

Parallel report to the European Committee of Social Rights

By the Federal Institute for the protection and promotion of Human Rights, Unia, the
Institute for the Equality of Women and Men, and the Délégué général aux Droits de l'Enfant

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Institut Fédéral pour la
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DROITS DE
L'ENFANT
Le Délégué général

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Report by the Federal Institute for the protection and promotion of Human Rights, Unia, the Institute for the Equality of Women and Men, and the Délégué général aux Droits de l'Enfant

To the European Committee of Social Rights

on the seventeenth periodic report of Belgium - 30 June 2023

The Federal Institute for the protection and promotion of Human Rights

The Federal Institute for the protection and promotion of Human Rights (FIRM/IFDH) is an independent institution created by the Act of 12 May 2019 in accordance with the Paris Principles Relating to the Status of National Human Rights Institutions (status B) to protect and promote human rights in Belgium.

Unia

Unia is an independent public institution that fights discrimination and promotes equal opportunities. Unia's independence and commitment to human rights have been recognised by the Global Alliance of National Human Rights Institutions (status B). Unia has interfederal competence, meaning that, in Belgium, it is active at federal level and at the level of the Communities and Regions. Unia is responsible for helping victims of discrimination based on the criteria protected by the anti-discrimination laws implementing European Directives 2000/43 and 2000/78. On 12 July 2011, Unia was also appointed as an independent mechanism responsible for promoting, protecting and monitoring the implementation of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD).

The Institute for the Equality of Women and Men

Created in December 2002, the Institute for the Equality of Women and Men is an independent federal public institution with the mission to guarantee and promote equality of women and men, and to combat any form of gender-based discrimination and inequality through the establishment and implementation of a comprehensive legal framework, and of appropriate structures, strategies, tools and actions. The institute aims to anchor equality between women and men into society so that it becomes self-evident in mentalities and practices.

The Délégué général aux Droits de l'Enfant

The Délégué général aux Droits de l'Enfant (Delegate-General for Children's Rights, DGDE) is an independent public institution that was established in the French Community of Belgium by the Act of 20 June 2002 and the ministerial Decree of 19 December 2002. Its overall task is to safeguard the rights and interests of children.

In the context of its mandate as defined by the Decree of 20 June 2002, the Délégué général can inter alia:

1. provide information on the rights and interests of children and ensure the promotion of children's rights and interests;
2. verify that legislation and regulations concerning children are correctly applied;
3. recommend to the Government, Parliament and any competent child protection authority proposals for adapting the regulations in force with a view to achieving more robust and effective protection of children's rights and interests;
4. receive information, complaints or requests for mediation in cases where children's rights and interests are infringed;
5. at the request of Parliament, conduct investigations into the operation of any administrative department of the French Community entrusted with the rights and interests of children.

1. Introduction

This report is the result of the collaboration between four Belgian independent institutions working on the protection and promotion of human rights: the Federal Institute for the protection and promotion of Human Rights (FIRM/IFDH), which coordinated this report ; Unia, The Interfederal Centre for Equal Opportunities; the Institute for the Equality of Women and Men (IGVM/IEFH); and the French-speaking Children's Ombudsman, the Délégué général aux Droits de l'Enfant (DGDE, French Community).

This report is set within the collaboration framework between these institutions, the bodies of the United Nations and the regional human rights organisations in the context of which they can present reports on the human rights situation in Belgium. It follows on from the national report the Belgian federal government submitted to the Secretariat of the Council of Europe on 22 December 2022. As this is a "simplified" report, it mainly deals with five collective complaints where the Committee of Social Rights ruled that Belgium had violated the Revised European Social Charter.

Three of these complaints, i.e., regarding the insufficiency of sites for Travellers (complaint No. 62/2010¹), the right to inclusion of persons with a disability in matters of housing and education (complaints Nos. 75/2011² and 141/2017³ respectively) mainly fall under the competence of the Belgian federated entities: the Regions and the Communities. On the basis of its interfederal mandate⁴

¹ ECSR, decision on the merits of 21 March 2012, [International Federation of Human Rights \(FIDH\) v. Belgium](#), Complaint No. 62/2010. See part 3 of this report.

² ECSR, decision on the merits of 18 March 2013, [International Federation of Human Rights \(FIDH\) v. Belgium](#), Complaint No. 75/2011. See part 4 of this report.

³ ECSR, decision on admissibility and merits of 16 October 2017, [Mental Disability Advocacy Center \(MDAC\) v. Belgium](#), Complaint No. 109/2014. See part 7 of this report.

⁴ In virtue of the cooperation agreement of 27 March 2014 signed between the Federal State, the Regions and the Communities, Unia has an interfederal mandate to fight certain forms of discrimination and promote the rights of people with disabilities. However, Unia no longer has any mandate for matters that fall within the remit of the Flemish Community as Flanders withdrew from the cooperation agreement. The Flemish government

to fight discrimination (with the exception of gender-based discrimination and related criteria) and, as an independent mechanism to promote, protect and monitor the implementation of the United Nations Convention on the Rights of Persons with Disabilities, Unia wrote these three sections. The two other collective complaints examined below – No. 98/2013,⁵ regarding the lack of an explicit prohibition of corporal punishment, and No. 124/2016, regarding pay transparency – fall within the federal remit and were written by FIRM/IFDH and IGVM/IEFH respectively, with the support of the DGDE on the complaint against corporal punishment. A collective complaint – No. 109/2014,⁶ regarding the right to inclusive education in Flanders – has not been examined in the context of this report.

In general, **the authors of this report deplore the Belgian State’s lack of effort to comply with the provisions of the European Social Charter.** In its 2020 Findings,⁷ the European Committee of Social Rights pointed out that Belgium had failed to act on all four collective complaints examined. Two years on, that finding can broadly be replicated. **As the European Social Charter is a legally binding treaty, it is up to the Belgian State to take any relevant measures to put an end to any violations thereof.**⁸

Finally, before proceeding to a review of the implementation of the Committee’s decisions, FIRM/IFDH would like to make a number of observations on Belgium’s non-acceptance of several provisions of the European Social Charter with regard to the Group of rights “Children, Families, Migrants”.

2. General comments on the ratification of the European Social Charter by Belgium

The Charter’s ratification system allows States not to sign up to all the rights it contains provided the government authorities agree to be bound by the majority of the Charter’s provisions.⁹ Belgium availed of that possibility by refusing seven of the Charter’s 98 provisions. Five of these seven provisions form part of the Group “Children, Families, Migrants”, i.e. :¹⁰

created a new body - which goes by the name of Vlaamse Mensenrechteninstituut (VMRI) – which will henceforth exercise this mandate in respect of the Flemish competences. The VMRI became operational in March 2023 and is currently recruiting its first members of staff.

⁵ ECSR, decision on the merits of 20 January 2015, [Association for the Protection of All Children \(APPROACH\) Ltd v. Belgium](#), Complaint No. 98/2013.

⁶ ECSR, decision on admissibility and merits of 16 October 2017, [Mental Disability Advocacy Center \(MDAC\) v. Belgium](#), Complaint No. 109/2014.

⁷ ECSR, follow-up of the decisions on the merits of the collective complaints – Findings 2020.

⁸ Incidentally, this non-conformity can be linked to a broader issue: the non-enforcement of judgments by the Belgian public authorities. In a report submitted to the European Commission in 2023, ENNHRI (the European Network of National Human Rights Institutions, which both Unia and FIRM/IFDH are affiliated to) highlighted the extent of this problem in Belgium. This report was produced by FIRM/IFDH, IGVM/IEFH and Unia.

⁹ Article A, Part III, of the Revised Social Charter states that each Party is at least bound by Part I of the Charter, which sets out its objectives, and by at least 16 articles or at least 63 paragraphs of Part II, which define the rights in question. Furthermore, the Parties must accept all the rights set out in the original European Social Charter of 1961, which are incorporated in the Revised Social Charter.

¹⁰ See the report of the Council of Europe, Directorate General of Human Rights and Rule of Law, Department of the European Social Charter, [“Belgium and the European Social Charter”](#), March 2021.

1. Article 19.12: *“the Parties undertake (...) to promote and facilitate, as far as practicable, the teaching of the migrant worker's mother tongue to the children of the migrant worker.”;*
2. Article 27.3: *“the Parties undertake (...) to ensure that family responsibilities shall not, as such, constitute a valid reason for termination of employment.”;*
3. And articles 31.1: *“the Parties undertake to take measures designed (...) to promote access to housing of an adequate standard.”;*
4. 31.2: *“to prevent and reduce homelessness with a view to its gradual elimination.”;*
5. And 31.3: *“to make the price of housing accessible to those without adequate resources.”.*

The tasks of FIRM/IFDH, as defined by the Act of 12 May 2019, include *“furthering ratification of new international instruments to promote and protect fundamental rights and adherence thereto”*.¹¹ In the context of this role, FIRM/IFDH looked at the obstacles to acceptance of the five aforementioned paragraphs in its simplified parallel report submitted to the European Committee of Social Rights in 2021. Its examination recommended that the Belgian State adopt a declaration accepting articles 27.3, 31.1, 31.2 and 31.3 of the European Social Charter, finding, as did the Committee, that the past reasons warranting the lack of acceptance were no longer relevant today. Furthermore, the 2021 parallel report by FIRM/IFDH, the DGDE and the Kinderrechtencommissariaat (KRC)¹² also urged the federal authorities to publish the reasons for its difficulties in accepting article 19.12 of the Charter and to make every effort to further compatibility of the communitarian and regional legislation with the article in question with a view to its adoption.

On 20 August 2021, the Belgian government replied to these recommendations in a commentary on the parallel report submitted to the Committee, only revisiting the non-acceptance of article 27.3 of the Charter on the right to protection against dismissal on grounds of family responsibilities. This commentary is discussed directly below this paragraph. The Belgian authorities did not respond to the other recommendations regarding the non-accepted provisions. Below, we will review how acceptance of these provisions evolved in the past two years.

Article 27.3: family responsibilities

In its third report on the non-accepted provisions by Belgium, the European Committee of Social Rights found that there was no inconsistency between Belgian law and articles 27.3 and 31.1, 31.2 and 31.3 of the Charter.¹³ As a result, there is nothing to prevent acceptance of these provisions. The Committee therefore recommends that Belgium accepts the four articles in question.¹⁴

The 2021 Belgian report shows that, apart from the sanctions against unfair or patently unreasonable dismissal, workers with family responsibilities were not explicitly protected against termination of employment. Since then however, the federal anti-discrimination legislation has been amended to

¹¹ Art. 5, 4°, Act of 12 May 2019 establishing a Federal Institute for the protection and promotion of Human Rights, *Moniteur Belge (M.B.)* [Belgian Official Gazette], 21 June 2019.

¹² The Dutch-speaking Ombudsman for Children.

¹³ ECSR, [3rd report on non-accepted provisions of the European Social Charter by Belgium](#), 3 September 2019.

¹⁴ *Ibid.*

provide for the criterion “family responsibilities”,¹⁵ following the example of a number of federated entities who had anticipated this provision, like the Walloon Region¹⁶ and the German Community.¹⁷

During 2021, the Belgian government let it be known that it could not accept article 27.3 because its legislation did not yet offer workers with family responsibilities protection against dismissal.¹⁸ Furthermore, in its reply to the report by FIRM/IFDH, the DGDE and the KRC, it specified that “*this situation can also be catered for (...) by the more general protection mechanisms*”, referring in particular to the protection against unfair or patently unreasonable dismissal, and the protection against dismissal on the grounds of maternity leave, paternity leave, adoption leave, parental leave, social assistance or palliative care leave.¹⁹ Once again, these arguments do not cite any obstacle that would explain the impossibility to accept article 27.3; quite the opposite, the Belgian State’s response clearly shows that this provision is compatible with Belgian law.

Accepting article 27.3 would strengthen the rights of workers with family responsibilities and would reinforce coherence between the European Social Charter and Belgian law. Furthermore, it would also allow Belgium to bring its legislation fully in compliance with Convention No. 156 of the International Labour Organisation on workers with family responsibilities,²⁰ which it ratified in 2015. **The authors of this report therefore recommend that the State adopts a declaration accepting article 27.3.**

Articles 31.1, 31.2 and 31.3: the right to decent housing

As is the case with article 27.3 of the Charter, the reasons why the Belgian government has refused to accept the three paragraphs of article 31 are unclear. The right to decent housing is currently guaranteed by article 23 of the Constitution and by several instruments of international law, such as article 11 of the International Covenant on Economic, Social and Cultural Rights. While article 31 of the Social Charter is more specific, it still does not amount to an obligation to achieve a result on the part of States. It does imply however that necessary measures must be taken to concretely and effectively realize the right to housing.²¹ In the light thereof, the Belgian objections to accepting the three paragraphs of article 31 should be clarified. The report by the Belgian government itself states that: “*Belgium’s acceptance of article 31 of the Charter is purely a matter of political will as the legislative and practical steps have been taken with a view to its acceptance*”.²² The matter was briefly

¹⁵ Act of 15 November 2022 amending the Act of 10 May 2007 on the fight against discrimination between women and men and the Act of 16 December 2002 establishing the Institute for the Equality of Women and Men, *M.B.*, 9 January 2023.

¹⁶ Decree of the Walloon government of 2 May 2019 amending the Decree of 6 November 2008 on the fight against certain forms of discrimination, *M.B.*, 20 August 2019.

¹⁷ Decree of the German Community of 19 March 2012 on the fight against certain forms of discrimination, *M.B.*, 5 June 2012. It inter alia forbids discrimination on the grounds of “parenthood”, a criteria distinct from motherhood.

¹⁸ ECSR, [3rd report on non-accepted provisions of the European Social Charter by Belgium](#), *op. cit.*, p. 10.

¹⁹ Federal Public Service Employment, Labour and Social Dialogue, Comments on the report by the Federal Institute for the protection and promotion of Human Rights, the Kinderrechtencommissariaat and the Délégué général aux Droits de l’Enfant to the European Committee of Social Rights on the 15th report on the implementation of the European Social Charter submitted by the Government of Belgium, 19 October 2021, RAP/RCha/BEL/15 (2021).

²⁰ International Labour Organisation, [Convention No. 156 on Workers with Family Responsibilities](#), adopted in Geneva on 23 June 1981.

²¹ ECSR, [3rd report on non-accepted provisions of the European Social Charter by Belgium](#), *op. cit.*, pp. 11-12.

²² *Ibid.*

touched on since the last simplified report: the Minister for Economy and Employment indicated that, as housing is one of the Regions' responsibilities, it is up to them to accept the provisions of the Charter.²³ However, the matter has failed to make it to the agenda of the Walloon and Brussels Parliaments between 2021 and 2023.²⁴

In 2019, the Committee strongly encouraged Belgium to accept these provisions so as to enhance the rights of workers with family responsibilities and to improve the guarantees of the right to housing. **As did the European Committee, the authors of this report recommend that the Walloon and Brussels authorities adopt a declaration accepting articles 31.1, 31.2 and 31.3 of the European Social Charter.**

Article 19.12: facilitating the teaching of migrant workers' mother tongue to the children of migrant workers

Acceptance of article 19.12 is particularly complex²⁵ and exclusively falls under the competences of the Communities and Regions. During 2021, FIRM/IFDH recommended that the State – via the federated entities – publicly explains the reasons for the difficulties in accepting article 19.12 of the Charter.²⁶ The Belgian authorities were also asked to make every effort to facilitate the adoption of article 19.12. In 2019, the Committee concluded that more information was required about the reasons that prevented acceptance of this provision. However, the Belgian State did not act on this recommendation, acceptance of article 19.12 was not put on the parliamentary agenda, and, since 2021, there doesn't seem to be any sign of a political declaration on the freedom to teach the migrant worker's mother tongue to the children of migrant workers.

In view of the foregoing, the recommendation FIRM/IFDH, the DGDE and the KRC made to the Committee in 2021 can be replicated. **Accordingly, the authors encourage the Belgian State to publish the reasons for the difficulties in accepting article 19.12 of the Charter and to make every effort to further compatibility of the community and regional legislation with the article in question with a view to its adoption.**

3. Complaint No. 62/2010 – Sites for Travellers

²³ Chamber of Representatives, [Questions et réponses écrites, séance du 9 septembre 2022](#), [Written questions and answers, sitting of 9 September 2022] question no. 977 from MP Gaby Colebunders dd. 04 August 2022 (Fr.) to the Deputy Prime Minister and Minister for Economy and Employment pp. 105-106.

²⁴ Flanders' adoption of a provision like this falls under the competence of the Flemish Human Rights Institute (VMRI).

²⁵ ECSR, [3rd report on non-accepted provisions of the European Social Charter by Belgium](#), *op. cit.*, p. 5.

²⁶ ECSR, [Comments by the Federal Institute for the promotion and protection of Human Rights, the Délégué général aux Droits de l'Enfant and the Kinderrechtencommissariaat](#) on the 15th report on the implementation of the European Social Charter submitted by the Government of Belgium, 30 June 2021.

In its decision of 21 March 2012, the European Committee of Social Rights concluded that there was a violation of Article E read in conjunction with Article 16 of the Revised Charter²⁷ as regards the right to housing for Travellers in Belgium. Several violations of the Charter in particular were identified:

- the refusal to recognise caravans as housing in the Walloon Region and the existence of housing quality standards that are not adapted to caravans in the Flemish and Brussels Regions;
- the inadequate number of public sites accessible to Traveller families and the lack of action on the part of the authorities to address the situation;
- the failure to provide for the specific needs of Traveller families in the urban planning legislation;
- the eviction procedures against Travellers who are unlawfully occupying land;
- lastly, the lack of a coordinated overall policy, inter alia in matters of housing for Travellers to prevent and fight the poverty and social exclusion they are subject to.²⁸ This final finding relied on article 30 of the Charter (the right to protection against poverty and social exclusion) rather than on article 16 (the family's right to social, legal and economic protection).²⁹

On the occasion of its most recent assessment of how this decision was being followed up,³⁰ the European Committee of Social Rights deplored the lack of information the State had provided which limited its ability to assess the implementation of its decision. While it did note that some progress had been made – in particular in Flanders, where indicative quality standards for caravans were introduced – it stressed that the Charter was still being violated on a number of points. The Committee concluded that the Communities and Regions had made far too little effort to bring Belgium into conformity with the European Social Charter.³¹

In the next part we will review to what extent the decision on the merits was acted upon. It contains information about the three Regions of Belgium: the Walloon, the Brussels-Capital and the Flemish Regions. It must be noted that protection and promotion of human rights in Flanders falls under the competence of the Flemish Human Rights Institute (VMRI) since 2023. Unia compiled the information below before this competence was assigned to VMRI (until 14 March 2023) and presents it without prejudice to VMRI's competence since that date.

The failure to recognise caravans as housing and to adapt the housing quality standards to mobile dwellings

In its Findings 2020, the Committee noted that the Walloon Region did not provide any information about caravans being qualified as “housing”, in accordance with article 16 of the Charter, read in

²⁷ Article 16 of the Charter which affords the family the right to social, legal and economic protection. Article E recognises the right to non-discrimination on any ground such as race, colour, sex, language, religion, political or other opinions, national extraction or social origin, health, association with a national minority, birth or other status.

²⁸ ECSR, decision on the merits of 21 March 2012, [International Federation of Human Rights \(FIDH\) v. Belgium](#), Complaint No. 62/2010.

²⁹ Article 30 inter alia provides for a commitment to adopt an overall and coordinated approach to promote access to employment, housing, training, education, culture, and social and medical assistance.

³⁰ ECSR, 3rd assessment of the follow-up: International Federation of Human Rights (FIDH) v. Belgium, in follow-up of the decisions on the merits of collective claims, Findings 2020, *op. cit.*, pp. 5-6.

³¹ *Ibid.*

conjunction with article E.³² In spite of a major reform in 2022 in the way Travellers are catered for,³³ this information is missing in the report Belgium submitted to the Committee. The Walloon Sustainable Housing Code does not qualify caravans as “housing”. That being said, they can henceforth be qualified as “light housing”.³⁴ which is also subject to planning permission and is qualified as housing within the meaning of the Code.

In the absence of implementing decrees by the Walloon government, the hygiene and density standards have not yet been adapted to cater for light housing.³⁵ The general criteria applicable to housing - and laid down by Decree of the Walloon government of 30 August 2007³⁶ – therefore do not apply but can be partially applied by analogy in virtue of the principle of “proper layout of sites”.³⁷ As far as Unia was able to establish, **obtaining permission to open a private caravan site is still extremely difficult**, not to say impossible. Conformity of these provisions with the Charter raises questions.

Lack of sites accessible to Travellers and a poor response from the State

The inadequate number of sites accessible to Travellers remains a problem across the three Regions (Flanders, Brussels-Capital, Wallonia) of Belgium. The efforts of all three Regions do not go far enough and are insufficient to allow us to conclude that a structural change has taken place.

In the Brussels-Capital Region, there are no figures on the number of public sites, but it is safe to say that they are few and far between and no new site has been opened since the Committee’s last review. Other than a halting site in Namur and four sites that have been announced but haven’t materialised yet, the Walloon Region does not have a single public residential terrain.

In the Flemish Region, Unia charted an increase in public sites and in the number of places. This increase has been extremely slow and by no means meets the needs of the Traveller community in Flanders, as previous Flemish governments explicitly acknowledged (“By 2010, we aim to create 500 additional places on transit sites and 750 on residential sites.”)³⁸

Year	Number of public residential sites for Travellers	Number of places for mobile homes ³⁹
1996	27	387
2004	27	407

³² ECSR, Findings 2020, *op. cit.*, p. 5.

³³ Decree of 5 May 2022 amending the Walloon Social Action and Health Code with regard to assistance to Travellers.

³⁴ Art. 1, 40°, of the Walloon Sustainable Housing Code.

³⁵ The Walloon Sustainable Housing Code provides for the adoption of these provisions. Art. 10bis, Walloon Sustainable Housing Code.

³⁶ Decree of the Walloon government of 30 August 2007 laying down the minimum hygiene criteria, the criteria for overcrowding and containing the definitions referred to in article 1, 19° and 22° *bis* of the Walloon Sustainable Housing Code, *M.B.*, 30 October 2007.

³⁷ Art. D.IV.57 5°, Walloon Regional and Urban Planning Code.

³⁸ Flemish government, “[Samenleven in diversiteit, strategisch plan minderhedenbeleid 2004-2010](#)”, [Coexistence in diversity, strategic policy plan for minorities], p. 35.

³⁹ All the figures quoted here were provided by the Public Service “Wonen [Housing]” of the Flemish government which monitors the availability of sites.

2014	30	481
2016	30	486
2022	32	510

It is also worth noting that, at the start of 2020, the City of Antwerp decided to close the public site in Deurne (24 places, 48 families).⁴⁰ While the municipal council eventually decided against this measure, it goes to show that people can be evicted from both public and private sites (see E.).

Aside from residential sites, transit sites are also in short supply. The sites in Flanders are always full. Flanders has a particularly vulnerable group of Travellers⁴¹ that tries to extend their stay on these sites because they have nowhere else to go and are evicted wherever they try to set up home. As there are fewer formal structures in the Walloon Region, Travellers enjoy greater flexibility (also because the Region is less densely populated), but that also leaves them open to being moved on because their presence depends on the tolerance of private landowners and the local police.

The failure to take account of the specific needs of Traveller families in the planning legislation

Given the current planning rules, it is virtually **impossible to set up a private site for Travellers that is fully compliant with all the urban planning rules**. This means that they are constantly at risk of being evicted and it creates an imbalance of power between the people living on the site and the local authorities.

Evictions of Traveller families from sites where they set up camp illegally

None of the three Regions have taken any steps to mitigate the consequences of Travellers being evicted. These evictions are usually the result of legal proceedings because the provisions of the planning legislation have been infringed, or of municipal administrative decisions in the context of the competences of the local authorities in matters of public policy and safety. The municipalities will then take (legal) action against private sites to try to evict its residents. Unia is aware of several evictions and threats of eviction in progress in the three Regions.

These municipal eviction decisions are often taken in violation of the applicable international provisions,⁴² inter alia the right to respect for private and family life,⁴³ the right to decent housing,⁴⁴

⁴⁰ Newspaper "Het Nieuwsblad", "[Stad Antwerpen sluit woonwagenterrein, bewoners krijgen 3,5 jaar om te verhuizen](#)" [City of Antwerp closes caravan site, residents are given 3.5 years to move], 21 February 2020.

⁴¹ M. REIDSMA, G. JUCHTMANS, S. CHAKKAR, P. DE CUYPER, "[Rondtrekkende woonwagenbewoners. Een Overzicht van de leefomstandigheden van rondtrekkende woonwagenbewoners en bestaande initiatieven ter ondersteuning](#)", [Onderzoeksinstituut voor arbeid en samenleving](#) [Itinerant caravan dwellers. An overview of the living conditions of itinerant caravan dwellers and the current support initiatives, Research Institute for Work and Society (HIVA)], KULeuven, 2020.

⁴² Office of the United Nations High Commissioner for Human Rights (OHCHR), Office for Democratic Institutions and Human Rights (ODIHR), the European Network of Equality Bodies (Equinet), European Network of National Human Rights Institutions (ENNHRI), European Union Agency for Fundamental Rights (FRA), Council of Europe, [OPRE Joint Statement on Evictions of Roma and Travellers in Europe](#), 29 June 2016.

⁴³ Art. 8, European Convention on Human Rights, (art. 7, Charter of Fundamental Rights of the European Union).

⁴⁴ Art. 31.1, European Social Charter (provision not accepted by Belgium); art. 23, Belgian Constitution.

the right to free movement and the right to select one's place of residence.⁴⁵ Furthermore, these evictions cannot infringe the right to non-discrimination either by specifically targeting certain groups of the Roma or the Traveller community.⁴⁶

The lack of a coordinated overall policy, inter alia in matters of housing for Travellers to prevent and fight poverty and social exclusion

The Flemish and the Brussels-Capital Regions provide funding for public sites. The Walloon Region provides the municipalities with support. But **none of the Regions have a coordinated overall policy, inter alia in matters of housing for Travellers**, in particular when it comes to fighting poverty and social exclusion. There is a lack of know-how and clear objectives.

The Flemish Region did have a specific plan for Travellers, but that approach fell by the wayside in 2019. There no longer is a coordinated approach to Travellers in the Flemish Region. Only the financial support mentioned above continues to be provided.

The National Action Plan for Roma,⁴⁷ which was recently adopted, lacks coordination both at a federal and regional levels. The Walloon Region is the only exception as the regional authorities entrusted the Travellers Mediation Centre with that task.

Conclusion and recommendations

In conclusion, several recommendations to bring the three Regions of Belgium more in conformity with articles 16, 30 and E of the Charter can be formulated:

- **Elaborate a binding framework to facilitate the local distribution of residential and transit sites;**
- Produce **concrete quantified objectives to create additional sites**. Base these figures on a solid knowledge of the target group;
- Provide (by analogy with the circular of the Flemish government on transit/halting sites) **a circular on "forced evictions"** to remind municipalities of the framework of fundamental rights municipalities must respect and prevent forced evictions inasmuch as possible;
- Strengthen the incentive policies to **make residential and transit sites more appealing to the municipalities** or other stakeholders.

4. Complaint No. 75/2011 – Highly dependent adults with disabilities

In its decision of 18 March 2013, the European Committee of Social Rights found against Belgium because of its inability to create sufficient care facilities for highly dependent persons with disabilities. On that occasion, the Committee inter alia emphasised that *"the State's failure to collect reliable data*

⁴⁵ Art. 45, Treaty on the Functioning of the European Union.

⁴⁶ In particular art. 1 of Protocol No. 12 to the European Convention on Human Rights, art. 14 of the European Convention on Human Rights, art. E. of the European Social Charter and article 21 of the Charter of Fundamental Rights of the European Union.

⁴⁷ Federal Public Service for Social Integration, [Stratégie Nationale pour l'Intégration des Roms 2020-2030](#) [National Strategy for the Integration of Roma 2020-2030].

and statistics throughout the metropolitan territory of Belgium on highly dependent persons with disabilities prevents an overall and coordinated approach to the social protection of these persons and constitutes an obstacle to the development of targeted policies concerning them". Consequently, Belgium had violated the right to protection against poverty and social exclusion.⁴⁸ The Committee also concluded that the right of the family to social, legal and economic protection had been similarly violated.⁴⁹ Some twelve years later, countless associations still denounce the lack of care places and solutions for this target group.

Given Flanders' withdrawal from the cooperation agreement to create an Interfederal Centre For Equal Opportunities, signed between the Federal Administration, the Regions and the Communities, Unia no longer has any up-to-date information on the situation in the Flemish Community. This contribution will therefore successively deal with the care situation for highly dependent persons in the Brussels-Capital Region, the Walloon Region, and to a lesser extent, the Flemish Region.

The state of play with high dependency in Brussels

In the Brussels-Capital Region, disability is by and large a community competence, i.e. it is managed either by the French Community Commission (COCOF), or by the Flemish Community Commission (VGC), or, lastly, where an institution is managed by these two authorities jointly, by the Common Community Commission (COCOM). As a result, a number of facilities, in function of their institutional or linguistic nature, either come within the remit of COCOM (via the Brussels service Iriscare, with competence for health, well-being and family benefits for Brussels residents), of COCOF (via the service PHARE, with competence for disability for the French-speaking residents of Brussels) or of the VGC (via VAPH, with competence for disability for the Flemish-speaking residents of Brussels).

The rules of both COCOM and COCOF, which regulate the certification and subsidisation of services for people with disabilities, show that COCOM and COCOF tend to operate more on the basis of "institutional" funding. Conversely, since 2017, the Flemish Community has gradually been putting a system of personal funding in place which is allocated to disabled persons directly who can then decide how they spend that budget.⁵⁰

The High Dependency Plan (GAMP)

In response to the Committee's indictment of Belgium, COCOF adopted a High Dependency Plan in 2014, to facilitate the development of new projects (inter alia by opening new centres), to combat exclusion of disabled persons outside of day centres or residential facilities, to tackle refusals of

⁴⁸ Art. 30, Revised European Social Charter.

⁴⁹ Art. 16, Revised European Social Charter.

⁵⁰ Study carried out by the Brussels Study Institute (BSI), on [le cadastre des services et besoins des personnes en situation de handicap](#) [The register of services for and needs of people with a disability], p. 37 (see infra).

admission and to create a centralised waiting list for a place in the day centres and residential facilities.⁵¹ Unfortunately, the avowed objectives were not achieved.⁵²

Thereupon, the French Community Commission (COCOF) and the Bi-communal Health Office (Iriscare) jointly sponsored a study⁵³ on creating a register of services for and needs of people with disabilities in Brussels.

Services for and needs of people with a disability: results in relation to high dependency

The study brings **a number of alarming figures to light on the numbers of people who are still on waiting list(s)**,⁵⁴ and are believed to have been so for several years.⁵⁵ In the territory of Brussels, 9,243 individuals who are recipient of an income-replacement allowance or an integration allowance find themselves in a situation of high dependency.⁵⁶

Among them, only 245 have access to a day centre for adults, 167 have a place in a residential facility for adults, 47 benefit from assistance with day-to-day activities and 8 have been provided with assisted housing.⁵⁷⁵⁸

As far as the waiting lists are concerned, the study reports that:

⁵¹ GAMP, “[Comité de suivi du Plan Grande Dépendance de la COCOF : Analyse de la mise en œuvre du Plan et Recommandations](#)” [The Monitoring Committee on the COCOF High Dependency Plan: An analysis of the implementation of the Plan and Recommendations], 2016.

⁵² During 2016, the Monitoring Committee on the COCOF High Dependency Plan conducted an assessment of the commitments made in this plan and made several recommendations that were approved by the Brussels advisory council.

⁵³ The study was awarded in the context of a public tender to the multi-disciplinary team of researchers coordinated by the Brussels Studies Institute (BSI). The first part of the study was elaborated by a team of lawyers and economists between September 2021 and February 2022, and lists the offer of services that are available to people with disabilities. The second part of the study, taken in hand by a team of psychologists, aims to identify the needs of people with disabilities in Brussels. The study relates to the overall disability policy of the three main entities with competence for disabilities in Brussels, i.e., COCOF, COCOM and the Flemish Community Commission (VGC).

The study is available on request via the following link: [Services et besoins de personnes porteuses d'un handicap - Brussels Studies Institute \(bsi.brussels\)](#) [Services for and needs of people with a disability].

⁵⁴ The study (p. 328) specifies however that it is difficult to talk about a “waiting list” or even of “waiting time”, on the one hand, because a certain number of people will probably never get a place in the centre in question, because of a shortage of places, especially in care centres for adults (a place coming up will depend on a user dying or a decision to no longer attend the centre). On the other hand, these lists are not always reviewed in chronological order, as centres are likely to consider candidates that suit them best. Lastly, the number of people waiting is difficult to quantify without a cross-reference or a centralised waiting list: people can put their name down on several waiting lists, with the ensuing risk of double counting, while the centres do not always operate lists that are up to date.

⁵⁵ Study conducted by the BSI, on [le cadastre des services et besoins des personnes en situation de handicap](#), p. 328.

⁵⁶ Study conducted by the BSI, on [le cadastre des services et besoins des personnes en situation de handicap](#), p. 331.

⁵⁷ Study conducted by the BSI, on [le cadastre des services et besoins des personnes en situation de handicap](#), p. 388.

⁵⁸ It must also be noted that from among the 1,542 highly dependent children in Brussels who qualify for increased child benefit, only 283 children attend a day centre for schoolchildren, 165 have access to a day centre for children who do not attend school and 95 children are in residential care for children, study conducted by the BSI, on [le cadastre des services et besoins des personnes en situation de handicap](#), p. 388.

- “Minimum⁵⁹ 225 and maximum⁶⁰ 1,413 people are waiting for a place in a day centre for adults,
- Minimum 146 and maximum 861 people are waiting for a place in a residential facility for adults,
- Minimum 20 and maximum 36 people are waiting for assisted housing,
- Minimum 25 and maximum 49 people are waiting for assistance with day-to-day activities.”⁶¹

As to the residential facilities for adults, the study adds: “However, 11 % of them estimate the average waiting time to be several years, while 33 % of them estimate the average waiting time to be 7 years (ranging between a wait of 1.5 and 15 years, depending on the centre). (...)”⁶² Lastly, the study mentions the lack of structures that can cater for a specific disability (in particular, autism spectrum disorders and dual diagnosis).⁶³

Given the lack of a cross-reference or centralised list and the limits within which these figures can be interpreted, **it is difficult to quantify the actual needs** in terms of places and care facilities for highly dependent persons.⁶⁴

High-dependency status and priority cases

COCOF adopted the decree on the inclusion of people,⁶⁵ commonly known as the Inclusion Decree⁶⁶ in 2014. This Decree provides for a high-dependency status.⁶⁷ Furthermore, it provides for additional subsidies for facilities that cater for highly dependent people. The most important implementing decree that must provide a framework for day and residential care and set new support standards for highly dependent people still needs to be adopted; a first reading of that decree by COCOF’s government has been scheduled for the month of July 2023.

⁵⁹ The “minimum” number is estimated on the basis of the number of people on the longest waiting list.

⁶⁰ The “maximum” number is estimated by making the sum total of the number of people on each individual waiting list.

⁶¹ Study conducted by the BSI, [cadastre de l’offre de services pour les personnes en situation de handicap à Bruxelles :une cartographie juridique, économique et pratique](#) [List of services for people with a disability in Brussels: a legal, economic and practical map], p. 380.

⁶² [Study conducted by BSI](#), *op. cit.*, p. 388.

⁶³ *Ibid.*

⁶⁴ On that matter, the study states on, p. 356: “Since there is no centralised or cross-reference list, it is impossible to accurately determine the number of people waiting for services. Thus, the creation of such a list is of paramount importance if we want to have an accurate idea of the true number of people waiting for services, and of the type of care and structures that need to be developed as a matter of priority.”

⁶⁵ [Decree of 17 January 2014 on the inclusion of people with disabilities](#), M.B., 3 October 2014, p. 78287.

⁶⁶ However, the implementation of the Inclusion Decree has been undermined by the fact that the resources allocated fall short of the decree’s ambitions. In that same vein, close on ten years later, a number of implementing decrees have not been adopted yet. This means that all the services announced in the decree are still not up and running at present (see [Study conducted by BSI](#), *op. cit.*, p. 28).

⁶⁷ To qualify for the status of highly dependent person, the person must also meet the criterion of “lack of satisfactory response to his day and/or residential care needs” (article 2, 3°, 3 of the Inclusion Decree).

Once **COCOF** has granted a person the status of highly dependent person, the disabled person will qualify for a number of benefits⁶⁸ and for assistance from the *Interface des situations prioritaires* [Priority Situations Interface],⁶⁹ a cell that forms part of PHARE.⁷⁰ Likewise, this status will play a role in the assessment of the priorities to be given in terms of the person's day and/or residential care, based on a priority convention. The granting of priority conventions is conditional on an urgency criterion related to the extent of the needs and a social criterion, for instance, the lack of family support or the risk that the person or the people around him may be in danger if the current situation is allowed to persist.

During 2023, PHARE identified more than 500 highly dependent people⁷¹ waiting for a solution tailored to their needs. This figure has been increasing year after year.⁷² In 2021 and 2022, the granting of personal agreements⁷³ was interrupted, plunging the families and support services in a situation of distress.⁷⁴

In the case of **COCOM**, the status of high dependency also leads to an increase in the funding for the services who cater for people with this status.⁷⁵

Lastly, in the case of the Flemish Community, the status of high dependency qualifies the person for a "care budget for highly dependent persons" (zorgbudget voor zwaar Zorgbehoevenden).⁷⁶ The amount of the personal budget (known as the "PVB") is also needs-specific. It is worth noting that "high dependency" does not directly figure in the context of the personal budget (PVB). Be that as it may, the amount of this budget is tailored to the disabled person's needs, which are assessed on the

⁶⁸ Inter alia, respite and leisure activities organised by a number of support services.

⁶⁹ The *Interface des situations prioritaires* is a segment of Phare whose main tasks are providing information, assessing and coordinating with the people and families faced with a disability who apply for "High Dependency (HD)" status; building a network around the person together with the family and professionals; brainstorming the solutions to be developed in the short, medium and long-term.

⁷⁰ Study by the BSI, [cadastre de l'offre de services pour les personnes en situation de handicap à Bruxelles : une cartographie juridique, économique et pratique](#), p. 62.

⁷¹ Figure communicated by the *Interface des situations prioritaires* by email.

⁷² This figure stood at 422 in 2020, at 403 in 2019 and at 180 in the 10 years prior to that (figures from the PowerPoint presentation on the figures of the 2019 annual report). See in that regard the BSI Study on [le cadastre des services et besoins des personnes en situation de handicap](#), p. 373 which inter alia quotes the figures from the PHARE annual activity report. On p. 374, the report states that "the circumstances of highly dependent people vary from person to person. In actual fact, during 2019, there was no solution for 74 % of registered adults; 2 % found themselves in a precarious situation, 9 % in a sketchy situation and 16 % in an unsuitable situation. Among children, there was no solution for 20 % of them, 34 % found themselves in a precarious situation, 9 % in a sketchy situation, 9 % in unsuitable situation and 29 % were of school-leaving age."

⁷³ A personal agreement is a personal budget that is allocated to a person in a priority or emergency situation which qualifies him for a place at a given service or institution. If the person or the service decides to terminate the contract, both the person and the service lose the funding.

⁷⁴ Communication dd. 31 January 2022 from Mr Bouchat to the support service managers on the state of play with priority agreements on 31 January 2022.

⁷⁵ [Arrêté ministériel du 2 mars 2009 déterminant les frais de fonctionnement des centres et services de l'Aide aux Personnes](#) [Ministerial Decree of 2 March 2009 determining the running costs of support centres and services], *M.B.*, 8 October 2009, art. 1, §1/1, 1°, b) and d) as amended by the Ministerial Decree of 22 January 2021 amending the Ministerial Decree of 2 March 2009 determining the running costs of support centres and services, *M.B.*, 8 February 2021.

⁷⁶ This budget amounts to 130 euro per month and is designed to cover support and non-medical services.

basis of medical criteria and in the broader context of the disabled person’s situation. Also, the greater the person’s support needs, the more generous the budget.⁷⁷

People with an acquired brain injury

In the Brussels Region, **people suffering from an acquired brain injury do not have access to a residential facility that caters for their specific needs.**

Incidentally, since 2003, La Braïse – a support service for people with an acquired brain injury – has been lobbying the Brussels regional authorities to obtain subsidies to build (the infrastructure) and run a residential centre for 15 adults. Given the current economic crisis and the increase in the cost of building, the subsidies initially granted no longer suffice. In the absence of sufficient financial support, the construction of the centre has come under serious threat and La Braïse has found itself forced to abandon the project.

Thus, people suffering from an acquired brain injury are losing hope of ever getting access to a residential facility that specifically caters for their life project and fear that they will ultimately end up in a nursing home, a place inherently unsuited to their life project.

Personal assistance budget

During 2007, COCOM tried to adopt a deinstitutionalisation approach by granting personal assistance budgets (PABs)⁷⁸ to also meet the needs of highly dependent people. Sixteen years later, **the allocation of PABs is still in the pilot phase.** In 2023, 48 people were given a PAB in the Brussels Region while 140 people are still waiting for a budget.⁷⁹ However, these figures do not reflect the reality of the needs in Brussels : disheartened, many people never even apply for a PAB.

Lack of respite facilities

The claimants at the origin of the 2011 collective complaint also included respite facilities in their “care solutions”.⁸⁰ In this respect, **the situation has barely changed since 2011.**⁸¹ Several studies were

⁷⁷ Study conducted by the BSI, on [le cadastre des services et besoins des personnes en situation de handicap](#), p. 65.

⁷⁸ A PAB is an annual budget that varies in function of the disabled person’s needs and is designed to allow him to pay one or more personal assistant(s) to help and assist him with activities, provide him with socio-educational, pedagogic or orthopedagogical support or even help him to coordinate his personal support.

⁷⁹ Figures supplied by the ASBL (non-profit organisation) in charge of personal budgets in Brussels. Note that in 2021, 42 people were granted a PAB while 90 people were still waiting for a PAB. The allocation of PABs does not keep pace with demand.

⁸⁰ International Federation of Human Rights (FIDH), Collective Complaint, document no. 1, available on <https://rm.coe.int/n-75-2011-federation-internationale-des-ligues-des-droits-de-l-homme-f/168074a2ee>, pp. 10-11.

⁸¹ H. MARCELLE, « [Les services de répit pour personnes handicapées en situation de grande dépendance](#) » [Respite services for highly dependent disabled persons].

Observatoire de l’accueil et de l’accompagnement de la personne handicapée [Observatory on the care and support for people with disabilities] PHARE, 2017, I. VAN DORSSLAER, “[Solutions de répit pour les parents d’enfants avec un handicap en Wallonie et à Bruxelles](#)” [Respite solutions for parents of children with a disability in Wallonia and Brussels], “[Etat des lieux des besoins et de l’offre actuelle](#)” [A review of the needs and the current offer], brochure published by the King Baudouin Foundation, 2021.

conducted on this issue. A first study highlighted the extent to which the issue of respite is intrinsically linked to a shortage of places in the day and residential centres.⁸² The second one also raised “*the lack of respite places and the poor visibility of the respite services*” and states that “*parents are exhausted and are often socially isolated, making it impossible for them to do the research on where they can get help*”.⁸³ Furthermore, the exorbitant cost of adapted transport significantly hampers access to respite facilities.

Conclusion and recommendations for the Brussels Region

In the absence of a cross-reference or centralised list of people looking for appropriate care, it is **urgent and imperative to have access to exhaustive and regularly updated statistics on the profile of people and their care needs.**⁸⁴

The Brussels authorities must also **strengthen the care arrangements** that meet individuals’ life project, in particular the personal assistance budgets which are still in the pilot phase.

Lastly, the Brussels authorities must, aside from dealing with the extremely urgent cases, many of which are still languishing on the waiting list of priority cases, **urgently address any critical unsupported situations.**

The state of play with high dependency in Wallonia

Walloon strategy for integrated life projects

Since 2021, the Walloon government has been working on the implementation of a **Walloon strategy for integrated life projects.**⁸⁵ It is about suggesting a new organisation of the “*Walloon institutional model by supporting ambulatory formulas that favour and maximise autonomy and by assisting the services with the implementation of a deinstitutionalisation plan that prioritises small units based in the residential fabric*”.⁸⁶

The strategy targets anyone with diminishing autonomy in his or her living environment, i.e., persons with a disability, the elderly and people suffering from mental health problems.⁸⁷

⁸² H. MARCELLE, *ibid.*, p. 9 (A Word from Minister Céline Frémault).

⁸³ I. VAN DORSSELAER, *ibid.*, p.22.

⁸⁴ [The study](#), p. 356, specifies in that regard: “*Since there is no centralised or cross-reference list, it is impossible to accurately determine the number of people waiting for services. Thus, the creation of such a list is of paramount importance if we want to have an accurate idea of the true number of people waiting for services, and of the type of care and structures that need to be developed as a matter of priority.*”.

⁸⁵ Further information is available on [Parcours de vie intégrés des personnes en perte d’autonomie | AVIQ](#) [Integrated life projects of people with diminishing autonomy].

⁸⁶ See the AVIQ 2021 annual activity report, p. 98, available on [Rapport annuel d’activités 2021 \(version complète\) | AVIQ](#) [2021 Annual activity report (complete version) | AVIQ].

⁸⁷ In the report that presents the Walloon strategy, deinstitutionalisation is defined as “a process that aims to favour the empowerment of people with diminishing autonomy, freedom of choice (in particular in terms of living space) and respect for their rights via: the transformation and adaptation of the existing living spaces, whatever they may be, and supporting people with diminishing autonomy via an integrated life project strategy, taking into account the diversity of profiles, their needs and their resources.

The approach to an integrated life project contemplates the issues of deinstitutionalisation and non-institutionalisation from various angles, which in particular take account of a person's needs and resources: family/friends/neighbourhood/finances.⁸⁸

While this approach does not actually exclude highly dependent people, it must be pointed out that **the strategy does not pay any specific attention to this particularly vulnerable group of highly dependent persons**, who are also entitled to an independent life.

The single list and the priority cases

A single list, which makes it easier to identify the number of people waiting for a care or residential service, has been in place since 2017. Linking demand to the level of urgency also makes the work of the so-called "priority cases" unit, which was set up within AVIQ, somewhat easier.

On 23 May 2023, the single list numbered a total of **1897** people waiting for a place in day or residential care.⁸⁹

Among them, and by category of high dependency disability, we note that:

- 185 people are registered as suffering from cerebral palsy, 96 of whom who are waiting for a care solution and 120 for a residential solution.
- 465 people are registered as suffering from severe & profound mental disorders, 259 of whom who are waiting for a care solution and 298 for a residential solution.
- 229 people are registered as suffering from autism, 128 of whom who are waiting for a care solution and 153 for a residential solution.
- 97 people are registered as suffering from cerebral palsy, 41 of whom who are waiting for a care solution and 68 for a residential solution.
- 730 people are registered as suffering from multiple disabilities (a combination of a physical and mental disability), 373 of whom who are waiting for a care solution and 484 for a residential solution.⁹⁰

Each year, the priority cases unit deals with an increasing number of urgent and complex requests because of people's profiles.⁹¹ The unit looks for solutions in the existing circuits and, as a last resort, activates the mechanism of personal places for people who have been declared a priority.

⁸⁸ AVIQ 2021 Annual activity report, p. 99.

⁸⁹ As this can contain multiple requests, i.e. requests for day and for residential care, the sum total of the types of requests will exceed the total number of requests.

⁹⁰ Figures communicated by AVQ by email.

⁹¹ AVIQ Annual activity report, 2021, p. 76.

On 1 April 2023, **the waiting list of priority cases numbered 240 people.**⁹² A budget has been made available to create 100 new priority, residential or day, places to specifically cater for people with autism⁹³. These places are reserved for people in an emergency situation only.

Personal Assistance Budgets (PABs)

On 31 May 2023, 537 people in Wallonia were in receipt of a PAB but, all priorities combined, 210 people were still waiting for this budget.⁹⁴ Taking account of the budgetary constraints, PABs are currently only available to people who meet priority criterion no. 1 (i.e. suffering from an illness featured on the list of priority diseases because of the rate at which their condition is progressing). Second priority is given to disabled people who do not have access to residential care and who have a score of minimum 45 on the independence scale.⁹⁵ These priority criteria considerably limit the PAB offer and do not in any way allow the demand from people who should qualify for a PAB to be met. Here too, the waiting lists do not reveal true demand either. Many people, discouraged by the priority criteria and the lack of available budget, never even applied for a PAB.

Among the adaptations to be made to the mechanism, the inventory of the existing mechanisms compiled in the context of the Walloon strategy for integrated life projects identified the need to increase the budget to meet pending applications, to review the current legislation to better tailor it to applicants' needs, to address the lack of services and lastly, to create new personal assistant or carer jobs.⁹⁶

The opening of additional places

The Autism Plan announces the creation of 144 new places for people suffering from autism or a dual diagnosis. So far, only 10 places for adults and 18 places for youngsters have come into being. 6 places for adults are currently going through the approval process.⁹⁷

⁹² <https://pro.guidesocial.be/articles/actualites/article/handicap-de-grande-dependance-et-autisme-100-nouvelles-places-d-accueil>.

⁹³ <https://pro.guidesocial.be/articles/actualites/article/handicap-de-grande-dependance-et-autisme-100-nouvelles-places-d-accueil> et [réponse de Madame Morreale à la question orale du 16 mai 2023 de Madame Durenne et Madame Roberty](#) sur l'ouverture de places d'accueil pour les personnes de grande dépendance [Reply from Mrs Morreale to the oral question from Mrs Durenne and Mrs Roberty dd. 16 May 2023 on the opening of care places for highly dependent people].

⁹⁴ Figures communicated by AVQ by email. This figure is on the rise: in June 2020, 115 people who did not meet priority criterion no. 1, were still waiting for a PAB.

⁹⁵ Referred to in article 802 of the regulatory section of the Walloon Social Action and Health Code and where family support is not or no longer able to sustainably ensure the level of care required.

⁹⁶ Inventory of the mechanisms that promote independent living and an analysis of their strengths and weaknesses, annex 2 to the Walloon strategy for integrated life projects, available on [Parcours de vie intégrés des personnes en perte d'autonomie | AVIQ](#) [Integrated life projects of people with diminishing autonomy], p. 27.

⁹⁷ See [réponse de Madame Morreale à la question orale de Madame Durenne et Madame Roberty](#) du 16 mai 2023 sur l'ouverture de places d'accueil pour les personnes de grande dépendance [Reply from Mrs Morreale to the oral question from Mrs Durenne and Mrs Roberty dd. 16 May 2023 on the opening of care places for highly dependent people].

The majority of projects (45 projects) that responded to the call for “autism” and the “brain injury/multiple disabilities” projects, were never started, inter alia because of the successive crises and the ensuing increase in building costs.

It was recently decided to only re-allocate the available resources to projects in the course of construction or where a works or equipment contract had been awarded, i.e. 37 projects out of a total of 82 projects.⁹⁸

Thus, **the initial ambitions of the various calls for projects have so far not been met.**

The Walloon authorities must continue their efforts to meet all the care and residential needs

Like the Brussels Region, **the Walloon Region must strengthen the mechanisms that allow highly dependent people to meet their life project**, such as dealing with the shortage of personal assistance budgets to meet all the applications.

The state of play with high dependency in Flanders⁹⁹

The Flemish Community adopted **an approach of deinstitutionalisation by developing a personal funding system** (PVB) which has become the main manner in which the services are funded. That being said, Flanders did not completely abandon institutional living either. In actual fact, the PVB can be used to fund various support functions, in particular support services for collective living.

The parallel report Unia submitted to the Committee on the Rights of Persons with Disabilities in December 2021¹⁰⁰ specified that **the financial support granted in the context of personal funding is insufficient.**

The Flemish Agency for Persons with Disabilities (VAPH) calculated that, while the overall budget for personal assistance the Government provides has doubled and now exceeds 660 million euro, the waiting time for the lowest priority group will be about 19 years by the end of 2024. It should be increased to 1.6 billion euro if all the current and future needs of some 113,500 people with disabilities are to be rightfully catered for by 2024. But as the Flemish government has no intention of increasing the budget to that level, highly dependent people will continue to be faced with serious problems.

Conclusion

⁹⁸ [Question orale du 30 mai 2023 de Madame Véronique Durenne à Madame Christie Morreale](#), sur l'action du Gouvernement en faveur des services d'accueil et d'hébergement pour les personnes en situation de handicap, pp. 9-10 [Oral question from Mrs Véronique Durenne to Mrs Christie Morreale on the Government's action on care and residential services for people with disabilities dd. 30 May 2023], pp. 9-10.

⁹⁹ Following Flanders' withdrawal from the cooperation agreement between the Federal Administration, the Regions and the Communities, the section on Flanders is not as detailed, as there has been no updated information since 2021.

¹⁰⁰ Available on https://www.unia.be/files/Documenten/Publicaties_docs/21-12-03-rapport-parall%C3%A8le-CDPH-version_finale_FR.pdf, p. 14.

In its 2018 conclusions,¹⁰¹ the European Committee of Social Rights took note of the progress made to give highly dependent disabled adults equal and effective access to the social services. It did point out however that “*not all the measures under consideration have been adopted yet*”.

To date, **few changes have been enacted: the majority of the measures to enhance the care for highly dependent people are still only in the announcement stage.**

These measures either relate to the opening of additional high-dependency places (in particular for priority cases), or to legislative amendments aimed at encouraging facilities to cater for highly dependent people, or to embarking on a process of deinstitutionalisation, or to improving the care for people living in collective facilities. Unfortunately, both the slowness in the building of facilities and in the legislative process do not augur well for an improvement in the situation in the short term. What is more, **in the absence of an existing quantitative register** – or at least one that is transparently available – which identifies the real needs of highly dependent persons, it is very difficult to shed light on the care situation of this target group in Brussels and Wallonia. There is no doubt that the new places to be created will only cover a small portion of the current demand.

It must also be noted that **the creation of places must imperatively go hand in hand with other initiatives**, such as a strengthening of the medical mechanisms, training and a revalorisation of the staff working in the disability and care sector, an adequate response to the ageing of people (in particular of people with multiple disabilities) and an effective reinforcement of healthcare personnel and the presence of healthcare beds within the institutions, a strengthening of the services (early detection, early stimulation and support), an increase in the capacity of ambulatory rehabilitation centres to ensure that people receive multi-disciplinary care and the reimbursement of outpatient speech therapy sessions for everyone.

In line with the United Nations Convention on the Rights of Persons with Disabilities, which in its article 19, enshrines the right to independent living and social inclusion, the authors remind of **the absolute necessity to approach high-dependency care from a perspective of deinstitutionalisation**, like the process that has been initiated in Flanders.

The country’s three entities should **reduce investment in collective infrastructures in favour of a form of independent living**, or *a minima*, and with due regard for the principle of progressive realisation of social rights, diversify the service offering by giving preference to human-size facilities within the community and, if a person chooses to live in a collective facility, to guarantee him a say in the decisions that affect him as an individual.

At this point in time, a significant number of people waiting for care find themselves in distressing situations, whether they are being looked after by an exhausted family or redirected to care facilities that are not tailored to their profile or needs, inter alia nursing homes or unapproved residential facilities, known as “pirate facilities”. These operate under the radar of the supervisory agencies and are subject to less stringent (in Wallonia), not to say non-existent (in Brussels), certification criteria. The living conditions with little reverence to human dignity are at times nothing short of deplorable in those institutions.

¹⁰¹ [16809ce30b \(coe.int\)](#).

Lastly, while the State did recognise the **status of informal caregiver** in 2020, that status only entitles caregivers to special leave, which is of little use to carers who had to give up work to look after a highly dependent person.

Thus, the authors of the report formulate the following recommendations:

In the Brussels Region:

1. Provide exhaustive and regularly updated statistics on the profiles of people and their care needs.
2. Strengthen the care arrangements that meet individuals' life project, in particular the personal assistance budgets which are still in the pilot phase.
3. Aside from dealing with the extremely urgent cases, many of which are still languishing on the waiting list of priority cases, address any critical unsupported situations as a matter of urgency.

In the Walloon Region:

4. Continue the efforts to meet all the day and residential care needs.
5. Like the Brussels Region, strengthen the mechanisms that allow highly dependent people to get their life on track, such as dealing with the shortage of personal assistance budgets to meet all the applications.

5. Complaint No. 98/2013 – Corporal punishment

Belgium does not explicitly prohibit the use of so-called “ordinary educational violence”, also called corporal punishment by the European Committee. In its second assessment of the follow-up of its decision in *Approach Ltd v. Belgium*, the Committee took note of some **efforts undertaken by the Belgian authorities to remedy its violation of article 17§1 of the Charter**, while pointing out that the legislation still lacks a prohibition of corporal punishment that is sufficiently clear and precise.¹⁰² Contrary to what was asserted in 2019 – where the State argued that there was already an implicit prohibition of corporal punishment in place –,¹⁰³ the 2022 Belgian report contents itself with noting that two bills – i.e., parliamentary initiatives, which did not come from the Government – are currently pending before Parliament.¹⁰⁴ In its comments on the observations from FIRM/IFDH, in 2021, the federal government also noted that there “*currently was no bill to regulate this matter*”¹⁰⁵.

All the independent public institutions for the defence of children's rights – the

¹⁰² ECSR, Findings 2020, *op. cit.*, p. 14.

¹⁰³ ECSR, [15th National Report on the implementation of the European Social Charter submitted by the Government of Belgium](#), monitoring of collective complaints, 2021 cycle, registered by the Secretariat on 15 December 2020, RAP/RCha/BEL/15(2021).

¹⁰⁴ ECSR, 17th National Report on the implementation of the European Social Charter submitted by the Government of Belgium, monitoring of collective complaints, nos. 62/2010, 75/2011, 98/2013, 109/2014, 124/2016 and 141/2017, 22 December 2022, p. 19.

¹⁰⁵ ECSR, Comments [by the Belgian government] on the report by the Federal Institute for the protection and promotion of Human Rights, the Kinderrechtencommissariaat and the Délégué général aux Droits de l'Enfant to the European Committee of Social Rights on the 15th National Report on the implementation of the European Social Charter submitted by the Government of Belgium, 20 August 2021, p. 4.

Kinderrechtencommissariaat,¹⁰⁶ the Délégué général aux Droits de l’Enfant,¹⁰⁷ the Advisory body of the National Commission on the Rights of the Child,¹⁰⁸ FIRM/IFDH¹⁰⁹ – are of the view that the Belgian legal framework is currently insufficient to protect children’s rights. This finding is shared by UNICEF Belgium¹¹⁰ and children’ rights civil society organisations, inter alia the coalitions of the French¹¹¹ and Flemish¹¹² NGOs, and the Belgian section of Defence for Children International.¹¹³ In spite of several decisions on the merits where the Committee found that Belgium is in violation of the Charter,¹¹⁴ the adoption of a law that would explicitly prohibit so-called educational violence still hasn’t made it to the agenda of the federal government.

The authors of this parallel report do not intend to repeat the reasoning developed in the parallel report submitted in 2021. Accordingly, they will simply summarise these findings, present a number of recent developments and conclude that there is a need to adopt a law that expressly prohibits educational violence to bring Belgian law into line with article 17 §1 of the Charter.

State of play: lack of an explicit prohibition of so-called ‘educational’ violence in Belgian law

The Criminal Code prohibits assault and battery,¹¹⁵ degrading treatment¹¹⁶ and considers it an aggravating circumstance if such violence is committed by a person with parental authority over a child,¹¹⁷ whether a parent, a teacher, a youth leader, or any other person in a position of authority. Another key element in the protection of children is Article 22*bis* of the Constitution, which states that children have the right to physical, mental and sexual integrity.¹¹⁸ Some authors argue that giving this

¹⁰⁶ See Kinderrechtencommissariaat, [Alternative report to UN Committee against Torture](#), 22 June 2020, p. 9.

¹⁰⁷ Délégué général aux Droits de l’Enfant, Opinion of 19 April 2019, [les impacts des violences éducatives ordinaires sur le bien-être et le développement de l’enfant](#) [The impact of ordinary educational violence on the well-being and development of children].

¹⁰⁸ Advisory Body of the National Commission on the Rights of the Child, Opinion of April 2018, ”[Interdire expressément les violences dites éducatives : une obligation juridique pour la Belgique](#)” [Expressly prohibiting forms of so-called educational violence: a legal obligation for Belgium].

¹⁰⁹ Federal Institute for the protection and promotion of Human Rights, [avis sur l’interdiction des violences dites éducatives ordinaires](#) [Opinion on the prohibition of forms of so-called educational violence], 31 January 2022.

¹¹⁰ UNICEF Belgium, [La violence à l’égard des enfants en Belgique](#) [Violence against children in Belgium].

¹¹¹ The Coordination des ONG pour les droits de l’enfant - CODE, [Etat de la situation des droits de l’enfant en Belgique : ce que les ONG recommandent](#) [Report on children’s rights in Belgium: what the NGOs recommend], March 2018.

¹¹² Vlaamse Kinderrechtencoalitie [Flemish Children’s Rights Coalition], [Debat over de ‘pedagogische tik’, het recht op geweldloze opvoeding](#) [Debate about the pedagogic ‘tap’, the right to non-violent education], 5 May 2021.

¹¹³ ECSR, [Commentaires de Défense des Enfants International - Belgique sur le 15^e rapport simplifié du gouvernement belge concernant la réclamation association pour la protection des enfants \(APPROACH\) Ltd c. Belgique](#), [Comments by Defence for Children International on the simplified report of the Belgian government on the claim by the *Association for the Protection of All Children (APPROACH) v. Belgium*], Complaint No. 98/2013, 29 June 2021.

¹¹⁴ Other than Decision No. 98/2013 examined here, decision on the merits No. 21/2003 of 7 December 2004, *World Organisation against Torture v. Belgium*, also established that article 17 of the Charter had been violated.

¹¹⁵ Art. 398 et seq., Criminal Code.

¹¹⁶ Art. 417 *quater*, Criminal Code.

¹¹⁷ Art. 405 *quater*, Criminal Code.

¹¹⁸ Art. 22 *bis*, Constitution.

article an autonomous normative scope could lead to a judicial prohibition of all so-called "educational" violence.¹¹⁹ However, such reasoning has not yet become established in case law,¹²⁰ and such case law would provide less legal certainty than the adoption of legislation (see also below for an overview of this case law).

In addition to these federal provisions, the Communities – which are responsible for youth protection, culture, sport and education – have adopted a number of specific prohibitions. The Decree of the Flemish government of 7 May 2004 prohibits corporal punishment in youth protection institutions.¹²¹ **But there is no such prohibition in the French Community**, even though a draft decree seems to be under review by the Government of the French Community.¹²² Aside from the fact that information about this draft decree is scarce, it has still not been brought before the Parliament of the French Community.

Therefore, **although Belgian law** – at both federal and federated level – **prohibits certain violent behaviour with a purportedly "educational" purpose, there is no explicit prohibition of corporal punishment in all situation**. This situation enables the continued tolerance of corporal punishment that does not reach a certain threshold of severity, which has notably been expressed by the recognition of a so-called "right of correction" by some jurisdictions.¹²³ In more recent years however, the courts have tended to become increasingly critical on the use of so-called 'educational' violence. On two occasions, the Nivelles Criminal Tribunal acquitted parents prosecuted for assault and battery against their minor children, even though they had confessed, and the children had been subjected to serious violence.¹²⁴ But both these decisions were overturned by the Brussels Court of Appeal.¹²⁵ During 2012, the Antwerp Court of Appeal delivered a judgment in another case where it confirmed the existence of a so-called "right of correction" with respect to a "wayward" child.¹²⁶ However, a more recent judgment of the Antwerp Court of Appeal did find that the "educational" aspect of a smack does not prevent that it could constitute a violation of article 398 of the Criminal Code.¹²⁷ A judgment of the Brussels Criminal Tribunal sentenced a mother to 4 months in jail (a sentence that could not be enforced because it was less than 6 months) for slapping her child in March 2023,¹²⁸ but, to our

¹¹⁹ J. FIERENS, "Pas panpan cucul papa ! Les châtements corporels et le droit applicable en Belgique" [Don't spank my bottom, Daddy! Corporal punishment and the law applicable in Belgium], *J.D.J.*, no. 300, 2010, p. 19.

¹²⁰ J. FIERENS, "Pas panpan cucul papa ! Les châtements corporels et le droit applicable en Belgique", *op. cit.*, p. 20.

¹²¹ Decree of the Flemish government of 7 May 2004 on the legal position of minors in integral youth care [and within the framework of the decree on the Act on juvenile delinquency], *M.B.*, 4 October 2004.

¹²² For the weeks of 9 and 16 February 2023, the agenda of the Government of the French Community features a draft decree on the prohibition of violence against children within facilities licensed, subsidised or organised by the French Community. See <https://gouvernement.cfwb.be/home/presse--actualites/ordre-du-jour/publications/seance-du-16-fevrier-1.publicationfull.html>.

¹²³ T. Corr. [Criminal Court] Nivelles, 13 January 2011, *J.D.J.*, no. 346, 2015, p. 38; C. A. [Court of Appeal] Antwerp, 13 March 2012, *R.W.*, 2012-2013, p. 1592; T. Corr. Nivelles 14 March 2013, *J.D.J.*, no. 346, 2015, p. 38.

¹²⁴ G. MATHIEU, "Châtiments corporels : Non, ce n'est pas pour son bien !" [Corporal punishment: no, it's not for his own good!], *J.D.J.*, no. 346, 2015, p. 11.

¹²⁵ C. A. Brussels, judgments of 7 March 2012 and 11 February 2014, *J.D.J.*, no. 346, 2015, p. 38.

¹²⁶ C. A. Antwerp, 13 March 2012, *J.D.J.*, 2013, p. 37.

¹²⁷ C. A. Antwerp, 30 January 2019, *Nullum Crimen*, 2019, pp. 163-164.

¹²⁸ RTBF, "[Bruxelles : une mère condamnée à 4 mois de prison pour avoir giflé son fils](#)" [Brussels: a mother given a 4 months' prison sentence for slapping her son], 14 March 2023.

knowledge, that decision has not been published. The lack of public information on prosecutions for so-called educational violence, the scarceness of court decisions and the failure to publish some convictions also contribute to the lack of visibility and predictability of case law in violence-related matters.

The tolerance of educational violence is also evident from a number of political statements¹²⁹ and regarded as acceptable by a large section of the Belgian population. A survey conducted in March 2020 on the initiative of the Belgian branch of the NGO Defence for Children International (DCI), shows the persistence of opinions tolerant of violence. For instance, 51 % of respondents, believed there was nothing wrong with giving a child “a little slap” on a regular basis or under certain circumstances.¹³⁰ DCI extensively quoted this survey in its contribution for the European Committee of Social Rights in 2021.¹³¹

This lack of legislation prohibiting corporal punishment is **contrary to case law of the European Court of Human Rights¹³² and Belgium’s international obligations,¹³³** as confirmed by inter alia the European Committee of Social Rights,¹³⁴ the UN Committee on the Rights of the Child¹³⁵ and the UN Committee Against Torture.¹³⁶ These provisions entail an obligation for Belgium to legislate to explicitly prohibit the corporal punishment of children, which the State has failed to do.¹³⁷

While Belgium still defended this lack of a prohibition, claiming some ad hoc – and “ongoing” – progress on this issue,¹³⁸ **the 2023 Belgian report merely states that these “proposals are still under**

¹²⁹ UNICEF, “[Standpunten politieke partijen rond geweld tegen kinderen](#)”, enquête UNICEF België - Verkiezingen 2019 [Positions of political parties on violence against children, UNICEF Belgium survey - 2019 Elections].

¹³⁰ Survey conducted by Dedicated on behalf of DCI Belgium, on a representative sample of 2013 Belgians aged 18 to 75 in March 2020. Dedicated on behalf of DCI Belgium, “[Violence dite éducative ordinaire, résultats de l’étude des opinions et comportements de la population belge](#)” [Ordinary educational violence, results of the study of the opinions and behaviours of the Belgian population], March 2020.

¹³¹ ECSR, [Comments by Defence for Children International on the simplified report of the Belgian government on the claim by the Association for the Protection of All Children \(APPROACH\) v. Belgium](#), Complaint No. 98/2013, 29 June 2021.

¹³² In particular the judgments in *Campbell and Cosans v. United Kingdom* of 25 February 1982, nos. 7511/76 and 7743/76; *A. v. United Kingdom* of 24 September 1998, no. 25599/94, which held that the “reasonable punishment” allowed under British law is incompatible with the Convention’s prohibition of inhuman and degrading treatment.

¹³³ More specifically, articles 17 of the European Social Charter, 19 and 28 of the International Convention on the Rights of the Child, and 7 of the International Covenant on Civil and Political Rights.

¹³⁴ ECSR, decision on the merits of 7 December 2004, [World Organisation against Torture v. Belgium](#), Complaint No. 21/2003.

¹³⁵ Committee on the Rights of the Child, [Final observations: Belgium](#), 18 June 2010, CRC/C/BEL/CO/3-4, § 8. Committee on the Rights of the Child, [Concluding observations on the combined fifth and sixth periodic reports of Belgium](#), 1 February 2019, CRC/C/BEL/CO/5-6, § 22.

¹³⁶ UN Committee Against Torture, [Concluding observations on the third periodic report of Belgium](#), 3 January 2014, CAT/C/BEL/CO/3, § 27.

¹³⁷ Advisory Body of the National Commission on the Rights of the Child, Opinion of April 2018, “[Interdire expressément les violences dites éducatives : une obligation juridique pour la Belgique](#)”.

¹³⁸ European Social Charter, [15th National Report on the implementation of the European Social Charter submitted by the Government of Belgium](#), *op. cit.*, p. 18.

discussion".¹³⁹ In actual fact, two bills remain on the agenda of the federal Parliament.¹⁴⁰ Like the recommendation put forward by the Advisory Body of the National Commission on the Rights of the Child,¹⁴¹ both propose an amendment to article 371 of the Civil Code¹⁴² to explicitly prohibit physical or psychological corporal punishment and other forms of humiliating treatment. Favouring an amendment to the Civil Code rather than a criminal prohibition also corresponds to the recommendations of the Committee on the Rights of the Child.¹⁴³ This would make it possible to countenance an approach based on awareness-raising and prevention, rather than a repressive approach which may not always be in the child's best interests. The Parliament's Justice Committee organised a number of hearings on these bills during January 2022, which the KRC¹⁴⁴ and the DGDE took part in. FIRM/IFDH also issued an opinion at the request of Parliament.¹⁴⁵ But given the lack of agreement among the political majority, these bills haven't progressed since.

Conclusion and recommendations

Amending the Civil Code would mainly have the symbolic effect of clarifying that all violence against children is unacceptable, even when it is described as being "educational". This prohibition could also have certain legal consequences for parents, particularly in the event of a court decision on parental authority, custody or the placement of children.

The legislative amendment should be accompanied with awareness-raising, prevention and information campaigns for the general public, as well as training and support measures for education and parenting aimed at parents, teachers, care providers, and anyone working with children and families, professionals who come into contact with families, youth support services, judges and lawyers.

The authors ask the Committee to continue monitoring the implementation of the *Approach v. Belgium decision* of 20 January 2015. In addition, they make the following recommendations:

- Adopt an amendment to the Civil Code explicitly prohibiting all so-called "educational" violence, whether physical, emotional or psychological. Ensure the consistency of the prohibition of so-called "educational" violence with the legislation of the federated

¹³⁹ ECSR, 17th National Report on the implementation of the European Social Charter submitted by the Government of Belgium, monitoring of collective complaints, nos. 62/2010, 75/2011, 98/2013, 109/2014, 124/2016 and 141/2017, 22 December 2022, p. 19.

¹⁴⁰ *Parl. Doc.*, Chamber of Representatives, Bill amending the Civil Code to prohibit any form of systematic violence between parents and their children, *op. cit.*

¹⁴¹ Advisory Body of the National Commission on the Rights of the Child, Opinion of April 2018, "Expressly prohibiting forms of so-called educational violence: a legal obligation for Belgium", *op. cit.*

¹⁴² This currently provides that "*the child and his father and mother must show one another respect at any age*".

¹⁴³ Committee on the Rights of the Child, General Comment No. 8 of 2 March 2007: *The right of the child to protection from corporal punishment and other cruel and degrading forms of punishment (art. 19, 28 (par. 2) and 37, among others)*, *op. cit.*, § 40.

¹⁴⁴ Kinderrechtencommissariaat, [Meer gewicht aan kinderrechten, Rapport annuel 2021-2022](#) [More weight to children's rights, 2021-2022 annual report], p. 55.

¹⁴⁵ FIRM/IFDH, [avis sur l'interdiction des violences dites éducatives ordinaires](#) [Opinion on the prohibition of ordinary so-called educational violence], 31 January 2022.

entities;

- Accompany the legal amendment with awareness-raising, prevention and information campaigns aimed at the general public, as well as training and support measures on non-violent education and parenting aimed at parents, teachers and care providers. Ensure training and support for anyone working with children and their families, youth support services, judges and lawyers.

6. Complaint No. 124/2016 – Pay transparency

The case of the *University Women of Europe (UWE) v. Belgium* relates to a violation of articles 1 (right to work), 4§3 (right to fair remuneration, including equality between men and women in matters of pay) and 20 (right to equal opportunities and equal treatment in matters of employment), read in conjunction with article E of the Charter which prohibits discrimination. In its decision on the merits, the Committee mainly held that there was a violation of articles 4 §3 and 20.c of the Charter **on the ground that pay transparency is not sufficiently ensured under Belgian law**. The other complaints based on the under-representation of women in decision-making positions or the lack of access to effective remedies, were declared unfounded.¹⁴⁶

Accordingly, the Committee concluded that compliance with the Charter in Belgium required the adoption of measures to enhance pay transparency.¹⁴⁷ This report is a first review of the extent to which the Committee’s decision was acted upon.

The Act of 22 April 2012 on measures to combat the gender pay gap did enable some progress to be made. **However, the effectiveness and efficiency of the law could be improved on a number of points.**

As the 2022 report the Belgian State submitted points out, the Government agreement of 30 September 2020 provided for an evaluation of the Act of 22 April 2012 and for additional measures to enhance the effectiveness of this legislation. The Institute for the Equality of Women and Men published an opinion on this issue, including a number of recommendations to optimise the report on wage structures and the classification of jobs.¹⁴⁸

Yet, since then, **no concrete change has been made to the legislation of 22 April 2012**. In parallel, **the European Pay Transparency Directive was adopted**.¹⁴⁹

Report on the pay structure

¹⁴⁶ ECSR, decision on the merits in the case [University Women of Europe \(UWE\) v. Belgium](#), 6 December 2019.

¹⁴⁷ *Ibid.*

¹⁴⁸ The Institute for the Equality of Women and Men, [avis n° 2020-1/001 “concernant diverses propositions de loi modifiant la loi du 22 avril 2012 visant à lutter contre l’écart salarial entre hommes et femmes et concernant l’efficacité et l’efficience de la loi”](#) [Opinion No. 2020-1/001 “on various bills to amend the Gender Pay Gap Act of 22 April 2012 and the effectiveness and efficiency of the law”] (2020).

¹⁴⁹ [Directive \(EU\) 2023/970 of the European Parliament and the Council](#) to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms, *Official Journal of the European Union*, L32, 17 May 2023.

The Act of 22 April 2012 states that companies employing more than 50 workers must produce an analytical report on their pay structure every two years. The Act states that this report must be confidentially discussed at the Works Council. The details cannot be communicated to the outside world or forwarded to the administration.

A working group has been meeting since 2022 to make proposals to improve this analytical report. These discussions preceded the adoption of the Pay Transparency Directive by the European Union. As it was adopted on 24 April 2023, the working group will meet again and take greater account of the new legislation. The aim of the working group is to improve the content of the analytical report on pay structure, but also to develop the automation of data and their possible publication. In the context of the transposition of the directive, **care must be taken to ensure that Belgium truly enhances pay transparency and hence, the access to pay-related information**, and that it does not diminish the scope of the current legislation governing all companies employing 50 workers while the Pay Transparency Directive only deals with companies employing 100 workers or more.

Gender-neutral job classification systems

The Gender Pay Gap Act of 22 April 2012 compels joint committees to have their job classification systems checked by the Directorate-General for Collective Labour Relations of the Federal Public Service (FPS) Employment, Labour and Social Dialogue.

On its website, the FPS Employment publishes a “*name and shame*” short list of joint committees who did not regularise their job classification systems in spite of having received a negative evaluation. Six joint commissions and six others who did not file their classification systems have made it to this list. During the parliamentary debates that preceded the adoption of the law, the matter of sanctions against joint committees who did not regularise their job classification system was debated but, in the end, rejected. Today, it must be concluded that **the “name and shame” list, which is not given any publicity, is insufficient to incentive or dissuade the joint committees.**

7. Complaint No. 141/2017 – Inclusive education in the French Community¹⁵⁰

In its decision of 9 September 2020, the European Committee of Social Rights unanimously concluded that the situation of children with disabilities in Belgium contravened two provisions of the revised European Social Charter. The Committee firstly concluded that there was a violation of Article 15§1 of the Charter¹⁵¹ on the ground that the right to inclusive education of children with intellectual disabilities is not effectively guaranteed in the French Community in Belgium.

As the Committee of Ministers points out in its recommendation CM/RecChS(2021)19, which was adopted in the wake of that decision, the Committee noted that:

¹⁵⁰ Progress report of the Belgian government and our critical analysis of inclusive education in the French Community only. The European Committee of Social Rights also found against inclusive education in the Flemish Community, but the follow-up given to that decision (No. 109/2014) does not form part of this report.

¹⁵¹ In virtue of article 15§1, the Parties are obliged 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.

- in practice, children with intellectual disabilities are deprived of the right to enrol in mainstream education because of a lack of coherent and sufficient measures to meet these children's needs;
- the inaction by the Belgian State to make adequate provisions constitutes a violation of the rights of children not to be discriminated against in the enjoyment of the right enshrined in article 15§1 of the Charter;
- there is no coherent plan of action to create the conditions necessary for effective inclusion or a time frame for implementing the right to inclusive education and indicators of success for measurable progress;
- there also is a lack of permanent adequate monitoring and evaluation of the measures taken to ensure the right to inclusive education and protect children from discrimination.

Furthermore, the Committee also concluded that there was a violation of article 17§2 of the Charter¹⁵² on the ground that children with intellectual disabilities do not have an effective right to inclusive education in the French Community. The Committee refers to its findings in the context of the violation of article 15§1 and, for the same reasons, considered that the accessibility criterion was not fulfilled. Mainstream educational institutions and curricula are not sufficiently accessible in practice to children with an intellectual disability.

Follow-up to the decision by the Committee of Ministers, recommendation of 22 September 2021

In the context of the follow-up to this decision, the Committee of Ministers formulated a number of recommendations for the Belgian State :¹⁵³

- *“pursue the work already initiated and take all necessary legislative and institutional measures to ensure a coherent action plan, creating the necessary conditions for effective inclusion in practice, including a time frame for implementing the right to inclusive education and indicators of success for measurable progress;*
- *take all necessary legislative and institutional measures to address the lack of permanent adequate monitoring and evaluation of the measures taken to ensure the right of inclusive education and protect children from discrimination;*
- *indicate the decisions and actions taken to comply with this recommendation in the next report on follow-up to decisions in collective complaints.”*

Report on the follow-up by the Belgian government of 22 December 2022

In response, the French Community put forward the following measures:

- the Pact for Excellence in Education;

¹⁵² Article 17 §2 states that children and young persons must be protected against negligence, violence or exploitation which features in a broader context of children's rights to social, legal and economic protection, including the right to develop themselves.

¹⁵³ Committee of Ministers, recommendation CM/RecChS(2021)19, 22 September 2021.

- the decree on “reasonable accommodation”;
- the decree creating “territorial poles”;
- a study by round tables which led to different “orientations” which are “being developed”.

These reforms are reviewed below.

Observations on the follow-up to the decision

Reinforcement of the obligation to guarantee the right to inclusion: article 22ter of the Belgian Constitution

Since March 2021, the Belgian Constitution contains an article 22ter which guarantees “every person with a disability (...) the right to full inclusion in society, including the right to reasonable accommodation” (paragraph 1) and imposes the obligation on the competent legislators to guarantee that this right is protected (paragraph 2).

The preparatory work to this new provision states that:

*“this review of the Constitution is far more than purely symbolic. **The responsibility to guarantee this inclusion falls to the federal government and to the federated entities. The intervenor quotes the example of education, where inclusion is indispensable to children with a disability. It is positive that, in society, people without a disability have contact with people with a disability, be it an intellectual or a physical disability. This true inclusion facilitates coexistence.**”¹⁵⁴ (emphasis added by the authors).*

Distribution of pupils between mainstream and special education: a quantitative analysis

Based on the *Indicateurs de l’enseignement 2015*,¹⁵⁵ the Committee concluded that special education in the French Community has continued to grow at all levels of education and is constantly evolving. It also pointed out that **children enrolled in type-2 special education (moderate to severe intellectual disability), i.e. the children concerned by the complaint, were in practice as good as deprived of the mechanism to integrate into mainstream education.**

An analysis of the most recent figures published in the *Indicateurs de l’enseignement 2022*¹⁵⁶ shows that nothing much has changed.

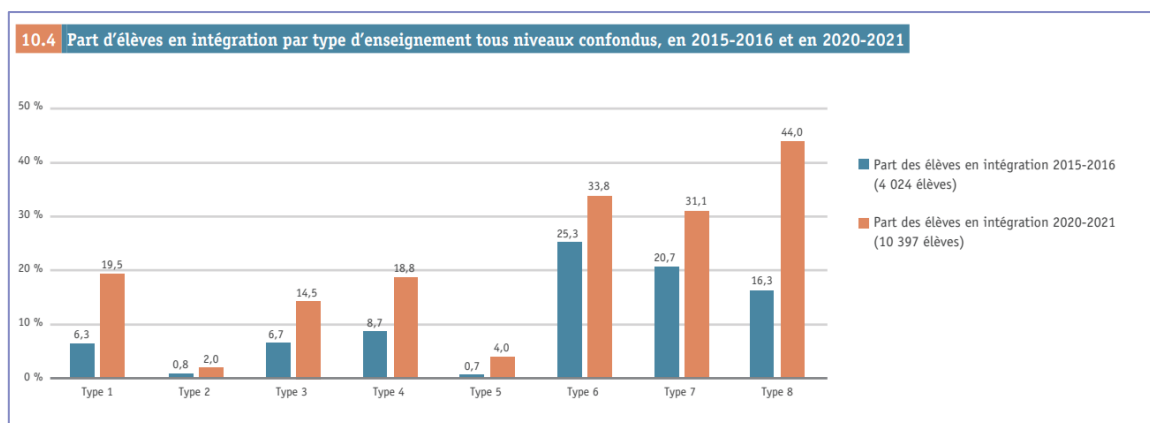
i. Still little integration for children enrolled in type-2 special education

The 2022 indicators show that only 2 % of children enrolled in type-2 special education were in the process of integration in 2020-2021.

¹⁵⁴ Draft revision of the Constitution to insert an article 22ter into Title II of the Constitution guaranteeing people with a disability the right to full inclusion in society, Report produced on behalf of the Constitution Committee and the institutional renewal by Mrs Claire Hugon, *Parl. Doc.*, Ch. Repr., no. 1445/2, p. 13.

¹⁵⁵ [Les indicateurs de l’enseignement 2015](#), [The 2015 education indicators]10th edition, March 2016.

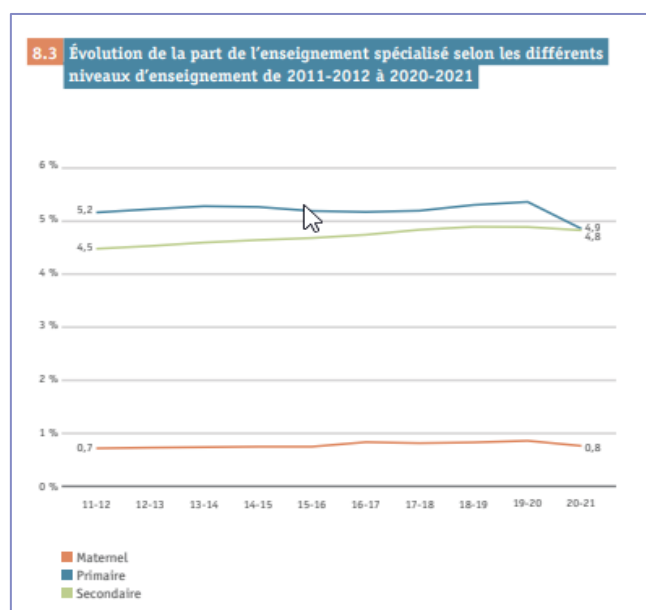
¹⁵⁶ [Les indicateurs de l’enseignement 2022](#), 17th edition, November 2022.



Ever more pupils in type-2 special education in the French Community

ii. *Evolution of special education, all types combined*

The share of **special education at all levels of the education system continued to grow between 2011-2012 and 2020-2021**, except at primary level where a reduction was recorded during 2020-2021.¹⁵⁷



iii. *Evolution specific to type-2 special education*

While some progress has been made in recent years, it hasn't filtered through to pupils enrolled in type-2 special education. In actual fact, the 2022 indicators¹⁵⁸ show that:

- At kindergarten level:
 - While there are few pupils in special kindergarten education, the majority are enrolled in type 2 (37.3 % of pupils during 2020-2021).

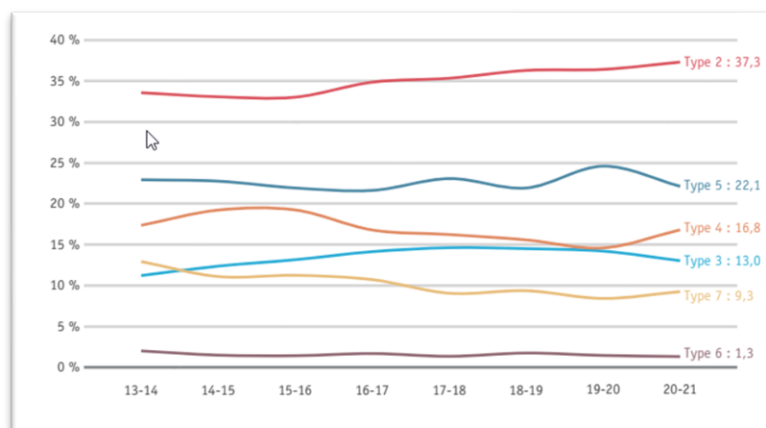
¹⁵⁷ *Ibid.*, pp. 36-37.

¹⁵⁸ *Ibid.*, pp. 38-39.

- Contrary to the other types, the number of pupils in type-2 special education is continuously rising.
- At primary school level:
 - While the share represented by special education at primary level has on average decreased between 2013-2014 and 2020-2021, “in contrast to type 2 where the number of pupils has consistently increased between 2013-2014 and 2020-2021, from 13.5 % to 16.7 % (i.e. an increase of 16.6 % in the number of pupils)”.¹⁵⁹
- At secondary school level:
 - “In type-2 special education, the percentage of pupils rose from 20.2 % in 2013-2014 to 21.4 % in 2020-2021 (+14 % of the number of pupils).”¹⁶⁰

The tables below show the evolution in the share of pupils by type of special education from 2013-2014 to 2020-2021. Type 2 is represented by the red line.

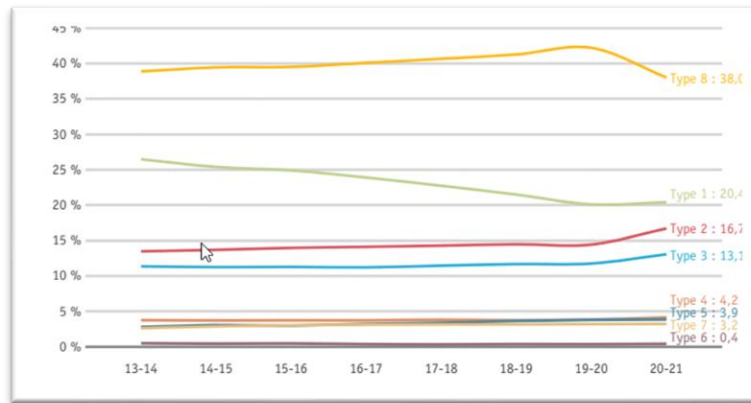
- **Kindergarten education**



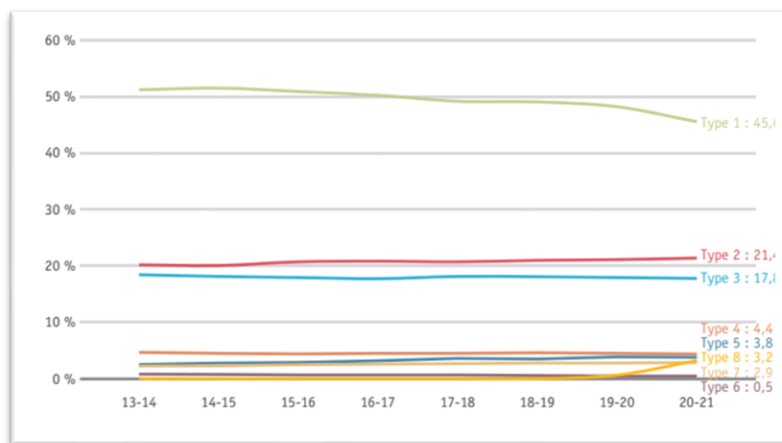
- **Primary education**

¹⁵⁹ *Ibid.*, p. 38, §3.

¹⁶⁰ *Ibid.*, p. 38, §4.



- **Secondary education**



Lack of a coherent action plan for effective inclusion

In spite of the recommendations from the Committee of Ministers of the Council of Europe and the UN Committee on the Rights of Persons with Disabilities,¹⁶¹ **the French Community did not take any measures to set out “a time frame for implementing the right to inclusive education and indicators of success for measurable progress”.**¹⁶² No “coherent action plan, creating the necessary conditions for effective inclusion”¹⁶³ has been adopted.

Measures to promote integration: ineffective, not to say discriminatory, for pupils with an intellectual disability

¹⁶¹ Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Belgium, 2014, CRPD/C/BEL/CO/1, §37.

¹⁶² European Committee of Social Rights, International Federation of Human Rights (FIDH) and Inclusion Europe v. Belgium, Complaint No.141/2017, §185.

¹⁶³ *Ibid.*

The authors also emphasise that, **while measures are being taken to reduce the number of pupils who are directed to special education, they do not target pupils with an intellectual disability, and even discriminate against them.** These two points will be examined below.

Measures that do not benefit pupils with an intellectual disability

In reality, the measures put forward in the report Belgium submitted do not benefit pupils with an intellectual disability. Quite the opposite in fact, for they are systematically excluded.

i. *The Pact for Excellence in Education*

Belgium already cited the Pact for Excellence in Education before the European Committee of Social Rights, in the context of the review of the collective complaint. In its observations to the Committee, Unia pointed out that: *“however, pupils with a moderate to severe intellectual disability are not covered by the measures of the Pact which mainly targets pupils in education types 1, 3 and 8”*.¹⁶⁴ In its decision, the Committee took note of this measure but also of the fact that *“in practice, children with intellectual disabilities are deprived of this possibility [to enrol in a mainstream school] in the absence of coherent and sufficient measures to meet their needs”*.¹⁶⁵

In its follow-up report, **the Belgian government does not explain how the measures under the Pact taken since the decision may have improved the integration of the target public covered by the indictment, i.e. pupils with intellectual disabilities. The Belgian government does not even mention this target group** but instead looks at children from disadvantaged socio-economic backgrounds.

ii. *The Reasonable Accommodation Decree*

Belgium’s 2022 report shows a lack of understanding of the concept “reasonable accommodation”. The Reasonable Accommodation Decree, which came into effect in 2018 (and not in 2019) did not make it compulsory to make reasonable arrangements. Provisions qualified as reasonable are compulsory, and refusing to make them amounts to discrimination according to the 2008 legal anti-discrimination framework and the Convention on the Rights of Persons with Disabilities. As the report suggests, they do not need to be “necessary” to be compulsory.

Once again, the Belgian government fails to explain how this decree, already relied on before the Committee in the context of the review of the collective complaint, furthers the integration of children with an intellectual disability since the Committee’s decision.

Quite the opposite, **these pupils aren’t actually even covered by this decree. In fact, the decree only entitles pupils in mainstream education “who do not need to be cared for by special education” to reasonable accommodation and provides that any such accommodation “shall not undermine the leaning objectives”**.¹⁶⁶ Thus, schools cannot operate differentiated objectives within one and the same classroom to allow children with an intellectual disability to progress at their own pace.

¹⁶⁴ Collective complaint No. 141/2017, Unia, [Observations under Article 32A§1 of the Rules of Procedure of the European Committee of Social Rights](#), 15 November 2017, page 20.

¹⁶⁵ *Ibid.*, §177.

¹⁶⁶ See articles 1.7.8-1. §§ 1 and 4 of the [Code of elementary and secondary education of 3 May 2019](#).

iii. The decree creating “territorial poles” (combined with the removal of full temporary integration)

Territorial poles are a mechanism under the Pact for Excellence in Education that has been progressively introduced since the start of the 2022-2023 school year. **While the pooling principle of this new mechanism can be commended in itself, it is a distinct backward step and discriminates against pupils with an intellectual disability** (see the section below on discrimination against pupils with an intellectual disability).¹⁶⁷

In actual fact, in 2020, the legislature of the French Community removed the former mechanism of full temporary integration (FTI) which allowed pupils to be educated in mainstream education while receiving support from a special education school. This meant that these pupils did not have to attend special education even though they were enrolled there. The aim of the Territorial Poles was to replace that mechanism. Now, a pupil with an intellectual disability will henceforth effectively have to attend special education for one year to be able to avail of the extra teaching periods provided by special education when he moves to mainstream education.

The impact of having to attend a minimum of one year special education is particularly severe on the pedagogical, family and social front. What is more, experience has shown that once a pupil starts his school career in special education it is extremely difficult, not to say impossible, to reverse course.

Yet, the Poles Decree was adopted in June 2021, after the new article 22^{ter} was inserted into the Constitution and the Committee had found against the former system, which made it compulsory to formally enrol in a special education school.

The preparatory work shows that the legislator was aware that, by adopting this decree, it was leaving children with an intellectual disability out:

*“It is the minister’s objective that each child finds its own place within the school system of the Walloon-Brussels Federation. The decree under review today does not provide an answer to the specific issue of children with an intellectual disability but the introduction of territorial poles is bound to change the paradigm and the view of disability in education. **At the request of the federations of organising bodies, Wallonia-Brussels Education (WBE) and the trade unions, care for pupils with a moderate to severe intellectual disability was not integrated into the poles’ mechanism, this to allow sufficient time to specifically reflect on the care for these pupils who are also entitled to qualitative and inclusive education.**”¹⁶⁸ (emphasis added by the authors).*

¹⁶⁷ On that note, see one school board’s carte blanche: “ [Les enfants ayant une trisomie ne sont pas considérés comme des citoyens à part entière et n’ont pas les mêmes droits que les autres](#) [Down Syndrome children are not regarded as full citizens and do not have the same rights as the others]”, 4 April 2023, published on the website of the League for Children’s Rights, www.liguedroitsenfants.be.

¹⁶⁸ Parl. Doc., Parliament of the French Community, 2020-2021, no. 245/3, p. 20.

Measures that discriminate against pupils with an intellectual disability: judgment of the Constitutional Court of 1 June 2023

In its **judgment of 1 June 2023** (no. 85/2023),¹⁶⁹ the Constitutional Court confirmed Unia’s analysis of the Poles Decree and ruled that certain provisions were discriminatory in that they created an unjustifiable difference in treatment between pupils in function of their disability.

The Court, basing itself on the Committee’s decision of 9 September 2020, ruled “*it is discriminatory that the territorial poles receive more funding for pupils with a sensorimotor disability, at the expense of pupils with an intellectual disability*”.¹⁷⁰ In actual fact, a number of specific measures have been put in place for territorial poles if they support children with a sensorimotor disability, but these measures are not extended to pupils with an intellectual disability.

The Constitutional Court clearly points out that:

- Territorial Poles do not allow all pupils to benefit from proper support, while that was their objective;
- nor the preparatory work nor the procedural documents provide any justification for the use of the criterion “sensorimotor” disability, as a basis for the difference in treatment established, in particular at the expense of pupils with an intellectual disability.

In consequence, the Territorial Poles Decree creates discrimination between pupils in function of the type of their disability. The Court annulled the challenged articles of the Elementary Education Code.

Main hope for improvement: implementation of the round tables

After having been found against by the European Committee of Social Rights, the Minister for Education of the French Community organised two round tables with Inclusion ASBL, the DGDE and UNIA in November 2021 and June 2022. The participants came up with 40 proposals to improve the situation of pupils with an intellectual disability.

A working group of organisers and the administration was set up to continue that work. The working group was integrated into project 14 of the Pact for Excellence to ensure its perpetuation, which is to be commended.

However, initially, the administration suggested to only select the evolution of “classrooms with inclusive aims” from the 40 proposals that came out of the round tables. These are classrooms from special education that move to mainstream schools, i.e., a mechanism that cannot be qualified as inclusive and which is specific to some thirty establishments. Inclusion asbl, the DGDE and Unia could not accept this single potential solution.

¹⁶⁹ Constitutional Court, 1 June 2023, [judgment no. 85/2023](#). See also the [communiqué de presse de la Cour](#) [Press release from the Court].

¹⁷⁰ Constitutional Court, press release judgment 85/2023.

On the day this report went to press, the matter was still under discussion. Unia awaits the concrete solidification of the proposals that came out of round tables.

Conclusion

Despite a strengthening of the Constitutional framework, the French Community did not take any measures to implement the right to inclusive education for children with an intellectual disability. To the contrary, these children are systematically excluded from measures designed to integrate children with a disability into mainstream education. Worse still, by getting rid of full temporary integration and creating territorial poles that do not meet their needs, children with an intellectual disability and their families are currently in a worse position than they were before the Committee’s decision of 9 September 2020.

The only perspective at this point in time is to see the **work of the round tables who are working on true reform that guarantees pupils with an intellectual disability the right to inclusive education come to fruition**. This is imperative if we are to better guarantee a real right to inclusive education for children with a disability.

8. Overall conclusion

A review of these five collective complaints seems to point to a general problem. The Belgian State – whether at a federal or federated level – seems to be in no hurry to implement the decisions on the merits the Committee delivered. In all the decisions reviewed here, implementation has barely gotten underway. In several cases – such as the right to inclusive education in the French Community or housing for highly dependent people – the situation has even deteriorated since the Committee held its decision on the merits.

It is important that the Belgian authorities make a firmer commitment to the decisions of the European Committee of Social Rights and that they take all useful measures to guarantee that Belgian law is brought into conformity with the Charter. These measures are especially important in cases where the Committee already established on earlier occasions that human rights were being violated. To this end, the authors of the present report formulate the following recommendations in relation to the five collective complaints examined:

- i. As to the non-accepted provisions of the Charter**
 6. Accept article 27.3 of the Charter;
 7. To the Walloon and Brussels authorities: accept articles 31.1, 31.2 and 31.3 of the Charter;
 8. Publish the reasons for the difficulties in accepting article 19.12 of the Charter and make every effort to further compatibility of the community and regional legislation with the article in question with a view to its adoption;
- ii. As to complaint No. 62/2010 – Sites for Travellers**

9. Elaborate a binding framework to facilitate the local distribution of residential and transit sites;
10. Produce concrete quantified objectives to create additional sites. Base these figures on a solid knowledge of the target group;
11. Provide (by analogy with the circular of the Flemish government on transit/halting sites) a circular on "forced evictions" reminding the municipalities of the framework of fundamental rights municipalities must respect to prevent forced evictions inasmuch as possible;
12. Strengthen the incentive policies to make residential and transit sites more appealing to the municipalities or other stakeholders.

iii. As to complaint No. 75/2011 – Highly dependent adults with a disability

In the Brussels Region:

13. Provide exhaustive and regularly updated statistics on the profiles of people and their care needs;
14. Strengthen the care arrangements that meet individuals' life project, in particular the personal assistance budgets which are still in the pilot phase;
15. Aside from dealing with the extremely urgent cases, many of which are still languishing on the waiting list of priority cases, address any critical unsupported situations as a matter of urgency;

In the Walloon Region:

16. Continue the efforts to meet the various day and residential care needs.
17. Like the Brussels Region, strengthen the mechanisms that allow highly dependent people to get their life on track, such as dealing with the shortage of personal assistance budgets to meet all the applications.

iv. As to complaint No. 98/2013 – Prohibition of so-called educational violence

18. Adopt an amendment to the Civil Code explicitly prohibiting all so-called "educational" physical, mental or psychological violence. Ensure the consistency of the prohibition of so-called "educational" violence with the legislation of the federated entities;
19. Accompany the legal amendment with awareness-raising, prevention and information campaigns aimed at the general public, as well as training and support measures on non-violent education and parenting aimed at parents, teachers and care providers. Ensure training and support for all professionals who come into contact with children and their families, youth support services, judges and lawyers;

v. As to complaint No. 141/2017 – Inclusive education in the French Community

20. Solidify the work of the round tables to better guarantee a real right to inclusive education for children with a disability.