



European
Social
Charter

Charte
sociale
européenne



FACTSHEET

Rights of persons with disabilities

Article 15 of the Revised European Social Charter

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. 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. In addition, the Charter guarantees in Article 15 specific rights relating to persons with disabilities..

■ 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.

PARAGRAPH 1 - 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 class 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 other learners (regardless of whether learners 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 are 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 found to have been unlawfully excluded, segregated or otherwise denied an effective right to education.

PARAGRAPH 2 - 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 are found to 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.

PARAGRAPH 3 - 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 persons 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 and cultural and leisure activities and 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.

■ 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 telecommunication technologies

■ Article 15§3 of the Charter requires inter alia that persons with disabilities should 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 persons with disabilities. Poverty levels experienced by persons with disabilities are taken into account when considering States Parties' obligations under Article 15§ 3 of the Charter.

➡ **Relevant collective complaints**

- ⌘ International Association Autism Europe v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003
- ⌘ International Federation of Human Rights (FIDH) v. Belgium, Complaint No. 75/2011, decision on the merits of 18 March 2013
- ⌘ European Action of the Disabled (AEH) v. France, Complaint No. 81/2012, decision on the merits of 11 September 2013
- ⌘ Mental Disability Advocacy Center (MDAC) v. Belgium, Complaint No. 109/2014, decision on admissibility and the merits of 10 October 2017
- ⌘ International Federation for Human Rights (FIDH) and Inclusion Europe v. Belgium, Complaint No. 141/2017, decision on the merits of 9 September 2020

➡ **Latest conclusions on Article 15 - 2020**