

Case Name	AUTISM-EUROPE v FRANCE
Topic	Discrimination in providing special educational services - violation of Articles 15 §1 and 17 §1 of the European Social Charter
Category	EQUALITY - discrimination;
Tribunal	European Committee of Social Rights
Country	France (Europe)
Case Date	04 Nov 2002

Persons with autism in France may attend mainstreaming **education**, either in their own right (individual mainstreaming) in ordinary classes with the assistance of special auxiliary staff, or as part of a group (collective mainstreaming) through school integration classes (CLIS) at primary level and **educational** integration units at secondary level. Persons who, by reason of the severity of their autism, cannot integrate into the ordinary **education** system may receive special **education** in a specialised institution or through medical and social services. The individual mainstreaming into regular schooling is financed through the general **education** budget. However, the mainstreaming of individuals through collective mainstreaming is financed through the sickness insurance budget. Also, all the above forms of special **education** are financed mainly through the sickness-insurance budget, and, in the case of autism, by a special appropriation system addressed to it. Teachers in special **education** and special auxiliary staff in these specialised institutions are paid out of the national **education** budget.

The special **education** institutions and social and medical services allocated for the **education** of children and adults with autism in France have historically been inadequate. The 1995–2000 catch-up plan for persons with autism failed to overcome the backlog; likewise, the 2001–03 multi-annual plan on disabled children, young persons and adults, which also addressed persons with autism, was far from filling the gap. About 75,000 persons with autism (of whom 19,000 are children) were in need of special **education**, but only ten per cent of them had a place (about 8,000 places in all were available).

Autism-Europe filed a complaint with the European Committee of Social Rights. It argued that France was in violation of Articles 15(1) and 17(1) of Part II of the Revised European Social Charter (the Revised Charter), in conjunction with Article E of Part V of the Revised Charter in so far as insufficient provision is made for the **education** of children and adults with autism due to identifiable shortfalls – both quantitative and qualitative – in the provision of both mainstream **education** as well as in the special **education** sector.

The Committee held that: (1) Article 15 of the Revised Charter both reflects and advances a profound shift of values in all European countries over the past decade away from treating persons with disabilities as objects of pity and towards respecting them as equal citizens; its underlying vision is one of equal citizenship for persons with disabilities and, fittingly, the primary rights are those of ‘independence, social integration and participation in the life of the community’; (2) securing a right to **education** for children and others with disabilities plays an important role in advancing their citizenship rights;

(3) Article 17 is predicated on the need to ensure that children and young persons grow up in an environment which encourages the ‘full development of their personality and their physical and mental capacities’; (4) Article 17 embodies the modern approach of mainstreaming and requiring the establishment and maintenance of sufficient and adequate institutions and services for the purposes of **education**; (5) although disability is not explicitly listed as a prohibited ground of discrimination under Article E, it is adequately covered by reference to ‘other status’; (6) Article E not only prohibits direct discrimination, but also indirect discrimination which 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; (7) the implementation of the Revised Charter requires parties to take practical action to give full effect to the rights recognised and when the achievement of any one of those rights is exceptionally complex and particularly expensive to resolve, a state party must take measures that allow it to achieve the objectives within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources; (8) the facts show that France has failed to achieve sufficient progress in advancing the provision of **education** for persons with autism; (9) the fact that the establishments specialising in the **education** and care of children with disabilities are not in general financed from the same budget as normal schools does not in itself amount to discrimination, since it is primarily for states themselves to decide on the modalities of funding; (10) nevertheless, the facts demonstrate that 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, and that there is a chronic shortage of care and support facilities for autistic adults; and (11) this situation constitutes a violation of Articles 15(1) and 17(1) whether alone or read in combination with Article E of the Revised Charter.