

ENSURE – NATIONAL REPORT AUSTRIA

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BACKGROUND

1. OBJECTIVES OF THE PROJECT AND REPORT

This report has been prepared in the context of the project “Ensuring Access to Intermediaries for Children with Disabilities in Legal Proceedings” (ENSURE), which is co-funded by the European Commission’s CERV-2024-DAPHNE programme. It is coordinated by the International Commission of Jurists (ICJ) – European Institutions in collaboration with project partners Validity Foundation (Validity), Terre des Hommes (TdH, Romania), Child Rights Centre (CRiC, Serbia) and the Ludwig Boltzmann Institute of Fundamental and Human Rights (LBI-GMR, Austria), running from March 2025 until February 2027. The National Report on Austria has been prepared by the project team consisting of Stephen Rabenlehner, Sabine Mandl and Helmut Sax (lead), which is grateful for research support by Louisa Starke.

The ENSURE project is dedicated to the improvement of communication with children with disabilities in court proceedings, in particular in the criminal justice system, in order to ensure and enhance access to justice for children with disabilities. In this regard, the concept and model of so-called “intermediaries” (support persons, facilitators, special representatives of children) aiming to support communication with children with disabilities, as described in the International Principles and Guidelines on Access to Justice (2020), which were developed under the leadership of the UN Special Rapporteur on the rights of persons with disabilities.¹ The integration of support persons aligns also with the EU’s objective to enhance rights-based child protection systems and ensure access to justice for children with disabilities, within the framework of its respective 2024 EC Communication on this topic.² Consequently, the project aims to remove communication barriers that prevent the aforementioned groups from effectively engaging in legal proceedings by developing tools for multidisciplinary support and by fostering coordination among authorities and professionals.

Different forms of intermediaries dedicated to children with disabilities already exist in some EU member states, such as Ireland and Spain. However, their formal regulation remains inconsistent. The project therefore seeks to build upon, further develop and support integration of such models at domestic level into existing instruments and professional practice. It aims to achieve these goals by engaging justice professionals and judicial authorities, child protection workers and disability specialists, as well as EU policymakers. Specific objectives include enhancing the skills of legal professionals, improving multidisciplinary cooperation, and raising awareness of the importance of specialised support for all children and young people with disabilities.

Within the methodological limits set for this deliverable³, the current report will provide an overview only of the existing legal and policy framework and practice (including findings from international monitoring processes regarding Austria), while focusing on the empirical findings gathered in the research process through consultation with various stakeholders.

¹ See, in particular, Principle 3 on “Persons with disabilities, including children with disabilities, have the right to appropriate procedural accommodations”.

² EC Recommendation of 23.4.2024 on developing and strengthening integrated child protection systems in the best interests of the child, C(2024) 2680 final.

³ Aiming at concise reports of about 10 pages, as described in the project’s “Methodology for National Reports” (May 2025).

2. RELEVANT INTERNATIONAL CONTEXT

The rights of children with disabilities directly intersect with rights of people with disabilities, next to the broader human rights framework (including non-discrimination of women and girls, as mandated under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)).⁴ Thus, in the following particular attention will be paid to the Convention on the Rights of Persons with Disabilities (CRPD) and to the Convention on the Rights of the Child (CRC), which have been both signed and ratified by Austria,⁵ as well as an overview of key findings from the assessment by the respective international monitoring bodies.

2.1 CONVENTION ON THE RIGHTS OF PEOPLE WITH DISABILITIES

When considering the accessibility of the legal system for children with disabilities, the CRPD provides for essential standards. Already in its preamble,⁶ the international treaty recognises “that disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others.” This emphasises the Convention’s understanding of disabilities which is not based on a medical and functionalist approach to barriers, but which acknowledges the social construct behind them, leading to a human rights-based model in addressing disability in order to overcome barriers, discrimination and exclusion and ensure comprehensive access to all rights for persons with disability.

Consequently, in respect to children, Article 7 CRPD expects from States Parties to “take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children”, to ensure their best interests as “a primary consideration” and, concerning their right to participation, “to be provided with disability and age-appropriate assistance to realize that right”.⁷ This also has to pertain to the possibility of having their voices heard in front of a court, which should also include that their testimonies is given due weight during court proceedings and appropriate assistance is provided in order to realise these rights. Furthermore, Articles 12 (Equal recognition before the law) and 13 (Access to justice) of the CRPD are of particular importance in the project’s context. While Article 12 emphasises the aspect of legal capacity of persons with disabilities and its exercise, Article 13 focuses on “the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.” To propel this change, the CRPD foresees that States Parties should provide and

⁴ See, in particular, the CEDAW Committee’s General recommendation No. 33 on women’s access to justice, UN Doc CEDAW/C/GC/33 (3 August 2025).

⁵ United Nations Treaty Collection, <https://treaties.un.org/>. Austria has only signed but not yet ratified the CRC Optional Protocol on the communications procedure, which would allow children, including children with disabilities, to review protection of their rights in Austria in front of the CRC Committee.

⁶ United Nations. Convention on the Rights of Persons with Disabilities, Preamble, lit. e, 13 December 2006, A/RES/61/106. United Nations Treaty Collection.

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=_en.

⁷ Emphasizing also to intersection with children’s rights through direct reference to the CRC already in its Preamble.

promote appropriate training for the professionals that are “working in the field of administration of justice, including police and prison staff.”

However, at national level, support systems for children in Austria do not sufficiently consider the needs of children with disabilities, as confirmed by the CRPD’s monitoring body in its latest Concluding Observations regarding Austria in 2023,⁸ indicating non-compliance with some of its obligations set forth in the CRPD. While the UN Committee highlighted some positive aspects (e.g. second Protection of Adults Act of 2018), it also pointed out various general areas of concern, affecting all persons with disability in Austria. For instance, regarding access to justice, the Committee expressed concern that there was no sufficient “availability of qualified sign language interpreters for administrative and court proceedings, the inaccessibility of some administrative and court buildings, a widespread lack of administrative and court decisions in accessible formats and the insufficient accessibility of online administrative and court hearings”.⁹ Furthermore, it deplored “serious shortcomings in the collection and publication of data on the situation of persons with disabilities across all areas of life, including health, education, employment and the justice system”.¹⁰ Concerning, specifically, children with disabilities, the UN Committee focused mainly on school segregation in Austria, but also recommended to “provide financial and technical support to organizations of children with disabilities to allow for their active participation in public discourse and promptly make available early intervention services and individualized support for children with disabilities and their families”.¹¹

Domestically, in line with Art 33 (2) CRPD, an Independent Monitoring Committee on the Implementation of the UN Convention on the Rights of Persons with Disabilities has been set up in Austria, which regularly assesses the situation of protection of rights of persons with disabilities.

2.2 CONVENTION ON THE RIGHTS OF THE CHILD

From an age- and development-centred perspective, the Convention on the Rights of the Child (CRC) is of particular relevance to the project - an international treaty ratified by Austria and in effect since September 1992. Based on General Principles of (again) primary consideration to the best interests of the Child (Art 3(1) CRC), non-discrimination of any group of children (including based on disability, Art 2), their right to life, survival and development (Art 6), it also guarantees to children their right to participation, including to “be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body”(Art 12 CRC). In addition, addressing specifically the rights of children with disabilities, the CRC requires States Parties to recognise that they “should enjoy a full and decent life, in conditions which ensure dignity, promote-self-reliance and facilitate the child’s active participation in the community” (Art 23 (1) CRC).

In its latest Concluding Observation on child rights protection in Austria, the UN CRC Committee noted several shortcomings specifically in respect of children with disabilities, and “urged” the Austrian government “to adopt a human rights-based approach to disability in implementing the

⁸ Committee on the Rights of Persons with Disabilities, Concluding observations on the combined second and third periodic reports of Austria, UN Doc CRPD/C/AUT/CO/2-3 (28 September 2023), see <https://www.monitoringausschuss.at/wp-content/uploads/2023/11/G2319061.pdf>.

⁹ Ibid. para 33.

¹⁰ Ibid., para 71.

¹¹ Ibid., para 22.

comprehensive national policy for the inclusion of children with disabilities”, as well, inter alia, to ensure to children with disabilities “effective access to public services and spaces and improve the physical accessibility of all public and private buildings, spaces and means of transport in all Länder”.¹² The Committee also deplored the lack of a comprehensive strategy for implementing children’s rights in Austria, challenges for non-discriminatory implementation due to inconsistent decentralised legislation, policies and measures in the nine different regions (Länder) of Austria, as well as the lack of comprehensive, effective child rights monitoring.

There is no similar independent national child rights monitoring body in Austria as established under the CRPD in the country.¹³

Still, concerning domestic implementation, reference should be made to the adoption of a dedicated Constitutional Act on the Rights of Children (2011) in Austria,¹⁴ which includes key child rights provisions, such as priority to the best interests of the child, special support to children outside the family environment, child right to participation, protection from violence (including access to compensation) and rights of children with disabilities to special protection, care and equal treatment. However, a recent study on the legal impact of these constitutional provisions noted only very limited use and relevance with much potential for more in-depth engagement both by the Austrian courts and the legislator.¹⁵

3. EUROPEAN STANDARDS

For the purpose of this overview, including as far as relevant to the context of this project and implementation in Austria, brief reference should be made only to key regional instruments protecting rights of children with disabilities. Under the auspices of the Council of Europe, this includes the European Convention on Human Rights (in particular, Art 6 on fair trial guarantees and Art 14 on non-discrimination), the Revised European Social Charter (including, Art 15 on the right of persons with disabilities to independence, social integration and participation in the life of the community, addressing also “measures, including technical aids, aiming to overcome barriers to communication and mobility”, Art 15(3)),¹⁶ as well as the CoE Convention on preventing and combating violence against women and domestic violence (“Istanbul Convention”).

As regards to the latter, its independent monitoring body, GREVIO (Group of Experts on Action against Violence against Women and Domestic Violence) published its first thematic evaluation report (focusing on “building trust by delivering support, protection and justice”) on Austria in September 2024. Relevant to the context of this project are, in particular, assessments and recommendations towards stronger cooperation in relation to victims of violence at risk of multiple forms of discrimination, including girls and women with disabilities as well as barrier-free access to support and

¹² UN Committee on the Rights of the Child, Concluding observations on the combined fifth and sixth periodic reports of Austria, UN Doc CRC/C/AUT/CO/5-6 (5 March 2020), para 31.

¹³ Although the current coalition government’s work programme (“Jetzt das Richtige tun. Für Österreich. Regierungsprogramm 2025–2029”, p 114) includes commitment to examine establishment of such body.

¹⁴ Federal Gazette/ BGBl. I Nr. 4/2011.

¹⁵ Czech/Fuchs/Pabel/Weber, Wirkung und Potenzial des BVG über die Rechte von Kindern. Evaluierung des Grundrechtsschutzes im BVG Kinderrechte, BKA (2025).

¹⁶ Article 15 (1) and (3) accepted also by Austria upon ratification of the ESC.

protection shelters. Furthermore, “[f]or women with physical disabilities, for example, barrier-free access to court buildings must be ensured, while women with intellectual disabilities may need information, instructions and questioning in easy-to-understand language and be offered breaks during hearings. For women who do not speak German, trained and qualified interpreters, if possible, of the same sex, are of crucial importance”, and GREVIO recommends particular attention to “women victims of violence who face intersectional discrimination, for example women with disabilities and migrant women, who may need specific measures of protection and support in criminal proceedings.”¹⁷

Concerning relevant EU standards and legislation, the EU Fundamental Rights Charter contains key provisions on non-discrimination (including explicitly disability, Art 21 FRC), rights to “integration of persons with disability” (Art 26) and rights of the child (including best interests principle and child right to effective participation, Art 24), complemented by a general “right to an effective remedy and to a fair trial”.

Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime entered into force in November 2012¹⁸ and aimed to further strengthen the rights, support, and protection of victims of crime. Fundamental rights shall be upheld in criminal proceedings, treating victims of crime with respect and providing support to ensure their access to justice, including to compensation. Regarding persons with disabilities, Art 3 (2) explicitly points out that “Member States shall ensure that communications with victims are given in simple and accessible language, orally or in writing. Such communications shall take into account the personal characteristics of the victim including any disability which may affect the ability to understand or to be understood”. Moreover, Art 22 (3) requires that “[i]n the context of the individual assessment [...] victims with disabilities shall be duly considered”. In addition, Art 24 contains further protection measures for child victims of crime. Considering the perspective of child offenders, Directive (EU) 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings entered into force in May 2016 and aims, in particular, to “establish procedural safeguards to ensure that children [...] are able to understand and follow those proceedings [...] (Recital 1)”. Recital 36 further elaborates on the aspect of “vulnerability” by referring to examples such as “learning disabilities” and “communication difficulties”. Similarly, Art. 7, which establishes the right to an individual assessment, refers to “specific vulnerabilities” (“take into account the child’s personality and maturity, the child’s economic, social and family background, and any specific vulnerabilities that the child may have”).

¹⁷ CoE/GREVIO, Building trust by delivering support, protection and justice: Austria – First thematic evaluation report, GREVIO(2024)4, Para 175.

¹⁸ Currently under review, see https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/criminal-justice/protecting-victims-rights/victims-rights-eu_en#evaluation-of-the-victims-rights-directive.

4. LEGAL AND POLICY FRAMEWORK IN AUSTRIA

Austria has established both legislation and support mechanisms, which address the implementation of fundamental rights of persons participating in court proceedings, as child victims of crime or as child offenders, however, only to a limited extent targeting specifically children with disabilities.¹⁹

On a general level, the Criminal Procedure Code (*Strafprozessordnung, StPO 1975*)²⁰ provides for a wide range of procedural rights of victims of crime (including various forms of physical, sexual, cyber violence, see sections 66ff), such as hearings with particular sensitivity to their situation, exclusion of the public from trial and presence of a person of trust. Of particular importance is victim's access to legal and psychosocial court assistance (see below). According to the Austrian Ministry of Justice, the EU victim's directive has been fully implemented by the Criminal Procedure Amendment Act (*Strafprozessrechtsänderungsgesetz*)²¹ 2016, while the Austrian Disability Council (*Österreichischer Behindertenrat*, legal representation of interests of people with disabilities) noted persistent implementation gaps regarding in the protection of victims of crime with disabilities.²²

In relation to child offenders, the Juvenile Court Act (*Jugendgerichtsgesetz, JGG 1988*)²³ acts as a *lex specialis* to both the general Criminal Code (*Strafgesetzbuch, StGB 1974*)²⁴ and the Code of Criminal Procedure, for substantive and procedural crime matters. It contains provisions offering a wide range of sanctions and other responses committed by young persons reaching the age of criminal responsibility, which is 14 years in Austria, as well as provides for the use of individual assessments concerning accused young persons (through juvenile court assistance services, see below). However, no particular accommodation instruments are foreseen in case of juveniles with disabilities. Only as far as persons with sensory impairments are concerned, the general Code of Criminal Procedure provides for the right of accused persons to support through sign language interpretation.²⁵

The following segment will highlight some existing structures and instruments in Austria, which are, in principle, available to children in court proceedings, although not necessarily specifically adapted to the needs of children with disabilities. The overview is not only limited to criminal proceedings, but also mentions instruments from civil proceedings as well as examples of monitoring bodies, since they should be considered relevant services and stakeholders for further discussion within the ENSURE project on improving communication with children with disabilities.

¹⁹ For a comprehensive assessment on access to justice for persons with learning difficulties, see Eckstein, Nina, *Der Zugang zum Recht im Lichte der Behindertenrechtskonvention unter besonderer Berücksichtigung von Menschen mit Lernschwierigkeiten* (dissertation, Linz) 2023

²⁰ Federal Gazette/BGBl. Nr. 631/1975.

²¹ Federal Gazette/BGBl. I Nr. 26/2016.

²² Österreichischer Behindertenrat. Unterarbeitsgruppe „Frauen mit Behinderungen“, AG 8 – Gewaltfrei durch Berücksichtigung besonderer Vulnerabilität, S. 3.

²³ Federal Gazette/BGBl. Nr. 599/1988.

²⁴ Federal Gazette/BGBl. Nr. 60/1974.

²⁵ Section 56 (7) StPO: „If the accused is deaf or mute, a sign language interpreter shall be called in, provided that the accused can communicate in sign language. Otherwise, an attempt shall be made to communicate with the accused in writing or by other appropriate means in which the accused can make himself understood.“ (translation by the author)

4.1 LEGAL AND PSYCHOSOCIAL COURT ASSISTANCE

The first concept presented here is the so-called “legal and psychosocial court assistance system in Austria “(*Prozessbegleitung*). Its relevant legal sources are the Austrian Criminal Procedure Code (*Strafprozessordnung*), the Austrian Civil Procedure Rules (*Zivilprozessordnung 1895*)²⁶ and its implementing Regulatory Order (*Prozessbegleitungs-Regulierungsverordnung*).²⁷ It offers support to victims (and their caregivers) of specific offences in exercising their rights and obligations in criminal proceedings, as well as in civil proceedings, as far as psychosocial assistance is concerned.

The process shall start with counselling services before a charge is filed against the suspect and it lasts until the end of the legal proceedings. The service is offered free of charge, and typically includes both psychosocial and legal support. The litigation support for children/juveniles is provided by counselling centres that are specialised on working with these age groups.

The psychosocial support is offered by employees of specialised counselling centres and aims to support persons with the emotional coping during the course of the criminal proceedings. It includes, for example, preparing and accompanying victims when reporting the incident during interrogation, and other relevant appointment. It also includes general information about the procedure and the coordination with different stakeholders involved in the case (e.g., child and youth welfare services, hospitals, schools, etc.). Under specific circumstances, the support can also include subsequent civil proceedings, in which the victim may assert claims of damages.

The legal support is provided by lawyers who are specialised in the support and representation of victims of crimes. Contrary to the psychosocial support, the legal support cannot be expanded to subsequent civil cases.

The first target group of persons that are entitled for the described support mechanisms are those that have directly experienced violence or dangerous threats (e.g., in the form of physical harm), whose sexual integrity and (bodily) autonomy has been violated (e.g., in the case of sexual abuse or rape) and those whose personal dependence (on the perpetrator) has been exploited through the situations mentioned before. The second group of persons that are eligible for this support mechanisms are certain close relatives of the victim (e.g. witnesses to the crime). A third group of people includes victims of specific crimes, such as terrorist acts or victims of hate speech on the internet. Lastly, all children (below 18 years) that have witnessed violence (in their local social environment, such as family) may benefit from court assistance as well.

Since the service is free of charge, it means that the financial situation of the victim does not constitute a barrier to access. Court assistance, however, has to be requested by the victim and is not assigned *ex officio*, which could constitute a barrier if the service is not well communicated. Only children below the age of 14 years, and have become victim of a sexual offence, have to be granted psychosocial court assistance (but not legal) in any case, directly by the court.

Although children are recognized as a distinct group, no relevant documents and sources (Ministry of Justice,²⁸ the quality standards for court assistance²⁹, Activity Report on court assistance (2014–

²⁶ Federal Gazette/ RGBI. Nr. 113/1895.

²⁷ Most recently, Federal Gazette/ BGBl. II Nr. 245/2024.

²⁸ Bundesministerium für Justiz. Opferhilfe und Prozessbegleitung. <https://www.justiz.gv.at/service/opferhilfe-und-prozessbegleitung.961.de.html;jsessionid=32A9926FC6616F62727F07F0091DBCE7.s2>

²⁹ Child Law Center. Qualitätsstandards Prozessbegleitung für Kinder und Jugendliche. https://www.clc.or.at/data/docs/qualit%C3%A4tsstandards_pb_kinder_und_jugendliche-1.pdf

2023))³⁰ make any specific reference to the concept of disability or how to specifically address victims with disabilities.

4.2 JUVENILE COURT ASSISTANCE

The Juvenile Court Assistance (JCA, *Jugendgerichtshilfe*) consists of specialised social workers, psychologists and pedagogues who, at the request of courts or the public prosecutor, provide the criminal court or the prosecutors with written or oral reports, in order to support their decision-making process.³¹ It is considered a key instrument of Austria's efforts to implement the Directive (EU) 2016/800 on procedural safeguards for child offenders.

The main tasks of the JCA consist of three areas: the juvenile social background report, the assistance in the decision-making process concerning (alternatives to) deprivation of liberty and the crisis intervention.

As part of the juvenile social report, the professionals establish contact with relevant persons that may provide information on the suspect as well as on his/her living conditions (including, the suspect and parents). The information is consolidated in a report to support the court and/or the public prosecutor in finding appropriate responses to the offence.

In a similar way, the JCA assists in the decision-making process in relation to pretrial detention, as in case of availability of a supporting social network (*Sozialnetzkonferenz*), the young person may be released from detention pending trial.

Finally, the JCA may also take crisis intervention measures in the event of imminent danger to the young person.

The Juvenile Court Assistance service in Vienna has a broader mandate as it continues to look after the adolescents and young adults also during their detention.³² This includes regular individual care, intensive care and crisis interventions as well as various group offers. Referral to internal training and education measures as well as to therapies is also provided by the Juvenile Court Assistance. If possible, emphasis is placed on regular contact with family and close relatives of the alleged offenders. In order to deal with family problems, social visits are organised and moderated with them and their relatives. While the scheme itself is quite elaborate, it does not address specifically the situation of children with disabilities; in addition, and more generally, funding of these services have been considered insufficient by professionals consulted in this project (see the empirical part below).

4.3 CHILDREN'S COUNSELLOR/ASSISTANT

The legal basis for the children's advisors/assistants (*Kinderbeistand*) is the Austrian Children's Counsellor Act (*Kinderbeistand-Gesetz*), which entered into force in 2010. The children's counsellor is a support person trained in psychosocial assistance, with comprehensive experience in the work with children in difficult family situations. It is considered part of Austria's effort to implement Art 12 of the

³⁰ Bundesministerium für Justiz. Prozessbegleitungs-Tätigkeitsbericht 2014–2023.

https://www.justiz.gv.at/file/2c94848535a081cf0135a49ef4880021.de.0/pb_t%C3%A4tigkeitsbericht_2014-2023.pdf?forcedownload=true

³¹ Bundesministerium für Justiz. Jugendgerichtshilfe, <https://www.justiz.gv.at/justiz/familien-und-jugendgerichtshilfe/jugendgerichtshilfe.2c94848b51c98d610152cffee7e93500.de.html>

³² Bundesministerium der Justiz. Folder

Jugendgerichtshilfe, https://www.justiz.gv.at/file/2c94848b51c98d610152cffee7e93500.de.0/2023_Folder_JGH.pdf?forcedownload=true

CRC concerning the child rights to participation in court proceedings,³³ although available not in criminal proceedings but only in family court matters.

In civil court proceedings, when the family court has to decide on custody of minors and visitation rights of parents, which can become highly controversial between parents, and particular burdening on children involved, the Austrian law requires to hear the views and perspectives of the child through such counselling service. In principle, available to children up to 14 years, it can be ordered by court exceptionally also up to 16 years.

The counsellor/assistant is supposed to speak on behalf of the child at court, thus sparing the child open confrontation with parents and courts.³⁴ The counsellor first seeks to establish a relationship of trust, provides information on the legal proceedings in a child-friendly manner and accompanies the child to relevant appointments, if requested. The appointment of the children's advisor is made by the competent court. For the first six months, the provision is free of charge but after that time, the child's parents must bear the costs; legal aid is provided for families with low income.³⁵

The MoJ implementing authority has developed quality standards and qualification needs for this service (extensive experience working with minors and to have a degree or completed education in the areas of social work, pedagogy, educational sciences, psychology, psychotherapy)³⁶ and has created information material for children³⁷ and young persons,³⁸ including in various languages. However, there are no specific requirements for expertise on inclusion and working with children with disabilities nor material targeting specifically this target group.

Since 2013, a service similar to juvenile court assistance has been established also in relation to family courts, called "*Familiengerichtshilfe*". Trained professionals (social workers, psychologists) support the decision-making process of judges in matters of custody/divorce proceedings and visitation/contact with parents.³⁹

4.4 REDRESS: ARBITRATION PROCEEDINGS

Separate from criminal and civil courts proceedings, but targeting specifically discrimination based on disability, the arbitration proceedings (*Schlichtungsverfahren*) is an instrument to provide legal protection for persons with disabilities. The legal basis for this structure can be found in the Federal

³³ Bundesministerium für Justiz. Kinderbeistand – Information für Eltern, <https://jba.gv.at/kinderbeistand-information-fuer-eltern-de/>

³⁴ Bundesministerium für Justiz. Kinderbeistand, <https://www.justiz.gv.at/service/familienrecht/obsorge-und-kontaktrecht/kinderbeistand.25c.de.html>

³⁵ Trennung und Scheidung Österreich. Kinderbeistand, <https://www.trennungundscheidung.at/kinderbeistand/>

³⁶ Jugendgerichtsbarkeit Austria (JBA). Infos für Bewerberinnen und Bewerber, <https://jba.gv.at/geschaeftsbereiche/kinderbeistand/>

³⁷ Jugendgerichtsbarkeit Austria (JBA). Kinderbeistand – Information für Kinder, https://jba.gv.at/wp-content/uploads/2025/09/Wickelfalz_A5_Kinderbeistand_20250909_FINAL_Seiten.pdf

³⁸ Jugendgerichtsbarkeit Austria (JBA). Kinderbeistand – Information für Jugendliche, https://jba.gv.at/wp-content/uploads/2022/10/Wickelfalz_A5_Jugendbeistand_20250909_FINAL_Seiten.pdf

³⁹ See the MoJ website, <https://www.justiz.gv.at/service/familienrecht/obsorge-und-kontaktrecht/familiengerichtshilfe.fed.de.html>.

Disability Equality Act (2005).⁴⁰ According to the Austrian Federal Disability Advocate (FDA)⁴¹, the arbitration process aims to *Bundes-Behindertengleichstellungsgesetz* reduce the potential number of lawsuits. The process is therefore a prerequisite for the legal enforcement of claims. According to section 10 (2) of the Austrian Disability Equality Act, a lawsuit is only permitted if an amicable settlement has not been reached three months after the beginning of the arbitration process.

When an alleged discrimination due to disability has taken place, the affected person may report the incident to a regional office of the Federal Agency for Social Affairs.⁴² A trained arbitration officer of the Ministry for Social Affairs brings together the conflicting parties, resulting either in an amicable settlement or a declaration that such settlement was not possible, which then may form the basis for lawsuit.⁴³ The whole process is free of charge. While there is no specific focus on children, a data base of “*Bizeps*”, a self-advocacy organisation of persons with disabilities, shows that there have been cases involving children with disabilities.⁴⁴ According to the Austrian Disability Advocate’s office, the arbitration process, in general, has proven effective in practice, with more than 1000 conducted arbitrations since the year 2006 and around 40% of them ending with an amicable settlement.⁴⁵

The Federal Disability Advocate (FDA) and their office not only provides support and information to persons with disabilities in case of discrimination, but may also bring class action lawsuits.⁴⁶ In response to the publication of the European Economic and Social Committee’s Fundamental Rights and Rule of Law Group “Report on the visit to Austria” (2025), the FDA also voiced concerning regarding the structural discrimination faced by persons with disabilities. Regarding the access to justice, the report stated that the “[p]articipants observed that access to justice for people with disabilities remained more limited than for other discriminated groups.”⁴⁷

4.5 MONITORING INSTRUMENTS REGARDING CHILDREN WITH DISABILITIES

As mentioned above, following ratification of the CRPD, Austria has established an Independent Monitoring Committee on the Implementation of the UN CRPD in order to promote, protect and monitor the implementation of the convention.⁴⁸ The committee consists of a total of seven members,

⁴⁰ Federal Gazette/BGBl. I Nr. 82/2005.

⁴¹ Behindertenanwaltschaft. Informationen zum Schlichtungsverfahren, https://www.behindertenanwaltschaft.gv.at/fileadmin/user_upload/dokumente/Informationen_zum_Schlichtungsverfahren.pdf

⁴² Bundesministerium für Soziales, Gesundheit, Pflege und Konsumentenschutz. Schlichtung, <https://www.sozialministeriumservice.gv.at/Angehoerige/Gleichstellung/Schlichtung/Schlichtung.de.html#>

⁴³ Behindertenanwaltschaft. Informationen zum Schlichtungsverfahren, https://www.behindertenanwaltschaft.gv.at/fileadmin/user_upload/dokumente/Informationen_zum_Schlichtungsverfahren.pdf

⁴⁴ Schlichtungsdatenbank. BIZEPS – Zentrum für Selbstbestimmtes Leben. <https://www.bizeps.or.at/schlichtungen/>

⁴⁵ Behindertenanwalt Österreich. Informationen zum Schlichtungsverfahren. https://www.behindertenanwaltschaft.gv.at/fileadmin/user_upload/dokumente/Informationen_zum_Schlichtungsverfahren.pdf

⁴⁶ Anwältin des Bundes für Gleichbehandlungsfragen für Menschen mit Behinderungen). Informationen zur Gleichstellung von Menschen mit Behinderungen, https://www.oesterreich.gv.at/de/themen/menschen_mit_behinderungen/gleichstellung-von-menschen-mit-behinderungen/Seite.1875000.

⁴⁷ European Economic and Social Committee. (2025). Report on the visit to Austria – Authorities’ observations on the report, p. 6, <https://op.europa.eu/en/publication-detail/-/publication/8f4b2e02-8f80-11f0-bfe2-01aa75ed71a1/language-en>

⁴⁸ Monitoring-Ausschuss. <https://www.monitoringausschuss.at/en/>

including four representatives of organisations working on disability issues, one human rights civil society representative, one representative from the field of development cooperation and one representative from the academic field (with substitute members for each member).⁴⁹

The Independent Monitoring Committee may request information from authorities in individual cases, issues recommendations and opinions concerning the rights of persons with disabilities, e.g. in relation to draft legislation, reports regularly to the Federal Disability Advisory Board, and also holds annual public hearings on topical issues.⁵⁰ The latest hearing of October 2025 was specifically devoted to the situation and experiences of children with disabilities.⁵¹

According to the law, persons with mental disorders, including children, who are regarded to pose a serious risk to themselves or others, and for whom other forms of treatment (such as mobile mental health services or outpatient psychiatric care) are not feasible, may be admitted to a hospital's psychiatric department. Since such process may strongly interfere with the right to personal liberty, a dedicated monitoring mechanism was established under the Placement Act (*Unterbringungsgesetz, 1990*),⁵² consisting of trained "patients advocates" (*Patientenanwalt*), supporting patients during the judicial review of such placement.⁵³

A similar structure has been established for persons in residential care institutions, which – although not conceived as closed institutions – may also see situations of interference with the right to personal liberty of those persons, including persons with disabilities. Since 2018, the applicable law (Residential Care Placement Act, *Heimaufenthaltsgesetz 2004*)⁵⁴ provides also for residential care institutions, in which at least three children may be placed, to fall under this jurisdiction. Thus, another dedicated monitoring mechanism (*Bewohnervertretung*) provides support for judicial review to residents of such institutions, including children with disabilities. The organisation "VertretungsNetz" operates both monitoring mechanisms across most regions in Austria and also offers information in a child friendly manner for children from 8-12 years⁵⁵ as well as for adolescents from 13-18 years.⁵⁶

Under the OPCAT-mandate, as a National Preventive Mechanism for monitoring institutions where persons are placed, and which can lead to situations of deprivation of liberty, the Austrian Ombudsman Board (*Volksanwaltschaft*) has set up seven visiting commissions across Austria to undertake (often unannounced) monitoring visits to institutional care facilities.⁵⁷ Furthermore, the nine regional Ombudsoffices for Children and Youth (*Kinder- und Jugendanwaltschaften*) in Austria have established special mechanisms of trusted persons to provide direct support to children in institutional care.⁵⁸

⁴⁹ Monitoring-Ausschuss. Über den Ausschuss. <https://www.monitoringausschuss.at/en/ueber-den-ausschuss/>

⁵⁰ Ibid.

⁵¹ See, <https://www.monitoringausschuss.at/sitzungen/aufwachsen-mit-behinderungen-meine-stimme-ist-wichtig/>.

⁵² Federal Gazette/ BGBl. Nr. 155/1990.

⁵³ Bundesministerium für Justiz. Patientenanzwaltschaft, Bewohnervertretung und Vereinsvertretung, <https://www.justiz.gv.at/service/patientenanwaltschaft-bewohnervertretung-und-vereinsvertretung.964.de.html>

⁵⁴ Federal Gazette/BGBl. I Nr. 11/2004.

⁵⁵ Vertretungsnetz. Informationsfolder für Kinder (8-12 J.) in der Psychiatrie, https://vertretungsnetz.at/fileadmin/user_upload/5_Patientenanwalt/Information_Kinder_Unterbringung_Psychiatrie_VertretungsNetz.pdf.

⁵⁶ Vertretungsnetz. Informationsfolder für Jugendliche (13-18 J.) in der Psychiatrie, https://vertretungsnetz.at/fileadmin/user_upload/5_Patientenanwalt/Jugendfolder_Psychiatrie_Unterbringung_2024.pdf.

⁵⁷ <https://volksanwaltschaft.gv.at/en/for-human-rights/commissions/>.

⁵⁸ See their website, at <https://www.kija.at/stellungnahmen>.

4.6 NATIONAL PLAN OF ACTION ON DISABILITY 2022-2030

The second National Plan of Action on Disability (NAP Disability) 2022-2030⁵⁹ provides for the long-term strategy of the Austrian government to address disability and inclusion, including the implementation of the CRPD in Austria. The latest NAP has been adopted in July 2022 and follows up on the first NAP, which covered the years 2012-2021.

According to the Ministry of Social Affairs, the NAP II contains almost 300 political objectives that have been agreed upon by all Ministries and Counties. It also includes around 150 indicators which are intended to measure the degree to which the objectives have been achieved. Ultimately, the NAP II contains 375 provisions, divided into eight chapters, that have to be implemented until 2030. It is stated that the outcome represents also an extensive participatory process, with efforts to include civil society organisations (CSOs) and persons with disabilities.

However, from the perspective of the Independent Monitoring Committee, several shortcomings have been observed.⁶⁰ As far as children with disabilities are concerned, the Committee specifically criticizes the Plan as being too limited in scope, lacking both clearly defined goals and corresponding implementation measures and indicators. It recommends that the plan include a systematic evaluation of how effectively families and children with disabilities can access available services and support in practice, identifying the obstacles they encounter and assessing the functionality and adequacy of counselling services. Furthermore, the Committee report emphasizes the need to ensure access to personal assistance for children with disabilities. In relation to access to justice in general, the report notes that court proceedings remain disproportionately challenging for persons with disabilities. Persistent barriers include the absence of sign language interpreters during pre-trial stages, increased legal costs resulting from the requirement for mandatory legal representation in higher courts, and the lack of effective mechanisms to eliminate these barriers.⁶¹ In addition, the report identifies Austria's federal structure as a key obstacle to the coherent and effective implementation of disability policies, as it complicates the coordination and uniform application of measures.⁶²

⁵⁹ Bundesministerium Soziales, Gesundheit, Pflege und Konsumentenschutz. Nationaler Aktionsplan Behinderung 2022-2030, <https://www.sozialministerium.gv.at/dam/jcr:97c546c6-166b-4990-9efb-79d3ed4f3797/2022-07-06%20NAP%20Behinderung%202022-2030.pdf>

⁶⁰ Monitoring-Ausschuss. (2022). Stellungnahme zum Nationalen Aktionsplan Behinderung 2022–2030 (page 3). https://www.monitoringausschuss.at/wp-content/uploads/download/stellungnahmen/nationaler_aktionsplan_behinderung_2022-2030/UMA_SN_NAP_2022-2030_05_2022.pdf

⁶¹ Ibid., p.6

⁶² p.23

CONSULTATIONS AND EMPIRICAL FINDINGS

5. METHODOLOGY

5.1 RECRUITMENT AND SAMPLE

A purposive sampling approach was applied (Patton, 2015), drawing on long-standing contacts with networks and organisations in the fields of children's rights and disability in Austria. These actors acted as gatekeepers, facilitating access to young persons with disabilities. However, this process proved particularly challenging, as also reflected in the empirical findings below, since only very few cases of children with disabilities in contact with the criminal justice system were reported and could be identified in this process. Nevertheless, two young women (now 20 and 22 years old) could be included in the sample, as they were willing to share their experiences with the justice system, although their experiences related basically to civil and administrative procedures and respective courts and public authorities.

For the focus group discussion, participants were invited to ensure broad representation from diverse institutional and professional contexts, including the justice sector, juvenile justice court assistance, psychosocial and legal court assistance, children's counsellor services, child protection organisations, support organisation for women with disability, Austrian National Disability Council, Federal Disability Advocate as well as from various monitoring institutions (Child and Youth Ombudspersons, VertretungsNetz, Austrian Ombudsman Office). As judges and the representative of the Monitoring Committee on the Rights of Persons with Disabilities were unable to participate directly in the focus group, expert interviews were conducted instead with them. The two young women with disabilities shared their experiences with administrative procedures in two separate semi-structured qualitative interviews. The President of the Austrian Deaf Association provided written responses to the interview questions.

In total, 18 persons participated in the empirical study (14 women and 4 men), including 12 participants in the focus group, three expert interviews, and two semi-structured qualitative interviews with young women with disabilities. For detailed information about the participants, please see Annex 1.

Methodologically, the focus group followed established theoretical and practical guidance (Barbour, 2018), and the semi-structured qualitative interviews as well as the expert interview were designed and conducted in line with the manual for qualitative interviewing (Helfferich, 2011).

5.2 DATA ANALYSIS

The data were analysed using thematic analysis following the approach of Braun and Clarke (2006). The analysis combined deductive and inductive elements: deductively, the structure of the questionnaires guided the initial coding framework, reflecting the project's overall research focus and key thematic areas. At the same time, an inductive approach was used to capture material-immanent meanings, allowing for the inclusion of participants' own horizons of understanding, orientations, and experiences as they emerged in the data. This combination enabled a structured yet open analysis that remained closely grounded in the empirical material.

5.3 ETHICAL CONSIDERATIONS AND DATA PROTECTION

All participants received written information about the ENSURE project, including its aims, data handling procedures, and participants' rights under the EU General Data Protection Regulation (GDPR, Articles 15–22). Prior to participation, they were asked to provide informed consent by signing a consent form. The forms contained detailed explanations regarding the voluntary nature of participation, the right to withdraw at any time without consequences, and the right to access, correct, or delete personal data.

For both the focus group and the individual interviews, participants were informed that discussions would be audio-recorded, transcribed, and anonymised using pseudonyms. The recordings and transcripts were stored securely and password-protected, with access limited to the research team. Additionally, participants in the focus group were asked for consent regarding the use of photographs for documentation and dissemination purposes. Contact information for the project's data protection officer and child protection officer was provided in case of questions or concerns. All members of the research team signed a confidentiality agreement, ensuring that data were used solely for research purposes within the ENSURE project.

6. EMPIRICAL FINDINGS

This section provides insight into the experiences, knowledge, and perceptions of the interviewees who took part in the focus group discussions, expert interviews, and interviews with young women with disabilities. The following structure follows the content of the questionnaire's questions and is extended by themes that emerged inductively from the interviews.

6.1 DEFINITION AND PERCEPTION OF DISABILITY

The interviews and focus group discussion reveal a clear tension between a human rights-based understanding of disability, as outlined in the UN Convention on the Rights of Persons with Disabilities (CRPD), and the medical-diagnostic perspective prevailing in Austrian judicial practice. From a human rights perspective — as emphasized by representatives of the Human Rights Control Body (FG8) and the Disability Ombudsperson (FG5) — disability should be understood as the result of social and institutional barriers rather than as an individual deficit. The Austrian Association of the Deaf (E4) adds a more nuanced view by describing deafness not only as a disability but also as a linguistic minority. The Federal Disability Advocate (FG5) stresses that Austria still lacks a basic awareness that disability is a social and institutional process: "We need to talk about impairment differently — not as a medical feature, but as the result of missing support and structural barriers." This critique is echoed in the interviews. A representative of the national monitoring committee of the CRPD (E1) noted that the concept of disability as defined by the CRPD "has not yet arrived." Instead of focusing on removing barriers, attention tends to be placed on identifying or overlooking individual deficits. The focus group also emphasised that a diagnosis is usually required for judicial consideration, but that the need often only "becomes apparent in the course of the proceedings" (FG 1). Consequently, the approach remains reactive rather than structural — disability only becomes relevant when it specifically affects

communication or the course of proceedings (FG8). As a result, children with invisible disabilities — such as intellectual⁶³, psychosocial, or neurodivergent impairments— often remain unacknowledged. This view is also confirmed from a judges' perspective (E2, E3), as disability was predominantly described in functional and diagnostic terms. E3 understood disability in general as an “impairment, whether physical, cognitive, or psychosocial,” but pointed out that not every medical or mental health condition automatically falls under this category. E2 emphasized that there is no formal definition and that classification usually depends on the specific situation and the child’s communication skills; in cases of doubt, a court-appointed expert is consulted. Psychiatric assessments are only occasionally available, and both judges stated that addiction is not considered a disability. At the same time, E2 observed an increasing number of cases involving diagnoses from the autism spectrum. Both judges emphasized that cases involving children with disabilities are extremely rare in court — sometimes only one or two in many years of service.

The representative of psychosocial court assistance (FG9) highlighted a major gap between the few cases that come to court and the actual extent of violence experienced by children with disabilities, as they face generally a high risk of violence and major barriers to support — especially “when they are not verbally able to confide in a person.” “E3 attempted to explain the overall low number of cases— including in civil and custody proceedings—by suggesting that, where parents can care well for a child with a disability, custody disputes seldom arise and agreements are often reached in the child’s best interests. In other constellations, the children are already in alternative care or live with one parent, while the other does not seek custody. As a result, children with disabilities rarely appear as active parties in custody proceedings. This structural “invisibility,” he argued, also contributes to their statistical underrepresentation.

Overall, the interviews and the focus group revealed a significant gap between the human rights–based understanding of disability under the CRPD and the reality of judicial practice. While the CRPD promotes a relational, barrier-oriented understanding of disability, the Austrian justice system largely remains rooted in a diagnostic and medical model.

6.2 SUPPORT STRUCTURES

Support for children and young people with disabilities in the justice context is overall very limited, fragmented, and mostly reactive. Specialised, disability-sensitive services are rare. The central, but differently regulated forms of support highlighted in the interviews and the focus group are children’s advisors (*Kinderbeistände*), psychosocial court assistance, and Juvenile Court Assistance (*Jugendgerichtshilfe*). Child advisor and youth court assistance contribute to the stability and emotional protection of children, while psychosocial and legal support during proceedings are designed for adults and children. However, none of these services is particularly specialised for children with disabilities. Their effectiveness depends strongly on the personal commitment of the persons involved.

Children’s advisor exists only in civil law proceedings and not in juvenile criminal proceedings. All participants assessed children’s advisors very positively — they “do great work” (E1) and “work well in custody proceedings” (E2). Since children, regardless of disabilities, often struggle to understand

⁶³ Following the UN CRPD, the authors use “intellectual disabilities.” In the interviews, NGOs representing or supporting persons with intellectual disabilities predominantly used “learning difficulties,” reflecting the term preferred by many self-advocates. By contrast, within the justice system, representatives tended to use “cognitive (‘geistige’) disability,” which remains in some legal texts but is no longer regarded as appropriate because it aligns with a medical and deficit-oriented model of disability.

proceedings, roles, and legal language, children's advisors are seen as relieving and supportive (E3). However, according to the representative of the Monitoring Committee of the Rights of Persons with Disabilities (E1), there are no documented cases with an explicit disability reference. The children's advisor (FG4) said: "I have worked as a children's advisor since 2010 and so far I have not had a single child with a disability who officially had a disability — many of them were treated with medication. This is not considered a disability, though. Nowadays, there are hardly any children who are not taking medication or who don't have behavioural issues." This suggests that there are many children with psychosocial or mental health issues in custody proceedings who are not classified as children with disabilities.

A judge (E3) stressed that it is important to distinguish between a children's advisors and legal representation. He argued for an independent, legally established child representation in court proceedings — analogous to custody conflicts, where a guardian ad litem (a court-appointed representative for the child in cases of conflict of interest) can be appointed. This is important, he said, because "child law lags behind adult protection law," and children overall have weaker representation. Psychosocial court assistance is integrated into criminal and civil proceedings and is described as reliably available and helpful for ensuring that proceedings run smoothly. It works very well and is available also at very short notice (E2). The two judges interviewed were not aware of specific support services tailored to different disabilities (E2/E3).

Juvenile Court Assistance plays a central role in preparing proceedings. It gathers background information, identifies support needs, and acts as an interface between the justice system, the family, and the social environment. Particular emphasis is placed on the early identification of communication support needs; if these only become apparent during the hearing, it is much more difficult to provide appropriate support). According to the Juvenile Court Assistance representative (FG1), it mainly supports proceedings involving young people aged 14 to 21; the spectrum ranges from general juvenile delinquency to serious sexual offences. Information about possible disabilities is rarely available in the beginning of a case, as FG1 explained: "We rarely know in advance whether there is a diagnosis — disabilities (mostly learning difficulties) usually only come up in conversations with the young people (...). Possible diagnoses are generally forwarded to the relevant authorities, but they are rarely or hardly ever taken into account in the further proceedings" (FG1).

In principle, young persons have the right to be accompanied by a support person, if one is available; early knowledge of this would facilitate the preparation of proceedings. If there are indications of possible incapacity, "we can request expert opinions" (FG 1). Overall, the impression in practice is that children and young persons with disabilities need something different in terms of sentencing, requiring other forms of support. The juvenile judge (E2) also pointed to the dense framework conditions: "In Vienna, Juvenile Court Assistance is currently being starved of funds."

For social work support after the age of 18 (up to 21), E3 pointed to a structural gap: there are no formalised adult social work services for (young) adults; as a result, many young adults are assigned an adult representative (according the Austrian Adult Protection Act – *Erwachsenenschutzgesetz*), even though this would not be necessary if support structures existed (E3). The focus group also confirmed these gaps during the transition: when young persons reach the age of majority, existing youth welfare services often end without equivalent services being available in the adult system — especially for young people with disabilities (FG5, FG3).

6.3 INFORMATION AND COMMUNICATION

Full access to information and communication for children and young people with disabilities is hardly regulated structurally. It is often the parents who try to pass on information “to the best of their knowledge and belief” (E1). This was also confirmed by a young woman with disabilities who was interviewed and who, although she had no experience in court, did have experience with authorities: her mother was always present to explain everything and provide emotional support (J2). Communication barriers arise even before proceedings begin, for example during initial contacts or when requesting information from the police and the court. The two interviewed young women with experience in administrative procedures reported very limited accessible information and, more generally, too little guidance and explanation of the individual steps during the procedures. According to E2, Juvenile Court Assistance plays a particular role here: “it clarifies, in advance and as a ‘pre-filter’, family backgrounds and potential support needs and prepares the information for the court hearing.” However, one judge (E3) noted that there is a lack of standardised procedures and materials for children with cognitive, psychosocial, or complex impairments (E3). In his view, court letters and legal language are generally hardly assessable: “as a rule, legal and court language is difficult for everyone to understand (...) and of course, the lower the cognitive capabilities, the more difficult it becomes” (E3). The two interviewed young women also confirmed the major challenge of understanding administrative language (J1/J2). As a result, comprehensibility in proceedings is not reliably ensured and, in practice, depends heavily on the individual preparation and translation by those involved. Individual actors make efforts to provide adapted explanations or follow-up discussions: “We try to explain it differently” (E2), but systematic procedures to ensure comprehension are lacking. Comprehension is usually inferred from non-verbal reactions: “If someone nods or says yes, I assume it’s ok” (E3). This leaves it uncertain whether information is actually understood. Although comprehensible communication is considered important, it is not institutionally guaranteed, but depends on individual practice.

The focus group reported that children and young persons with learning difficulties or psychosocial impairments have little access to information in easy-to-read language. Materials to prepare for proceedings exist only sporadically and are not used systematically (FG3, FG2): “There is a brochure in easy language about court proceedings.” Staff of psychosocial court assistance sometimes resort to using documents intended for very young children because there are no suitable formats for older children or young people with disabilities (FG9). According to the Austrian Deaf Association (ÖGLB), accessible pathways, child-friendly materials, and comprehensible explanations of procedural steps are only available in a patchy way. Information should be age- and disability-appropriate—especially in cases of complex multiple disabilities, according to their representative (E4). ÖGLB noted that interpreting and communication support in ÖGS or ÖGS Plus exists in law but is rarely and not comprehensively available in practice. According to the juvenile judge (E2), ÖGS interpreting occurs in court practice only about once a year. In addition, video interpreting is technically possible at the Vienna Regional Criminal Court, but he was unable to provide any information on the frequency of its practical application.

The juvenile judge points to a possible discrepancy with regard to communication with children and young people, as he is required to adhere to the principle of expediency in criminal proceedings. This rather pragmatic approach aims to conduct proceedings quickly in order to relieve the burden on children as quickly as possible (E2). However, according to the Federal Disability Advocate (FG5) and a representative of a support organisation for women with disabilities, this creates a field of tension: children with learning difficulties or psychosocial impairments often need more time, breaks, and

preparatory explanations. In practice, however, rapid taking of evidence moves to the foreground, while individual communication needs recede.

Overall, it becomes clear that the comprehensibility of information and successful communication in proceedings for children and young persons with disabilities are not currently reliably structurally guaranteed, but depend heavily on individual preparation, the random availability of assistance and scarce resources.

6.4 RIGHT TO BE HEARD

The right of children to be heard in court is legally enshrined from the age of ten (§ 105 (1) Non-Contentious Proceedings Act, *Außerstreitgesetz*, AußStrG). However, participants in the focus group were highly critical of how this right is implemented in practice. The children's counsellor (FG4) shared a specific example of a ten-year-old child with a disability who was not heard. According to the representative of the Ombudsman Board (*Volksanwaltschaft*, FG8), children with disabilities are often not heard in custody and guardianship proceedings – sometimes even from the age of 14, despite existing legal entitlements.

According to one judge, children with disabilities are in principle heard, since taking children seriously is seen as essential – both as a sign of respect and as a prerequisite for trust and participation. Children need to have the feeling that they are being taken seriously, otherwise they won't share their views. However, intensity of the hearing depends very much on the individual case and with younger children, communication often takes place through parents or expert opinions. The juvenile judge (E2) also explained to either conduct hearings directly or to rely on expert witnesses. In practice, hearings often only take place if the child is deemed capable of making a "clear and comprehensible" statement and of understanding the situation appropriately, in accordance with Section 105(2) of the AußStrG. If this expectation is not met, it is not uncommon for a hearing to be waived. The representative of the Monitoring Committee (E1) criticised this discretionary power of judges and pointed out that this provision often leads to exclusion in practice. She therefore argued: "It should still be attempted to hear the child, even if a disability is involved." Her experience also confirmed the high barriers to communication and understanding: "We don't know a single case where the disability was taken into account or even addressed (...) and what also happens is that these children are then simply not heard."

The focus group participants also attributed this to the nature of the questioning during proceedings: "If judges or other actors are not familiar with assisted communication, this can lead to misunderstandings or incorrect assessments" (FG5, FG3). "Assisted communication has so far not been officially recognised as a form of communication by either the police or the courts," added a representative of a support organisation for women with disabilities (FG3). Even when caregivers or support persons understand the statements of a child with disabilities, these are often not considered as evidence in proceedings, according to the representative of the psychosocial and legal court assistance (FG9). In contrast, judges (E2/E3) argued that statements must be clear and comprehensible, regardless of the form of communication. However, the juvenile judge admitted that assessment becomes difficult when verbal or cognitive barriers exist and statements appear unclear or contradictory to him. According to the representative of the psychosocial and legal court assistance (FG9), if statements are considered at all in the proceedings, they are often deemed less credible. Judges tend to take the time to interview a child only when clear material evidence (such as photos) is available (FG9). Convictions without such evidence are considered very difficult, as statements from

children with disabilities are often regarded as unreliable and therefore not credible. This effectively links the right to be heard to perceived cognitive/communicative capability.

In addition to challenges of communication and credibility, structural barriers such as the availability of suitable rooms and sufficient time resources make it more difficult to ensure a child- and disability-sensitive hearing. Although barrier-free access to courts⁶⁴ and public buildings is enshrined in law, implementation varies. One judge reported that his district court was rebuilt about ten years ago and is fully accessible, but he noted that this cannot be said for all locations.

Overall, there is a clear discrepancy between the right to be heard and actual judicial practice — primarily due to communicative and epistemic barriers, and the incomplete implementation of accessibility.

6.5 TRAINING AND COOPERATION IN THE JUSTICE SYSTEM

The interviews and focus group reveal a clear lack of systematic training on disability, accessibility, and child-friendly communication and information. “There is no mandatory module on accessibility or communication with persons with disabilities (...) it only happens, if at all, through individuals who take it upon themselves,” explained the representative of the Monitoring Committee (E1). The judge confirmed that such training takes place “on a voluntary basis” and “is not a fixed part of the curriculum” (E3).

There are a few related training offers — for example, modules on anti-discrimination or communication within judicial training — but these remain general and do not specifically address disability or child-sensitive procedures (E1, E3). Training on the Adult Protection Act and on child protection is mentioned positively; however, there is still little overlap between child protection and disability.

The judge (E3) identified a clear need for further qualification, as communication with persons with disabilities is something to be trained, but yet missing in trainings. None of the interviewees could name any training on easy-to-read language, assisted communication, or on conducting conversations with children with disabilities. Experience-based knowledge in dealing with adults and children with disabilities is often acquired individually and passed on informally among colleagues — a pattern that the representative of the Monitoring Committee described as personalised knowledge transfer: “If someone is committed, something happens — if not, it gets lost.” Consequently, knowledge is lost once committed individuals leave their position; systematic institutional anchoring and documentation of this practical expertise are lacking.

The focus group repeatedly referred to a “knowledge gap” within the justice system, noting that judges and prosecutors have very little awareness of accessible or assisted communication. The representative of the children’s advisor (FG4) explained: “Awareness-raising is a good word, but it’s also about attitude, information, and experience. Judges need more room for manoeuvre.”

While most participants called for more training and education on disability-related needs and barriers, the representative of the psychosocial and legal court assistance (FG9) also emphasised that designated contact persons (experts on disability) for police and justice should be available when needed in cases involving children and young people with disabilities. At the same time, experience has shown that it is difficult to reach judges with voluntary further training, especially on topics that

⁶⁴ Structural accessibility in court buildings is based on Section 8(2) of the Federal Disability Equality Act (BGStG), which requires federal agencies to draw up roadmaps for removing structural barriers. The corresponding "Justice Roadmap" of the Federal Ministry of Justice provided for gradual implementation with a target date of 2015, which has been continuously pursued since then.

rarely affect them quantitatively; therefore, disability-sensitive communication and procedural conduct should be systematically integrated into the training and further education of all employees of the justice system.

In terms of cooperation, only isolated initiatives exist. Juvenile Court Assistance and, in some cases, Family Court Assistance were repeatedly mentioned as key interfaces. Cooperation with specialist services, social work, psychology, or victim support is usually based on personal contacts and is not systematically coordinated. There are occasional collaborations with universities, for instance through courses on children's rights or guest lectures, but these are voluntary and not institutionally established. Similarly, there is sporadic cooperation with children's and youth ombudspersons and with organisations providing psychosocial or procedural support. Overall, it is a fragmented system that depends heavily on the individual commitment of individuals.

6.6 EXAMPLES OF PROMISING PRACTICE

From the findings in Austria, there are no structurally anchored models of good practice for supporting children with disabilities within the justice system. However, the approaches to juvenile and psychosocial court assistance, and children's advisor already presented under support structures should be mentioned here. While these are not specifically designed to address the needs of children with disabilities, they already provide valuable foundations that could be further developed and adapted for this target group.

In addition, the focus group identified several successful initiatives that, while not specialised for children with disabilities, have proven to be highly child-friendly and could be adapted for this group, too. One example is the police journal service in Graz, where investigators are specifically accompanied and guided when questioning children. The Criminal Investigation Police Department in Andreasgasse, Vienna, was also highlighted as a long-standing example of child-sensitive police interviewing, providing an appropriate environment and specially trained officers. Another positive example concerns proceedings in which children did not have to appear directly in court, for instance, through video links or interviews conducted in a protected setting, which was described as more child-friendly and less stressful. In that context the juvenile judge (E2) mentioned that he sometimes conducts separate interviews with children in an adjoining room to create a calmer and more confidential atmosphere.

Overall, these examples show that although there are effective approaches, they remain isolated and context-specific and are not barrier-free or tailored to the needs of children with disabilities. In this regard, there appears room for stronger joint assessment by the various existing monitoring bodies to have a more target approach monitoring access to justice for children with disabilities in Austria.

7. GAPS, BARRIERS AND RECOMMENDATIONS

Across all topics, the interviews and focus group reveal a fundamental tension between children's and disability rights and institutional practice. The following section summarises the gaps, barriers and recommendations identified by the respondents in relation to the before mentioned topics.

7.1 UNDERSTANDING OF DISABILITY AND LACK OF AWARENESS

Gaps and Barriers: Within the justice system, a functional and diagnostic understanding of disability predominates — disability is seen mainly as an individual or medical characteristic. While there is some openness, there remains uncertainty about how to accommodate needs within existing procedures.

In practice, authorities often wait for formal diagnoses before taking action; without such diagnoses, no support is provided. It is little individual, situation-specific awareness of communicative or organisational needs, and when there is, it depends on individuals. As a result, disability tends to be addressed only when it becomes visible or disrupts proceedings, while invisible, intellectual, or psychosocial disabilities often go unnoticed. Additionally, there are significant gaps in awareness and knowledge about specific needs, accessible communication methods, and the importance of inclusive procedural design. Existing expertise is not structurally embedded but rather situational.

Recommendations: What is needed is a broad understanding of disability as the result of social and institutional barriers, in line with the UN CRPD. This awareness should inform all stages of judicial proceedings. Needs must be identified and considered regardless of a formal diagnosis, particularly for non-visible disabilities. It is crucial to raise awareness of the diversity of disabilities and to gain a deeper understanding of the associated communication and organisational requirements so that inclusion is not an afterthought but is realised at the core of the process.

7.2 INVISIBILITY

Gaps and Barriers: Formally, children with disabilities are hardly noticed in the justice system, nor are their experiences documented. Although around fifteen percent of the population live with a disability (WHO, 2023), this proportion is not nearly reflected in judicial proceedings. Judges reported only one or two known cases over many years of service — an indication of structural underreporting and institutional invisibility. This lack of visibility is linked to the broader social exclusion of persons with disabilities. Even when they are part of the proceedings, they are often neither recognised nor heard — they tend to be noticed only when their presence obviously affects the proceedings. As a result, children with intellectual, psychosocial or so-called "invisible" disabilities often go unnoticed.

Recommendations: There is a need to consciously make children with disabilities visible in the justice system – not only through additional diagnostics, but also through systematic recording and reflection on existing procedures. Judicial actors should become more sensitive to signs of disability and structural barriers, even if no formal diagnoses are available. In the long term, mechanisms are needed to make the actual proportion of affected children visible and to incorporate their experiences into the further development of procedures. This will prevent disability from continuing to be seen as an exception. In addition, evidence-based (disability-, gender- and age-specific) data and research on the topic are needed.

7.3 SUPPORT STRUCTURES

Gaps and barriers: Psychosocial and legal as well as juvenile court assistance, and children's advisor do not offer specialised services for children with disabilities. The legal representation of children still has room for improvement; compared to adult protection law, there is a need for further development in child custody law. Juvenile court assistance is central to the early assessment of needs. Although possible diagnoses of young persons are generally forwarded to the relevant authorities, they are rarely taken into account in the further course of proceedings. Overall, juvenile court assistance has insufficient resources. From the age of 18/21, there are gaps in provision; social work support is withdrawn and young adults tend to end up in adult representation unnecessarily.

Recommendations: Psychosocial and legal as well as juvenile court assistance, and children's advisor must be disability-sensitive and standardised in the proceedings (regardless of individual commitment). Clear, child-centred representation is also needed in juvenile criminal proceedings – analogous to civil proceedings (children's advisor). The resources of juvenile court assistance must be

strengthened. Support must continue beyond the transition to adulthood so that adult representation is only used where it is actually necessary.

7.4 INFORMATION AND COMMUNICATION

Gaps and barriers: Access to comprehensible information is currently insufficiently structured, meaning that children and young person continue to be heavily reliant on their parents to communicate on their behalf in many proceedings. Although sign language interpretation is provided for by law, in practice it is not widely available; at the same time, assisted communication is neither officially recognised nor established. As a result, procedures, materials and court documents are often not child-friendly and difficult to understand, while easy or visual language and standardised formats for intellectual or psychosocial impairments are largely lacking. This problem is exacerbated by communication that is often pragmatic and time-pressured (acceleration requirement), so that individual communication needs – especially for children with verbal, intellectual or psychosocial impairments – are easily overlooked. Without assisted forms of communication, visual symbols and easily understandable language, comprehensibility remains uncertain; statements then run the risk of being misunderstood or classified as unreliable because they are considered to lack credibility.

Recommendations: Accessible communication that is suitable for children and young persons with disabilities must be established as standard. This requires reliable access to interpreting and communication support (including ÖGS, ÖGS Plus and assisted communication), age- and procedure-appropriate materials in easy or visual language, and sufficient time to ensure that communication takes precedence over speed. Communication must not depend on parental mediation, but must be guaranteed institutionally. According to the Austrian Deaf Association, in international or multilingual proceedings, it must be ensured that interpreters for other national sign languages are available; hearing ÖGS interpreters can support the child's respective national sign language to enable precise communication. In addition, peer support from adult deaf people can strengthen both communication and the children's sense of security. Finally, online information (e.g. scalable and zoomable) should be prioritised and easy-to-understand explanatory formats on the procedure ("What happens?") should be provided; print-only materials are often difficult to read and are not sufficient. Despite the importance of digitally prepared information, a personal, well-prepared conversation in a protected setting with a trusted contact person remains central.

7.5 RIGHT TO BE HEARD

Gaps and barriers: The legally enshrined right to be heard from the age of 10 is implemented inconsistently and on a case-by-case basis in practice. In custody and guardianship proceedings, children with disabilities are often not heard, even after reaching the age of 14. Hearings are often formal rather than genuine conversations, especially with younger children, whose views are often conveyed through their parents or expert reports. The decision on whether a child is heard is at the discretion of the judge; according to Section 105(2) of the AußStrG, a hearing may be waived if no "considered statement" is expected – a rule that is apparently applied particularly frequently in the case of children with disabilities, it is assumed. There is no evidence-based data on this. A fundamental problem is that statements made by children in proceedings are often considered less reliable, which leads to a formal, non-participatory hearing practice. There are also structural barriers: a lack of suitable rooms and a lack of comprehensive structural accessibility. There is also a lack of methodological knowledge and interview techniques for child-friendly hearings.

Recommendations: There is a need for binding and inclusion-oriented implementation of the right to be heard, whereby children are heard regardless of their age, diagnosis or perceived level of

understanding and capability. Hearings must be designed as genuine conversations, with sufficient time, suitable rooms and child-friendly language. The requirement for speed must not be at the expense of understanding and participation. In addition, systematic recording and evaluation of hearing practices is needed to check whether children with disabilities are actually being heard. A comprehensive, barrier-free environment and the recognition of different forms of communication are prerequisites for the right to be heard to exist in more than just a formal sense.

7.6 TRAINING AND FURTHER EDUCATION AS WELL AS COOPERATION

Gaps and barriers: There is a clear lack of (systematic) training on disability, accessibility and child-friendly communication. Not a single one could be named by the respondents. Existing initiatives are based on individual commitment and are neither mandatory nor institutionally anchored. Knowledge is passed on informally and on a personal basis, which means that it is lost when staff change. This creates a structural knowledge gap and a lack of awareness of disability-sensitive communication and procedural design. There is a complete lack of training on easy language, assisted communication or conversational techniques with children with disabilities.

At the same time, the effectiveness of voluntary training is sometimes questioned, since in practice participation in specific training offers remains low. Cooperation on the issue of children with disabilities between the judiciary, social services, specialist agencies and NGOs is sporadic and person-specific, without institutional coordination or established exchange structures.

Recommendations: There is a need to systematically anchor inclusion issues in the training of judges, prosecutors and police, supplemented by practical formats on communication, accessibility and disability-sensitive proceedings. Training courses should be designed to be interdisciplinary and in mixed-abled teams in order to increase diversity of perspectives and practical relevance. If necessary, experts in the field of children and young people with disabilities could also be a valuable resource as a point of contact for the police and judiciary. Institutionalised exchange between the judiciary, specialist agencies and NGOs could consolidate knowledge and secure long-term cooperation.

In terms of monitoring, access to justice and communication support for children with disabilities at court should be prioritised for further joint analysis between the various existing monitoring bodies and structures.

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ANNEX 1 – PARTICIPANT – EMPIRICAL STUDY

Focus group discussion	Organization/Profession	Gender
FG 1	Juvenile Court Assistance	f
FG 2	Child protection organisation	f
FG 3	Support organisation for women with disabilities	f
FG 4	Children Advisor in custody proceeding	f
FG 5	Federal Disability Advocate	f
FG 6	Representation network (Residential Homes Act) – human rights monitoring	f
FG 7	Representation network (Residential Homes Act) – Human rights monitoring	f
FG 8	Austrian Ombudsman Board	f
FG 9	Psychosocial and legal court assistance	f
FG 10	Austrian Disability Council	f
FG 11	Children and Youth Ombudsperson	m
FG 12	Children and Youth Ombudsperson	m
Expert interviews		
E	Federal Monitoring Committee of the UN CRPD	f
E	Juvenile court judge	m
E 3	Presiding judge District court	m
E 4 (in writing)	Austrian Deaf Association	f
Interviews with young women with disabilities		
J 1	Student	f
J2	Student	f