

International Disability Alliance (IDA)

Disabled Peoples' International, Inclusion International,
International Federation of Hard of Hearing People,
Rehabilitation International, World Blind Union,
World Federation of the Deaf, World Federation of the DeafBlind,
World Network of Users and Survivors of Psychiatry,
Arab Organization of Disabled People, European Disability Forum,
Red Latinoamericana de Organizaciones no Gubernamentales de Personas con
Discapacidad y sus familias (RIADIS)

Suggestions for disability-relevant recommendations to be included in the Concluding Observations CAT 44th Session (26 April to 14 May 2010)

The International Disability Alliance (IDA) has prepared the following suggestions for the concluding observations, based on references to persons with disabilities to be found in the reports on Austria.

AUSTRIA

[State report](#)

103. Act on the Protection of Personal Freedom of Home Residents: The Federal Act on the Protection of the Personal Freedom of Residents of Homes and other Nursing and Care Facilities (*Bundesgesetz über den Schutz der persönlichen Freiheit während des Aufenthalts in Heimen und anderen Pflege- und Betreuungseinrichtungen (Heimaufenthaltsgesetz)*), Federal Law Gazette I No. 11/2004, which entered into force on 1 July 2005, provided for the first statutory regulation of the protection of the personal freedom of **mentally ill** or **mentally disabled persons** during their stay at old people's homes, nursing homes, homes for the **disabled** and other facilities. While the **Act on the Hospitalization of Mentally Ill Persons** (*Unterbringungsgesetz*) has provided for checks regarding restrictions of freedom of **mentally ill** patients at **psychiatric hospitals** and departments since 1990, there was no comparable legal protection applying to homes for the **disabled**, old people's and nursing homes until the Act on the Protection of Personal Freedom of Home Residents entered into force. A home resident's freedom is restricted if she or /he is prevented from moving about against or without his or her will, and if physical means are used or threatened to be used, for instance by fixing bars to the resident's bed or by removing the resident's walking aid. If the resident is able to understand and judge and agrees to being prevented from moving about, this is no restriction of freedom. A resident's freedom may be restricted only if certain criteria are met. One of these criteria is that without such measure the life or health of the resident or the life or health of others would be seriously and severely at risk. Restrictions of freedom may be carried out exclusively upon the instruction of an authorized person such as, for instance, the head physician of the home. All restrictions of freedom must be carried out in observance of professional standards, always attempting to harm

the resident as little as possible. As soon as the statutory requirements are no longer met, the measure restricting the resident's freedom must be discontinued immediately. The resident may appoint a close relative, a lawyer, or a notary public to represent him or her in the safeguarding of his or her right to personal freedom.

Written replies

31. Please provide information on any independent inspections of psychiatric institutions and their follow-up, and elaborate on the bodies undertaking these activities. Please also elaborate on their findings and describe the situation of patients, including the use and extent of any coercive measures

A prison committee is installed at the seat of each provincial court responsible for penal matters in the provincial capitals (and the seat of the provincial court of Feldkirch in Vorarlberg); these committees are charged with ensuring exact compliance with regulations on prisons, in particular as regards the treatment of sentenced prisoners. The prison committees in the Länder have to visit each prison situated in their jurisdiction without prior announcement at least once a year. Their observations must be reported to the Ministry of Justice.

Visits to the Göllersdorf prison (a special prison for the imprisonment of **mentally ill prisoners** lacking the capacity for criminal responsibility under section 21 paragraph 1 of the Penal Code) by the prison committee no. I with its seat at the St. Pölten provincial court under section 18 paragraph 5 of the Execution of Sentences Act took place on 7 October 2005, 9 May 2006, 19 April 2007 and 29 October 2008; no grave defects were found, neither in structural conditions nor in the treatment of patients, especially not as regards the use of coercive measures.

32. Please inform the Committee on any concrete measure aimed at ensuring that deprivation of liberty for children is always a measure of last resort used for the shortest appropriate period of time. Please also indicate whether measures alternative to detention are applied and whether children deprived of liberty are systematically separated from adults.

Within the scope of application of the Federal Act on the Protection of Personal Freedom during a Stay in a Home or other Care Institution (*Heimaufenthaltsgesetz/HeimAufG*, section 2: in particular in nursing homes and homes for **people with disabilities** where at least three **mentally ill or mentally disabled persons** can be given permanent support or care, as well as hospitals, with the exception of psychiatric wards), regardless of the age of the person in question, deprivation of liberty can only be ordered under the following circumstances (section 4 of the Act):

1. if the person is **mentally ill or mentally disabled** and poses a serious and considerable threat to his own life and health or the life and health of others as a consequence;
2. if such deprivation of liberty is necessary and apt to avert such a threat, as well as of a duration and intensity appropriate in relation to the threat; and

3. if such a threat cannot be averted by other measures, in particular less restrictive support or care measures.

By operation of the law, as soon as a resident is deprived of liberty or such a deprivation of liberty is announced, the resident will be represented by the association responsible for naming residents' representatives based on the location of the care institution, in addition to any representative the resident may have appointed (representation of residents).

The director of the care institution is under an obligation to immediately report any deprivation of liberty under the law to the resident's representative (and, if applicable, to a representative and trusted person of the resident), all of whom are entitled to submit an application for review by a court. The law does not provide for systematic segregation of children, adolescents and adults in care institutions governed by the above-mentioned law (and such segregation is not known to be customary in practice also not in the case of deprivation of liberty due to a serious and considerable threat as a result of mental illness or mental disabilities). Depriving minors of their liberty as part of measures taken by youth welfare services is not permitted in Austria.

Under the Hospitalisation Act (*Unterbringungsgesetz*), mentally ill persons, including minors, can be deprived of their liberty against their will in psychiatric wards if such measures are necessary to avert a serious and considerable threat to their own health or the health of others. The right to liberty is defended in a special court procedure by a special legal representative, the patient advocate (*Patientenanwalt*).

Since, as an effect of the Hospitalisation Act, only a small number of psychiatric patients are deprived of their liberty, and since separate psychiatric wards for children and adolescents are not available at all psychiatric hospitals, it can be assumed that the special treatment of minors, which is in principle the objective, is not guaranteed without fail.

(...).

Recommendations from IDA

- To abolish the practice of coercive medical measures and any detention or preventive measures associated with the enforcement of such coercive medical measures, when linked to the existence of a disability such as an apparent or diagnosed mental illness.
- To ensure that inspection system in prisons, psychiatric institutions and other institutions serving persons with disabilities, conform to the requirements of the CRPD.
- To ensure any laws that may exist which permit interdiction or involuntary confinement on the basis of disability are repealed or treated as null and void in order to give effect to CRPD articles 12, 14, 17 and 25.