European Committee of Social Rights
Comité européen des Droits sociaux

DECISION ON THE MERITS

18 March 2013

International Federation for Human Rights (FIDH)
v. Belgium

Complaint No. 75/2011

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter ("the Committee"), during its 263rd session attended by:

Luis JIMENA QUESADA, President
Monika SCHLACHTER, Vice-President
Petros STANGOS, Vice-President
Lauri LEPPIK
Rüçhan IŞIK
Jarna PETMAN
Giuseppe PALMISANO
Karin LUKAS
Eliane CHEMLA
Jozsef HAJDU
Marcin WUJCZYK

Assisted by Mr Régis BRILLAT, Executive Secretary,

Having deliberated on 22 January and 18 March 2013,

Based on the report presented by Petros STANGOS,

Delivers the following decision adopted on this last date:

PROCEDURE

1. The complaint submitted by the International Federation for Human Rights ("the FIDH") was registered on 13 December 2011.

2. The complainant organisation argues that the serious shortage of accommodation for highly dependent adults with disabilities and their families represents a violation of Articles 15§3 and 16 of the Revised European Social Charter ("the Charter"), taken alone or in conjunction with Article E. Further, and more specifically, it maintains that this shortage deprives highly dependent adults with disabilities and their families of effective access to social and medical assistance, social services and housing, and of their autonomy, social integration and opportunities to take part in community life, in violation of Articles 13§3, 14 and 16, taken alone or in conjunction with Article E. Moreover, according to the FIDH, this lack of legal and social protection exposes them to lasting poverty and exclusion in violation of Article 30, taken alone or in conjunction with Article E.

3. The Committee declared the complaint admissible on 22 March 2012.

4. In accordance with Article 7 paragraphs 1 and 2 of the Protocol providing for a system of collective complaints ("the Protocol"), and with the Committee's decision on the admissibility of the complaint, on 27 March 2012 the Executive Secretary communicated the text of the admissibility decision to the Belgian Government ("the Government") and to the FIDH. On 28 March 2012, he also sent the decision to the Contracting Parties to the Protocol and the states that had made a declaration in accordance with Article D§2, and to the organisations referred to in Article 27§2 of the 1961 Charter.

5. In accordance with Rule 31§1 of the Rules, the Committee set 31 May 2012 as the deadline for presentation of the Government's submissions on the merits. At the Government's request, the President extended this deadline to 2 July 2012. The Government's submissions on the merits were registered in the Secretariat on 29 June 2012.

6. In accordance with Rule 31§2 of the Rules, the President invited the FIDH to reply to the Government's submissions by 27 September 2012. At the request of the FIDH, and in accordance with Article 6 of the Protocol and Rule 28§2, the President granted an extension of the deadline to 3 December 2012. The reply of the FIDH was registered on 3 December 2012.

7. In response to a request submitted on 8 November 2012, and in accordance with Rule 32A§1 of the Committee's Rules, the Belgian equal opportunities and anti-racism centre (CECLCR) was invited to present its observations on the complaint. The President set 14 December 2012 as the deadline for these observations. They were registered in the Secretariat on 14 December 2012.

8. In its reply dated 3 December 2012, the FIDH asked the Committee to organise a hearing. The Committee decided not to hold such a hearing.

CONCLUSIONS OF THE PARTIES

1 – The complainant organisation

9. The FIDH asks the Committee to find that the Belgian authorities' failure to provide adequate facilities for highly dependent adults with disabilities deprives them and their families to the rights guaranteed by:

- Article 13§3 of the Charter and Article E in conjunction with Article 13§3;
- Article 14 and Article E in conjunction with Article 14;
- Article 15§3 and Article E in conjunction with Article 15§3;
- Article 16 and Article E in conjunction with Article 16;
- Article 30 and Article E in conjunction with Article 30.

10. The FIDH therefore asks the Committee to find that there have been violations of these articles.

2 – The respondent Government

11. The Government asks the Committee to find that there was not violation of 13§3, 14, 15§3, 16 and 30, alone or read in conjunction with Article E of the Charter, due to its action to assist highly dependent persons. It states that during the current period of economic crisis and financial constraint, it has set out to ensure that its response to the demands it faces takes account of all the possible care and accommodation facilities and that this response reflects the needs of the families concerned.

OBSERVATIONS OF THE BELGIAN EQUAL OPPORTUNITIES AND ANTI-RACISM CENTRE (CECLCR)

12. The equal opportunities and anti-racism centre is responsible for promoting, defending and monitoring the Belgian state's implementation of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). The centre made its submissions to the Committee to help clarify its task by describing the current situation in Belgium concerning the provision of social services to highly dependent persons with disabilities, in the light of the Belgian state's obligations under the following provisions of the UNCRPD:

- Article 19, which stipulates that highly dependent persons with disabilities must have access to a range of services appropriate to their needs;
- Article 25, which recognises that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability;
- Article 26, which states that all persons with disabilities should have access to rehabilitation services;
- Article 28, which requires states to recognise the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability.

13. The centre concludes by drawing attention to the incompatibility of the existing lack of appropriate facilities for highly dependent persons with the principles of the UNCRPD. This creates an obligation on the Belgian state to establish and develop appropriate social services and facilities to meet the needs of highly dependent persons with disabilities, together with the necessary resources, with a view to the gradual implementation of their rights in accordance with the Committee's criteria. It also stresses the need for statistical data on the living circumstances of those concerned and for them to be fully involved in framing any policies that concern them.

RELEVANT DOMESTIC AND INTERNATIONAL LAW

A – Domestic law

14. Belgian Constitution of 17 February 1994,

> "Article 1 Belgium is a Federal State made up of communities and regions".

15. Special Institutional Reform Act of 8 August 1980. Under the special act, disability policy, other than the rules governing and the financing of disability allowances, was transferred to the communities.

> "Section 5§1. The personal matters referred to in Article 59b, 2b of the Constitution are:
> …
> II. With regard to personal assistance:
> 4. Disability policy, including the vocational training, refresher training and retraining of persons with disabilities, with the exception of:
> a. the rules governing and the financing of disability allowances, including individual cases;
> b. the rules governing financial assistance to employers to provide employment for employees with disabilities."

16. Under section 31bis of the Institutional Reform Act of 9 August 1980, the consultative committee of the federation decided, on 15 September 2004, to set up a series of joint ministerial conferences on a range of subjects, including one on well-being, sport and the family, which provides a "persons with disabilities" section.

17. The Disability Allowances Act of 27 February 1987 lays down the different types of allowance, their rates, the eligibility conditions and the applications procedure.

> "Section 1. There are three allowances for persons with disabilities: the income replacement allowance, the integration allowance and the assistance to elderly persons allowance."

> "Section 5. Entitlement to the income replacement or integration allowances continues after the age of 65, provided it remains payable without interruption.

> Section 6
> The basic annual rate of the income replacement allowance (as of 2011) is EUR 4 860.87. The basic rate is paid to persons in category A. The basic allowance is increased by 50% for persons in category B and 100% for persons in category C.
> The Crown shall decide which persons belong to categories A, B and C.
> § 2. The rate of the integration allowance varies according to the degree of autonomy and the category to which the person with disabilities belongs:
> 1. category 1: persons with disabilities with a degree of autonomy of 7 or 8 points, who receive an allowance of EUR 870.60;
> 2. category 2: persons with disabilities with a degree of autonomy of 9 to 11 points, who receive an allowance of EUR 2 966.67;
> 3. category 3: persons with disabilities with a degree of autonomy of 12 to 14 points, who receive an allowance of EUR 4 740.37;
> 4. category 4 persons with disabilities with a degree of autonomy of 15 or 16 points, who receive an allowance of EUR 6 906.12;
> 5. category 5 persons with disabilities with a degree of autonomy of 17 points or more, who receive an allowance of EUR 7 834.56.
> § 3. The rate of the assistance to elderly persons allowance varies according to the degree of autonomy and the category to which the person with disabilities belongs:
> 1. category 1: persons with disabilities with a degree of autonomy of 7 or 8 points,

who receive an allowance of EUR 743.98;
2. category 2: persons with disabilities with a degree of autonomy of 9 to 11 points, who receive an allowance of EUR 2 839.94;
3. category 3: persons with disabilities with a degree of autonomy of 12 to 14 points, who receive an allowance of EUR 3 452.91;
4. category 4: persons with disabilities with a degree of autonomy of 15 or 16 points, who receive an allowance of EUR 4 065.70;
5. category 5: persons with disabilities with a degree of autonomy of 17 or 18 points, who receive an allowance of EUR 4 994.14.

§ 4. The categories and rates applicable to the integration allowance are as follows:
1. category 1: persons with disabilities with a degree of autonomy of 7 or 8 points, who receive an allowance of EUR 870.60;
2. category 2: persons with disabilities with a degree of autonomy of 9 to 11 points, who receive an allowance of EUR 2 966.67;
3. category 3: persons with disabilities with a degree of autonomy of 12 to 14 points, who receive an allowance of EUR 4 740.37;
4. category 4: persons with disabilities with a degree of autonomy of 15 or 16 points, who receive an allowance of EUR 6 906.12;
5. category 5: persons with disabilities with a degree of autonomy of 17 points or more, who receive an allowance of EUR 7 834.56.

Section 7§1. The allowances provided for in section 1 are only payable if the combined income of the person with a disability and of the person with whom he or she forms a household does not exceed the rate of the allowances provided for in section 6."

"Section 12§ 1. If a person with disabilities is admitted to an institution at the total or partial expense of the public authorities, a public department or a social security body, 28% of the integration allowance payment shall be suspended, subject to conditions laid down in a royal decree issued by the Council of Ministers.

§ 3. The term "household" shall be taken to mean any cohabitation of two persons who are not family members or relatives up to three removes. A household shall be presumed to exist when two persons who are not family members or relatives up to three removes have their principal residence at the same address. Any type of evidence to the contrary may be adduced by the person with disabilities in question or by the agency responsible for the administration of disability benefits. However, if one of the household members is detained in prison or a social protection institution the household shall cease to exist."

18. The Co-ordinated Health Insurance and Allowances Act of 14 July 1994:

"Section 32.
The following shall be entitled to health benefits as defined in part III, chapter II of this act and subject to the conditions it lays down:
…
13. persons registered on the national register of physical persons whose state of health is recognised as rendering them unfit for paid employment."

19. Article 128ter of the Royal Decree of 3 July 1996 implementing the aforementioned co-ordinating act:

"Those eligible for benefits, in accordance with section 32.1.13 of the co-ordinated act, shall be persons whose principal residence is in Belgium and who:

- are at least fifteen years old and not yet sixty-five and have been certified by a medical inspector of the medical supervision department to be unfit for paid employment for an estimated period of at least one year, on account of physical injuries or functional disorders resulting in a loss of earning capacity of at least two-thirds of what a person in the same circumstances and with the same training could expect to earn from employment, *or*;
- in accordance with section 2 § 1 of the Disability Allowances Act of 27 February 1987, have the required certificate of incapacity for entitlement to the replacement allowance provided for in this sub-section, or have the certified level of reduced autonomy required under section 2 §§ 2 or 3, for entitlement to the integration allowance or the assistance to elderly persons allowance provided for in these sub-sections, *or*;
- are at least fifteen years old and, on account of a physical or mental incapacity of at least 66%, satisfy the medical conditions for entitlement to increased family allowances, in accordance with section 47 of the co-ordinated legislation on family allowances for paid employees or Article 20 of the Royal Decree of 8 April 1976 establishing the family allowance scheme for the self-employed."

20. The Saint Quentin agreements of 31 October 1992 authorised the French Community to delegate certain powers to the Walloon Region and the French Community Commission in Brussels, including those relating to disability policy.

21. In order to standardise policy on assistance to persons with disabilities, under a government agreement of 1 December 2011 responsibility for mobility aid will be transferred to the federated entities and for the elderly persons' allowance to the communities. In the bilingual Brussels-Capital Region it will be transferred to the Joint Community Commission. However, the Saint Quentin agreements may still be applied.

Flemish Region

22. Decree of 7 May 2004 on the establishment of an internal autonomous agency with legal personality: *Vlaams Agentschap voor Personen met een Handicap* (Flemish agency for persons with disabilities).

> "Article 2. For the purposes of this decree:
> (…)
> 2. disability shall mean any significant and long-term impediment to individual participation resulting from the interaction of functional disorders of a cognitive, psychiatric or sensory nature, limitations on the performance of basic actions and personal and external factors;
>
> Article 3. An autonomous agency with legal personality shall be established, as provided for in article 10 of the outline decree. The agency shall be known as the *Vlaams Agentschap voor Personen met een Handicap* (hereafter "the Agency").

Article 4 § 1. The Agency shall promote the social integration and participation in society of persons with disabilities, by offering them support to enable them to optimise their personal autonomy and their quality of life.

Article 5. The Agency's main tasks shall be to:
1. organise support for persons with disabilities and their immediate entourage;
2. specify criteria for defining the target group of persons with disabilities, and establish arrangements for identifying them and determining their required level and type of support and how it should be provided."

23. The Decree of 7 May 2004 on the establishment of a public law external autonomous agency: *Vlaamse Dienst voor Arbeidsbemiddeling en Beroepsopleiding* (Flemish employment and vocational training office) defines disability as follows:

"Article 2 For the purposes of this decree:
(…)
10. persons with employment disability: persons with significant and long-term impediments to active participation in employment resulting from the interaction of functional disorders of a cognitive, psychiatric or sensory nature, limitations on the performance of basic actions and personal and external factors, and who are registered with the employment and vocational training office."

24. Order of 17 March 2006 on the system of aid and assistance for the social integration of persons with disabilities and the approval and financing of a *Vlaams Platform van verenigingen van personen met een handicap* (Flemish platform of associations of persons with disabilities).

"Article 9. The Agency shall establish a centralised data bank of basic information on requests for care, the reception, treatment and support services provided by the relevant agencies and bodies, and the personal assistance budget."

"Article 36. Subject to the budget established for that purpose, the Agency may, in accordance with this decree, approve and finance a Flemish platform of associations of persons with disabilities."

25. Order of 15 December 2000 establishing the conditions for the granting of a personal assistance budget for persons with disabilities.

"Article 2
§ 1. Persons with disabilities who are eligible for a social integration allowance may be entitled to a personal assistance budget, following a decision of the assessment committee provided for in chapter II of the Flemish Government Decree of 24 July 1991 on registration with the *Vlaams Agentschap voor Personen met een Handicap* (the "Agency").

§ 2. Persons with disabilities as specified in § 1 seeking a personal assistance budget must submit a reasoned application. Applications must be approved by the committee of experts provided for in article 20.
Those concerned must also:
1. demonstrate in their application that they can cope in their family environment with a reasonable level of assistance. Family environment signifies residence outside of an establishment provided or funded by the public authorities;
2. include in their application the proposed nature and number of hours of assistance requested and a description of how the assistance should be organised (in the form of the personal assistance budget and other types of assistance and services), in the context of their social integration;
3. include with their application an undertaking that they are themselves prepared to organise and meet the cost of assistance from establishments and bodies that are not financed by the

communities or regions."

"Article 4. The Agency may only award personal assistance budgets to a maximum of 2 200 persons with disabilities.
It may only award such a budget to persons with disabilities whose application for assistance has been recognised by the regional priorities committee as requiring priority mediation, as defined in article 1.20 of the Flemish Government Order of 17 March 2006 on the system of aid and assistance for the social integration of persons with disabilities and the approval and financing of a *Vlaams Platform van verenigingen van personen met een handicap*."

Brussels-Capital Region

26. Decree of 4 March1999 on the social and occupational integration of persons with disabilities**.**

"Article 2. For the purposes of this decree, person with disabilities shall be understood to mean any person who satisfies the conditions laid down in article 6."

"Article 6. To be eligible for the provisions of this decree, persons with disabilities must satisfy the following conditions:
a) have a disability that results in a diminution of at least 30% of their physical or at least 20% of their mental capacity. Disability means the social disadvantage resulting from a deficiency or incapacity that limits or prevents the performance of a normal role, having regard to age, sex and social and cultural factors."

27. Decree of 18 December 1998 on the establishment of a separately managed department for the social and occupational integration of persons with disabilities.

"Article 2. A separately managed department shall be established under the overall supervision of the Board of the French Community Commission. The department shall undertake the tasks assigned to the French Community Commission with regard to assistance to persons with disabilities in accordance with the decree of 19 July 1993 assigning certain responsibilities to the French Community, the Walloon Region and the French Community Commission, other than infrastructure grants to day centres and residential facilities.

Article 3. The department shall be named the Brussels French-speaking department for persons with disabilities."

28. Order of 7 November 2002 on personal assistance centres and services.

"Article 3. This order concerns the following centres and services in the bilingual Brussels-Capital Region which, because of their organisational arrangements, are not attached exclusively to either one of the communities:
1. Domiciliary care services: services to enable isolated, elderly, disabled or sick persons and families in difficulty to remain in or return to their own homes and become more autonomous. They are supplied, at their request and on a temporary basis, with support for and assistance with day-to-day tasks in their homes, provided by family and senior citizen aides, home helps and so on.
…
4. Centres and services for persons with disabilities:
These centres and services perform the following tasks:

a) night time and weekend out-of-home care for children and adults with mental, physical or sensory disabilities, offering accommodation, education and training, medical and psychological support and guidance and social support to their families. They provide either social rehabilitation and paramedical services, or social, creative or recreational activities to enable them to acquire or retain the necessary skills for daily living and promote their

autonomy and integration into society;
b) day care for persons with mental, physical or sensory disabilities, offering medical, psychological, paramedical, social and educational services, with a view to attaining the maximum possible autonomy and family and social integration. These centres provide places either for children with disabilities, whether or not they attend school, or for adults with disabilities who are unable to integrate into a normal or specially adapted training establishment or work place;
c) support for persons with disabilities who live or wish to live on their own, to maintain or attain the maximum possible autonomy and family and social integration;
d) domiciliary care, at their own request, for severely physically adults with disabilities, to assist them with daily tasks and activities they are physically unable to carry out themselves. This assistance does not include social, medical or therapeutic care."

29. The aforementioned order is the subject of a number of implementing decisions relating to centres and services for persons with disabilities:

- French Community Commission Board decision of 21 September 2006 on the certification and funding of day centres and residential facilities, laying down measures to encourage the provision of facilities for persons with a high level of dependency.

- Board Decision of 25 October 2007 on the certification and funding of centres and services for persons with disabilities, setting out measures to encourage the provision of facilities for persons with a high level of dependency.

- Board decision of 22 October 2009 on the granting the status of person with a disability and its admission to centres and services coming under the authority of the Joint Community Commission, laying down the application procedures for granting the status of person with a disability and for admission to these centres and services.

Walloon Region

30. Health and Social Action Code

"Article 261
Young persons and adults are deemed to be disabled if a change in their mental, sensory or physical abilities significantly restricts their capacity for social integration or work to the extent that social intervention is required."

"Article 273
The Walloon agency for the integration of persons with disabilities (AWIPH) is the government body responsible for implementing policy on the social and occupational integration of persons with disabilities, by means of overall co-ordination and the provision of information. This includes:
- drawing up proposals for action and the planning of regional policy;
- participating in regional and joint ministerial co-ordination of disability policy;
- encouraging research, information searches and the development of relevant social indicators;
- organising activities and campaigns to increase public knowledge and awareness;
- encouraging the participation of persons with disabilities and their associations in developing measures to assist them;
- promoting the initial and in-service training of staff of all the agencies fully or partly involved in work with the person with disabilities;

- taking part in inter-regional and international co-operation;
- participating in prevention, screening and diagnostic activities relating to impairment and disability and early intervention programmes;
- promoting the provision of information and guidance to persons with disabilities and their families;
- developing, as and when necessary, individual plans to reflect the aspirations, capacities and needs of the person concerned, in conjunction with that person and all other existing or potential partners which can contribute to such a plan's design and implementation;
- promoting best practices concerning the reception, residential care and personal development of persons with disabilities and other forms of support;
- encouraging occupational training and retraining for persons with disabilities;
- promoting persons with disabilities' access to employment;
- encouraging persons with disabilities' participation in cultural and social activities, with particular emphasis on personal mobility and means of access."

31. Order of 10 January 2008, with retroactive effect to 2007, establishing a new method of funding and refunding services concerned with aids to daily living.

"Article 3. Aids to daily living consist of assistance to persons with disabilities who have chosen to live independently. Such persons may ask the department to help them, at any time of day or night, with daily tasks they cannot perform themselves because of their functional impairment. Such assistance shall be provided solely at the request of the individuals concerned, who decide when and how they should be helped, to ensure maximum respect for their privacy."

32. Order of 22 April 2004 on the conditions governing approval and funding of support services for children and their families and for adults with disabilities.

"Article 4.
§1. Support services shall be governed by the following principles:
1. They are concerned with enhancing each individual's quality of life in accordance with his or her natural pace;
2. They encourage the exercise of the rights and duties associated with citizenship;
3. They are performed in a number of locations and by a number of participants acting in partnership;
4. Those concerned work as a network to offer a transversal approach to the problems faced by those concerned and strengthen internal and external co-ordination;
5. The aim is to place the issue of disability at the heart of the community with a view to mobilising its resources and fostering debate on new forms of co-existence.
§2. Support services for children and their families shall be governed by the following principles:
1. A plan should be drawn up for the child, based on its parents' or representatives' wishes, to reflect its situation and circumstances and its socio-cultural and family environment, and in accordance with the family's ideological, philosophical and religious beliefs;
2. Wherever possible, the plan should be implemented through recourse to general services.
§3. Support for adults shall be governed by the following principles:
1. Based on the wishes of the individuals concerned or, if they are unable to formulate them, those of their legal representatives, the persons looking after them or their immediate entourage, a plan should be drawn up in conjunction with those individuals and, if appropriate, the persons who have assisted in formulating their wishes, to reflect their situation and circumstances and socio-cultural and family environment, and in accordance with their ideological, philosophical and religious beliefs;
2. Wherever possible, the plan should be implemented through recourse to general services.

Article 5
The agency concerned shall ensure respect for the privacy, independence and freedom of choice of beneficiaries and/or their legal representatives.
The agency shall respect right of persons with disabilities to equality. Beneficiaries and their

legal representatives may not be required to make any financial contributions, other than those provided for in article 83, as a condition for admission or access to a facility or form of support."

33. Walloon Government Order of 14 May 2009 on the conditions governing the award of personal assistance budgets

"Article 3.
The purpose of personal assistance is to compensate for beneficiaries' incapacities resulting from their functional impairments by providing them with aid and assistance requested by them, in the form of the financing of services provided by one or more personal assistants, to enable them to remain in their normal living environment and organise their daily lives, and to facilitate their family, social or occupational integration."

"Article 7.
To be eligible for a personal assistance budget, persons with disabilities must be able to show that their autonomy is severely restricted."

34. Walloon Government Order of 17 November 2011 on the conditions governing the approval and funding of family-type support services for persons with disabilities.

35. Walloon Government Order of 10 January 2008 on the conditions governing the approval and funding of services providing assistance with daily living activities.

36. Walloon Government Order of 9 October 1997 on the conditions governing the approval and funding of residential and day care services for persons with disabilities.

- *Co-operation agreements between the federated entities*

37. Co-operation agreement of 20 October 1998 between the Flemish Community and the Walloon Region on the integration of persons with disabilities.

38. Order of the Walloon Government of 15 July 2010 extending the co-operation agreement of 20 October 1998 between the Flemish Community and the Walloon Region on the integration of persons with disabilities.

39. Co-operation agreement of 29 October 2008 between the Brussels-Capital French Community Commission and the Walloon Region to guarantee the free circulation of persons with disabilities.

40. Co-operation agreement of 10 April 1995 between the Walloon Region and the German-speaking Community on the defrayal of the costs of the placement and social and occupational integration of persons with disabilities.

41. Order of the Flemish Government of 24 April 2009 extending the co-operation agreement between the Flemish Community and the Walloon Region on the integration of persons with disabilities.

42. Decrees and orders transposing Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation:

- Decree of 10 July 2008 establishing the framework of the Flemish policy on equal opportunities and treatment.

- French Community decree of 12 December 2008 on combating certain forms of discrimination.

- Order of 4 September 2008 to promote diversity and combat discrimination in the Brussels regional public service.

- Order of 4 September 2008 on combating discrimination and equal treatment in the field of employment.

- Order of 19 March 2009 to amend the Order of 17 July 2003 on the Brussels Housing Code.

B – International standards and acts

43. United Nations Convention on the Rights of Persons with Disabilities adopted in New York on 13 December 2006 and ratified by Belgium on 2 July 2009.

44. Recommendation Rec(2006)5 of the Committee of Ministers to member states on the Council of Europe Action Plan to promote the rights and full participation of people with disabilities in society: improving the quality of life of people with disabilities in Europe 2006-2015.

45. Recommendation 1185 (1992) of the Parliamentary Assembly of the Council of Europe on Rehabilitation policies for the disabled (see Doc. 6581, 26 February 1992, report of the Social, Health and Family Affairs Committee, Rapporteurs : Mr Foschi and Mr Schwimmer “Independent living: rehabilitation policies for the disabled”).

46. Recommendation 1592 (2003) of the Parliamentary Assembly of the Council of Europe “Towards full social inclusion of persons with disabilities” (see Doc. 9632, 10 December 2002, report of the Social, Health and Family Affairs Committee, rapporteur: Mr Surján).

OTHER SOURCES

47. Issue Paper: “The right of people with disabilities to live independently and be included in the community”, published on 13 March 2012 by the Council of Europe Commissioner for Human Rights (https://wcd.coe.int/ViewDoc.jsp?id=1931307#P257_34995), which interprets the United Nations Convention on the Rights of Persons with Disabilities, and in particular Article 19.

48. CAP48, Proceedings of the colloquy “*Cap sur la grande dépendance*”, Brussels, April 2009, Workshop B “*Vivre au quotidien avec une personne de grande dépendance*”.

THE LAW

INTRODUCTORY REMARKS

Responsibility of the federal state for its federated entities

49. Decision making powers in Belgium are divided between the federal state, three regions (Flanders, Wallonia and Brussels) and three communities (Flemish, French-speaking and German-speaking). In the bilingual Brussels region, authority is shared between the French Community Commission (CoCoF), for French speakers, and the Joint Community Commission (CoCom), which administers the bi-community institutions. The federal authorities and the eight other entities each have significant and autonomous responsibilities in the field of disability policy, and both the complainant organisation and the defendant state consider how these are co-ordinated in their introductory comments.

50. The Committee notes the information in the complaint and in the Government's submissions. This information concerns the scope of the responsibilities of the state and the other entities. Policy on assistance to persons with disabilities, other than the rules governing and the funding of allowances, was transferred to the communities under legislation dated 1980. An institutional agreement in 1992 allowed the French Community to delegate certain responsibilities, in particular with regard to disability policy, to the Walloon Region and the French Community Commission. Another governmental agreement in 2011, designed to standardise policy on assistance to persons with disabilities, resulted in the transfer of responsibility for mobility aid to the federated entities and for the elderly persons’ allowance to the communities.

51. The Committee also notes that the regions have responsibility for housing, particularly with regard to provision for persons with disabilities, and for town and country planning, mobility, accessibility issues and the granting of direct assistance. The communities' responsibilities cover areas such as education, vocational training and care of persons with disabilities, and anything that might affect their social integration. The three regions and three communities are mainly financed by the federal government and grant annual budgets to their respective disability agencies (the AWIPH in the Walloon Region, the VAPH in the Flemish Region and the DPB in the German-speaking Community). However, each region and community is itself responsible for financing any additional care it provides for persons with disabilities, over and above the limits set by the federal funding system, from its own resources.

52. The Committee refers to the general principles of public international law governing states' international responsibility, as clearly enunciated both in Article 27 of the Vienna Convention on the Law of Treaties ("A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty") and in the draft articles on responsibility of states for internationally wrongful acts: "The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organisation of the State, and whatever its character as an organ of the central government or of a territorial unit of the State" and "A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty" (respectively Article 4§1 and paragraph 6 of the commentary on Article 3: Draft Articles on Responsibility of States for Internationally Wrongful Acts, approved by the United Nations General Assembly, A/RES.2001/56/83).

53. The Committee considers that, as in the case of public international law, the principle of the exclusive responsibility of States Parties to the Charter derives firstly from an imperative concern for neutrality with regard to the internal structure of those states, irrespective of their respective constitutional approaches to the separation of powers or the extent to which their internal structure is based on the principles of autonomy or decentralisation.

54. Therefore, as the Committee has already stated in the past, the primary responsibility for implementing the European Social Charter rests with national authorities (FIDH v. Belgium, Complaint No 62/2010, decision on the merits of 21 March 2012, §§54 and 55; The Central Association of Carers in Finland v. Finland, Complaint No 70/2011, decision on the merits of 4 December 2012, §55; The Central Association of Carers in Finland v. Finland Complaint No 71/2011, decision on the merits of 4 December 2012, §45). Having regard to their constitutional arrangements and their domestic system of institutional relations, these authorities may in turn delegate certain powers to local authorities or the social partners. However, if they are not accompanied by appropriate safeguards, such implementation arrangements may threaten compliance with undertakings under the Charter (FIDH v. Belgium, *ibid.,* §55; Conclusions 2006, General Introduction, §10).

55. In this connection, the Committee points out that the domestic legal system cannot exempt a State Party from the international obligations it entered into on ratifying the Charter. So “even if under domestic law local or regional authorities ... are responsible for exercising a particular function, States Parties to the Charter are still responsible, under their international obligations, for ensuring that such responsibilities are properly exercised. Thus ultimate responsibility for implementation of official policy lies with the ... state” (European Roma Rights Centre v. Greece, Complaint No 15/2003, decision on the merits of 8 December 2004, §29). This means that, as a State Party to the Charter, the Belgian state must ensure that the obligations arising from the Charter are respected by the regions and communities.

Fundamental issues raised by the complaint

56. The complainant organisation presents and enlarges on two complaints that would constitute violations of various Charter provisions.

57. The first, divided into two sub-complaints, concerns both the failure to offer highly dependent persons with disabilities a sufficient number and variety of care solutions and the obstacles to their inclusion on waiting lists for access to appropriate care. According to the complainant organisation, this complaint constitutes a violation of articles 13§3, 14, 15§3 and 16 of the Charter, and of Article E in conjunction with each of these provisions.

58. The second complaint concerns the inadequacy of policies to combat the poverty and social exclusion that affect highly dependent adults with disabilities and their families, which would constitute a violation of Article 30 of the Charter and Article E in conjunction with Article 30.

59. The Committee notes that the arguments presented by the FIDH in support of its allegation of a violation of Article E of the Charter, in conjunction with each of the other substantive articles that it also claims to have been violated, are so closely interlinked that they cannot be easily separated from those relating to the substantive articles. Consequently, they will be presented together in a section specifically relating to Article E.

60. The Committee will consider the FIDH's complaints in the following order:

- alleged violation of Article14;
- alleged violation of Article 13§3;
- alleged violation of Article 15§3;
- alleged violation of Article 16;
- alleged violation of Article 30;
- alleged violation of Article E in conjunction with articles 14§1, 13§3, 15§3, 16 and 30 of the Charter.

ALLEGED VIOLATION OF ARTICLE 14

61. Article 14 reads as follows:

> **Article 14 – The right to benefit from social welfare services**
>
> "Part I: Everyone has the right to benefit from social welfare services".
>
> "Part II: "With a view to ensuring the effective exercise of the right to benefit from social welfare services, the Parties undertake:
>
> 1. to promote or provide services which, by using methods of social work, would contribute to the welfare and development of both individuals and groups in the community, and to their adjustment to the social environment;
>
> 2. to encourage the participation of individuals and voluntary or other organisations in the establishment and maintenance of such services."

A – Submissions of the parties

1. The complainant organisation

62. The FIDH asserts that the insufficient number and variety of care solutions for highly dependent persons with disabilities and the obstacles to inclusion of these people on a waiting list constitute a violation of Article 14 of the Charter.

63. By way of a preliminary observation, the FIDH notes that in Belgium, where powers in the sphere of disability policies are divided between the federal state and the federated entities and, with regard to residence and personal scope, between the federated entities themselves, any person with a disability needing care or accommodation applies for recognition of his or her disability and registers with one of the following "federated" agencies, the AWIPH for the Walloon Region, the VAPH for the Flemish Region and the Dutch-speaking inhabitants of Brussels, the DPB for the German-speaking Community and the Brussels PHARE service for French-speakers resident in the Brussels-Capital Region. Each of these agencies should provide sufficient care and support capacity. According to the FIDH, the fragmentation of responsibilities for the integration of persons with disabilities between the numerous federated entities and the federal authorities makes it extremely complicated to find a public body capable of meeting the needs of persons with disabilities and their families and seriously compromises the effective implementation of legislation and policy choices. Furthermore, the FIDH considers

the attempts at transversal co-ordination that have been made to be highly unsatisfactory. For example, the Federal Government agreement of 2011 was very unclear about the services and solutions on offer for highly dependent persons with disabilities and made any measure dependent on the availability of funds.

64. The FIDH limits its complaint to highly dependent persons with disabilities, in other words persons who need the help of others to perform the ordinary daily activities essential to survival and/or the realisation of their goals in life. These persons may be divided into the following categories: persons with multiple disabilities, persons with autism, persons with an acquired brain injury, persons with severe cerebral palsy, persons with a severe to profound mental disability and persons with a behavioural disorder on top of a pre-existing severe disability. According to the FIDH, there is, moreover, no consensus among the federal state and the various federated entities as to the definition of high dependency.

65. By care solutions for highly dependent persons with disabilities, the FIDH means day-care places, residential places, including places in communal establishments, personalised budgets intended for the purchase of services enabling individuals to live at home and respite provision.

66. One of the first things that the FIDH notes is the lack of reliable figures, particularly in the Walloon and Brussels Regions, concerning the number of highly dependent adults with disabilities requiring a care solution. Faced with this shortage of figures and in order to assess the number of people concerned by its complaint, the FIDH takes as a starting point the figures published by the Federal Ministry of Social Affairs concerning allowances (income replacement allowance (ARR) and integration allowance (AI)) awarded to persons with disabilities, who are categorised according to their level of dependence and then divided up according to Region. The number of beneficiaries of allowances in categories 3, 4 and 5, comprising persons suffering from high dependency (73 381), is compared with the overall prevalence of high-dependency disability in Belgium, which stood at around 1.11% of the population aged 21 to 65 in 2010. As a result, the FIDH asserts that the percentage of the adult Belgian population suffering from a high-dependency disability is around 1.115%.

67. According to the FIDH, 6 718 highly dependent persons with disabilities were in receipt of ARR or AI in the Brussels-Capital Region in 2010. If the figure of 1.115% is applied, the number of such persons can be estimated at 7 768. Applying the same criteria, the estimated number of highly dependent persons with disabilities is 24 277 in the Walloon Region and 43 390 in the Flemish Region.

68. The FIDH provides the following information on demand for places and services:

Brussels-Capital Region

69. The FIDH asserts that despite the lack of precise figures, it can be said that provision is limited and there is a serious shortage of funds to meet the full range of care and accommodation needs. Personal assistance budgets (BAPs) exist but they are chiefly suited to persons whose disability does not place them in a situation of high dependency and they are of very limited use. According to the FIDH, only 8 or 9 BAPs have been allocated in the Brussels Region.

70. Interface Grande Dépendance recorded 156 highly dependent adults with an unsatisfactory care solution or no solution at all in 2009 and 218 such cases in 2011. The FIDH highlights the growing shortage of places and questions whether there were only 218 such cases.

71. The FIDH analyses the gap between the 218 people found by Interface Grande Dépendance to be without a care solution and the potential demand of the 7 768 people identified on the basis of epidemiological prevalence studies. According to the Government's submissions, there are 550 approved places for adults in day centres in Brussels and 351 in accommodation centres. According to the FIDH, these 351 places are probably used in part by persons already attending a day centre. In addition, these places are not just used by highly dependent persons with disabilities. The FIDH estimates the number of highly dependent persons with disabilities whose needs are neither known nor satisfied at about 7 000 once those who are provided with a satisfactory or even a partial or inappropriate solution are discounted.

72. The FIDH also believes that the official figures do not reflect the actual circumstances of families. For example, the autism association, the *Coupole Bruxelloise de l'Autisme,* which is planning to open two centres in 2014, already has 54 enrolments for the 15 available places.

73. The FIDH also notes that the CoCoF allocated only €1.6 million of its €88.7 million budget to highly dependent persons (individual contracts and respite services).

Walloon Region

74. The FIDH points out that the Walloon Region freely admits to the shortage of places for highly dependent persons with disabilities. In 1997 it even placed a moratorium on the creation of new places. Persons in urgent need of care may, however, while waiting for a place to become free, obtain an individual contract from the AWIPH enabling them to take their own steps to find an approved institution willing to offer them an unsubsidised place. According to the FIDH, however, fewer than 200 individual contracts have been granted.

75. The FIDH considers that the Government cannot rely solely on the data produced by the priority case unit as this list only contains people who are in emergency situations. Moreover, out of 248 applications filed with the priority case unit in 2011, only 149 were considered urgent and 137 (55%) were followed up, 55 through individual contracts.

76. The Walloon Region also offers a personal assistance budget (BAP), which covers the cost of certain home-help services. According to the FIDH, however, only 80 BAPS have been allocated in the Walloon Region since the scheme was put in place in 2009, which is very little. The FIDH therefore complains of the under-use of the BAP budget.

77. The degree of urgency is used as the basis for decisions to grant BAPs but according to the FIDH, it is wrong simply to take the number of urgent cases (such as those caused by a carer falling ill or dying) and infer from these figures that there are no other people who would like access to a place in an institution or another type of service. The FIDH has collected statements from a number of families who are not considered priority cases but are in situations of considerable need. The FIDH does agree with the Government, however, that the number of highly dependent persons is not the basis on which to calculate the number of accommodation places needed, as there is a whole range of other measures which may be preferable to an accommodation place.

78. The FIDH also notes that, compared with the overall grant to the AWIPH, which is €557 062 million, the budget for highly dependent persons is minimal, amounting to some €16 million. Once individual grants are added to this, the overall budget for highly dependent persons comes to €38 650 million, which is 6.9% of the AWIPH grant.

Flemish Community

79. The FIDH points out that since 2001 the VAPH has had a centralised waiting list. The "*Zorgregierapport*" of 31 December 2010 mentions a total of 14 155 urgent care applications received in the year just ended. 4 124 applications involve a waiting period of over two years and in half of these cases, the waiting period even exceeds three years. 30% of the applications with a waiting period of over three years are applications for admittance to a residential facility.

80. The central data base, the *Centrale Registratie van Zorgvragen* (CRZ) contains all pending applications, which amounted to 21 419 applications at the end of 2010, of which 14 155 related to an urgent situation. This figure grows every year because, every year, the number of new applications outstrips the number of solutions found. Under the rules of the Flemish Community's care system, if a care solution cannot be found for a highly dependent person with a disability, he or she may claim to be in an urgent situation. Extra funds are allocated for such situations but they are not sufficient to satisfy all needs. There are ten times too many candidates for the available budget.

81. On 1 January 2011, 1 808 people were receiving a BAP but the VAPH specifies that in 2010, 1 768 BAPs were allocated and 5 470 people were still on the waiting list.

82. According to the FIDH, the situation of highly dependent adults with disabilities in the German-speaking community is more favourable, as the

Government demonstrates in its submissions, and should be distinguished from the situation in the other three regions.

83. In conclusion, the FIDH estimates the number of persons suffering from a high-dependency disability in Belgium in 2010 at 73 461, or 1.115% of the resident population. In the absence of any detailed figures from the authorities, the complainant organisation considers that at least 50% of these people are deprived of an effective right of access to care and accommodation solutions matching their needs.

84. In Belgium, most care or accommodation facilities for persons with disabilities are full. Because demand far outstrips supply, waiting lists are established and grow ever longer. According to the FIDH, the insufficient number of care solutions has extremely prejudicial consequences for highly dependent adults with disabilities and their families.

85. In this connection, the FIDH has provided 11 letters, dated between 1994 and 2005, sent by parents or social workers employed in the disability field to the Ministry responsible for persons with disabilities, complaining about the lack of sufficient care solutions and the problems of young people with severe disabilities who must leave day centres, specialised schools, rehabilitation centres or accommodation centres when they reach the age limit for attendance at the establishment in question (between 12 and 21). As a result young people must go back to their families and lose the skills that they have acquired over the years. The FIDH also provides over 35 statements from parents or close family members on the lack of care solutions for highly dependent adults with disabilities, most of which were collected in 2011 or, in some cases, 2012 from the Association of persons with Down syndrome, their parents and the professionals who care for them (APEM-T21).

86. Because of the shortage of places, it is those people with the most severe disabilities and hence in most need of special assistance who are primarily and regularly refused any form of organised care. There are not, moreover, proportionately more of such people in care facilities. According to the FIDH, any genuine possibility of a choice of care or accommodation solution has been eliminated and families are forced to accept places in facilities that can be totally unsuitable.

87. Lastly, the FIDH criticises the fact that the new policies and projects mentioned by the Government in its submissions have not been given the slightest practical effect. Furthermore, some of the new “care” measures drawing on the “respite” model are only partial solutions and, if demand for them is high, it is only because of the lack of any other solution.

2. The respondent Government

88. The Government points out that Belgium’s federal structure means that policies and measures often originate at federal level, in the Regions or Communities (see §§ 49 to 51 above).

89. With regard to support policies for people with disabilities, the Government's submissions highlight the attempts to establish co-ordination between the federal state and the federated entities and among the federated entities themselves. By way of examples, it cites the section on persons with disabilities of the Interministerial Conference on Well-being, Sport and the Family, the government agreement of 2011 (which states that the federal government will support the implementation of a transversal disability policy in accordance with the requirements of the United Nations Convention on the Rights of Persons with Disabilities), the interfederal co-ordination mechanism set up to apply the UN Convention at national level and the bilateral co-operation agreements negotiated by the Walloon Region with the Flemish Community, the German-speaking community and the Brussels-Capital Region. The aim of these agreements is to overcome institutional barriers and simplify procedures for people with disabilities seeking care and accommodation solutions, particularly where this is called for by the severity of the disability and the urgency of the situation.

90. The Government criticises the FIDH for failing to back up its allegation sufficiently with reliable figures. It objects to the fact that the FIDH's estimation of needs is based solely on a comparison between the number of places in services approved by the operators and a figure for highly dependent persons based on the number of beneficiaries of allowances. These services are important but they are not the only ones available. By way of another example, the Government cites the BAP. In addition, the figures used by the FIDH refer to the count made by the Federal Public Service and are broken down according to degree of dependence, not to type of disability.

91. The Government asserts that in the Brussels-Capital Region, the figure of 7 768 people between 21 and 65 taken from prevalence studies seems to substantially overestimate the number of highly dependent persons with disabilities who are truly affected by these issues. These figures also include persons who have found a satisfactory care solution in Brussels, the Walloon Region or Flanders or an unsuitable or partial solution. The latter two solutions may be imperfect but at least they exist.

92. The Government acknowledges that there are no co-ordinated statistics at federal level on the number of highly dependent persons with disabilities. No separate surveys on disability are conducted in the Flemish Region but, to fill this gap, questions on the subject are included in the largest possible number of reports and studies. Among these are the VAPH report, which includes information on applications for assistance in Flanders and the capacities of institutions and services. Data are also available on BAP applicants and users. In the Walloon Region, the Government draws attention to statistics produced by IWEPS including, in particular, a statistical survey by the priority case unit.

93. The Government provides the following information on care provision and waiting lists:

Flemish Community

94. Contrary to the FIDH's claims, the Government maintains that there are no waiting lists in Flanders. All applications for assistance for people with disabilities including BAPs are recorded in a central data base called the CRZ. The CRZ makes it possible to find a suitable place for all applications and to take account of the urgency of the request. As part of an expansion policy in 2010, 644 new places were created and over €2 million were allocated to manage priority applications.

95. On 30 June 2011, a little over 36 000 people were receiving support from one or more services of the VAPH and 22 000 were registered with an application for active assistance, 12 250 of which were urgent applications.

Walloon Region

96. The Government claims that despite a difficult economic context, the region has set up a varied range of options to meet the needs of people with disabilities. They include:

- an increase in the budget of the AWIPH;
- increased provision. In the first half of the nineties over 600 places were set up in care and accommodation facilities. Since 1997, the moratorium on the creation of new places has been relaxed and new places have been created in recent years: 479 individual places, 45 places in residential services for highly dependent adults, 112 places in transitional care facilities and 50 places in day care facilities. The AWIPH also partly subsidises day care and accommodation places with a grant of up to €2 million. There are currently 50 services of this type, providing 802 places or solutions;
- the new priority-case unit. In 2011, 248 applications were filed with this service and 137 solutions were found;
- introduction on 14 May 2009 of the BAP. There being a limited number of BAPs available, priorities for entitlement were established, covering people with the severest disabilities with no other solution. On 29 February 2012, there were 265 BAPs with a total budget of €2 million;
- since 2009, 23 services have been financed as part of the special "respite" initiative.

97. The Government recognises, nonetheless, that some services have long waiting periods. List management practices also vary somewhat from one service to another. Having been alerted to the problem, the AWIPH appointed a working group to set up a workable common admissions system for 2012 and a single waiting list for 2013.

98. The Government admits that in the Walloon Region, places were not allocated to those who needed them the most, namely highly dependent persons, but it is in fact the difficulty or complexity of providing care which is one of the reasons for which applications are refused.

Brussels-Capital Region

99. The Government states that despite the restricted budgetary context, a series of projects have been launched, such as the information and awareness-raising campaign which PHARE is running on its activities. Other activities include the following:

- the individual support service for the social and occupational integration of people with disabilities: in 2011, there were 956 applications for admission and the budget was €3 900 000;
- the care and accommodation service: 351 places in accommodation centres, 550 in day care;
- the Infrastructure Decree, which subsidises the infrastructure required to care for people with disabilities. The percentage of infrastructure costs covered by these subsidies has increased from 50% to 75% and in some cases, 90%;
- the creation of 200 new places for highly dependent people over the next five to six years.

100. The Government recognises, however, that where the CoCom's services are concerned, the figures from the high dependence unit for 2011 showed that 218 highly dependent persons with disabilities had no care solution.

101. The Government considers that the persons with the severest disabilities are (significantly) better subsidised than others. The cost of their care is not therefore one of the reasons why they may be excluded or refused admittance. The difficulty or complexity of providing them with the right care is much more of a reason for their refusal or rejection.

102. In conclusion, the Government maintains that the idea that 50% of highly dependent persons with disabilities are deprived of an effective right of access to care and accommodation solutions matching their needs is not substantiated and is not based on any objective evidence. Because of the extremely varied range of solutions on offer, which amount to far more than just accommodation, and the increase in the budget allocated for persons with disabilities, the Government considers that Belgium is in conformity with its obligations under the Charter.

B – Assessment of the Committee

103. The Committee considers that Article 14 of the Charter is the main provision that is applicable to this complaint.

Application in the context of this complaint of paragraph 1 of Article 14 of the Charter

104. The Committee notes that the FIDH refers to Article 14 in its entirety. However, the Committee considers that all of the FIDH's complaints refer to problems that are related to the organisation, specialisation and geographical distribution of social welfare services and to the equal and effective access to and standard of the services on offer. All of these aspects of the right to benefit from social welfare services fall within the material scope of Article 14§1 (Conclusions 2005, Statement of Interpretation on Article 14§1; see also, for example, Conclusions 2005, Bulgaria, Conclusions 2009, Italy). The Committee considers that

none of the FIDH's complaints fall within the field of application of paragraph 2 of Article 14.

Equal and effective access to social welfare services

105. The Committee points out that Article 14§1 of the Charter establishes an individual right for all persons who find themselves in a dependent situation to benefit from services using methods of social work.

106. When examining the periodical reports of the States Parties to the Charter, the Committee considers what is implied by the parties' undertaking to respect the individual right to social welfare services under Article 14 of the Charter. What it implies is high-quality social welfare services, subject to quality control by the authorities and capable of guaranteeing equal and effective access to their users.

107. Equal and effective access to social welfare services is an expansion on the Committee's fundamental thinking with regard to the rights enshrined in the Charter, which is that the aim and purpose of the Charter, being a human rights protection instrument, is to protect rights not merely theoretically, but also in fact (International Commission of Jurists (ICJ) v. Portugal, Complaint No. 1/1998, decision on the merits of 9 September 1999, §32) and 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 (Autism-Europe v. France, Complaint No. 13/2002, decision on the merits of 4 November 2002, §53).

108. The Committee has taken equal and effective access to social welfare services under Article 14§1 of the Charter to mean an access that is guaranteed in law and in practice (Conclusions 2007 – Italy) and is capable of keeping pace with user's needs (Conclusions 2009 – Slovak Republic). Moreover, for this purpose, the Committee asks the States Parties to see to it that their reports on the application of Article 14§1 of the Charter specify what the main eligibility criteria for access to social services are, how decisions on the provision of social service are taken and what remedies are available for persons whose requests for a social service have been rejected (Conclusions 2009 – Georgia).

Equal and effective access to social welfare services for persons with disabilities

109. The Committee points out that the situation of dependency in which persons must find themselves in order to claim entitlement to social welfare services is defined by means of the criterion that they belong to groups considered to be vulnerable, including people with disabilities (Statement of Interpretation on Article 14§1 – Conclusions 2009 and Conclusions XIX-2).

110. Under Article 14§1 of the Charter, access of persons with disabilities to social welfare services can be regarded as equal and effective if the State Party offers varied and multiple methods of care for these people by the community and if the number and quality of the social welfare services actually provided correspond as closely as possible to the specific, practical, individual needs of the persons concerned so that a free choice can be made by the users concerned and, above all,

by their families, provided that they act on behalf of these persons and not instead of them.

111. The Committee points out that the undertakings entered into by the States Parties confirm the normative content of Article 14§1 of the Charter as defined.

112. With regard to international law, the Committee notes that the United Nations Convention on the Rights of Persons with Disabilities of 13 December 2006, which has already been signed and ratified by over 80 states (including Belgium) and came into force on 3 May 2008, reflects existing trends in comparative European law in the sphere of disability policies.

113. Under Article 19 of the UN Convention (on "Living independently and being included in the community") the States Parties undertake to recognise the right of all persons with disabilities to live in the community "with choices equal to others" and to "take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right". They also undertake to ensure that persons with disabilities "have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement" (Article 19, sub-paragraph (a)) and that social services are available to them "on an equal basis and are responsive to their needs" (Article 19, sub-paragraph (c)).

114. The Committee takes note of the document on the right of people with disabilities to live independently and be included in the community published by the Office of the Council of Europe Commissioner for Human Rights (see §47 above), which, with reference to the UN Convention and Article 19 in particular, qualifies freedom of choice for persons with disabilities "in the types of services provided and the manner in which they are provided" as a "key element" of the Convention's principles and a factor playing a "crucial role" in the implementation of Article 19 by the States Parties because it "has direct bearing on the way support is provided, and is linked with the existence of alternatives. As is often the case, if only one alternative to institutionalisation is provided, the person cannot make any real choice" (sections 1.1.3 and 3.1.1 of the document).

115. The Committee notes that Recommendation Rec(2006)5 of the Committee of Ministers of the Council of Europe on the Action Plan to promote the rights of people with disabilities (see §44 above) regards freedom of choice of people with disabilities vis-à-vis the social welfare services available to them as one of the aims that states should be pursuing through their human rights activities (section 1.2.1). In relation to the requirement, at least in the long term, for social welfare services to be diversified in order to match the needs of people with disabilities, it appeals to the states "to ensure that the allocation of social services and related support is based on a sound, multidisciplinary assessment of the person's needs, and subject to periodic review" (sub-paragraph 3.11.3.ii).

Equal and effective access to social welfare services for highly dependent adults with disabilities

116. The Government provides lists for the Flemish, Walloon and Brussels-Capital Region, which are the main focuses of the complaint, itemising a varied range of social service approaches on offer for all persons with disabilities irrespective of the severity and complexity of the disability from which they suffer. By extension, these social services should also be available to highly dependent persons with disabilities.

117. The Committee notes that according to the Government, this means that an infrastructure has been set up in the disability sector and that this has been built up around three main categories of social service in the Flemish Region (outpatient, semi-residential and residential services) and spread over a broad range of social service approaches in the Walloon and Brussels-Capital Regions.

118. In its response to the Government's submissions, the FIDH rejects the lists drawn up by the Government because a large number of the social service approaches included in these lists are completely irrelevant and unsuited to the needs of highly dependent adults with disabilities.

119. In the Committee's view, this echoes the position defended by the FIDH in its complaint, which is that only one form of social service, namely day care and night accommodation centres, is suited to the needs of highly dependent adults with disabilities.

120. The Committee considers that this is why the complainant organisation, having calculated approximately (by extrapolating the statistics provided by the authorities and comparing them with epidemiological data from disability prevalence studies) that there are 73 641 highly dependent adults with disabilities in Belgium, believes that the Belgian state should be in a position to provide an entirely equivalent number of care and accommodation solutions.

121. Without prejudice to the opinion of the experts in the field of disability, the Committee cannot impose on States a particular method of community care for persons with serious disabilities, it is for States to decide which is the most appropriate and most closely matches their needs. This falls within its margin of appreciation in implementing the Charter provision relied on.

122. However, it recalls that the diversification and variety of social welfare services is an essential element of Article 14§1 of the Charter (see §110 above). This provision of the Charter may be undermined if the approach which may reasonably be regarded, within the margin of appreciation of the State, as being most suited to the needs of these persons is particularly deficient.

123. The Committee notes from the expert opinion deriving from civil society and the Parliamentary Assembly of the Council of Europe in its Recommendation 1592 (see §46 above), that the establishment of day care and night accommodation centres, which entail the full and permanent supervision of a large part of the daily lives of highly dependent adults with disabilities and whose aim is to relieve their severe psychosomatic, sensory or communicational problems, is the most appropriate approach to these persons, whose serious health defects expose them to a total lack of control over their lives.

124. It is extremely difficult to calculate the number of places needed in day care and night accommodation centres in the absence of reliable figures on the number of highly dependent persons with disabilities having access to these centres. In any event, the number of existing places in these institutions is lower than the demand for places and this means that many of these persons cannot benefit from this social service approach which is supposed to be most suited to their needs.

125. It notes firstly, that the low number of places on offer for highly dependent adults with disabilities in existing care and accommodation centres is recognised by the Government at various points in its submissions and – particularly with regard to the French-speaking Community in the Brussels-Capital Region – in the minutes of the Social Affairs Committee of the Brussels French-speaking Parliament of September and October 2012 covering the hearing of public services and NGOs dealing with highly dependent adults with disabilities (minutes of 18 September 2012).

126. The same also applies, according to the Government's submissions, in the Flemish Community, where there is a shortage of available places, in the Walloon Region, where the available places have not been allocated to highly dependent adults with disabilities and refusals to accommodate such persons in the institutions concerned have occurred, and in the Brussels-Capital Region, where there are highly dependent adults with disabilities who do not have a care or accommodation solution.

127. Moreover, the Committee notes sufficient evidence of specific cases and many severely individuals with disabilities who have been refused any care in an existing care and accommodation centre. Such cases are contained in statements made available to the Committee in the form of letters sent to the public authorities by the parents of the persons concerned and by groups of people working in the social welfare services (see §85 above).

128. The shortage of places in existing care and accommodation centres for severely dependent persons with disabilities relative to demand is also confirmed by the fact that many such persons are entered on waiting lists for a place in such institutions for periods sometimes exceeding three years. From the individual statements enclosed both with the complaint and with the FIDH's reply, families either lose hope and do not register on waiting lists again after some time or, they do not even register a first time. As a result, the exclusion from care and accommodation centres becomes definitive.

129. The Government denies the existence of waiting lists in the Flemish and German-speaking Communities and in the Brussels-Capital Region. With regard to the Walloon Region, where the FIDH gives a figure in its complaint of 800 severely persons with disabilities waiting for a place in an existing institution for adults in 2007, the Government, while formally acknowledging that waiting times in the region are long, justifies them with reference to advances in medicine, which have considerably increased the life expectancies of most people with disabilities, meaning that only a few places come free every year in existing care and accommodation centres.

130. The Committee also considers that the numerous denials of any access to existing care and accommodation centres for severely dependent persons with disabilities could have been reduced if priority access had been granted to these people by an objective means.

131. However, this does not seem to be the case in the Flemish Community, where, under an order of 2006 amended in 2011, the idea that priority should be given to applications from highly dependent persons with disabilities giving them access to a care or accommodation centre as quickly as possible is practically entirely replaced by the criterion of the urgency of care, which applies to such persons only if, according to the assessment of urgency drawn up, their parents suffer from dementia or a disability.

132. In the Walloon Region, where there is still a shortage of care and accommodation centres because of the moratorium on the establishment of new institutions (see § 74 above), the Committee notes that the priority case unit set up by the relevant regional authority applies a test of urgency based on the extreme nature of the dementia and that this causes some people to be denied any access to a care or accommodation centre. According to data provided by the Government, this applied to a little less than 50% of the cases dealt with by the service in 2011.

133. With regard to the Brussels-Capital Region, the Committee points out that in its submissions the Government refers to the practice of priority agreements with highly dependent persons with disabilities, through which existing care and accommodation centres are subsidised to receive such persons. It notes that the priority that is given to these persons for access to residential centres is only granted to them prior to actual access, in other words in order to be registered on a waiting list following a appraisal of their state of need by a multidisciplinary team, which awards them a high dependency “label” for this purpose.

134. The Committee considers that excluding highly dependent persons with disabilities from any care or accommodation solution forces these people either to apply for and obtain forms of social service which may prove unsuited or little suited to their specific, practical needs or for them to resort to forms of protection which fall entirely outside the scope of a social service-based approach.

135. It takes note of the FIDH's allegations that in Belgium, irrespective of the community or region concerned, residential-type services, which help people in particular to find appropriate housing, are not usually adapted to high-dependency disability, as is also the case with personal assistance budgets (which, in the FIDH's view are chiefly suited to persons whose disability does not place them in a situation of high dependency). In the opinion of the complainant organisation, the solution adopted in the Flemish and Walloon Regions, which is for the authorities to award personal assistance budgets, are no more than a means for the competent authorities to avoid setting up care facilities in day care and night accommodation centres.

136. The Committee also observes that highly dependent adults with disabilities who are not admitted to care and accommodation facilities either fall back on their families – with consequences whose conformity with the Charter will be assessed subsequently in the context of this complaint – or run the risk of resorting to forms of collective care which have nothing to do with social work. According to evidence provided by the FIDH which is not contested by the Government, these alternative solutions can include the extension of schooling beyond the age of 21 in specialised education establishments in Brussels and the Flemish Region, confinement to a mental hospital in any of the regions or communities or, in the Flemish Region, confinement in the psychiatric wing of a prison. The latter case relates to persons who have committed an offence but are forced to remain in a psychiatric wing whereas they could have been released provisionally under supervision if there were sufficient and appropriate care and accommodation facilities for persons with disabilities.

137. The Committee notes that such circumstances, resulting from the lack of places in existing care and accommodation centres for highly dependent persons with disabilities, constitute a failure by the Government to meet the needs stemming from these persons' state of health and particular lifestyles, which justify their demands for appropriate social services.

138. Due to the fact highly dependent persons with disabilities remain for long periods on waiting lists for a place and because of the administrative practices with regard to the priority treatment of their applications, the Committee concludes that the Government has failed to fulfil its positive obligation under Article 14§1 to provide a number of places on offer in such institutions consistent with the demand. As a result, the right of these persons to equal and effective access to this form of care by the community is not guaranteed in practice.

139. Consequently, the Committee holds that there is a violation of Article 14§1 of the Charter.

On the justifications given by the Government for the limited number of care and accommodation places for highly dependent adults with disabilities

140. The Government refers to the increase over a five-year period in the budgets of Belgium's federated entities which are allocated to care for persons with disabilities by the community. In addition to the fact that these figures are not broken down according to particular disabilities, the FIDH contests them because they do

not take account of the average inflation rate recorded over the same reference period (14%), which means that in approximate terms, the average increases in the budget for social services for people with disabilities was 10% instead of the 24% claimed by the Government in Flanders, 2.2% instead of 16.2% in Wallonia and 1.9% instead of 15.9% in Brussels-Capital.

141. The Government also mentions the fact that any planned increase in the budgets allocated to social services for people with disabilities over and above the one that has already been made is prevented by the economic crisis which is currently affecting the country.

142. The Government also provides practical justifications for the fact that the care and accommodation places on offer for persons with severe disabilities do not satisfy the demand. Among other things, it argues that increasing life expectancies mean that people with disabilities remain in care and accommodation centres for a longer time and therefore places are unavailable despite the fact that they have been approved (see §129 above). It also asserts that the growing demand for places in the Brussels-Capital Region is due to the fact that half of highly dependent persons with disabilities are of foreign origin and were born before their family members arrived in Belgium and applied for family reunification in order to take advantage of forms of medical and social assistance which are still underdeveloped in their country of origin.

143. The Government, echoing its argument that it is pursuing a policy to progressively improve the provision of care and accommodation places for persons with severe disabilities, emphasises the fact that under the articles of the Charter relied on by the FIDH in its complaint, such as Articles 15§3, 16 and 30, states are under an obligation to muster the necessary resources to comply with the Charter but not to achieve the objectives set by these articles.

144. The Committee holds that the practical justifications given by the Government result in a denial of the social service needs of the persons concerned and cannot therefore be accepted.

145. The Committee also holds that because of its wording, Article 14§1 of the Charter forms part of the articles of the Charter which require States Parties to devise and implement appropriate measures in order to ensure, gradually and in due course, the effective exercise of the right in question. The fact that this provision does not require the States Parties to guarantee immediate results or to adopt conduct which may be capable in the absolute of guaranteeing the right immediately (immediate due diligence) does not mean that the conduct of a State Party such as that which is contested in the complaint, which fails to comply with the legal obligation to offer a particular social service to the extent that it denies access to this service to the persons concerned and excludes them from any solution of this type, can be deemed to comply with this provision of the Charter.

146. The Committee does, however, take into account the high cost for the national budget that creating a large number of places in care and accommodation centres for highly dependent persons with disabilities would entail. In view of the demanding and complex treatment which such people require, the Committee does not consider

the figure of €100 000 for the creation of a new place referred to by the representative of the authorities at the hearing on persons with severe disabilities held by the Social Affairs Committee of the Brussels French-speaking Parliament (minutes of 25 September 2012) to be excessive.

147. When the implementation of one of the rights guaranteed by the Charter is exceptionally complex and expensive, the measures taken by the state to achieve the Charter's aims must fulfil the following three criteria: (i) a reasonable timeframe, (ii) measurable progress and (iii) financing consistent with the maximum use of available resources (Autism-Europe v. France, *op. cit.*, §53; Mental Disability Advocacy Center (MDAC) v. Bulgaria, Complaint No. 41/2007, decision on the merits of 3 June 2008, §39). It would also point out that "States Parties must be particularly mindful of the impact that their choices will have for groups with heightened vulnerabilities" and that they must take "practical action to give full effect to the rights recognised in the Charter" (Autism-Europe v. France, *ibid.,* §53). Similarly, "States enjoy a margin of appreciation in determining the steps to be taken to ensure compliance with the Charter, in particular as regards to the balance to be struck between the general interest and the interest of a specific group and the choices which must be made in terms of priorities and resources" (European Roma Rights Centre v. Bulgaria, Complaint No. 31/2005, decision on the merits of 18 October 2006, §35).

148. In the light of the foregoing, the Committee notes that the Government's realisation of the specific problems of highly dependent persons with disabilities dates back to the 1990s or, at the latest, 2000 and the years just after, when the first legislation or regulations were introduced, directly or indirectly, with regard to these persons.

149. Over a period which the Committee considers to have lasted long enough, the authorities have failed to make any progress on organising the available financial resources in order to prevent the many genuine cases of highly dependent persons with disabilities being denied access to any care or accommodation solution.

150. Despite the length of this period, the Committee, having compared the information provided by the Government with the data and information provided by the FIDH, notes that projects to build new care and accommodation centres, which could have increased the number of places available for persons with severe disabilities, have either been dragging on for years (as is the case with four projects launched by non-profit-making associations in the French Community of the Brussels-Capital Region) or are being run by the parents of persons with disabilities, who are desperately seeking funds and grants to complete them. Deadlines have also been put back in other areas. For example in Flanders, a census of people with disabilities, including persons with severe disabilities, which was decided on in 2003 and scheduled to take place in 2010, has been put back to 2020, and in the Brussels-Capital Region, a decree on the integration of people with disabilities, which is supposed to show due regard for the issue of care for highly dependent persons with disabilities and was originally supposed to have been adopted a year ago, has been put back to 2014 or 2015. Ultimately, the Committee would point out that the lack of objective and reliable figures on the number of persons for whom appropriate solutions have been found or who are awaiting such solutions, whose

conformity with the Charter will be assessed subsequently in the context of the complaint, prevents it from judging, even approximately, if there are areas in which progress has been made in the community care provided for these persons despite the generally gloomy picture which has already been painted.

151. None of the justifications given by the Belgian Government for its failure to provide enough places in care and accommodation centres for highly dependent adults with disabilities to ensure that these people are not denied access this form of social service, may legitimately be accepted. The Committee holds therefore that this failure constitutes a violation of Article 14§1 of the Charter.

Organisation of social services– information and advice

152. The Committee takes note of the information provided by the Government about public institutions which give advice, information and practical guidance to people with disabilities in general. In the Flemish Community these are provided by the Support Plan Services or SPS, and in the German-speaking Community by the Guidance, Support and Counselling Services for People with Disabilities and their Family and Relatives, which is run by the German-speaking Community's Service for Persons with a Disability or DBD, while, with regard to the Walloon Community, it is pointed that under the 2011 Health and Social Action Code, the government body for the execution of the policy of social and occupational integration of persons with disabilities (the AWIPH) is responsible for providing support, information and guidance for people with disabilities and for their families. Since 2005 it has been running a helpline, whose staff provide information and advice in co-operation with the relevant departments of the AWIPH.

153. It also notes from the Government's submissions that there are no institutions giving individual advice and assistance to people with disabilities, from which highly dependent persons with disabilities could also benefit, in the Brussels-Capital Region, either through its French body (CoCoF) or through its bicommunity one (CoCom).

154. The Committee reiterates the principle of the effective application of the Charter throughout the metropolitan territory of each State Party and holds that, since there is no institution in the Brussels-Capital Region giving individual advice and assistance to people with disabilities, from which highly dependent persons with disabilities could also benefit, Belgium fails to comply with this principle. Consequently, the Committee holds that there is also a violation of Article 14§1 of the Charter in this respect.

ALLEGED VIOLATION OF ARTICLE 13§3

155. Article 13§3 reads as follows:

> **Article 13 – The right to social and medical assistance**
>
> "Part I: Anyone without adequate resources has the right to social and medical assistance."
>
> "Part II: With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake:
>
> 3 to provide that everyone may receive by appropriate public or private services such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want; …"

A – Submissions of the parties

1. The complainant organisation

156. The FIDH reiterates, from the standpoint of Article 13§3, the grounds set out in respect of Article 14.

2. The respondent Government

157. The Government puts forward the same arguments as for Article 14.

B – Assessment of the Committee

158. The Committee recalls that Article 13§3 and Article 14 of the Charter overlap since they refer to services of the same kind (social), despite their slightly different wording: "appropriate" services offered as "social" (and medical) assistance in the case of Article 13§3, and services "using methods of social work" in the case of Article 14§1.

159. Article 13§3 of the Charter requires the Contracting Parties to provide that everyone may receive social assistance in the form of advice and personal help enabling them to be fully aware of their rights to social and medical assistance and of the ways to exercise those rights, the aim being to prevent, to remove, or to alleviate personal or family want (Conclusions 2009, Romania). The role of the social assistance covered by Article 13§3 is to enable those concerned to overcome difficulties arising from their state of want, avoid benefit dependency and re-establish their autonomy (Conclusions 2009, Denmark, Turkey). As a consequence, Article 13§3 applies specifically to persons without adequate resources or at risk of becoming so (Conclusions 2009, Moldova, Malta, Sweden).

160. The Committee takes note of the fact that the FIDH limits the scope of its complaint to highly dependent persons with disabilities.

161. It considers that Article 13§3 would be specifically applicable to highly dependent persons with disabilities if all such persons, or a more or less significant number of them, were without adequate resources or at risk of becoming so.

162. The Committee takes the view that if highly dependent persons with disabilities and, in particular, their families are plunged into a state of deprivation of material resources, impoverishment, social exclusion and exclusion from working relations, as the FIDH moreover alleges, this situation is more a consequence of the defending State's disability policy and practice, the compliance of which with the Charter will be assessed under other relevant provisions, than of an original distinctive characteristic of these persons and their families.

163. It deems that the right to social assistance guaranteed by Article 13§3, going hand in hand with a material commitment of the States Parties aimed at enabling those entitled to social assistance eventually to reintegrate into social life through their own efforts and means, is not in itself a relevant reference standard for examining the conformity with the Charter of the defendant State's policy with regard to highly dependent persons with disabilities.

164. The Committee considers that as a result of the acute physical, neurological, sensory and behavioural impairments suffered by highly dependent persons with disabilities, which make them so "highly dependent" on the persons surrounding them, the coverage of their care needs by the community cannot be aimed at ensuring that they make a quick recovery, convalesce or resume a normal life, to the point of negating the full and absolute state of need in which they find themselves. Conversely, the coverage of their care needs by the community does have the goal of reconciling their condition with the overriding requirement to respect their human personality and dignity.

165. However, the forms of social assistance that a State Party must provide for it to claim conformity with Article 13§3 of the Charter, that is to say advice and personal help offered by appropriate services and the procedures to be followed by those concerned to exercise their right to social assistance, if they effectively exist and function for the benefit of a given population group defined by the criterion of the state of want experienced by its members, could have been made available to highly dependent persons with disabilities so as to steer them towards social services appropriate to their condition.

166**.** The Committee also notes that Article 14 entails a general requirement that potential users should be informed of the available social welfare services suited to their state. On account of the very specific situation of highly dependent persons with disabilities the Committee considers that they all need some form of help and it would be artificial to distinguish that coming under Article 13§3 from that covered by Article 14. Since the latter provision is of a more general nature, it decides to examine the complaint in the context of Article 14 (see §§ 152 to 154 above).

ALLEGED VIOLATION OF ARTICLE 15§3

167. Article 15 reads as follows:

> **Article 15 – The right of persons with disabilities to independence, social integration and participation in the life of the community**
>
> "Part I: Disabled persons have the right to independence, social integration and participation in the life of the community."
>
> "Part II: 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:
> …
>
> 3. to promote their full social integration and participation in the life of the community in particular through measures, including technical aids, aiming to overcome barriers to communication and mobility and enabling access to transport, housing, cultural activities and leisure."

A – Submissions of the parties

1. The complainant organisation

168. The FIDH reiterates in substance, from the standpoint of Article 15§3, the grounds set out in respect of Article 14.

169. It alleges, in particular, that highly dependent persons with disabilities are often deprived of access to facilities of any kind or accommodated in totally unsuitable facilities (placement in a psychiatric institution or even in the psychiatric wing of a prison). Some of these persons are forced to continue living in the family home for too long, which can hamper their socialisation and their adaptation to any potential future care solution. At the same time, under Article 15§3 the Parties are committed to promoting the integration and participation of persons with disabilities.

170. The FIDH stresses the need for a legal framework to facilitate the establishment of smaller, approved and subsidised, facilities of a family nature, designed to house 4-5 persons and to foster the integration of persons with disabilities in cities and neighbourhoods.

2. The respondent Government

171. The Government refers to the 6th report by Belgium concerning Article 15§3 in which it lists the measures aimed at providing persons with disabilities with accommodation and support in a manner allowing them to be as independent as possible. The report contains information relating to the Flemish Community. The VAPH grants financial assistance for the purchase of technical aids concerned with communication and mobility, so as to afford the persons concerned greater autonomy in their everyday lives and to facilitate their integration, along with a personal assistance budget (BAP). In its submissions on the merits of the complaint the Government cites various forms of assistance to provide persons with disabilities with accommodation and support in a manner allowing them to be as independent as

possible, such as funding for: home-help services for persons with disabilities; private accommodation with individualised support; sheltered housing services for persons with disabilities; and integrated housing projects for persons with disabilities. As regards the Walloon Region, the Government mentions inter alia individual integration assistance (technical aids and adaptations) and the personal assistance budget aimed at granting resources to persons with disabilities with significant impediments so as to improve their quality of life, help them to remain in their own home and facilitate their family and social integration.

B – Assessment of the Committee

172. Under Article 15§3, States undertook to adopt a coherent policy on disabilities, with positive action measures to achieve the aims of social integration and full participation. These measures should have a clear legal basis and be co-ordinated.

173. Article 15§3 requires, in particular, a number of measures to foster the integration and participation of persons with disabilities. To give meaningful effect to this undertaking:

- Mechanisms must be established to assess the barriers to communication and mobility faced by persons with disabilities and identify the support measures that are required to assist them in overcoming these barriers;

- Technical aids must be available either for free or subject to an appropriate contribution towards their cost and taking into account the beneficiary's means. Such aids may for example take the form of prostheses, walkers, wheelchairs, guide dogs and appropriate housing support arrangements;

- Support services, such as personal assistance and auxiliary aids, must be available, either for free or subject to an appropriate contribution towards their cost and taking into account the beneficiary's means. (Conclusions 2008, Statement of interpretation on Article 15§3)

174. The Committee observes that Article 15§3 of the Charter is a general provision which, with a view to the full integration and participation of persons with disabilities in social life, does not require States Parties to overcome barriers to communication and mobility alone, but also those relating to leisure, cultural activities, transport and housing.

175. In view of the critical state of health and particular lifestyle of persons with severe disabilities, the Committee considers that, in so far as these persons are excluded from day or night care facilities, they remain at home with their families, which, in accordance with Article 15§3, makes it incumbent on the States Parties to ensure that the social services take action to implement the home adaptations necessary to permit these persons' integration and dignified existence within the family and social environment. From this standpoint, the Committee considers that Article 15§3 is applicable to highly dependent adults with disabilities.

176. The Committee nonetheless underlines that the FIDH has not submitted information and arguments that indicate with sufficient precision in what way Belgium has violated its obligations under Article 15§3. In these circumstances, the Committee holds that Belgium is not in breach of Article 15§3 of the Charter.

ALLEGED VIOLATION OF ARTICLE 16

177. Article 16 reads as follows:

> **Article 16 – The right of the family to social, legal and economic protection**
>
> "Part I: The family as a fundamental unit of society has the right to appropriate social, legal and economic protection to ensure its full development."
>
> "Part II: With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means."

A – Submissions of the parties

1. The complainant organisation

178. The FIDH reiterates in substance, from the standpoint of Article 16, the grounds set out in respect of Article 14.

179. It alleges, in particular, that the insufficient care and accommodation solutions oblige many families to devote themselves to caring full-time for their relative with disabilities. Many parents have to give up their jobs. This also results in their social isolation. The family's right to economic, legal and social protection, as provided for in Article 16, is therefore seriously affected. Many tangible cases of persons with severe disabilities obliged to return to live with their families for lack of resources and care facilities are substantiated through eye-witness accounts and letters sent to the competent authorities (see § 85 above).

2. The respondent Government

180. The Government points out that the Committee of Social Rights in the past considered that the situation in Belgium complied with the requirements of Article 16.

181. It refers again to the measures already mentioned such as aids and home adaptations and the personal assistance budget in the Flemish Community, to which must be added the possibility of six to ten weeks' support for persons requesting help who find themselves in an unforeseen, extremely urgent situation. In the Walloon Region facilities to assist families and persons with disabilities in their everyday lives are approved and subsidised (family support and home care services). Respite services are also subsidised (domiciliary minder services, temporary accommodation, emergency support services). Lastly, the PHARE services in the Brussels-Capital Region can provide individual assistance with home adaptations so as to foster the independence of persons with disabilities and keep them in their own homes.

B – Assessment of the Committee

182. The Committee reiterates that caring for persons with disabilities entails a raising of awareness within society and among public authorities.

183. It considers that the provision of appropriate care for highly dependent persons with disabilities by the community is in no way incompatible with their families' involvement in the lives of the persons concerned, or even with a duty for their families to sustain a constant, good quality relationship with them. It nonetheless takes the view that this good quality relationship is fundamentally altered when families assume care and living support tasks for their relatives with severe disabilities which could have been properly performed, in close co-operation with the family, by social services appropriate to these persons' needs.

184. The Committee takes note of the testimonies made available to it in the form of letters denouncing cases of exclusion from care and accommodation facilities, sent to the public authorities by the parents of persons with severe disabilities (see § 85 above), and observes that the shortage of places in these institutions obliges highly dependent persons to live with their families, with far-reaching negative implications for the family's living conditions in many cases. For many parents the painful consequence of their devotion to a child with a permanent health problem is that they have to give up work altogether or reduce their working hours to take care of their highly dependent family member. Apart from the financial losses thus incurred, as the FIDH pointed out in its response, this situation often causes families to make an even greater financial outlay, in that they utilise their own funds to build and set up appropriate care and accommodation facilities without receiving any public subsidies.

185. The Committee reiterates that States Parties must be particularly mindful of the impact that their choices will have for groups with heightened vulnerabilities, such as persons with disabilities, as well as for the other persons affected including, especially, their families on whom falls the heaviest burden in the event of institutional shortcomings (Autism-Europe v. France, *op. cit.,* § 53).

186. The Committee considered the Government's argument that the Committee had already examined the situation in Belgium with regard to Article 16 in the past, under the national reporting procedure, and had held the situation to be in conformity with the Charter. In this connection, it recalls that the collective complaints procedure makes it possible to probe more thoroughly into questions already dealt with under the reporting procedure, especially where the complainant organisation is capable of supplying the Committee with information and/or evidence that would not be available through the reporting system (International Commission of Jurists (ICJ) v. Portugal, *op. cit.*, §§ 10-12).

187. Consequently the Committee holds that the shortage of care solutions and of social services adapted to the needs of persons with severe disabilities causes many families to live in precarious circumstances, undermining their cohesion, and amounts, on the part of the defendant State, to a lack of protection of the family as a unit of society, in breach of Article 16 of the Charter.

ALLEGED VIOLATION OF ARTICLE 30

188. Article 30 reads as follows:

> **Article 30 – The right to protection against poverty and social exclusion**
>
> "Part I: Everyone has the right to protection against poverty and social exclusion."
>
> "Part II: With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake:
> a. to take measures within the framework of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance;
>
> b. to review these measures with a view to their adaptation if necessary."

A – Submissions of the parties

1. The complainant organisation

189. The FIDH reiterates the arguments concerning the lack of statistics on the number of highly dependent persons with disabilities in need of a care solution. It denounces the failure to implement a co-ordinated overall policy to combat the poverty and social exclusion suffered in particular by these persons and their families, in violation of Article 30. Highly dependent adults with disabilities without a place in a care facility or other accommodation service, and their families, unquestionably fall into the category of the socially excluded, since they more often than not live in conditions of economic insecurity and a state of exhaustion.

2. The respondent Government

190. The Government draws attention to the federal anti-poverty plan of 2008, which comprises 59 specific measures with regard to income, employment, health care, housing, energy access and access to public services. An anti-poverty action plan was adopted by the Flemish Community in July 2010. The Brussels-Capital Region has taken measures concerning affordable access to services and other appropriate types of assistance for persons with disabilities. In 2009 the Walloon Government adopted an Order determining the application conditions and criteria for people with disabilities to benefit from individual assistance with a view to their integration.

191. The Government points out that, in the past, the Committee held that Belgium was in compliance with Article 30.

B – Assessment of the Committee

192. Concerning the Government's argument that the situation in Belgium has been deemed compliant with Article 30, the Committee reiterates the assessment given under Article 16 (see § 186 above).

193. The Committee points out that Article 30 of the Charter requires States Parties to adopt positive measures for groups generally acknowledged to be socially excluded or disadvantaged, including highly dependent adults with disabilities deprived of access to care and accommodation centres.

194. It also reiterates that, with a view to ensuring the effective exercise of the right to protection against social exclusion, Article 30 requires States Parties to adopt an overall and co-ordinated approach, which should consist of an analytical framework, a set of priorities and measures taking account of the problems' nature and extent, so as to prevent and remove obstacles to access to fundamental social rights, an approach that cannot be implemented without collecting statistics (European Roma Rights Centre (ERRC) v. France, Complaint No. 51/2008, decision on the merits of 19 October 2009, § 93; FIDH v. Belgium, *op. cit.,* §201).

195. The Committee also takes into consideration the Recommendation 1185 (1992) of the Parliamentary Assembly of the Council of Europe on Rehabilitation policies for the disabled, inviting the Committee of Ministers “to provide for the setting up of a European information and evaluation system for obtaining reliable statistics, calculated with regularly updated indicators… ». Furthermore, according to the report of Mr Foschi and Mr Schwimmer (see § 45 above), no State can know how many people with disabilities there are, nor what their needs are, nor in particular their wishes, if there is no information or evaluation system whereby it is possible, on the basis of reliable statistics and reviewable indicators, to obtain information and make the necessary comparable forecasts.

196. The Committee is aware of the measures in favour of persons with disabilities existing in Belgium, in particular the income replacement and integration allowances and other financial assistance such as the BAP.

197. It considers, however, that the State's failure to collect reliable data and statistics throughout the metropolitan territory of Belgium in respect of highly dependent persons with disabilities prevents an "overall and co-ordinated approach" to the social protection of these persons and constitutes an obstacle to the development of targeted policies concerning them.

198. Consequently, the Committee holds that there has been a violation of Article 30 of the Charter.

ALLEGED VIOLATION OF ARTICLE E TAKEN IN CONJUNCTION WITH ARTICLES 14§1, 13§3, 15§3, 16 AND 30

199. Article E reads as follows:

> **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 – Submissions of the parties

1. The complainant organisation

200. The FIDH states that, in general, the Belgian authorities' attitude towards highly dependent adults with disabilities is indicative of institutional discrimination towards them, in breach of Article E of the Charter.

201. As examples of this institutional discrimination the complainant organisation cites the case of a person with a disability from Brussels living in the bilingual region, who, under the rules in force, must register with either the French-speaking Community's agency or that of the Flemish Community dealing with the capital, without being able to benefit from any services proposed by the body with which he or she is not registered, even though they may differ from those of the body with which he or she is registered, and the case of a French-speaking resident of the outskirts of Brussels who obligatorily comes under the Flemish Community and cannot benefit from the French-speaking Community's services, and who therefore has no other option than to turn to a Walloon service subsidised by the Walloon Region's disability agency if he or she is to obtain services in his or her mother tongue.

202. The FIDH also alleges that the Government fails to take into consideration the discriminatory exclusion from care and accommodation facilities suffered by highly dependent persons with disabilities, since the centres prefer to care for persons with less severe disabilities.

203. It maintains that highly dependent persons with disabilities are proportionally under-represented in the care facilities and are statistically more excluded than those with a minor to moderate disability. It states that it is indeed difficult to take charge of persons with severe disabilities on account of the current staffing standards laid down by the legislation; as a result, those with the severest disabilities are often the first to be excluded from any form of organised care, which all too often leads to the paradoxical situation that those persons who have the most need for special assistance, appropriate stimulation and high quality care are the first to be excluded.

2. The respondent Government

204. The Government contends that refusals to admit highly dependent persons with disabilities to care and accommodation facilities are based more on the difficulty or complexity of catering for their needs, while at the same time greater resources are allocated to these persons than to those with minor or moderate disabilities.

205. In its submissions the Government sets out in detail the manner in which the European Union's anti-discrimination directives are incorporated into national law at both the federal level and that of the federated entities.

B – Assessment of the Committee

206. Article E prohibits discrimination on the basis of disability. Although disability is not explicitly listed as a prohibited ground of discrimination under Article E, it is adequately covered by the reference to “other status” (Autism-Europe v. France, *op. cit.*, § 51). In respect of the preamble to the 1961 Charter, the Committee held that “one of the underlying purposes of the social rights protected by the Charter is to express solidarity and promote social inclusion. It follows that States must respect difference and ensure that social arrangements are not such as would effectively lead to or reinforce social exclusion” (European Roma Rights Centre (ERRC) v. Italy, Complaint No. 27/2004, decision on the merits of 7 December 2004, §19; ERRC v. Greece, *op. cit.*, §19). In addition, to ensure equal treatment in accordance with Article E, it is necessary to prohibit "all forms of indirect discrimination" that "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" (Autism-Europe v. France *ibid.,* §52). In the decision on the merits of Complaint ERRC v. Italy, *ibid.*, the Committee held that "equal treatment implies that Italy should take measures appropriate to Roma's particular circumstances to safeguard their right to housing and prevent them, as a vulnerable group, from becoming homeless" (§ 21) and that "Its failure to take into consideration the different situation of Roma or to introduce measures specifically aimed at improving their housing conditions, including the possibility for an effective access to social housing, means that Italy is in violation of Article 31§§1 and 3 taken together with Article E" (§ 46).

207. The Committee notes that, in this complaint, the possibility of comparison inherent in all situations of discrimination, here concerning highly dependent adults with disabilities, applies in respect of all other persons, whether persons without disabilities, whose interest is nonetheless to make use of the social services, or those with minor or moderate disabilities.

208. The Committee notes the considerable vulnerability of highly dependent adults with disabilities, whose serious health problems result in a total lack of control over their lives and lead them to demand along with their families, acting on their behalf not in their stead, that their individuality and human dignity be respected.

209. The Committee deduces from Article E of the Charter that the States Parties are obliged, when taking measures in the social services field, to take account of the situation of highly dependent adults with disabilities so as to guarantee their effective access to the benefits of public policy on an equal footing with all other persons, even if that entails that persons with severe disabilities, on account of their own specific vulnerability, will be treated more favourably than others.

Article E taken in conjunction with Article 14§1

210. Having noted, in connection with the examination of the Belgian situation's conformity with Article 14§1, that Belgium is not creating sufficient day and night care facilities to prevent the exclusion of many highly dependent, persons with severe disabilities from this form of social welfare service appropriate to their specific, tangible needs, the Committee holds that this situation also breaches Article E taken in conjunction with Article 14§1.

211. The Committee, however, notes that while the refusals of access to the existing care and accommodation facilities met with by highly dependent persons on account of the costly, complex care necessitated by their condition – refusals to which the FIDH refers on several occasions in its complaint – qualify as exclusion of these persons from this form of social welfare service appropriate to their needs, for which the responsibility can be attributed to the Government for the reasons already analysed, that is to say the lack of sufficient places available, they are in themselves a question of private law relations between the persons under consideration here and those legally responsible for the care facilities. In this connection the Committee points out that Belgian has anti-discrimination legislation incorporating EU law into its domestic legal system (see § 42 above) and refers the persons concerned to the competent national courts with a view to asserting their right to non-discriminatory treatment under national law.

212. Having noted, in connection with the examination of the Belgian situation's conformity with Article 14§1, that there are no institutions in the Brussels-Capital Region that provide advice and personal help to persons with disabilities, the Committee finds that the lack of regulations in this matter has a negative impact on the access to tangible public resources of all persons with a disability, regardless of the seriousness thereof.

213. The Committee therefore holds that there is no violation of Article E taken in conjunction with Article 14§1 in this respect.

Article E taken in conjunction with Article 13§3

214. Having examined the ground of complaint concerning the right to advice, information and personal help from the angle of Article E in conjunction with Article 14§1, the Committee holds that no separate question arises under Article 13§3 and that there is no violation of Article E taken in conjunction with Article 13§3.

Article E taken in conjunction with Article 15§3

215. The Committee points out that the FIDH has not produced information and arguments showing with sufficient clarity in what way Belgium has violated its obligations under Article E of the Charter taken in conjunction with Article 15§3. Consequently, the Committee holds that Belgium is not in breach of Article E taken in conjunction with Article 15§3 of the Charter.

Article E taken in conjunction with Article 16

216. Having noted, in connection with the examination of the Belgian situation's conformity with Article 16, that the lack of care solutions and social services suited to the needs of persons with severe disabilities obliges these persons to live with their families and that as a result many of these families are in a precarious, vulnerable state, the Committee finds that this state of affairs stigmatises these families as a particularly vulnerable group, as a result of which Belgium is completely in breach of its obligation under Article E of the Charter to outlaw unequal access of the persons concerned to collective advantages (Autism-Europe v. France, *op. cit.*, §52).

217. The Committee therefore holds that there is a violation of Article E taken in conjunction with Article 16 of the Charter.

Article E taken in conjunction with Article 30

218. The Committee finds that the state's failure to collect reliable data and statistics throughout the metropolitan territory of Belgium in respect of highly dependent persons with disabilities, as noted in connection with the examination of the Belgian situation in respect of Article 30, constitutes a general and structural policy weakness regarding the collection of statistics on all persons with disabilities and does not specifically disadvantage highly dependent adults with disabilities.

219. The Committee therefore holds that there is no violation of Article E taken in conjunction with Article 30 of the Charter.

CLAIM FOR REIMBURSEMENT OF COSTS AND EXPENSES

A – Submissions of the parties

1. The complainant organisation

220. The FIDH requests the Committee to order Belgium to pay the sum of €10000, representing the expenses it incurred in lodging this complaint, breaking down between lawyer's fees and other expenses concerning research work undertaken to prepare the complaint file and the holding of co-ordination meetings.

2. The respondent Government

221. The Government requests the Committee to dismiss this claim on the ground that the collective complaints procedure makes no provision for financial penalties in respect of States Parties. In addition, in accepting the Committee's jurisdiction, the States did not accept such clauses, which could moreover lead to abuse on the part of complainants.

B – Assessment of the Committee

222. The Committee has already stated that, whilst the Protocol does not regulate the issue of compensation for expenses incurred in connection with complaints, it considers that, as a consequence of the quasi-judicial nature of the proceedings under the Protocol, when there is a finding of a violation of the Charter, the defending state should meet at least some of the costs incurred. (Confédération Française de l'Encadrement (CFE-CGC) v. France, Complaint No. 16/2003, decision on the merits of 12 October 2004, §§ 75 and 76; European Roma and Travellers Forum (ERTF) v. France, Complaint No. 64/2011, decision on the merits of 24 January 2012, §§ 148 and 149; FIDH v. Belgium, *op. cit.*, § 210).

223. Consequently, the Committee will examine the FIDH's request and submit its opinion on it to the Committee of Ministers, leaving it to the latter to decide how it might invite the Government to meet all or part of these expenses. The Committee notes the considerable work accomplished both to lodge the complaint itself and to present submissions throughout the procedure, including the appendices.

224**.** The Committee considers that the sum claimed is disproportionate and must be reduced. In the light of all these considerations, the Committee considers that it would be fair to award the FIDH the sum of € 2 000 as lump sum compensation for expenses incurred. The Committee notes that this sum does not constitute just satisfaction or a financial penalty. It therefore invites the Committee of Ministers to recommend that Belgium pay this sum to the complainant organisation.

CONCLUSION

For these reasons the Committee concludes:

- unanimously that there is a violation of Article 14§1 of the Charter because of the significant obstacles to equal and effective access for highly dependent adults with disabilities to social welfare services appropriate to their needs;

- unanimously that there is a violation of Article 14§1 of the Charter because of the lack of institutions giving advice, information and personal help to highly dependent adults with disabilities in the Brussels-Capital Region;

- unanimously that no separate question is raised under Article 13§3 of the Charter;

- unanimously that there is no violation of Article 15§3 of the Charter;

- unanimously that there is a violation of Article 16 of the Charter;

- unanimously that there is a violation of Article 30 of the Charter;

- unanimously that there is a violation of Article E taken in conjunction with Article 14§1 of the Charter due to the fact that Belgium is not creating sufficient day and night care facilities to prevent the exclusion of many highly dependent persons with disabilities from this form of social welfare service appropriate to their specific, tangible needs;

- unanimously that there is no violation of Article E taken in conjunction with Article 14§1 of the Charter due to the fact that the Brussels-Capital Region has no institutions giving advice and personal help to people with disabilities;

- unanimously that there is no violation of Article E taken in conjunction with Article 13§3 of the Charter;

- unanimously that there is no violation of Article E taken in conjunction with Article 15§3 of the Charter;

- unanimously that there is a violation of Article E taken in conjunction with Article 16 of the Charter;

- unanimously that there is no violation of Article E taken in conjunction with Article 30 of the Charter,

and invites the Committee of Ministers to recommend that Belgium pay the sum of € 2000 to the FIDH to cover the cost of the proceedings.

Petros STANGOS
Rapporteur

Luis JIMENA QUESADA
President

Régis BRILLAT
Executive Secretary