 1995](#)

¹⁴⁶ A mechanism enabling persons in difficulty, who have been granted priority for the allocation of social housing and have not been offered housing within a reasonable time, to exercise their right to housing before a court.

¹⁴⁷ See, in particular, Articles L.111-7, L.300-1, L.302-1 and L.441-1 of the Building and Housing Code. **Appendix 3 Applicable domestic and international law.**

¹⁴⁸ **Appendix 3 Applicable domestic and international law.**

¹⁴⁹ Rights Defender, Factsheet on [“Housing, disability and the loss of independence”](#), 2014, p. 3.

¹⁵⁰ Article of 5 April 2016 in the magazine Faire Face, “You applied for accessible social housing? Don’t hold your breath!” ([“Vous avez demandé un logement social accessible ? Patientez !”](#)) : “Disabled applicants wait longer than others for social housing. The average waiting time for accessible housing has reached 27 months, compared to 19 months overall for all types of housing”.

street”.¹⁵¹

Therefore, access for persons with disabilities to the services and facilities enabling access to housing is far from adequate in France in view of the obligations deriving from the Charter.

g) Insufficient access to health care

Services and facilities for the general public designed to facilitate access to health care are also essential for the right of persons with disabilities to independence to be respected. If access is inadequate, **the right to health protection set forth in Article 11 of the Charter is not respected.**

Equal and free access to healthcare is a right granted by French legislation,¹⁵² which must be interpreted in the light of Article 25 of the CRPD.¹⁵³ However, despite these provisions, persons with disabilities face major access problems.

Persons with disabilities face difficulties with access to health services for the general public. In his report on France, the Council of Europe Commissioner for Human Rights highlights the inaccessibility of health facilities:

“Despite the commitments entered into by France under the European Social Charter and the United Nations Convention on the Rights of Persons with Disabilities, the Commissioner notes that many persons with disabilities remain isolated within their own social environment because of the inaccessibility of health facilities ...”.¹⁵⁴

Furthermore, in a report commissioned by the French Ministry of Health, Mr Pascal Jacob¹⁵⁵ states that, “over and above the geographical obstacles, the rationing of services through waiting lists and people forgoing medical treatment for financial reasons, it can be said, in general, that health professionals are not currently prepared to deal with and manage the specific problems of persons with disabilities”.¹⁵⁶ These problems have been confirmed by a field survey on persons with disabilities and in vulnerable situations.¹⁵⁷ They can even go so far as withholding of treatment¹⁵⁸ including primary healthcare.¹⁵⁹ These difficulties arise

¹⁵¹ Rights Defender, Factsheet on [“Housing, disability and the loss of independence”](#), 2014, p. 2.

¹⁵² Health-related rights are covered by Law No. 2002-2 of 2 January 2002 on the revitalisation of social and medico-social work, Law No. 2002-303 of 4 March 2002 on patients’ rights and the quality of the health system and Law No. 2005-370 of 22 April 2005 on patients’ rights and the end of life. More recently, Law No. 2009-879 of 21 July 2009 on hospital reform and patients, health and regions, known as the HPST Law, and the Law of 26 January 2016 on the modernisation of the health system have pointed out that the health system is based on these two principles. The provisions of these laws are codified in the Public Health Code, particularly Articles L1110- 1, L1110-1-1 and L1110-3. **Appendix 3 Applicable domestic and international law.**

¹⁵³ **Appendix 3 Applicable domestic and international law.**

¹⁵⁴ Council of Europe Commissioner for Human Rights, [report by Nils Muižnieks following his visit to France from 22 to 26 September 2014](#), 2015, particularly paragraph 239.

¹⁵⁵ Pascal Jacob, full report, “Citizens’ rights for persons with disabilities. A life of treatment and care without any interruption”, ([“Un droit citoyen pour la personne handicapée. Un parcours de soins et de santé sans rupture d’accompagnement”](#)), 2013.

¹⁵⁶ Pascal Jacob, [summary of his report on access to healthcare for persons with disabilities](#), 2013, p.2

¹⁵⁷ Adapei 69, APF, mrle Rhône Alpes, Unafam, Access to health care for persons with disabilities and in vulnerable situations. Assessment of the current situation in the City of Lyon and the *département* of the Rhône ([Accès à la santé des personnes en situation de handicap et de précarités. État des lieux pour proposer des réponses à partir de l’analyse des situations constatées sur les territoires de la métropole de Lyon et du département du Rhône](#)), 2016, p.118.

¹⁵⁸ Article of 21 February 2017 in the magazine Déclic, “Medical consultation – doctor refuses to treat my disabled child!”.

despite the fact that disabled persons' health needs are often greater than the general public's, or at least require special measures.¹⁶⁰

Poor co-operation between support services for people with disabilities and health services also result in major difficulties with access when what is needed is proper liaison between the two, albeit respecting each sector's fields of activity.¹⁶¹ This problem is compounded by the fact that access to support services is inadequate.

Failure to take account of persons' specific needs with regard to access to care sometimes has serious consequences for persons with intellectual disabilities, persons with multiple disabilities and persons with psychological disorders,¹⁶² such as inappropriate and abusive psychiatric care¹⁶³ resulting in full hospitalisation¹⁶⁴ and treatment that is sometimes forced,¹⁶⁵ and combined with unwarranted seclusion and restraint measures.¹⁶⁶

[\("Consultation médicale : un médecin refuse mon enfant handicapé !"\)](#).

¹⁵⁹ See:

- Pascal Jacob, [summary of his report on access to healthcare for persons with disabilities](#), 2013, p.5;
- Denis Piveteau, op. cit., p.70;
- Ile-de France Network on Disability, Prevention and Dental Treatment (Rhapsod'if), [2014 Activity Report](#). On p. 4 of this report it is pointed out that "in public health terms, oral and dental health are a priority issue for this target group, who have a high risk of pathology in this area".

¹⁶⁰ For example, with regard to persons with intellectual disabilities, see the Unapei White Paper on Accessible Health Care for persons with mental disabilities, ([Livre Blanc pour une santé accessible aux personnes handicapées mentales](#)), 2013, p.13.

¹⁶¹ See:

- Unapei, White Paper on Accessible Health Care for persons with mental disabilities, ([Livre Blanc pour une santé accessible aux personnes handicapées mentales](#)), 2013, p.19;
- Unapei, White Paper on "Multiple disabilities and citizenship – a challenge for all" ("Polyhandicap et citoyenneté, un défi pour tous"), 2016, p.24;
- Pascal Jacob, [summary of his report on access to healthcare for persons with disabilities](#), 2013, p.5;
- Denis Piveteau, op. cit., 2014, pp.70 et seq.;
- French Psychiatric and Mental Health Evidence Centre, Items of evidence to improve the treatment and life path of persons with mental disabilities arising from a schizophrenic disorder, ([Données de preuves en vue d'améliorer le parcours de soins et de vie des personnes présentant un handicap psychique sous tendu par un trouble schizophrénique](#)), 2015, pp.116 et seq.

¹⁶² See:

- Pascal Jacob, [summary of his report on access to healthcare for persons with disabilities](#), 2013, p.5;
- Unapei, White Paper on Accessible Health Care for persons with mental disabilities, ([Livre Blanc pour une santé accessible aux personnes handicapées mentales](#)), 2013, p.17;
- French National Institute of Health and Medical Research (Inserm), Joint expert report on intellectual deficiencies – Summary and recommendations ([Expertise collective Déficiences intellectuelles - Synthèse et recommandations](#)), 2016, pp. 29 et seq. and pp.106 et seq.;
- Unapei, White Paper on "Multiple disabilities and citizenship – a challenge for all" ("Polyhandicap et citoyenneté, un défi pour tous"), 2016, pp. 22 et seq.

¹⁶³ The following documents highlight the problem of extended hospitalisation for want of appropriate care outside hospital, particularly outpatient services:

- National Mental Health Support Task Force, Guide to a pluralistic approach to steering change – How to galvanise the life and treatment projects of long-term psychiatric hospital patients ([Guide pour une démarche plurielle de conduite du changement - Comment mobiliser le projet de vie et de soins des personnes longuement hospitalisées en psychiatrie](#)), 2012;
- IRDES, *Questions d'économie de la santé* No. 202, "Long-term psychiatric hospitalisation – analysis of geographical disparities and their determining factors", 2014, particularly conclusions 7 and 8;
- Denis Piveteau, op. cit., 2014, p.21;
- French Psychiatric and Mental Health Evidence Centre, Items of evidence to improve the treatment and life path of persons with mental disabilities arising from a schizophrenic disorder, ([Données de preuves en vue d'améliorer le parcours de soins et de vie des personnes présentant un handicap psychique sous tendu par un trouble schizophrénique](#)), 2015, pp.116 et seq.;
- Regional Health Agency of Auvergne-Rhône-Alpes, [Long-term hospitalisation in Rhône-Alpes \(Les hospitalisations psychiatriques au long cours en Rhône Alpes\)](#), 2016, pp.123 to 126.

¹⁶⁴ Denis Piveteau, op. cit., p. 71, with regard to persons with complex disabilities.

¹⁶⁵ See:

- IRDES, *Questions d'économie de la santé* No. 222 "Involuntary psychiatric treatment – results after four years of implementation of the Law of 5 July 2011" (["Les soins sans consentement en psychiatrie : bilan après quatre années de mise](#)

A report by the Rights Defender highlights the fragmentation of children's care paths in the context of the child welfare system.¹⁶⁷

The adoption of the Law of 21 July 2009 on hospital reform and on patients, health and the regions, one of whose aims was to combat unequal access to care for persons with disabilities did not result in any solutions to the problems although it did identify them.¹⁶⁸

A statement in 2013 by the Minister for Persons with Disabilities and Measures to Combat Exclusion concerning unequal access to care and health services for persons with disabilities showed that the government now acknowledged that these inequalities existed.¹⁶⁹ Nonetheless, the Law of 26 January on the Modernisation of the Health System did not provide a satisfactory response to the considerable problems faced in this area by persons with disabilities.

In section 2.1.3., it will be shown that inadequate access to services and facilities for the general public prevents France from respecting the right of persons with disabilities to independence, social integration and full participation in the life of the community, the right to benefit from social welfare services, the right to health protection and the right to housing, as set forth in the Charter and interpreted in the light of the CRPD.

2.1.3. Violations of the Charter

The lack of effective access to an independent life within the community for persons with disabilities living in France described above constitutes a violation by France of the right of

en œuvre de la loi du 5 juillet 2011”),2017;

– Council of Europe Commissioner for Human Rights, [report by Nils Muižnieks following his visit to France from 22 to 26 September 2014](#), 2015, paragraphs 233 and 234.

¹⁶⁶ See:

– French National Assembly, Information report to conclude the work of the assessment mission on Law No. 2013-869 of 27 September 2013 amending certain provisions arising from Law No. 2011-803 of 5 July 2011 on the rights and the protection of persons undergoing psychiatric treatment and the arrangements for their care, 2017, pp.117 et seq.;

– Report by the General Controller of Places of Detention on “Seclusion and restraint in mental health establishments” ([“Isolement et contention dans les établissements de santé mentale”](#)), 2016;

– Council of Europe, Report to the Government of the French Republic on the visit to France by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 15 to 27 November 2015 (in French only) April 2017, paragraph 142;

– Council of Europe Commissioner for Human Rights, [report by Nils Muižnieks following his visit to France from 22 to 26 September 2014](#), 2015, paragraph 232;

– National Health Authority (HAS), Good practice recommendation on “Seclusion and restraint in general psychiatry units” ([Recommandation de bonne pratique “Isolement et contention en psychiatrie générale”](#)), 2017. This recommendation sets out the very limited conditions in which seclusion and mechanical restraint should be exercised (see in particular the keynote messages on p. 5);

– Unafam, press release of 22 March 2017, “At last clear regulations on seclusion and restraint for psychiatric patients” ([“Enfin une réglementation précise sur l’isolement et la contention en psychiatrie”](#)). Unafam emphasises that such measures must be very exceptional and points out that persons being cared for in psychiatric hospitals are already experiencing considerable hardship.

¹⁶⁷ The Rights Defender’s 2015 annual report on children’s rights, entitled “Disability and child protection – rights for invisible children” ([“Handicap et protection de l’enfance : des droits pour des enfants invisible”](#)), pp.86 et seq.

¹⁶⁸ National Health Authority, Public hearing on “Access to care for persons with disabilities”, [Full report](#) and [Summary](#), 2009.

¹⁶⁹ Minister for Persons with Disabilities and Measures to Combat Exclusion, [Statement by Ms Marie-Arlette Carlotti in Garches on 6 June 2013 concerning unequal access to care and health services](#).

persons with disabilities to independence, social integration and participation in the life of the community (1), the right to protection against poverty and social exclusion (2), the right to benefit from social welfare services (3), the right to health protection (4) and the right to housing (5), considered alone and/or in conjunction with the principle of non-discrimination.

2.13.1. Violation of the right of persons with disabilities to independence, social integration and participation in the life of the community – Article 15§3 taken alone and/or in conjunction with Article E on non-discrimination

The European Committee of Social Rights (“the Committee”) has clarified the scope of Article 15, paragraph 3, of the Charter in several decisions.

In its decision on *Autism-Europe v. France* of 4 November 2003, the Committee pointed out that “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’” and “that Article 15 applies to all persons with disabilities regardless of the nature and origin of their disability and irrespective of their age”.¹⁷⁰

In its decision on *AEH v. France* of 11 September 2013, the Committee reiterated what the intention of the authors of the revised Charter was when drafting Article 15 by citing the explanatory report to the revised Charter. The protection of persons with disabilities provided for by this article covers “the right of persons with disabilities to independent social integration, personal autonomy and participation in the life of the community in general. The words ‘effective exercise of the right to independence’ contained in the introductory sentence to the provision imply, inter alia, that disabled persons should have the right to an independent life. ... Parties must aim to develop a coherent policy for persons with disabilities. The provision takes a modern approach ... [The article] not only provides the possibility, but to a large extent obliges Parties to adopt positive measures for the disabled”.¹⁷¹ The Committee also points out that “according to the wording of Article 15 itself, its aim is to secure the ‘right of persons with disabilities to independence, social integration and participation in the life of the community’. Each paragraph of Article 15 comes together to achieve this objective”.¹⁷²

In the same decision, the Committee stressed that Article 15 of the Charter reflects changes in Europe’s value system in which there has been a shift to an approach centred on inclusion and choice.¹⁷³

With regard more specifically to Article 15§3 of the Charter, in its decision on *FIDH v. Belgium* of 18 March 2013, the Committee stated that “under Article 15§3, States undertook to adopt a coherent policy on disabilities, with positive action measures to achieve the aims of social integration and full participation. These measures should have a clear legal basis and be co-ordinated. ... Article 15§3 requires, in particular, a number of measures to foster

¹⁷⁰ European Committee of Social Rights, *Autism-Europe v. France*, Collective Complaint No. 13/2002, [decision on the merits of 4 November 2003](#), §48.

¹⁷¹ European Committee of Social Rights, *European Action of the Disabled (AEH) v. France*, Collective Complaint No. 81/2012, [decision on the merits of 11 September 2013](#), §27.

¹⁷² *Ibid.*, §28.

¹⁷³ *Ibid.*, §75.

the integration and participation of persons with disabilities. To give meaningful effect to this undertaking:

- Mechanisms must be established to assess the barriers to communication and mobility faced by persons with disabilities and identify the support measures that are required to assist them in overcoming these barriers;
- Technical aids must be available either for free or subject to an appropriate contribution towards their cost and taking into account the beneficiary's means. Such aids may for example take the form of prostheses, walkers, wheelchairs, guide dogs and appropriate housing support arrangements;
- Support services, such as personal assistance and auxiliary aids, must be available, either for free or subject to an appropriate contribution towards their cost and taking into account the beneficiary's means. (Conclusions 2008, Statement of interpretation on Article 15§3).

... Article 15§3 of the Charter is a general provision which, with a view to the full integration and participation of persons with disabilities in social life, does not require States Parties to overcome barriers to communication and mobility alone, but also those relating to leisure, cultural activities, transport and housing".¹⁷⁴

Relying initially on Recommendation No.R(92)6 of the Committee of Ministers of the Council of Europe on a coherent policy for people with disabilities,¹⁷⁵ Article 15§3 of the Charter must also be read in the light of [Recommendation \(2006\) 5 of the Committee of Ministers of the Council of Europe on the Council of Europe Action Plan to promote the rights and full participation of people with disabilities in society](#).¹⁷⁶¹⁷⁷

As the Committee has already done with regard to Article 14§1 of the Charter,¹⁷⁸ the standard-setting content of Article 15§3 of the Charter must be examined in the light of the undertakings made by France through the CRPD. In this connection, the Court of Justice of the European Union also interprets the law of the Union in the light of the CRPD.¹⁷⁹

The Committee has stated that when it is required to interpret the Charter, it applies the methods of interpretation set out in the 1969 Vienna Convention on the law of treaties, and that the Charter is an instrument designed to complement the European Convention for the Protection of Human Rights and Fundamental Freedoms and give life and meaning to fundamental social rights.¹⁸⁰ This inevitably leads it to take account of the principles arising from the European Convention or the CRPD. The European Court of Human Rights has also

¹⁷⁴European Committee of Social Rights, International Federation for Human Rights (FIDH) v. Belgium, Collective Complaint No. 75/2011, [decision on the merits of 18 March 2013](#), §§172 to 174.

¹⁷⁵ Council of Europe, [Recommendation No. R\(92\)6 of the Committee of Ministers of the Council of Europe on a coherent policy for people with disabilities](#). In the appendix of this recommendation, particularly Part VIII, details are given of individual measures to be taken to improve the social integration and the environment of persons with disabilities.

¹⁷⁶ Council of Europe, [Recommendation No. \(2006\) 5 of the Committee of Ministers on the Council of Europe Action Plan to promote the rights and full participation of people with disabilities in society: improving the quality of life of people with disabilities in Europe 2006-2015](#). Action line No. 8 on community living also gives guidance on individual support measures which must be available to persons with disabilities to enable them to live in the community.

¹⁷⁷ European Committee of Social Rights, International Federation for Human Rights (FIDH) v. Belgium, Collective Complaint No. 75/2011, [decision on the merits of 18 March 2013](#), §115.

¹⁷⁸ Ibid., §§111 to 114.

¹⁷⁹ Court of Justice of the European Union, [judgment of 1 December 2016, Daouidi, C 395/15](#), §§40 and 41.

¹⁸⁰ European Committee of Social Rights, International Federation of Human Rights Leagues (FIDH) v. France, Collective Complaint No. 14/2003, [decision on the merits of 8 September 2004](#), §§26 to 29.

referred to the CRPD when interpreting the provisions of the Convention.¹⁸¹ Similarly, the Court refers to Recommendation 1592 (2003) of the Parliamentary Assembly of the Council of Europe towards full inclusion of persons with disabilities.¹⁸²

This practice of taking the CRPD into account is in line with the Council of Europe Disability Strategy 2017-2023 “Human rights: a reality for all”, adopted on 30 November 2016, which states that “persons with disabilities are entitled to have access to and enjoy the full range of human rights safeguarded by ... the United Nations Convention on the Rights of Persons with Disabilities” and that the intention is to act “in line with the UNCRPD” and with “the evolving body of decisions, guidelines and General Comments of the UNCRPD Committee”.¹⁸³

Article 19 of the CRPD, on living independently and being included in the community establishes that the States Parties “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 ... 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”.¹⁸⁴

The complainant organisations ask the Committee to follow its case-law¹⁸⁵ and to take note of the document on “The right of people with disabilities to live independently and be included in the community”, produced by the Council of Europe Commissioner for Human Rights. In interpreting the CRPD, particularly Article 19(b) thereof, this document states:

-
- that this article implies “providing access to individualised disability-related supports on which enjoyment of this right [i.e. to live independently and be included in the community] depends for many individuals”;¹⁸⁶
 - that “independent living occurs if, in whatever living scheme one chooses to live one’s life, ... one retains autonomy and control over one’s life and decisions while accessing the individualised supports needed to do so”;¹⁸⁷
 - that “various dimensions of support are required to enable inclusion in the community. Support must allow for the choice generally experienced by people without disabilities in typical life activities, and not be strictly limited to what the particular provider has to offer. Support, which may be necessary in various areas of

¹⁸¹ See, in particular:

– European Court of Human Rights, *RP and Others v. the United Kingdom*, [judgment of 9 October 2012](#), application no. 38245/08;

– European Court of Human Rights, *Guberina v. Croatia*, [judgment of 22 March 2016](#), application no. 23682/13;

– European Court of Human Rights, *A.-M.V. v. Finland*, [judgment of 23 March 2017](#), application no. 53251/13.

¹⁸² European Court of Human Rights, *Glor v. Switzerland*, [judgment of 30 April 2009](#), application no.13444/04.

¹⁸³ Council of Europe, [Disability Strategy 2017-2023 “Human rights: a reality for all”](#), paragraphs 2 and 23.

¹⁸⁴ **Appendix 3 Applicable domestic and international law.**

¹⁸⁵ European Committee of Social Rights, *International Federation for Human Rights (FIDH) v. Belgium*, Collective Complaint No. 75/2011, [decision on the merits of 18 March 2013](#), §114.

¹⁸⁶ Council of Europe Commissioner for Human Rights, [The right of people with disabilities to live independently and be included in the community](#), 2012, section 1.1.

¹⁸⁷ *Ibid.*, section 1.3.2.

life, ... should be value-neutral. The individual supported should be able to adopt or reject that support, and choose to make a different decision altogether”;¹⁸⁸

- that “choice and control over the support needed to live and be included in the community are of paramount importance in the area of support services, in particular personal assistance”.¹⁸⁹

The complainant organisations also request the Committee to take account, in accordance with its case-law,¹⁹⁰ of the General Comments of the UN Committee on the Rights of Persons with Disabilities, particularly General Comment No. 5 on living independently and being included in the community. In this comment, Article 19 of the CRPD is interpreted to require the States Parties:

- to take immediate action to ensure that persons with disabilities can freely choose where to live and receive any support they need regardless of where they live;¹⁹¹
- to devise personal assistance programmes providing sufficient and fair financial support to enable persons with disabilities to live independently in the community.¹⁹² These programmes must also be available for persons with disabilities regardless of their level of disability and hence of the level of support needed.¹⁹³

It is clear therefore that under Article 15 of the Charter, particularly under Article 15§3, as clarified by the case-law of the Committee and Article 19 of the CRPD, States Parties must take measures supporting all persons with disabilities to make their right to independence effective. These measures comprise technical aids, support services such as live assistance and, more generally, individual assistance measures designed to overcome barriers to communication and mobility and facilitate access to all areas of life in the community in accordance with the life choices of the persons concerned, including where they choose to live.

Yet, it was demonstrated in section 2.1.2 above that the French individual support system is based on a disability policy still centred on a medical approach, focusing on functional limitations, not on human rights, and taking little account of the personal assistance required for persons with disabilities to be able to live in the community and be integrated into it, including their free choice of where to live.

Besides the many shortcomings of the system it creates (failure to cater for certain types of disability, insufficient scope and amount of assistance available, abusive administrative practices restricting people’s rights, failure of the authorities to provide a guiding hand, etc.), France’s outmoded approach to personal assistance is incompatible with respect for the right to independence, social integration and participation in the life of the community. For, if personal assistance needs are not catered for, protection of this right is not guaranteed and respect for the fundamental rights and dignity of persons with disabilities is

¹⁸⁸ Ibid., section 3.1.2, p. 30.

¹⁸⁹ Ibid., section 3.1.2, p. 31.

¹⁹⁰ European Committee of Social Rights, *Mental Disability Advocacy Center (MDAC) v. Belgaum*, Collective Complaint No. 109/2014, [decision on the merits of 16 October 2017](#), §72.

¹⁹¹ UN Committee on the Rights of Persons with Disabilities, [General comment No. 5 \(2017\) on living independently and being included in the community](#), §§ 38 and 39.

¹⁹² Ibid., §16(d).

¹⁹³ Ibid., §20.

not secured in France.

As demonstrated in section 2.1.2, France is perfectly well aware that the system it has set up does not enable the rights of persons with disabilities to be effective, and this has, moreover, been acknowledged by the authorities. Yet, despite all of this, no effective action has been taken over the years to implement the rights protected by the Charter satisfactorily.

In several of its decisions, the Committee has highlighted the scope of the states' obligations when implementing the Charter: the aim and the purpose of the Charter, being a human rights protection instrument, is to protect rights not merely theoretically, but also in fact¹⁹⁴ and the States Parties are under an obligation to take not merely legal action but also practical action to give full effect to the rights recognised in the Charter.¹⁹⁵ With regard to the need to make persons' rights effective not just theoretically but also in fact, the Committee has stated that states must make available the resources and introduce the operational procedures necessary to give full effect to the rights specified in the Charter.¹⁹⁶

In this context, the complainant organisations consider that France's lack of initiative to make the fundamental rights of persons with disabilities effective and, in particular, its failure to safeguard their right to independence, social integration and participation in the life of the community despite the many reports published by the authorities and independent administrative bodies over the years, constitutes a breach by France of its obligations under the Charter.

Consequently, the absence in France of a system providing persons with disabilities with effective access to the personal assistance they need to live in society and be integrated into it in all areas of life so as to live an independent life within the community in accordance with their life choices constitutes a violation of Article 15§3 of the Charter.

Furthermore, Article 15§3 of the Charter requires States Parties to “overcome barriers to communication and mobility ... enabling access to transport, housing, cultural activities and leisure”¹⁹⁷, in other words to make society as a whole accessible.

Accordingly, the Committee has already found that “all newly constructed or renovated public buildings and facilities, and buildings open to the public should be physically accessible”.¹⁹⁸

This provision of the Charter must now be read in the light of the Council of Europe

¹⁹⁴European Committee of Social Rights, *International Commission of Jurists v. Portugal*, Collective Complaint No. 1/1998, [decision on the merits of 9 September 1999](#), §32.

¹⁹⁵ See:

– European Committee of Social Rights, *Autism-Europe v. France*, Collective Complaint No.13/2002, [decision on the merits of 4 November 2003](#), §53;

– European Committee of Social Rights, *International Movement ATD Fourth World v. France*, *Collective Complaint No. 33/2006*, [decision on the merits of 5 December 2007](#), §61.

¹⁹⁶ European Committee of Social Rights, *International Movement ATD Fourth World v. France*, Collective Complaint No. 33/2006, [decision on the merits of 5 December 2007](#), §61.

¹⁹⁷ European Committee of Social Rights, *International Federation for Human Rights (FIDH) v. Belgium*, Collective Complaint No. 75/2011, [decision on the merits of 18 March 2013](#), §174.

¹⁹⁸ European Committee of Social Rights, [Conclusions 2003 – Italy – Article 15§3](#), concerning mobility.

Disability Strategy 2017-2023 “Human rights: a reality for all”, adopted on 30 November 2016. Universal design and accessibility are two of the priority areas of this strategy,¹⁹⁹ which states that “accessibility is often viewed only as accessibility to the built environment. However, it is a much wider concept. It extends also to accessibility of products and services, including the channels in which services are delivered”.²⁰⁰

This approach is also consistent with the CRPD, of which Article 9, on “Accessibility” states that “to enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas”.²⁰¹ Article 21, on “Freedom of expression and opinion, and access to information”,²⁰² sets out the requirements where it comes to the accessibility of information.

Article 19(c) of the CRPD states that States Parties must ensure that “community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs”.²⁰³

When interpreting the CRPD, particularly the interaction between Article 19(c) and Article 9 of this convention, the Council of Europe Commissioner states, in his report on “The right of people with disabilities to live independently and be included in the community” that services “may need to be adjusted at the macro level to include people with disabilities”.²⁰⁴

Article 19 of the CRPD has moreover been interpreted by the UN Committee on the Rights of Persons with Disabilities to require States Parties to ensure that people with disabilities are granted reasonable accommodation to promote their inclusion at local level.²⁰⁵

The UN Committee states that support services and facilities include public libraries, hospitals, schools, transport, shops, markets and museums. It puts particular emphasis on the need for these services and facilities to be available, universally accessible, acceptable and adaptable for all persons with disabilities.²⁰⁶ It also points out that deinstitutionalisation programmes must be part of a comprehensive inclusion strategy, including policies to increase public awareness and reorganise services and facilities to secure a fully independent life and inclusion in the community for persons with disabilities.²⁰⁷

The message therefore of Article 15 of the Charter, particularly paragraph 3 thereof, as

¹⁹⁹ Council of Europe, all”, points 2.2 and 3.3.

²⁰⁰ Ibid., paragraph 56.

²⁰¹ **Appendix 3 Applicable domestic and international law**

²⁰² **Appendix 3 Applicable domestic and international law**

²⁰³ **Appendix 3 Applicable domestic and international law**

²⁰⁴ Council of Europe Commissioner for Human Rights, [The right of people with disabilities to live independently and be included in the community](#), 2012, section 3.1.3, p.34.

²⁰⁵ UN Committee on the Rights of Persons with Disabilities, [General comment No. 5 \(2017\) on living independently and being included in the community](#), §46

²⁰⁶ Ibid., §32

²⁰⁷ Ibid., §33

fleshed out by the case-law of the Committee and the CRPD, is that states must take measures to improve the accessibility of services and facilities designed for the general public to make the right of persons with disabilities to independence effective.

However, it was demonstrated in section 2.1.2 above that in France, despite legislation on the subject dating back to 1975, these services and facilities are not accessible because of the failure to secure universal accessibility in practice. France is perfectly aware of its failings in this area because it has even enacted legislation to increase the possibility of derogating from the general accessibility requirement and to extend the deadlines by which accessibility needs to be achieved.

Yet, as already stated, the aim and the purpose of the Charter is to protect rights not merely theoretically, but also in fact²⁰⁸, and the States Parties are under an obligation to take not merely legal action but also practical action to give full effect to the rights recognised in the Charter.²⁰⁹ States must make available the resources and introduce the operational procedures necessary to give full effect to the rights specified in the Charter.²¹⁰

In this context, the complainant organisations consider that France's lack of initiative to make the right to independence, social integration and participation in the life of the community effective by making services and facilities for the general public accessible despite the many national and European reports highlighting inadequacies in this area constitutes a breach by France of its obligations under the Charter.

Consequently the insufficient accessibility of services and facilities in France also constitutes a violation of Article 15§3 of the Charter.

In its case-law, the Committee has also clarified the scope of Article E. Under this article, the enjoyment of the rights set forth in the Charter must be secured without discrimination on the ground of disability.²¹¹

The Committee pointed out that although the term disability does not figure in Article E of the Charter, it is covered by it. In this connection, the Committee referred to the interpretation by the European Court of Human Rights of Article 14 of the Convention, particularly the *Thlimmenos v. Greece* case.²¹²

The Committee has stressed in its case-law that to meet the obligations arising from Article E, states must take account of the specific situation of some groups and take specific measures where necessary to eliminate discrimination, as identical treatment alone is not

²⁰⁸ European Committee of Social Rights, *International Commission of Jurists v. Portugal*, Collective Complaint No. 1/1998, [decision on the merits of 9 September 1999](#), §32.

²⁰⁹ See:

– European Committee of Social Rights, *Autism-Europe v. France*, Collective Complaint No.13/2002, [decision on the merits of 4 November 2003](#), §53;

– European Committee of Social Rights, *International Movement ATD Fourth World v. France*, Collective Complaint No. 33/2006, [decision on the merits of 5 December 2007](#), §61.

²¹⁰ European Committee of Social Rights, *International Movement ATD Fourth World v. France*, Collective Complaint No. 33/2006, [decision on the merits of 5 December 2007](#), §61.

²¹¹ European Committee of Social Rights, *Autism-Europe v. France*, Collective Complaint No. 13/2002, [decision on the merits of 4 November 2003](#), §51.

²¹² European Committee of Social Rights, *Autism-Europe v. France*, Collective Complaint No. 13/2002, [decision on the merits of 4 November 2003](#), §52.

enough to protect a given category from all discrimination.²¹³

Article E of the Charter prohibits not only direct discrimination but also “all forms of indirect discrimination” which “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”.²¹⁴

This normative content is strengthened by the provisions of Article 19 of the CRPD, which states that persons with disabilities must have access to the personal assistance necessary to be able to live in the community and be integrated into it and to services and facilities designed for the general public “with choices equal to others”.

For persons with disabilities, enjoyment of the right to independence, social integration and participation in the life of the community on an equal footing with others implies the introduction of measures removing barriers connected with the person’s environment or disabling situation. Yet, as demonstrated in section 2.1.2 above, in France these barriers remain. By failing to provide sufficient access to personal assistance and to services and facilities for the general public, France fails to cater for the specific needs of persons with disabilities and denies them equal access to collective benefits. This amounts to discrimination against persons with disabilities as it deprives them of the possibility of leading an independent life within the community like other citizens.

Furthermore, the failure to allocate the necessary resources for full and effective access to personal assistance and to social-rights services and facilities stems from restrictive management of the state welfare budget. In this connection, the Committee found in its decision on *AEH v. France*,²¹⁵ that “budget restrictions in social policy matters are likely to place persons with disabilities at a disadvantage and thus result in a difference in treatment indirectly based on disability” as people with disabilities are “more likely to be dependent on community care, funded through the State budget, in order to live independently and in dignity, as compared with other persons in receipt of community care”. The tight budgetary context surrounding measures designed to remove barriers linked to a person’s environment or disability indirectly hampers persons with disabilities and constitutes discrimination.

By failing to see to it that the right of persons with disabilities to independence, social integration and participation in the life of the community is effective, France is in breach of Article 15§3 of the Charter, taken alone and/or in conjunction with Article E on non-discrimination.

²¹³ See:

– European Committee of Social Rights, *European Roma Rights Centre v. Italy*, Collective Complaint No. 27/2004, decision on the merits of 7 December 2005, §§36 and 46;
– European Committee of Social Rights, *Centre on Housing Rights and Evictions (COHRE) v. Italy*, Collective Complaint No. 58/2009, decision on the merits of 25 June 2010, §35;
– European Committee of Social Rights, *International Federation for Human Rights (FIDH) v. Belgium*, Collective Complaint No. 62/2010, decision on the merits of 21 March 2012, §§49 and 50.

²¹⁴ See:

– European Committee of Social Rights, *Autism-Europe v. France*, Collective Complaint No. 13/2002, decision on the merits of 4 November 2003, §52;
– European Committee of Social Rights, *European Action of the Disabled (AEH) v. France*, Collective Complaint No. 81/2012, [decision on the merits of 11 September 2013](#), §133.

²¹⁵ European Committee of Social Rights, *European Action of the Disabled (AEH) v. France*, Collective Complaint No. 81/2012, [decision on the merits of 11 September 2013](#), §§142 to 145

2132. Violation of the right to protection against poverty and social exclusion – Article 30

France has undertaken, under Article 30 of the Charter, to ensure the effective exercise of the right to protection against poverty and social exclusion. This undertaking implies that it will 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.

In its decision on FIDH v. Belgium of 18 March 2013, the European Committee of Social Rights explained the scope of Article 30 of the Charter. It pointed out that Article 30 of the Charter requires States Parties to adopt positive measures for groups generally acknowledged to be socially excluded or disadvantaged.²¹⁶

According to the Committee, persons with disabilities are a vulnerable group in the context of the application of Article 14§1 of the Charter.²¹⁷ They must also be regarded as such when Article 30 is applied for, as demonstrated in section 2.1.2 above, in France, persons with disabilities are particularly exposed to social exclusion and poverty because of the lack of a comprehensive, co-ordinated strategy to promote independent living within the community.

In the Committee's view, Article 30 requires states to "adopt an overall and co-ordinated approach, which should consist of an analytical framework, a set of priorities and measures taking account of the problems' nature and extent, so as to prevent and remove obstacles to access to fundamental social rights, an approach that cannot be implemented without collecting statistics".²¹⁸

The Committee emphasises that "no State can know how many people with disabilities there are, nor what their needs are, nor in particular their wishes, if there is no information or evaluation system whereby it is possible, on the basis of reliable statistics and reviewable indicators, to obtain information and make the necessary comparable forecasts. The Committee considers this a prerequisite for the effective implementation of Article 30 of the Charter".²¹⁹

The European Committee of Social Rights has pointed out that living in poverty or social exclusion undermines human dignity.²²⁰

Article 30 of the Charter must also be interpreted in the light of the following instruments:

- Recommendation No. (2006) 5 of the Committee of Ministers of the Council of

²¹⁶ European Committee of Social Rights, International Federation for Human Rights (FIDH) v. Belgium, Collective Complaint No. 75/2011, [decision on the merits of 18 March 2013](#), §193.

²¹⁷ European Committee of Social Rights, Conclusions 2009, Statement of interpretation on Article 14§1

²¹⁸ European Committee of Social Rights, International Federation for Human Rights (FIDH) v. Belgium, Collective Complaint No. 75/2011, [decision on the merits of 18 March 2013](#), §194.

²¹⁹ *Ibid.*, §195.

²²⁰ European Committee of Social Rights, European Roma Rights Centre (ERRC) v. Ireland, Collective Complaint No.100/2013, decision on the merits of 1 December 2015, §185.

Europe on the Council of Europe Action Plan to promote the rights and full participation of people with disabilities in society: improving the quality of life of people with disabilities in Europe 2006-2015.²²¹ Action line No. 14 on “Research and development”²²² recommends that states should “develop statistical and information strategies for disability policy and standard development based on a social and human rights-based model of disability” and “ensure information gained through needs assessments ... is used to the greatest effect to inform overall service planning and provision at national, regional and local levels”;

- the Council of Europe Disability Strategy 2017-2023 “Human rights: a reality for all”, adopted on 30 November 2016. This invites member states to adopt a gender equality perspective, to support efforts to collect data and organise public awareness-raising campaigns.²²³

Furthermore, as with Article 14§1 of the Charter,²²⁴ the normative content of Article 30 must be examined in the light of France’s commitments under the CRPD.

This approach is consistent with the Council of Europe Disability Strategy 2017-2023, which states that “persons with disabilities are entitled to have access to and enjoy the full range of human rights safeguarded by ... the United Nations Convention on the Rights of Persons with Disabilities” and that the intention is to act “in line with the UNCRPD” and with “the evolving body of decisions, guidelines and General Comments of the UNCRPD Committee”.²²⁵

Article 4 of the CRPD, setting out “General obligations”,²²⁶ requires the states to adopt a strategy for the implementation of the rights of persons with disabilities.²²⁷ Articles 6 and 7 of the CRPD,²²⁸ on women and children with disabilities respectively, imply that women and children with disabilities should be covered by this strategy. Under Article 8, on “Awareness-raising”,²²⁹ the member states are required to take measures to raise awareness among all members of society while, under Articles 9, on “Accessibility” and 21 on “Freedom of expression and opinion, and access to information”,²³⁰ they are expected to promote the accessibility of society. Lastly, under Article 31 , on “Statistics and data

²²¹ European Committee of Social Rights, International Federation for Human Rights (FIDH) v. Belgium, Collective Complaint No. 75/2011, [decision on the merits of 18 March 2013](#), §115.

²²² Council of Europe, [Recommendation No. \(2006\) 5 of the Committee of Ministers on the Council of Europe Action Plan to promote the rights and full participation of people with disabilities in society: improving the quality of life of people with disabilities in Europe 2006-2015](#), Appendix, section 3.14.

²²³ Council of Europe, [Disability Strategy 2017-2023 “Human rights: a reality for all”](#), paragraphs 41, 51(d) and 54.

²²⁴ European Committee of Social Rights, International Federation for Human Rights (FIDH) v. Belgium, Collective Complaint No. 75/2011, [decision on the merits of 18 March 2013](#), §§ 111 to 114.

²²⁵ Council of Europe, [Disability Strategy 2017-2023 “Human rights: a reality for all”](#), paragraphs 2 and 23.

²²⁶ **Appendix 3 Applicable domestic and international law**

²²⁷ See, in particular:

- UN Committee on the Rights of Persons with Disabilities, [Concluding observations on the initial report of Belgium](#), 2014, paragraph 6;
- UN Committee on the Rights of Persons with Disabilities, [Concluding observations on the initial report of Denmark](#), 2014, paragraph 9;
- UN Committee on the Rights of Persons with Disabilities, [Concluding observations on the initial report of Portugal](#), 2016, paragraph 12.

²²⁸ **Appendix 3 Applicable domestic and international law**

²²⁹ **Appendix 3 Applicable domestic and international law**

²³⁰ **Appendix 3 Applicable domestic and international law**

collection”,²³¹ the 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 CRPD and to identify and address the barriers faced by persons with disabilities in exercising their rights.

The complainant organisations also request the Committee to follow its own case-law²³² and take account of the general comments of the UN Committee on the Rights of Persons with Disabilities, particularly General Comment No. 5 on living independently and being included in the community. In this comment Article 19 of the CRPD²³³ is interpreted to mean that there should be a strategy to enable persons with disabilities to be included in the community with the same freedom of choice as others,²³⁴ including through implementation of a de-institutionalisation strategy.²³⁵

France therefore is required, under Article 30 of the Charter interpreted in the light of the CRPD, to adopt an overall, co-ordinated approach to promote effective access for persons with disabilities to independent living and inclusion in the community:

- by adopting a consistent strategy based on the collection of reliable data and statistics;
- by working to raise public awareness about disability and making society more accessible for the disabled;
- by combating discrimination and taking account of the situation of women and children with disabilities;
- by implementing a strategy to offer all persons with disabilities community-based solutions helping them to lead independent lives within the community thanks to the support in all areas of life of specialised services, personal assistance and services for the general public including the de-institutionalisation of existing services.

However, it has been demonstrated in section 2.1.2 above that France does not have an overall, co-ordinated policy to help people with disabilities lead an independent life within the community, as defined by the Committee.²³⁶

By failing to adopt an overall, co-ordinated approach to help people with disabilities lead an independent life within the community, France is in breach of Article 30 of the Charter.

2133. Violation of the right to benefit from social welfare services – Article 14§1 taken alone and/or in conjunction with Article E on non-discrimination

²³¹ **Appendix 3 Applicable domestic and international law**

²³² European Committee of Social Rights, *Mental Disability Advocacy Center (MDAC) v. Belgium*, Collective Complaint No. 109/2014, [decision on the merits of 16 October 2017](#), §72.

²³³ **Appendix 3 Applicable domestic and international law**

²³⁴ UN Committee on the Rights of Persons with Disabilities, General Comment No. 5 on the right to live independently and being included in the community, §§ 16(a) and 24.

²³⁵ *Ibid.*, §§ 42 and 58.

²³⁶ European Committee of Social Rights, *International Federation for Human Rights (FIDH) v. Belgium*, Collective Complaint No. 75/2011, [decision on the merits of 18 March 2013](#), §§194 and 195.

In its decision on *International Federation for Human Rights (FIDH) v. Belgium*, the Committee clarified the scope of Article 14§1 of the Charter with regard to persons with disabilities.

Article 14§1 of the Charter is the provision that applies “to problems that are related to the organisation, specialisation and geographical distribution of social welfare services and to the equal and effective access to and standard of the services on offer”.²³⁷

Under this provision, persons with disabilities have an individual right to equal and effective access to social services, guaranteed in law and in practice.²³⁸ Access is equal and effective “if the State Party offers varied and multiple methods of care for these people by the community and if the number and quality of the social welfare services actually provided correspond as closely as possible to the specific, practical, individual needs of the persons concerned so that a free choice can be made by the users concerned”.²³⁹

This definition of the normative content of Article 14§1 of the Charter is confirmed by the commitments entered into by France through the CRPD, particularly Article 19.²⁴⁰

This approach is also consistent with the Council of Europe Disability Strategy 2017-2023, which states that “persons with disabilities are entitled to have access to and enjoy the full range of human rights safeguarded by ... the United Nations Convention on the Rights of Persons with Disabilities” and that the intention is to act “in line with the UNCRPD” and with “the evolving body of decisions, guidelines and General Comments of the UNCRPD Committee”.²⁴¹

Article 19 of the CRPD on living independently and being included in the community states that States Parties recognise “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 ...; 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.”²⁴²

²³⁷ Ibid., §104.

²³⁸ Ibid., §§105 to 109.

²³⁹ Ibid., §110.

²⁴⁰ Ibid., §§111 to 114.

²⁴¹ Council of Europe, [Disability Strategy 2017-2023 “Human rights: a reality for all”](#), paragraphs 2 and 23.

²⁴² **Appendix 3 Applicable domestic and international law**

The complainant organisations ask the Committee to follow its case-law²⁴³ and to take note of the document on “The right of people with disabilities to live independently and be included in the community”, produced by the Council of Europe Commissioner for Human Rights. In his interpretation of Article 19 of the CRPD, the latter states in particular that “the three key elements of Article 19 are choice ..., individualised support ..., and making services for the general public accessible to people with disabilities ...”,²⁴⁴ that “to have access to a range of services presupposes that such services exist, and are within the reach of each person with disabilities”²⁴⁵ and that “a key component to achieving inclusion in the community is ensuring the inclusiveness of existing public services”.²⁴⁶

The complainant organisations also request the Committee to take account, in accordance with its case-law,²⁴⁷ of the General Comments of the UN Committee on the Rights of Persons with Disabilities, particularly General Comment No. 5 on living independently and being included in the community. In this comment, Article 19 of the CRPD is interpreted to require the States Parties:

- to take immediate action to ensure that persons with disabilities can freely choose where to live and receive any support they need regardless of where they live;²⁴⁸
- to implement de-institutionalisation strategies to promote community-based services and support for independent living, including clear deadlines and indicators. The requisite resources must also be allocated for this;²⁴⁹
- to ensure that support services are also available to persons with major support needs;²⁵⁰
- to ensure that persons with disabilities are granted reasonable accommodation to promote their inclusion at local level;²⁵¹
- to ensure that persons with disabilities are involved in the process of setting up general services so that they truly meet their needs.²⁵²

The UN Committee has given more detailed information on the features that services for the general public must have to be truly inclusive. They must be accessible to all persons with disabilities regardless of the type of disability.²⁵³ It must be possible to gear them to the needs of persons with disabilities in general wherever they live, not just in certain places.²⁵⁴ It is also crucial for these services to be available in both urban and rural areas.²⁵⁵ It is

²⁴³ European Committee of Social Rights, International Federation for Human Rights (FIDH) v. Belgium, Collective Complaint No. 75/2011, [decision on the merits of 18 March 2013](#), §114.

²⁴⁴ Council of Europe Commissioner for Human Rights, [The right of people with disabilities to live independently and be included in the community](#), 2012, section 1.3.3.

²⁴⁵ Ibid., section 3.1.2, p.30.

²⁴⁶ Ibid., section 3.1.3, p.32.

²⁴⁷ European Committee of Social Rights, Mental Disability Advocacy Center (MDAC) v. Belgium, Collective Complaint No. 109/2014, [decision on the merits of 16 October 2017](#), §72.

²⁴⁸ UN Committee on the Rights of Persons with Disabilities, [General comment No. 5 \(2017\) on living independently and being included in the community](#), §§38 and 39.

²⁴⁹ Ibid., §§42 and 57.

²⁵⁰ Ibid., §§20 and 21.

²⁵¹ Ibid., §46.

²⁵² Ibid., §§42 and 70.

²⁵³ Ibid., §32.

²⁵⁴ Ibid., §34.

²⁵⁵ Ibid., §35.

essential for them to be affordable and for them to take account of the low incomes which people with disabilities usually bring in.²⁵⁶ They must also be acceptable, in other words equal in quality to those provided for the rest of the population.²⁵⁷

Article 14§1 of the Charter must also be read in the light of Recommendation (2006) 5 of the Committee of Ministers of the Council of Europe on the Council of Europe Action Plan 2006-2015 to promote the rights and full participation of people with disabilities in society.²⁵⁸

The message of Article 14§1 of the Charter therefore, as fleshed out by the Committee's case-law and Article 19 of the CRPD, is that persons with disabilities have an individual right to equal and effective access to social welfare services comprising specific community-based services and services for the general public. This guaranteed access in law and in practice should enable them to choose where they live freely.

However, it has been demonstrated in section 2.1.2 above that in France:

- the available support systems undermine the possibility for persons with disabilities to choose where to live;
- persons with disabilities do not have effective access to specific community-based services because of the shortage and the unsuitable nature of services and a failure to implement the necessary strategy and resources;
- persons with disabilities do not have effective access to social services and facilities for the general public because of their inaccessible, non-inclusive nature.

Having been denied the benefit of social welfare services, many persons with disabilities rely on the support of their families²⁵⁹ or resort to forms of social service which have nothing to do with the type of service referred to in Article 14§1.²⁶⁰ This article expressly requires that such services should “contribute to the welfare and development of both individuals and groups in the community, and to their adjustment to the social environment” and this is not the case with forms of care such as keeping adults in support facilities for persons under 20, psychiatric hospitalisation (which may be forced, combined with abusive seclusion and restraint measures or subject to illegal internal rules), placements in Belgium, etc.

²⁵⁶ Ibid., §35.

²⁵⁷ Ibid., §35.

²⁵⁸ European Committee of Social Rights, International Federation for Human Rights (FIDH) v. Belgium, Collective Complaint No. 75/2011, [decision on the merits of 18 March 2013](#), §115.

²⁵⁹ See 2.2. **The impact on families of the lack of a genuine independent life within the community for persons with disabilities living in France**

²⁶⁰ European Committee of Social Rights, International Federation for Human Rights (FIDH) v. Belgium, Collective Complaint No. 75/2011, [decision on the merits of 18 March 2013](#), §§134 and 136.

The situation in France constitutes a denial of the freedom of choice of persons with disabilities and a failure to meet the needs and expectations which warrant their claims for appropriate social welfare services.²⁶¹

The Committee has also made the following findings in this respect:

- “because of its wording, Article 14§1 of the Charter forms part of the articles of the Charter which require States Parties to devise and implement appropriate measures in order to ensure, gradually and in due course, the effective exercise of the right in question. The fact that this provision does not require the States Parties to guarantee immediate results or to adopt conduct which may be capable in the absolute of guaranteeing the right immediately (immediate due diligence) does not mean that the conduct of a State Party ..., which fails to comply with the legal obligation to offer a particular social service to the extent that it denies access to this service to the persons concerned and excludes them from any solution of this type, can be deemed to comply with this provision of the Charter”;²⁶²
- “when the implementation of one of the rights guaranteed by the Charter is exceptionally complex and expensive, the measures taken by the state to achieve the Charter’s aims must fulfil the following three criteria: (i) a reasonable timeframe, (ii) measurable progress and (iii) financing consistent with the maximum use of available resources (Autism-Europe v. France, op. cit., §53; Mental Disability Advocacy Center (MDAC) v. Bulgaria, Complaint No. 41/2007, decision on the merits of 3 June 2008, §39)”;²⁶³
- “States Parties must be particularly mindful of the impact that their choices will have for groups with heightened vulnerabilities’ and ... they must take ‘practical action to give full effect to the rights recognised in the Charter’ (Autism-Europe v. France, ...)”.²⁶⁴

In the light of this case-law, the complainant organisations believe that the measures taken by France to provide support services are not in conformity with the Charter.

The state should continuously be proposing new means of improving the situation of persons with disabilities. These measures should be assessed in the light of the state’s economic situation and the level of social protection it affords. In the light of France’s social policy, the means allocated to programmes whose aim is to promote the inclusion of persons with disabilities in the community are inadequate in comparison to the resources mustered by the state on a general level.²⁶⁵

Plans to improve provision launched 10 years ago, besides not being founded entirely on a

²⁶¹ European Committee of Social Rights, International Federation for Human Rights (FIDH) v. Belgium, Collective Complaint No. 75/2011, [decision on the merits of 18 March 2013](#), §137.

²⁶² Ibid., §145.

²⁶³ Ibid., §147.

²⁶⁴ Ibid. §147.

²⁶⁵ See:

– OECD, [Social spending in France as a % of GDP](#), 2016: in 2016 social spending in France amounted to 31.5% of GDP;

– article of 30 January 2018 in the magazine Faire Face, Disability budget – is France one of Europe’s star pupils in this respect? ([Budget du handicap : la France fait-elle partie des bons élèves européens ?](#)): in 2014, the disability budget was 2.1% of GDP.

human rights-based approach, have still not made it possible to make access to social welfare services effective.²⁶⁶ This long period of over 10 years can in no way be regarded as a reasonable waiting time for persons who have been denied access to social welfare services. In its decision on AEH v. France, the Committee found that putting back the deadline by which the objectives regarding autism should be achieved to 2017, whereas the first plan began in 2005, constitutes an unreasonable extension, which exceeds the margin of appreciation afforded the State Party.²⁶⁷

Without reliable statistics, progress cannot be measured and, in any case, it has been demonstrated in section 2.1.2 that progress was unsatisfactory. Nowhere near enough resources were mobilised to meet the needs of persons with disabilities, especially given the failure to adopt a human rights-based approach and an overall strategy to improve means of helping all such persons to lead an independent life within the community, which are nonetheless essential for “the number and quality of the social welfare services actually provided [to] correspond as closely as possible to the specific, practical, individual needs of the persons concerned so that a free choice can be made by the users concerned”.²⁶⁸

In the absence both of reliable data on the needs of persons with disabilities and of reforms designed to set up support to meet these needs, it is impossible to devise a programme to use the resources that can be mobilised as effectively as possible.

The use for other purposes of budgets ordinarily earmarked for the funding of support for persons with disabilities and the failure to make use of the European funds available shows in any case that resources are not allocated in the best possible way. The Committee has already found that maximum use of financial resources cannot be said to be made so long as France continues to subsidise travel by persons with disabilities to Belgium instead of financing the establishment of services in France.²⁶⁹

The economic crisis that France is currently facing cannot be used to justify the lack of effective access to social services, as to do so would be to deny the social needs of persons with disabilities and hence to infringe their fundamental rights.²⁷⁰

Consequently, the lack, in France, of equal and effective access for persons with disabilities to social welfare services constitutes a violation of Article 14§1 of the Charter.

In its case-law, the Committee has also clarified the scope of Article E. Under this article, the enjoyment of the rights set forth in the Charter must be secured without discrimination on the ground of disability.²⁷¹ Article E of the Charter prohibits not only direct discrimination

²⁶⁶ The CNSA website, Results of the plans ([Les bilans des plans](#)) (updated on 10 July 2017).

²⁶⁷ European Committee of Social Rights, European Action of the Disabled (AEH) v. France, Collective Complaint No. 81/2012, [decision on the merits of 11 September 2013](#), §§95 to 98.

²⁶⁸ European Committee of Social Rights, International Federation for Human Rights (FIDH) v. Belgium, Collective Complaint No. 75/2011, [decision on the merits of 18 March 2013](#), §110.

²⁶⁹ European Committee of Social Rights, European Action of the Disabled (AEH) v. France, Collective Complaint No. 81/2012, [decision on the merits of 11 September 2013](#), §99.

²⁷⁰ European Committee of Social Rights, International Federation for Human Rights (FIDH) v. Belgium, Collective Complaint No. 75/2011, [decision on the merits of 18 March 2013](#), §§141 and 144.

²⁷¹ European Committee of Social Rights, Autism-Europe v. France, Collective Complaint No. 13/2002, [decision on the merits of 4 November 2003](#), §51.

but also “all forms of indirect discrimination” which “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”.²⁷² Appropriate measures vis-à-vis the population concerned are required to take account of its specific situation and avoid discrimination.²⁷³

This normative content is strengthened by the provisions of Article 19 of the CRPD, which states that persons with disabilities must be able to choose where they live and have access to services and facilities for the general public “with choices equal to others”.

Yet, the forced departures abroad to access social services, particularly to Belgium, relate specifically to persons with disabilities. As the Committee emphasised in its decision on *AEH v. France*,²⁷⁴ this situation illustrates France’s failure to cater for these persons’ specific needs in France itself, thus imposing different life paths on them than persons without disabilities and denying them freedom of choice. This policy constitutes discrimination against the persons forced to move away with regard to their access to social welfare services.

France’s failure to cater for these persons’ specific needs in France also constitutes discrimination against many persons with disabilities who have remained in France with no access to social services and hence no possibility of leading an independent life like other citizens.

One of the main reasons why the necessary resources have not been mobilised to set up a range of services for persons with disabilities has been the parsimonious management of the state’s social welfare budget. In this connection, the Committee found in its decision on *AEH v. France*,²⁷⁵ that “budget restrictions in social policy matters are likely to place persons with disabilities at a disadvantage and thus result in a difference in treatment indirectly based on disability” as persons with disabilities are “more likely to be dependent on community care, funded through the State budget, in order to live independently and in dignity, as compared with other persons in receipt of community care”. Applying budget restrictions to support for persons with disabilities indirectly places them at a disadvantage and amounts to discrimination.

Lastly, the difficulties for persons with disabilities with access to social welfare services for the general public because of their inaccessible and non-inclusive nature outlined in section

²⁷² See:

– European Committee of Social Rights, *Autism-Europe v. France*, Collective Complaint No. 13/2002, decision on the merits of 4 November 2003, §52;
– European Committee of Social Rights, *European Action of the Disabled (AEH) v. France*, Collective Complaint No. 81/2012, decision on the merits of 11 September 2013, §133.

²⁷³ See:

– European Committee of Social Rights, *European Roma Rights Centre v. Italy*, Collective Complaint No. 27/2004, decision on the merits of 7 December 2005, §§36 and 46;
– European Committee of Social Rights, *Centre on Housing Rights and Evictions (COHRE) v. Italy*, Collective Complaint No. 58/2009, decision on the merits of 25 June 2010, §35;
– European Committee of Social Rights, *International Federation for Human Rights (FIDH) v. Belgium*, Collective Complaint No. 62/2010, decision on the merits of 21 March 2012, §§49 and 50.

²⁷⁴ European Committee of Social Rights, *European Action of the Disabled (AEH) v. France*, Collective Complaint No. 81/2012, decision on the merits of 11 September 2013, §§132 to 137.

²⁷⁵ European Committee of Social Rights, *European Action of the Disabled (AEH) v. France*, Collective Complaint No. 81/2012, decision on the merits of 11 September 2013, §§141 to 145.

2.1.2 above also constitute discrimination against persons with disabilities in comparison to the overall population.

By failing to secure equal and effective access to social welfare services for persons with disabilities, France is in breach of Article 14§1 of the Charter, taken alone and/or in conjunction with Article E on non-discrimination.

2134. Violation of the right to housing – Article 31§§1 and 3 taken alone or in conjunction with Article on non-discrimination

The Committee has clarified the scope of Article 31§1 of the Charter in several of its conclusions and decisions:

- States must guarantee the right to adequate housing for all;²⁷⁶
- “in order to meet the criteria of adequacy, a dwelling must provide occupants with adequate space and protect them from harsh weather conditions or other threats to health. It must also be structurally secure to ensure the physical safety of occupants”;²⁷⁷
- “social housing offered to Roma should be, as far as possible, culturally suited to them”;²⁷⁸
- “the standards of adequate housing shall be applied not only to new constructions, but also gradually, in the case of renovation to the existing housing stock. They shall also be applied to housing available for rent as well as to housing occupied by their owners”;²⁷⁹
- States must guarantee equal treatment with regard to housing for various categories of vulnerable people, including persons with disabilities.²⁸⁰

²⁷⁶ European Committee of Social Rights, Conclusions 2003 – France – Article 31§1.

²⁷⁷ European Committee of Social Rights, *European Roma Rights Centre v. Portugal*, Collective Complaint No. 61/2010, decision on the merits of 30 June 2011, §37.

²⁷⁸ European Committee of Social Rights, *European Roma Rights Centre v. Portugal*, Collective Complaint No. 61/2010, decision on the merits of 30 June 2011, §49.

²⁷⁹ European Committee of Social Rights, Conclusions 2003 – France – Article 31§1.

²⁸⁰ European Committee of Social Rights, Conclusions 2003 – France – Article 31§1.

It has also done so with regard to Article 31§3 on the requirement for states to make housing affordable to those without adequate resources:

- “The Committee considers housing to be affordable when the household can afford to pay the initial costs (deposit, advance rent), the current rent and/or other costs (utility, maintenance and management charges) on a long-term basis and still be able to maintain a minimum standard of living, as defined by the society in which the household is located”;²⁸¹
- “in order to establish that measures are being taken to make the price of housing accessible to those without adequate resources, States Parties to the Charter must show not the average affordability ratio required of all those applying for housing, but rather that the affordability ratio of the poorest applicants for housing is compatible with their level of income”;²⁸²
- “under Article 31§3 it is incumbent on States Parties to adopt appropriate measures for the construction of housing, in particular social housing (see Conclusions 2003, Article 31§3, France, p. 232, Italy, p. 348, Slovenia, p. 561, and Sweden, p. 655). Furthermore, they must ensure access to social housing for disadvantaged groups”;²⁸³
- States must take measures to prevent excessively long waiting times for allocation.²⁸⁴

The Committee has stressed that the right to housing permits the exercise of many other civil, political and economic rights and is of central importance to the family.²⁸⁵ This has also been the finding of the European Court of Human Rights and is particularly true of persons with disabilities

Article 31 of the Charter must also be interpreted in the light of Article 15§3 of the Charter. According to the European Committee of Social Rights, the needs of persons with disabilities must be catered for in housing policies, enough appropriate housing must be made available, including social housing, and other support must be provided for existing housing to be converted.²⁸⁶

Article 31 of the Charter must also be read in the light of Recommendation (2006)5 of the Committee of Ministers of the Council of Europe on the Council of Europe Action Plan 2006-2015 to promote the rights and full participation of people with disabilities in society.²⁸⁷ Action Line 8 of this recommendation, on “Community living”, calls for states to “develop

²⁸¹ European Committee of Social Rights, Conclusions 2003 – Sweden – Article 31§3.

²⁸² European Committee of Social Rights, European Federation of National Organisations Working with the Homeless (FEANTSA) v. Slovenia, Collective Complaint No. 53/2008, decision on the merits of 8 September 2009, §72.

²⁸³ European Committee of Social Rights, European Roma Rights Centre v. Italy, Collective Complaint No. 27/2004, decision on the merits of 7 December 2005, §45.

²⁸⁴ European Committee of Social Rights, International Movement ATD Fourth World v. France, [Collective Complaint No. 33/2006, decision on the merits of 5 December 2007](#), §§128 to 133.

²⁸⁵ European Committee of Social Rights, European Roma Rights Centre (ERRC) v. Ireland, Collective Complaint No.100/2013, decision on the merits of 1 December 2015, §56.

²⁸⁶ European Committee of Social Rights, Conclusions 2003 – Italy – Article 15§3.

²⁸⁷ European Committee of Social Rights, International Federation for Human Rights (FIDH) v. Belgium, Collective Complaint No. 75/2011, [decision on the merits of 18 March 2013](#), §115.

and promote housing policies which enable people with disabilities to live in suitable housing in their local community” and to propose “alternative housing models, which enable a move ... to community living”.²⁸⁸

As with Article 14§1 of the Charter,²⁸⁹ the normative content of Article 31 must be examined in the light of France’s commitments under the CRPD. This approach is consistent with the Council of Europe Disability Strategy 2017-2023, which states that “persons with disabilities are entitled to have access to and enjoy the full range of human rights safeguarded by ... the United Nations Convention on the Rights of Persons with Disabilities” and that the intention is to act “in line with the UNCRPD” and with “the evolving body of decisions, guidelines and General Comments of the UNCRPD Committee”.²⁹⁰

Article 19 of the CRPD, on living independently and being included in the community establishes that the States Parties “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 ... 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”.²⁹¹

The complainant organisations ask the Committee to follow its case-law²⁹² and to take note of the document on “The right of people with disabilities to live independently and be included in the community”, produced by the Council of Europe Commissioner for Human Rights. In this document, the Commissioner calls on the member states to develop and implement a plan for housing services and give persons with disabilities the means to access housing in the general housing market.²⁹³

Under paragraph 1.a) of Article 9 of the CRPD,²⁹⁴ on “Accessibility”, States Parties are required to secure access for persons with disabilities to housing by identifying and eliminating obstacles and barriers to accessibility. Article 28 of the CRPD, on “Adequate standard of living and social protection”,²⁹⁵ requires States Parties, under paragraph 2.d), to secure access for persons with disabilities to social housing programmes.

The message therefore of Article 31 of the Charter, particularly paragraphs 1 and 3, as

²⁸⁸ Council of Europe, [Recommendation No. \(2006\) 5 of the Committee of Ministers on the Council of Europe Action Plan to promote the rights and full participation of people with disabilities in society: improving the quality of life of people with disabilities in Europe 2006-2015](#), Appendix, section 3.8.3.

²⁸⁹ European Committee of Social Rights, International Federation for Human Rights (FIDH) v. Belgium, Collective Complaint No. 75/2011, [decision on the merits of 18 March 2013](#), §§ 111 to 114.

²⁹⁰ Council of Europe, [Disability Strategy 2017-2023 “Human rights: a reality for all”](#), paragraphs 2 and 23.

²⁹¹ **Appendix 3 Applicable domestic and international law.**

²⁹² European Committee of Social Rights, International Federation for Human Rights (FIDH) v. Belgium, Collective Complaint No. 75/2011, [decision on the merits of 18 March 2013](#), §114.

²⁹³ Council of Europe Commissioner for Human Rights, [The right of people with disabilities to live independently and be included in the community](#), 2012, recommendations 8 and 12, pp. 7 and 8.

²⁹⁴ **Appendix 3 Applicable domestic and international law.**

²⁹⁵ **Appendix 3 Applicable domestic and international law.**

fleshed out by the Committee's case-law and Article 19 of the CRPD, is that the States Parties must secure the right to adequate housing of persons with disabilities, who form a category of vulnerable people. For these people, the concept of adequate housing must be understood to include housing geared to their disability, in other words, depending on their situation, accessible or supported housing, designed in particular to guarantee their physical safety. Furthermore, the housing on offer to persons with disabilities must be affordable and this means taking account not only of their income but also the cost of converting accommodation to cater for their disability. Access for economically deprived persons with disabilities to social housing must be guaranteed, and waiting times for allocation must be reasonable.

However, it was shown in section 2.1.2 above that access for persons with disabilities to adequate, affordable housing, including social housing, is far from having been secured in France because of general problems with access to housing, housing accessibility issues, particularly where social housing supply is concerned, a mismatch between the supply of appropriate social housing available and the housing demands of persons with disabilities, the failure to take account of the priority access to social housing that has been granted to persons with disabilities, the underdevelopment of housing support services, and the inadequate coverage of the cost of home help and housing conversion.

It should be emphasised that the European Court of Human Rights found against France for a violation of Article 6§1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms because of a failure to enforce judicial decisions granting housing under Law No. 2007-290 of 5 March 2007 on an enforceable right to housing.²⁹⁶ The failure to comply with this article has a still greater impact on persons with disabilities.

In several of its decisions, the Committee has highlighted the scope of the states' obligations when implementing the Charter: the aim and the purpose of the Charter, being a human rights protection instrument, is to protect rights not merely theoretically, but also in fact²⁹⁷ and the States Parties are under an obligation to take not merely legal action but also practical action to give full effect to the rights recognised in the Charter.²⁹⁸ With regard to the need to make persons' rights effective not just theoretically but also in fact, the Committee has stated that states must make available the resources and introduce the operational procedures necessary to give full effect to the rights specified in the Charter.²⁹⁹

As explained in the submissions on the violation of Articles 14§1 and 15§3 of the Charter, France is perfectly aware of the ineffectiveness for persons with disabilities of access to social welfare services and personal assistance and the inaccessibility of society but, despite this, it has failed to take any effective or efficient action over the years to comply satisfactorily with the rights protected by the Charter. Nor has there been any significant

²⁹⁶ European Court of Human Rights, *Tchokontio Happi v. France*, judgment of 9 April 2015, application no. 65829/12.

²⁹⁷ European Committee of Social Rights, *International Commission of Jurists v. Portugal*, Collective Complaint No. 1/1998, [decision on the merits of 9 September 1999](#), §32.

²⁹⁸ See:

– European Committee of Social Rights, *Autism-Europe v. France*, Collective Complaint No.13/2002, [decision on the merits of 4 November 2003](#), §53;

– European Committee of Social Rights, *International Movement ATD Fourth World v. France*, Collective Complaint No. 33/2006, [decision on the merits of 5 December 2007](#), §61.

²⁹⁹ European Committee of Social Rights, *International Movement ATD Fourth World v. France*, Collective Complaint No. 33/2006, [decision on the merits of 5 December 2007](#), §61.

progress with regard to access to housing for vulnerable persons in France.³⁰⁰

In this context, the complainant organisations consider that France’s lack of initiative to make the fundamental rights of persons with disabilities effective and, in particular, its failure to safeguard their right to housing constitute a violation of Article 31§§1 and 3 of the Charter.

In its case-law the Committee has also clarified the scope of Article E of the Charter, with regard both to persons with disabilities and to Article 31 of the Charter:

- the enjoyment of the rights set forth in the Charter must be secured without discrimination on the ground of disability;³⁰¹
- Article E of the Charter prohibits not only direct discrimination but also “all forms of indirect discrimination” which “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”,³⁰²
- “the right to housing secures social inclusion and integration of individuals into society and contributes to the abolishment of socio-economic inequalities”;³⁰³
- all the rights set out in the Charter, including the right to adequate housing, must be ensured without discrimination on any ground. This also applies to social housing;³⁰⁴
- “Article E enshrines the prohibition of discrimination and establishes an obligation to ensure that, in absence of objective and reasonable justifications ..., any group with particular characteristics, including Roma, benefits in practice from the rights in the Charter”,³⁰⁵ thus requiring states to take account of different situations³⁰⁶ and specific features;³⁰⁷
- states must ensure that discrimination is eliminated not only in law but also in fact. The failure to implement in practice provisions intended to meet a group’s specific needs and thereby to secure them equal access to housing, constitutes a discrimination in the effective enjoyment of this right;³⁰⁸

³⁰⁰ European Committee of Social Rights, [Conclusions 2013- France - Article 30](#)

³⁰¹ European Committee of Social Rights, *Autism-Europe v. France*, Collective Complaint No.13/2002, [decision on the merits of 4 November 2003](#), §51.

³⁰² See:

– European Committee of Social Rights, *Autism-Europe v. France*, Collective Complaint No. 13/2002, decision on the merits of 4 November 2003, §52;
– European Committee of Social Rights, *European Action of the Disabled (AEH) v. France*, Collective Complaint No. 81/2012, [decision on the merits of 11 September 2013](#), §133.

³⁰³ European Committee of Social Rights, *European Roma Rights Centre v. Italy*, Collective Complaint No. 27/2004, decision on the merits of 7 December 2005, §18.

³⁰⁴ European Committee of Social Rights, *European Federation of National Organisations Working with the Homeless (FEANTSA) v. France*, Collective Complaint No. 39/2006, decision on the merits of 5 December 2007, §156.

³⁰⁵ European Committee of Social Rights, *European Roma Rights Centre v. Italy*, Collective Complaint No. 27/2004, decision on the merits of 7 December 2005, §36.

³⁰⁶ European Committee of Social Rights, *European Roma Rights Centre v. Italy*, Collective Complaint No. 27/2004, decision on the merits of 7 December 2005, §46.

³⁰⁷ European Committee of Social Rights, *European Roma Rights Centre v. Portugal*, Collective Complaint No. 61/2010, decision on the merits of 30 June 2011, §52.

³⁰⁸ European Committee of Social Rights, *European Roma and Travellers Forum (ERTF) v. France*, Collective Complaint No. 64/2011, decision on the merits of 24 January 2012, §§42 and 109.

- a longer waiting time for one group of persons than for other persons for the allocation of social housing means that it can be presumed that there is a problem of indirect discrimination against this group in respect of access to social housing.³⁰⁹

The message therefore of Article 31 of the Charter, particularly paragraphs 1 and 3, and of Article E, is that the States Parties must take measures to secure the effective right to housing, especially access to social housing, for persons with disabilities, on an equal footing with others while taking account of their specific characteristics.

Yet, it was demonstrated in section 2.1.2 that because of the lack of appropriate, accessible housing and the discrimination to which they are subject, persons with disabilities do not effectively enjoy the right to housing. For persons with disabilities, the right to adequate housing implies introducing measures to remove barriers connected with a person's environment or disabling situation. These barriers remain and France has failed to take due and positive account of the specific needs of persons with disabilities as regards access to housing and has failed to do what was necessary to guarantee them access to collective rights and benefits which should be open to everyone. This amounts to discrimination against persons with disabilities as it deprives them of the possibility of leading an independent life within the community like other citizens.

With regard to effective access to affordable housing, although France has granted priority to persons with disabilities in the allocation of social housing, this priority is not effective and waiting times are still longer for persons with disabilities than for other applicants, as demonstrated in section 2.1.2 above. The failure to implement measures intended to guarantee equal access to housing for persons with disabilities in practice constitutes discrimination in the effective enjoyment of this right.

By failing to make the right of persons with disabilities to housing effective, France is in breach of Article 30§§1 and 3 of the Charter, taken alone and/or in conjunction with Article E on non-discrimination.

2135. Violation of the right to health protection – Article 11§1 taken in conjunction with Article E on non-discrimination

The Committee has clarified the scope of Article 11§1 and its relationship with Article E of the Charter.

Article 11 of the Charter “imposes a range of positive obligations to ensure an effective exercise of the right to health, and the Committee assesses compliance with this provision paying particular attention to the situation of disadvantaged and vulnerable groups”.³¹⁰ “The healthcare system must be accessible to everyone, ... in particular to disadvantaged groups, which should not be victims of discrimination”.³¹¹ The state has a positive

³⁰⁹ European Committee of Social Rights, *European Federation of National Organisations Working with the Homeless (FEANTSA) v. France*, Collective Complaint No. 39/2006, decision on the merits of 5 December 2007, §157.

³¹⁰ European Committee of Social Rights, *European Roma Rights Centre (ERRC) v. Bulgaria*, Collective Complaint No. 46/2007, decision on the merits of 3 December 2008, §45.

³¹¹ European Committee of Social Rights, *Médecins du Monde - International v. France*, [Collective Complaint No. 67/2011](#), decision on the merits of 11 September 2012, §139.

obligation to ensure that disadvantaged groups have access to health care on an equal footing with others and must therefore take measures to this effect.³¹²

Under Article E of the Charter, the enjoyment of the rights set forth in the Charter must be secured without discrimination on the ground of disability.³¹³ Article E of the Charter prohibits not only direct discrimination but also “all forms of indirect discrimination” which “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”.³¹⁴

As with Article 14§1 of the Charter,³¹⁵ the normative content of Article 31 must be examined in the light of France’s commitments under the CRPD.

This approach is consistent with the Council of Europe Disability Strategy 2017-2023, which states that “persons with disabilities are entitled to have access to and enjoy the full range of human rights safeguarded by ... the United Nations Convention on the Rights of Persons with Disabilities and that the intention is to act “in line with the UNCRPD” and with “the evolving body of decisions, guidelines and General Comments of the UNCRPD Committee”.³¹⁶

Article 25 of the CRPD, on “Health”,³¹⁷ states that when dealing with persons with disabilities, States Parties must:

- “take all appropriate measures to ensure access for persons with disabilities to health services”;
- “provide those health services needed by persons with disabilities specifically because of their disabilities ... as close as possible to people’s own communities”;
- “require health professionals to provide care of the same quality to [them] as to others”;
- serve this purpose “through training and the promulgation of ethical standards” intended to raise awareness among staff;
- “prevent discriminatory denial of health care or health services ... on the basis of disability”.

The message therefore of Article 11 of the Charter, particularly paragraph 1, and of Article

³¹² See:

– European Committee of Social Rights, *European Roma Rights Centre (ERRC) v. Bulgaria*, Collective Complaint No. 46/2007, decision on the merits of 3 December 2008, §49;

– European Committee of Social Rights, *Médecins du Monde - International v. France*, [Collective Complaint No. 67/2011](#), decision on the merits of 11 September 2012, §144.

³¹³ European Committee of Social Rights, *Autism-Europe v. France*, [Collective Complaint No. 13/2002](#), decision on the merits of 4 November 2003, §51.

³¹⁴ See:

– European Committee of Social Rights, *Autism-Europe v. France*, Collective Complaint No. 13/2002, decision on the merits of 4 November 2003, §52;

– European Committee of Social Rights, *European Action of the Disabled (AEH) v. France*, Collective Complaint No. 81/2012, [decision on the merits of 11 September 2013](#), §133.

³¹⁵ European Committee of Social Rights, *International Federation for Human Rights (FIDH) v. Belgium*, Collective Complaint No. 75/2011, [decision on the merits of 18 March 2013](#), §§ 111 to 114.

³¹⁶ Council of Europe, [Disability Strategy 2017-2023 “Human rights: a reality for all”](#), paragraphs 2 and 23.

³¹⁷ **Appendix 3 Applicable domestic and international law.**

E, as informed by Article 25 of the CRPD, is that the States Parties must take measures to guarantee that the right of persons with disabilities to health and access to health care can be exercised effectively on an equal footing with other persons. These measures consist in particular in ensuring that the health care system is accessible and inclusive.

Yet it was demonstrated in section 2.1.2 above that, in France, because of the inaccessibility of health services for the general public, their non-inclusive nature, which can go so far as withholding treatment, and their poor co-ordination with support services, persons with disabilities are not afforded the full, complete and effective enjoyment, on an equal footing with the rest of the population, of the right to health protection set out in Article 11 of the Charter, whereas the health care system should be accessible to the entire population.

France is failing to comply with its obligation to ensure that persons with disabilities have access to health care on an equal footing with others by omitting to take all the appropriate measures to remedy the difficulties they meet in accessing health care.

By failing to ensure equal and effective access for persons with disabilities to health care, France is in breach of Article E taken in conjunction with Article 11§1 of the Charter.

2.2. The impact on families of the lack of a genuine independent life within the community for persons with disabilities

The rights of the families of persons with disabilities are tied up very closely with the rights of these persons to independent living and inclusion. The Charter protects these families' rights (2.2.1.). However, in the absence of a genuine independent life within the community for persons with disabilities, their families' rights cannot be made effective (2.2.2.). As a result, France is in breach of its treaty obligations (2.2.3).

2.2.1. The protection arising from the Charter

The rights of the families of persons with disabilities are protected by several provisions referred to in this complaint:

- Article 16 on the right of the family to social, legal and economic protection;³¹⁸
- Article 27 on the right of workers with family responsibilities to equal opportunities

³¹⁸ Article 16 of the Charter – 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”.

- and equal treatment, particularly §1,³¹⁹
- and Article E on non-discrimination.³²⁰

2.2.2. Consequences for families of the lack of a genuine independent life within the community for persons with disabilities

Under the aforementioned provisions of the Charter, France is required to afford the families of persons with disabilities protection and equal treatment.

In this connection, French law lays down a general framework, under which support for families is one of the aims of its policy to support persons with disabilities.³²¹ This legislation also contains provisions to assist family caregivers helping persons with disabilities,³²² although such persons are not afforded the same protection by French law as family caregivers helping the elderly.³²³ These domestic law provisions are complemented by several provisions of the CRPD.³²⁴

However, despite this legal framework, the lack of a genuine independent life within the community for persons with disabilities puts many families in France in a vulnerable situation (2.2.2.1.). These families often face unequal opportunities and treatment in their working life (2.2.2.2.).

Therefore the lack of a genuine independent life within the community for persons with disabilities prevents France from respecting the **right of the family to social, legal and economic protection and the right of workers with family responsibilities to equal opportunities and equal treatment (rights protected respectively by Articles 16 and 27 of the Charter).**

³¹⁹ Article 27 –The right of workers with family responsibilities to equal opportunities and equal treatment:

“With a view to ensuring the exercise of the right to equality of opportunity and treatment for men and women workers with family responsibilities and between such workers and other workers, the Parties undertake:

1/ to take appropriate measures:

a/ ...;

b/ ...;

c/ to develop or promote services, public or private, in particular child daycare services and other childcare arrangements;
...”.

³²⁰ Article E – Non-discrimination:

“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”.

³²¹ This is illustrated by Articles L114-1-1, L114-2, L114-3, L146-3 and L245-12 of the Social Welfare and Family Code.

Appendix 3 Applicable domestic and international law.

³²² For example, the Labour Code and the Social Security Code include provisions on leave, working hour adjustments and pension rights for the parents and family of persons with disabilities.

³²³The definition of a “family caregiver helping an elderly person” (Article L.113-1-3 of the Social Welfare and Family Code) is broader than that of a “family caregiver helping a person with a disability” (Article R245-7 of the Social Welfare and Family Code). In addition, caregivers helping the elderly enjoy a genuine right to respite (under Article L232-3-2 of the Social Welfare and Family Code) whereas respite for caregivers helping persons with disabilities is seen as only one possible use among many others of disability compensation benefit (PCH) (Article L.114-1-1 of the Social Welfare and Family Code).

Appendix 3 Applicable domestic and international law.

³²⁴ Preamble (x) and Articles 19 and 23 of the CRPD. **Appendix 3 Applicable domestic and international law.**

2.2.2.1. Families placed in a vulnerable situation

Many families provide support for family members with disabilities³²⁵ because they do not have access to an independent life within the community.³²⁶ Caregivers may be parents, spouses, children or other members of the family and may be required to support their relative with a disability for his or her whole life. The person receiving support may be a child, an adult or an elderly person. Caregivers may live with the person they are assisting or not. However, because of the barriers to the choice of a place of residence resulting from the lack of access to special support services, and services and facilities for the general public, forced cohabitation is common, even up to a very advanced age.³²⁷

This burden of responsibility on families is compounded by the shortage of respite services for caregivers³²⁸ or other types of support service providing a response to the various needs of caregivers that have been identified (the need to understand, the need for recognition, the need for time for themselves, the need for support, particularly on a psychological level, the need for financial support, and the need for practical forms of assistance such as emergency accommodation).³²⁹

In general, support services for family caregivers in France remain somewhat limited, particularly for caregivers assisting persons with disabilities, and they are not always effective.³³⁰ Furthermore, where there is no genuine access for persons with disabilities to an independent life within the community, the support policy for family caregivers cannot

³²⁵In this connection:

- Support may take various forms: health care, help with education and integration into the community, managing finances, administrative formalities, supervision, psychological support, communication, domestic activities, etc. See COFACE-Handicap, European Charter for Family Caregivers ([Charte européenne de l'aidant familial](#)), 2009, Article 1;
- Even when a person with a disability receives support or assistance, families must often act as co-ordinators for the various partners, particularly with regard to health needs. See the “Forecasts” section of the CNSA’s report of 2011 on supporting family caregivers in their “unseen” tasks ([Partie prospective : Accompagner les proches aidants, ces acteurs “invisibles”](#)), 2012, pp. 19 to 22.

³²⁶ Rights Defender, [Opinion No. 18-06](#), 2018, p.14.

³²⁷ See:

- IGAS, “The increasing age of persons with disabilities – contribution to the debate”, ([L’Avancée en âge des personnes handicapées. Contribution à la réflexion](#)), 2013, section 3.3.1, p.15.

For example, an ageing disabled man could have been living with his parents for years for want of a place where he can live independently and appropriate support services. The parents, who are now over 80 and sick, and their disabled son, who is about 50, would be forced to live together although the parents are no longer able to support their son.

Such situations can result in total collapse when the parents die. See, on this subject:

- Unapei, The increasing age of persons with disabilities ([L’avancée en âge des personnes handicapées mentales](#)), 2009, p.15;
- Unapei press release of 3 September 2012, Death of a person with a mental disability – Our indecent indifference as such people grow old ([Décès d’une personne handicapée mentale : L’ignoble indifférence de notre société face à leur vieillissement](#)).

³²⁸ See:

- A joint guide on family caregivers by the French Observatory for Corporate Social Responsibility and the National Federation of Family Associations (ORSE-UNAF), entitled “[Aidants familiaux : guide à destination des entreprises](#)”, 2014, p.6: “For caregivers assisting persons with disabilities, a number of respite services (home help, holidays or temporary accommodation) can be covered by the PCH. However, in practice, the lack of suitable facilities, the unwieldiness of administrative procedures and the reluctance of caregivers and disabled persons to take up the solutions proposed make this right difficult to apply”;
- CREAI-ORS Languedoc-Roussillon, Identifying respite needs for persons caring for the disabled ([Identification des besoins en matière de solutions de répit dans le cadre du handicap](#)), 2016, p.52.

³²⁹ CNSA report – “Forecasts” section op. cit., p. 28.

³³⁰ French National Assembly, “rapid response” report on caregivers by the member, Pierre Dharréville ([Communication de M. Pierre Dharréville](#)), 2018, p.8.

have its full effect.³³¹ Therefore, the lack of an overall, co-ordinated policy to promote independent living and inclusion in the community also places a burden on families.

Families face problems such as exhaustion,³³² physical and mental health issues,³³³ loneliness and family conflicts³³⁴, along with difficulties in reconciling work and family life which can result in persons stopping work and a risk of social exclusion.³³⁵ These problems are exacerbated in the case of single-parent families, ageing parents or disabilities requiring permanent assistance or combined with behavioural disorders.³³⁶ In some cases, these situations result in desperate measures, with persons taking their own lives or that of the person they are caring for.³³⁷

The individual examples set out in Appendices 4 and 5 illustrate well how insufficient access for persons with disabilities to specific services makes many families highly vulnerable. Parents are forced to accept the removal of their child to avoid exhaustion or job losses. Others are obliged to rearrange, reduce or cease professional activities and still others to give over the care of their child to a brother or sister. Families can be placed in

³³¹ CNSA report – “Forecasts” section op. cit., p. 18: “... the most crucial form of support for caregivers is quality professional assistance commensurate with the needs of the person receiving support and affordable to all”.

³³² See:

- French Federation of Associations Supporting Family Caregivers (CIAAF), CIAAF Manifesto Championing Non-Professional Family Caregivers ([“Manifeste du CIAAF pour la défense de l’aidant familial non professionnel”](#)), 2011, p.4;
- CNSA report – “Forecasts” section op. cit., p. 22;
- OCIRP op. cit., 2016, p.33.

³³³ See:

- CIAAF Manifesto op. cit., pp. 4 and 5;
- CNSA report – “Forecasts” section op. cit., p. 22;
- ORSE-UNAF, [“Aidants familiaux : guide à destination des entreprises”](#), 2014, p.8
- OCIRP op. cit., 2016, p. 33
- French Association of Caregivers, “Family caregivers – a societal problem. Supporting them to preserve their health” ([“Les proches aidants: une question sociétale. Accompagner pour préserver la santé”](#)), 2016

³³⁴ Report by the CNSA and the consulting firm, Eneis Conseil, on caregiver support policies, and systems to help caregivers subsidised by the CNSA under sections IV and V of its budget, ([Étude de la politique de l’aide aux aidants et évaluation des dispositifs d’aide aux aidants subventionnés par la CNSA au titre des sections IV et V de son budget](#)), 2015, p.25.

³³⁵ See:

- French Ministry of Labour’s Directorate of Campaigns, Research, Studies and Statistics (DARES), Survey No. 081 of December 2017 on helping a family member and reconciling this with work, ([Aider un proche : quels liens avec l’activité professionnelle?](#));
- CNSA report – “Forecasts” section op. cit., p. 22;
- IRDES, Health Economics No. 176, How to preserve an ever-dwindling resource ([Comment pérenniser une ressource en voie de raréfaction?](#)), 2012, box, p.3;
- OCIRP op. cit., 2016, p.33.

³³⁶ See:

- INSERM, Joint expert report on intellectual deficiencies – Summary and recommendations ([Expertise collective Déficiences intellectuelles - Synthèse et recommandations](#)), 2016, pp.75 and 76
- CNSA report – “Forecasts” section op. cit., p.23.

³³⁷ See:

- Unapei press release of 27 April 2011, Unapei denounces the authorities’ inertia in response to the dramatic situations of over 30 000 families dealing with an ageing child with disabilities ([L’Unapei dénonce l’immobilisme des pouvoirs publics face aux situations dramatiques de plus de 30 000 familles confrontées au vieillissement de leur enfant handicapé mental](#)) –
- Unapei press release of 24 April 2013 under the same title as above;
- Unapei press release of 2 February 2015, How many more tragedies must there be for France to deal with the critical situations of thousands of families of children with disabilities suffering from exclusion and loneliness? ([Combien de drames devons-nous compter pour que la France mette fin aux situations critiques de milliers de familles d’enfants handicapés condamnés à l’exclusion et l’isolement ?](#)).

real danger where the person they are caring for is prone to violence, while persons with disabilities can be at risk when exhaustion leads their close relatives to the verge of abuse.³³⁸ Families are sometimes placed under major pressure by the authorities including their being reported to child welfare services when they will not accept a proposal for a solution that is inappropriate or far away from them.³³⁹

The French courts have recognised the infringement of family life caused by the lack of access to appropriate facilities. For instance, in his Order of 7 October 2013 in the so-called Amélie Loquet case, the urgent applications judge at Cergy Pontoise Administrative Court held that “in view of the severity of young A’s behavioural disorders ... and the threats they pose to herself and her family, the applicants have good reason to claim that the failure to provide appropriate care for their daughter constitutes a serious and manifestly unlawful infringement of their right to safety and to lead a normal private and family life”.³⁴⁰

The forced departures to Belgium and their consequences for families³⁴¹ tell us much about the lack of protection for families because of insufficient access to specific services in France.

Insufficient access to the personal assistance needed to be able to live in the community and be integrated into it also tends to make families vulnerable, both because they are then expected to shoulder the burden of supporting disabled family members and because of the financial impact of the shortcomings of the PCH system (major costs left for families to cover themselves, irregular administrative practices where it comes to recovering overpayments, etc.).

Consequently, the lack of appropriate measures enabling persons with disabilities to live independently and be included in the community discriminates against families, which also find themselves excluded as a result. This exclusion operates both at an economic level, because of situations of extreme vulnerability resulting from the failings of the state, and at a social level as a result of physical and psychological fatigue and the isolation of families receiving little or no support.

In section 2.2.3., it will be shown that the lack of effective access for persons with disabilities to an independent life within the community, which places many families in a vulnerable situation, prevents France from respecting the right of the family to social, legal and economic protection set forth in the Charter.

2.2.2.2. Families faced with unequal opportunities and treatment at work

³³⁸ See also the CNSA report – “Forecasts” section op. cit., pp.22 and 23.

³³⁹ See also: UN Committee on the Rights of the Child, [Concluding observations on the fifth periodic report of France](#), 2016, paragraphs 59 and 60.

³⁴⁰ Cergy Pontoise Administrative Court, [Interim Order No. 1307736 of 7 October 2013](#), p.6.

³⁴¹ Unapei, Exiles from the Republic. France’s shameful disability record. ([Les Bannis de la République. Le Livre Noir du Handicap en France](#)), 2015, p.6: “Many families face an unbearable choice: either they must allow their child, sometimes aged no more than ten, to go and live hundreds of kilometres away, or they must fall into the intolerable category of people for which there is “no solution”. Apart from the unbearable distance, there are many other consequences of such exiles including the break-up of families, the uprooting of individuals, the feeling in parents of young children that they are abandoning their child in a distant place and elderly parents being unable to travel to see their adult children”.

Many family members who are forced to provide all or part of the support needed by a disabled family member because persons with disabilities as a whole do not have access to an independent life within the community are affected by this situation in their work.

Such family members are forced to reduce, rearrange or cease their professional activities or cannot be available to compete for jobs on the labour market.³⁴² They lose their rights (to leave, pensions, unemployment benefit, etc.), and any chance of promotion or career development.³⁴³

The situation has a particular impact on women as six in every ten caregivers are women.³⁴⁴

A regional study³⁴⁵ reports on the difficulties faced by caregivers in reconciling work and family life. The main problems reported by family caregivers are lack of time, stress, health problems, fatigue, guilt at being away at work, adverse effects on career development and loss of income linked to caregiving commitments. The study also shows that nearly one caregiver in three has made some sort of adjustment in their working life such as adopting flexible working hours, working part time, taking temporary leave, teleworking or early retirement. Caregivers rely more than others on a flexible working environment and since this is not always possible they sometimes have to give up their jobs. France's policies with regard to leave entitlement and working time adjustments are not capable of meeting caregivers' needs.³⁴⁶

While the main concern for some family caregivers is remaining in the labour market, for others it is access to the market, or occupational integration or reclassification.³⁴⁷

³⁴² See:

- DARES, Survey No. 081, op. cit.;
- CNSA report - "Forecasts" section op. cit., p.22;
- IRDES, Health Economics No. 176, op. cit., p.8;
- OCIRP, op. cit., pp.33 et seq.;
- Denis Piveteau, op. cit., section 2.2.2, p.21.

³⁴³ See:

- CIAAF report op. cit., p.5;
- DARES survey referred to above, table 2, p.3.

³⁴⁴ See:

- CIAAF report op. cit., 2011, p.2;
- CNSA report - "Forecasts" section op. cit., p.19;
- IRDES, Health Economics No. 176, op. cit., p.31.

³⁴⁵ CREA Rhône Alpes, "Needs and desires of caregivers dealing with persons with disabilities living at home" ("[Les besoins et attentes des aidants familiaux de personnes handicapées vivant à domicile](#)"), 2009, pp. 24 to 26.

³⁴⁶ See:

- Pierre Dharréville op. cit., pp.5 and 7;
- the bill tabled and rejected in the National Assembly on 8 March 2018 on the social recognition of caregivers, which proposed to improve caregivers' leave entitlements;
- the failure of France to support the European Commission's Proposal for a Directive of the European Parliament and of the Council on work-life balance for parents and carers, repealing Council Directive 2010/18/EU, which would have improved leave entitlements and working hour adjustments for caregivers in France. See the [open letter to the French President on this subject, entitled "Time to act!"](#), signed by 51 French and European associations and sent to President Macron on 16 April 2018;
- *Faire Face*, Article of 1 February 2018, Donating leave to caregivers - the wrong response to the right need ([Don de jours de congés aux aidants : vrai besoin, fausse réponse](#)). This article on the right of persons caring for persons with disabilities to accept offers from their fellow employees to transfer their leave to them points out that this measure substitutes individual solidarity for national solidarity.

³⁴⁷ DARES survey 081 op. cit., section on helping young people to get more involved in defining their own career path, pp. 6

In section 2.2.3, it will be demonstrated that the lack of effective access for persons with disabilities to an independent life within the community, which affects many families in their work, prevents France from respecting the right of workers with family responsibilities to equal opportunities and equal treatment, as set forth in the Charter.

2.2.3. Violations of the Charter

The consequences for families of the lack of a genuine independent life within the community for persons with disabilities in France, as described above, constitute a violation by France of the right of the family to social, legal and economic protection (1) and the right of workers with family responsibilities to equal opportunities and treatment (2), taken alone and/or in conjunction with the principle of non-discrimination.

2.2.3.1. The violation of the right of the family to social, legal and economic protection – Article 16, taken alone and/or in conjunction with Article E on non-discrimination

In its decision on *International Federation for Human Rights (FIDH) v. Belgium*, the Committee clarified the scope of Article 16 of the Charter with regard to persons with disabilities.

According to the Committee, while appropriate care for persons with disabilities is in no way incompatible with their families' involvement in the lives of the persons concerned, when families assume care and living support tasks which could have been properly performed by social services appropriate to these persons' needs, high-quality family relations are liable to be affected and families are forced to undergo deep-reaching, negative upheavals in their lifestyles.³⁴⁸

The Committee also points out that “States Parties must be particularly mindful of the impact that their choices will have for groups with heightened vulnerabilities, such as persons with disabilities, as well as for the other persons affected including, especially, their families on whom falls the heaviest burden in the event of institutional shortcomings (*Autism-Europe v. France*, ... § 53)”³⁴⁹ and considers that a lack of social services geared to the needs of persons with disabilities, which places families in precarious circumstances and undermines their cohesion, “amounts, on the part of the defendant State, to a lack of protection of the family as a unit of society, in breach of Article 16 of the Charter”.³⁵⁰

As with Article 14§1 of the Charter,³⁵¹ the normative content of Article 31 must be examined in the light of the commitments entered into France when it ratified the CRPD.

This approach is consistent with the Council of Europe Disability Strategy 2017-2023, which states that “persons with disabilities are entitled to have access to and enjoy the full range of human rights safeguarded by ... the United Nations Convention on the Rights of Persons with Disabilities” and that the intention is to act “in line with the UNCRPD” and with “the evolving body of decisions, guidelines and General Comments of the UNCRPD Committee”.³⁵²

³⁴⁸ European Committee of Social Rights, *International Federation for Human Rights (FIDH) v. Belgium*, Collective Complaint No. 75/2011, [decision on the merits of 18 March 2013](#), §§183 and 184.

³⁴⁹ *Ibid.*, §185.

³⁵⁰ *Ibid.*, §187.

³⁵¹ *Ibid.*, §§ 111 to 114.

³⁵² Council of Europe, [Disability Strategy 2017-2023 “Human rights: a reality for all”](#), paragraphs 2 and 23.

The CRPD asserts in its preamble³⁵³ that it is “convinced that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State, and that persons with disabilities and their family members should receive the necessary protection and assistance to enable families to contribute towards the full and equal enjoyment of the rights of persons with disabilities”.

Article 23 3) of the CRPD on “Respect for the home and the family”,³⁵⁴ requires States Parties to “provide early and comprehensive information, services and support to children with disabilities and their families”.

The complainant organisations also ask the Committee to follow its case-law³⁵⁵ and to take note of the document on “The right of people with disabilities to live independently and be included in the community”, produced by the Council of Europe Commissioner for Human Rights. In interpreting Article 19 of the CRPD, the Commissioner recommends that the member states should set up support services and a support plan for families.³⁵⁶

The complainant organisations also request the Committee to abide by its case-law³⁵⁷ and take account of the general comments of the UN Committee on the Rights of Persons with Disabilities, particularly General Comment No. 5 on living independently and being included in the community. In this comment, Article 19 of the CRPD³⁵⁸ is interpreted to require the State Parties to prevent the isolation of persons with disabilities in the community or separation from their family, particularly by providing families with the necessary support.³⁵⁹

Article 16 of the Charter must also be interpreted in the light of Recommendation (2006) 5 of the Committee of Ministers of the Council of Europe on the Council of Europe Action Plan 2006-2015 to promote the rights and full participation of people with disabilities in society³⁶⁰. Action Line No. 8 of this Plan, on “Community living”, recommends that states should, in particular, take various measures to support families such as setting up complementary services and other facilities.³⁶¹

The message therefore of Article 16 of the Charter, as fleshed out by the Committee’s case-law and the CRPD, is that family protection requires states to provide effective access to community-based services for persons with disabilities, failing which they place the families of persons with disabilities in a vulnerable situation.

³⁵³ **Appendix 3 Applicable domestic and international law**

³⁵⁴ **Appendix 3 Applicable domestic and international law**

³⁵⁵ European Committee of Social Rights, International Federation for Human Rights (FIDH) v. Belgium, Collective Complaint No. 75/2011, [decision on the merits of 18 March 2013](#), §114.

³⁵⁶ Council of Europe Commissioner for Human Rights, [The right of people with disabilities to live independently and be included in the community](#), 2012, recommendations 8 and 9, pp. 7 and 8.

³⁵⁷ European Committee of Social Rights, Mental Disability Advocacy Center (MDAC) v. Belgium, Collective Complaint No. 109/2014, [decision on the merits of 16 October 2017](#), §72.

³⁵⁸ **Appendix 3 Applicable domestic and international law**

³⁵⁹ UN Committee on the Rights of Persons with Disabilities, General Comment No. 5 on the right to live independently and being included in the community, §§55, 67 and 87.

³⁶⁰ European Committee of Social Rights, International Federation for Human Rights (FIDH) v. Belgium, Collective Complaint No. 75/2011, [decision on the merits of 18 March 2013](#), §115.

³⁶¹ Council of Europe, [Recommendation No. \(2006\) 5 of the Committee of Ministers on the Council of Europe Action Plan to promote the rights and full participation of people with disabilities in society: improving the quality of life of people with disabilities in Europe 2006-2015](#), Appendix, section 3.8.

Yet it was demonstrated in section 2.2.2 above that in France many families support a disabled family member when this support should actually have been provided, in co-operation with the family, by appropriate community-based services including personal assistance and services for the general public. This responsibility has many adverse repercussions for such families, who are most often deprived of sufficient assistance. Other families are forced to accept that the disabled family member will have to move far away from them to receive appropriate support. As to minor children, parents may even have them removed from their care. For many families, the lack of access for persons with disabilities to an independent life within the community causes deep-reaching, negative upheavals in their lifestyles, amounting to a failure by France to protect families as a unit of society.

In this context, because of its impact on families, the lack of access in France to an independent life within the community for persons with disabilities constitutes a violation of Article 16 of the Charter.

Furthermore, in its decision on *International Federation for Human Rights v. Belgium*, the Committee explained the link between Article 16 and Article E of the Charter: when “the lack of care solutions and social services suited to the needs of persons with severe disabilities obliges these persons to live with their families and that as a result many of these families are in a precarious, vulnerable state, ... this state of affairs stigmatises these families as a particularly vulnerable group, as a result of which Belgium is completely in breach of its obligation under Article E of the Charter to outlaw unequal access of the persons concerned to collective advantages (*Autism-Europe v. France*, op. cit., §52)”.³⁶²

At the same time, the fragile state in which many families of persons with disabilities find themselves in France makes them a particularly vulnerable group which does not have the same protection as other families, including the families of dependent elderly people, who get more recognition.

By failing to provide persons with disabilities effective access to an independent life within the community, thus placing many families with one or more disabled members in a fragile position, France fails to fulfil its duty of protection vis-à-vis these families, in breach of Article 16 of the Charter, taken alone and/or in conjunction with Article E on non-discrimination.

2.2.3.2. The violation of the right of workers with family responsibilities to equal opportunities and treatment – Article 27§1 taken alone and/or in conjunction with Article E on non-discrimination

Article 27§1 of the Charter, on “The right of workers with family responsibilities to equal opportunities and equal treatment”, states that “with a view to ensuring the exercise of the right to equality of opportunity and treatment for men and women workers with family responsibilities and between such workers and other workers, the Parties undertake: ... to take appropriate measures ... c. to develop or promote services, public or private ...”.

³⁶² European Committee of Social Rights, *International Federation for Human Rights (FIDH) v. Belgium*, Collective Complaint No. 75/2011, [decision on the merits of 18 March 2013](#), §216.

Article 27§1 of the Charter must be interpreted in the light of:

- Recommendation (2006) 5 of the Committee of Ministers of the Council of Europe on the Council of Europe Action Plan to promote the rights and full participation of people with disabilities in society.³⁶³ Action Line No. 8 of this Plan, on “Community living”, recommends that states should, among other things, support the families of persons, “paying particular attention to the reconciliation of private and professional life and to gender equality” and having due regard to “the relevant provisions included in Recommendation No. R (96) 5 of the Committee of Ministers to member states on reconciling work and family life”;³⁶⁴
- the appendix to Recommendation [CM/Rec\(2010\)2](#) of the Committee of Ministers to member states on deinstitutionalisation and community living of children with disabilities,³⁶⁵ which states as follows: “1.6. the state has a responsibility to support families so that they can bring up their disabled child at home and, in particular, to create the necessary conditions to implement a better reconciliation of family and working life: the state should therefore finance and make available a range of high-quality services from which the families of children with disabilities can choose assistance adapted to their needs”.

Article 27§1 c) must therefore be understood to require States Parties to take suitable measures to promote access for persons with disabilities to appropriate community-based services, which would foster the reconciliation of work and family life.

Yet it was demonstrated in section 2.2.2 above that, in France, insufficient access for persons with disabilities to appropriate community-based services, including personal assistance and services for the general public, has a negative impact on the working life of persons who are forced to provide all or part of the support for a disabled family member, particularly for women workers. In this way the right of workers with family responsibilities to equal opportunities and treatment is completely thwarted by insufficient services.

Consequently, the lack of effective access to community-based services for persons with disabilities in France constitutes a violation of Article 27§1 of the Charter.

The link should also be made between Article 27§1 of the Charter and Article E on non-discrimination. Under Article E, the enjoyment of the rights set forth in the Charter must be secured without any discrimination on the ground of disability.³⁶⁶ Article E of the Charter prohibits not only direct discrimination but also “all forms of indirect discrimination” which “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

³⁶³ European Committee of Social Rights, International Federation for Human Rights (FIDH) v. Belgium, Collective Complaint No. 75/2011, [decision on the merits of 18 March 2013](#), §115.

³⁶⁴ Council of Europe, [Recommendation No. \(2006\) 5 of the Committee of Ministers on the Council of Europe Action Plan to promote the rights and full participation of people with disabilities in society: improving the quality of life of people with disabilities in Europe 2006-2015](#), Appendix, section 3.8.

³⁶⁵ Council of Europe, Recommendation [CM/Rec\(2010\)2 of the Committee of Ministers to member states on deinstitutionalisation and community living of children with disabilities](#), 2010, appendix, paragraph 1.6.

³⁶⁶ European Committee of Social Rights, Autism-Europe v. France, Collective Complaint No. 13/2002, decision on the merits of 4 November 2003, §51.

all are genuinely accessible by and to all”.³⁶⁷

As with Article 14§1 of the Charter,³⁶⁸ the normative content of Article E must be examined in the light of the commitments entered into France when it ratified the CRPD.

This approach is consistent with the Council of Europe Disability Strategy 2017-2023, which states that “persons with disabilities are entitled to have access to and enjoy the full range of human rights safeguarded by ... the United Nations Convention on the Rights of Persons with Disabilities” and that the intention is to act “in line with the UNCRPD” and with “the evolving body of decisions, guidelines and General Comments of the UNCRPD Committee”.³⁶⁹

Article 2 of the CRPD defines discrimination on the basis of disability as “any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination ...”.³⁷⁰ The General Comment by the UN Committee on the Rights of Persons with Disabilities on equality and non-discrimination states expressly that discrimination on the basis of disability, as defined by Article 2 of the CRPD and implemented under Article 5, on “Equality and non-discrimination”,³⁷¹ covers discrimination by association.³⁷² The complainant organisations request the Committee to take account of this general comment, in accordance with its case-law.³⁷³

Article E of the Charter must also be interpreted in the light of the case-law of the European Court of Human Rights and the Court of Justice of the European Union. The Committee has stated in its decisions that Article 31 of the Charter should be interpreted “in the light of relevant international instruments that served as inspiration for its authors or in conjunction with which it needs to be applied”.³⁷⁴ Pursuant to this case-law, the complainant organisations call for Article 27§1 of the Charter to be interpreted in the light of the decisions of the European Court of Human Rights³⁷⁵ and the Court of Justice of the European Union.³⁷⁶ Both of these courts recognise the concept of discrimination by

³⁶⁷ See:

– European Committee of Social Rights, *Autism-Europe v. France*, Collective Complaint No. 13/2002, decision on the merits of 4 November 2003, §52;

– European Committee of Social Rights, *European Action of the Disabled (AEH) v. France*, Collective Complaint No. 81/2012, [decision on the merits of 11 September 2013](#), §133.

³⁶⁸ European Committee of Social Rights, *International Federation for Human Rights (FIDH) v. Belgium*, Collective Complaint No. 75/2011, [decision on the merits of 18 March 2013](#), §§ 111 to 114.

³⁶⁹ Council of Europe, [Disability Strategy 2017-2023 “Human rights: a reality for all”](#), paragraphs 2 and 23.

³⁷⁰ **Appendix 3 Applicable domestic and international law**

³⁷¹ **Appendix 3 Applicable domestic and international law**

³⁷² UN Committee on the Rights of Persons with Disabilities, [General Comment No. 6 on equality and non-discrimination](#), 2018, §§3 and 20.

³⁷³ European Committee of Social Rights, *Mental Disability Advocacy Center (MDAC) v. Belgium*, Collective Complaint No. 109/2014, [decision on the merits of 16 October 2017](#), §72.

³⁷⁴ European Committee of Social Rights, *International Movement ATD Fourth World v. France*, Collective Complaint No. 33/2006, [decision on the merits of 5 December 2007](#), §68.

³⁷⁵ *Ibid.*, §69.

³⁷⁶ European Committee of Social Rights, [The relationship between European Union law and the European Social Charter](#), 2014. On pages 40, 125 and 134 of this working document, the Committee mentions convergences between the Charter and Directive 2000/78/EC of the Council of 27 November 2000, establishing a general framework for equal treatment in employment and occupation, which was interpreted by the Court of Justice of the European Union in its judgment on S.

association on the ground of disability.^{377 378} The Court of Justice has found, in particular, that the less favourable treatment of an employee with a child with a disability on the ground of that disability constitutes discrimination.³⁷⁹

Furthermore, in its document, “Children’s Rights under the European Social Charter”, the Charter Secretariat identifies the prohibition of discrimination on the ground of family responsibilities as one of the family rights deriving from the Charter.³⁸⁰

Under Article 27§1 of the Charter, States Parties are required to develop or promote services enabling workers with family responsibilities to reconcile work and family life, without any distinction according to whether they have young children to look after or whether a child or adult in their family has a disability.

However, while France is acknowledged at European level to be a model pupil where it comes to setting up facilities for young children,³⁸¹ this is not the case with community-based services for children and adults with disabilities, as demonstrated in section 2.1.2 above.

By failing to meet its obligation to set up community-based services which would enable workers with a disabled family member to reconcile work and family life, France also fails to meet its obligation “to outlaw unequal access of the persons concerned to collective advantages”³⁸² on the ground of disability.

By failing to provide effective access for persons with disabilities to community-based services, thus undermining the chances of workers who partly or fully support a family member with disabilities from reconciling work and family life because of a lack of services, France is in breach of Article 27§1 of the Charter, taken alone and/or in conjunction with Article E on non-discrimination.

Coleman against Attridge Law and Steve Law.

³⁷⁷ [European Court of Human Rights](#), Guberina v. Croatia, judgment of 22 March 2016, application no. 23682/13, paragraph 79.

³⁷⁸ Court of Justice of the European Union, judgment of 17 July 2008, S. Coleman against Attridge Law and Steve Law, C 303/06.

³⁷⁹ Ibid.

³⁸⁰ Charter Secretariat, Children’s Rights under the European Social Charter, 2005, p.4.

³⁸¹ European Commission, [Barcelona objectives. The development of childcare facilities for young children in Europe with a view to sustainable and inclusive growth](#), 2013, pp.6 and 7.

³⁸² See :

– European Committee of Social Rights, Autism-Europe v. France, Collective Complaint No. 13/2002, decision on the merits of 4 November 2003, §52;

– European Committee of Social Rights, International Federation for Human Rights (FIDH) v. Belgium, Collective Complaint No. 75/2011, [decision on the merits of 18 March 2013](#), §216;

– European Committee of Social Rights, European Action of the Disabled (AEH) v. France, Collective Complaint No. 81/2012, [decision on the merits of 11 September 2013](#), §133.

Part 3: Conclusions and signatures

In ratifying both the revised European Social Charter and the UN Convention on the Rights of Persons with Disabilities, France undertook to respect the social rights of persons with disabilities on its territory.

However, in practice in France, persons with disabilities do not have access to an independent life within the community. This situation also has a major impact on the families of such persons.

EDF and Inclusion Europe ask the European Committee of Social Rights to declare this complaint admissible.

They also ask it to hold that France fails to meet its obligations under the following Charter provisions:

- Article 15§3, taken alone and/or in conjunction with Article E;
- Article 30;
- Article 14§1 taken alone and/or in conjunction with Article E;
- Article 31§§1 and 3 taken alone and/or in conjunction with Article E;
- Article 11§1 taken alone and/or in conjunction with Article E;
- Article 16 taken alone and/or in conjunction with Article E;
- Article 27§1 taken alone and/or in conjunction with Article E.

EDF and Inclusion Europe also ask the Committee to invite the Committee of Ministers to recommend that France should pay a sum of €5 000 to each complainant organisation to cover procedural costs.³⁸³ Supporting documents will be supplied to the Committee in the response to the State's submissions.

Brussels, 14 May 2018



For European Disability Forum
Ioannis Vardakastanis
President



For Inclusion Europe
Maureen Piggot
President

³⁸³ European Committee of Social Rights, International Federation for Human Rights (FIDH) v. Belgium, Collective Complaint No. 75/2011, decision on the merits of 18 March 2013, §222: as a consequence of the quasi-judicial nature of the proceedings under the Protocol, when there is a finding of a violation of the Charter, the defending state should meet at least some of the costs incurred.

Part 4: List of appendices

The following appendices are enclosed with this collective complaint:

- Appendix 1: Documents concerning the complainant organisations
- Appendix 2: Abbreviations and acronyms
- Appendix 3: Applicable domestic and international law
- Appendix 4: Figures illustrating the lack of access to specific services and concrete cases of persons denied such access
- Appendix 5: Statements from families collected by the Unafam social office
- Appendix 6: The lack of effective access to personal assistance
- Appendix 7: Bibliography