

# COMMON STATEMENT OF BDF, UNIA AND GRIP

*21<sup>st</sup> session of the Committee of the Right of Persons with disabilities  
29 march 2019*

## GENERAL INTRODUCTION

Dear members of the Committee,

We are very pleased to be here for the 21<sup>st</sup> session of The Committee and we would like to thank you for receiving us. There are three organisations sitting in front of you today: BDF, UNIA & GRIP.

- The **Belgian Disability Forum** asbl (BDF) gathers 18 Belgian organisations representative of persons with disabilities. The role of the BDF is to give a proper follow-up to EU and international regulations having an impact on the life of persons with disabilities in Belgium. BDF is represented today by:
  - **Miss Veerle VAN DEN EEDE**
  - **Mr Olivier MAGRITTE**
  - **Mr Thomas DABEUX**
- **UNIA** is an independent public institution that combats discrimination and promotes equal opportunities. Unia is the independent mechanism to promote, protect and monitor the implementation of the CRPD in Belgium, as provided for in article 33, paragraph 2.
- UNIA is represented today by:
  - **Miss Marijke DE PAUW**
- **GRIP** is a Flemish organisation defending human rights and promoting equal opportunities and Inclusive society for PWD. GRIP is represented by:
  - **Mr Patrick VANDELANOTTE**
  - **Mr Xavier DE RUYTER**
  - **Miss Inge RANSCHAERT**

We are three different organisations but we are going to present the priorities for persons with disabilities together. We chose to discuss the main themes but you'll find more Information in our respective reports.

## BDF STATEMENT

I would like to draw your attention to the following points:

### 1. Cooperation between entities

I'd like to remind you that Belgium is a federal state with 3 regions and 3 communities. Each entity has its own skills, its own agency and its own government. This organization can have negative impact on politics consistency and finally on persons with disabilities. And it unfortunately has.

That being said, Belgium has not organised any **interministerial conference**<sup>1</sup> on persons with disabilities during this legislature (2014-2019), and has not been able to adopt and carry out any **joint and coordinated plans** on the implementation of the Convention. However, a **National action plan** for persons with disabilities was already recommended by the Committee on the Rights of Persons with Disabilities. Until now Federal Government and federated entities made no effort to define such a plan.

## 2. Consultation of PWD

As a federal state, the **consultation of persons with disabilities** and their representative organisations should be organised at all levels. The Flemish Government recently launched a process for the creation of a Flemish advisory board. Due to certain institutional reforms, the Brussels and Walloon advisory boards are undergoing changes. Questions remain regarding their independence, as well as their limited competence. In 2017, the German-speaking Community took a first step towards setting up an advisory board. However, it didn't go further than one initial meeting on "self-determination". The French-speaking Community has not taken any steps to this end.

Resources allocated to the functioning of existing advisory bodies, to the support of their work and to their independence of action are not sufficient. The follow-up given to their advices is hardly ever specified

## 3. Statistics

Up to date and publicly available data concerning the number and situation of persons with disabilities in Belgium are lacking. Data on persons with disabilities are only available in a fragmented form, making it difficult to track trends and intervene in a targeted way in the policies that are being applied.

The lack of properly exploitable quantitative data makes it difficult, if not impossible, to develop the policies and actions expected by persons with disabilities and their families.

Belgium didn't make any progress in this regard, despite the recommendation of the Committee.

## 4. Equal recognition before the law

On 1 September 2014, the new **Act on legal capacity** entered into force. We've welcomed the efforts made to reform the former legislation on the status of legal protection. Since then, even if assisted decision making is encouraged, the possibility of using a substitution of decision making by a third person has been maintained. Furthermore, The Act has not been revised to **provide the right to supported decision-making**, as was recommended by the Committee.

The implementation of this legislation is disappointing. Based on numerous testimonies and reports it appears that the reality does not correspond to the **objectives and spirit of the law**. The justices of the peace do not have adequate resources and time to properly carry out their responsibilities. They are highly likely to designate a professional administrator (lawyer), and too frequently opt for complete protection of the person and a system of substituted decision-making.

The Minister of Justice presented a new text to the Parliament reforming this law. The National High Council of Persons with Disabilities expressed a series of reservations about this text.

## 5. Adequate standard of living and social protection

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<sup>1</sup> An interministerial conference brings together ministers from all the federated entities in order to coordinate their actions in specific matters such as policy on inclusion of persons with disabilities

A significant number of persons with disabilities living in Belgium don't have a sufficient income to achieve a satisfactory standard of living. The **replacement income** for persons with disabilities is 20% beneath the poverty threshold and almost 60% below the guaranteed minimum wage

40% of persons who receive a disability allowance in Belgium actually live below the poverty threshold.

During the years 2016-2018, the Directorate General for Persons with Disabilities experienced very serious IT problems which, coupled with a lack of staff, generated very **significant delays** (9 months to 1 year) in the processing of PWD's records.

There is also a growing phenomenon of **non-take-up** (persons who do not activate their rights for lack of information or misunderstanding). Persons with disabilities are no exception. This phenomenon also distorts existing statistics.

## UNIA STATEMENT

Introduction

Distinguished Chair,  
Distinguished members of the Committee,

Unia, the interfederal Centre for equal opportunities, wishes to thank the Committee for this opportunity to present some of its main findings and concerns on the implementation of the CRPD in Belgium.

### Art. 5 CRPD: Non-discrimination & reasonable accommodation

In 2018, Unia opened a staggering 604 cases on discrimination on the basis of disability. Most disability-related cases concerned the area of goods and services (32%), education (26%) and employment (24%). This constitutes a clear increase of cases on disability-based discrimination, with cases having more than doubled since 2010 .

Although Belgium has a strong legal framework on the right to equality and non-discrimination, a few important gaps remain. The prohibition of discrimination does not include discrimination by association (with the exception of the Flanders Equal Opportunities Decree), despite the Committee's recommendations in 2014.

Moreover, the current anti-discrimination legislation does not include a prohibition of discrimination on perceived or assumed grounds, nor of intersectional discrimination, or discrimination based on past health status.

In addition, the application in practice of the antidiscrimination legislation in practice remains a challenge. An extensive evaluation of the anti-discrimination legislation carried out by Unia in 2016 and 2017 shows that

in many cases it is almost impossible for the victim to provide the proof required by law;  
and legal action is financially inaccessible for most victims of discrimination.

Unia also remains concerned about the application of the right to reasonable accommodation. Although formalised in Belgian legislation, more recent legislation on housing and education at the regional level has shown that the right to reasonable accommodation is still disregarded at times and even undermined.

Finally, a specific form of discrimination in Belgium concerns the situation of older persons with disabilities. One of the conditions for support at the regional level is that the person with a disability must be under 65 years of age; thereby excluding an increasing number of older persons with disabilities from these support services.

#### **Art. 9 CRPD: Accessibility**

A second issue I would like to address is that of accessibility, one of the main area where no noteworthy progress has been made since Belgium's review in 2014. There exists no comprehensive legal framework at either the regional or federal level, nor any action plans aimed at ensuring accessibility of the built environment, public transport and public services.

The legislation that exists at the regional level is very limited in scope and does not uphold sufficiently high standards in terms of accessibility. There is a lack of monitoring and sanctioning, with urban planning permits still being delivered for inaccessible buildings. More so, there is a lack of training on accessibility and Universal Design for architects, entrepreneurs, as well as officials responsible for the approval of urban planning permits.

There also continue to be huge gaps regarding accessibility of information and communication. Websites and mobile applications are generally not sufficiently accessible to persons with disabilities.<sup>2</sup> Deaf persons in particular encounter great difficulties in access to public services, who only very rarely provide professional sign language interpreters.

Unia frequently receives complaints regarding inaccessibility of public transportation as well. Despite certain efforts by the public transport companies, there is little or no progress in autonomous accessibility.

#### **Art. 14 CRPD: Right to liberty and security**

In Belgium, forced hospitalisation of persons with disabilities is still possible under the mental health act of 1990, which has not been amended despite the Committee's recommendation to do so.

There also remain significant issues concerning the rights of persons with disabilities in detention, including those in internment. Belgium has been condemned on several occasions by the European Court of Human Rights for these infringements.

The act of 5 May 2014 maintains internment as a security measure for persons with disabilities who have been declared not responsible for their actions. The number of internees in prison has decreased significantly, yet 530 internees are still detained in prison today. Furthermore, the text of the new Internment Act and its implementation raise several problems, such as: the absence of a psychiatrist within the social protection chambers, and absence of any appeal against the decisions of the social protection chambers.

Two medico-legal psychiatric centres were established in Flanders. A recent audit by the Flemish Care Inspection identified certain shortcomings, however, with regard to insufficient staff, the quality of care and obtaining consent for medical treatments.

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<sup>2</sup> According to monitoring carried out by Anysurfer in 2018, only 24% of internet websites can be considered accessible. See <http://moniteurdelaccessibilite.be/2018.html>. The municipal public authorities do not provide better results. Based on a sampling of 60 municipality websites, results showed that only 25% of them were accessible. For more information, see [https://www.unia.be/files/Documenten/Artikels/Rapport\\_Anysurfer\\_Unia.pdf](https://www.unia.be/files/Documenten/Artikels/Rapport_Anysurfer_Unia.pdf).

Prison infrastructure also remains inaccessible and the prison management are reluctant to provide the necessary reasonable accommodations due to security concerns. This has serious effects on the health and overall wellbeing of persons with disabilities in prison. Particularly problematic is the lack of training of prison staff in this regard.

### **Art. 27 CRPD: Employment**

Finally, I would briefly like to address the issue of employment in Belgium. Today the employment rate of persons with disabilities remains far below the European average at only 23% of those aged between 15 and 64.

Public administrations do not meet their own quotas for the employment of persons with disabilities, even though they are rather low (2 to 5%).

One of the causes of the low employment rate is a lack of coordination between the federal level and the different regions, who all have some competences regarding employment.

Funding is lacking for job search and employment support in a mainstream setting. Large budgets are still being invested in employment in separate settings, namely sheltered workshops. At the same time, reasonable accommodations are still frequently refused.

Since 2017 there is a policy on the reintegration of persons after a long-term period of work incapacity on the Belgian labour market. In practice, however, the new procedure leads to termination of the contract in no less than 68% of the cases.

## **GRIP STATEMENT**

Good morning.

I am Inge Ranschaert. Together with Patrick Vandelanotte and Xavier De Ruyter, I represent GRIP.

Equal Rights for Every Person with a Disability (GRIP) is the human rights organization of and for people with disabilities, based in Flanders. We strive for equal rights and equal opportunities and stand up for an inclusive society.

In the past we have already made several submissions about the implementation of the CRPD in Flanders, as well as a shadow report in 2011. Here we address the submission of GRIP for the List of Issues Prior to Reporting and we present our point on art. 24, art. 19 and art. 8.

### **ART 24 – INCLUSIVE EDUCATION**

This committee, in the general conclusions of 2014, requests that the Belgian state would implement a coherent inclusive education strategy for children with disabilities. We are disappointed to report that the governments of the Regions and Communitie, who are responsible for the educational policy, failed to develop an effective long-term plan to evolve from two separate education systems (mainstream and special education) to one inclusive education system.

Instead, we notice that the politicians in charge continue to promote a dual system, with a separate system of special education in addition to mainstream education. To illustrate this: much to our surprise, the Flemish Minister of Education has repeatedly stated that long term investments in segregated

educational settings is in accordance with the vision of the UN Convention on the Rights of Persons with Disabilities.

In any case, too many children with disabilities in Belgium still are referred to a segregated setting such as special education. This didn't change much since the general conclusions of 2014 and we are worried that this will not change in the next few years. So we ask the committee to observe in detail the position of Belgium regarding article 24.

We would like to highlight a couple of things:

- The new decrees, the 'M-decree' in Flanders and the 'Pact for educational excellence' in the French-speaking Community, are not in line with the CRPD. They are not effective, only aiming a kind of "inclusion-light" version.
- The number of pupils in special education remains around 4%, far higher than the European average (1.54%). While the number of pupils in special education has finally stopped increasing in Flanders, it is growing again this year with the new type 9 for autistic children. In the French Community it is constantly increasing and a new decree prohibits the change of the learning objectives of main education.
- Because of the lack of support and reasonable accommodations in mainstream education, most of the parents are only confident in the quality of special education. In the logic of gradual transition towards inclusive education, we are not opposed to the coexistence of those two systems in the coming years. But only when the goal of inclusive education is clear and steps are taken forwards, not backwards, according to due planification
- The ruling of an independent judge in a court of first instance on 7<sup>th</sup> of October 2018 indicates that there are problems in the application of the right to enrol, as well as a lack of willingness at certain schools to provide students with reasonable accommodations.
- There is a lack of working together across different governments and departments. There is no inter-sectoral commitment towards the realisation of inclusive education.

#### **ART 19**

As to the article 19, we can't go into details for every community, but it is clear that the multiple levels of government within the Belgian State often fail to provide an appropriate response to a legitimate application for support within a reasonable period of time.

The problem of waiting lists, addressed by the committee in 2014, remains and represents a violation of the right to support. This is a very crucial problem in Belgium.

Many persons with disabilities are not able to fully participate and live independently within the society. The need for support is constantly increasing. Unfortunately, because of budget restrictions, this support is not sufficiently offered. This results in long waiting lists for a Personal Assistance Budget and access to certain residential services. Even for the most urgent cases, the waiting period can be as long as three years.

To this, we must add that authorities still invest significantly more resources in institutions, than in resources to facilitate independent living. The budgets for personal assistance are insufficient. The situation on this is radically different between the three regions : it is limited to 25 persons in Brussels-Capital Region, to a limited test group of about 200 persons in Walloon Region. In Flanders, a new system for Personal Budgets was introduced in 2017 with which persons with disabilities can pay for care, support and assistance themselves. The implementation of the new system, however, has proven to be difficult. There is also clear evidence that minors with disabilities are admitted to facilities more frequently than they are provided with a Personal Assistance Budget.

In general, we notice a lack of understanding of the right to independent living and being included in the community and so the government has not developed any strategy or comprehensive policy for deinstitutionalization. This issue is raised by the National High Council of Persons with Disabilities in a position paper addressed to the Belgian authorities. The scope of article 19 CRPD and the General Comment number five have been publicly called into question, including by politicians, public agencies and actors of the sector of persons with disabilities. So we ask the committee to pay attention to the right to live independently and being included in the community.

#### **ART 8**

In general, we observe that the paradigm shift towards an awareness of the capacities and social contributions of persons with disabilities is virtually inexistent. The vision of disability in Belgium remains strongly based on the medical model. There is no strategy for the concretisation of the paradigm shift.

In the past years, Unia, GRIP and other members of the civil society have organised campaigns about the CRPD. We are still waiting for the government to launch an effective awareness raising campaign about the human rights of persons with disabilities or about the UN Convention.

In the media, the approach to disability is evolving slowly. Even the official public broadcasters do not fully shift the paradigm. The lack of visibility of persons with disabilities in the media, mainly television, remains too big. They are systematically presented as victims and limited in a passive role or, for the best, as witnesses.