



European Ombudsman
Ms Emily O'Reilly
CS 30403
1, avenue du Président Robert Schuman
67001 Strasbourg Cedex
France

Administrator:
Hannah Suntinger, BA

Reference number:
2021-0.128.548 (VA/8853/INT)

Date:
13 April 2021

Dear Ms O'Reilly,

On behalf of my colleagues, Ombudsman Bernhard Achitz and Ombudsman Walter Rosenkranz, I would like to thank you very much for your inquiry. Kindly find below the considerations of the Austrian Ombudsman Board on the national implementation of the right to independent living for persons with disabilities and older persons.

The European Structural and Investment Funds (ESIF) can support a multitude of measures, which are in line with the requirements set by the political framework for the fight against poverty, which prevent institutionalisation of persons with disabilities and which support reforms to transition to community-based services (de-institutionalisation). ESIF support should not be used for the construction and refurbishment of facilities, regardless of their size, for long-term stays of adults and minors with disabilities. The measures, proposed by the ESIF, are part of a strategic vision on how the transition from institutional care to community-based care according to the criteria within the framework of the proposed ex ante conditionality for active inclusion is put into practice.

The Austrian Ombudsman Board is aware that the reality is partly different and research shows that many EU countries in practice use EU subsidies to replace bigger facilities with smaller institutions or to refurbish existing facilities (kindly see https://enil.eu/wp-content/uploads/2020/12/Study_EP_EN_09122020.pdf;

<https://www.bizeps.or.at/bulgarien-und-die-europaeische-kommission-ignorieren-kritik/>). This practice is contrary to the UN Convention on the Rights of Persons with Disabilities and relevant EU directives. Austria also has a great deal of catching up to do, many persons with disabilities

live and/or work in facilities, which have been specifically created for them, while they do not have the possibility to choose from adequate alternatives. If bigger, older facilities are closed, then subsidies by the EU are unfortunately partly used to sustain facilities, albeit in smaller and in accessible form, which are questionable from a human rights perspective. Unfortunately, EU subsidies are not used to fully develop the right to comprehensive personal assistance and to a personal budget. The Austrian Ombudsman Board has explicitly drawn the responsible UN Committee's attention to this already back in 2018 (kindly find a summary on Austria's implementation of Article 19 UN Convention on the Rights of Persons with Disabilities in the following document on p.29, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCRPD%2fIFR%2fAUT%2f32189&Lang=e).

In July 2020, ENIL and Independent Living Austria have thus submitted a complaint to the European Commission against the Province of Upper Austria, as subsidies by the European Agricultural Fund for Rural Development (EAFRD) had been used to dissolve a large home for persons with disabilities and to replace it with six smaller communal homes and two workshops for persons with disabilities (kindly see https://equineteurope.org/2020/eu-funded-discrimination-of-persons-with-disabilities-in-austria-and-else-where/?fbclid=IwAR1wpGqchKapkrKJPzt_pgReRmpYebhQPkF3By2jth3YLn5Z5kbVhxJUL6c).

In Salzburg, there is also a large provincial facility, which is deemed completely unsuitable by the Austrian Ombudsman Board and its responsible commission and which, despite protests of relevant NGOs, will be replaced by a new building. So also in this case, a conceptual change of mind to implement the UN Convention on the Rights of Persons with Disabilities in housing and care services has not taken place

(kindly see <https://www.derstandard.at/story/2000073529896/ghettoisierung-in-salzbuerger-behindertenheim>; <https://www.bizeps.or.at/alles-alt-konradinum-und-der-neubau/>).

Wherever necessary, the Austrian Ombudsman Board in cooperation with the provinces' monitoring committees has pointed out the need for a radical structural change (kindly see <https://www.monitoring-stmk.at/wp-content/uploads/2020/07/Stellungnahme-Stmk-MA-Psychiatriezuschlag.pdf>).

The Austrian Ombudsman Board has also shown in its special report "No chance of work – the reality of persons with disabilities" the precarious working conditions of persons with disabilities and also demanded a salary instead of pocket money for persons working in sheltered workshops as well as their own entitlement to social security, especially to a pension, during the discussion in

the Ombudsman Committee of the Austrian National Council in December 2020 (kindly see <https://volksanwaltschaft.gv.at/artikel/menschen-mit-behinderungen-lohn-statt-taschengeld-1>).

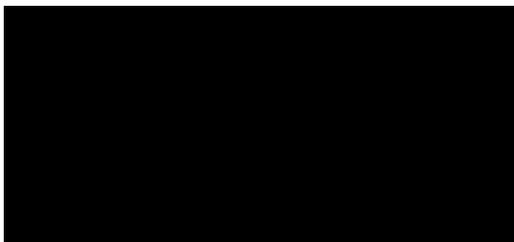
Due to the special challenges because of the Covid-19 pandemic, the Austrian Ombudsman Board, for the first time, will present to the National Council and the Federal Council, in addition to the annual reports on monitoring public administration and on the activities of the Austrian National Preventive Mechanism, a special report on Covid-19 in May 2021. In particular, the situation of people in retirement and nursing homes as well as persons with disabilities and support provided by the Austrian Ombudsman Board during the pandemic are discussed in this report.

We thus warmly welcome the Strategic inquiry OI/2/2021/MMO into how the European Commission monitors EU funds used to promote the right of persons with disabilities and older persons to independent living and we are happy to contribute, whatever possible, to make the rights of persons with disabilities a reality.

On your additional question on the participation of Ombudsmen in national monitoring committees, I would like to inform you that we would welcome this opportunity as far as permitted by law.

This letter may be published on your website.

Kind regards,



Werner Amon

Member of the Austrian Ombudsman Board