



BOFAXE

Drowning in Negligence (Part 1)

The Structural Shortcomings of Germany's Approach to Inclusion-Oriented Disaster Management

— In July 2021, Germany faced a critical test of its implementation of Article 11 of the Convention on the Rights of Persons with Disabilities (CRPD), specifically focusing on the protection of persons with disabilities in situations of risk and humanitarian emergencies. The severe floods that hit parts of Germany claimed over 130 lives, including twelve persons living in a residential facility for people with disabilities. A shadow report by the German Institute for Human Rights, submitted to the Committee on the Rights of Persons with Disabilities (the Committee), re-examined these events in the context of the recent review process. This piece delves into the shadow report's findings, asserting that Germany not only violates Art 11 CRPD by failing to effectively include the perspectives of persons with disabilities into its disaster management strategies but also that the tragic death of those twelve persons results from another structural problem: the widespread institutionalisation of persons with disabilities.

Floods in the Ahr Valley: Autopsy of a Catastrophe

According to the shadow report, the deaths of twelve persons with disabilities during the floods epitomize the "major shortcomings" of the German government concerning the inclusion of the perspectives of people with disabilities in disaster and emergency management (para. 40). Although the report acknowledges the measures undertaken by the German government particularly in terms of accessibility of alarm systems (para. 39), it attributes the fatalities to a lack of inclusion-oriented emergency plans and concepts and insufficient participation of persons with disabilities in the development process of those plans (para 40). In addition to the striking absence of inclusive and flooding-specific disaster strategies on the local and federal level, the vulnerability of the residence to the flooding was significantly heightened by fatal cost-cutting measures. During the nights, only one single employee covered the shift in the respective residential facility, consisting of two buildings over 250 meters apart. While the employee evacuated the residents from one building during the flooding, all but one resident located in the other building drowned. Years before the floods, the local fire protection officer identified this understaffing as a huge risk. However, to save costs, the local authorities refused to allocate funds to an additional night shift.

Article 11 CRPD: Strong Law, Weak Compliance

The CRPD is the only international convention stipulating specific obligations for disaster and emergency situations. Precisely, Art. 11 CRPD calls upon States to take *"in accordance with their obligations under international law [...] all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters"*.

This explicit emphasis recognizes that persons with disabilities are disproportionately affected by the effects of disasters. Harmful societal notions of disability and a general lack of accessibility in evacuation and response infrastructure often result in people with disabilities being left behind or abandoned during evacuations. It is crucial to note that Art. 11 CRPD must under no circumstances be interpreted in a paternalizing manner (para. 16f.). Although the exact legal obligations arising from Art. 11 CRPD have not yet been concretized by the Committee in a general comment (GC) on Art. 11 CRPD, it has touched upon the issue on several occasions: *Inter alia*, GC No. 4 states that inclusive education must continue to be provided in emergency situations (para. 14), GC No. 2 calls for accessibility of emergency services (para. 18), GC No. 7 dictates the participation of persons with disabilities in the development of emergency plans (para. 78), and, importantly, GC No. 6 requires that persons with disabilities must be included on an equal basis in national emergency protocols and be fully considered in evacuation scenarios (para. 43-46). Precisely, the latter obligations call for structured comprehensive strategies and regulatory frameworks that ensure national compliance on all levels. However, there is a striking paucity concerning the exact normative content of this obligation and best-practice examples on how to effectively provide for inclusive disaster response. Fortunately, the committee is currently preparing a general comment dedicated to Art. 11 CRPD and will thus greatly improve this state of uncertainty in the near future.



BOFAXE

Drowning in Negligence (Part 2)

The Structural Shortcomings of Germany's Approach to Inclusion-Oriented Disaster Management

Even in the absence of more in-depth guidance, when assessing the German regulatory situation prior to the 2021 catastrophe, some significant flaws rooted in legislative inaction can be identified that impede an effective implementation of Art. 11 CRPD. The legislative responsibility for civil protection in times of peace lies with the *Länder*, and its practical realization mainly at the municipal level. Thus, disaster response strategies in Germany abound in a number of different regional concepts. In consequence, clear regulations and guidelines would be needed on the federal level (or at least the level of the *Länder*), to ensure that the municipal concepts are in compliance with Art. 11 CRPD by indeed including persons with disabilities into their disaster response strategies. However, currently only one of the 16 laws governing disaster management of the *Länder* mentions the inclusion of persons with disability at all (§ 7(3) BHKG North-Rhine-Westphalia). Similarly, on the federal level, although there have been several initiatives to promote inclusive humanitarian action abroad, there has been little to no official guidance on disability inclusion in domestic disaster management. This absence of regulatory frameworks on a central level leads to many municipal entities not involving or even considering persons with disabilities at all, thereby neglecting its obligations under Art. 11 CRPD entirely. Against this background, it is not surprising that the Committee voiced concerns over the lack of an 'overarching disability inclusive, human rights-based strategy for disaster risk reduction' in its recently published concluding observations on Germany (para. 23).

The Root of All Evil: Institutionalised Living

On top of the failure to implement effective regulatory frameworks to ensure compliance with the obligations imposed by Art. 11 CRPD on all governmental levels, it is surprising that the debate on the 2021 events has not yet been linked to another structural deficit: the continuing lack of deinstitutionalisation. Arguably, the tragedy would have been prevented if the affected individuals had been included into society in a decentralized and individualized manner, rather than in a central care facility. According to the German Institute for Human Rights, almost half of all persons with disabilities who receive housing benefits still live in residential facilities and the number has even slightly increased during the last decade. While Germany claims in its combined second and third periodic reports to have initiated a deinstitutionalisation process (para. 167f.), these figures indicate Germany's inability to effectively provide for more inclusive and self-determined forms of accommodation. The Committee has on multiple occasions voiced concerns over such type of accommodation (and has condemned Germany for this already in 2015 [para. 41f.] and also in its recent concluding observations, [para. 33]) as standing in stark contrast to Art. 19 CRPD, the right to independent living and inclusion into the community. In its General Comment No. 5 from 2017 the Committee called upon States to implement effective deinstitutionalisation strategies and individualized support services (para 54f.) since living in residential facilities often impedes the effective enjoyment of the residents rights on an equal basis with others. Such type of accommodation often limits the residents' self-determination, participation in society (particularly if such residencies are located in isolated places), privacy, and personal and bodily autonomy. The concept of placing persons with disability in special care facilities stems from a highly outdated (medical) model of disability that reduced its ambitions to keeping persons with disability 'warm, full and clean' and with certain distance to the rest of society. Although nowadays modern approaches of such facilities go far beyond this approach and in recognition of the inherent dignity of persons with disabilities indeed aim at enabling inclusion and self-determination, the reality of most of such facilities, however, does not fully mirror this change. While lack of staff and financial resources might play a role here, the main reason being arguably the still prevailing misconception that paternalizing approaches are in the best interest of persons with disabilities and necessary for their 'protection'. However, as the tragic death of the twelve individuals during the 2021 flooding has illustrated, this approach is extremely harmful, in worst case even leads to the loss of lives. Living in residential facilities creates and enhances vulnerabilities, not only towards disaster- and emergency situations such as natural disasters or fires, but also towards infectious diseases (p.3) and psychological, physical and sexual violence, humiliation and neglect by care takers and other residents. Thus, deinstitutionalisation is necessary to protect lives and guaranteeing the effective enjoyment of human rights on an equal basis with others – in times of emergencies, but also in everyday life.

Conclusion

In the absence of concrete guidance by the CRPD itself, it gives hope that the recently adopted new resilience strategy by the German Government calls for the inclusion of persons with disability during all phases of crisis (prevention, response and reconstruction, p. 58f). However, more than two years after the tragedy, concrete guidance on how to achieve this is still missing. Germany must get active now and provide for substantial and comprehensive regulatory and legislative frameworks to prevent fatalities and reduce vulnerabilities of persons with disabilities. Nevertheless, as long as Germany refrains from taking effective deinstitutionalisation measures, all efforts will arguably only treat the symptoms, not the cause.