

October 2009

## **Day of General Discussion**

### **Contribution**

#### **“Article 12 CRPD – The right to equal recognition before the law”**

The Austrian Monitoring Committee, entrusted with monitoring the protection and promotion of the Convention on the Rights of Persons with Disabilities (CRPD) in Austria, is grateful for the opportunity to contribute to this Day of General Discussion through the generous support of the Austrian Permanent Mission to the United Nations in Geneva.

There are many ways of approaching how to make equal recognition before the law for all persons with disabilities a reality on the ground. The Austrian Monitoring Committee – just shy of the first anniversary of its establishment – welcomes the chance to share its observations on this important subject and other related issues of importance to Austria and the Austrian community of persons with disabilities.

#### **1. The importance of including persons with disabilities and their representative organizations**

“Nothing about us without us,” is the oft-quoted mantra of the disability community the world over and captures a core principle of the CRPD, namely, the essential participation of persons with disabilities in all aspects of decision-making across all spheres of life. As applied to the equal recognition before the law, it could be read to mean: “Nothing about me without me.” The Austrian Monitoring Committee wholeheartedly supports this principle and believes that, as a first step in achieving equal recognition before the law those who are to benefit must have their assigned seat at the table, when the implementation of any Convention provision, including equal recognition before the law, is discussed.

Therefore, the focus of the Austrian Monitoring Committee to date has been to stress the *obligation* of the government to ensure that persons with disabilities and their representative organizations are involved and closely consulted in the development and implementation of legislation and policies aimed at implementing the Convention, as enshrined in Article 4, paragraph 3 of the CRPD.

The composition of the Austrian Monitoring Committee aims to fulfill the criterion of representation of civil society, particularly Disabled People's Organizations (DPOs), in line with Article 33, paragraph 3. It should be emphasized, however, that the Austrian Committee is of the view that ensuring participation in the monitoring process is only one dimension of the requirement. Therefore, the Committee has used its first statements to repeatedly stress the importance of ensuring the involvement of persons with disabilities and their representative organizations at all levels and in all phases of policy-making.

The nature and fundamental importance of ensuring meaningful implementation of equal recognition before the law necessitates that, as a first step, the obligation to involve DPOs must be effectively realized, in order to ensure a good basis for discussions and subsequent implementation. Therefore, the Austrian Monitoring Committee will seek to ensure that discussions and deliberations on equal recognition before the law are inclusive of DPOs.

## **2. The importance of independent living**

The CRPD ensures the equal enjoyment of all human rights to all persons with disabilities and, in so doing, guarantees that persons with disabilities have the equal right to make their own choices. In the observation of the Austrian Monitoring Committee, an excellent starting point for discussions on equal recognition before the law is the notion of independent living; for it exemplifies the wide array of issues that need to be taken into account and addressed when discussing equal recognition before the law and operationalizing the obligation.

In the experience of the Austrian Monitoring Committee it is paramount to keep an eye on the scope of independent living, to do justice to the spirit and overall aim of the Convention and much more so the needs of persons with disabilities. Taking into account the manifold aspects of independent living, all of which focus on ensuring that an individual can make and enact their choices in all areas of life, the underlying concept makes for a good basis on equal recognition before the law.

In particular, it ensures that the linkage between the support envisioned in Article 12 and the personal assistance services foreseen in Article 19 are strengthened and utilized. Reviewing the developments in Austria, it is of paramount importance to have the experience with personal assistance systems, including *all* its stakeholders, inform the debate on support systems aimed at exercising legal capacity.

The focus on independent living, in the perception of the Austrian Monitoring Committee, also brings two other very important components into the focus of the debate: first, the emphasis on the social model – stressing that disability results from the interaction between persons with disabilities and attitudinal, environmental and other barriers. Secondly, it serves the important task of raising awareness on the factors that segregate, marginalize and therewith lead to the exclusion of persons

with disabilities. At the same time it provides a unique opportunity to emphasize what *is* possible, something that can get lost in the fight over details.

### **3. Equal recognition before the law**

The Austrian Civil Code draws a distinction between legal capacity (*Rechtsfähigkeit*) and the capacity to act (*Handlungsfähigkeit*). While every person has legal capacity, there are possibilities to limit the capacity to act. Consequently, guardianship is foreseen for those persons whose 'reason' (*Vernunft*) is considered to be in need of support by a third person. The support is provided through guardianship as enshrined in the Austrian Guardianship Act (*Sachwaltergesetz*).

An overhaul of the Austrian Guardianship Act in 2007 increased the subsidiary nature of guardianship and emphasizes the support to be provided for the individual. The amendment also increases the leverage for judges – who appoint guardians – to limit the areas in which the guardian has a say in the decision making process. While the title of the Act could definitely be changed, our attention has to be on implementation and practice: without having explored the issue in any detail, it appears that ensuring the meaningful application of the standards of supported decision making in day-to-day life, is where the shortcomings are. Furthermore, the Austrian Civil Code, which was drafted in the late 18<sup>th</sup> Century, is based on a model of substituted decision-making.

Obviously, there is a need to bring this approach in line with the Convention. The Monitoring Committee will, within its means, support efforts to ensure compliance with the Convention. First and foremost it will continue its strong support for the inclusion of persons with disabilities and their representative organizations in various policy processes to create a firm base for persons with disabilities to represent their interests and bring many provisions, including those related to equal recognition before the law, in line with the concept of independent living.

As this important process unfolds, the Monitoring Committee will also strive to ensure that social barriers are addressed and that equal attention is paid to society at large, where perceptions need to be changed to ensure meaningful implementation of the Convention.