



Convention on the Rights of the Child

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COMMITTEE ON THE RIGHTS OF THE CHILD

Thirty-eighth session

SUMMARY RECORD OF THE 1008th MEETING

Held at the Palais Wilson, Geneva,
on Friday, 14 January 2005, at 3 p.m.

Chairperson: Mr. DOEK

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS OF STATES PARTIES (continued)

Second periodic report of Austria (continued) (CRC/C/83/Add.8; CRC/C/Q/AUT/2; CRC/C/RESP/75; HRI/CORE/1/Add.8)

1. At the invitation of the Chairperson, Ms. Buchmann, Ms. Czech, Ms. Ellison-Kramer, Mr. Grosz, Mr. Haupt, Ms. Orthofer-Samhaber, Mr. Petritsch, Ms. Reinprecht, Mr. Ruhs, Mr. Ruscher, Mr. Satzinger, Ms. Schittenhelm, Mr. Schmidpeter, Mr. Schütz, Ms. Staffe, Mr. Tury, Mr. Winkler and Ms. Wörgötter (Austria) resumed places at the Committee table.
2. Ms. ANDERSON asked why the number of convictions for sexual abuse of minors was so low. It would be useful to know what kind of assistance, particularly schooling, was available to foreign children detained by the police. The reporting State should explain why the courts sentenced minors to imprisonment instead of applying alternative penalties.
3. Mr. SCHÜTZ (Austria) said that adoptions were conducted by means of a contract signed by the adoptive parents and the child's legal representative. When applications for approval of such contracts were submitted to a court, judges were obliged to hear children aged 10 or over. Children under 10 could be heard, at the discretion of the judge, through a social worker or a court expert. If the adopted child was foreign, the relevant legislation from the child's country of origin was applied cumulatively, in accordance with international private law.
4. Few adoptions had taken place under the 1993 Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption. Although no data was currently available on the number of such adoptions, regional authorities would be able to provide that information. There were no statistics on other adoptions of foreign children. Austria had made a reservation to the European Convention on the Adoption of Children because the Convention contradicted Austrian legislation on inheritance law.
5. Children were considered to be capable of giving their own consent for medical treatment from the age of 14. However, that was merely a guideline; the decisive factor was the individual child's capacity to understand the treatment and its consequences.
6. Mothers were automatically granted custody of children born out of wedlock. If the parents agreed, they could apply to the courts for joint custody, which would be granted unless it was considered not to be in the best interests of the child.
7. Ms. ORTIZ asked why fathers were not automatically given custody rights, since that would encourage more fathers to take responsibility for their children.
8. Mr. SCHÜTZ (Austria) said that legislators were of the view that it was in the best interests of the child to avoid joint custody unless the parents were in agreement.

9. Children placed in the so-called “baby nests” were given a first name and a family name by the regional government in conjunction with the youth welfare authority, which assumed legal representation of such children. If a mother expressed a wish for her baby to be given certain names, her wish was taken into consideration.
10. Mr. CITARELLA asked whether there was any arrangement for telling such children who their mothers were, if they asked for such information.
11. Mr. SCHÜTZ (Austria) said that such information was kept on record and was provided to children who requested it.
12. Ms. OUEDGRAOGO asked which names appeared on the birth certificate in the case of a child left in a baby nest.
13. Mr. SCHÜTZ (Austria) said that the only name recorded on the birth certificate was that of the child.
14. The Convention had been directly invoked before a court of appeal in a case involving a child who had applied for his father to be given visitation rights. The case had been successful.
15. Several Supreme Court decisions had taken custody away from parents who used corporal punishment against their children, or who allowed another adult to do so. The Government had implemented measures to increase awareness of the need to raise children without using violence. In the Council of Europe, Austria was one of the main proponents of a ban on corporal punishment.
16. Ms. AL-THANI said that, according to some reports, many children were unaware of the fact that they had the right not to be subjected to corporal punishment.
17. Mr. SCHÜTZ (Austria) said that every effort was being made to disseminate information on the Convention, particularly the right of the child not to be subjected to corporal punishment.
18. Ms. WÖRGÖTTER (Austria) said that, regardless of the genders of the parties involved, sexual contact with an adolescent between the ages of 14 and 16 constituted a crime if the adolescent was incapable of understanding the consequences of the act. If it could be proved that the older person was exploiting the younger one, the former was guilty of sexual abuse. Sexual contact with a minor under 18 was a criminal offence if payment was involved. An amendment introduced in 2004 had criminalized the pornographic portrayal of all minors up to the age of 18.
19. Although there were no specific provisions concerning sexual abuse by members of the clergy, all abuses by people in positions of authority were covered by the law. In 2005, the Criminal Code would be amended in order to ensure that sexual abuse by members of the clergy could not be covered up. The Criminal Code would also be amended in 2005 to include specific provisions on victims’ rights. In particular, victims would be informed when the perpetrators of crimes against them were released from prison, and would be provided with appropriate care and support.
20. Since legislation banning sex tourism had entered into force only in May 2004, no statistics were available on prosecutions resulting from that legislation.

21. Sentences for juvenile offenders were equivalent to half the sentence for adults who committed similar offences. Minors could not be given life sentences. Minors aged 16 or above received sentences of between 1 and 15 years for crimes that carried life sentences for adults; below the age of 16, minors were given sentences of between 1 and 10 years for such crimes.
22. The juvenile courts had been closed down because they had been unwieldy and had posed many logistical and organizational problems. Cases involving minors were dealt with in special divisions of the ordinary courts by juvenile judges and prosecutors. Special legislation for dealing with juvenile delinquents had been enacted.
23. Mr. CITARELLA requested information on the composition of the courts. He asked whether social workers and other persons concerned with children could be present at court hearings.
24. Ms. SMITH wished to know the maximum sentence that could be imposed on minors.
25. Mr. FILALI enquired whether a person imprisoned for committing a sexual offence against a minor could be eligible for early release. If so, he wondered whether the offender was assigned to a special residence. He asked what measures were taken to protect the victim and potential victims.
26. Ms. WÖRGÖTTER (Austria) said that the maximum sentence that could be handed down for minors over 16 years of age was 15 years' imprisonment; the maximum sentence for minors under 16 was 10 years.
27. No changes had been made to the composition of the courts since the juvenile courts had been closed down. As in the past, juvenile offenders received judicial assistance.
28. Like all other offenders, sex offenders were eligible for suspended or conditional sentences. Police surveillance could be ordered in the case of particularly dangerous sex offenders who had been released from prison. Such persons could be assigned to a particular residence, and psychotherapy could be ordered.
29. Prisons offered psychiatric assistance for juveniles. Minors who became violent were no longer placed in solitary confinement but were sent to a psychiatrist, who ordered the appropriate treatment. She was aware of only one case in which a minor had been placed in solitary confinement. By law, children in prisons were separated from adults. Vienna had a special prison for juveniles; elsewhere, children were held in separate sections of prisons.
30. The CHAIRPERSON asked whether a 16-year-old who had been sentenced to six years' imprisonment was transferred to a prison for adults once he or she reached the age of majority.
31. Ms. WÖRGÖTTER (Austria) said that minors remained in juvenile prison even if they came of age during their prison term, and they continued to receive special care and assistance.
32. Provisions on trafficking in human beings had been introduced in the Criminal Code in order to bring it into line with the relevant international instruments. The provisions dealt with sexual exploitation, exploitation of a person's labour, and trafficking in human organs.

33. Ms. SMITH said that the number of out-of-court settlements in cases involving children seemed very low. She wondered what Austria was doing to promote such settlements.
34. The Committee had received reports of poor prison conditions in Austria. She asked whether the Government was satisfied with its system of juvenile justice.
35. Ms. WÖRGÖTTER (Austria) said that the Austrian Government was quite satisfied with its juvenile justice system. Every effort was made to ensure that incarcerated minors received the best possible care. While prisons for adults were overcrowded, juvenile prisons were not. Incarcerated minors benefited from the services of social workers and psychiatrists. Vocational training, computer and language courses and other forms of training were offered. Foreign detainees could take courses in German. There were various forms of recreational and sports activities. In accordance with a suggestion by the European Committee for the Prevention of Torture, such educational and recreational activities had been made available until 6 p.m., three hours longer than previously.
36. She agreed that extrajudicial penalties were a better alternative to imprisonment, particularly for minor offences. The public prosecutor's office made full use of that possibility.
37. Mr. FILALI asked whether prison rules were made available in the languages of minors from other countries upon their imprisonment.
38. Ms. WÖRGÖTTER (Austria) said that, as far as possible, foreign prisoners were provided with such information in their own language. Prison social workers endeavoured to cover as many languages as they could. Special workshops were available to foreign juveniles if their poor knowledge of German made it impossible for them to keep up in the regular facilities.
39. The decision to place a juvenile in custody was taken by a judge. In eastern Austria, there were many juvenile offenders from Bulgaria and Romania, who were suspected of involvement in financial crimes and had been placed in custody because they might try to flee the country. Many juvenile offenders came from sub-Saharan Africa; they had often been implicated in drug trafficking.
40. Unfortunately, the delegation had been unable to obtain the requested figures on accusations and convictions. Acquittals were not included in such data. She would submit that information the following week in writing.
41. The CHAIRPERSON said that, since only 10 per cent of cases involving some 2,700 juveniles had been settled out of court, he wished to know what had been the outcome of the remaining 90 per cent. He hoped that not every case had to be prosecuted and brought before the courts. He wondered why the prosecutor did not have discretionary power to decide whether or not to prosecute.
42. Ms. WÖRGÖTTER (Austria) said that, in accordance with the principle of legality, every case reported had to be filed with the public prosecutor. While the public prosecutor could take the circumstances of each case into account, he could not simply decide that the matter was not serious and could be dropped. Out-of-court settlements could be reached only if an alternative measure was proposed.

43. Female genital mutilation, which had been explicitly outlawed in 2001, was subject to criminal prosecution and punishment. There had not been many such cases in Austria.
44. The CHAIRPERSON asked whether parents who arranged for the genital mutilation of their daughter in another country and then returned to Austria, could be prosecuted under Austrian law.
45. Ms. AL-THANI asked whether any practical measures had been taken to prevent female genital mutilation, such as awareness-raising among groups that were likely to perform such practices in Austria or elsewhere.
46. Ms. SMITH said that, if no law prosecuted female genital mutilation performed abroad, she hoped that Austria would consider introducing one. All the Scandinavian countries had such legislation. She was surprised to hear that the practice was uncommon in Austria.
47. Ms. WÖRGÖTTER (Austria) said that, while female genital mutilation performed abroad could not be prosecuted in Austria, the Government sought to draw the attention of judges, public prosecutors and officials in the Ministry of Justice to the problem as part of their training in criminal law. She would convey the Committee's comments and proposals for changing legislation on that question to her Government.
48. Mr. HAUPT (Austria) said that any health-care worker found to have been involved in female genital mutilation, whether in Austria or abroad, was subject to disciplinary action, which could include being banned from future employment in the profession. The Ministry of Women's Affairs supported domestic and international women's organizations that campaigned against the practice of female genital mutilation. The Government was seeking to raise awareness among the relevant religious communities and had also provided brochures and other information to women's groups active in the rural areas of the most affected countries. He welcomed the Committee's suggestion that the practice of female genital mutilation should be punishable even when it was performed abroad.
49. Mr. RUHS (Austria) said that a brochure dealing with the question of female genital mutilation had been published by the Austrian Family Planning Association and distributed in schools.
50. The Federal Government was responsible for most matters dealing with public school education. Compulsory education started at the age of 6 and lasted for nine years. The Federal Government established school regulations, the curriculum, the length of the school year and the number of class hours per day, and decided which schools should receive financial support. It also laid down requirements for establishing private schools and hiring teachers, and decided whether and to what extent such schools were eligible for federal subsidies. The regional governments were responsible for organizational matters and the hiring of teachers. In some cases, the regional governments had ceded responsibility for education to the Federal Government.
51. Children's participation was ensured through a comprehensive system of pupil representation. Regional and federal pupil representative bodies defended children's interests vis-à-vis the respective regional education authorities and the Ministry of Education. Children's

views were heard on such substantive issues as the extension of school hours, the construction of schools or the appointment of a new headmaster. The federal pupil representative body was competent to propose legislative measures related to schooling.

52. The Convention on the Rights of the Child and other human rights-related issues were included in political education curricula. The Convention had also been incorporated into training curricula for kindergarten teachers and teachers working with children with special needs. In the future, all teacher training curricula would contain a direct reference to the Convention on the Rights of the Child.

53. The term “unsuitability for schooling” contained in paragraph 5 of the Compulsory School Attendance Act referred to children who, for physical or psychological reasons, were unable to attend school regularly. Pursuant to paragraph 5 of the Act, those children were exempted from compulsory attendance. While the term was old-fashioned and would soon be replaced, the content of the provision would be retained.

54. The issue of catering to schoolchildren’s special dietary needs did not arise in most Austrian schools, since classes ended at lunchtime and no school meals were served. In full-time schools that served meals, a child’s special dietary needs could be accommodated in consultation with the headmaster and at the parents’ expense. In cases where children were unable to handle or consume certain foods for religious reasons, account was taken of their needs.

55. A maximum of 30 pupils were admitted per class. An increase of up to 20 per cent was permissible in cases where a small number of children would otherwise be refused entry into the school of their choice. The average number of pupils per class was 20 for primary schools and 23.8 for secondary schools. Cost-cutting measures had not affected the teacher-pupil ratio, which was 1:14 in primary schools and 1:10 in secondary schools.

56. Pre-primary schools had been largely phased out. The so-called “open school entry phase” enabled younger children, who previously would have been sent to pre-primary schools, to enter the first year of primary school. Special tutoring was provided to facilitate the integration of those children.

57. In the 2002/03 school year, 15.2 per cent of children enrolled in Austrian schools had been non-native speakers of German. Those children received additional tutoring and were entitled to instruction in their mother tongue.

58. Support services for children with social integration problems were similar to those offered for children with disabilities. Children with disabilities who attended regular schools received professional integration assistance. Special provisions had been made to allow for the extension of teaching time to reach the teaching objective. Integrated vocational training for children with special needs had been introduced; such training included extended apprenticeships or partial qualification in cases where the exercise of a particular trade was not compatible with certain disabilities. In some cases, children might be exempted from compulsory vocational school attendance where such schooling was part of an apprenticeship.

59. There were 15 pilot projects for gifted children; the Austrian Centre for the Study of Giftedness in Salzburg was particularly active in that area. Six hundred teachers in Austria held diplomas in gifted education from the European Council for Higher Ability.

60. Mr. HAUPT (Austria) said that a mother-child pass scheme had been introduced to facilitate the early recognition and treatment of metabolic diseases, psychological disturbances and other health impairments. In order to prevent obesity in children, efforts were being made to promote healthy foods and exercise in schools and kindergartens. Kindergarten staff were trained in health-related matters, and sports were promoted at school. School doctors were required to attend conferences on childhood obesity. At the beginning of each school year, children underwent a general medical examination.

61. Counselling services were provided for children with special needs and for children at risk for alcohol and other substance abuse. Specially trained staff assisted in those children's rehabilitation and reintegration into society. Schools were drug-free zones and the school premises and routes to school were under strict surveillance. Regular talks in schools were held to alert children and parents to the danger of drug and alcohol consumption. Recently enacted tobacco legislation established a non-smoking policy for all public buildings; all restaurants were required to have non-smoking areas. Through its drug coordination centre, the Ministry of Health was responsible for taking measures to combat drug abuse at the federal level. Regulating the new "designer drugs" was difficult, since some of those drugs were also used for medical purposes. The Government had therefore sought to control the availability of such drugs. Austria was committed to international cooperation in combating drug abuse, and experience gained from the cooperation with the Czech Republic in combating child pornography had proved useful in that respect.

62. Pursuant to legislation enacted on 1 January 2005, new employees must be reported to the social insurance institutions within the first 24 hours. Austria had ratified International Labour Organization (ILO) Convention No. 138 concerning Minimum Age for Admission to Employment. Accordingly, the employment of children under the age of 12 was strictly prohibited.

63. Measures had been taken to facilitate integrated vocational training for children with disabilities, including job coaching, the employment of specially trained teachers, vocational training assistance, the extension of apprenticeships by a maximum of three years, and partial qualifications. A pilot project had been implemented to set up residential homes for children with disabilities who in the past had been in nursing homes for the elderly. Thus far, the establishment of such homes was mainly limited to major Austrian cities.

64. Some 600 units had been set up in State hospitals and university clinics to care for persons with psychosomatic problems, including eating disorders. The Government also planned to construct a number of clinics that catered exclusively to persons with psychosomatic disorders.

65. Some 120,000 persons residing in Austria did not have health insurance coverage; between 8,000 and 10,000 of them were undocumented migrants, including some 3,000 to 4,000 children. Everyone was entitled to emergency medical care; for uninsured persons, the costs of treatment were absorbed by the respective regional authorities. While there were no

known cases of uninsured persons being refused health care, the Government was concerned at reports of undocumented migrants who had refrained from seeking treatment for fear of deportation.

66. Austria's suicide prevention strategy was based on close cooperation between the police and accident ambulances. For the purpose of identifying persons at risk, special telephone hotlines had been set up. Psychiatric clinics and day-care centres offered counselling and treatment in the aftermath of a suicide attempt.

67. Mr. CITARELLA, Country Rapporteur, said that the consideration of Austria's second periodic report (CRC/C/83/Add.8) had shown that the Government was making considerable efforts to improve the situation of children. Nevertheless, there was still room for improvement. Austria should give further consideration to withdrawing its reservations to the Convention. Concerted action should be taken to ensure a better knowledge of the Convention among professionals who worked with children. The collection of disaggregated data was imperative. Alleged cases of discrimination and xenophobia should be dealt with properly. There were inconsistencies in the definition of the child in the different regions, in particular regarding the minimum age for sexual intercourse. Equal access to education must be ensured. The juvenile justice system must be brought into line with the provisions of the Convention, particularly through the establishment of special courts dealing with children's affairs. He regretted that the Juvenile Justice Court in Vienna had been dissolved.

68. Mr. HAUPT (Austria) said that the dissolution of the Juvenile Justice Court in Vienna was not regarded as a setback for juvenile justice. On the contrary, the juvenile courts operating at the regional level ensured a swifter and more effective response to juvenile offences. Owing to time constraints, it had not been possible to answer all the questions raised, particularly those under the competence of the Interior Ministry. The Government would do its utmost to follow up the Committee's suggestions.

The meeting was suspended at 5.10 p.m. and resumed at 5.15 p.m.

Initial report of Austria under the Optional Protocol on the involvement of children in armed conflict (CRC/C/OPAC/AUT/1)

69. Mr. CITARELLA, Country Rapporteur, said that, according to paragraph 40 of the report (CRC/C/OPAC/AUT/1), the Austrian armed forces did not operate any schools, yet paragraph 41 referred to a military-led boarding school under the supervision of the Ministry of Defence. He asked whether the school was also under the supervision of the Ministry of Education. He also enquired whether voluntary recruits accepted as of the age of 17 were subject to the provisions of the Military Penal Code in the same way as conscripts, and what sanctions were applicable to them in cases of desertion and other offences. He requested clarification of paragraph 57 of the National Defence Act 2001 with respect to the legal capacity of voluntary recruits under the age of 18.

70. The CHAIRPERSON requested information on Austria's participation in United Nations peacekeeping activities. According to paragraph 9 of the report, the National Defence Act gave a restrictive interpretation of the term "direct participation in hostilities", which meant that minors could be deployed in dangerous conflict areas to carry out other military duties. He

asked whether the Ministry of Defence issued any specific regulations or instructions for commanders in the field concerning the types of duties that under-age recruits were allowed to perform.

71. Mr. FILALI wished to know the number of volunteer recruits belonging to minority groups in Austria. He enquired whether the military and civilian staff of the military boarding school were treated differently. He asked whether, under military law, minors had the same guarantees as under civil law.

72. Ms. OUEDRAOGO asked the delegation to comment on reports received of young recruits stationed at border posts who had attempted suicide.

73. Mr. SATZINGER (Austria) said that the military boarding school was not a military academy and the students who attended it were not subject to military discipline. The school was supervised by the Ministry of Education as well as by the Ministry of Defence and its curriculum was similar to that of other secondary schools in Austria. The school had been established during the Austro-Hungarian empire for children of officers and thus had a certain tradition. However, owing to constraints on the defence budget, there was currently some debate as to whether the school should remain open.

74. There was no military justice system as such in Austria; there were no military courts or military chambers in the criminal and civil courts. Minors who committed offences appeared before the juvenile courts, and conflicted minors received half the usual penalty or sentence under the relevant civil or criminal legislation.

75. The age of majority was 18, and no exemption was made for voluntary recruits under that age, for whom parental consent was still required. While the armed forces did not encourage the recruitment of minors, some 17-year-olds who had completed their education wished to begin their compulsory military service as soon as possible.

76. Owing to its neutral status, Austria had more than 40 years of United Nations peacekeeping experience and its troops had been deployed in operations throughout the world. Since peacekeeping operations entailed the risk of hostilities, Austrian troops deployed abroad must be over the age of 18. Military regulations stipulated that minors should not be sent to conflict areas; when that was not possible, their military service was suspended until they reached the age of majority.

77. No data was available on the number of recruits belonging to ethnic minorities. The civilian staff of the military boarding school was not subject to any military supervision; their working conditions were the same as those of ordinary employees anywhere else.

78. One of the tasks of the armed forces was to assist the civil authorities, and the Ministry of the Interior sometimes requested help in border control. Since involvement in hostilities was not expected in such assignments, the services of volunteers were used. While there had been suicide attempts among young soldiers on border duty, he could not say with certainty whether only minors had been involved

79. Ms. VUKOVIC-SAHOVIC enquired whether it was possible for 17-year-olds who were conscientious objectors to volunteer for alternative civil service.

80. Mr. FILALI requested the delegation to explain how military offences were dealt with.

81. Mr. SATZINGER (Austria) said that, following the requisite medical examinations, 17-year-olds could apply to do alternative civil service and register as conscientious objectors. Military offences were referred by military commanders to the public prosecutor's office, which dealt with them under the same civil and criminal procedures as other offences.

82. The CHAIRPERSON thanked the delegation for its explanations, which indicated that Austria was complying with its obligations under the Optional Protocol to the Convention on the involvement of children in armed conflict.

The meeting rose at 5.55 p.m.