

AUSTRIAN NATIONAL COUNCIL OF PERSONS WITH DISABILITIES (OEAR)

A L T E R N A T I V E R E P O R T

on the implementation of the

**UN CONVENTION ON THE
RIGHTS OF PERSONS WITH DISABILITIES
IN AUSTRIA**

on the occasion of the first State Report Review

before the UN Committee on the Rights of Persons with Disabilities

Vienna, January 2013

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I. Introduction

This report is submitted by the **Austrian National Council of Persons with Disabilities** (Oesterreichische Arbeitsgemeinschaft fuer Rehabilitation; **OEAR**) – the umbrella organization of disability organizations in Austria which currently exists of 78 members – on the occasion of Austria’s first state report review before the UN Committee on the Rights of Persons with Disabilities. This report has been prepared by the **Forum of the Convention on the rights of persons with disabilities** (Behindertenrechtskonventionsforum; **BKF**) that was founded by the OEAR in 2008 (the year of the ratification of the CRPD by Austria). This forum consists of experts from the field of disability (including people with disabilities themselves) and the field of human rights. Its purpose is to follow-up the implementation of the UN Convention by Austria in a critical manner and to include civil society in all aspects relating to the Convention.

The report reflects **substantial deficits** and challenges in terms of the implementation of the CRPD by Austria and contains **key recommendations**. The contributions to this report have been written by the authors mentioned below and were compiled, complemented and revised by the coordinator Barbara Kussbach in close collaboration with the legal officer of the OEAR, Christina Meierschitz and with regard to the English version in collaboration with the international policy officer of the OEAR, Christina Wurzinger. A draft of the report was sent to all members of the OEAR, the BKF and a wide circle of interested civil society organizations for feedback. The comments that were made by these organizations have been included in the final version of this report. For the German version of the CRPD, the informal translation of the German “Netzwerk Artikel 3 e.V.” has been chosen for reference by this report. This translation is a revised version of the official translation (that was agreed upon by Austria, Germany and Switzerland) in which some inaccuracies of the latter are corrected (e.g. “Inklusion” instead of “Integration” or “Barrierefreiheit” instead of “Zugänglichkeit”).

During the consultation process for the state report, the Austrian Federal Ministry of Social Affairs announced the establishment of a **National Action Plan (NAP)** for the rights of persons with disabilities, that was adopted in July 2012.

The National Action Plan on Disability is the national strategy of the Austrian Federal Government for the implementation of the CRPD for the period from 2012 to 2020. It covers 250 measures in various federal areas. The regional authorities are not addressed by the NAP i.e. the areas falling under the responsibility of the 9 regions are not covered by the NAP.

In the drafting process of the NAP, two work forums (at the beginning and at the end of the drafting process) were organized by the Federal Ministry of Labour, Social Affairs and Consumer Protection in order to inform civil society about the progress made. The first draft of the NAP was sent out to the NGOs for written consultation. Some arguments of about 70 statements made by NGOs were taken into account by the Ministry. However, important arguments were not considered, supposedly because of the financial expenditures that would be necessary. The finalization of the NAP was neither sufficiently transparent nor participative.

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III. Member Organizations of the Austrian National Council of Persons with Disabilities (OEAR)

- Allgemeine Unfallversicherungsanstalt
- Ambulatorium Sonnenschein
- ASSIST Sozialwirtschaftliche Dienstleistungen für Menschen mit Behinderung gemeinnützige GmbH
- assista Soziale Dienste GmbH
- Bandgesellschaft
- BBRZ Österreich
- Behindertenhilfe Bezirk Korneuburg
- Behindertenhilfe Klosterneuburg
- Behindertenintegration Ternitz Gemeinnützige GmbH
- Blinden- und Sehbehindertenverband Österreich -Bundessekretariat
- BPIInternational CONSULT-Benjamin PETUTSCHNIG
- Caritas Österreich Zentrale
- CBMF - Club behinderter Menschen und ihrer Freunde
- club handikap
- dachverband berufliche integration - austria
- Dachverband DIE STEIRISCHE BEHINDERTENHILFE
- Dachverband Österreichische Autistenhilfe
- debra-austria Interessengemeinschaft Epidermolysis bullosa und Verein zur Förderung der Epidermolysis bullosa-Forschung
- design for all, Zentrum für barrierefreie Lebensräume
- Diakonie Österreich Behindertenarbeit
- Epilepsie Interessengemeinschaft Österreich
- Epilepsie und Arbeit Gemeinnützige Beratungs- und Entwicklungs GmbH
- Förderverein Odilien-Institut für sehbehinderte und blinde Menschen
- Gemeinnützige Sozialtherapeutikum Eggersdorf GmbH
- Gesellschaft für ganzheitliche Förderung und Therapie NÖ GmbH
- Gewerkschaft der Post- und Fernmeldebediensteten
- Grete Rehor - Hilfsfonds für behinderte Menschen
- Hilf selbst mit (HSM)
- Hilfsgemeinschaft der Blinden und Sehschwachen Österreichs
- Hilfswerk Österreich - Bundesgeschäftsstelle
- HPE-Österreich
- Initiativ für behinderte Kinder und Jugendliche
- Institut für Sozialdienste Vorarlberg (IfS) - Geschäftsführung
- Institut für soziales Design (ISD)
- Jugend am Werk Berufsausbildung für Jugendliche GmbH
- KoMiT GmbH
- Konduktiv Mehrfachtherapeutische Zentren und Integration

- Kriegsopfer- und Behindertenverband Österreichs
- Landesverband der Wiener Behindertenverbände (LVWB)
- Lebenshilfe Österreich
- Multiple Sklerose Gesellschaft Österreich - Universitätsklinik für Neurologie - AKH Wien
- Multiple Sklerose Gesellschaft Wien
- Musische Arbeitsgemeinschaft
- OÖZIV - Oberösterreichischer Zivil-Invalidenverband - Büro der Landesleitung
- ÖSB - Österreichischer Schwerhörigenbund - Bundesstelle Wien
- Österreichische Blindenwohlfahrt
- Österreichische Hämophilie- Gesellschaft - Selbsthilfezentrum
- Österreichische Vereinigung Morbus Bechterew - Bundesgeschäftsstelle
- Österreichischer Behindertensportverband
- Österreichischer Gehörlosenbund
- Österreichischer Verband für Spastiker-Eingliederung
- Österreichisches Hilfswerk für Taubblinde und hochgradig Hör- und Sehbehinderte
- ÖZIV - Österreichischer Zivil-Invalidenverband - Landesgruppe Steiermark, Landessekretariat
- ÖZIV - Österreichischer Zivil-Invalidenverband - Landesgruppe Kärnten, Landessekretariat
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- ÖZIV - Österreichischer Zivil-Invalidenverband - Bundessekretariat
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- pro mente austria - Gesellschaft für psychische und soziale Gesundheit
- pro mente Wien - Gesellschaft für psychische und soziale Gesundheit
- RollOn Tirol - wir sind behindert
- Selbsthilfegruppe Down Syndrom Wien, NÖ
- slw Soziale Dienste GmbH
- SOB 31 Verein zur Förderung kultureller Aktivitäten von Menschen mit Behinderung
- Soziales Zentrum St. Josef
- Sprachrohr für Menschen in anthroposophisch orientierten Lebens- und Werkstätten
- Steirische Vereinigung für Menschen mit Behinderung
- Therapiezentrum für halbseitig Gelähmte

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- VertretungsNetz
- Vereinszentrale
- Wien Work - Integrative Betriebe und AusbildungsgmbH
- Wiener Hilfswerk - Landesgeschäftsstelle Wien

IV. Executive Summary

Contrary to the opinion of the Austrian Government, which states in its **2008 Report on the Situation of Persons with Disabilities**,¹ that the paradigm shift has already been implemented in Austria and furthermore, that it is assumed that *“the concrete rights that have been stipulated in the Convention have up to this date already been embodied in the Austrian legal system (no need for implementation under substantive law)”*, the Convention has not been implemented in many fields in Austria so far. As can be concluded from the above-quoted statement and furthermore from political reactions (or non-reactions) since the ratification of the Convention in October 2008, it seems that the CRPD has been underestimated in its meaning and impact on Austria’s legal situation.

According to the introductory statements in its state report, the Government apparently assumes that the obligations of the CRPD have already been implemented to large extents through the previously existing laws concerning the equal treatment and equality of persons with disabilities (such as the prohibition of discrimination according to Art 7 of the Federal Constitutional Act or the Disability Equality Package 2005) as well as through various measures and grants for persons with disabilities (e.g. the Disability Concept of 1992).

At federal level, the National Action Plan on Disability (NAP) has brought a change to the level of awareness. The 250 measures foreseen in the plan in order to implement the CRPD demonstrate that there is still much to be done in order to enable persons with disabilities to live in a society in compliance with the CRPD. For all measures, it will be crucial to consider how they are implemented and whether persons with disabilities and their organizations will participate from the very beginning in all programmes and measures that affect them.

The NAP refers exclusively to the responsibilities of the Federal State and not those of the regions (Laender). Hence, it is to be feared that the implementation of the CRPD within the responsibility of the regions (also regarding the entire social sector) is still very distant.

This is also demonstrated by the numerous deficits in the implementation of the CRPD that are described in this report. Contrary to the Government's opinion stated in the introduction of its report, it is not just a matter of *“further improving the situation of people with disabilities in Austria”*, but to entirely implement the CRPD within all legal and political measures of the

¹ The Government of Austria. 2008. 2008 Report on the Situation of Persons with Disabilities in Austria (hereinafter referred to as the “2008 Disability Report of the Federal Government”), 73. Available online at: www.bmsk.gv.at/cms/site/liste.html?channel=CH0009.

country in order to achieve **full inclusion and comprehensive participation of persons with disabilities** in the community.

Even though there is a multitude of regulations and service offerings for persons with disabilities in Austria, the distribution of competences between the federal Government and the regions (Laender), as well as the strongly pronounced federalism in terms of disability-related legal matters, have led to enormous uncertainties and inequalities. The **paradigm shift** from the medical model to the social model of disability has been implemented just as little as the shift from the welfare concept to the human rights based approach.

The main deficits and challenges for comprehensive reforms primarily lie in the following areas:

1. Comprehensive Accessibility

In Austria, there is no national concept for establishing full accessibility and there are multifaceted barriers that impede and frustrate the equal and independent participation of persons with disabilities in many aspects of life. This concerns physical, social, communication and informational barriers. **Physical barriers** such as, for instance, barriers of access to public buildings, private homes, schools and health care facilities or obstacles in public spaces often lead to discrimination of persons with disabilities. Neither the existing staged plans for the eradication of environmental barriers nor the present legal protection from discrimination are effective enough to enable comprehensive accessibility. **Social barriers** – whereupon the image of persons with disabilities is still marked by pity and the care (welfare) concept instead of self-determination and full inclusion – call for substantial measures for awareness-raising and sensitization. **Communication barriers** that manifest themselves in a lack of service offerings in alternative forms of communication such as the sign language, captioning, Braille or large print, as well as **informational barriers** such as a lack of information that is presented in Easy Language, still exclude a great number of persons with disabilities from social life.

2. Inclusive Education

The present **educational system** in Austria **is not inclusive** and even though there has been an amendment to the Education Acts, it is oriented towards the integration concept - even in its wording. This involves the entire educational career from early childhood education, compulsory school, vocational training and higher education to adult education. A lack of opportunities to take part at inclusive educational programs and of an adequate amount of qualified personnel is already evident at **kindergarten** level. At the compulsory

school levels, approximately half of all students with disabilities still attend a **special school** with Special Needs Education (SNE). The theoretical freedom of choice of parents and children in terms of choosing the appropriate method of instruction is rarely granted in practice. Instead of advancing the full inclusion of disabled students, new special schools are being built. Generally, there is no right to inclusive education after leaving compulsory education. Austrian Sign Language is not recognized as a language of instruction. Additionally, there is a lack of equal access to **higher education** which is due to the fact that most courses of studies have environmental barriers and curricula that are designed for persons without disabilities.

3. Inclusive Work and Employment

Despite the legal codification of the right to equality of persons with disabilities and the ratification of the CRPD, persons with disabilities still experience many disadvantages in terms of **access to the regular labor market**. The shift of the labor market towards an information society and meritocracy intensifies this trend even further. Labor market-based offers differ widely in terms of the general conditions and the related financial and social law-related consequences. The model of daily and occupational structures such as “**occupational therapy**” is still widely common even though it is not compatible with the right to equal employment and fair working conditions. There is a lack of nationwide, secured personal assistance in all aspects of life. The measures towards the inclusion of persons with disabilities into the labor market are inadequate (such as the penalty system instead of an incentive system for businesses, a low compensatory tax for not employing persons with disabilities, etc.). Furthermore, persons with disabilities are increasingly affected by harassment, **mobbing and discrimination** at their workplace.

4. Living Independently

To date, the principle of living independently has not been realized in Austria. Austrian law is still highly marked by the model of **guardianship** instead of support or assistance. This becomes especially evident in the fact that persons with learning disabilities or psychosocial disabilities are often times placed under guardianship very quickly without respecting their personal requests and decisions accordingly. In many aspects of life persons with disabilities can not live independently, for example when choosing their place of residence and when

exercising their right to private and family life whereby a lack of adequate alternatives often results in their accommodation in social care institutions or group homes.² Support services that should enable persons with disabilities to live independently such as the **care allowance** have not been re-evaluated for years and currently they are threatened by massive cost-cutting measures by the government. An **absence** of accessibility and **personal assistance** in all aspects of life often render any chance of living independently impossible.

5. Full Participation

The **participation of persons with disabilities** and their representative organizations in terms of all relevant legal and political measures at the federal, regional (Laender) and municipal levels has not yet been realised in accordance with Article 4(3). While certain organizations and disability associations are partly consulted in cases of draft legislation or other measures and asked to provide comments, quite often, important suggestions on behalf of the civil society fail in their outcomes which is either due to the opposition of the highly influential business sector in Austria (for instance, in terms of measures towards accessibility) or due to the alleged lack of available funds. The **equal participation and co-determination** of persons with disabilities in all social spheres as it is stipulated by the CRPD has thus not been realized in Austria so far.

² These institutions are primarily run by private organizations that are partly financed by the regions (Laender). The affected persons have to pay a high contribution to the costs.

V. Implementation of the CRPD

Article 1-2 Purpose and Definitions

1. Purpose

Reflecting upon the overall social and political situation in Austria, the purpose of the CRPD of ensuring full and equal **enjoyment of all human rights** and **respect for their inherent dignity** for persons with disabilities has not been realized to date. Prejudice, misperceptions and a lack of information about disabilities as well as negative attitudes and fear towards persons with disabilities often lead to discrimination and social exclusion. Persons with disabilities are often not able to exercise their human rights equally and fully because they lack relevant and accessible information.

The recommended **paradigm shift away from the medical, deficit-oriented model towards the social model** whereby a disability emerges from the interaction between persons with impairments and attitudinal and environmental barriers that inhibit them from an effective and equal participation in the society³ has not taken place in Austria so far. To a large extent, this becomes evident inter alia in the legal definitions and declaratory procedures on the existence of a disability that are strongly influenced by the field of medicine. On the political level, it becomes obvious that a further paradigm shift **away from the care (welfare) concept towards the human rights based approach** has not been implemented yet or is merely in its initial stages.⁴ The rights of persons with disabilities are predominantly treated by the Federal Ministry of Labor, Social Affairs and Consumer Protection and are not sufficiently considered as a cross cutting issue to be applied by all responsible bodies at federal, provincial and municipal level. The implementation of inclusive education, for example, is hampered by the fact that the Federal Ministry on Education does not consider the rights and interests of persons with disabilities as belonging to its area of responsibility. The same approach is being practiced by other ministries, like the Federal Ministry of Justice or the Federal Ministry of Health as further outlined in the respective sections of this report.

³ Cf. classification of the WHO 2001, <http://www.who.int/classifications/icf/en>.

⁴ Even if the National Action Plan on Disability (NAP) is a step towards this approach.

2. Definitions

In Austria, there is **no universal definition** of the term disability.⁵ Different laws at the federal and provincial levels that contain, for instance, the equality of persons with disabilities or various support services and that pursue the same goals, use different terms that are not fully in accordance with the CRPD. Most of these definitions are heavily **influenced by the medical concept** whereby disability is mostly treated as an equivalent to “illness”. In comparison, the social and societal dimension of disability, that is the interaction between the individual and society, that leads to social and other barriers, is not considered enough in most laws, see for instance Sec 3 Federal Disability Equality Act (Bundes-Behindertengleichstellungsgesetz)⁶, Sec 3 Disability Employment Act (Behinderteneinstellungsgesetz), Family Burden Settlement Act (Familienlastenausgleichsgesetz), Federal Care Allowance Act (Bundespflegegeldgesetz), Federal Disability Act (Bundesbehindertengesetz) and the Assessment Regulation (Einschätzungsverordnung).⁷ At the regional level, inconsistent standards also result in an unequal treatment of persons with disabilities. Thus, in Styria, for instance, chronic illnesses do not constitute a disability as long as the course of disease is still influenceable; as a result, the regulations for persons with disabilities do not apply for persons with multiple sclerosis or muscular dystrophy, for instance, even if they are dependent on a wheelchair and face societal barriers in their everyday living. The **large number of imprecise and varying definitions** at the federal and the regional level therefore leads to uncertainties and inequalities in terms of claiming rights and services. Even the general efforts of the government to concentrate on the World Health Organization’s 2001 ICF definition of disabilities (International Classification of Functioning, Disability and Health) cannot hide the fact that previous measures have not been in compliance with the CRPD (cf. e.g. the Assessment Ordinance (Einschätzungsverordnung) that was adopted after ratification of the Convention and that still employs the ICD 10 that exclusively considers medical but not social aspects).

⁵ Compare also the National Action Plan on Disability (NAP) (2012: 14f).

⁶ Sec 3 Disability Equality Act: “Disability within the meaning of that law is the impact of a – not only temporary - physical, mental or psychosocial disability or a sensual impairment that is likely to impede the participation in social life. Not only temporary is deemed to be an expected period of more than 6 months.”

⁷ All these laws are based on a definition of disability that does not reflect the social model. Disability is rather considered as a problem of the individual that is caused by a personal deficit.

The lack of a uniform definition of disability is partly a factor in the fact that there is no reliable and meaningful **data collection** about the number and the situation of persons with disabilities in Austria that would reflect the transversal character of disability (→ cf. Article 31). Previous surveys and general statistics have each used different terms for disability whereby an overlapping with health-related impairments and chronic illnesses often became evident. This obscure distinction between illness and disability may lead to imprecise results and may generate a wrong image about persons with disabilities.

The legal definition for “**disproportionate burden**”, that make the removal of discriminatory conditions or barriers unreasonable, is in many cases too vague and based on traditional hierarchies between the non-disabled majority and the disabled minority of the community (cf. e.g. Sec 6 para 2 Disability Equality Act). In this context, the heavy influence of the business sector becomes evident (especially in the process of adopting new laws) which often acts against the realization of comprehensive accessibility. As a result of the broad and economically marked interpretation of what “disproportionate burden” for the removal of barriers really means, persons with disabilities often have limited access to services, living space or work.

There is no general definition of the term **reasonable accommodation** as foreseen in the CRPD. Only the Disability Employment Act stipulates the obligation to make reasonable accommodations in the working environment.⁸

Even though the Austrian **Sign Language** has been recognized as an independent language in Art 8 para 3 Federal Constitutional Act since 2005⁹, a transposition of this constitutional provision into ordinary law is still lacking (cf. e.g. → Art 24 about the missing recognition and promotion of the sign language as a language of instruction). Likewise, there are massive deficits in practice such as the insufficient availability of qualified sign language interpreters (→ cf. e.g. Art 9 and 13).

In legal texts, **easy language** is hardly mentioned and in reality it is almost not applied (→ cf. Art 21). Moreover, there is no translation of the CRPD into easy language (or at least it is

⁸ Cf. Sec 6 Disability Employment Act.

⁹ Art 8 para 3 Federal Constitutional Law: “The Austrian Sign Language is recognized as an independent language. Further details are regulated by law.”

only being prepared now). A nationwide universal utilization of easy-to-read formats (such as identical symbols for Austria and Europe) would be essential.

Recommendations:

- Implementation of the **National Action Plan on Disability** also at the regional level with early, active and result-oriented participation of persons with disabilities and their representatives in order to achieve full inclusion and equal participation in the community¹⁰
- Measures for the protection of the inherent **dignity and human rights** of persons with disabilities on all societal and political levels (e.g. awareness raising campaigns and trainings)
- The **social model of disability** and the focus on the impedimentary societal context must be embedded in the legal and political practice concerning issues relating to persons with disabilities. The paradigm shift away from a marginalizing, medical image towards an inclusive life for persons with disabilities must be turned into reality.
- **Definitions** of the terms “disability” and “disproportionate, “unreasonable burden” and “reasonable accommodation” in legal texts must be revised and standardized in accordance with the CRPD.
- **Easy language** must be incorporated into legal texts and applied in practice (e.g. a translation of the CRPD into easy language).

Article 3-4 General Principles and General Obligations

1. Measures for the Implementation of the Convention

Since the ratification of the CRPD in October 2008, no practical political specific and comprehensive measures for the implementation of the Convention have been taken except for a few small implementation steps (such as the establishment of the Independent Monitoring Committee and a few other minor adjustments). The National Action Plan on

¹⁰ The National Action Plan on Disability (NAP) was elaborated with only partial and insufficient participation of persons with disabilities. Now it will be even more important that the implementation process includes persons with disabilities and their interest groups. Participation of persons with disabilities is a requirement by the CRPD. Not to consider this in the elaboration/drafting process nor in the implementation process of the NAP contradicts the CRPD.

Disability (NAP) is a step in that direction. However, it remains to be seen which concrete consequences the implementation of the NAP is going to have on the situation of persons with disabilities.¹¹ The **paradigm shift** in twofold ways, namely away from the medical towards the social model of disability on the one hand and away from the care (welfare) concept to the human rights based approach on the other hand, has not been fulfilled so far. Considerations about the establishment of a national action plan for persons with disabilities have been expressed by the Federal Ministry of Work, Social Affairs and Consumer Protection for the first time in 2010 in the course of the preparation of the state report. Despite repeated admonitions on behalf of the civil society sector to implement the rights of the CRPD, especially in terms of fundamental principles such as accessibility, full inclusion (especially in the areas of education and work), living independently, equal participation in the community and full participation, there still is a lack of legal codification and practical implementation.¹² Inevitable extensive structural reforms have not been attempted or considered so far. This concerns, for instance, reforms in legal capacity (self-representation instead of guardianship → cf. Art 12), in the educational system (inclusive education instead of the special school system → cf. Art 24) or in working life (right to work instead of “occupational therapy” → cf. Art 27).

Outdated terminology and **discriminatory regulations** in various laws are still used and have so far not been subjected to a legal revision (cf. for example referring to deaf persons as “dumb”, “mute” or “deaf-mute” in Court as well as the mandatory assistance of a third person during the process of swearing a legal oath¹³). Likewise, there has been no systematic examination of the legal order on the conformity with the CRPD. The report of the Working Group on the Examination of the Legal Order into Disadvantages for Persons with Disabilities¹⁴ has not been entirely implemented up to this date. Similarly, the application of

¹¹ This is relevant above all in the consideration of the fact that there are no additional resources foreseen for the implementation of the NAP and that it is more than uncertain to what extent the 250 measures foreseen in the NAP can be implemented without any additional financing.

¹² Furthermore it remains to be seen to what extent the National Action Plan on Disability (NAP) tackles these demands in a sufficient way.

¹³ Cf. “Legal Oath of the Mute” of 1842 and the rules of procedure for the Courts of First and Second Instance.

¹⁴ In the year 1998 a Working Group with broad participation of persons with disabilities was established in the Federal Chancellery’s Constitutional Office. The mandate of the Working Group was to examine the entire legal order (all federal laws) with the aim of identifying legal provisions that

mainstreaming of disability by all responsible bodies of the legislation and the administration is not observable so far.

2. Omission of Measures that are inconsistent with the Convention

The obligation to abstain from actions or practices that contravene the CRPD is ignored repeatedly by Austria through the fact that new laws are issued in conflict with the Convention and without adequate participation of persons with disabilities (e.g. the relatively new building law in Styria whereupon business enterprises are exempted from the obligation to provide full accessibility → cf. Art 9; also the changes in the context of the the Structural Engineering Act (Bautechnikgesetz) in Upper Austria that are likely to cause a deterioration of accessibility) or measures in continuation of systems that are contrary to the CRPD (e.g. the extension of special schools instead of the implementation of inclusive education → cf. Art 24).

3. Participation in Legal and Political Measures

Persons with disabilities are rarely included in the planning processes of measures that are relevant to them from the very beginning or rather, their suggestions are often dismissed at the end with reference to a lack of financial resources. Thus, representatives of persons with disabilities have, for instance, initially been included into the first phase of the drafting-process of the Federal Disability Equality Act, but in the final version of this bill, the recommendations and proposals of persons with disabilities have been largely ignored. This clearly indicates that there are indeed efforts to include the view of persons with disabilities into legislative developments but ultimately, the existing power structures, political strategies or economic interests continue to retain precedence in terms of the final legal text.

A similar inadequately participative process was repeated in the elaboration and drafting process of the National Action Plan on Disability (NAP). Although persons with disabilities and their organizations were invited to participate at a work forum in February 2011, they were not included in the following drafting process. Months passed without any further information on the ongoing elaboration of the NAP by the BMASK. The interpretation of the results of the work forum held in February 2011 was exclusively done by the BMASK. About

discriminate persons with disabilities. The results were summarized in a final report in 1999. The examined provisions should have been modified according to the findings of the report. Many findings have been incorporated into law – especially regarding discriminatory wording. Other aspects have not been implemented up to this date.

one year later, the draft NAP was published and open for written consultation. The timeline in order to send in statements was very short and only 5 days after this deadline , a second work forum was organized in February 2012 where the draft was presented. All this clearly contradicts the concept of meaningful and effective participation. Real participation ensures the possibility as well as the time for expressing one's opinion and real consultation means that opinions and views are being taken seriously and are on equal basis taken into account in the process of setting the agenda and in the implementation process.

Even at the regional (Laender) level, such as in Styria, there have been repeated examples of the persistent refusal to include persons with disabilities in policy measures. It is not even certain that the regions (Laender) and the municipalities possess any knowledge about the existence of the CRPD or that they feel concerned about implementing it. At least in some regions, the overriding view is that the CRPD does not impact on the regional level directly and hence, that there is no need for action.

Recommendations:

- Comprehensive implementation of the **National Action Plan on Disability (NAP)** in compliance with the CRPD
- Commitment to and measures towards the implementation of the CRPD, especially realization of the **social model** of disability and application of the **human rights based approach**
- **Awareness-raising** and extensive information about the CRPD for all public stakeholders (→ also see Art 8)
- **Standardization** of the various federal and regional (Laender) laws for persons with disabilities in order to provide equal rights and conditions for all people irrespective of their region of residence
- Introduction of **structural reforms** for the realization of the CRPD and abandonment of contradictory measures
- **Legal revision:** systematic examination of the Austrian laws on the contradictions to the CRPD and review of outdated, discriminatory regulations (e.g. the “Legal Oath of the Mute”) and terminology
- **Mainstreaming** of disability in all new laws and programs at federal, regional and municipal level
- **Inclusion** and meaningful consultation of persons with disabilities and their representatives during the elaboration of all laws and programs concerning persons with disabilities (according to the government decision of 2008 on “Standards for

Public Participation”, particularly the third step of public participation: **cooperation** with persons with disabilities)¹⁵

Article 5 Equality and Non-Discrimination

1. Legal Status

In Austria, the right to equality and equal treatment of persons with disabilities is enshrined in the Constitution as well as in different laws on the federal and provincial level. Thus, **Art 7 para 1 Federal Constitutional Law** determines that all citizens are equal before the law. The third and fourth clauses of this provision contain the national objective, which is: “No person must be disadvantaged on account of his or her disability. The Republic (the federal state, regions (Laender), and municipalities) avows itself to guarantee the equal treatment of disabled and non-disabled persons in all aspect of daily life.” Additionally, Austrian Sign Language is recognized as an independent language through Art 8 para 3 Federal Constitutional Law whereby further regulations have to be adopted by law (cf. e.g. Sec 73 a Civil Proceedings Code and Sec 56 para 2 Criminal Proceedings Code) → see Art 13 for more information.

This Constitutional provision together with the European Union directive 2000/78/EC, that prohibits discrimination in employment and occupation, form the basis for different laws on equality and non-discrimination in the areas of **work and vocational training** (e.g. Disability Employment Act) and in the area of **daily life** (e.g. Disability Equality Act). The protection against discrimination includes direct and indirect discrimination (e.g. caused by physical barriers) and also encompasses harassment, instruction to discriminate as well as victimisation and protection against discrimination by association. Likewise, most laws stipulate that measures for the promotion of equality do not constitute discrimination according to the law (affirmative action).

The legal consequences of discrimination on the ground of disability in employment (with a few exceptions, for instance, in the case of dismissal) as well as in access to goods and services are restricted to **claims for damages**. The Federal Disability Equality Act stipulates the compensation of the financial loss as well as of the personally suffered harm. In cases of

¹⁵ Decision of the Federal Government 2008, “Standards for Public Participation”, www.partizipation.at

harassment, there is a minimum compensation of 1000 Euros. In the context of all other forms of discrimination (direct and indirect discrimination, instruction to discriminate against a person, discrimination on grounds of association) there is no minimum compensation foreseen for the personal damage suffered. There is no claim to omit or eliminate barriers; otherwise, there exist certain transitional periods for the establishment of accessibility (→ cf. Art 9). Therefore, the current legal situation does neither fulfill the criteria of Art 5 CRPD, according to which “efficient legal protection” is to be granted, nor the criteria of the European Union Directive 2000/78/EC, whereupon adequate judicial remedies in order to combat discrimination are to be provided that are “efficient, proportionate and dissuasive”.

At the **regional (Laender) level**, some Constitutions contain regulations for equal treatment, such as, for instance, in

- **Upper Austria:** Art 9 para 3 Land Constitution (human rights, human dignity) and para 4 (prohibition of any discrimination according to the ECHR). Para 4 explicitly recognizes the Austrian sign language.
- **Salzburg:** “Assistance of elderly and *disabled persons*” and “creation of equal chances and *equality for all citizens*, especially for women” (Art 9 Land Constitution). However, the term citizen only refers to Austrian nationals that have their principal residence in Salzburg (Art 4).
- **Vorarlberg** admits in Art 7 para 2 of the Land Constitution the equality of all citizens before the law and in para 3 the “obligation of the community to assist aged and *disabled persons* and to guarantee the equality of their living conditions”.

Provisions against discrimination on the ground of disability exist in all regions (Laender) with regard to employment in public service (except in Lower Austria) and with regard to access to goods and services which are available to the public.

2. Practice

Civil courts are the responsible bodies for legal enforcement in cases of discrimination but it must be noted that a mandatory **mediation proceeding** must be conducted at the Federal Social Office before a law suit is initiated. The model of mediation has proved itself during the past few years and in many cases this process leads to a settlement between the parties. According to data from the Federal Social Office, there have been a total of 1028 mediation

proceedings during the period of 2006-2011..¹⁶ An exact evaluation of the outcomes and effectiveness of all mediation proceedings is - due to a lack of official publications about the course of action and results - only possible to a limited extent. The online database run by *bizeps* provides a good overview into the process of various mediation proceedings.¹⁷

However, a large part of discrimination cases on the ground of disability are not resulting in effective and sufficiently dissuasive punishments. There are hardly any court decisions so far regarding the Federal Disability Equality Act and even the possibility of mediation proceedings is often not used by victims of discrimination because the proceedings involve enormous efforts that are, in many cases, absolutely disproportionate to the potential outcome. The main reason behind that is the fact that there is merely a legal claim for compensation but not for the omission or elimination of the discrimination. Besides that, the legal **minimum compensation** that is usually used by courts as a reference when assessing damages is much too low and especially for larger businesses, it is in no way dissuasive. The non-material damage, that is the personal harm of the affected person, is usually not adequately taken into account (e.g. in cases of discrimination in terms of access to goods and services, such as lack of access to shopping centers for wheelchair users). Additionally, the **risk of high legal charges** contributes to the fact that victims of discrimination hardly ever choose to take legal action (e.g. legal expenses of 2,500 Euro with a potential compensation of 1,000 Euro). Alternatively, there is the possibility to launch a **class action** through the Austrian National Council of Persons with Disability (OeAR). However, this is only possible with the approval of the Federal Disability Advisory Board which consists of 29 members, most of whom are sent from political parties, ministries and social partners whereby only seven of these members represent disability organizations. The possibility of a class action or of an intervention by a third party has not been made use of to date.

In cases of **multiple discrimination** on the ground of disability plus another ground (such as gender, ethnic origin, religion, age or sexual orientation), the Federal Social Office becomes automatically responsible (instead of the Equal Treatment Commission, which deals with all discrimination grounds except disability). Due to the lack of expertise of the Federal Social

¹⁶ Cf. Annual Report of the Federal Social Office 2011, http://www.bundessozialamt.gv.at/cms/basb/attachments/5/6/0/CH0013/CMS1277224702007/26819_basb_gb_2011_screen.pdf.

¹⁷ Cf. www.bizeps.or.at/gleichstellung/schlichtungen.

Office in other areas of discrimination, this can lead to deficits in legal protection. However, there is little practical experience on this matter.

Sec 8 of the Federal Disability Equality Act, according to which **federal grants** are only to be given to businesses that follow the regulations of this law (that is, e.g. by providing or at least effectively working on their accessibility), hardly has an impact in reality. The meaning of the fact that a business is not following the regulations of this law is still unclear (manifest breach, final conviction). Furthermore, there is no collection system of the single cases/violations which would allow the financing bodies to inspect the cases.

This has been documented through the high federal grants that have been given to the Austrian broadcast company (ORF) or to the Austrian railways (OEBB), for instance, regardless of their repeated refusal to provide full accessibility in their services.

The **Disability Ombudsman** that has been installed by the Federal Disability Act has a consulting function and can deliver advisory opinions and recommendations; however, he hardly has any further competencies in order to enforce the right to equal opportunities for persons with disabilities. Otherwise, the intransparent appointment of the present and the previous disability ombudsman, that were not part of the candidate pool of qualified persons with disabilities, has been criticized repeatedly.

Recommendations:

- Adopt **equality provisions** for persons with disabilities in the provincial (Laender) constitutions of Burgenland, Carinthia, Lower Austria, Styria, Vienna and Tirol
- Incorporate the **prohibition of discrimination** on the ground of disability in terms of access to goods and services in the Non-Discrimination Act of Lower Austria
- Simplify and **harmonize** of the non-discrimination legislation at federal and provincial (Laender) level
- Introduce a legal claim to **omit or eliminate barriers**
- Ensure **effective legal protection** for persons with disabilities against discrimination through effective, proportionate and dissuasive sanctions (especially regarding non-material compensation) as well as through facilitated access to court
- Improve the class action (introduce a class action claim for omission, end the obligation of secrecy of the Federal Disability Council, extend the standing to bring proceedings to all qualified organizations that are active in this area)
- Effectively apply the provision on the withdrawal of **federal grants** in case of violation of the principle of non-discrimination (Art 8 Federal Disability Equality Act)

- Strengthen the competencies of the **disability ombudsman**

Article 6 Women with Disabilities

In addition to all rights of the CRPD, Art 6 highlights the existing inequalities between men and women within society and aims at eliminating these especially for girls and women with disabilities by specific legal and political measures. Furthermore, women with disabilities shall be empowered in their independence in order to be able to exercise any of their rights according to the Convention. For this reason, only a few central aspects regarding the situation of women with disabilities will be treated in this section; for further information on any other rights → cf. especially Art 24 (Education), Art 27 (Work and Employment), Art 19 (Living Independently), Art 23 (Home and Family), Art 29 and 30 (Participation in Political and Cultural Life), Art 16 (Freedom from Exploitation, Violence and Abuse) and Art 28 (Adequate Standard of Living).

For more disability related information on the implementation of the **UN Convention on the Elimination of All Forms of Discrimination against Women** (regarding women and girls with disabilities) → see the relevant documents issued by the OEAR¹⁸ and by the Independent Monitoring Committee for the Implementation of the CRPD¹⁹ related to the seventh state report review of Austria before the UN Committee on the Elimination of Discrimination against Women.

1. Equality of Women with Disabilities

Women with disabilities are often subject to disadvantages at all societal levels and frequently affected from **multiple discrimination**. The manifold workload of women that

¹⁸ Cf. joint submission by OEAR, EDF (European Disability Forum) and IDA (International Disability Alliance) to the Pre-sessional Working Group on Austria of the CEDAW Committee, 52nd session. <http://www.oeaar.or.at/inter-national/lobbying/internationales-lobbying/stellungnahmen/JointOeAREDFIDAsubmissionCEDAWCommitteeAustria18062012final.doc> as well as http://www.oeaar.or.at/inter-national/lobbying/internationales-lobbying/stellungnahmen/OeAR_EDF_IDAsubmissiononAustriaCEDAWCommitteefinal.doc.

¹⁹ Cf. statement of the Independent Monitoring Committee as of 12 April 2012. http://www.monitoringausschuss.at/cms/monitoringausschuss/attachments/5/7/1/CH0914/CMS1322123068495/austria_crpd_committee_submission_cedaw_2012.doc.

derives from their still prevailing various roles in society in terms of work, child care, household and family, partnership/marriage as well as the assistance of and caring for the older generation, is experienced even more intense by women with disabilities. A disability often impedes the fulfillment of all the tasks that are attributed to these roles. Additionally, women and girls with disabilities are especially disadvantaged in education, in the labor market as well as in private life, such as in terms of leading a self-determined sexual and family life or in the participation in social life, and furthermore, they are more affected from violence and poverty. As a result of their manifold stressful living conditions, women with disabilities often show signs of chronic illnesses, impairments in their musculoskeletal system and psychosocial disabilities.²⁰ Among disabled women, the ones with learning difficulties suffer the most from discrimination and social exclusion.

Despite the constitutional codification of the right to equality between women and men (Art 7 para 2 Federal Constitutional Law) and ordinary laws against discrimination, there are **no specific regulations** (for instance, in the disability laws) to protect and empower **women with disabilities**. In cases of multiple discrimination (on the ground of disability and gender), the Federal Social Office is responsible for the examination instead of the Equal Treatment Commission. In practice, the lack of gender related expertise or sensitization of the Federal Social Office can result in an inadequate consideration of the gender aspect when examining cases of discrimination against women with disabilities. Official figures and results of mediation or court proceedings regarding multiple discriminations against women with disabilities (especially regarding the use of the provision on an augmented compensation) are unknown.

2. Information, Consultation and Programs for Women with Disabilities

Besides deficits in the current status and application of the law regarding the protection of disabled women there are **no specific responsibilities or programs** for women with disabilities at the political level. The existing measures for persons with disabilities (such as those initiated by the Federal Ministry of Work, Social Affairs and Consumer Protection) hardly consider the gender aspect and the programs for women (e.g. by the Federal Ministry

²⁰ LUZIA, study about the living situation of women with disabilities in Vienna who are excluded from the labor market, Vienna 2006, Institut Sofia, p. 8. Pdf-download available at: www.institut-sofia.at/downloads/Kurzfassung_Luzia_Studie.pdf.

for Women and Civil Service) indicate a lack of the disability aspect.²¹ The overall lack of attention to the rights of the CRPD as a cross cutting issue, that should be applied across all ministries and provincial (Laender) agencies, becomes even more evident when it comes to the rights of women with disabilities. The lack of political awareness in this field also explains why the situation of women with disabilities has not been treated in previous Austrian state reports to the Committee on the Elimination of Discrimination against Women (CEDAW), even though the CEDAW Committee already recommended providing information on this matter.²²

The National Action Plan on Disability (NAP) lists the consideration of the gender perspective in all disability policies as one of its objectives. However, in order to improve the situation of women with disabilities it would be more adequate to ensure the consideration of the disability perspective in all women's policies. Furthermore, the outlined objective of the NAP is not reflected in the measures foreseen in the same document.²³

Generally, there is a lack of **information and advice** about the rights of persons with disabilities and there are even less specific services for women. There is a particular deficit of comprehensive information about special grants, claims and laws, medical assessment proceedings as well as about services for education and training, job-seeking, psychosocial counseling and assistance with childcare.²⁴ Therefore, women with disabilities often lack relevant information and may, due to the confusing legal situation and the "funding jungle", not be able to enforce their rights. Likewise, there is a need for improvement in specialization and networking by **relevant non-governmental organizations** (NGOs) in order to achieve effective implementation of the various issues concerning women with disabilities (in the

²¹ Cf. the official reporting about the situation of women with disabilities that provides evidence of the insufficient awareness about this matter. At least, the 2008 Disability Report by the Federal Government treats aspects that concern women here and there whereas the 2010 Women's Report by the Federal Ministry for Women and Civil Service only treats this matter within the chapter "Health and Nursing Care" using some statistical data.

²² CEDAW A/46/38, 4 January 1991, General Recommendation No. 18, Women with Disabilities.

²³ Cf. National Action Plan on Disability 2012-2020, p. 18f. http://www.bmask.gv.at/cms/site/attachments/7/7/8/CH2477/CMS1332494355998/nap_web.pdf.

²⁴ LUZIA, study about the living situation of women with disabilities in Vienna who are excluded from the labor market, FN 9, p. 14.

women's movement as well as in the disability movement). Up to this date, there are only a few NGOs and programs that are specifically devoted to this group of persons.²⁵

Quotation of an affected woman:²⁶

"It's like a cycle. If you don't know what there is, you can't ask for it".

Additionally, the lack of **statistical data** that address disability and gender issues as a prerequisite for exposing the particular situation of women with disabilities, has negative effects on the implementation of political measures → also see Art 31.

3. Women with Disabilities in the Labor Market → also see Art 27

Women with disabilities are often confronted with difficulties and barriers in terms of access to higher education institutions, the acquisition of a university degree, the completion of a chosen vocational training and taking up a certain career. 23 percent of non-disabled women in Austria between the ages of 16 and 64 have completed compulsory school at most, while this applies to twice as many disabled women (46 percent) of the same age group (of working age). To date, women with disabilities are less likely than men with disabilities to have completed a **vocational training**. In many cases, women with disabilities are employed in underpaid professional fields that are "typical for women", under precarious working conditions and at lower hierarchy levels. Factors for the generally lower incomes among women are especially inferior career entry opportunities, lower income-related valuation of jobs that are "typical for women", lower further career opportunities and an unequal distribution of care tasks within the family.²⁷ Even in cases of severe health-related impairments and deteriorations that occur in the course of their professional life many women remain, due to their difficult financial situation, in the same job as long as accidents or enormous deteriorations of their health status lead to a loss of their job.²⁸

²⁵ Cf. e.g. Association NINLIL that fights against sexual violence against women with learning difficulties or multiple disabilities by providing counseling services, empowerment and networking. Online at: www.ninlil.at.

²⁶ LUZIA, study about the living situation of women with disabilities in Vienna who are excluded from the labor market, FN 9, p. 13.

²⁷ Cf. Disability Report 2008 of the Federal Government, FN 1, p. 230-231.

²⁸ Cf. LUZIA, study about the living situation of women with disabilities who are excluded from the labor market, FN 9, p. 11.

The fact that women in Austria receive **lower incomes** (18 percent less on average) and consequently lower unemployment benefits and social assistance than men, has especially strong negative effects on women with disabilities. In 2007, the average monthly unemployment benefits or social assistance for non-disabled women was Euro 614.40 while women with disabilities only received Euro 545.20. Non-disabled men received an average of Euro 756.40 per month in comparison while men with disabilities received Euro 672.30.²⁹ Only a small number of women can actually live independently through earning incomes from unemployment benefits, social assistance, pensions and petty jobs. Partnerships can mean some form of financial support but at the same time, women often lose their individual right to receive benefits from taking the total household income into account.

In summary and as proven by regional qualitative studies about the job market situation of women with disabilities³⁰, it can be observed that women with disabilities are less likely to be employed than men with disabilities; at the same time, they merely represent about a third of all registered unemployed persons with disabilities. Furthermore, there is evidence that unemployed women with disabilities receive the smallest financial benefits, less illness-related pensions, and that their average earnings from benefits through these pensions is only about half the amount provided to men with disabilities.

4. Violence against Women with Disabilities → also see Art 16 and 23

Women with disabilities are in all stages of their lives especially exposed to the dangers of potential acts of violence against their physical integrity. Women and girls with disabilities, and particularly those with learning difficulties, often become victims of violence and are twice as much affected from sexual assaults than women without disabilities.³¹ The main reason for that is the stereotyping of disabled persons as “A-Sexual” that impedes that persons with disabilities receive adequate sex education; another reason is the fact that

²⁹ Cf. Disability Report 2008 of the Federal Government, FN 1, p. 159-160.

³⁰ Cf. LUZIA, study about the living situation of women with disabilities in Vienna who are excluded from the labor market, FN 9; also see: Buchinger/Gschwandtner, Women with Disabilities and Impairments in the Labor Market of Salzburg – A Qualitative Study. Salzburg, 2008.

³¹ Cf. Violence Report 2001 of the Federal Ministry for Social Security and Generations, pp. 76. http://bmwa.cms.apa.at/cms/content/attachments/6/2/5/CH0617/CMS1192461342869/gewaltbericht_2002_-_kurzfassung1.pdf.

many persons with disabilities still live in institutions that structurally abet violence.³² Disabled women and girls who are dependent on certain assistance (e.g. for their personal hygiene) or on overall personal assistance in order to conduct their lives, often get into states of dependence that are accompanied by sexual violence.

5. Family Life, Motherhood and Participation in Society by Women with Disabilities → also see Art 23, 19, 28, and 30

Due to the fact that disabled women, and especially those with learning difficulties, are affected from enormous social exclusion and, furthermore, are often not considered as fully-fledged equal women, having a relationship, family and motherhood are often denied to them. Only few disabled women live in relationships or lead a sexual life of their own choice; and even less women with disabilities are mothers and also able to live up to this role accordingly. The low participation in the labor market and the high risk of poverty by women with disabilities also results in the inability of many women to choose their place of residence and makes them dependent on spending their lives at home or in institutions. Therefore, they particularly face a lack of opportunities to lead an independent life with full participation in the community.

Recommendations:

In addition to or in concretization to the recommendations on the areas that are especially relevant to women, such as Education (Art 24), Work (Art 27), Living Independently (Art 19), Freedom from Violence (Art 16), Family Life (Art 23) or Participation in Cultural Life (Art 30) the following is recommended in particular:

- Consideration of the rights of women with disabilities (“**Gender and Disability Mainstreaming**”) by all responsible bodies in all legal and political measures (such as national action plans on issues related to women or disability); inclusion of women with disabilities into all measures that are relevant to them
- Empowerment of women and girls with disabilities in the areas of **education** and **work** (federal responsibility) as well as empowerment directed to enable women with

³² According to a survey of 130 women at Austrian disability facilities between the ages of 17 and 69 that was conducted in the mid 1990s, 64 percent of the participants stated that they were victims of sexual violence.

disabilities to lead an **independent life** (e.g. housing and personal assistance in private life are regional responsibility)

- Enhancement of the system of vocational training and gender-sensitive job-seeking; create new career opportunities for women with disabilities
- Creation of a right to **personal assistance** and support through persons of the same sex
- Improvement of the **protection from violence** for women with disabilities
- Establishment of a **central contact point** for women with disabilities (such as an ombudswoman); increased information, counseling and awareness-raising on the rights of women with disabilities

Article 7 Children with Disabilities

In addition to all rights of the CRPD (which apply to adults and children equally), Art 7 highlights the responsibility of the State to ensure the full enjoyment of all rights by children with disabilities, to consider the best interests of the child in all relevant measures and to grant these children full participation. Therefore, only the central aspects related to children with disabilities will be treated in this section; for further information on any other rights → cf. especially Art 8 (Awareness-Raising), Art 9 (Accessibility), Art 16 (Freedom from Violence and Abuse), Art 19 (Living Independently), Art 23 (Home and Family), Art 24 (Education), Art 25 (Health), and Art 30 (Participation in Leisure and Sport).

For more information on the implementation of the disability related rights of the **UN Convention on the Rights of the Child** (Art 2 and 23 CRC), whereupon the principles of non-discrimination and full inclusion of children with disabilities in the community are emphasized³³ → see the relevant documents of the third and fourth state report review of Austria before the UN Committee on the Rights of the Child³⁴ (cf. especially the respective

³³ Cf. General Comment No. 9 (2006) of the UN Committee on the Rights of the Child regarding the Rights of Children with Disabilities, CRC/C/GC/9.

³⁴ Cf. the documents at the child rights website of the Federal Ministry of Economy, Family and Youth. Available online at: www.kinderrechte.gv.at/home/service/downloads/monitoring/content.html.

statements of the Independent Monitoring Committee for the Implementation of the CRPD³⁵ and of the OEAR³⁶ as well as the Concluding Observations of the Committee on Austria taken in the course of the state review in October 2012³⁷).

1. Equal Enjoyment of Rights by Children with Disabilities

After long-time calls, numerous initiatives and international recommendations³⁸, **the rights of the child** have been recognized as fundamental rights by the **Austrian constitution** in 2011 (Federal Gazette I number 4/2011). Article 6 Federal Constitutional Act on the Rights of the Child stipulates the right of children with disabilities to protection and care according to their special needs. Furthermore, Article 6 leg cit refers to the general principle of non-discrimination embodied in the Austrian Constitution (Article 7 para 1 Federal Constitutional Act) and puts it in concrete terms regarding equal treatment of children with and without disabilities in all aspects of daily life.

Still, the principle of full inclusion of persons with disabilities is not fully embodied. Thus, the legal protection from discrimination of children with disabilities in all aspects of life is not regulated adequately.

From the very beginning on, children with disabilities are not (or at least not sufficiently) included in the various fields of society in Austria. There is a trend in legislation and practice towards fragmented and half-hearted attempts to “integration”, accompanied by a nationwide inconsistent image due to the prevalent federal structures. There is **no general commitment** to the **inclusion of children** and youths with disabilities. Accordingly, there is no action plan with clear indicators to ensure the sustainable inclusion through adequate administrative

³⁵ Cf. preliminary statement of the Independent Monitoring Committee as of 24 June 2009. www.monitoringausschuss.at/cms/monitoringausschuss/attachments/2/8/6/CH0914/CMS1276526308845/sn_crc_final.pdf.

³⁶ Cf. joint submission by OEAR, EDF (European Disability Forum) and IDA (International Disability Alliance) to the Pre-sessional Working Group on Austria, 60th session of the UN Committee of the rights of the Child. http://www.oear.or.at/inter-national/lobbying/internationales-lobbying/OeAR_EDF_IDAsubmissiononAustriaCRCCCommitteefinal.pdf.

³⁷ Cf. CRC/C/AUT/CO/3-4, in particular para 35, 36, 44, 45, 52 and 53.

³⁸ Cf. e.g. the Concluding Observations of the CRC Committee, CRC/C/15/Add.251, 31 May 2005, para 9.

practices by public authorities and thereby, to achieve the equal participation of children and youths in the community.³⁹

There is special evidence of the lacking inclusion in the Austrian **educational system** that is – apart from a few integrating forms of care and schooling - still highly marked by the prevalence of special educational needs institutions, such as the therapeutic pedagogic kindergarten, special schools, homes and other institutions that lead to segregation and exclusion.⁴⁰ In this context children with disabilities are massively disadvantaged, inter alia due to their exclusion from the rule of a compulsory free year of kindergarten as well as due to the missing legal entitlement to an integrated form of instruction after ninth grade. Therefore, children with disabilities do not have the same opportunities to education as children without disabilities and consequently, they are highly disadvantaged during vocational trainings, job search and their overall plans for life → also see Art 24.

There is a strong need to improve the **public awareness** and image of persons and especially children with disabilities within society. The paradigm shift from the medical towards the social model of disability and from the welfare concept towards the human rights based approach has not been implemented up to this date. The media hardly ever portrays children and youths with disabilities and if they do, they are portrayed in a way that is strongly marked by neediness and dependency instead of human rights principles such as self-determination or inclusion. A prime example is the charity campaign “Licht ins Dunkel” (“Light into the Darkness”) that was initiated by the public-legal broadcasting corporation (Oesterreichischer Rundfunk; ORF) and that is based on a concept that primarily provokes sympathy for children with disabilities → also see Art 8.

In many areas, the lack of (physical, social, communicative, and intellectual) **accessibility** constitutes an enormous obstacle to full participation in the community, especially for children with disabilities. This concerns, for instance, schools and other public institutions that are not accessible, a lack of services for the acquisition of alternative forms of communication (such as Braille and the sign language), inadequate interpretation services

³⁹ The UN Committee on the Rights of the Child expressed its concerns regarding these facts and issued corresponding recommendations in its Concluding Observations on Austria as of 5 October 2012, see CRC/C/AUT/CO/3-4, para 44 and 45.

⁴⁰ Also these circumstances were criticized by the UN Committee on the Rights of the Child in 2012 and corresponding recommendations were issued, see CRC/C/AUT/CO/3-4, para 45(e), 52 and 53.

for deaf children, missing subtitles in films and TV programs, or insufficient information services in “easy language”. The availability of technical aids for children with disabilities is often not adequate or not free of charge and thus, the reduction of barriers is made difficult → also see Art 9.

Apart from care and support services, services in terms of personal assistance also play an especially important role for children with disabilities in order to be able to lead a **self-determined life**. The fact that a nationwide and comprehensive system of personal assistance is missing in all aspects of life in Austria also has negative effects on the chance for children with disabilities to lead a self-determined life → also see Art 19.

In the **area of health care**, children with disabilities are often disadvantaged because Early Childhood Intervention (ECI) is not equally distributed at the regional (Laender) level. In case of an assumed impairment during infancy, children often have to wait for a period of up to three months to receive a standardized diagnosis and afterwards up to two years to receive an appropriate therapy or grant because there are not enough programs for early detection and Early Childhood Intervention. Likewise, there is a lack of child-specific regulations for medical evaluations that form the basis of the entitlement to support benefits, such as in the assessment of the need for long-term care in order to receive care allowances → also see Art 25 and 26.

Even though meaningful empirical studies about **violence and abuse** of persons with disabilities have not been conducted in Austria, there is evidence from previous experiences that especially children and girls with disabilities often become victims of violence and (also sexual) abuse. This is partly a result of the fact that they are often accommodated and cared for in disability institutions and homes which leads to great dependencies → also see Art 16.

2. Consideration of the Best Interest of the Child and Full Participation

According to the guidelines of the Austrian Civil Law Code and the general Youth Welfare Laws, the **best interest of the child** is generally also considered in decisions regarding children with disabilities. However, especially in cases of massive intrusions into the lives of children, this is not always clearly visible (e.g. in the event of withdrawal of the parental custody). Furthermore, there is much need for improvement regarding the participation of children, and especially of those with learning difficulties (→ cf. Art 23). The right to express their views in custody cases (e.g. the decision with which parent the child wants to stay) is only granted to children of 10 years and above.

Counseling institutions for children and youths, such as the Children and Youth Ombudsman or various organizations and initiatives in the area of children are supposed to serve the strengthening and encouragement of their concerns. However, there is a lack of information and counseling services that is specifically targeted at children and youths with disabilities in order to provide them with opportunities to express their concerns and needs independently. There is a general need for improvement regarding the **participation** in legal or political measures by persons with disabilities; the same applies especially to children with disabilities.⁴¹

There is a lack of meaningful **statistical data** about the situation of children with disabilities. As a result, the need for improvement measures within various areas cannot be documented sufficiently and recommendations can thus often not be considered or implemented accordingly → also see Art 31.

Recommendations:

In addition to or in concretization of the recommendations concerning the areas that specifically affect children, such as, for instance, Education (Art 24), Awareness-raising (Art 8), Accessibility (Art 9), Living independently (Art 19), Health (Art 25) or Violence (Art 16), especially the following recommendations are being proposed:

- Introduction of measures for **awareness-raising** about the situation and rights of children with disabilities
- Legal embodiment and practical implementation of the **full inclusion** of children with disabilities in all legal matters (especially in the ones that affect children) and legal policies (such as education); full participation of children with disabilities in all measures that affect them
- Comprehensive (physical, social, communicative, and intellectual) **accessibility** for children with disabilities (for instance, in all schools)

⁴¹ Cf. single positive initiatives for the inclusion of children, such as, for instance, in the preparation of the National Action Plan for the Rights of Children and Youths. Available online at: www.kinderrechte.gv.at/home/upload/30%20oesterreich/nap_041123_ov.pdf.

- Measures for strengthening a **self-determined** life style of children with disabilities (e.g. entitlement to technical aids or personal assistance) in order to encourage them to develop their full personalities and exercise all their rights on an equal basis with other children
- Standardization of and increase in programs dealing with **early detection and Early Childhood Intervention (ECI)** for children with disabilities
- Measures in order to improve the **protection from violence** for children with disabilities
- Introduction of a **central contact point** for the comprehensive counseling and information services for children with disabilities and their families

Article 8 Awareness-Raising

For the implementation of Art 8, there is need of an extensive societal **attitude shift** because profound **prejudices**, wrong perceptions **and fears about disability** and persons with disabilities still exist in our society. These are hardly ever addressed in public. The opinions or prejudices and the resulting practices are not just recently formed. They have partly evolved over centuries and have especially experienced their negative climax during the Nazi era. The societal perception about persons with disabilities is mostly still marked by the welfare concept and by the adjustment to norms instead of rights and the recognition of differences and diversity. Persons with psychosocial impairments often suffer from the fact that their “disability” is not recognized as such, but instead, they are regarded as unwilling to work and participate actively. Additionally, they are often assessed as being incurable even though there is scientific evidence against this argument. In order to counteract this perception, organizations such as *pro mente Austria* provide education and anti-stigma work with affected persons at schools.

Over long time, the prejudices and **stigmata towards** deaf persons and the use of **sign languages** in Austria as well as worldwide have been nourished by the “Second International Conference of Deaf Educators” that took place in Milan in 1880. The resolutions that were decided back then had extensive and mostly negative effects on the social lives of deaf persons. According to these resolutions, oral methods (that is, the rigid use of spoken language) were to be given preference in the language education of deaf children. Sign languages have been excluded from educational programs for deaf children and until the 1980s they were even prohibited in educational measures. Only with the “21st International Congress on Education of the Deaf” (ICED) that took place in Vancouver in 2010, these

Milan resolutions that have lasted for over a century have been abandoned. However, the – non evidence based - perception that the sign language represents an obstacle to learning the spoken language is still widely common.⁴²

The **paradigm shift** from exclusion to inclusion is hardly noticeable. Since the ratification of the convention, there is - apart from a few single actions - no evidence about any comprehensive sensitization measures – neither via the media nor via the educational system. Information in “Easy Language” is very rare. According to past experiences, public authorities as well as the general population still have little knowledge about the UN Convention on the Rights of Persons with Disabilities and furthermore, there is a wide lack of awareness about the concerns and rights of persons with disabilities. Individual information events and activities, especially by representative groups and by the Independent Monitoring Committee (that has its own website since early 2010), contribute to the process of awareness-raising, especially among the affected persons; however, they cannot replace extensive sensitization campaigns that are necessary in order to achieve a general attitude shift.

Likewise, the **portrayal** of persons with disabilities **in the media** is often still marked by images that provoke sympathy instead of self-determination and inclusion. One example is the outdated concept of the ORF charity campaign for children with disabilities with the title “Licht ins Dunkel” (“Light into the Darkness”). (This becomes especially evident in comparison to the positive example of the German broadcaster ZDF with its charity campaign “Aktion Mensch”, formerly “Aktion Sorgenkind”, which emphasizes on educational measures and public relations in terms of sensitization for the equality of persons with disabilities.) Additionally, in Austria, disability is still mainly defined by the medical instead of the social model. News reports by the ORF about the UN Convention on the Rights of Persons with Disabilities are yet unknown.

A **best practice example** for the dissemination of information is “bidok”, the digital library and learning platform of the University of Innsbruck that addresses issues related to the inclusion of persons with disabilities in Austria (<http://bidok.uibk.ac.at>). Through its website and the available information, “bidok” is – in terms of an “Open University” – in accordance

⁴² Cf., inter alia, the diploma thesis of Wrba, Stefanie (2012), Policy of Hearing: the application of new, assistive technologies in the context of deafness seen by the example of the cochlear implant. University of Vienna.

with the aims of Art 8. However, “bidok” suffers from permanent and acute funding problems, despite its enormous success and signalling effect, which is the reason why its future existence is not yet established.

Recommendations:

- Extensive **sensitization campaigns** about the situation of persons with disabilities with the participation of persons with disabilities
- Information about and **dissemination of the UN Convention** on the Rights of Persons with Disabilities at authorities and among the population (also in alternative forms of communication)
- Adjustment of the previous concepts of the portrayal of persons with disabilities in the **media** to the principles of the convention (e.g. a new orientation of the charity campaign “Licht ins Dunkel”)
- Financing and implementation of cross-country and interdepartmental awareness-raising projects for e.g. “bidok” and for future **projects**.
- Awareness-raising about the rights of persons with disabilities in all **educational institutions** (especially in initial and continuing training programs for teachers and care personell) as well as for other public sectors including police, prosecutors, judges, social workers, etc.

Article 9 Accessibility

The general rule to eliminate disadvantaging circumstances at all levels of the local government and to create basic conditions for the comprehensive equality before the law by persons with disabilities is based on the Principle of Equality of Art 7 para 1 Federal Constitutional Act. The Federal Disability Equality Act should be seen as a concretization to Art 7 para 1 Federal Constitutional Act. This and a few other laws contain specific rules and measures for the establishment of accessibility. However, the regulations are incomplete and there is a lack of a standardized nationwide concept with the aim of achieving comprehensive accessibility. In July 2012 the National Action Plan on Disability 2012-2020 (NAP) was adopted by the Ministerial Council. It also contains measures to improve accessibility at a nationwide level. However, the NAP lacks binding elements. In spite of several invitations, the regions (Laender) did not participate in the process of drawing up the NAP. The financing of the measures and goals in the area of accessibility is not ensured.

I. Measures for the Identification of Barriers

The Federal Disability Equality Act corresponds only partly with the stipulation of Art 9 CRPD to take appropriate measures for the identification of obstacles and barriers to accessibility, that is, by foreseeing **staged plans** for **public buildings** and for **public transport**. These schemes have been forwarded to the OEAR when the Federal Disability Equality Act came into force by the responsible bodies (but not by all of them) in varying quality and quantity. Due to the fact that continuous reports about the status quo are not provided and furthermore, as the OEAR does not have the legal control option (but merely a right to be heard), no statement can be made about the development. Thus, the only option is to wait for **the end of the transitional period**. Alongside the OEAR there is no other organisation which approves or implements the staged plans. In addition to this, only 8 out of 13 political institutions have fulfilled their statutory obligation to publish the staged plans on their website.

Up to this date, many **public buildings** are not accessible. Furthermore, unsolved areas of responsibility form an obstacle to the adaptation of accessibility of public buildings, especially in cases where the Federal Real Estate Company acts as landlord, because it is not bound by the Federal Disability Equality Act. Discussions about the assumption of cost delay the implementation of accessible services by the federal administration enormously. Staged plans that concern the buildings of the **regional (Laender) governments** have only been adopted in Tirol and Vienna. However, final staged plans have also not been drawn up in these regions. In Vienna, a staged plan was presented in 2012, which was rejected by interest groups. Two particular points of criticism need to be emphasised here: firstly, the transitional periods of up to thirty years for the creation of barrier-free access are far too long. Secondly, the measures to create accessibility to buildings are based on the currently valid construction laws in the region of Vienna, which are, however, completely inadequate. In other words, the staged plan which has been presented is only a promise to adhere to existing legislation on construction. Measures for the identification of obstacles and barriers for **other facilities** that are open to the public as well as for roads, housing, medical facilities and workplaces, are yet unknown. Measures for the identification of barriers to **information and communications** are not known either. However, the E-Government Act, the Service of Documents Act, and Sec 6 Federal Disability Equality Act provide legal regulations in this field.

II. Measures for the Elimination of Barriers

The commitment to Art 9 to ensure appropriate measures through the elimination of obstacles and barriers is only met insufficiently.

1. Physical Barriers

According to Sec 5 para 2 Federal Disability Equality Act, a lack of accessibility represents a direct form of **discrimination**. This means that discrimination exists if **consumer businesses** cannot be entered or persons with disabilities are denied access to the **provision with goods and services** due to physical, communicative or other barriers. In this respect, the Federal Disability Equality Act is basically a measure at a federal level to prevent discrimination due to barriers in accordance with Art 9, however, the implementation, especially regarding the elimination of barriers, is insufficient.

At **regional (Laender) level**, a ban on discrimination in access to goods and services due to disabilities has been introduced in eight out of nine regions (Laender). Lower Austria is the only region without such a ban.

The Federal Disability Equality Act merely specifies an entitlement to compensation for **the occurred damage but not the elimination** or omission of barriers as a legal consequence/sanction. The compensation is to be resolved through the court; before that, a mediation procedure must be conducted (→ cf. Art 5). In practice it can be seen that conciliation proceedings can lead to the creation of accessibility, whereas law suits only lead to low amounts of damages being paid. The first evaluation of the Federal Disability Equality Act (2010-2012) noted that the lack of entitlement to elimination or to an injunction is a point of severe criticism. *“With regard to the effectiveness.... of the Disability Equality Act and the best possible realisation of the equality of people with disabilities, we would advocate the granting of a right to a performance claim. Particularly in view of the fact that the discriminating conditions should (also) be eliminated in the future, this would be a more effective means than merely granting a right to damages, because this would tend to ensure - and also have a preventive effect - that people with disabilities will encounter discrimination-free circumstances, because discriminators cannot buy their way out by paying damages.”⁴³*

The relatively **low compensation amount** (Sec 9 Federal Disability Equality Act specifies a minimum amount of EUR 1000) is no incentive for businesses to eliminate barriers. Additionally, the measures for the elimination of physical barriers– together with the regulations for the transition that are flexible in time (“until the end of 2015”) - remain at the discretion of the industrialist and thus, they are often subject of economic argumentations. According to a study of 2007 and the evaluation of the Federal Disability Equality Act (2010-

⁴³ Cf. : Quote: BMASK. Sozialpolitische Studienreihe. Volume 10. Evaluierung des Behindertengleichstellungsrecht. 2012

2012), the understanding of accessibility among Austrian businesses is very heterogeneous and do not meet the intentions of the Federal Disability Equality Act.⁴⁴

The same situation also becomes evident in terms of access to **housing, medical facilities** and **workplaces**.⁴⁵ The latter is regulated separately through the Disability Employment Act. Due to the above-mentioned remarks, there is no guarantee that all aspects of accessibility are considered by private legal entities (Art 9 para 2 lit b).

As of 1 January 2011, the Disability Equality Act was amended to the detriment of people with disabilities in two points regarding accessibility. Firstly, for buildings used by the federation there is now a transitional period for the creation of barrier-free access until 2020 (extension by four years). Secondly, only the barriers described in the staged plans are to constitute discrimination in buildings used by the federation. Construction-related barriers which are not listed here are not to be considered discriminatory barriers as defined by the Disability Equality Act, although people with disabilities are indeed discriminated against by these barriers. This action on the part of the Austrian state profoundly contravenes the UN Convention on Disability Rights. In this way, the state is making a negative statement and showing that its political will to create accessibility is very weak.

Subsidies from the federal government, the regions (Laender) and local authorities are not fully bound to the criterion of accessibility. This leads to buildings being constructed, renovated or adapted and not being barrier-free in spite of subsidies. In areas where subsidies are linked to accessibility, there is no appropriate check on whether accessibility has actually been realised.

a. Buildings/Residential Buildings

There are no regulations on accessibility known with regard to the concepts of housing nor in the concepts of land use planning and of regional development. Regarding the barrier-free access to housing Sec. 6 para 2 Z 6 Federal Disability Equality Act foresees for that the affected person has to demonstrate his/her need to use the apartment. This regulation

⁴⁴ Cf. Schober/Skina. 2008. Counseling Services and Counseling Needs by Austrian Businesses in the Field of "Accessibility". Study on behalf of the Austrian Civil Invalidation Association (Oesterreichische Zivil-Invalidenverband; OEZIV), Institute for Interdisciplinary Non-Profit Research at the University of Economics in Vienna.

⁴⁵ Cf. Schober/Sprajcer, Where there is will, one can find the way? Study on building accessibility in business premises and Non Profit Organizations in Eastern Austria. 2009

contradicts Art. 9 para 1 lit a because persons with disabilities are subjects to discrimination with regard to their access to housing. Everybody should have the freedom to choose where to live.

In the present **construction laws** (which are covered by the competencies of the regions), regulations about structural accessibility are not considered sufficiently nor are they regulated in a standardized manner. There are minimum standards for accessibility (Art 9 para 2 lit a) that are regulated by the A-Standards B1600ff which are being continuously developed. However, these norms do not have any binding character nor have they been incorporated into existing building laws by decree up to this date. The harmonization of building laws across Austria is attempted through the OIB guidelines (Oesterreichisches Institut fuer Bautechnik). In four out of nine regions, these guidelines have been signed and thus declared to be binding. The OIB guidelines contain, however, only a few provisions from the Austrian Standard B1600, which are predominantly beneficial to people with physical disabilities. Presently, there are merely inadequate guidelines about how many apartments in one complex have to be habitable in an accessible manner. Likewise, there are hardly any binding guidelines about the number of accessible accommodation units in hotels and similar establishments. Non-structural measures to improve accessibility that predominantly concern persons with sensory impairments and learning difficulties (such as orientation systems, tactile guidance systems and systems according to the so-called two senses principle) are embodied in the A-Standards B 1600ff, however, they are not contained in building codes in a binding manner. Present measures for signposting in Braille and in easy-to-read and comprehensible form in all public buildings (Art 9 para 2 lit b) are insufficient.

The region of Upper Austria recently presented a draft amendment of the Upper Austrian Building Technology Act, according to which not even new residential buildings have to be accessible. This would constitute a drastic worsening of the situation compared to the current legislation. In spite of massive objections from the organisations of people with disabilities, it is to be expected that future residential buildings in Upper Austria will not have to be accessibly constructed from the start. The region of Upper Austria is thus making a negative statement and showing that the political will to create accessibility is not present.

There is also a lack of regulations about **the rescue and evacuation** of persons with disabilities from public buildings. In various fire prevention regulations and fire prevention courses there is also no consideration of the support which people with disabilities require during rescue and evacuation.

Industrial operating plants (new constructions or alterations) are usually subject to approval, which means that an operating license has to be applied for. However, there are no regulations within the existing **trade regulations** that regulate equal access for persons with

disabilities. Thus, this aspect is also not given sufficient consideration by the responsible bodies in proceedings for the approval of plants.

The present **Landlord and Tenant Act** needs to be adapted in relation to accessibility; areas and plants that are situated outside the rented area (such as entrance areas, stairs, stair wells, corridors, elevators or parking lots) and thus in the sphere of influence of the landlord/landlady, are not covered by the Federal Disability Equality Act. According to the Landlord and Tenancy Act (and the Austrian Civil Code), a tenant is not entitled to build or to legally force the owner to build a ramp, an elevator or a parking lot, for example. This inevitably results in delays in the implementation of accessibility that are mainly characterized by issues of financing.

According to Section 3 of the Tenancy Act, a landlord/landlady is responsible for the 'dynamic' maintenance of buildings and accommodation according to customary local standards. The Act, however, does not clarify whether accessibility is a customary local standard. At least after expiry of the transitional period, accessibility should therefore form part of customary local standards and should thus be included in the Tenancy Act. It is also common that people with disabilities have to pay more rent if they require more living space or floor space.

*CASE STUDY A. (Footnote: Source ÖZIV Vienna, report of a wheelchair user)
A woman with a wheelchair has to pay 20% more for her garage parking space, because it is 120cm wider than the other spaces. She needs the wider space, however, because otherwise she would not be able to get out of her car and into her flat.*

In conjunction with the award of public contracts, Section 87 **Federal Procurement Act**) regulates that the relevant rules of barrier-free building (universal design) have to be considered in tender documents. However, it seems astonishing that the existing Austrian Standards B1600ff do not serve as the foundation for accessible planning and building, but instead, there are insufficient minimum requirements that do not consider all aspects of barrier-free accessibility. Furthermore, this provision generally refers to new constructions and general renovations and only applies to additions and alterations of buildings and parts of buildings if the total cost does not rise disproportionately through that and if there is a corresponding demand. This provision is not compliant with the intentions of the Convention and the Federal Disability Equality Act, according to which all buildings that are open to the public have to be accessible to all people. Thus, the issue of whether there is a demand cannot be relevant. The provision in Section 87 para 2 Federal Procurement Act according to which there is no need for accessible building (universal design) if it may be assumed – on the basis of statements of a nationwide group of representatives of persons with disabilities –

that there is no necessity for access by persons with disabilities, is also contradictory to the Federal Disability Equality Act. There are no known provisions in the Federal Procurement Act regarding information and communications.

b. Public Road Space and Public Transportation

There are still no lowered kerbs at road junctions and crossings in many places. Lowered kerbs, acoustic traffic lights signals and tactile lane separators only exist in urban areas, if at all. Road signs or other public objects (such as mail boxes, garbage bins, etc.) often represent obstacles – and even worse, they are an injury risk for blind and visually impaired persons. The Road Traffic Act is also insufficient in this regard. Likewise, there is no accessible solution for roof avalanche warnings during winter. Presently, there are merely bars that are leaned against house walls diagonally and partly fixed onto house walls; these represent risks of injury for visually impaired persons and do not signify that there is a danger zone.

Furthermore, electric and hybrid vehicles cannot be detected by blind and visually impaired persons because they approach without a sound. On public transport, the side on which passengers should exit the vehicle is only announced in some parts of the country. Signs for blind people (tactile paving) are often hidden behind billboards, triangular stands, etc.

Concepts on public areas or shared space do not contain sets of rules which guarantee accessibility.

c. Schools

According to the Federal Disability Equality Act, there is a **staged plan** for the implementation of accessibility in federal schools until December 31, 2015. Various seminars about accessible building are being held for the further training of the schools inspectors who are responsible for school maintenance. Concerning (physical) access to compulsory schools, the external organization (construction, maintenance and supply) is the responsibility of the regions (Laender) and thus not regulated by the Federal Disability Equality Act. The anti-discrimination laws of the regions (Laender) apply here. Staged plans are only in force in Vienna and Tirol (see above I Measures to determine whether there are barriers). See also Article 24 Education.

d. Medical Facilities

Generally, there are complaints by persons with disabilities that only few **medical practitioners** are accessible in a barrier-free manner; this particularly concerns the field of

medical specialists and rural areas. Even medical practitioners and examination facilities where examinations in relation to care allowances or the classification of the extent of a disability are conducted are most often not accessible. Due to the fact that persons with disabilities often need medical services this is problematic. Accessibility at hospitals is in part not sufficient and is a problem in relation to long-term inpatient stays of persons with disabilities, e.g. there are no accessible bathrooms or there are shared rooms that are too small and thus inappropriate for wheelchair users.

The Vienna Regional Health Insurance Fund (WGKK) is an example for the lack of accessibility to medical practices. It is the largest social insurance institutions in Austria. According to plans of the Vienna Health Insurance Institution (VHIC), 12 percent of all contracted medical practitioners should provide barrier-free accessibility until 1 January 2014. Newly launched practitioner's offices and practitioner's offices that are taken over must be accessible in any case. A survey on the website of the VHIC showed that 23 out of 1727 medical practitioners of the VHIC are accessible. According to personal evaluation, 5 offices of General Medical Practitioners (out of 793), no Orthopedists (out of 88), no Ophthalmologists (out of 91), 2 Internal Medicine practitioners (out of 113), 4 Radiologists (out of 79), and two Gynecologists (out of 106) are accessible, for instance. (Source: <http://www.praxisplan.at/> last viewed in November 2012). The advisory council of the Federal of Austrian Social Insurance Institutions noted in a letter of 3.5.2012 that "*... the granting of a health insurance fund contract by individual health insurance funds is not bindingly linked to accessibility. The exception is Vorarlberg, where this criterion has to be taken into account when tenders are invited for a new health insurance fund contract*".

The low levels of service provision in terms of accessible doctor's offices results in the fact that persons with disabilities can hardly ever consult a doctor of their choice. Often, the doctor's personal evaluation of the accessibility of their practice is not checked and so many offices are not easily accessible even though they are declared as such. A prime example for this are elevator systems which do not work or the lack of accessible toilets.

The position of the Austrian Medical Association is also peculiar, as it takes the view that practices do not fall within the scope of the Disability Equality Act and therefore do not have to be accessible (source: the ÖAZ doctor's newspaper No. 23/24 of 15.12.2010. See also <http://www.aerztezeitung.at/archiv/oeaez-2010/oeaez-2324-15122010/barrierefreiheit-von-ordinationen-behindertengleichstellungsgesetz-rechtliche-situation.html>, last viewed in November 2012). The Quality Regulation 2006 of the Austrian Medical Association specifies compulsory consultations with a disability organization in the event of the launch or taking

over of a practice. The general objective is to recognize potential obstacles and barriers for persons with disabilities and the elderly and to advise about possible solutions in order to achieve accessibility. The inclusion of disability organizations is more than welcome. However, practice shows that this measure is only effective in a few cases because practitioners are not obligated to design their offices in a barrier-free manner. In most cases, the consultations with disability organizations are limited to telephone calls during which these disability organizations neither have the chance to raise awareness nor to advise on potential solutions.

CASE STUDY B: (Footnote: Source: FROM 2012

A disabled persons' association drew up a checklist in cooperation with the Medical Association which is intended to support doctors in assessing the accessibility of their practices. The Medical Association commented on the checklist presented by the disabled persons' association:

"...it could be that when the new checklist becomes valid there are no longer any practices which can be viewed as "accessible", although the practice's owner tries, for example, to help the patient onto the couch together with his/her assistant, or offers to hang their clothes on a hanger which is higher than 100-120 cm above the floor. We think it would be a disastrous picture if there were no longer any practices which could be declared to be "accessible".

The help provided by the practice owner and his/her team in the example above was unfortunately not taken into account when drawing up the checklist. Perhaps it is possible to ease the regulations in some individual points to offer practice owners the chance to be "accessible". (original extract from correspondence).

In a few individual cases there are special services and pilot projects by health care institutions, such as, for instance, the Drug Approval Service for deaf, hard of hearing or deafblind persons, such as Rehamed Tisserand in Bad Ischl (that is equipped with special alarm systems according to the so-called two senses principle and provides training for its employees) and Deaf Outpatient Clinics in Vienna, Linz and Graz (Barmherzige Brueder), at the Landeskrankenhaus Salzburg and the University Hospital of the Paracelsus Medical Private University.

According to the Pharmacy Regulations 2005, "disability-appropriate" access to pharmacies had to be established by 9 March 2010, except in cases of a technically unacceptable efforts or legal obstacles such as the preservation of historical heritage. This regulation seems to have been largely successful, even though especially in Vienna many buildings are subject

to preservation orders and numerous pharmacies are thus exempted, even though the next accessible pharmacy is not within a reasonable distance.

2. Barriers to Information and Communication Technologies

a. Emergency Services (→ also see Art 11)

The lack of accessible arrangements for deaf, hearing-impaired and speech-impaired persons to use **emergency call systems** such as the European Emergency Number 112 is very problematic. There is a nationwide service with the emergency number 0800 133 133 that is accessible via text message or fax and that is offered as a voluntary service by the Federal Police Directorate of Vienna. However, there have been reported cases in which emergency cases have not been forwarded and operational services did not turn up. The emergency calls were only processed after the affected deaf persons asked hearing persons to call for help via the conventional emergency helpline after hours of waiting. According to other reports, the wrong emergency services (e.g. the police instead of the ambulance) have been sent to the location after sending the emergency call. In all reported cases, no confirmation about the receipt of the emergency call had been returned by the emergency helplines; thus, deaf persons who are in an emergency never know if an emergency service is coming to their aid or not. Likewise, there are no arrangements for accessible emergency call systems in elevators, elevator systems, cable cars, on motorways for deaf and hearing-impaired persons (there is no visual feedback according to the so-called two senses principle).

b. Access to Information (Art 9 para 2 lit f)

The Telecommunications Act Section 1 para 2 lit a TKG 2003 merely broadly and vaguely regulates that the interests of disabled users have to be accounted for. There is a great need for concretization on this matter.

Furthermore, there is no nationwide telephone operator service for deaf, hearing-impaired and speech-impaired persons for various situations, and not only in terms of emergency call services (such as the TESS telephone operator service in Germany). In 2012 a pilot scheme was initiated which offers a telephone operator service for people who are deaf or hard of hearing. It is subsidised by the Federal Ministry of Labour, Social Affairs and Consumer Protection. Its continuation and financing by the Austrian state must be guaranteed in the future.

EXAMPLE A:⁴⁶

A deaf woman asks her hearing mother-in-law to place a telephone call on her behalf. She tells her what she wants to say and which information she needs. However, the mother-in-law talks about something entirely different during the telephone call; this was not the kind of information that she asked for. Thus, the deaf woman feels ignored and patronized.

c. Access to new Information and Communication Technologies (Art 9 para 2 lit g)
(Überschrift: Einzug nach links)

Access to the Internet is partly regulated by the **e-Government Act**. It obliges governmental agencies to design their websites according to international standards for accessible websites. In this context, employees of the Federal Administration have access to free training about accessible web design. Furthermore, there are evaluations about the accessibility of the websites of the Federal Administration. Additionally, the Federal Chancellery has offered a special annual award for Barrier-free Accessibility in IT since 2005.

Within the private sector, the call for accessible websites is supported by the Federal Disability Equality Act. However, the implementation or elimination of barriers cannot be achieved using the Federal Disability Equality Act.

Generally, a positive picture arises in terms of the development of the Internet. However, training programs or supportive measures to be able to use these Internet technologies hardly exist. This especially concerns persons with learning disabilities and persons with disabilities (from older generations) who did not grow up using these technologies or who simply cannot afford these technologies.

d. Promotion of accessible Information and Communication Technologies (Art 9 para 2 lit h)

Generally speaking, there is no evidence about funded research projects in the construction sector (e.g. automatic door operating systems, alarm systems and emergency call systems according to the “two senses principle”). However, there are a few cases of funded research projects such as the development of a ticket machine at the Donau University of Krems.

⁴⁶ Cf. OEGLB, Third Discrimination Report 2010. Available online at: www.oeglb.at.

Technological aids for blind and visually impaired persons are only affordable to a few people (e.g. keyboards in Braille, large high-resolution screens, auditory reading devices, etc.)

3. **Personal Assistance and Sign Language Interpreters** (Art 9 para 2 lit e)

There already are **personal assistance** services in the workplace as well as in the private sphere; however, these vary widely across the regions (Laender), there is no adequate funding, nor is there a legal entitlement to comprehensive personal assistance in all aspects of life → for further information see Art 19.

Even though Federal Bureaus and legally regulated service providers (e.g. the Public Employment Service, social insurance institutions, etc.) are responsible for offering interpretation services in sign language (Section 8 para 2 Federal Disability Equality Act), reality looks different. Social insurance law does not specify any legal basis for assuming the costs of interpreting services. The entitlement to medical treatment only concerns medical treatment itself; interpreting services are not included. Social insurance institutions predominantly make use of the services of their contracting partners. Some of these partners possess sign language competencies – this is also recorded in the list of the Austrian Medical Association. According to the Viennese Medical Association, only 16 out of more than 6,000 medical practitioners provide services in sign language, seven of which are general medical practitioners, two Orthopedists, one from the field of Internal Medicine and one Radiologist. Thus, there are hardly any services for deaf persons.⁴⁷

There are no standardized regulations (no legal entitlement) for assuming the costs of sign language interpretation services in the regions (if the regional department of the Federal Social Office is not responsible). Furthermore, there are no regulations for assuming the costs of writing assistants for hearing-impaired persons who communicate in German and who do not have competencies in Austrian Sign Language. The costs for sign language interpretation services for deaf and hearing-impaired students who attend schools that are within the competence of the Federal Ministry of Education, Arts and Culture and who require Austrian Sign Language in integrated teaching are usually paid for by the above-mentioned ministry; however, there is no legal entitlement.

There is a stark lack of qualified interpreters for Austrian Sign Language (ASL). According to estimates, about 1,000 interpreters instead of approximately 90 (that are currently active) are needed across the nation. The quality of the translations (or interpreting)

⁴⁷ Cf. <http://www.praxisplan.at/>, last viewed in November 2012.

should also be improved (especially in different fields of expertise or in court). For a long time now, the police have had a few officers who act as sign language interpreters on duty, however, they do not possess any adequate forms of training in ASL, which enhances the risk of misunderstandings with the deaf party. Furthermore, there is no freedom of choice in terms of interpreters in civil and criminal proceedings or in notarial procedures → cf. Art 13.

4. Training on Accessibility (Art 9 para 2 lit c)

Generally, universal design (Art 2) is not obligatory in the curricula of (especially technical) vocational training courses and further training, or at least, it is not common. There are neither basic training courses nor further training courses on accessibility (this applies to areas within responsibility of the Federal Government, the regions and the municipalities).

Recommendations:

A key recommendation is the dialog with and **the inclusion of persons with disabilities** and their representative groups, especially in the identification of appropriate measures to take the wide variety of their needs into account. In order to achieve comprehensive accessibility, the following recommendations must be fulfilled:

General Recommendations

- Regular interim reports about the **progress of the staged plans** in according with the Federal Disability Equality Act
- Clarification of the competencies for barrier-free adaptations between the Federal Real Estate Company as landlord and the federal ministries as tenants
- Presentation of staged plans of the regional governments
- The award of subsidies must be bindingly linked to the criterion of accessibility
- The award of subsidies must be linked to the condition that the implementation of accessibility is accompanied and monitored by the associations of people with disabilities.
- Federal Disability Equality Act: **Legal entitlement to the elimination** of obstacles and barriers
- Binding goals on the elimination of discriminating obstacles and barriers by businesses in collaboration with recognized disability organizations
- Entitlement to **comprehensive personal assistance** in all aspects of life
- Barrier-free **accessibility to all schools**; learning institutions must be accessible, gender-appropriate and designed in an environmentally-friendly way.
- Establishment of the topics “Persons with Disabilities”, “Accessibility” and “Universal Design” in all teaching, educational and further educational curricula

- Training and awareness-raising for all administrative authorities provided by the associations of people with disabilities
- **Further educational** on accessibility in companies

Buildings/Homes

- Landlord and Tenant Act: Concretization of the responsibilities of landlord and tenant in terms of accessibility and laying down that accessibility shall form of part of usual local standards
- The comprehensive and binding embodiment of the Austrian Standards B1600ff in building laws
- Federal Procurement Act: The comprehensive and binding involvement of Austrian Standards in the awarding of public contracts; the elimination of the Requirement Clause and the Waiver Clause; the introduction of monitoring mechanisms for implementation
- Trade Regulations: Accessibility as a mandatory criterion for proceedings for the approval of plants
- Measures on accessibility in fire protection specifications
- Mandatory consideration of accessibility in concepts for residential buildings, urban planning and regional development

Public Roads Space and Public Transportation

- Road Traffic Act/traffic control: the minimum heights of road signs and objects which jut out in road traffic; regulations for safe solutions in road traffic (such as roof avalanche warnings, hybrid cars, etc.)
- Escort services for persons with disabilities at all train stations (especially for persons with limited mobility, as well as blind and visually impaired passengers)
- Nationwide announcements of the exit side in all public transport
- Barrier-free extension of regional train connections
- The legal embodiment of accessibility in shared space

Medical Facilities and Emergency Services

- Accessibility to all medical institutions and free choice of medical practitioners
- A binding link between accessibility and the award of health insurance fund contracts and the new establishment of private practices.
- Regulations on the rescue and evacuation of persons with disabilities

Communication

- Installation of a nationwide telephone operator service for deaf, hearing-impaired, and speech-impaired persons (concretization of Section 1 para 2 lit 1 TKG 2003)⁴⁸
- Legal entitlement to free sign language interpretation services, writing assistants, and written interpretation during the utilization of legally regulated services
- Freedom of choice in terms of sign language interpretation services during civil and criminal proceedings
- Measures for ensuring the qualifications of and a sufficient number of sign language interpreters
- Introduction of examination boards that are approved by the state for language competencies in ASL with the involvement of the Austrian Deaf Association and the Regional Associations of Organizations of the Deaf
- Development of training curricula for state-approved interpreters in ASL; creation of an interpreters' pool and an agency for interpreting services in all regions (Laender)
- Affordable new information and communication technologies and the provision of further training for the practical implementation of these technologies

Article 10 Right to Life

In Austria, the right to life is guaranteed to all human beings under constitutional law in Art 2 ECHR (European Convention on Human Rights).⁴⁹ For the rights of persons with disabilities it is of particular importance in this context how the protection of life is configured from the beginning until the end; very serious and partly controversial issues often arise in this context, such as about abortion in cases of eugenic indication or about various forms of euthanasia.

1. The Protection of Prenatal Life

The constitutional regulations for the protection of embryos appear rather weak in Austria when, for instance, compared with Germany. According to the perception of the Austrian supreme courts⁵⁰ and the majority of the prevalent doctrine, the basic right to life as stated in Art 2 ECHR **does not refer to prenatal life**. However, this does not result in the total

⁴⁸ Cf. the German legal position on this matter: Section 45 Amendment to the Telecommunication Legal Order of 18 February 2007.

⁴⁹ Also see Art 6 of the International Covenant on Civil and Political Rights (ICCPR).

⁵⁰ Cf. Constitutional Court (VfSlg 7400/1974) and Supreme Court (SZ 72/91).

vulnerability of the embryo under constitutional law because due to general pragmatic considerations a gradual transition to the full protection of life is granted. However, an extension of the fundamental legal protection of life until the earliest stage of embryonic development after the moment of conception, especially in terms of in vitro embryos before nidation, cannot be justified constitutionally.

The **protection of embryos** has not been defined in a uniform manner under the present Austrian law. While the full legal protection of life only starts from birth, a gradual protection according to the civil law regulations about abortion exists for prenatal life from the moment of nidation (that is, the implantation of a fertilized egg into the endometrium). After that, the decision about an abortion within the first three months usually remains with the pregnant woman; in the case of certain indications, this protection becomes irrelevant in favor of other interests even until just before birth (see eugenic indication below). Before nidation, especially with regard to the extra-corporal in vitro embryo, the protection of fertilized egg cells is much stricter due to the Medical Propagation Act. After that, all therapeutic, diagnostic or research-related interventions on fertilized embryos are prohibited as long as they are not required for the induction of a pregnancy.

Biomedical techniques such as **cloning or research** with embryonic stem cells are not explicitly regulated in Austria. “Reproductive cloning” seems to be prohibited on the grounds of the Medical Propagation Act as well as any type of research on surplus embryos from the field of reproductive medicine. By contrast, “therapeutic cloning”, that is the production of embryonic stem cells through the transfer of somatic cell nuclei into enucleated egg cells, is viewed differently. The protection of the Medical Propagation Act only refers to fertilized egg cells, but does not apply to cells that have been produced by the transfer of nuclei. As a result, there are indicators that the use of embryonic stem cells which have been produced by nuclear transfer (be it for research or for therapeutic purposes) is presently permitted.

According to Section 97 para 1 L 2 second case Criminal Code, **eugenic (embryopathic) indication**, fetuses that show risks of massive physical or mental damage may be killed until just before birth. Even though an abortion ban (Abtreibungsverbot) in the case of an eugenic indication cannot be directly deducted from Art 10, this regulation is contrary to the purpose (Art 1) and the general Non-Discrimination Act (Art 5) of the Convention, which states that the full inclusion of persons with disabilities has to be established and furthermore, that discrimination between children with and without disabilities is prohibited. Likewise, Section 97 para 1 L 2 second case Criminal Code contradicts the Equality Act of Art 7 para 1 Federal Constitutional Law that states that no person must be disadvantaged on the grounds of a disability. This contradiction of the constitution was already detected by a working group of

the constitutional service of the Federal Chancellery's Office in 1998; however, an amendment or elimination of this section of the legal text has – despite repeated recommendations - not been implemented to this date.

The “**wrongful birth**” **problem**, that is the granting of damages on the grounds of the birth of a disabled child, is closely related to the eugenic indication issue. If a child in Austria is born with a disability that is the cause of a medical error, one can claim damages if the error has directly caused or increased the disability or if it has prevented the disability from being alleviated. Parents of children whose disability has not been recognized during pregnancy due to failure by the doctor may claim a separate damage. However, maintenance claims that result from the disability of the child are explicitly excluded. These claims have to be borne by the community as a whole.⁵¹ The position of the Austrian Federal Government on the “wrongful birth” debate as stated in the 2007 Government Program, according to which “the birth and existence of a child with a disability is not “damage”, no matter how deep the consternation and grief of the parents about the fact of the child's disability may be”, is highly questionable. There is not only a lack of a sensitive and human rights-compliant understanding, but furthermore, there is a particular lack of appropriate legal and political measures (compared to the situation in France where, after a relevant case, an amendment to the law was made that clarifies that no damages can be awarded for the mere existence of a human being).

The National Action Plan on Disability (NAP) foresees a broad discussion process about medical, legal and ethical aspects of prenatal diagnostics with all affected groups.⁵²

Additionally, Austria has **no adequate qualified counseling services for parents** who are expecting a disabled child. There is still a lot of pressure from society and from the medical establishment about terminating a pregnancy in the case of a predicted disability. The fact that the situation of parents with disabled children continues to become more difficult is clearly indicated by OECD figures about births of children with Down's Syndrome that have decreased from 27 in 1995 to 10 children in 2006 in Austria. On the other hand, the birth rates of children with Down's Syndrome have – despite prenatal diagnostics - remained the

⁵¹ For further details see 1 Ob 91/99k, 5 Ob 165/05h, 5 Ob 148/0m; there is no legal entitlement to compensation for a “healthy” unwanted child, cf. 6 Ob 101/06f.

⁵² Cf. National Action Plan on Disability 2012-2020, p. 37. http://www.bmask.gv.at/cms/site/attachments/7/7/8/CH2477/CMS1332494355998/nap_web.pdf.

same or even risen slightly in Nordic countries where generous support systems are provided to children with disabilities.

The National Action Plan on Disability (NAP) foresees the extension and the evaluation of counseling services.⁵³

2. The Protection of Life in the Final Phases

Dying and death are topics that are associated with great fears in our society and thus, they are often suppressed and a taboo. There are certain fears such as the fear of suffering from unbearable pain, of becoming a burden to one's family and society, of being left alone in the process of dying, or of receiving insufficient medical and nursing care assistance. Elderly and ill people but also persons with disabilities partly represent these fears. The personal confrontation with this topic is suppressed through their death (euthanasia). This also becomes evident in the general attitude that has emerged within our society during the past few years, whereby there are tendencies towards increased exclusion of elderly and disabled persons as well as sick or so-called "unproductive" persons.

The health care system is frequently characterized by inhuman cost-benefit thinking. A so-called "mercy death" for incurably ill persons and persons with disabilities is by no means part of history – it still exists. In the course of the debate about euthanasia, affected persons repeatedly accentuate that they do not want to be a burden to their families and society as a whole. This fear clearly indicates the existence of an interplay between the general attitudes of society and the individual.

The **hospice movement** makes an effort to integrate death as a part of life and to accompany terminally ill persons in their final phases of life. This usually occurs in an outpatient setting, at the person's home by visitor services, or in wards/rooms at hospitals, nursing homes and in-patient hospices that have been especially designed for the care of the dying. The term **dying with dignity** consists of accompanied dying in one's natural surroundings where one's own life does not simply "perish" but where it can be completed in a personal way.

The term **active euthanasia** describes any measure that has the purpose of ending the life of a person on the grounds of the explicit wish of the respective person. This act is strictly

⁵³ Cf. National Action Plan on Disability 2012-2020, p. 37.
http://www.bmask.gv.at/cms/site/attachments/7/7/8/CH2477/CMS1332494355998/nap_web.pdf.

prohibited by law (cf. Sections 77 and 78 Criminal Code – willful homicide on demand and assisted suicide).

The term **passive euthanasia** describes the decision of a doctor to abstain from or to interrupt life-prolonging measures for seriously ill persons or accident victims. Passive euthanasia is not explicitly regulated in Austria, but it can be prosecutable in certain cases. For instance, a criminal offense according to Section 75 ff Criminal Code (Persecutable Offense against Body and Life) can occur in the event of the omission of life-saving measures such as “minimal therapy” for newly born children with severe disabilities. However, passive euthanasia is not merely permitted but – in the event of the explicit patient’s will – it is even warranted, for instance, if there is a valid **living will (advance directive)**. Living wills are regulated by the Advance Directive Act. According to this law there is a distinction between a “binding living will” that is tied to strict prerequisites and a “notable living will” that has to be considered in cases where the patient is no longer responsive - when fathoming out the patient’s will. A living will can only be set up by the patient himself or herself. The patient must be capable of insights and making reasoned decisions when setting up a living will. In a binding living will, the forms of medical treatment that are disapproved must be described explicitly or unambiguously emerge from the overall context of the living will. Furthermore, the living will must clearly indicate whether the patient is capable of assessing the consequences of the living will accurately. A living will that does not fulfill all the requirements of Sections 4 to 7 Advance Directive Act still has to be considered when establishing the patient's will. Difficulties may emerge for persons with (particularly intellectual) disabilities in relation to the conclusion of a valid living will if they do not have sufficient support – e.g. in the form of comprehensive personal assistance – in order to execute their capabilities to act → also see Art 12 and 19.

Indirect euthanasia, which is defined as medical measures that reduce the suffering of a person by using high doses of painkillers even if these measures eventually reduce the life of a person, is permitted in Austria. On the other hand, **assisted suicide** in the form of drug prescriptions for terminally ill persons - who take these drugs by themselves which then lead to their deaths - is prohibited.

Recommendations:

- General **sensitization measures** for the dismantling of stereotypes about the quality and the value of the lives of persons with disabilities, especially for responsible parties in the field of politics (cf. “wrongful birth” debate)

- Abolition of impunity in terms of **abortion in cases of eugenic indication** according to Section 97 para 1 L 2 second case Criminal Code (based on the results of the working group of the Federal Chancellery of 1998)
- Extension of **counseling services for parents(-to-be)** of children with disabilities and the legal embodiment of appropriate training modules for medical professionals
- Legal entitlement to **comprehensive personal assistance** for persons with disabilities in all aspects of life, especially in terms of being able to make self-determined decisions during the final phase of life

Article 11 Situations of Risk and Humanitarian Emergencies

According to Art 15 of the Federal Constitution, disaster control lies within the **competence of the regions (Laender)**, which have issued their own Disaster Relief Acts. Since May 2003, the Federal Ministry of the Interior is the responsible body for the coordination of national disaster control management, national crisis management and international disaster relief. Missions are predominantly executed by the fire department, the armed forces, disaster control services, and private ambulance services.

Generally, no distinction is made between persons with and without disabilities in **situations of risk** and other emergencies in terms of the competence of the regions (Laender); in any case, there are no specific regulations for the handling of persons with disabilities in situations of risk. In certain circumstances, this may result in persons with disabilities not being adequately covered or able to receive the appropriate care during protection measures; furthermore, existing alarm systems are not tuned to their individual needs (e.g. visual-audible alarm systems for deaf persons). As far as is known, persons with disabilities are not included into the formulation of disaster management plans at federal and municipal level (except for Vienna). Forces are not specifically trained in handling persons with disabilities. **Emergency call services** are not sufficiently “barrier-free” across the nation → also see Art 9.

In terms of regulations about **international disaster relief**, persons with disabilities are not yet included in all areas or involved in the planning process. For example, people with disabilities are mentioned in the guidelines of the Austrian Development Agency on

International Humanitarian Aid (2007)⁵⁴, but there is no obligatory inclusion in all (planning) measures. It is positive that in the call for proposals of the Austrian Development Agency, people with disabilities are to be taken into account in cases of humanitarian aid – though here again there is no obligation. In addition, responsibility for international disaster and humanitarian aid is divided up among various actors, which makes it difficult to apply a coherent approach.

Recommendations⁵⁵:

- **Inclusion** of persons with disabilities in the preparation of national and international disaster management plans
- Consideration of the individual needs of persons with disabilities in all **disaster management plans**, missions, and alarm systems
- Incorporation of separate modules into the curricula of **first-aid courses** about the specific needs in the handling of persons with disabilities
- Enactment of standardized regulations for the **rescuing** and evacuation of persons with disabilities (such as “barrier-free” emergency call services)

Article 12 Equal Recognition before the Law

1. General

The general recognition of persons with disabilities as **legal persons** (Art 12 para 1) is principally granted in Austria, similarly to the rest of Europe. However, the implementation of the further paragraphs of Art 12, in which the recommended paradigm shift away from the medical towards the social model of disability is questionable → see also Art 1 and 2. The concept of living independently forms the basis of Art 12, according to which each person, including those with learning disabilities or psychosocial disabilities, have the right to act as a legal person. This is the only way to realize the principle of equal recognition before the law. If the disability reaches an extent whereby the person is not able to cope with the

⁵⁴ Cf. http://www.entwicklung.at/uploads/media/LL_HuHi_02.pdf, p. 3 and 17

⁵⁵ See also Chapter 3 Need for Action in the statement of the Monitoring Committee ‘Barrier-Free Humanitarian Aid and Development Work’; Chapter 1.10. Development Cooperation and Humanitarian Aid in the NAP Disability 2010

requirements of everyday life by his or her self, states parties must grant the forms of support services that the respective person indeed requires.

In order to ensure these support services, different measures may be taken. Due to the fact that all these measures are tied to the term “support” (support/assistance) which is used in the original English version, legal regulations related to guardianship that order the incapacitation of a person, declare all his/her statements and volitions null and void, or that deny a person his or her capacity to act, are not in accordance with Art 12. Such regulations would have the consequence that the withdrawal of the “legal capacity to act” excludes the persons concerned from the personal exercise of numerous human rights that are embodied in the Convention.

Thus, Art 12 contains a **turning away from regulations on guardianship** that particularly specify legal representation by third parties for persons with learning difficulties and/or psychosocial problems and completely or partially limit the affected persons in the exercise of their legal capacity (capacity to contract). The model of legal representation that is common in many countries, according to which a third person acts instead of the disabled person (“substituted decision making”) should be replaced by a support model which accompanies persons with disabilities during the deciding what they want and expressing their will, but which does not limit these persons in the exercise of their rights (“supported decision making”).

2. The Legal Situation

The Austrian Civil Code distinguishes between **legal capacity** (Section 16 Civil Code), that is the capacity to be agent of rights and duties, and the **capacity to act**, that is the capacity to justify one’s rights and duties through one’s own actions. The capacity to act, on the other hand, is divided into the capacity to contract (Section 865 Civil Code) and liability in torts (Section 15 and Section 1307 ff. Civil Code). While each natural person is granted legal capacity from birth according to the regulations of the Civil Code, the capacity to act can be restricted if the person is unable to use reason. These persons can thus be excluded from participation in legal relations and their right to submit legally binding declarations of intent might be transferred to third parties. One’s own actions are substituted by those of the guardian.

The Austrian system of guardianship that has been practiced for many years is, in its present form, not compatible with Art 12, because it still specifies the full or partial incapacitation of persons with disabilities and thus, it does not allow self-determined decision-making and a

self-determined life. Likewise, there are no support models as envisaged in the Convention.⁵⁶ There is, for instance, no effective, regular control of whether the wishes of the affected persons have been respected.

The Guardianship Law Amendment Act of 2006 (that came into effect on 1 July 2007) has brought a few improvements for the affected persons, but no general changeover from the model of “substituted decision making” to the model of “supported decision making”. Thus, the subsidiarity of the guardianship is highlighted more explicitly than before and the aids that are to be used primarily are circumscribed more precisely in order to ensure that a guardian is only appointed if necessary. Furthermore, there is the option of a precautionary power of attorney or the (legal) representation by close relatives (see below) as an alternative to the previous guardianship system. During the appointment of a guardian, courts may exempt certain objects or parts of the income from the area of influence of the guardian if the affected person can be trusted to take care of themselves.

In order to ensure personal care, a limitation in the **number of guardianships** that can be taken over has been stipulated (i.e. single persons may act as guardian in a maximum of five cases, notaries and law firms a maximum of 25 guardianships). However, this strict regulation was softened through the Amendment 2009 (Federal Law Gazette I No. 52/2009) insofar as it is assumed that single persons cannot take on more than five guardianships and that notaries and law firms cannot take on more than 25 guardianships. This means that more than 25 guardianships may still be taken over and thus, the fairly common practice by law firms of accepting up to 100 guardianships has not been curbed. It is obvious that high-quality personal guardianship cannot be ensured under these circumstances. The guardian has the duty to report to the court about their personal contacts with the affected person at appropriate intervals and at least once a year. There are no reports about practical experiences about how this regulation has proven itself in practice. Besides that, the court merely has to examine - at appropriate time intervals that do not exceed five years - whether the best interests of the person under guardianship require the termination or amendment of the guardianship.

3. Practice

⁵⁶ There are only a few single positive examples such as the project “ZIELWÄRTS – Personenzentrierte Planung” (transl. “Toward the Goal - Person-Centered Planning”) of the *Lebenshilfe Vorarlberg*.

In practice, appointments of guardians are effected by courts in great numbers and often very rapidly without adequately considering potential alternatives. According to a 2009 survey of the Institute of Legal and Criminal Sociology (ILCS), there are approximately 50,000 guardianship cases in Austria.⁵⁷ The ILCS expects an annual growth of 20 percent in all reappointments and a total amount of approximately 80,000 guardianships in 2020. 75 percent of all guardianship cases concern persons aged 60 and above. 60 percent of all persons involved in such proceedings are women. In nearly half of all proposed proceedings, the appointment of a guardian occurs in relation to all affairs (this applies to 62 percent of all appointments), whereas in one fourth of all proceedings, the appointment occurs for a certain part of a person's affairs.

The **costs** of guardianship by law firms or notaries are often unreasonable in terms of the services that are actually provided. Due to scarce resources, a more economical representation through the guardians of an association is not always possible. The fees for a guardianship proceedings were increased by the Amendment to the Court Fees Act in 2009 → for further information see Art 13.

According to the view of persons with disabilities, **problems** exist especially in relation to professional guardians who are notaries and lawyers.⁵⁸ In this context, the lack of personal contact is mainly criticized; apparently, guardians are difficult to reach, do not have enough time and do not care about the concerns of their clients in an adequate manner. Often, many persons concerned do not know which of their affairs are subject to guardianship. The amount of assets that are to be managed independently is criticized as being too low and the examination of guardianships by the court at an interval of only five years is criticized as not being effective enough. Furthermore, embezzlement cases by guardians that are hardly detectable and traceable in reality occur repeatedly. Among the affected persons, there is a general lack of information and counseling services about inquiries related to guardianships and the exercise of one's legal capacity.

⁵⁷ Pilgram/Hanak/Neumann. 2009. Entwicklung von Kennzahlen für die gerichtliche Sachwalterrechtspraxis als Grundlage für die Abschätzung des Bedarfs an Vereinssachwalterschaft. Available online at: <http://www.irks.at/downloads/SWKennzahlen%20final.pdf>.

⁵⁸ Cf. Protocol of the National Information Day on the UN Convention, 30 November 2009, in Vienna.

Quotations of aggrieved parties:⁵⁹

“Guardianships often are a must.”

“Guardians do not keep appointments.”

“My decision stands: If a guardian opposes my decision, s/he should apply to the court in order to receive a confirmation of his/her opinion.”

Apart from the traditional guardianships by notaries, lawyers or attorney’s associations, representation through close family members is feasible as well, even though it is questionable whether this actually represents an improvement in the autonomy of the affected person. Persons with disabilities who are **represented by a relative** are, for instance, not entitled to access their bank accounts because it can be assumed – due to the registration confirmation in terms of business transactions - that the family representative represents the affected person because he or she no longer has the required capacity to enter into contracts in order to execute certain affairs. The bank thus refuses to allow persons with disabilities access to their income or bank balances which de facto equals the withdrawal of their capacity to enter into contracts. Even if the power of attorney by the relative only contains a small part of the affairs that usually have to be taken care of, the affected persons will then certainly be refused disposition in any areas which go beyond that. Only in the event of a revocation of the power of attorney could the trust in the legal capacity of the person be restored. However, in practice that is almost impossible because there is no legal guarantee that the written agreement about the registration of the power of attorney (Section 140 h para 3 Notarial Code sent to the person affected contains any information about the option of revocation by the affected person itself. The costs that are related to the registration, the lack of an estoppel regulation in the event of a conflict of interests between the family member representative and the affected person, the lack of judicial review, and the option (which only exists indirectly by means of the submission of an objection) to choose a family member representative, lead to the conclusion that representation by a family member according to Section 284 b to e Civil Code is not in unison with Art 12 of the Convention.

According to a 2009 study about the impact of the Guardianship Law Amendment Act,⁶⁰ the **alternatives** to the traditional guardianship system (such as power of attorney or

⁵⁹ Source: Protocol of the National Information Day on the UN Convention, 30 November 2009, in Vienna.

representation by a family member) have been **rarely used** so far because they are either little known or resources in the family environment are too scarce. Thus, the demand for guardianship through representatives of the legal profession has not decreased so far.

Overall, the present **legal situation** and **practices in terms of guardianships form a contradiction to Art 12.**

The National Action Plan on Disability (NAP) foresees the amendment of the Guardianship Act and the development of a model of assisted decision making, both with the participation of persons with disabilities.⁶¹ The Federal Ministry of Justice announced in autumn 2012 that a pilot project on assisted decision making would start at the beginning of the year 2013. At the present state (January 2013) we have not any further information on the state of the project.

Recommendations:

- **Abolition of the guardianship law** in accordance with the Convention (Art 12 and 19) in order to ensure the realization of a self-determined life; this should occur through:
 - The establishment of a **ministerial working group** with the inclusion of persons with disabilities and their representatives with the purpose of developing a system of supported decision-making as well as setting up and legally embodying support groups
 - The development of a **staged plan** according to human rights parameters that contains indicators and an adequate schedule in order to implement the specifications of the Convention on full and equal recognition before the law in a timely manner (from the representative model to the support model)
 - In the lead up to the required abolition of guardianship law, the present laws **should be applied in compliance with the Convention** (e.g. principle of subsidiarity); furthermore, appropriate measures for **quality assurance** should be taken (e.g. limitation of the number of guardianship cases by one guardian or office)
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⁶⁰ Pilgram, Hanak, Kreissl & Neumann. 2009. Studie zu den Auswirkungen des Sachwalterrechtsänderungsgesetzes (SWRÄG) 2006. Available online at: <http://www.irks.at/downloads/SWRAEG%20final.pdf>.

⁶¹ Cf. National Action Plan on Disability 2012-2020, pp. 35. http://www.bmask.gv.at/cms/site/attachments/7/7/8/CH2477/CMS1332494355998/nap_web.pdf.

- Strengthening of **judicial reviews** (e.g. inspections after every two years and also for family member representatives)
- Legal entitlement to comprehensive **personal assistance** for all persons with disabilities in all aspects of life → also see Art 19
- **Information and counseling** services (also in easy-to-read versions) for persons with disabilities in relation to inquiries about guardianship and the exercise of one's legal capacity

Article 13 Access to Justice

1. Equal Access to Justice

Effective access to justice for persons with disabilities particularly contains

- "Barrier-free" accessibility to all buildings and premises that are used as/for courts, court proceedings and preliminary proceedings;
- Issuing legal documents in a version that allows the affected persons to read or hear and store these;
- The option of contacting courts in one's language or even in writing, be it in person, in oral or in electronic form;
- Participation in court proceedings including preliminary proceedings and information about these proceedings by court staff in a form that the respective person is familiar with.

According to Section 8 para 2 Federal Disability Equality Act, the Federal Ministry of Justice is obliged to draw up a **staged plan for the elimination of barriers** in buildings that are used by the ministry (courts, state prosecutors, the penal system). This plan has been submitted and stipulates the elimination of barriers until 31 December 2015.⁶² Up to now date, not all buildings have been made accessible and usable by people with disabilities so far; exact information about the progress of the staged plan is not known → also see Art 9. Furthermore, the Federal Ministry of Justice has clarified by means of an order of 9 November 2007 that blind and visually impaired persons are allowed to bring guide dogs to judicial offices.

⁶² Cf. Disability Report 2008 of the Federal Government, FN 1, page 113.

For **civil** proceedings, there is a stipulation according to Section 73 a Code of Civil Procedure that deaf or speech-impaired persons are entitled to sign language interpreters. The federal government assumes the costs of the interpretation services that are required during the entire civil proceeding (not only during the hearing of the deaf person). Furthermore, the state has to bear the costs provided that the respective party requires interpretation services for communication with their legal representative in order to conduct the proceedings, and if the interpretation service is related to the proceedings. However, there is no legal entitlement to compensation of the costs through the state, due to the fact that the entitlement has to be determined by the courts in terms of the specific case and only after the submission of an invoice.

In **criminal proceedings**, Section 56 para 2 Code of Criminal Procedure rules that a sign language interpreter has to be called in for persons charged with an offense who are “deaf or non-verbal” and who are able to converse in the Austrian Sign Language. Otherwise, an attempt should be made communicate in writing or in any other appropriate form of communication. According to Section 126 para 2 Code of Criminal Procedure, persons who are registered on the appropriate list of the Ministry of Justice have to be used as interpreters. There are regulations for civil as well as for criminal proceedings that deaf persons are not allowed to select an interpreter themselves. Due to the fact that there are no regulations on the required qualifications of interpreters who are registered in the list of court interpreters, there are repeated problems with interpreters who are not adequately qualified for Austrian Sign Language (ASL). The professional organization (Austrian Association of Court Interpreters) also does not take into consideration any proof about the qualification of ASL interpreters for first registrations and re-registrations. According to Section 61 para 2 L 2 Code of Criminal Procedure, a legal aid defense lawyer has to be ordered for defendants who are “blind, deaf, speech-impaired, or disabled in any other form or not knowledgeable in the legal language and therefore not in the position to defend himself or herself”.

There is no knowledge about specific, age-appropriate measures for **children** with disabilities. Usually, the trusteeship court is notified to appoint an attorney for **persons with learning difficulties** or psychosocial disabilities if the judge assumes them to be incapable of undergoing proceedings. Other forms of support are not stipulated in the rules of procedure or in the Court Procedure Act. In the course of the Finance Act 2009 (Federal Law Gazette I 2009/52), a liability to charges in the field of guardianship was introduced through an amendment of the Court Fees Act: as of 1 July 2009, a fee of EUR 116 will be collected for all pecuniary decisions of the guardian that are subject to approval. In addition, fees for decisions about the confirmation/acknowledgment of the guardianship invoice have been

stipulated. The amount of the fee depends on the amount of the compensation that has been granted to the guardian and is 25 percent of the compensation, but at least EUR 74. These new regulations represent a massive financial burden to many people and thus limit their access to justice. According to previous experiences, legal aid is no longer granted if persons with disabilities have savings or account balances of more than EUR 3,000 (or, in many cases, even less).

According to Section 2 L 1 Jurors and Lay Assessors Act, persons “who are, due to their physical or mental state, not able to fulfill the duties of the office” are excluded from the **juror’s or lay assessor’s office**. This regulation seems to contradict the Convention because it excludes – according to the currently prevailing interpretation - for instance, blind and deaf persons from these offices from the start, even though in the majority of cases they may be able to fulfill the duties of a juror or lay assessor despite their disability (e.g. through the assistance of sign language interpreters).

The drawing up of legal documents in such a version that it can be read or heard and stored by the affected person is not stipulated by law at present (there is no easy- to-read version of decisions). Nor is there an option for people to communicate with judicial authorities in their own language or form of writing in person, orally or in electronic form.

According to the First Federal Law Settlement Act, the validity of the Royal Judiciary Decree of 28 September 1842 to the Court of Appeal of Tyrol-Vorarlberg with the title “Legal Oath of the Mute 1842” (JGS No. 644/1842) has been re-extended beyond 31 December 1999 and thus, it is an applicable law. The terms for deaf persons that are used in this law, namely “deaf”, “mute” or “deaf-mute”, as well as the obligatory assistance by a third party during the swearing of a legal oath are not merely outdated, but also discriminating, and must therefore be eliminated → also see Art 13 and 14.

2. Initial and Continuing Training for Judiciary Personnel

According to Section 14 para 1 and 2 Judge and District Attorney Service Act, training courses are to be stipulated in order to enable **applicants for the office of judge** to “apply their knowledge of the law in practice, to foster their ability to describe and to make decisions on legal cases orally and in writing, and to raise their understanding of social and economic interrelationships and their meaning for the application of the law”. There is a lack of explicit legal regulations about training the employees of justice authorities and the prison regime in the handling of persons with disabilities.

Even though the subject of equality is basically dealt with in general basic law modules within the training for judges, there is no sufficient specific and especially compulsory **training** about the rights of persons with disabilities **for incumbent judges**. In the area of imprisonment, no training in the handling of persons with disabilities has been offered according to information by the Penal System Training Center. According to information provided by the Security Academy, the police occasionally conduct training about dealing with persons with psychosocial disabilities or in the field of human rights in general, but not specifically about the rights of persons with disabilities.

Despite the repeal of certain job entry restrictions, there are no **judges** or district attorneys with disabilities so far; or at least, no figures are available.

Recommendations:

- Admission of regulations in the Code of Civil Procedure and the Code of Criminal Procedure about **input at court** as well as for drawing up legal documents in order to guarantee legibility and comprehensibility for persons with disability.
- Repeal of the “Legal Oath of the Mute 1842”
- Section 2 L 1 **Jurors and Lay Assessors Act** should be adapted to Art 13 so that persons with disabilities are not excluded from the offices of jurors and lay assessors from the start
- Increase in the number of qualified **interpreters for Austrian Sign Language (ASL)** at court; persons who are deaf and blind must be provided with interpreters for tactile sign language or communication assistance for Lormen – also in order to be able to communicate with their legal representative
- Partial revocation of the **liability to fees** in the area of guardianship (for instance, analogous to Section 276 Civil Code under consideration of untouchable assets of EUR 10,000)
- Initial and continuing training measures for employees working in the field of judicial administration (cf. Art 13) (including police and prison staff): a compulsory part of the training for candidates for the office of judge according to Section 14 Judge and District Attorney Service Act in the “handling of persons with disabilities who are involved in legal proceedings”; initial and continuing training in all areas of justice about the rights of persons with disabilities according to the UN Convention

Article 14 Liberty and Security of Person

1. The Legal Situation

The right to liberty and security of the individual is fundamentally guaranteed by constitutional law under **Art 5 ECHR** and designed more specifically in the **Federal Constitutional Law on the Protection of Personal Liberty**. According to this law, no person may be arrested or stopped due to any other reasons than the ones stated in this Federal Constitutional Law or in any other way than the one stipulated by law (Art 1 Protection of Personal Liberty Act). According to Art 2, a person may be deprived of his/her personal liberty if there is reason to assume that he or she might jeopardize oneself or others due to a psychosocial disability, among other things.

The prerequisites for and the examination of any restrictions of liberty in nursing homes, homes for the disabled or other institutions in which at least three psychosocially disabled or “mentally disabled” persons can be taken care of permanently, are regulated by the Home Residence Act. According to Section 1 para 2, restrictions of liberty are only permissible insofar as they are explicitly stipulated by law. Section 11-19 Home Residence Act create the possibility of a judicial review about whether the restriction of liberty is indeed justified. A proposal for such a judicial review can be submitted by the resident himself or herself, by his or her representative or confidant, or by the management of the institution. The district court is the responsible body.

The admission and compulsory stays of persons with psychosocial disabilities to psychiatric hospitals or psychiatric wards is regulated by the **Hospitalization Act**. It purports to serve the protection of one’s personal rights in cases of detentions in closed areas or other restrictions of one’s freedom of movement. According to Section 17, the management is obliged to notify a court immediately if a person has been committed to an institution without his or her having requested it. According to Section 18, the responsible district court has to decide about the admissibility of the hospitalization of the patient after a review of the prerequisites related to the hospitalization.

2. Practice

A **forced hospitalization** is subject to three prerequisites: the affected persons must suffer from a psychosocial disability, there must be a serious and substantial jeopardy for the life or health of the person him/herself or for others, and there must be a lack of an adequate alternative option for treatment or care. If one of the prerequisites ceases to apply, the hospitalization must be repealed immediately. In the event of admission without request, a

review by the head of department and a second medical specialist for psychiatry must be conducted immediately.

Due to the prevalent lack of psychiatrists, the **Amendment to the Hospitalization and Home 2010** waives the necessity of a second expert opinion. With regard to the continuation of the hospitalization a mere *forecast* of the danger that might be caused is sufficient in order to order a continuation of the detention for prolonged treatment. There are no procedures related to compulsory hospitalization to a social care facility. If it is clear that a person is no longer able to give their valid consent about the hospitalization, an attorney must be called in. Between 2003 and 2005 almost every fourth admission occurred by force.

Forced hospitalization and forced treatment, that is, measures against the will of the affected persons, are not compliant with the Convention. The extension of a detention in psychiatric departments or hospitals with the purpose of using all available means of therapy that has occurred with the Amendment to the Hospitalization Act 2010 (thus, already after the ratification of the CRPD) is explicitly inconsistent with the Convention. The endangerment can now be estimated by a forecast, whereby the duration of treatment can be extended. Often, the necessity of a hospitalization is merely based on the fact that there is a lack of the required outpatient treatment for persons with psychosocial disabilities. Generally, there are simply not enough options for outpatient treatment. The fact that a young learning-disabled man was detained for deportation for eight days in April 2009 indicates that there is a lack of sensitization in the handling of persons with disabilities and a lack of knowledge about the UN Convention.⁶³

Recommendations:

- **Adaptation of the legal situation and practice in relation to forced hospitalization** of persons with disabilities in accordance with the requirements of the Convention, e.g. reinforcement of the examination by a medical specialist during admission and continuation of a detention

⁶³ Cf. <http://derstandard.at/1237229855740/Oesterreicher-in-Schubhaft-Scharfe-Kritik-von-Behindertenanwalt-Haupt>.

- **Initial and continuing training** about the rights of persons with disabilities (including persons with psychosocial disabilities) for medical and nursing care staff as well as for judicial employees
- Increase in the number of adequate support offers for persons with psychosocial disabilities and their families.

Article 15 Freedom from Torture or cruel, inhuman or degrading Treatment or Punishment

Art 3 ECHR prohibits any form of torture, inhuman or degrading treatment and applies as the only law of the ECHR without exception. Due to this regulation, Austria is not only committed to refrain from all prohibited actions but it must also issue penalty rules for the protection from especially serious interventions into the physical or psychosocial integrity of a person and it must ensure their effective implementation. This contains numerous criminal law provisions as well as regulations about forced measures in homes and medical institutions → cf. Art 14.

The inclusion of persons with disabilities in various ethics commissions guarantees a certain level of monitoring of the protection of persons with disabilities from medical and scientific experiments. However, there is no knowledge about any mechanism that examines the participation of disability representatives in such commissions.

A few psychiatric institutions and nursing homes still use **net beds** as a means of restricting the liberty of agitated patients;⁶⁴ patients who are fixed (to the bed) by mechanical measures are not monitored by a medical professional on a continuous basis and in a direct manner which would have the effect of showing the patient some human affection and reduce his or her fears. In Austria, the Austrian Ombusman Board (Volksanwaltschaft) functions as supervisory body for all psychiatric institutions and social care facilities as stated in Art 16 para 3 of the UN Convention.

⁶⁴ Cf. the recent criticism of the CAT Committee in its final recommendations to Austria in May 2010: CAT/C/AUT/CO/4-5, para 25; also see the report of the CPT about its visit to Austria in 2009: para 134-136.

Concerning the issue of **forced abortions** and **forced sterilizations** as forms of inhuman treatment towards girls and women with disabilities → cf. Art 23.

Recommendations:

- “Disability and age” should be admitted as further prohibited grounds of discrimination to Section 5 para 1 of the **Directive Regulation** of the Federal Ministry of the Interior regarding the behavior and demeanor of the forces of law and order.
- Immediate **implementation of the recommendations** of the international monitoring bodies for protection against torture and other inhuman treatment (**CAT, CPT**) under inclusion of persons with disabilities
- Abolition of “net beds” and the application of restrictions of the freedom of movement which are compliant with human rights (e.g. mechanical fixings)

Article 16 Freedom from Exploitation, Violence and Abuse

1. Legal Situation

In Austria, the protection from exploitation, violence and abuse is primarily regulated by criminal law. Moreover, regulations on the protection from violence within the family have been implemented in various other laws based on the Second Protection Against Violence Act 2009. Regarding persons with disabilities, the Austrian Criminal Code (Strafgesetzbuch, StGB) contains the following criminal offenses:

Torture or Neglect of under age, younger or defenceless Persons⁶⁵

Sec 92 StGB

Para 1

A sentence up to three years of imprisonment applies to whoever causes physical or emotional pain to another person under his/her care or welfare who is defenceless due to a mental disability.⁶⁶

⁶⁵ This is not an official translation. The original wording is “Quälen oder Vernachlässigen unmündiger, jüngerer oder wehrloser Personen“

Para 2

The same shall apply to whoever grossly neglects his/her duty to exercise care or welfare in favour of such a person with the result of seriously harming the person's health or physical or intellectual development, also if this happens merely due to negligence.⁶⁷

Continued Execution of Violence⁶⁸

Sec 107b StGB

Para 1

Whoever continuously exercises violence on another person over a longer period of time, shall be punished by imprisonment up to three years.⁶⁹

Para 3

A sentence between six months and five years applies to whoever commits the crime against a person who is defenceless due to a mental disability.⁷⁰

Para 4

Whoever commits a crime pursuant to para 3 in a painful manner or who repeatedly commits crimes against the sexual self-determination and integrity in the context of a continued execution of violence pursuant to para 3, shall be punished by imprisonment from one to ten years. In case a crime pursuant para 3 results in an assault with serious permanent consequences (Sec 85) or in case the violence according to para 3 is executed for more than one year, the offender shall be punished by imprisonment from five to fifteen years. In case the violence results in the death of the injured person, the offender shall be punished by imprisonment between ten to twenty years.⁷¹

⁶⁶ This is not an official translation. The original wording is "Wer einem anderen, der seiner Fürsorge oder Obhut untersteht und der wegen einer geistigen Behinderung wehrlos ist, körperliche oder seelische Qualen zufügt, ist mit Freiheitsstrafe bis zu drei Jahren zu bestrafen."

⁶⁷ This is not an official translation. The original wording is "Ebenso ist zu bestrafen, wer seine Verpflichtung zur Fürsorge oder Obhut einem solchen Menschen gegenüber gröblich vernachlässigt und dadurch, wenn auch nur fahrlässig, dessen Gesundheit oder dessen körperliche oder geistige Entwicklung beträchtlich schädigt."

⁶⁸ This is not an official translation. The original wording is "Fortgesetzte Gewaltausübung"

⁶⁹ This is not an official translation. The original wording is "Wer gegen eine andere Person eine längere Zeit hindurch fortgesetzt Gewalt ausübt, ist mit Freiheitsstrafe bis zu drei Jahren zu bestrafen."

⁷⁰ This is not an official translation. The original wording is "Mit Freiheitsstrafe von sechs Monaten bis zu fünf Jahren ist zu bestrafen, wer die Tat gegen eine wegen geistiger Behinderung wehrlose Person begeht."

⁷¹ This is not an official translation. The original wording is "Wer eine Tat nach Abs. 3 auf qualvolle Weise begeht oder im Rahmen einer fortgesetzten Gewaltausübung nach Abs. 3 wiederholt"

Sexual Abuse of a defenceless or psychosocially disabled Person⁷²

Sec 205 StGB

Para 1

A sentence between six months and five years of imprisonment applies to whoever – taking advantage of the situation - abuses another person who is – due to a mental disability - not capable of understanding the significance of what is happening or of acting according to such an understanding by performing a sexual act on the person or by letting the person perform a sexual act on the abuser. The same shall apply to whoever induces a person to perform a sexual act on another person or to perform a sexual act on the abused person him/herself in order to be sexually stimulated or satisfied or in order to sexually stimulate or satisfy a third person.⁷³

Para 2

In case the crime causes aggravated assault (Sec 84 para 1) or pregnancy, the offender shall be punished by imprisonment between five and ten years. In case the crime causes the death of the abused person, the offender shall be punished by imprisonment between ten and twenty years or by life imprisonment.⁷⁴

2. Practice

Straftaten gegen die sexuelle Selbstbestimmung und Integrität begeht, ist mit Freiheitsstrafe von einem bis zu zehn Jahren zu bestrafen. Hat eine Tat nach Abs. 3 eine Körperverletzung mit schweren Dauerfolgen (§ 85) zur Folge oder wird die Gewalt nach Abs. 3 länger als ein Jahr ausgeübt, so ist der Täter mit Freiheitsstrafe von fünf bis zu fünfzehn Jahren, hat sie aber den Tod der verletzten Person zur Folge, mit Freiheitsstrafe von zehn bis zu zwanzig Jahren zu bestrafen.“

⁷² This is not an official translation. The original wording is “Sexueller Missbrauch einer wehrlosen oder psychisch beeinträchtigten Person“

⁷³ This is not an official translation. The original wording is “Wer eine andere Person, die wegen einer geistigen Behinderung unfähig ist, die Bedeutung des Vorgangs einzusehen, oder nach dieser Einsicht zu handeln, unter Ausnützung dieses Zustands dadurch missbraucht, dass er an ihr eine geschlechtliche Handlung vornimmt oder von ihr an sich vornehmen lässt, oder sie zu einer geschlechtlichen Handlung mit einer anderen Person oder, um sich oder einen Dritten geschlechtlich zu erregen oder zu befriedigen, dazu verleitet, eine geschlechtliche Handlung an sich selbst vorzunehmen, ist mit Freiheitsstrafe von sechs Monaten bis zu fünf Jahren zu bestrafen.“

⁷⁴ This is not an official translation. The original wording is “Hat die Tat eine schwere Körperverletzung (§ 84 Abs 1) oder eine Schwangerschaft zur Folge, so ist der Täter mit Freiheitsstrafe von fünf bis zu fünfzehn Jahren zu bestrafen. Hat die Tat jedoch den Tod der missbrauchten Person zur Folge, so ist der Täter mit Freiheitsstrafe von zehn bis zu zwanzig Jahren oder mit lebenslanger Freiheitsstrafe zu bestrafen.“

Persons with disabilities are generally subject to an **increased risk of becoming victims of psychological and physical violence** as well as sexual abuse. Furthermore, they are frequently affected by violence within institutions which is due to housing arrangements in disability facilities, homes, and psychiatric institutions.⁷⁵ Due to a lack of existing relevant data about the living conditions of persons with disabilities in general (→ cf. Art 31), there are no figures about violence and similar assaults. However, it is most likely that there is a high estimated number of unreported cases, also because of the fact that every fifth woman in Austria is affected by violence. The factors that lead to violence are, inter alia, the societal perception of persons with disabilities as weak and unequal members of society as well as the mostly strong power gaps and the dependency between offender and victim (whereby the offender often shows a high need for control while the victims are mostly restricted in their physical defense and, furthermore, their socialization is often characterized by obedience).⁷⁶ The specific set of problems regarding violence and abuse of persons with disabilities in Austria is also expressed in a statement of the Independent Monitoring Committee.⁷⁷

Psychological violence against persons with disabilities often occurs as disdain, intimidation and disrespect towards their personalities. This has especially massive consequences for **children and youths** (who are) in their most formative years and also concerns elderly persons in particular. Offenders are predominantly parents, relatives and caregivers. Due to the strong dependency that persons with disabilities are frequently subjected to, they are especially exposed to the risk of becoming victims of threats and violence.

⁷⁵ Cf. 2001 Violence Report of the (former) Federal Ministry for Social Security and Generations, pp. 76. Available online at:

[http://bmwa.cms.apa.at/cms/content/attachments/6/2/5/CH0617/CMS1192461342869/gewaltbericht_2002 - kurzfassung1.pdf](http://bmwa.cms.apa.at/cms/content/attachments/6/2/5/CH0617/CMS1192461342869/gewaltbericht_2002_-_kurzfassung1.pdf).

⁷⁶ Cf. Flieger. 2010. Missbrauch, Gewalt und Behinderung. In: Monat – Sozialpolitische Rundschau, Juli/August 2010. Available online at: <http://www.oeaar.or.at/publikationen/monat-sozialpolitische-rundschau/juli-august-2010/missbrauch-gewalt-und-behinderung>.

⁷⁷ Cf. Statement of the Independent Monitoring Committee (Unabhängiger Monitoringausschuss) about violence and abuse.

Available online at: <http://www.monitoringausschuss.at/sym/monitoringausschuss/Stellungnahmen>.

Furthermore, persons with disabilities, and especially **women and girls**, are highly affected from **physical and sexual violence**. This is particularly due to the fact that they are often perceived by society as “asexual”. They do not receive education about sexuality and are deprived of their right to actively live up to their sexuality → also see Art 6 and 23. Due to these still prevailing attitudes, sexual abuse is generally encouraged. Even though there are no official studies, the percentage of persons with disabilities who are victims of abuse is estimated to be twice as high as the one of persons without disabilities.⁷⁸

The risk of becoming the victim of **institutional violence** is very high because many people with disabilities still live at residential institutions. The prevailing circumstances and the inflexibility of these institutions, the massive power gaps between nursing or caregiving staff, and the social isolation of these institutions constitute especially high risk factors that encourage violence against the “ones that are taken care of”. Even though there are reservations about such large institutions that massively restrict the freedom of choice and self-determination of persons with disabilities in all aspects of their daily lives, there is no evidence about any precautionary measures for their elimination. Recently, there have been reports about massive and partly long-time cases of violence and abuse of children and adults with disabilities at such institutions. According to these reports, caregivers apparently hit the affected persons and used other forms of violence as a means of punishment.⁷⁹

These and similar examples indicate that there are no effective **measures against violence and abuse** of persons with disabilities in Austria. Often, abuse of persons with disabilities is not treated as a criminal offense but rather as a social work issue. Thus, accusations are hardly followed up by police investigations.⁸⁰ Additionally, offenders usually come from the immediate social environment of the affected person and moreover, there is not enough information about the various forms of abuse against persons with disabilities. Disability-specific forms of abuse contain, for instance, excessive drug prescriptions, the deprivation of care other other measures of assistance, the destruction or the removal of aid devices or the threat of doing so, the intrusion into the privacy, or the unnecessary control over a person’s life. Violence protection institutes are not prepared for victims with disabilities at all or only insufficiently. Counselling services are usually not accessible and there is no availability of

⁷⁸ Cf. 2001 Violence Report, FN 45.

⁷⁹ Cf. Allegations of abuse at nursing homes in Tyrol (<http://www.bizeps.or.at/news.php?nr=11606>) and in Styria (<http://www.bizeps.or.at/news.php?nr=11671>).

⁸⁰ Cf. Flieger. Missbrauch, Gewalt und Behinderung, FN 46.

sign language interpreters. Counsellors and police officers are not adequately trained in the interaction with persons with disabilities. Thus, the credibility of victims with disabilities is often doubted very quickly and allegations of abuse are, for example, ascribed to a cognitive impairment. The organization NINLIL - on the side - that offers relevant counselling and further training on the subject sexual violence against women with disabilities is a best practice example within this ambit.⁸¹

Due to the recent OPCAT-Implementation Law (Federal Law Gazette I 2012/1) the Austrian Ombudsman Board (Volksanwaltschaft) has established (as of 1 July 2012) six interdisciplinary commissions. The commissions shall monitor the compliance with the OPCAT regulations and with Article 16 para 3 of the CRPD in the more than 4000 facilities all over Austria, where persons are in detention or may be deprived of their liberty. The Austrian Ombudsman Board is obliged to publish an annual NPM-Report and to submit it to the UN-Subcommittee on Prevention of Torture.

Additionally the Human Rights Advisory Council (Menschenrechtsbeirat) was established within the Austrian Ombudsman Board. The members of this council are on equal terms suggested by NGOs and federal ministries.

Due to the very recent establishment of the institutions, the practical performance of the six commissions and of the Human Rights Advisory Council can not be assessed so far. However, it should be critically mentioned, that persons with disabilities are not adequately represented within the commissions.

Recommendations:

- **Awareness-raising and information** for persons with disabilities on the protection against violence and on strengthening their personal safety
- Initial and **continuing training** on the interaction with persons with disabilities for relatives, professionals of disability assistance, employees of violence protection institutes, police and justice
- Measures for the **reduction of large institutions** and other housing arrangements for persons with disabilities that encourage structural violence

⁸¹ Cf. NINLIL, Organization against Sexual Violence against Women with Learning Disabilities or Multiple Disabilities, <http://www.ninlil.at>.

- **Inclusion of persons with disabilities** in all legal and political measures for the protection against violence and abuse
- Adequate representation of persons with disabilities within the National Preventive Mechanism according to OP-CAT according to Art 16 para 3

Article 17 Protecting the Integrity of the Person

The protection of physical and mental integrity for persons with disabilities is closely related to the protection against torture or inhuman treatment (→ cf. Art 15) and to the protection against violence and abuse (→ cf. Art 16). The main relevance of Art 17 lies within the field of **medical interventions and medical treatment** of persons with disabilities.

According to Sec 90 Austrian Criminal Code (Strafgesetzbuch StGB), a medical intervention is only permitted if the affected person gives his/her consent. A disabled person with a sufficient ability to comprehend, judge and act in this context may only give his/her consent to a medical treatment by him- or herself. If there is a purported lack of such an ability, the **representative of the person affected** (usually a guardian or next of kin or persons authorized by the patient to manage his/her affairs) needs to give the consent (Sec 283 and Sec 284 Austrian Civil Code ABGB). The guardian can only give his/her consent to a severe treatment (such as abortion or sterilization) if the lacking ability to comprehend, act and judge is proved by a medical certificate. If there is no such certificate or if the affected person indicates that he/she refuses the treatment, the consent needs an authorization by court. If the guardian does not give his/her consent to a medical treatment and if his/her negative decision could harm the health or wellbeing of the disabled person, the court can substitute the consent of the guardian or appoint another person for the guardianship.

Regarding the issues of **autonomous consent** also to medical interventions → cf. Art 12 and 19

Regarding the issue of **forced abortions** and **forced sterilizations** → cf. Art 23

Recommendations:

- Repeal all laws which allow for the substitution of consent and the forced treatment of persons with disabilities, and ensure that persons with disabilities exercise their right to informed consent in all medical settings.

Article 18 Liberty of Movement and Nationality

The liberty of movement describes the freedom to choose one's residence and abode. **Art 2 of the 4th Optional Protocol to the ECHR** (European Convention on Human Rights) grants to everyone lawfully within the territory of a Member State of the ECHR the right to liberty of movement within this territory, the freedom to choose one's residence, and the freedom to leave any country. Certain exceptions by law are possible.

Art 18 of the Treaty Establishing the European Union (TEU) grants all citizens of the European Union the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the TEU and by the measures adopted to give it effect. Art 39 TEU further substantiates this right for workers.

Art 4 Organic Law (Staatsgrundgesetz StGG) states that the freedom of movement of persons and legal estate within the national territory is not subject to any restrictions. According to the jurisdiction of the Constitutional Court, every person lawfully within the Austrian territory may invoke this article. No one may be obliged without legal basis to reside in a certain territory of Austria or to refrain from it.

Citizenship may only be granted, changed or deprived in accordance with the **Citizenship Act (Staatsbürgerschaftsgesetz StbG)**. The Citizenship Act does not stipulate any special provisions for persons with disabilities; however, the application of certain provisions can affect disabled people adversely. Thus, Sec 10 para 1 L 7, for instance, stipulates that citizenship may only be granted after a lawful and continuous residence for a period of 10 years, provided the person concerned has a secured maintenance. This provision poses a hurdle to persons with disabilities because their unemployment rate is above average.

Persons with disabilities are actually deprived of their right to liberty of movement given the fact that **social benefits** can usually not **cross national borders**. The provisions on social benefits differ from country to country. Often they even differ from region to region within the same country. In individual cases, a person with a disability needs to clarify in advance if he/she is entitled to comparable social benefits in the country of destination.

Recommendations:

- Conclusion of **intergovernmental agreements** in which the state parties agree on the mutual recognition of entitlements to social services of citizens of each other's countries.

Article 19 Living Independently and being included in the Community

As an introductory remark it should be noted that in the German translation of Art 19 the English term "community" should generally be translated as "Gesellschaft" (society) and not "Gemeinschaft" (community). Art 19 stipulates the full participation of persons with disabilities in society. The application of the term "Gemeinschaft" (community) has the connotation of a life merely in community with other people with disabilities.

1. Living Independently and Free Choice of the Place of Residence

The principle of living independently as such is neither embodied in the constitution nor in any other law (with the exception of the Federal Care Allowance Act (Bundespflegegeldgesetz BPGG)). Sec 1 of the Federal Disability Equality Act (Bundesbehindertengleichstellungsgesetz BGStG) describes its purpose as "equal participation of persons with disabilities". of course, this must include as well independent decision-making and independent realization of these decisions..

Following provisions/laws tend to conflict with principle of living independently:

- Sec 27 d Consumer Protection Act (Konsumentenschutzgesetz KSchG) that prescribes minimum standards for the personal rights in (nursing) home contracts.
- Sec 1 Federal Care Allowance Act (Bundespflegegeldgesetz BPGG) that stipulates the partial covering of extra costs for persons "in need of care": if benefits under Art 19 were based on this provision, personal assistance would be equated with (medical) care which would be contrary to the principle of living independently. However, Sec 1 Federal Care Allowance Act is the only ordinary law that uses the term "independent" after all.
- Home Residence and Accommodation Act (Heimaufenthalts- und Unterbringungsgesetz) → cf. Art 14
- Guardianship Act (Sachwalterschaftsgesetz) → cf. Art 12

The establishment, the maintenance and the operation of care facilities for persons with disabilities are subject to the competence of the regions (Laender) that have passed **Home Residence Laws**. Due to differences in the regional laws, changing one's place of residence becomes enormously difficult for people with disabilities. Civil law regulations and regulations about measures that limit one's freedom are subject to the competence of the Federal Government (Home Contract Act (Heimvertragsgesetz), Home Residence Act (Heimaufenthaltsgesetz)→ cf. Art 14).

Due to a lack of financial support, persons with severe disabilities as well as persons with learning difficulties usually do not have the chance to decide independently where and with whom they would like to live. Demands for community-based forms of living and short-term care are much higher than offers. Often, the only option is the **accommodation in homes** (partly even homes for the elderly and nursing homes). At present, partially and fully supported residential communities are exclusively occupied by residents with different disabilities who are escorted by two caregivers. There is almost no interaction with the adjacent apartments or their residents. The present care ratio foresees time structures that are neither appropriate to one's needs nor individual. Individual talents and independence of people with disabilities are not supported. The existing structures in homes are thus generally inconsistent with the principle of independent living. Moreover, these structures encourage abuse as well as physical and sexual violence → cf. Art 16. In any case, there are no official inquiries on the situation and the state of satisfaction of persons with disabilities who live in homes and residential communities.

Persons with a **psychosocial disabilities** are presently cared for by the Assistance for Homeless People, for instance in Vienna. This is absolutely insufficient and inadequate from a professional point of view. The "funding chaos" as a reason for frustrating the optimum use of resources and appropriate care has already been highlighted in the 2004 Austrian Psychiatric Report.⁸² The tremendous fragmentation of the funding of the care system hinders the continuity of care in cases of psychosocial disabilities. Due to differing legal regulations and funding mechanisms, psychiatric care is marked by a lack of continuity in terms of care and mostly a lack of coordination of the different insurers, facilities, and sponsors in the medical and social, in-patient, out-patient and complementary fields.

⁸² 2004 Austrian Psychiatric Report by the Federal Ministry for Health and Women. Cf. http://www.bmg.gv.at/site/attachments/9/9/5/CH0963/CMS1098965386003/oesterreichischer_psychiat_riebericht_2004_katschnig_et_al.pdf.

2. Support Services

Persons with disabilities are granted **care allowances** as a subsidy for the compensation of care-related additional expenditures. It has the purpose of reimbursing additional expenditures for care at a fixed rate in order to assure the required care and assistance for persons in need of care as far as possible. Another purpose is to improve the chance of leading an independent and needs-oriented life. Affected people have a legal entitlement to this allowance (they need to apply for). However, the care allowance bases upon a purely medical orientation and considers primarily basic needs such as personal hygiene.

Depending on the individual need for care, care allowances currently amount to a monthly sum of Euro 154.20 at Level 1 of the care allowance levels and Euro 1,655.80 at Level 7 of the care allowance levels. Due to the fact that persons with a high need for assistance cannot even cover their existential basic needs with this amount, especially persons who receive Levels 5-7 of the care allowance levels are constrained to live with their families or in homes in most of the regions (Laender). For persons with learning difficulties or intellectual disabilities it is often difficult to receive the required amount of care allowances because the conditions are predominantly tailored to persons with physical or sensory impairments.

Since the introduction of care allowances in 1993, they have been revalued four times, which resulted in an **enormous loss of purchasing power**. In 1995, care allowances have been increased by 2.8 percent and in 1997 the allowances for Level 1 have been cut by 22 percent. Only in 2005, care allowances have been increased once again by 2 percent. The last increase in care allowances occurred in 2008 but staggered; for Levels 1 and 2 an increase of 4 percent, for Levels 3 and 4 an increase of 5 percent and for Levels 5 and 6 an increase of 6 percent. A report of the Institute of Advanced Studies (Institut für höhere Studien) indicates that the price level has increased by 18 percent between 1997 and 2007 while the average expenditure for federal care allowances have only been increased by 2.4 percent. Thus, the average amount of care hours that the affected persons are able to afford from their care allowances, have decreased drastically during this period.

In the year 2010 massive cuts were introduced for beneficiaries of the care allowance of level 1 and 2 by by raising the limits of the need for care as a condition for the receipt of care allowances. At present, half of the recipients of care allowances fall into levels 1 and 2. This development is an enormous step backwards that contradicts the CRPD and is likely to impede the realization of an independent life.

The agreement between the Federal Government and the regions (Laender) about the **24-hour-care** has not brought the expected relief. Often, care-giving relatives (and due to multiple burdens, predominantly women) are massively overburdened; the existing support measures often do not suffice for balancing these burdens.

3. Personal Assistance

The chance to be entitled for **personal assistance** depends on the aspect of life for which it is required. Personal assistance at work is subject to the Federal Government; personal assistance in other aspects of life, on the other hand, lies in the competence of the regions (Laender). Neither at federal governmental nor at regional (Laender) level, there are harmonised standards or legal entitlement to comprehensive personal assistance in all aspects of life in order to enable an independent life. In reality, this leads to great uncertainties and legal uncertainties among the affected persons and often to random decisions on the approval of the required benefits.

Personal assistance at the workplace is funded on the basis of a directive “for the promotion of personal assistance at the workplace” at the national level since 2004. This contains all disability-related assistance either at the workplace or at the training location The way to work is included as well. The basis of this support service is the determination of the need for care. Clients undertake this determination together with an assistant service center. According to the directive, assistant service centers shall be set up nationwide whereby organizations of affected persons are to be preferred. However, the hourly rate for personal assistants that is far too low at Euro 7.42 (gross) is problematic. Furthermore, it is disturbing that this offer is restricted to persons with very high demands for support while persons with learning difficulties and persons who receive Levels 1 and 2 of the care allowance are generally excluded from this offer. According to information by the Federal Ministry of Labour, Social Affairs and Consumer Protection, only persons of Level 5 of the care allowance and above are entitled to personal assistance at the workplace provided that they show the expertise and personal qualification for the exercised or sought job. Thus, only 282 persons have claimed personal assistance at the workplace in 2008. The reduction of support benefits in the area of work furthermore results in disadvantages for all persons who are not considered sufficiently capable of working and sufficiently productive.

The approval of **personal assistance in other aspects of life** is only regulated in a few regions (Laender) - such as Tyrol, Upper Austria and Vienna - but very differently. Even here there is no legal entitlement for comprehensive personal assistance. Anyhow, the existing offers for personal assistance beyond the workplace cannot sufficiently cover the urgent

demand for persons with physical limitations, chronic illnesses, sensory and perceptual impairments and for persons with learning difficulties.

4. “Barrier-free” Accessibility to Services for the General Public → cf. Art 9

Despite existing legal bases and specific staged plans for the elimination of barriers in different areas, there is still a huge lack of comprehensive accessibility in Austria. This also includes community-based services and facilities that are open to the general public. A major problem in this context is the lack of entitlement to file for injunctive relief or for the elimination of barriers (the existing form of mere damage compensation provision on the basis of discrimination due to lacking accessibility proves to be little effective → cf. Art 5). Even in the issuing of new laws there are sometimes violations against the rules for accessibility, e.g. the new building law (Baugesetz) in Styria according to which businesses have been explicitly exempted from the obligation to provide accessibility.

Recommendations:

- Valorization of **care allowances** and measures towards a long-term protection of the financial viability of the care system
- **Legal entitlement to comprehensive personal assistance** in all aspects of life; personal assistance for all persons with disabilities (including children and persons with psychosocial disabilities) must be accessible, appropriate to one’s needs, irrespective of one’s income, freely selectable in its organizational form and independent of one’s place of residence; this includes as well support groups for the support of persons with learning disabilities as well as persons with psychosocial disabilities in their everyday lives
- Evaluation of the individual needs of the affected person and approval of an adequate “**personal budget**”
- **reform of the existing laws** to in accordance with the stipulations of the convention in terms of the realization of an independent life, e.g. Home Residence Act and Accomodation Act (Heimaufenthalts- und Unterbringungsgesetz) (→ cf. Art 14) and guardianship laws (→ cf. Art 12)
- More offers in terms of **independent forms of living** for persons with disabilities
- Expansion and qualitative improvement of **out-patient treatment** for persons with psychosocial disabilities, especially youths, towards a sustainable care by sufficient and adequately qualified staff
- Creation of comprehensive **accessibility** in terms of access to services and facilities for the general public → cf. Art 9

Article 20 Personal Mobility

There are several regulations at federal and regional (Laender) level in terms of **supporting the mobility** of persons with disabilities in the form of benefits in kind and financial benefits. However, **great differences** in the criteria for the approval as well as in the quality of these services pose a serious problem. These differences often lead to unequal treatment of the affected ones and also result in an odyssey for persons with disabilities if they want to apply for and receive these benefits (“funding jungle”). The following aspects in particular have negative effects on an adequate and equal utilization of the required support services for persons with disabilities:

- Different criteria for the approval of benefits at regional (Laender) level
- Several different insurance institutions (e.g. the Pension Insurance Institution, the Labour Association, the Laender, the Federal Social Office, the General Accident Insurance Institution, or fonds) that grant benefits according to different criteria; likewise, there are also differences in the quality of benefits in kind
- A general lack of legal entitlement to benefits

1. Personal Mobility

The personal mobility of persons with disabilities in public transport and personal transport is only given partially. In terms of public transport, all providers of public means of transport, transport systems and transport equipment are, according to Sec 19 para 10 Federal Disability Equality Act (Behindertengleichstellungsgesetz BGStG), obligated to formulate staged plans for the elimination of barriers → cf. Art 9. Such plans for the gradual implementation of accessibility until 2015 do indeed exist, however, there are significant differences regarding the quality of measures foreseen in the various plans.

Concerning the Austrian **railway traffic**, the OEBB (Oesterreichische Bundesbahnen, Austrian Federal Railways) cooperates with representative groups about measures for the improvement of the accessibility of transport. For instance, the Service Center “OEGS.barrierefrei” provided training to OEBB sales staff in using sign language when communicating with customers who are deaf or hard of hearing and in avoiding communicative barriers. Similar cooperations for fostering accessibility exist with regional infrastructure operators. However, there is evidence of a concentration to city regions while the development of non-urban areas and rural regions is rather regressive. There is much need for improvement for persons with mobility impairments in terms of the entry, transit, and

exit services of the OEBB. Thus, the registration system for the mobility service is rather complicated, error-prone and unreliable (the registration must occur within 24 hours before departure – or at least 48 hours in the case of journeys abroad – via a telephone hotline with costs or elaborate online forms). Due to logistic problems, wheelchair users are very often constrained to put up with longer travel times. Short-term Changes (such as changes in arrival or departure gates (platforms), replacement bus services, technical defects of elevators, etc.) cannot be taken into account. Transit times often are calculated in such short intervals that persons with disability impairments can not catch up with them. Low floor vehicles are still used too rarely or at irregular intervals.

Travelling with the **ÖBB Postbus**: according to information entitled ÖBB Postbus – Barrier-Free Travel at www.postbus.at, more than half of ÖBB buses are accessible. They are low floor buses with fold-up ramps or buses with a wheelchair lift. However, the use of these buses is difficult by the fact that passengers do not receive any relevant information about which routes are equipped with low floor buses. People with limited mobility can obtain information by telephone from the Postbus customer information centre about barrier-free routes, and can state specific wishes for a journey so that an accessible bus can be made available. → At www.wienerlinien.at, for example, the latest information on lifts in stations can be obtained. Information is provided about which Wiener Linien lifts are currently out of order, and where maintenance work on lifts is planned. This service for passengers with limited mobility is certainly very helpful. However, a mobile phone with an internet connection is needed to be able to access the information while travelling.

→ Bus and coach companies are still purchasing new, non-accessible buses, such as the company WESTbus GmbH (51% owned by Blaguss Reisen GmbH and 49% by Rail Holding AG, the parent company of WESTbahn), which has operated regular coach services since 11.12.2011. This is an important and long-lasting discrimination against people with disabilities as defined by the Disability Equality Act. In April 2012, the OEAR therefore applied for conciliation proceedings on this issue at the Federal Social Welfare Office. In the conciliation talks on 3.10.2012 an agreement was reached with Blaguss Reisen (the operator of WESTbus). Details of the conciliation agreement can be viewed in the BIZEPS conciliation database at <http://www.bizeps.or.at/gleichstellung/schlichtungen/> under the title 'New coaches without space for wheelchairs'.

In terms of **air traffic**, Vienna Airport (Wien Schwechat) has an escort service with suitably trained staff. However, the construction of the new terminal at Vienna Airport provides a very good illustration of the fact that planners are not well-informed about accessibility.

CASE STUDY A: Barriers in the newly-constructed Check-in 3 (Skylink) (Report of a wheelchair user. Source: www.bizeps.or.at, last viewed in November 2012)

When I went to have a look at the departures hall I immediately noticed that there were no signs showing the barrier-free route from the arrivals car park to Check-in 3.

The way from the check-in to an accessible toilet, for example, is very long, and the site maps are not clear. One toilet on Level 1 can only be opened with a button. When pushing the button one blocks the door because it is so narrow. The next toilets are on Level 0 - however, you first have to open two awkward fire doors to get to the toilet. The signs showing the way to the toilet at the other end of Level 0 are too sporadic. Some barrier-free toilets are signposted as such, and some are not, although they do exist. So if you want to go to the toilet before checking in, it is very unpractical. The routes to the toilets are very poorly signposted, and in some cases not at all...

In terms of **occasional transport** the problem is that cabs and rental cars do not provide accessibility. In this regard, there is no regulation within the Occasional Transport Act (Gelegenheitsverkehrsgesetz GelverkG) or in the trade regulations (Gewerbeordnung GewO). Thus, the personal mobility of persons with disabilities is not adequately ensured, especially regarding the requirements of freely selectable times and affordable costs.

For an increase of mobility with free choice of timing and at affordable costs, there are various offers, supplements, subsidies and grants. However, they are regulated very differently and furthermore, there is no legal entitlement to them. There are a few grants by the Federal Social Office for the job-related field. Personal mobility during leisure time, on the other hand, is regulated by the various different disability acts of the regions (Laender). Personal mobility is not only inconsistent but often also insufficient. Depending on the region (Land), travels during leisure time are mostly offered by charity organizations (e.g. the Johanniter, the Austrian Red Cross, the Malteser, etc.) and are either free of charge or (in most cases) at least available at an affordable cost (e.g. with supplements from the state or the municipality; however, there are certain income limits, for instance, in Vienna). It must be noted though that the availability of these transport services is often problematic. Most often, persons with disabilities cannot select their time freely because these transport services only have a limited share of freely available journeys. Thus, there is a dependency on cab services or support from relatives or neighbors, especially in rural areas.

There are various **supplements** for mobility support by the Federal Social Office and at regional (Laender) level. Such mobility and transport supplements (mostly one-time subsidy payments of approximately EUR 600 per annum) have the purpose of covering disability-related additional expenditures, including the free vignette for high ways. The supplement usually depends on the degree of the disability and is predominantly granted to persons who are actively participating in the labor market. Thus, persons with disabilities who are unemployed are disadvantaged (especially children or retired persons).

An example is the mobility supplement (Federal Social Welfare Office): this subsidy has been cut by 26%. In 2010, the mobility supplement was still EUR 780. For 2011 and 2012 it was only EUR 580. In addition, this supplement is no longer paid to people with disabilities who are in marginal part-time employment. This is a worsening of the situation for people with disabilities.

Public transport operators usually grant **fare discounts** (e.g. the OEBB as well as regional means of public transport). There are also certain **tax reliefs**, e.g. in terms of expenditures for cab services for people with walking disabilities, allowances for cars (that are restricted to persons with walking disabilities with impairments of at least 50 percent) or expenditures for guide dogs. **Vehicle drivers with walking disabilities** can get certain facilitations, provided they issue an identity card according to Sec 29 b Road Traffic Act (Straßenverkehrsordnung StVO). e.g. the use of parking space for people with disabilities. In reality, such parking spaces are either insufficiently available or only available at certain times of the day. Furthermore, they are often occupied by other vehicles or not accessible (e.g. the level difference is too high or there is either not enough space to unload a wheelchair or inappropriate flooring such as grass or gravel). Because of that, persons with walking disabilities are restricted in their personal mobility.

2. Mobility Aids, Animal Helpers and Personal Assistance

High-quality **mobility aids** usually often have high amounts retained for the own account. Aid devices that are fully or mainly sponsored often are outdated models and do not correspond to individual needs. There usually are no supplements for assistive technologies such as speech readers, etc. The competencies for the handling of and the deciding on requests are highly complex and there does not exist a standardized authority so far. Furthermore, there is no legal entitlement to these technologies. For this reason loose sponsoring bodies such as welfare organizations etc. have to step in to cover the financial expenses. On the other hand, there are excellent supplements for the adaptation of jobs by the Federal Social Office. The access to devices is guaranteed through various social insurance institutions.

Supplements and allowances vary according to the form of disability. Thus, supplements for hearing devices, for instance, are only small amounts whereas there are higher supplements for wheelchairs.

Regarding questions about **personal assistance** in all aspects of life → cf. Art 19

3. Training in Mobility Skills and Training for Specialist Staff

According to Point 9 of the guidelines of the Federal Ministry of Labour, Social Affairs and Consumer Protection on the “Integration into Employment of People with Disabilities”, the Federal Social Welfare Office offers grants for mobility training. Furthermore, there are grants of the regions (Laender) in the framework of disability assistance, e.g. for persons at integrated businesses.

4. Awareness Raising of Manufacturers

Generally, there are grants for the development of and research about mobility aids. However, these are mostly for short-term projects. Grants for long-term projects in the fields of basic research and clinical research that could achieve better results, do not exist. This has also been confirmed by the Ministry of Science and Research upon inquiry from the Independent Monitoring Committee.

Recommendations:

- Measures towards **comprehensive accessibility** in the area of individual transport, public transport and corporate transport, especially in rural areas → also see Art 9
- **Standardized criteria** for the approval of grants and **equal quality** of benefits in kind at federal and regional (Laender) level
- **Legal entitlement to grants** for ensuring personal mobility and equal access to assistive technologies for all persons with disabilities (irrespective of employment status)
- **Freedom of choice** in the selection of aid devices that are appropriate in terms of individual requirements and the latest status of technology as well as individually affordable
- **High-quality** services for everyone, irrespective of insurance institution
- A standardized **administrative body** that provides counseling, informs about aid devices, interacts with decision-makers and supports proposals and requests.
- **Mobility training** for persons with disabilities (especially for children in order to foster their independence) and for specialist staff who work with persons with disabilities
- Action plan for the support of long-term projects about **research and development** of mobility aids

Article 21 Freedom of Expression and Opinion, and Access to Information

The right to freedom of expression and opinion for all human beings is generally regulated by **Art 13 Organic Law (Staatsgrundgesetz StGG)** and **Art 10 ECHR (European Convention on Human Rights)**. However, the granting of comprehensive accessibility in terms of access to information and the exercise of the right to freedom of expression and opinion for persons with disabilities is insufficient in many aspects of life.

1. Accessibility in terms of Access to Information

Sec 8 para 2 Federal Disability Equality Act (Behindertengleichstellungsgesetz BGStG) prescribes access to all services of the state by persons with disabilities, including information services (Sec 6 para 5).. However, a violation of these rules merely results in the entitlement to compensation for the affected person but not in the obligation to eliminate the barriers. There are no effective measures or incentives for private service providers to provide all information in accessible formats. Private providers often lack the adequate knowledge about the prescription of accessibility. Thus, there is often no awareness about their wrongdoing in terms of the present discrimination.

Offers of information in alternative communication (such as Braille, sign language, and the Lorm's alphabet), are still insufficient with regard to many aspects. Apart from a few brochures by the Federal Ministry of Labour, Social Affairs and Consumer Protection about specific subjects for persons with disabilities there is little information in "easy-to-read" – versions. → also see Art 9.

According to Sec 42 d para 1 Copyright Act (Urheberrechtsgesetz UrhG), libraries have the permission to prepare publications in electronic formats and make them available to blind and visually impaired persons. In practice, various university libraries offer reading spaces and services for the processing of literature for blind persons.

2. Alternative Communication in Official Interaction

Sec 17 a General Administrative Proceedings Act (Allgemeines Verwaltungsverfahrensgesetz AVG) ensures blind and visually impaired persons access to files. According to Sec 29 para 7 Delivery Act (Zustellgesetz ZustG), the delivery service must guarantee accessibility to the particular services for disabled persons according to the state of the art of technology. In reality, the communication of persons with disabilities (e.g. hearing-impaired persons) with official authorities is problematic because there is no availability of adequate interpretation services and alternative communication. Furthermore,

the automatic bearing of costs of interpretation services is not foreseen. There are no “barrier-free” communication services for deaf-blind persons (such as the Lorm’s alphabet or tactile sign languages) → also see Art 9 and 13.

3. Accessible Mass Media and Websites

According to Sec 4 para 1 L 10 ORF-Act (ORF-Gesetz), the program mission of the Oeffentlicher Rechtlicher Rundfunk (ORF, Austrian Broadcasting Corporation) contains the consideration of the concerns of persons with disabilities. According to Sec 5 para 3 ORF-Act, information programs of the ORF have to be designed according to the requirements of the technological development and the economical viability in a way that makes it easier for deaf and hearing-impaired persons to follow the program. Regarding grants from the Federal Government, the basic principles of the Federal Disability Equality Act (Behindertengleichstellungsgesetz, BGStG) must be preserved according to Sec 8 para 3 Federal Disability Equality Act.

At present (status: December 2012), approximately 60 percent of the ORF programs have subtitles,⁸³. However, subtitles assist deaf persons only to a limited extent because German is a foreign language to them. Merely one newscast of the ORF (namely, ZiB 1 at 7:30 P.M.) is broadcast in Austrian sign language (ASL or Oesterreichische Gebaerdensprache OEKS). Only a few programs are broadcast with audio descriptions. Private TV stations do not provide any subtitles or dubbin in ASL.

Since July 2009, after the swearing-in of the first deaf Member of Parliament in Parliament, its sessions are broadcast in sign language. Specific information about the UN convention in the (programs of the) ORF is unknown. Likewise, there is no program of the ORF that is designed or moderated by persons with disabilities.

Sec 1 para 3 E-Government Act (E-Government Gesetz E-GovG) demands the **accessibility of websites by the Federal Government**. According to an evaluation of the Federal Chancellery’s Office in 2007⁸⁴, 94 percent of the web services at federal level have

⁸³ Cf. http://www.bizeps.or.at/downloads/etappenplan_orf3.pdf.

⁸⁴ Cf. Evaluation of the Federal Chancellery’s Office about Accessibility, 2007, p. 19. <http://www.digitales.oesterreich.gv.at/DocView.axd?CobId=24388>.

the minimum standards of the WCAG A⁸⁵. However, the WGAC A is not always sufficient. There is still a considerable demand for improvement in order to adapt all websites to the standards AA and AAA, respectively.⁸⁶

4. Recognition and Promotion of Sign Languages

Despite the recognition of the Austrian Sign Language (ASL) as an independent language in Art 8 para 3 Federal Constitutional Act⁸⁷ and Art 9 para 4 Upper Austrian Regional Constitutional Act, there are no detailed regulations in the basic laws in order to ensure comprehensive services or support in terms of communication and thus enabling an independent life → also see Art 9. Up to this date, there are often no (legal) texts that have been translated into sign language. The question of bearing of costs for sign language interpretation has not been resolved in many cases, like, for instance, at universities, at school (there are different regulations for federal- and regional (Laender) schools), in the field of leisure, at medical practitioners' offices, at hospitals, etc.

Bilingual instruction with the use of ASL as a language of instruction is not embodied adequately in the Austrian **educational system**, which constitutes an offense of Art 21 lit e. There are no Early Childhood Intervention (ECI) measures for parents and children in terms of ASL, and furthermore, no embodiment of ASL as a language of instruction and a general promotion of the sign language and deaf culture in Austria → for further information see Art 24.

Recommendations:

- Measures to ensure that persons with disabilities are provided with all the **information** intended for the general public (media reports, laws, decrees, administrative proceedings, etc.) in Braille, sign language and other **alternative forms of communication** on time and without additional cost
 - Measures for comprehensive and especially communicative accessibility (effective sanctions and incentives for private entities) → cf. Art 9
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⁸⁵ Guidelines of the Web Accessibility Initiative (WAI) by W3C – Web Content Accessibility Guidelines 1.0

⁸⁶ Cf. Evaluation of the Federal Chancellery's Office about Accessibility, 2007, FN 60, p. 31.

⁸⁷ Art 8 para 3 Federal Constitutional Act: "The Austrian Sign Language is recognized as an independent language. Further details are regulated by the laws."

- Measures towards ensuring accessible and non-discriminating broadcasting of programs by the mass media; obligation for the ORF to broadcast all programs with informative value in sign language as well
- Reimbursement for sign language interpretation services in all aspects of life; improved training opportunities for sign language interpreters, amplification of the pool of qualified sign language interpreters

Article 22 Respect for Privacy

Art 22 is closely related to the other rights of the convention, especially Art 25 (privacy with regard to health care), Art 19 (Living Independently and protection of one's privacy especially for the residents of homes), Art 12 (protection of one's privacy in terms of guardianship cases) and Art 8 (protection of one's privacy regarding portrayal of the media) → hence, also compare the detailed information in these articles

1. The Right to Privacy

In Austria, the right to privacy and family life (including the protection of one's home, correspondence, etc.) is guaranteed by constitutional law under **Art 8 ECHR**. However, it is questionable whether this regulation offers adequate protection for persons with disabilities in terms of Art 22. Some **areas of personal rights** are especially protected by law in Austria, e.g. one's personal honor (Sec 1330 Austrian Civil Code (Allgemeines Bürgerliches Gesetzbuch ABGB), Sec 111 et seqq. Criminal Code (Strafgesetzbuch StGB)), one's name (Sec 43 ABGB), the privacy of correspondence (Sec 118 StGB), the right to one's own picture (Sec 78 Copyright Act (Urhebergesetz UrhG)) or the Copyright Laws. An offense of these protection laws may result in an entitlement to compensation. Regarding the rights of persons with disabilities, Sec 27 Consumer Protection Act (Konsumentenschutzgesetz KSchG) contains minimum standards for home contracts in terms of the respect to privacy for home residents. All home residents have the right to designate a person of trust that has to be contacted or informed by the management in cases of important (civil) legal matters.

Art 22 is especially significant for persons with disabilities who are dependant on third parties and thus, often lack self-determination in the surrounding of their housing arrangements. Art 22 para 1 stipulates that disabled persons are entitled to legal protection from attacks on and **interference with their privacy**. In Austria, persons with disabilities who are accommodated in larger facilities that also have shared rooms (especially at homes for the elderly and care facilities) are repeatedly affected from limitations of their privacy or private sphere. Specific figures or statistics about such cases are not available → also see Art 19.

In terms of the protection of privacy, three areas can essentially be set apart:

The individual sphere (Protection of the right to self-determination): e.g. the right to informed self-determination, the right to decide about the exposure and use of personal data

Privacy (life within one's home, within the family, privacy): an offense occurs, for instance, in the case of unsolicited email delivery, audio recordings without consent, falsified portrayal of one's lifestyle by the media, the use of one's name or picture for advertisement purposes, defamatory comments

Intimacy/the private sphere (the internal world of thoughts and feelings, sexuality): an offense occurs, for instance, in cases of the publication of private letters or diaries

The state is obligated to provide the protection of privacy in all these areas and also has to ensure effective measures for the monitoring and enforcement by independent authorities. In the Austrian dualistic system (civil and criminal protection), the enforcement of the protection against interference into one's privacy is problematic since the proceedings to not foresee any shifting of the burden of proof.

2. Data Protection

The protection of one's privacy also includes the obligation to treat information on personal, health and rehabilitation confidentially. They may only be forwarded to others with the consent of the affected person. In Austria, there is no sufficient protection or control in terms of the dissemination of the personal data of persons who are accommodated or employed at homes or facilities. Usually, the affected persons can not decide to prevent the dissemination of the data. In practice, there is evidence that personal data is disseminated by hospitals very easily (e.g. to insurance institutions). Currently, all private insurers obtain information about which services have been provided to a patient. With the Insurance Law Amendment Act 2010 (Versicherungsrechts-Änderungsgesetz 2010), the Federal Ministry of Justice has determined that private insurances receive more health data about their patients in the future. This way, the private insurances shall learn about the proportionality, i.e. if the services are in proportion with the health impairment. Data protection experts, the Data Protection Council, the Medical Association as well as the Labour Association have raised great concerns about this amendment. There is a certain risk that "tiresome patients" could lose their insurances because of these new legal guidelines.⁸⁸ The **Data Protection Act 2000 (Datenschutzgesetz DSG 2000)** is the legal basis for data protection in Austria. Beyond

⁸⁸ Cf. <http://www.nachrichten.at/nachrichten/politik/innenpolitik/art385,411705>.

that, there is a large number of special provisions in terms of data protection under ordinary law and especially under public law. The **Data Protection Council** has been installed at the Federal Chancellery. On request of the federal and regional governments, the council gives advice on matters of legal policy. Its mission is the preservation of data protection and the monitoring of the development of data protection in Austria plus formulating recommendations for its improvement.

The observance of data protection is monitored by the **Austrian Data Protection Commission**. However, there is the option of civil enforcement of data protection at ordinary courts (especially the deletion and rectification of incorrect data). According to a report of the Data Protection Commission of 2007⁸⁹, there is a special need for legal action in Austria, That applies, inter alia, to the transmission of data of medical treatments to private insurance institutions by health service providers and and to using the social insurance number as a means of identification beyond the area of health care. In its report, the commission also addresses comprehensive information network systems because in this ambit there is generally a higher risk of interfering with data protection. These systems include, for instance, the **Oesterreichisches Zentrales Vertretungsverzeichnis OEZVV** (the Austrian Central Representatives Directory) at the Austrian Chamber of Notaries for the registration of a precautionary power of attorney (Sec 284 f Austrian Civil Code ABGB) and a power of attorney (or its revocation) of close relatives (Sec 284 c Austrian Civil Code); furthermore, new **information network systems** on the basis of regional (Laender) law. Such new systems are currently established in the areas of youth welfare, social assistance and disability assistance.

For Austria, the **data protection directives of the European Union** are binding and are to be implemented under national law. The general Data Protection Directive 95/46/EC has been complemented by the data protection directive for electronic communication with the title "Telecommunication Data Protection Directive" 2002/58/EC, as well as the "Data Retention Directive" 2006/24/EC. The latter stipulates the obligatory data retention of traffic data in terms of telecommunication and the Internet and commits member states to the introduction of minimum (data) retention periods of six months (for the Internet) and 12 months (for telephony), respectively. This directive has been massively criticized by human

⁸⁹ 2007 Data Protection Report of the Data Protection Commission, <http://www.dsk.gv.at/DocView.axd?CobId=30637>.

rights organizations and data protection supervisors⁹⁰ and is subject of a direct action before the European Court of Justice; in the event of appropriate implementation by Austria, it would also have negative effects on the protection of personal data of persons with disabilities.

Recommendations:

- **Awareness-Raising** about the right to privacy by persons with disabilities directed at the affected persons as well as medical and care-giving staff
- Measures for improved **protection** from and **monitoring** of interferences with the privacy of persons with disabilities who live or work at facilities (e.g. by the Austrian Ombudsman Board that is, inter alia, responsible for the implementation of Art 16 para 3 CRPD)
- More offers in terms of **independent forms of living** for persons with disabilities in order to ensure the exercise of the right to privacy → cf. Art 19
- Precise regulations and enhanced **transparency** in terms of handling medical and personal data of persons with disabilities
- Compliance with **human rights-based protection standards** in terms of the implementation of European data protection regulations (e.g. the Data Retention Directive)

Article 23 Respect for Home and the Family

Art 23 guarantees the right to marriage and family and its derivative rights. The English version uses the term “home”, which is translated in the German version as “Wohnung” (“apartment”). The reason was to prevent confusion. Here we are not discussing the right to home as in Art 22, but the right to a life within a family setting by persons with disabilities.

1. Marriage and Partnerships

In Austria, the right to marriage and founding a family is generally guaranteed in the constitution under **Art 12 ECHR**. According to Sec 1 and 2 Marriage Act (Ehegesetz), the

⁹⁰ Cf. the statement of the Ludwig Boltzmann Institute for Human Rights about the draft report regarding the Amendment to the Telecommunication Act, http://www.parlinkom.gv.at/PG/DE/XXIV/ME/ME_00117/pmh.shtml.

right to enter a marriage is granted to persons who have legal capacity provided that they are of marriageable age (that is, who have reached the age of 18) or if they are declared marriageable (who have reached the age of 16 and are mature enough to enter a marriage). Underage persons or persons who are limited in their legal capacity, need the consent of a legal representative in order to be able to enter a marriage. In case of refusal of the consent, this can be replaced by the court (Sec 3 Marriage Act). Legal incapacity is referred to children below the age of seven years and to persons above the age of seven years who do not possess the use of reason. Underage persons above the age of seven and persons who are appointed a guardian according to Sec 268 Austrian Civil Code (ABGB) are determined as having limited legal capacity (Sec 102 Marriage Act).

A marriage is void if one of the spouses had no legal capacity at the time of entering the marriage or if he/she was in a state of unconsciousness or suffering from a temporary disorder of the mental activity (Sec 22 Marriage Act). A spouse has the right to demand divorce if the marriage - due to the behavior of the other spouse that is based on a mental disorder and can therefore not be considered a marital fault – has broken down to the extent that a restoration of relationship that resembles the nature of a marriage cannot be expected (Sec 51 Marriage Act).

Common-law marriages, such as long-term cohabitation in a shared household, long-term sharing of money matters and the existence of a long-term sexual relationship between two persons, do not develop the legal effects of a marriage. Generally in these cases there is no analogous application of the legal regulations related to marriage (e.g. no entitlement to spousal support, no division of the shared savings, etc.). **Same-sex couples** have the right to enter a registered partnership since 2010; however, these do not have the same (legal) effects as a marriage (e.g. different regulations in terms of naming, no right to adopt someone else's children or the children of one's partner).

In reality, persons with disabilities have enormous difficulties to exercise their right to marriage and family life. Compared to persons without disabilities, they often live alone. According to the 2008 Disability Report by the Federal Government, 31 percent of persons with disabilities live in single person households. Among people with disabilities who are of working age (that is, between the ages of 16 and 64), 19 percent of all male and 23 percent of all female persons with disabilities live by themselves; among persons with disabilities

above the age of 65, the number of people who live by themselves is 21 percent for males, while the share is significantly higher for women (52 percent).⁹¹ Especially women with disabilities and learning difficulties are often not determined as full and equal women within society and thus, they are often deprived of having partnerships, founding a family and becoming or being mothers.⁹²

2. Sexuality and Family Planning

The exercise of sexuality by persons with disabilities in general as well as the desire to have children, pregnancy and motherhood by women with learning difficulties still are **taboo subjects** in Austria. Often, persons with disabilities still have to fight the stereotyping of being considered “asexuals”. Most women with learning difficulties hardly have the chance to claim counseling services in terms of sexuality or their desire to have children.⁹³ There is almost no adequate sexual education within the family setting, at school or at facilities of the disability assistance nor is it made up during adulthood.⁹⁴ As far as it is known, only the region Styria provides special counseling services for persons with disabilities. Other measures are often only provided occasionally and without the essential sustainability.

Contraception is often used automatically. **Abortions** partly occur without providing adequate information or information that can be fully understood by the persons concerned. The communication with doctors and medical professionals is especially inadequate for deaf-blind and deaf persons. There is a lack of sufficient alternative forms of communication and interpretation services. There is a tabooing of sexual activity among persons with disabilities. This sometimes leads to the approval of sterilization as an allegedly safe form of contraception in order to prevent any further discussions or even control measures.⁹⁵ The

⁹¹ 2008 Disability Report of the Austrian Federal Government, FN 1, p. 22.

⁹² More recent data is currently not available.

⁹³ Cf. Kastlunger. 2009. Die Lebenssituation und die Unterstützungssituation von Müttern mit Lernschwierigkeiten in Österreich unter besonderer Bezugnahme auf die Bundesländer Niederösterreich und Wien. MA Dissertation, University of Vienna, http://othes.univie.ac.at/4409/1/2009-03-10_0007641.pdf.

⁹⁴ Walter (ed.). 2004. Sexualbegleitung und Sexualassistenz bei Menschen mit Behinderungen, p. 25.

⁹⁵ Cf. Pixa-Kettner. 1999. Konzepte der Begleitung für Mütter und Väter mit geistiger Behinderung. Ein Beitrag aus der englischsprachigen Literatur. In: Psychosozial (22), No. 77, Issue 3, 1999, p. 63. With the 1996 publication entitled “... *Dann waren sie sauer auf mich dass ich ein Kind haben wollte...*” – *Eine Untersuchung zur Lebenssituation geistig behinderter Menschen mit Kindern in der BRD*, Pixa-Kettner, Bargfrede and Blanken enabled the opening of the debate about the hitherto only larger

denial of the right to sexuality, however, is a strong interference with the basic rights of persons with disabilities. As observed by the World Association for Sexual Health (WAS), sexual rights are universal human rights and have to be granted to all persons on an equal basis with others. Furthermore, sexual health requires, that these rights are adequately recognized, respected and promoted within society. These (sexual rights) contain, for instance, the right to sexual freedom, sexual equality, sexual connection, sexual education, responsible family planning, the provision of sexual health care, etc.⁹⁶ In Austria, persons with disabilities have a great need to catch up on these matters.

In the event of **sexual contacts** between persons with disabilities **within care facilities**, the caregiver can - in cases of insufficient supervision - be prosecuted if the contact did not occur on a voluntary basis. Thus, the caregiver is guilty of the delict of injunction in terms of preventing a punishable offense, if supervised minors maintain sexual contacts with each other or with adults (Sec 286 Austrian Criminal Code). In the event of a pregnancy of an underage woman with learning difficulties, a medical report as well as the consent of the parents, the guardian and the guardianship court is required for the decision about an abortion.

Regarding adults, the caregiver does not have any responsibilities, neither do advocates have any obligations or a say concerning socio-pedagogical questions. Regarding sexual contacts between a person with disability and a person without disability, the latter can be accused of sexual abuse of a defenseless or a person with psychosocial disabilities -in case of a lacking capability of understanding the extent and possible consequences of sexual actions. (Sec 205 Austrian Criminal Code).

According to the Austrian Criminal Law, **active sexual assistance** is a further problem. The caregiver could under certain circumstances be found guilty of instigation to sexual abuse of a defenseless and psychosocially disabled person (previously "desecration" according to Sec 205 Austrian Criminal Code). This would be the case if the caregiver causes persons with learning difficulties and a lacking capability of understanding to sexual intercourse or other obscene actions. Provided that both persons are adults and capable of understanding and if

academic research project about this topic within the German-speaking environment. All further academic research projects and publications of these scholars are related to this research topic.

⁹⁶ Cf. World Association for Sexual Health (WAS), 14th Conference, Hongkong, 1999.

the desire for sexual contacts is given for both of them, assistance in sexual actions is not punishable.

Sec 146 d and 284 first sentence Austrian Civil Code guarantee protection from sterilization. An **involuntary sterilization** is punished as malicious grievous injury with up to 10 years imprisonment (Sec 87 Austrian Criminal Code). Thus, sterilization is only permitted upon consent and if the person has reached the age of 25 or if the intervention does not violate accepted principles of morality (Sec 90 para 2 Austrian Criminal Code). A prohibition of the sterilization of minors (which predominantly affects persons with disabilities) has been embodied through the Children's Law Amendment Act (Kindschaftsrechts-Änderungsgesetz, entered into force 1 July 2001) in Sec 146 d Austrian Civil Code. It says: "Neither an underage child nor its parents are allowed to give their consent to medical measures that have the purpose of leading to the lasting infertility of the underage child." According to Sec 284 Austrian Civil Code regarding persons under guardianship prescribes that the guardian may not give his or her consent to a medical measure that has the purpose of leading to lasting infertility of the person with disability unless there is – due to permanent physical illness - a serious risk for the life or a severe health damage of the affected person. The consent definitely requires judicial approval.

Real-life practices in terms of sterilization of persons with disabilities take place in a gray zone that is affiliated with the imprecise term "accepted principles of morality" ("gute Sitten") and the opinion of medical experts that is based on this concept.⁹⁷ Due to a lack of official figures, one may assume that there is still a high estimated number of unreported cases of sterilized women with learning difficulties of childbearing age. Furthermore, there is a wide lack of adequate information and counseling services for the affected persons.

3. Assistance in the Performance of Parental Responsibilities

According to scientific evidence, social support networks often are the best means to compensate for motherly and parental competencies. In the course of this, competence-promoting support is especially important in order to promote self-determined solutions to problems. Generally spoken, a physical or sensory impairment does not have any influence on the parental competencies of parents.

⁹⁷ Cf. Berger. 1998. Ärztliche Sicht – "Zwangssterilisation". Paper presented during the inquiry with the subject "Forced Sterilization – Human Rights Violation or Necessity?" that was organized by the "Gruenen" (Environmental Party's) Parliamentary Club at the Austrian Parliament on 5 March 1998.

In Austria, there is an tremendous lack of social conditions that enable parents with disabilities to live together with their child.⁹⁸ It seems that mothers and fathers with learning difficulties are one of the most strictly controlled and monitored groups of parents.⁹⁹ There are **hardly any forms of support** for accompanying **learning-disabled persons** during pregnancy or **parenthood**. Thus, aid often is only requested in situations of acute crises which mostly is rather competence-inhibiting; fathers are often excluded from the support network and families are often divided because only mothers and their children can be accommodated in institutions that provide accompanied living.

A further problem for parents with disabilities occurs with the strict division of the responsibilities of the involved bodies. Thus, disability assistance considers itself as being exclusively responsible for supporting mothers while the Youth Welfare Office, on the other hand, exclusively feels responsible for the well-being of the child. In reality, this inflexible distribution of authorities impedes a meaningful cooperation in terms of a common solution for all parties involved.

In Austria, there are no adequate and specific support services for mothers with disabilities, and especially for mothers with learning difficulties. Mother-and-child-facilities often declare themselves as not being responsible or incompetent if addressed by women with disabilities in situations of crises.¹⁰⁰ Future-oriented projects for increased demand driven counselling for mothers partly fail due to traditional attitudes about the capabilities and opportunities of women with disabilities.¹⁰¹

⁹⁸ Cf. Kassoume. 2006. *Unterstützungsangebote bei Schwangerschaft und Elternschaft von Menschen mit Lernschwierigkeiten in Wien*. MA Dissertation, 2006, <http://bidok.uibk.ac.at/library/kassoume-schwangerschaft.html#ftn.id2781150>.

⁹⁹ Cf. Pixa-Kettner & Bargfrede. 2004. *Elternschaft von Menschen mit geistiger Behinderung – ein soziales Problem?* In: *Soziale Probleme von Menschen mit geistiger Behinderung: Fremdbestimmung, Benachteiligung, Ausgrenzung und soziale Abwertung*, edited by Wuellenweber. Stuttgart, pp. 78-88.

¹⁰⁰ Cf. Ferrares. 2001. *Behinderte Frauen und Mutterschaft. Eine Bestandsaufnahme*. In: *Behinderte in Familie, Schule und Gesellschaft*, No. 1/2001; bidok, <http://bidok.uibk.ac.at/library/beh1-01-ferrares-mutterschaft.html>.

¹⁰¹ Cf. the example of a project of “Pro Mente” Lower Austria which - due to massive demands - designed a concept for the needs-oriented support of mothers with psychosocial disabilities and their children which was finally not approved by the Federal Government.

4. Care of Children within the wider Family

A child must not be separated from its parents against their will except for if the **separation** occurs **on the grounds of a court order** that must exclusively refer to the best interests of the child. The priority of the (wider) family in terms of child care that is stipulated in Art 23 para 4 and 5 UNCRPD, has been embodied in the Youth Welfare Act 1989 (Jugendwohlfahrtsgesetz 1989)¹⁰², the implementation acts of the regions (Laender) as well as in Sec 176 Austrian Civil Code.

In most cases, **persons with learning difficulties** or psychosocial disabilities are deprived of the chance to raise their child by themselves by means of a court ruling. As long as one parent does not have the full legal capacity, he or she must – due to legal regulations - neither represent his or her minor child nor execute the asset management (Sec 145 a Austrian Civil Code). Provided that the parents cannot exercise the parental custody, it will be transferred to the Youth Welfare Office. The closer family environment is preferred when surging for care options. There is no statistical data about this matter; however, affected persons stated that children have been taken away from them already at hospital or at mother-child-homes without any prior notice.¹⁰³

When parents **threaten the best interests of the child** through their behaviour, the court can **deprive or limit** their **parental custody**. According to jurisdiction, the best interest of the child is already threatened when the parents neglect or do not fulfil parental duties - such as in the case of alcoholism of the mother or if the custodial father persistently violates the prohibition of force according to Sec 146 a Austrian Civil Code¹⁰⁴ due to his education methods. According to legislative materials, threatening the best interests of the child does not exactly refer to the abuse of parental powers. It is sufficient that the parental duties have not been fulfilled (objectively) or that they have been severely neglected (subjectively) or even that the parents have endangered the best interests of the child due to their overall behavior. The best interests of the child can already be threatened by the fact that important

¹⁰² BGBl (Federal Law Gazette) No. 161/1989 amended BGBl I No. 41/2007.

¹⁰³ Cf. Hahn. 2002. Sexuelle Erfahrungen von Frauen mit geistiger Behinderung unter besonderer Berücksichtigung einer Einzelfalldarstellung. MA Dissertation, 2002, <http://bidok.uibk.ac.at/library/hahn-sexualitaet.html>.

¹⁰⁴ Sec 146 a Austrian Civil Code: The infant child has to follow the orders of the parents. Regarding the orders and their enforcement the parents have to take into consideration the age, the development and the personality of the child; the use of force and the cause of physical or emotional suffering are forbidden.

changes have occurred while the parents do not allow for these changes through consensual actions.¹⁰⁵

In practice, it can be observed that in many cases **taking away a child** is still given preference on the grounds of protecting the best interests of the child instead of enabling a life within the family with adequate counseling and support services. As research has shown, this occurs despite the fact that mothers would absolutely be in the condition of taking care for their children with the adequate form of support.¹⁰⁶ A survey that was conducted in Vienna and Lower Austria in 2008 has shown that approximately half of the recorded children (51 percent) do not live with their parents.¹⁰⁷ A placement with relatives, foster families, adoptive parents or in homes still seems to be dominant (in comparison to adequate support services for parents with disabilities). An urban-rural comparison of Vienna and Lower Austria leads to the assumption that there is a gap between rural and urban living spaces.

In Vienna, there is close networking with the **Municipal Department 11** (Youth and Family Welfare Office; MD 11) because this department is responsible for caring about the best interests of the child; furthermore, it is the department that is most likely to be able to provide resources. Optional services are in-patient treatment at mother-and-child homes, out-patient treatment, counseling services at mother-and-child-centers as well as the consultation of family helpers/assistants. However, the fact that the services of the MD11 are not specifically configured for persons with learning difficulties and that their social workers are often not attuned to this group of people is problematic as well. There are no long-term and continuous support services, such as, for instance, the parents assistance model. This model would enable the self-determined exercise of parental duties (similar to the provision of personal assistance in all aspects of life) upon conducting a needs analysis.

Recommendations:

- **Awareness-raising** measures in order to remove the taboo of the subject sexuality of persons with disabilities

¹⁰⁵ ÖJZ-LSK 2002/95 = EF 96.635.

¹⁰⁶ Cf. Hahn. Sexuelle Erfahrungen von Frauen mit geistiger Behinderung, FN 78.

¹⁰⁷ Cf. Kastlunger. Die Lebenssituation und die Unterstützungssituation von Müttern mit Lernschwierigkeiten, FN 68, pp. 96.

- Active and outreach **sexual counseling and education** for persons with disabilities (also for women with learning disabilities who desire to have children)
- Special **counseling services** for persons with disabilities (and especially women) regarding sexuality, contraception or abortion
- Support services in **parenting** for parents of children with disabilities as well as for parents with disabilities (e.g. family assistance and parents assistance) in order to ensure a life within the family
- Enhanced precautionary measures against **forced abortion** and **forced sterilization**

Article 24 Education

1. The Right to Inclusive Education (Art 24 para 1 and 2)

The obligation to inclusive education refers to the entire educational system. This means all public and private institutions that have an educational mandate, starting from early childhood education up to post-university training, adult education and lifelong learning.

The present **Austrian educational system** does not provide inclusive education neither in the Austrian legislation nor in practice.¹⁰⁸ Despite the amendment to the Schools Acts (in 1993,1996 and 2012)¹⁰⁹, these are still focused on the **integration concept** in its wording (which is the reason why the term “integration” will be used repeatedly hereinafter even though it is not in accordance with the wording and the concept of the Convention). The existing special school system and the concept of integration in schools have been embodied as equivalent systems. The extent and the form of integration highly depend on the regions (Laender). But even within the regions themselves, these have been developed in different ways

¹⁰⁸ Cf. Statement by the Independent Monitoring Committee about inclusive education of 10 June 2010,

http://www.monitoringausschuss.at/cms/monitoringausschuss/attachments/2/8/6/CH0914/CMS1276526308845/ma_sn_bildung_final.pdf.

¹⁰⁹ “SchOG-Novelle” (“SO-Amendment”), describes the Amendment to the School Organization Act(Schulorganisationsgesetz) as well as the related federal laws such as the School Education Act (Schulunterrichtsgesetz), the Compulsory Education Act (Schulpflichtgesetz) and the national teacher’s service law (LandeslehrerInnen-Dienstrecht).

(according to the prevailing traditions and regional policies).¹¹⁰ This has resulted in the development of very different traditions in terms of the integration of children with disabilities in the different regions as well as within the regions themselves. Thus, there are school districts where the special school system has actually been almost eliminated alongside districts where the confrontation with ideas about the joint teaching of children with and without disabilities is still in its inception.¹¹¹ Generally, it should be noted that the joint schooling of children with and without disabilities in Austria is fundamentally embedded into a segregating educational system; **inclusive education** has **not** been **realized** so far. Inter alia, this is also reflected by the distinctly lower number of disabled persons who have completed their A-levels or university degrees compared to non-disabled persons.¹¹²

a. Early Childhood Education, Care and Upbringing (0-6 years)

The sector of institutional facilities for early childhood education, care and upbringing consists of **nursery schools and kindergarten** for children between the ages of 0 and 6 years. The duties, objectives and overall conditions of these facilities are regulated by the legislation of the regions (Laender) so that children receive education to varying extents depending on their place of residence.¹¹³ Apart from integrated services, there are also special orthopedagogic kindergarten facilities. However, there is no legal entitlement to inclusive childcare at kindergarten and preschool age. Thus, equal opportunity is already not given for children between the ages of 0 and 6. Such problems are particularly due to a lack of places in creches and kindergartens, waiting periods for kindergarten placements of children between the ages of 0 and 3 years, a lack of nursing and medical services during the attendance of kindergarten, short periods of time that the children spend at kindergarten (e.g. between 8:00 and 10:00 A.M.) and a lack of childcare from midday onwards. In Vienna,

¹¹⁰ Specht. 2001. Schülerinnen und Schüler mit Sonderpädagogischem Förderbedarf an der Nahtstelle Schule – Beruf. Schulorganisation und Pädagogik am Ende der Schulpflichtzeit. In: Jugendliche mit Behinderungen zwischen Schule und Beruf, edited by Specht, Wetzel et al. Zentrum für Schulentwicklung, Forschungsbericht 29, Wien 2001, pp. 7-76 (13).

¹¹¹ Specht. Schülerinnen und Schüler mit sonderpädagogischem Förderbedarf, FN 81, p. 11.

¹¹² According to Mikrozensus 2007, only 14.6 percent of men and 15.7 percent of women with disabilities have obtained A-level or university degrees, in comparison to 31.3 percent of men and 33.3 percent of women without disabilities.

¹¹³ Stanzel-Tischler, Breit. 2009. Frühkindliche Bildung, Betreuung und Erziehung und die Phase des Schuleintritts. In: Nationaler Bildungsbericht Österreich 2009. Band 2: Fokussierte Analysen bildungspolitischer Schwerpunktthemen, edited by Specht. Graz, pp. 15-32 (21).

for instance, children with disabilities often do not have access to integrated groups because there are too few offers and not enough staff. The higher the need for support of children with disabilities, the more difficult it is to be offered a placement. In many cases, private owners do not have the financial resources in order to carry out structural changes or to employ skilled staff that is trained in special education.

As a result of an agreement between Federal Government and regions according to Sec 15 a Federal Constitutional Law, there is a compulsory year of half-day kindergarten for children who are in their last year before compulsory school attendance since 2009. This has the purpose of “providing all children with the best educational opportunities and entry chances into their future careers irrespective of their socio-economic backgrounds”. However, there is an exemption from this compulsory year of kindergarten, inter alia, for “children who cannot be expected to attend – due to a disability or due to medical reasons or on the grounds of notable special educational needs (SEN) or due to the distance or difficult road (infrastructure) conditions between the place of residence and the nearest adequate institutional childcare facility.” This release from the general compulsory attendance is based on a wrong understanding of the welfare concept. It can result in children with disabilities not having access to institutional facilities for early childhood education, especially in cases of unavailable kindergarten placements or as a result of a lack of resources and the prevalent attitudes and practices of the responsible bodies.¹¹⁴ This does not only contradict the right to inclusive education but also violates Art 5 (Non-Discrimination), Art 7 (Children with Disabilities) and Art 20 (Personal Mobility).¹¹⁵

b. Compulsory Education (6-14 years) and Secondary Schools (14-19 years)

Austria has a vertically differentiated school system that involves selection. Since the amendments to the School Organization Acts of 1993 and 1996, parents of children with disabilities can express their wish to have their child attend a primary school (Volksschule), junior high school (AHS-Unterstufe), middle school (Hauptschule), cooperative middle school (Kooperative Mittelschule), new middle school (Neue Mittelschule), a polytechnic school, a

¹¹⁴ Cf. Feyerer. 2009. Qualität in der Sonderpädagogik: Rahmenbedingungen für eine verbesserte Erziehung, Bildung und Unterrichtung von Schüler/inne/n mit sonderpädagogischem Förderbedarf. In: Nationaler Bildungsbericht Österreich 2009, edited by Specht, FN 84, pp. 73-98 (88).

¹¹⁵ Cf. Statement of the Independent Monitoring Committee regarding the Art 15 a Federal Constitutional Act - Agreement of 27 August 2009, http://www.monitoringausschuss.at/cms/monitoringausschuss/attachments/2/8/6/CH0914/CMS1276526308845/sn_kindergartenjahr.pdf.

one-year domestic science school or a special school (Sonderschule). Thus, the existing special school system and educational integration have been embodied and recognized as parallel systems in the legislation.

Children with disabilities receive special educational support if they are granted **special educational needs (SEN)**. Such a need for support exists if a student is – due to a physical or psychosocial disability – not able to follow the instruction (teaching) at primary or middle school or at Polytechnic School without SEN and if he or she is not exempted from school attendance according to Sec 15 Compulsory Education Act 1985 (Schulpflichtgesetz 1985). The fact that the assessment of SEN declares the necessity for additional support measures is disputed. The assessment is not standardized and it often causes schools to obtain as many SEN-labels as possible in order to receive as many resources as possible.¹¹⁶ Thus, an enormous difference between the SEN rates from 2.58 percent up to 4.43 percent between the regions (Laender) can be perceived in Austria. However, staff resources are not allocated according to the actual number of children with SEN: a percentage of 2.7 percent of the compulsory students was set by the Federal Government; however, this percentage ceased to apply several years ago. Even though the total amount of compulsory students has receded during the past few years, the amount of children with SEN has increased. However, teaching staff resources that have been allocated to the regions (Laender) in the form of positions have not been increased concurrently. As a result a teacher is responsible for more children than some years ago.¹¹⁷

In the school year of 1993, **Special Education Centers (SEC)** have been legally embodied according to the 15th Amendment to the School Organization Act. This had the purpose of contributing to the fact that children with SEN can - through the provision and coordination of special educational measures - also be taught at general schools. In practice, Special Education Centers have very different responsibilities in the various regions (Laender) and often adopt double-orders, which lead to a “conflict of interests”. On the one hand, they are supposed to support the educational integration of children with disabilities, and on the other hand, they should fulfill the duties of a special school. For years, there have thus been requests for the conversion of Special Education Centers into Education Centers. These

¹¹⁶ Cf. Feyerer, FN 85, p. 90.

¹¹⁷ Cf. Feyerer, FN 85, pp. 84, 94.

Education Centers are expected to systematically support schools in the optimum fostering of all students through individualization and differentiation.¹¹⁸

During the introduction of **integration into the regular school system**, the legislator has not determined a certain model. It has rather created the basis for a flexible and autonomous implementation of joint teaching of children with and without disabilities at each location.¹¹⁹ Thus, the extent and form of integration in the various regions are **developed very differently**, and furthermore, they even vary within some of the regions as well as from school to school. There is no evidence about how far the *“Directive for the Implementation and Monitoring of Quality Standards in the Field of Integrated Education of Students with Special Educational Needs”* from 2008 by the Federal Ministry of Education, Arts and Culture have been implemented in practice.

During the school year 2006/07, a total of **27,745 children with special educational needs (SEN)** have attended compulsory school.¹²⁰ Approximately half of these children (52.58 percent) attended integrated classes and the other **half** (47.42 percent) attended a **special school**. However, across Austria, the “integration quota” shows considerable differences at regional (Laender) level (in Styria, for instance, 82 percent of the children attend integrated classes, in Lower Austria merely 32 percent). Thus, in most regions neither the entitlement to a comprehensive parallel provision of special needs education, nor the freedom of choice for parents is realised.¹²¹ There is no **real choice**, because there is a lack of **equivalent conditions** such as full-time schools and full-time care services and sufficient staff (teachers, assistants etc.) in the integrated area, for which reason parents are often obliged to opt for the attendance of a special school (which is usually full-time). According to reports from parents, they are often inadequately informed about their right to choose by the management of Special Education Centers- Furthermore, in some cases they are urged to register their children at a special school when they are told that there are only few vacancies. Even in

¹¹⁸ Specht et al. 2006. Qualität in der Sonderpädagogik: Ein Forschungs- und Entwicklungsprojekt. Forschungsansatz, Ergebnisse und Schlussfolgerungen. No. 70, 2006, p. 58. Graz: Zentrum für Schulentwicklung.

¹¹⁹ Cf. Feyerer. 2005. Qualitätsvolle Integration/Inklusion in der Sekundarstufe. In: Inklusive Pädagogik. Beiträge zu einem anderen Verständnis von Integration, edited by Grubich et al. Aspach/Innskreis, pp. 233-254 (pp. 244).

¹²⁰ Cf. Feyerer, FN 85, p. 76.

¹²¹ Cf. Feyerer, FN 85, p. 88.

regions with high numbers of integrated classes, children with learning difficulties, severe impairments, as well as blind and deaf children often attend a special school.¹²² The number of students with intellectual impairments who are taught according to the curriculum for severely disabled children is especially low in integrated classes at Secondary Level 1.¹²³ The quality of education at special schools is often criticized by parents of children with severe impairments. They argue that in some cases a cognitive underchallenge and regressions in the social development of their children become evident. Furthermore, it must be noted that, up to this date, quality problems in terms of separate teaching at special schools have hardly been addressed in scientific and public settings.¹²⁴ In many cases, teaching in **integrated classes** is not satisfactory as well. Students with SEN are mostly taught in separate classrooms whereas the presence in the main class is limited to a minimum time. Teamteaching does not work out either in many classes, and furthermore, the use of new educational forms often fails due to a lack of willingness by teachers.¹²⁵

As in the fields of care, upbringing and education in early childhood, there are no legal entitlements in the field of **afternoon care in schools**. The legislation does not regulate educational, human or material resources.¹²⁶ This means that pupils with special educational needs and/or disabilities have to rely on the goodwill of the operator in relation to whether they will obtain a place. Particularly in Secondary Stage I, there are hardly any integrated programmes, whereas special schools do offer them.

Compulsory education usually lasts nine years in total. **Integrated education** at primary schools, Secondary Level 1, polytechnic schools and one-year domestic science schools is regulated by law. The regulation of forestry and agricultural schools in the 2012 amendment to the Schools Act was not implemented. There is a complete lack of access to further education, and the right to education until the age of 18 is only available at special schools (see the School Education Act Section 32 para 2). Apart from the lack of a legal basis, other factors are also responsible for this, such as the strict admission criteria, a lack of individual

¹²² Cf. Feyerer, FN 85, p. 87.

¹²³ Engl. 2004. Zur Situation von Schülerinnen mit geistiger Behinderung in Integrationsklassen der Sekundarstufe I aus Sicht der Elternberatung von Integration Wien. In: Integration Österreich: Ungehindert Behindert, edited by Weissbuch, pp. 46-49 (47).

¹²⁴ Cf. Feyerer, FN 85, p. 89.

¹²⁵ Cf. Engl, FN 94, p. 47.

¹²⁶ siehe dazu
http://www.integrationwien.at/docs/Qualitaetsoffensive%20ganztaegige%20Betreuung_%20AG%20Inklusion.pdf

support measures, outdated perceptions and attitudes of school staff and a lack of inclusive education in teacher training. The result is that students who have attended integrated general schools for eight years, hardly find any further offers for finishing the last compulsory year of school (with a few exceptions of school experiments at a Polytechnic School or one- or two-year vocational schools for economic careers). Thus, they must complete this last year of school at a special school for purposes of (receiving) career orientation. It must be mentioned that (compared at national as well as at international level) Austrian students with SEN and the ones with disabilities who have attended integrated classes, leave school the earliest and hardly find any further educational opportunities.¹²⁷

All in all one can maintain that there is **no evidence** about **progress directing towards** integration or **full inclusion in the Austrian educational system**. This results from the maintenance of the expensive parallel system (integrated classes and special schools) and the actual increase in the funding provided to special school in contrast to the spending cuts for integration.¹²⁸ Since 2001, the nationwide rate of integration across Austria stagnates at a value of about 50 percent. Furthermore, the ratification of the UN Convention in 2008 and the clear statement of the Independent Monitoring Committee about inclusive education that was made in 2010¹²⁹ have not lead to any improvements of the existing system so far. This condition has been confirmed by recent reports about the experiences of affected parents. These reports indicate an increase in the promotion of special schools instead of reinforced integration measures in the regular school system. Even completely new constructions of special schools are still common up to this date and furthermore, they are advertised by politicians as an urgent necessity and a special accomplishment for students with disabilities.¹³⁰

¹²⁷ Fasching/Felkendorff. 2007. Länderbericht Österreich. In: Behinderungen beim Übergang von der Schule ins Erwerbsleben. Expertenberichte aus drei deutschsprachigen Ländern, edited by Hollenweger, Hübner et al. Zurich, pp. 67-1010.

¹²⁸ Feyerer. 2009. Ist "Integration" normal geworden? In: Zeitschrift für Inklusion, No. 2, 2009, pp. 7. Available online at: <http://www.inklusion-online.net/index.php/inklusion/article/view/19/25>.

¹²⁹ Cf. Statement of the Independent Monitoring Committee about Inclusive Education, FN 79.

¹³⁰ Cf. Report about a new special school in Schwechat (Lower Austria) in the daily newspaper "Der Standard" of 11 November 2007; also see: Decision about the construction of a new special school by the Innsbruck City Council of 14 July 2010.

CASE STUDY EXAMPLE B and C:¹³¹

When asking the management of a school about choosing the appropriate school, parents of a child with a disability receive the following piece of information: “Your child is too severely disabled. It would be better off at a special school. Their teachers are better trained, there are smaller groups of students and better facilities.”

When criticizing the shortcomings of a special school, a mother receives the following reply: “You should rather not complain. Your child attends one of the most expensive special schools.”

The National Action Plan on the implementation of the UN Convention on Disability Rights¹³² by the Austrian government, Article 24, contains **no binding monitorable goals**, and also **no specific time schedule**. The implementation of the measures is also **not ensured in financial terms**. It states:

- “Development of Inclusive Pilot Regions and based on this the creation of a detailed development concept and the nationwide extension of the Inclusive Regions until 2020 – responsible are the Ministry of Education, the regions (Laender) and local authorities.
- Increased numbers of pilot projects in Secondary Stage II by 2020 – responsibility lies with the Ministry of Education
- Increase in the number of integrated classes in the lower stage of general secondary school by 2010 – responsibility lies with the Ministry of Education.”¹³³

Civil society representatives are concerned that no changes and qualitative improvements will occur due to the NAP.

c. Reasonable Accommodation and individual Support Measures

¹³¹ Source: Reports of concerned parents by the organization “Verein Gemeinsam Leben – Gemeinsam Lernen – Integration Wien”.

¹³² Federal Ministry of Labour, Social Affairs and Consumer Protection (BMASK) (2012): Nationaler Action Plan on Disability 2012-2020. Strategy of the Austrian Federal Government for the Implementation of the UN Convention on Disability Rights. Vienna: BMASK,

¹³³ Cf. Federal Ministry of Labour, Social Affairs and Consumer Protection (BMASK) (2012): National Action Plan on Disability 2012-2020. Strategy of the Austrian Federal Government for the Implementation of the UN Convention on Disability Rights. Vienna: BMASK, p. 66.

Accessibility to and at all educational institutions (Art 9) is part of the reasonable accomodation (Art 2) for the needs of each individual. Previous experiences have shown that, despite the existence of a staged plan for the elimination of structural barriers, especially children with physical impairments are often affected from physical barriers at schools and educational institutions → cf. Art 9 for further details.

Since the school year 2008/09, **individual support plans** are to be designed for children with SEN who are taught according to the curricula of the general special school, the special school for deaf children, the special school for blind children or according to the curriculum of the special school for severely disabled children.¹³⁴ According to a study about individual support plans¹³⁵, the deficits of the students build the basis for the design of the sample plans that are recommended by experts and of the support plans that are applied by teachers. Furthermore, special educational support measures for children are designed without taking the teaching material for the whole class into consideration. There are no child-environment-analyses that include the learning environment as the potential cause of learning difficulties. Furthermore, there is no structural embodiment of the participation of the affected parents and students.

Reasonable accomodation or **positive measures** (Art 5 para 4), for instance for taking exams, are often still insufficient. In present educational practice, it is very probable that the majority of students with disabilities fail to complete their educational degrees if they face the same conditions regarding their examinations as the students without disabilities.

Instruction in **alternative forms of communication** (e.g. sign language, Braille, etc.) is not guaranteed adequately. This is due to a lack of using the Austrian Sign Language as a language of instruction, the inadequate provision of resources (e.g. technical aid devices) and insufficient qualified teaching staff. According to the Federal Ministry of Education, between 1,100 and 1,400 students per year are determined as deaf and hearing-impaired. The **Austrian Sign Language** has been recognized as an independent language under constitutional law according to Art 8 para 3 Federal Constitutional Act since 2005. Since September 2008, it has also been embodied in the curriculum for the special school for deaf and hearing-impaired children for the first time. However, this has brought almost no

¹³⁴ For children who are instructed according to the curriculum for severely disabled children, this regulation has been effective since 1996.

¹³⁵ Cf. Hauer/Feyerer. 2006. Individuelle Förderpläne für Schüler/innen mit ASO Lehrplan.

improvement for deaf children. On the one hand, there are not enough staff resources (that is, teachers who possess sign language competencies). On the other hand, the broad application of the Austrian Sign Language as a language of instruction often fails due to social barriers (a lack willingness on the part of education authorities and school leaders in terms of integrated classes or special school classes for deaf children as well as a negative discourse about the sign language in general). Due to the fact that an increasing number of school children who are deaf or have hearing disabilities from early childhood are being provided with cochlear implants in both ears, education authorities and school leaderships are largely of the opinion that the use of sign language in lessons is not necessary. This attitude is strengthened by the claim that the use of sign language has a negative effect on the encouragement of speech. However, the experiences of children and young people who are deaf or have hearing disabilities and have at least one cochlear implant prove that there are cases of barriers to the accessibility of language and communication in spite of these technical aids. . Moreover, the curriculum is partly unclear, it contains various weak points and educational errors. Emphasis is given to ear and speech training of the spoken language. The Austrian Sign Language has the status of an “alternative” and therefore no equal status compared to other languages. Furthermore, the term “bilingual teaching” (meaning the encouragement of Austrian sign language and German) does not exist in the curriculum. The right to language (including Austrian sign language) and its use in lessons for children who are deaf or hard of hearing is not ensured by the NAP.

Thus, the education situation of deaf and hearing-impaired children and young people in Austria has not improved significantly up to this date. There still is no legal embodiment of the **Austrian Sign Language as a language of instruction**. According to an Austrian study about the situation of deaf and hearing-impaired students and their teachers, bilingual teaching with the Austrian Sign Language still is an exception across all regions (Laender).¹³⁶ Affected parents report about the pressure from their consultative environment which strongly opposes the Austrian Sign Language. The non-utilization or an active avoidance of the sign language in the Austrian educational system does not only violate Art 24 but also Art 21 lit e (Freedom of Opinion and Expression) and Art 5 (Non-Discrimination).

The use of school assistants at compulsory school is handled differently across Austria and depends on the guidelines of each region (Land). Most regions do not offer any specific regulations or their practical implementation is missing. However, school assistance occupies

¹³⁶ Cf. Krausneker/Schalber. 2007. Sprache Macht Wissen. <http://www.univie.ac.at/oegsprojekt>.

a high status in the integrated teaching of Upper Austria (which is also evident by their own qualification course). In Upper Austria, school assistants are closely integrated into the school system. They enable students with disabilities to participate in a common life and to achieve the objectives of the curriculum. Furthermore, they contribute fundamentally to the success of scholastic and integrative work. Measures of this type are also lacking in the field of education, care and upbringing in early childhood (aged 0-6) and in integrated afternoon supervision.

2. Acquisition of Life and Social Development Skills (Art 24 para 3)

Apart from an inclusive educational system, the acquisition of life and social development skills must be ensured as well. These skills represent central conditions for an independent and self-determined life and young people with disabilities at Secondary Level 2 are mostly deprived of them. Life and social development skills also involve the acquisition of alternative forms of communication, such as **Braille** and the **sign language**.

Presently, Braille can only be learned at special schools and teaching material is neither prepared nor provided to a sufficient extent.

Up to this date, **schools for deaf persons** exist in six of Austria's nine regions (Vienna, Upper Austria, Styria, Salzburg, Tyrol, and Vorarlberg). All schools for deaf persons explicitly emphasize auditive-verbal ear and speech training or German as first language. There are a few exceptional cases which managed to implement a bilingual concept that handles the Austrian Sign Language as the language of instruction and German as a second language. Apart from that, in most cases students who attend integrative schools are taught and supported without using the Austrian Sign Language. There were only a few school experiments with bilingual education involving the Austrian Sign Language. These school experiments took place at two schools for deaf persons in Klagenfurt (1990-1995) and Graz (1995-2000) as well as at one primary school in Vienna (2000-2004) in which the instruction was systematically bilingual and at the same time in accordance with the regular curriculum. A comparison of the regions (Laender) reveals a considerable gap between Vienna and the other Laender: only the Federal Institute for Deaf Education in Vienna offers cooperative classes in Vienna which are managed in an integrated way. Children and young people who are deaf or have hearing disabilities have comparatively better educational opportunities in Vienna than in other Laender.

Since winter term 2008/09, the University of Vienna offers **sign language courses for students** at the Department of Education. For teachers at the six deaf schools across the

country, there are no language requirements and furthermore, there is no obligation to learn, possess competency in or to use the Austrian Sign Language. The pilot project GESTU (“Gehörlos erfolgreich studieren”/“Studying successfully with hearing impairments”) offers a central service structure and has been introduced for deaf students at the Technical University of Vienna during the winter term of 2010/11. It is sponsored by the Technical University of Vienna and the Federal Ministry of Science and Research. In this pilot project tutors and sign language interpreters work together. The objective is to increase the number of deaf students in Austria.

3. Measures for the Employment of Teaching Staff (Art 24 para 4)

Art 24 para 4 which aims at the employment of qualified teaching staff as well as teacher training has immediate effects on the content of initial and continuing teacher training: the responsible regions have to ensure that adequately qualified special educators are equipped with the required special knowledge on the one hand. On the other hand, the regions have to ensure that inclusive educational knowledge is also provided during general teacher training in order to create an educational system that is directed towards inclusion. Up to this date, **there is no inclusive teacher training** in Austria.

Furthermore, there is a massive **lack of inclusive educational teaching staff**. Since approximately three years, the College of Education offers a specialized and accredited training module. It can be chosen as part of the general course of studies or as additional training. Due to limited resources, a nationwide availability of qualified teaching staff will definitely not be achieved during the next few years. At the beginning of the 2009/10 school year, there was a massive shortage of teachers in Vienna. Reasons for that were that many special school teachers transferred into other regions unexpectedly while the number of “integrative classes” at Secondary Level 2 was increasing. Therefore, approximately 30 classes were unstaffed and itinerant teachers from the area of educational speech therapy or supporting teachers had to step in as an “emergency measure”. This situation caused a noticeable weakening of the overall support system at Viennese primary schools. It brings massive disadvantages particularly for children who have an especially urgent need for such supportive assistance. This can hardly be compensated by alternative channels (such as speech therapists or tuition).¹³⁷

¹³⁷ Cf. Tuschel. 2009. Ja mach nur einen Plan... In: Integrationsjournal, Der Stadtschulrat informiert, December 2009, p. 4.

According to Sec 9 Higher Education Act, the **university course “Hearing-impaired Pedagogy”** merely provides basic knowledge in the Austrian Sign Language and urgently recommends the attendance of a separate program of study for acquiring the Austrian Sign Language. Thus, the above-mentioned program does not target the qualification of teachers in order to be able to offer bilingual teaching in the Austrian Sign Language and German.

CASE STUDY EXAMPLE D and E:¹³⁸

The supporting teacher of an institute for deaf education does not have any competence in the Austrian Sign Language. Instead of interpreting the spoken language during the lesson while concentrating on the content, she disturbs her deaf student by constantly asking her questions about sign language vocabulary. The student is disturbed by that and distracted from the lesson. She wants to be provided with teaching material in a fluent manner and is loaded twice by her role as a “walking dictionary” and quickly tires.

Deaf students at a higher technical school require supporting teachers. A teacher who is deaf herself offers her services to the principal. The teacher is fluent in sign language and possesses an A-level degree from the Higher Technical School and thus, the expert knowledge. The principle rejects her on the basis of her deafness.

According to the regulation about the admission requirements at Colleges of Education¹³⁹, persons with certain disabilities are excluded from the admission to the teaching profession. By the curricula for primary school and special school teachers necessary vocal and physical-motor prerequisites are required for teaching students, for instance, in music and physical education (P.E.). Persons with certain disabilities can not fulfil this requirement. In the course of the currently practiced Austrian system in which primary school and special school teachers teach all subjects (with the exception of religious education), this requirement may according to Sec 7 Disability Employment Act represent a “critical job requirement” for holding all lessons. However, this regulation does not seem to be objectively justified against its background, since it is not appropriate in order to achieve the purpose of exercising the teaching profession. Thus, replacement by other teachers in music and sports lessons could be stipulated as an alternative. The requirements of speaking and vocal performance, of the musical-rhythmic aptness and the physical-motor fitness thus prove to be excessive, not

¹³⁸ Cf. Discrimination Reports of the OEGLB 2004, 2005, and 2010, <http://www.oeglb.at>.

¹³⁹ Higher Education Admission Regulation (Hochschul-Zulassungsverordnung), Federal Law Gazette II No. 134/2000 (attachment 2 and 3), last amendment by Federal Law Gazette II No. 112/2007.

objective and discriminating. The admission criteria for the general teacher training are designed in such a way that persons with disabilities, and especially the ones with a sensory disability, are generally excluded from teaching jobs. This is also reflected by the fact that there are hardly any teachers with disabilities.

4. The Sector of Tertiary Education (Art 24 para 5)

In the present university system, **students** with disabilities are confronted with massive limitations and barriers. The access to universities is difficult for persons with disabilities due to physical, social and communicative barriers. To persons with learning disabilities, access is denied at all (there are no offers in easy language and there is no right to extend the examination times, etc.). Another reason is often the lack of personal assistance in all aspects of life (→ cf. Art 19). Some programs of study include a curriculum or structural barriers that hinder persons with disabilities to successfully complete their studies at all. In other programs of study, the affected persons are constantly dependent on special provisions and exceptions during their basic studies (BA, MA) as well as during the specialization phase (e.g. doctoral/PhD programs and post-Doc programs). According to a social survey about students from the year 2009, 1.3 percent of all students stated that they have a disability, 12 percent stated that they were chronically ill and eight percent stated that they had another impairment.¹⁴⁰ Thus, the number of persons with a psychosocial or physical impairment was approximately 20 percent. According to *Statistik Austria*, 46,277 persons of the 2008/09 academic year were disabled, chronically ill or otherwise health-impaired (that equals about one fifth of all students). There are no precise figures about graduates with disabilities of Austrian universities.

Disability officers at universities do not have standardized job specifications and do not always come from the group of persons with disabilities; in some cases, this position is not even occupied. The number of **lecturers** with disabilities at Austrian universities is insignificantly small. Employment in a research position is possible under certain conditions, however, a research career that is comparable to that of a non-disabled person, is not possible.

Deaf students are especially disadvantaged due to a lack of financial protection of the required interpretation services. As a result the number of sign language-speaking university graduates is exceedingly small. The reasons for that are the lack of equipment at universities

¹⁴⁰ Cf. Studierenden-Sozialerhebung 2009, p. 290, <http://www.sozialerhebung.at>.

and the lack of inclusive education and promotion of the sign language in earlier levels of education which is continued at university level. There is no right to freedom of choice for deaf students in terms of taking exams in sign language or in written language instead of spoken language. Furthermore, no right to access to information through visualization is stipulated. Moreover, deaf persons do mostly not have access to the kinds of research that affect them because research results are often merely published in English or German.

In the area of vocational training, a significant step towards professional training for young people with disabilities has been made in 2003 with the Amendment to the Vocational Training Act (Sec 8 b Berufsausbildungsgesetz BAG). Ever since, young people with disabilities and disadvantages¹⁴¹ can complete an **integrative vocational training (IVT)** in the form of an extended apprenticeship¹⁴² or in the form of a partial qualification (Teilqualifizierung)¹⁴³. The objective of the Integrative Vocational Training is to enable young people to obtain a formal job qualification in order to increase their chances to integration in the general labor market. In the mean time, IVT has developed into a significant and widely used measure because it is the only form of education for disabled young people at Secondary Level 2 up to this date. In 2008, a total of 131,880 young women and men completed an apprenticeship and approximately three percent (or 3,920) of these young people completed Integrative Vocational Training. Out of these 3,920 young people, 2,650 completed an extended apprenticeship (68 percent) while 1,270 completed a partial qualification (32 percent). According to the final report about the “Evaluierung der integrativen Berufsausbildung” (Evaluation of Integrative Vocational Training)¹⁴⁴ this form of

¹⁴¹ The target group of Integrative Vocational Training are persons who have not been appointed a regular vocational training program by the Public Employment Service (AMS) and to whom one of the conditions of Sec 8 b para 4 Vocational Training Act is applicable.

¹⁴² Extended apprenticeship (Sec 8 b para 1 Vocational Training Act): Extension of the duration of the legal apprenticeship for one year or in exceptional cases for two years, if this is necessary for the completion of the final exam. The extended apprenticeship leads to a regular apprenticeship diploma. Young people who complete this form of education are subject to full compulsory vocational training.

¹⁴³ Partial Qualification (Sec 8 b para 2 Vocational Training Act): “Conclusion of an indenture, that foresees the acquisition of a partial qualification by limiting the job description to certain parts of a profession, potentially adding certain parts of the job description of other professions. The duration of the partial qualification can last between one and three years. Youth that complete the partial qualification have the right and/or the obligation to attend the vocational school. Which classes have to be attended depends on the content of the indenture.

¹⁴⁴ Cf. Heck/Dorr/Dörflinger et al. 2008. Evaluierung der integrativen Berufsausbildung, p. 117.

vocational training has proved itself well and is considered a significant medium for job integration by both the affected young people and experts. A reduction of the regular training time of up to 50 percent is possible since the Amendment to the Vocational Training Act of 2010. This increases the chances of obtaining a successful job qualification.

However, the aim of providing young people with disabilities with further education has not been fulfilled sufficiently yet.¹⁴⁵ Presently, there is a lack of additional training options, especially in order to pave the way to integrative apprenticeships for severely disabled youth. This forms an obstacle to continuing education after compulsory education and furthermore, to establish an alternative to “occupational therapy”. Moreover, there are not enough opportunities for extended apprenticeships or partial qualification, which is partly due to a lack of willingness by teachers and businesses. Additionally, staff, financial resources and quality standards are still unsatisfying and there are no adequate measures to achieve full inclusion in terms of vocational training. This includes as well an adequate inclusive content the teacher training for vocational school teachers, which is still insufficient up to this date.

In the area of **adult education** there are hardly any accessible and integrative offers for further education for persons with disabilities. In most cases, there are offers that bear the label “integrative” although they are exclusively designed and implemented for persons with disabilities.

Recommendations:

For the realization of **inclusive education** at all levels (from early childhood education up to postgraduate education), especially two central recommendations arise:

- The right to inclusive education according to the UN Convention must be embodied in the federal constitution as well as in all relevant laws and furthermore, an **inclusive educational system** must be created in Austria.
- The right to reasonable accommodations has to be ensured. The quality of the **pedagogical implementation** of inclusive education and the provision of support measures must be adapted (e.g. staff and material resources, full day care, multiple

¹⁴⁵ Cf. Pinetz/Prammer. 2010. Die Integrative Berufsausbildung in Österreich – eine Ausbildungsform für behinderte Jugendliche? In: Zeitschrift für Inklusion, No. 1, 2010. Cf. <http://www.inklusion-online.net/index.php/inklusion/article/view/44>.

grade classes, school assistants, barrier-free access to languages and communication, inclusive training of educational staff)

In Detail there are following recommendations:

General

- Adaptation of the existing **laws** to the UN Convention, e.g.
 - Art 14 para 6 Federal Constitutional Act and Sec 4 School Organization Act (Schulorganisationsgesetz): The principle of non-discrimination must explicitly include discrimination on the basis of disability
 - Sec 2 para 1 School Organization Act (Schulorganisationsgesetz): Embodiment of the right to inclusive education
 - Sec 3 para 1 lit c and para 7 lit b School Education Act (Schulunterrichtsgesetz): Deletion of physical and health-related qualifications as entry requirements to schools
 - Section 32 para 2: school attendance in the 10th and 11th school years must be possible at other schools and not only special schools.
- Development of a “roadmap on inclusion” for the implementation of the UN Convention; adaptation of all **curricula** to the most recent educational findings and to the standards of the UN Convention
- Joint **basic training** including pedagogy of educators, awareness raising, the acquisition of the Austrian Sign Language and other alternative forms of communication
- Comprehensive **accessibility** at all educational institutions (physical, social, communicative, and intellectual accessibility)
- **Involvement** of persons with disabilities, parents/relatives, experts, educators and representatives in the development and implementation of structural reforms and educational measures

Early Childhood Education

- Abolishment of therapeutic pedagogical (orthopedagogic) kindergarten and introduction of a nationwide standardized provision of **early childhood education** with adequate support measures that is compulsory for all children and free of charge for parents. (This goes beyond the compulsory year of kindergarten to which children with disabilities must also have legal entitlement)

- Early Childhood Intervention (ECI) and the acquisition of **sign languages**: information at an early stage for parents of deaf children about easy baby sign language and the Austrian Sign Language; acquisition and utilization of the Austrian Sign Language at kindergarten besides German as common speech; kindergarten staff who are competent in the Austrian Sign Language; joint integration of deaf children

Compulsory School Level (Primary Level, Secondary Level 1, the compulsory ninth Grade of Education - Secondary Level 2)

- Immediate **building freeze for new special schools**
- **Children with disabilities should no longer be admitted to Special Education Centers or special schools from the school year 2013/14**
- Conversion of existing **special schools into inclusive schools** for all
- Modification of **Special Education Centers into Education Centers** for all children (educational know-how, material and staff resources should benefit all children at a joint regular school)
- **Common basic teacher training** for all branches of compulsory school (inclusive education, team teaching, internal differentiation of learner groups, disability pedagogy, etc.)
- Legal embodiment of inclusive education from all compulsory grades (integrated afternoon supervision) via secondary stage II including agricultural and forestry schools up to lifelong learning
- Structural adjustment for the identification of **Special Educational Needs** (in this regard the allocation of resources should not be related to the individual child, it is a task of the entire system)
- Adequate material **equipment**, specification and nationwide embodiment of supportive conditions concerning the maximum number of students in one class, the number of children with SEN in one class, additional recruitment of teachers, full day care for severely disabled children as well; multiple level classes
- Ensuring adequate provisions (e.g. for exams)
- A legal right to personal assistance in the area of early childhood education, and the extension of the (school) assistance scheme
- Entitlement to **personal assistance** at school; extension of school assistance
- Introduction of the **Austrian Sign Language as a language of instruction** and German as a second language (Sec 16 School Education Act); introduction of additive bilingual teaching as a regular form in terms of promoting the Austrian Sign Language and German; conversion of deaf schools into bilingual schools

- Entitlement to accompaniment of interpreters for deaf-blind persons to enable independent communication with hearing persons in tactile sign language or Lormen

Secondary Level 2 and Vocational Training

- Legal embodiment of inclusive education for the compulsory ninth year of school as well as **throughout Secondary Level 2** for all types of schools including agricultural and forestry schools as well as all private educational institutions until the 12th or 13th year of school
- **Inclusive Vocational Training:** Increase in resources for vocational schools in order to ensure the highest possible quality of education; standardized regulations for the implementation of the legal provisions concerning dual training; creation of nationwide quality standards across Austria; make use of all staff resources, especially concerning the development and revaluation of Integrative Vocational Training (IVT); ensure that young people with a high need for support are not excluded from participating in Integrative Vocational Training from the very beginning; expansion of the fields of activity of special educators in the area of vocational training schools; adequate embodiment of inclusive content in the initial and continuing teacher training for vocational teachers.

Tertiary Education and Adult Education

- Adequate counseling services for disabled and especially for deaf students, and **accessibility to universities**, especially by means of sign language interpreters
- Non-discriminating access to **teacher training** at Colleges of Education
- Promotion of **academic staff** with disabilities (e.g. through a “quota system”)
- Establishment of a **chair for Disability Studies/Deaf Studies**; promotion of sign language research and deaf pedagogy; publication of research results in the Austrian Sign Language; specialised BA and MA programs about the Austrian Sign Language
- Embodiment of the **Austrian Sign Language** beyond compulsory school as a language of instruction at deaf schools; German as a second language of instruction
- Inclusive training and accessible offers for persons with disabilities in terms of **adult education** and lifelong learning

Article 25 Health

1. Access to Health Services

Even though Austria has a relatively well-developed health care system, persons with disabilities experience disadvantages in various areas. In terms of access to health care,

there are only few accessible **medical practitioners offices** across Austria and also **hospitals** are not fully accessible in their design which is very problematic → cf. Art 9 for further details. Even medical practitioners are often not accessible, as well as treatment facilities that conduct medical examinations regarding (the entitlement to) care allowances, classifications of the level of disability, etcetera. This represents a restriction for and unequal treatment of persons with disabilities who have to claim medical services on a regular basis. The result of this low supply is that persons with disabilities can seldomly consult the doctor of their choice. Deaf persons hardly have the chance to conduct confidential conversations with doctors because there are hardly any doctors who possess sign language competencies.

A lack of comprehensive **personal assistance** in all aspects of life also impedes the access to and the use of health care services for persons with disabilities (especially for persons with learning difficulties) → cf. Art 19 for further details. Another problem is the lack of **access to certain forms of therapy**, such as, for instance, Botox treatments against incontinence. This procedure can usually be conducted for persons with paraplegia without the use of anesthetics in a relatively fast and cheap way. However, it is not provided in the form of outpatient treatment in Austria. For this treatment, the patient has to undertake not less than a one-week in-patient stay at a hospital or stay at a rehabilitation center for up to three weeks. Taking into account that the treatment needs to be conducted on a regular basis and that there are still prevailing deficits with regard to the treatment of patients with disabilities (the lack of accessibility and training of the staff), this represents a considerable burden.

2. Special Health Care Services, including Early Detection and Early Intervention

In Austria, there generally are no **statistical data** about the situation of persons with disabilities (→ cf. Art 31) and thus, about their health conditions and their essential need for medical services. Thus, there also is, for instance, no evaluation of the mother-child-medical card as it is common in Germany. This evaluation would inform about the need of Early Childhood Intervention (ECI) by capturing every 800th child.

The special **treatment of children** with disabilities is deficient in several areas. There are waiting periods of up to three months for specific diagnostic procedures. After investigating upon a medical suspicion or obtaining a diagnosis, there are further waiting periods between six months and two years for certain forms of demand driven therapy. Furthermore, there is no sufficient mobile Early Childhood Intervention for all children. Specific forms of demand driven therapy are often – if at all – only provided in urban areas. Affected families have to

purchase the internationally recognized ABA therapy from Germany. There is no provision of long-term family therapies in order to prevent the institutionalisation of children.

Behavioral problems of young and elderly persons, and especially among non-verbal persons or persons with learning difficulties, do not lead to structural adjustment or the quest for means or forms of communication. Instead, a primary symptomatic treatment by medication takes place (“tranquilise”). The risk of falling ill with dementia at an older age is significantly higher for certain groups of persons within the group of persons with learning difficulties, such as persons with the Down Syndrome, than among the non-disabled population because there is no appropriate intellectual fostering during adulthood, either.

For young as well as elderly people who live at segregating facilities there is no guarantee to demand driven **preventive health screenings** that also arise in relation to the intake of medication. Furthermore, there are hardly any measures for early intervention to protect against further disability. Illnesses often remain undetected because there is little access to expensive examination methods that are subject to approval. A lack of knowledge and coordination abilities in various medical specialist divisions as well as lacking or insufficient preventive health screenings thus result in the deterioration of the health condition and finally in the earlier decease of persons with disabilities.

Regarding issues of **gender-specific health care provision**, and especially medical counselling for women on sexuality, contraception or abortion as well as the matter of forced sterilization and forced abortion → cf. Art 23.

3. Medical Staff

In the various professions of the health care system, there is evidence of a lack of knowledge about the specific health-related challenges regarding elderly non-verbal people and people with learning difficulties in general. Furthermore, there are often deficient or even **no practical capabilities on communication and actions** towards these persons. For instance, there are hardly any doctors who possess sign language competencies. There is repeated evidence of discriminating situations, for instance, if blood samples are being taken from persons in wheelchairs in the waiting areas of hospitals. Beyond that, psychiatric facilities do not feel responsible for persons with learning difficulties with an according psychiatric diagnosis. During training for doctors and health professionals, there is no educational material on basics and intervention and furthermore, there is no obligation towards practical work with persons with disabilities.

Also the right to **informed consent** is not safeguarded in Austria. Information material in easy to read formats on medical issues is hardly available. There is no specific counseling for persons with intellectual disabilities in hospitals and medical offices. Furthermore, there is the possibility to order guardianship for medical requirements which means that the affected person is entirely denied the right to decide on his/her health issues and the respective medical treatment.

Medical examinations and **treatment** of persons with disabilities are often conducted in a very **uncoordinated manner**, that is, at unreasonable times. Thus they put a strain on the health condition of the affected persons (e.g. no coordination between doctors about medical treatment with anaesthetics). Furthermore, there are no (psychosocial) counselling services for the affected persons and their relatives at hospitals in order to cope with new situations, such as dealing with a sudden disability.

The handling of personal medical and **health-related data** of patients in general and thus also of persons with disabilities by medical staff (especially at hospitals) is precarious → cf. Art 22.

4. Access to Health and Life Insurances

Persons with disabilities who are employed at **day and employment structures** (so-called “occupational therapies“) do not have their own social insurances (health and pension insurance) because their occupation is not considered paid work. Rather, it is covered by the social assistance provisions of the provinces (Laender). They do not possess their own health insurances (the only option is dependent coverage) and do not earn their own pension entitlements. → for further details see Art 27 and 28. Since 2011 they have a compulsory accident insurance.

Often, persons with disabilities were disadvantaged in terms of concluding a **private health, accident or life insurance** by either being totally excluded or by receiving low offers. Persons with learning difficulties were especially affected from this problem. The **amendment of the insurance law 2012** (Versicherungsrechtsänderungsgesetz 2012) introduced the prohibition of discrimination of persons with disabilities in this field. It remains to be seen if and to what extent the amendment will improve the situation in practice. The Amendment does not foresee any sanctions for discrimination except for the possibility to issue a representative action (Verbandsklage) and to ask for an injunction. The right to issue a representative action is reserved for the ÖAR, the Klagsverband (Litigation Association) and the Verein für Konsumenteninformation (Association for Consumer Information).

5. Refusal of Health Care Provision and particularly Foods and Fluids

At many medical facilities, the provision with sufficient fluids is poor because in some cases, no more than two liters of water are provided per day. Due to the fact that sedatives or drugs that cause half-sleep hardly allow the control of the bladder, especially while sleeping, these drugs are often given to patients without water in the evening in order to prevent enuresis. This leads to the dehydration of the persons with disabilities who (due to their disability) often face an exceptional daily burden. Hence, they often grab drinks that are standing around and are not intended for them and thus, they sometimes suffer from the consequences.

Recommendations:

- Establish **comprehensive accessibility** (physical, social, communicative, intellectual) within the whole health care system, and especially among all medical practitioners and the hospital system → cf. Art 9
- Guarantee the accompaniment or **personal assistance** of/for persons with disabilities (learning difficulties) during hospital stays in order to ensure the free choice of doctors and treatment → cf. Art 19
- Dealing with persons with disabilities (including forms of communication) must be integrated into the **initial and continuing training** of medical staff and health professionals; the training of disabled care must include nursing content as well.
- **Statistical data acquisition** (e.g. an evaluation of the mother-child-medical card) for the analysis of the need for adequate medical-therapy precaution and demand driven support measures
- Measures for enforcing the **protection of health interests** of persons with disabilities, e.g. data protection for the transmission of medical data (→ cf. Art 22), establishment of an independent monitoring body for medical concerns of persons with disabilities
- **Expansion of preventive measures** through demand driven preventive medical check-ups (tailored to the medication), and through easier access to expensive examination methods that are subject to approval; free access to psychotherapy
- Ensure equal conditions and services for persons with disabilities with regard to the conclusion of private **health, accident and pension insurances**

Article 26 Habilitation and Rehabilitation

1. General

Habilitation and rehabilitation are the first significant steps to ensure that persons with disabilities are able to lead an independent life, to be mobile and to reach their full potential in order to attain a job with their own income and to exercise all the rights that are stated in the CRPD. **Habilitation** means transmitting the abilities that are necessary to participate in the community. Such programs are predominantly targeted at children who are born with a disability. **Rehabilitation** means the reconstruction of capacities and abilities. This mainly concerns adults who need to relearn to participate fully in the community after attaining a disability. Habilitation and rehabilitation are usually processes that are limited in time and tailored to individual persons.

In Austria, the federal Government, the regions (Laender), social insurance institutions, and the Public Employment Service usually share the duties of **medical, professional, social and educational rehabilitation** whereby, in practice, emphasis is placed on medical rehabilitation measures. Concerning interrelated topics see the explanations under the respective articles, such as e.g. accessibility to aid devices (→ Art 9, 20), independent living and community based support services (→ Art 19), access to health care services (→ Art 25).

The General Social Insurance Act (Allgemeines Sozialversicherungsgesetz ASVG) regulates the extent of **medical rehabilitation**, the responsibility for granting measures and the claimants. All three insurance branches (accident, pension, and health insurance) are responsible for granting measures of medical rehabilitation. Likewise, there are identical or similar regulations for the medical rehabilitation of self-employed persons or officers under the Commercial Social Insurance Act (Gewerbliches Sozialversicherungsgesetz GSVG)¹⁴⁶, the Farmers Social Insurance Act (Bauern-Sozialversicherungsgesetz BSVG)¹⁴⁷, as well as the Civil Service Health and Accident Insurance Act (Beamten-Kranken- und Unfallversicherungsgesetz B-KUVG)¹⁴⁸. Purpose of these rehabilitation measures is to restore the health condition of the insured persons so far that they are able to occupy an

¹⁴⁶ Commercial Social Insurance Act, Sec 99 a, Sec 157-168.

¹⁴⁷ Farmers Social Insurance Act, Sec 96 a, Sec 148 p, Sec 150-160.

¹⁴⁸ Civil Service Health and Accident Insurance Act, Sec 65 a and Sec 70.

appropriate position in their professional or economic field and in the community on a preferably permanent basis and without care and assistance (prevention of care allowances).

2. Accident Insurances (Sec 189 General Social Insurance Act)

Accident insurers take precautions for the rehabilitation of workers and employees, self-employed persons, students, university students, and specially protected persons (that is, for instance, civil servants, members of charity organizations, etc.) if the reason for a disability is a **work accident** or an **occupational disease**. An accident that occurs in locational, timely and causal relation to the insured professional activity or training is deemed to be a work-related accident. An occupational disease is an illness that is caused by the execution of an (insured) occupation. Thus, non-insured persons are excluded from the services of an accident insurance.

The accident treatment should eliminate or at least improve the health impairment or physical damage that was caused by the work accident or occupational disease, as well as the caused reduction of the earning capacity or of the ability to manage essential personal matters. Furthermore, it should prevent a deterioration of the consequences of the injury or illness (Sec 189 General Social Insurance Act). The accident treatment contains medical assistance, remedies, medical aids and nursing care at hospitals, rehabilitation centers and other facilities. Furthermore, there is entitlement to treatment with body replacement parts, orthopedic aids and other aids that are necessary to ensure the success of the curative treatment or to alleviate the consequences of a work accident or an occupational disease. Contrary to the pension and health insurance, the entitlement to services under the accident insurance is strictly restricted to the causes of (acknowledged) work accidents or occupational diseases. Furthermore, the entitlement to rehabilitation is restricted to only a small group of persons.

3. Pension Insurance (Sec 300-307 c General Social Insurance Act)

Pension insurers conduct rehabilitation measures if - without the granting of rehabilitation services - the disability probably were to lead or has already led to **invalidity**, the **incapacity to work** or the **incapacity to earn**. Workers receive an invalidity pension, employees an occupational disability pension. The identification of the incapacity to work is purely based on medical viewpoints and does not consider social aspects → cf. Art 27 for further details.

Pension insurers can also and at any time overtake the granting of medical rehabilitation measures that actually a health insurer would be responsible for. In practice, this means that the medical rehabilitation of pensioners is largely conducted by pension insurers due to a lack of adequate facilities by health insurers.

According to the Federation of the Austrian Insurance Institutions the percentage of invalidity pensions – compared to all pensions – was 9 percent in December 2010. There are strict rules for the approval of an invalidity pension or an occupational disability pension: generally the expert evidence of the doctors from the pension insurers are determining the decision. On the basis of these expert evidences more than the half of the applications were rejected by the pension insurers in 2010 all over Austria.

On average, this form of early pension was Euro 1,021 for men and Euro 671 for women in 2009; it is received for 17 years on average, in comparison to the regular age pension that can still be enjoyed for 22 years on average.

With the Structural Adjustment Act 1996 (Strukturanpassungsgesetz 1996), the basic principle “Rehabilitation ahead of Pension” has been legally embodied. This means that the pension insurer can conduct rehabilitation measures for pensioners who are “of working age” in order to prevent an imminent incapacity to work (Sec 361 para 1 General Social Insurance Act). Pension benefits on the grounds of a reduced working capacity are usually temporarily restricted. Permanent granting only occurs if a permanent invalidity (incapacity to work, incapacity to earn) may be assumed due to the physical or mental state of the patient. The application for an invalidity pension, as well as for a pension based on the incapacity to work or on the incapacity to earn is automatically deemed to be an application for rehabilitation as well.

The Amendment of the Social Insurance Act 2012 rules that persons who have not already reached the age of 50 years as of 1 January 2014 are only entitled to apply for an invalidity pension or an occupational disability pension, if the invalidity of the occupational disability is permanent. Instead of a temporary invalidity pension or a occupational disability pension there will be rehabilitation money or retraining money available. This means that the costs are shifted from the pension insurance to the unemployment insurance. Hence, persons with health impairments who take part at appropriate and reasonable measures and this way can increase the chances to get into employment are entitled to a payment that secures the maintenance.¹⁴⁹ As a result the pension insurance is supposed to save expenses up to 700 million Euro until 2018.¹⁵⁰

¹⁴⁹ For more critical information regarding the planned reform see the statement of the OEAR on the Amendment of the Social Insurance Act 2012 as of 6 September 2012. <http://oear.or.at/ihr-recht/stellungnahmen>.

¹⁵⁰ Cf. http://wienerzeitung.at/nachrichten/oesterreich/politik/500220_Befristete-Invaliditaetspension-wird-abgeschafft.html.

4. Health Insurance (Sec 154 a General Social Insurance Act)

Health insurers conduct **rehabilitation** measures **in supplemental responsibility of accident and pension insurers**. After the medical treatment the health insurer approves the rehabilitation measures at its sole discretion. This way the provision of in-patient medical rehabilitation should be safeguarded for persons who are not or no longer eligible for pension insurances (e.g. covered dependents and orphan pensioners). The respective insurer that is in charge of the benefits must not only provide and finance its own benefits. Additionally it has to coordinate any further measures that are essential for the rehabilitation.

The general objective of the rehabilitation is to enable patients to go back to leading an independent life without assistance from others as far as possible, to execute a job or to be able to complete an education. Disability-related retirements and the need for long-term care should be prevented or at least postponed. On the one hand, there must be appropriate treatment methods, and on the other hand, patients must be in the mental and physical state to make use of the therapies that are offered for their rehabilitation. In case that one of these prerequisites should not be fulfilled, there is either no opportunity to (obtain) aid by means of rehabilitation measures or there is no ability to rehabilitate at all. Contrary to the sometimes complicated delimitations by insurance law, this definition of medical rehabilitation is relatively comprehensible. During the application for the following rehabilitation process, hospital doctors must take exclusively this definition into account.

5. Further Rehabilitation Measures by the Federal Government and the Regions (Laender)

Measures for the **professional integration** of persons with disabilities lie within the responsibility of the Federal Government → cf. Art 24 and 27.

The services of the regions (Laender) are subsidiary, i.e., they are only granted if no other equal or equivalent services are provided by the Federal Government, the social insurers or the Public Employment Service. The nine regions (Laender) provide the so-called integration assistance for disabled persons into the community and at work as well as special social services in the course of the **social and disability assistance** (embodied in the regional laws) → cf. Art 28. While the social insurance is responsible for the treatment and rehabilitation after incidents of illnesses and accidents, the regions (Laender) are - based on the disability and social assistance laws - responsible for treatment, rehabilitation and the provision of medical aids and aid devices in cases of birth-related physical and multiple

disabilities of children and youths. This differentiation arises from the fact that a birth-related disability neither qualifies as an illness according to social insurance laws nor as an accident.

The differentiations between rehabilitation and medical treatment, between pension insurers and health insurers often are not clear. The interfaces between Labor Inspection, the General Accident Insurance Institution (AUVA) and health insurers are vague as well. The regional rehabilitation services across Austria (e.g. integration assistance or social services) are due to the different regional laws not standardized and do often not provide for a legal claim. The quality of **rehabilitation services varies according to the cause of the disability**. Services for work accidents or occupational diseases are the most comprehensive ones. The services for recreational accidents are a bit less comprehensive. For birth-related disabilities the services are merely insubstantial. Measures generally occur according to the following staged plan: (1) measures by the accident insurer, (2) measures by pension insurers, (3) measures by health insurers (for medical rehabilitation) and (4) measures by the regions (Laender). The accident insurer provides the most comprehensive and most expensive rehabilitation services. There are no specific areas of responsibility concerning the treatment of patients during the various stages of disease. This leads to injustices. The rehabilitation depends on which region (Land) the person lives in, where or how the person is insured and on whether the person is "willing" to bear the costs himself or herself in cases of emergency. The responsibility of the Public Employment Service concentrates on cases where the taken measures are likely to cause a relatively short-term and unproblematic integration and incorporation into the job market. Persons who have more and rather long-term problems thus cannot claim the rehabilitation measures of the Public Employment Service. Furthermore, rehabilitation measures for blind and visually impaired persons are often insufficient.

6. Rehabilitation Measures for Children

There is a massive demand for in-patient rehabilitation facilities for children in Austria. Figures about the need for in-patient rehabilitation by children and youths have already been calculated in cooperation with the Austrian Society for Pediatrics in 1999, 2004 and 2008, and the special significance of the creation of a nationwide, structured rehabilitation system for children and youths has been formulated.¹⁵¹ Up to this date, there are no separate rehabilitation centers for 0-18 year-olds in Austria such as in Germany, for instance.

¹⁵¹ Cf. <http://www.docs4you.at/Content.Node/PresseCorner/2010/Presseaussendung--Kinderrehabilitation-in-oesterreich-unzur.php>.

According to a new plan for “Children and Youth Rehabilitation” that was elaborated on behalf of the Federal Ministry for Health, the demand for in-patient rehabilitation opportunities for children and youths in Austria has been recorded once again, and the requirements for treatment structures have been defined. However, this plan has not been implemented so far.

The Austrian Ombudsman (Volksanwaltschaft) has also voiced similar criticism about the insufficient rehabilitation of children in its 2009 Annual Report. The authors of the report state that, *“approximately 250 children and youths in Austria fall ill with cancer every year. They have to undergo long and stressful therapies in order to fight the direct consequences of tumors. During this process, paraplegia can occur as much as limb loss and hearing impairments. Chronically ill children and youths, who suffer from the consequences of an accident, experience similar medical and psychosocial states of emergency. Rehabilitation clinics that are especially designed for the needs of such children and youths and their families, do not exist in Austria so far. These would according to expert opinions be extremely important in order to cope with the shock about the diagnosis and with the hospital treatment that can in some cases last a couple of months. There are estimates that approximately 185 beds will be needed for the rehabilitation of children and youths until 2020 in Austria. Presently, there is no comprehensive care with educational and psychosocial support for children and youths in Austria. Furthermore, there is no specific regulation on the conditions for the entitlement to rehabilitation services for children. Due to a lack of special service provision in Austria, health insurers occasionally offer financial support for stays at special clinics abroad.*

For many families, this is not an option. After months of staying at a hospital, these rehabilitation stays in Germany or the Czech Republic are often too tiring for children. For the affected persons it is a disadvantage that, since 1992, the approval of rehabilitation measures is merely a so-called compulsory task for health insurers. This means that they are obligated to provide rehabilitation measures, however, this obligation is not related to an individual legal claim to services. Initial plans to convert rehabilitation within the health insurance into a mandatory service that can be enforced with an individual legal claim have not been realized so far.”¹⁵²

Recommendations:

¹⁵² Cf. Jahresbericht der Volksanwaltschaft 2009, Kurzbericht, p. 27.

<http://www.volksanw.gv.at/aktuelles/presse/jahresbericht-2009-praesentiert>.

- **Standardization** of the quality of **rehabilitation services** irrespective of the cause of the disability (work accident, recreational accident or birth-related disability)
- Introduction of a **nationwide legal claim** to rehabilitation services and expansion of community-based rehabilitation measures
- More emphasis on **social rehabilitation**; taking into account the social destination of rehabilitation measures social rehabilitation may no longer be marginalized within the system of rehabilitation
- Expansion of in-patient facilities for the **rehabilitation of children** following a calculated demand; establishment of separate rehabilitation centers for children
- Enhanced rehabilitation services for **deaf, blind and deaf-blind persons** (e.g. recognition of guide dogs as well as mobility and orientation trainings for blind and visually impaired persons as a medical rehabilitation measure; interpretation services in tactile sign language or Lormen for mobility and orientation trainings for deaf-blind people)
- Full rehabilitation with only one **contact point** (“One-Stop Shop”) in order to receive optimally measures (→ also see Art 27)
- Expansion of **preventive measures** in order to prevent the occurrence or possibility of a disability and to reduce the rehabilitation costs

Article 27 Work and Employment

1. The Labour Situation of Persons with Disabilities

Presently, the labour and employment opportunities of persons with disabilities in Austria are not in accordance with the standards of Art 27. Despite the legal embodiment of the equality of persons with disabilities as well as the ratification of the UNCRPD, persons with disabilities still experience many **disadvantages regarding the access to the (regular) job market**. The full inclusion of persons with disabilities and their representatives into all work-related measures is not given.

The **lack of** protected and standardized **data about the labour situation** of persons with disabilities, and especially of persons with learning difficulties, poses a serious problem. The data collection by various bodies (Public Employment Service, *Statistik Austria*, etc.) is

conducted by using varying definitions of (the term) disability, which means that there is no comparability¹⁵³ → also see Art 31. Therefore, there is no reliable empirical evidence about how far the present support systems benefit those who need this support most urgently in order to (re-)enter into the labour market. An expansion of the eligible group of persons, the restriction of most support structures to one year, as well as fixing the efficiency or success of support measures to quantitative placement rates only result in the fact that applicants are already selected in advance. Often only young applicants – with lower support expenditures - benefit from that. Thus, there are economic and cultural barriers that especially affect persons who need long-term and continuous support. Persons with learning difficulties are massively underrepresented in all areas of the labour market.

As of November 2012, the number of persons with disabilities within the group of **unemployed** persons was 15.17 percent.¹⁵⁴ In 2007, a third of the disabled persons who are classified as registered (cf. item 2 below) were not employed.¹⁵⁵ Due to the low educational level and low employment opportunities, persons with health-related placement restrictions are unemployed for significantly longer periods of time and find it harder to get a job.¹⁵⁶ Persons with disabilities who are considered unfit for work and who are employed in segregated facilities are not covered in unemployment statistics. **Women** with disabilities often experience multiple discriminations in the job market as well. They are massively affected from lack of qualifications, low employment opportunities and unemployment. They are predominantly employed in low-paid, specifically female professional fields and at lower hierarchy levels¹⁵⁷ → also see Art 6. Unemployment among **deaf** and hearing-impaired **persons** is especially high. Due to the lack of bilingual education, their employment opportunities in the labor market are very low. They often depend on jobs that are simple, poor in communication and characterized by routine. They hardly exercise the types of jobs that suit their actual skills and talents. Insufficient interpretation services often impede further training and career opportunities by deaf employees as well. In a survey among deaf women,

¹⁵³ Cf. Behindertenbericht der Bundesregierung 2008, FN 1, pp. 157.

¹⁵⁴ Source:

<http://www.arbeitundbehinderung.at/de/arbeitsmarkt/arbeitsmarktdaten/gesamtarbeitslosigkeit.php>.

¹⁵⁵ Cf. Behindertenbericht der Bundesregierung 2008, FN 1, p. 148.

¹⁵⁶ Cf. Behindertenbericht der Bundesregierung 2008, FN 1, p. 158.

¹⁵⁷ Cf. Behindertenbericht der Bundesregierung 2008, FN 1, pp. 230-234.

only one percent of the participants stated that they receive further training in their jobs and that they have career opportunities.¹⁵⁸

The government, corporate and employee (workers') representatives¹⁵⁹ put in place various **information and awareness** raising measures and services about the rights of persons with disabilities in the working world. However, the respective information and awareness is not given at all responsible bodies on a nationwide basis (employers, labour inspection, Public Employment Service, career counselors, etc.).

2. The Right to Work and Fair Working Conditions

In Austria, the Disability Employment Act imposes an obligation on employers to employ at least one **registered disabled person** per 25 employees for businesses from a size of 25 employees (as of 1 January 2012, this affects 94,910 persons¹⁶⁰. Otherwise, a compensatory tax of Euro 232 per month (as of 2012) must be paid. This compensatory tax flows into the compensatory tax fund and is used for the support of persons with disabilities in the job market. Due to the low amount of this compensation, many businesses do not fulfill their employment duty.¹⁶¹ According to information by the Government, the obligation towards employing persons with disabilities has been fulfilled to about two-thirds during 2006/07.¹⁶² After six months of employment, registered disabled persons enjoyed a special dismissal protection, which means that a dismissal was only possible after approval by the Disability Committee. The regulations on the dismissal protection were changed by an amendment of the Disability Employment Act in 2010. The special dismissal protection comes only into effect after 4 years of employment.

According to the 2008 Disability Report by the Government, *“the willingness of employers to hire disabled persons is not as high as desired”* and *“the participation of persons with disabilities in working life [...] thus still remains difficult.”*¹⁶³

¹⁵⁸ Breiter et al. 2002. Projekt VITA – Erkundungsstudie zur beruflichen Lebenssituation von gehörlosen Frauen im Raum Wien und Umgebung, p. 109.

¹⁵⁹ Cf. e.g. the joint initiatives of social partners, the Federal Ministry of Labor, Social Affairs and Consumer Protection and the OEAR. <http://www.arbeitundbehinderung.at>.

¹⁶⁰ <http://www.arbeitundbehinderung.at/de/arbeitsmarkt/arbeitsmarktdaten/bequengstigtebehinderte.php>.

¹⁶¹ Cf. the statements of the Disability Ombudsman in “Die Presse”, print edition, 7 May 2010. <http://diepresse.com/home/politik/innenpolitik/563405/index.do?from=suche.intern.portal>.

¹⁶² Cf. Behindertenbericht der Bundesregierung 2008, FN 1, p. 147.

¹⁶³ Cf. Behindertenbericht der Bundesregierung 2008, FN 1, pp. 147-148.

Approximately 19,000 to 20,000¹⁶⁴ persons with disabilities are presently employed at **day and employment structures**, and especially under the so-called “occupational therapy” (Beschäftigungstherapie), as well as at sheltered workshops (geschützte Werkstätten) or “capacity-oriented activities”. Their activities are not considered paid work even though the persons go to work on a regular basis, work on or with machines and produce products or provide services, in some cases also in outsourced groups at companies. Instead of paid work, these activities are perceived as measures of the regions (Laender) according to the respective social assistance and disability laws that contain different regulations. Persons at day and employment structures are not insured against unemployment and do **not receive wages (based on collective agreements)** for their work. They only receive a small pocket money that sometimes is less than Euro 10 a month. The legal regulations about employee protection, paid leave and sick leave, employee provision schemes and labour relations (e.g. trade union representation) do not apply. In cases of illness there are different regulations on the continuity of pocket money. Due to the fact that the statutory social insurance is income-dependent, these persons **do not have their own social insurance** (health and pension insurances) either and do not receive, for instance, their own pension entitlements. With regard to health and pension insurance there is the possibility of indirect insurance entitlements due to the qualification as a family member (dependent coverage, orphan’s pensions). Since 2011 persons who are working in day and employment structures have their own accident insurance. Since 2009 there is a working group within the Federal Ministry of Labour, Social Affairs and Consumer Protection including representatives of the regions (Laender) that discusses the inclusion of persons working in day and employment structures also in the health and pension insurance – so far without any results. Persons with disabilities are not represented within the working group.

The different regulations about the **assessment of the capacity to work, act and earn** by persons with disabilities represent a key hurdle and a major discrimination. According to the Unemployment Insurance Act (Arbeitslosenversicherungsgesetz), a person is determined unfit for work if he or she is invalid or incapacitated. In terms of the definition of the term invalidity, it is referred to the relevant regulations of the General Social Insurance Act (Allgemeines Sozialversicherungsgesetz). The sole criterion is whether one’s own capacity to act matches (the one of) a physically and mentally healthy person for at least 50 percent. If

¹⁶⁴ Cf. König, Oliver. 2007. Report on the Employment of disabled People in European Countries. Country Report Austria, Academic Network of European Disability Experts.

the capacity to act is lower than that, the respective persons are considered unfit for work. A capacity to act of at least 50 percent must also exist in order to count as a member of the group of registered disabled persons according to the Disability Employment Act (Behinderteneinstellungsgesetz). This means that, for instance, a business that employs a person with a disability whose capacity to act is below 50 percent must pay a compensatory tax (that is, a sanction for not hiring a disabled person) even though it actually fulfills its employment duty or even goes beyond it. Especially in relation to occupational integration and supportive measures, this strict allocation is very disturbing. Whether and to which extent a person is capable to work and earn, finally is closely related to the support at the workplace, the adaptation of the fields of duty to the individual partial working capacity and to the basic conditions that are available for the occupational integration.

The 50 percent limit of the capacity to act also has an impact on the responsibility for benefits from the federal Government (labour market) and the regions (social assistance). It provokes major gaps and **discrimination within the arrangement and the receipt of benefits**. The consequences in the area of unemployment insurance or invalidity pensions are substantial because these regulations deny persons who are “unfit for work” access to benefits and thus, impede adequate protection.

Further problems regarding the evaluation of the working capacity are the **different classification procedures and bodies**. These differ depending on whether it concerns the assessment of the degree of the disability for the Disability Employment Act (Behinderteneinstellungsgesetz) or for the Federal Disability Act (Bundesbehindertengesetz), whether it concerns a classification according to the federal care allowance law, whether it concerns the evaluation of the individual need for assistance according to regional laws, or whether it concerns medical assessments for the identification of the working capacity according to the Unemployment Insurance Act (Arbeitslosenversicherungsgesetz) or according to the General Social Insurance Act (Allgemeines Sozialversicherungsgesetz). All assessment procedures are generally based on a **purely medical examination**. They do not permit a bio-psycho-social, that is, a holistic and multidisciplinary approach. In order to be able to receive benefits, the affected persons have to undergo a separate assessment procedure at each insurance institution that is designed according to different criteria. These multiple assessment procedures are found to be stressful for the affected persons (because they have to commute between the separate institutions and because these procedures often take a couple of months). Furthermore, the results are often different legal assessments, that are not comprehensible and often lead to great legal uncertainties. A standardization of these assessments would not only result in increased legal certainty but

would also represent a significant improvement of the procedural economy for insurance institutions regarding duration and costs. This has already proven successful in the course of a pilot project about a standardized assessment body (called “Health Street”) that was conducted in Lower Austria and Vienna.

The National Action Plan on Disability (NAP) plans the establishment of a standardized assessment body until 2018.¹⁶⁵

The fact that there still is an income difference of approximately 18 percent between men and women in Austria¹⁶⁶, also leads to significantly lower incomes and thus to lower income-oriented benefits (such as, for instance, unemployment benefits and unemployment assistance)¹⁶⁷ especially among women with disabilities → also see Art 6 and 28.

The so-called “Grants Pitfall” (“Beihilfenfalle”) represents a further obstacle for persons with disabilities. This means that starting a paid job according to a collective agreement does not contain any financial stimulus in most cases. Most transfer payments (orphan’s pensions, increased family allowances, etc.) usually stop when certain income limits have been exceeded. As a result the available net income can become even lower by starting an employment. Furthermore, there is no guarantee that lost benefits will be revived in case of a job loss. Thus, starting a paid job paradoxically represents a considerable financial risk for persons with disabilities on a long-term basis. Additionally, there are waiting lists for individual Disability Assistance services (e.g. employment at a workshop) in some regions (Lower Austria, Upper Austria) so that starting a paid job is also related to the risk of losing the possibility of returning to alternative offers in the event of failing in the regular job market.

3. Protection from Discrimination and Harrassment at Work → cf. Art 5

In order to implement the EU Employment Framework Directive, the Austrian Disability Equality Package 2005 was issued. It led to the embodiment of the protection from discrimination and harassment in several laws. According to this, **discrimination and**

¹⁶⁵ Cf. National Action Plan on Disability 2012-2020, p. 95. http://www.bmask.gv.at/cms/site/attachments/7/7/8/CH2477/CMS1332494355998/nap_web.pdf.

¹⁶⁶ Cf. Frauenbericht 2010 der Bundesministerin für Frauen und öffentlichen Dienst (Women’s Report 2010 by the Federal Minister for Women and Civil Service), pp. 270, <http://www.bka.gv.at/site/7207/default.aspx>.

¹⁶⁷ Cf. Behindertenbericht der Bundesregierung 2008 (Disability Report by the Austrian Federal Government), FN 1, pp. 160, 230-234.

harassment on the grounds of a disability is prohibited at work as well as during initial and continuing training, with regard to memberships in employee organizations and in the access to self-employment. Before a legal enforcement of (primarily) claims for compensation, a compulsory **mediation proceeding** must be conducted at the Federal Social Office. A legal claim for injunction or for the elimination of barriers does not exist → also see Art 9. The legal minimum compensation in cases of discrimination and harassment is relatively low and in reality, it is little repulsive for employers.¹⁶⁸ Previous experiences about mediation proceedings have shown that the majority (approximately 60 percent) of all proceedings originate from the field of work. However, the settlement quota in this area is significantly lower than the one from proceedings outside the field of work. Legal proceedings about dismissal disputes or about the enforcement of claims for compensation are, amongst other reasons, due to the risk of high legal costs, very rare → see Art 5 for further details.

CASE STUDY EXAMPLE G:¹⁶⁹

Mr. E (deaf) discovers a job advertisement in a newspaper and contacts the job assistance agency. This person contacts the respective company and informs them that a deaf person would be interested in the position. The response of the company is that the position is no longer available. However, Mr. E does not give up and asks his father to call the company on his behalf and to withhold that he is deaf. To this, the company replies that the position is still available and invites Mr. E to a job interview.

Employees with disabilities are often victims of **mobbing** against which there are hardly any legal and actual remedies. Additionally, this situation is even more complicated for persons with disabilities because a change of workplace is often very challenging for them.

CASE STUDY EXAMPLE F:¹⁷⁰

Reply to the question of an employee with a disability about an eventual change of workplace: “You should be happy to have a job! What else could you want?”

4. Accessibility at Work

¹⁶⁸ E.g. at least Euro 1000 in cases of harassment according to Sec 9 Federal Disability Equality Act.

¹⁶⁹ Source: OEGLB, 3. Diskriminierungsbericht 2010, <http://www.oeglb.at>.

¹⁷⁰ Source: An anonymous affected person.

The accessibility of businesses is often not or not adequately given. The accessibility of buildings lies within the responsibility of the regions (Laender). It is regulated to widely varying degrees → cf. Art 9. The responsibility for financial support regarding accessible design of the workplace or supportive measures is unclear and affected persons are often confronted with contradictory information about potential benefits by authorities and institutions (Federal Social Office, Pension Insurance Institution). The accessible design of workplaces for the protection of health and safety is regulated according to the *OE-Norm* (Austrian Standards) and primarily duty of the employer. However, quite often it is not adequately implemented (e.g. no optical-acoustic signals for fire alarm devices for deaf employees). Furthermore, there are no adapted safety trainings and fire drills.

The funding of interpretation services in **sign language** in the area of employment and work is generally granted by the Federal Social Office, but only if these are related to the main job. There are no grants for continuing trainings in relation to a side job or for unemployed deaf persons who would like to attend initial and continuing training or to be retrained. Federal bureaus but also legally regulated service providers such as social insurers or the Public Employment Service are obligated by the rule to accessibility to finance interpretation services in sign language in their area of authority. However, there is no legal entitlement to such services. This often causes difficulties and in some cases random decisions about the reimbursement of costs.

5. Support Services and Personal Assistance in the Workplace

For disadvantaged and disabled young people, there are various offers by the regions (Laender) for support for the acquisition of educational qualifications, entry into the job market or for obtaining employment as well as to lastingly remain in employment. This occurs through counselling, vocational orientation, skills training, education and training. During job assistance which follows the clearing process, young people receive support in finding a job, an apprenticeship position or in gaining access to higher educational training. However, the requirements and overall conditions of the individual employment programs and measures towards occupational integration (such as skills training projects, supportive assistants, etc.) as well as performance clauses (quota systems) result in the fact that in most cases only young persons who are especially fit and who tend to be easily placeable are included. Persons with placement problems and increased need for support, on the other hand, hardly

find access to measures towards occupational integration and skills training, but often depend on the several forms of “occupational therapy”, etc.¹⁷¹

The Public Employment Service offers in cooperation with other sponsors (federal Government, regions) measures for initial entry or re-entry into the job market. Persons who need especially intensive forms of support are referred to other service facilities by the Public Employment Service. Many organizations cooperate with the Public Employment Service and have specialized in support in terms of job search and career entry or re-entry, such as job assistance, for instance. Offers in terms of support structures for deaf young people, such as supportive assistance (clearing, job coaching, vocational training assistance, job assistance), target group-oriented service providers (business support services, sensitization measures, mentoring) and crisis intervention in terms of problems in the workplace with the support of assistants who are competent in Austrian Sign Language are, however, not sufficiently given in Austria.

For **career/job training** → cf. Art 24

For **personal assistance** at the workplace → cf. Art 19

Recommendations:

- Constitutional enshrinement of the **right to work** for all human beings
 - Realization of **full inclusion in the labor market** by the opening of day centred and social enterprises that are geared towards individual needs as part of community-based support services
 - Immediate protection under social insurance and employment laws as well as fair pay (according to collective agreements) of persons with disabilities at day centres and social enterprises
 - Freedom of choice with regard to adequate work in supported positions in the job market or at day centres that are secured in terms of social insurance and
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¹⁷¹ Cf. Egger-Subotitsch. 2006. Lebenssituation und Bedürfnisse von Jugendlichen. In: Damit fertig werden, das Beste rausholen und es irgendwie schaffen, edited by Egger-Subotitsch & Sturm. Paper presented at the Conference “Physisch und Psychisch beeinträchtigte Personen am Arbeitsmarkt”, 15 March 2005, Vienna, AMS Österreich (Public Employment Service Austria), pp. 60-65 (62); Fasching/Pinetz. 2008. Übergänge gestalten, Pädagogische Unterstützungssysteme für junge Frauen und Männer mit Sonderpädagogischem Förderbedarf im Arbeitsleben. In: Behinderte Menschen, Zeitschrift für gemeinsames Leben, Lernen und Arbeiten, No. 5, 2008, pp. 26-41 (pp. 38).

employment laws (including the opportunity to return from integrative jobs to sheltered workshops)

- Legal embodiment of representative bodies (workshop councils) at day centres and social enterprises
- Expansion of and legal entitlement to **support measures** in terms of (re-)entry into the job market for persons with disabilities, according to their need for support (especially for young people)
- Measures for increased implementation of the **obligation to employ people with disabilities** for businesses, especially in terms of the amount of compensatory taxes and consideration of the obligatory quota irrespective of the capacity to act by the respective person (incentive system instead of sanction system)
- Reform of the **assessment procedures** in terms of the capacity to work (individualized decisions instead of a strict 50 percent limit; comprehensive, multidisciplinary assessments; modification of the term “unfit for work”)
- Standardization of the various classification procedures; introduction of a **central contact point** and **funding framework** (“Health Street”, “One Stop Shop”) by an agreement between the federal Government and the regions according to Art 15 a Federal Constitutional Law
- **Awareness-raising** about the right to work and equal working conditions for persons with disabilities
- Establishment of comprehensive **accessibility** in the job market
- Reinforcement of the legal protection from **discrimination** in the job market (legal entitlement to the elimination of barriers, support during legal proceedings)
- Expansion of **personal assistance** in the workplace and in all aspects of life
- **Data acquisition** on persons with disabilities that is structured according to the type of disability in all statistics (and especially those of the Public Employment Service)
- **Inclusion** of persons with disabilities and their representatives in all work-related measures that concern them

Article 28 Adequate Standard of Living and Social Protection

1. Poverty Situations of Persons with Disabilities

In Austria, approximately **96,000 persons with disabilities** are **affected by poverty**. Measured by the total population, for persons with disabilities the risk of becoming poor¹⁷² or becoming acutely poor¹⁷³ is about twice as high (20 instead of 11 percent and 13 instead of 6 percent, respectively).¹⁷⁴ 37,000 disabled persons cannot sufficiently heat their apartments, 69,000 live in overcrowded apartments, and 38,000 are in arrears with important payments. Women with disabilities are affected by poverty and acute poverty twice as much as disabled men.¹⁷⁵ The number of persons with disabilities among the group of unemployed people is 15 percent (as of May 2010);¹⁷⁶ the number of unemployment assistance recipients is significantly higher among disabled persons than among non-disabled persons (approximately 69 percent instead of 42.7 percent in 2007).¹⁷⁷

Poverty is preeminently characterized by **social exclusion** and **non-participation** in the community, by which persons with disabilities are especially affected. Reasons for the increased risk of poverty among persons with disabilities are thus to be found in financial benefits that are partly too low (e.g. inadequate valorization of the care allowance since 1993, an eight percent decline in unemployment assistance since 2000) on the one hand, and on the other hand in deficits in access to education (Art 24), training and work (Art 27), a lack of accessibility in all aspects of life (Art 9) as well as a lack of comprehensive participation (Art 29 and 30).

2. Social Benefits and Support Measures

¹⁷² A person who has an income that is less than 60 percent of the average income of the total population (Euro 900 per month) is at risk of poverty.

¹⁷³ A person who has a low income and who is restricted in terms of basic needs such as clothes, accommodation or food, is considered acutely poor.

¹⁷⁴ Cf. Statistik Austria EU-SILC 2008; cf. Behindertenbericht der Bundesregierung 2008, FN 1, p. 22.

¹⁷⁵ Behindertenbericht der Bundesregierung 2008, FN 1, p. 22; cf. <http://www.armutskonferenz.at>.

¹⁷⁶ Cf.

<http://www.arbeitundbehinderung.at/de/arbeitsmarkt/arbeitsmarktdaten/gesamtarbeitslosigkeit.php>.

¹⁷⁷ Cf. Behindertenbericht der Bundesregierung 2008, FN 1, p. 159.

Social transfers and pensions help to reduce the risk of poverty of people with disabilities. For the coverage of care-related additional expenditure, the Federal Care Allowance Act stipulates the care allowance as a flat-rate financial benefit according to the extent of a person's need for long-term care → see also Art 19. In reality, care allowances especially benefit lower income groups.¹⁷⁸ The problem is that these allowances have only been valorized insubstantially four times since their introduction in 1993 and thus have experienced massive losses in terms of (their) purchasing power. Furthermore, the classification procedure for the establishment of the need for long-term care does not correspond with the criteria of the social disability model in accordance with the UN Convention, because it is based on a purely medical examination method. Although the access to care allowances has been restricted massively for the recipients of Care Level 1 and 2, the permanent funding of the care allowance system does not seem to be secured. → cf. Art 19 for further details.

Besides that, the situation of **children with disabilities** is still unsatisfactory. The Amendment to the Federal Care Allowance Act 2008 has only brought improvements for children and young people with severe multiple disabilities. Furthermore, there is no legal entitlement to short-term care for care-giving relatives that would allow them to receive essential services quickly and on a short-term basis.

Persons who are not able to sustain their livelihoods by themselves and with their own income or to obtain maintenance payments presently have the chance to receive **social assistance** according to the various regional laws which contains financial benefits, benefits in kind or services for the protection of one's livelihood. **Disability assistance** has the aim of supporting people who, due to their disability, are not able to conduct an independent life on their own. For persons with disabilities, disability assistance is thus a special scheme in addition to social assistance. Social as well as disability assistance are, due to the competence of the regions (Laender) in this field, not only regulated by different laws¹⁷⁹ according to each region, but also in different ways in terms of prerequisites, amount or legal enforcement. In principle, there is also the option of receiving both social assistance and disability assistance simultaneously. In general, the person's overall assets are considered

¹⁷⁸ Cf. Behindertenbericht der Bundesregierung 2008, FN 1, p. 25.

¹⁷⁹ In Burgenland, Salzburg, Styria and Vienna under the Disability Act, in Upper Austria and Vorarlberg under the Opportunity Act, in Tyrol under the Rehabilitation Act, in Carinthia under the Minimum Social Protection Act and in Lower Austria under the Social Assistance Act.

for the assessment of social benefits, for which reason persons with disabilities do not have the chance to acquire savings for emergency cases.

Persons with disabilities usually have **increased living expenses** because they often depend on social services such as home helps, cleaning services, laundry services, meals on wheels, etc. and furthermore, they have higher expenses for clothes, shoes and other aids. Support benefits in this context also vary according to each region and are often insufficient. In four regions (Styria, Salzburg, Tyrol and Upper Austria), benefits from social or disability assistance have, by taking the increased family allowance into account, been cut by between EUR 211.10 and EUR 349.40. The family allowance should not be considered part of the income of the child¹⁸⁰ but – similarly to the care allowance – considered a benefit for extra expenditure that does not result in a reduction of social or disability assistance.¹⁸¹

Regional differences result in great legal uncertainties and inequalities among the affected persons depending on the geographical location of their place of residence. The **means-tested minimum income** (according to Art 15 a Federal Constitutional Law Agreement between Federal Government and Laender) that was introduced in September 2010, is intended to adapt procedural standards in the area of open social assistance and provide standardized benefits. The minimum income consists of a flat-rate financial benefit of EUR 773,25 (as of 2012) twelve times a year (in some regions 14 times a year) and minimum standards for the protection of the needs for the costs of living, accommodation outside of stationary facilities as well as benefits in cases of illness, pregnancy and childbirth. The recipients are to be increasingly involved in labor market policy programmes and are covered by statutory health insurance. The capacity to work is not a prerequisite to entitlement; however, if the recipients are able to work they must be willing to offer their labor, otherwise the benefits can be cut by up to 50 percent.

Due to the fact that separate regulations according to the regions exist for the specific needs of persons with disabilities (the so-called “Regional Disability Law”) that are valid as special laws in relation to the Social Assistance Law,¹⁸² there are **doubts** about whether persons

¹⁸⁰ Cf. § 12 a Family Compensation Act 1967.

¹⁸¹ Compare the jurisprudence of the Administrative Court, on the other hand, that does not recognize any illegality in terms of crediting the increased family allowance to the social and disability assistance (VwGH 2006/10/0200, 2007/10/0183, 2008/10/0126).

¹⁸² Pfeil. 2001. Rechtswissenschaftliche Studie “Vergleich der Sozialhilfesysteme der österreichischen Bundesländer”, Vienna, pp. 22, cf.

with disabilities are **entitled to benefit from the means-tested minimum income**, or rather, it is for the regulations of the regions (Laender) in terms of the means-tested minimum income to decide whether and how far persons with disabilities are actually eligible. Likewise, there are doubts about whether these benefits are actually sufficient in order to ensure an adequate standard of living that secures one's livelihood. The means-tested minimum income is generally designed to overcome cases of temporary emergency. However, this tool is not suitable for persons who – due to a lack of realistic opportunities in the job market and thus, their own potential earnings – depend on these benefits on a permanent basis. Moreover, the equalization supplement has to be used as a basis for the means-tested minimum income. Thus, there is a poverty gap of 16.7 percent or EUR 149.00 per month for one-person households.¹⁸³ This measure thus does not reach far enough to actually protect people from poverty. Furthermore, it must be critically remarked that by the inclusion of people with disabilities in the means-tested minimum income these people are judged as “welfare cases”. This leads to a reinforcement of the old paradigm that people with disabilities are portrayed as welfare cases and paupers. In this system, persons with disabilities do not have the opportunity to achieve an additional income or to save up assets. This also has the consequence that persons with disabilities who are employed at day centres (“occupational therapies”) and who are generally considered as unfit for work do not have any chance of escaping the poverty trap.

3. Benefits from Social and Pension Insurances

The higher risk of poverty by persons with disabilities is amongst others a consequence of low earned incomes and the derivative low social and pension benefits.¹⁸⁴ Persons with disabilities who are employed at **day centres and social enterprises** (such as “occupational therapies”, workshops or “capability-oriented activities”) and who do not receive wages but only insignificant pocket money, are especially affected. These activities are not considered paid work but represent measures which form part of the social assistance (schemes) of the regions (Laender) which means that **no separate entitlements to social insurances and pensions** can be acquired. The only chance to obtain health insurance is co-insurance. Thus, the present regulation and practice in terms of day centres and social enterprises not

<http://www.bmsk.gv.at/cms/site/dokument.html?channel=CH0184&doc=CMS1230042708868>.

¹⁸³ Österreichische Gesellschaft für Politikberatung und Politikentwicklung (OEGPP). 2008. Zweiter Armuts- und Reichtumsbericht für Österreich, p. 8, cf. http://www.politikberatung.or.at/typo3/fileadmin02_Studien/5_armut/armutundreichtum2008.pdf.

¹⁸⁴ Cf. Behindertenbericht der Bundesregierung 2008, FN 1, p. 22.

only violate the right to work (→ cf. Art 27) but due to a lack of social protection also violate Art 28.

For persons who have been disabled from birth, a special regulation about **invalidity pensions** was added in 2004. According to this regulation, the respective persons are upon incapacity to work entitled to invalidity pensions if they have made contributions for 10 years. However, this regulation can still be a disadvantage if these persons do not succeed in pursuing an employment that justifies compulsory insurance for a period of 120 months, because in that case they will - due to their lower capacity to act (less than 50 percent) - not be entitled to benefits from social insurance (pension insurance) or unemployment insurance.

Recommendations:

- **Legal entitlement to** (standardized) **financial benefits and benefits in kind** according to the corresponding federal and regional laws; especially legal entitlement to benefits for sustaining one's livelihood and other benefits for persons with disabilities as stipulated by the **means-tested minimum income**.
- Legal entitlement to **comprehensive personal assistance**, seen as broadly defined support benefits in terms of Art 19 coupled with further benefits such as care allowances, family allowances, etc.
- Separate **protection under social insurance laws** (wages in terms of collective contracts) for persons with disabilities who are employed at day centres and social enterprises in order to earn independent entitlements to health and pension insurance → cf. Art 27
- Measures for the long-term **funding of the care system**; valorization of the care allowance and tax reductions for persons with disabilities; administrative simplifications instead of cuts at Care Level 1 and 2
- Legal entitlement to **short-term care** according to all Care Allowance Acts under regional law for care-giving relatives
- Measures for the **effective poverty reduction** of persons with disabilities, and especially labor market enabling programs for women and support benefits for children
- Better integration of persons with disabilities into the **invalidity pension scheme** by eliminating discrimination and reducing the contribution periods in compulsory insurance from previously ten to five years

Article 29 Participation in Political and Public Life

1. Political participation as an elected representative

Persons with disabilities are extremely underrepresented in political offices in Austria. Presently, there are only three (out of 183) Members of Parliament at the National Council who have physical or sensory impairments. Even disability spokesmen of the individual political parties are not always persons with disabilities (e.g. the disability spokesman of the Social Democratic Party of Austria). In regional (Laender) politics there are no politicians with disabilities at present. Up to this date, only one person with learning difficulties appeared on the list of candidates of the Social Democratic Party of Austria for an election of the National Council. However, this person had due to his or her ranking at number 379 no realistic chances to a position as a Member of Parliament.

2. Exercising the Active Right to Vote

According to the Federal Law on the Election of the Members of the European Parliament (Europawahlordnung), there are regulations on the accessibility of polling stations and on support services during voting for persons with disabilities (offering appropriate aids e.g. for blind or visually impaired persons, freely chosen electoral assistants, etc.). Since the Amendment to the Right to Vote 1998 (Federal Law Gazette I No. 161/1998), the individual election laws prescribe at least one polling station in each municipality or, in Vienna, in each district that is accessible for physically disabled persons according to the technical possibilities. However, no regulations about blind control systems or ballot paper templates are to be found in the electoral regulations of the regions (Laender). Furthermore, accessibility has not been embodied as such in all electoral regulations and thus, it has not been implemented adequately across Austria so far.

People with disabilities can vote as follows: (1) by postal vote or absentee ballots, (2) at “special voting parishes”, such as, for instance, at electoral authorities which have been set up at institutions for persons with disabilities, (3) at a “flying electoral commission” or (4) with the aid of an assistant. The regulations for accessible voting options regarding other **elections**, such as the one of the Austrian **Student Union** are inadequate. Thus, not all polling stations for the last election of the Austrian Student Union were freely accessible. The relevant electoral regulation does not stipulate any compulsory provision of ballot paper templates for blind voters; thus, there were no ballot paper templates available at any of the universities (except for the one at Graz where a provisional solution was provided).

There is no voting material in Easy-to-Read formats, which means that persons with learning difficulties are restricted in their right to vote. Furthermore, there are no permanent and effective measures of political education for persons with learning difficulties. Two workshops of the “Democracy Workshop” that took place in 2008 and that had the objective of educating about political rights of persons with learning difficulties did not have any lasting impacts. Due to a lack of appropriate measures for the political education of persons with learning disabilities, their opportunities to participate in political life are very limited.

3. Advocacy Groups and Self-Advocacy Organizations → cf. Art 12, 19

Advocacy groups are funded on the basis of subsidies. Funding is not guaranteed by law which also results in financial uncertainties. In Austria, there are several self-advocacy groups, such as, for instance, self-advocates of the *Lebenshilfe Wien*, *Mensch Zuerst – People First Vorarlberg*, *Vienna People First*, etc. Further, the network *Selbstvertretung Österreich* (Self-Advocacy Austria) has been founded in 2008 and currently has 54 members. The members are from all over Austria, Southern Tyrol, Switzerland and Germany. Recommendations of self-advocacy groups (listed below) usually remain unnoticed; they often feel as if they were not taken seriously by politicians and that they do not receive enough legal support.¹⁸⁵

4. Participation

People with disabilities and the organizations representing them shall be involved as early as possible and actively included in all political processes at federal, regional (Laender) and municipal level, especially in processes of formulating legislative provisions. In Austria, people with disabilities and their organizations are generally invited to issue statements on law amendments or other measures in most cases. However, there is **no comprehensive, structured and results-oriented inclusion** from the very beginning so far. Subsequently, important suggestions often remain without consequences. This is either due to a lack of political will, the opposition of the economic sector that is strongly represented in Austria or the alleged nonexistent financial viability of measures → cf. Art 4.

Quotation of Self-Advocates: ¹⁸⁶

¹⁸⁵ Cf. Protocol of the National Information Day about the UN Convention, Vienna, 30 November 2009.

¹⁸⁶ Source: Protocol of the National Information Day about the UN Convention, Vienna, 30 November 2009.

“We are not even heard by politicians because they believe that everything is so great for us that we don’t want anything else.”

Recommendations:

The full participation of people with disabilities in political and public life is only possible if the basic principles of the CRPD for an equal and independent life are fulfilled. As a basis for exercising the rights within Art 29, reference is thus made to the recommendations of Art 4 (Full Participation in all relevant Measures), Art 8 (Awareness-Raising), Art 9 (Comprehensive Accessibility), Art 19 (Living Independently), Art 24 (Inclusive Education) and Art 27 (Inclusive Work).

- Measures towards **empowerment and political education** for persons with (learning) disabilities and the support of their participation in political life, especially in the occupation of **public offices**
- Ensure the **continuity of self-advocacy work** (self-advocacy and advocacy groups) considering various factors such as constant financial support by the Federal Government (Federal Social Office) or the regions/Laender (*Fonds Soziales Wien/* engl.: Vienna Social Fund) as well as their inclusion in all measures that are relevant to them at an early stage
- Measures towards comprehensive **accessibility during all elections and election campaigns** and ensuring secret ballot and the personal right to vote for persons with disabilities

Article 30 Participation in Cultural Life, Recreation, Leisure and Sport

1. Accessibility to Cultural Life

Structural barriers often prevent the comprehensive participation of people with disabilities in cultural and recreational life → also see Art 9. Access to cultural events is often made difficult by insufficient offers of reserved parking for persons with disabilities. Seats for wheelchair users are often poorly positioned and so far away that eventually necessary assistance becomes difficult. There is a lack of offers for people with sensory disabilities (audio descriptions, sign language, induction loops). In general there is a lack of comprehensive accessibility in both cultural and tourist facilities. There are some occasional barrier-free offers, but information about them is difficult to obtain. On the one hand, there is a lack of awareness among providers that the participation of people with disabilities is a human right. They often perceive the issue of accessibility as a burden. On the other hand, a knowledge of how to create barrier-free offers is also not present.

In the cultural sector, there are hardly any services that are specifically designed for persons with learning difficulties (e.g. theaters, museums, exhibitions in Easy Language). People with disabilities often have – also due to their low financial resources - few chances to participate in cultural, sporting or touristic activities, to go on vacation or to travel. The lack of legal entitlement and insufficient offers in terms of personal assistance in all aspects of life also prevents the full participation in cultural life and leisure activities → also see Art 19.

2. Accessible Media → cf. Art 21

According to its program mission, the **Austrian Broadcasting Corporation (ORF)** has to consider the concerns of persons with disabilities. Information programs have to be designed according to the technical possibilities in such a way that makes it easier for deaf or hearing-impaired persons to follow the programs.¹⁸⁷ However, regulations about compulsory accessibility for public-legal and private TV stations do not exist and the implementation of the existing regulations is poor. The entry into force of the new ORF Act and the Private TV Act on 1 October 2010 has brought some improvements, however, so far there is no legal embodiment of any concrete staged plan that would regulate the increase of annual quotas for subtitles and audio descriptions.

¹⁸⁷ Sec 4 para 1 L 10 and Sec 5 para 3 ORF Act.

The 3rd staged plan (2012-2014) on the further extension of barrier-free access to ORF television programmes and its online offers has been presented. The current subtitling rates for January-April 2012: ORF 1 (60.4%), ORF 2 (64.10%) und ORF III (26.72%). Source: BIZEPS-Info: staged plan: "We make television possible. We are barrier-free. ORF." (15.9.2012) www.bizeps.or.at]

Concerning the subtitling (in German) of media that have been produced in Austria on digital devices (films, DVDs, blue rays, etc.), there is presently no legal obligation at federal and regional (Laender) level. The funding guidelines of media productions only contain regulations about accessibility to a certain extent. The only sign language dubbing of ORF newscasts (ZIB1) is not broadcasted publicly but only on the less known channel "ORF 2 Europe". The **participation** of persons with disabilities in media reports is not given and the image of persons with disabilities that is disseminated via the media does not correspond with the one of equal full participation. Thus, there is no program by the ORF that is designed or moderated by people with disabilities themselves. Furthermore, no person with a disability is represented at the Audience Council of the ORF.

Case study- claim for damages due to a DVD without subtitles:

Since 1.1.2006, the Disability Equality Act has laid down that information processing systems which are sold to the public have to be barrier-free. A DVD therefore has to have subtitles so that it can also be consumed by people who are deaf or hard of hearing.

A DVD produced in 2009 by the ORF, however, does not have subtitles. The deaf plaintiff bought the DVD and then realised that it was useless to him. After an unsuccessful attempt at conciliation at the Federal Social Welfare Office, the plaintiff brought an action because of discrimination due to a disability and claimed damages. In the first and second instances (Commercial Court in Vienna), the court ruled in favour of the plaintiff, who was awarded damages. (Source: BIZEPS Info: ORF produced DVD without subtitles: damages due to discrimination; BIZEPS Info: Court rules in favour of deaf football fan. Available at www.bizeps.or.at)

3. Recognition and Promotion of the Sign Language and Deaf Culture → also see Art 8, Despite the recognition of the **Austrian Sign Language** as an independent language in Art 8 para 3 Federal Constitutional Act (and Art 9 para 4 Upper Austrian Regional Constitutional Act) the ordinary law at federal and regional (Laender) level does not foresee any detailed regulations in order to ensure a comprehensive service or support for communication (and thus enable a full participation in cultural life). There are only a few texts that have been translated into sign language. Cultural events, such as theater productions are generally not

translated and there is no legal entitlement to reimbursement for sign language interpreters. Furthermore, only few interpreters are available, especially in specific situations where expert knowledge in vocabulary is required. Generally, there is no awareness about the sign language and about adequate support measures within society. Thus, deaf people are often affected from exclusion from cultural and leisure events as well. Measures for the promotion of Austrian **deaf history, culture and arts** do not exist either. More specifically, there is a lack of services at kindergarten and school in terms of visual and tactile music and movement education (songs, poetry and dance in sign language) for deaf and hearing-impaired children, for instance.

4. Sports and Leisure

The recent sports promotion activities are primarily targeted towards **professional sports**. These sports are promoted by the Austrian Disabled Sports Federation (Österreichischer Behindertensportverband ÖBSV) in accordance with the Federal Sports Promotion Act 2005 (Bundes-Sportförderungsgesetz 2005). There is a fund for the promotion of disabled sports and there are different grants, such as grants for children and youth projects or grants for the training for sports coaches. Measures for the promotion of **mass sports activities** are not as common as the ones for professional sports. There is the opportunity to participate in sports weeks and to make use of the sports and recreational centers of the state. Some of these facilities are accessible for wheelchair users while others are only partly accessible. In the course of the day of sports, various disability organizations are involved in order to motivate persons with disabilities for mass sports activities. The costs for disability-specific sports equipment are usually more expensive what represents a certain obstacle for exercising these sports activities.

Due to the lack of an inclusive educational system in Austria, there is no equal promotion of leisure and sports activities for children with disabilities at school → see Art 24.

Recommendations:

Media

- Legal obligation for public-legal and private TV stations to provide access to digital media and **“barrier-free” program content** (subtitles, audio descriptions, sign language, etc.)
- Approval of grants especially for media and cultural institutions only under the condition of an adequate consideration of comprehensive accessibility

- Compulsory **participation** of people with disabilities in designing and moderating program content at public-legal and private TV stations (e.g. Audience Council as well as the Foundation Council of the ORF)

Sign Language and Deaf Culture

- Recognition and promotion of the **Austrian Sign Language** as well as deaf culture, history and arts; visual and tactile music education and movement education (especially in the governmental education curriculum)
- Sufficient sign language **interpreters**, script interpreters and communication assistants with Lormen competencies as well as interpreters for the tactile sign language specifically for deaf-blind people in all aspects of life at federal and regional (Laender) level (as well as ensuring their training and funding)
- Inclusion of deaf people in **parental counseling** in order to support parents of deaf infants, children and young people and for the appreciation of deaf culture and sign language

Cultural, Sports and Leisure Activities

- Comprehensive **accessibility** to cultural, sports and leisure events including the promotion of and awareness raising for **accessible tourism** within the tourism sector
- Measures for the promotion of artistic potential of persons with disabilities
- Promotion of **mass sports activities** for persons with disabilities and of (affordable) disability-related sports equipment for mass sports activities
- Expansion of **personal assistance** in all aspects of life for a full participation in cultural life, recreation, leisure and sports

Article 31 Statistics and Data Collection

In Austria, data collection about the situation of persons with disabilities is, same as in other areas, insufficient and unsystematic.¹⁸⁸ Apart from general data collections by *Statistik Austria*, for instance, about the living and income situation of the Austrian population (EU-SILC) and a questionnaire survey of 2008 with the title “People with Impairments”, there are

¹⁸⁸ Cf. similar criticism in terms of missing data collections in the final recommendations to Austria by the UN committees of CERD, CDESCR, etc.

no **comprehensive official statistics** about the position of persons with disabilities that would serve as a basis for measures towards implementing the convention (e.g. in the area of health care or for the achievement of accessibility).¹⁸⁹ There are varying definitions of the term 'disability' used in various general data collection procedures. Therefore, the data collection, for instance, by the Public Employment Service (for unemployment statistics) or the various funding agencies (for figures about benefit recipients) lead to different results and do not convey a clear, meaningful image.¹⁹⁰

Thus, the total amount of approximately 1.6 million people with disabilities in Austria is based on an extrapolation of the EU-SILC survey of 2006. According to this survey an estimated amount of 630,000 people have a severe impairment. (i.e. an impairment that lasts at least six months) while about one million people suffer from chronic illnesses. However, these estimates only refer to people between the ages of 16 and 64 who live in households. Children under the age of 16 and elderly people as well as people with disabilities who live at facilities are thus not recorded. The lack of meaningful data (e.g. about the situation of children with disabilities) prevents or impedes justified demands for and the implementation of specific measures towards an improvement of the situation of persons with disabilities. It represents a massive deficit in the effective implementation of the convention.

The general and **accessible dissemination of data** about the situation of persons with disabilities in compliance with data protection policies is not given either. Persons with disabilities are neither included in nor assigned for data collection measures.

Recommendations:

- Introduction of systematic and **standardized data collection** (according to gender, age, language, etc.) about the situation of persons with disabilities as a basis for measures towards implementing the CRPD
- Public and accessible **dissemination of statistical data** about the situation of persons with disabilities in compliance with data protection policies
- Full **participation** of persons with disabilities in the collection and analysis of data that affect them as well as training on data collection

¹⁸⁹ Cf. Frauenbericht 2010, FN 145, p. 270.

¹⁹⁰ Cf. Behindertenbericht der Bundesregierung 2008, FN 1, pp. 7.

Article 32 International Cooperation

Apart from poverty reduction in general (cf. Art 28 para 2 lit b), Art 32 highlights the importance of **International Development Cooperation** for the sustainable improvement of the living conditions of persons with disabilities, especially in developing countries.¹⁹¹ International Development programs must actively support the **equality** of persons with disabilities and ensure the **comprehensive inclusion** of and **accessibility** for people with disabilities at all stages of the International Development Cooperation (planning, implementation, monitoring and evaluation).

The Austrian **Development Cooperation Act** (Federal Law Gazette 65/2003) contains a regulation about the consideration of the special needs of persons with disabilities. However, this regulation does not comply with the stipulations of the CRPD on the full inclusion of persons with disabilities.

The proportion of GDP which Austria spent on **development cooperation** in 2011 was **0.27%**, which also included an over-average element of education and training costs for foreign students, and peacekeeping missions. There are no plans for an increase towards the internationally established amount of 0.7 percent until 2015.

There are certain **quality criteria and guidelines** elaborated by the Austrian Development Agency (ADA) regarding the consideration of persons with disabilities within the field of International Development Cooperation.¹⁹² However, their practical implementation has not been proved or evaluated in a transparent manner. The Austrian Development Cooperation funds individual projects that aim at supporting people with disabilities, still, there is no systematic embodiment of inclusion of persons with disabilities in all Development Cooperation projects. The principles of accessibility and participation that are stipulated in the CRPD are not implemented at all or merely unsystematically. There are no figures and

¹⁹¹ PP (I), (m) ICRPD.

¹⁹² OEZA, Qualitätskriterien Menschen mit Behinderungen, cf. http://www.entwicklung.at/uploads/media/06b_Behinderung.pdf; Fokus: Menschen mit Behinderung in der OEZA, 2008, cf. http://www.entwicklung.at/uploads/media/Fokus_Behinderung_Nov08_02.pdf.

statistics for identifying how far people with disabilities benefit from the Development Cooperation programs.

The National Action Plan (NAP) on Disability 2012-2020 contains a separate chapter on 'Development Cooperation and Humanitarian Aid'.¹⁹³ However, the goals and measures formulated here require careful monitoring, which is made more difficult by the lack of specific indicators to measure progress. There is a complete lack of recognition that the Development Cooperation Act in its current form does not correspond to the CRPD. In addition, the NAP does not have its own budget, the principle of mainstreaming is not generally recognisable and many of the measures have a time limit, so that their long-term effect is not ensured.

In its development policies, Austria commits itself to the implementation of the **Millennium Development Goals**¹⁹⁴, particularly in the areas of energy/the environment, water/sanitary facilities and peace/security. However, accessibility is not a mandatory element in the planning and realisation of the projects which they involve.

The Development Cooperation Act (Sec 1 para 4 L 4 Entwicklungszusammenarbeitsgesetz) stipulates that all measures "must consider the needs of children and persons with disabilities in a meaningful way". This has not been implemented in the projects for the achievement of the MDGs even though – according to the Resolution 64/131 by the UN General Assembly¹⁹⁵ that is endorsed by Austria as well – all national programs for the achievement of the MDGs should be designed in accessible formats and people with disabilities should be included in all development initiatives.

¹⁹³ NAP Behinderung 2012-2020, Kapitel 1.10
http://www.bmask.gv.at/site/Soziales/Menschen_mit_Behinderungen/

¹⁹⁴ Siehe u.a. 3-Jahresprogramm der OEZA 2010-2012 und Aktualisierung 2011:
http://www.entwicklung.at/uploads/media/3JP_2010-2012_06.pdf

Österreichische Kandidatur für den Menschenrechtsrat der Vereinten Nationen 2011-2014 - Vorhaben und Verpflichtungen

¹⁹⁵ <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/469/69/PDF/N0946969.pdf?OpenElement>.

The necessity of comprehensive barrier-free and inclusive development cooperation and humanitarian aid is now being highlighted in a proposal for a resolution in the Austrian Parliament.¹⁹⁶

Recommendations¹⁹⁷:

- Ensure that **no funds** that are intended for humanitarian interventions or for the **International Development Cooperation** will be used for the funding of further structural, social, communicative or other **barriers** for persons with disabilities
- Amendment to Sec 1 para 4 L 4 **Development Cooperation Act (Enwicklungszusammenarbeitsgesetz)** according to the obligations under the CRPD
- Structural analysis of all Development Cooperation programs according to the stipulations of the CRPD
- Embodiment of the **Human Rights Approach** on the basis of the CRPD
- Embodiment of comprehensive (social, structural, communicative and intellectual) **accessibility** in all Development Cooperation programs
- Identification and deconstruction of factors of exclusion; **participation** of persons with disabilities and their representatives in Austria and the partner states of the Austrian Development Cooperation within the field of International Development Cooperation; inclusion into program and project planning, including disaster relief operations
- Disability, especially in a structural and social meaning must be understood as an **transversal matter** within the Austrian Development Cooperation as well
- Development of indicators and goals for the realization of an **inclusive, accessible Austrian Development Cooperation**
- Specific **training** for operational forces and staff of the Development Cooperation (in Austria and the partner states of the Austrian Development Cooperation) for the inclusion of persons with disabilities

¹⁹⁶ Motion for a resolution regarding the rights and needs of persons with disabilities in international cooperation, issued in March 2012: http://www.parlament.gv.at/PAKT/VHG/XXIV/A/A_01900/imfname_248412.pdf

¹⁹⁷ See also Chapter III on the need for action in the statement of the Monitoring Committee 'Barrier-Free Humanitarian Aid and Development Cooperation 2010'.

- Step-by-step increase of Austria's **share** of **Development Cooperation** up to **0.7 percent** of the GNP and introduction of a binding staged plan towards the fulfillment of 0.7 percent

Article 33 National Implementation and Monitoring

1. Focal Points and Coordination Mechanisms

The responsibility for disability policies lies within the competence of the Federal Ministry of Labour, Social Affairs and Consumer Protection and its subjected body, the **Federal Social Office as well as the nine provincial branches of the Federal Social Office**. The embedding of disability issues in the Ministry of Social Affairs highlights the fact that the human rights based approach (considering the transversality of disability issues) has not been realized in Austrian politics so far. The rights of persons with disabilities do not represent uniquely a social matter but should be considered and implemented by all governmental bodies transversally. Since the Federal Ministry of Labour, Social Affairs and Consumer Protection does not have a higher hierarchy level than the other ministries, it cannot exercise any superordinate influence on their follow-up to the implementation of the CRPD. There was no establishment of focal points for matters relating to the convention. The same applies to a separate coordination mechanism that would – under the inclusion of people with disabilities – ensure awareness-raising and the standardized compliance with the CRPD by the various ministries and departments.

2. Independent Mechanisms according to the Paris Principles

An **Independent Monitoring Committee** for the Implementation of the UN Convention on the Rights of Persons with Disabilities has been established under the Amendment to the Federal Disability Act in 2008 (Federal Law Gazette I No. 109/2008). The Committee has been constituted on December 10, 2008. According to Sec 13 Federal Disability Act, the Monitoring Committee consists of seven members with voting powers (and substitute members) and two advisory members from the Federal Ministry of Social Affairs, Labour and Consumer Protection or each affected department. The full members are assigned upon recommendation of the OEAR. Four members are representatives of Disabled People's Organizations (DPOs). Furthermore, there is one member each from an NGO within the field of Human Rights, an NGO from the field of International Development Cooperation and from the field of academic research. The Monitoring Committee makes recommendations and issues statements concerning the rights of persons with disabilities. In individual cases it requests opinions of administrative bodies. It is obliged to report to the Federal Disability Advisory Board about its sessions on a regular basis. According to ordinary law the members - including the Chair(wo)man - are assigned independently and free of instructions and exercise their jobs as undischarged honorary members. Recently a compensation expense

has been introduced for the chair. However, it is only recognized for sessions of the committee, not for the whole range of committee activities. The other members still do not receive any attendance fees. The Federal Social Office and its nine provincial branches have to support the Independent Monitoring Committee in the fulfilment of its affairs. The business matters of the committee are operated by the Federal Ministry of Social Affairs. Since 2010, the committee has its own website where all comments, minutes and information about its activities can be accessed (www.monitoringausschuss.at).

The **Monitoring Committee does not comply with** the international criteria for national human rights institutions as stipulated in Art 33 para 2.¹⁹⁸ According to the **Paris Principles**¹⁹⁹, “ *A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence*”. It must, inter alia “*have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding*” in order to “*enable it to have its own staff and premises*” and “*to be independent of the Government*”. The Monitoring Committee lacks the stipulated **independence**. On the one hand, this is partly due to the incorporation of the committee in the administration of the Federal Ministry of Social Affairs which provokes the impression of diminishing the agenda to a merely social one and thus, contradicts the basic principle of the CRPD of establishing full inclusion of persons with disabilities. Furthermore, the independence and the freedom of instructions of the committee members are not guaranteed under constitutional law. On the other hand, the Monitoring Committee was established without a separate **legal statute**. Furthermore, it does not have the required **budget** that is to be administered independently.

At the regional level there are so far no **independent mechanisms** for the monitoring of the observance of the CRPD - despite the legal regulation under Sec 13 para 8 Federal Disability Act. In some regions (Laender) there are governmental bodies that have been primarily established for the area of non-discrimination. However, they do not seem to be appropriate bodies according to Art 33 para 2. Neither do they have comprehensive

¹⁹⁸ Cf. statement of the Independent Monitoring Committee about a national human rights institution of 27 May 2009,

http://www.monitoringausschuss.at/cms/monitoringausschuss/attachments/2/8/6/CH0914/CMS1276526308845/ma_sn_nhri_final.pdf.

¹⁹⁹ Cf. Resolution of the UN General Assembly 48/134.

competences with regard to the CRPD matters nor the required independence and features according to the Paris Principles.²⁰⁰

3. The Inclusion of Civil Society

The **awareness** within civil society about the UN Convention on the Rights of Persons with Disabilities is still very low because there are no adequate information services at federal, regional (Laender) and municipal level → also see Art 8. Due to the poor general information about the CRPD, the inclusion of NGOs in its monitoring is rather limited.

Civil society organizations are included in the monitoring of the UN convention by their membership in the Monitoring Committee. They have also been consulted in a certain way during the preparation of the first CRPD State Report of Austria. However, a general deficit in the structured, early and results-oriented **inclusion of persons with disabilities** and their representatives in terms of the implementation and monitoring of the convention becomes evident. The ambitious activities of the Independent Monitoring Committee (cf. for instance the regular and heavily attended public sessions and the preparations of statements under participation of civil society) cannot replace the responsibility of the Government in terms of comprehensive inclusion of persons with disabilities in all aspects of life and especially in terms of the monitoring of the convention. Moreover, the statements or recommendations that are made by NGOs and even the recommendations of the Independent Monitoring Committee about the implementation of the convention remain without the adequate consideration in most cases.²⁰¹

Recommendations:

- Establishment of a **national human rights institution** according to the Paris Principles into which the agendas of the Independent Monitoring Committee will be included; at any case, ensuring the administrative and financial independence of the Monitoring Committee by divestment from the Federal Ministry of Social Affairs, Labor and Consumer Protection and assignment to a multidisciplinary, independent body

²⁰⁰ Cf. e.g. statement of the Independent Monitoring Committee about the Draft of an Amendment to Vienna Non-Discrimination Act of 27 May 2010.

²⁰¹ Cf. e.g. the statements of the Independent Monitoring Committee about “Occupational Therapy” or inclusive education that remain without reaction by the responsible ministry up to this date.

- Establishment of **focal points** for the implementation of the CRPD at federal and regional (Laender) level
- Establishment of a **coordination mechanism** for the coordination of all activities of the various departments that affect persons with disabilities. This coordination mechanism must be equipped with adequate competences in order to exercise superordinate influence on the follow-up of all ministries, regions (Laender) and municipalities to the implementation of the CRPD.
- Consideration of the **mainstreaming approach** for the rights of persons with disabilities by all responsible bodies of the federal and regional (Laender) governments
- Early, structured and results-oriented **inclusion** of persons with disabilities into the implementation and monitoring of the CRPD (including the State Report Reviews)

VI. Summary of the Key Recommendations

Article 1 and 2	Purpose and Definitions
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- Launch a **National Action Plan** for the implementation of the CRPD under early inclusion of persons with disabilities and their representatives also on the regional levels
- Implement the **social disability model**
- Issue clear **definitions** of disability and “disproportionate or undue burden” in legal texts
- **Apply Easy Language** in legal texts and in practice

Article 3 and 4	General Principles and Obligations
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- **Standardize** the various federal and regional (Laender) laws for persons with disabilities
- Systematically examine the Austrian laws on the contradictions to the CRPD and ensure the systematic **legal revision**
- **Mainstream** disability in all new laws and programs at federal, regional (Laender) and municipal level
- **Include** and consult persons with disabilities and their representatives in all measures that affect them

Article 5	Equality and Non-Discrimination
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- **Adopt equality provisions** for persons with disabilities into the regional (Laender) constitutions of Burgenland, Carinthia, Lower Austria, Styria, Vienna and Tyrol
- Simplify and **harmonize** the non-discrimination legislation
- **Introduce a legal claim to omit or eliminate barriers** → also see Art 9
- **Ensure effective legal protection** for persons with disabilities against discrimination through effective and dissuasive sanctions as well as through facilitated access to court

Article 6	Women with Disabilities
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- Ensure “**Gender and Disability Mainstreaming**” by all responsible bodies in all legal and political measures
- Support the **personal independence** of girls and women with disabilities, and particularly support in **education and employment**
- Improve the **protection from violence** for women with disabilities
- **Establish a central contact point** for comprehensive counseling and information services for women with disabilities

Article 7	Children with Disabilities
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- Implement **full inclusion** of children with disabilities
- Launch more programs for the **early detection and Early Childhood Intervention (ECI)** of children with disabilities
- Improve the **protection from violence** for children with disabilities
- **Establish a central contact point** for comprehensive counseling and information services for children with disabilities

Article 8	Awareness-Raising
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- Launch broad campaigns and programs for **sensitization and awareness-raising** of the situation of persons with disabilities under inclusion of persons with disabilities
- Inform about and **disseminate the UN Convention** on the Rights of Persons with Disabilities at official bodies and the general public
- Ensure that the portrayal of persons with disabilities in the **media** is consistent with the CRPD

Article 9	Accessibility
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- Establish **comprehensive** physical, social, communicative and intellectual **accessibility**
- **Introduce a legal claim to omit or eliminate barriers** → also see Art 5
- Ensure accessibility to all public **buildings** and to educational and health care facilities, **public infrastructure**, and **public means of transport** in particular → also see Art 21 and 24
- Enhance a binding embodiment of the **A-Standards (Ö-Normen)** in building laws and in public procurement without requirements or waiver clauses

- Render the compliance with accessibility criteria compulsory with regard to operating licenses as well as **residential buildings** and urban planning
- Introduce a legal claim to free **sign language interpretation** for using legally regulated services
- Take measures to ensure the qualification and the adequate number of **sign language interpreters**
- Extend **alternative forms of communication** (sign language, Braille, Easy-to-Read, etc.)

Article 10 Right to Life

- Take **sensitization and awareness-raising measures** towards the elimination of stereotypes of the quality and value of the lives of persons with disabilities
- Abolish impunity for **abortion in cases of Eugenic Indication** according to para 97 Sec 1 L 2 second case Austrian Criminal Code
- Enhance **counseling services for parents (to-be)** of children with disabilities

Article 11 Situations of Risk and Humanitarian Emergencies

- Consider the individual needs of persons with disabilities in all national and international **disaster prevention plans**, missions and alarm systems under inclusion of persons with disabilities
- Adopt standardized provisions on **rescue** and evacuation of persons with disabilities

Article 12 Equal Recognition before the Law

- **Reform the guardianship laws** by adapting it to the CRPD in order to realize an independent life
- Apply the existing laws in compliance with the CRPD and take measures for the quality assurance **of guardianships**
- Introduce a legal claim to comprehensive **personal assistance** for all persons with disabilities in all aspects of life → also see Art 19

Article 13 Access to Justice

- Initiate amendments to the Code of Civil Procedure and the Code of Criminal Procedure in order to enshrine the usage of alternative forms of communication for **filing documents to the court** and for the drawing up of judicial documents
- Abolish the “**Legal Oath of the Mute 1842**”
- Initiate an amendment to Sec 2 L 1 **Jurors and Lay Assesors Act (Geschworenen- und Schöffengesetz)** so that persons with disabilities are not excluded from the jury
- Increase the number of qualified **interpreters for the Austrian Sign Language** at court
- Ensure **intitial and continuing training** on the rights of persons with disabilities for **court/judicial staff**

Article 14 Liberty and Security of Person

- Enhance **medical specialist check-ups** for initial and continuing forced hospitalization
- Introduce **initial and continuing training** for medical and nursing care staff
- Increase the number of training positions for **specialists in the field of psychiatry**

Article 15 Freedom from Torture or Cruel, Inhuman or Degrading Treatment or Punishment

- Ensure the immediate implementation of the **recommendations of the international bodies** for the protection from torture and inhuman treatment (CAT, CPT)

Article 16 Freedom from Exploitation, Violence and Abuse

- **Take preventive measures for the protection against violence:** awareness-raising and information for persons with disabilities; initial and continuing training in interacting with persons with disabilities for relatives, care personnel, police, etc.
- **Dismantle large institutions** and forms of accommodation for persons with disabilities that favour structural violence
- Adequate **representation** of persons with disabilities within the National Preventive Mechanism according to OP-CAT according to Art 16 para 3
- Abolish “**net beds**” and ensure that interferences with the freedom of movement are in compliance with human rights

Article 17 Protecting the Integrity of the Person

- For the consent to medical interventions → see Art 12 and 19
- For forced abortion and forced sterilization → see Art 23

Article 18 Liberty of Movement and Nationality

- Conclude **intergovernmental agreements** on the mutual recognition of entitlements to social services of citizens of each state party

Article 19 Living Independently and Being Included in the Community

- Ensure the valorization of **care allowances** and adopt measures towards a long-term protection of the financial viability of the care system
- **Introduce a legal claim to comprehensive personal assistance** in all aspects of life that meets the demand, is accessible, irrespective of income and freely selectable
- Make available more offers of **independent forms of living** for persons with disabilities → also see Art 22
- Take measures for the expansion and qualitative improvement of **out-patient treatment** for persons with a psychosocial disabilities and youths in particular
- Create comprehensive **accessibility** in terms of access to services and facilities for the general public

Article 20 Personal Mobility

- Take measures towards **comprehensive accessibility** in the area of individual transport, public transport and corporate transport → also see Art 9
- Introduce a **legal claim to grants** for ensuring personal mobility
- Issue **standardized criteria** for the approval of grants and equal quality of benefits in kinds at federal and regional (Laender) level
- Establish a central **administrative body** that provides information and counseling about aid devices

Article 21 Freedom of Expression and Opinion, and Access to Information

- Realize comprehensive communicative **accessibility** → also see Art 9

- Take measures to ensure accessible and non-discriminating broadcasting of programs by the **mass media** → also see Art 30
- Ensure the reimbursement for **sign language interpretation** services in all aspects of life

Article 22 **Respect for Privacy**

- Improve the **protection and control of interference** with the privacy of persons with disabilities who live or work at facilities
- Make available more offers of **independent forms of living** for persons with disabilities → also see Art 19
- Establish precise regulations and enhance **transparency** regarding medical and personal data of persons with disabilities

Article 23 **Respect for Home and the Family**

- Enhance active and outreach **counseling and education services about sexuality** for persons with disabilities
- Introduce special **counseling services** for persons with disabilities (and women in particular) about sexuality, contraception and abortion
- Establish support services in **parenting** for parents of disabled children and well as for disabled parents of non-disabled children
- Enhance protection measures against **forced abortion** and **forced sterilization**

Article 24 **Education**

- Establish an **inclusive educational system** in Austria at all public and private institutions, from early childhood education through adult education
- Promote responsibility for inclusive education with **educational policies instead of social policies**
- Ensure the quality improvement of the **pedagogical implementation** of inclusive education and provide schools with adequate individual support services
- Establish comprehensive **accessibility** at all educational institutions → also see Art 9
- Stop building new special schools and convert the existing **special schools into inclusive schools** for all

- Enhance the legal embodiment of inclusive education at **Secondary Level 2** (until the age of 18)
- Introduce a legal claim to **personal assistance** at school → also see Art 19
- Introduce the **Austrian Sign Language as a language of instruction** and German as a second language
- Guarantee “**Barrier-free**” **access to tertiary education**
- Ensure non-discriminating access to **teacher training** at Colleges of Education and joint **basic training** including pedagogy

Article 25 Health

- Establish **comprehensive accessibility** in the entire health care system → also see Art 9
- Guarantee the accompaniment or **personal assistance** of persons with disabilities at hospital stays → also see Art 19
- **Expand preventive measures** by health screenings according to individual needs and provide easier access to expensive examination methods
- Promote **initial and continuing training** of medical and health personnel in dealing with persons with disabilities → also see Art 14

Article 26 Habilitation and Rehabilitation
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- **Standardize** the quality of **rehabilitation services** irrespective of the cause of the disability
- Introduce a **nationwide legal claim** to rehabilitation measures and expand community-based rehabilitation measures
- Expand the in-patient facilities for the **rehabilitation of children**
- Establish integral rehabilitation with only one **contact point** → also see Art 27
- Develop **preventive measures**

Article 27 Work and Employment
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- Provide for the constitutional enshrinement of the **right to work** for all people
- Realize the **full inclusion in the labor market** by opening day and employment structures that are modularly geared towards individual needs as part of community-based support services

- Ensure **comprehensive protection** and **fair pay according to social insurance law and employment laws** of persons with disabilities at day and employment structures
- Introduce measures in order to enhance the implementation of the **employment duty** for businesses, especially with regard to the amount of the compensatory tax and the crediting of obligation quotas
- Establish a **central contact point** and **funding framework** → also see Art 26
- Ensure comprehensive **accessibility** and effective **protection against discrimination** in the labor market → also see Art 9 and 5
- Expand **personal assistance** at the workplace and in all aspects of life

Article 28 Adequate Standard of Living and Social Protection

- Introduce a **legal claim** to standardized **financial benefits and benefits in kind** according to the corresponding federal and regional (Laender) laws
- Ensure **comprehensive protection and pay according to social insurance laws** for persons with disabilities at day and employment structure → also see Art 27
- **Ensure the funding of the care system**; provide for the valorization of care allowances; introduce administrative simplifications instead of cuts at Care Level 1 and 2
- Implement measures towards **effective poverty reduction** for persons with disabilities

Article 29 Participation in Political and Public Life

- Implement measures for comprehensive **accessibility during all elections** and ensure secret ballot and the personal right to vote for persons with disabilities
- Implement measures for **political education** for persons with (learning) disabilities and support their participation in political life
- Provide for secured funding of **self-advocacy and advocacy groups** as well as their inclusion in all measures that are relevant to them

Article 30 Participation in Cultural Life, Leisure and Sports

- Introduce an obligation of public-legal and private TV stations to provide access to digital media and **“barrier-free” program content** → also see Art 9 and 21

- Promote the **Austrian Sign Language** as well as deaf culture, history and arts
- Provide comprehensive **accessibility** to cultural, sports and leisure events → also see Art 9
- Promote **mainstream sporting activities** for persons with disabilities
- Expand **personal assistance** in all aspects of life → also see Art 19

Article 31 **Statistics and Data Collection**

- Introduce systematic and **standardized data collection** regarding the situation of persons with disabilities
- Promote public and “barrier-free” **dissemination of statistical data** about the situation of persons with disabilities under observance of data protection policies
- Ensure the full **participation** of persons with disabilities during the collection and evaluation of data that are relevant to them

Article 32 **International Development Cooperation**

- Ensure that **no funds** that are intended for humanitarian interventions or **Development Cooperation** is used for funding further structural, social, communicative, or other **barriers** for persons with disabilities
- Enshrine an amendment to Sec 1 para 4 L 4 Development Cooperation Act (Entwicklungszusammenarbeitsgesetz) according to the obligations of the CRPD
- Provide comprehensive accessibility in all Development Cooperation programs and realize an **inclusive, “barrier-free” Austrian Development Cooperation**
- Enhance the **participation** of persons with disabilities and their representatives in Austria and in the partner states of the Austrian Development Cooperation in the field of International Development Cooperation
- Promote specific **training** for operational forces and staff of the International Development Cooperation on the inclusion of persons with disabilities

Article 33 **National Implementation and Monitoring**

- Establish a **national human rights institution** according to the Paris Principles into which the agendas of the Independent Monitoring Committee will be included
- Ensure the administrative and financial independence of the **Monitoring Committee**

- Establish **focal points** for the implementation of the CRPD at federal and regional (Laender) level
- Establish a **coordination mechanism** for the coordination of all activities of the different departments that are relevant to persons with disabilities