

Hannover, 20. Jul. 2023

**A statement on the state of Lower Saxony on  
Measures of the Federal Republic of Germany implementing the  
United Nations Convention on the Rights of Persons with Disabilities in  
the period from September 2019 until March 2023**

**Preliminary remarks**

In addition to the reports already available on the implementation of the UNCRPD for Germany, we are submitting a report for the Federal State of Lower Saxony in Germany. This report is based on the questions adopted by the Committee on the Rights of Persons with Disabilities on 10 October 2018 (CRPD/C/DEU/QPR/2-3) and on 21 September 2018 (CRPD/C/DEU/CO/-3).

The CRPD questions explicitly ask about developments in the German states. The Federal Government's answers are too general and do not take into account the general requirements in the Guidelines for periodic reporting to the Committee on the Rights of Persons with Disabilities, also within the framework of the simplified reporting procedure (CRPD/C/3), so that the deficit for Lower Saxony in relation to the requirements stated there is named on the basis of the most concise examples.

**Re A. Purpose and general obligations (arts. 1-4)**

Lower Saxony implements only the most minimal measures of rights for persons with disabilities. It has a state commissioner for persons with disabilities, but she has been unable to perform her duties for over a year due to illness. The conciliation body for the settlement of disputes under Article 9 of Directive (EU) 2016/2102 is also to be established there. The last "Inclusion Action Plan" ended in 2022, the intention is now to adopt a new one in mid-2024. The preparations for the new version are being carried out under the auspices of the Lower Saxony State Chancellery, which is to be welcomed.

However, this alone does not mean that the requirements contained in the above-mentioned guideline CRPD/C/3, formulated in the purpose (art. 1) No. 3 a), will also be implemented. According to this guideline, state measures must be taken to ensure that the

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requirements of the UNCRPD are also implemented in the areas of responsibility of the state of Lower Saxony. The details of the most important implementation topics are discussed below.

## **B. Specific rights (arts. 5-30)**

### **Equality and non-discrimination (art. 5)**

Considerable need for action in legal regulations and practice arises in the areas of

- Accessibility (art. 9), especially nos. 9 and 10 CRPD/C/DEU/QPR/R.2-3,
- Equal recognition before the law (art. 12), especially No. 12 a) CRPD/C/DEU/QPR/R.2-3,
- Access to justice (art. 13),
- Living independently and being included in the community (art. 19), especially nos. 18 a), b), d), 19, and 20 CRPD/C/DEU/QPR/R.2-3
- Personal mobility (art. 20), especially No. 21 CRPD/C/DEU/QPR/R.2-3
- Education (art. 24)
- Participation in political and public life (art. 29), especially No. 30 CRPD/C/DEU/QPR/R.2-3.

The respective need for action is now explained in detail:

#### **On accessibility (art. 9), especially paras. 9 and 10**

#### **CRPD/C/DEU/QPR/R.2-3:**

It is not evident that the legislation, Land Government and administrations of the Land of Lower Saxony, including the Municipalities, recognise the accessibility of persons with disabilities and, when recognised, intend to abandon it in an appropriate manner. In hearing procedures, we had referred to Universal Design - Universal Design - and proposed that the relevant ministries be mandated to develop proposals for its implementation in programmes. This would enable the state to catch up with the corporations based in Lower Saxony with world-class know-how. This proposal was not taken up.

Above all, the neglect of accessibility in public transport (cf.

- in public transport (cf. the explanations under Personal Mobility (art. 20) and
- in housing

should be pointed out.

This was particularly evident in the passing of the Lower Saxony Building Code Act. Here, in a Political Declaration with selected organisations, it was agreed in advance of the legislative process to amend the aforementioned law, which began at the end of



2016/beginning of 2017, that building costs would take precedence in new construction and extensions. The consideration of barrier-free access was even considered as undesirable additional costs and should therefore be avoided. This agreement was then also reflected in the amendments to the law. The shift of accessible housing so far from the ground floor to the 1st floor without providing for mandatory accessibility (this was only required for residential buildings with more than 4 floors) was even referred to as the implementation of the CRPD. The intention to conduct a parliamentary review of the building application practice in due course after the publication of the amendments to the Act has so far failed to materialise. During the parliamentary deliberations, we presented statistically ascertainable figures from the submitted building applications of the past decades throughout Lower Saxony on the proportion of buildings planned to be barrier-free. The figures are sobering. If barrier-free flats were specified at all in building applications, they are only to be found in the larger cities, so that people with disabilities must inevitably move to these cities in the course of their lives. Policy measures have subsequently been implemented to date on other policy priorities, all of which take into account low-cost or affordable construction and climate protection. The lack of building practice taking barrier-free aspects into account was not only evident in the municipalities outside the large cities in Lower Saxony, but also in the large cities: In new building areas, also in the state capital Hannover, only buildings below the obligation to construct barrier-free measures were registered for new construction.

In this context, another speciality in Germany must also be pointed out: In residential construction, the German standard DIN 18040 divides accessibility into the B- (DIN 18040 Part 1) and R- (DIN 18040 Part 2) standards. The R-standard covers flats that can be used without restrictions with a standard wheelchair (1.20 m long and 0.70 m wide). DIN 18040-2 places higher requirements on the equipment of the flats.

If the municipalities in Lower Saxony are willing, they will provide for a minimum number of barrier-free flats according to the B- and R-standards which fall below the mandatory standards for floors applicable in Lower Saxony in the development plans to be adopted by them.

Furthermore, it must still be pointed out: The municipalities or other authorities do not check whether barrier-free flats are actually built according to the submitted development plans. People with disabilities also have no right to take legal action against the lack of implementation practice, even if the building regulations have been violated.

Legal regulations provide for legal proceedings to be brought in all other cases of violations of mandatory building measures, but not in the case of unimplemented accessible housing. This leads to legally impermissible discrimination of people with disabilities.



## **On Equal recognition before the law (art. 12), especially No. 12 a)**

### **CRPD/C/DEU/QPR/R.2-3**

Now that Germany has decided to newly legally regulate the law on guardianship from the January 2023, we asked the responsible Ministry of Justice in Lower Saxony at an early stage whether we could present our concept there so that the ordering of legal guardianship could be reduced through the application of various measures. However, the Ministry sees no need to change anything in practice. The ministry's website (<https://kurzelinks.de/8tftp>, as of 17.07.2023) contains explanations of the law on guardianship and a downloadable brochure that do not take the legal changes into account. Obviously, the state of Lower Saxony is not interested in the legal changes and does not take note of the increasing numbers of court-ordered guardianships from year to year.

## **On access to justice - Access to justice (art. 13)**

Direct legal access for persons with disabilities to self-representation before the courts is not possible, at least in Lower Saxony. The Landessozialgericht für die Bundesländer/German states of Lower Saxony and Bremen sets hardly achievable hurdles for self-representation before the social courts in Lower Saxony. For example, as a self-help association, we were denied the right to represent our members because we could not present enough legal proceedings during the year. Our expertise and legal knowledge were not challenged.

In fact, we hardly find any lawyers in the places where people with disabilities live (this also applies to the centre of Hanover) who are sufficiently familiar with the complicated and structured German legal system for people with disabilities. Law firms that are familiar with this are not prepared to accept a mandate only on payment of the minimum lawyer's fee, which is also significantly lower than remuneration regulations in other areas of law. Settlement according to contractually higher rates of remuneration was legally permitted in Germany a few years ago.

We refer to the commitments mentioned at the beginning that the Federal Government is obliged to describe requested measures of implementation to the CRPD, including those that happen in the German states and the municipalities.

## **On Living independently and being included in the community (art. 19), especially No. 18 a), b), d), No. 19, and 20 CRPD/C/DEU/QPR/R.2-3**

The German states are legally obliged by federal laws to regulate and define the principles regulated in the federal laws in more detail by their own laws. For example, the state of Lower Saxony still does not provide for independent decision-making for all persons



with disabilities in the design of their housing and lifestyle. People with high support needs continue to be dependent on a specific form of housing in groups, on which the municipality commissioned by the state of Lower Saxony, as the locally responsible service provider/statutory benefit provider, alone makes the final decision. Even if a private service provider is found to carry out the tasks, the lives of these people are in fact restricted due to the financial resources made available for this purpose. The daily routine of each individual person is determined by the specifications of the statutory benefit provider, which is then implemented by the private service provider according to its specifications for the entire residential group, and thus also for the individual person. This means that getting up, showering/bathing, going to bed, leisure time in the group or as an individual takes place according to times planned in advance for days/weeks - regardless of necessary therapies - and this does not enable a self-determined life.

### **On Personal mobility (art. 20), especially No. 21**

#### **CRPD/C/DEU/QPR/R.2-3**

Under Accessibility, general reference was made to public transport. The law applicable to this in Lower Saxony has since 1997 only provided for a general, non-binding regulation on the "special needs" of persons with mobility impairments, which are to be appropriate. The transport authorities designated by the state of Lower Saxony (transport associations named by the state, the state of Lower Saxony for local rail passenger transport, otherwise the districts and independent cities) then decide on their own whether they will take these requirements into account and, if so, what measures are to be taken. The public transport authorities continue to decide independently on further requirements or applicable further requirements they have set themselves.

This lack of precise legal requirements thus prevents personal mobility for individuals or groups of people in public spaces in Lower Saxony. Even an advisory body of organisations of people with disabilities, approved and recognised by the Hannover Region, which have an interest in participating in the design of public transport, are therefore unable to effectively introduce their precise proposals in such a way that they are incorporated into the specifications of the bodies making decisions within the administration.

### **On Education (art. 24)**

The dilemma of the lack of implementation of inclusive schooling in Lower Saxony is sufficiently well known to the public. Almost every implementation measure of minimal steps in education was de facto stopped in the last legislative period. Effective implementation steps in this legislative period are not apparent so far. At present, it is left to the local school headmasters to decide whether to implement appropriate measures and how to do



so. In their decisions, they are left alone by the state. The support staff provided by the state are so thinly staffed that they are unable or hardly able to implement the identified and desired measures.

### **On participation in political and public life (art. 29), especially No. 30 CRPD/C/DEU/QPR/R.2-3**

The persons with high support needs can hardly participate in political and public life, as described. We parents and families of children born with disabilities have usually supported our children in their stages of life according to the extent of their disabilities to the extent that they could also participate in public life. When this was no longer possible or no longer considered beneficial, we placed them into the care of private service providers for further support. Because these were or are special institutions until today, a continuation was or is not possible or only possible to a limited extent. For a maximum of 6,000 euros per month in state aids for 24-hour support with 1:1 care, this is not possible in high-wage Germany. Surveys of persons entitled to benefits commissioned by the state of Lower Saxony are to be assessed against this background. Those who have lived for decades in special structures under these conditions will not know another, more self-determined life. Incidentally, the state of Lower Saxony is also not sufficiently prepared for the changing living conditions of the upcoming generation. At present, measures are being taken to adapt to the new law that came into force in 2020. However, these only transfer the principles of previous practice to the new law. Fundamental changes, however, are not taking place. If this were otherwise, higher costs would also have to be calculated. A calculation of the costs incurred by the full or gradual transfer of the requirements of the CRPD is not desired in Lower Saxony for a group of persons with disabilities that can be specified in more detail. Currently, it is a matter of people with certain forms of disabilities who are accommodated in closed psychiatric facilities in Lower Saxony due to a lack of suitable offers. At least this group of persons should be accommodated in closed institutions of inclusion aid. As a rule, the previous support system for these people has demonstrably brought about their forms of disability themselves. We do not see that closed inclusion aid facilities will change this. In contrast, we are of the opinion that in family structures to be promoted, the psychiatrically caused phenomena can be remedied and developed into people who can live with their disability until the End of their lives. The administration of medication is limited to what is absolutely necessary. If society itself has caused these increased costs through the lack of development of support structures, it must also ensure that the human outbursts that have been brought about are reversed.



## C. Specific obligations (art. 31-33)

### Statistics and data collection (art. 31), especially nos. 32 and 33

Lower Saxony hardly ever publishes reliable statistical data on details of the persons supported, insofar as they have characteristics of disabilities. The Lower Saxony State Statistical Office was unable to answer our queries in this regard after figures were published following the conversion of funding in 2020. The municipal statutory benefit providers commissioned by the state of Lower Saxony also apply the International Classification of Functioning, Disability and Health (ICF) in such a way that a support need to be determined according to the ICF per se is only determined if the state of Lower Saxony provides funding for them. In this way, the state of Lower Saxony violates the principles of the ICF, according to which international comparability is to be established (cf. Annex 5 ICF and people with disabilities).

The decision-making bodies of the ICF have already seen the misuse of the ICF (cf. Annex 5 /Annex 5 ICF and people with disabilities) and subsequently formulated ethical guidelines for the use of ICF in Annex 6.

Before the new legal regulations came into force in 2020, we had asked in submissions to the responsible Lower Saxony Ministry for Social Affairs, Labour, Health and Equality for the seamless adoption of all regulations to be observed by Lower Saxony. The information contained in these submissions has not been heeded to date.

Prior to the implementation of the Lower Saxony Action Plan Inclusion 2019/2020, a big conference of a large number of associations and organisations representing persons with disabilities took place. We also took part in this. Despite the guidelines of the Lower Saxony Ministry for Social Affairs, Labour, Health and Equality, which had the aim of narrowing down demands, a long list was drawn up. After working through these proposals in the ministries of Lower Saxony, only a small part of them was included in the action plan. It is still unclear why certain goals were not included. This approach is one of the reasons for submitting this paper.

Yours sincerely

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