Convention on the Rights of Persons with Disabilities
Country Report Austria
9th Session, April 15-19, 2013

Report by Klagsverband zur Durchsetzung der Rechte von Diskriminierungsopfern
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March 2013
Purpose of this report

This report seeks to provide the Committee with supplementary information on the implementation of the CRPD in Austria.

About the Klagsverband

The Klagsverband zur Durchsetzung der Rechte von Diskriminierungsofvern (Klagsverband; Litigation Association of NGOs against discrimination) is an umbrella organization of 33 anti-discrimination organizations based in Vienna. Only NGOs can be ordinary members.

It was founded in 2004 to coordinate civil society activities and strategic litigation in the field of anti-discrimination on the grounds of age, disability, ethnic origin, gender, religion and belief, and sexual orientation.

The Klagsverband is the only organization in Austria supporting victims of discrimination in court on the grounds of any of the approximately 50 anti-discrimination laws.

The main tasks of the Klagsverband include

- strategic litigation
- documentation of the anti-discrimination legislation on international, EU, federal and state level
- documentation of and commentaries on decisions
- commentary on legislative drafts
- counseling for member organizations
- training in anti-discrimination law

About 40 percent of the Klagsverband’s work focuses on matters relating to disabilities.

General remarks

The implementation of the CRPD in Austria has led to a number of activities in Austria. The nomination of the Federal Monitoring Mechanism for the Rights of Persons with Disabilities (Monitoringausschuss) and the National Disability Action Plan 2012-2020 (NAP Behinderung 2012-2020) are steps that have been taken specifically by the Federal Ministry of Labour, Social Affairs and Consumer Protection (BMASK).

Main challenges include

- the hierarchy of anti-discrimination legislation in Austria
- the negligible coordination of federal and state activities and laws
- the still rudimentary awareness that inclusion is a matter that must be addressed by all members of governments and society in general.

**Article 5 – Equality and non-discrimination**

Due to the federal structure of Austria, there are approximately 50 laws prohibiting discrimination of persons with a disability. The sheer number of laws causes many problems regarding their application and scope.

On the **federal level** the following laws exist:

- Disability Equality Act (Bundesbehindertengleichstellungsgesetz\(^2\))
- Disability Employment Act (Behinderteneinstellungsgesetz\(^3\))

Further laws exist to prohibit discrimination on the grounds of age, ethnic origin, gender, religion and belief, and sexual orientation.

Each of these laws has its own public equality bodies to handle cases within its jurisdiction. In cases of multiple/intersectional discrimination or when it is not clear prima facie what law is applicable, many questions arise. When an equality body comes to the conclusion that their relevant law is not applicable they have to deny support.

Each of Austria’s **nine states** has several equality acts covering both the access to goods and services provided by the states and communities and employment with these provinces and communities.

In Lower Austria, the state Anti-Discrimination Act does not prohibit discrimination of persons with a disability with regard to goods and services. The Klagsverband and other organizations have repeatedly asked the state government to introduce such legal protection available in the other states. Thus far there has not been any such draft legislation.

**Recommendations with regard to Article 5**

- unify the Austrian anti-discrimination legislation
- prohibit discrimination of persons with a disability with regard to goods and services in all states including Lower Austria (so called “levelling up”)
• take legal and administrative action to provide easier access to equality law.

Article 7 – Children with disabilities

Austria signed the Convention of the Rights of the Child (CRC) in 1990 and ratified it in 1992. However, there are still reservations to Art. 13, 15 and 17 of the CRC (For details see “Recommendations of the National Coalition for the Implementation of the Convention on the Rights of the Child Austria”\(^4\)).

Due to the federal Structure of Austria, the provinces are given the right to set up nurseries (Kindergarten). Each province has its own strategy towards inclusion. There is no comprehensive plan on how to provide for inclusive nurseries. There are very few inclusive nurseries. In many regions of Austria the nurseries decide if and how they will offer groups for children with or without disabilities.

Children with a disability are particularly disadvantaged in education. Due to rigid structures of the educational system many children are in “special schools” (Sonderschulen). Many schools are not accessible. For details see Art. 24.

Recommendations with regard to Article 7

• set up rules how to guarantee inclusive nurseries
• prohibit discrimination of persons with a disability in education

Article 9 – Accessibility

Buildings

The Disability Equality Act provides in § 8 that the federal government must establish a step-by-step-implementation plan (Etappenplan) for buildings owned and used by federal authorities. When the Disability Equality Act entered into force on Jan. 1, 2006, all barriers should be removed by Dec 31, 2015. In 2010 the Disability Equality Act was amended\(^5\) in order to prolong the period in which ministries can remove barriers to Dec 31, 2019.

Only few of the states have issued such step-by-step-implementation plans, and even these are not easy to find.

\(^5\) BGBl. I 2010/111
Vienna published a step-by-step-implementation plan in June 2012\(^6\). It is not exactly ambitious and does not foresee the removal of barriers in public buildings like schools until the year 2042. The Vienna Lobby for Persons with a Disability (Wiener Interessensvertretung von Menschen mit Behinderung\(^7\)) – established to consult the City of Vienna – has sharply criticized the implementation\(^8\).

Styria has issued an Action Plan for the implementation of the CRPD\(^9\) regarding buildings. Specific timelines have been set in internal priority lists.

According to our information, the other states (Burgenland, Carinthia, Lower Austria, Upper Austria, Salzburg, Tyrol, and Vorarlberg) have not as yet issued such implementation plans.

The Federal Ministry of Labour, Social Affairs and Consumer Protection (BMASK) is the focal point for the national implementation of the CRPD.

Legal action

The Disability Equality Act foresees that unlawful barriers are considered indirect discrimination. The law does not foresee any obligation to remove unlawful barriers but only the payment of compensation.

The definition of unlawful barriers applies to the state laws regulating building codes. The application of these reciprocal laws has not yet proved efficient.

Moreover there are only very limited possibilities for organisation to take action in case of discrimination with regard to barriers.

The Disability Equality Act provides the Austrian National Council of Disabled Persons (Oesterreichische Arbeitsgemeinschaft fuer Rehabilitation\(^10\)) with the possibility to take action in cases where a large number of persons have been discriminated. This action for a declaratory judgement (Feststellungsklage) can only be taken following a recommendation of the Federal Disabilities Advisory Board (Bundesbehindertenbeirat). No such recommendation has been made yet, and due to the structure of this Advisory Board it seems unlikely that such a recommendation will ever be achieved.

BGBl. I 2013/12 has introduced a new class action suit against discriminatory clauses in insurance contracts to the Disability Equality Act (§ 13 sect. 3). It entered into force on Jan. 1, 2013.

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\(^{6}\) http://www.bizeps.or.at/downloads/etappenplan_wien.pdf (26.02.2013)

\(^{7}\) http://www.wien.gv.at/menschen/barrierefreiestadt/interessensvertretung/ (26.02.2013)


\(^{9}\) http://www.soziales.steiermark.at/cms/ziel/94717223/DE (26.02.2013)

\(^{10}\) http://www.oear.or.at/startseite/english (26.02.2013)
Recently, there have been discussions on reducing legal standards for accessibility. Especially in Upper Austria, there is a draft for a new Act for Building Specifications (Bauchtechnikgesetz\textsuperscript{11}) that has earned harsh critics\textsuperscript{12,13}. The responsible member of the state government called the existing standards for accessibility “totally exaggerated”\textsuperscript{14} (voellig ueberzogen). The state parliament has not passed this act yet.

Recommendations with regard to Article 9

- all states and communities set up step-by-step-implementation plans to remove all barriers from buildings no later than 2019
- harmonize state and federal legislation and legal action in order to make the accessibility of buildings and transportation means a reality
- effective, proportionate and dissuasive remedies including class action suits

Article 12 – Equal recognition before the law

The main goal of Article 12 is that all people, including those with severe mental disorders or intellectual disabilities, may legally take care of their own affairs without any legal representative.

According to the current Austrian Guardianship law (Sachwalterschaftsrecht) no kind of assisted decision-making is provided for.

Recommendations with regard to Article 12

- replace the present form of guardianship with assisted decision-making for persons with severe mental disorders or intellectual disabilities

Article 21 – Freedom of expression and opinion, and access to information

The Klagsverband has supported a number of complaints against the “Austrian Broadcasting Corporation” (Oesterreichischer Rundfunk – ORF\textsuperscript{15}) in order to get ORF’s legal obligation for

\textsuperscript{14} http://derstandard.at/1350261175743/Manfred-Haimbuchner-Der-Wohnbau-ist-der-Klimaschutz-Mistkuebel (26.02.2013)
\textsuperscript{15} http://www.orf.at (26.02.2013)
accessible broadcasting and DVDs recognized by a court. ORF is a public institution that is partly financed by compulsory fees from the consumers.

The ORF-Act\(^\text{16}\) only foresees in § 3 para. 1 cif. 2 that two nationwide TV programmes have to be available. There are no time limits for providing for accessibility.

Although ORF issued a step-by-step-implementation plan for 2011 and 2012\(^\text{17}\) and for 2012-2014\(^\text{18}\), many news broadcasts, films and DVDs are still lacking subtitles or Austrian sign language interpretation for the hearing impaired. There have been clear improvements in recent years – but the new implementation indicates only very vague plans from 2012 onward.

Moreover, the implementation plan does not include additional products like DVDs. These are not part of the legal mandate of ORF. Nonetheless, any kind of new products have to be accessible according to the Disability Equality Act and ORF has already been convicted for not including subtitles on a best selling DVD\(^\text{19}\).

Recommendations with regard to Article 21

- amend the ORF Act in order to have clear timelines in which accessibility has to be achieved
- step up efforts to establish inclusive, accessible information

Article 24 – Education

**Segregating children with a disability** – as well as migrants or children from disadvantaged social backgrounds – is common in the Austrian education system. It perpetuates social and educational inequalities. There are only few publicly available data like “Monitoring.Integration.Diversitaet 2009-2011\(^\text{20}\)” that covers the situation of migrants only.

Schools for special education (Sonderschulen) are attended to a high percentage by immigrants, ethnic minorities (such as Roma), and children with a disability. Moreover, children must decide by the age of ten if they wish to attend an 8-year “Gymnasium” (a secondary school that ends with a “Matura”, the Austrian version of the German 'Abitur' or the French 'baccaleaureat' - the examination one must pass at the end of secondary school to obtain the right to study at university.) or a 4-year “Hauptschule” (a secondary school that ends without a “Matura”).

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\(^{16}\) BGBl. 1984/379 as amended by BGBl. I 2012/15
\(^{17}\) http://www.bizeps.or.at/downloads/etappenplan_orf.pdf (26.02.2013)
The Monitoring Committee for the Rights of Persons with Disabilities (Monitoringausschuss²¹) established to comply with the CRPD (see Art. 33) has issued an elaborate statement on the shortcomings of the Austrian education system and how it could be improved²².

**Recommendations with regard to Article 24**

- install an inclusive educational system in Austria
- abolish special education schools (Sonderschulen)
- improve the education of teachers so they may better teach diverse groups of pupils
- increase efforts to remove physical barriers in schools

**Article 27 – Work and employment**

There are only limited data publicly available on the situation of persons with a disability on the labour market. Nevertheless these figures reveal that disabled persons

- are less integrated in the labour market and
- have a higher risk of becoming unemployed.

Persons with a disability of more than 50 percent are specifically protected by the Disability Employment Act – they are persons with a disability who are eligible for preferential treatment (beguenstigt behindert). All organisations (public and private) of more than 25 employees are obligated to employ at least one person with a disability eligible for preferential treatment.

If they fail to do so, they have to pay a compensation fee (Ausgleichstaxe) in the amount of 238 to 355 euros per month (depending on the number of employees) for each person that should be employed.

Still, not even all public (federal and state) governments respect this obligation and prefer to pay the compensation fee.

**Recommendations with regard to Article 27**

- more employment of persons with a disability
- government should act as a role model for equality in employment


Article 33 – National implementation and monitoring

On the federal level, Austria has created monitoring committees for the Rights of Persons with Disabilities (Monitoringausschuss\(^{23}\)). It has issued a number of ground-breaking recommendations in recent years.

Only a few states have established monitoring committees within their competency

- Accordings to § 7 para. 5 of the Vienna Antidiscrimination Act\(^{24}\), an independent body within the Vienna City Administration, the Office of Anti-Discrimination (Stelle zur Bekämpfung von Diskriminierung) was put in charge of the monitoring committee (Monitoringstelle) of Vienna. Persons with disabilities as well as other experts are invited to take part in the meetings and to consult with the officers. The chosen legal form does not comply with the Paris Principles.
- Upper Austria has decided on a similar arrangement\(^{25}\).
- Lower Austria and Tyrol have also presented draft legislation that declare their state antidiscrimination affairs offices to be in charge of the monitoring committees.
- According to our information the other states have not planned or taken any steps to establish monitoring committees.

Recommendations with regard to Article 24

- install monitoring committees in compliance with the Paris Principles in all states.

\(^{24}\) LGBl. 2004/35 as amended by LGBl. 2012/88
\(^{25}\) LGBl. 2012/68