ANWÄLTIN FÜR GLEICHBEHANDLUNGSFRAGEN
FÜR MENSCHEN MIT BEHINDERUNGEN
MAG.A CHRISTINE STEGER

Dear Madam Chairperson,

Dear Mr. Special Rapporteur,

Dear members of the Technical Committee!

I would like to thank you for the opportunity to report on the progress of the implementation of the UN Convention from the perspective of the Federal Disability Ombudsperson's Office. I will do so on the basis of the following topics:

1 Fulfilment reservation
2 Definition of disability
3 Reasonable accommodation
4 Protection against discrimination
  a) Fragmentation
  b) Elimination/enforcement proviso
5 Education
6 Labor
7 De-institutionalization

Recommendations

1 Fulfilment reservation:

The Republic of Austria ratified the CRPD with a reservation of fulfillment. A structured and comprehensive translation/transfer of the Convention's objectives into national (and regional) law should have been the consequence of this commitment as of 2008. This has neither been done **systematically** nor **comprehensively**. The recommendations for action issued in 2013 already address the problem of shared responsibilities between the federal and state governments. Very clear recommendations were also made here by the expert committee. However, I cannot see any implementation of these recommendations. There are still 10 different laws and guidelines in force for the area of personal assistance alone.

2 Definition of disability:

Medical criteria for determining "disability" still apply in Austria. The concept of disability as defined in the Convention has not found its way into laws and guidelines. The broad meaning of disability for participation, not in the sense of medical deviation, is not being applied. It can be stated that there are some laws on federal as well as state level that have modernized terms. However, the underlying idea of these laws is from a time before the Convention. The social model of disabilities is not the applied tool to consider people with disabilities comprehensively. This leads to point 3:

3 Reasonable accommodation:

The result is that many people with disabilities are not given the opportunity to live independently in the first place because they are not encompassed by the applied legal concept of disability. Reasonable accommodation as provided for in the Convention does not link to a specific "degree of disability" but to the analysis of the environment. A large proportion of people with learning disabilities are, for instance, excluded from Personal Assistance. Likewise, people with psychosocial impairments. Austria continues to use the term disability exclusively for certain disability "forms" and therefore pigeonholes people. If I don't fit the pigeonhole, I don't get the support needed. This is contrary to the CRPD.

4 Discrimination protection:

a) Fragmentation:

The division of competences already mentioned affects all areas of life, including protection against discrimination. In Austria, protection against discrimination is not only regulated very differently within the federal provinces, it also strongly differentiates between discrimination "dimensions". There is no actual intersectional consideration in any anti-discrimination law. Most problematic of all: if the fact of "disability" is part of intersectional discrimination, individuals must first go through all instances in this

area before they can claim discrimination in the other areas of discrimination than disability.

b) Removal/Injunctive Relief:

A major shortcoming is also the fact that persons with disabilities in Austria cannot sue for injunctive relief or removal of discrimination. In the Equal Treatment Act procedure, it is mandatory that conciliation between discriminated and discriminating parties takes place, which must fail before going to court. There, however, if discrimination is found to have taken place, there is only compensation for damages (in a small amount), no claim for removal or omission. Many people with disabilities therefore resign themselves even before the proceedings, knowing that they will receive a maximum of few hundred euro in damages.

5 Education:

Austria continues to maintain a dual education system that systematically segregates and segregates children with disabilities. Since the last state audit, the numbers of special schools have hardly decreased overall. In some states, there is even explicit expansion. The very promising pilot project of "inclusive model regions" was abolished in 2017.

6 Work:

The special school forms the base for the further course of young people with disabilities. Currently, at the end of compulsory schooling, there is still the passage to the so-called "health street", where at the end the "inability to work" is determined. From this point on, it is no longer the Ministry of Labor that is responsible, but the disability assistance of the federal states. This means: day structure, workshops, compulsory labor. No pension coverage, no wages. Inclusion in the primary labor market is no longer legally possible here; once this "inability to work" has been established, there is no way back.

7 De-institutionalization:

Again: The departments for the disabled of the federal states are responsible. In the last 15 years, a development towards smaller homes and better structures can be observed. Basically, however, nothing has changed. We cannot detect a structured commitment to the consistent dismantling of home structures with a fixed timetable. The impression is created that there is understanding for the problems of "large" facilities, but that a special structure is held on to because it would represent the "best form" of care. This approach probably stems from a very welfare state view of people with disabilities. To reiterate: If certain people with disabilities are excluded from services such as personal assistance, then the states provide certain services for this "target group" such as assisted living. This is without alternative due to the legal situation in the federal states and there is no freedom of choics.

Unfortunately, we have to note that in the last 10 years there has been a massive deterioration in the area of barrier-free housing. however, this would be the basis for community-oriented housing.

Recommendations:

- Consistent and structured analysis of all legal materials with regard to compatibility with the objectives from the CRPD as well as legal adjustments
- Ensure access to reasonable accommodation for all persons with disabilities and a recast of the assessment regulation
- Harmonization of the protection against discrimination
- Expansion to include claims for removal and injunctive relief
- Mandatory dismantling of special schools and transformation of mainstream schools into an inclusive system by 2030
- Abolition of the determination of "incapacity for work"

- End to day structuring measures, workshops and the establishment of a permeable system to the labor market
- Abolition of residential homes, access for all people with disabilities to community-based services and housing

Thank you for your attention!