



**Convention on the
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COMMITTEE ON THE RIGHTS OF THE CHILD

Twentieth session

SUMMARY RECORD OF THE 509th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 13 January 1999, at 10 a.m.

Chairperson: Miss MASON

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS OF STATES PARTIES (agenda item 4) (continued)

Initial report of Austria (CRC/C/11/Add.14; HRI/CORE/1/Add.8; CRC/C/A/AUSTRIA/1; CRC/C/Q/AUSTRIA/1; written replies of the Government of Austria to the questions raised in the list of issues) (continued)

1. At the invitation of the Chairperson, the members of the delegation of Austria resumed places at the Committee table.

2. Mrs. MOKHUANE asked why the maximum duration of placement of a minor in a psychiatric institution was longer for a consenting minor than for a minor who was committed against his will, and whether any study had been made into the impact on a child of being committed against his will.

3. She also wished to know what measures were taken to remove the perpetrator of violence in the family from the home and to care for the children who had been the victims of such violence.

4. If she had understood correctly, children born outside wedlock automatically acquired Austrian nationality if their mother was Austrian, but what happened when the mother was foreign and the father was Austrian?

5. Lastly, it would be useful to know whether a study had been made to assess the effectiveness of the programme for the prevention of violence within the community and the family.

6. Mr. RABAH drew attention to the fact that, in its written reply to item No. 6 of the list of issues, on the training of members of various professions on the subject of the provisions of the Convention, the Austrian Government had stated that no specific training programme had been established for judicial staff, but what about for members of other professions such as law enforcement officers, teachers and social workers?

7. Mr. SCHÜTZ (Austria), replying to questions raised at the previous meeting, said that Austria would shortly ratify the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption and that the procedure for that purpose was well advanced. Austria had decided upon that course because most of the children adopted in Austria were originally from Romania, which had decided to cooperate in adoption matters only with States parties to that Convention.

8. On the subject of young offenders, no complaints had been received to date regarding ill-treatment by minors held in establishments under the authority of the Ministry of Justice. The experts belonging to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment had visited Austria twice and had encountered no cases of violence against young offenders in detention.

9. Where wages were concerned, trade unions and employer associations concluded collective agreements by branch of activity which applied the principle of "equal pay for equal work". Persons who felt that that principle

had been infringed could complain to the bodies responsible for monitoring compliance with that principle. The fact that women on average received lower wages than those paid to men was due to the fact that, in general, they held less-skilled jobs.

10. In regard to the case of Carina Sylvester, the Austrian delegation was of the opinion that the Committee was not competent to consider a communication from a private individual and was therefore surprised that a Committee member should have read out at the previous meeting a letter written by the attorney of Carina Sylvester's father.

11. The CHAIRPERSON acknowledged that the Committee was not competent to receive communications from private individuals. It did not therefore intend to examine the case in question. However, the Committee was interested in the general issues raised by the case in regard to the implementation by the State party of articles 9, 10 and 11 of the Convention.

12. Mr. FULCI clarified that that was indeed the spirit in which he had raised the matter.

13. Mr. SCHÜTZ (Austria) said that, contrary to the allegations of the attorney in question, the mechanisms whereby the Austrian justice system could enforce its rulings in regard to child custody were effective in 99 per cent of cases. In such matters, judges held extensive discretionary powers and could, for instance, when necessary, call in the youth welfare services or the police in order to ensure that the child was returned to the parent to whom custody had been awarded while ensuring that such action was not deleterious to the child. Nonetheless, in some particularly complex cases, it was possible that the procedure followed might not comply fully with the provisions of the Convention.

14. In addition, it was erroneous to state, as alleged in the letter from the attorney, that the Austrian justice system established a direct link between the payment of child support and a parent's right to have contact with the child, or that first instance decisions regarding custody and visiting rights could be appealed again and again. The ruling of the court of first instance could not be altered or overturned unless the circumstances had changed significantly.

15. In all events, the Sylvester case was a strictly bilateral matter that involved only the United States of America and Austria, which were both parties to the Hague Convention on the Civil Aspects of International Child Abduction, and would be settled, if it was so requested by the United States, between their respective ministries of foreign affairs and of justice.

16. In the case in question, if the court order for the child's return had not been executed, it was because the mother had gone into hiding with her daughter and that the child had been untraceable for a very long period. Given the child's psychological state, it was legitimate to wonder whether it was in her interests to separate her from her mother when she had not seen her father for a year and a half.

17. Mr. STORMANN (Austria), replying to Mrs. Karp's question regarding a mother's right not to disclose the identity of her child's father, said that until 1989 it had been up to the youth welfare authority, as the legal guardian of children born out of wedlock, to establish paternity. A law had been adopted in 1989 which made the mother the legal guardian of the child and permitted her to establish paternity, with the assistance of the youth welfare authority. A study carried out in 1993 had concluded that the law, which was very flexible, had proved effective. In that year, 96.5 per cent of the some 20,000 children born out of wedlock had been recognized by their fathers. In only 800 cases had steps been taken to identify the fathers and such action had been successful in two thirds of the situations in question.

18. Mrs. Karp had also asked whether a child had the right to undergo medical treatment in a specialist facility without parental consent. The State could not oblige a child to undergo such treatment without the consent of its legal guardians unless the child's health and well-being were in jeopardy. In such cases, the justice system could entrust the youth welfare authorities with the task of deciding what treatment a child should undergo.

19. In regard to the periodic review of placement, he said that such placement could only take place in very specific circumstances. The mentally ill, as opposed to the mentally handicapped, could be committed to a psychiatric hospital or to the psychiatric service of a hospital with the consent of the legal guardians if the child was under 14 years and with the consent of the legal guardians and of the child if over 14 years. In the latter case, the maximum duration of hospitalization was six weeks, which could be extended to up to a maximum of 10 weeks. If the placement was non-voluntary, it could last up to three months and could be extended to a maximum of one year. If placement took place on a court order, it was up to the court periodically to review the placement order. If placement was decided with the consent of the legal guardians and with the assistance of the youth welfare authorities, then it was up to the authorities to decide whether placement should continue or be terminated. Whenever a child was placed in an institution (school, specialized institution) the authorities were required to monitor the quality of the institution on a regular basis. However, if placement occurred without the involvement of an official authority, for instance, when the legal guardians placed their child with neighbours, the legal guardians were responsible for monitoring the situation. One potentially negative consequence of the law on placement was that it could require the termination of placement when the patient still needed further treatment. The legislation governing placement had been regularly reviewed since its entry into force. A Ministry of Justice commission, composed of psychiatrists, judges, experts and civil servants, was responsible for carrying out an ongoing impact assessment and considering whether the problems encountered in specific cases necessitated amending legislation. Austria had experienced certain problems in connection with the placement of mentally disabled persons, although most cases involved adults. Legislation had indeed been in force for some time and should be reviewed. Efforts had been made to draft a bill covering both minors and adults, but it had proved difficult and the section dealing with adults had had to be abandoned in December 1998.

20. Replying to Mrs. Karp's question on the sterilization of children, he agreed that current legislation gave legal guardians the right to decide on

the sterilization of their minor children who were in care. However, criminal law provided that sterilization was authorized only on pressing medical grounds. Previously, experts had been of the opinion that it was damaging to a mentally ill woman to have the baby to which she had given birth taken away if she had been conscious of her pregnancy. Today, they were more inclined to believe that it was more harmful to sterilize a mentally ill woman who was able to understand the nature of pregnancy. Consequently, a new bill provided that the legal guardians could in future consent to the sterilization of their child for medical reasons, but not merely to avoid pregnancy. But that was not a total ban because sterilization sometimes occurred as the result of medically necessary action or treatment.

21. In regard to discrimination against children born out of wedlock, he confirmed that the acknowledgement of paternity by an Austrian citizen did not automatically confer Austrian citizenship. That rule had arisen out of the State's desire to forestall abuse. Austria had many foreigners and had decided that, in order to ensure that children were not acknowledged by "false fathers" in the sole interest of acquiring nationality, it was preferable that nationality should be granted after several years and not automatically.

22. Replying to a question by Ms. PALME, Mr. FILLER (Austria) stated that the intention was not to raise the legal age of sexual consent, which stood at 14 years, but merely to seek better to protect young people in sexual matters.

23. By way of explanation for the late submission of the initial report, he said that the review of all national legislation by independent experts had been an extremely long process. That had, however, been necessary in order to make decision makers aware of the Convention and had allowed attitudes to evolve in recent years. The delay should not therefore be interpreted as a lack of respect towards the Committee. Meanwhile, it was expected that the second periodic report would be ready for submission as planned in September 1999. A number of NGOs and institutions had already been invited to participate in its preparation, and drafting meetings would be organized during the summer of 1999.

24. The Austrian Government considered that it had met its obligation to establish a body responsible for monitoring the implementation of the Convention by setting up a group of independent experts, whose conclusions had been examined by Parliament; in addition, an interdisciplinary group of independent experts was to be established to evaluate the implementation of the Convention in the light of the Committee's recommendations. Meanwhile, the Committee's comments on that approach would be welcome.

25. He said that the Federal Children's and Adolescents' Ombudsman had been established in 1991. It had been a long and arduous task to achieve the establishment of ombudsmen in all the Länder and then to harmonize the working methods of the ombudsmen of the Länder with those of the Federal Ombudsman. Efforts to achieve that end were continuing. A survey had revealed that Austrian children were familiar with their rights, for instance the right to privacy and to respect for the secrecy of correspondence. In the event of a violation of that right, by parents for example, children could submit a complaint and inform the ombudsman.

26. Replying to Mrs. Karp's question on the resolution adopted in November 1998 by the European Union's Council of Ministers on the participation of young people, he said that it had not been easy to come up with even a basic text. The matter of funding had not been explicitly laid down in the resolution because Member States had been of the opinion that the matter should be decided by individual States, although it was clear that funding would have to be made available if the resolution was to be implemented. He welcomed the large number of telephone hotlines enabling children to contact NGOs, ombudsmen, religious organizations, etc., but considered it regrettable that they were not manned 24 hours a day. It might well be possible to improve the service by placing the different hotlines on a network. On the subject of violence, one study had been carried out in 1977, another in 1992 and a third was currently under way, 10 years after the entry into force of the law prohibiting violence within the family; the report would review all forms of violence and the different measures that existed to combat them. Lastly, nobody under the age of 18 could be called up for military service. While boys could voluntarily perform military service from the age of 17, they could under no circumstances be sent into combat in time of war. Girls could not under any circumstances enter the army before 18 years of age.

27. In reply to a question by Mr. FULCI, Mr. SCHÜTZ (Austria) estimated that at least 350,000 brochures - which featured the text of the Convention - had been directly distributed to citizens and all Austrian children had received a copy. A number of NGOs had also launched campaigns to publicize the Convention.

28. In regard to training, the federal authorities had, for instance, provided training for the staff responsible for implementing programmes to combat violence.

29. In regard to juvenile justice a specific law existed with the prime objective of avoiding prison sentences for young people.

30. He himself had taken part in seminars to familiarize judges and other judicial staff with the Convention.

31. In reply to a question on teacher training, Mrs. KISSER (Austria), said that the Ministry of Education and Cultural Affairs was divided into seven departments, one of which was specifically responsible for monitoring compliance with child rights. Information was disseminated in different ways, including brochures, the organization of seminars for teachers, parents and children, and on the Internet. A telephone line was manned from 8 a.m. to 8 p.m. for children to ask questions on any matters of concern.

32. The CHAIRPERSON invited the members to ask their last questions or to make their final comments.

33. Mr. KOLOSOV considered it regrettable that, while the overall situation was positive, the number of child suicides should be increasing constantly. Had studies been conducted into that alarming phenomenon? What preventive measures did the authorities intend to take?

34. Mrs. KARP thanked the members of the delegation for their informative replies. Referring to one such reply, she was of the view that children should be permitted to consult a doctor without prior parental consent and that the authorities should consider introducing a system which established a fair balance between the rights of parents and the rights of children. Certain other questions, however, had not been dealt with. For instance, she would like to have some examples of court rulings based on the provisions of the Convention. Was provision made for child participation in institutions other than schools (institutions for handicapped children, for example)? Did a guarantee exist of equitable access to protection services for all children who had been the victims of violence? In that connection, she suggested that children who used the telephone hotline that had been set up for them should be channelled directly to the reception services closest to their home. She asked whether special programmes had been introduced with a view to teaching children how to participate in running their school or the institution in which they lived. She wondered what obstacles had been encountered by the bill to make the age of consent for homosexual relations the same for boys as for girls. Did a mechanism exist in placement institutions for periodically reviewing the justification for children's presence there and for transferring them, where appropriate, to another reception structure? Given that statistics indicated that only 30 per cent of disabled children attended ordinary schools, she asked whether measures had been taken to improve that proportion. On the subject of sex education at school, she asked whether it had been demonstrated that teachers were best placed to introduce the subject to their pupils and whether it would not be better to entrust that task to specialist teachers. What subjects were discussed by student representatives with the officials of the Ministries of Education and Cultural Affairs?

35. The Committee would be interested in receiving statistics on the number of children in prison and in pre-trial custody, the nature of the offences committed and the corresponding sentences. The delegation had stated that there were two juvenile courts in the entire country and she wondered whether the judicial staff of the other courts included judges with special training in the area of juvenile justice. Had the Austrian authorities considered introducing the family group conference system or "family council" in place of traditional sentences? Such a system had been adopted in many Western countries, with very good results, since it allowed young offenders to be monitored within the family and made parents responsible for them. The Committee also wished to know how the rights of offenders under 14 years of age were guaranteed and whether they were represented in the judicial proceedings involving them, even if the case did not go to court.

36. Did the recent changes in legislation which had made prostitution a punishable offence include penalties for the clients of prostitutes under the age of 18 years? Such a measure was all the more necessary since the age of sexual consent was 14 years for girls. Why was the fact of giving children access to premises in which they could engage in prostitution considered merely as a misdemeanour and not as an offence? Was there any ban on disseminating the addresses of child prostitutes? Did any programme exist for children in the nature of the programme intended primarily to protect the victims of the traffic in persons that had been established under the auspices

of the Ministry of the Interior? What solution had been adopted by the authorities to rehabilitate victims in preference to expelling them immediately to their country of origin where they would be in danger?

37. Mrs. OUEDRAOGO drew attention to the reference in the report to the financial assistance that was granted to university students with low-income parents. Was such assistance available to needy primary and secondary school children? Paragraph 386 of the report stated that, under the Government's "austerity plan", parents were to be asked to make a financial contribution to cover the cost of textbooks. It would be interesting to know whether low-income children would be exempted from paying that contribution. In regard to human rights education, it had been stated that the different provisions of the Convention were taught separately and that children were perhaps not familiar with the Convention as a whole. It would therefore be desirable to recommend that the provisions should be placed back in their context so as to offer a global understanding of the Convention and to convey its multidisciplinary nature.

38. She congratulated the Austrian delegation on its report which she had found to be easy to consult, clear and comprehensive. She had taken note of the considerable progress that had been achieved by the State party and urged it to continue on that course. She would however like it to examine the reservations it had entered, with a view to withdrawing them. She also stressed that the State party should achieve closer coordination in the implementation of the Convention which did not appear to be viewed from a holistic angle.

39. Ms. PALME considered that the 1.4 fertility rate in Austria was far too low for a modern society. Given the substantial social benefits granted to parents, it was permissible to wonder as to the real reason why families had so few children. Perhaps the general climate was not as flexible or generous as it was made out to be. The report contained no statistics on breastfeeding or on the number of women who stayed at home to raise their children. Parental leave appeared to be very short (only a few months). At all events, a low fertility rate indicated the existence of difficulties in raising children and it would be interesting to receive additional information on the subject.

40. It would also be helpful to learn more about the follow-up devoted to the Convention, at the level both of the Länder and of the Federation as a whole. That was particularly important for monitoring the situation of disabled children or children from socially or psychologically vulnerable families belonging to particular minorities, such as the Roma ethnic group. It would also be interesting to have more comprehensive information on the follow-up to the World Congress against the Commercial Sexual Exploitation of Children and to know whether an action plan had been launched in that connection. The work that had been done for children in conflict with the law was excellent. Nonetheless, 200 child incarcerations per year was an excessively high number. In preference to incarceration, children should be provided with some sort of support system when they came into conflict with the law.

41. Mrs. MOKHUANE congratulated the State party on its mother and child health-care system, which offered virtually universal coverage; however, what was done for the 4 per cent of mothers who were not covered by the system? She requested more information on the situation of children with AIDS. In regard to the pilot study on sex education provided in partnership with parents, which was to be implemented nationally, what was the reaction of the parents involved? What were children's feelings on that subject and what criteria was the decision to implement the experiment at the national level based on? While schooling was obligatory, where the drop-out rate was concerned, no statistical break-down by sex was available. How was article 29 of the Convention implemented in schools, given the xenophobia that clearly existed in Austria? Since children were permitted to work from the age of 13, was there not a risk that they might be exposed to pornography in certain occupational environments, particularly the press? She would be interested to know what was done to protect children in such situations. She would also like to know whether the principle of the right to leisure and recreation (article 31 of the Convention) was respected as fully in towns as in the country.

42. Mr. FULCI noted that in 1995 Austria had signed the 1993 Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption, but had not yet ratified it. It was stated in paragraph 252 of the report that Austria had signed a number of bilateral agreements in that sphere and he asked what obstacles had been encountered at the multilateral level.

43. The State party had been very frank in admitting, in paragraph 373 of its report, that a large number of children in Austria lived on the edge of poverty, confirming a trend that was not confined to developing countries but affected even the most prosperous nations. In the view of the Committee, it was essential that any reform of the welfare state should not lose sight of the protection of the best interests of the child. According to data provided by a number of NGOs, it would appear that 200,000 young people in Austria lived in poverty or on the edge of poverty, 20 per cent of whom were under 15 years of age. If those figures were accurate, he invited the Austrian delegation to give an explanation.

44. In the light of paragraph 491 of the report which stated that the protection of children and adolescents from economic exploitation and work which could impair their health and development was ensured by international agreements, as well as by a series of domestic laws and regulations, it might be asked why Austria had not yet acceded to ILO Convention No. 138 on the minimum age of admission to employment.

45. An NGO had informed the Committee that some 50 under-age refugees were being held in Austria pending expulsion and that they might remain in prison for up to six months without having committed or been found guilty of any offence. What was the minimum age at which a minor could be incarcerated in Austria?

46. Mrs. KARP expressed the hope that the State party would withdraw its reservations to the Convention. She commended the stance that had been adopted regarding corporal punishment within the family and wondered whether

Austria would be prepared to share its experience with other countries which were somewhat reluctant to introduce such progressive legislation in that sphere. In regard to the independent body that had been established to monitor the implementation of the Convention, it might be of interest to ensure that children were included and that their point of view was taken into consideration. She had received the impression from the discussions that the State party had spared no effort in implementing the Convention as thoroughly as possible; however, it was a continuous process where there was always room for improvement and she hoped that Austria's current efforts would not flag. She likewise hoped that the delegation's discussions with the Committee would be widely publicized.

47. Mr. RABAH asked Mr. Siedler, the young member of the Austrian delegation, whether his numerous activities left him time for leisure and recreation. How did Austrian children spend their free time and were government programmes for school-age children in that sphere adequate?

48. The CHAIRPERSON, summarizing the discussion on the initial report of Austria, said that it was one of the best that the Committee had ever examined. That was no doubt due to the healthy economic climate in Austria and to the fact that the report had been drawn up in accordance with the Committee's guidelines and provided much useful information. However, given that nothing was perfect and human nature being what it was, the members of the Committee would always find something to criticize. For instance, one member had considered it regrettable that the Austrian delegation had not included a representative of the executive branch. She herself agreed but acknowledged that the members of the delegation had performed their task in an exceptionally competent manner. She drew attention to comments regarding the reservations to the Convention and its hierarchical position in the Austrian legal order. While the ombudsman system as it stood was commendable, it might be made more consistent by placing all ombudsmen on an equal footing. Likewise, it might be desirable to allocate the necessary resources to the federal coordination mechanism in order to ensure that it could satisfactorily carry out the tasks ensuing from the implementation of the Convention. Concerns had also been expressed regarding the age of marriage: although it was still higher than in some other countries, nonetheless it might be expected to have repercussions not only in terms of education and health but also in regard to the responsibilities that must be assumed by young couples. Considerable attention had also been devoted to children's access to medical consultations. The Committee acknowledged that the general principles of the Convention were respected but wished to make it clear that it was concerned not so much by social considerations, i.e. the well-being of the child, but by the manner in which all aspects of a child's life were protected and by the matter of the child as a subject of law. The question of discrimination had barely been touched on, but it should be borne in mind that some minorities, for instance the Roma and the Sinti ethnic groups, were severely disadvantaged in European societies, although the corresponding authorities might deny that was so. Austria was no exception and should be particularly attentive to the matter of integrating those minorities. Another cause for concern was the question of general access to information where there was a risk that children might be exposed to pornography. That issue was connected with the age of sexual consent and the risk that young people aged 14 to 18 might become

involved in pornographic activities. She urged the State party not to rest on its laurels and not to lose sight of the fact that the protection of child rights was an ongoing process requiring regular reporting to the Committee.

49. Mr. SCHÜTZ (Austria) thanked the members of the Committee for the spirit of understanding with which they had examined Austria's report and assured them that he had given the closest attention to all their comments. He thanked the Chairperson for her concluding observations and words of encouragement to his delegation, which was fully committed to continuing its work to improve and promote the rights of the child in Austria. He wished to emphasize that the Convention was implemented on the basis of its substance, so that the matter of its position in the hierarchical order of legal texts was of secondary importance. The Committee's observations regarding the disparity in the legal age of marriage for girls and for boys would be taken into account. Austria had already offered to share with other States its experience in the abolition of corporal punishment and he had personally participated in bilateral seminars on that subject. Owing to shortage of time, the Austrian delegation suggested that it might reply in writing to the other questions raised by the members of the Committee before it adopted its concluding observations.

50. Mr. SIEDLER (Austria) said that he considered the situation of Austrian children in regard to leisure and recreation to be satisfactory. Although his student representation activities occupied a lot of his time, he viewed them as a hobby rather than work. He said that schools had councils composed of an equal representation of parents, teachers and pupils and chaired by the school director which served as discussion groups and in which pupils felt themselves to be on an equal footing with adults. More importance should, however, be given to political education; discussions on that subject were being held with the Ministry of Education and Cultural Affairs.

The meeting rose at 1.05 p.m.