

MonitoringAusschuss

Unabhängiger Monitoringausschuss zur Umsetzung der UN-Konvention
über die Rechte von Menschen mit Behinderungen



Report for the preparation of a General Comment on Article 27 of the CRPD (the right to work and employment)

Preamble

The Independent Monitoring Committee welcomes the preparation of a General Comment on Article 27 and would like to use the opportunity to contribute to its development in response to the request for written submissions. In doing so, it will focus, according to its purpose, on current challenges and, in addition, refer to good practice contributions and concepts from within civil society.

1. Introduction

No statements

2. Normative content

a. **Legal analysis and links to the general principles of the Convention: the right to work and employment as a fundamental and transversal human right**

II. workplace segregation

The Republic of Austria has to date neglected to bring discriminatory legislation regarding work and employment of persons with disabilities into conformity with the CRPD's requirements. Legislators still distinguish between persons genuinely considered as "fit to work" and persons genuinely considered "unfit to work". Persons with disabilities with high support needs as well as with intellectual disabilities are assessed based on deficit-oriented parameters and from their 18th year onwards frequently declassified as "unfit to work". This (de)classification has far-reaching consequences: persons considered "unfit to work" are excluded from (further) training and education offered by the Labour Market Service (the very organisation tasked by the Ministry of Labour to operationally combat unemployment). Overall, this declassification results in the Ministry of Labour not being responsible for the employment situation of this group. The obligation moves, based on the distribution of competences, to the so called "Disability Supports" of the states or alternatively to the department of the Minister of Social Affairs.

III. Interpretation of article 27 (b): The right to equal remuneration for work of equal value

As already outlined at the start, many people with learning difficulties or high support needs are structurally excluded from the so-called first labour market. About 27,000 persons across the entire country are based in 'day-structuring' programmes in institutions run by the Disability Support and work predominantly in sheltered workshops. Since they are considered unfit to work,

they do not receive a salary but receive (varying, depending on the State/service provider) some sort of ‘pocket money’ or a ‘performance bonus’ and are furthermore not entitled to individual social security or pension schemes.

IV. Interpretation of article 27 (b) part II: Applying health and safety considerations in a non-discriminatory way

Problems in the context of reasonable accommodations exist especially in the context of legal claims. The Disability Employment Act (Behinderteneinstellungsgesetz, BEinstG) makes provisions for an open-ended list of measures, however employers are not sufficiently obligated to provide these and neither the employer nor the employee have a legal claim for reimbursement by the Ministry for Social Affairs. Furthermore, persons have to be declared as ‘registered disabled persons’ to have these entitlements. The relevant declaration is based on a medical assessment, focusing on deficit-oriented functional impairments. In addition to this, an enterprise can claim that it is ‘economically unbearable’ for them to provide reasonable accommodations for employees with disabilities.

V. Interpretation of article 27 (b) part III: Measures to eliminate discriminatory attitudes and harassment, particularly against women, migrants and refugees with disabilities

b) Specific measures to eliminate discriminatory attitudes and harassment against women, migrants and refugees with disabilities

The Monitoring Committee is not aware of any specific measures in this context. We cannot make any valid statements because of the unclear data situation and insufficient data collection. The situation in the individual States presents itself as very diverse, as they also strongly differentiate here based on residence permits.¹

VI. Interpretation of article 27 (c): Labour and trade union rights on an equal basis with others

Persons with disabilities are heavily underrepresented in unions. The subject of persons with disabilities is therefore predominantly presented from the perspective of professional caregivers. On a business level, the Federal Employment Act stipulates Disabled Persons Representatives, which are to attend the works meetings in an advisory function.

While the Working Hours Act envisages for registered disabled persons the option of additional leave, there is no legal entitlement to this either.

In the sheltered workshops of the Disability Assistance, there is recently an increasing tendency to establish so called ‘Workshop Boards’, however, they lack in many states a legal basis and established, autonomous support structures.

¹ In some States refugees with disabilities only have an entitlement to benefits when their asylum status has been recognised. In several States they have this claim where fulfilling the status of subsidiary protection. The so-called Disability Assistance of the States is generally only then obliged to provide benefits, when de jure equality with citizens has been established. Especially with ongoing asylum procedures – which as is generally known can take years in Austria – it becomes clear that there is no consideration of the concerns of refugees with disabilities.

VII. Interpretation of article 27 (d) and (j): Access to inclusive education and inclusive vocational training

Austria is characterised by a high degree of formalised acquisition of education. This field is still lacking a diverse, inclusive educational offering. A lack of architectural, infrastructural, organisational and communicational accessibility plays a big part in this context.

While there is the option of support and use of aids in many parts of the tertiary education sector, there is no legal entitlement in most cases. Universities are outsourced in Austria and independent from the Ministry of Science and students are therefore dependent on the relevant university's stance on their provision. There is no statutory equality plan for students with disabilities or chronic diseases in analogy to the Women's Equality Plan. The Monitoring Committee encourages in this regard to accelerate the establishment of an equality plan.

VIII. Interpretation of article 27 (f): Self-employment, microfinance, business development services

Self-employment is only playing a minor role for persons with disabilities in Austria. There is the rate advisory service or start-up subsidy for persons with disabilities who want to take the step into self-employment.

X. Interpretation of article 27 (h): Affirmative action programs and special attention to persons with disabilities who are particularly excluded from the labour market

In Austria persons can get attested the status of 'unfitness to work' (see above). This statement differs depending on the field it applies to, and therefore has to be done several times by people. With the status of unfitness to work, people lose entitlements to measures supporting inclusion (training and (further) education) in the first labour market.

The Federal Employment Act (Bundeseinstellungsgesetz) envisions an obligation to employ persons with disabilities proportionate to the overall labour force. Where this obligation is not met, a Compensation Tax is collected from the relevant businesses. These 'penalty payments' are added to a fund which again funds support measures for persons with disabilities. The Compensation Tax is based on the concept of 'registered disabled persons' and therefore a medical assessment. The foundation of membership in the group of 'registered disabled persons' is a rating of the disability of minimum 50%. Quotas in conformity with the CRPD have to be based on a social model.

A consequence of the quota regulation is that persons with disabilities who have not been ascribed a sufficient degree of disability, face increased difficulties with employment services, as they do not contribute to the fulfillment of the quota and are therefore rejected more frequently. Furthermore, persons without a degree of disability of 50% are not eligible for potential financial supports for workplace design and adaptations or fixed time subsidies for incidental wage costs.

XI. Interpretation of article 27 (i): The obligation to provide reasonable accommodation in the workplace and the denial of reasonable accommodation as a form of disability-discrimination, including in recruitment processes

Caused by the distribution of powers between the Federal State and the States and the allocation of the matters of persons with disabilities to the States, there are high differences in terms of standards and support systems regarding reasonable accommodation: not every State offers personal assistance and in those offering it, this frequently does not apply to all persons with disabilities (very often persons with or psychosocial disabilities are not covered by the assistance). The basis for support services is up until today a deficit-oriented image of persons with disabilities.

XIII. Interpretation of 27 (2) forced or compulsory labour

De facto there is no forced labour for persons with disabilities in Austria, which would lead to exploitations and entail a profit motivation. Based on the extensive relationships of dependence, it can however come to such compulsory-like situations. This can be especially the case where guardians do not act in accordance with their clients. The legal reform of the guardianship system is in this regard de jure a clear improvement, as guardians are less frequently tasked, have to act based on the wishes of the person concerned where they are in charge and as legal steps can be taken where they are not representing the person appropriately. A lot hinges however on the to date insufficient implementation of the Adult Protection Act (Erwachsenenschutzgesetz) and the independent access to information regarding legal options. Especially regarding this access to information, it is lacking in comprehensive, nationwide peer counselling services for persons in sheltered workshops.

Summary

Important points regarding the implementation of Article 27 arise in Austria especially regarding the attribution and assessment of fitness to work. This and many other measures and supports are based on medical rather than means-tested assessments. Requests for assistive devices are not always covered by a legal claim but depend on various parameters, which are not directly depending on the needs of persons with disabilities.

Apart from the Federal Employment Act, persons with disabilities are not systemically represented. Lobbies for and with persons with disabilities are usually seen as additional measures, without equating them legally with existing representative bodies or safeguarding them.

Generally, the data situation regarding persons with disabilities is insufficient. Existing data is collected based on the medical model (legal basis of the Disability Assistance in Austria).