



30/06/2023

RAP/RCha/BEL/17(2023)

## **EUROPEAN SOCIAL CHARTER**

Comments submitted by  
The Mental Disability Advocacy Centre  
concerning the 17th National Report on the implementation of  
the European Social Charter

submitted by  
**THE GOVERNMENT OF BELGIUM**  
Follow-up to the Collective Complaint No. 109/2014

Comments registered by the Secretariat  
on 30 June 2023

**REPORT FOR FINDINGS 2023**



VALIDITY

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

30 June 2023

## Comments on the follow-up

to the European Committee of Social Rights Decision

### **The Mental Disability Advocacy Centre (MDAC) v. Belgium**

(no. 109/2014)

filed in response to the Belgian Government report submitted on 22 December  
2022

#### **Authors:**

**Validity Foundation (Mental Disability Advocacy Centre)** is an international human rights organisation with standing to submit collective complaints before the European Committee of Social Rights. Contact information: Validity Foundation, Impact Hub, Ferenciek Tere 2, 1053 Budapest, Hungary, represented by Šárka Dušková, Litigation Director, [sarka@validity.ngo](mailto:sarka@validity.ngo)

**Gelijke Rechten voor Iedere Persoon met een handicap (GRIP, Equal Rights for Every Person with a Disability)**, is a Flemish organization defending the rights of persons with disabilities. Contact information: GRIP, Vooruitgangstraat 323, 1030 Brussel, Belgium, represented by Patrick Vandelanotte, Coördinator GRIP, [patrick.vandelanotte@gripvzw.be](mailto:patrick.vandelanotte@gripvzw.be)

#### **I.**

## **Introduction and Summary**

1. GRIP and Validity submit the present report for the consideration of the European Committee of Social Rights (hereafter, “the Committee”) on the implementation of its Decision in the case *the Mental Disability Advocacy Centre (MDAC) v. Belgium* (complaint no. 109/2014, published on 29 March 2018, conclusions adopted by the Resolution of the Committee of Ministers CM/ResChS(2018)3 of 4 July 2018).
2. On 22 December 2022, the Belgian Government submitted a report to the Committee in which it outlined the progress in the implementation of the above decision. The Government report clearly indicates that they remain committed to segregated education and allow for inclusive education only “when possible”. The Flemish Government not only plans to maintain a segregated special education system but in recent years, the number of such segregated schools and pupils with disabilities in them has significantly increased. This, as the Committee noted previously, contradicts the notion of inclusion (*Mental Disability Advocacy Centre (MDAC) v. Belgium*, mainly paras 65-67). The right to inclusive education means that all children, including those with high support needs, have the right to be included in mainstream schools and adequately supported therein (ibid).
3. The authors submit this reaction to the Government report to demonstrate not only the Flemish Government’s failure to implement the decision *Mental Disability Advocacy Centre (MDAC) v. Belgium* but also their lack of commitment and effort to do so. The authors request the Committee to adopt a clear stance against the Flemish authorities’ disregard towards the above decision and the ensuing Resolution of the Committee of Ministers.

## **II.**

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

4. In the complaint registered on 30 April 2014, relying on Articles 15§1, 17§§ 1 and 2 and Article E of the Revised European Charter, MDAC (now called “Validity”) alleged that the Flemish Community of Belgium denies access to mainstream education to children with disabilities, in particular to children with intellectual disabilities, and fails to provide necessary reasonable accommodations to ensure inclusion of children with disabilities in mainstream education.
5. The Belgian Government's defence in the case rested predominantly on the argument that since 1 September 2015, the Flemish Community adopted a so-called M-Decree, a law

introducing measures aiming to support the inclusion of children with disabilities in mainstream education, including reasonable accommodations.

6. The Committee nevertheless found the measures implemented through the M-Decree insufficient, insisting that “*the eligibility requirements for admission to mainstream education according to the M-Decree, (...), are based on the notion of integration rather than inclusion*”. The Committee concluded that “*there are serious and numerous restrictions to the right of inclusive education by excluding pupils who are “unable to follow the common curriculum”*” (paras 66 and 69, respectively).
7. The Committee found that contrary to Articles 15§1 and 17§2 of the Charter, the Belgian state does not offer an effective guarantee of inclusive education for all children with disabilities, despite the fact the possibility to refuse their enrolment in mainstream education lacks any legitimate aim. The Committee criticised the lack of a concrete time frame, indicators and dedicated resources for fully achieving an inclusive education system. The Committee also concluded that the state discriminated against children with disabilities by failing to provide a guarantee of reasonable accommodations. Furthermore, it acknowledged that the children had no access to an effective remedy against the refusal of enrollment.
8. On 4 July 2018, the Committee of Ministers adopted a resolution based on the above decision (Resolution CM/ResChS(2018)3), which also takes note of the commitment of the Belgian Government to bring the situation into conformity with the Charter and the information it has communicated in this regard. Despite the Committee’s findings in relation to the M-Decree, the Committee of Ministers considered in this respect, that the M-Decree is a step in the right direction and invited the Belgian Government to submit on the next reporting occasion any new developments regarding implementation.

### **III.**

#### **The Implementation of the decision since 2018 and the civil society and media reaction**

9. Despite the promises that the M-Decree and its correct implementation may at least improve access to inclusive education for children with disabilities, since 2018, the Flemish Government has both practically and rhetorically consistently undermined any progress in the implementation of the *MDAC v. Belgium* decision.

10. Already in 2017, the Flemish Government representatives publicly denied its full support to inclusive education, saying that a system of segregated special needs schools needs to be kept in place in the long run.<sup>1</sup>
11. The Belgian Government report to the Committee on the implementation of *MDAC v. Belgium* from 19 December 2019 reiterated the same stance. The Flemish Government reportedly adopts a “pragmatic and realistic approach: special education when needed, inclusive education when possible”. Again, the Committee's criticism that the Flemish education laws and policies “... are based on the notion of integration rather than inclusion” (*MDAC v. Belgium, para 66*) remained unanswered.
12. Since that time, the Flemish Government has moved further and further from its commitment to implement inclusive education. The education minister, Ben Weyts, recently communicated in the media that students should attend school “in the right place”, indicating that the right place for pupils with disabilities are special schools:

"This Flemish Government chooses special education and is putting all available resources to creating new places," says Weyts. "We are mobilising as many resources as possible as well as people to give the most vulnerable pupils a good place."<sup>2</sup>
13. The minister also publicly gave a new interpretation of the Enrolment Decree which would make it even easier to refuse to enrol pupils with special needs, in clear contravention of the Committee's *MDAC v. Belgium* decision (paras 65-67):

“Pupils with special care needs can go into mainstream education but the class council makes the final decision when it deems impossible to provide the needed support to a particular pupil or when the care for that one pupil comes at the expense of the other pupils.”<sup>3</sup>

---

<sup>1</sup> The information is available in Flemish at:

[https://pincette.katholiekonderwijs.vlaanderen/meta/properties/dc-identificator/2017\\_01\\_11\\_LER\\_ondersteuningsmodel\\_advies%20VLOR](https://pincette.katholiekonderwijs.vlaanderen/meta/properties/dc-identificator/2017_01_11_LER_ondersteuningsmodel_advies%20VLOR)

<sup>2</sup> “Deze Vlaamse Regering kiest voor het buitengewoon onderwijs en zet alle zeilen bij om extra plaatsen te creëren”, zegt Weyts. “We mobiliseren zoveel mogelijk middelen én mensen om de meest kwetsbare leerlingen een goede plaats te geven.”

[Meer dan 600 extra plaatsen in het buitengewoon onderwijs | Ben Weyts](#), 23 April 2023.

<sup>3</sup> “Leerlingen met speciale zorgnoden kunnen terecht in het gewone onderwijs, al beslist de klassenraad finaal wanneer het alsnog niet lukt om een bepaalde leerling de juiste zorg aan te bieden of wanneer de zorg voor die ene leerling ten koste gaat van de andere leerlingen.”

[Leersteundecreet krijgt finaal groen licht | Nieuw-Vlaamse Alliantie \(N-VA\)](#), 3 May 2023.

14. As a result of this rhetoric and corresponding policies, inclusive education for children with disabilities has become significantly less available in the Flemish Community in recent years. In GRIP's experience, the schools increasingly refuse to understand inclusive education and reasonable accommodations as legal obligations. Parents and children who choose inclusive education are forced to carry a significant part of the responsibility for their children's education. They have little recourse to protect their child's right to be enrolled and appropriately supported in a mainstream school. Unsupported by the state, mainstream schools which attempt inclusive education are overburdened.
15. In practice and in line with the rhetoric, the Government adopted no steps to improve children's access to mainstream education. Parents and children remain in legal uncertainty regarding the right to enrolment in mainstream education. There is no clarity about the availability of appeals against enrolment decisions. From GRIP's experience, reasonable accommodations for children with disabilities enrolled in mainstream schools are widely unavailable, with long waiting lists for access to personal assistance budgets. In addition, there are still no permanent monitoring and evaluation measures to ensure inclusive education and non-discrimination in practice.
16. The difficulties of children with disabilities in accessing mainstream education with appropriate accommodations have been highlighted in several media reports, including the VRT news, which highlights that Belgium has the most pupils in special education in all of Europe and maps the underlying trends.<sup>4</sup> Another reportage emphasises that inclusive education remains an illusion in Belgium, wasting many pupils' educational potential.<sup>5</sup>
17. The lack of effective policies and the rhetoric denying the right to inclusive education manifests in a significant increase in the number of children enrolled in the special education system.

---

<sup>4</sup> <https://www.vrt.be/vrtnws/nl/2022/10/04/buitengewoon-onderwijs-cijfers/>, 5 October 2022. See also the Pano documentary, monitoring the same: [Pano - woensdag 5 oktober 2022 om 21:36 | VRT MAX](#).

<sup>5</sup> [“Wat als Stephen Hawking geen ondersteuning had gekregen?” Blijft inclusie voor velen een illusie? Onderwijstopman Lieven Boeve reageert | VRT NWS: nieuws](#), 20 March 2022.

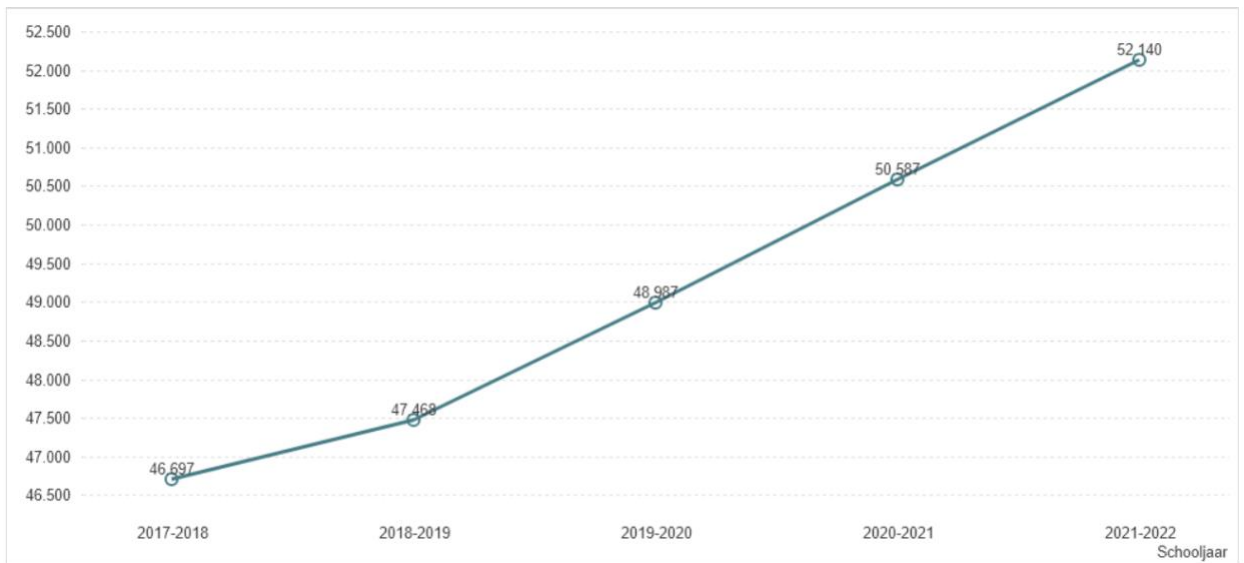


Figure 1. Number of pupils in special education<sup>6</sup>

18. This is consistent with the fact that the number of children with intellectual disabilities (“type 2 pupils”) in special education increased as well.

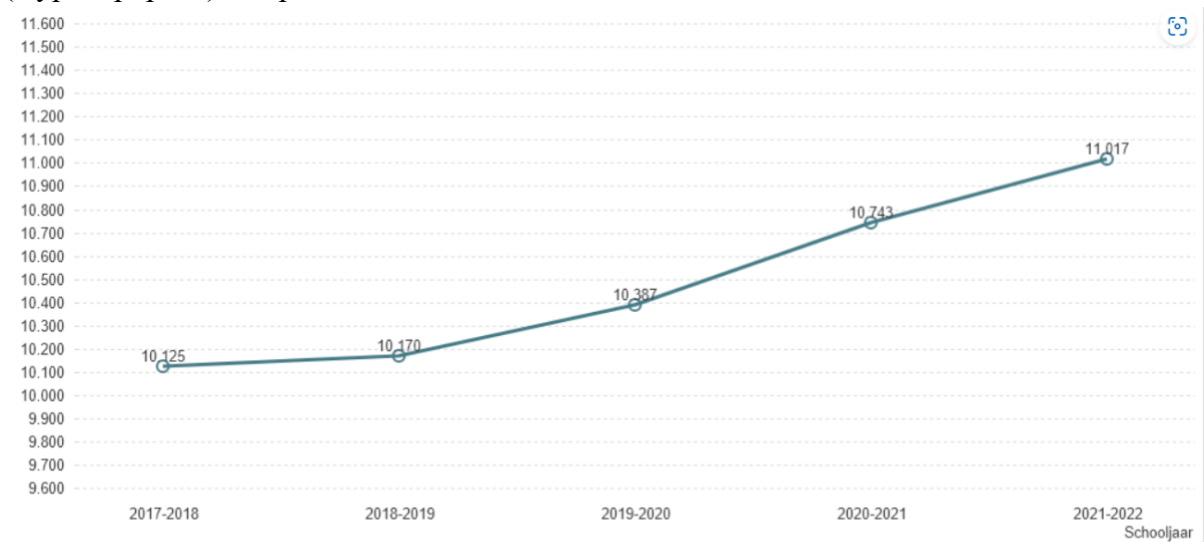


Figure 3. Number of type 2 pupils in special education<sup>7</sup>

<sup>6</sup> Public data available from: [https://dataloep-publiek.vlaanderen.be/QvAJAXZfc/notoolbar.htm?document=LP-Publiek%2FPubliek\\_Inschrijvingen\\_leerplicht.qvw&host=PubliekQVS%40cww100163&anonymous=true](https://dataloep-publiek.vlaanderen.be/QvAJAXZfc/notoolbar.htm?document=LP-Publiek%2FPubliek_Inschrijvingen_leerplicht.qvw&host=PubliekQVS%40cww100163&anonymous=true)

<sup>7</sup> Ibid.

19. As admitted in the Government report, in 2021, 903 children with intellectual disabilities were educated in mainstream schools, as opposed to 10,743 children with intellectual disabilities in special schools. In 2022, the number of children with intellectual disabilities in both streams of education inexplicably increased to 1234 in mainstream education and 11 017 in special education. Nevertheless, the ratio remained de facto identical - ten times more pupils with intellectual disabilities attend a special school than a mainstream school.
20. Moreover, approximately 500 children who have complex support needs are still completely denied education and need to be home-schooled, which is a dramatic increase from recent years.<sup>8</sup> Nevertheless, the Government does not consistently publish data to appropriately monitor this dynamic.
21. In September 2023, the Government plans to finally introduce the new guidance decree which is supposed to replace the M-decree (as indicated in the Government report to the Committee of 19 December 2019). This legislation, if adopted, is a further step away from implementing inclusive education. It envisages the expansion of special education and further investments into places to enrol more pupils therein.<sup>9</sup> Instead of focusing on the implementation of reasonable accommodation at mainstream schools, the decree focuses on the corporatisation of learning support centres and the posts of support staff. Moreover, it does not include any timeframe or indicators of success for measurable progress towards inclusive education for all children.
22. The continuing commitment to maintaining the discriminatory segregated education system means that the Government will not be shifting its budgeting to allocate the maximum available resources for the achievement of inclusive education as it should. And while for the 2023-2024 school year, the Government plans to set up an inclusive education committee to develop a vision of inclusive education for Flanders, the legislation adopted before that directly hinders any attempts to actually implement it in practice.

#### IV.

#### Conclusion

23. GRIP and Validity reiterate their observation that there is neither a commitment by the Flemish Government nor a clear plan to implement inclusive education. The Government report itself confirms that the Government remains committed to segregated education. The

---

<sup>8</sup> Public data available from:

[https://www.mijnvclb.be/downloads/caleidoscoop/jg30%201%2011\\_ge%20moet%20niet.pdf](https://www.mijnvclb.be/downloads/caleidoscoop/jg30%201%2011_ge%20moet%20niet.pdf)

<sup>9</sup> [Meer dan 600 extra plaatsen in het buitengewoon onderwijs | Ben Weyts](#), 23 April 2023.



Government's clear plan is to expand the special education system, instead of investing in implementing inclusion with reasonable accommodations in mainstream schools. Both the plans as well as the practical steps prove that the Government is not committed to implementing the Committee's *MDAC v. Belgium* decision, nor is planning to take any practical steps in this regard.

24. In the meantime, the number of children with intellectual disabilities in the special education system continues to rise and the right to inclusive education with appropriate supports remains an illusion in Flanders. GRIP and Validity kindly request the Committee to require that the Government reassess its current education policy and immediately adopt steps to ensure all children's right to equal access to education, as required by Articles 15§1 and 17§§2 of the Charter, and the Article 24 of the United Nations Convention on the Rights of Persons with Disabilities ("UN CRPD"), as interpreted by the UN CRPD Committee in its General Comment no. 4 on inclusive education (25/11/2016, CRPD/C/GC/4)