

COUNCIL OF EUROPE UPHOLDS AUTISM-EUROPE'S COMPLAINT AGAINST FRANCE

The Council of Europe has just made public the decision taken by the European Committee of Social Rights of 4 November 2003 whereby France was found to have failed to fulfil its educational obligations to persons with autism under the European Social Charter¹.

This decision, which was analysed by the Council of Europe's Committee of Ministers on 10 March 2004, thus upholds the collective complaint² that Autism Europe lodged against France denouncing the non-provision of education to people with autism due to the lack of integration in mainstream education on the one hand and the dramatic shortage of specialised educational institutions on the other hand.

Autism Europe, which took this case to Strasbourg³, joins with Autisme France and the other French associations that stood by Autism Europe's action in rejoicing over this decision, which should change the fates of people with autism in France and, beyond that, the fates of the very large number of people with disabilities who do not get the education to which they are entitled.

In May 2002, Autisme France raised before Autism Europe's Council of Administration the need to bring a collective complaint against France to the Europe's human rights bodies for failing to meet its obligations vis-à-vis people with autism. This motion was approved unanimously by all of Autism Europe's board members and especially by the representatives of the other French associations, including UNAPEI, Sésame Autisme and Pro Aid Autisme.

Strengthened by this unanimous vote, Autism Europe addressed its collective complaint to the European Committee of Social Rights in July 2002. This complaint was declared admissible in December 2002. The written procedure was conducted in the course of 2003 and the public hearing took place in September 2003. The European Committee of Social Rights issued its decision on 4 November 2003. The Council of Europe's Committee of Ministers adopted a resolution on this decision on 10 March 2004. The case was thus treated with due diligence and efficacy by the human rights bodies based in Strasbourg.

¹ For information and the sake of accuracy: The European Court of Human Rights has to be distinguished from the European Committee of Social Rights. Similarly, the European Convention on Human Rights has to be distinguished from the European Social Charter (which is also distinct from the European Union's Charter of Fundamental Rights). This complaint was taken to the Council of Europe, not to the European Union. Within the Council of Europe, whereas the European Court of Human Rights is in charge of ensuring that the European Convention of Human Rights (which defines individuals' civil rights) is enforced, the European Committee of Social Rights is in charge of ensuring that the European Social Charter is enforced. (The latter is the second treaty of the Council of Europe. It defines collective human rights, including the right to education.)

² For information and the sake of accuracy: One must also differentiate individual complaints lodged with the European Court of Human Rights (ECHR) from collective complaints lodged with the European Committee of Social Rights. Whereas the scope of an ECHR ruling is limited to repairing the damages sustained by the complainant, the collective complaints and decisions of the European Committee of Social Rights have collective scope. The recent collective complaint procedure is a human rights defence procedure that may be initiated by international organizations that have advisory status at the Council of Europe.

³ Autism Europe was represented by Evelyne Friedel, lawyer at the Paris Bar, of Jones Day.

The European Committee of Social Rights' decision concluding that France fails to meet its obligations to people with autism⁴ stresses the following points.

- The European Social Charter, which requires that the States guarantee the right to education to people with disabilities, applies to all such persons, regardless of the natures and origins of their handicaps and their age. It thus "clearly covers both children and adults with autism."
- "...in the case of autistic children and adults, notwithstanding a national debate going back more than twenty years about the number of persons concerned and the relevant strategies required...France has failed to achieve sufficient progress in advancing the provision of education for persons with autism".
- most of the French official documents...still use a more restrictive definition of autism than that adopted by the World Health Organisation".
- "...the proportion of children with autism being educated in either general or specialist schools is much lower than in the case of other children, whether or not disabled. In this regard, the decision finds that autistic people are an excluded group within the excluded. The decision also observes that there is a chronic shortage of care and support facilities for autistic adults".
- In addition, there is the importance of providing an appropriate educational environment "...in circumstances where the effects of ineffective or untimely intervention are ever likely to be undone" (sic).
- Given that under the European Social Charter the Parties undertake to ensure the education and training of persons with disabilities and children and young people alike "...in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose...", France must henceforward take "not merely legal action but also practical action to give full effect to" people with autism's right to education.
- Despite the complexity and cost of enforcing this right, France must, in the name of positive discrimination, "...take measures that allows it to achieve the objectives of the Charter within a reasonable time" and "with measurable progress".
- Finally, because Article E prohibits not only direct discrimination, but also all forms of indirect discrimination and such indirect discrimination may arise when people with autism are given "inappropriate treatment", France must make the best choices and make maximum use of available resources to meet the needs of people with autism and their families, "...on whom falls the heaviest burden in the event of institutional shortcomings." (In this connection, Autism-Europe calls attention to the fact that too many people with autism are effectively given inappropriate treatment in costly hospital institutions without educational components.)

⁴ The excerpts from the decision are printed in italics. The underscoring has been added.

The Council of Europe's Committee of Ministers, for its part, recalled the main points in the European Committee of Social Rights' decision, namely, the more restrictive definition of autism than that of the WHO; the lack of schooling for children with autism, who are thus the victims of serious discrimination on this account; and the chronic shortage of facilities for adults.

The Committee of Ministers took note of the fact that France undertook to comply with the Revised European Social Charter's provisions and asked the French Government to report on the situation in the next report on its policy on disabilities to be submitted to the European Committee of Social Rights.

Although the measures that the French Government plans to take to date still fall far short of the mark when it comes to actual needs and meeting the Revised European Social Charter's requirements, Autism-Europe hopes that the Council of Europe's decision will prompt France finally to provide appropriate education for people with autism, who are particularly excluded in this respect. Autisme France, the families and local associations that it represents, and the other national associations join with Autism Europe in making these wishes and expect a lot from this decision.

Even though the decision referred specifically to the case of people with autism, its scope goes well beyond this group by reasserting the right to education for all people with disabilities, regardless of the severity of the disability. Whilst people with autism are unfortunately the hardest hit because of the glaring lack of educational services tailored for their needs, they unfortunately are not the only ones to suffer because of France's indigence in this regard.

Finally, we must emphasise the fact that Autism Europe's complain is the first collective action to defend the rights of people with disabilities in Europe. Its importance in this respect was highlighted by the Council of Europe. This action culminated in a decision that was adopted in 2003, which was European Year of People with Disabilities. It must now take its place in the movement to improve the fundamental rights of people with disabilities, especially of those with the severest disabilities, throughout Europe.

Autism Europe and all the people with autism in Europe that it represents hereby thank Autisme France, especially Max Artuso and barrister Evelyne Friedel, who represented Autism Europe in dealing with Europe's human rights bodies, for their commitment and pro bono work. Without them the complaint and this victory would never have come to be.

The Council of Europe's web site and links related to the decision:

<http://www.coe.int/DefaultEN.asp>

http://www.coe.int/T/E/Human_Rights/Esc/

[http://www.coe.int/T/E/Com/press/News/2004/ResChs\[2004\].asp](http://www.coe.int/T/E/Com/press/News/2004/ResChs[2004].asp)

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AUTISM EUROPE

AUTISM-EUROPE is a European network of associations of parents of persons with autism all around Europe. Its main objective is to promote and protect the human rights of persons with autism and their families and help improve their lives.

AUTISM-EUROPE has 80 national and regional associations in 30 European countries including 14 E.U.

AUTISM-EUROPE as a European umbrella organisation, co-ordinates the efforts of its member organisations at European level and ensures effective liaison with the EU institutions.

AUTISM-EUROPE also plays a key role in disseminating information throughout its network, supporting research activities, raising awareness among decision-makers at all levels, and promoting transnational exchange programmes.

AUTISM-EUROPE organises a major international congress every three years which attracts more than 1.500 delegates from all around the world.

AUTISM-EUROPE is a founding member of the European Disability Forum (EDF) and it is also a founding member of the Social Platform.

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