

**Presentation for the occasion of the  
side event of the UN Committee on the Rights of  
Persons with Disabilities  
on Austria**

*Geneva, 16 April 2013*

The Austrian NGO delegation present at the side event of the UN-Committee on the Rights of Persons with Disabilities was organized by the Oesterreichische Arbeitsgemeinschaft fuer Rehabilitation (OeAR), the umbrella organization of the Austrian disability associations that has also issued and submitted the alternative report on the implementation of the CRPD in Austria. The NGO-delegation itself consists of 3 representatives of the OeAR, one representative of the Austrian Association of the Deaf and 2 representatives of Independent Living Austria.

The following presentation focuses on the most pressing issues related to the implementation of CRPD obligations. Education, work, living independently, accessibility as well as political participation and legal capacity are grave concerns in terms of societal structural exclusion and discrimination of persons with disabilities in Austria.

The paradigm shift towards a human rights based disability policy is very slow and hesitant in Austria. Disability is still seen as a responsibility of social affairs and the principles of accessibility and inclusion are not recognized as cross cutting issues. Consequently, Austria lacks a national policy to establish comprehensive accessibility and inclusion.

The federal system is regularly used as a justification for not fully implementing the Convention. The Laender, which are responsible for social support services for people with disabilities, tend not to feel committed and obliged by the provisions of the CRPD. The attempts by the federal government to overcome this situation are rare and very poor, resulting in weak and varied levels of protection of disability rights across the Laender. In July 2012, the National Action Plan on Disability 2012-2020 (NAP) was published by the Federal Ministry of Labour, Social Affairs and Consumer Protection (BMASK). The NAP is the strategy of the Austrian federal government for the implementation of the CRPD. Although the NAP represents a step in the right direction, it has its shortcomings. Its major shortcoming is the lack of participation of the Laender as well as the lack of indicators and the vague formulation of the measures foreseen which hinders its implementation. Also the participation of civil society in the elaboration of the NAP was insufficient.

## **Inclusive education**

The current Austrian education system is not inclusive but rather based upon the concept of integration in the law and in practice. Austria has a very strongly established two track system of education: Although more than 50% of all children labelled with special educational needs are educated in regular schools, there are still more than 13.000 children in special schools. 65% are boys, they are significantly overrepresented in special schools. Children with migration background are overrepresented in special schools as well. Overall, the proportion of children in special schools has been constantly rising for the last 12 years, including since Austria's ratification of the CRPD.<sup>1</sup>

Inclusive education is only regarded as an option by the Laender governments and by the school administration as a whole. This policy is reflected in a rather unequal distribution of resources. The City of Innsbruck, for example, spends about 130.000 Euro - per year to improve the accessibility of regular schools, but in 2010 it decided to invest 10 million Euro to build a new special school for severely disabled children. Just recently, the Laender government of Carinthia announced the plan to invest 11 million Euro into a large boarding school only for children with severe disabilities. No data is available on the allocation of resources for staff<sup>2</sup>, but we are convinced that much more money is spent for special schools than for making regular schools accessible and supportive for children with disabilities.

One major concern is that many regular schools and teachers do not welcome children with disabilities. Parents often have to argue and to fight for school integration. Inclusive education often fails and children with disabilities have to change to special schools. As a consequence, many people – including parents, teachers and school administrators - think that inclusive education does not work and that children with disabilities are better off in special schools.

There are more than 30 boarding schools exclusively for children with disabilities in Austria; some of them are part of large residential institutions. In the eyes of the public it is normal for children with disabilities to stay away from their families segregated in boarding schools.

The public debate concerning article 24 has led parents of special school students to actively advocate for segregation. They insist on their right to choose between special school and integration and are well supported by the school administration, by teachers' unions and by politicians. They argue that article 24 only emphasizes the right for children with disabilities to

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<sup>1</sup> See: Flieger, Petra (2012). Es läuft was falsch bei der Integration (Something is going wrong with school integration). <http://bidok.uibk.ac.at/library/flieger-segregationsquotient.html>

<sup>2</sup> See: Schmied, Claudia (2012) Reply to a parliamentary request on the allocation of staff in special schools and in integrated classes. For download in German: [http://www.parlament.gv.at/PAKT/VHG/XXIV/AB/AB\\_12549/fname\\_279944.pdf](http://www.parlament.gv.at/PAKT/VHG/XXIV/AB/AB_12549/fname_279944.pdf)

education and that special schools provide this education very well. Special schools are considered as being a part of the regular school system. Even the Federal Minister of Education points out that special schools are not mentioned in the CRPD and concludes that special schools may exist as an additional offer next to a fully developed inclusive educational system, ignoring the CRPD's emphasis on inclusive education.<sup>3</sup> There is a lack of awareness that segregation in special institutions is discriminatory and disadvantageous for any child.

Children in special schools are isolated and marginalized. They are denied their right to freedom and participation on an equal basis with other children, their evolving potential for independence and living in the community is neglected. They do not have the chance to participate equally in the decision making process of their education. Furthermore, research conducted at the University of Vienna shows that special school students receive much less support for vocational integration than students with disabilities who are educated in regular schools<sup>4</sup>. They are systematically disadvantaged and often directly referred to sheltered workshops.

Furthermore, deaf children do not receive education in sign language, neither in special schools nor in regular schools. Even though Austrian Sign Language is recognized as an official language in the Austrian constitution<sup>5</sup>, teachers in integrated classes are not sufficiently trained in Austrian sign language. Special schools for hard-of-hearing and deaf children do not use Austrian sign language systematically either.<sup>6</sup> We are deeply concerned that the persistence of communicative barriers in primary and secondary education lead directly to disadvantages in future participation and employment.

Another major concern is that people with disabilities are still legally excluded from teacher training. The National Action Plan is unambitious in this regard promising "consultations and preparation of steps" with the aim of providing access by 2020.<sup>7</sup> As the government acknowledges a lack of teachers with Austrian sign language competence, native signers must be granted access to teacher training.

As a consequence from what has been said, people with disabilities have a significantly lower level of education than non-disabled people in Austria, e.g: 32% men and 46% of

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<sup>3</sup> Schmied, Claudia (2012). Reply to a parliamentary request on the role of special schools with regard to inclusive education. For download in German: [http://www.parlament.gv.at/PAKT/VHG/XXIV/J/J\\_12769/index.shtml](http://www.parlament.gv.at/PAKT/VHG/XXIV/J/J_12769/index.shtml)

<sup>4</sup> See: Fasching, Helga/Mursec, Diana (2010). Schulische Ausgangssituation und Übergang in Ausbildung und Beruf in Österreich. (Educational starting situation and transition from training to work in Austria). Vienna: University of Vienna. For download in German: [http://vocational-](http://vocational-participation.univie.ac.at/fileadmin/user_upload/proj_intellectual_disabilities/Fasching_Mursec_2010_Bd.1_-_Letztversion.pdf)

[participation.univie.ac.at/fileadmin/user\\_upload/proj\\_intellectual\\_disabilities/Fasching\\_Mursec\\_2010\\_Bd.1\\_-\\_Letztversion.pdf](http://vocational-participation.univie.ac.at/fileadmin/user_upload/proj_intellectual_disabilities/Fasching_Mursec_2010_Bd.1_-_Letztversion.pdf)

<sup>5</sup> See article 8 para 3 B-VG.

<sup>6</sup> See Krausneker, Verena; Schalber, Kristina, 2007: Sprache Macht Wissen.

<sup>7</sup> See National Action Plan on Disability 2012-2020, chapter 5.7, pp. 77.

women with disabilities have only finished compulsory school compared to 12% men and 23% women without disabilities.<sup>8</sup> 14,6% men and 15,7% women with disabilities hold a university degree compared to 31,4% men and 33,3% women without disabilities.<sup>9</sup> No data is available on people with disabilities with migration background. Furthermore, this data does not include people living in institutions.

The National Action Plan on Disability is extremely disappointing with regard to education. Special schools and their role with regard to inclusive education are not mentioned at all. The action plan foresees inclusive pilot regions.<sup>10</sup> However, the foreseen measures are vague and have not been started to date.

### **Work and employment**

The Austrian government's policies and measures for equal vocational integration are not sufficiently effective. There is a quota system in Austria for the employment of persons with disabilities. However, the percentage of companies that fulfil their duty to employ people with disabilities has been constantly low for the last 10 years: only about 22 to 23 % of the companies fulfil the quota. Unemployment is significantly higher among women and men with disabilities than among people without disabilities. Within this group, women with disabilities are especially disadvantaged. Furthermore, it is estimated that about 19.000 people with disabilities attend sheltered workshops (vocational therapy) where they are not covered by social security or worker's rights and only receive pocket money. 44% of persons in sheltered workshops are female, but they are disadvantaged with regard to their participation in the special programmes offered in the workshops: In programmes for vocational qualification, only 37% of the users are female; No data is available on people with disabilities with a migration background in sheltered workshops.

Although the Federal Government has emphasized vocational integration for the last 20 years, there has been a dramatic increase of sheltered workshops: The majority of all sheltered workshops in Austria were built after 1990, 35 % after the year 2000.<sup>11</sup> New sheltered workshops are still being established. The National Action Plan foresees the

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<sup>8</sup> See Disability Report 2008, Report of the Federal Government on the situation of persons with disabilities in Austria 2008, Federal Ministry for Labour, Social Affairs and Consumer Protection, p. 17. These statistics regard persons from 16 to 64 years.

<sup>9</sup> See: Leitner, Barbara (2008). People with impairments. Results of the micro census special inquiry in 2007. (Menschen mit Beeinträchtigung. Ergebnisse der Mikrozensus-Zusatzfragen im 4. Quartal 2007). Statistische Nachrichten 12/2008, p.1132 – 1141. Internet:

<http://www.bmsk.gv.at/cms/site/dokument.html?channel=CH0092&doc=CMS1233138935231>. These statistics regard persons from 20 to 60 years.

<sup>10</sup> See National Action Plan on Disability 2012-2020, measure 125, p. 62.

<sup>11</sup> See: Koenig, Oliver (2010). Werkstätten und Ersatzarbeitsmarkt in Österreich (Workshops and Sheltered Employment in Austria). Wien: Universität Wien. For download in German: [http://vocational-participation.univie.ac.at/fileadmin/user\\_upload/proj\\_intellectual\\_disabilities/Koenig\\_2010\\_Bd. III - Letztversion.pdf](http://vocational-participation.univie.ac.at/fileadmin/user_upload/proj_intellectual_disabilities/Koenig_2010_Bd. III - Letztversion.pdf)

development of a comprehensive concept for support structures for vocational integration that includes federal as well as Laender measures.<sup>12</sup> In the framework of developing such a comprehensive concept we urgently recommend an in-depth analysis of measures and programmes that have been carried out for the last 15 to 20 years in order to ensure more employment opportunities for persons with disabilities in the mainstream labour market and the phasing out of sheltered workshops.

## **Independent Living**

Support services for people with disabilities are the responsibility of the nine Laender. Thus, there are major differences with regard to the availability of different services. No comprehensive or comparative overview of these services is available. However, the number of people with disabilities who live in special institutions is alarmingly high. In 2011, more than 1.800 people with disabilities lived in institutions with more than 100 residents. 3.800 people lived in institutions with more than 30 residents and almost 5.700 people with disabilities lived in institutions with 11 to 30 residents<sup>13</sup>. Only 1.805 lived in arrangements with up to 10 residents.<sup>14</sup> No gender specific data is available. We doubt that all these people had a proper choice and gave their informed consent to live in an institution.

People living in these institutions face a significantly higher risk of becoming victims of abuse, violence and exploitation. There are no safeguards to ensure that people do not enter or remain in institutions. It is highly problematic that in the public opinion, large institutions for people with disabilities are well accepted.

Only about 1.000 women and men with disabilities receive personal assistance or similar services in the community. Personal Assistance services are only provided in those Laender where there are strong independent living initiatives that are politically active.

Significantly more financial resources are spent for special institutions than for personal assistance or similar services. In 2011, about 16 times more money was invested in institutionalisation than in community oriented support services. This demonstrates that the Austrian social system has not taken its CRPD obligations and is very reluctant to implement the independent living paradigm.

We appreciate that since 2012, institutions and programmes for people with disabilities have been subject to independent monitoring according to the provisions under article 16 (3)

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<sup>12</sup> See National Action Plan on Disability 2012-2020, measure 164, p. 74.

<sup>13</sup> See: Stockner, Hubert (2011). Personal Assistance as a way out of the institutional segregation of people with disabilities. Report for Independent Living Austria on the situation of Personal Assistance in Austria. [http://www.slioe.at/downloads/themen/assistenz/PA\\_institutionelle\\_Segregation.pdf](http://www.slioe.at/downloads/themen/assistenz/PA_institutionelle_Segregation.pdf) (in German).

<sup>14</sup> These numbers are not comprehensive, they do not include people with disabilities under the age of 60 years who live in care homes for old people. Children in special boarding schools are not fully included either.

CRPD. However, we criticise that there are no comprehensive plans or specific measures to reduce the number of people living in institutions. The National Action Plan on Disability only mentions the necessity of deinstitutionalisation but completely lacks any specific measures.

Furthermore, we are alarmed about the results of a recent study: It revealed that in Austria more than 42.000 children between 5 and 18 years of age are informal caregivers. They care for their mother or father, their siblings, their grandparents or other relatives. We consider this not only a violation of these children's human rights, but also a rather dramatic indicator of the poor and insufficient development of community oriented support services in Austria.

### **Legal capacity**

According to the Austrian Civil Code, the capacity to act can be restricted if the person is deemed as “unable to use reason”. The Austrian system of guardianship still permits the full or partial incapacitation of persons with disabilities and thus, it does not allow self-determined decision-making and a self-determined life. Likewise, there are no established support models and mechanisms in Austria, nor is there any effective, regular control or monitoring to check whether the wishes of the individual concerned have been respected.

In practice, appointments of guardians are effected by courts in great numbers and often very rapidly without adequately considering potential alternatives. 75 percent of all guardianship cases concern persons aged 60 and above. 60 percent of all persons involved in such proceedings are women. In nearly half of all proposed proceedings, the appointment of a guardian occurs in relation to all areas of life<sup>15</sup> (this applies to 62 percent of all appointments), whereas in one fourth of all proceedings, the appointment occurs for a specified part of a person's life.

The National Action Plan on Disability foresees the creation of a model of supported decision-making as a pilot project, though it is silent on plans to abolish substituted decision making. Further, there is no concrete information available on the implementation of these plans.

### **Accessibility / Non-discrimination**

Austria lacks a national policy to establish comprehensive accessibility. Numerous barriers exist which prevent persons with disabilities from equal and independent participation in many areas of life. There are only individual measures towards the improvement of accessibility.

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<sup>15</sup> This includes, inter alia, the right to marry, the right to choose one's residence and the right to decide on medical issues.

The protection from discrimination (inter alia by barriers) is regulated in the Federal Disability Equality Act which unfortunately is a very weak law. An official evaluation of the Federal Disability Equality Act criticises the lack of sanctions for discrimination due to barriers. If businesses or ministries do not comply with accessibility regulations or if they are not accessible, they do not have to expect controls or sanctions. In the case of discrimination, the Act only provides for financial compensation but not for the removal of barriers. Thus the authors conclude: „Compensation does not lead to an improvement of the situation for persons with disabilities, neither does it lead to a rapid accessibility according to the Federal Disability Equality Act. Consequently, an injunctive relief should be possible if comprehensive accessibility is the wish of the society.“<sup>16</sup> However, the National Action Plan on Disability merely announces a discussion about these issues and no concrete actions.<sup>17</sup> We do not consider this an appropriate measure to ensure accessibility for people with disabilities.

### **(Political) Participation and Consultation**

In Austria, people with disabilities and their organizations are generally invited to issue statements on law amendments or other measures in most cases. However, there is no comprehensive, structured consultation process and results-oriented inclusion from the very beginning of legal reform projects. Subsequently, important suggestions are often left without being addressed.

Apart from that, many politicians do not know the difference between a service provider organisation and a DPO. When asked for participation, politicians as well as representatives of the public administration often refer to negotiations with service-providers. Service providers are much better equipped with resources than DPOs. Thus, the effective participation of people with disabilities in political developments is hindered and distorted by the dominance of service providers.

With regard to deaf people, both accessibility and participation in society are highly dependent upon the availability of Austrian Sign Language interpreters. We are disappointed that there is no legal entitlement to interpretation services in all areas of life and no control of the quality of interpretation. The government acknowledges the lack of interpreters in the National Action Plan on Disability (NAP 2.7.1) but does not specify the remedies.

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<sup>16</sup> BMASK (Federal Ministry of Labour, Social Affairs and Consumer Protection) (ed.) (2012). Evaluierung des Behindertengleichstellungsrechts. (Evaluation of the Disability Equality Act) Vienna: BMASK, p. 122. For download in German: [http://www.bizeps.or.at/downloads/bgstg\\_evaluierung.pdf](http://www.bizeps.or.at/downloads/bgstg_evaluierung.pdf) .

<sup>17</sup> See National Action Plan on Disability 2012-2020, measure 43, p.32.

## **Conclusions**

The main conclusion from what we have said is that the governance of the implementation of the CRPD in Austria is weak and uninformed of the CRPD principles. This becomes most evident in three aspects:

1. Responsibility for CRPD implementation has been delegated to the Ministry for Labour, Social Affairs and Consumer protection, not the Federal Chancellery which has a broader scope across all sectors,
2. The split competences between the federation and the Laender hinder sustainable changes and improvements leading to incoherence and differing levels of rights protection for persons with disabilities depending on where they live; this is further exacerbated by the refusal of the Laender to participate in the development of the National Action Plan on Disability.
3. There are powerful interest groups that advocate actively against inclusion and accessibility. The reaction of the government is very reluctant and weak in this regard.