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**24th session of the UN Committee on the Rights of Persons with Disabilities: General discussion of the CRPD on the right of persons with disabilities to work and employment Art.27 – Submission of the Austrian Disability Council**

**Introduction:**

The Austrian Disability Council (Österreichischer Behindertenrat) is the umbrella organization of the Austrian Disability Associations. It comprises 82 Member Organizations and represents the interests of 1.4 million persons with disabilities in Austria. The Austrian Disability Council furthermore operates as the Austrian National Council to the European Disability Forum (EDF).

This submission provides information from the Austrian Disability Council regarding Art.27 UNCRPD.

**General remarks:**

The Austrian Disability Council welcomes the preparation of a general comment on Art.27 by the CRPD. We thank the CRPD for its important work and for the opportunity to express our opinion on this subject.

Austria ratified the CRPD and its optional protocol in 2008 and is therefore obliged to implement it.

However, the **unemployment rate** of persons with disabilities is still much higher than that of persons without disabilities in Austria.

There are four areas we want to emphasize concerning employment of persons with disabilities and the labor market:

1. **Basis for an inclusive labour market – inclusive education:**

The education system in Austria is not inclusive of children, youths and adults with disabilities, it is still focusing on segregation. The ratification of the CRPD did not lead to changing the policy of segregating persons with disabilities. There are still Special Schools, sheltered employment structures and large institutions.

Due to the fact, that there is still no inclusive education system, the prerequisites for an inclusive working environment are not being met.[[1]](#footnote-1) Therefore persons with disabilities have fewer prospects in the so called “primary labor market” and generally fewer opportunities to lead their lives independently.

* The basis for an inclusive labor market and working environment is an inclusive education system. Therefor an inclusive education system from kindergarten to university must be established.

1. **Gainful employment and social security instead of pocket money – Art.27 1a, 1b, 1c:**

The way out of a Special School usually leads directly into **sheltered employment structures**, where persons with disabilities do not have independent social insurance (except for accident insurance) and **do not receive wages** based on collective agreements (but only some pocket money)**. Also, legal regulations on workers ́ protection**, paid leave and sick leave; employee provision schemes and labor relations (e.g. trade union representation) do not apply. Currently 23.000 persons with disabilities are working in sheltered employment structures.[[2]](#footnote-2)

Many employers still have **preconceived ideas** about persons with disabilities and hesitate to hire them. The skills of persons with disabilities are not a point of focus within the society.

In Austria, only businesses with more than 24 employees must employ a person with disabilities. Due to the fact, that most of the Austrian businesses are small companies, that only concerns 2,9 percent. Of these businesses, only 22 percent are fulfilling their obligation. The others rather **prefer to pay a compensatory tax** (in German: “Ausgleichstaxe”) amounting to at least 271 euros per month (for each person with disabilities who is not employed), **than to employ persons with disabilities**.[[3]](#footnote-3)

* We see the need for fair payment of persons with disabilities on an equal basis with others, that secure a decent quality of life in the midst of society. Furthermore, they should be entitled to receive social security and all other social protection mechanisms.
* Awareness raising campaigns on the rights and the skills of persons with disabilities are necessary.

1. **Personal Assistance in the workplace – Art.27 1e:**

Personal assistance in general is one of the most important prerequisites for independent living. Personal assistance in the workplace is equally important. However, currently there is no unified federal legislation concerning personal assistance (PA) in Austria - only for PA in the workplace and **only with a certain care allowance level. This is the reason that some groups of persons with disabilities are not eligible for PA, like people with learning disabilities.** They often do not have the required care allowance level and they do not have access to the so-called “primary labor market”.

* Personal Assistance at the workplace must be available for all persons with disabilities regardless of their disability and of their care allowance level.

1. **Terms like “Capacity to work”, assessment procedures, stereotypes, and their limitations for the lives of persons with disabilities Ar.27 1a and 1e:**

Due to the federal structure of Austria, benefits which fall under the responsibility of the provinces exist in nine different versions (e.g. sheltered employment structures, personal assistance for daily life). So, persons with disabilities are confronted with many legal terms and classifications such as **“capacity to work”, “invalidity” or “degree of disability”** in their everyday lives. These terms and categories are sometimes defined in contradictory ways in individual federal or regional laws. As the different authorities use different terminology, the benefits granted by each authority work together badly or not at all. For this reason, persons with disabilities are often deprived of the chance to find a solution that addresses their problems adequately and provides them with a secure income.

The **assessment procedures** and **assessment bodies** represent another problematic issue because they differ depending on whether they relate to an assessment of the degree of disability in terms of the Disability Employment Act or the Federal Disability Act (“Bundesbehindertengesetz”), whether they relate to a classification according to the Federal Care Allowance Act (“Bundespflegegeldgesetz”), or the evaluation of the individual need for assistance according to regional laws, or to **medical assessments to determine the** **capacity to work** according to the Unemployment Insurance Act (“Arbeitslosenversicherungsgesetz”), or according to the General Social Insurance Act (“Sozialversicherungsgesetz”). **Assessment procedures to determine if someone is able to work are still based on the medical model of disability**, the human rights approach to assessing the need for benefits is not taken into consideration. In order to receive benefits, those concerned have to undergo separate assessment procedures at each insurance institution. These multiple assessments are not only perceived as extremely stressful by the people in question, but they also lead to differing legal results that are non-transparent and cause great legal uncertainty.

People with placement restrictions and an additional need for support rarely have access to measures aiming at professional orientation or qualification. The authorities often declare them to be **“unfit for work” early on** (after leaving school). Sothey have to rely on **sheltered employment structures** and **do not have access to** the so-called **“primary labor market”.** Whether or not support measures are successful is only evaluated via quantitative placement rates. This often means that only those persons with disabilities requiring little support can benefit from these measures. There are no transparent criteria to ensure that measures are provided according to need.[[4]](#footnote-4)

In January 2019 started the test-phase of a new **“client-segmentation”, an algorithm within the Austrian AMS** (public employment service). This sorting algorithm **calculates employment opportunities**, based on characteristics like age, gender, disability, nationality, past employment records and others. The **algorithm places people in three so-called “segments” (groups)**. People with the best chances to get a job are placed in the first group “segment H” (high), followed by “segment M” (middle) for people who will need some help, but still have good chances to find a job. People, who are placed in “segment N” (low, in German: “niedrig”) have the least chances to get a job. For people in “segment N” the AMS foresees the least amount of help. It was criticized from diverse groups of civil society as discriminatory, because it **could further exacerbate the unemployment situation of already disadvantaged groups**, which are often placed in “segment N”, like single mothers, people older than 50 years as well as persons with disabilities and therefor their poverty risk.

The ombudsman board criticized, that the **AMS algorithm will strengthen stereotypes** against women and persons with disabilities. The AMS argued, that the algorithm does not foster discrimination; it would simply show the reality on the labor market and disadvantaged groups like women will get targeted support.

There is a target group “women” within the AMS, but no specific target group „women with disabilities”.[[5]](#footnote-5)

* The federal and regional laws and authorities should use uniform terms when it comes to persons with disabilities.
* Assessment procedures, also those to determine if someone is able to work, must be based on the human rights approach of disability.
* Inclusive education must be taken into action instead of further developing the segregating Special School sector.
* Equal opportunities for persons with disabilities in the labour market (gainful employment and social security instead of sheltered employment structures) must be ensured.
* Persons with disabilities and especially women with disabilities should be a target group within the AMS.

1. Cf. <https://www.behindertenrat.at/wp-content/uploads/2018/07/2018-07-17-Alternative-Report-Austria_-English.pdf> p.24. Last accessed on 03/11/2021 [↑](#footnote-ref-1)
2. Cf. <https://www.behindertenrat.at/wp-content/uploads/2018/07/2018-07-17-Alternative-Report-Austria_-English.pdf> p.27. Last accessed on 03/11/2021 [↑](#footnote-ref-2)
3. Cf. <https://www.behindertenrat.at/wp-content/uploads/2018/07/2018-07-17-Alternative-Report-Austria_-English.pdf> p.26. Last accessed on 03/11/2021 [↑](#footnote-ref-3)
4. Cf. Alternative report of the Austian Disability Council: <https://www.behindertenrat.at/wp-content/uploads/2018/07/2018-07-17-Alternative-Report-Austria_-English.pdf> p.24. Last accessed on 03/12/2021 [↑](#footnote-ref-4)
5. Cf. Submission of the Austrian Disability Council to the 73rd session of the CEDAW Committee: <https://www.behindertenrat.at/wp-content/uploads/2019/06/Submission-Austrian-Disability-Council_CEDAW.pdf> p. 6 Last accessed on 03/12/2021 [↑](#footnote-ref-5)