



Convention on the Rights of Persons with Disabilities

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Committee on the Rights of Persons with Disabilities

Tenth session

Summary record of the 106th meeting

Held at the Palais Wilson, Geneva, on Tuesday, 3 September 2013, at 10 a.m.

Chairperson: Ms. Cisternas Reyes

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The meeting was called to order at 10.05 a.m.

Consideration of reports submitted by States parties under article 35 of the Convention *(continued)*

Initial report of Austria (continued) (CRPD/C/AUT/1; CRPD/C/AUT/Q/1 and Add.1)

1. *At the invitation of the Chairperson, the delegation of Austria took places at the Committee table.*

Articles 11–20

2. **Mr. Tatić** asked why the Government spent a disproportionately large amount of its support services budget on institutional care as opposed to personalized assistance and community-based services to promote independent living. He requested further information about the long-term support allowance, in particular, whether recipients could afford to hire a personal assistant and live in the manner of their choosing.

3. **Ms. Mulligan** asked whether the Government's international disaster relief planning and humanitarian assistance programmes made provision for persons with disabilities and if that was a mandatory requirement.

4. **Mr. Ríos Espinosa** asked what processes had been established to guarantee the due process rights of persons with disabilities who were declared unfit to stand trial and whether a mechanism existed to review guardianship arrangements.

5. **Ms. Peláez Narváez** requested further clarification of the reasons for the reduction in the number of children with Down syndrome in Austria. She asked what steps the State party had taken to ensure effective access to justice for persons who faced multiple discrimination and how the tools provided for in the national legislation on combating violence against children, including the national child helpline and information leaflets, were made accessible to children with disabilities. Turning to the issue of forced sterilization of women and girls with disabilities, she enquired what efforts the Government had made to ensure that informed consent of the individual concerned was obtained prior to any sterilization procedure or treatment.

6. **Mr. Langvad** asked whether the different language used in relation to independent living in each of the Länder resulted in persons with disabilities experiencing differing levels of independence across the country. He also wished to know whether persons with disabilities requiring living assistance could choose their own place of residence or whether it was determined by the location of the assistance provider. He would welcome clarification as to whether persons with intellectual disabilities who lived in special facilities had to spend their leisure time in those facilities or whether they had access to other locations. He enquired whether the Government had taken any steps to facilitate participation by persons with disabilities in their local communities, such as providing sign-language interpretation. Lastly, he asked what initiatives had been introduced to guarantee the right of persons with psychosocial disabilities to full and informed consent to every action affecting the management of their disability.

7. **Ms. Degener** requested further information on the number of persons with disabilities participating in the pilot supported decision-making scheme and the extent to which disabled persons' organizations had been involved in the design of the project. Noting the large amount of government expenditure on institutions for persons with disabilities at the expense of independent living programmes, she asked whether the State party had any intention of reviewing its spending policies.

8. **Mr. Buntan** asked whether all persons with disabilities were registered at birth and enjoyed full legal status.
9. **Ms. Pavey** asked whether the State party had established any strategies or programmes for persons with disabilities during situations of national emergency or humanitarian disaster.
10. **Mr. Ben Lallahom** asked what had been done to ensure that accessibility and mobility measures for persons with disabilities were applied consistently throughout the country, particularly in rural areas. He also wished to know whether persons with disabilities could easily travel outside Austria.
11. **Ms. Maina**, welcoming the State party's pilot supported decision-making scheme, asked whether the aim of the project was to reduce the number of persons with disabilities in institutional care and emphasize a more rights-based approach to habilitation and rehabilitation. She enquired how community-based services would be provided under the project for persons with psychosocial disabilities. Lastly, she asked whether the project would include supported voting to improve access to the electoral process, particularly for persons with intellectual or psychosocial disabilities.
12. **Ms. Quan-Chang** asked whether migrants or refugees with disabilities received long-term care in Austria and whether such assistance extended to migrants or refugees living in rural areas. She requested information on the number of migrants or refugees with disabilities in receipt of the long-term support allowance and on the mechanisms in place to prevent abuse of or violence against those groups.
13. **Mr. Lovász** asked whether the State party intended to launch an accessible and universal call system that took account of the needs of persons with disabilities.
14. **The Chairperson**, speaking in her personal capacity, said that she would welcome further information on the 1842 law on swearing of legal oaths, particularly whether the law still required deaf or mute persons to receive assistance from a third party. She also wished to know whether the State party had implemented any policies or standards in respect of the use of physical and chemical restraint on persons with psychosocial disabilities in institutions and whether it had established a national preventive mechanism pursuant to the Convention against Torture.

The meeting was suspended at 10.30 a.m. and resumed at 10.50 a.m.

15. **Mr. Helmut Tichy** (Austria) said that, while the Austrian Development Agency provided development and humanitarian assistance and the Government had prepared a policy document highlighting that persons with disabilities were a particularly vulnerable group who required specific assistance in emergency situations, the inclusion of persons with disabilities in the relevant programmes remained a challenge. In response to the problem, the Government had set up a national meeting on humanitarian assistance that brought together various ministries, development assistance agencies and NGOs to discuss how adequately to address the matter in future. Regarding legal registration of persons with disabilities, he wished to confirm that all persons must be registered within three days of birth without exception and that persons with disabilities enjoyed full legal status in Austria. Turning to the issue of supported voting, a special voting assistance programme existed and persons with psychosocial disabilities, among others, had the right to be accompanied when voting.
16. **Mr. Krauter** (Chairperson of the Ombudsman Board, Austria) said that, since July 2012, the Board had acted as the country's national preventive mechanism and as the independent body responsible under article 16 of the Convention for monitoring and assessing institutions serving persons with disabilities. As such, its main aim was to promote deinstitutionalization and raise awareness of the need to move from an integration-

to an inclusion-based approach to disability. Concerning net beds, the Supreme Court had unfortunately recently passed a decision allowing their use in institutions for persons with severe mental disabilities, but the Government intended to draft a new act to eradicate the practice following the next elections.

17. In 2012, 164 complaints had been received on matters relating to the abuse of guardianship powers, including misuse of funds and property. The implementation of the Convention in Austria continued to be hampered by the country's fragmented legal structure, and creative ways would need to be found to resolve that situation. The Ombudsman Board had yet to receive any complaints regarding access to justice for persons with psychosocial disabilities.

18. **Mr. Hofer** (Austria) said that the amount of the care allowance paid to persons with disabilities to cover their support needs ranged from 154 to 1,654 euros per month, with 5 per cent of the Austrian population currently eligible for assistance. Of those who received the allowance, 12 per cent lived in institutions; one third of recipients receiving the highest monthly payment lived in nursing homes. The system had recently been harmonized across the Länder and allowances were now awarded on a national rather than a regional basis.

19. At the federal level, many measures had been introduced to support the personal mobility of persons with disabilities. A tax-free allowance was available to help persons with disabilities to obtain their driver's licence and buy a car. After the forthcoming harmonization of parking permit arrangements, more persons with disabilities and their assistants would have access to free, accessible parking.

20. **Mr. Cernelic** (Austria) said that each of the Länder sought to afford persons with disabilities the greatest possible flexibility and freedom in deciding where and how they wanted to live by making available a range of options. Living, work and leisure space were kept separate. Almost all Länder offered persons with disabilities the option of personal assistance as an alternative to institutional care. Sign-language interpretation was among the services provided to facilitate participation in the local community. Migrants and refugees with disabilities were eligible to receive the same assistance as Austrian nationals.

21. The Johannes von Gott Nursing Centre was the current residence of 581 persons with multiple disabilities who could not be assisted in any other institution. The Government was aware that the institution did not fully comply with article 19 of the Convention and was taking steps to establish inclusive living arrangements for the residents.

22. **Ms. Maurer** (Austria) said that barrier-free access to public transport was guaranteed in Vienna and the larger cities but not in rural areas. Only one in every two or three vehicles was barrier free, and, in some cases, while the vehicle itself was barrier free, the infrastructure, such as stations or stops, was not. The use of public transport by persons with disabilities sometimes involved a complicated procedure whereby they had to announce their intended journey up to 24 hours in advance. The Länder were well aware of the problem, and some had drawn up phased plans for the barrier-free organization of public transport. Accessibility would be taken into account in future tenders for public transport contracts, but the process would take time.

23. **Mr. Barth** (Austria) said that, in Austria, the appointment of a guardian was a last resort when no alternative assistance was available. Guardians had to identify the wishes of the person they were representing and ensure that the person was able to live life according to his or her wishes. The competent court then had to evaluate regularly whether it was in the interests of the person to continue to have a guardian. The Austrian guardianship system was not dissimilar to the guardianship models in other European countries and therefore did not seem, a priori, inappropriate. In some cases, such as urgent legal procedures, representation was indispensable if a person could not express his or her wishes.

24. The problem with guardianship lay not with the system of representation as such, but with its use in practice. Access to social services was being made increasingly difficult and, if there were even minor doubts as to a person's capacity, many social authorities would require him or her to have representation. It was important to ensure that the system for claiming disability benefits was barrier free, so that the need for representation would not arise.

25. Following the 2006 guardianship reform, a system had been introduced under which social work professionals supported the guardianship court in establishing whether guardianship was really necessary. The system had been found to reduce recourse to guardianship, with greater effort made to identify resources in the person's environment, such as peer support or support from family members, with a view to replacing guardianship as far as possible.

26. An overhaul of the guardianship system would take place over the next two to three years, starting with a symposium in December 2013 at which representatives of persons with disabilities would identify themes to be followed up in working groups with a view to the elaboration of draft legislation. Although the themes had not yet been decided, it already seemed clear that supported decision-making should be incorporated in legislation, that recourse to guardianship should be reduced to only the most necessary cases and that the influence of guardians should be restricted, for example when persons with disabilities wished to marry.

27. With regard to medical treatment for persons with disabilities, under the law, if the person concerned had the capacity to decide, consent to treatment was required, even if a guardian had been assigned for medical matters. Methods of supported decision-making could be used in such situations. If the person did not have the capacity to give consent, a guardian with responsibility for medical matters could do so, taking the person's wishes into account. That also applied for the use of contraception and other medication. Sterilization was only permitted if the person had the capacity to give consent. Under the law, there was only one exception, namely, if failure to conduct a sterilization would result in serious risk to the person's life, permanent bodily harm or major damage to the health of a woman if she became pregnant. If doctors or the person's family believed that to be the case, a court decision was always required, following very strict criteria.

28. Regarding confinement in closed psychiatric institutions, the curtailment of freedom was only permitted as a last resort, if the person in question was mentally ill and was a serious danger to himself or herself or to others. Simply having a disability was never a justification for being placed in a closed institution. Guardians had no authority to consent to such measures; there must always be a special examination procedure and a decision by the competent court. Guardianship offices had specially trained patients' ombudspersons who closely monitored whether the criteria for imposing measures curtailing freedom had been met, and, if not, they referred cases for court review. The patients' ombudspersons were legally obliged to take account of the wishes of the person concerned and ensure that they were heard. The involvement of the patients' ombudspersons did not restrict the person's capacity to initiate court proceedings independently.

29. With regard to the 1842 provisions on witnesses who were deaf or mute, it would be necessary to check whether they remained in force.

30. **Ms. Windischhofer** (Austria) said that no data were available to establish whether the birth of fewer children with Down syndrome in Austria was due to selective abortion. The federal Government had set a number of health objectives, such as improving health through social cohesion, and one of the overarching objectives of the Child and Youth Strategy was to establish equal opportunities for all children and ensure that the conditions

were in place for all persons to find their place in society. Efforts to achieve all those aims were already under way and a coordination unit had been set up to monitor progress.

31. **Mr. Rubisch** (Austria) said that, pursuant to the recommendations of the Committee on the Rights of the Child, a monitoring board for children's rights had been established and the Federal Ministry of Economy, Family and Youth had conducted evaluation studies on violence against children with disabilities, which would be repeated at regular intervals. Complaints could be registered with the Ombudsmen for Children and Young People in all Länder, who worked closely with the national Ombudsman to prevent cases of abuse and mistreatment. There were plans to create a public awareness campaign on violence against children in the next legislative period.

32. As to the availability of information in alternative formats, the Convention, the State party report, the National Action Plan on Disability and important leaflets on care allowance and equal rights for persons with disabilities, for example, were available in easy to read form. The easy to read version was always first checked by persons who themselves had a disability to ensure that they could be understood by the target readers.

33. The German translation of the Convention, and in particular the use of the term "*unabhängiges Leben*", rather than "*selbstbestimmtes Leben*", to refer to "independent living", would be reviewed and amendments made if necessary. The Government had publicized the current dialogue with the Committee through a press release issued several days previously, which provided extensive information on the background and objectives of the process.

34. **Mr. Bechina** (Austria), speaking as Chair of the Council of Europe Committee of Experts on the Rights of People with Disabilities, said that two Austrian members of parliament had contributed to a Council of Europe document on the life experiences of persons with disabilities, which was a useful awareness-raising tool. With regard to the influence of the Council of Europe on national policy, he drew attention to the Council's Disability Action Plan 2006–2015, which was a regional tool for the implementation of the Convention.

Articles 21–33

35. **Mr. Ríos Espinosa** asked about the State party's policy on accessibility to historical sites and monuments, noting that it was necessary to strike a balance between conservation and accessibility.

36. **Mr. Langvad** asked whether there had ever been an evaluation of the quality of teaching in special schools in the State party. He enquired whether all persons with disabilities who wished to vote had access to the necessary transport and assistance with travel to the polling station, and why some persons in Austria were deprived of their right to vote. He wondered what percentage of Austrian international development assistance focused on persons with disabilities. Lastly, how was it ensured that the independent monitoring mechanism was fully in compliance with the Paris Principles?

37. **Ms. Pavey** said that it was still not clear how persons with disabilities were included in the State party's national disaster preparedness plans. Concerning article 29, she wished to know whether the Political Parties Act contained any provisions on diversity and encouraging the participation of persons with disabilities.

38. **Ms. Mulligan** said that she would be interested to hear some up-to-date examples in response to her previous question on article 11, on situations of risk and humanitarian emergencies. In relation to article 32, she wondered how the Government ensured that all sectoral development cooperation projects, such as water and energy programmes, were accessible to persons with disabilities, whether there were plans to monitor how persons

with disabilities benefited from development cooperation, and what would be done to ensure their participation in both the planning and implementation of policies and programmes. She wished to know whether the State party intended to increase funding for development aid from its current level of 0.28 per cent of gross domestic product. Lastly, she enquired how the Convention was taken into account in the development of strategic documents.

39. **Mr. Babu** requested information on the election of representatives of persons with disabilities to the parliament.

40. **Ms. Peláez Narváez** asked what mechanisms were in place for persons with disabilities to lodge complaints if they were subjected to abuse by their guardians. She wished to know whether mammography machines, gynaecological examination tables and birthing beds were accessible to wheelchair users. Were there any cases of persons with disabilities becoming adoptive parents? She would be interested to hear more about specific measures to guarantee access to employment for persons with disabilities. Lastly, she wondered what was being done to ensure the proper participation in political and public life of women with disabilities and to support the creation of organizations of women with disabilities.

41. **Mr. Kim Hyung Shik** said that parents' wishes seemed to prevail over those of the children concerned when families decided between a special or an inclusive school, which was contrary to the principle of the best interests of the child. He would appreciate the delegation's views on the matter. The assumption that technical schools were the best choice for persons with disabilities was discriminatory: was the State party prepared to respect the right of persons with disabilities to choose their own career path? The State party had not submitted any data on tertiary education, but he understood that, in a 2006 social survey, less than 1 per cent of students had been defined as disabled. He asked the delegation to comment and to indicate what measures were envisaged to broaden opportunities in tertiary education for persons with disabilities.

42. In the section of its report on article 26, on rehabilitation, the State party had addressed mainly health and financial compensation measures. He would appreciate information on other measures such as early intervention or prevention, as well as educational and social measures. Lastly, he wondered whether the State party had a long-term policy to include disabled persons' organizations in the implementation of article 32, rather than just involving them in projects, or to encourage those organizations, along with other Austrian NGOs, to work more closely with their counterparts in the South.

43. **Mr. McCallum** said that Austria was to be congratulated on having a monitoring mechanism under article 33; it should take steps to make the mechanism fully independent in accordance with the Paris Principles. Austria was to be congratulated on its efforts in many areas involving persons with disabilities. He was nevertheless surprised at the lack of university graduates with disabilities, and he would like to know whether there were plans to make inclusive education more viable.

44. Concerning article 27, it was clear from the statistics that the quota system for employment had failed, with only 22 per cent of companies complying. He would like to know whether the Government was considering other programmes to bring more persons with disabilities into the labour market and shrink the large numbers in sheltered workshops.

45. **Ms. Degener** said that she wondered what was to happen to special schools in the model regions for inclusive education: would the numbers be reduced or would they be closed or turned into something else? With regard to article 12, she wished to emphasize that the Convention required a more radical change of paradigm than the States parties

seemed to have understood. Articles 12, 14 and 17 required forced treatment to be stopped and article 24 required the abolition of all forms of segregation in the education system.

46. **Mr. Ben Lallahom** said that a debate appeared to be looming in Austria about special schools, with some sectors asking for them to be maintained and others for them to be closed. He wondered what the Government's position was.

47. **Mr. Tatić** said that it was still not clear what the reasons were for the disproportion in the amounts spent on persons using personal assistants and those residing in institutions, and whether there were any plans for a change in line with article 19. Further to the earlier question on historical monuments, he wondered whether those working in conservation received training in making monuments accessible to persons with disabilities.

48. **Mr. Buntan**, referring to article 21, asked whether the Austrian approach to providing information to persons with disabilities in timely fashion and accessible formats was based on any internationally recognized standards of accessibility. As to article 30, did Austria have any copyright exemption law to allow access to published works for people with print disabilities and what were the delegation's views on the recently adopted Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled? Lastly, was there a special mechanism for involving disabled persons' organizations in the independent monitoring mechanism under article 33 and did Austria make any distinction between organizations of persons with disabilities and organizations that provided services to persons with disabilities?

49. **Mr. Al-Tarawneh** enquired what efforts were made to ensure that persons with disabilities actually had access to the labour market, as opposed to simply receiving a financial payment under a compensation scheme, which represented more of a charitable approach. He understood that a pilot project on persons with disabilities and the labour market was due to start in 2014 and run for three years. He wondered what plans there were thereafter.

50. **Mr. Lovászy** noting with satisfaction the recognition afforded sign language in the Austrian Constitution, asked whether there was any legislation requiring schools to offer sign language.

51. **The Chairperson**, speaking in her personal capacity, asked what sanctions were in place for non-compliance with the requirement to provide sign-language interpretation, beyond mere financial compensation. She requested indicators of the quality of education provided in the inclusive education system. She enquired what percentage of individuals had access to rehabilitation and skills programmes and in particular to those designed for persons with visual or hearing impairments or both. She wondered why, in some cases, persons with disabilities working in the public and private sectors earned less than colleagues who were not disabled. Lastly, how did the State party support disabled persons' organizations and enable them to take a full part in the political life of the State?

The meeting was suspended at 12.15 p.m. and resumed at 12.30 p.m.

52. **Mr. Helmunt Tichy** (Austria) said that a European Union study had confirmed that persons with mental health problems or intellectual disabilities were not excluded from voting or standing for election in Austria. Persons with disabilities wishing to vote had access to transport and other support systems. As to the lists of candidates of political parties, that was a matter for the parties themselves. Currently three persons with disabilities were members of the Austrian parliament: they had been elected in a general election, there being no special electoral body for persons with disabilities.

53. **Mr. Heinz Tichy** (Austria), clarifying the situation of refugee and migrant children with disabilities in respect of education, said that any child with a disability who was not in the country only temporarily and was thus required to attend school would have all the

rights pertaining to his or her status. A series of assessments, including psychological assessments, was made to determine whether a child could remain in the education system and also whether he or she had any special language requirements. A decision had to be made as to whether the child would be able to follow the teaching and whether support was needed. Decisions on the fate of a child could not be made in a secretive manner, and the authorities asked children questions in order to establish what they themselves wanted and what was in their best interests.

54. It was true that, overall, the number of children enrolled in special education had increased, but it was important to bear in mind that virtually every child who was supposed to go to school was in the school system, including, therefore, quite a large number of children with disabilities, many of whom benefited from tailored arrangements. A closer look at the figures for special schools showed that in fact the number of pupils had declined from year to year. The whole question of inclusive education and its definition had been the subject of lengthy debate and intensive dialogue. In July 2013, the legislation governing universities had been amended, and now made frequent mention of inclusive education.

55. Regarding sanctions for non-compliance with the obligation to offer sign language, in fact there was no real right in that regard in the sphere of education, merely a range of provision in different schools. Part of the question was whether sign language was to be considered the language of an ethnic group, which was not the case in Austria. In article 24 of the Convention, sign language was mentioned rather in the context of linguistic identity. That did not mean it was not necessary to offer it, but the whole question was perhaps not best resolved through legislation and the interpretation of legislation. Sign language offered as personal support amounted to a contract under private law, and legal action could be taken in case of non-fulfilment.

56. **Ms. Edler** (Austria) said that, if a single school system for all was to be created, then the framework would need to be changed. It was not a matter of adapting children to the available structures. Currently, certain legal provisions stood in the way of inclusion, for example one governing parents' and childrens' exercise of the right to choose the best possible school, special school or otherwise. Two Länder, Carinthia and Styria, had nevertheless taken steps to change the structures. Styria intended to abolish special schools by 2020. However, that would not be possible as long as those legal provisions were still in place, and the hope was that the developments in those two Länder would encourage the Ministry of Education to give renewed consideration to the question.

57. **Ms. Pflichter** (Austria) said that, in the latest three-yearly survey on the social situation of persons with disabilities and chronically ill persons, in 2011, 12 per cent of Austrian students described themselves as having a disability or chronic illness that hindered them in their studies. In 17 of the 21 State universities there were special disability offices that offered a range of support measures, but the students themselves had to inform those offices that they needed support; very few in fact did so. Projects were under way at various universities to provide for students with visual or hearing impairments and to introduce sign-language interpretation in tertiary education. As more students with disabilities completed their studies, so more teachers with disabilities would begin to appear in universities.

58. **Mr. Hofer** (Austria) said it was true that only 22 per cent of employers were in full compliance with the Disability Employment Act, but any employer who failed to comply with any given provision of the law would count as non-compliant. In fact, 65 per cent employed persons with disabilities. Austria spent some 400 million euros per year on the employment of persons with disabilities. The Ministry of Social Affairs earmarked 170 million euros for those with the severest disabilities who would not otherwise be able to work. Assistance was given to women in finding apprenticeships and efforts were made to

ensure that they had a choice of occupations other than those traditionally associated with women. By law, no one should be paid a lower wage because of a disability.

59. The seven members of the monitoring body were appointed by the umbrella organization for disability organizations, which was itself independent. No member of the monitoring body was a member of a ministry. It was true that there was no specific federal budget allocation for the monitoring body. The Government would do its best to ensure that budgets were allocated in a more transparent fashion.

60. **The Chairperson** thanked the delegation for its frank and helpful replies.

The meeting rose at 1 p.m.