

# AUTISM & CASE LAW

Protecting the Right to Education for Children  
with Autism Spectrum Disorders



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Against Discrimination

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## Cover :

“Whirlpool” : Painting by Jane Mary Hannah, who attends the Grampian Autistic Society “Jigsaw Centre”, Scotland

# Introduction

In March 2004, the Committee of Ministers of the Council of Europe 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 Charter. This decision upheld the collective complaint that Autism Europe had lodged against the French Government.

This decision was also the starting point for all Autism Europe's activities concerning the defence of the rights of persons with autism.

In its Coordination Projects 2004-2005 and 2005-2006, Priority 2 "Defence of Citizens' Rights", within the Community Action Programme to combat Discrimination 2001-2006 promoted by the European Commission, Autism Europe committed itself to gathering and analyzing examples of case law on the right to education of persons with autism spectrum disorders (ASD) with the objective of raising awareness of fundamental rights, of the legislative processes existing for people to protect their rights at a national level and whether these processes are accessed and appealed to.

The right to education and the organisation of education of people with autism and severe disabilities are regulated by national legislation. **In practice, children with autism and severe disabilities do not always enjoy positive discrimination**, in terms of the adequate or appropriate support they are entitled to, in order to access effective education. As a consequence, the full development of their personality and the possibility to lead a dignified life to the best of their potential in society is impeded. In these cases, parents or advocates can appeal to a court of law in order to have their right to education recognized and implemented.

The development of case law still remains an important source of law. **A statement of law made by a judge in a case can become binding on later judges and can in this way become the law for everyone to follow.** Recourse to appeal processes in the case of non-enactment of fundamental rights is therefore essential in order to defend these rights and ensure that inclusive intentions are translated into reality.

In collaboration with Evelyne Friedel, attorney working for the international law firm Jones Day, **Autism Europe has gathered and analysed examples of case law upholding the Right to Education of children with disabilities in several European countries**, namely France, Germany, Italy, Poland and the United Kingdom. Autism Europe also analysed the case law rendered by the Council of Europe and more particularly, the conclusions rendered by the European Committee of Social Rights in its decision of 4 November 2003, since this decision represents a landmark decision which can be presented before national courts.

In the countries analysed, it results that the **reasons for appealing differ according to the type of education system and special needs provision available.** In Italy, for

example, the national and international rules and regulations available are effective in guaranteeing the right to an education of disabled citizens.

The case of **Poland** illustrates how recourse to appeal processes can vary from country to country according to the legal, cultural and political character of the country concerned. The case of Poland is an example of how recourse to appeal processes can vary from country to country according to the legal, cultural and political character of the country concerned. National legislation on education in Poland takes into account the rights and needs of children and young persons with disabilities, including children and young persons with autism. However, the complexity of the judicial system, together with the length of time and expense involved, deters people from appealing individually.

**The Autism Europe survey would confirm that awareness among the general public of human rights instruments and their role in combating discrimination in education depends fundamentally on the permanence of countries within the European Union and consequent familiarity, or otherwise, with the protection processes membership affords.**

Within this context and with the aim of raising awareness on the rights of people with autism, and in this specific case, on their right to education, among as large an audience as possible, Autism Europe is publishing an '**Autism & Case Law Tool Kit**' on its web site. This is based on the case law documentation received from Autismo Italia, the Italian national non-profit association of parents of people with autism. Its aim is to provide **user-friendly information and practical advice on the right to education of people with autism and severe disabilities and on how people can protect their rights.**

**Autism Europe, Brussels 2006.**

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# Council of Europe

The European Convention for the Protection of Human Rights and Fundamental Freedoms has been ratified by the 46 Member States of the Council of Europe. The first Additional Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms has also been ratified by all these member States, except by Andorra, Monaco, and Switzerland.

The European Social Charter (revised) of 1996 has been ratified by the following 22 countries: Albania, Andorra, Armenia, Azerbaijan, Belgium, Bulgaria, Cyprus, Estonia, Finland, France, Georgia, Ireland, Italy, Lithuania, Malta, Moldova, Netherlands, Norway, Portugal, Romania, Slovenia, Sweden<sup>1</sup>.

**IN ALL THE COUNTRIES WHO RATIFIED THE ABOVE-MENTIONED TREATIES, AND IN THE CASE THAT NO RESERVATION WAS MADE AT THE TIME OF RATIFICATION, THE FOLLOWING CITED PROVISIONS CAN BE USEFULLY AND PURPOSEFULLY BROUGHT BEFORE NATIONAL COURTS IN CASES OF DISCRIMINATION REGARDING THE EDUCATION OF AUTISTIC PEOPLE, IN AS FAR AS INTERNATIONAL COMMITMENTS TAKEN BY THE STATE SUPERSEDE NATIONAL LAWS AND REGULATIONS.**

**PROVISIONS IN EUROPEAN TREATIES GOVERNING NON DISCRIMINATION AND THE EDUCATION OF DISABLED PEOPLE.  
PROVISIONS OF THE EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS**

Article 2 of the first **Additional Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms**, regarding the right to education reads as follows:

- **No person shall be denied the right to education.** In the exercise of any functions which it assumes in relation to education and to teaching, **the State shall respect the right of parents** to ensure such education and teaching in conformity with their own religious and philosophical convictions.

Article 14 of the **European Convention for the Protection of Human Rights and Fundamental Freedoms**, prohibiting discrimination, reads as follows:

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

<sup>1</sup>

16 other countries have ratified the previous Social Charter of 1961. However, this previous treaty does not specifically define the right of education of people with disabilities. Many of these countries have signed the revised Charter but have not yet ratified it.

# Provisions of The European Social Charter (revised) of 1996

Articles 15§1, 17§1 and E of the **European Social Charter (revised) of 1996** govern discrimination, education, and more particularly, education of people with disabilities. These articles read as follows:

- **Article 15** : *The right of persons with disabilities to independence, social integration and participation in the life of the community With a view to ensuring to persons with disabilities, **irrespective of age** and the nature and origin of their disabilities, the effective exercise of the right to independence, social integration and participation in the life of the community, the Parties undertake, in particular (...) to take the **necessary measures to provide persons with disabilities** with guidance, **education** and vocational training in the framework of general schemes wherever possible or, where this is not possible, through specialised bodies, public or private (...)*
- **Article 17** : *With a view to **ensuring the effective exercise of the right** of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to **take all appropriate and necessary measures** designed (...) to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by **providing for the establishment or maintenance of institutions and services sufficient and adequate** for this purpose (...)*
- **Article E** : *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*



## CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS REGARDING THE RIGHT TO EDUCATION OF DISABLED PEOPLE, THE FREEDOM OF CHOICE OF PARENTS AND THE PRINCIPLE FOR POSITIVE DISCRIMINATION

The European Court of Human Rights rendered two decisions concerning the right to education of disabled children. These decisions condemned the compulsory placement of the children in special nursing homes for children with disabilities against their parents' wishes (Graëme v. the United Kingdom, Commission's decision of 5.2.1990 & Persson v. Sweden, 2.7.1993.)

Pursuant to the European Court of Human Rights (Thlimmenos c. Greece, 4.6.2000), the **principle of equality** and the **right not to be discriminated against in the enjoyment of the rights** are violated when **States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different.**

This means that **human difference** in a democratic society should not only be viewed positively but **should be responded to with discernment in order to ensure real and effective equality.**



## CASE LAW OF THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS REGARDING THE RIGHT TO EDUCATION OF CHILDREN AND ADULTS WITH ASD

The decision of **The European Committee of Social Rights** of November 2003 (Autism Europe v. France) concluding that France failed to fulfil its educational obligations to persons with autism under the European Social Charter **stresses the following case law principles which can purposefully be presented before national courts of the ratifying countries:**

- Securing a right to education for children and adults with disabilities plays an obviously important role in advancing their citizenship rights.
- Article 15 applies to all persons with disabilities regardless of the nature and origin of their disability and irrespective of their age. It thus clearly covers both children and adults with autism.
- As stated by Article 17, the **need** to ensure that children and young persons grow up in an environment which encourages the full development of their personality and of their physical and mental capacities **is just as important for children with disabilities as it is for others and arguably more in circumstances where the effects of ineffective or untimely intervention are ever likely to be undone.**
- The insertion of Article E into a separate article in the revised Charter indicates the heightened importance of the principle of non-discrimination with respect to the achievement of the various substantive rights contained in the treaty. The function of Article E is to help secure the **equal effective enjoyment** of all the rights concerned regardless of difference. 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”. This approach is consistent with the Political Declaration adopted by the 2nd European Conference of ministers responsible for integration policies for people with disabilities (Malaga, April, 2003).
- **Article E not only prohibits direct discrimination but also all forms of indirect discrimination.** Such indirect discrimination may arise by failing to take due and positive account of all relevant differences or by failing to take **adequate measures to ensure that the rights are genuinely accessible.**
- **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 recognized in the Charter.** When the achievement of one of the rights in question is exceptionally complex and particularly expensive to resolve, a State Party must take measures that allows it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources.
- **States Parties must be particularly mindful of the impact that their choices will have for groups with heightened vulnerabilities** as well as for others persons affected, including especially their families on whom the heaviest burden falls in the event of institutional shortcomings.

(with the kind collaboration of **Evelyne Friedel**)

# France

## NATIONAL PROVISIONS STATING FOR THE PRINCIPLE OF AN EDUCATION IN ORDINARY SCHOOLS FOR DISABLED PEOPLE

Pursuant to the French Code of Education and to principles set forth by the law of February 11, 2005:

- The public education system must ensure an education to children and adults presenting a disability.
- The State must set up the financial and human means necessary for the education of children and adults in mainstream institutions.
- Parents must obtain a personalised project for the orientation and education of their child, mentioning the necessary assistance and means (material aids, human assistance) that may be needed for an effective education.
- On the basis of said personalised project, the orientation can be continuation in an ordinary class, an orientation in a specialised class, or an orientation in a specific institution.
- Any child should be registered in the school or in a specific institution for disabled children nearest to their residence, which constitutes their place of reference.

### CASE LAW RENDERED BY ADMINISTRATIVE COURTS HOLDING THE STATE RESPONSIBLE AND GRANTING DAMAGES TO THE FAMILY

#### DECISION OF THE ADMINISTRATIVE COURT OF LYON OF OCTOBER 2005

The administrative court of Lyon rendered a decision on October 3, 2005, by which it condemned the State to pay Euro 36.000 to the parents of a 14-year-old adolescent with autism, who had not been provided education for more than three years due to a lack of places available in a specialised establishment.

This adolescent who was severely handicapped, had received an education by a specialised establishment until September 2002, at which date, following a reorganisation of the service, the adolescent was forced to return to the residence of the parents where the adolescent was still to be found at the date of the hearing

Notwithstanding the orientation by the specific administrative commission in charge of the education of disabled children towards three establishments likely to accommodate



the adolescent, no effective education was offered since these institutions did not have any places available. The judges underlined that the administration had made every effort to offer a satisfactory solution for the adolescent but concrete possibilities unfortunately did not exist.

The administrative judges concluded that the State's responsibility was engaged, taking into account the length of the period during which the adolescent was not provided with an education. However, the judges considered that the State, even if held responsible, did not commit a fault, considering the efforts carried out by the administration to accommodate the needs and find a solution. In addition, as opposed to what was requested by the parents, the judges considered that the court did not have power to enjoin the State to provide education for the child.

## **DECISION OF THE ADMINISTRATIVE COURT OF PARIS OF MARCH 2005**

In March 2006, the State was again condemned for not having provided an education to a mentally disabled adolescent for a period of 8 years. In this case the State was condemned to grant damages, amounting to Euro 30.800, to the parents and the adolescent.

In this case, the specific administrative commission in charge of the education of disabled children never proposed the family with a suitable solution, even partial. Only private organisations helped the child.

**The administrative court of Paris estimated that this support should not only lie within the responsibility of the State, but was also heavily insufficient in light of the legal requirements under which effective education must be provided by the State. The education of this mentally disabled child should have been dealt with by a specialised establishment.**

(with the kind collaboration of **Evelyne Friedel**)

# United Kingdom

## NATIONAL PROVISIONS STATING FOR THE PRINCIPLE OF NON DISCRIMINATION FOR DISABLED CHILDREN

Schools must not discriminate against disabled children in their admissions arrangements, in the education and associated services they provide, or in relation to exclusions from the school. All other claims about schools are heard under the Disability Discrimination Act (DDA).

Schools must not treat disabled pupils less favourably because of their disability, without justification. They must also make reasonable adjustments so that disabled pupils are not disadvantaged compared with pupils who are not disabled. But in making these adjustments they do not have to remove or alter physical features or provide extra aids and services.



### **CASE LAW RENDERED BY A SPECIFIC TRIBUNAL, TAKING INTO ACCOUNT THE VERY SPECIFIC NEEDS OF THE CHILD AND RESPECTING THE WISHES OF THE PARENTS**

The Special Educational Needs and Disability Tribunal (SENDIST) is an independent tribunal which was set up by the Education Act 1993. It considers parents' appeals against the decisions of Local Education Authorities (LEAs) about children's special educational needs if parents cannot reach agreement with these authorities. The tribunal only covers England and Wales.

In July 2002, the SENDIST rendered a decision following an appeal by the parents of a 15 year old adolescent with autism under section 326 of the Education Act 1996 against the contents of an amended statement of special educational needs issued by the competent Local Education Authorities (LEA).

Since September 1997, the child was integrated in a community special school for pupils with moderate learning difficulties. The child was originally placed within the autistic unit of this school, where he was taught within a small, structured teaching environment, using TEACCH methods and with sufficiently trained personnel. However since this unit was not funded for secondary pupils, the child had to be transferred in a general class within the school. Facing the concerns of the parents, it was agreed that their child could continue to spend a significant amount of time in the autistic unit, but with some supported integration. However, in June 2001 a review meeting concluded that the child's statement should be amended and an alternative placement sought.

The LEA issued a new statement naming a maintained special school for pupils between the ages of 2 and 19 who have severe learning difficulties, and "including pupils with

additional autistic spectrum disorders”. However, the level of difficulties and autistic behaviour of the child, who became adolescent, went beyond those experienced at this second school. Consequently, his parents requested that a third school, which was an independent special school, be named in their child’s statement. In addition, the Secretary of State had given consent under section 347(5)(b) of the Education Act 1996 to their child’s placement in this school, if the SENDIST ordered and confirmed this decision.

**Section 9 of the Education Act 1996 requires to have regard to the general principle that pupils are to be educated in accordance with the wishes of their parents, so far as that is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure.**

In the present case, the LEA could not argue that the third school would be an inappropriate placement for the adolescent. However, it maintained that the provision at the second school was appropriate and that to fund a placement at the third school would be an unreasonable use of its resources, given its statutory responsibility to its school population as a whole. It also contended that there are no educational reasons which could justify a residential placement for the adolescent, considering that the arguments put forward to support residence were social rather than educational.

On the contrary, the SENDIST did consider that the second school was an inappropriate placement for the adolescent. The tribunal considered that the adolescent’s extreme needs were likely to go beyond the school’s current experience. The tribunal also estimated that the adolescent required a residential placement.

**The SENDIST concluded that the only realistic chance of enabling the adolescent to acquire a sufficient level of academic, self help and social skills to enable him to lead a reasonably independent life lied in an autistic specific provision and a residential placement. Given these conclusions, the tribunal considered that it was not required to balance the cost of one provision against another.**

In conclusion, the SENDIST ordered the LEA to amend the adolescent statement to name the third school and ordered the placement to be residential.

(with the kind collaboration of **Evelyne Friedel**)

## NATIONAL PROVISIONS STATING THE RIGHT TO AN EDUCATION OF CHILDREN WITH SEVERE DISABILITIES IN ITALY

In Italy, mainstream education rules and regulations ensure the right to education for everybody. Pupils with difficulties in learning and difficulties related to their disability have the right to study, just like all other pupils. No school can deny access and an adapted education programme to any pupil on the grounds of disability.

These principles mean that schools must be able to accept any pupil, whatever the degree of their learning impairment. Nevertheless, mainstream education can represent a challenge for children with severe disabilities, mainly when sufficient, adapted support is not ensured. For this reason, many families have lodged petitions with the Public Administration, in particular with the Ministry of Education, Universities and Research (MIUR), in order to obtain more support at school for their severely disabled children.

### CASE LAW RELATIVE TO THE RIGHT TO AN EDUCATION OF CHILDREN WITH SEVERE DISABILITIES

In numerous decisions having been rendered since 2002, petitioners considered the limited allocation of hours of support conceded as insufficient, inadequate and above all an abuse of the right to education and health. They claimed the right to an appropriate number of hours of support during school time, as recognized by Law 104/92, framework law for the integration of disabled citizens and, in this respect, appealed to the inviolability of the right to education and training, to the full development of the child's personality as recognized by the Italian Constitution and international normative texts. On these premises, they requested the adoption of suitable measures to guarantee their children the full allocation of hours of support.

On the basis of existing rules and regulations, the presiding judges issued ordinances of allocation or reinstatement of the hours of teaching support, claimed by the petitioners, whilst observing the following principles:

- Not only damage to the physical and mental integrity of the person but also damage caused by the violation of an inalienable and fundamental human right, fall within the concept of damage to the person.
- **Withdrawal of the educational support of a specialised teacher or the allocation of an inadequate number of hours of teaching support to the disabled child does not encourage teaching or learning. They unjustifiably jeopardize a fundamental right of the person to an education, to integration in a mainstream school and to the development of his/her personality as guaranteed by the Constitution and nation-**

**al and international legislation and they cause serious and irreparable damage to the child and his/her family (whose moral and economic efforts are totally thwarted)**

- The organisation of support activities by schools cannot, in any event, restrict or violate any right of the person recognized by international sources, by the Italian Constitution or by law.
- **The justification adopted concerning the insufficiency of available financial resources or the current support needs of other pupils are irrelevant** in the face of inviolable subjective rights; eventual financial claims invoked by the Administration cannot, in any event, justify the restriction of the right to education or integration in mainstream schooling since the same law that establishes the limit, determined by the ratio between the total able pupil population and support teachers, allows for its revocation in the case of severe disabilities.
- The fact that the disabled child attends the kindergarten or upper secondary school, which are not included within compulsory education, is deemed entirely irrelevant in relation to the right to education.
- The appeals of the Public Administration against the ordinances issued by the presiding courts of law providing for the allocation of more adequate support have been duly rejected and the first degree ordinances confirmed in the second degree on the basis of the same normative texts cited in the first degree.

As evidenced by the ordinances issued by the Italian judges in response to the petitions lodged against the national Public Administration in defence of the right to education of children with severe disabilities, the national and international rules and regulations available, guaranteeing the right to education of disabled citizens, are rendered effective.

## **AN EXAMPLE OF REGULATORY FRAMEWORK TO ENSURE THE RIGHT TO EDUCATION FOR CHILDREN WITH DISABILITIES: THE CASE OF ITALY**

Italy boasts an advanced regulatory framework regarding the inclusion of pupils with disabilities in mainstream classes. Pupils have been enrolled in mainstream schools for more than 25 years thanks to a series of well-designed legislative and administrative measures which have guaranteed full inclusion of pupils notwithstanding the kind of impairment or age.

**The right to education in the ‘school for all’**, is ruled by:

- the Italian Constitution (article 3) ;
- the Law 517/1977, which abolished differentiated classes, aimed at favouring the inclusion of disabled, impaired pupils in mainstream classes ;
- the Framework Law on the care, social inclusion and rights of disabled people (n.104/92), the main legislative reference in terms of school inclusion, which has been reinforced by

- the presidential decree dated February 1994, which enacted co-operation among schools, local health units and families for the preparation of the IEP (Individual Educational Plan).

This last provision, known as 'Atto d'indirizzo', is the legislative measure and the milestone of inclusion that all teachers should know since they are called to build up an alternative route for the pupil with a disability independently of their disciplinary domain.

For pupils with disabilities the law provides for a diversified Individual Education Plan (IEP) according to those educational goals which are not based on ministerial programmes (i.e. the Italian version of the British national curriculum system) but are geared to meet disabled pupil's capabilities, skills and potentialities. Sometimes the IEP is erroneously considered as an individualized programme. On the contrary there is a difference between individualized programming and the IEP. While the former is a document prepared by curricular teachers in terms of syllabus content, the latter is a more complex document intended as a global plan for the disabled pupil including didactic, rehabilitative, social and welfare aspects.

### **The inclusion school model envisages the following steps:**

1. The case is reported. Parents submit their child's medical diagnosis or the school may notice a pupil's disability and report it to specialists. However, parental authorization is always required.
2. Functional diagnosis. It concerns the description of the pupil's pathology, disability, capability and skills. It is an acquisition of clinical and psychological data provided by the multidisciplinary unit (medical specialist, child psychologist, rehabilitation therapist, social practitioner at the local health authority) regarding the psycho-physical conditions of the pupil. It contains personal details of the pupil, his/her family, aetiological factors, medical case history and the pupil's potentialities according to the following axis: cognitive, emotional- relational, linguistic, sensorial, motor, neuropsychological and personal autonomy.
3. Functional Dynamic Profile. This consists of an analytic description, based on the functional diagnosis, of the pupil's potential levels of response to present/possible development. It indicates the pupil's physical, psychological, social and emotional characteristics, his/her disability related learning difficulties and chances of recovery. The pupil's cultural and personal choices must be taken into consideration. It is prepared jointly by the multidisciplinary unit composed of curricular teachers, parents, the specialist teacher, social and health care practitioners such as the psychologist, the rehabilitation therapist and the medical specialist. It is dynamic because it must be modified at regular intervals on the basis of a structured observation and according to pupil's outcomes, especially when moving from infant to primary and to secondary education. It envisages the analysis of the following aspects: cognitive, emotional-relational, communication, linguistic, sensory, motor, neuropsychological, autonomy and learning. It envisages long-, middle- and short-term objectives. The school principal is responsible for the FDP.
4. Individual Educational Plan. It represents the official document of the pupil's

inclusion in mainstreaming. It is here that class teachers, along with specialist teachers, are to design an educational plan tailored to the pupil's abilities and needs. It includes educational, rehabilitative, social and health provisions. The idea is to offer the pupil diversified and easier learning conditions along with additional extracurricular activities to favour the transition to work and adult life and alternating school with vocational training.

5. Evaluation and monitoring. In order to check if interventions and provisions are matching with the outcomes and if goals have been achieved. This phase is crucial in order to provide for changes and favour cognitive and social development of the pupil.

Inclusion of pupils with disabilities in mainstream units and classes of every kind and level of education means cutting down the number of pupils of that unit or class. The present law envisages no more than 25 pupils for each class with one disabled pupil or two mild disabled pupils. For placement in mainstream classes, the psycho-physical development of the pupils is more important than his or her age. Pupils are given the opportunity to follow the standard curriculum or a simplified/adapted curriculum according to their abilities. Special curricula based on pupils' individual abilities are fostered.

### **The support of a qualified teacher**

The presence of the qualified teacher in every kind of school is provided by law 104/92. This teacher is assigned to the class in which the disabled child has been included, in order to carry out individualised interventions according to the needs of every pupil. The assignment is made after the enrolment when the presence of a disabled pupil in a class has been ascertained. The number of hours spent by the support teacher with the pupil is established on the grounds of the Functional Dynamic Profile and therefore according to his needs. In the different levels of compulsory education, one support teacher is provided for every four disabled pupils. However, this ratio can be changed in primary schools when there are pupils with particularly serious disabilities on the basis of their functional diagnosis, or when schools are situated in the mountains, or on small islands. Nowadays the global demand of support teachers is valued on the ratio of one teacher every 138 pupils attending public schools (on average there is one teacher every two disabled pupils).

However, the teacher is assigned to the class and he collaborates with other teachers in order to improve the inclusion of the disabled child, who is part of the class as well, and to whom all teachers must relate. This is another reason why the support teacher takes part in the evaluation of the whole class he is working in at compulsory school.

The role of the support teacher can be defined as multifunctional: as a matter of fact his/her work is based on the connection and co-ordination with other professional figures. S/He works as a team with other teachers and represents a point of reference within the relationship with the disabled pupil. Moreover s/he carries out at the same time an activity of both individualised and group rehabilitation. It is important that, when moving from elementary to secondary school, the support teacher ceases to be a "protective model" in order to turn into a "model of independent growth".

The support teacher should have attended a special qualifying course. In the past it lasted two years, whereas nowadays the qualification is attained at university, where the course lasts six months more than the Qualifying School, which is necessary for every teacher.

### **Didactic and educational continuity**

Regulations have taken into account the theme of didactical continuity between different school orders, providing not only the transmission of documents between schools, but also allowing meetings of the respective teachers and giving the support teacher the chance to look after the pupil during the passage and initial attendance at the new school.

In the age range from birth to three, pupils with disabilities are guaranteed a place in nursery schools. From three to six they are guaranteed a place in kindergartens, and from six to 14 (the compulsory age range), pupils with disabilities are guaranteed a place and education in mainstream classes. Pupils with disabilities who have completed compulsory education are guaranteed admission into mainstream classes of post-compulsory secondary schools and when they have completed this they are guaranteed access to higher education: universities and other institutions of higher education.

School inclusion of pupils with disabilities into mainstream units and classes of any kind and level of education is achieved through a co-ordinated plan of school services, health and social assistance, cultural, recreation and sport centres as well as through activities managed by public or private bodies

The Ministry of Public Education provides:

- the organisation of educational activities with flexibility in the setting of the classes in order to implement the school programme;
- guaranteed continuity in education between school levels.

This requires close collaboration between teachers at different levels.

The Local Health Authority has the task of evaluating, through special medical commissions, the disability and general ability of the pupil as well as the need for permanent assistance. The commissions include a social worker and an expert on the particular kind of disability, both of them employed by the Local Health Authorities.

The local authority supplies technical equipment and educational instruments to schools and universities.

Pupils with disabilities, who are temporarily unable to go to school for health reasons, are also guaranteed education. The provincial Director of Education arranges mainstream classes for these pupils in hospitals, as detached units of state schools.

(With the kind collaboration of **Autismo Italia**, Italy)



# Germany

## NATIONAL PROVISIONS STATING FOR THE PRIORITY OF ATTENDANCE IN THE MAINSTREAM SCHOOLS

In Germany the principle of inclusion in mainstream schools has priority.

Every disabled child must be examined in order to assess his/her abilities to attend a mainstream school. If the child's abilities meet specific requirements, the child has the right to attend a regular school. If school attendance can only be achieved with the support of a school assistant, the responsible administrative authorities (social welfare office or youth welfare office) have to bear the costs for such assistance.

Attendance at a specialised institution, instead of a mainstream school, can and must only be considered if the disabled child is objectively not able to attend a mainstream school with the support of a school assistant.



## CASE LAW CONFIRMING THE PRINCIPLE FOR INTEGRATION AND HOLDING THAT A SPECIAL INSTITUTION MUST REMAIN EXCEPTIONAL

A major decision was rendered by the German administrative court on April 28, 2005. **This decision recalled the principle of law under which the social welfare office has to bear the costs for a school assistant if a mainstream school is attended. This decision added that it cannot be argued by the administration that these expenses would not exist if a specialised institution was attended.**

By rendering such a decision, the German court confirmed with force that **the principle is integration in mainstream schools and that education in a specialised institution can only be envisaged when such integration is effectively impossible.**

(With the kind collaboration of **HAK - Autismus Deutschland**, Germany)

# Poland

## NATIONAL PROVISIONS TAKING INTO ACCOUNT THE RIGHTS AND NEEDS OF CHILDREN AND YOUNG PEOPLE WITH DISABILITIES, INCLUDING CHILDREN AND YOUNG PEOPLE WITH AUTISM

As far as only the legislative aspects are concerned, the education system in Poland takes into account the needs of people with autism in Poland. It is worth noting that the laws regulating the education system in Poland, in comparison with health care or social assistance systems, in effect take into account the rights and needs of children and young people with disabilities, including children and young people with autism.



### ABSENCE OF CASE LAW DUE TO SOCIAL AND CULTURAL ASPECTS

Contacts with parents of children and adults with autism as well as general observation of social, cultural and political life in Poland point to several reasons for the **absence of practice of case law in Poland in the area of education**.

Notwithstanding the 'friendly' national legislation and the amount of allocated funds, the lack and low quality of offered and delivered services is extremely problematic for people with autism and their parents. In particular, what makes it impossible or at least very difficult for children and young people with autism to take advantage of the rights granted to them is the lack of qualified personnel prepared to provide a specific education to people with autism.

**This should be dealt with through courts.**

**However, this is not done for the following reasons:**

In the Polish legal system one can appeal to court only when direct appeals to government agencies turn out unsuccessful. The parents who want to fight for the rights of their children must first submit their requests through letters of appeals addressed to the government agencies. Since most of them are not able to write such letters themselves as they do not know the laws and regulations which govern the rights they could appeal to, they usually ask non profit organisations to help them write such letters. In case of unsuccessful results, the parents do not go to court as they do not believe that they might obtain better results and win their cases.

Not only can no specific organisation help the families to go through the whole court process, but also Polish people have very poor experience with legal proceedings.

Indeed, Polish people have very limited knowledge that they can in effect fight for their

rights, and if they do, they do not believe that such endeavours might prove successful. This results from the former conviction, at the time of communism, that the government, as representing the common interest, is always right and always wins against a protesting citizen defending a private and individual right.

This social and political situation explains why parents of children with autism prefer presenting their requests to non-profit organisations, which can advocate and lobby for their cause. They also prefer referring their difficulties to advocacy organisations (such as the SYNAPSIS Foundation, for instance), which advocate to the Government for the whole group. On very rare occasions, they also ask the special public institution, the Advocate for Children's Rights to defend their rights.

Another reason why Polish people hardly ever resort to court is that trials in Poland take forever, so by the time the decision is issued, the latter may have become obsolete. In addition, going to court can be quite expensive, and parents are afraid that if they lose (which, in their opinion, is most likely to happen), they will have to cover all trial expenses. Finally, those more educated and wealthier parents who would be able to sue the government agencies in cases where public schools do not respect the rights granted to their children, prefer to send their children to private schools they pay for individually.

(With the kind collaboration of the **Synapsis Foundation**, Poland)

## AUTISM-EUROPE a.i.s.b.l.

### AUTISM

Autism is a complex lifelong disability, due to multiple medical causes, interfering with the normal development and functioning of the brain, sometimes identifiable in very early childhood. Although the exact mechanisms involved in the neurological dysfunction are not yet clear, autism deeply affects the way the person communicates and relates with his or her environment.

Despite initial beliefs to the contrary, autism is not a rare condition. We know that, if the whole spectrum of autistic disorders is considered, the disability may affect almost 1/1000 of population.

Autism can affect any family, regardless of ethnic or social class, and it is four times more frequent in males than in females. Often, but not always, autism is combined with other disabilities, especially general learning difficulties of varying degrees, as well as behavioural problems.

Persons with autism can really improve if early diagnosis is followed by personalised specialised education and treatment but the vast majority of them, and their families, need intensive and sustained support throughout their lives to fulfil their potential and make the difficult task of living with autism easier.

In spite of the availability of good models of service delivery, most persons affected by autism do not have access to them nor are they able to benefit from scientific, medical, educational and social progress made during the last decades in reference to this condition. This deprivation generates much suffering and additional difficulties, and constitutes a form of discrimination which Autism-Europe is strongly committed to fight against.

Autism-Europe ensures effective liaison between approximately 85 member associations of parents of persons with autism in 31 European countries, including 20 Member States of the European Union, governments and European and international institutions.

Autism-Europe plays a key role in raising public awareness, and in influencing the European decision-makers on all issues relating to autism, including the promotion of rights of people with autism and other disabilities involving complex dependency needs:

- **through its publications:**

- "LINK" MAGAZINE published and circulated in English, French and Portuguese
- CHARTER FOR PERSONS WITH AUTISM formally adopted by the European Parliament as a Written Declaration (May 1996)
- CODE OF GOOD PRACTICE on the prevention of violence against persons with autism
- DESCRIPTION OF AUTISM drafted by an international team of experts
- POSITION PAPERS on health, ageing, inclusion, education and family needs
- AWARENESS LEAFLET

- **by organising events and actions at European level:**

- An international Congress in Europe every three/four years
- Awareness campaigns

- **by promoting actions and initiatives (client oriented service delivery, scientific research, etc.) aimed to improve the quality of life of persons with autism and their families.**



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