

## **12<sup>th</sup> session of the Committee on the Rights of Persons with Disabilities - Dialogue with Belgium 18 – 19 September 2014**

Submission by GRIP vzw

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**GRIP, Gelijke Rechten voor Iedere Persoon met een handicap** (Equal rights for every person with a disability) is a civil rights organisation of and for persons with a disability. GRIP considers it important that persons with a disability critically reflect on the UN Convention and the situation of persons with a disability in Flanders (Belgium). For that purpose, GRIP realized a shadow report in 2011, through a consultative and participative process. In March 2013 GRIP made a submission to the List of Issues.

In the current submission we present a brief update of information, remarks and proposed recommendations. Some are related to questions in the list of issues. We focus on 5 main issues of concern.

### **Contact:**

Patrick Vandelanotte

GRIP vzw - Koningsstraat 136 – 1000 Brussel

00 32 2 214 27 60 / patrick@gripvzw.be

### **Executive summery**

#### **Paradigm shift and awareness-raising**

In Flanders there is still a great need for awareness-raising. We regret that the government, following the ratifications of the CRPD, did not conduct a campaign addressing the public about the CRPD and the rights of persons with a disability. The media, as an important player in the field of awareness-raising, is not sufficient being held responsible for their role as intended by the CRPD.

#### **Internments**

In Belgium more than 1,000 persons with intellectual or psychosocial disabilities are in prisons, deprived of their right to adequate support. The Belgian Government is taking measures to improve this situation. However there remains more emphasis on the protection of the society than on their treatment and re-integration.

## **Disability support and living in the community**

There is still no right to support for persons with a disability in Belgium. In December 2013 19,250 people were on the waiting list in the Flanders region. A high rate of referral to residential care remains in Flanders. A budget for personal assistance (PAB) can be obtained, but the number of allocated budgets is increasing too slow. There is no real perspective for deinstitutionalization. The 'Perspectief 2020'-plan is far too weak to make a difference. Some measures of the new decree on the financing of the care (PVF, persoonsvolgende financiering) need to be assessed as to their conformity to the CRPD.

## **Inclusive education**

Education in Flanders increases segregation instead of being inclusive. Comparative data on education of children with disabilities in Europe show that the percentage of pupils in segregated special education in the Flemish community is the highest in Europe. One of the reasons is the lack of funding for the support of students in regular schools. The new M-decree provides the right for reasonable accommodation for those pupils who follow the general curriculum. For pupils who are in need of an individual programme and who are not able to reach the general goals of the curriculum, it is not clear if they will be granted a strong enough right for enrolment in the regular school.

## **Employment**

An insufficient number of persons with a disability are active in regular employment. The government fails to achieve its own targets related to the employment of persons with a disability in its departments. The new 'maatwerk'-decree is still missing individual support measures.

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### **1. Paradigm shift and awareness-raising / role of the media**

CRPD article 8 / List of Issues question 8

In Flanders there is still a great need for awareness-raising. In the shadow report (8.1.) we argue that the government as well as society still perceive disability from the viewpoint of the medical model.

There is a shortcoming of awareness-raising campaigns and programmes offering society a positive image of disability and information on the rights of people with a disability in general and notably the CRPD.

The public is not informed about the CRPD. No campaign with that purpose was conducted by the government so far. In 2014, GRIP launched its campaign 'My disability, my rights' ('Mijn handicap, mijn rechten') with the financial support of Flemish Department of Equal Opportunities. (<http://www.gelijkerechten.be/doemee/mijn-handicap-mijn-rechten/bekijk-de-campagnefilm.html>). Because of few resources, the campaign had little impact. Other organisations of persons with disabilities invest through their traditional channels (websites, magazines, communication in the press...), but unfortunately the general public is not reached. Civil society does not have sufficient means to organize broad public campaigns.

The media is an important actor in the field of information and awareness-raising. We notice that the public and private broadcast are not sufficient being held responsible for their role as intended in the CRPD art. 8.2.c : 'Encouraging all organs of the media to portray persons with disabilities in a manner consistent with the purpose of the present Convention'.

A recent diversity monitor shows that on the public broadcasting company (VRT) the on-screen visibility of persons with disabilities remains very low, namely 0.7 % (0.7 in 2009, 1.1% in 2011 and 1% in 2012). GRIP suggested that the government should impose a quantitative target for on-screen visibility of disability (as is the case for women and ethnic cultural minorities). This was not adopted in the management agreement 2012-2016.

Proposed recommendations:

- Conduct information and awareness-raising campaigns about the rights of persons with a disability based upon the CRPD, targeting the general public.
- In all information from the government and in all awareness-raising campaigns the focus should be the paradigm shift: both a positive and a human rights approach to disability, counteracting the charity approach.
- Ensure that DPOs are involved in the monitoring and evaluation of such campaigns.
- Impose to the public broadcasting company (VRT) a quantitative target for on-screen visibility of disability.

## **2. Internments**

CRPD article 13 and 14 / List of Issues Question 12, 14

A tragic disregard of the equal rights for persons with a disability is apparent in internments. In Belgium more than 1,000 persons with intellectual or psychosocial disabilities are in prisons, where they are deprived of their right to adequate support.

The Belgium Government is taking measures to improve this situation, both to the internment procedure as to living conditions. It is too soon to evaluate. But there remain many concerns, mostly based upon the fact that the protection of the society is emphasized rather than treatment and re-integration. We regret the absence of specific training concerning the situation of persons with disabilities and their specific rights.

The opening of two forensic psychiatric centers in Flanders before the end of the year, is a positive development.

Proposed recommendations:

- It is important that, from the start of the forensic psychiatric centers, the rights of the people treated in these centers, are monitored.
- Development of a long-term strategic plan for keeping the high number of internees out of prison by creating a forensic circuit.
- Establish an accessible and easy procedure to support persons with a disability from the beginning of their contact with justice.

### **3. Disability support and living in the community**

CRPD article 19 / List of Issues Questions 19, 20

There is still no right to support for persons with a disability in Belgium. In December 2013 19,250 people were on the waiting list in the Flanders region, while 43,835 received a service provided by the VAPH. Although the government argues that they are investing, the situation is hardly improving. Treating only the most urgent and critical demands, with a very low budget in a very low tempo, is almost inhumane.

The conclusion is that the investments are not sufficient. As a result of a collective complaint (n° 75/2011), the European Committee of Social Rights reported a violation by Belgium of the European Social Charter. Over the last months, two cases of people in need of support were taken to court with the result that the Flemish Government was forced to provide adequate support.

In the Flemish plan 'Perspectief 2020', there is the promise that by 2020 persons with a high need for support will receive this support. It is however unclear who belongs to this group and how this promise can be kept without a radical increase in the welfare budget. There is concern about depriving other groups of support and personal assistance and about placing a heavier burden on the families of people in need of assistance.

A budget for personal assistance (PAB) can be obtained but the number of allocated budgets is increasing too slow. By the end of 2013 2,248 people with a disability were organizing their support with a budget for PAB. In 2013 this number has increased only with 173 while 682 persons applied. This brings the persons on the waiting list to the number of 3,292. Compared to the data in the shadow report of 2010 (1,830 PAB's granted) only 418 new budgets were provided (12 % of the people on the waiting list). These new budgets were only allocated to those persons with the highest and most urgent need for support. Some people are more than 10 year on the waiting list. This results in harrowing situations and no future prospects. The result being that some people are not making any demand; there is just no hope in obtaining a PAB. The integration of the PAB in the central registration system (CRZ) is not dealing with this problem adequately.

There is no real perspective for deinstitutionalization. Despite the ratification of the CRPD, a strong rate of referral of persons with disabilities to residential care remains in Flanders. Not enough information is provided about the possibility of living in the community. Institutional care is too often identified as the only sustainable solution. The institutions in Belgium mostly offer good service and care. However the

paradigm shift of the UN-Convention leads to the perspective of deinstitutionalization, meaning 'living in the community'. With a strong tradition of institutions in Flanders, this needs a clear political vision, confronting both the professionals and the persons with a disability and their parents. There are some initiatives taken by the Flemish Government, within the 'Perspectief 2020'-plan, but far too small to make a change.

In this context, questions raise about the ongoing funding of new institutional services. The argument used is that small congregated settings are no 'institutions' and are working towards inclusion. We would like to quote here Gerard Quinn and Suzanne Doyle: 'All institutions or congregated settings are presumptively unjust regardless of size'. (Getting a Life – Living Independently and Being Included in the Community, 2012, p.28).

In Flanders, the new decree on the financing of the care (PVF – 'persoonsvolgende financiering') is meant to be a step towards the self-determination of persons with a disability. Some of the new measures need to be assessed as to their conformity to the CRPD:

- The decree will make a distinction between people with low needs obtaining a flat rate 'basic support budget' (funded through health insurance) and people with high needs (budget obtained from the department of welfare). Is this justifiable from a human-rights approach?
- The support of family, friends, volunteers and regular services will be taken in account in the assessment of new demands and in the re-assessment of budgets already been allocated. This could result in pressure on people with disabilities to rely on support and help from their families and network, making them more dependent.
- It is not clear which principles of the current PAB will remain and which will change.
- The new decree is anchoring a priority system without the guarantee of a reasonable waiting period. Hence people can remain on a waiting list for years and years.

Proposed recommendations:

- Without further delay, the government must present a clear budget plan to provide the right for disability support to every person in need of support. Reasonable waiting periods must be part of this plan.
- There needs to be a change in politics. Ad this moment institutional care remains preferred. A stronger plan for reconversion is needed than the present 'Perspectief 2020'-plan.
- Monitoring of the implementation of the PVF-decree as to the effect on the right to disability support, the possibility to lead an inclusive life and the independency of care providers.

#### 4. Inclusive education

CRPD article 24 / List of Issues Questions 21, 22, 23.

Education in Flanders (and Belgium) increases segregation instead of being inclusive. The right to participation in the regular education with reasonable accommodation for pupils with a disability is not guaranteed because the investments needed in inclusive education are not made.

Only 15% of children with disabilities in Flanders attend mainstream schools. 85% attend special schools that exist in separate buildings, segregated from the mainstream educational system. Although rates of integration of children with physical disabilities have increased in the last decade, the rates for children with intellectual and severe, multiple disabilities, has remained stagnant.

Comparative data on education of children with disabilities in Europe show that the percentage of pupils in segregated special education in the Flemish community is the highest in Europe (Figure 1). See also Figure 2 from a University of Leeds study detailing the proportion of students in inclusive education, specialized classes and segregated education which again shows Belgium to have the highest proportion of pupils in segregated special education in Europe.

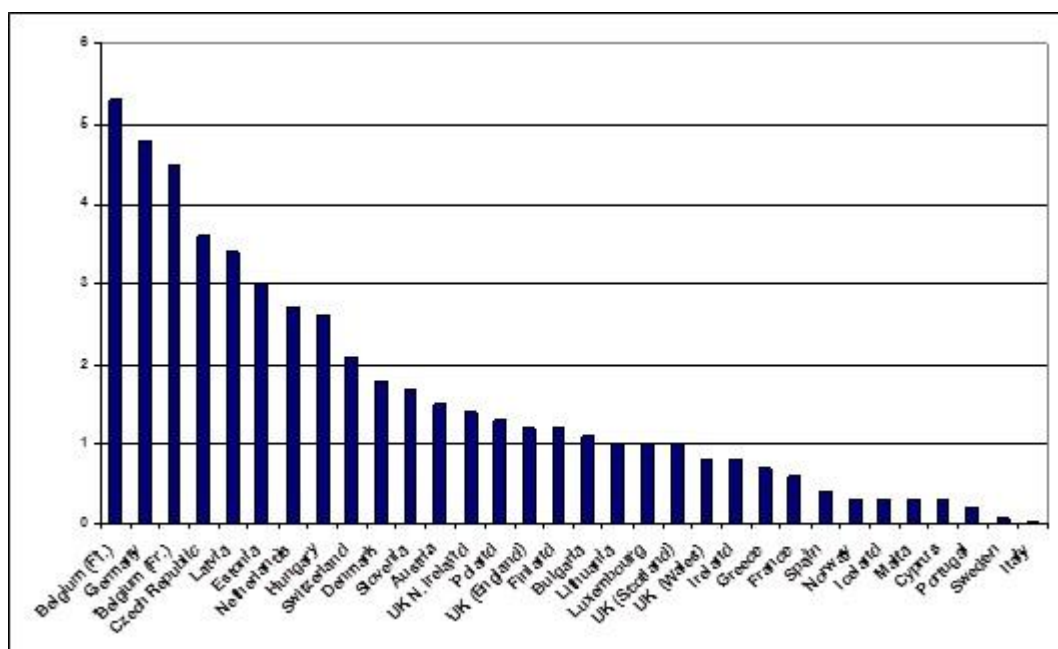


Figure 1: Pupils in special schools and classes as a % of the total school population. (European Agency for Development in Special Needs Education, Country Data 2010. [http://europa.eu/rapid/press-release\\_IP-12-761\\_nl.htm?locale=en.](http://europa.eu/rapid/press-release_IP-12-761_nl.htm?locale=en))

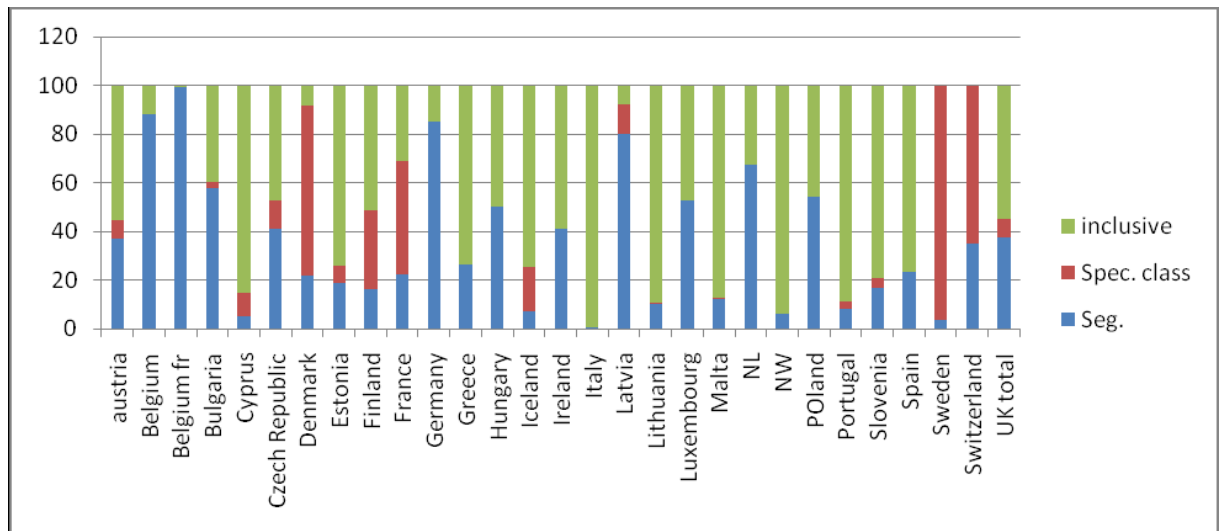


Figure 2: Proportion of students with disabilities in inclusive, segregated and specialized classes. (Ebersold, S. (2011). *Inclusive education for young disabled people in Europe: trends, issues and challenges*. University of Leeds: ANED.)

Since the ratification of the CRPD, there has been no change in the support for pupils with disabilities attending regular schools. Fact is that for a student in inclusive education, less funding for support is provided compared to a student in segregated special education. The difference in investment in support between inclusive education and special education needs to be addressed.

A new decree on special education was adopted by the Flemish parliament last month. This M-decree ('decree concerning measures for pupils with specific educational needs'), provides the right for reasonable accommodation for those pupils who follow the general curriculum. For pupils who are in need of an individual programme and who are not able to reach the general goals of the curriculum, it is not clear if they will be granted a strong enough right for enrolment in the regular school. The discussion is still ongoing. The Flanders Government has allocated no new funding, so it is unlikely that the law will leverage resources needed to achieve inclusive education for all children.

With the support of GRIP, MDAC sent a "collective complaint" to the European Committee of Social Rights (Complaint no. 109/2014, Mental Disability Advocacy Center v. Belgium, violation of Article E in relation to Articles 15 and 17 of the Revised Social Charter). The complaint is directed against Belgium and focuses on the education system in Flanders where there is a startlingly high rate of educational segregation.



Proposed recommendations:

- Monitoring as to the implementation of the new M-decree. It needs to be clear and controlled that no students are refused because they are not able to follow the main curriculum, unless it is proven that the needed accommodations are impossible or disproportional.
- Flanders should develop consistent strategies for funding students with disability in mainstream schools. At least, they should be allocated the same amount of support as students in segregated, special education schools. Also training for the teachers and additional resources for reasonable accommodations need to be provided.

## **5. Employment**

CRPD article 27 / List of Issues Questions 24, 25, 26

An insufficient number of persons with a disability are active in regular employment. The government fails to achieve its own targets related to the employment of persons with a disability.

Flanders adopted 'maatwerk', a new decree on employment. It provides some regulations to support persons with a disability working in regular employment. The decree is missing individual support measures (no personal assistance). It will be up to the newly elected Government to take these decisions.

Despite of a protocol (2007), little progress little progress in the field of reasonable accommodations was made:

- Selor (the federal selector) adopted a policy for testing and evaluating persons with disabilities applying for a job with the federal government.
- The government in Flanders set up a system of "integration protocols" whereby measures of reasonable accommodation in the workplace are organized.
- There is no policy at the local level.

The main problems remain:

- There is no coordination between the federal, Flemish and local level.
- There is no system on how the government deals with reasonable accommodations.

In Flanders there is a plan of action to combat discrimination on the workplace, these are limited to the authority of Flanders. Most of these measures tackle conflicts through mediation, not in court. There is no plan of action on the federal level.

Proposed recommendations:

- The government must take action to reach the targets for employment of persons with disabilities in all departments.
- If the system of targets does not lead to a better employment rate with the authorities, they must commit to meet quotas and establish deadlines.
- Without further delay the Flemish Government must provide the individual support measures within its 'maatwerk'-frame.