



THE RIGHT TO EDUCATION UNDER THE EUROPEAN SOCIAL CHARTER

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The European Social Charter complements the European Convention on Human Rights in the field of economic and social rights. It sets out rights and fundamental freedoms and establishes a supervisory mechanism based on collective complaints and state reports, guaranteeing their respect by states parties. It was recently revised and the 1996 Revised European Social Charter is gradually replacing the initial 1961 Charter. The Charter guarantees a wide range of rights; rights relating to housing, health, education, employment, social protection, movement of persons and non-discrimination.

The Charter (either the 1961 text or the 1996 revised text) has been signed by all 46 member states of the Council of Europe and ratified by 38.

The European Committee of Social Rights' (ECSR) function is to judge the conformity of the national law and practice with the Charter. Its 15 independent and impartial members are elected by the Council of Europe Committee of Ministers for a period of six years renewable once.

The Charter is a major European treaty on social rights which secures *inter alia* the right to education from primary to higher education and the right to vocational training through a range of provisions, i.e. Articles 9 (right to vocational guidance), 10 (right to vocational training), 15§1 (right to vocational training for persons with disabilities) and 17§1 (right of children to assistance, education, and training). It guarantees an accessible and effective primary and secondary education and vocational training system, as well equal access to higher education.

The assessment on the conformity of the national situations to these provisions is carried out in the reporting system through Conclusions which are published once per year (next Conclusions on provisions relating to education are due in

¹ This document is not binding on the ECSR.

2007 and 2008). One collective complaint, *Autism-Europe v. France* (Complaint No. 13/2002, decision on the merits of 4 November 2003) has dealt so far with the right to education of persons with autism. The ECSR found France in violation of Articles 15§1 (right to vocational training for persons with disabilities) and 17§1 (right of children to assistance, education, and training) whether alone or read in combination with Article E (non-discrimination) of the revised European Social Charter (see Appendix III for a summary of the complaint).

Free primary and secondary education

Article 17 of the Revised Charter includes a general right to education (in addition to Article 10, 15 etc). It requires states to establish and maintain an education system that is free of charge.

The Appendix provides that Article 17§2 does not imply that there is an obligation to provide compulsory education up to the age of 18. Nevertheless the ECSR considers that education should be compulsory for a reasonable period in general until the minimum age for admission to employment.

i) Accessible and effective education

The education system must also be both accessible and effective.

In assessing whether the system is effective the ECSR examines whether there is a functioning system of primary and secondary education, the number of children enrolled in school, the number of schools, class sizes, the teacher pupil ratio, and the system for training teachers. School drop out rates and the number of children who successfully complete compulsory education and secondary education must be monitored. Where there is a significant number of children dropping out of school or failing to successfully complete compulsory education, measures must be taken to improve the situation².

An effective system of education further requires the existence of a mechanism to monitor the quality of education delivered and to ensure a high quality of teaching.

Accessibility requires firstly that there is a fair geographical and regional distribution of schools (in particular as regards urban/rural areas). Secondly that the basic education system is free of charge; any hidden costs such as books, uniforms etc must be reasonable and assistance must be available to limit their impact on the most vulnerable groups. Thirdly equal access to education must be guaranteed for all children.

ii) Equal access to education for children from vulnerable groups

² Moldova and Romania have been found to be in violation of this provision due to the level of non-attendance at compulsory schooling (Conclusions 2003, Conclusions 2005).

Particular attention must be paid to ensure that vulnerable groups benefit from the right to education and have equal access; for example children from minorities, children seeking asylum, refugee children, children in hospital, children in care, pregnant teenagers, teenage mothers, and children in young offender institutions/serving custodial sentences. Where necessary equal access to education for these children should be guaranteed through special measures. However special measures for Roma children must not involve the establishment of separate/segregated schooling facilities³.

Vocational training and higher education

i) Professional guidance

According to Article 9, the right to vocational guidance must be guaranteed:

1. within the school system (information on training and access to training);
2. within the labour market (information on vocational training and retraining, career planning, etc).⁴

Vocational guidance is assessed on the basis of its functions, organisation, operation, total expenditure, number of the staff and of persons assisted⁵. Vocational guidance shall address in particular school-leavers, job-seekers and unemployed persons.⁶

Vocational guidance must be provided:

- free of charge;⁷
- by qualified (counsellors, psychologist and teachers)⁸ and sufficient staff;
- to a significant number of persons.

It shall also be adequately financed by the State: the information collected and the means used to disseminate them should allow as many people as possible to be reached.⁹

Equal treatment with respect to vocational guidance must be guaranteed to everyone, including non-nationals.¹⁰ According to the Appendix to the Charter, equality of treatment shall be provided to nationals of other Parties lawfully resident or regularly working on the territory of the Party concerned. This implies

³ See conclusion in respect of Slovenia (Conclusions 2005).

⁴ Conclusions XIV-2, Statement of Interpretation on Article 9, p. 55.

⁵ Conclusions XIV-2, Statement of Interpretation on Article 9, p. 55.

⁶ Conclusions I, Statement of Interpretation on Article 9, p. 53.

⁷ Conclusions XIV-2, Statement of Interpretation on Article 9, p. 55.

⁸ Conclusions XIV-2, Statement of Interpretation on Article 9, p. 55.

⁹ Conclusions XIV-2, Statement of Interpretation on Article 9, p. 56.

¹⁰ Conclusions XIV-2, Statement of Interpretation on Article 9, p. 58.

that no length of residence is required from students and trainees residing in any capacity, or having authority to reside in reason of their ties with persons lawfully residing, on the territory of the Party concerned before starting training. This does not apply to students and trainees who, without having the above-mentioned ties, entered the territory with the sole purpose of attending training. To this purpose, length of residence requirements or employment requirements and/or the application of the reciprocity clause are contrary to the provisions of the Charter.¹¹

Vocational guidance of persons with disabilities is dealt with under Article 15 of the Charter for countries having accepted both provisions.¹²

ii) Vocational training and higher education

In view of the current evolution of national systems, which consists in the blurring of the boundaries between education and training at all levels within the dimension of lifelong learning, the notion of vocational training of Article 10§1 covers: initial training - i.e. general and vocational secondary education - university and non-university higher education, and vocational training organised by other public or private actors, including continuing training – which is dealt with under Article 10§3 of the Charter. University and non-university higher education are considered to be vocational training as far as they provide students with the knowledge and skills necessary to exercise a profession.¹³

According to Article 10§1, the right to vocational training must be guaranteed to everyone.¹⁴ States must provide vocational training by:¹⁵

- ensuring general and vocational secondary education, university and non-university higher education; and other forms of vocational training;
- building bridges between secondary vocational education and university and non-university higher education;
- introducing mechanisms for the recognition/validation of knowledge and experience acquired in the context of training/working activity in order to achieve a qualification or to gain access to general, technical and university higher education;
- taking measures to make general secondary education and general higher education qualifications relevant from the perspective of professional integration in the job market;
- introducing mechanisms for the recognition of qualifications awarded by continuing vocational education and training.

¹¹ Conclusions XVI-2, Poland, pp. 632-633.

¹² Conclusions 2003, France, p. 127.

¹³ Conclusions 2003, France, p. 131.

¹⁴ Conclusions I, p. 55.

¹⁵ Conclusions 2003, France, p. 131.

Facilities other than financial assistance to students (which is dealt with under Article 10§4, see below) shall be granted to ease access to technical or university higher education based solely on individual aptitude.¹⁶ This obligation¹⁷ can be achieved namely by:

- avoiding that registration fees or other educational costs create financial obstacles for some candidates;
- setting up educational structures which facilitate the recognition of knowledge and experience, as well as the possibility of transferring from one type or level of education to another.

The main indicators¹⁸ of compliance include the existence of the education and training system, its total capacity (in particular, the ratio between training places and candidates), the total spending on education and training as a percentage of the GDP; the completion rate of young people enrolled in vocational training courses and of students enrolled in higher education; the employment rate of people who hold a higher-education qualification and the waiting-time for these people to get a first qualified job.

Equal treatment with respect to access to vocational training must be guaranteed to non-nationals.¹⁹ According to the Appendix to the Charter, equality of treatment shall be provided to nationals of other Parties lawfully resident or regularly working on the territory of the Party concerned. This implies that no length of residence is required from students and trainees residing in any capacity, or having authority to reside in reason of their ties with persons lawfully residing, on the territory of the Party concerned before starting training. This does not apply to students and trainees who, without having the above-mentioned ties, entered the territory with the sole purpose of attending training. To this purpose, length of residence requirements or employment requirements and/or the application of the reciprocity clause are contrary to the provisions of the Charter.²⁰

Vocational training of persons with disabilities is dealt with under Article 15 of the Charter for States having accepted Article 15.²¹

While paragraph 1 of Article 10 mainly deals with the right of access to vocational training and continuing vocational training, paragraph 5 focuses on complementary measures which are nonetheless fundamental to make access effective in practice. The list is non-exhaustive.

a reducing or abolishing any fees or charges;

¹⁶ Conclusions I, p. 55.

¹⁷ Conclusions 2003, France, p. 132.

¹⁸ Conclusions XIV-2, Statement of Interpretation on Article 10, p. 60 and Conclusions 2003.

¹⁹ Conclusions XIV-2, Statement of Interpretation on Article 10, p. 62.

²⁰ Conclusions 2003, Slovenia, p. 473.

²¹ Conclusions XIV-2, Statement of Interpretation on Article 10, p. 62.

States must ensure that vocational training, as defined in paragraph 1, is provided free of charge or that fees are reduced. Fees and contributions, however, shall not apply differently to non-nationals and States are under the obligation to guarantee equal treatment on the basis of the conditions mentioned under paragraph 1.²²

b granting financial assistance in appropriate cases;

Access to vocational training also covers the granting of financial assistance, whose importance is so great that the very existence of the right to vocational training may depend on it.²³ All issues concerning financial assistance for vocational training up to higher education, including allowances for training programmes in the context of the labour market policy,²⁴ are dealt with under Article 10§4.²⁵ States must provide financial assistance either universally, or subject to a means-test, or awarded on the basis of the merit. In any event, assistance should at least be available for those in need²⁶ and shall be adequate.²⁷ It may consist of scholarships or loans at preferential interest rates. The number of beneficiaries and the amount of financial assistance are also taken into consideration for assessing compliance with this provision.²⁸

Equal treatment with respect to financial assistance must be guaranteed to non-nationals on the basis of the conditions mentioned under paragraph 1.²⁹

iii) Apprentices

According to Article 10§2, young people have the right to access to apprenticeship and other training arrangements. Apprenticeship means training based on a contract between the young person and the employer, whereas other training arrangements can be based on such a contract, but also be school-based vocational training.³⁰ They both must combine theoretical and practical training and close ties must be maintained between training establishments and the working world.³¹

Apprenticeship is assessed on the basis of the following elements: length of the apprenticeship and division of time between practical and theoretical learning;

²² Conclusions XVI-2, United Kingdom, p. 941.

²³ Conclusions VIII, p. 136.

²⁴ Conclusions XVI-2, Slovak Republic, p. 773.

²⁵ Conclusions XIV-2, Statement of Interpretation on Article 10, p. 62.

²⁶ Conclusions XIII-1, Turkey, p. 242.

²⁷ Conclusion XVI-2, Slovak Republic, p. 772.

²⁸ Conclusions XIV-2, Ireland, p. 406.

²⁹ Conclusions 2003, Slovenia, p. 483.

³⁰ Conclusions XIV-2, Statement of Interpretation on Article 10, pp. 60-61 and Conclusions 2003, Sweden, p. 589.

³¹ Conclusions XIV-2, Statement of Interpretation on Article 10, pp. 60-61.

selection of apprentices; selection and training of trainers; remuneration of apprentices; termination of the apprenticeship contract.³²

The main indicators of compliance are the existence of apprenticeship and other training arrangements for young people, the number of people enrolled, the total spending, both public and private, on these types of training and the availability of places for all those seeking them.³³

Equal treatment with respect to access to apprenticeship and other training arrangements must be guaranteed to non-nationals on the basis of the conditions mentioned under paragraph 1.³⁴

The education of children with disabilities

The ECSR examines the right of children with disabilities to education under Article 15§1 where a Contracting Party has accepted this provision otherwise it examines their situation under Article 17³⁵.

The underlying idea behind Article 15 (right of persons with disabilities to independence, social integration and participation in the life of the community) is that persons with disabilities must enjoy full citizenship, and that their essential rights in this respect are “independence, social integration and participation in the life of the community”.³⁶

Article 15 embodies a new approach to disability: this is no longer seen in terms of the target group or individual problems, but as a question of citizenship affecting the whole community, which must remove the barriers and put an end to exclusion. It applies in respect of all disabilities: physical, mental and intellectual.

According to Article 15§1, all persons with disabilities have a right to education and training: general education, basic compulsory education and further education as well as vocational training in the traditional sense. Persons with disabilities (children, adolescents, adults) must be integrated into mainstream facilities; education and training must be made available within the framework of ordinary schemes and, only where this is not possible, through special facilities.

³² Conclusions XVI-2, Malta, p. 498.

³³ Conclusions XIV-2, Statement of Interpretation on Article 10, p. 61.

³⁴ Conclusions XIV-2, Statement of Interpretation on Article 10, p. 62 and Conclusions 2003, Slovenia, p. 473.

³⁵ Bulgaria has been held to be in breach of this provision as children with disabilities are often denied an effective right to education (Conclusions 2005).

³⁶ Conclusions 2003, Statement of Interpretation on Article 15, p. 10§5.

Lessons provided in mainstream schools and, if need be, in special schools must be adequate.³⁷ This means that in order to guarantee an equal and non-discriminatory treatment of persons with disabilities, mainstream and special schools must ensure adapted teaching. States must take measures (such as the support of teachers and the accessibility of premises) in order to enable integration and must demonstrate that tangible progress is being made in setting up education systems which exclude nobody.³⁸

Legislation should prohibit discrimination on the basis of disability in the field of education. Such legislation should, as a minimum, require compelling justification for special or segregated educational systems and confer an effective remedy on those who have been unlawfully excluded, segregated or otherwise denied an effective right to education.³⁹

In the case of *Autism Europe v. France*, Collective Complaint No. 13/2002 (see Appendix III for a summary), the applicant alleged there was insufficient education *inter alia* for children with autism in the mainstream and special schools. The ECSR, after reviewing all the evidence available to it, found a violation of Articles 15§1 and 17§1 (whether alone or in conjunction with Article E) on the grounds that France had failed to achieve sufficient progress in advancing the provision of education for children with autism.

³⁷ *Autism Europe v. France*, Complaint No. 13/2002, Decision on the merits of 4 November 2003, §48.

³⁸ Conclusions 2005, Cyprus, p. 96.

³⁹ Conclusions 2005, Cyprus, p. 96.

APPENDIX I

Please consult our web site to find further information on the monitoring procedure, reporting procedure and collective complaints procedure

www.coe.int

APPENDIX II

Provisions from the Charter and Revised Charter – Extracts

Article 9

Everyone has the right to appropriate facilities for vocational guidance with a view to helping him choose an occupation suited to his personal aptitude and interests.

With a view to ensuring the effective exercise of the right to vocational guidance, the Parties undertake to provide or promote, as necessary, a service which will assist all persons, including the handicapped, to solve problems related to occupational choice and progress, with due regard to the individual's characteristics and their relation to occupational opportunity: this assistance should be available free of charge, both to young persons, including schoolchildren, and to adults.

Article 10

Everyone has the right to appropriate facilities for vocational training

1. With a view to ensuring the effective exercise of the right to vocational training, the Parties undertake to provide or promote, as necessary, the technical and vocational training of all persons, including the handicapped, in consultation with employers' and workers' organisations, and to grant facilities for access to higher technical and university education, based solely on individual aptitude;

2. With a view to ensuring the effective exercise of the right to vocational training, the Parties undertake to provide or promote a system of apprenticeship and other systematic arrangements for training young boys and girls in their various employments;

3. With a view to ensuring the effective exercise of the right to vocational training, the Parties undertake to provide or promote, as necessary:

- a adequate and readily available training facilities for adult workers;
 - b special facilities for the re-training of adult workers needed as a result of technological development or new trends in employment;
4. With a view to ensuring the effective exercise of the right to vocational training, the Parties undertake to provide or promote, as necessary, special measures for the retraining and reintegration of the long-term unemployed;
5. With a view to ensuring the effective exercise of the right to vocational training, the Parties undertake to encourage the full utilisation of the facilities provided by appropriate measures such as:
- a reducing or abolishing any fees or charges;
 - b granting financial assistance in appropriate cases;
 - c including in the normal working hours time spent on supplementary training taken by the worker, at the request of his employer, during employment;
 - d ensuring, through adequate supervision, in consultation with the employers' and workers' organisations, the efficiency of apprenticeship and other training arrangements for young workers, and the adequate protection of young workers generally.

Article 15

Disabled persons have the right to independence, social integration and participation in the life of the community.

1. 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;
2. 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 promote their access to employment through all measures tending to encourage employers to hire and keep in employment persons with disabilities in the ordinary working environment and to adjust the working conditions to the needs of the disabled or, where this is not possible by reason of the disability, by arranging for or creating sheltered employment according to the level of disability. In certain cases, such measures may require recourse to specialised placement and support services;

3. 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 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.

Article 17

Children and young persons have the right to appropriate social, legal and economic protection.

1. 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:

- a 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;
- b to protect children and young persons against negligence, violence or exploitation;
- c to provide protection and special aid from the state for children and young persons temporarily or definitively deprived of their family's support;

2. 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 provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools.

Appendix: It is understood that this provision covers all persons below the age of 18 years, unless under the law applicable to the child majority is attained earlier, without prejudice to the other specific provisions provided by the Charter, particularly Article 7.

APPENDIX III

Collective Complaint Autism-Europe v. France Summary of decisions

<u>Originating Body</u>	EUROPEAN COMMITTEE OF SOCIAL RIGHTS
<u>Decision</u>	
Type	Decision on the admissibility
Date	12/12/2002
Importance level	1*
Conclusion	Admissible
Separate Opinion	No
Published in	Collective Complaint Procedure: Decisions on the Admissibility, Volume 1 (1998 - 2003)
<u>Complaint</u>	
Title	Autism-Europe v. France
Number	13/2002
Respondent State	FRANCE
Date of registration	26/07/2002
Articles	15§1, 17§1, E
<u>Other information</u>	
ECHR Case-law	
ECSR Case-law	
Other sources	
Keywords	Statute, particular competence

NOTICE

The conditions of admissibility laid down in the Protocol and in the rules of procedure are fulfilled:

- a) The complaint is
 - lodged in writing
 - indicates in what respect the complainant organisation considers that the Charter is not respected
 - concerns a provision accepted by the respondent state

- b) The complaint
 - emanates from an NGO on the list
 - is signed by a person entitled to represent the NGO
 - concerns a field in which the NGO has a particular competence

The Committee observes from the Statute of the organisation that Autism-Europe has particular competence in respect of the Complaint.

* 1 – 3 importance levels:

- 1 – High importance: new case-law or decisions which make a significant contribution to the clarification or modification of the case-law
- 2 – Medium importance: Decisions which do not make a significant contribution to the case-law but nevertheless do not merely apply existing case-law
- 3 – Low importance: decisions with little legal interest

<u>Originating Body</u>	EUROPEAN COMMITTEE OF SOCIAL RIGHTS
<u>Decision</u>	
Type	Decision on the merits
Date	04/11/2003
Importance level	1*
Conclusion	Violation: Article 15§1 and Article 17§1
Separate Opinion	Yes
Published in	Collective Complaint Procedure: Decisions on the Merits, Volume 2 (2001-2003)

<u>Complaint</u>	
Title	Autism-Europe (IAAE) v. France
Number	13/2002
Respondent State	FRANCE
Date of registration	26/07/2002
Articles	15§1, 17§1, E
<u>Other information</u>	
ECHR Case-law	Thlimmenos c. Grèce [GC}, n° 34369/97, CEDH 2000-IV,§44
ECSR Case-law	
Other sources	
Keywords	Discrimination, non-discrimination, children, autism, schools, right to education, placements, specialised institutions, equal, citizenship, disabilities, integration, social integration, participation, mainstreaming, other status

NOTICE

Education, care and support facilities for autistic children and adults.

In the context of the case, Articles 15§1, 17§1 and E are so intertwined as to be inseparable. The underlying vision of Article 15 is one of equal citizenship for persons with disabilities, which means they have the right to “independence, social integration and participation in the life of the community”. Securing a right to education for children and others with disabilities plays an obviously important role in advancing these citizenship rights. Article 17§1 guarantees the right to education for all children, which implies the establishments and maintenance of sufficient and adequate institutions and services for the purpose of education. Since Article 17§1 deals only with children and young persons it must be read in conjunction with Article 15§1 as far as adults are concerned.

Article E on non-discrimination does not constitute an autonomous right, but its function is to secure the equal effective enjoyment of the various substantive rights contained in the Charter. Although disability is not listed as a prohibited ground of discrimination under Article E, it is adequately covered by the reference to “other status”. Non-discrimination means treating equals equally and unequals unequally. Article E prohibits not only direct discrimination but also all forms of indirect discrimination. Such indirect

* 1 – 3 importance levels:

- 1 – High importance: new case-law or decisions which make a significant contribution to the clarification or modification of the case-law
- 2 – Medium importance: Decisions which do not make a significant contribution to the case-law but nevertheless do not merely apply existing case-law
- 3 – Low importance: decisions with little legal interest

discrimination may arise by failing to take adequate steps to ensure the rights and collective advantages that are open to all are genuinely accessible by and to all.

The Charter requires the State Parties to take not merely legal action but also practical action to give full effect to the rights recognized therein. 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.

France has failed to achieve sufficient progress in advancing the provision of education for persons with autism. Whether a broad or narrow definition of autism is adopted, 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. It is established that there is a chronic shortage of care and support facilities for autistic adults. (11 votes to two).