

Austrian contribution for the OHCHR Study on Art 8 CRPD

1(a). Does your country have laws, policies, plans, strategies or guidelines at any level of government relating to raising awareness about persons with disabilities, in particular initiatives to:

- foster respect for the rights and dignity of persons with disabilities;
- combat stereotypes, prejudices and harmful practices relating to persons with disabilities; or
- promote awareness of the contributions of persons with disabilities?

1(b). What are the challenges to implementing the above?

Questions 1 (a) and 1 (b)

The National Action Plan (NAP) on Disability 2012-2020

(<https://broschuere.service.sozialministerium.at/Home/Download?publicationId=225>) is the strategy of the Austrian federal government for the implementation of the CRPD. The NAP on Disability emphasises the fight against stereotyped views of people with disabilities. It contains a chapter on awareness raising and information. Objectives and measures include public relations work, target-oriented campaigns and the provision of accessible information.

Awareness-raising regarding persons with disabilities also plays an important role within the framework of teacher training and subsequently in the school sector: the Federal Framework Act on the Introduction of New Training for Teachers (Federal Law Gazette I No. 124/2013) of 11 July 2013 anchored Inclusive Education in the new training for all pedagogues in several respects: The curricula of the Bachelor's and Master's degree programmes must take into account, inclusive pedagogy, to an appropriate extent. In primary teacher training, inclusive pedagogy has to be offered as a focal area, in secondary teacher training (general education) a specialisation in inclusive pedagogy has to be offered.

At the Länder level, the Lower Austrian Monitoring Committee, for example, raises awareness for the rights of people with disabilities through targeted public relations work: holding of public meetings; creation of a folder; publication of recommendations and opinions on the homepage; creation of a blog with information on the rights of people with disabilities.

2(a). What legislative and policy measures are taken to address hate crimes, hate speech and harmful practices against persons with disabilities?

See **Common Core Document HRI/CORE/AUT/2017, paragraph 180** on legislation regarding non-discrimination and equality: Persons with disabilities are protected by comprehensive **anti-discrimination legislation**. It provides for a prohibition of discrimination in everyday life, which covers access to and supply with goods and services available to the public and the working environment as well as the area of the federal executive administration. The Länder have issued anti-discrimination laws for their own spheres of competence.

Since 2018, in case of **harassment** due to disability, it is possible to apply to a court for an injunction. The harassment must however be considerable in order to be defined as discrimination in the meaning of the Federal Disability Equality Act. The law refers to undesired, uncalled-for or repulsive behaviour against the affected person, with the aim or effect of violating the dignity of the affected person and creating an intimidating, hostile, undignified,

offensive or humiliating environment for the affected person. An important factor in relation to harassment is that there has to be a legal relationship between the harasser and the harassed person. Instructing another person to discriminate is also unlawful.

The **most relevant provision against hate speech** in the Austrian Penal Code is sec. 283. It has been considerably amended by the Criminal Law Amendment Act 2015 (Strafrechtsänderungsgesetz 2015) and currently reads as follows:

(1) Any person who publicly in a manner accessible to many people

*1. instigates the use of violence or incites hate against a church or religious community, or any other group of persons defined by existing or missing features relating to race, colour, language, religion or ideology, nationality, ancestry or national or ethnic origin, gender, **physical or mental impairment**, age, or sexual orientation or any member of such group specifically because of the association with such a group,*

2. berates one of the groups listed in subpara. 1 with the purpose to violate the human dignity of another and in a manner capable of decrying or degrading the group in the public opinion, or

3. condones, denies, grossly downplays, or justifies felonies within the meaning of sec. 321f and sec. 321k that have been determined with legal force by a domestic or international court, and if that conduct is specifically directed against one of the groups listed in subpara. 1 because of the association with that group and is committed in a manner capable of inciting violence or hate against such a group or a member of such a group,

is liable to imprisonment for up to two years.

(2) Any person who commits the offence under para. 1 in a printed document, in a broadcast, or in any other way that makes the conduct under para. 1 accessible to a broad segment of the public is liable to imprisonment for up to three years.

(3) Any person who through an offence under para. 1 or 2 causes other persons to use violence against one of the groups listed in para. 1 subpara. 1 or against a member of such a group because of that person's association with such a group is liable to imprisonment for six months to five years.

(4) Any person who, unless the person is punishable by a higher penalty as a participant (sec. 12) in conduct under para. 1 to 3, in a condoning or justifying way distributes written material, images, or other depictions of ideas or theories that condone, promote, or incite hate or violence against one of the groups listed in para. 1 subpara. 1 or against a member of such group because of that person's association with the group, in a printed document, in a broadcast, or in another way that makes the information accessible to a broad segment of the public is liable to imprisonment for up to one year or a fine not exceeding 720 penalty units.

According to sec. 33 para. 1 no. 5 Penal Code it is an aggravating circumstance if the offender acted out of racial, xenophobic, or other particularly reprehensible motives, especially those that are directed against one of the groups of people listed in sec. 283 para. 1 subpara. 1, or any member of such groups specifically because of their association with that group.

Initially, the provision only mentioned "particularly reprehensible motives" in general without giving any examples. In 1996, racial and xenophobic motives were introduced as explicit examples for "particularly reprehensible motives". **The Criminal Law Amendment Act 2015 broadened the scope of this provision further by adding a reference to sec. 283 Penal Code**

and thus determining that it is an aggravating circumstance whenever the offender's motive is rooted in the victim's race, colour, language, religion or ideology, nationality, ancestry or national or ethnic origin, gender, **physical or mental impairment**, age, or sexual orientation.

Good practices:

- The guidelines to the criminal offence of hate speech (https://www.ris.bka.gv.at/Dokumente/Erlaesse/ERL_07_000_20170917_BMJ_S215_001_0002_IV_1_2017/ERL_07_000_20170917_BMJ_S215_001_0002_IV_1_2017.pdf)
- The possibility of creating „special departments“ dealing with criminal cases under Section 283 of the Austrian Penal Code, which was used almost nationwide by the Austrian public prosecutors offices.

2(b). In particular, are there legal remedies available for persons with disabilities seeking compensation and reparation? Are there legal provisions to sanction perpetrators, including through criminal law? Please provide information on their application in practice (e.g. cases of persons condemned for hate crimes against persons with disabilities).

The **legal consequence of discrimination** established by a court is an entitlement to compensation. In addition to any material damage (e.g. if a service cannot be made use of), immaterial damage, insult or a 'personal limitation' can arise due to discrimination.

In the abovementioned case of **harassment due to disability**, an obligatory attempt at **conciliation** has to be undertaken before going to court. The aim is to achieve an out of court settlement in the interests of all those affected. The proceedings at the "Sozialministeriumservice" are deliberately informal and representation by a lawyer is not required. There are no limitations on using one's fantasy to find solutions as long as the solution is not unlawful and both sides agree to it. Within the framework of this conciliation procedure, the option of free mediation by an external mediator is also available.

See further the **Common Core Document HRI/CORE/AUT/2017, paragraph 182** on effective remedies: The Equal Treatment Commission, the Federal Ombudsman for Disability (see paragraph 14,8), the Ombud for Equal Treatment and the relevant bodies in the Länder provide for **protection against discrimination** in employment and access to goods and services.

In case persons with disabilities become **victims of crimes** (eg hate speech), they – as any other victims of crimes – have the right to be represented in criminal proceedings (sec. 73 CCP). Any person admitted to practice as a lawyer, any institution for victim protection recognised under sec. 25 para. 3 of the National Security Police Act (Sicherheitspolizeigesetz [SPG]) or any other suitable person may be authorized to act as a representative. These representatives accompany the victims in an advisory and supportive manner and, unless provided otherwise, exercise the same rights as those represented by them.

Upon request, victims of certain crimes are to be afforded **psychosocial and legal support** for the proceedings, insofar as this is necessary to preserve their rights, taking into account their personal concerns (sec. 66 para. 2 CCP).

Victims also have the right to **compensation** for damages caused by the criminal offence or the infringement of her/his rights (sec. 67 para. 1 CCP). If a victim issues a statement to that effect, she/he becomes a private party to the proceedings. According to sec. 67 para. 7 CCP legal aid is

provided for private parties as far as they are not already granted legal support for the proceedings (sec. 66 para. 2 CCP), their representation by a lawyer is necessary in the interests of the administration of justice, in particular in the interest of a proper enforcement of their claims in order to avoid a subsequent civil procedure, and as far as they are unable to bear the costs of their legal representation without a negative impact on the necessary maintenance (this is the maintenance the person requires to provide a simple lifestyle for her-/himself and her/his family).

For **victims of hate speech**, there is a special counselling centre, the "Beratungsstelle gegen Hass im Netz". Victims and witnesses of hate postings, cyber-mobbing and other forms of verbal and mental violence on the internet get support there. The service is free of charge and victims can get advice via chat, messenger, e-mail or phone. Personal appointments are also possible. After an initial assessment of the contents, a trained and experienced consulting team informs clients about their options for action and possible counter-strategies. The aim of the counselling centre is to strengthen and support all victims of hatred on the internet.

There are currently numerous efforts at both federal and state level to counter hate speech in online media by means of media law and other measures. The following developments are to be highlighted in this regard:

- A fact sheet drawn up by the Federal Ministries in May 2018 serves as a basis for discussions and further exchange on the topic of "provider accountability".
- On 13 November 2018, the Federal Government held a summit against hatred on the Internet.
- A working group of federal and Länder experts is currently being set up to develop the legal basis for an effective overall concept in order to be able to take consistent action against hatred on the Internet.

3(a). What steps have been taken to establish standards and/or good practices on the representation and portrayal of persons with disabilities in broadcast media, including codes, guidelines and other measures (legal, co-regulatory or self-regulatory)?

The National Disability Action Plan 2012-2020 includes in its media chapter the topic "Public image of people with disabilities", which focuses on presenting the life of people with disabilities in all its aspects in an objective and balanced way, respectful and up-to-date.

A specific measure in the NAP Disability provides for the creation of a working group involving disability organisations and media representatives to draw up a recommendation on the representation of people with disabilities in the media - the working group was established in 2014. Representatives of people with disabilities, journalistic training institutions and various media (radio, television and print media) participated in this group.

In 2014/15, the working group drew up a recommendation.¹ The measures suggested therein primarily address journalists as well as training and further education institutions for them. They also aim for an expansion of barrier-free offerings in the media (e.g. subtitling, etc.).

In 2017, the recommendation and the implementation results were presented to headquarters:

¹ Available in German at https://www.bundestkanzleramt.gv.at/dam/jcr:ba8ecb36-ad21-4c53-9016-4fc92cd1d0fa/Empfehlung_zur_Darstellung_von_Menschen_mit_Behinderungen_in_den_Medien.pdf c

- Study on reporting in Austrian mass media in connection with people with disabilities,
- the website "www.barrierefreiemedien.at", which provides rapid access to relevant information on the representation of people with disabilities in the media;
- the "Media & Accessibility" information headquarters set up at the Federal Chancellery to promote cooperation between organisations of persons with disabilities and the media and administrative units (e.g. media and press offices in federal ministries and Länder administrations), as well as the placement of experts (e.g. from organisations of people with disabilities) in response to enquiries from media companies or public service bodies (federal, Länder and local authorities).

3(b). In addition, what legal framework, measures or good practices exist to regulate social media in accordance with Article 8 and human rights standards on freedom of expression?

4(a). Please provide information on the existence and implementation of the programmes and activities, including successful examples of campaigns, related to raising awareness about persons with disabilities and their rights, and combating negative attitudes including through initiatives of:

- training, including human rights education;
- research, including studies on perception and attitudes;
- surveys and data collection.

See answer to question 1(a) and (b). Moreover, the chapter on awareness-raising and information in the NAP also covers objectives and measures in the field of **research, statistics** as well as **training and human rights education** for different groups.

In 2018, a total of 16 training courses on the new Adult Protection Act² for judges and judicial officers as well as conferences on the new Adult Protection Act were organised in eight of the nine federal states. In the area of further training, the judiciary organises events for judges and public prosecutors on equal treatment law on an ongoing basis, which in particular also deal with discrimination against people with disabilities.

In addition, all prospective Austrian judges and prosecutors are obliged to complete a fundamental rights module in the course of their training, which also deals with the subject of equal treatment and anti-discrimination.

In order to further raise the awareness of all judges, prosecutors and prospective judges, they have the possibility to participate in relevant further training programmes of foreign organisers in order to be able to view and discuss the topic from an international perspective.

² Reform of the former guardianship law, taking into account the basic values laid down in the CRPD; the Adult Protection Act basically regulates the representation of people in legal matters. According to the law, however, this may only take place if the person concerned is - even with support - unable to take care of his or her own affairs.

In 2018, several training courses were also held for employees of adult protection associations, doctors, lawyers and bank employees. The brochure of the Ministry of Justice on the essential contents of the Adult Protection Act was published in several versions on the homepage www.justiz.gv.at. Copies are available in English, Turkish, Serbo-Croatian and in "simple language".

4(b). Please indicate their objective, scope, target audience, impact (including available data), partners and participants, particularly the participation of, and role of persons with disabilities and their representative organisations, and any key factors of success

Please, refer to the answer to question 4 (a).

5. Please provide information on the role of persons with disabilities and their representative organisations, including children with disabilities, in the design, implementation, monitoring and evaluation of all measures relating to awareness raising. Please provide detail on concrete mechanisms and activities undertaken for consultation and active involvement (e.g. regular meetings, online consultations, etc.).

See answer to question 3(a).