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**Convention on the Rights of Persons with Disabilities**

8 May 2013

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**Committee on the Rights of Persons with Disabilities****List of issues in relation to the initial report of Austria, adopted by the Committee at its ninth session (15–19 April 2013)****A. Purpose and general obligations (arts. 1–4)****Purpose (art. 1)**

It is explained in the initial report of Austria that the Government of Austria intends drawing up a national action plan for people with disabilities. The Committee understands that this National Action Plan was adopted in August 2012 and that it contains guidelines of the Austrian disability policy for the years 2011–2020. Please update the information on the National Action Plan. Please explain how it will operate at the different levels of the Austrian federal structure. Furthermore, with regard to the shared competency with the European Union in many areas (anti-discrimination in particular), please refer to the elements of European Union legislation on cohesion policy, structural funds and related programmes relevant to this National Action Plan, because the European Union itself has also ratified the Convention.

**Definitions (art. 2)**

In the initial report of Austria (paras. 18–24), a series of definitions of “disability” are set out. These definitions are taken from various laws relating to persons with disabilities. These definitions appear to focus upon the old medical model of disability. Please explain whether or not these laws cover persons with intellectual and/or psychosocial disabilities. Please also explain whether consideration has been given to adopting an overall legal definition of disability.

In the report (para. 31), it is noted that Austrian sign language is enshrined in article 8, paragraph 3, of the Austrian Constitution and that it is recognized as a language in its own right. Please give details on measures taken to support the teaching and the use of Austrian sign language in educational institutions and public services requiring the official languages to be used and concerning the dissemination of information.

**General obligations (art. 4)**

Please give greater detail than is contained in paragraph 46 of the report on how persons with disabilities and their representative institutions are being consulted with respect to the implementation of legislation and policies concerning persons with disabilities, in accordance with article 4, paragraph 3, of the Convention.

As is explained in the report (para. 3), Austria has a federal system of government comprising the federal Government, the Länders (provinces) and local authorities. Please indicate whether the legal frameworks in place in these three levels of government are in keeping with the Convention. Please discuss the translation of the Convention into the German language. Please explain why the word “inclusion” was translated as “integration”. Please inform the Committee if civil society has been involved in the translation process.

**B. Specific rights****Equality and non-discrimination (art. 5)**

It is noted in the report (para. 51) that the Länders have adopted laws prohibiting discrimination in employment and presumably in other areas. Please give further details on these laws, and whether all of the Länders have adopted laws prohibiting discrimination.

Article 5, paragraph 3, of the Convention requires the provision of reasonable accommodation. However, in the initial report (paras. 33–34 and 54), there is no comprehensive discussion of reasonable accommodation. Instead, in paragraph 34 when discussing the Employment Discrimination Act, it appears that employers may discriminate where not to do so “would place an unreasonable strain on the employer”. In paragraph 54, there is discussion of the federal Disability Equality Act where discrimination is presumably excused where it would place “a disproportionate burden” on the discriminator. Please explain how these laws with their vague terminology are compatible with the concept of reasonable accommodation as defined in the Convention.

Please give up-to-date statistics, disaggregated by sex, on the numbers of cases brought at the federal and provincial levels by persons with disabilities alleging discrimination in employment, in the provision of accommodation and in the provision of goods and services. Please specify the percentage of claims which were successful and the remedies granted, and the percentage of claims which were settled, disaggregated by sex. Please also explain how many cases were dealt with by the courts, and how many matters were settled by mediation.

## **Awareness-raising (art. 8)**

Please give further details on awareness-raising programmes that have been implemented over the last four years (paras. 95–97).

Please give details on steps being taken to promote the positive image of children and adults with disabilities amongst government personnel, the media, the public and families.

## **Accessibility (art. 9)**

In the report (paras. 105–108), the construction laws of the Länders are described. Please explain whether or not these laws extend to the erection or refurbishment of private as well as public buildings. Please explain why there is a minimum number of people set for requiring a barrier-free environment for public buildings. Please explain whether there are any deadlines set in this regard for the city of Vienna, since it has reportedly committed itself to drawing up a staged plan.

In the report (para. 109), a staged plan to make federal buildings accessible is discussed. However, criticisms are made of the long transitional period in the report by the Commissioner for Human Rights of the Council of Europe (CommDH(2012)28, para. 26). Please provide updated information on this issue and specify the number and percentage of federal buildings which have been made accessible.

In the report (para. 113), a project on freedom from barriers in the workplace is mentioned. Please expand on and update this information. Please explain whether this project has been evaluated by persons with disabilities.

In the report (paras. 116, 216–217), radio and television programmes accessible to blind and deaf persons by the Austrian Broadcasting Corporation and other providers are described. The criticisms levelled in the report are noted (paras 220–222). Please indicate the percentage of radio and television programmes which are now fully accessible to blind and/or to deaf persons.

## **Situations of risk and humanitarian emergencies (art. 11)**

Please explain whether the guidelines in Austrian international disaster relief now take account of persons with disabilities (see para. 139).

## **Equal recognition before the law (art. 12)**

It appears that Austrian guardianship operates in accordance with the substituted decision-making model (see paras. 140–142 and para. 146). Please explain whether initiatives are being taken to replace substituted decision-making with regimes of supported decision-making, in conformity with article 12 of the Convention.

In the initial report (paras. 143–145), patients' ombudspersons and other forms of patient representation are discussed. Please give updated information on the role and work of the patients' ombudspersons and other forms of assistance in hospitals, and especially in psychiatric institutions.

## **Access to justice (art. 13)**

In thereport by Austria submitted as part of the universal periodic review process by the Human Rights Council (A/HRC/WG.6/10/AUT/1, paras. 61–62), human rights training for police officers, judges and prosecutors is discussed. Please explain whether the curriculum covers the human rights of persons with disabilities. With regard to the information contained in paragraph 155 of the report concerning access to fair justice systems, please give further reasons as to why only one expert member is sufficient to safeguard the rights of minors in civil law proceedings when taking into account their mental maturity.

## **Liberty and security of the person (art. 14)**

In the report (para. 162), theHospitalisation Act and the Nursing Home Residence Act are noted and are described as “exemplary”. Yet, in its report to the Government on the visit to Austria, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment indicates that visits were made to the Sigmund Freud Regional Psychiatric Hospital (Landesnervenklinik) in Graz and the Johannes von Gott Nursing Centre (Pflegezentrum) in Kainbach. In paragraphs 133–144 of the report, strong criticisms are made of some practices, especially practices of restraint on persons with disabilities. Please furnish information on if and how these criticisms have been dealt with by the authorities.

## **Freedom from violence and abuse (art. 16)**

It does appear that there has been an increase in physical and emotional violence against and sexual abuse of persons with disabilities (see para. 172 and A/HRC/WG.6/10/AUT/3, para. 22). Please explain what measures are being put in place, especially in large institutions, to prevent physical, emotional and sexual violence.

The report (paras. 173–174) appears to indicate that persons with disabilities may receive medical intervention without their consent, provided it is approved by a guardian. Please provide further information on the circumstances where guardians may authorize medical intervention without the consent of the person.

It appears that the sterilization of women and girls with disabilities is prohibited without their consent, and there appears to be a total ban on the sterilization of minors (para. 229). Yet, sterilizations appear to be high (paras. 175–176). Please indicate the number of persons with disabilities who have been forcibly sterilized in Austria over the past three years. Please explain whether any of these

sterilization operations and obligatory abortions have been undertaken without the consent of the patient.

### **Living independently and being included in the community (art. 19)**

Please update the figures on the provision of caring measures and social security as outlined in the report (paras. 183–185). Please detail the budgetary amounts spent on institutionalized services as compared with those spent on independent living services.

As is explained in the report (para. 195), the BMASK/Federal Social Office provides personal assistance in the workplace. Are there any plans to broaden the categories of persons with disabilities who may receive personal assistant services?

Please explain what steps are being taken to ensure comprehensive personal assistance in all aspects of life, i.e., personal assistance for all persons with disabilities (including children and persons with psychosocial disabilities) that is accessible, demand-driven, irrespective of income, freely chosen in its organizational form and independent of place of residence, also including support groups for the support of persons with intellectual disabilities as well as persons with psychosocial disabilities in their everyday lives. Please also explain how the evaluation of the individual needs of the person concerned is ensured and what steps are being taken to approve an adequate “personal budget” in order to enable persons with disabilities to independently design and choose their individual lifestyle.

Please explain whether there are plans to deinstitutionalize the existing institutions to enable more persons with disabilities to live independently in the community (paras. 200–201).

### **Personal mobility (art. 20)**

Please give information on plans to increase accessible transport, including accessible information on travelling, especially in the Länders (paras. 208–209).

### **Respect for home and the family (art. 23)**

Please give details on the education given to persons with disabilities on sexuality, pregnancy and the caring of children (para. 235).

### **Education (art. 24)**

Please give updated information on the numbers of children, disaggregated by sex, who are attending mainstream schools and those who are attending special schools. Please explain whether the percentage of children with disabilities in mainstream schools has fallen in the last few years.

In its concluding observations on the report by Austria, the Committee on the Rights of the Child expressed concern over parental decisions to send children with disabilities to special schools (CRC/C/AUT/CO/3-4, paras. 44–45). Please explain what measures are available, including counselling, to assist parents when making this choice for their child with disabilities.

In the report (para. 260), figures are set out from the 2007 micro-census showing that persons with disabilities have far lower completion rates in secondary and in tertiary education. Please update these figures. Please explain what efforts are being made to increase the completion rates of persons with disabilities in secondary and in tertiary education.

### **Health (art. 25)**

In the report (para. 271), Vienna’s health forum for women and girls with disabilities is noted. Please explain whether similar health forums operate in other regions of Austria.

Please explain what steps are being taken to increase the quality of the implementation of inclusive education, including sufficient and adequate individual support measures (i.e., materials and human resources, availability of all-day care, classes comprising different levels, use of assistant teachers, sign language interpreters, compulsory training of all teachers (beyond special needs teachers)) and allocation of budget for all of the above.

In the report (para. 273), criticisms are made of the lack of training for doctors, on the needs of persons with disabilities. Please explain what training is available to doctors and other health professionals on the needs of persons with disabilities, especially concerning persons with more complex disabilities in group homes and institutions.

What measures are in place to ensure that all education, information, health care and services relating to sexual and reproductive health, HIV and sexually transmitted infections are made accessible to women and girls with disabilities in age-appropriate formats?

### **Work and employment (art. 27)**

The vocational training measures set out in the report (paras. 288–291) are commendable. However, please give details on the percentage of persons with disabilities in employment, disaggregated by sex, when compared with the percentage of Austrians in employment, disaggregated by sex. Please explain to the Committee why the number of sheltered workshops has risen significantly during the last few years. Please explain why other inclusive employment strategies have not been fully implemented.

In the report by Austria as part of the universal periodic review process (para. 114), information is given whereby companies of a certain size must employ a certain quota of persons with disabilities, else have a tax penalty placed on them. Please give further information on this quota system. How many of these companies fulfil the quota and how many prefer instead to pay the tax penalty?

### **Participation in political and public life (art. 29)**

What measures are being introduced to increase comprehensive accessibility during all elections and election campaigns and to ensure secret ballots and the personal right to vote for persons with disabilities?

### **C. Women and children with disabilities (arts. 6 and 7)**

#### **Women with disabilities (art. 6)**

Please provide data on the number of reported cases of all forms of violence, including domestic violence, against women and girls with disabilities since 2010, as well as the number of prosecutions, convictions and sentences imposed on perpetrators (see CEDAW/C/AUT/Q/7-8, para. 8).

Please give information on further measures to assist the participation of women with disabilities in the Austrian labour market (see para. 83).

#### **Children with disabilities (art. 7)**

Please explain what measures have been taken to increase the availability of inclusive child care for children with disabilities (see para. 93).

In its concluding observations on the report by Austria, the Committee on the Rights of the Child expressed concern about the lack of measures to enable children with disabilities to report violence and neglect in institutions, including migration holding centres (CRC/C/AUT/CO/3-4, paras. 35–36). Please give information on what measures are being adopted to enable children with disabilities to report cases of violence and neglect.

### **D. Specific obligations**

#### **National implementation and monitoring (art. 33)**

In the report (paras. 358–363), the role and work of the independent mechanism, the Independent Monitoring Committee, is discussed. However, this independent mechanism appears to lack the independence as required by article 33, paragraph 2, of the Convention because insufficient account has been taken of the principles relating to the status of national institutions for protection and promotion of human rights (Paris Principles). Please explain whether measures will be taken to strengthen the independence of the Monitoring Committee to bring it into line with article 33 of the Convention.

Please give information on whether any of the Länders are establishing independent monitoring committees, similar to the federal Austrian Independent Monitoring Committee.