

# 10<sup>th</sup> Anniversary

## **Expert meeting to mark the 10<sup>th</sup> anniversary of equality for persons with disabilities and the Austrian Disability Ombudsman**

On 14 and 15 January 2016, the Austrian Disability Ombudsman, Erwin Buchinger, and his Office as well as the Ministry of Social Affairs, with the active involvement of the Federal Chamber of Labour and the Office for Opportunities & Benefits of the Austrian Trade Union Federation (ÖGB), hosted an expert meeting on key equality issues for persons with disabilities and the further development of this agenda at the ÖGB Events Centre in Vienna.

The expert meeting was called for various reasons: 10 years after the entry into force (on 1 January 2006) of the Federal Disability Equality Act (Bundes-Behindertengleichstellungsgesetz/BGStG), which was adopted by the National Council on 6 July 2005 and promulgated on 10 August 2005; the tenth anniversary of establishing the Austrian Disability Ombudsman under the Federal Disability Act (Bundesbehindertengesetz/BBG) as well as the end of the ten-year transition period for buildings accessibility regulations.

It was therefore the right point in time to publicly address and further develop issues which persons with disabilities, their organisations and those responsible at the political and administrative level face on a daily basis.

After a historical overview to acknowledge the processes that gave rise to the BGStG and the Austrian Disability Ombudsman, education, labour market/labour law and accessibility were the main topics for discussion on the first day. On the second day, the meeting focused more strongly on concepts regarding the further development and perception of these issues in Germany and the European Union.

All relevant organisations and decision-makers at national level as well as representatives from Germany and the European Union Agency for Fundamental Rights were invited to the expert meeting. 200 participants listened to the wide range of presentations. They had an opportunity to share their ideas, experiences and problems in two panel discussions of the two-day meeting.

Mention should also be made of the fact that sign language interpretation services were offered throughout the meeting by Elke Schaumberger and Christian Bruna. All the contributions of the speakers were explained with visual aids by Petra Plicka.

To support the participants, 15 assistants were available. The team of the Office of the Disability Ombudsman played an important role in arranging, preparing documents for and handling the expert meeting. Acting as a moderator, Aaron Banovics, an employee of the Disability Ombudsman, guided the audience through the programme and led the panel discussions.

### **Opening and historical review**

Disability Ombudsman Erwin Buchinger opened the meeting and welcomed the participants.

The main tasks of his Office outlined by him were mirrored in the purpose and structure of the subsequent expert meeting. The President of the Federal Chamber of Labour and the Vienna Chamber of Labour, Rudolf Kaske, as well as former Federal Minister Rudolf Hundstorfer, who acted as the co-host of the expert meeting, presented kick-off remarks. In his welcome message, President Kaske stressed the need for improving conditions for persons with disabilities at work and young people seeking jobs.

Hundstorfer reminded of achievements in improving the social security of persons with disabilities in the past few years, which had been facilitated by the unrelenting work of disability organisations, individuals and the Disability Ombudsman. He also stressed that there were, for example, unsolved problems and ongoing talks between the federal government and the federal provinces regarding the pensions of persons living in day-structuring institutions.

Former Minister for Social Affairs and Vice-Chancellor during the founding period ten years ago, Herbert Haupt, was the first speaker giving a historical presentation. Haupt had acted as the first Disability Ombudsman from 2006 to 2009. In his very personal statement, Haupt told the participants about his own disease and disability, about responses to the demands of disability initiatives, about preparatory and drafting processes and the adoption of the law some months after he resigned as a Federal Minister in late January 2005 as well as his appointment as Austria's first Disability Ombudsman in the period 2006 to 2009. By way of conclusion, Haupt called for providing low-cost medication to chronically ill patients.

In his lecture, Head of Division Manfred Pallinger traced the development of the Federal Disability Equality Act from the perspective of a competent official of the Ministry.

The following two lecturers, the Presidents of the ÖZIV (interest representation for persons with disabilities) and the ÖAR (umbrella organisation of Austrian disability associations), Klaus Voget, and assistant professor Susanne Auer-Mayer of the University of Salzburg, rounded off the overview of the history of the federal equality disability legislation.

### **Education, labour market/labour law and accessibility**

The afternoon session of the first day was opened with two presentations on "education". The Head of Division I of the Federal Ministry of Education and Women (BMBWF), Kurt Nekula, who is also the President of the charity organisation 'Licht ins Dunkel', emphasised in his presentation that all the BMBWF's educational reforms were not limited to pursuing educational goals but strove for an inclusive society in various areas, e.g. the integration of pupils with non-German mother tongue, competency-based education, network projects regarding the transition from nursery to primary school, a new learning culture at the New Middle School, all-day schools or new training programmes for pedagogues.

Volker Schönwiese, a retired professor of the teaching and research areas "inclusive pedagogy and disability studies" at the Faculty of Education of the University of Innsbruck, highlighted the dramatic development in the educational sector for pupils with disabilities. On the one hand, the number of pupils with special needs for socio-pedagogical support, who had no chance to pass the school-leaving (A-levels) exam, was increasing annually. On the other hand, efforts to introduce inclusion classrooms were inadequate. Instead of these

inclusion classrooms, classrooms for special-needs pupils as well as a growing number of integration-oriented “co-operative learning classrooms” were established.

The second thematic block of the afternoon session was devoted to the labour market and labour law. First of all, the Managing Director of the Austrian Public Employment Service (AMS), Herbert Buchinger, presented the current situation of persons disadvantaged at job placement. Martina Chlestil of the Vienna Chamber of Labour lectured on the situation of employees with disabilities and the provisions of the Act on the Employment of Persons with Disabilities, the conflict area “notice to quit, dismissal, disease and disability” and landmark decisions of the European Court of Justice and the Supreme Court. Chlestil identified a comprehensive need for reform regarding the duration and cost of court proceedings as well as voluntary, amicable settlement procedures.

The following two presentations focused on accessibility. The Secretary-General of the ÖAR, Eringard Kaufmann, addressed architectural barriers that were still existing. Volker Frey, the Secretary-General of the Klagsverband (an organisation for enforcing the rights of victims of discrimination), criticised the legal maze of international agreements, federal and provincial laws leading to severe inadequacies in the area of accessibility.

The first day of the expert meeting was concluded with a discussion round, in which some speakers participated. Occasional criticism was voiced of the educational sector, in concrete terms the continued existence of special needs schools, but also the inclusive school model. Other problems highlighted were the inadequate implementation of the UN Convention as well as the fact that accessibility issues were disregarded in housing projects.

The subsequent buffet dinner afforded the attendees with an opportunity for informal exchanges.

### **Future challenges**

The second day of the meeting began with a statement by Ombudsman Günther Kräuter, who is not only responsible for the concerns of persons with disabilities but also for six human rights commissions, which are active countrywide. Their task is to monitor compliance with human rights standards in all institutions, nursing homes, hospitals, day-structuring facilities and prisons.

The Head of the Office of the Disability Ombudsman Birgit Lanner used her speaking-time to focus on the challenges and future developments. After presenting the responsibilities and accomplishments of the Office (staffed with six employees) in the last ten years, she turned the spotlight on the future challenges in four spheres, i.e. work, education, accessibility and legal protection.

As far as employment and occupation was concerned, several problem areas had been identified: huge educational deficits, a massive increase of the unemployment rate of persons with disabilities as well as the discrimination of persons in day-structuring facilities in matters pertaining to labour and social law as well as current barriers to the primary labour market.

In the context of education, the Disability Ombudsman advocated the definition of an

objective to abolish special needs schools within an appropriate period of time. The introduction of model regions for inclusive education was to be completed across Austria by 2020. In addition, the Ombudsman called for enshrining the right to inclusive education for fourteen- to eighteen-year-olds in the law. Improvements of the accessibility of educational premises as well as the basic and in-service training of teachers were also deemed necessary.

The debate on accessibility gained new momentum at the end of the transition period for retrofitting historic buildings (31 December 2015). As in practice problems were persisting, the Disability Ombudsman considered it vital to focus on awareness-raising and sensitisation measures.

With a view to improving mechanisms to assert legal claims, the need was stressed to introduce cease-and-desist orders in everyday matters and annually adjusted minimum compensation payments, to facilitate access to law enforcement and strengthen the Disability Ombudsman's position.

All of these issues were also addressed by the next speaker, Martin Ladstätter, Chairman of the association Bizeps – 'Independent Living'. He highlighted the positive and negative aspects of the current situation based on settlement cases and the subdued developments of investment measures. Ladstätter provided an exhaustive analysis of the necessary reform steps to improve the current situation of persons with disabilities to enable them to an equal, lawful participation in social life.

### **Opinions from Germany and the European Union**

Interesting insights going beyond the Austrian borders were provided by Verena Bentele, Commissioner of the German federal government for matters relating to disabled persons, as well as Nevena Peneva, executive member of the Equality Sector of the European Union Agency for Fundamental Rights in Vienna.

Commissioner Bentele presented the current status of the equality and anti-discrimination law in Germany. Earlier than in Austria, namely in 2001, Germany's red-green federal government had introduced the Social Code IX, which governs the social participation and rehabilitation of persons with disabilities. The Disability Equality Act (BGG) was passed already in 2002, and the General Equal Treatment Act (AGG) in 2006. Whereas the BGG was evaluated after 14 years and is subject to regular reviews, there are no plans to amend the AGG and, in particular, to grant more rights in the private sphere.

Bentele pinpointed problems identified in the German BGG after evaluation and informed about the envisaged improvements of the Act. Concluding her remarks, she was confident that she would be able to report about the experiences made in some years.

Nevena Peneva, the official responsible for disability affairs in the European Union Agency for Fundamental Rights in Vienna, first of all presented selected issues of the UN Convention on the Rights of Persons with Disabilities, e.g. equal treatment and non-discrimination, legal capacity, employment and occupation as well as education. She then provided insights into the legal implementation process and projects in the individual Member States of the Union. Peneva ended her lecture by presenting the Agency's model for identifying and assessing

specific indications in the Member States. She explained the three phases and the respective questions by using “political participation” as an example.

The panel discussion concluding the event provided the participants with ample opportunity to present their views on the topics and to bring problems to the attention of officials.