

Counterstatement to joint statement by the federal and state governments in cooperation with the Standing Conference of the Ministers of Education and Cultural Affairs (KMK) to the Office of the High Commissioner for Human Rights in Geneva dated January 15, 2016

The UN Committee on the Rights of Persons with Disabilities (CRPD) has submitted a comment on Article 24 of the UN Convention on the Rights of Persons with Disabilities in draft form designated as "Draft General Comment on Article 24" and opened the discussion of it. The Position Statement given by Germany is challenged.

I. Human Rights Initial Situation

The "German Statement Concerning the Draft General Comment on Article 24 CRPD" does neither reflect the existing situation in Germany nor the human rights requirements. Accordingly, it is fundamental for the understanding of the UN Convention on the Rights of Persons with Disabilities that inclusion in an inclusive education system is an inalienable *human right of children*, to a life together with people with and without disabilities. The human rights of a child cannot be overruled by its parents. The constitutional right to education, guaranteed under Article 6 (2) of the German Constitution (Grundgesetz), obligates the parents "to lead and guide the child in the exercise of its rights" (Article 5 CRC.); accordingly, the exercise of parental rights under the German Constitution is linked to the interests of the child (BVerfGE 24, 119 [143]). A *right to opt* for segregation, which would authorize the state to maintain "mainstream schools" and "special schools" side by side on a permanent basis contradicts the objective and the purpose of the Convention and does *de jure* not exist. A caveat to this effect, under Art. 46 UN Convention on the Rights of Persons with Disabilities is impermissible. An option exists only *de facto*, as long as "mainstream schools" and "special schools" exist and have not yet developed into an inclusive education system.

This "German statement" is therefore based on fundamental human rights misapprehensions.

II . The current situation

The statement "*Over the past few years , the share of children with special educational needs attending regular schools has risen continuously*" is incomplete. Although the number of children ascertained to have special needs in the "regular schools" has increased, the number of children remaining in "special schools" has not decreased, but rather increased. The higher proportion of children with disabilities in "regular schools" is explained by the fact that more and more children who previously had no particular support status were reported as children with special needs. This is a consequence of the subsidy system that provides higher contributions for identified deficiencies.

The basis for these findings is in the official statistics of the Standing Conference of the Ministers of Education and Cultural Affairs (KMK). The reference year is the 2008/09 school year, because it was the last school year before the ratification of the UN Convention on the Rights of Persons with Disabilities in 2009 and reflects the previous state of affairs.

Thereafter, the inclusion rate in Germany increased from 13.2 % in 2000/01 to 18.4 % in the reference year 2008/09 and finally to 31.4 %, in the last year under review (2013/14). The true situation is, however, only visible when these numbers are put in contrast with the proportion of those students diagnosed with special educational needs. These numbers are not declining. Rather, there are even 0.4 % more disabled students in special schools, since the reference year 2008/09, in Germany. The supposed increase in the inclusion rate is due only to the fact that a correspondingly higher number of children in "mainstream schools" were certified as having special educational needs.

There has not been a decline in the number of separately schooled students, on the overall average for Germany, although it was so in individual states.

III . The understanding of inclusion in general

Due to legal requirements of the states many teachers try, especially in elementary schools, inclusive concept teaching methods, although the implementation conditions fall far short of the practical requirements and therefore setbacks can be observed. Also, when there is a consensus that an implementation of the Convention is not possible "overnight", this is even less acceptable than that there is in no federal state a satisfactory concept for the actual implementation of inclusive education, but instead the present inadequate conditions continue to exist.

According to the recommendations "Inclusive Education for Children and Youth with Disabilities in Schools" (*Resolution of the Standing Conference of the Minister of Education and Cultural Affairs (KMK) of October 20, 2011*), the implementation steps for the creation of an inclusive education system with a continued validity of general educational standards shall be limited to the co-education of children with disabilities in "mainstream schools", with the involvement of specially trained education professionals; the teachers in "regular schools" shall be trained especially for diagnostic skills. This reduces the *general* human right to participate in society to a special law for people with disabilities. Inclusion, on the other hand, requires the development of a comprehensive educational and school law concept for the coexistence of *all* children, with and without disabilities, which makes individuality and diversity a basis for pedagogical action. The conditions for accomplishing it go far beyond the requirements described by the Standing Conference of Ministers of Education and Cultural Affairs, in terms of structural, spatial and of personnel aspects, as well as with respect to the provision of "reasonable accommodation" (*Art. 2 UN Convention on the Rights of Persons with Disabilities*) for children with disabilities.

For university education and further education, present and proven concepts must therefore be seized upon, in order to enable the organization and planning of inclusive education. At the same time, competencies must be communicated that enable to develop the most varied learning scenarios, reflecting the diversity and wealth of the talents, and to manage, in particular, in coexistence with seriously and the most severely disabled children, the common life in the school day.

The recommendations of the Standing Conference of Ministers of Education and Cultural Affairs and the corresponding concepts of federal states need fundamental revision in order to comply with the Convention.

IV. Conclusions

In the opinion of the undersigned, the UN Committee should

- not regard the "German Statement" as a final description of the situation in Germany and responsibly demand from the federal government a valid evaluation of available data;
- call on the federal government to provide an overview of the state of opinion on the implementation of the UN Convention on the Rights of Persons with Disabilities in Germany and thereby also involve relevant societal groups;
- explicitly highlight the apparent weaknesses in the implementation of the Convention in the General Comment, in order to create a foundation for future *Concluding Observations*, with respect to the states reporting by Germany.

Signed in Bielefeld, Germany, on February 18, 2016

“Politik gegen Aussonderung – Koalition für Integration und Inklusion e.V.”
Prof. Dr. Anne-Dore Stein, Evangelische Hochschule Darmstadt
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