



# Convention on the Rights of the Child

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## Committee on the Rights of the Child Eighty-third session

### Summary record of the 2449th meeting

Held at the Palais Wilson, Geneva, on Friday, 31 January 2020, at 10 a.m.

*Chair:* Mr. Pedernera Reyna

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*The meeting was called to order at 10 a.m.*

**Consideration of reports of States parties** (*continued*)

*Combined fifth and sixth periodic reports of Austria (continued)* (CRC/C/AUT/5-6; CRC/C/Q/5-6 and CRC/C/AUT/RQ/5-6)

1. *At the invitation of the Chair, the delegation of Austria took places at the Committee table.*
2. **Mr. Tichy** (Austria) said that, in 2018, the Constitutional Court had recognized that intersex persons had the right to have their sex recorded as such on their identity documents; the first identity document with an intersex sex marker had been issued in 2019. In 2017, the Austrian Bioethics Commission had adopted a unanimous position on intersex and transgender identity and had made recommendations to protect intersex persons from medical interventions and to support parents confronted with social discrimination. The recommendations that would be implemented from 2020 provided that, unless immediate surgery was medically necessary, a multidisciplinary panel of specialist doctors would examine intersex children before their second birthday in order to determine whether surgery was indicated. The rules made clear the decision-making process for surgery and required parental consent for all interventions. Since 1 January 2020, federal law had prohibited cosmetic surgery for persons under the age of 16.
3. **Ms. Stoitsits** (Austria) said that the national curriculum included citizenship education at all levels and in all types of schools. Children's rights were covered as a separate topic in the sixth and seventh grades and addressed in history and social science classes; she could provide examples of the materials used. Recently, teachers had been encouraged to use the thirtieth anniversary of the Convention as an opportunity to discuss children's rights.
4. Several relevant decrees had been issued by the Ministry of Education during the reporting period, including one on intercultural education. Another decree contained instructions for implementation of the headscarf ban in schools, including potential sanctions against parents. Since its adoption, only eight cases of non-compliance had been recorded, all of which had been resolved through a discussion between the school and the parents. A further decree covered attire for physical education from a safety standpoint, stipulating that girls under the age of 10 must remove their headscarves and allowing girls to wear a burkini for mandatory swimming lessons. A comprehensive decree on sex education and gender equality instructed teachers on how to incorporate a gender perspective with children from diverse backgrounds and to uphold the constitutional provisions on non-discrimination.
5. The teacher training system had been amended since the previous review so that teachers at all levels of compulsory schooling completed the same course of study, which included material on children's rights. Topics such as the Ombudspersons for Children were covered in continuous training for in-service teachers. Furthermore, the secondary school curricula had been redrafted to include human rights education.
6. The principle of inclusive education for children with disabilities had been adopted in 1993 and enshrined in law in 1996, first in primary schools and subsequently at all levels of compulsory education. Children with disabilities were assessed when they started school and their special needs identified. To ensure that decisions were made in the best interests of the child, responsibility for the appraisal had been transferred from the individual schools to the regional education boards, with parental participation. Numerous new teaching and inspection jobs had been created to facilitate inclusive education, which was also a subject addressed in the new programme of the federal Government. Schools were given clear instructions on inclusion, with special focus on preparing persons with disabilities to join the labour market. Although the overwhelming majority of children with disabilities were included in the mainstream system, special schools still existed, for example schools for deaf children or blind children.
7. The federal Government had taken immediate measures in 2015 to cope with the arrival of large numbers of refugees. Additional funding of €143 million had been allocated for the integration of migrant children into the school system, including the immediate provision of additional school places and teachers and extra resources for German language teaching. It had been more challenging to find funding for children over the minimum school-leaving age of 15. In addition, students needed to demonstrate certain competencies to enter

further education. To meet that challenge, the law had been amended to extend the option of a voluntary additional school year to students with no knowledge of German. A special transitional level had been established, in which students took intensive classes in German, English, mathematics and Austrian history and culture and could then join the first year of upper secondary school. Many young persons between the ages of 15 and 21 had availed themselves of that opportunity.

8. The number of positions for German language teachers had more than doubled and a further 250 temporary posts had been opened in schools with specific demographic challenges. Three-person interdisciplinary teams had been introduced, consisting of a psychologist, a social worker and a social pedagogy specialist who were able to communicate with parents in Arabic or Farsi. Dedicated funding for adult training had also been set aside for young refugees up to the age of 25.

9. **Mr. Rodríguez Reyes** said that he would like to know what plans the Government had to abolish special schools and incorporate students attending such schools into mainstream establishments.

10. **Ms. Todorova** said that she would be interested to know whether the decentralized system for the inclusion of children with disabilities meant that the Ministry of Families and Youth did not play a major role in policymaking. She would like the delegation to comment on whether genuine inclusion could really be achieved with all responsibility for decision-making left to the Länder. She would like to know whether any efforts were made after the initial assessment to help children to enter mainstream school, for example by adapting the school environment to meet their requirements. She wondered whether children with mental impairments and psychosocial disabilities attended mainstream schools. She wished to underscore that inclusive education led to an inclusive society and a reduction in the stigma faced by persons with disabilities.

11. **Ms. Aldoseri** said that the ban on headscarves in schools seemed to be directed against young Muslim women, as it did not extend to the head coverings worn by Jews or Sikhs. Did the delegation not agree that such a ban, coupled with the display of crucifixes in classrooms, might alienate young Muslims from attending regular schools and encourage them to enrol in private religious schools, where they might become more easily radicalized? She was particularly concerned by the plan to extend the headscarf ban to girls up to the age of 14, which was almost the end of compulsory schooling.

12. **Ms. Khazova** (Country Rapporteur) said that she wished to know if the transitional levels were intended for children over the mandatory schooling age of 15. What actions did the authorities take if, for religious reasons, a girl's parents refused to allow her to participate in sporting activities such as swimming? She wished to know what measures were taken against the parents of girls who wore headscarves to school.

13. **Ms. Stoitsits** (Austria) said that the transitional levels were specifically aimed at children over the age of 15, who were no longer under the obligation to attend school. Following the transitional level, many students were able to pursue regular schooling. The actions that teachers were to take in the event that a girl aged between 6 and 10 came to school wearing a headscarf were set down in the law. No penalties had ever been handed down, and the eight recorded cases had all been resolved through discussion with the parents. The constitutionality of the headscarf ban had been challenged before the Constitutional Court and the Government would await the Court's ruling before deciding what course of action to take and whether to proceed with its plan to extend the ban to girls aged between 10 and 14. No information currently existed to indicate that the ban was causing girls to move into private educational institutions or to abandon school altogether.

14. All schools were regulated by the same federal laws and the Ministry of Education, as the central educational authority, sought to ensure uniform comprehensive teaching throughout the country. Within that overarching framework, the Länder operated schools up to middle-school level and vocational institutes while the federal authorities were responsible for secondary schools and higher education.

15. When it came to children with disabilities and special needs, the Government was committed to pursuing a policy of inclusion – which for decades had been referred to as “integration” – in mainstream schools, whereby all children would be taught together in the same schools. That did not mean, however, that all existing special schools would be closed.

In fact, it was important also to take account of the desires and needs of parents, some of whom wanted their children to be taught at special schools.

16. **Mr. Tichy** (Austria) said that his country's domestic legislation on the wearing of headscarves had received a positive response from the Committee on the Elimination of Discrimination against Women, while the move from integration to inclusion of persons with disabilities had been strongly advocated by the Committee on the Rights of Persons with Disabilities.

17. The Government was aware of the divergence between domestic law and the Convention on the Reduction of Statelessness. In fact, stateless persons born in Austria currently had just two years to apply for citizenship, between the ages of 18 and 20, whereas the limit enshrined in the Convention was three years. The issue was under active consideration and he was confident that the law would eventually be changed.

18. **Mr. Ruscher** (Austria) said that the limit of eight weeks for a father to register a child born outside marriage, for the purposes of the child acquiring citizenship, had been imposed in the wake of numerous cases where registration requests had been made up to 17 years after the birth. Although procedures for late registration had been simplified, there were currently no plans to extend the limit.

19. Austria was very sensitive to the needs of unaccompanied minor asylum seekers and applied special provisions in their regard. As a consequence, and in order to benefit from those provisions, some asylum applicants untruthfully claimed to be minors. Once all other avenues to determine an applicant's age had been exhausted without a conclusive outcome, the authorities were sometimes compelled to resort to age determination procedures. Such procedures – which were entirely voluntary and had been approved by the Office of the United Nations High Commissioner for Refugees (UNHCR) – began with a non-invasive medical examination. In most cases, that itself was sufficient to determine the person's age. If not, an X-ray of the wrist was taken and, if that too proved inconclusive, a CT scan of the jaw and teeth. If any doubt still persisted once the procedures had been completed, the applicant was considered to be a minor. Around 230 applicants had undergone the procedures in 2018 and around 140 in 2019. In cooperation with UNHCR, a pamphlet providing information on asylum procedures for child applicants had been published in various languages including Farsi, English, German, Arabic and Urdu.

20. When an asylum seeker first arrived, the federal authorities conducted an assessment to determine whether Austria was responsible for that individual under the European Council's Dublin II Regulation. If responsibility did lie with Austria, an asylum application was launched and the applicant was referred to support and care services run by the Länder. The federal authorities ran two accommodation centres for minor asylum seekers, both located in Lower Austria. One was an exemplary facility that did not even have a fence. It was exclusively reserved for minors and had capacity for around 70 persons. The other was for minors and adults, who were accommodated separately. It did have a fence but no guards. A third centre, also in Lower Austria but run by the regional authorities, had been secured by guards with dogs. It had been shut down following a public outcry and Austria had acknowledged that it had failed to live up to its own asylum standards in that case.

21. It was not true that migrant children did not receive the special support they needed, or that they suffered discrimination. Psychologists were in regular attendance at all the sites where young asylum seekers were accommodated, while experienced and well-trained carers were on hand to support them and refer them for medical treatment if necessary. The children were constantly accompanied and never just left to their own devices. In some cases, the authorities paid female asylum seekers, from the same cultural and linguistic background as the minor and of the same general age as the absent mother, to act as a kind of surrogate mother to the child.

22. Of the 845 unaccompanied minors who had applied for asylum between January and October 2019, the exact number who had "disappeared" could not be ascertained, as some had reached the age of adulthood in the meantime, while the application process had ended for others. The majority of those whose whereabouts were unknown were from Afghanistan, Pakistan and Bangladesh.

23. When the absence of an asylum-seeking minor under the age of 14 was noted, the police were contacted immediately. They gathered and entered the relevant information in a

nationwide database. If the child was found in the country within two years, the asylum proceedings would resume automatically and there would be no further consequences if the child had committed no offence. Running away from an accommodation centre was not an offence. If the child reappeared after more than two years, a legal review would be undertaken to determine whether a new application was required. The child and youth welfare services were also informed of such cases. The procedure for all minors was the same, although the police prioritized finding children under the age of 14 for the purposes of providing care.

24. Female genital mutilation was criminalized under article 85 of the Criminal Code, which included provisions relating to the voluntary infliction of severe bodily harm. However, available statistics referred only to offences under that article but not to the specific acts of bodily harm that had occurred in each case. All he could tell the Committee was that, in 2016, prosecutors had taken action under that article in four cases where the victim had been a girl under the age of 18, in two cases in 2017 and in two more in 2018.

25. The new 100-metre zone of personal protection introduced in January 2020 applied to all victims of domestic violence, both male and female and adults and children. The squalid or otherwise unsuitable conditions that the police had sometimes found when responding to reports of domestic violence had led to the development, at the federal level, of an 8-page questionnaire on living conditions to be filled out by police officers whenever they entered a home with children, even if the domestic violence reported did not relate to them. Child protection services had to be informed if a certain number of conditions were noted. Under new regulations that would enter into force in January 2021, perpetrators of domestic violence would be required to undergo conflict prevention training led by outside experts, with refusal to do so being considered a criminal offence.

26. **Ms. Khazova** said that she wished to know whether a child whose parent was a victim of domestic violence would also be protected by the 100-metre protection zone, even if he or she had experienced no abuse.

27. **Mr. Madi** (Country Rapporteur), referring to the distinction in Austrian law that allowed migrants, refugees and asylum seekers over the age of 14 to be detained for immigration-related purposes but not those under 14, said that, for the Committee, a child was any person under the age of 18. He wished to know whether the nationwide reception facility for child victims of human trafficking referred to by the State party in paragraph 176 of the report had been established or was still in the planning phase.

*The meeting was suspended at 11.35 a.m. and resumed at 11.55 a.m.*

28. **Mr. Gudbrandsson** said that it was regrettable that the State party's report did not include statistical data on child abuse and neglect, especially sexual abuse, and information on the implementation of child protection and intervention measures. He wished to know whether any child-friendly, multidisciplinary intervention mechanisms were in place, whether the State party had the expertise to conduct forensic interviews with child victims of sexual abuse without retraumatizing them, and whether facilities were available for the forensic medical examination of children. Further information would be appreciated on the structure of the child protection system and the reporting mechanisms that existed.

29. **Mr. Ruscher** (Austria) said that, when a perpetrator of domestic violence was removed from a home, all persons living in that home would benefit from a 100-metre personal protection zone. If the police were present at a home and deemed that an act of violence might potentially occur after their departure, they were to immediately bar the potential perpetrator from the premises. The right to be protected from violence was given priority over a homeowner's right to enter his or her property.

30. Asylum seekers under the age of 14 could be placed in pre-deportation preventive detention only if accompanied by an adult and if no less stringent measure, such as regularly reporting to the police, was possible. Children up to the age of 18 were generally subject to less stringent measures. If a child over the age of 16 failed to comply with those measures, a detention order could be handed down in view of expulsion.

31. Of the 21 persons under the age of 18 who had travelled from Austria to Syria or Iraq, 3 had returned to Austria and 1 had gone to a third country. As the individuals in question were over 14 years old – the age of criminal responsibility – the cases had been referred to the public prosecution service. There were plans to put in place a government-run programme

for young people who had been involved with extremist groups, but funding had not yet been allocated for that purpose.

32. **Mr. Sorger** (Austria) said that, since January 2017, cases of hate speech had been handled by specialized staff in the public prosecution service. The Criminal Code had been amended to extend protection to victims of hate speech on religious grounds, make justifying genocide and crimes against humanity a form of hate speech, reflect a European Union resolution on racism and incitement to cybercrime, and introduce custodial penalties for hate speech offences. Making hate speech material publicly available had also been criminalized and, under an agreement with Facebook, such content had to be deleted within 24 hours.

33. Under existing legislation, individuals over the age of 16 could marry if they filed the relevant declaration and obtained the consent of a legal representative. If the legal representative refused to provide consent without offering sufficient grounds, a court could nevertheless authorize the marriage. The Government's legislative programme proposed increasing the marriage age to 18 in all cases. Measures were taken to prevent forced marriage and marriage between cousins.

34. "Underage" minors were those under the age of 14. Minors over the age of 14 – referred to as "adolescents" – were thought to have greater decision-making capacity and, consequently, could be held criminally responsible if deemed sufficiently mature.

35. The guidelines for determining the best interests of the child took the form of the 12 criteria listed in section 138 of the Civil Code. The principle was recognized at the constitutional level under the Constitutional Act on the Rights of Children in 2011 and had been incorporated into youth and child welfare laws at the federal and regional levels in 2013. The uniform application of the principle across the Länder was ensured by the competent federal authority.

36. Minors served their sentences either in separate juvenile facilities or in the juvenile sections of prisons. Minors who were alone in the juvenile section could request to be transferred to the adult section. Ministry of Justice experts would decide on the request, taking into account any potential danger to the minor.

37. Many of the amendments to the Juvenile Courts Act had led to reduced sentences, although the maximum sentences that had been in place remained unchanged. For serious offences such as assault and terrorist activities, the minimum penalty under the Criminal Code was 5 years of deprivation of liberty, with the same penalties applying to young adults (those between 18 and 21 years of age) as to adults. Sentences could not exceed 20 years.

38. The Protection against Violence Act contained a number of provisions that aimed to ensure that the best interests of the child were respected. For example, child and youth welfare agencies were required to protect children from violence and protect children's privacy if their parents were unable to do so. In custody or divorce cases, a support person, who was bound to secrecy, could be made available to children to explain the proceedings and allow them to express their wishes openly. Mediation was mandatory in divorce cases where the couple had children.

39. Judicial decisions to remove children from their parents were founded on a determination that the best interests of the child were at risk, based on the 12 criteria laid out in section 138 of the Civil Code.

40. One hundred judges were participating in a pilot programme that sought to apply a single procedure to determine the best interests of the child in custody proceedings, develop a plan of action to be followed by parents with support from child and family protection services, and reach custody decisions within six months. The results of the project were expected by the end of 2020.

41. By law, the mandate of the child protection authorities was to help ensure that parents were able to raise their children. Criteria for the removal of children from their families were also defined by law. When a report that a child was in danger was received, the district administrative authorities were required to assess the danger. The assessments involved separate discussions with the child and his or her parents or guardians, visits to the child's place of residence and the consideration of any reports produced by child protection or other specialists.

42. Under a 2011 amendment to the Criminal Code, a new offence was defined: namely, initiation of sexual contact with underage persons. Anyone who, with the intention of committing a sexual offence, contacted an underage person by way of telecommunications or in any other manner while concealing his or her intentions (a practice also known as grooming) was subject to prosecution. Another offence, referred to as continued harassment by way of telecommunications or a computer system, had been defined in 2015. The aim had been to combat cyberbullying. Penalties of up to 3 years' imprisonment could be imposed if the victim of the offence committed or attempted suicide. Slightly more than 300 cases of cyberbullying had been reported to the police from the definition of the offence in 2015 to 1 January 2016.

43. **Mr. Madi** said that he wished to know whether he had understood correctly that children could be transferred to prisons for adults only when they were alone in juvenile detention facilities and requested the transfer themselves. He also wished to know whether any measures were in place to monitor the situation of minors who were thus transferred. The 20-year prison terms that minors could apparently be given seemed too long.

44. **Ms. Khazova** said that she wondered why the State party had so many children in institutions and whether it had any plans to reduce their number.

45. **Mr. Sorger** (Austria) said that minors could also be transferred to prisons for adults if they were alone in a juvenile facility – juvenile detention facilities in Austria were rarely crowded – and deemed suicide risks. A special expert body ensured that the adults among whom they were placed could be trusted. The 20-year prison terms that had been mentioned were imposed for especially heinous crimes committed by young adults between the ages of 18 and 21, not minors.

46. **Mr. Miklautz** (Austria) said that education or training had been made compulsory up to the age of 18 to help combat poverty – possibly exacerbated by unemployment – among children who had completed apprenticeships before they turned 18. In several cases, however, a child could complete his or her compulsory education before the age of 18. Around 100 recruits under the age of 18 had enlisted in the Austrian armed forces in 2019. They were prohibited from taking part in combat or combat drills.

47. Over the past ten years, Austria had conducted thorough investigations of the sexual abuse of children in establishments run by churches or the State. A special commission had awarded more than 2,000 people compensation of €25,000 each for the abuses they had endured in church-run establishments in the 1960s and 1970s. The commission continued to meet and would grant compensation to any future victims of sexual abuse. Compensation totalling approximately €19 million had been awarded to those who had been victims of sexual abuse in the children's homes run by regional authorities. In 2017, the victims of abuse in homes run by churches or the State had been awarded monthly pensions of €350, as the abuse they had suffered was believed to have robbed them of the opportunity to develop professionally on an equal footing with others. Victims of sexual abuse in hospitals or psychiatric institutions had been made eligible for those pensions in 2019.

48. Construction codes had been adopted to provide for barrier-free access in Vienna and elsewhere in Austria. Discussions had been held with representatives of persons with disabilities to ensure that progress was made in that respect. Accessibility was understood to refer not only to the physical environment but also, for example, to the ease with which information could be understood. Government institutions throughout Austria had been called on to take cross-cutting measures to promote barrier-free access in the broad sense of the term.

49. **Mr. Reibmayr** (Austria) said that following the recent reforms, budgetary allocations for childcare and other related children's facilities were determined by the Länder. It was true that critics of the reforms had said that they were likely to worsen the situation of families with more than three children. The Austrian Constitutional Court had recently ruled that parents' knowledge of German or English had been weighted too heavily in administrative decisions to award bonuses for their efforts to improve their job qualifications. That ruling would give a boost to efforts to combat child poverty, which was a major priority of the federal Government.

50. The Government's goal was for the Austrian economy to be carbon neutral by 2040. A recently introduced taxation system involved the adoption of comprehensive measures to

work towards that goal. Children were at the core of the social component of a strategy that had been developed to adapt to climate change.

51. **Mr. Filler** (Austria) said that trafficking in children was dealt with at the federal level. The agencies involved in combating the offence cooperated, and a national referral mechanism had been developed. The number of children at risk of being trafficked had recently increased, as had the number of persons against whom criminal proceedings had been instituted. The causes of the recent increase, which were being investigated, were unclear. Although trafficking in children was rare in Austria, each Land was required to have the facilities necessary to support children who had been trafficked or were at risk of being trafficked.

52. Comprehensive risk assessments informed the authorities' decisions on whether to remove children from their homes. Decisions to remove a child from his or her family were never made lightly; on the contrary, the child protection authorities made every effort, including by providing support to the families concerned, to ensure that children could stay with their families. Allowing a child to return to his or her family was also a lengthy process.

53. Comprehensive studies of the prevalence of violence against children in Austria had been carried out. One recent study, which would be transmitted to the Committee in due course, had shed considerable light on the issue, not least by providing detailed information on parents' attitudes towards their children. Figures concerning the sexual abuse of children would also be provided to the Committee in writing. With a view to preventing the abuse that young athletes had formerly endured, officials from regional and national sports federations were obliged to report any signs of child abuse among child athletes to the child protection authorities.

54. It would be a mistake to believe that the reforms whereby responsibility for legislation in the area of child and youth welfare had been shifted to the nine Länder had dealt a blow to the primacy of the rights of the child. Officials in the Länder were doing excellent work in that area.

55. **Ms. Khazova** said that the Committee, which understood the complexity of many of the issues faced by Austria, welcomed the openness with which the delegation had approached the interactive dialogue. She hoped that Austria would ratify the Optional Protocol to the Convention on a communications procedure as soon as possible.

56. **Mr. Tichy** (Austria) said that discussions on ratifying the Optional Protocol were under way and that the Government wished to ensure that it was fully prepared before it took the step of ratifying the Protocol. Lastly, as had been mentioned earlier, as a federal State, Austria could choose to implement its international obligations at the federal or the regional level, and both were equally effective.

*The meeting rose at 1 p.m.*