



## Convention on the Rights of Persons with Disabilities

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### Committee on the Rights of Persons with Disabilities

#### **Concluding observations on the initial report of Austria, adopted by the Committee at its tenth session, 2-13 September 2013**

1. The Committee considered the initial report of Austria (CRPD/C/AUT/1) at its 105<sup>th</sup> and 106<sup>th</sup> meetings, held on 2 and 3 September 2013 respectively. At its 117<sup>th</sup> meeting, held on 11 September 2013, the Committee adopted the following concluding observations.

#### **I. Introduction**

2. The Committee welcomes the initial report of Austria, which was prepared in accordance with the guidelines for submission of reports to the Committee, and is grateful for the written replies (CRPD/C/AUT/Q/1/Add.1) to the list of issues prepared by the Committee (CRPD/C/AUT/Q/1).

3. The Committee is grateful for the dialogue between its members and the State party's delegation. It commends the State party for its preparation and the strength of its delegation, which included representatives of relevant government ministries and representatives of the Austrian Länder (regions). It is also welcomed the presence of representatives of two Austrian independent surveillance institutions: the Austrian Ombudsman Board and the Austrian Monitoring Committee for the implementation of the Convention on the Rights of Persons with Disabilities.

#### **II. Positive aspects**

4. The Committee congratulates the Republic of Austria on its adoption in July 2012 of the National Disability Action Plan 2012-2020. National plans are an excellent method of bringing laws, policies and practices into line with the United Nations Convention on the Rights of Persons with Disabilities.

5. Austria is to be congratulated on a number of its achievements. The Committee notes that sign language is enshrined in Article 8(3) of the Austrian Constitution and congratulates Austria on this important step towards recognizing the rights of persons with disabilities who live in the State party. The Committee was also pleased to hear that deaf members of the Austrian parliament have been accommodated via the provision of sign language. The Committee also notes that Austria is one of the first states with which it has dialogued to have established a monitoring body under article 33. The Committee notes that Austria is one of the States which ensures the right to vote and be elected for persons with

psychosocial and intellectual disabilities as enshrined in article 29 of the Austrian Constitution.

### **III. Principal areas of concern and recommendations**

#### **A. General principles and obligations (arts. 1–4)**

6. The Committee is concerned that the German translation of the Convention does not accurately represent the meaning of the Convention and may cause decisions incompatible with the Convention. For example, the word "integration" is used instead of the word "inclusion". The translation of "independent living" does not accurately reflect the meaning of this term and may in fact lead to people being denied the chance to live in the community. During the constructive dialogue the Austrian delegation intimated the possibility of revisiting the German translation of the Convention.

**7. The Committee recommends that the State party revise the German translation of the Convention in line with the Convention. The Committee further recommends that the State party ensures that persons with disabilities and disabled persons organisations be involved in the process of revision.**

8. The Committee noted that there are differing concepts of disability across the State Party's laws and policies. The Committee is concerned that the State Party misunderstands the difference between defining disability and identifying groups of persons who can benefit from different kinds of services. The Committee is concerned that some of these definitions constitute a medical model of disability.

**9. The Committee recommends that the relevant laws be amended to include the concept of disability in accordance with the Convention.**

10. The Committee notes that Austria has a federal system of government and is concerned that this has led to an undue fragmentation of policy, especially as the Länder (regions) are the providers of social services. This fragmentation can be seen in the development of the National Disability Action Plan, in the development of which the Länder's participation was intermittent and uneven. Fragmentation is also apparent in the different definitions of disability, different accessibility standards, and different protections against discrimination across the various Länder. The Committee notes that article 4(5) of the Convention makes it clear that the administrative difficulties of a federal structure do not allow a state to avoid its obligations under the Convention.

**11. The Committee recommends that the State party ensure that federal and regional governments consider an overarching legislative framework and policy on disability in Austria in conformity with the Convention. It is recommended that this policy should include frameworks for real and genuine participation by persons with disabilities through their representative organisations with respect to the development and implementation of legislation and policies concerning persons with disabilities in accordance with article 4 paragraph 3 of the Convention.**

#### **B. Specific rights (arts. 5–30)**

##### **Equality and non-discrimination (art. 5)**

12. The Committee recognises the progress made in Austria in developing anti-discrimination laws at the federal and regional levels, however it notes that with one exception, the only remedy available is financial compensation. The exception is in

employment matters, where further training programs and improvements of conditions in employment may be mandated. It appears that systems for dealing with matters of multiple discrimination, where disability is combined with gender or ethnicity, require more development.

**13. The Committee recommends that the discrimination laws be strengthened by broadening the available remedies to include other remedies that require a change of behaviour in people who discriminate against persons with disabilities, such as injunctive powers. The Committee recommends that the State party examine the appropriateness of the current structures used to deal with situations of multiple discrimination.**

14. While the Committee recognises women's right to reproductive autonomy, the Committee notes that under Austrian law it is legal for a foetus to be aborted up to the onset of birth if serious damage to the health of the foetus can be expected. The Committee is concerned that there appears to be a link between this provision and the fact that according to OECD statistics, births of children with Down's syndrome in Austria fell by 60% between 1995 and 2006. The Committee notes that discussions on this matter are underway.

**15. The Committee recommends that the State party abolish any distinction in the period allowed under law within which a pregnancy can be terminated based solely on disability.**

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

16. While much has been achieved, the Committee notes that substantive equality between women and men has not yet been achieved. Women with disabilities face multiple forms of discrimination because of their gender and disability, and may also be at risk of sexual violence and abuse.

17. The Committee is concerned about a lack of advocacy and support structures for women with disabilities. The Committee notes with concern that there is only one organisation representing women and it does not cover all women with disabilities in the State party.

**18. The Committee recommends that the State party adopt effective and specific measures to ensure equality and to prevent multiple forms of discrimination against women and girls with disabilities. The Committee encourages the State party to mainstream a gender perspective in its disability legislation and policy, and to facilitate advocacy by and on behalf of women and girls with disabilities. The Committee also encourages the State party, including the Länder, to offer services which are accessible to and targeted at women with disabilities.**

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

19. In its 2012 Concluding Observations on Austria (CRC/C/AUT/CO/3-4), the Committee on the Rights of the Child expressed its concern about a number of ways in which the rights of children with disabilities were at risk of being abrogated.

**20. The Committee endorses the recommendations of the Committee on the Rights of the Child and requests the State Party to implement those recommendations as speedily as is appropriate.**

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

21. The Committee notes with concern that there appears to be very few awareness raising campaigns being conducted in Austria to counter negative and out-dated stereotypes about persons with disabilities which foment discrimination. The Committee is concerned

that throughout Austrian society there does not appear to have been a complete understanding of the paradigm shift created by the human rights-centred approach in the Convention. The Committee is also concerned at reports that persons with disabilities face practical impediments in matters of adoption, and that those stereotypes are partly attributable to the persisting prejudices and stereotypes against persons with disabilities.

**22. The Committee encourages the State party to take initiatives in relation to awareness-raising to effectively transform the perception of persons with disabilities based on the charity model and the "old-fashioned" understanding that all persons with disabilities need to be protected. Instead, the State party should make efforts to reinforce a positive image of persons with disabilities as holders of all the human rights recognized in the Convention. Furthermore, the State party should, in consultation with disabled persons' organisations, take specific measures, including awareness-raising campaigns, aimed at eliminating prejudices. The Committee recommends that further specific programs be established, in consultation with disabled persons' organisations, to address negative stereotypes and all practical impediments faced by persons with disabilities in relation to adoption.**

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

23. The Committee commends the State party for its achievements in the area of accessibility to buildings, to transport and to information. The Committee notes that various cities and Länder have developed plans for improving accessibility to facilities. However, it is concerned that accessibility is poor in some areas, particularly outside Austria's larger cities. It is particularly concerned that, in at least one Länd, there is a minimum number of people set for requiring a barrier-free environment for public facilities. In addition, accessibility shall also consist of barrier-free info-communication accessibility in Austria's media, at ORF in particular.

**24. The Committee recommends that the State party develop an overarching inclusive approach to accessibility in accordance with Article 9 of the Convention. The building standards should not be limited to buildings of a minimum size or capacity, but should apply to all public facilities in accordance with article 9. The Committee also recommends decreasing the timelines of staged plans that currently operate in some cities and Länder and also the plan for subtitling ORF programs.**

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

25. While taking note of the efforts by the State party to develop a plan on disaster preparedness, and its contributions to development cooperation and humanitarian aid, the Committee is concerned at the lack of information on the State party's preparedness to provide persons with disabilities with the necessary support in the event of a disaster.

**26. The Committee urges the State party to provide information in its next periodic report on the specific measures taken to ensure its preparedness to provide persons with disabilities with the necessary support in the event of a disaster. The State party should also increase its efforts to implement the twin-track approach in order to fully achieve disability inclusion in all spheres of the Austrian Development Cooperation.**

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

27. In 2012, approximately fifty-five thousand Austrians were under guardianship, with half with respect to all aspects of life. This is concerning, particularly because the Austrian guardianship laws do appear to be old fashioned and out of step with article 12 of the Convention. The Committee commends the State party for introducing a pilot program under the national action plan on supported decision-making.

28. The Committee recommends that substituted decision making be replaced with supported decision making. The Committee recommends that Austria do more to ensure that persons with disabilities have access to supported decision-making and are not placed under guardianship. The Committee recommends that supported decision making structures should respect the person's autonomy, will and preferences, and be in full conformity with article 12 of the Convention, including with respect to the individual's right, in his/her own capacity, to give and withdraw informed consent for medical treatment, to access justice, to vote, to marry, to work, and to choose a place of residence. The Committee also recommends that disabled persons organizations be involved in all aspects of the pilot program on supported decision-making. The Committee further recommends that the State party provide training, in consultation and cooperation with persons with disabilities and their representative organizations of persons with disabilities, at the national, regional and local levels for all actors, including civil servants, judges, and social workers, on the recognition of the legal capacity of persons with disabilities and on mechanisms of supported decision-making.

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

29. The Committee is deeply concerned that Austrian laws allow for a person to be confined against his or her will in a psychiatric institution where they have a psychosocial disability and it is forecast that they might endanger themselves or other persons. The Committee is of the opinion that the legislation is in conflict with article 14 of the Convention because it allows a person to be deprived of their liberty on the basis of their actual or perceived disability.

30. The Committee urges the State Party to take all necessary legislative, administrative and judicial measures to ensure that no one is detained against their will in any kind of mental health facility. It urges the State party to develop deinstitutionalization strategies based on the human rights model of disability.

31. The Committee also urges the State party to ensure and that all mental health services are provided based on the free and informed consent of the person concerned. It recommends that the State allocate more financial resources to persons with intellectual and psychosocial disabilities who require a high level of support, in order to ensure that there are sufficient community based outpatient services to support persons with disabilities.

#### **Freedom from torture and cruel, inhuman or degrading treatment or punishment (art. 15)**

32. The Committee notes with concern the continued use of net beds and other forms of non-consensual practices in the State party's psychiatric hospitals and institutions where people with intellectual, mental and psychosocial disabilities are confined.

33. The State party should abolish the use of net beds, restraints and other non-consensual practices used against persons with intellectual, mental and psychosocial disabilities in psychiatric hospitals and institutions. It is further recommended that the State party should continue to provide training to medical professionals and personnel in the care and other similar institutions on the prevention of torture, cruel, inhuman or degrading treatment or punishment as provided by the Convention.

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

34. The Committee commends the Austrian Ombudsman Board for the work done to investigate allegations of mistreatment in institutional settings. However, the Committee

remains concerned at reports of exploitation, violence and abuse of persons with disabilities.

**35. The Committee recommends that the State party take further measures to ensure protection of women, men, girls and boys with disabilities from exploitation, violence and abuse.**

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

36. The Committee notes with concern reports that over the last twenty years the population of Austrians with disabilities, who are institutional dwellers, has increased. The Committee is particularly concerned by this phenomenon because institutions are contrary to article 19 of the Convention and leave persons vulnerable to violence and to abuse.

**37. The Committee recommends that the State party ensure that the Federal Government and the Governments of the Länder place greater efforts on de-institutionalisation and in allowing persons with disabilities to choose where they live.**

38. The Committee commends Austria on its various personal assistance programs (at the federal and Länder levels) to assist persons with disabilities. The Committee notes with concern that the personal assistance programs are not available to persons with psychosocial disabilities and that not all cover persons with intellectual disabilities.

**39. The Committee recommends that the State party ensure that the assistance programs provide sufficient financial assistance to ensure that persons can live independently in the community. The Committee further recommends that the State Party harmonise and broaden its personal assistance programs by making personal assistants available to all persons with intellectual and psychosocial disabilities.**

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

40. The Committee is concerned that progress towards inclusive education in Austria appears to have stagnated. The Committee notes with concern reports suggesting that the number of children in special schools is on the increase and that insufficient effort has been made to support the inclusive education of children with disabilities. It further notes that there exists some confusion between inclusive education and integrated education. However, the Committee commends the establishment in several Länder of model regions of education.

41. The Committee is disappointed that there are very few university graduates with disabilities in Austria. Although Austria is to be commended for offering sign language interpretation to all students at tertiary level, it was stated during the constructive dialogue that there have been only 13 students with hearing impairments, of whom only three have graduated from university.

42. It also appears that there is a lack of teacher training of teachers with disabilities and teachers who use sign language. Without sufficient teachers with sign language skills, deaf children are placed at a significant disadvantage.

**43. The Committee recommends that greater efforts be made to support students with disabilities in all areas of inclusive education from kindergarten to secondary school. It particularly recommends the State party to ensure that persons with disabilities, including children with disabilities and their representative organisations be involved in the day-to-day implementation of the models of inclusive education introduced in various Länder. The Committee further recommends that greater efforts be made to enable persons with disabilities to study at universities and other tertiary institutions. The Committee also recommends that increased efforts be made to train teachers with disabilities and train teachers who can sign with the necessary**

level of quality so as to enhance the education of deaf and hard of hearing girls and boys in accordance with the formal recognition of Austrian sign language in the Constitution of Austria.

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

44. The Committee notes with concern that approximately 19,000 Austrians work in sheltered workshops outside of the open labour market and receive very little pay.

45. While noting that Austria has a quota system for employment of persons with disabilities, the Committee is concerned at reports that a majority of employers prefer to pay a fine rather than to comply with the quota requirement. It notes that only 22% of employers actually fulfil their obligations under the Disability Employment Act, which governs this quota system.

46. The Committee notes with concern that there is a significant gender gap in the employment and income of women with disabilities, when compared with men with disabilities.

**47. The Committee recommends that the State Party enhance programs to employ persons with disabilities in the open labour market. The Committee further recommends that measures be put in place to narrow the employment and payment gender gap.**

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

48. The Committee commends the State party for its upholding of article 29 of the Convention by allowing all persons to vote including persons with intellectual and/or psychosocial disabilities. However, it does appear that many polling booths are not fully accessible to persons with disabilities.

**49. The Committee recommends that more work be done to ensure that voting is fully accessible to all persons, irrespective of disability, and that voting information is provided in all accessible formats.**

### **C. Specific obligations (arts. 31–33)**

#### **Statistics and data collection (art. 31)**

50. While noting the launch of a new reporting forum on women’s issues, the Committee is concerned at reports that data are rarely collected on matters affecting women with disabilities.

**51. The Committee recommends that the State party systematize the collection, analysis and dissemination of data on women and girls with disabilities and enhance capacity-building in this regard; that it develop gender-sensitive indicators to support legislative developments, policymaking and institutional strengthening for monitoring and that it report on progress made with regard to the implementation of the various provisions of the Convention.**

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

52. The Committee observes the creation of the “Independent Monitoring Committee for the Implementation of the United Nations Convention on the Rights of Persons with Disabilities” as Austria’s article 33(2) independent monitoring mechanism. However, the Committee is concerned that the monitoring committee does not have its own budget and it appears to lack the independence required by the Principles relating to the status and

functioning of national institutions for protection and promotion of human rights (Paris Principles).

**53. The Committee recommends that the full independence of the independent monitoring committee be guaranteed in accordance with the Paris principles. The Committee further recommends that the Länder create their own independent monitoring mechanisms to further coordinate disability policies and practices throughout Austria.**

**54. The Committee recommends that the Independent Monitoring Body be allocated a transparent budget and be given the power to administer that budget autonomously.**

#### **Follow-up to concluding observations and dissemination**

55. The Committee requests the State party to implement the recommendations of the Committee as contained in the present concluding observations. The Committee recommends that the State party transmit the concluding observations for consideration and action to members of the Government and Parliament, officials in the relevant Ministries, and members of relevant professional groups, such as education, medical and legal professionals, as well as to local authorities and the media, using modern social communication strategies.

56. The Committee strongly encourages the State party to involve civil society organizations, in particular disabled persons' organizations, in the preparation of its second periodic report.

57. The Committee requests the State party to disseminate the present concluding observations widely, including to non-governmental organizations and representative organizations of persons with disabilities, as well as to persons with disabilities themselves and members of their families, in accessible formats.

#### **Next report**

58. The Committee asks the State party to submit its combined second and third periodic reports by 26 October 2018.

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