

**NETZWERK  
KINDERRECHTE  
ÖSTERREICH**

National Coalition  
for the Implementation  
of the UN Convention on  
the Rights of the Child  
Austria

**SUPPLEMENTARY  
REPORT ON THE  
3RD AND 4TH  
REPORT OF THE  
FEDERAL REPUBLIC  
OF AUSTRIA TO THE  
UNITED NATIONS,  
PURSUANT TO  
ARTICLE 44, PARA-  
GRAPH 1B OF THE  
UN CONVENTION  
ON THE **RIGHTS  
OF THE CHILD****



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über die Rechte des Kindes



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# INTRODUCTION

## **According to the Austrian Government all rights of the child are implemented, but not according to us**

The Austrian Government currently does not seem to see the political need for action to tackle improvements for children and youths on the basis of children's rights: "Austria became a contracting party to the Convention on the Rights of the Child with the assuredness that the rights of the child and the respect for their special needs, as regulated in the Convention, are in principle already ensured within the Austrian legal system. In this sense, the regulations provided in the Federal Constitutional Law on the Rights of the Child are already implemented. [...] A general answer to the question of leading responsibility of one or more departments for the individual articles is also barely possible, because the individual children's rights can be implemented under various aspects concerning different departments." 13 of 14 ministries have answered a parliamentary inquiry concerning the new Federal Constitutional Law on the Rights of the child in July 2011 in this manner. The present Supplementary Report of the National Coalition Austria with its 34 member organizations comes to a different conclusion.

## **„FEEDBACK 2011“ – for the first time children and youths had their say**

For the first time the National Coalition Austria has tried to meet the challenge to let children and youths have their say in the Supplementary Report. The project „FEEDBACK 2011“ gathered the opinion of children and youths in three ways: with a postcard-questionnaire for children (1,781 children wrote to us about: "What upsets me the most..." and "I find especially good..."), with an online-questionnaire for adolescents (556 adolescents filled out an online-questionnaire on various topics concerning children's rights.) and with projects on children's rights with direct participation of children and youths. The results from all three surveys are presented in green text in the respective places.

## **Problem areas concerning children's rights in Austria 2011**

It has been 13 years since the National Coalition Austria first reported to the UN Committee on the Rights of the Child (hereinafter: "UN Committee") on the implementation of children's rights in Austria. The current situation of children and youths confirms that the majority of previous demands have, also in 2011, not lost their validity and that the problem areas have mostly remained the same. Our Supplementary Report does not claim to be complete but still deals with a multitude of living realities of children and youths. As focal points our members described the following areas: education, youth welfare, unaccompanied refugee children, participation, child poverty, Federal Constitutional Law on the Rights of the Child, coordination, juvenile justice, violence, integration/migration, education on children's rights, separation/divorce/custody, prevention, protection of children, children with a disability, health, international cooperation, child trafficking, child pornography and child prostitution, children and armed conflicts, and international adoptions.

# I. GENERAL MEASURES FOR THE IMPLEMENTATION (ART 4, 42 AND 44 PAR 6 CRC)

Even nearly 20 years after the UN Convention on the Rights of the Child came into effect in Austria the comprehensive national applicability of the CRC is not assured.

## Reservations

At the level of International Law - contrary to the demand of the UN Committee on the Rights of the Child - the reservations to Art 13, 15 and 17 CRC continue to exist. In the view of the National Coalition the reservations originate from an outdated legal framework and hence are to be withdrawn.

## Legislation

At a national level the CRC was characterized by an entirely inadequate status within the Austrian legal system for many years through not being approved as a constitutional law by the National Council in 1992 in the course of the ratification process (unlike for instance the ECHR) and furthermore through "Reservations" (according to Art 50/2 Subpar 3 B-VG) precluding the self-executing nature in courts and with administrative authorities. In this area a fundamental change occurred within the reporting period: On February 16th 2011 the Federal Constitutional Law on the Rights of the Child (BVG Kinderrechte) came into effect. This law singles out individual pivotal rights and principles of the CRC and anchors them at a constitutional level with a self-executing nature for courts and administrative authorities. Thereby the Constitutional Law clearly establishes at least a basis for fundamental improvement concerning judicial review, legal protection and sensitization to Children's Rights as legally enforceable entitlements of young people - yet with significant restrictions concerning the extent of the guarantees.

Since its foundation, the National Coalition demanded a comprehensive anchoring of children's rights in the federal constitution: a study by the Coalition member Ludwig Boltzmann Institute for Human Rights showed serious gaps in the protection of fundamental rights for children and youths already in 1999. Nevertheless, the ruling parties chose a very selective approach for their constitutional law draft in autumn 2009: initially, only a general entitlement to protection and care, the best interests principle, the prohibition of child labour and violence should become provisions at a constitutional level; later on an anti-discrimination principle for disabled children and a highly problematic limitation clause (which was not foreseen by the CRC and limits functions of key CRC principles) was added. Hence not a single provision was included concerning social (living standard, health, social security) and cultural rights (education in a comprehensive sense, leisure time) of children or specific target groups - for instance refugee children.

The National Coalition criticized severely the draft in November 2009, but was only invited to a discussion on the draft after an initial failure of the bill in Parliament in December 2009 (due to the lack of the required 2/3 majority for constitutional laws). A further experts' hearing only took place in January 2011, just one week before the finally successful passing of the bill in the National Council. At that point the "Green Party" alone criticized the content and refused the approval of this „light version" of constitutional rights of children. Now it will be up to the practical implementation, especially to the application of the new constitutional law by courts and administrative authorities as well as by the actual target group - the children and youths and their legal representatives - to determine to what extent the - basically existing - potential of this constitutional law can be utilized. However demands of the National Coalition for monitoring, obligatory and regular evaluation, sensitization and further education for specific professionals, information for children and youths and their parents as well as other accompanying measures have remained unregarded until now.

Furthermore it must be pointed out that on the level of International Law, Austria has committed itself also to the implementation of recommendations under the "Universal Periodic Review" (UPR) of the UN Human Rights Council which included several recommendations in relation to the rights of the CRC, and including to implementation of the new Constitutional Law on the Rights of the Child.

### National Action Plan - NAP

A further example of the ambivalent handling of children's rights and the lack of political intention for implementation is the National Action Plan for the Rights of Children and Adolescents, passed by the Council of Ministers in November 2004. Based on a broad one year consultation process including an experts' report in April 2004, which included 700 proposals for improvement and requested a children's rights oriented paradigm shift in the Austrian children and youth policies, the National Action Plan of the Federal Government still considered about 200 implementation measures. Nevertheless, from the very beginning, no additional financial resources were allocated. Contrary to the explicit recommendations given also by the UN-Committee 2005, it lacked indicators and a monitoring mechanism and the roles of the provinces in the implementation of the NAP also remained unclear. An earlier established "Accompanying Working Group" (including representatives of the ministry as well as from civil society) established to support NAP implementation terminated its work already in 2007 without further follow-up. The argument of the Federal Government in the State Report 2009 (Par 27), that the nearly 200 NAP-measures were "mostly implemented" within three years, cannot be agreed to in any way by the National Coalition.

### Coordination and evaluation

Part of the essential structural problems in the implementation of the CRC are furthermore the lack of a coordination mechanism for aligning measures within the federal administration as well as in the relationship between federal state - provinces - municipalities, as requested of Austria by the UN-Committee in all statements so far. Youth welfare, protection of children, social welfare/social welfare benefits and educational questions are still strongly oriented towards the single interests of the provinces and not on Austrian-wide valid standards. Particularly the listing of boards and bodies lacking explicit CRC-implementation mandates in the State Report 2009 (Par 21 ff) shows the need for coordination and sensitization; the inter-institutional working group for the NAP (see above) mentioned in the State Report 2009 (Par 24) no longer exists since 2008. Likewise there is no appropriate monitoring mechanism in Austria.

## Data collection

Weaknesses also exist in the development of the necessary basis for children's rights oriented policy development: there is a lack of comprehensive standardized youth welfare statistics, data for instance on exploitation of children in Austria including child trafficking, and there is no research program or research funding with the focus on "Children's Rights" - quite the contrary, the renowned Austrian Institute for Youth Research, active for almost 50 years, had to close down in 2009 due to suspension of public funds.

Moreover it is of prevalent relevance to take a new point of view in the field of data collection. Family-specific reporting often happens only from the view of parents, whereas children are mostly only "co-affected" or even "risk factors". If on the other hand, the children are taken into account, the focus is steered towards the fact that children have their own rights. Data should thus be collected, e.g., on how many children are affected when the unemployment rate rises, when taxes are raised, when the number of overtime hours increases, when communal living space is eliminated, when green areas are mutated into shopping centres, when pedestrian zones and traffic restricted zones are renounced or when noise and air pollution worsens due to building of new roads. Presently there is a vast lack of regular social-statistic studies from the point of view of children and youths.

## Dissemination of the Convention

Education on children's rights is undertaken in a systematically inadequate manner, mostly by means of inclusion into the educational principles of the subject Civic Education and due to the dedication of interested teachers but not through consequent anchoring into the curriculums of primary and secondary education as well as tertiary education of teachers or by means of setting a focus for instance in program work.

## International cooperation

In external relations children's rights are anchored in a sustainable way only in a limited manner. Within the realms of foreign policy at an international and European level several initiatives have been taken, for instance in the area of protection of children affected by armed conflicts or within the realms of combating child trafficking; but a coherent coordination with the goals anchored in the Three-Year-Program of the Austrian Development Cooperation (Österreichische Entwicklungszusammenarbeit, OEZA) is necessary as well. However in the context of the latter, urgently necessary children's rights mainstreaming - as required by the Law on Development Cooperation and recommended by the UN Children's Rights Committee in 2005 - as well as developmental measures with a child-specific focus often fail due to lack of resources in the OEZA. Furthermore there is no sustainable implementation strategy including infrastructure (focal point, regular training programs) and it has been noted that there is increased orientation of developmental targets on economic interests of the country (for instance in the Black Sea Region) instead of cooperation for the improvement of the social situation in partner countries.

### **FEEDBACK (2011) by children and youths**

Children's rights, if unknown by anyone, cannot be effective. Only 63% of all 12 to 19 year olds know that there is a convention of the UN on the rights of all 0 to 18 year olds. 61% do not have the feeling that they know enough about their rights.

## RECOMMENDATIONS

- + Accompanying measures for the Federal Constitutional Law on the Rights of the Child (BVG Kinderrechte) including information, further education, monitoring, evaluation and development of information on the CRC suitable for children.
- + Children's rights oriented children and youth policies based on the results of the NAP-Consultation 2004.
- + Creation of a coordination structure for the implementation of measures concerning children's rights.
- + Creation of an independent monitoring structure for the observation of the implementation of the CRC.
- + Anchoring of children's rights as a topic for research and advancement of research.
- + Anchoring of education in the area of children's rights at all schooling levels in curriculums and in practice (for example yearly project weeks).
- + Ratification of the 2011 Third Optional Protocol to the CRC by Austria (creation of an individual complaint assessment) and advocacy on an international level for a rapid entry into force of the Third Optional Protocol.
- + Package of measures for a sustainable anchoring of a children's rights approach as a cross-sectional task for the Austrian Development Cooperation: creation of an implementation plan (in consultation with civil society) according to the order of the EZA-Law "Guideline Human Rights" (Leitlinie Menschenrechte) and "Focus Paper Children" (Fokuspapier Kinder); continuous consideration of children's rights in the project/program cycle (from the development to monitoring and evaluation, including indicators) as well as in the Three Year Program of the OEZA, child-focused measures-emphasis within the realms of the implementation of the Millennium Development Targets; coordination of a children's rights oriented foreign and developmental policy; sustainable organizational anchoring (children's rights focal points in the Foreign Ministry and ADA Austrian Development Agency, trainings also for country offices etc.)

## II. DEFINITION OF A CHILD (ART 1 CRC)

### Age limits in youth welfare

In its Supplementary Report 2004, the National Coalition already warned insistently that the situation of the just under 18 year olds and young adults is becoming more and more precarious. Although the financial independence of young people is non-existent, most youth welfare measures are terminated with age of consent. Even before age of consent new parenting support measures are denied; among other circumstances, when not at least a third of the education was completed before the age of 18. This already concerns 16 to 17 year olds. Whether someone is granted a youth welfare measure is at the discretion of the Youth Welfare Department and varies greatly depending on the region. According to the Youth Welfare Report 2010 there was only one single measure for a young person extended past age of consent in the Province of Lower Austria, whereas in the Province of Styria 402 cases were reported.

In the first draft for the Federal Children and Youth Aid Law (Kinder- und Jugendhilfegesetz -BKJHG) an appropriate provision for young adults was planned, stating that a continuing parenting support measure is to be granted if for instance this is necessary in order to gain a level of independent living. This Article was softened to a "can"-provision in the subsequent drafts.

### Youth Protection Laws

With regard to the various age limits the area of Youth Protection Laws in Austria is to be considered problematic. Since this subject matter is regulated at a provincial level, there are various Youth Protection Laws. Although a harmonization of the Youth Protection Laws is repeatedly demanded by many experts, up until now only three provinces (Vienna, Lower Austria and Burgenland) could bring themselves to a harmonization. In all the other provinces different laws for children and youths are still in effect.

The different Youth Protection Laws in Austria conflict with the anti-discrimination approach and the equality of all children and youths. The definitions of the terms "children" and "youths" are on their own problematic, since children and youths are categorized into different age groups in each single province. Furthermore the age limits are regulated differently, among other areas, for presence in public places and at public events, alcohol consumption, youth endangering media, data media, items or in the area of gambling devices and games of luck.

Particularly disturbing are the various sanctions in case of violations. In this context the recent strengthening of the Youth Protection Law in Carinthia is also to be criticized. In this law sanctions for youths for example having to carry out free services for the public for up to 100 hours, fines up to € 500,- or for repeat offenders up to € 1000,- are foreseen. Although there was some movement again in the political discussion in the past months and steps were taken towards an agreement concerning curfews and alcohol consumption, a standardization or harmonization has not yet been implemented.

### **Age determination of unaccompanied refugee children**

Age is, apart from name and nationality, an essential part of identity. All of this information given by unaccompanied refugee children is generally questioned by authorities in Austria. The Austrian Federal Act on Granting Asylum (AsylG) offers in Art. 15 of its currently applicable version the possibility for asylum authorities to order radiological examinations "in the course of a multi-factor examination methodology for age determination" if the applicant cannot prove his/her age. Up until 1.1.2010 this procedure was prohibited on the grounds of the Radiation Protection Act, but an amendment to this act has opened up this possibility now. This has led to the situation that almost three quarters of all newly arriving unaccompanied refugee children are sent to the age determination examination. But also unaccompanied refugee children that have been living in Austria for years are increasingly cited for an age determination examination.

The examinations are divided into several parts: carpal X-ray and panoramic X-ray (teeth), dental examination, physical examination and inquiry into the living circumstances and summary report. In autumn 2010 the process for determination of the minimum age was extended. Now a computer tomography of the shoulder is ordered additionally when the carpal X-ray shows that the growth of the epiphyseal cartilage is complete. This is very problematic for at least two reasons: first, the computer tomography of the shoulder is connected with a very high radiation exposure (6.000 fold radiation exposure of a carpal X-ray!) and second, the available reference figures from the underlying studies are insufficient in order to derive serious and verifiable results. In the first half year of 2010 alone, the Federal Asylum Office ordered 359 age diagnoses. In 272 cases an age report was conveyed in which majority age was declared 173 times.

With this kind of age assessment international specifications (General Comment No. 6, 2005, of the UN Committee on the Rights of the Child and the UNHCR - Guidelines on International Protection) are violated. At the proceedings level the obtaining of an informed consent is not guaranteed, the decision about the age is legally not separately subject to appeal. The advantages of the radiological examination for narrowing down the age in comparison to other methods (for example MRT) are purely of administra-

tive and financial nature. Furthermore it should be considered that in the course of the approval process an obligatory TB check-up is undertaken and asylum seekers often face this test several times within the Dublin procedure, since these examinations are compulsory in other Dublin states as well. Thereby an accumulation of the radiation exposure occurs. The Austrian legal position meets the minimum standards of the EU-procedure guidelines only in so far as it excludes compulsory measures and makes reference to the fact, that if in doubt, minority is presumed - a provision that is however not universally applied.

A legal consequence which can follow a declaration of majority age is that the asylum applicant can be accused of claiming social benefits unlawfully through purporting to be underage. The offence of unlawfully claiming social benefits is stated in Art. 119 FPG and is sanctioned with strict penalties. In case of damages up to 3000,- Euros it is already punishable with up to one year imprisonment or a fine of up to 360 wage-related quotas. Those who received social benefits exceeding 3000,- Euros are to be penalized by the court with a prison sentence of up to three years.

## **RECOMMENDATIONS**

- + Taking public responsibility for "young adults" until attaining a state of self-supportability.
- + Appropriate standardized youth welfare regulations with legal entitlements for "young adults".
- + Standardized and comprehensible youth protection laws as well as preventative and informative measures.
- + Age determination - also in practice - must only be undertaken as a last means. If in doubt, minority age must be assumed.
- + Multi disciplinary (including psychosocial) assessment instead of a "multi-factoral assessment".
- + Sensitive and child-oriented procedures for examinations and protection of the information rights.
- + It must be legally anchored that declarations of majority age always have to be issued in the form of an official notification. This would also mean that all legal consequences following the declaration of majority age only become effective after legal finality.

# III. THE GENERAL PRINCIPLES OF THE CRC (ART 2, 3, 6 AND 12 CRC)

## DISCRIMINATION

### General non-discrimination rule

The new Federal Constitutional Law on the Rights of the Child (BVG Kinderrechte) contains no general non-discrimination rule of children between each other or in relation to adults but is limited to the equal treatment of children with a disability (Art 6). Especially critical appears to be Art 7 of the new Federal Constitutional Law on the Rights of the Child which inserts a CRC-foreign reservation based on the model of Art 8 Par 2 EHRK. Thereby it should be made clear - according to the commentary - that for instance in regards to the principle of the best interests of the child "criminal-law measures or legal measures concerning aliens, restrict specific rights of a child. But a thought should also be given to cases in which the rights of the child conflict with interests of the parents worthy of consideration". This reservation fundamentally misjudges the function of the basic principle of the best interests of the child in the CRC, which in itself already requires a weighing of interests. A restricted interpretation of the inserted reservation carries the danger of a contrary weighing of the interests to the disadvantage of the children.

### Action Plan against Discrimination (CERD)

In the 3rd and 4th State Report general measures for inhibiting discrimination are stated in the commentary of the critical notes, as for example training for executive authorities, education of teachers or the National Action Plan for Integration. Further legal or other measures, especially in regards to the discrimination of children and youths are not presented. Although there are a few new approaches at a national and provincial level, for instance the State Secretary for Integration, Provincial Ministers for Integration in Styria and Vienna, or an integration concept in Upper-Austria with the (political) goal of taking responsibility but these are by far not sufficient in order to safeguard against the widely spread polarization in the media and the thereby increased observable discrimination.

### Differences between the Federal State and the Provinces and between Provinces

The State Report illustrates and emphasizes the difference between the provinces - the supposed advantages of the federal system are not recognizable from a children's rights point of view because depending on the kind of illness, disability, school interests or youth welfare needs, children may receive very different support from the

public authorities. Furthermore the lack of educational offerings as well as health, social and youth welfare services is increasing in rural areas.

### **Discrimination of children with a disability**

The rights and entitlements of children and youths with a disability are regulated by different laws, by-laws and various social measures in the different provinces. Nevertheless, these children and youths experience clear discrimination for example concerning (higher) education, entrance into the work force, recreational activities or health services. The independent Monitoring Committee for the Implementation of the Convention on the Rights of Persons with Disabilities (CRPD) criticizes the realization of the human rights of children and youths especially in two aspects: first the inclusion of children and youths with a disability is not anchored sufficiently in the Austrian legal system and hence not implemented; second, the education system in Austria in particular is not yet comprehensively inclusive: there are only few integration kindergartens and in schooling there are in fact several integration classes, but there are also still special schools for disabled children, where children and youths with a disability are educated in an excluded environment and therefore stigmatized. The same is often true for children's homes, children's institutional apartments, after-school care and care for 6 to 14 year olds during school holidays. All-day schools and all-day care facilities in the integration sector barely exist. Thereby parents are forced to decide on a special school, since these schools often offer an all-day care. This situation is in conflict with the "right of choice".

Institutional facility attendance is basically open to all children whereby integrative services are offered; but apart from this there are also specific services (curative pedagogic institutions). Though for children with a disability and/or a chronic disease under the age of 3 there are hardly any child minders and crèches. Apart from that, there are waiting lists for a kindergarten place of up to three years and with the introduction of the free kindergarten-year before school in 2009, the situation has worsened: Thus "[...] those children who cannot be expected to visit a child care facility due to a disability or due to medical reasons, due to special pedagogical requirements or due to the distance or difficult infrastructural conditions between their home and the nearest appropriate institutional child care facility, are exempt from the regulation [...]." Through this the danger is emerging that children with a disability and/or a chronic illness would be excluded due to lack of kindergarten places, lack of financial resources and also lack of the appropriate approach and attitude of professional persons and administrative authorities. Similarly to kindergartens, after-school care children often wait up to one and a half years for a placing.

When children with chronic diseases obtain a place in a kindergarten or an after-school care facility parents often have to undertake the medical and necessary care services - be it financially or through organizing personnel. Apart from that, these children can often visit the kindergarten or after-school care only for a certain time span (for example from 8.00 a.m. until 10.00 a.m.). Thus they get excluded from group activities and are not taken for trips and excursions due to the lack of adequate personnel.

### **Discrimination of children speaking a foreign language**

Children with a foreign language as their native language are massively discriminated in their access to the education system and also disadvantaged in the fostering of their special talents. The discrimination starts at kindergarten age. The expectation that children with a lack of German skills are fostered in kindergartens to an extent, that they are acquainted with German according to a standardized level when entering school - as it was stated in the outdated Agreement according to Art 15a - cannot be met under

the current conditions since there is a general lack of appropriate pre-school services and suitable teachers. Children with a foreign language background are being discriminated at a structural level due to lack of language fostering measures.

This can be shown in examples of the situation in the federal capital where every second child in child-care facilities is multi-lingual:

» For about 8.000 foreign parents of kindergarten children there are only ten native speaking employees available in case of language difficulties.

» "Mum learns German" ("Mama lernt Deutsch"), an excellent language course for mothers is only offered at 45 out of 981 (!) kindergartens because often the premises are not suitable or rooms cannot be adapted.

» A child with language training needs only receives additional training for half an hour per week; the language training assistants are generally not specially trained for this task (neither pedagogically nor philologically).

» The trainer-child ratio for children with a foreign language is, despite the rapid growth in the last few years, yet lower than for children with German as their mother tongue. One reason could be that municipal kindergartens give priority to children with working parents. Since migrant mothers are more often non-working mothers their children are listed with a lower priority. This criterion for access cannot be justified in an "educational kindergarten" system.

Under these circumstances pedagogues cannot take responsibility for the achievement of a certain language level at school entry, even if parents would want that or if 15a-Agreements regulate that resource-oriented measures like the fostering of native languages cannot be realized at all- and that given the fact that every second child in Vienna is potentially multi-lingual (instead of "non German speaking").

### **FEEDBACK (2011) of children and youths**

On average 16% of youths feel discriminated. Especially affected are youths with migration background. In the areas of language, religion, gender and in case of disability they experience discrimination three times as often as native residents.

Unaccompanied refugee children also report experiences with discrimination and racism for example when they are treated differently by teachers at school or when they are refused admission to a disco. Especially unaccompanied refugee children from Africa find frequent checks by the police discriminating.

# RECOMMENDATIONS

- + Inclusion in all areas of society and especially in the education system.
- + Comprehensive, thus physical, social, communicational and intellectual accessibility.
- + Programs for education and support of early-diagnosis and early intervention.
- + Anchoring of the right to inclusive education, based on the UN-Convention in the Federal Constitutional Law as well as in all relevant laws. That means a legally anchored and enforceable right to inclusive education in the area of institutional child care.
- + The quality of the pedagogical implementation of inclusive education and the services relating to individual support measures must be adjusted (for example personnel and material resources, all-day care, assistants, sign-language interpreters, training of pedagogues based on the principles of inclusion).
- + Allocation of a child-care place must no longer be dependent on whether parents are working or not.
- + Raising of awareness for eliminating stigmatization and discrimination of children with a disability.
- + Expansion of "Mum learns German" ("Mama lernt Deutsch"): the pre-requisites concerning rooms should be taken care of and the service should be extended substantially and should be promoted widely among the population speaking a foreign language.
- + More time for language: in order to ensure a standardized language level on school entrance, a general increase in service concentration in groups with many foreign-language children. Language training at kindergarten-age is first and foremost relationship work.
- + More money for language: in the obsolete 15a-Agreement the provinces received about 5 million Euros per year for the early language training of children at kindergarten age. The expectation that children in kindergartens with insufficient German language skills are fostered to an extent that they are acquainted with German according to a standardized level, cannot be achieved within this budget. Apart from that the language training was entirely taken out of the 15a-Agreement, which is currently being negotiated. No matter how, the language training in kindergartens must be given a substantially higher financial standing.
- + Training and further education for pedagogues: with pedagogues there is a great need for a range of further education; in the curriculums of the education of pedagogues language fostering must receive a higher standing as well.
- + Parents' coaches: migrant parents often have a fear of contact with educational institutions, based on the lack of language abilities and experiences made in their countries of origin and with Austrian institutions. The accompaniment provided by voluntary parents' coaches, which can take on an inter-mediatory role is already a well-proven model and should be undertaken in Austria as well.

+ Review of allocation of placements: since children with two working parents are favoured to other children, children from migrant families, whose mothers are more often not working mothers are less likely to obtain the desired kindergarten place. This regulation makes it harder for these mothers to become employed, discriminates children from educationally underprivileged social classes (since their mothers are more often non-working) and increases the concentration of children from migrant families to certain "focus-kindergartens".

+ Multilingualism is a resource: German language abilities of children from foreign speaking countries are often seen from a purely deficit-oriented point of view. Whether a child is attested "insufficient knowledge of the German language" or whether it is classified as "multi-lingual" is a matter of view. Awareness must be raised, that - with appropriate fostering - every second kindergarten child in Vienna could achieve multi-lingual competency.

## **PARTICIPATION**

### **Federal Constitutional Law**

It is to be welcomed that the right to participation found its way into the new Federal Constitutional Law on the Rights of the Child (BVG Kinderrechte). Up until this point in time there are no visible effects of the Federal Constitutional Law on the Rights of the Child apparent; the National Coalition is missing corresponding strategies for monitoring and accompanying research initiated by politics - see chapter I.

The measures noted in the 3rd and 4th State Report for the extension of participation of children and youths are welcome. It must be stated though that in Austria these measures are carried out selectively and case-related and that they are not based on an institutional structure. However children and youth politics is to be seen as a cross-sectional matter, therefore the requests of children and youths must be heard and considered in all fields of politics. The Structured Dialogue, a concept which originates in the renewed youth policy strategy of the EU and is only in the beginning of its implementation in Austria, certainly is a great chance - presuming that the dialogue between youths and political decision makers is not limited to a mere exchange of opinions but will lead to concrete results.

### **Lowering of voting age and civic education**

The lowering of the voting age in 2007 certainly is the most positive change regarding the participation of youths and is therefore placed right in the beginning of chapter III of the 3rd and 4th State Report. It must be noted though that the high need for civic education/education for democratic citizenship as repeatedly stated by youths themselves is currently by far not met.

### Austrian Federal Youth Representative Council (Bundesjugendvertretung, BJV) as the legal representative of the interests of children and adolescents

The fact that a new basis could be established for the financing of the Federal Youth Representative Council (BJV) in 2008 actually guarantees the BJV as the legally anchored representative of the interests of children and adolescents in Austria a more solid financial security than before. However, the financing is still not anchored in a law but regulated on the bases of a by-law. Therefore we cannot speak of an complete financial independence and long-term planning security.

### Working Group Participation and Democracy Workshop of the Parliament / Democracy-Initiative by the Austrian Federal Ministry for Education, Arts and Culture (ARGE Partizipation und Demokratie-Werkstatt des Parlaments/Demokratie-Initiative von Unterrichtministerium und Familien- und Jugendministerium)

The Working Group Participation in which the provincial and the federal governments as well as the Federal Youth Representative Council work together has established itself as the most important networking and expert forum and could contribute greatly to the subject matter of youth participation in Austria. Nevertheless, its recommendations are not binding. Projects like the Democracy Workshop, which was started up in the course of the process of lowering the voting age were and still are extremely successful and have already been extensively effective. However they are to be understood as an information and education service rather than a possibility for participation and mainly reach adolescents in the educational environment.

### Emergency Number "147 Help Online" ("147 Rat auf Draht")

The recommendation of the Children's Rights Committee in 2005 to further support the "147 Help Online" and secure its structures in order to guarantee the efficient operation of this service is still of current importance. The "147 Help Online" set up by the ORF as the responsible body is financed in various ways by the Austrian Federal Ministry of Education, Arts and Culture, by the Federal Ministry for the Interior and the Ministry of Social Affairs and by the provinces on the basis of single cooperation agreements, which are only arranged for one or a maximum of two years. The emergency line is not co-financed by Telekom any more.

#### **FEEDBACK (2011) of children and youths**

School is one of the most important living environments of children and youths. Every third person complains about not having the possibility for constructive participation in class or in projects; every fifth student does not feel that they are taken seriously by the teachers; this mostly concerns adolescents with migration background (41%).

## **BEST INTERESTS OF THE CHILD**

See chapter V, Institutional Care, Youth Welfare

## RECOMMENDATIONS

- + Creation of possibilities for participation of children and youths in decisions at all levels, including on a European and international level.
- + Stronger anchoring and fostering of civic education/education for democratic citizenship in the schooling area as well as in the school-external area.
- + Civic education/education for democratic citizenship as independent school subject from year 5 onwards.
- + Extension and safeguarding of participation at school, especially for younger pupils.
- + Legal anchoring of the financing of the Federal Youth Representative Council.
- + Index adjustment of subsidies for children and youth organizations.
- + All encompassing inclusion of the Federal Youth Representative Council into political processes and decisions correspondent to its social partnership status.
- + Binding character of the developed guidelines and standards for participation of the Working Group Participation (for example on a municipal level).
- + Long term and sufficient financial security for the emergency number "147 Rat auf Draht".

## IV. CIVIL RIGHTS AND FREEDOMS (ART 7, 8, 13-17, AND 37 A) CRC)

### Right to Identity

Concerning the so called "baby flaps" („Babyklappen") data has only been collected since 2008: in all of Austria 2008 two, 2009 four and 2010 six newborns were placed in "baby flaps". In 2008 forty babies, 2009 forty-four and 2010 forty babies were born anonymously whereby in eight cases anonymity was retracted afterwards. Baby flaps should inhibit child abandonment and infanticide through giving the child away anonymously.

### Access to appropriate information

The recommendations of the Commission are still valid whereby the efforts toward the protection from harmful information and for the improvement of the international cooperation in the area of internet should be fortified. 73 % of all Austrian households had internet access in 2010. With the increasing number of children in a household the ratio rises. Online communities and social networks like 'Facebook' or 'MySpace' are a fixed part of everyday life. Adolescents use these platforms to stay in contact with friends practically 24 hours a day. In doing so they often share confidential information and private issues with a large circle of people. That can definitely become a problem as cases of cyber mobbing or cyber grooming clearly show. The initiation of sexual contact with children and youths, the so called "grooming" is currently not punishable by law, but a law draft already exists in parliament.

In the course of a study 22% of all questioned youths stated that the dangers and risks of the internet use were never discussed at school. In dealing with media parents or teachers show particular unawareness concerning technical possibilities and effects and legal consequences in case of misuse by youths. Further, cases of cyber mobbing or happy slapping almost always go hand in hand with mobbing and violence in the social and school environment.

### Media by children and for children

There is not one single nation-wide newspaper, radio or TV channel made exclusively by children for children. Although there are single inclusions or children's pages in print media it is usually edited by adults.

## Privacy protection

The National Coalition also shares the criticism of the Committee in respect to the need for higher acceptance of the right to privacy in everyday life by parents and other close persons for instance concerning personal correspondence. An important aspect of privacy protection for children lies in respecting their privacy of correspondence. A large amount of written communication between children and youths generally does not happen via letters in envelopes any more but via electronic paths on mobile phones through SMS or on the internet via e-mail and through social networks. According to a 2011 study of the European Commission 47 % of Austrian children and youths between 9 and 16 use social networks on the internet. Among the 9 to 12 year olds a quarter state that they make their profile publicly accessible, 10 % declare their address and telephone number in it and 29 % their attended school. Hereby it needs to be considered that picture and video material of children which do not have their own profile is also made public. The right of use is usually transferred entirely to the providers of the platforms and there is no right to data deletion. Humiliation, insult and mobbing attacks amongst youths or also between adults and youths are cases of flagrant violation of privacy in the area of internet and mobile telephones.

In the current State Report the protection measures in a spectacular criminal case are described to the media as an exemplary effort towards the protection of privacy. The measures undertaken in the course of the case are to be welcomed and represent a further development in comparison to the handling of past cases. Nevertheless, public measures need to be much more extensive and need to show effects outside sensational occasions as well. The cases of serious violation of privacy rights in public news reporting through journalists on TV, radio, electronic and print media are increasing. In particular children and youths who are victims of physical, sexual and psychological violence require special protection that also needs to cover the public reports of their story in the media. Apart from that the development can also be followed in media reports on family crises, for instance in connection with separation and divorce of parents or measures of the youth welfare authorities. Through making information public (in entirety or abbreviated) such as the identity of the offender and/or the location of the incident, publication of photos etc., the privacy of the children concerned is increasingly ignored.

## RECOMMENDATIONS

- + The confidential help services for pregnant women must be increased in order to reduce the risk of child abandonment; giving away children in baby flaps and anonymous births.
- + Introduction of a criminal offence "Grooming" into law.
- + Enforced violence prevention in connection with media training in the field of educational institutions (children have a right to privacy but they also have a right to decide where they want to waive privacy, a right to informative self-determination)
- + Awareness-raising concerning new media for parents, pedagogues and other professional groups dealing with children and youths.
- + Promotion of non-commercial media which can implement the information and education mandate and can guarantee that children can participate in the production in an effective way or that they are provided with their own ways of dissemination in which they are supported when producing them.
- + Child oriented preparation of information in all media.
- + Concepts for effective data protection and sensitization campaigns that not only concern the protection of the classical correspondence privacy but also the communication habits of children and youths today in a sufficient way.
- + Improved media law regulations in connection with effective sanctions (no data or pictures of concerned children and youths, the offender or the location, if on the grounds of this data or in combination of the information given conclusions concerning the respective child are possible).
- + Measures for a voluntary self control of media (for instance special training for journalists, regulatory authority...).

# V. FAMILY ENVIRONMENT AND ALTERNATIVE CARE (ART 5, 18 PAR 1, 18 PAR 2, 9, 10, 27 PAR 4, 20, 21, 11, 19, 39 AND 25 CRC)

## YOUTH WELFARE

### Family reunification

As in the past years the number of unaccompanied refugee children with subsidiary protection status or convention status has increased significantly, the topic of family reunion has gained importance in Austria. It is a problem that adolescents with subsidiary protection status can only take advantage of this right after the first extension, hence after one year. It is furthermore difficult for the youths to procure the financial means for the family reunion. Occasionally authorities require DNA-tests of the family members and age determination reports of siblings. In Upper-Austria (Linz) the costs for the DNA-tests are pre-financed by the Youth Welfare Department, in other provinces this is not the case. Apart from that the financial means for flight tickets have to be procured.

Sometimes a difficult situation emerges for the youths after the arrival of the family. They have to bear the responsibility for the cost of living of the entire family. There is the danger that they drop out of school or their professional education in order to start working. Apart from that the youths very quickly lose the support of the Youth Welfare Department since the child custody goes back to the parents. Subsequently the youths must normally leave their accommodation; partly they are transferred to remote refugee boarding houses.

### Alternative care, youth welfare

The Commission recommends in its "concluding observations" that the laws (Youth Welfare Act - Jugendwohlfahrtsgesetz) and provisions for care facilities must be harmonized and minimum standards according to the CRC must be introduced at a provincial and national level. Apart from that it recommends that the Federal Government undertakes a systematic monitoring and evaluation of the quality, accessibility and availability of these facilities. The 3rd and 4th State Report assumes in this context that various competent information and exchange committees would be sufficient for harmonizing the administrative tasks and for synchronizing future policies and that the competitive situation among the provinces would even be advantageous for the living conditions of children.

From the point of view of the National Coalition no recommendations of the "concluding observations" could be realized and the opinion of the Ministry in the State Report cannot be shared; as a result of several sad incidents of severe neglect in which children even died the Austrian Youth Welfare came into public view. Therefore three (experts) work groups were initiated in spring 2008 by the responsible Federal Ministry for Health, Families and Youth that should compile reform suggestions for the Federal Youth Welfare Law 1989. Meanwhile there are three drafts for the Federal Children and Youth Aid Law (BKJHG). The originally included achievements (consistent four-eyes-principle, youth welfare measures for young adults) were weakened in the following drafts. In redrafting, financial considerations were obviously put above the best interests of the child and the law is still waiting for its implementation. Hence neither a legal standardization nor attempts to work on standardized administrative practices are known.

The control mechanisms to inhibit discrimination, which are listed in the State Report, are insufficient. According to the Youth Welfare Report 2010 for instance only one single measure for an adolescent was extended past majority age in Lower-Austria, whereas in comparison there were 402 cases in Styria - see also chapter II, Age limits in youth welfare. The positive effects of the "competitive situation" between the provinces cannot be verified by the National Coalition. Due to the continual absence of nation-wide care standards there are still large quality differences in the measures of youth welfare authorities.

Apart from that there are no adequate statistics available for the quality control of care possibilities. The Youth Welfare Report 2010, cited above, is extremely shortened in comparison to the statistics of Youth Welfare before 1999 and moreover partially unconvincing. Hence the figures of the Ministry differ from the figures collected by the single provinces (the Ministry states 10.043 cases of institutional care in 2005, but adding the figures from the provinces, they add up to 10.462). The figures of the provinces are usually significantly higher and unfortunately cannot be compared with each other because standardized criteria for data collection are non-existent. Nationwide monitoring and regular evaluation was not undertaken and would only be partially reliable due to insufficient statistics.

Although the Federal Constitutional Law on the Rights of the Child contains the entitlement of children that cannot grow up within their family environment to special protection by the government (Art 2 Par 2 leg.cit.), it is yet to be seen how far this will be considered and thereby will have an influence on the living situation of institutionally placed children. The children's right to quality standards in the care and placement of children (Art 3 Par 3 CRC) was not included into the Constitutional Law and is undermined repeatedly.

In recent years little weight was given to prevention as one of the main responsibilities of Youth Welfare. A significant lack of resources (lack of time and a high work load for too few staff) make it difficult for the Youth Welfare Department to serve its function as a central governmental institution for securing the best interests of the child adequately. Not only that little is invested in this area but on the contrary, innovative and far-sighted services are eliminated. Styria for instance completely eliminated the frequently and gladly accepted "social and study support". Criticism is also regularly expressed about the work of experts appointed by courts: manipulative questioning and free, sometimes strange interpretations of children's statements, violation of the basic right to hearing of parties and moving of responsibility for decision making to experts.

With supervised visitation access there are complaints especially about insufficiently trained personnel and inflexible models which hardly consider the individual story and the special needs of the children. Apart from that the Youth Welfare Law states a responsibility for all children with residence in Austria independent of country of origin and nationality which means that services of Youth Welfare Authorities must also be granted to refugee children, migrant children or children as victims of exploitation and child trafficking.

## RECOMMENDATIONS

- + Financial and organizational support for family reunion.
- + Possibilities to take responsibility for the best interests of the child by the responsible youth welfare departments even after arrival of the family members.
- + New legal basic conditions in youth welfare which are oriented around the best interests of the child and not according to federalist or budgetary considerations.
- + Sufficient financial resources for youth welfare.
- + Involvement of children and youths as well as experts in law amendments.
- + Austria-wide quality standards for care.
- + Federal standardized statistics.
- + Quality assured institutions for children and ongoing control.
- + Securing of preventative measures on different levels (federal, provincial, municipal).
- + Children must be involved in decisions which concern them existentially within an appropriate framework and in decelerated procedures. They have the right to a comprehensive investigation of their best interests and clarification of their perspectives, independent of country of origin and nationality and especially in the case of impending (mandatory) measures relating to aliens (for instance deportations).
- + Children must not be interpreted. Their "voice" has to be heard through personal presence, accompaniment /strengthening or by means of a children's guardian at court.
- + Guarantee of mediation for an optimal solution with parents and the child/the children and/or the children's guardian. This is also necessary for foster care by inclusion of parents and the responsible person from youth welfare.

+ Extension of networking possibilities (avoidance of parallel structures and information loss).

+ Occupational Law for social workers.

+ Getting to know the living circumstances of social groups concerned in the course of education for judges, lawyers, childcare personnel etc. in conjunction with compulsory regular specific further education.

## **VIOLENCE**

### **Abuse, neglect and violence against children, corporal punishment**

Corporal punishment, hence punishment by using physical violence has been prohibited in Austria since 1989. Thereby Austria is the fourth state worldwide, following Sweden, Finland and Norway, that has legally anchored an upbringing free of violence. Nevertheless, the change in attitude concerning violence in upbringing only develops slowly in Austria. Opinions like: "A slap in the face has never hurt a child", "Children ask for it", "Children forget it quickly anyway" and so forth are still heard frequently. Violence against children is and remains one of the main problems in regards to the abidance of children's rights in Austria. A provision prohibiting violence on its own does not create a violence free living environment for children. In a way laws do have the effect of educating but in the protected environment within a family and especially in regards to children the provisions can hardly be enforced.

Additionally, wide ranged awareness-raising campaigns are required. A study launched among others by the Ministry for Families and Youths from the year 2009 clearly shows that little has been done in Austria in comparison to Sweden and Germany. Following wide-ranging nation-wide educational measures, nearly 90 % of all Swedish people say that they had heard of the abolishment of corporal punishment, valid since 1979. Austria and Germany, which introduced the provision much later, are equally far behind with 30%, although they have done more awareness raising. A similar picture is shown when comparing the prevalent educational measures: 68 % of Austrian parents use a slap in the face as an upbringing measure but only 18 % of Swedish parents do.

Similar results are shown by a study from 2010: only 45.4 % of all persons questioned find the statement "A healthy slap in the face has never hurt a child" entirely wrong and therefore disapprove of slapping in the face as an upbringing measure. The use of corporal punishment as an upbringing measure is not only the result of a lack of information. Parents especially that must make do with precarious social living conditions, but not only those, are unable to cope with the upbringing of their children. In an Austrian-wide study of the Catholic Family Association Austria (Katholischen Familienverbandes Österreichs) in 2010, only one quarter of parents state that they have never been overwhelmed by the upbringing of their children.

## **FEEDBACK (2011) of children and youths**

After all, every fifth youth reports having personally experienced violence in the family, every second youth experiences violence among peers. Among youths with migration background, adolescents from poor families and youths whose parents have a low educational level, violence is experienced significantly more often. Adolescents, who experience violence themselves are less likely to know about the prohibition of violence. Youths with migration background do not take advantage of hotlines and support institutions in correspondence with the extent of the violence they experience.

Psychological violence is even harder to be recognized from outside than physical violence and is the most prevalent violence towards children and youths. Thereto a few examples: "You are too stupid for anything", "If I had known that, I would have never had children", "If you are not good, the bogeyman will come and get you", "Either you do this immediately or I will beat you", etc.

The actual extent of sexual violence cannot be determined reliably. The main reason for the high estimated number of unreported cases is the pressure to keep it secret (the unwritten rule of silence), which burdens the victims and leads to speechlessness and inability to react in so many cases. Keeping it secret, which is demanded by the offenders, is often fortified by threats that cause fear and feelings of guilt in the victim. The "not being able to talk about it" (and not being allowed) is a central characteristic mostly with sexual violence within the family. In the past two years a number of abuse cases from the past 50 years in the Catholic Church and in institutional homes were made public in a wave carried by the media.

## **RECOMMENDATIONS**

- + Establishing a comprehensive psycho-social network (kindergarten, school, youth welfare, police, courts, health system, etc.) for children and parents - from birth of the child onwards until the age of young adulthood.
- + Sufficient personnel and financial resources and an organizational framework for low-threshold aid and support services.
- + Strengthening of the acceptance of social work.
- + Comprehensive preventative measures for instance parental training measures concerning violence-free education.

## **FAMILY POLICIES**

The measures of the Austrian Federal Government in the area of family policies, also mentioned in the 3rd and 4th State Report in several passages, are in principle to be rated positively but the last consequence is missing in order to implement these measures broadly and nation-wide. The services of the government for families largely consist of direct monetary subsidies but it is easier to break the social barrier with non-monetary general services such as subsidies for institutions and free services than through monetary subsidies to the families. Some measures of the legislator must definitely be criticized because they do not promote the desired decrease of social barriers through their targeting. One example is the tax deductibility of child care costs that almost solely relieves families in the middle and upper income third and hence intensifies the social differences instead of minimizing them.

### **Family Law**

A comprehensive legal reform of Family Law, which on the one hand establishes the joint responsibility of both parents for the best interests of the child and on the other hand puts unmarried parents at an equal level with married parents, is overdue. The political debates concerning the subject matter "joint custody" and its implementation into the Austrian legal system are only fragments and are hardly discussed from the perspective of the children and their rights.

### **Children's guardian**

The model "children's guardians in custody proceedings", mentioned in the State Report, is also a positive measure for the implementation of the CRC. Since July 1st 2010 the children's guardian is conducted as a regular service. There are about 15.000 divorce children per year in Austria but currently there are only 106 trained children's guardians in all of Austria. So far children's guardians were only appointed in 150 cases but it would be necessary in 600 cases per year as estimated by the Ministry.

## **RECOMMENDATIONS**

- + Equal access to education, pedagogical services and institutions for children and youths in order to combat social selection mechanisms.
- + Low-threshold services for families with low income and with migration background for instance through family centres with legal counselling, health services, language training etc.
- + Urgently necessary Family Law reform oriented on the CRC.
- + Further extension of the model "children's guardian" and accompanying measures in regards to judges.

## VI. BASIC HEALTH AND WELFARE (ART 6 PAR 2, 23, 24, 26, 18 PAR 3, 27 PAR 1, 27 PAR 2 AND 27 PAR 3 CRC)

The risk factors for health and development and the modern diseases of children and youths have changed fundamentally in the last decades. In the past it was the classic infection and deficiency diseases which mainly threatened the health and development chances of children and youths; today they are replaced by life-style diseases, chronic developmental disorders and psycho-social regulation and integration disorders. There is still a clear health disadvantage based on regional and social factors. Children who are most affected are those children that grow up in poverty, in a poorly educated environment, in remote rural areas or in urban areas with a high population density as well as children from migrant families.

### Federal Constitutional Law on the Rights of the Child (BVG Kinderrechte)

As explained in chapter I, the right to health and an appropriate standard of living was not included in the new Federal Constitutional Law on the Rights of the Child (BVG Kinderrechte).

### Available data concerning children's and adolescents' health

In Austria there is no broad, systematic-epidemiologic survey instrument or monitoring for children's and adolescents' health data. The current data sources represent only few and narrowly specified sub-areas. The Federal Ministry of Health has recognized this deficiency and has launched the development of appropriate data-panels; the implementation will have to be monitored.

### Health promotion and prevention

Austria spends about 2% of its health expenses on health promotion and prevention. In a European comparison this is a very low figure. In contrast to this is the fact that Austria's children and youths show especially bad figures in the areas of "health" and "risk behaviour" (OECD Report "Doing Better for Children," 2009; UNICEF Child Well-Being Report, 2007; WHO Report "Health Behaviour in School-aged Children", 2005/2006): Thus Austrian 15-year olds show the highest smoker-rate at 27% and the highest violence-experience rate at 25% in a European comparison. 19% of boys and 9% of girls suffer from obesity and the figures are also above average with eating disorders, alcohol consumption and suicide ("Let's talk kids", Health Policy Monitor 2010).

## Reproductive medicine

In Austria there are no legal limitations on the number of transferred embryos or within reproductive medicine with regard to fertilization in the course of hormone stimulation. Therefore multiple pregnancies and hence the number of premature babies (last 11,1%) has risen strongly. This has enormously harmful consequences for the health and development of the children concerned (clearly more disabilities, malformations, developmental disorders, etc.). The Caesarean section rate is at a high 30% Austria-wide.

## Breastfeeding

In Austria there is a very high breastfeeding rate of 93% at the beginning but at the age of six months only 55% of babies are breast-fed and at the age of one year it is only 16%. In Scandinavian countries the breastfeeding rate lies at 80% at the age of six months.

## Early interventions/early child development support

About 5-10% of all Austrian children live under difficult circumstances: violence, alcohol, poverty, psychological problems of the parents, inability to cope with the child, etc. These children are seldom actively brought into the health system or reached by it ("prevention dilemma"). The consequences of this, according to the Mannheim Longitudinal Study, are 10 times higher addiction rates, 3 times as many disorders of social behaviour and twice as many 19 year-olds with depression. In Austria about 20.000 to 40.000 children under the age of 4 are affected.

## Health promotion in kindergartens, schools and municipal youth work

Children spend a large amount of their active life time at kindergarten and school, which are also ideal places for the acquisition of health and living competencies. Peer groups have a large learning effect on every single child. In order to reach this age group with behavioural prevention or modification they need to be reached in their living spaces.

## Cross-professional interdisciplinary networking

Care services in Austria are currently mostly only financed when the child is present. Interdisciplinary teamwork is only possible within hospital or out-patient structures but would also be desirable in all other fields such as local doctors, schools, the cooperation with youth welfare etc.

## Diagnostic-therapeutic services

The general provision of paediatric services functions at a high level in Austria. Only the ambulatory services on weekends and at night are insufficiently developed. However, things are very different with children and youths with developmental disorders, children with in-patient or out-patient rehabilitation needs, with psychosomatic or psychiatric diseases or with problems in the field of developmental and social paediatrics. At this point in time there is no systematic gathering of objective demand and adequate care.

According to current data it is known that there is a significant shortage in some fields of therapeutic services, of physiotherapy, ergotherapy, psychotherapy, logopedics and the range of medical services of children and youth psychiatry and social paediatrics. In some provinces there are no freely accessible services financed by public health insurances regarding the professional fields mentioned above. The free services provided through so-called "pool-solutions" or special out-patient clinics do not meet all needs (exception Vorarlberg) and have long waiting lists or often do not take on any more patients. Recently the Association of Austrian Social Security Institutions launched a "survey on the medical therapeutic services for children and youths". The Vienna Regional Health Insurer is in the process of undertaking a "survey concerning the waiting times for children's therapies". There are presently no results available.

For children with very frequent therapy needs (for instance intensive therapy phases with specific indication) and/or increasingly prevalent, curative educational care needs (as with for instance autism, ADHS or similar) there are only few publicly financed services. But if these possibilities are not provided through quality ensured and legally regulated pedagogical professions or health professions as services, there is the danger of switching to cheap paramedical services that are not quality assured.

### Rehabilitation

In all of Austria there are 65 rehab institutions for adults but not a single one for children. Children and youth rehabilitation is only offered as an "additional indication" at three of those institutions. Austria-wide there is a need for about 380 primary rehabilitation beds/places for children and youths. It would make sense to have them mostly divided up into three regionally well positioned centres - for some indications also decentralized.

### Assistive, adaptive and rehabilitative devices as well as remedies and pharmaceuticals

The supply of assistive, adaptive and rehabilitative devices as well as remedies for children and youths with motoric restrictions is connected to a high logistic effort (meaning often the consultation of many different institutions), hence month-long delays and high excess. Children and youths have a right to quality ensured medication. Currently about 60% of all medication taken at that age is not sufficiently tested and scientifically researched for children and youths.

### Quality assurance

The treatment of children and youths requires a lot of specific development-oriented knowledge and special aptitude as well as training for age-specific implementation of therapeutic issues, systemic thinking and competency for working with parents. Apart from the specialist in paediatrics and adolescent medicine and the specialist for child and adolescent psychiatry, there are no certified qualifications related to the work with children and youths in the health area in Austria. As a specific qualification within a special field, the diploma for school doctors must be mentioned.

### Strengthening and support for parenting

Parents hold a key position in the development of health and lifestyle of their children. They are the earliest and life-long formative influence on the next generation. But in Austria treatment institutions for children and youths have few formal possibilities for intensive work with parents under the currently effective legal conditions.

## Cross-departmental health policies

Children's and adolescents' health is an explicitly cross-sectional topic, which constantly transcends the arbitrary departmental boundaries between the educational, social and health systems. However there can also be valuable contributions to the living-space oriented health of children and youths by the departments of family affairs, economy, environment or sports.

## RECOMMENDATIONS

- + Inclusion of the right to health and adequate living standard into the Federal Constitutional Law on the Rights of the Child (BVG Kinderrechte).
- + Regular, representative, systematic-epidemiologic evaluation and reporting of children's and adolescents' health data.
- + Significant increase of the financial budget for health promotion and prevention for children and youths.
- + Strategic concentration and easier implementation of health promotion projects.
- + Modern adaptation and valorisation of the prevention instrument Mother-Child-Pass (Mutter-Kind-Pass).
- + Limitation of the number of in-vitro-fertilized ova for nidation.
- + Compulsory counselling and information for future parents in reproductive medicine ("assessment of the best interests of the child").
- + Compulsory quantitative and qualitative documentation of all in-vitro-fertilizations with recordings of the course of pregnancy and birth and the development of the children ("Out-come-Register").
- + Lowering of the Caesarean section rate to the level of urgent indications for mother or child.
- + Postnatal breastfeeding counselling by professionally competent persons.
- + Establishment of an expert committee and a "social early warning and help system" ("early intervention"). It should however be noted that the Austrian term „Frühförderung“ (early support - a pedagogical training concept for children with developmental deficiencies) cannot be equated with „Frühe Hilfen“ („early intervention“).
- + Adoption of model projects like for instance SAFE-parent's courses as a nation-wide standard service.
- + Kindergartens and schools should per se be health promoting living spaces (exercise, nutrition, psycho-social health) and should meet these requirements with equipment and personnel at a high level and should impart health competency.

## FEEDBACK (2011) of children and youths

On average 7% of all youths feel unhealthy or rather not healthy and every tenth adolescent has the feeling that his/her family does not care about health. The rate is twice to three times as high in adolescents with migration background and youths from poor families. 60% of the youths are surrounded by smokers at least once a day. Every fifth adolescent says that his/her parents worry about the payment of treatments.

- + Training of pedagogues with regard to health promotion.
- + Group sizes of maximum six to eight children at crèches with a child-care-taker ratio of 1:2-3.
- + An examination in the course of school-enrolment around the age of 5, which encompasses all developmental aspects and is quality-assured. The current practice of determining language abilities only focuses on the language development and hence falls too short. Language fostering is not language therapy and therefore cannot substitute a quality-assured diagnosis and therapy of language impairment.
- + Concentration of various competencies and resources of the different health and social professions in the educational system as well as organization in teams and through networking.
- + Intensification of health promotion and risk-prevention projects for adolescents at a municipal level and through inclusion of regional resources.
- + Systematic financing of communication and cooperation services (networking) of health related professions.
- + Austria-wide expansion of diagnostic and therapeutic services and elimination of private excess payment for physiotherapy, ergotherapy, logopedics, psychotherapy and child and adolescent psychiatry (among other solutions through an "overall contract" in primary care), tailored to the needs.
- + Establishment of a therapists-register with indication of specialization.
- + Creation of financing models for higher frequency treatment necessities and areas linked with pedagogical interventions (for example autism support).
- + Implementation of the specific rehabilitation requirements for children and youths as already verified by expert committees and the Health Dialogue by the Federal Ministry of Health.
- + Simplification of the access („One-Stop-Shop“) and elimination of private excess payments for assistive, adaptive and rehabilitative devices as well as remedies.
- + Certified additional qualification for all health professions as a prerequisite for the work with children and youths.
- + Improvement of the safety of medical products for children and youths through legal provisions.
- + Unlimited co-support of parents concerning the indication and diagnosis of the child.
- + Concentration of competencies and resources from the health, education and social areas with the involvement of other departments specific to the topic as well as the establishment of appropriate cooperation platforms at a national and provincial level ("health in all policies").

## Harmful traditional practices: Female genital mutilation FGM

According to a 2010 report of the Women's Health Centre FEM Süd, which undertakes health advisory for women from countries affected by FGM, there are about 6.000 to 8.000 victims of FGM resident in Austria. Apart from that, there are indications of girls suffering this fate in Austria as well as in the course of trips to their countries of origin. According to estimates of the Federal Ministry of Health, about 100 girls or women might be affected by it every year.

According to Art 64 Par 1 Subpar 7 and Art 65 Par 1 of the Austrian Penal Code, FGM is a punishable offence, even if it is practiced abroad. Experts stress that the application of the provision is connected with several problems, for instance evidence in possible proceedings or the fear of the women concerned of reporting to the police. Hence it is important to inform the persons concerned that they are entitled to this right and how they can make claim to it. Parents must be made aware that FGM is a criminal offence in Austria, even when carried out abroad.

Nevertheless, the focus should lie on prevention and not on judicial prosecution. The implementation of goals noted in the "National Action Plan on Prevention and Elimination of FGM in Austria 2009-2011" lies with the individual ministries.

## RECOMMENDATIONS

- + Training and further education offensive at different levels: asylum matters, social work, youth work, midwives, specialist doctors and pedagogues.
- + Informative work with ethnic and religious communities, which is designed in a gender-specific way and is offered in different languages.
- + Recognition of imminent FGM as grounds for asylum in Austria for girls and women.
- + Coordination office for networking of activities and FGM-projects in Austria.
- + Evaluation and long-term continuation of the National Action Plan.

## Forced Marriage

The necessity for specific protection and professional support for girls and boys that are threatened and affected by forced marriage was recognized by the Austrian government - but specific measures were not yet implemented.

Girls and boys that are threatened by forced marriage presently do not have a possibility to receive the protection and support that they need. If children flee their families because of forced marriage they need a protected placement in order to prevent the danger of continued pressure from their families. Currently girls and boys are placed and cared for in the existing youth welfare institutions and women's refuges. These institutions do not meet the requirements of girls and boys threatened by forced marriage, which is why time and again the children affected or threatened leave the respective care institution and return to their families - often with far-reaching consequences.

The measures of the City of Vienna, noted under item 191 of the 3rd and 4th State Report are to be welcomed and are a first step in the right direction. Nevertheless, further effective and comprehensive measures must be taken.

## RECOMMENDATIONS

- + Establishment of special Austria-wide protection institutions for children threatened or affected by forced marriage. These must be accessible for all children, independent of nationality; they must provide competent native speaking support and must be operated separately for girls and boys.
- + Provision of increased financial and personnel resources for advisory institutions and for the implementation of prevention services.
- + Austria-wide sensitization measures for threatened and affected children, key professionals and families.
- + Introduction of a specific criminal offence "forced marriage". Currently forced marriage is subsumed under the offence coercion, criminal dangerous coercion or making a criminal dangerous threat. Forced marriage constitutes a violation of human rights comparable with human trafficking and should therefore be explicitly sanctioned with a more severe penalty.

### Child poverty – Right to an adequate standard of living

The difficulties of a brief description of unsolved problems in the area of child poverty are especially that this highly cross-cutting topic must be seen in close relation to many policy areas which, on top of that, are located at different administrative levels (federal government, provincial governments and municipalities). The reduction of child poverty must be seen as a goal of the general family policy, social policy, labour market policy and education policy (which must also encompass the entire elementary education and apprenticeship training). Insofar many of the measures mentioned for these areas are also measures to combat child poverty; a few very important ones will be covered here in particular.

In an international comparison there are relatively few children at risk of poverty in Austria (13%), at least on the basis of the EU-SILC-poverty level which is currently applied in public discourse and which is a "relative poverty level": if a child lives in a household where less than 60% of the "equivalized median household income" is available, this household is rated as being "at risk of poverty" because there is less money available in the respective household than is "normal" in the respective country

(definition EU-SILC). This level can only be interpreted in comparison with other countries or with comparison over time but does not allow a conclusion of whether the child can be provided with a - however absolutely defined - minimum living standard with the income available. Due to the merely statistical, technical construction of the level it is easy to avoid a discussion on what children should at least be conceded in a society (how much living space, how much time with their parents, how much education, which recreational activities,...). But in the past years poverty has shifted especially towards people with a minimum pension, single parents, large families and migrant families. For the children concerned, poverty is felt more distinctly nowadays due to a general high living standard and has a stronger segregating effect due to commercialization of the children's living environments (brand awareness, expensive mobile phones and recreational activities, etc.).

In a European comparison, a serious problem is the low social mobility due to the highly selective schooling system that has, among other things, still not overcome the challenges of immigration.

## RECOMMENDATIONS

+ In order to combat child poverty in Austria, first and foremost, measures must be taken to promote the social mobility and to deal with the challenges of immigration in a positive way. The State Report only mentions these rudimentarily. It indeed states an impressive list of transfer benefits but in a European comparison these are above-average anyway. The increase of kindergartens must be noted positively but this measure must not only remain quantitative, but there must be more focus on the improvement of quality, especially in the area of language training - see chapter III, Discrimination in the educational area.

+ Scientific evaluation of the measures combating child poverty and public dissemination of the results.

+ Development of a poverty assessment level that can be interpreted in terms of content and norms, which can provide a more valid basis for political and administrative measures.

Conclusive remark: objectives are formulated for many of these topics in the very recent paper "Child Health Strategy" ("Kindergesundheitsstrategie"), published by the Federal Ministry of Health on September 29th 2011. This is an extremely positive recognition of the prevalent problems but the implementation through policy remains to be seen.

# VII. EDUCATION, LEISURE TIME AND CULTURAL ACTIVITIES (ART 28, 29 AND 31 CRC)

## FEEDBACK (2011) of children and youths

Every tenth adolescent lives in a residential environment where sleep is disturbed by noise; many complain about air pollution in their living environment (13%) or school environment (25%). 15% find that there are not enough park areas. Youths with migration background and from poor families complain about these problems two to three times as often.

Adolescents from poor families and youths with migration background often complain frequently about not being able to afford recreational activities (51% and 22%).

## LEISURE TIME

### Noise made by children

In Austrian law noise made by children is not treated differently from noise as environmental pollution (e.g. noise by aircrafts or traffic). Only rarely is it stated in court decisions that noise made by children when playing is a necessary and important developmental factor. There are almost daily complaints by parents at the Ombudsoffices for Children and Youths (KIJAs) that they are upset about the way neighbours deal with playing children in residential neighbourhoods or apartment blocks: from insults and threats to call the police to physical attacks. In case of noise made by adolescents many adults engage the police right away.

## RECOMMENDATIONS

- + Clear specifications for child and youth friendly dwellings and for the design of public spaces.
- + Noise made by children must be excluded from the term „common“ noise pollution and being noisy must be considered part of a children's right.
- + Reform of house rules. House rules that are hostile towards children and youths should be invalid by law.
- + Property management urgently needs to be trained in order to enable a conflict-free living together. If in doubt they should always take the children's view in order not to endanger their development (for instance when children and youths step on grass areas).
- + Establishment of neighbourhood-management in residential areas. Federal law would need to be changed in order to be able to finance neighbourhood-management as part of the running costs.

## TRAINING AND EDUCATION

To start with it must be made clear that the National Coalition's point of view is based on a more comprehensive definition of education than in the 3rd and 4th State Report. Education is understood as a human right corresponding to the CRC on the one hand and as a key element for establishing socially equal opportunities on the other hand. In order to meet the associated general requirements, it is based on a wide definition of education which connects pre-school, school and school-external education.

### Institutional framework conditions

Considering school as well as pre-school education, the possibilities are unequally spread in Austria, which clearly conflicts with the demand for promotion of equal opportunity. There are enormous local differences (especially between the different provinces) in the pre-schooling area; apart from that, the basic conditions of the services (like costs and opening times) differ greatly – see also chapter III, Discrimination in the educational area. The introduction of free kindergarten in several provinces, for example, must be seen very positively, but the measure was taken back in several provinces due to cost-related reasons. This fact is not mentioned in the 3rd and 4th State Report.

The 3rd and 4th State Report already states in regard to the National Education Report 2009, that the choice of school is less influenced by a decision on education, but rather by institutional basic conditions and possibilities. Apart from the local situation, the educational level of the parents is one of the basic conditions that influence the educational path of children the most. This is one of the biggest hindrances the Austrian education system still does not compensate for; quite the contrary the educational path of children is already determined at the age of ten years due to early selection.

The study "Entrance of Young Persons into the Job Market" (2009) by Statistik Austria confirms that the educational path of young people in Austria is socially selective. Only 5% of all children from parents with only compulsory schooling as their highest educational attainment, but 41% of children from parents with an academic education graduate themselves at university level. The study also confirms that children with migration background clearly have worse educational chances than those without migration background. Altogether two thirds of children with migrant origin reach the same or a lower educational status than their parents.

In the Supplementary Report on the 2nd State Report 2002 the National Coalition has already uttered its concerns regarding the quality of the education system, the free access to education and the equal chances in the education system. This concern will remain. Although the sporadic introduction of the "New Intermediate School" (Neue Mittelschule) is a step in the right direction, this measure does not reach far enough since this type of school is not offered nation-wide and apart from that, the separation of school types into grammar schools (Gymnasien), general-education secondary schools (Hauptschulen) and New Intermediate Schools (Neue Mittelschulen) remains. It must be especially pointed out that the necessary demand for measures for the integration of children with a foreign language as their mother tongue and comprehensive fostering and inclusion of children with special needs at all school levels have not yet been met, see also chapter III, Discrimination.

## Education as a living environment

In the Supplementary Report on the 2nd State Report the National Coalition already stated: "School must be a place where children can have fun studying without fear. The girls and boys should be able to experience school as a holistic child-oriented living space where they can remain children and are respected in their human dignity." This demand must be emphasized again, also especially in regard to the desirable extension of all-day schooling. In terms of out-of-school education as well as child and youth work, the 3rd and 4th State Report only refers to the Province of Vienna and the forms of open youth work.

## Work Experience

In many vocational schools work experience is obligatory. Apart from that pupils work in employment types like contract work, voluntary work or school holiday jobs in which problems concerning labour law and misuse of these types of employment through some employers occur. Additionally it should be noted that the extension of practical training and other precarious working conditions for young people after completing their education is currently a big problem but cannot be looked at in detail here.

## The connection between the level of education and unemployment

In Austria the formal level of education has a significant influence on the risk of becoming unemployed: hence in 2010 almost half (45%) of all registered unemployed people had only completed compulsory schooling and more than a third (35,3%) had an apprenticeship diploma. In comparison to that, university graduates only amounted to 3,8%. These figures emphasize the need for measures concerning equal chances in the educational sector as stated in the demands above.

### FEEDBACK (2011) of children and youths

13% of adolescents are rather not and a further 22% are not at all content with their school buildings. The discontentment rises with age; in comparison to grammar schools, pupils of other secondary schools utter a lot of discontentment (16% grammar schools vs. 34% other secondary schools). Youths with migration background are in an especially difficult situation; they often live in the city ring district of the large cities: 11% are rather not content and 35% (!) are definitely not content with their school buildings.

## National Education Report

Although a basis is given through publishing the National Education Report, this report is insufficiently taken into account. The 3rd and 4th State Report mentions the establishment of an "Education Reform Committee" (Bildungsreformausschuss) by the "Education Committee of the National Council" (Bildungsausschuss des Nationalrates) but obviously wrong termini were used here (since in Austria educational topics are dealt with in a Schooling Committee - Unterrichtsausschuss - and not in an Education Committee - Bildungsausschuss). Although a Subcommittee of the Schooling Committee was established by now its competences reach far beyond the National Education Report. This does satisfy the extent of the report and the intentions of a separate committee. Up until this point in time no specific measures from the conclusions of the Education Report are known.

# RECOMMENDATIONS

- + Extension of the obligation for all children to visit kindergarten.
- + Extension and nation-wide provision of free kindergarten.
- + Nationwide standardized framework law for childcare institutions.

- + Improved financial provision and minimizing of group-size in elementary schooling.
- + Education of pedagogues at university level.
- + Nationwide training, education and care facilities with equal basic conditions.
- + Measures against a too early decision concerning the educational path.
- + Measures against the "inherited education level" and fostering of equal chances within and through the education system.
- + The role of private schools, which charge a fee and increasingly differentiate themselves from the free public schools in their offerings, should be regarded critically in respect to their possible social segregation.
- + Appropriate basic conditions concerning school buildings and personnel as well as new, individualized schooling forms for a fostering learning environment for children and youths. The maximum number of pupils in a classroom should generally be limited to 25. Hereby it must be especially noted, that orders of the Provincial Education Board, suggesting the overstepping of the legally permitted maximum number by 20% does not help the improvement of the quality of schooling.
- + Review of the mechanisms with which the financial means for school renovations can be steered.
- + Strong networking within the school-external children and youth work, especially in regard to all-day schools.
- + Strengthening of social work in schools.
- + Stronger networking between formal and non-formal educational institutions.
- + Stronger fostering of school-external work.
- + Improvement of possibilities for children to play in public areas for instance through participation projects with children and youths.
- + Barrier free access to recreational institutions (inspection by the Federal Government and the Provinces).
- + Reduction of costs for recreational and cultural activities.
- + Reform of physical education (sports according to interests).
- + Stronger cooperation between schools and sports clubs.
- + Improved education of labour laws for young people in schools as well as improved basic legal conditions concerning work experience, which prevent exploitation and define the responsibilities of employers.

- + Holistic all-over concept for the educational area in Austria. Up until now measures are only implemented fragmentally without applying the educational concept comprehensively.
- + Establishment of a specific parliamentary committee for national educational reports.

## Apprenticeship

The topic of apprenticeship is not mentioned in the State Report; therefore this subject matter should be raised here at the interface between education and the labour market. According to an OECD Report from 2010, the present dual education system in Austria with its integrative studying at school and in companies has many strengths: it is well structured, the youth unemployment rate is low, in an international comparison the transfer into the initial employment mostly works well and the social partners are included at all levels of apprenticeship policies and cooperate effectively. The training system complies with a wide requirements palette reaching from special possibilities for disadvantaged children, in regards to school or family, to upper-secondary vocational schools that offer a technical education at a high level.

According to the OECD, the most important challenges of the Austrian system are: in year nine adolescents that want to commence an apprenticeship have to cope with two transfers: from secondary school to a one-year secondary completion school (Polytechnikum) and from there into the vocational school. Due to the bad image of the "Polytechnikum" many students spend one year in a higher secondary school, which usually does not correspond with their occupational goals. A number of apprenticeships are too specialized for entrance into the employment market or for being helpful towards a further career. There are also a lack of minimum standards in the quality assurance of the apprenticeship education on the job. The company-external education is expensive and reduces the appeal for companies to offer apprenticeships. Not all apprentices have access to a qualitative vocational orientation based on information about the labour market. A central problem in the education of apprentices is the unequal distribution of apprenticeship occupations, which eventually leads to problems for adolescents in finding the desired job or apprenticeship. According to the Chamber of Commerce the three most frequent apprenticeships practiced by girls are still retail, administration and hairdressing. Close to half of all female apprentices choose from these three areas. Apart from this the question arises whether the decision for an apprenticeship at the age of 15 might be too early. Every fourth youth with an apprenticeship degree does not work within the trained profession after a few years; of the ones that do work in the trained profession many think about a change. Furthermore there is a high percentage of 18% of youths with migration background who do not successfully transfer at all into an apprenticeship (or for that matter into higher secondary schools). The teaching of basic competences in reading, writing and calculation within the dual education is very limited.

### FEEDBACK (2011) of children and youths

One quarter of the adolescents questioned complain that too little knowledge on later vocational possibilities is imparted. Youths with migration background are especially dependent on a well functioning education on vocation-orientation because their parents don't know enough about the possibilities in Austria. Therefore many of them complain especially frequently (40%) about the lack of education on vocation-orientation.

Furthermore unaccompanied refugee children uttered the desire for more information on various education possibilities and for help with formulating resumes and letters of application.

## RECOMMENDATIONS

- + The ninth grade needs to be reformed so that at that point all students are immediately steered into the educational path corresponding with their interests. The common school for all 10 to 15 year olds would be the best step in that direction.
- + The tendency of companies to offer their own highly specialized education must be counteracted, especially through a modularization of apprenticeship education.
- + The quality of the education within companies must be assured through effective monitoring and support of companies training apprentices. Quality assurance should be established -for instance through company inspectors (analogue to the school inspectors).
- + The focus within company-external education (Überbetriebliche Ausbildung - ÜBA) should be on referring adolescents to regular training institutions. The resources for the "ÜBAs" should rather be allocated for preparing the adolescents better for a regular apprenticeship within a company.
- + A gender-sensitive vocation-orientation of high quality should be offered to all students as a separate subject, which first and foremost is based on information about the labour market. Since 2009/2010 the compulsory course for vocational orientation in year 7 and 8 has been available. The effects of this measure should urgently be evaluated on a wide basis.
- + Equal treatment of apprentices in companies and training institutions (company-external apprenticeship training).
- + The availability and presentation of occupation relevant information should be significantly improved.
- + Systematic processes should be developed with which the basic skills of apprentices can be determined in order to be able to offer support if necessary - especially concerning difficulties with reading, writing and calculation. In order to reach this goal, the curriculums of vocational schools should be reformed; the usage of innovative schooling methods should be considered.
- + An apprenticeship is - despite the recommendations of the ILO - legally not classified as an education but as an employment. This is not only a problem for youths with an asylum-seeking status which are in a difficult situation at the end of their compulsory schooling; although they have the possibility to attend school during their asylum procedure, for many of them this is not a realistic option after concluding the compulsory school. The possibility of working within an apprenticeship is not possible due to the lack of a work permit. A dual apprenticeship education is not an employment but a step towards entering the labour force.
- + Improved and in particular standardized basic conditions for apprentices concerning cost coverage for boarding schools and free public transport.

# VIII. SPECIAL PROTECTION MEASURES (ART 22, 30, 32-36, 37, 38, 39, 40 CRC)

## UNACCOMPANIED REFUGEE CHILDREN (URC)

### Admission procedure

The admission to the asylum procedure is currently maybe the most problematic point for asylum seekers in Austria. In the admission procedure the asylum authorities deal, to begin with, only with the question which country is responsible for the conduction of the asylum procedure according to the provisions of the Dublin-II Regulation. The impending deportation to Greece (currently suspended), Hungary, Italy or Poland is, in addition to the age determination (see chapter II), extremely stressful for the young persons.

### Placement

Considering, that in winter 2009, 230 URC were placed in the refugee camp Traiskirchen, there were only 51 in the beginning of March 2011. The decrease of URC admitted to the proceedings (due to the increase of declarations of majority and lower numbers of applicants) leads to problems with capacity utilization in the placement institutions for URC and to closing down or to curtailing the quality of care. In summer 2011 the number of URC again rose in the refugee camp to over 180 URC that had to wait there without adequate care for several months after the admission to the asylum procedures or for transfer to a care institution.

### Child custody

In 2005 the Supreme Court declared that unaccompanied refugee children must be provided with a legal guardian. Today this requirement is met for the vast majority of URC after being admitted to the asylum proceedings. But there are still regions (Carinthia, Styria) where the clarification of custody is not carried out at all or only in exceptional cases. In daily practice the duties of custody are usually only insufficiently undertaken (with only a few positive exceptions).

### FEEDBACK (2011) of children and youths

A number of URC complain about the closely packed rooms in the placements that often lead to disturbance as well as a lack of cleanliness. The adolescents would like to receive more pocket money (the amounts vary from 35,- to 52,- Euros per month) or to be able to work in order to be able to improve their financial situation.

The adolescents also expressed the desire for more contact with the majority population and Austrian adolescents. Many adolescents see themselves confronted with prejudice; often language barriers hinder the contact.

## Educational situation

URC visit the same schools as all other children. The right to education for asylum seekers of school-age is basically complied with in Austria. After completion of compulsory school education the entrance into the labour force is not possible. Although the Alien Employment Act does not generally prohibit employment, it is regulated through a decree that work permits for asylum seekers may only be issued for harvesting or seasonal work. Asylum seekers are also not allowed to start an apprenticeship – see chapter VII Apprenticeship – since these jobs are also subject to the Alien Employment Act. Hence the only possibility lies in the school perspective.

## Asylum proceedings

In the last few years the asylum proceedings sped up noticeably. A growing number of asylum proceedings of URC can be legally concluded during minority. Therewith the topics return and integration gain importance after recognition. Official statistics on granting subsidiary protection and asylum for URC are not available. According to a 2010 study, undertaken by Asylum Coordination Austria (asylkoordination österreich) in the year 2009, 142 URC obtained subsidiary protection, in 17 cases asylum was granted. Generally the shorter duration of proceedings is positive, but the quality of the proceedings (especially because of the no longer existing access to the Administrative Court) has unfortunately dropped significantly.

## Family reunification – see chapter V

## Voluntary return of unaccompanied refugee children

Official statistics on the return or deportation of URC are not available. In some countries (Kosovo, Nigeria, Chechnya) reintegration programs are offered by the International Organization for Migration (IOM). In 2009 nineteen URC were supported by IOM in their voluntary return, 34 URC were supported by “Drehscheibe Wien”. Within the scope of the Assisted Voluntary Return Programs the IOM makes contact with the parents or other close family members in their home country. If the “family assessment”, which is taken out in the course of the returning process, shows that the safety of the minor cannot be guaranteed on return of the minor, then the responsible youth welfare authority in the country of origin is contacted additionally.

## Deportation of children

Again and again in the past few years it came to deportations of URC. According to a statistic of the Federal Ministry of Internal Affairs (BMI) 146 children were in custody pending deportation in 2009, 172 in 2010. 475 children in 2008 and 435 children in 2009 were in a “less severe measures procedure”. According to the Federal Ministry of Internal Affairs the unaccompanied refugee children were always transferred to their legal guardians or to the youth welfare authorities by contact officers. Nevertheless, the independent human rights observer, who is involved in the process of deportation, could not verify this course of action.

### **FEEDBACK (2011) of children and youths**

School and education is recognized by the unaccompanied refugee children themselves as an important matter as well. Youths with a positive asylum notification would like more information on different educational possibilities and help with formulating resumes and letters of application. Even recognized refugees find looking for a job difficult; they lack the support and contacts with companies. Many youths utter the desire for better German courses which are more adjusted to the requirements of the labour market. For those that are still in the asylum proceedings, the worst is the insecurity and the inactivity they are doomed to after compulsory school completion in cases where they do not manage the admittance to a higher secondary school. One adolescent also criticized in an interview the long duration of his stay in the refugee camp in Traiskirchen – six months, without schooling or German tuition.

### **FEEDBACK (2011) of children and youths**

The asylum procedure is experienced as victimizing by many youths, especially the way they are questioned. They have the feeling that they are not trusted. It is most demoralizing that the youths concerned have to wait for an official notification for a long time. Many are also depressed about the fact that they are not allowed to travel to other countries in order to meet family members or friends and that they must not move house within Austria.

## **FEEDBACK (2011) of children and youths**

The deportation hangs like the sword of Damocles over all refugees whose proceedings are not finalized. Many have witnessed the deportation of friends or acquaintances and feel that the time between the decision and the deportation seems very short. They would wish for more time. A deportation after five to ten years is perceived as absolute injustice, especially when the adolescents have made an effort to learn German and to complete school.

The Aliens Police Law determines that only in the exceptional case of the aliens police having reason to assume that the goal of the custody pending deportation cannot be reached with a less severe measure, custody pending deportation can then be imposed on children as well. A law amendment, passed in April 2011, now provides the compulsory application of a less severe measure only for children up until they turn 16 (Art 77 Par 1 FPG). Hence children between 16 and 18 will be even less protected from custody pending deportation in future.

## **RECOMMENDATIONS**

+ Most recently the Committee recommended ensuring that the representatives of separated asylum seeking children are especially trained and that they know about the special needs of asylum seeking children. This recommendation has not been met so far. The legal representatives in admission proceedings for unaccompanied refugee children (URC) do not have any special education regarding the work with children.

+ Most recently the Committee recommended providing adequate care places, whereby the respective developmental level of the unaccompanied asylum seeking child which is separated from the family, must be taken into consideration. With the implementation of the "Basic Care" (Grundversorgung) in 2004 special care places were created for URC. But these normally do not comply with the care standards that are usually applied for child care institutions. Apart from that the daily rates for care have not been valorised since 2004, which leads to a further deterioration of the care quality and to financial problems of the accommodating institutions.

+ Most recently the Committee recommended ensuring that unaccompanied asylum seeking children always get provided with a caretaker and that the interests of the child get taken into consideration. This recommendation was partially met; nevertheless, the duties connected with custody - especially the regular personal contact with the adolescent - should also be established.

+ Better educational chances, especially the access to vocational training for asylum seeking children.

+ Most recently the Committee recommended ensuring, that all questioning of unaccompanied asylum seeking children must be undertaken by qualified and trained persons. In recent years single trainings (together with the UNHCR) were available for employees of the Federal Office for Asylum (Bundesasylamt) regarding the work with unaccompanied refugee children but they were not very comprehensive in terms of duration and content. Apart from that, the interrogation of URC is not only undertaken by these employees. Hence the demand for qualified and trained personnel remains.

+ Most recently the Committee recommended the full consideration of the principle of the best interests of the child in decisions on deportation of unaccompanied asylum seeking children and to avoid that they are put into custody pending deportation prior to their deportation. This recommendation is not met. The passed law amendment has the effect that in future alien children can be taken into custody pending deportation even more frequently. The National Coalition demands the legal anchoring of a prohibition of custody pending deportation of children and the compulsory application of the less severe measure, also in cases where families are concerned.

## **SEXUAL EXPLOITATION, PORNOGRAPHY AND CHILD TRAFFICKING**

- see section on OPSC

## **JUVENILE JUSTICE**

In 2005 the Committee on the Rights of the Child already dealt with this subject matter and the recommendations resulting from this remain valid even after six years. Although the re-establishment of the successful project Vienna Juvenile Court (Wiener Jugendgerichtshof) is determined in the current government program, it will, according to statements of policy-makers, not be implemented.

Currently the building of a juvenile prison in Vienna is more important: after repeated cases of abuse with a major response from the media, even the Federal Ministry of Justice had to admit in 2010/2011, that the prison in Vienna Josefstadt is not suitable for adolescents. Thereupon a portion of the juvenile inmates were transferred to the Gerasdorf Prison. It was explicitly stressed by the ministry that this was a transitional solution. However now a new and adequate prison for juveniles is no longer mentioned. The situation especially of the 18 to 21 year old prison inmates in Josefstadt has not improved at all: up to eight boys share a prison cell and the locking-up periods (from 15:00 until 6:00 on the next day) are terrible.

Juvenile remand prisoners of which relatively high percentages suffer from psychological or psychiatric disorders, are neither provided sufficient individual psycho-social and/or therapeutic support, nor are there adequate conditions existent to open up new perspectives for the adolescents. The actual socio-political goal to re-socialize the youths cannot be reached in many cases within the present system.

## RECOMMENDATIONS

- + Building of a juvenile prison in Vienna.
- + Interface coordination: currently the cooperation between youth welfare, youth facilities, paediatrics and adolescent medicine, adolescent psychiatry, police and - in case of confinement - the juvenile courts, is regulated at various quality levels; expedient help and support for children and youths requires a standardized and multi-professional approach.
- + Research in the area of children and youth delinquency as well as research on expedient measures in cases of juvenile delinquency and evaluation models in the area of prevention.
- + Abolition of the criminal qualification "professional" for juveniles.
- + Differentiation between children, youths and adults in the Security Police Act.
- + Legal right to the possibility of a compulsory school graduation, an education and a meaningful activity during detention on remand or during imprisonment.
- + Multi-professional personnel (social pedagogues, social workers) during penal execution in order to open the possibility of re-socialization at all through relationships and pedagogic measures. Analogue to Germany, the situation of every individual adolescent should be discussed and expedient measures should be developed and provided.
- + Extension of accommodation facilities for difficult or psychologically disturbed young people (the crisis intervention institutions are often overextended and do not accommodate difficult youths any more. Without accommodation, without income and without a chance to a better life, one-way streets are paved for drug addiction and criminality.)
- + Examination of the possibilities for confinement in so called halfway-houses during daytime instead of detention on remand.
- + Particular panels of judges for the juvenile penal system in all of Austria with inclusion of multi-professional teams.
- + Ensuring the specific training and regular further education of experts and consultants that are ordered by the court.
- + Re-establishment of the proven model Juvenile Court for all of Austria. Proceedings concerning the care of children in regard to endangerment of the best interests of the child should also be reintegrated into the competency of the juvenile court (as this was standard before its dissolution).

## **INTERNATIONAL ADOPTION**

With international adoptions from countries that have not ratified the Hague "Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption" (Hague Adoption Convention), the current Austrian legal provisions prove to be insufficient to ensure the best interests of the child and the respect of its fundamental rights. Even the Federal Ministry of Justice comes to this conclusion on its website: "The adoption from countries which are not State parties to this Convention [Hague Adoption Convention], is based on an insecure legal framework."

Through the amendment of the "Federal Law on Non-contentious Proceedings" (Außerstreitgesetz) in January 2010 there is the possibility to deny the recognition of foreign judgments on adoption. This is not a compulsory recognition procedure but only an optional recognition procedure. Hence it is only considered by the Austrian authorities concerned as a preliminary question (incidental examination) whether an international adoption is legally valid and given recognition. "A legally valid adoption carried out abroad does not require explicit recognition in Austria."

Hence Austrian citizens still have the possibility to travel to a country that has not ratified the Hague Adoption Convention and can adopt a child according to the respective legal situation there without it being guaranteed that this adoption was carried out in terms of the best interests of the child and that the adoption seeker is suitable at all for adopting a child.

Nevertheless, a seriously taken examination of the best interests of the child cannot take place after the completion of an adoption process but has to be carried out before the adoption process. This is only possible if procedure competencies and procedure standards concerning assessment of suitability of the adoption seeker, matching, implementation of an adoption, recognition of an adoption carried out abroad and accompaniment after the recognition of the adoption are clearly defined. This is especially true for international adoptions from countries which are not signatories to the Hague Adoption Convention. But even in international adoptions within the realms of the Hague Adoption Convention the currently applied procedures must be further developed in order to establish Austria-wide uniform standards in the key areas mentioned above.

Furthermore we agree with the Federal Ministry of Justice that "improvements [...] shall be considered two-fold, namely through a closer cooperation between authorities as well as reciprocal control, but also through recognition proceedings. The preventative cooperation is a responsibility of youth welfare and hence must be regulated within the youth welfare laws." In the currently effective Federal Youth Welfare Act and thereby in the respective Provincial Youth Welfare Laws but also in the current draft of the BKJHG, possibly coming into effect, the demanded and urgently necessary clear regulations concerning the areas listed above regarding international adoption are missing.

The Austrian Federal Government also concluded in its current government program "Together for Austria" („Gemeinsam für Österreich" 2008-2013) that "if necessary [...] abuse-proof regulations in due consideration of multilateral instruments concerning adoption, must be established. It must in any case be ensured, that the handling of international adoptions is carried out through public institutions, in order to avoid abuse and profit-oriented actions in this area. Strict standards and certification must be planned for the arrangement of these adoptions."

A clear regulation in the areas listed above concerning international adoptions creates the urgently needed transparency. The best interests of the child and its fundamental rights would be protected through this. However transparency also means having the possibility to collect data; thereby the demands of the Committee to collect disaggregated data on international adoptions would be accounted for.

## **RECOMMENDATIONS**

- + Clear and abuse-proof regulation of international adoptions preferably through an independent law in regards to international adoptions.
- + Setting up a data base on international adoptions.

# OPTIONAL PROTOCOL TO THE CRC ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT (OPAC)



The protection of children in the context of armed conflicts is, according to the statements of the Federal Government, one of the focal topics of the Austrian foreign policy concerning human rights. Effectively Austria initiated or supported corresponding measures in the area of politics and International Law on an international and European level. In this context it seems unfortunate that Austria is not among the countries that state a general protection age of 18 years for any form of inclusion of adolescents into the military service: a voluntary registration is already possible from 17 years onwards. Nevertheless, the arguments in the State Report (para 263) for the adherence to this exception is understandable insofar as it refers to the practical problems of some adolescents, which have already completed their apprenticeship several months before their 18th birthday; this voluntary registration enables them to perform their military service subsequent to their apprenticeship. Apart from that a voluntary registration under 18 for foreign deployments is not possible. The State Report also refers appropriately in this context (paras 260ff) to the OPAC-conform legal prohibition of immediate participation of under 18 year olds in hostilities and also any participation in foreign deployments of under 18 year olds. Nevertheless it should be considered whether a generally higher minimum age (for instance 21 years) for a participation of young people in such missions should be provided considering the especially stressful situation.

The situation of the Military High School in Wiener Neustadt, mentioned in the State Report must be seen ambivalently: on the one hand the State Report states that the recruiting of under 18 year olds is "in no way" promoted, on the other hand it states that in the associated boarding school, led by the Federal Ministry of Defence for example, weapons training of under 18 year olds takes place. Figures on how many graduates of this high school actually pursue a military career are not available but would be relevant to be gathered.

As described in chapter I, General implementation measures, the Austrian Development Cooperation (Österreichische Entwicklungszusammenarbeit, OEZA) has only highly insufficient financial means at its disposal for pursuing their tasks. For years the OEZA has been confronted with cuts, including a reduction of the number of focus-countries (for example Burundi). Affected by it are also child-focused projects (for instance for rehabilitation of child soldiers), which are undertaken by Austrian and international NGOs with OEZA-support. A child-focused development-policy funding strategy would be urgently required, which is also in accordance with the targets of the Austrian Development Cooperation anchored in the Three-Year Program.

Last but not least it should be pointed out that in the State Report - contrary to the request of the Commission in 2005 - there is no information on the question to what extent public financial means are spent on the psycho-social care of children and youth who came to Austria as refugees or migrants from crisis areas. At the same time the insufficient support for traumatized persons was pointed out repeatedly by refugee organizations in the context of the increasingly restrictive amendments of the Austrian immigration laws.

## **RECOMMENDATIONS**

- + Raising the minimum age for foreign deployments to at least 21 years.
- + Development of a child-focused development policy funding strategy as part of the OEZA Three-Year Program, including the increase of financial means for funding and training measures in connection with the implementation of the OPAC within the realms of OEZA and in Austria itself.
- + Increase of financial means for the psycho-social care of children and youths, which come to Austria as refugees or migrants from crisis areas.

# OPTIONAL PROTOCOL TO THE CRC ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY (OPSC)

The OPSC-part of the State Report and the Concluding Observations of the UN Committee on the Rights of the Child from 2008 were used as the basis and it is structured accordingly (chapter I-VIII). Following the titles of the chapters which the statements refer to, the respective paragraphs from both documents are quoted.

## I. DATA

(Concluding Observations, CO-OPSC: 6-7; State Report, SR: 267-272) The planned modernization of the criminal statistics and the improvement of the Judiciary Completion Statistics (Justizledigungsstatistik)(SR: 269-271) are to be welcomed. Hence all offences which were relevant for a conviction shall be listed in the criminal statistics from 2012 onwards (so far only the predominant offence was listed).

In the Judiciary Completion Statistics victim data is also collected from the end of 2011/the beginning of 2012 onwards (gender, age and nationality of the victim, etc.). However a systematic collection and analysis of data regarding the OPSC as recommended in CO-OPSC: 7, will still not be possible. In regards to data on child trafficking information is already partially available for 2009 from the criminal statistics, which provide information on age, gender and nationality of the victim. Altogether there were 22 victims in 2009 that were identified in the course of being reported on the basis of Art 104a (human trafficking) of the Strafgesetzbuch (StGB, Criminal Code); of these, six victims were underage and overall 11 victims were younger than 21 years. The form of exploitation is still not indicated. In the sense of comprehensive prevention and combat of child trafficking and the recognition of trends this would be essential. Currently the Judiciary Completion Statistics do also not allow a differentiation between child and human trafficking. However, according to the information of the Federal Ministry of Justice there are only 15 convictions altogether since the introduction of the §104a StGB in 2004. It cannot be determined whether or how many children were involved in these cases as victims because of the already mentioned missing itemized victim data.

In regard to SR 272 it must be mentioned that the figures on child trafficking stated in the Report of the Working Group Child Trafficking (AG Kinderhandel) are not systematically determined or evaluated but are estimated by experts. In regard to the data on child prostitution there are concrete indications from nearly all provinces by non-governmental and governmental institutions as well as statistics that exploitation of children happens through prostitution. A number of cases regarding at least 25 adolescents in 2010 were reported by different organizations, especially those that provide outreach or low-threshold work. The institutions are also talking about new phenomena for instance "lover boys" or "prostitution in return for goods" - in this area there is an urgent need for scientific survey.

Within the figures of offences in connection with pimping, the group of male children between 14 and 18 years frequently appear as suspects - as it can be identified from the data of the criminal statistics regarding the offence "Gainful referral of sexual contacts with children" according to Art 214 StGB. In 2010 six of the ten suspects were between 14 and 18 years old, one of them female. Furthermore it can be seen that according to Art 216 StGB (pimping) female suspects can be found as well. In this context more detailed studies on the roles of children or girls/boys in regard to sexual exploitation of children would be necessary as well.

The number of convictions decreased to five in 2009 from 18 in 2008 and increased again in 2010 to eight. Missing data on victims handicap the analysis of the phenomenon child prostitution. This for instance means that in the statistics regarding Art §207b StGB (sexual abuse of adolescents) it cannot be differentiated between cases of taking advantage of a relationship based on authority and cases of the adolescent person being paid for sex (child prostitution).

The data on child pornography in the criminal statistics or the criminality report indicate an increase of suspects within the group of under-18-year olds. This shows a problematic area, where youths increasingly become offenders themselves, probably through the careless usage of new media. The majority of offenders were male but also female offenders were identified (in 2010 for instance even 15 of 35 offenders between 14 and 18 were female). Cases where extraterritorial law (Art 64 StGB) was applied in connection with Art §207a (child pornography) are not known at the Federal Bureau of Criminal Investigation (BKA) and are statistically not recorded. Since it frequently becomes apparent that child pornographic material was produced in connection with child sex tourism offences an extensive investigation might be necessary in this field.

## RECOMMENDATIONS

+ Implementation of the recommendation of CO-OPSC: 7 regarding the comprehensive data collection of victim and offender data for all offences concerning child trafficking, child pornography and child prostitution in regards to reports to the police (criminality statistics) and convictions (judiciary completion statistics).

+ Accessibility of detailed data which provide information on at least the following characteristics of the victim: nationality, age, gender, form of exploitation (in the case of child trafficking). In respect to the offences and the offenders, data should be itemized by the following characteristics: location of crime (in Austria or abroad) and in sub-categories of offences according to the StGB.

+ Data collection/studies on juvenile suspects including the gender-ratio as well as on new phenomena like "lover boys" or "prostitution in return for goods".

## **II. GENERAL MEASURES OF IMPLEMENTATION**

### **National Action Plan (NAP)**

(CO-OPSC: 8-11; SR: 273-274) For the implementation of the National Action Plan against human trafficking (NAP), mentioned in SR 274, there is no separate budget at the disposal of the Task Force against Human Trafficking, hence the implementation depends on the different ministries.

### **Coordination and evaluation**

(CO-OPSC: 10-11; SR: 275-278) With reference to SR 275 it should be noted, that this permanent mechanism for coordination and evaluation of the OPSC is non-existent. The Federal Youth Representative Council (BJV) is only partially included. With reference to SR 276 it should be noted that a large number of the recommendations of the Working Group on Child Trafficking could not be implemented yet (for instance a national coordination and cooperation mechanism NRM – see also chapter V). Furthermore it could not be achieved yet to build up a sustainable and formalized cooperation between Federal Government and the Provinces in regards to measures for the prevention and protection of victims of child trafficking. There are efforts of NGOs to foster respective cooperation mechanisms in the provinces but this is hardly financed by the government.

SR 277-278: In regard to the established working group (full title: Coordination Committee on the protection of children from sexual exploitation - Koordinationsgremium zum Schutz von Kindern vor sexueller Ausbeutung), established in 2009, it should be noted that the field of activity of this committee is limited to experts' exchange and discussion on the topics of the OPSC. The mandate of the coordination committee does not envisage an action plan or a budget.

The problematic topic of prostitution of girls or the prostitution of children was not specifically attended to despite the establishment of the Coordination Committee. Thus for example a working group established in Vienna in 2008 concerning this subject matter was meanwhile "put on hold". The reason for this as stated by the responsible authority (Youth Welfare Department) is that currently there is no indication of underage prostitutes in Vienna. However, the information described in chapter I (data) permits different conclusions.

### Awareness raising and training

(CO-OPSC 12-13; SR: 279-284) There is still a lack of systematic anchoring of the topics child prostitution, child pornography and child trafficking in the training and further education of relevant professional groups such as policewomen and policemen, aliens and asylum authorities, judges and public prosecutors, youth welfare, teachers etc. Sensitizing measures should also be taken for medical personnel for better protection of the rights of the victims. Medical personnel are not sufficiently trained to meet the specific needs of victims according to the OPSC.

A wide sensitization of the public (for example through media campaigns) has not yet taken place. Apart from that there is a lack of basic research in order to undertake target-oriented and target-group specific awareness-raising. There are no scientific studies concerning new phenomena in the field of the OPSC like for instance "lover boy phenomenon", "prostitution in return for goods", juvenile offenders in the area of sexual exploitation, abuse etc.

The seminar on fundamental rights for judges and public prosecutors, mentioned in SR 281 is a general seminar on fundamental rights, which is not especially targeted at children's rights or the topics of the OPSC. So far there is neither specific training offered for public prosecutors or judges concerning the topic of human trafficking/child trafficking nor concerning other topics of the OPSC. However, in the light of judicial practice (hardly any charges or convictions based on Art 104a) awareness raising and training of judges and public prosecutors seems to be essential. The lack of sensitization in the work with children who are victims of sexual exploitation in the course of court proceedings very clearly shows a need for action. Generally there is the tendency that the government or authorities generally equate training on the topic child abuse with the topics of the OPSC, but this seems to fall too short because the aspect of exploitation and the commercial aspect are excluded.

The activities of the Ombudsoffices for Children and Youths (KIJAs), mentioned in SR 283 and 284, are certainly to be welcomed. According to the information available to the authors of the report, neither special workshops on children's rights concerning the topics of the OPSC nor special training material on the topics of the OPSC are offered. Specialized workshops on child trafficking, child sex tourism or new media / internet are so far only held by ECPAT Austria and the ECPAT Youth Advisory Council (Peer-to-Peer Workshops). However, these activities were so far carried out without any financial support of the responsible ministries.

### Independent institutions

(CO-OPSC: 14-15; SR: 285-286) Concerning the reference of the State Report to the Federal Children and Youth Aid Law it should be stated that this has still not been implemented and that there is no consensus on a political level. The Ombudsoffices for Children and Youths (KIJAs) are not equipped with an official mandate for the monitoring of the CRC and its Additional Protocols. This can also not be carried out in an "informal way" but only through an official order or mandate and in agreement with the KIJAs.

## RECOMMENDATIONS

- + Provision of the Task Force against Human Trafficking (including the working groups) with its own budget.
- + The Work Group "Coordination Committee on the protection of children from sexual exploitation" (Koordinationsgremium zum Schutz von Kindern vor sexueller Ausbeutung) should be equipped with a concrete mandate, a budget and an action plan, in order to be able to fully execute the functions mentioned in the State Report.
- + Inclusion of the BJV into all committees that deal with the topics of the OPSC.
- + Anchoring of the OPSC-topics into the curriculums of schools and into the teacher's education as well as development of corresponding materials for communicating the topic.
- + Financing of studies and research concerning relevant topics of the OPSC.
- + Implementation and financing of training programs for relevant professional groups – especially policewomen and policemen, public prosecutors, judges and medical personnel regarding the key topics of the OPSC as well as specifically regarding child trafficking in order to improve their competencies in regards to identification and care and to increase the effectivity of the investigations and criminal prosecution of cases in connection with child trafficking.

## III. PREVENTION OF CHILD TRAFFICKING, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

### Measures for prevention of criminal offences according to the Additional Protocol

(CO-CRC: 51-52; CO-OPSC: 16-19; SR: 287-297) The working groups on child trafficking and sexual exploitation, mentioned in SR 288, are neither equipped with a mandate for implementation of concrete measures nor with their own budget, whereby no concrete preventative measures can be taken but at the most proposals can be developed. These measures must always be negotiated with the corresponding ministries. Preventative measures in the area of awareness raising and sensitization are barely or insufficiently financed.

Concerning the single activities listed in the State Report it should be stated that these are definitely to be welcomed but the all encompassing approach for combating sexual exploitation of children through targeted measures is not recognizable yet. Hence there is still a lack of systematic anchoring of the topics concerning sexual exploitation of children (child trafficking, child prostitution and child pornography) in the training and further education programs and in the curriculums for policewomen and policemen, for judges and public prosecutors. Often prevention and protection of child

victims of domestic violence and sexual violence within the family are equated with prevention or protection of victims of sexual exploitation or child trafficking (compare reference in SR 297).

In regards to the prevention of child sex tourism, the initiative of the Ministry for Family Affairs and Youth within the realms of the Trilateral Campaign (Austria-Germany-Switzerland) is to be welcomed. Important is the continuation and where necessary the extension of the campaign in the coming years in order to anchor the reporting office for child sex tourism in the awareness of the population sustainably, as well as the continuation of the round-table concerning ethics in tourism as an exchange platform between government, the private sector and NGOs.

## RECOMMENDATIONS

- + Financial means for targeted prevention campaigns for different target groups, for example for affected people in various languages, for children and youths (especially in regards to internet/new media), for professional groups.
- + Preventative programs for juvenile offenders.
- + Continuation of the multi-sectoral prevention measures in regards to child sex tourism in cooperation and with participation of ministries, tourism industry and NGOs.
- + Multiannual promotion of the reporting office for child sex tourism through media-effective measures and evaluation (analysis of the complaint-reports and of website hits).

## IV. PROHIBITION OF CHILD TRAFFICKING, CHILD PORNOGRAPHY AND CHILD PROSTITUTION AND RELATED ISSUES

### Existing criminal laws and regulations

(CO-CRC: 52; CO-OPSC: 20-21; SR: 298-301)

### Child prostitution

Uniform regulations for all of Austria concerning exemption from punishment for children in prostitution still don't exist. Although in several provinces (like Vienna and Upper Austria) efforts are made not to impose administrative penalties on juvenile prostitutes there is a lack of unified regulation. Data on penalties for customers of juveniles offering sexual services are not accessible (compare chapter I, Data).

## Child trafficking

Although child victims of human trafficking definitely appear in the statistics of reports to the police there are rarely any convictions of offenders. According to information of the Federal Ministry of Internal Affairs many of the reported cases are not charged in accordance with Art 104a StGB by the public prosecutors but usually in accordance with other offences that can be more easily proved (for instance assault, coercion, various sexual offences or international prostitution-trafficking).

## Child pornography

The Austrian laws still do not meet the requirements of the Optional Protocol in regards to graphic child pornography.

The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse was ratified on the 25th of February 2011 as recommended in the Concluding Observations of the UN Committee on the Rights of the Child. However, the Council of Europe Convention on Cybercrime has not yet been ratified in contrast to the assertion in the State Report.

Furthermore, Art 207a Par 5 must be regarded as problematic since the production or possession of pornographic material involving emancipated children (above 14) is not punishable if they give their consent and if it is for their own use. As latest studies by international child protection organisations confirm, the pornographic peer-to-peer exploitation is increasingly becoming a problem. A combination of legal and social measures is necessary if offenders are victims at the same time or when the offenders themselves are children.

Apart from that, Art 64 (punishable offences abroad) was not adapted to the amendments in the 2nd Federal Law on Protection against Domestic Violence. Hence "access to" and "possession of" child pornography were not included. This is also not planned in the course of the implementation of the EU-Directive on combating the sexual abuse/ sexual exploitation of children.

## Legal aspects of adoption

(CO-OPSC: 22-23; SR 302-306) In regard to international adoptions, data and studies on possible cases that would have to be qualified as sale of children or child trafficking according to OPSC are non-existent.

## Jurisdiction and extradition

(CO-OPSC: 24-25; SR: 307-310) The Austrian Criminal Law is not in all aspects completely in correspondence with Article 4 of the Additional Protocol - especially in regard to Par (2) Subpar a). Currently Austrian authorities are, according to Art 64 StGB, only competent for sexual offences against children in a country outside Austria if two conditions in regard to the offender are fulfilled: namely nationality AND habitual residence in Austria. According to the Federal Ministry of Justice, amendments will be made in this area due to the changes resulting from the new EU Directive on combating the sexual abuse and the sexual exploitation of children as well as child pornography. Prospectively only nationality will be a criterion in future. However, experts suggest that either nationality OR the habitual residence should be used as a criterion for the applicability of Art 64.

## RECOMMENDATIONS

- + Extension of the applicability of Art 64 StGB to the offences "possession of" (Art 207a Par 3) and „access to“ (Art 207a Par 3a) child pornographic material
- + Criminalization of graphic child pornography.
- + Revision and evaluation of Art 207a Par 5, since this exception for children over 14 years is problematic.
- + Rapid implementation of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse .
- + Applicability of Art 64 (offences committed abroad) for offences according to OPSC, if the offender is either an Austrian citizen or has his habitual residence in Austria.

## V. PROTECTION OF THE RIGHTS OF VICTIMS

(CO-OPSC: 26-32; SR: 311-325)

### Qualified care and support

In the context of child trafficking it could not be achieved yet to develop a national coordination and cooperation mechanism (NRM), as intended in the NAP and also demanded in CO-OPSC: 30, a-c. Hence there is no Austria-wide standardized procedure for dealing with victims of child trafficking. Apart from the institution "Drehscheibe" in Vienna, mentioned in SR 316, there is no other institution in Austria dealing especially with victims of child trafficking. Currently there is also no possibility to place child victims in specially protected apartments; the youth welfare system only allows open institutions. These are often not suitable for providing enough protection for the child victims. LEFÖ-IBF, a care institution for adult women, offering protected apartments as well, also accepts girls from 15 years upward or 16 years of age in exceptional cases.

Furthermore there is a lack of sufficient resources and especially trained personnel in order to guarantee the social re-integration and the physical and psychological health of the victims as already demanded by the Committee in 2008. The capacities of the "Drehscheibe" to meet the special needs of the victims of child trafficking are limited.

So far no special emergency number for victims of child trafficking and sexual abuse has been established. The already existing private contact offices or report institutions "Rat auf Draht" (for all concerns of children) and "Stoptline" (reports on child pornography) are not financially secured.

### FEEDBACK (2011) of children and youths

In Summer 2010 Austrian adolescents visited the "Drehscheibe" in order to find out more about the needs of the children concerned there through participative observation. One situation unsettled the young researchers greatly and raised questions concerning the protection of victims of child trafficking: "There was a boy that was regularly picked up by two elder men. The boy was not particularly fond of these meetings it seemed. Although the men were prohibited to enter the "Drehscheibe" and the boy was told, he did not have to go with them, he was not forbidden to do so. What reasons would there have been not to keep him at the "Drehscheibe" for his own protection?"

### FEEDBACK (2011) of children and youths

Especially the lack of sufficient resources for native-speaking and psychological care is a problem for the youths. When a girl was accompanied to an examination at the hospital, she had to describe her rape several times. The communication between doctor and patient was difficult, there was no social worker present: "She was afraid to be left alone in public. She missed her family and apart from the trainee nobody spoke her language. A ten-minute conversation was in German with the trainee as a translator. [...] Three weeks had passed since her abuse and she had never spoken to a Rumanian speaking psychologist."

For persons affected by sexual exploitation in prostitution there are also still no comprehensive support and care concepts in Austria as this has been requested for years by the various experts. Additionally, experts criticize the lack of low-threshold care institutions for adolescent persons as well as prostitution of children being punishable, which hinders the sustainable support of these children.

### **Psycho-social and legal accompaniment in court cases**

As mentioned in SR 313, 314 and 320, according to the Austrian Code of Criminal Proceedings (Strafprozessordnung, StPO) there is a right to free psycho-social and legal accompaniment in court cases for victims. But in practice there are massive problems with the implementation of this right, especially for victims of child trafficking. Due to the lack of a NRM and hence of a specialized care concept with federal responsibility there is also a lack of a special mechanism in order to guarantee the access to comprehensive psychological care and psycho-social and legal accompaniment in court cases. For the psycho-social and legal accompaniment in court cases the consent of the Youth Welfare Department / Guardianship Court is necessary, whereby the psycho-social and legal accompaniment in court cases is dependent on whether the care institution finds it necessary. Although SR 314 und 315 refer to the basic legal possibility of psycho-social and legal accompaniment in court cases and compensation, this is rarely applied for child victims of human trafficking. A recent study on compensation possibilities for victims of human trafficking in Austria shows that psycho-social and legal accompaniment in court cases basically has a positive effect on the outcome of the proceedings and the compensation of the victim. Only 8 of the 71 investigated cases concern child victims and only three of those took advantage of a psycho-social and legal accompaniment in court cases. The figures prove that children only seldom receive psycho-social and legal accompaniment in court cases. As already stated in the last shadow report on the OPSC, there is still an obvious lack of specialized institutions in order to guarantee proceedings-rights for child victims in practice.

### **Questioning of children**

As described in SR 321-324 there are special laws and guidelines for the questioning of child victims and victims whose sexual integrity was violated. Nevertheless, some of the rights of victims and some guidelines only concern victims under 14 years of age such as the regulation of the guideline by-law, whereby children must be questioned by especially trained officers and where for instance the UN's Economic and Social Council (ECOSOC) resolution 2005/20 (CO-OPSC: 32) protects all child victims and witnesses of criminal offences under the age of 18. In addition to the guideline by-law in some provinces there are internal instructions or other initiatives for a more sensitized handling of children when questioning them. This is basically to be welcomed but should be compulsory for all children up until the age of 18.

### **Compensation possibilities**

Contrary to the statement in SR 315 that the rights of victims concerning compensation are met, the results of the study on compensation possibilities in the area of human trafficking, mentioned above, show that the possibilities in reality to receive adequate compensation are very small, especially for child victims. In practice there are major deficits for example: in the access to appropriate psycho-social and legal accompaniment in court cases (see above), in the securing and confiscation of assets of the accused persons, in the assessment of damages, in the instruction of the victims on their rights (this contrary to the statement in SR 319, that the respective rights of the victims are safeguarded by Art 10 StPO), generally because of the legal situation,

which makes claiming on the basis of suffered psychological consequences difficult, or through the regulation, that non-EU citizens only receive payments on the grounds of the Crime Victim Compensation Law (Verbrechensentschädigungsgesetz) if they are lawfully resident in Austria.

### **Residence permit and repatriation of victims**

Due to the lack of a NRM there is no Austria-wide valid coordinated system of repatriation on the basis of an individual case and risk analysis in accordance with the principle of "the best interests of the child". Solely the "Drehscheibe" (institution of Youth Welfare Vienna) has built up connections to a few countries where repatriation can be carried out in a regulated manner if appropriate care institutions exist. In these cases the children get handed over to their home countries as quickly as possible. A professional and requirement oriented care and repatriation of children, as mentioned in SR 316, is not carried out at all in most of the provinces.

In regard to the residence permit for child victims of human trafficking there is no data or evaluation. Identified victims of child trafficking from non-EU countries basically have the possibility to obtain a residence permit according to Art 69a NAG, if they are either unaccompanied children and hence under the custody of the Youth Welfare Department or in order to guarantee the criminal prosecution or the enforcement of claims in civil proceedings. Nevertheless, the duration of the residence permit is limited - either for the duration of the proceedings (even when the proceedings are terminated) or until the age of consent.

### **Non-Punishment**

Children that are involved in prostitution are still criminalized through administrative penalties, as is documented by reports of single persons affected and experts, as well as in one particular province even through official statistics. In at least five provinces children that are exploited through prostitution can be penalized with an administrative fine because of "illegal" prostitution if they are within the age of criminal responsibility (between 14 and 18). The fines range from 363,- Euros to 7.267,- Euros, for repeat offenders up to 14.535,- Euros. The amended Prostitution Law in Vienna at least provides that no fines are imposed by police when they are caught for the first time (mandatory counselling).

## RECOMMENDATIONS

- + Development and implementation of a NRM for victims of child trafficking.
- + Financial securing of existing institutions like "Drehscheibe" and extension of care facilities for victims of child trafficking, especially protected apartments in all of Austria.
- + Establishment and advancement of low-threshold, outreaching and gender-specific facilities for children involved in prostitution and for homeless adolescents.
- + Establishment and extension of specific psycho-social and legal accompaniment in court cases for child victims of human trafficking, including claims for compensation of victims.
- + Application of sensitized questioning for all children up to 18.
- + Abidance and implementation of EU-directives, for example through a temporary residence permit for victims of child trafficking, independent of their cooperation with the law enforcement authorities.
- + Abolition of the (administrative) liability of juvenile persons and establishment of counselling institutions addressed to this target group.

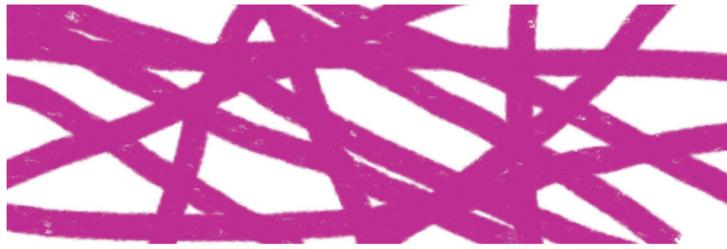
## VI. INTERNATIONAL AID AND COOPERATION

### International aid

(CO-OPSC: 33; SR: 326-328) The means of the Austrian Development Agency (ADA) were reduced dramatically. This will also have a negative effect on cooperation programs.

## RECOMMENDATIONS

- + Financing of awareness raising programs in regard to Roma populations with the goal of eliminating stigma, as well as programs for securing income for endangered groups, including Roma.
- + Fostering of communication within the EU with the victims' countries of origin affected by child trafficking; trends and strategies of the EU-countries within the relevant professional groups, especially police, judicial authorities, youth welfare, specialized care institutions.



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