



Convention on the Rights of Persons with Disabilities

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Committee on the Rights of Persons with Disabilities

Views adopted by the Committee under article 5 of the Optional Protocol, concerning communication No. 50/2018*, **

<i>Communication submitted by:</i>	M. Köck
<i>Alleged victim:</i>	The author
<i>State party:</i>	Austria
<i>Date of communication:</i>	7 July 2017 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 70 of the Committee's rules of procedure, transmitted to the State party on 6 April 2018 (not issued in document form)
<i>Date of adoption of views:</i>	24 March 2022
<i>Subject matter:</i>	Education in Austrian Sign Language
<i>Procedural issues:</i>	Lack of substantiation of claims; admissibility <i>ratione temporis</i>
<i>Substantive issues:</i>	Discrimination on the grounds of disability; reasonable accommodation; accessibility to persons with disabilities; inclusive education; best interests of the child; freedom of expression; right to information; cultural rights; access to the courts
<i>Articles of the Convention:</i>	5, 7, 12 (3)–(4), 13 (1), 21 (b) and (e), 24 and 30 (4)
<i>Article of the Optional Protocol:</i>	2 (b) and (e)–(f)

1. The author of the communication is M. Köck, a national of Austria born in 1997. She claims to be the victim of violations by the State party of article 5, read in conjunction with articles 7, 12 (3)–(4), 13 (1), 21 (b) and (e), 24 and 30 (4), of the Convention. The Optional Protocol to the Convention entered into force for the State party on 26 October 2008. The author is not represented by counsel.

* Adopted by the Committee at its twenty-sixth session (7–25 March 2022).

** The following members of the Committee participated in the consideration of the communication: Rosa Idalia Aldana Salguero, Danlami Umaru Basharu, Gerel Dondovdorj, Gertrude Oforiwa Fefoame, Vivian Fernández de Torrijos, Mara Cristina Gabrilli, Amalia Eva Gamio Ríos, Samuel Njuguna Kabue, Rosemary Kayess, Kim Mi Yeon, Abdelmajid Makni, Sir Robert Martin, Floyd Morris, Jonas Ruskus, Markus Schefer and Saowalak Thongkuay.



A. Summary of the information and arguments submitted by the parties

Facts as submitted by the author

2.1 The author is deaf and her first language is Austrian Sign Language. In primary school, her education was bilingual, in German and in Austrian Sign Language. However, starting from 2007, through secondary school, upper secondary school and commercial school and during an advanced course for the matriculation examination, she received only interpretation from German into Austrian Sign Language and followed a curriculum for deaf pupils. The lack of bilingual education was disadvantageous to her, as simultaneous interpretation is selective and therefore the information conveyed is not always complete. This was compounded by the lack of certification of certain interpreters. Moreover, she could not take notes systematically while looking at the interpretation. This affected her performance in mathematics and German. As a result, she had to repeat the 2011/12 school year and had to change schools in 2013. She did not pass the 2016/17 school year and decided to repeat it voluntarily.

2.2 On 28 July 2014, the author's parents filed a request on her behalf to the Federal Ministry of Education and Women to change her language of instruction from German to Austrian Sign Language, which the Ministry forwarded to the Villach Business School Board for reasons of competence. On 23 October 2014, the Board rejected the request. It interpreted the request as an invocation of article 18 (12) of the School Instruction Act, which provides that the school director, at the request of a pupil whose mother tongue is not the language of instruction at the school in question, may decide that the language of instruction should be replaced by a modern foreign language for the assessment of the pupil's academic performance, provided that the modern foreign language is included as a compulsory subject at the school level in question. The article also provides that the pupil must provide proof of performance in his or her mother tongue that is equivalent to the performance in German of a pupil whose mother tongue is German. However, as no curriculum for Austrian Sign Language as a modern foreign language was in place to measure such performance, there was no legal basis for the request. The parents filed an appeal against the Board's decision, arguing that the denial of Austrian Sign Language as the author's language of instruction amounted to discrimination compared to provisions for children whose mother tongue was a language other than German, including users of autochthonous minority languages. On 12 November 2014, the Regional School Board for Carinthia State confirmed the reasoning of the Villach Business School Board and rejected the appeal.

2.3 On 4 March 2015, the Federal Administrative Court rejected the appeal by the author's parents appeal against the decision of the Regional School Board for Carinthia. The Court found that the Board had correctly held, in the absence of a legal provision for instruction in Austrian Sign Language, that articles 16 (1) and 18 (2) of the School Instruction Act cannot be interpreted as allowing for instruction in Austrian Sign Language.¹ The Court also dismissed the parents' invocation of article 8 (3) of the Federal Constitutional Act, which recognizes Austrian Sign Language as an independent language, but leaves further details to be developed by the law. The Court did not consider the author's references to the Convention.

2.4 On 24 June 2015, the Constitutional Court declared the parents' appeal inadmissible because it had insufficient prospect of success and raised no constitutional questions. On 26 April 2017, the Supreme Administrative Court rejected the author's request to revise the decision of the Federal Administrative Court as it did not raise any points of law of essential importance, as required under article 133 (4) of the Federal Constitutional Act. In this regard, the Supreme Administrative Court noted the absence of a legal basis for using Austrian Sign Language as a language of instruction.

¹ Article 16 (1) of the School Instruction Act provides the following: "The language of instruction is German, unless otherwise provided by law or by intergovernmental agreements for schools intended especially for linguistic minorities." Recalling this provision, the Federal Administrative Court referred to article 8 (1) of the Federal Constitutional Act, read together with article 7 of the Minority School Act for Carinthia and article 1 of the Minority School Act for Burgenland, and to articles 62 et seq. of the Treaty of Saint-Germain-en-Laye, read together with article 7 of the State Treaty for the Re-establishment of an Independent and Democratic Austria.

Complaint

3.1 The author submits that the State party has violated her rights under article 5, read in conjunction with articles 7, 12 (3)–(4), 13 (1), 21 (b) and (e), 24 and 30 (4), of the Convention.

3.2 The author argues that the State party discriminated against her as it forced her to be educated in German, and to be graded as if German were her first language, without allowing instruction in Austrian Sign Language or offering Austrian Sign Language as a compulsory course. The School Instruction Act requires pupils' performance to be advanced in their mother tongue compared to foreign languages, but deaf pupils are forced to deliver this performance in German rather than in their mother tongue. She argues that the State party's parliament has failed to enact legislation allowing for instruction in Austrian Sign Language, as the School Instruction Act accommodates autochthonous groups and immigrant children only. Likewise, the Federal Constitutional Act excludes deaf people by defining linguistic minorities according to ethnic criteria. The author also argues that the State party lacks a curriculum for bilingual education and does not provide for inclusive teaching, teaching materials that meet applicable standards or training for teachers. Moreover, Austrian Sign Language is excluded from the Government's efforts towards multilingualism. The author submits that these facts render her unequal before and under the law, in breach of article 5 of the Convention, as the State party has invoked the legislation in force to deny her instruction in her first language. She notes that the President of the Regional School Board for Carinthia publicly supported her application, but stated that the legislation precluded him from granting it.

3.3 Invoking article 7 of the Convention, the author argues that the State party did not take all necessary measures to ensure her full enjoyment as a child with a disability of all human rights and fundamental freedoms on an equal basis with other children and did not consider her best interests. Specifically, the administrative and judicial authorities never asked her about her needs or opinions, in breach of article 37 of the General Administrative Procedure Act and article 4 of the Federal Constitutional Act on the Rights of Children.

3.4 Concerning articles 12 (3) and (4) and 13 (1) of the Convention, the author refers to article 50 (2) of the Federal Constitutional Act, which provides that the National Council can resolve the extent to which approved treaties must be implemented by the issue of laws. She also refers to the explanatory text accompanying the State party's ratification of the Convention and the Optional Protocol thereto, which provides that a reservation of rights under article 50 (2) (3) of the Federal Constitutional Act excludes the possibility of individuals or groups of individuals asserting rights directly under the Convention. She argues that the courts thus disregarded her references to the Convention and that these provisions conflict with article 8 (3) of the Federal Constitutional Act. Further, as the Federal Disability Equality Act has the status of an ordinary law, it cannot serve to abrogate other laws in a court action. The author was therefore forced to claim her rights by referring to the principle of equality and the prohibition of discrimination, which reduced her capacity for legal action and access to justice. Additionally, the Regional School Board for Carinthia and the Federal Ministry of Education and Women did not respect article 13a of the General Administrative Procedure Act, which obliges authorities to inform unrepresented persons about the procedures necessary for their claims.

3.5 Under article 21 (b) and (e) of the Convention, the author argues that the denial of bilingual education prevents her from developing full linguistic and cognitive capacities and thus reduces her job opportunities.

3.6 With regard to article 24 of the Convention, the author affirms that the measures to include her in education were inadequate, as there were no legal provisions or curricula for the bilingual schooling of deaf children, no appropriate training for teachers of bilingual education, practically no deaf teachers and no supportive educational techniques and materials. This caused a loss of sense of dignity and self-worth in the author.

3.7 As to article 30 (4) of the Convention, the author argues that she did not receive adequate support for school subjects such as mathematics and German and no support to develop her mastery of Austrian Sign Language at the various school levels. She was thus made to feel as if she was the reason for the difficulties that she had at school.

3.8 The author also invokes articles 2 and 26 of the Universal Declaration of Human Rights, article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms and article 2 of the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms.

State party's observations on admissibility and the merits

4.1 On 8 October 2018, the State party provided its observations on the admissibility and merits. The State party observes that the author filed three applications for arbitration concerning her school performance between October 2012 and February 2013. The first proceedings ended with an agreement to increase interpretation and to provide professional interpreters for oral examinations, visual teaching material for mathematics and a curriculum change. The second proceedings ended without an agreement, as recognition of Austrian Sign Language in school legislation could be achieved by legislative change only. As a result of the third proceedings, the Regional School Board for Carinthia agreed to bear the costs of sign language interpretation.

4.2 The State party describes relevant domestic provisions, including articles 7 (1) and 8 (1) and (3) of the Federal Constitutional Act, the Federal Disability Equality Act, and articles 16 (1) and 18 (12) of the School Instruction Act. The State party observes that the Federal Constitutional Act and treaties to which it is party provide for the rights of its linguistic minorities.

4.3 The State party submits that the author's comparison with the legal situation of autochthonous linguistic minorities inadequately considers their specific legal and factual circumstances. The protection of such groups is based on international agreements, such as the Treaty of Saint-Germain-en-Laye, which, according to the State party, guarantee mother-tongue education in public primary schools. The State party observes that these narrowly tailored guarantees were created in response to the residence of members of non-German nationalities on the territory of the Republic of Austria after the First World War and that such rights are tied to the areas of settlement of the respective groups. Their right to use their mother tongue in education is therefore not absolute. Moreover, regulations in this regard differ between the six autochthonous groups and within their settlement areas. As users of sign language live all over the country, the situation of any one ethnic group cannot serve as a standard of reference.

4.4 The State party disputes the author's claim of discrimination in relation to immigrants whose mother tongue is a language other than German. The State party observes that article 18 (12) of the School Instruction Act concerns the assessment of academic performance, not the language of instruction. Moreover, the sum of the requirements for both languages combined is equal to the requirements for other pupils. The State party argues, in the case of deaf pupils, it is not expedient to apply such regulations without differentiation, and that other support measures for deaf pupils have been implemented.

4.5 The State party argues that article 24 of the Convention must be read together with articles 5 (3) of the Convention on the obligation to take all appropriate steps to ensure that reasonable accommodation is provided in order to promote equality and eliminate discrimination. The State party also argues that the right to education is subject to progressive realization, in accordance with article 4 (2) of the Convention. Further, the Convention requires the removal of barriers, but does not grant a right to a particular method of removal. The State party argues that where various equivalent options are available, States parties are free, as a first step, to choose the option that causes the least organizational or other expenditure. Accordingly, article 24 of the Convention requires equal and barrier-free access to education for deaf pupils, but does not contain a general obligation to establish sign language as a language of instruction immediately.

4.6 The State party argues that it has taken adequate measures to establish an inclusive education system, including through the National Action Plan on Disability 2012–2020. In 2011, a participatory strategy to implement the Convention in the education system was launched, which included the development of "inclusive model regions" aiming to offer barrier-free access to all educational institutions. The State party has thus introduced nationwide training and education in Austrian Sign Language, including for teachers, and

Austrian Sign Language has been included in curricula for persons with hearing disabilities. The State party has also established a legal basis for providing support measures in case of specific educational needs, deviating from curricula and providing adapted frameworks for examinations. Overall, a wide range of individual educational support is provided to pupils with specific needs.

4.7 In the author's case, the State party observes that her curriculum was changed, she received learning support and remedial teaching, she was offered visual teaching material for mathematics, she was continuously supported by two teachers proficient in sign language and by sign language interpreters, and interpreters were provided for oral examinations. These measures were coordinated with her, her parents and all relevant institutions and were tailored to her individual needs. In this connection, an independent sign language expert supported the author and her parents to ensure the best possible learning environment for her. From 2012 until 2016, the author received a special education allowance of €11,270 and her family received an increased family allowance.

4.8 The State party submits that the Convention does not confer a right to legal counselling. Its authorities dealt with the author's case comprehensively, since – in addition to the three arbitration proceedings – the Villach Business School Board, the Regional School Board for Carinthia, the Federal Administrative Court and the Constitutional Court exhaustively examined her submissions. Further, the Supreme Administrative Court already examined the alleged violation of her right to be informed about her rights, but did not find such a breach.

4.9 In response to the author's claim that she is barred from invoking the Convention domestically, the State party observes that it has put the Convention under a proviso of fulfilment in the same way as it has done with other human rights treaties.

4.10 Concerning the author's claims of violations of laws other than the Convention, the State party argues that the Committee is competent only to examine alleged violations of the Convention.

Author's comments on the State party's observations on admissibility and the merits

5.1 In her comments of 23 January 2019, the author reiterates that the State party has not enacted any legislation to allow for the use of Austrian Sign Language as a first language of instruction, despite its constitutional recognition as an independent language. Additionally, the School Organization Act recognizes German as the first language of education, while Austrian Sign Language does not have the same status. The author affirms that existing curricula for special schools for deaf children are not qualitatively equivalent to other curricula, and deaf pupils therefore cannot be considered as having equal and barrier-free access to education. She argues that the Federal Institute for Education Research, Innovation and Development of the Austrian School System, in its reports, ignores Austrian Sign Language and fails to specify the measures that have been taken to ensure inclusive education for pupils with hearing disabilities.

5.2 The author argues that the State party disregards the fact that she received poor grades for German despite the measures invoked. She reiterates that the lack of a bilingual curriculum forced her to study in written German and through low-quality interpretation, rather than in her first language. She notes that the Committee has expressed its concern about the lack of teacher training for teachers with disabilities and teachers who use sign language.² She also notes that the Committee has stated that lack of proficiency in sign language skills among teachers of deaf children and inaccessible school environments exclude deaf children and are thus considered discriminatory.³

² CRPD/C/AUT/CO/1, para. 42.

³ General comment No. 6 (2018), para. 65.

B. Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with article 2 of the Optional Protocol and rule 65 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

6.2 The Committee has ascertained, as required under article 2 (c) of the Optional Protocol that the same matter has not already been examined by the Committee, and that it has not been, nor is being, examined under another procedure of international investigation or settlement.

6.3 The Committee notes that the author claims violations of her rights under the Convention starting from the 2007/08 school year. The Committee recalls that the Optional Protocol entered into force for the State party on 26 October 2008. In view of the nature of the author's claims, however, the Committee is satisfied that the facts that are the subject of the communication continued after that date. The Committee is therefore not precluded by article 2 (f) of the Optional Protocol from examining the facts that occurred prior to that date.

6.4 The Committee considers that the author's claims concerning the obstacles that she faced in her education, given that Austrian Sign Language is her first language, raise issues under articles 5, 7, 21, 24 and 30 (4) of the Convention. The Committee therefore considers that this part of the communication has been sufficiently substantiated for the purpose of admissibility.

6.5 The Committee notes the State party's argument that the Convention does not confer a right to legal counselling and that it has domesticated the Convention under a proviso of fulfilment. The Committee also notes the author's arguments that she was unable claim a violation of the Convention before the domestic authorities and that the Regional School Board for Carinthia and the Federal Ministry of Education and Women did not provide her with information about the procedures necessary to pursue her claims. However, the Committee considers that the author has not sufficiently explained, for the purpose of admissibility, how these points affected her right not to be discriminated against in the exercise of her legal capacity and access to justice under article 5 read in conjunction with articles 12 (3) and (4) and 13 (1) of the Convention. The Committee therefore concludes that this part of the communication has been insufficiently substantiated and declares it inadmissible under article 2 (e) of the Optional Protocol.

6.6 The Committee notes the author's claim of discrimination with regard to other non-German linguistic minorities in the State party. The Committee notes the State party's argument that the author's comparison with the situation of autochthonous linguistic minorities inadequately considers their specific factual and legal circumstances. The Committee further notes that the author has not demonstrated how the fact that Austrian Sign Language is her first language has placed her in a situation similar to that of the State party's other linguistic minorities with regard to German. The Committee therefore considers that this part of the communication has been insufficiently substantiated and declares it inadmissible under article 2 (e) of the Optional Protocol.

6.7 The Committee notes the authors' claims of violations of the Universal Declaration of Human Rights, the Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms. The Committee notes that article 1 of the Optional Protocol limits the material scope of its competence to receiving and examining communications claiming a violation of any of the rights set forth in the Convention. The allegations of violations of other treaties and instruments fall outside of this scope. The Committee therefore declares these claims inadmissible under article 2 (b) of the Optional Protocol.

6.8 In the absence of any other objections by the State party regarding admissibility, the Committee declares the communication admissible, insofar as it raises issues of concern under articles 5, 7, 21, 24 and 30 (4) of the Convention, and proceeds with its consideration of the merits.

Consideration of the merits

7.1 The Committee has considered the present communication in the light of all the information that it has received, in accordance with article 5 of the Optional Protocol and rule 73 (1) of its rules of procedure.

7.2 The Committee notes the author's claim of a violation of article 5 read in conjunction with articles 21 (b) and (e), 24 and 30 (4) of the Convention, as after primary school, she received education through interpretation into Austrian Sign Language and was graded as if German were her first language. The Committee notes the author's argument that her performance suffered owing to the selectivity and the low quality of the interpretation and that she was not supported in developing her knowledge of Austrian Sign Language. The Committee notes her claim that she is not equal before and under the law and that she has been discriminated against as she was forced to be educated in German, without provision for instruction in Austrian Sign Language.

7.3 The Committee recalls that to ensure equality and non-discrimination for deaf children in educational settings, they must be provided with sign language learning environments with deaf peers and deaf adult role models. Lack of proficiency in sign language skills among teachers of deaf children and inaccessible school environments exclude deaf children and are thus considered discriminatory.⁴ The Committee also recalls that in order to foster accessibility, education as well as the content of school curricula should promote and be conducted in sign language, Braille, alternative script, and augmentative and alternative modes, means and formats of communication and orientation – in accordance with article 24 (3) (a) of the Convention – with special attention to the appropriate languages and modes and means of communication used by blind, deaf and deafblind students.⁵ The Committee further recalls that deaf and hard-of-hearing students must be provided with the opportunity to learn sign language and measures must be taken to recognize and promote the linguistic identity of the deaf community.⁶

7.4 The Committee recalls that under article 2 of the Convention, “discrimination on the basis of disability” is defined as any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field, and as including all forms of discrimination, including denial of reasonable accommodation. The Committee also recalls that the phrase “on an equal basis with others” means, on the one hand, that persons with disabilities will not be granted more or fewer rights or benefits than the general population, and, on the other hand, that States parties are required to take concrete specific measures to achieve de facto equality for persons with disabilities to ensure that they can in fact enjoy all human rights and fundamental freedoms.⁷ The Committee further recalls that progressive realization, as required under article 4 (2) of the Convention, means that States parties have a specific and continuing obligation to move as expeditiously and effectively as possible towards the realization of article 24.⁸ However, progressive realization does not prejudice those obligations that are immediately applicable: States parties have a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each aspect of the right to education, including non-discrimination in all aspects of education, and reasonable accommodation to ensure that persons with disabilities are not excluded from education.⁹ Similarly, the Committee recalls that equality and non-discrimination are a cornerstone of the international protection guaranteed by the Convention and are not subject to progressive realization.¹⁰ The Committee recalls that States parties' obligation with respect to progressive realization entails taking positive action to reduce structural disadvantages and

⁴ General comment No. 6 (2018), para. 65.

⁵ General comment No. 2 (2014), para. 39.

⁶ General comment No. 4 (2016), para. 35 (b).

⁷ General comment No. 6 (2018), para. 17.

⁸ General comment No. 4 (2016), para. 40.

⁹ *Ibid.*, para. 41; see also Committee on Economic, Social and Cultural Rights, general comment No. 3 (1990).

¹⁰ General comment No. 6 (2018), para. 12.

giving appropriate preferential treatment to persons with disabilities in order to achieve the objectives of full participation and equality within society for all persons with disabilities.¹¹

7.5 In this regard, the Committee notes that the author was continuously supported by two teachers proficient in Austrian Sign Language and by sign language interpreters, including during oral examinations, that her curriculum was adapted and that she received learning support and remedial teaching, including visual teaching material. The Committee further notes that these measures were coordinated with the author, her parents and relevant institutions and were tailored to her individual needs. Moreover, an independent sign language expert supported her in her learning environment, she received a special education allowance of €11,270 between 2012 and 2016, and her family received a family allowance. The Committee notes that, with these measures, the author progressed through the State party's school system, although she had to repeat the 2011/12 school year, had to change schools and opted to repeat the 2016/17 school year. In the light of all the circumstances, the Committee concludes that, given the nature and extent of the measures taken to accommodate the author, and her actual development and progression at her schools, these measures were not irrelevant, inappropriate or ineffective. The information before it, therefore, does not allow the Committee to find that the State party failed in its obligation to take concrete specific measures, by providing reasonable accommodation, to achieve de facto equality for the author to ensure that she could enjoy all human rights and fundamental freedoms. Accordingly, the Committee finds that the author's rights under article 5, read in conjunction with articles 21 (b) and (e), 24 and 30 (4), of the Convention have not been violated.

7.6 The Committee notes the author's claim that the State party did not consider her best interests and that the administrative and judicial authorities never asked her about her needs or opinions. The Committee also notes the State party's observation according to which the measures taken for the author were coordinated with her and her parents and were tailored to her individual needs. The Committee further notes that the author has not provided additional information to show how the treatment of her case by the State party's authorities was affected by the alleged disregard of her interests. In view of the foregoing, the Committee considers that the State party has not violated the author's rights under article 5, read in conjunction with article 7, of the Convention.

7.7 In light of the above, the Committee is of the view that the facts before it do not disclose a violation of article 5, read in conjunction with articles 7, 21 (b) and (e), 24 and 30 (4), of the Convention.

C. Conclusion

8. The Committee, acting under article 5 of the Optional Protocol, is of the view that the facts before it do not disclose a violation of article 5, read in conjunction with articles 7, 21 (b) and (e), 24 and 30 (4), of the Convention.

¹¹ Committee on Economic, Social and Cultural Rights, general comment No. 5 (1994), para. 9.