

Rights of persons with disabilities

Article 15 of the Revised European Social Charter

FACTSHEET



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Article 15 – The right of persons with disabilities to independence, social integration and participation in the life of the community

With a view to ensuring to persons with disabilities, irrespective of age and the nature and origin of their disabilities, the effective exercise of the right to independence, social integration and participation in the life of the community, the Parties undertake, in particular:

1. to take the necessary measures to provide persons with disabilities with guidance, education and vocational training in the framework of general schemes wherever possible or, where this is not possible, through specialised bodies, public or private;
2. to promote their access to employment through all measures tending to encourage employers to hire and keep in employment persons with disabilities in the ordinary working environment and to adjust the working conditions to the needs of the disabled or, where this is not possible by reason of the disability, by arranging for or creating sheltered employment according to the level of disability. In certain cases, such measures may require recourse to specialised placement and support services;
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.

■ All provisions of the Charter are applicable to persons with disabilities. However, in addition, the Charter guarantees, in Article 15, specific rights relating to persons with disabilities. Article E of the Charter, the non-discrimination clause, provides: "The enjoyment of the rights set forth 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." This prohibits discrimination, inter alia, on the ground of disability. The function of Article E is to help secure the equal effective enjoyment of all the rights guaranteed by the Charter regardless of the specific characteristics of certain persons or groups of persons.

■ Article E not only prohibits direct discrimination, when a person or group is treated less favourably than another without proper justification, but also all forms of indirect discrimination. Such indirect discrimination may arise by



failing to take due and positive account of all relevant differences or by failing to take adequate steps to ensure that the rights and collective advantages that are open to all are genuinely accessible by and to all.

■ The overall aim of Article 15 is to ensure the effective exercise of the rights to independence and social integration. Its underlying vision is one of equal citizenship for persons with disabilities, implying that an equality of treatment should exist, not only by law but also in practice.

■ Article 15 applies to all persons with disabilities regardless of the nature and origin of their disability and irrespective of their age. The European Committee of Social Rights has stressed the importance of moving away from a medical definition of disability towards a social definition that focuses on the interaction of health conditions, environmental and personal factors.

THE RIGHT TO EDUCATION AND TRAINING

■ Under Article 15§1, all persons with disabilities, irrespective of age and the nature and origin of their disabilities, are entitled to guidance, education and vocational training in the framework of general schemes wherever possible and only exceptionally through specialized bodies, public or private. Vocational training under Article 15 encompasses all types of higher education, including university education. Article 15§1 applies to all persons with disabilities, not only children.

■ The focus of this Article is on inclusive education. The right to an inclusive education relates to the child's right to participate meaningfully in mainstream education. Inclusive education implies the provision of support and reasonable accommodations for persons with disabilities to access schools effectively.

This may include: adaptations to the classroom and its location, provision of different forms of communication and educational material, provision of human or assistive technology in learning or assessment situations, as well as non-material accommodations, such as allowing a student more time, reducing levels of background noise, sensitivity to sensory overload, alternative evaluation methods or replacing an element of the curriculum by an alternative element.

Reasonable accommodation should be adequately tailored to an individual's circumstances and learning needs.

The qualifications that learners with disabilities can achieve should be equivalent to those of others (regardless of whether those with disabilities are in mainstream or special education or of whether special arrangements were made for them during the school-leaving examination).

Teachers and assistants dealing with pupils and students with disabilities should be adequately qualified.

Under this provision of the Charter, non-discrimination legislation in relation to disability in the field of education is required. Such legislation should, as a minimum, require compelling justification for special or segregated educational systems and confer an effective remedy on those who have been unlawfully excluded, segregated or otherwise denied an effective right to education.

THE RIGHT TO EMPLOYMENT

This provision requires States Parties to promote an equal and effective access to employment on the open labour market for persons with physical and/or intellectual/psychosocial disabilities.

States Parties enjoy a margin of appreciation in the measures they adopt to enable this. However, anti-discrimination legislation is required to create genuine equality of opportunities on the open labour market. Under Article 15§2, anti-discrimination legislation must include the adjustment of working conditions (reasonable accommodation) and confer an effective remedy on those who have been unlawfully discriminated. In addition, there must be obligations imposed on the employer to ensure effective access to employment and to keep in employment persons with disabilities.



Article 15§2 of the Charter requires that persons with disabilities be employed in an ordinary working environment. Only in exceptional cases, provision may be made for sheltered employment that should aim to assist workers to migrate to the open labour market. Persons working in sheltered employment facilities, where production is the main activity, are entitled to the basic provisions of labour law and in particular, the right to fair remuneration and trade union rights.

THE RIGHT TO SOCIAL INTEGRATION AND PARTICIPATION IN THE LIFE OF THE COMMUNITY

The third paragraph of Article 15 obliges States Parties to adopt a coherent policy in the disability context: positive action measures to achieve the goals of social integration and full participation of person with disabilities. Such measures should have a clear legal basis and be coordinated.

This provision requires the existence of comprehensive non-discrimination legislation providing effective remedies in relation to disability covering both the public and private sphere in fields such as housing, transport, telecommunications, cultural and leisure activities as well as effective remedies for those who have been unlawfully treated.

Article 15§3 obliges States Parties to take measures to ensure the right of persons with disabilities to live independently in the community. This includes the provision of financial and personal assistance and technical aids as well as the phasing out of large institutions.



■ The needs of persons with disabilities must be taken into account in housing policies, including the construction of an adequate supply of suitable, public, social or private, housing. Further, financial assistance should be provided for the adaptation of existing housing.

■ Public transport (land, rail, sea and air), all newly constructed or renovated public buildings, facilities and buildings open to the public, and cultural and leisure activities should be physically accessible.

■ Measures must be taken to promote access to new information and communication technologies.

■ Article 15§3 of the Charter requires, *inter alia*, that persons with disabilities have a voice in the design, implementation and review of coordinated disability policies.

■ The obligation of States Parties to take measures to promote persons with disabilities' full social inclusion and participation in the life of the community is strongly linked to measures directed towards the amelioration and eradication of poverty amongst them. Poverty levels experienced by persons with disabilities are taken into account when considering States Parties' obligations under Article 15§3 of the Charter.

Article 23 and Article 11 of the European Social Charter

■ Also of relevance to the rights of persons with disabilities is Article 23 on the rights of older persons and Article 11 on the right to protection of health. Under Article 23 there should be a national legal framework related to assisted decision-making for older persons; their right to decide for themselves should be preserved. Older persons must not be assumed to be incapable of making their own decisions just because they have a particular medical condition or disability.

■ States Parties must take measures to replace regimes of substituted decision-making by supported decision-making, which respects the person's autonomy, will and preferences. These may be formal or informal.

■ Older persons may need assistance to express their will and preferences, therefore all possible ways of communicating, including words, pictures and signs, should be used before concluding that they cannot make the particular decision on their own. In this connection, the national legal framework must provide appropriate safeguards to prevent the arbitrary deprivation of autonomous decision-making by older persons. It must be ensured that any person acting on behalf of older persons interferes to the least possible degree with their wishes and rights (Statement of Interpretation 2013).

■ Under Article 11.3 community-based mental health services should be available and measures should be taken to transition to community-based mental health from former large-scale institutions.

➔ Relevant collective complaints

- 🔗 *International Association Autism Europe v. France*, Complaint No. 13/2002, decision on the merits of 4 November 2003 – access to education for children with autism (Article 15 and 17).
- 🔗 *International Federation of Human Rights (FIDH) v. Belgium*, Complaint No. 75/2011, decision on the merits of 18 March 2013 – access to facilities and accommodation for highly dependent disabled adults.
- 🔗 *European Action of the Disabled (AEH) v. France*, Complaint No. 81/2012, decision on the merits of 11 September 2013 – access to education and vocational training for persons with disabilities (Article 15 & 17).
- 🔗 *Mental Disability Advocacy Center (MDAC) v. Belgium*, Complaint No. 109/2014, decision on admissibility and the merits of 10 October 2017 – access to inclusive education for persons with intellectual disabilities (Article 15 & 17).
- 🔗 *International Federation for Human Rights (FIDH) and Inclusion Europe v. Belgium*, Complaint No. 141/2017, decision on the merits of 9 September 2020 – access to inclusive education for persons with intellectual disabilities (Article 15 & 17).
- 🔗 *European Disability Forum (EDF) and Inclusion Europe v. France*, Complaint No. 168/2018, decision on the merits of 19 October 2022 – access to health care, right to autonomy, social integration and participation in the life of the community (Article 15/3); access to education (Article 15/1).

➔ Latest conclusions on Article 15 – 2020

The European Social Charter, adopted in 1961 and revised in 1996, is the counterpart of the European Convention on Human Rights in the field of economic and social rights. It guarantees a broad range of human rights related to employment, housing, health, education, social protection and welfare.

No other legal instrument at pan-European level provides such an extensive and complete protection of social rights as that provided by the Charter.

The Charter is therefore seen as the Social Constitution of Europe and represents an essential component of the continent's human rights architecture.

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The Council of Europe is the continent's leading human rights organisation. It comprises 46 member states, including all members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.



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