

DECISION ON THE MERITS

COMPLAINT No. 13/2002

By Autism - Europe
against France

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter (hereafter referred to as "the Committee"), during its 197th session attended by:

Messrs Jean-Michel BELORGEY, President
 Nikitas ALIPRANTIS, Vice-President
Ms Polonca KONCAR, Vice-President
Messrs Stein EVJU, General Rapporteur
 Rolf BIRK
 Matti MIKKOLA
 Konrad GRILLBERGER
 Tekin AKILLIOĞLU
 Alfredo BRUTO DA COSTA
Ms Csilla KOLLONAY LEHOCZKY
Messrs Gerard QUINN
 Lucien FRANCOIS
 Andrzej SWIATKOWSKI

Assisted by Mr Régis BRILLAT, Executive Secretary of the European Social Charter

After having deliberated on the 3 and 4 November 2003,

On the basis of the report presented by Mr Gerard QUINN,

Delivers the following decision adopted on this last date:

PROCEDURE

1. On 12 December 2002, the Committee declared the complaint admissible.
2. In accordance with Article 7§1 and §2 of the Protocol providing for a system of collective complaints and with the Committee's decision on the admissibility of the complaint, the Executive Secretary communicated, on 13 December 2002, the text of the admissibility decision to the French Government, to Autism-Europe, to the Contracting Parties to the Protocol, to the states that have made a declaration in accordance with Article D§2 of the revised European Social Charter, as well as to the European Trade Union Confederation (ETUC), the Union of the Confederations of Industry and Employers of Europe (UNICE) and the International Organisation of Employers (IOE), inviting them to submit their observations on the merits of the complaint. In accordance with Article 25§2 of the Committee's Rules of Procedure, the President fixed a deadline of 15 February 2003 for the presentation of observations.
3. On 11 February 2003, the French Government presented its observations on the merits of the complaint.
4. The President set 11 April 2003 as the deadline for Autism-Europe to present its observations in response to the Government. The observations were registered on 10 April 2003.
5. During its 193rd session (31 March – 4 April 2003), the European Committee of Social Rights decided, in accordance with Article 7§4 of the Protocol providing for a system of collective complaints and Article 29§1 of the Committee's Rules of Procedure, to organise a public hearing.
6. The hearing took place in public at the Human Rights Building in Strasbourg on 29 September 2003. Autism-Europe was represented by E. FRIEDEL, Lawyer, and by Ms D. PAGETTI-VIVANTI, President of Autism-Europe. The Government was represented by Mr A. BUCHET, Deputy Director of Human Rights, Legal Affairs Department at the Ministry of Foreign Affairs, Mr P. DIDIER-COURBIN, Deputy Director for Persons with Disabilities, General Directorate of Social Action at the Ministry for Health, the Family and Disabled Persons, Ms M-C. COURTEIX, Head of the task force: School adaptation and integration, Directorate for school education at the Ministry for National Education, and Ms J. VILLIGER, Office for Disabled Adults, General Directorate of Social Action at the Ministry for Health, the Family and Disabled Persons.

According to Article 29§2 of its Rules of Procedure, the Committee invited the ETUC to participate in the hearing. ETUC was represented by Mr G. FONTENEAU, Social Adviser, and by Mr K. LÖRCHER, Legal Adviser.

The Committee heard addresses by E. FRIEDEL, Mr. A. BUCHET, and Mr. G. FONTENEAU and replies to questions put by members of the Committee.

SUBMISSIONS OF THE PARTICIPANTS IN THE PROCEDURE

a) The Complainant Organisation

7. Autism-Europe asked the Committee:

- to rule that France is failing to satisfactorily apply its obligations under Articles 15§1 and 17§1 of Part II of the Revised European Social Charter because children and adults with autism do not and are not likely to effectively exercise, in sufficient numbers and to an adequate standard, their right to education in mainstream schooling or through adequately supported placements in specialised institutions that offer education and related services;

and

- to rule that France is in violation of the non-discrimination principle embodied in Article E of Part V of the Revised European Social Charter since persons with autism do not benefit from the right to education recognized to persons with disabilities by Article 15§1 and generally set out in Article 17§1 of Part II of the Charter.

The complainant alleged that France is not taking enough action as required under the revised European Social Charter to secure children and adults with autism a right to education as effective as that of all the other children.

b) The French Government

8. The French Government (hereafter “the Government”) asked the Committee to reject the complaint as unfounded in each respect. It considers that the relevant legislation and the practice concerning the provision of education for persons with autism did not infringe Articles 15, 17 and E of the Revised European Social Charter (hereinafter Revised Charter).

c) The European Trade Union Confederation (ETUC)

9. The ETUC argues that France does not comply with Articles 15, 17 and E of the Revised Charter.

RELEVANT DOMESTIC LAW

10. On the basis of the submissions by the parties, the relevant domestic law on the provision of education for persons with autism may be summarised as follows:

The right to education of persons with disabilities is enshrined in two Acts:

- Act no. 75/534 of 30 June 1975, People with disabilities (policy) act,
- and Act no. 75/535 of 30 June 1975 on social and medico-social institutions,

Part of Act no. 75/534 has been enshrined in Act no. 89/486 of 10 July 1989 laying down framework provisions on education. Another piece of legislation makes more detailed

provision for persons with autism (Act no. 96/1076 of 11 December 1996 on social and medico-social institutions and making adapted provision for persons with autism). All the above legislation has now been codified in the Code of Social Action and the Education Code respectively.

11. The relevant provisions of the Education Code are Articles L.111-1, L.112-1 to L.112-3, and L.351-1.

Article L.111-1 provides that:

“the right to education is secured to all”.

More particularly, and dealing with children and young persons with disabilities, Article L.112-1 states that:

“Schooling is compulsory for children and young persons with disabilities. They shall meet the compulsory-education requirement either through integration in the ordinary education system or, failing that, through special education, as decided by the *département* special education board in accordance with the individual’s particular needs”.

Article L.112-2 continues:

“Educational integration of young people with disabilities shall be facilitated”.

The scope of special education is defined by Article L.112-3, which provides:

“Special education shall combine educational, psychological, social, medical and paramedical action; it shall be delivered either at establishments within the general system or by specialist establishments or services....”.

With respect to the delivery of special education Article L.351-1 provides that:

“... The state shall pay for the education and initial vocational training of children and adolescents with disabilities:

1. preferably, by integrating into ordinary classes ... all children capable of being integrated despite their disabilities;
2. or by making qualified staff for whom the education minister is responsible available to establishments and services set up and maintained by other ministries, by public law entities or by authorised non-profit groups or bodies ...
3. or by entering into contracts or partnerships with private education establishments ...”

That is, Article L.112-1 and Article L.351-1 establish a statutory preference in favour of the education of children with disabilities in the mainstream.

12. The relevant provisions of the Code of Social Action are Articles L.114-1, L.114-2, L.116-1, L.116-2, L.242-4 and 10, and L.246-1.

According to Article L.114-1, the State is obliged to guarantee the right of persons with disabilities to have access to fundamental rights, including the right to education.

The right to the enjoyment of these rights in a mainstream environment is acknowledged by Article L.114-2 insofar as it provides that:

“The action taken shall, whenever the aptitudes of the person with disability and the capabilities of the family so allow, ensure access for the minor or adult with disability to those institutions open to the whole population...”.

The overall goals of social and medical action are set out under Article L.116-1 and 2 as follows:

“Social and medico-social action shall promote, within an inter-ministerial framework, the autonomy and protection of persons ... prevent exclusion and correct its effects. It shall be based on continuous evaluation of needs and of expectations ... in particular those of people with disabilities ... and on making facilities and allowances available to them. It shall be performed by the state, the local authorities and the public establishments run by them, social-security agencies, the voluntary sector and social and medico-social institutions...”

Social and medico-social action shall be so conducted as to respect the equal dignity of all human beings, with the aim of making adapted provision to meet the needs of each individual and affording them equitable access throughout the country.”

Early intervention is mandated by Article L.242-4, which provides that:

“The earliest possible provision is necessary. It shall be possible for it to continue for as long as the condition of the person with the disability warrants it and without any limit of age or duration”.

With respect to the financing of these measures, Article L.242-10 reads:

“Expenses for accommodation and care in special education establishments and vocational establishments, together with the cost of outside care in connection with such education, with the exception of expenses falling to be met by the state under Article L.242-1¹, shall be wholly met by the sickness insurance schemes, subject to the rates which are the basis for calculation of benefit. Where such costs are not covered by the sickness-insurance schemes, they shall be covered by social assistance²....”

Article L.246-1 makes more particular provision for persons with autism:

“Any person with a disability resulting from autism syndrome or related disorders shall receive, regardless of age, multidisciplinary provision catering for his or her specific needs and difficulties. Such provision shall be adapted to the condition and age of the individual and have regard to the resources available. It may be educational, therapeutic or social.”

13. To summarise, persons with autism may attend mainstreaming education, either in their own right (individual mainstreaming) in ordinary classes with the assistance of special auxiliary staff, or as part of a group (collective mainstreaming) through school integration classes (CLIS) at primary level and educational integration units (UPI) at secondary level. Persons who, by reason of the severity of their autism, cannot integrate the ordinary educational system may receive special education in a specialised institution or through medico-social services (SESSAD – special education and domiciliary care services). Specialised institutions include: IME – medical-educational institutes; IMP – medical-teaching institutes; IMPRO – medical-occupational institutes; MAS – Special residential establishments and FDT – double-charging establishment for the most severely disabled.

14. The individual mainstreaming into regular schooling is financed through the general education budget. However, the mainstreaming of individuals through collective mainstreaming is financed through the sickness-insurance budget. Also all the above

¹ This article expressly refers to the aforementioned Article L.351-1 of the Education Code.

² These provisions also appear in Article L.321-1 of the Social Security Code.

forms of special education are financed mainly through the sickness-insurance budget and, in the case of autism, by the special appropriations system addressed to it. Teachers in special education and special auxiliary staff in these specialised institutions are paid out of the national education budget.

15. According to the prevalence rate used, the number of persons with autism varies largely. The complainant assumed that, on the basis of the most recent scientific knowledge, the appropriate prevalence rate is 16 per 10 000 persons. As a consequence, it is claimed that there are approximately 100 000 persons with autism in France, of whom 25 000 children and young people. The Government opted for a prevalence rate of 4-5.6 per 10 000 persons: accordingly, there are approximately 7,000 children and 20,000 adults with autism in France. The complaint alleges that a certain number of French children with autism attend institutions in Belgium.

AS TO THE LAW

I. ARGUMENTS OF THE PARTIES

16. Autism-Europe initially argued, but did not pursue at the hearing, that the relevant parts of French law are as such, in violation of Articles 15§1 and 17§1 of the Revised Charter. Having abandoned that line of argumentation the complainant argued instead that the implementation of the law, or the *de facto*, situation, is in violation of the said Articles. More specifically, the complainant finally argued that, in practice, insufficient provision is made for the education of children and adults with autism due to identifiable shortfalls – both quantitative and qualitative - in the provision of both mainstream education as well as in the so-called special education sector.

17. The Committee therefore finds it unnecessary to proceed further with respect to the original argument. Accordingly, its analysis will be confined to the question whether the relevant French practice constitutes, as alleged by the complainant, a violation of Articles 15§1, 17§1 and E of the Revised Charter.

18. Articles 15§1, 17§1 and E of the Revised Charter read as follows:

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

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

1. to take the necessary measures to provide persons with disabilities with guidance, education and vocational training in the framework of general schemes wherever possible or, where this is not possible, through specialised bodies, public or private;

.....

Article 17 - The right of children and young persons to social, legal and economic protection

With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed:

1. a to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose;

.....

Article E – Non-discrimination

The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status. “

A. The alleged unavailability of special education institutions and services

19. Autism-Europe argued that the special education institutions and socio-medical services allocated for the education of children and adults with autism have been historically inadequate. The 1995-2000 catch-up plan for persons with autism failed to overcome the backlog; likewise, the 2001-2003 multi-annual plan on disabled children, young persons and adults, which addressed also persons with autism, is alleged to be far from filling the gap. It also asserted that 75 000 persons with autism (of whom 19 000 are children) are in need of special education, but that only 10% of them have a place (about 8,000 places in all are currently available).

20. According to Autism-Europe, the current situation as regards placements in special education stands as follows:

Situation as compiled by Autism-Europe: Number of places per 75 000 persons with autism in France

Number in 1995	Actually established 1995-2000	To be opened 2001-2003	Total	Remaining needs	Rate of satisfaction
5400	1400	1053	7853	67147	11.6%

Official figures³: number of places per 48 000 persons with autism in France

Number in 1995	Officially established 1995-2000	To be opened 2001-2003	Total	Remaining needs	Rate of satisfaction
5400	2033	1053	8486	39514	21.4%

³ As from DGAS, Report to the Parliament on the implementation of Act no.96/1076, “Autism: evaluation of action 1995-2000”, December 2000. The difference as regards the estimate of the number of persons with autism is due to the retained incidence rate of the disability.

21. The complainant alleges that even if the official French rate of prevalence is accepted (which it asserts is lower than the one retained by the Health World Organisation), the finances dedicated to the 1995-2000 catch-up plan could only envisage the creation of 1 400 wholly new places, and not the 2033 places officially claimed to be opened. It further alleges that the 2001-2003 multi-annual plan would not really help to change the situation since it would only enable the creation of 1053 additional places for a budget of € 22.87 million.

22. According to the complainant, on average, 300 places have been created annually since 1995, which represents an annual increasing rate of 0.7% in comparison with the official needs. At this pace, it will take one hundred years to resorb the deficit of places, and this without taking into account the natural increase of the autistic population, which, on the basis of the official figures, it is estimated will grow by 160 persons per year.

23. In reply the Government acknowledged that the catch-up plan of 1995-2000 had fallen short of real needs. In its written memorials, the Government indicated that, within the framework of the 2001-2003 multi-annual plan or other exceptional plans, these special appropriations amounting in total to about €30 million enabled, or will enable, the creation of 1053 places reserved specifically for persons with autism. It further asserted that 1756 SESSAD (special education and domiciliary care) places for the educational integration of children with disabilities, including autistic children, and young people had been created (on a budget of € 36.95 million), and 507 were planned in 2003. In total 3228 SESSAD places have been created between 2001 and 2003. It asserted that there were 5500 places in specialist residential establishments (MAS), residential establishments with medical facilities (FAM) and special employment centers (CAT) for severely disabled adults, some of whom would include autistic persons. Finally, it asserted that the 2003 Social Security Finance Act set aside € 70 million for severely disabled adults and € 9 million for improving facilities in establishments and other services and on the educational integration of disabled children through the establishment of additional places in residential and non-residential centers with educational and medical facilities and in SESSAD (special education and domiciliary care services).

24. At the hearing, the Government indicated that 94 000 children and young persons with disabilities (0-20 years of age) are taken care of in special education institutions, socio-medical services, or health institutions. More precisely, as regards autism, it reaffirmed that, through the catch-up plan of 1995-2000, a total of about 2033 places (820 for children and 1213 for adults) have been created. In addition, the multi-annual plan 2001-2003 and special appropriations has finally permitted, as of September 2003, the creation of some other 1306 places for children, young people and adults with autism.

25. The Government acknowledged that part of figures provided did not concern directly persons with autism, but in general disabled or seriously disabled persons. However, it argued that, on the one hand, the approach chosen by France is not the provision of specialised services for any category of disabled persons, but their reception in multipurpose establishments and services; and, on the other hand, that statistic programmes aiming at disaggregating data concerning specifically persons with autism (which currently do not exist) have been recently launched.

26. In any event, the Government considered that, even if the creation of places, and thereby the allocation of resources, were insufficient to cover all needs, the catch-up for educational provision of autistic persons did not only lie in allocating additional funding, but also in diversifying the offer of services at *département* level by implementing Act no. 2002/2 containing reforms of social and medico-social provision.

B. Separation and limitation of budgetary resources

27. Autism-Europe advanced a structural reason why there is inadequate funding for the education of children and young adults with autism and argued that this violates Article 15§1 in combination with Article 17§1. Special education, it is alleged, is at an automatic disadvantage because it does not fall under the finance Act and is not therefore considered to be a public service that the State is obliged to provide. Hence, unlike ordinary education, its financing is not calculated according to the number of children in the system and those forecast for the future.

28. Autism-Europe observed that the financing of special education comes mainly under the sickness-insurance budget approved through the social security finance Act, to the exception of teachers provided by the national system to the special education sector who are paid by the State budget. This implies for the complainant that the expenditure is not determined according to the real needs of the number of people with disabilities who need adapted educational provision. Thus, it argued that, because of the budgeting mechanism chosen, persons with disabilities do not in practice (despite the legislation) benefit from the right to education because they cannot do so for as long as the funding of special education placements remains outside the national education system and is treated as “social assistance” or “care” to which health or social-action expenditure limits apply.

29. As far as persons with autism are concerned, the complainant specifically argued that, unless France alters its budgetary and financial policy, the shortfall on educational provision for autistic persons will never be made up and the quantitative needs will never be met.

30. The Government contested the complainant’s argument and considered that, on the basis of Article L.112-1 of the Education Code, children with disabilities are fully covered by the educational public service requirement, either through ordinary or special education. According to Article L.112-3, special education is much more than just a form of care, since it combines educational, psychological, social, medical and paramedical inputs. Moreover, the Government recalled that special education is not financed solely by the sickness insurance scheme since the state pays for its educational component (Article L.242-1 of the Social Action Code). Accordingly, 5 400 teachers are assigned to medical-social establishments and services and health establishments to assist 94,000 children and young persons with disabilities.

31. Finally, the Government contested that the financing of the part of special education met by the sickness insurance system through the ONDAM - the national objective for sickness insurance expenditure - is less generous than what would be a state financing within the education budget. On the contrary, it held that such a system is more flexible because the growth rate applied to the expenditure objective for services and establishments, depending on the social security system, is determined by public health needs and national priorities.

C. The alleged inadequacy of early intervention

32. Autism-Europe argued that early intervention to assist children with autism is virtually non-existent.

33. The Government considered that early medical-social action centers (CAMSPs) make specific provision for the early detection of disability, or risk of disability, and outpatient treatment by multidisciplinary teams for children under six with sensory, motor or mental disabilities. From 1996, the number of these centers has sharply increased: they are now 260 in all but one of the *departments*, and the 2001-2003 three-year plan for disabled children, young persons and adults has set aside € 3 million a year to finance their establishment and extension. The recently established four autism resource centers in Brest, Reims, Montpellier and Tours are responsible for carrying out diagnoses in particularly complex or sensitive cases. The complainant sustained that this information concerned disabled children as a whole rather than children with autism.

D. The alleged inadequacy of mainstream education

34. Notwithstanding the regulations in force, the complainant argued that the mainstreaming of autistic children and young people is still the exception rather than the rule and, even when it occurs, it is confined to an average of just a few hours per week. The complainant asserted that structures charged with integration – school integration classes (CLIS), educational integration units (UPI) and the domiciliary care and special education services (SESSAD), are generally and even officially acknowledged as insufficient in number⁴. The complainant cited official figures concerning mainstreaming. According to the report of the Senate, only 7% of children with disabilities (about 60,000 as a whole) are integrated into ordinary schools⁵. According to the Ministry of Education, mainstreamed disabled children and young people represent 1.3% of the total school population in each department, while the Court of Auditors rates their integration to less than 1%⁶. At the hearing, the complainant asserted that out of 6,000 children with autism who could be mainstreamed only 250 are individually integrated, that is about 5%. Another 400 are collectively integrated, making a total of 650 on a total school population of 15 million children, teenagers and students.

⁴ Ministry of Employment and Solidarity (General Inspectorate of Social Affairs), Ministry of Education (General Inspectorate of Education), Report on access to education for children and young people with disabilities, March 1999; M. Fardeau, DGAS Report to the Ministry of Employment and Solidarity, Disability: a comparative and forward analysis of provision.

⁵ Senate, P. Blanc, Report of the Social Affairs Commission on the policy for compensating disability.

⁶ Court of Auditors, Life with a disability, Public report, June 2003.

35. The Government contested this argument and affirmed that for the State mainstreaming is a priority, both in legislation (Articles L.114-1 of the Social Action and Family Code in general terms and Articles L.112-1 and L.112-3 of the Education Code, Education Act, No. 89-486) and in relevant regulations (*Handiscol* circular), and also through the provision of the necessary resources.

36. The Government asserted that full-time or part-time integration may occur individually or collectively through the creation of special classes (CLIS and UPIS) within ordinary schools. In its written memorials, it indicated that, at the start of the 2001-2002 academic year there were 3381 CLIS (compared with 3170 the previous year) and 303 UPIS (compared with 202). At the hearing, the Government contested the complainant's figures about mainstreaming of persons with autism, but it was unable to offer precise data concerning them. It only affirmed that, in 2002-2003, the total number of disabled persons integrated into ordinary school amounted to 89 000 (67 000 at primary level and 22 000 at secondary level).

37. The Government pointed out that the *Handiscol* project assists in the integration process by providing information, assistance in improving access to school establishments, training of teachers, and the supply of support staff to accompany children who need it.

38. Finally, the Government indicated a new range of measures decided on 21 January 2003 for further improving the integration of pupils with disabilities by developing special classes in secondary schools and increasing the number of special auxiliary staff to 6,000 (Decree no. 40/2003 on auxiliary staff).

E. The alleged deficiencies in special education: administrative unwieldiness and teacher training

39. Autism-Europe alleged that persons with autism find it hard to receive adapted education in specialised institutions because administrative unwieldiness gets in the way of providing new specialised facilities. The long and time-consuming administrative process is also held to be at the origin of French persons with autism integrating Belgian special education institutions.

40. The complainant affirmed that there are no binding rules requiring the teaching staff of specialised education facilities to be specifically trained to cater for autistic persons⁷ and the training for staff is in fact non-existent or ill-adapted. This appears to be confirmed by official sources⁸.

41. The Government contested the allegation and indicated all measures implemented so far to train professionals working with autistic persons:

- for seven years the National training and study centre for maladjusted children (CNEIFEI) organises an autism module as part of its training for teachers studying for a specialised teaching certificate in educational adjustment and integration (CAPSAIS, option D). In 2002-2003, 12 specialist teacher trainees and 97 other persons (national education personnel and parents) took part in this module;

⁷ There is only Circular no. 98/232 on training for staff working with persons with autism.

⁸ Ministry of Employment and Solidarity (General Inspectorate of Social Affairs), Ministry of Education (General Inspectorate of Education), Report on access to education for children and young people with disabilities, March 1999.

- since 1998, seventy continuing training sessions have been held each year, attended by an average of 500 trainees, to form professional working with persons with autism;
- new measures announced by the Government include training for all staff and the development of specialist teacher training in university teacher training institutions (IUFM).

42. In addition, the Government held that Act No. 2002/2 on social and medical-social action should help reducing the number of steps and time required to set-up specialist establishments.

F. The alleged deficiencies in the educational placements of adults with autism

43. As a consequence of the lack of legal rules, Autism-Europe argued that educational provision for autistic adults is non-existent.

44. The Government contested the allegation and described all the different medical and medical-social establishments and services catering for adults with disabilities, thereby including adults with autism.

G. Reliance on Hospitalisation of Children and Adults with Autism

45. Autism-Europe alleged that, as a consequence of the lack of places, persons with autism seek care abroad, mainly in Belgium, and that hospitals cannot be considered “sufficient and adequate” institutions and services for educational provision of autistic persons. This latter aspect, the complainant added, is confirmed by official sources⁹.

46. The Government contested the allegation and indicated that the newly planned places already referred to are particularly concerned with offering autistic persons local accommodation so that they are not cut off from their families. Moreover, placement in psychiatric hospital occurs when specialist care, which like all medical care is prescribed by doctors, is necessary for persons with autism, as for anyone else.

II. ASSESSMENT OF THE COMMITTEE

47. The Committee considers that the arguments of the complainant alleging the violation of Articles 15§1 and 17§1 and of Article E are so intertwined as to be inseparable. Its assessment, therefore, will deal with the question whether the situation in France is in conformity with Articles 15§1 and 17§1 whether alone or when read in combination with Article E of the Revised Charter.

48. As emphasised in the General Introduction to its Conclusions of 2003 (p. 10), the Committee views Article 15 of the Revised Charter as both reflecting and advancing a profound shift of values in all European countries over the past decade away from treating them as objects of pity and towards respecting them as equal citizens – an approach that the Council of Europe contributed to promote, with the adoption by the Committee of Ministers of Recommendation (92) 6 of 1992 on a coherent policy for people with disabilities. The underlying vision of Article 15 is one of equal citizenship for persons with

⁹ Ministry of Employment and Solidarity (General Inspectorate of Social Affairs), Ministry of Education (General Inspectorate of Education), Report on access to education for children and young people with disabilities, March 1999.

disabilities and, fittingly, the primary rights are those of “independence, social integration and participation in the life of the community”. Securing a right to education for children and others with disabilities plays an obviously important role in advancing these citizenship rights. This explains why education is now specifically mentioned in the revised Article 15 and why such an emphasis is placed on achieving that education “in the framework of general schemes, wherever possible”. It should be noted that Article 15 applies to all persons with disabilities regardless of the nature and origin of their disability and irrespective of their age. It thus clearly covers both children and adults with autism.

49. Article 17 is predicated on the need to ensure that children and young persons grow up in an environment which encourages the “full development of their personality and of their physical and mental capacities”. This approach is just as important for children with disabilities as it is for others and arguably more in circumstances where the effects of ineffective or untimely intervention are ever likely to be undone. The Committee views Article 17, which deals more generally, *inter alia*, with the right to education for all, as also embodying the modern approach of mainstreaming. Article 17§1, in particular, requires the establishment and maintenance of sufficient and adequate institutions and services for the purpose of education. Since Article 17§1 deals only with children and young persons it is important to read it in conjunction with Article 15§1 as far as adults are concerned.

50. Autism-Europe also argued that Article E of the Revised Charter is violated since the net result of alleged shortfalls is that persons with autism do not benefit, as effectively as other citizens, from a right to education as embodied both in Articles 15§1 and 17§1.

51. The Committee considers that the insertion of Article E into a separate Article in the Revised Charter indicates the heightened importance the drafters paid to the principle of non-discrimination with respect to the achievement of the various substantive rights contained therein. It further considers that its function is to help secure the equal effective enjoyment of all the rights concerned regardless of difference. Therefore, it does not constitute an autonomous right which could in itself provide independent grounds for a complaint. It follows that the Committee understands the arguments of the complainant as implying that the situation as alleged violates Articles 15§1 and 17§1 when read in combination with Article E of the Revised Charter.

Although disability is not explicitly listed as a prohibited ground of discrimination under Article E, the Committee considers that it is adequately covered by the reference to “other status”. Such an interpretative approach, which is justified in its own rights, is fully consistent with both the letter and the spirit of the Political Declaration adopted by the 2nd European conference of ministers responsible for integration policies for people with disabilities (Malaga, April, 2003), which reaffirmed the anti-discriminatory and human rights framework as the appropriate one for development of European policy in this field.

52. The Committee observes further that the wording of Article E is almost identical to the wording of Article 14 of the European Convention on Human Rights. As the European Court of Human Rights has repeatedly stressed in interpreting Article 14 and most recently in the *Thlimmenos* case [*Thlimmenos c. Grèce* [GC], n° 34369/97, CEDH 2000-IV, § 44)], the principle of equality that is reflected therein means treating equals equally and unequals unequally. In particular it is said in the above mentioned case:

“The right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is also violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different.”

In other words, human difference in a democratic society should not only be viewed positively but should be responded to with discernment in order to ensure real and effective equality.

In this regard, the Committee considers that Article E not only prohibits direct discrimination but also all forms of indirect discrimination. Such indirect discrimination may arise by failing to take due and positive account of all relevant differences or by failing to take adequate steps to ensure that the rights and collective advantages that are open to all are genuinely accessible by and to all.

53. The Committee recalls, as stated in its decision relative to Complaint No.1/1998 (International Commission of Jurist v. Portugal, § 32), that the implementation of the Charter requires the State Parties to take not merely legal action but also practical action to give full effect to the rights recognised in the Charter. When the achievement of one of the rights in question is exceptionally complex and particularly expensive to resolve, a State Party must take measures that allows it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources. States Parties must be particularly mindful of the impact that their choices will have for groups with heightened vulnerabilities as well as for others persons affected including, especially, their families on whom falls the heaviest burden in the event of institutional shortcomings.

54. In the light of the afore-mentioned, the Committee notes that in the case of autistic children and adults, notwithstanding a national debate going back more than twenty years about the number of persons concerned and the relevant strategies required, and even after the enactment of the Disabled Persons Policy Act of 30 June 1975, France has failed to achieve sufficient progress in advancing the provision of education for persons with autism. It specifically notes that most of the French official documents, in particular those submitted during the procedure, still use a more restrictive definition of autism than that adopted by the World Health Organisation and that there are still insufficient official statistics with which to rationally measure progress through time. The Committee considers that the fact that the establishments specialising in the education and care of disabled children (particularly those with autism) are not in general financed from the same budget as normal schools, does not in itself amount to discrimination, since it is primarily for States themselves to decide on the modalities of funding.

Nevertheless, it considers, as the authorities themselves acknowledge, and whether a broad or narrow definition of autism is adopted, that the proportion of children with autism being educated in either general or specialist schools is much lower than in the case of other children, whether or not disabled. It is also established, and not contested by the authorities, that there is a chronic shortage of care and support facilities for autistic adults.

CONCLUSION

For these reasons, the Committee concludes by 11 votes to 2 that the situation constitutes a violation of Articles 15§1 and 17§1 whether alone or read in combination with Article E of the revised European Social Charter.

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