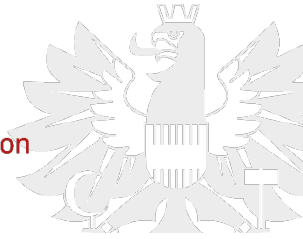


MonitoringAusschuss

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



2023

Monitoring Report for the UN Committee on the Rights of Persons with Disabilities on the Occasion of the Second Constructive Dialogue with Austria

Independent Monitoring Committee of the Republic of Austria

I. Introduction

The Independent Monitoring Committee thanks the UN Committee for its dedicated work on the rights of persons with disabilities. It appreciates the consideration of the present report and its inclusion in the second constructive dialogue with Austria.

The first State Review took place in October 2013. It resulted in numerous Concluding Observations and Recommendations by the UN Committee which were very helpful and relevant for Austria.

The structure of the current monitoring report builds on the guidelines of the UN Committee regarding reporting submitted by State parties. As an Appendix to the main body of the report, which is guided by the list of issues as well as the recommendations from 2013, there is the special report on education, with a focus on the implementation of Article 24 CRPD in Austria.

II. Implementation in Detail

A. Purpose and general obligations (Articles 1 – 4)

Recommendations, CRPD/C/AUT/CO/1: paragraphs 8 and 9

List of Issues 2018, CRPD/C/AUT/QPR/2-3: question 1

The UN Committee's Recommendation in 2013 regarding the **amendment of relevant laws**, to bring them in accordance with the CRPD, **was not clearly implemented** at a nationwide level. The amendment of Austrian legislation is exacerbated by Austria's **federal system**. As is known, there are apart from federal legislation nine – depending on the State – differing legislative frameworks, which regulate the rights and entitlements of persons with disabilities in different ways. A harmonization in the shape of a **federal-State-agreement according to Article 15a of the Constitution** is not intended for most areas of regulation.

The Independent Monitoring Committee's recommendation:

- Continued **harmonization** of Austrian legislation with the **UN CRPD**.

Article 1 CRPD

List of Issues 2018, CRPD/C/AUT/QPR/2-3: question 2

The social or **human rights model of disability** has received **increasing resonance** in the public, politics and research. The current **National Disability Action Plan 2022-2030** also includes such measures.

However, the **paradigm change** from the medical to the human rights model of disability **has not yet happened** in several important areas, such as medicine, in particular in the context of benefits or in legislation. For instance, the **Assessment Regulation**, which determines the existence of a disability regarding the status as Registered Disabled Employee in the context of the Disability Employment Act, continues in essence to build on the **medical model**.

The **legal definitions in §3 Disability Employment Act and §3 Act on the Equalization of Persons with Disabilities** only partially meet the definition of Article 1 CRPD. The aspect of interdependency with external barriers is missing entirely. Furthermore, a **unified, CRPD-based definition of disability** is missing in the relevant federal acts as well as the States' participation and disability acts. Several State laws, such as the Upper Austrian Equal Opportunities Act, still use the terminology 'Persons with Impairments' which reflects the medical model. The Salzburg Participation Act and the Tyrolian Participation Act however incorporated non-discriminatory terminology based on the human rights model.

The Independent Monitoring Committee's recommendations:

- Comprehensive implementation of the human rights model of disability within the **Austrian legal system** (federal and State law),
- Consultation of the **human rights model** in the **context of benefits** for persons with disabilities
- Holistic and long-term awareness-raising focused **public relations work and continuous training of relevant professions**

List of Issues 2018, CRPD/C/AUT/QPR/2-3: question 3

The Ministry of Social Affairs tendered the **evaluation of the 1. National Action Plan 2012-2020** in 2019. The evaluation was carried out by the university of Vienna. They concluded that the funding had had bad starting conditions because of the funding reservation of cost neutrality by the Ministry of Finance. The intended measures of the **NAP Disability (2012-2020)** were **financially under-resourced**, funding generally **untransparent**.

The Austrian Federal Government approved the **2. National Disability Action Plan 2022-2030** on 6th July 2022.

Regarding the funding of NAP Disability (2022-2030), the “**department principle**” and the **funding via State budgets** appear problematic and sufficient funding is again not guaranteed. Actual ringfencing for measures would have significantly facilitated the implementation. For this reason, the Independent Monitoring Committee had supported the resolution by the Federal Disability Advisory Board from 19th January 2022 regarding the funding through a **special budget** or the establishment of an **Inclusion Fund**, especially for cross-departmental and cross-State measures. Only the investigation of the establishment of an Inclusion Fund was included as a standalone measure in **NAP (2022-2030)**.

The Independent Monitoring Committee's recommendations:

- **Transparent and sufficient funding of NAP Disability (2022-2030)**
- **Establishment of an Inclusion Fund**

Article 4 CRPD

Recommendation, CRPD/C/AUT/CO/1: paragraph 11

List of Issues 2018, CRPD/C/AUT/QPR/2-3: question 4

Participation and involvement of persons with disabilities and their organisations in (legislative) decision-making processes and the implementation of legislation and measures happens only – if at all – **selectively**. This became particularly clear during the

Covid-19 pandemic. Persons with disabilities and their representatives were included only late, and frequently following complaints, in **crisis** and advisory **committees**.

Positively to be noted is the participative development of the 2nd Protection of Adults Law from 2016 by the Ministry of Justice with direct involvement of self-advocates. However, this innovative legislative process has remained a **singular event**.

When developing the new **NAP Disability (2022-2030)**, representative organisations were more included. However, transparency was missing in how far and which form recommendations and suggestions were picked up on.

At an organizational level, there are for that matter no dedicated representative organisations for children and youth with disabilities.

The Independent Monitoring Committee's recommendation:

- Ensure the **comprehensive participation of persons with disabilities and their representative organisations**

Recommendations, CRPD/C/AUT/CO/1: paragraphs 6-7

List of Issues 2018, CRPD/C/AUT/QPR/2-3: question 5

As the CRPD's first German translation did not align with the authentic treaty text in essential elements, the CRPD Committee recommended a revision on the occasion of the first Austrian State Review in 2013.

As an immediate reaction to this, the Ministry for Europe, Integration and External Affairs (BMEIA) established a **participatory working group** with the involvement of the Ministry of Social Affairs, the Independent Monitoring Committee, and several NGOs from within the disability space. An **error correction of the German translation** was developed as part of a multi-annual process. In 2016, the **CRPD was announced again in a revised Austrian translation** (BGBl III 20167105). Despite efforts from Austria, the State Parties Germany, Switzerland and the EU could not be convinced to adopt the revised version. This has resulted in a different German version published in the Official Journal of the EU.

After extensive awareness raising by the NGOs involved, the Ministry of Social Affairs also commissioned the revision of the **easy-to-read version of the CRPD**. The new version of the CRPD in easy to read was co-developed with self-advocates and published in 2019.

The Independent Monitoring Committee's recommendation:

- **Unified German translation of the CRPD** in all German-speaking State Parties and the EU

B. Specific rights (Articles 5 – 30)

Article 5 CRPD

Recommendation, CRPD/C/AUT/CO/1: paragraphs 12-15

List of Issues 2018, CRPD/C/AUT/QPR/2-3: questions 6 – 8

The Inclusion Package (Federal Law Gazette I 2017/155) brought about several improvements regarding non-discrimination of persons with disabilities in Austria. An **injunctive relief in the case of harassment** was included in the Act on the Equalization of Persons with Disabilities (BGStG). **Collective action** in the BGStG was **strengthened by expanding the number of institutions with legal standing by the Office of the Federal Disability Ombudsman and ‘Klagsverband zur Durchsetzung der Rechte von Diskriminierungsopfern’** (Litigation Association of NGOs Against Discrimination). **Injunctive relief or removal claims** can now be granted against **large capital companies and insurances**. In all other cases a declaratory action claim is possible.

The current **NAP Disability (2022-20230)** also includes several recommendations for improvement. For instance, it plans the **expansion of injunctive relief and removal claims in the BGStG**. Furthermore, the **expansion of collective action to the Disability Employment Act** shall be examined. **Legal and de facto measures** to strengthen current structures to deal with cases **of multiple discrimination** have however **not been implemented**. The sensitization of the judiciary regarding multiple discrimination continues to be low. This can be seen in the low calculation of compensation for multiple discrimination. NAP Disability (2022-2030) envisions sensibilization and training for members of the judiciary in this context. **Overall, it must be noted: the Act on the Equalization of Persons with Disabilities has not been comprehensively improved**. The fragmentation of legislation and problems resulting in enforcement, in particular in cases of intersectional or multiple discrimination, continues to exist, as well as the varying levels of protection in federal and State acts. The **goals and measures of the NAP Disability (2022-2030)** are in some parts **not coherent** and framed **too vaguely**.

The Independent Monitoring Committee’s recommendations:

- Expansion of **injunctive relief and removal claims in BGStG**
- **Statutory expansion of collective action to the BEinstG and ensuring the financial resourcing of organisations with legal standing for collective action**
- Implementation of **sensibilisation and training measures** to strengthen **protection from discrimination in cases of multiple discrimination**

- **Levelling up** in non-discrimination law through **legal adjustment of different protection levels** of persons experiencing discrimination

Article 6 CRPD

Recommendation, CRPD/C/AUT/CO/1: paragraphs 16-18

List of Issues 2018, CRPD/C/AUT/QPR/2-3: questions 9-11

The CRPD Committee's recommendations from 2013 to ensure **equality and prevention of multiple discrimination of women and girls with disabilities** has, the Independent Monitoring Committee's perspective, **not been sufficiently implemented**. There are occasional initiatives with the aim to prevent multiple discrimination of girls and women with disabilities and to raise awareness. A systematic and comprehensive reappraisal of the recommendation has not happened since the last State review.

A study regarding the experiences of violence of persons with disabilities, which was commissioned by the Ministry of Social Affairs in 2017, shows clearly **that women with disabilities are affected to a high extent by violence over the course of their lives** – in particular psychological violence. Women with higher support needs are to be seen as particularly at risk.

Furthermore, **valid data regarding the situation of women and girls with disabilities** is missing. It is important to collect systematic data to assess the current situation of women and girls with disabilities and implement adequate measures.

In the current **NAP Disability (2022-2030) poverty in older age of women with disabilities should be significantly reduced and every victim protection, advisory and health service made fully accessible** and undergo needs-based expansions. However, **accessible access to victim protection and advisory centres** for women and girls with disabilities is still lacking. **Easy access offerings in plain language as well as peer counsellors in counselling centres are missing especially in rural areas.**

Furthermore, it must be added, that despite several implemented measures and support systems women with disabilities continue to be confronted with **big obstacles and discrimination at the labour market**. Ongoing reviews and improvement of these measures as well as the promotion of an inclusive and accessible labour market are essential to improve the employment situation of women with disabilities.

The Independent Monitoring Committee's recommendations:

- Expansion of **accessible victim protection and advisory services across Austria**

- Systematic **data collection** and **measures for inclusion of women with disabilities at the labour market**
- Expansion and funding of **empowerment and protection against violence seminars for women and girls with disabilities**

Article 7 CRPD

Recommendation, CRPD/C/AUT/CO/1: paragraphs 19-20

List of Issues 2018, CRPD/C/AUT/QPR/2-3: questions 12-14

Many legal matters impacting children and youth with disabilities are subject to division of powers between federal and State authorities in Austria. Especially those **areas** for children and youth with disabilities which are State competency, **such as personal assistance, assistive devices, etc show differing levels of services and quality standards.**

Since 2020 children and youth aid falls under the sole regulatory competence of the States. There are at **times large differences in quality in socio-pedagogic or therapeutic services.** Furthermore, children and youth with disabilities are often not considered as an autonomous target group in children's and youth welfare. In cases of **placement in care**, they are not placed in children's and youth institutions but **in 'disability aid' institutions.** This is explained with the **lack of accessibility (of buildings) in institutions of children and youth and qualified support staff.** 'Disability aid' institutions are mostly targeted for adults with disabilities and therefore not for the needs of children and youth with disabilities. The Independent Monitoring Committee notes generally with concern the absence of a coherent deinstitutionalization strategy and that remainder with the family cannot be ensured because of **insufficient support systems and family-centred services.** The current NAP Disability (2022-2030) does not reach far enough here either.

The Independent Monitoring Committee's recommendations:

- **Harmonisation of service catalogues and consistent quality standards** in State offerings
- **Inclusion of children and youth with disabilities in children and youth aid** and staff training

Article 8 CRPD

Recommendation, CRPD/C/AUT/CO/1: paragraphs 21-22

List of Issues 2018, CRPD/C/AUT/QPR/2-3: questions 15-16

Currently there are **no measures** taken to publish the General Comment. On the Ministry of Social Affairs' website there are links to the English version on the CRPD Committee's website as well as to the German translation by the German Ministry of Social Affairs.

§97 para1 N2 StGB continues to remain in force. It **cannot be determined** if **stigmatization** has increased because of this. Finally, it has been reported that **childcare places for children with disabilities are missing**, making the situation of families with children with disabilities seem precarious. **Sexual education** of women and girls with disabilities is also **inadequate**. The Independent Monitoring Committee has access to reports that women with disabilities are repeatedly prescribed contraception without sufficient medical information. Isolated projects, such as education materials in sign language, attempt to create access, are however not widely known.

A nationwide campaign **to improve the image of persons with disabilities** is missing.

Overall, the **medical model dominates** in Austria.

The Independent Monitoring Committee's recommendations:

- **Nationwide information campaigns** regarding the **CRPD** and the **General Comments**
- **Inclusive campaigns**, which show persons with disabilities as a part of society
- **Guaranteed support of families with children with disabilities**

Article 9 CRPD

Recommendations, CRPD/C/AUT/CO/1: paragraphs 23-26

List of Issues 2018, CRPD/C/AUT/QPR/2-3: questions 17-22

The degree of accessibility varies and ranges from a high degree of implementation by some federal agencies to partially implemented or unsuitable individual measures by many communities. The same applies to the field of education and educational institutions.

It becomes evident that the **staged plans of the Act on the Equalization of Persons with Disabilities (BGStG) for federal buildings** is currently the most effective instrument to implement accessibility. Independent control and a focus on all persons with disabilities is however missing. Such staged plans are also missing at a **State and local level**. An expansion of the staged plans requires new **binding assessment criteria, including corresponding sanctions** (e.g. disadvantages in financial compensation in the case of non-fulfilment).

The **biggest flaws** of uncoordinated measures become visible with **health and social services**. Within **larger health services and in State hospitals the degree of implementation is high**, however very **low** amongst **other** health service providers (e.g., specialist healthcare providers, specialist doctors, GPs) and in smaller establishments. For instance, there is no accessible mammography screening option to receive cancer screening for women who use a wheelchair.

Within **housing**, the building regulations at State level have since been harmonized with the OIB-guidelines. However, only some State capitals have experts and expert advice for this. The biggest challenges pose the **adaptation measures of substandard** in existing buildings. There is neither a federal concept nor staged plans or monitoring. Accessibility is only occasionally stipulated in **social housing (council flats)**. Tenants with disabilities need to cover **adaptations of non-accessible and new adaptable flats** themselves. Public subsidies have not been increased in 18 years. Landlords are not obliged to cover the costs. **Stagnation** in the implementation of accessibility must be noted especially for **public services, public infrastructure in existing buildings or institutions of social life**. For instance, less than 4% of public sanitary facilities are State of the art accessible.

With 90% **accessible infrastructure and public transport**, the record for **State capitals is positive**. **Supra-regionally** the implementation is **fair to middling**. It ranges from exemplary offering (e.g., more than 50% accessible regional train stations) to the complete absence of accessible public transport in the majority of the 17,000 rural regions. Approximately **1,600 of the 2,093 municipalities cannot be reached on an equal accessible basis by public transport**. This represents the gravest **failure in implementation by the States and municipalities**. A coordinated approach between States is missing in the implementation of accessibility for pedestrians, at stops and transport hubs. Furthermore, several regulations by the State-run **Research Centre Rail, Traffic (FSV)** do not represent State of the art, whereby comprehensive accessibility for everyone fails.

As the monitoring of **public websites and features** is undertaken according to EU Regulation 2016/2102 with precise assessment criteria by the Research Promotion Agency (FFG), there are detailed results and good comparative data. Mostly, **less than 50% of the criteria by the Web Content Accessibility Guidelines are met**. Text-based content and suitable captchas are missing. As accessible usability is not an assessment criterion, it must be assumed that only a quarter of all websites and apps are compliant.

There is a lack of **sign language interpreters**, several universities have however created additional **educational offerings** for sign language interpretation. The actual **demand of deaf people** can however not be met by far due to the cap on funding. Generally, it must be noted that reference to implementation strategies for **universal design and accessibility** content is missing in the **universities' curricula**, especially for engineers, designers,

architects, or programmers. The topic is predominantly advanced by committed individuals (e.g., professors, department heads). New is the inclusion of the topic in civil engineering exams.

Accessibility as a topic continues to **not be consistently considered in public procurement**. The **Public Procurement Act** regulates that accessibility criteria have to be considered in public procurement. However, **substantiation and obligation** are missing. Similar critique must be voiced regarding the **Accessibility Bill** (expected to enter into force in 2025) based on the Regulation (EU) 2019/882 (EEA).

The Independent Monitoring Committee's recommendations:

- Binding **staged plan models** to implement accessible usability at **municipality, State and federal level** including new **assessment and procurement criteria** and **sanctions** as well as the abolishment of exceptions
- **Updating the staged plan for public transport**, in particular expansion of regional transport offering (collecting bus); accessible usability as a compulsory criterion with possibility for regress
- Implementation of **accessible health services** and all existing **services** with commercial time limits for staged plans and sanctions
- Establishment of **subsidized funding models for accessible social housing, cost coverage** of accessibility adaptation needs
- Swift **fulfilment of EU requirements** regarding professional training, further training duties, expert advice 'accessibility', including development of guidelines according to the Standardisation Act: public infrastructure, fire and civil protection

Article 11 CRPD

Recommendation, CRPD/C/AUT/CO/1: paragraphs 25-26

List of Issues 2018, CRPD/C/AUT/QPR/2-3: questions 23-24

The intake and catering for refugees with disabilities is insufficient in Austria and varies depending on the State. **Accessible, inclusive asylum accommodation and services are missing** especially for unaccompanied children and youth with disabilities. Chronic illness, trauma and especially invisible **disabilities** are **not being routinely captured** during initial reception.

Emergency and disaster plans do not include federal-level and systematic precautions to be able to accommodate the specific requirements of persons with disabilities without losing time or resources. Furthermore, the **data situation is insufficient**. Disaster

information systems are **not accessible throughout**, **information** is only in some cases available in **plain language**.

The **systematic involvement** of persons with disabilities in **international humanitarian aid** has **not yet happened**. They are mentioned in the Guideline on Humanitarian Aid (2007) but there is no obligation of an inclusive design. Austria has not yet endorsed the Charter on Inclusion of Persons with Disabilities in Humanitarian Action.

The Independent Monitoring Committee's recommendations:

- **Inclusive asylum system/ refugee support:** Training and networking of authorities and institutions
- **Accessible registration and accommodation** under consideration of family networks and support persons
- Central **registration system for standardised recording** of refugees with disabilities
- Access to **disability services** for refugees with disabilities
- **Systematic involvement of persons with disabilities**, representative organisations and all regional authorities in the development, evaluation and training for disaster protection and prevention (including fire protection, evacuation plans) for accessible and inclusive risk management as well as comprehensive **data collection**
- **Accessible design of every information and communication system for situations of danger**, including emergency call systems and disaster protection
- **Endorsement of the Charter on Inclusion of Persons with Disabilities in Humanitarian Action** under reference to a **twin-track approach** for international humanitarian aid programmes and disaster prevention
- **Inclusive planning and implementation** of each international humanitarian project
- National implementation of the **Sendai framework**

Article 12 CRPD

Recommendation, CRPD/C/AUT/CO/1: paragraphs 27-28

List of Issues 2018, CRPD/C/AUT/QPR/2-3: questions 25-27

The Ministry of Justice responded to the **CRPD Committee's recommendations from 2013** with a comprehensive, 5-year participatory process to **reform guardianship legislation**, which is seen by many as a **best practice example** regarding the involvement of persons with disabilities and their organisations. The intention was to introduce the so-called **2. Protection of Adults Act (2.ErwSchG)** which should lead towards supported decision-making and thus a strengthening of the self-determination of persons with disabilities. It

was unanimously passed by parliament in March 2017 and **entered into force on July 1st 2018**.

The evaluation of the by now 5-year implementation period of the 2.ErwSchG shows however the **mostly persisting lack of supported decision-making**. There are still **no measures to establish community-based services as an alternative to the range of forms of substituted decision-making**. The Independent Monitoring Committee must note that some States have instead even **reduced or discontinued existing support measures**. The new §249 ABGB only allows for substituted decision-making where it is 'inevitable'. Due to the lack of alternative supports, judges are however required to determine this 'inevitability'. This contradicts the purpose of the reformation and risks its effectiveness.

The new Act allows for several options of representation. With the **statutory adult representation**, the scope of potential representatives is limited to the next of kin, the **scope of activities is however defined very broadly by law** and can still cover all areas of life. This is particularly **concerning in the context of self-determination** regarding representation in court or the person's assets. The large number of **lawyers** who have so far been appointed as adult representatives and, **in some cases, 'support' several hundred people, continues to result in complaints and critique**.

Practice shows that there is a **lack of profound practical guides, training, and awareness-raising for all actors regarding the implementation of the 2. ErwSchG**. A differentiated **understanding of the term 'mental illness'** is yet to be developed. The presence of a 'mental illness' which results in a limitation of decision-making ability, is a precondition for representation in the sense of the 2. ErwSchG. In practice, there seems to be a lack of clarity what this means. In many cases there seems to be the idea of this being dementia in its final stages.

The Independent Monitoring Committee's recommendations:

- Recommendation for the **States to significantly expand support measures** and offer sufficient alternatives to the extent where **supported decision-making becomes the norm**
- **Close supervision of values and their long-term safeguarding** needs to be **guaranteed in implementing the reform**
- **Regular evaluation and statutory adjustments** on the basis of experiences by those affected by it

Article 13 CRPD

List of Issues 2018, CRPD/C/AUT/QPR/2-3: question 28

Deaf people have a right to a **sign language interpreter**. Out of the approximately 130 ÖGS interpreters in Austria (2014 data) only 8 work for courts, so that the implementation is not of sufficient quality.

There is **no comprehensive accessibility of court buildings**, only a definition by the Ministry of Justice regarding visual, mobility or hearing disabilities. According to this definition, 93.73% of courts are accessible (2019 data).

Only some States provide decisions in plain language, court rulings do not exist in accessible formats. **Video hearings** are currently being introduced into legislation; whereby **comprehensive accessibility** is not yet secured.

Under §1 para2 ZPO **persons with a guardian** do sweepingly not have **legal standing**. This constitutive loss does not look at existing capabilities of the individual and is a breach of article 6 ECHR and Article 13 CRPD.

The Independent Monitoring Committee's recommendations:

- Actual **increase of sign language interpreters**
- Measures for **full accessibility of all court buildings and documents**
- Statutory **determination of full accessibility in video hearings**
- **Abolish §1 para2 ZPO** without replacement

Article 14 CRPD

Recommendations, CRPD/C/AUT/CO/1: paragraphs 29-31

List of Issues 2018, CRPD/C/AUT/QPR/2-3: questions 29–30

Due to the **lack of alternatives** such as person-centred supports and mobile, community-based, low-threshold supports and services, **persons with psychosocial disabilities** continue to be placed in care homes instead and **sedated with psychotropic drugs and in some cases subjected to restrictions of liberty**. In some cases, **children and youth** who show 'behavioural problems' in children's and youth institutions, are increasingly treated or sedated with psychotropic drugs as well as the **elderly** in nursing homes according to reports.

The medical model is predominant here and psychotropic drugs are seen as first choice in treatment. In doing so, **too many different psychotropic drugs are prescribed with too high a dosage and medical staff lacks the knowledge on how the medication can be tapered at a low risk**. Therefore, **patients continue to only receive one-sided information about the options of psychotropic drugs**.

There are isolated cases where psychiatrists suggest to patients to agree to **electroconvulsive therapy** – where other forms of treatment fail. It must be questioned if patients are able to freely decide for or against this in a situation of crisis, as **supported decision-making and circles of support are not routinely provided**.

The Independent Monitoring Committee's recommendations:

- Strengthen self-determination in psychological crisis situations through **supported decision-making and circles of support**
- Trained and remunerated **peers in the entire psychiatric and psychosocial sector**
- Mobile, community-based, low-threshold accessible **services and supports**
- **Multi-professional mobile emergency services**, which people in psychological crisis can use no matter their place of residence at any time of the day, without a waiting period, from their own home or a place of their choice
- Beyond that it is recommended to design socio-psychiatric services (medical as well as psychosocial) in a way that persons in exceptional circumstances can be supported so that **committal in preventive detention can be avoided**

Article 15 CRPD

Recommendations, CRPD/C/AUT/CO/1: paragraphs 32-33

List of Issues 2018, CRPD/C/AUT/QPR/2-3: questions 31–33

The use of **cage beds is forbidden by law in Austria since July 1st, 2015**, the Monitoring Committee observes however with concern that, according to reports from civil society, **fixation and medical sedation** continue to be used as non-consensual practices in psychiatric settings. According to these reports such practices are frequently **experienced as more invasive and forceful** and also result more **frequently in injuries for the person in question**. Particularly concerning seems the use of **private security** in some clinics for tasks which are reserved for qualified staff. In many cases the use of coercive treatment could be **avoided if there were sufficient person-centred support offerings**.

The **situation in psychiatric clinics continues to escalate** as, due to **staff shortages**, psychiatric clinics must close, or new ones cannot open. Relatives and carers experience that **patients are not admitted or discharged to soon** and a **frequent lack of alternative person-centred supports** in these situations.

The **new Admittance Act (UbG) enters into force on July 1st, 2023**. The UbG shall **protect the personal rights of persons** admitted to a psychiatric institution for treatment. It is however questionable how far the required resources will be provided to **implement the act adequately**.

The Independent Monitoring Committee's recommendations:

- **De-escalation training for psychiatric clinic staff, rescue forces and policy, which in best case act preventatively in cases of escalation and to avoid torture, cruel inhuman and degrading treatment or punishment according to the Convention**
- **Sufficient person-centred support offerings**

Article 16 CRPD

Recommendation, CRPD/C/AUT/CO/1: paragraphs 34-35

List of Issues 2018, CRPD/C/AUT/QPR/2-3: questions 34-35

Since the last State Review in 2013 statutory improvements have been made to protect victims of violence and abuse, such as the **Criminal Law Amendment Act 2015** and the **Criminal Law Amendment 2017**. The **'Hatred on the Web' Law Package 2021** strengthened the criminal and civil law protection for victims of online hate speech and the **3. Violence Protection Act 2019** expanded protection for victims of domestic violence.

Nevertheless, a **study on violence against persons with disabilities** commissioned by the Ministry of Social Affairs in 2017 proves the continued high risk of violence for persons with disabilities. Particularly at risk are **persons with disabilities in institutions** and **women and girls with disabilities**. The Ombudsman Board's Visitor Commission, which was founded based on Article 16 para 3 CRPD, confirms the need for improvement in the protection of human rights of persons with disabilities in institutions.

In many **institutions** there is a **lack of qualified support staff** and an effective **staff ratio**. There is furthermore a **lack of solid violence protection concepts**. **Effective complaint mechanisms** in the case of violence or abuse are insufficient legally and in practice. **House rules** which restrict the self-determination of inhabitants severely are proven to favour violence and abuse. Many institutionalized persons with disabilities also receive **neither adequate sexual education nor information on protection from violence**.

Furthermore, the **data situation is insufficient and unsystematic**. **Institutions for victim protection and protection from violence** are in most cases **not accessible**.

The Independent Monitoring Committee's recommendations:

- **Compulsory implementation of violence protection concepts as a public funding criterion for disability services**
- **Involvement of persons with disabilities in the development of house rules and institutional violence protection concepts**
- **Accessibility of victim and violence protection institutions**
- **De-Institutionalisation**

Article 17 CRPD

List of Issues 2018, CRPD/C/AUT/QPR/2-3: question 36

According to §90 Criminal Code, **forced sterilization is prohibited** in Austria. If a person does **not have decision-making capacity**, a representative (selective guardian) must under §255 ABGB (2. ErwSchG) only agree to a sterilization where there is otherwise permanent physical ailment or a risk to the person's life or severe pain or damage to their health. The agreement is subject to **court approval**.

Clear **data and numbers** on how far the statutory protection works in practice – especially for women and girls with disabilities – and on **accessible information**, does not exist.

The Independent Monitoring Committee's recommendations:

- **Accessible sexual education and advise**
- **Accessible medical information** especially for women and girls with disabilities
- **Training of medical personnel**
- **Data gather and transparency** regarding the number of sterilisations undertaken

Article 19 CRPD

Recommendation, CRPD/C/AUT/CO/1: paragraphs 36-39

List of Issues 2018, CRPD/C/AUT/QPR/2-3: questions 37-39

The service offerings and quality standards in State welfare and disability acts differ largely. This results in **structural inequalities of persons with disabilities depending on their place of residence**.

Due to unsuitable housing offers many **young persons with disabilities continue to live in nursing homes**. In Vienna alone there are currently around 300 persons with disabilities permanently living in nursing homes. For persons with learning difficulties there is little information in plain language on leases and alternative living settings.

The current NAP Disability (2022-2030) may aim for the fastest possible deinstitutionalization or the continuation of already existing deinstitutionalization strategies. However there have been **no visible efforts since the last State Review in 2013 to develop and implement a comprehensive, unified concept for the dismantling of institutions ('Residential homes')**. Furthermore, **funding is not sufficiently secured in the NAP Disability (2022-2030)**. Beyond that, the **data situation** regarding the number of residential homes and their inhabitants is **insufficient**.

Regarding **personal assistance (PA)**, it must be noted: it is currently provided in each State, the **scope of services varies**, however. For instance, persons with learning difficulties and psychosocial disabilities are excluded in some States, the amount of funding varies, and a legal entitlement exists only in two States. The Ministry of Social Affairs started **the pilot**

project 'Nationwide unified regulations for personal assistance in leisure time and work' (Budget €100mill; duration 2 years) in December 2022, which will be implemented from summer 2023. However, **only three of nine States** participate to date. Once again it becomes clear that the **federal structure** is a **massive obstacle for a nationwide implementation of PA**. There was **only limited participation of experts with disabilities** in the development of the pilot project, therefore it does not comply with every requirement of the CRPD and is only of limited practicability.

Disabled persons organisations (ENIL, SLIÖ) also filed **three complaints against Austria with the EU Commission** regarding **misuse of funding from the EU Structural Funds**. This regarded institutions in Tirol, Upper Austria, and Carinthia. Instead of investing in inclusive and de-institutionalised measures, money was used for the renovation and construction of segregating disability institutions. The complaints have either been dismissed by the European Commission or are currently being reviewed.

The Independent Monitoring Committee's recommendations:

- **Monitoring group** for the implementation of the pilot project, involving experts with disabilities and their experiences with PA
- **Full Implementation of the regulation regarding nationwide unified PA and immediate measures** to avert the precarious living conditions
- **Improved data basis regarding the situation of persons with disabilities** to allow for a target-group specific need assessment
- **Measures and staged plans** in State action plans regarding the binding **dismantling of institutions**
- **No further investments in existing or new institutions**

Article 20 CRPD

List of Issues 2018, CRPD/C/AUT/QPR/2-3: question 40

The Ministry of Social Affairs funds, based on the '**Directive to Promote Mobility to Support Participation in Employment of Persons with Disabilities**' (in force since 01.11.2022), the purchase and accessible adaptation of vehicles. Furthermore, e.g., a mobility subsidy and funding for the acquisition of support dogs are planned. Funding comes from the federal budget and the Compensation Tax Fund (§4). Funding is directed solely to employed people, jobseekers, apprentices, and pensioners (§6). There is no legal right (§7). Several States also provide additional funding. However, there is also no legal right.

Due to the lack of data the negative impact of budget cuts on mobility subsidies cannot be estimated.

The Independent Monitoring Committee's recommendations:

- **Legal Right** to mobility subsidies
- Extension of eligibility to **persons with disabilities who cannot work**

Article 24 CRPD

Recommendation, CRPD/C/AUT/CO/1: paragraphs 40-43

List of Issues 2018, CRPD/C/AUT/QPR/2-3: question 41

Austria has **not sufficiently implemented** the recommendations regarding **Article 24** and continues to **lag in implementing inclusive education**. In the field of schools, the list of issues is particularly long. **Chronical underfinancing of inclusive education** becomes evident. The **cap on resources** by the Ministry of Education results in currently only half of the necessary costs being covered by the States. This results in a loss of quality in schools. Furthermore, there is a lack of efforts to transfer resources from special needs education into the expansion of inclusive educational structures. The education chapter of the **NAP Disability (2022-2030)** shows that **no additional resources have been provided to implement inclusive education** in schools. This leads to the impression that inclusive education should be established at zero cost. Furthermore, there is no publicly available sound data regarding the funding of inclusive education by the States.

In the area of teacher training on inclusive education, indications show **cuts at primary and secondary level**, which would have massive implications for the quality of education. There is still no offering that addresses the demand for training, which provides sufficient specialization to teachers on specific types of disability. In the field of **teacher training** no measures have been taken to encourage the training and recruitment of persons with disabilities.

Ambitious attempts to implement inclusive education, which had been positively noted in the previous State Report, such as the **Inclusive Model Regions**, have been discontinued. At the same time the **special needs educational system** has been **reinforced** and expanded. In recent years the signs for **retrogression in implementing inclusive education** have grown. There is also no or only **pseudo-participation** of persons with disabilities and their organisations in important education policy processes. Beyond that it must be noted that the **gaps in inclusive education also become evident in other areas, such as elementary pedagogy and studying**.

For a detailed description of the situation see the **attached Special Report Education**.

The Independent Monitoring Committee's recommendations:

- Sufficient and transparent **funding of inclusive education**
- Development and implementation of a **nationwide plan on the implementation of inclusive education**
- Development and implementation of plans on the implementation of **inclusive education in each State**
- **No cuts** in the area of **teacher training** and establishment of a comprehensive **further education offering** for inclusive education, including incentives for teachers
- Rapid expansion of **inclusive offerings in elementary education**

Article 27 CRPD

Recommendation, CRPD/C/AUT/CO/1: paragraphs 44-47

List of Issues 2018, CRPD/C/AUT/QPR/2-3: question 42

Most employers continue to not meet their **employment quota of registered disabled persons** as per the Disability Employment Act (BEinstG).

With the means of the Inclusion Package (Federal Law Gazette I 2017/155) **programmes such as youth coaching and Apprenticeship Fit as well as apprenticeship coaching and job coaching (NEBA)** have been implemented. Only persons with disabilities who are **considered fit to work** can benefit from NEBA services. For those persons the maximum length of stay in measures of the AMS (labour market service) is often too short. The **labour market service** is also planning a **new algorithm** which would **put persons with disabilities at a disadvantage**.

Grave structural gaps continue to exist despite these programmes. Persons with high support needs, who are considered unfit to work, continue to fall under the responsibility of the States. This cohort (according to more recent estimates approx. 25,000 people) are **often in day services, where they carry out activities for 'pocket money'**. Despite considerable efforts and a corresponding statement of intent in the **Programme of Government 2020-2024**, these activities are not recognized as work and there is **no health insurance or pension claim** arising from it. As they have no pension claims, they also cannot retire.

The Independent Monitoring Committee's recommendations:

- Further increase of developing **models of permeability to the first labour market as well as funding of projects for all persons with disabilities**
- **Cover persons with disabilities in day services under social security law**

Article 29 CRPD

Recommendations, CRPD/C/AUT/CO/1: paragraphs 48-49

List of Issues 2018, CRPD/C/AUT/QPR/2-3: question 43

Every person with a disability has their **active and passive right to vote without restrictions** (Art. 26 para 1 B-VG). The exercise of the active right to vote is impeded, as **election processes** continue **not to be fully accessible**.

The **Election Law Amendment Act** from early 2023, entering into force 1.1.2024, requires for parliamentary elections from 2028 amongst other things the **accessibility of each voting station and booth and information on the election process in plain language**.

There are currently no dedicated programmes to promote an environment where **persons with disabilities** also have the right and opportunity to be elected (**passive right to vote**).

The Independent Monitoring Committee's recommendations:

- Ensure **full accessibility**, also for State and municipality elections (amendments in the electoral regulations for State parliament and municipal council)
- **Training of electoral authorities** to this effect
- **Inclusive further training offering in party institutions and activist organisations** for everyone who wants to run for election (passive right to vote)

C. Specific obligations (Article 31-33)

Article 32 CRPD

List of Issues 2018, CRPD/C/AUT/QPR/2-3: questions 44-45

A nationwide, systematic, and coordinated strategy to implement the 2030 Agenda and **full involvement of persons with disabilities** is missing. **Indicators to evaluate goals being achieved** are also partially missing. No indicator covers the aspect of inclusive education of persons with disabilities (SDG4). The same applies to SDG11 regarding accessibility of cities and settlements.

The **inclusion of persons with disabilities in Austrian international cooperation** continues to only happen **selectively**. Concrete measures to guarantee full inclusion of persons with disabilities is missing to date. The **Austrian development policy three-year programme 2022-2024** has made a significant step forward, in particular regarding the inclusion of girls and women with disabilities. Disability is however still not a binding cross-sectional matter. The **NAP Disability (2022-2030)** does approach a **twin-track approach**, the required **measures** are however **insufficient**. **Funding programmes** continue to lack binding inclusion requirements. Publicly available **data regarding inclusion in the OEZA** according to the OECD DAC disability marker is also missing.

The Independent Monitoring Committee's recommendations:

- **Participatory development of an OEZA action plan** to implement Article 32 CRPD, applying a **twin-track approach** and in alignment with the **2030 Agenda for Sustainable Development**, with concrete goals, measures, indicators and budgets
- **Breakdown of data and statistics on EEZA projects by disability**, in alignment with the 2030 Agenda (**disability-disaggregated data**)

III. **Annex: Special Report Art. 24 – Education on the Occasion of Austria’s Second Review by the CRPD Committee**

Summary

The report shows by means of a range of examples, that Austria does not sufficiently comply with the obligations arising from Article 24. Furthermore, the recommendations resulting from the last review were not sufficiently complied with in recent years. Overall, a continuous violation of the human rights of persons with disabilities in education can be seen. This becomes, among other things, apparent via the following points:

- **Resource problems for inclusive education and stabilization of the special needs school system**

Due to Ministry of Education’s cap on resources, only half of the necessary costs of inclusive education are currently covered by the States. Therefore, inclusive education is chronically underfunded. This results in a loss of quality of inclusion in schools. Instead, resources continue to be used for the stabilization and even expansion of the special needs school system.

- **Implementation of inclusive education between regression and stagnation**

A concerning reduction in the percentage of pupils with disabilities in mainstream schools can be observed. Ambitious attempts to implement inclusive education, such as the Inclusive Model Regions, were discontinued at the end of the 2010s. In recent years there have been increasing signs of regression in realizing inclusive education. Development in other areas stagnates, for instance the right to education in Austrian sign language.

- **Passivity and indifference towards human rights**

A strong passivity and indifference towards Austria’s obligations arising from Article 24 can be observed from the government’s side in recent years. Necessary changes in law and school practices have to be claimed through the courts or criticized by civil society initiatives, to make administrators react to at times alarming faults and discriminations.

- **Pseudo-participation of persons with disabilities**

No or only pseudo-participation of persons with disabilities and their organisations is undertaken in important education policy processes. This became particularly

evident during the creation of the education chapter of the National Disability Action Plan.

- **Massive flaws in all areas of education**

The enormous lack of inclusive education is not only found in schools. It can also be seen in elementary education and universities. Here too there are no concrete plans how to guarantee inclusive education, also in an international context.

Overall, it must be documented that Austria is still far from the necessary structural changes regarding the goal of an inclusive educational system and has moved even further away from it in recent years.

Introduction

The UN Convention on the Rights of Persons with Disabilities acknowledges the right of persons with disabilities to education in Article 24. State Parties commit to creating an education system which provides access for everyone to inclusive, high quality and free education, from nursery up to adult education. Special needs institutions, such as special needs school, must become inclusive.

During the first State Review in 2013 it was already documented that Austria did not implement those objectives sufficiently. Some of the main points of critique were:

- Lack of implementation of inclusive education in schools
- Lack of accessible teacher training
- The low number of students with disabilities (CRPD Committee, 2013)

In consideration of these gaps, the CRPD Committee issued the following recommendations to Austria:

1. Increased efforts regarding the establishment of an inclusive education system – from elementary level to secondary level
2. Ensuring the participation of children with disabilities and their representatives in implementation efforts of inclusive education
3. Bigger efforts to increase the number of students with disabilities
4. Increase the number of teachers with disabilities and establishment of an accessible teacher training (CRPD Committee, 2013)

As shown by this report, Austria has not sufficiently honoured these demands. Hereinafter, selected examples will be introduced, which illustrate that Austria continuously and blatantly violates the binding requirements of Article 24. In doing so, the emphasis lies on schools.

Chronical underfunding of inclusive education and further resource issues

Inclusive education is chronically underfinanced in Austria. This structural underfunding becomes visible for instance in the still existing cap on the resources allocated by the Ministry of Education for the enrolment of pupils with so-called special educational needs¹. The Federal State assumes 2.7 percent pupils with SPF. This rule is empirically not justifiable. Following the numbers of Statistik Austria, the percentage of pupils with SPF in the academic year 2020/21 was in total 5.1 (Statistik Austria, 2022). In some states, such as Salzburg, the percentage reached even 6.8 percent. The lack of resources resulting from the cap must be balanced by the States. As shown in the Court of Auditors' Report 2019, this cannot be achieved, resulting in a structural lack of resources in the implementation of inclusive education (Court of Auditors, 2019). This tendency was confirmed also in reports from teachers available to the Monitoring Committee, according to which resources for inclusion have continuously been cut back in several states over recent years. This results, as reported by teachers, in a clearly lower quality of inclusive education as well as in a reduction of teachers interested in working in inclusive settings.

Overall, it must be noted that resources for inclusive education are not transparently identified by the States. For example, upon a request by the Independent Monitoring Committee regarding the resources for inclusive education, one of the States' education administration advised that there was a new allocation key. However, this key was not viewable.

Furthermore, there are no indications of the central structural problem of the Austrian educational system in relation to disability being addressed: The allocation of resources continues to be tied to the labelling "Special Educational Needs". This problem has been pointed out for some time (e.g., Tyrolian Monitoring Committee, 2015) - nothing has changed, however.

¹ Special Educational Needs (Sonderpädagogischer Förderbedarf, SPF) is the determinant category of the Austrian educational system for resource allocation in the context of disability. This category continues to be shaped by the medical model of disability. SPF is the case where a child 'cannot follow the lessons in primary, new secondary or polytechnic school due to a not only temporary physical, intellectual or mental impairment or an impairment of their sensory functions' (BMBWF, 2019) The diagnosis SPF also activates additional resources, which should help facilitate the pupil's participation in class.

Furthermore, it must be criticized that there is no indication of resources being transferred from the special needs school system towards inclusive education. The dual system (inclusion in mainstream schools/special needs schools) continues to be funded. This also becomes clear under the next point.

Continuation and strengthening of the special needs school system

Special needs schools continue to be built and old ones to be renovated. Furthermore, the Monitoring Committee has access to reports, whereby some States explicitly announced their intention to expand special needs education offerings in the coming years.

Furthermore, several of the few local efforts to open special needs schools for pupils without disabilities and thus transform them into inclusive schools, are not being continued.

Numerous special needs schools exist with adjacent boarding schools. Children with disabilities are at times already placed in these institutions at pre- or primary-school age (Tyrolian Monitoring Committee, 2015). For instance, if there is no place available in an inclusive nursery or primary school in their hometown (cf. Flieger, 2022). This form of special needs school institutionalization has to date barely been dealt with in Austria, resulting in a lack of awareness of the problem. However, special needs boarding schools are to be seen as a violation of both Articles 24 and 19.

Decline of pupils with disabilities in mainstream schools

The Integration Quota represents the percentage of pupils with Special Educational Needs which are being taught in mainstreamed schools. The current Ministry of Education's National Education Report shows a reduction of the Integration Quota over recent years: compared to the last National Education Report the quota reduced from 61% to 60% (BMBWF, 2022).

Some states indicate an even larger decline of the quota. The State of Vienna's Integration Quota fell between the year 2016/2017 and the year 2019/2020 even clearly below the 50% mark (from 50% in the year 2016/17 to 45% in 2019/2020).

Those reductions happen in a period, during which, according to the recommendations by the CRPD Committee, inclusive education should have been increasingly implemented. The numbers for Vienna show furthermore, that in some regions drastic regression in the implementation of inclusive education must be noted.

Data situation regarding education and disability

The data situation for the area of education and disability continues to be inadequate. In the available statistics only the category of Special Educational Needs is assessed – which

covers a large heterogeneity of disabilities with different support needs. Problem areas in inclusive education are thereby systematically hidden, e.g., the increasing number of pupils with intellectual disabilities in special needs schools. On the other hand, through the sole assessment of SPF other pupils, who have a disability but do not fall into the group of pupils with SPF, are made invisible.

Furthermore, data is missing regarding educational trajectories of pupils with disabilities. Problematic developments are also obscured, such as the increasing change of pupils with cognitive and intellectual disabilities to special needs schools at secondary school level. The pressure of academic achievements becomes visible here, frequently at the expense of an inclusive educational setting – as reported by parents.

Important indicators for the assessment of progress in inclusive education are missing in the most recent National Education Report by the Ministry of Education, for instance the so-called Segregation Quota. These indicators were previously regularly provided – and also trajectories of these indicators. It is not clear why they are not included anymore.

Discontinuation of Inclusive Model Regions

The development of Inclusive Model Regions represents the to date most ambitious attempt to consistently work, at least at the level of single States, on the implementation of inclusive education. It was established in the first National Action Plan regarding the Implementation of the CRPD (BMASK 2012), as well as in a directive of the Ministry (BMBF 2015), stating that as a first step selected States should transform into Inclusive Model Regions.

The resulting insights should then be fed back into the federal process, at the end of which in 2020 all of Austria should in essence be one big inclusive model region. The establishment of inclusive education should be promoted in the Inclusive Model Regions while simultaneously reducing classes in special needs schools. The goals were the increase in quality of inclusive education in schools, the development of demand-oriented and flexible resource allocation and the further development of the process to establish Special Education Needs (BMBF 2015). Three Model Regions were established in the academic year 2015/2016 (Carinthia, Styria, and Tirol). Within the Model Regions considerable efforts to implement inclusive education were made by members of educational administration, teachers, and academics (Feyerer, 2016). The successes of the Model Areas regarding the implementation of inclusive education are well documented. Many insights were gained for further transformation towards the goal of an inclusive education system (Svecnik et al., 2017; Svecnik & Petrovic, 2018).

It is therefore entirely incomprehensible why, after only three years of running this ambitious project, it was de facto terminated with the 'Bildungspaket'-Policy in 2019. In

response to a parliamentary inquiry, the Ministry of Education claimed that with the Educational Reform the 'measures tested and insights gained within the Inclusive Model Regions' (BMBWF, 2022, p. 2) will be continued in the newly established Expert Groups for Inclusion and Diversity Management (FIDS). The Monitoring Committee does however not know about such written guidance. It also remains unclear which insights were taken up and implemented. It can therefore be assumed, that the *so far only ambitious policy regarding the implementation of inclusive education has been removed without a replacement.*

Stagnation in the field of Sign Language

There is still no right to education in Austrian Sign Language (ÖGS) and German (bimodal-bilingual education). ÖGS cannot be officially used as a language of instruction (although being used in numerous places around Austria). There is no curriculum for the subject ÖGS (apart from the HLMW9 Vienna). Therefore, ÖGS can not be taught in a structured manner in schools.

The implementation of measures in the space of ÖGS takes comparatively long. Work on the curriculum has been ongoing for five years. In 2021 a resolution was passed in National Council with the goal to have the curriculum completed by 2023/2024.

There are no books on ÖGS on the list of certified schoolbooks (schoolbook list for primary and special needs schools).

National Action Plan 2022 – 2030

When asked regarding the implementation of inclusive education, the Ministry of Education frequently refers to the chapter on education in the new National Disability Action Plan. The measures included therein should be implemented between 2022 and 2030 (BMSGPK, 2022). However, the intended measures do not hold the potential to make Austrian schools comprehensively more inclusive. After all, the chapter barely covers the recommendations which Austria received from the UN during the last State Review. Regarding the chapter on education, it must be noted that it does not tie into measures which were positively received by the CRPD Committee in 2013: The Inclusive Model Regions (see above). The measures chosen instead do not have the potential to promote a substantive change towards inclusive education. The education chapter of the National Action Plan 2022-2030 therefore *falls even behind the aspirations of the previous National Action Plan*. Overall, this chapter has only blurred indicators. It strives e.g., towards 'the increase of the Inclusion Quota under consideration of the relevant State's starting point' (BMSGPK 2022, 83). Similarly, it names the 'number of educational attainment of pupils with disabilities or impairments in the context of secondary level II' (ibid) as an indicator – without concrete numbers. It refers to an exchange between Federal state and States on

inclusive education and the development of a concept as indicators for the area of elementary education. The pressing structural deficits, e.g., regarding places in inclusive nurseries (see Point 22) are ignored and work on faults postponed until after 2030. Therefore, only measures that are merely cosmetic in nature can be found.

The recommendation to involve persons with disabilities at the centre of developing inclusive education offerings, which was issued as part of the State Review, was not followed in the context of the National Disability Action Plan (NAP 2022 – 2030). Instead, the development process of the education chapter can be seen as a picture book example of pseudo-participation. While the voices of some representatives of disability organisations were ‘heard’, it was at the same time clarified, that they were excluded from the further development process, as it could only be negotiated with ‘actually influential’ stakeholders, the States as well as the teacher unions.

The recommended actions documented in the evaluation of NAP 2012-2020 were also not considered in the education chapter, e.g. the development of a staged plan to realise inclusive education or the development of financial incentives for schools to become inclusive see Biewer et al. 2021, 413ff.).

The education chapter seems furthermore founded on the idea that the development of an inclusive education system could happen on a cost-neutral basis. Most of the measures in the context of schools should be covered ‘within the current budget’ (BMSGPK, 2022, 79). Therefore, the exact amount of the intended expenses is not clear.

Barriers for pupils with special educational needs in accessing the 11th or 12th school year

Austria only has compulsory education until the ninth grade. Pupils can subsequently continue their educational career in secondary level 2 in vocational middle schools, vocational higher schools, colleges and senior classes of high schools. Pupils with certified special educational needs face a legal barrier in such an educational career as well as the practices resulting from it. Pupils with certified special educational needs can only complete ten grades according to the School Education Act (§32 para 2 SchUG). 11th and 12th grade are then subject to approval: The school provider (‘Schulerhalter’) as well as the relevant school authority must agree. The law does not regulate under which circumstances such an approval has to be granted and when it can be declined. While in most States approval is granted by ‘good will’, Vienna shows a very high number of rejections. As a result, a protest took place via a citizens initiative (www.ichwillschule.at) against this regulation. Because of the thereby created media attention, Vienna received an order from the Ministry of Education, to end the outlined practice. Vienna’s Department of Education announced subsequently that continued enrolment could only be guaranteed for the coming school year (23/24). This is apparently intended in a special needs school

setting: most pupils with SPF will be taught together in branch classes of two schools; however only from 8.00-14.00, while most other schools at secondary level 2 provide a full-day offer.

The legal requirement, as well as the announced 'solution' by the city of Vienna, clearly violate the principles of Article 24 of the CRPD (equal access to education).

No legal claim to adequate personal assistance in federal schools, higher education institutions, and universities

According to the Ministry for Education's circular 7/2017 there is an entitlement to personal assistance in federal educational institutions (PAB) only in the case of physical disability at a certain, high level of care allowance. It states: 'PAB relates to pupils or students with physical disabilities, which are assessed as care allowance level 5, 6 or 7. In certain, justified circumstances, persons from level 3 can be considered.' (BMB, 2017, 4.1). However, numerous other pupils and students with other forms of disability, such as sensory disabilities or persons with autism, are excluded from personal assistance. This results in a de facto restriction of the service of personal assistance in relation to the type of disability and level of care allowance.

Following a failed attempt at settlement with the Ministry of Education, the Klagsverband (a NGO supporting victims of discrimination to enforce their rights) filed a suit against the Republic of Austria – with a focus on personal assistance in federal schools. The ruling of the Commercial Court of Vienna on 31st March 2023 found a discrimination under the Disability Equal Treatment Act (Commercial Court Vienna, 2023). The Ministry of Education, which had still claimed in the context of the settlement, that the regulation was not discriminatory, accepted the ruling and announced changes. What these will look like has not been shared to date.

Further areas of education

In addition to the emphasis on schools, this section shall shed exemplary light on two other areas of education: elementary education and higher education. It will become evident, that there are at times dramatic flaws in implementation.

a) Elementary education (nursery)

In the context of elementary education, the lack of a legal claim must be stated as the central issue. This, in combination with an in many Austrian regions glaring lack of places, results in children with disabilities frequently waiting for years for a place. For Instance, in Vienna, there are currently over 1,000 children with disabilities waiting for a place. The

Monitoring Committee has similar reports from educational administrations in other States. Especially in rural areas this situation is frequently disastrous as parents have told the Monitoring Committee.

Furthermore, there is a shortage of specialists (special education nursery staff or elementary education staff with an expertise in inclusive pedagogy) which negatively affects the quality of supports for children with disabilities as well as the availability of places for children with disabilities.

Beyond that, there is a lack of support systems for children with disabilities, such as individual assistance (e.g., for children with autism) or mobile pedagogic teams (e.g., occupational therapists (Pinetz & Miffek, 2021)). Overall, the resource situation in the field of elementary education and disability must be seen as problematic (KIJA, 2022).

In conclusion, the interplay of the absence of a legal claim, a lack of available places and a poor general framework, results in children with disabilities facing massive inequalities compared to children without disabilities. They are not only systematically denied participation in elementary education but also an exchange with children of their age.

b) Studying

Supports for students continues to be regulated in a very problematic manner. The Student Aid Act as well as regulations regarding personal assistance in employment are linked to the degree of disability of at least 50% and the care allowance level. Moreover, most students with impairments see supports from their university as insufficient; this cohort also shows a lower rate of satisfaction with their university experience than those students without a disability (Zaussinger et al., 2020). Entry exams for several degrees, show barriers. Studying and working cannot, as also shown in a report by the Court of Auditors, be seen as accessible (Rechnungshof, 2022). Overall, it must be noted, that the expansion of physical and communicational accessibility within universities and higher education institutions progresses slowly and reasonable accommodations for accessible lectures and learning environments is by far not available in each location. These dramatic divergences in the field of accessibility are justified by the Ministry of Education with the autonomy of universities, whereby the Ministry as the funding body evades its responsibilities. However, the measurement plans for the promotion of women, which must be developed by each university, show that a coordinated, planned approach in addressing such gaps in regard to grounds of discrimination, is possible despite the autonomy of universities.

Inclusive Education in Austrian international cooperation?

Education is a focus in Austrian international cooperation. By 2024, 17% of the annual portfolio should be allocated towards education (BMEIA, 2022). Within this, the emphasis lies on vocational and higher education.

Inclusion is generally well embedded within the current three-year plan of the Austrian international cooperation policy 2022-2024 (ibid). The Austrian Development Agency provided already in 2013 a paper on the topic of inclusion, which outlines how projects can be designed more inclusively (ADA, 2013). However, it is not a binding specification which has to be complied with by project partners.

There are some education projects by partners which work with persons with disabilities. However, it cannot be determined based on the published project list whether they follow an inclusive or segregated approach.

The Austrian Development Agency applies the OECD DAC Disability Marker in categorizing the projects funded, which is positive. The results are currently not published. A simplified summary which education projects have OECD Marker 1, OECD Marker 2 or no disability marker, cannot be determined from an external view.

This results in education projects which are funded via Austrian international cooperation so far not complying with the requirements of Article 24 CRPD. Furthermore, it can not be assessed from the outside, whether the percentage of education projects complying with the CRPD increases in Austrian international development.

Conclusion

Progress can hardly be documented since the last state review, as becomes evident via the selected examples. On the contrary, signs of regression have been recorded especially over recent years. Education policy and administration do not show sufficient systemic efforts to progress the transformation of the dual system (special needs schools and inclusion).

Inclusive education is chronically underfunded while new measures must be cost-neutral. Furthermore, a pronounced indifference and passivity towards the implementation of the goals of Article 24 becomes evident.

As has been shown, necessary changes in legislation or school practices must be enforced via the courts or criticized via citizen initiatives, to make educational administration react. However, the UN Convention demands a proactive stance, meaning the required changes should be advanced by the State and its actors.

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