



Joint Submission of the Austrian National Council of Disabled Persons (OeAR) and the European Disability Forum (EDF) on the occasion of the second Universal Periodic Review of Austria in November 2015

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CONTRIBUTORS ORGANISATIONS

The **Oesterreichische Arbeitsgemeinschaft fuer Rehabilitation (OeAR)** is the umbrella organisation of Austrian disability associations. It comprises more than 70 member organisations and represents the interests of 400,000 persons with disabilities in Austria. The OeAR is a member of and operates as the Austrian National Council to the European Disability Forum. Contact person Christina Wurzinger, ch.wurzinger@oear.or.at, +43 1 513 1533 211, www.oear.or.at.

The **European Disability Forum (EDF)** is the independent European umbrella organisation representing 80 million disabled Europeans, to which the OeAR is a full member. EDF is the only European pan-disability platform run by persons with disabilities and their families. Created in 1996 by its member organisations, EDF ensures that decisions concerning persons with disabilities are taken with and by persons with disabilities. Contact person An-Sofie Leenknecht, Ansofie.leenknecht@edf-feph.org, +3222824602, www.edf-feph.org

OVERVIEW

This submission provides supplementary information from the Austrian and international disability movement to the 2nd UPR report (hereinafter State Report) submitted by the Austrian government to the Human Rights Council. The OeAR welcomes the opportunity to contribute to the review process by providing additional information on the implementation of human rights and fundamental freedoms with regard to persons with disabilities in Austria.

Austria ratified the UN Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol on 26 September 2008. It is clear that the human rights standards of the UDHR and the CRPD intersect and reinforce each other when it comes to the human rights of persons with disabilities.

Austria-specific challenges in the implementation of human rights

In Austria all UN treaties have been ratified with a **constitutional reservation** which means that the treaties are not directly applicable. In order to attain legal validity, its content has to be transformed into national law, i.e. it has to be published as a law or enshrined as a legal provision. This legal positivism, the adherence to codified law, obviously deprives the human rights treaties of their genuine meaning and more importantly application. Austrian jurisprudence merely considers international treaties for interpretation of Austrian law upon request. In legal practice, this does generally not happen which means that the treaties have actually no practical impact.

Another major challenge in the implementation of human rights treaties in Austria derives from the destructive handling of the **federalist system**. In Austria, the federal government shares its power with the governments of nine provinces, Laender. Problematically, the Laender tend not to feel directly committed and obliged by the provisions of the international human rights treaties. The split competences between the federation and the Laender hinder sustainable changes and improvements, which leads to incoherence and differing levels of rights protection also for persons with disabilities depending on where they live.

There are **no endeavours to develop a harmonized strategy** of the Laender. The federal system is regularly used as a justification for not fully implementing the human rights conventions. The attempts by the federal government to overcome this situation are rare and minimal, resulting in weak and varied levels of protection of disability rights across the Laender.

Proposed recommendations:

- Take concrete steps to ensure the thorough implementation of the UN human rights treaties, including the CRPD, across Austria also at the Laender level.
- Enhance efforts made by the Federal government to provide training and awareness raising to Laender governments and to ensure that the human rights of all persons including persons with disabilities are being upheld in the same way in

Implementation of human rights with regard to persons with disabilities

In Austria persons with disabilities are still confronted with **multiple barriers** that prevent them from the full and equal enjoyment of essential human rights and fundamental freedoms. The **human rights based approach** has so far not succeeded. Instead, persons with disabilities are often perceived as beneficiaries of charity. The **negative medical definition of disability** that emphasises deficits has not been fully overcome so far. These circumstances significantly contribute to the prevailing **negative stereotypical attitudes** towards persons with disabilities. Hence, the image of persons with disabilities is strongly determined by the connotations of being weak, needy and dependent.

The main obstacles to the comprehensive implementation of human rights standards with regard to persons with disabilities is the **lack of political will** as well as the **lack of awareness** of the relevant stakeholders. There is also a lack of understanding for the **crosscutting character** of disability and thus, for the shared responsibilities. Likewise, the concept of **civil participation** has so far not been entirely understood or implemented.

Hence, persons with disabilities are more often confronted with discrimination in all areas of life. It starts with a **segregating education** system which fosters the massive and growing discrimination in the **labour market**.¹ Consequently, persons with disabilities are also particularly affected by **poverty**. Additionally, they are significantly more likely to become victims of **violence** which tends to have a connotation with the good standing of **institutions** in Austria. This has as much a negative impact to the possibility to leave an independent life as the non-accessible environment and the inhomogeneous and lacking regulations regarding personal assistance.² In all mentioned areas women and girls with disabilities form the most marginalised group.³ The **protection from discrimination** (inter alia by barriers) is weak especially regarding possible sanctions. The level of protection varies also significantly between the Laender.

Proposed recommendation:

- Introduce effective strategies in order to enable persons with disabilities to enjoy their right to lead an independent life. This includes, inter alia, the introduction of empowerment strategies especially for women and girls with disabilities, the transformation of institutions to community based services, the enhancement of personal assistance, awareness-raising campaigns that transmit a positive and self-determined image of persons with disabilities as well as the further development and extension of a system of supported decision making that is in accordance with the existing human rights standards.

The implementation of the Austria-specific recommendations received in the course of the first Universal Periodic Review in 2011:

After the first Universal Periodic Review of Austria in 2011 the OeAR has overtaken the civil society monitoring of the implementation of following recommendations:

92.25 (2nd part) [...] promote an inclusive educational system which does not leave behind migrant children or children with special needs (Costa Rica);

92.35 Continue measures for adoption of the “National Action Plan for Persons with Disabilities” (Azerbaijan);

92.83 Continue the implementation of measures to improve the access to health services by all children (Chile)

¹ In comparison to January 2014 the unemployment rate of persons with disabilities who are registered as unemployed at the Public Employment Service (AMS) has risen 16,3% as of January 2015, see http://www.arbeitundbehinderung.at/de/news/2015/02/arbeitslosigkeit_jaenner.php. Persons who are classified „unable to work“ are not considered in these figures.

² Compare also Österreichische Arbeitsgemeinschaft für Rehabilitation, Alternative Report on the implementation of the UN Convention on the Rights of Persons with Disabilities in Austria, OeAR 2013.

³ Compare Joint Submission of the Austrian National Council of Disabled Persons (OeAR), the European Disability Forum (EDF) and the International Disability Alliance (IDA) on Austria to the Pre-sessional Working Group of the CEDAW Committee, 52nd session, see <http://www.oeaar.or.at/inter-national/lobbying/internationales-lobbying>. Compare also Independent Monitoring Committee on the Implementation of the UN Convention on the Rights of Persons with Disabilities, Statement on the implementation of the Convention on the Elimination of Discrimination against Women in Austria, 2012, see <http://monitoringausschuss.at/dokumente/documents-in-english/>.

92.85 Consider appropriate education system reforms to ensure its more inclusive social accessibility (Slovakia);

Ad recommendation 92.25 (2nd part) and recommendation 92.85

The National Action Plan (NAP) on Disability foresees „**inclusive model/test regions**“ which was considered as a positive first step. However, taking a closer look, these model regions do not correspond with the human rights standards of the CRPD, that foresees a comprehensive inclusive system for all persons with and without disabilities.

The implementation of the inclusive model regions is very hesitant. There are still no clear regulations from the Federal Ministry of Education that would be binding for the Laender in order to implement the inclusive model regions. The question on how the entire Austrian education system can be modified in order to enable all pupils and students to participate and to work and learn together has not been posed so far.⁴

The lack of progress in providing inclusive education as well as the worrying deficits in teacher training have been criticized very clearly by the CRPD-Committee in 2013. ⁵ Austria quite obviously adheres to the segregating double-tracked schooling system which is also in conflict with the recommendations of the CRC-Committee (regarding especially the conflict of the best interest of the child and the right to choose between special and mainstream education of the parents).⁶ Despite the introduction of the pilot project on the inclusive model regions there is still a lack of political will when it comes to the development of an inclusive and accessible education system. Especially in the education sector, the federal structure is preferably used as a justification for the ongoing shortcomings.⁷

There have been some initial meetings between representatives of civil society and the Federal Ministry on Education after the first UPR. However, these did not lead to a participative follow-up and were ceased consequently.

Ad recommendation 92.35

The **National Action Plan on Disability** was adopted in July 2012, however, there have been strong deficits regarding participative processes in the elaboration of the NAP. The time frames of the (often quite vague) measures are mostly too long and there are no indicators foreseen in the NAP. Although some ministries demonstrated good efforts⁸ the implementation of the measures is done in a very humping way – if at all. Additionally, the Laender did not participate at the NAP which poses a major obstacle to its effectiveness. The same effect can be drawn from the fact that there is no budget foreseen for the implementation of the Action Plan. Hence, most of the measures foreseen in the NAP are not implemented so far.

⁴ See integration wien, Statement on the report of the Austrian Broadcasting Company (ORF) „Special education does not contradict the UN Convention“, 5/11/2014, p. 3.

http://www.integrationwien.at/documents/Stellungnahmen/Stellungnahme_zum_ORF_Beitrag_an_Ministerin_Heinisch-Hosek_integration_wien.pdf. (German version only).

⁵ See CRPD/C/AUT/CO/1 para 40ff.

⁶ See CRC/C/AUT/CO/3-4 para 44f.

⁷ Compare e.g. BMBF (Federal Ministry for Education and Women), Statement on the report of the Austrian Broadcasting Company (ORF) „Special education does not contradict the UN Convention“ of 4/11/2014; written reply, 19/12/2014, reference number BMBF-36.153/0145-I/5/2014, p. 2.

⁸ In this regard particularly the efforts of the Federal Ministry for Justice are remarkable. With broad civil participation it has taken first steps in order to reform the system of guardianship by implementing a pilot project that emphasises supported decision making.

Ad recommendation 92.83

Children with disabilities are still confronted with strong discrimination in the Austrian **health system**. Reasons for this are, inter alia, the (depending on the Land) very heterogeneous regulations permitting early support services, the unreasonable waiting periods for diagnosis and corresponding therapies or support as well as the general lack of programs for early detection and early support services. In this area no endeavours nor efforts for improvement could be recognized since the last UPR. Although civil society representatives tried to get in contact with the relevant stakeholders, there was no participative process of implementing the relevant UPR recommendation.

Proposed recommendations:

- Reinforce the efforts to implement a consistent, inclusive and non-discriminating **education system** that is equally accessible for all persons irrespective of ethnic origin, disability, gender or belief. This includes nation- and Laender-wide harmonized regulations, a comprehensive reform of teacher training directed at inclusive and individualised education as well as the provision of comprehensive accessibility with regard to the physical environment, to communication, to the curricula and to the training materials.
- Re-organize the co-ordination of implementing the **National Action Plan on Disability** by establishing a results-driven and effective structure with strong participation of civil society organizations and the allocation of an adequate budget for the realization of the foreseen measures.
- Harmonize and broaden the provision of adequate programs for early detection and early support services with regard to **childhood disability** and introduce a country-wide examination of the existing rehabilitation services for children with disabilities and of their effectiveness (including the identification of lacks in quantity and quality) in co-operation with disabled people's organizations.