



## **Additional Report and Response to the List of Issues**

Submitted by the Austrian Ombudsman Board on the occasion of the 29th Session of the CRPD (14 August–8 September 2023)

The Austrian Ombudsman Board (AOB) submitted its report regarding the human rights situation for persons with disabilities for the state review of Austria in 2018. After five years, the AOB wishes to update its information. The present **report follows the structure of the *list of issues***. It includes additional and updated information to its report from 2018.

The AOB will only cover topics, which it had to deal with in the course of its work and has thus a first-hand knowledge. Since the state party submitted a report and pointed out the improvements made by Austria, the AOB will focus rather on the shortcomings of the legal framework and the administrative practice with a view to the rights of persons with disabilities.

Before contributing to the *list of issue* questions, which the State Party had to respond to, the AOB also wants to cover some general issues.

The AOB is the NHRI of Austria (Status A) and the Austrian constitution established it as ombuds institution, national preventive mechanism (OPCAT) and Art. 16/3 CRPD authority. However, the AOB wants to stress that for all institutional settings it is first and foremost the public administration supervisory authorities' responsibilities to guarantee the fulfilment of human rights and the prevention of violence in institutions. The AOB can only monitor samples of institutions and report on its findings. It cannot order institutions to change their practice or close them. In contrast, the public administration supervisory authorities can.

### *AOB recommendation:*

*All public administration supervisory authorities should guarantee the fulfilment of human rights and the prevention of violence in institutions through close and frequent monitoring.*

Equal rights, equal chances and non-discrimination for persons with disabilities are still not in place in Austria. The legal framework is still largely based on a medical model of disability and rules are scattered and not unified due to a division between federal state and *Bundesländer* competences. There is no enforceable right to many support tools or benefits and persons with disability are largely bound to poverty because of a non-inclusive labour market and a lack of proper social security schemes. In addition, the current system relies for care and support matters for a big part on the family of the person with disability. This is not only true for children but also for adults aged 50+.

AOB recommendation:

Austria should adjust its legal framework for persons with disabilities and base it on a social model of disability. There should be an enforceable right to support and benefits. Austria should set up a social security and support scheme as well as a labour environment, which ensures that persons with disabilities are not bound to lifelong poverty.

Many persons with disabilities have a feeling of being lost in an extremely complicated, confusing and multi-layered system of support. A one-stop-shop system that allows the persons concerned to get the individual support they need is not only highly desirable, but overdue. Such a casework system would also make gaps between various public support tools visible and persons with disabilities would not be sent in circles from one authority to the other.

AOB recommendation:

Austria should set up a one-stop-shop support and case management system for persons with disabilities, which covers all areas including federal and Bundesländer matters.

Since many persons with disabilities receive only pocket money in sheltered workshops, get only minimum social welfare and have to contribute financially to their own support a lot, persons with disabilities are doomed to poverty.

AOB recommendation:

Persons with disabilities should be entitled to regular wages in sheltered workshops and be included in the social insurance scheme like other workers.

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

**1. Please indicate whether the State party has reviewed its legislation and further harmonized it with the provisions of the Convention since the review of its initial report.**

Despite the adoption of a new National Action Plan for disability matters and some individual improvements, it is fair to say, that the legal framework in Austria does not uphold the rights guaranteed in the CRPD. The biggest challenge to harmonize the legislation with the provisions of the Convention is the fact, that Austria is a federal state and each *Bundesland* has its own disability legislation. Since disability matters are cross-sectional matters a thorough alignment with federal legislation, which ensures a complete coverage of the Convention's rights, is essential.

In general, many support schemes for persons with disabilities are dealt with within the "private sector administration" without a proper legal entitlement to support measures.

AOB recommendation:

Austria should ensure a legal entitlement to all measures, which are necessary to guarantee all rights of the Convention. There should be a common approach taken by the federal

government and legislators together with the Bundesländer. The rights of persons with disabilities should be in the centre of the analysis.

**2. Please indicate what measures have been taken to ensure that the assessment of disability for gaining access to support services is in line with the human rights model of disability provided for in the Convention, particularly in article 4 (3).**

The medical model for assessing disability is still widely used in Austria. One of the most obvious examples and violation of the human rights model of disability is the assessment of “performance capability”. If a person is found to have a lower than 50% “performance capability” he or she is regarded to be unfit for the primary labour market. Once labelled unfit the person is not eligible for the services of the public job centres. Although there are plans to raise the age limit for the assessment to 25 years and older, the division between two groups of human beings with regard to the labour market is not in line with the CRPD

AOB recommendation:

Austria should abolish the assessment of “performance capability” for all persons with disability (see also para 42).

**3. Please provide information on measures taken to ensure the full and effective implementation of the National Disability Action Plan 2012–2020, including the funds allocated for its implementation.**

The detailed evaluation of the NAP 2012-2020 comprises a document of more than 700 pages. From the AOB’s point of view, the biggest problem concerning the NAP 2012-2020, as well as its succeeding document, is the lack of guaranteed financial funds for the implementation of the planned measures. The alleged lack of financial resources is one of the biggest obstacles for the realization of a legal framework as well as administrative practice to ensure all the rights prescribed in the Convention.

AOB recommendation:

Austria should set up a comprehensive “inclusion fund” to finance the necessary measures provided for in the NAP 2022-2030.

**4. Please provide information on measures taken to ensure the full and effective participation of persons with disabilities and their representative organizations, including those representing women, girls and boys with disabilities, in the design, implementation and review of all disability-related legislation and policies, as well as in other policy and decision-making processes.**

During the drafting process of the NAP 2022-2030 persons with disabilities and their representatives have been invited to participate. However, the participating organisations

criticized that their demands and suggested measures have not been included in a satisfying extent.

AOB recommendation:

Austria should make inclusion and participation of persons with disabilities respectively representative organizations in all disability related legislation and policies, as well as in other policy and decision-making processes, compulsory.

**6. Please provide information on measures taken to strengthen the anti-discrimination laws by broadening the scope of available remedies and including remedies other than financial compensation that would require a change in the behaviour of people who discriminate against persons with disabilities, such as injunctive powers.**

All shops and services are obliged to guarantee barrier-free access. In case this obligation is not met, the Austrian Federal Act on the Equal Treatment of Persons with Disabilities (*Bundesgleichstellungsgesetz*) still provides only for financial compensation instead of a right to a removal of the barriers.

AOB recommendation:

Austria should grant a right to a removal of unlawful barriers in addition to financial compensation for persons with disabilities.

#### **Women with disabilities (art. 6)**

**9. Please provide information on measures taken to ensure equality and prevent multiple forms of discrimination against women and girls with disabilities and to mainstream a gender perspective in disability-related legislation and policies, and a disability perspective in its legislation and policies concerning women.**

Women with disabilities (young, older, blind, hearing impaired, mobility impaired, with intellectual disabilities or multiple disabilities etc.) face all kinds of barriers regarding the access to health care. The right to free choice of physicians and medical treatment is limited at best, but often not existing. This is due to a lack of barrier-free medical centres, a lack communication tools and a lack of awareness.

A recent study on the experiences and prevention of violence against persons with disability in Austria showed the enhanced risk of violence, which girls and women with disabilities are exposed to. They face various forms of violence inside and outside the institutional settings. The importance for violence prevention or crisis management plans is obvious, but such plans are not area-wide in place.

During the COVID pandemic, the number of cases of domestic abuse rose and it became obvious that girls and women with disabilities are not just more often exposed to violence,

but also have fewer means to escape violent settings. Domestic assault shelters are often not barrier-free and staff is often not qualified to accommodate woman with disabilities.

AOB recommendation:

Austria should take all necessary steps to guarantee non-discriminatory access to health care for women with disability.

Austria should make violence prevention plans and crisis management plans compulsory in institutional settings. Furthermore, Austria should make sure that domestic assault shelters guarantee unhindered access for women with disabilities.

### **Children with disabilities (art. 7)**

**13. Please provide information on the number of children with disabilities not living with their families, including those placed in institutions, and detailed data, including the financial and other resources invested, on measures taken to ensure the deinstitutionalization of children with disabilities.**

The AOB was confronted with situations when children with disabilities needed a substantial amount of care taking, but the children were not granted a place in a care taking facility nearby their parents' home. In one case, the public service provider planned to transfer a six-year-old child far away from the parent's hometown to a different city. When the parents, who visited the child on a daily basis, did not agree with the transfer, the public service provider initiated procedures to withdraw the parents' right for custody.

In such cases (24-h-) care at the parent's home might be difficult due to a lack of sufficient living space for the whole family. Although the AOB requests public administration to enable every child to receive the necessary care at home and ensure deinstitutionalization, this is, for the moment, not always possible due to infrastructure reasons.

AOB recommendation:

Austria should establish comprehensive de-institutionalization strategies for persons with disabilities. Austria should make sure that every child with disability can live in his/her family's home. However, as long as there are institutional settings in place, public authorities must provide for sufficient places in care facilities to make sure, that children can live close by to their parents.

The increase of psychosocial crises of children during the COVID pandemic showed the importance of an increase of the number of psychiatric, therapeutic, client oriented services. A promising model has been established in Vienna. The care services take place at home for a period of 3 to 6 months and the intensity of care is comparable to institutional settings. The extramural setting allows quick and client oriented interventions.

AOB recommendation:

Austria should introduce enhanced home-care-taking options for children in a psychosocial crisis.

**14. Please provide information on measures taken to prevent any abrogation of the rights of children with disabilities.**

The AOB has been confronted with numerous complaints of families whose children with disabilities are discriminated against. Although equality among children is prescribed by the Austrian constitution, children with disabilities still face, in many instances, rejection in nurseries, schools, sports associations, youth groups and the like. Parents are often referred to special institutions for children with disabilities. The lack of a barrier-free environment, liability issues, shortage of individual support and a lack of knowledge result in separation and hinder inclusion.

AOB recommendation:

Austria should ensure that any child with a disability can attend nurseries, schools, sports associations, youth groups and the similar like any other child.

Furthermore, the AOB observed a lack of sufficient job qualification programmes for children with disabilities under 18 years of age. Especially children with multiple disabilities have in many cases practically no chance to enter the primary or mainstream labour market. If persons with disabilities are “classified” with a capacity to work of less than 50% they are excluded from the regular support programmes of the federal unemployment agency. This means that those minors cannot enter regular apprenticeships or jobs. The classification is based on medical diagnosis and individual deficits rather than abilities and chances. The AOB regards the classification scheme as arbitrary and rigid. There have been plans to raise the age limit for this classification to 25 years or older, but so far many minors are still affected by this practice.

In addition, children with disabilities who need to receive medication while in care, are sometimes not accepted in certain educational or training centres and are consequently even more disadvantaged than children with disabilities who attend regular schools.

AOB recommendation:

Austria should ensure that minors with disabilities should have the same educational and vocational opportunities like all other children.

Structural deficits exist also in both the outpatient and inpatient areas of child and adolescent psychiatry regarding the care provided. Countrywide there is a need of several hundred treatment beds based on the bed benchmark for the child and adolescent psychiatry and only an insufficient number is in place. The inadequate care situation causes extreme pressure in some child and adolescent psychiatry wards. The lack of beds results in extended waiting times

and shortened stays with frequent overcrowding. This situation led in the past to children and adolescents having to be admitted to adult inpatient psychiatry.

There are government plans to stock up financial means, but the need for treatment places has even risen during the COVID pandemic and in its aftermath.

AOB recommendation:

Austria should establish a sufficient number of treatment beds for child and adolescent psychiatry.

### **Accessibility (art. 9)**

**17. Please indicate whether all public services, especially educational, health and social services, as well as all client services, have been made fully accessible at the Federal, Land and municipal levels, in line with the State party's legislation and the Committee's concluding observations (CRPD/C/AUT/CO/1).**

By no means have public services been made fully accessible at any administrative level. Quite the contrary: there is even a lack of knowledge among many decision-makers, what barrier-free access means. Service providers, operators and even public authorities have misconceptions of disability and barrier-free accessibility. A lack of barrier-free accessibility is also evident in inappropriate layouts and furnishings in many institutions and facilities for persons with disabilities. It is sometimes argued that e.g. no wheelchair-users are clients in the respective institution, not considering that the non-barrier-free environment prevents future clients and/or future staff with disabilities from joining. Even newly build institutions or public buildings do not comply with accessibility rules.

Furthermore, there is still no enforceable right for removal of barriers to public services according to the Federal Act on the Equal Treatment of Persons with Disabilities (*Bundesbehindertengleichstellungsgesetz*). The violating party can only be ordered to pay compensation but not to remove the barrier.

AOB recommendation:

Austria should ensure that all public administration authorities have a sufficient knowledge of a "barrier-free environment" and that there is an enforceable right for removal of barriers to public services.

**20. Please indicate what steps the Federal Government is taking in order to satisfy the need for sign language interpreters.**

The AOB criticized in the past that there is a lack of sign language interpreters in Austria (1 interpreter per 100 deaf persons). This is also due to limited number of education and training facilities.

AOB recommendation:

Austria should promote the education of sign language interpreters and increase number of education and training facilities.

### **Situations of risk and humanitarian emergencies (art. 11)**

**23. Please provide information on measures taken to make services and facilities available to migrants, asylum seekers and refugees with disabilities fully accessible and disability-inclusive.**

The AOB observed that legislations of the *Bundesländer* exclude asylum seekers from certain support measures for persons with disabilities. They can only receive disability related therapies, which are covered by health insurance. However, they are not eligible for other essential therapies, which fall into the area of the disability support of the *Bundesländer*. There is a loophole in the legal framework of the *Bundesländer*, which needs to be closed.

AOB recommendation:

All Bundesländer, respectively the federal government, should ensure that all children in Austria, including asylum seekers, are included in all therapeutic support schemes.

Austria has nine different disaster relief laws (every *Bundesland*) including nine different definitions of disaster with differing procedures. There is a lack of barrier-free information and disaster warnings. Organisations of and for persons with disabilities demand participation in the process of drafting disaster relief plans.

AOB recommendation:

Austria should guarantee participation of and for persons with disabilities for the process of drafting disaster relief plans. All disaster relief laws should include persons with disabilities and their needs in course of a disaster.

### **Equal recognition before the law (art. 12)**

**25. Please provide information on measures taken to provide persons with disabilities with support in decision-making, including any reform of legislation and funds provided for supported decision-making. Please also provide information on ways in which individuals' choices, will and preferences are taken in account when providing individuals with support in decision-making.**

After the change of the regulatory framework for legal guardianships, the number of complaints reaching the AOB is decreasing. However, since the appointment and control over legal guardians lies in the responsibility of independent courts the AOB cannot examine individual court decisions.



## **Liberty and security of the person (art. 14)**

**29. Please provide information on measures taken to review legislative provisions that allow for deprivation of liberty on the basis of disability, including intellectual and/or psychosocial disabilities, and to ensure that the provision of health-care services, including all mental health-care services, is based on the free and informed consent of the person concerned.**

Among the unjustified restrictions of liberty, which the AOB observed in facilities for persons with disabilities, the use of medication, and in particular PRN medication, was among the most common forms. This stems from the fact, that in many cases it was not clear, whether a certain medication had been prescribed in line with a general health diagnosis, or rather to calm down patients. The latter is only allowed within a narrow field of procedure. Since the main responsibility for the proper descriptions lies, primarily, in the hands of individual, independent physicians, they should be the first addressees of any critique. However, public administration must be aware of the problem and ensure that restrictions of liberty are only applied under lawful circumstances.

### *AOB recommendation:*

*Public authorities in cooperation with the Medical Chamber should ensure that restrictions of liberty are applied under lawful circumstances only.*

The Nursing and Residential Homes Act had been amended. The Act grants special protection and regulates the legality to apply means of deprivation of freedom. Prior to its introduction, there was no comparable legal protection in this area. Homes for juveniles under the supervision of youth welfare authorities were exempted from those regulations. All institutions for minors under the supervision of the youth welfare authorities are now included in the scope of the Act.

## **Freedom from torture or cruel, inhuman or degrading treatment or punishment (art. 15)**

**31. Please provide information on measures taken to abolish the use of net beds, restraints and other non-consensual practices with regard to persons with intellectual disabilities and persons with psychosocial disabilities in psychiatric hospitals, institutions or anywhere else.**

The use of net beds had been proscribed under any circumstances.

**32. Please indicate whether intersex children are treated as children with disabilities and if surgery continues to be performed on these children in the State party. If so, please provide data on the number of children who have undergone surgery since the review of the initial report.**

The AOB criticised for many years not life-saving medical interventions and surgeries performed on intersex children. Those interventions are still not legally banned, although even

the parliamentary equal treatment committee recommended the ban of Intersex-genital-mutilation.

AOB recommendation:

Austria should ban non-live-saving intersex medical interventions on children.

#### **Freedom from exploitation, violence and abuse (art. 16)**

**34. Please provide information on effective measures taken to ensure the protection of persons with disabilities from exploitation, violence and abuse. Especially, please provide information on the establishment of protocols for the early detection of violence, above all in institutional settings, the provision of procedural accommodation to gather testimonies of victims, the prosecution of those responsible, and the type of redress that persons with disabilities who are victims of violence receive.**

The Federal Ministry for Social Affairs, Health, Care and Consumer Protection published the study on „Violence towards persons with disabilities: experience and prevention“. The results of the study were alarming. 72.5% of the interviewed persons with disabilities stated that they had already been the victim of physical violence. Persons with disabilities or mental illness are also more often victims of sexual violence. The study results also highlight that the area of sexuality is a taboo subject in many institutions and facilities, while the topic is not sufficiently addressed. Only around half of the interviewees stated that they had received adequate sex education, either in school, at home or in the institution or facility – without statements on the quality of the sex education.

Sexual self-determination is not restricted to sexual activities. The area also covers topics such as partnership and love, privacy, sex education, perception of one's own body and protection from sexual violence and harassment. The promotion of an environment for sexual self-determination, is necessary for effective protection against violence and to facilitate self-determination.

The commissions of the AOB visited numerous institutions across Austria, which do not have a written violence prevention concept in place. Often there is also no standard procedure on how to deal with incidences of violence. This is also due to the fact that several *Bundesländer* do not have an obligation for the establishment and implementation of a violence prevention concept in their regulatory framework for institutions for persons with disabilities. Furthermore, in several *Bundesländer* there is no obligation to establish a residents' or clients' representation council.

AOB recommendation:

The establishment and implementation of sexual self-determination concepts as well as violence prevention concepts should be compulsory for all institutions for persons with disabilities. Furthermore, the establishment of clients' representation councils should be compulsory for all institutions for persons with disabilities.

The AOB's commissions reported also that there is often an insufficient number of staff working in institutions. This is due to insufficient regulatory duties, insufficient use of financial resources, and also a general lack of qualified personnel in several *Bundesländer*. This situation enhances the risk for violence in institutional settings.

AOB recommendation:

The Bundesländer should review the regulatory duties for staff requirements, provide sufficient resources to employ staff and to promote education possibilities for the respective jobs.

There is also no obligation to use Augmentative and Alternative Communication when necessary. This leads to a dependency, a lack of autonomy and a lack of self-determination for the persons concerned, which, as a result, also increases the risk for the various forms of violence.

AOB recommendation:

The use of Augmentative and Alternative Communication should be compulsory when non-verbal clients depend on it.

The AOB criticized the pocket money model in sheltered workshop in general. This system bears a particular danger for exploitation in cases, when workshops take on external jobs and generate surpluses while workers do not profit directly from them. This might not happen in the majority of sheltered workshops, but the AOB commissions reported such observations in institutions.

AOB recommendation:

Austria should abolish the pocket money model in sheltered workshops (see para 42).

Currently, around 1.400 persons are in detention with a forensic commitment and this number shows a substantial increase in recent years. The legal framework for detention following a forensic commitment as well as its practice have been criticized by the European Court of Human Rights and the CPT, which suggested a comprehensive reform. Since 2023, there are higher thresholds for the forced admission, but there is still not a sufficient level of available therapies and personal rights are often heavily restricted. A group of experts, however, delivered a proposal for a wider system reform comparable with regular psychiatry clinics and departments including an independent patient advocate, sufficient therapies and rehabilitation measures as well as a sufficient number of staff. So far, the current system does not comply with the rights enshrined in the CRPD.

AOB recommendation:

Austria should change to a system for forensic commitments, which is in line with human rights standards.

**35. Please provide information on how article 16 (3) is being implemented, particularly within the mental health system.**

The AOB is the independent authority under article 16 paragraph 3 of the UN Convention on the Rights of Persons with Disabilities to prevent exploitation, violence and abuse. At any time, the AOB can independently undertake unannounced visits to facilities and programmes designed to serve persons with disabilities. The AOB thus monitors and controls, for example, nursing homes, residential facilities, assisted living, sheltered workshops for the disabled, psychiatric hospitals and departments. For this purpose, the AOB has set up seven commissions, which are pluralistic in their composition, to undertake these visits. These commissions report to the members of the AOB regarding their observations and provide suggestions for improvements that serve to enforce human rights guarantees.

After putting these positions out to tender, 56 members were appointed to serve on these commissions. This is a secondary job for the commission members who are experts in the areas of medicine, psychiatry, psychology, nursing, care of the disabled, social work and human rights. Persons with disabilities who are professional peer counsellors can assist the commissions during their monitoring and control visits. This reinforces the level of trust between the interviewers and the persons being questioned. At the same time it sensitises the AOB commissions additionally for the difficulties, persons with disabilities have to face. Interpreters can also accompany the commissions and persons experienced in non-verbal and/or facilitated communication.

For the purpose of monitoring and control, the commission members are vested with comprehensive powers. They have the right to access all rooms and areas of the visited facilities and can view all documentation. The interviewers can conduct conversations in a protected, non-coercive and anonymous atmosphere with residents, patients, family members and employees of the institutions.

In the event that the results raise human rights related concerns, the AOB initiates investigative proceedings and gathers statements from the service providers, the competent supervisory authorities and/or the competent highest administrative entities. After completing an investigative proceeding, the AOB can make an official determination of maladministration and report publicly to the National Council and/or the Diets.

In addition to the commissions, a Human Rights Advisory Council has been established. It advises the AOB in the determination of general investigative focal points, the definition of investigative standards and prior to issuing findings of maladministration and recommendations. Federal Ministries and NGOs nominate the Council members, who have a wide-ranging experience in the field of human rights.

In 2021, the commissions put a special focus on violence in psychiatric hospitals or departments and carried out 50 visits to such facilities. The results of those visits showed that personnel, especially doctors and non-caretaking staff, do not receive (sufficient) de-escalation training. Furthermore, when violent incidents happen systematic documentation and statistical evaluation does not take place in a sufficient way. Such documentation is essential for an incident analysis that increases prevention possibilities.

The findings also showed that in around 25% of the facilities medical restraints were not only carried out by qualified staff. Furthermore, the design of rooms and the building structure of facilities in several institutions make de-escalation more difficult. Finally, the AOB concluded that there is not a sufficient number of personnel working in psychiatric hospitals of departments.

AOB recommendation:

Austria should make de-escalation training compulsory for all staff in psychiatric institutions, make a systematic documentation of violent incidents obligatory, establish procedures, which guarantee that only qualified staff carries out medical/physical restraints and ensure that sufficient personnel works in those institutions.

**Living independently and being included in the community (art. 19)**

**37. Please provide information on measures taken, including the provision of adequate funding, to enable the diversity of persons with disabilities to enjoy their right to freely choose their residence on an equal basis with others and to access a full range of in-home and other community services for daily life, including personal assistance.**

The AOB observed that persons with disabilities are by no means free to choose their residence. This is due to the following reasons:

1. There is no proper Austrian-wide deinstitutionalization strategy in place.
2. Persons with disabilities who wish to live in an own apartment do not have a right – also depending on the kind of disability/s – to get the appropriate financial and personal support.
3. There is no Austrian-wide right to personal assistance for non-work-related matters.
4. Persons with disabilities often cannot choose between institutional residences due to a lack of service providers. Especially in rural areas, this issue is particularly problematic. The AOB observed cases where persons with disabilities were rejected by all regional service providers and therefore had to continue living with their parents.

Especially minors with multiple disabilities and/or chronic psychiatric disorders have – due to a lack of a sufficient number of apt care places - a higher risk to be placed in unsuitable homes (e.g. residential homes for elderly).

AOB recommendation:

Austria should establish and implement a proper Austrian-wide deinstitutionalization strategy. Austria should expand personal assistance services and provide persons with disabilities with an enforceable right to get the appropriate financial and personal support in order to live in an own apartment. Austria should make sure that persons with disabilities enjoy a de facto right to choose places of residence.

## Education (art. 24)

**41. Please provide information on the funding available to provide reasonable accommodation for students with disabilities based on individual requirements, to provide students with disabilities with the support they require within the mainstream education system, and to continue training teachers and all other educational and non-teaching staff to accommodate quality inclusive educational settings, in line with general comment No. 4 (2016) on the right to inclusive education. Please indicate what measures are taken to promote and encourage the training and hiring of teachers with disabilities. Please provide information on measures taken to implement targets 4.5 and 4 (a) of the Sustainable Development Goals.**

Speaking in more general terms, children and young adults with disabilities and chronically ill children are confronted with special challenges in coping with every-day life in Austria. Kindergartens and schools often feel reluctant to admit them. Even those children, who need little or no assistance (e.g. asthma, diabetes or epilepsy patients), but rather an understanding for their individual situation, face opposition quite often.

The AOB identified problems regarding the accessibility to school buildings and the allocation of support staff. Many difficulties result from the complicated allocation of responsibilities between various authorities as well as from a lack of personal assistance, especially in the private school sector. The legal uncertainty should be eradicated by the creation of explicit regulations for the support of personal assistance in the entire school sector together with legal entitlements for the individuals affected.

However, currently special schools for children with disabilities are still in place but are also in demand among many parents. For the time being, the AOB cannot see any substantial governmental initiative to reduce the number of children in those schools or to abolish them at all.

Finally, children with disabilities have no right to attend regular schools of the secondary level (14 years and older).

### AOB recommendation:

All educational facilities should be obliged to guarantee the access of children and young adults with disabilities. Children with disabilities should have a right to attend regular schools of the secondary level (14 years and older).

## Work and employment (art. 27)

**42. Please provide information on measures taken to enhance programmes for the employment of persons with disabilities in the open labour market and to narrow the employment and gender pay gaps. Please provide specific information on measures taken to promote the transition of persons with disabilities from sheltered employment to the open labour market. Furthermore, please provide information on measures taken to ensure**

**that social insurance contributions are made for such persons. Please provide information on measures taken to implement target 8.5 of the Sustainable Development Goals.**

Persons with disabilities face discrimination when trying to access the regular labour market in Austria. The situation is particularly difficult for persons with learning disabilities or chronic psychiatric illnesses who live in an institutional environment and are integrated into occupational therapy workshops.

One of the government's programmatically defined objectives is to help individuals transition from this protected world into the regular labour market. In practice, those objectives are not met often enough and this is because of various reasons:

- Classification as being unfit for work

If the Public Employment Service (*Federal Authority*) national labour agency suspects a person with disability to be unfit for work, it orders a medical assessment, which is mainly deficit-oriented. If a person is found to have a "performance capability" of under 50% the usual support mechanisms of the Public Employment Agency cannot be applied.

Instead, authorities of the *Bundesländer* will support them with benefits for persons with disabilities. Once classified to have a "performance capability" of under 50% a person can hardly change her/his status and normally stays in this group forever. Although there are plans to raise the age limit for the assessment to 25 years and older, the division between two groups of human beings with regard to the labour market is not in line with the CRPD.

AOB recommendation:

Austria should abolish the assessment of "performance capability" for all persons with disability. All persons, who wish to work, should get an individualised support to get access to the labour market.

- Residential arrangements and sheltered workshops are often handled by the same service provider and therefore very closely intertwined

There are many regions in Austria where only one residential home and one-day structure is available for persons with disabilities. Consequently, in such cases, there is no freedom to choose from various options. If residential places are usually intertwined with sheltered workshops, which are operated by the same organisation, it is fair to assume that there is at least implicit pressure to attend such workshops. This can lead to clients having a lack of social contact with the outside world and moving in closed social circles.

AOB recommendation:

Austria should establish a system, which breaks up organisational links between residential structures and work structures.

In addition, institutions for persons with disabilities often lack the resources (and sometimes the will) to promote their clients abilities in order to support them to get access to the labour market.

AOB recommendation:

If the under 50%-classification will not be changed, institutions for persons with disabilities should be obliged to draw up a plan for the clients' labour market inclusion, get the resources to promote the clients' abilities as good as possible and should be monitored by authorities in doing so.

- Pocket money in occupational therapy workshops

Persons, whose "performance capability" ranges between very low to just under 50% of the "performance capability" of persons with no determined disability, work in these facilities. Regardless of the scope of the work these individuals perform, such occupations are not deemed employment relationships. Under current law, the activities are regarded to serve as "education, upbringing, and treatment". Activities in such workshops are not qualified as employment under social insurance law.

Therefore, these individuals are not covered by social insurance based on their work. They do not acquire any independent pension entitlement. Furthermore, they receive other insurance benefits from entitlements under the minimum benefit system, from orphan pensions, etc. Those persons with disabilities do not receive any wages for their work, but receive only pocket money of normally less than EUR 100 per month.

The AOB regards the reliance on social welfare or the set-up of the minimum benefit system (i.e. without taking assets into consideration and without recourse regulations) for those persons with disabilities not in line with the CRPD.

The AOB published a special report on this issue and submitted it to the National Parliament and the regional Diets. So far, the issued demands have not been met.

AOB recommendation:

Austria should change the current system and ensure that persons with disabilities working in (sheltered) workshops are entitled to regular wages and acquire entitlement under statutory social insurance.

- Personal assistance as tool for enhanced integration

In Austria, there is no right for personal assistance for matters not related to work. The autonomy, empowerment and self-determination of many persons with disabilities could be enhanced by supplying personal assistance services. This could also have a positive effect on the inclusion in the regular job market.

AOB recommendation:

Austria should expand personal assistance services regarding the extent as well as the eligibility of recipients. There should be a claimable right to personal assistance for all persons with disabilities including persons with learning disabilities.