



30.11.2018

NOTICE TO MEMBERS

Subject: Petition No 0371/2018 by J.G. (Spanish), on behalf of APICO (the Spanish association for integrating disabled children in regular schools), on inclusive education for children with special needs

1. Summary of petition

The petitioner calls for disabled children to receive schooling in regular schools, and, more specifically, he criticises the case in which 8 young people were excluded from a vocational training school, and calls for them to be reintegrated and for their educational needs to be taken into account.

2. Admissibility

Declared admissible on 29 August 2018. Information requested from Commission under Rule 216(6).

3. Commission reply, received on 30 November 2018

The Commission's observations

Children with disabilities need to be appropriately integrated into the general education system and provided with individual support in the best interest of the child.

The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) is a legally binding international human rights instrument to which the EU and its Member States, including Spain, are parties. Article 24 of the UNCRPD¹ requires States Parties to protect and safeguard all human rights and fundamental freedoms of persons with disabilities including access to education. In particular, Article 24.2 clearly states that “States Parties shall ensure

¹ <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-24-education.html>

that persons with disabilities are not excluded from the general education system on the basis of disability”.

The "European Disability Strategy 2010-2020: A renewed commitment to a barrier-free Europe"¹ promotes inclusive education and lifelong learning for pupils and students with disabilities. With full respect for the responsibility of Member States for the content of teaching and the organisation of education systems, EU action supports national efforts through ET 2020, the strategic framework for European cooperation in education and training. Its aim is to remove legal and organisational barriers for people with disabilities to general education and lifelong learning systems.

However, the legal competence for eliminating barriers is in the hands of the competent national authorities. The Commission employs the Method of Open Coordination under the European Semester to draw the attention of Spanish authorities to the much higher than the EU average early school leavers' rate for people with disabilities and to the much lower than the EU average tertiary education attainment rate for people with disabilities in Spain.²

In case the regional Ministry of Education ("*Consejería*") of Andalucía is not responding to this complaint, the petitioner is recommended to launch an appeal with the Ombudsman of the Autonomous Community of Andalucía ("*Defensor del Pueblo Andaluz*")³, or with the National Ombudsman ("*Defensor del Pueblo de España*")⁴, both of which are responsible for defending the fundamental rights and public liberties of citizens by supervising the activity of public administrations.

Moreover, Spain has not only ratified the UNCRPD, but also its' Optional Protocol. This means that if an individual or groups of individuals claim to be victims of a violation of the provisions of the Convention by a State Party, complaints may also be made, under certain conditions, before the "Committee on the Rights of Persons with Disabilities". These conditions include, in particular, that all available domestic remedies must have been exhausted⁵. Further information can be found on the website of the United Nations Office of the High Commissioner of Human Rights (OHCHR)⁶.

Conclusion

The Commission will continue to monitor the inclusiveness of the Spanish education system, in particular by means of the European Semester process, in order to support and improve the access to education for children with special needs.

¹ COM(2010)0636 final of 15.11.2010. Available at:

<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0636:FIN:en:PDF>

² The Country Report 2018 for Spain: The early school leavers' rate increases to 39 % for people with disabilities in 2016, being among the highest rate in the EU. The tertiary education attainment gap between people with and without disabilities is 19.9 pps. versus an EU average of 13.6 pps.

³ <http://www.defensordelpuebloandaluz.es/>

⁴ <https://www.defensordelpueblo.es/>

⁵ Article 1 and 2 of the Optional Protocol, <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/optional-protocol-to-the-convention-on-the-rights-of-persons-with-disabilities.html>

⁶ <http://www.ohchr.org/EN/Issues/Disability/Pages/DisabilityIndex.aspx>