



Swiss Learning
Health System

Abstract of the Policy Brief on:
“How can discrimination against people
with disabilities in the law of the Roman
Catholic Church be eliminated?”

Sabine Baggenstos

The problem

- Legal system (canon law 1983)
- Applicable to 1.2 billion people worldwide
- Includes an element of discrimination against people with disability (impotence)
- Any person suffering from permanent impotence is enjoined from marrying in church
- Contradicts other national and international law (Swiss Federal Constitution 1999 [BV] and UN Convention on the Rights of Persons with Disabilities 2006 [CRPD])
- The problem: the impediment of impotence in canon law is from the lens that state law is discriminatory on the basis of a physical trait.

Aim and intention of the PhD thesis

- To discuss and develop possible solutions to solve this problem: how can discrimination be eliminated?

Contents of the PhD thesis

Part I: Medical Background and Context	Part II: Canon Law Background and Context	Part III: State Law Background and Context	Part IV: Conclusion of Part II and III
<ul style="list-style-type: none"> - Impotence (= inability to have sexual intercourse) - Prevalence - Causes - Treatment - Permanence 	<p>C. 1084 § 1 CIC/1983: “[...] marriage is invalidated by antecedent and perpetual impotence to have sexual intercourse, whether on the part of the man or on that of the woman, whether absolute or relative.”¹</p>	<ul style="list-style-type: none"> - No marriage restrictions due to impotence - Human right for people with disabilities to marry - Human rights model of disability; right to inclusion - Prohibition of discrimination on the basis of disability 	<ul style="list-style-type: none"> - Options - Implementation considerations <p>Stakeholder dialogue 11.09.2018 (Canon Law)</p> <p>Stakeholder dialogue 10.09.2019 (State Law)</p>

¹ Banares 2004, S. 1174.

Options / Implementation considerations

Results of the stakeholder dialogue 11th September 2018 (Canon Law):

- Option 1:
 - The Holy See as a subject of international law can sign the CRPD. The law of the church can be changed.
- Option 2:
 - The current legislation of the church needs to be discussed. There should be a change from natural law arguments to human rights arguments.²
 - Human dignity is the central aspect of having rights.
 - However, “the essential elements for impotence are derived from the content of the institution of marriage”³.
 - Therefore the question arises: “what is the right balance between protecting the institution and respecting the person?”⁴ In current canon law “the conflict and the resulting tension between the two trends, institutional and personalistic, is noticeable”⁵.

Results of the stakeholder dialogue 10th September 2019 (State Law):

- Option 3:
 - The discussion surrounds the implementation of fundamental rights and third-party effect (Art. 35 BV)⁶.
 - State law can restrict the freedom of the church so that the person can be protected and is not discriminated.
 - Balancing of interests / practical concordance between church and persons: the right of the church to have its own law ↔ human dignity prohibits every discrimination of the person.
 - Creation of an incentive system for the religious community: financial incentives; assistance services, information centres; universities with special training programs on the topic of fundamental rights and human rights; education of fundamental rights for bishops; announcement of the CRPD in church and discussion on the topic, achieved institutionally by forums. This would be possible for the long term.
 - Creation of a catalogue of requirements in public and legal recognition.
 - Integration of targets into the Constitutions or laws of the Roman Catholic Cantonal churches, e.g. dealing with people with disabilities.
 - Performance of the state’s protection obligation: CRPD should be realized.

² Cf. Graulich und Weimann 2018.

³ Banares 2004, S. 1175.

⁴ Örsy 1986, S. 262.

⁵ Örsy 1986, S. 263.

⁶ Cf. Müller 2018.