



# 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 1007th meeting

Held at the Palais Wilson, Geneva, on Friday, 14 January 2005, at 10 a.m.

*Chairperson:* Mr. Doek

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

**Consideration of reports of States parties** (agenda item 5)

*Second periodic report of Austria* [CRC/C/83/Add.8; list of issues (CRC/C/Q/AUT/2); written replies of the Government of Austria to the list of issues (CRC/C/RESP/75)]

1. *At the invitation of the Chairperson, Mr. Haupt, Mr. Winkle, Mr. Petritsch, Mr. Satzinger, Mr. Schütz, Ms. Staffe, Mr. Ruhs, Ms. Ellison-Kramer, Ms. Orthofer-Samhaber, Mr. Ruscher, Ms. Buchmann, Mr. Schmidpeter, Ms. Czech, Mr. Grosz, Ms. Wörgötter, Ms. Schittenhelm, Ms. Reinprecht and Mr. Tury (Austria) took places at the Committee table.*

2. **Mr. Haupt** (Austria) explained that, in the federal structure of Austria, the Federal Government was responsible for legislation and for the implementation of legislation on the family, health, education and the right to asylum, while the implementation of provisions on nationality fell to the Länder. Similarly, the Federal Government defined the general legislative framework for the social protection of children and the organization of schools, but the Länder defined the implementing legislation and were required to apply it. Lastly, the Länder were responsible for adopting and implementing legislation on the establishment of nursery schools and extra-curricular activities, for example.

3. That division of responsibilities was not called into question during the current review of the Constitution because the degree of latitude enjoyed by the local authorities meant that they were in the best position to adapt to needs of the population and the specific character of the various regions. Also, the regions were all very keen to attract families in view of the very low birth rate, so they were at pains to offer the best possible living conditions and that could only be good for the children.

4. Austria had adopted numerous measures to comply with the recommendations that the Committee on the Rights of the Child had made in 1999. Thus, the 2001 Act amending the law on relations between parents and children had strengthened the legal position of adolescents and young people by reducing the age of legal majority from 19 to 18 and increased parents' responsibilities for their children. Also, the permanent sterilization of minors and mentally disabled children was now prohibited under the General Civil Code, in accordance with the recommendations made by the Committee in its last concluding observations.

5. Austria had published its initial report and the Committee's concluding observations, which had been widely distributed, and the second periodic report was now available on the website of the Ministry for Social Security and Generations. After the General Assembly Special Session on Children in 2002, the Austrian Government, in collaboration with civil society in general and children in particular, had prepared the National Action Plan for Children's Rights adopted in November 2004. The possibility of incorporating the rights of the child in the federal Constitution was currently under discussion.

6. **Mr. Citarella** was pleased to see that the federal authorities, local authorities and non-governmental organizations had collaborated in preparing the State party's periodic report but regretted that more attention had been paid to the political and legal aspects of implementing the Convention than to the actual effects on the situation of children of the measures that had been taken. He understood that the Convention had already been applied directly in some Austrian courts, despite the reservations that the State party had expressed on the subject, and he wished therefore for further details. He also wondered about the distinction that had been drawn between the Convention on the Rights of the Child and the European Convention on Human Rights, which had constitutional standing, and he was

surprised that Austria had expressed reservations about the Convention on the Rights of the Child because of a supposed contradiction between the two conventions.

7. It was regrettable that the State party had no official statistics on the number of refugees and asylum-seekers who were minors, on the budget for disabled children or on adoption.

8. Since the implementation of the Convention was particularly complex in States with a federal structure, perhaps the delegation could explain how responsibility for the questions covered by the Convention was divided between the central and regional authorities dealing with education, health and social services and how coordination between the respective authorities was ensured.

9. The age of legal majority had been reduced and some forms of discrimination, particularly in the age of consent to sexual relations, had been eliminated, and that was welcome news, but it would be helpful if the delegation could expand on the fact that children were considered to “come of age” at 14 and to have only limited capacity to perform legal acts between the ages of 7 and 14. It was regrettable that the definition of the child varied from Land to Land and that distinctions were still drawn between children born in and out of wedlock. It was also a matter of concern that family reunification was still subject to the system of immigration quotas, despite the adoption of family-friendly acts.

10. Lastly, perhaps the delegation could give details of the written agreement between the adopting person and the adopted child that had to be concluded in every case of adoption.

11. **Ms. Chutikul** found it deplorable that the State party had yet to establish a genuine mechanism for coordinating policies on children. Perhaps the delegation could say whether the Federal Government encouraged the Länder to follow the example of the few Länder that had incorporated the rights of the child in their constitution.

12. The Committee wished to have details of the period covered by the National Action Plan; the extent to which children and non-governmental organizations had participated in its implementation; the indicators employed to determine how far the objectives had been achieved; and also details of the composition and remit of the Steering Committee on the Rights of the Child. Perhaps the delegation could also provide information on the respective remits of the Austrian Federal Youth Council established in 2000 and the federal students’ representative body, and on the relations between them. Lastly, it would be useful to know whether young people were represented on those bodies by their peers or by adults.

13. **Mr. Al-Sheddi** asked whether a specific budget had been allocated for the activities connected with the Action Plan. He was concerned about the lack of disaggregated data on the most vulnerable children, but he was pleased to see that there was now a telephone counselling service for victims of abuse and wished to know how the operators were trained and whether the government supported services of that kind. In view of the large number of calls, it looked as though measures would have to be taken to increase public awareness of the problem of abuse.

14. **Ms. Lee** considered that the information on the legal age of consent to sexual relations provided in the report was not very clear, and she asked the delegation to explain the salient points of the legislation on the subject as it applied to children between the ages of 14 and 18. She also wished to know whether the allegations of sexual abuse by religious instructors had been openly investigated by the courts and whether the State party had taken measures to prevent any recurrence of such incidents.

15. **Ms. Smith** welcomed the State party’s adoption of legal provisions designed to encourage participation by children and wished to know whether it was easy for young people to exercise that right, particularly in the community and at school. Similarly, it

would be useful to know whether children were generally familiar with the provisions of the Convention and their rights under it.

16. **Mr. Liwski** noted with concern the large number of racist and xenophobic acts on Austrian territory reported by the Committee on the Elimination of Racial Discrimination in 2002 and wished to know whether the State party had taken measures to eradicate those evils and whether it planned to adopt further legislation on the subject.

17. Perhaps the delegation could also say whether the competent authorities had given those in charge of the police service clear instructions to stop police brutality, whether complaints of such acts had been received recently and whether any action had been taken to put an end to those reprehensible practices.

18. **Ms. Ouedraogo** asked whether measures had been taken to address the fact that many children in poor families had no access to basic social services and, if so, whether the impact of the measures had been assessed.

19. The delegation might also indicate whether the State party planned to ban corporal punishment and encourage the use of non-violent forms of discipline, and whether it had established specific indicators, programmes and a structure to implement the National Action Plan for Children's Rights.

20. **Ms. Ortiz** asked what proportion of the national budget was allocated to development aid and whether the programmes funded by Austria under that heading paid due attention to the recommendations and suggestions of the Committee on the Rights of the Child concerning the beneficiary countries.

21. **The Chairperson** noted that the restrictions set out in articles 13 and 15 of the Convention were similar to those contained in articles 10 and 11 of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, and could not therefore see what interest the State party could have in maintaining its reservations in their regard. Nor could he see what, in article 17, could be incompatible with the basic rights of others, particularly the basic right to freedom of information and press freedom, and might therefore justify the reservations Austria had expressed in regard to that article.

22. The Committee also wished to know whether all the people who had professional contact with children — particularly judges, prosecutors, members of the police service, teachers and health professionals — received continuous in-service training on the rights of the child.

23. Since the ombudsmen's duties varied considerably from one Land to another, it might be desirable for the Federal Government to define their role more clearly, so as to ensure that the same protection was provided in all the Länder.

24. The delegation might also indicate what measures the State party had taken to ensure that children of unknown parentage, who were left at reception centres, had access to essential information concerning their origin, and explain who was responsible for registering them and choosing a family name and forename for them.

25. Lastly, he asked why, in the case of a child born out of wedlock but recognized by both its parents, parental authority was exercised exclusively by the mother, as it appeared to represent an element of discrimination against children born out of wedlock.

*The meeting was suspended at 11.05 a.m. and resumed at 11.25 a.m.*

26. **Mr. Haupt** (Austria) said that the rights of the child had been duly considered in the current review of the Constitution. The draft Constitution guaranteed better legal protection of children's rights and created conditions conducive to their personal development and well-being, providing in particular that every child was to have direct personal links with

both parents unless there was a risk of injury to the child, that the child was to be heard and to be assured that his or her opinion would be taken into account with due regard to the child's age and degree of maturity. The draft Constitution also prohibited child labour and protected children against any form of economic or sexual exploitation, particularly for the purposes of pornography, prostitution or trafficking. It also stated that children who were victims of such crimes were entitled to special protection and to reintegration and rehabilitation programmes. However, no consensus had been reached on the right to recreational activities.

27. Children were regarded as legal persons in the new draft Constitution but there was no provision for their representation. The term "young" meant individuals under 25 years of age but youth movements could include and represent people up to 35 years of age. In the youth councils that had been established, young people under 25 years of age had been elected and given responsibility for certain issues of interest to the young, such as sport, culture and the problem faced by young people in finding accommodation.

28. In addition, young people over 16 years of age were entitled to vote in municipal elections in all but three of the Länder. According to the local authorities, however, only some 30 to 40 per cent of 16 to 18 year-olds participated whereas the usual turn-out was between 60 and 80 per cent of registered voters. More must therefore be done to make young people aware of that new right, and educational establishments and other children's organizations could play a decisive role in here.

29. Two Länder had already incorporated the provisions of the Convention in their constitution and in their legislation and four others were to do so shortly. Austria would continue to develop on federalist lines, believing that a decentralized system was more responsive and conducive to the implementation of decisions at local level.

30. The Ministry for Social Security and Generations had produced several studies on violence against children, and that preliminary work had cleared the way for a public debate. There had also been a great many judicial decisions on the subject recently, although the Austrian authorities were aware that the cases brought before the courts were only the tip of the iceberg and that there was still much to be done in the areas of rehabilitation, prevention and information.

31. There had recently been wide media coverage of cases involving priests, which had come to light because people who had been abused years or even decades before had finally found the courage to speak out. The Austrian Bishops' Conference had responded immediately, regularly informing the judicial authorities of any suspected cases and of all cases of sexual abuse that might have occurred. At the same time, counselling services had been provided by the church and other authorities. The Council of Bishops was doing its best to take preventive action for the future and to make amends for the damage done in the past.

32. The Ministry for Social Security and Generations had taken a number of measures to combat sexual violence and was cooperating in particular with a special centre providing psychological care and rehabilitation services for women victims. The results were encouraging, and the centre would be asked to provide the same kind of care for younger victims. The treatment would be evaluated every two years with the assistance of psychiatrists and psychologists. A special training course had been introduced for those providing psychological and social assistance and other forms of rehabilitation, with occasional input from denominational organizations and non-governmental organizations (NGOs). The telephone counselling service, an essential tool, was designed to help people to overcome their reluctance to speak openly about cases of violence and to offer psychological care and other forms of rehabilitation.

33. The federal *modus operandi* entailed regular meetings to ensure coordination between federal and local representatives responsible for dealing with questions concerning young people. The meetings — held every three years — provided an opportunity not merely to exchange the fruits of experience but also to allocate resources to wider projects. There were also occasional problems of coordination at interministerial level but progress was undoubtedly being made in that area.

34. The regulation of family reunification quotas under the legislation on asylum, for which the Ministry of the Interior was responsible, would continue. The delay there had been in 2000 had been resolved in the case of refugees within the meaning of the Convention relating to the Status of Refugees but economic migrants fell into in a different category.

35. The people serving in advisory bodies dealing with young people were all themselves young. In accordance with the acceptable compromise reached by the Austrian parliament, the age-limit for serving in those bodies was 35, although 25 would have been preferable so as to enable young people to take responsibility as soon as possible for issues relating to them.

36. In 2002, the number of NGOs involved in preparing the act that was being adopted at the time had risen from 300 to 600. A portal had been created to keep NGOs and interested members of the public informed. That should facilitate a gradual improvement in the legislation. The volume of Austrian social legislation had increased to such an extent in the past 30 years that the ordinary citizen had difficulty in finding his way about it, and the legislation was currently being consolidated. In the case of the legislative acts to be adopted during the life of the current Parliament, the aim was that any citizen with an average mastery of legal terminology should be able to understand them. The Ministry for Social Security and Generations had also established numerous sites providing information on subjects of interest to young people.

37. **Mr. Winkle** (Austria) explained that the Austrian courts referred to domestic law rather than directly to the Convention but all the obligations set out in the Convention already figured in specific acts, although that did not mean that a court could not directly invoke the Convention.

38. Regarding Austria's reservations about certain provisions in the Convention concerning the right to information and their relationship with those contained in the European Convention on Human Rights, the provisions in question were similar but not identical and, on grounds of legal necessity, only the restrictions on the right to information specified in article 10 of the European Convention, corresponding to those contained in article 17 of the Convention on the Rights of the Child, applied because of the wealth of Austrian case-law based on that article. The aim was not to restrict the exercise of the rights provided in the Convention on the Rights of the Child but, on the contrary, to prevent any dilution of those rights. That was why the Austrian authorities felt it necessary to maintain those reservations.

39. While it was true that Austria had not achieved the objective of devoting 0.7 per cent of GNP to official development assistance, it remained fully committed to the objectives agreed by all the States attending the Monterrey Conference on financing for Development. It was also bound by the European Union's decision at Barcelona to increase that assistance to at least 0.33 per cent of GNP by 2006. One of the priorities set in the new Austrian legislation on cooperation, which had just been entirely overhauled, concerned programmes for children. Thus, a number of programmes planned under the current three-year period were mainly concerned with the rehabilitation of children who were victims of armed conflicts, and Austria had been one of the first countries to devise a programme for the rehabilitation of children traumatized in Iraq.

40. Austria would take over the rotating presidency of the European Union at the beginning of 2006, and human rights and the rights of the child would continue to be among its priority fields of action. In particular, Austria planned to coordinate the 2006 annual resolution on the rights of the child at the Commission on Human Rights, to initiate a dialogue on the subject between the European Union countries and China, Iran and others, and to pay great attention to the problem of children in armed conflicts. Austria had also played an important part in the international investigation of questions connected with child trafficking.

41. Austria attached great importance to combating racism, xenophobia and other forms of discrimination, as demonstrated by the fact that the European Observatory for Racist and Xenophobic Phenomena was located in Vienna. Austria had also been an active participant in the debate on the future European human rights agency, which should play a particularly important role in that connection.

42. **Ms. Uttemayer** said that the National Action Plan for Children's Rights was designed to mobilize all the social forces, and the Federal Ministry for Social Security and Generations had therefore consulted a wide range of members of parliament, NGOs and child protection organizations. The relevant department had invited duly qualified organizations to work with some 20,000 children, to ask them about their priorities and the changes they wished to see. The replies had been summarized in a report, which served as one of the bases for the Action Plan. A database of measures had been created to improve coordination between the Federal Government and the governments in the Länder and to provide quality control.

43. The Ministry had worked hard to keep the public informed, creating a website, and publishing and distributing numerous documents and reports on questions connected with young people. An information booklet for children under 10 had been sent to primary schools and had been very well received by students. The Ministry had published a booklet on children's rights designed for teachers. It had organized meetings to provide children with a platform where their views and concerns could be heard. The combined results of the process had been summarized by university experts in a report on the situation of children in the fields covered by the Convention.

44. It was also important to establish the necessary structures to implement the Action Plan, and a multi-party working group was to be formed to set priorities and to follow up and monitor activities in that connection.

45. As for children living in poverty and the assessment of measures taken to address the problem, the Social Security Commission had ordered a social report which would shortly be accessible on the Ministry website. Also, the Ministry was to reconsider the question of family allowances to see how they could be used to reduce child poverty further. The Ministry had participated in an OECD peer review of all those policies. Lastly, a scientific institute had been commissioned to look into the distribution of child and family allowances in Austria.

46. **The Chairperson** asked about the status of the Action Plan approved by the Government, and whether it would have to be submitted to Parliament for formal approval or simply for discussion.

47. **Mr. Winkler** (Austria) said that the Action Plan had to be agreed by a majority in Parliament.

48. **Mr. Citarella** observed that the statistical data submitted in the written replies, for example the information on education and juvenile justice, was confused.

49. He asked whether there were circumstances in which minors under 14 years of age (the age of criminal responsibility) could be prosecuted and imprisoned, for what offences

minors could be required to serve very substantial sentences — apparently up to 20 years in prison — and what sentence would be handed down to an adult in similar circumstances. The substantial number of minors held in preventive detention was equally surprising, as was the fact that there were no longer any juvenile courts apart from special sections at various levels in the judicial system.

50. According to some sources, minors could be permitted to work at the age of 12 in certain circumstances, which appeared to be incompatible with continued attendance at school, and a child who was unable to attend school could be legally expelled, a situation that called for clarification.

51. **Ms. Chutikul** warmly welcomed the establishment of a centre for reporting child pornography and revival of National Socialist propaganda, and the creation of the Internet and New Media Committee. She wished to know more about their functions, resources and authority. She wondered, for example, to what extent those players and the Austrian Association of Internet Service Providers were able to intervene in cases involving illegal content, and with what results.

52. Perhaps the delegation could explain the composition of the special interministerial team created in 2004 to combat trafficking in human beings, and say whether the definition of trafficking had been extended, as the Ministry of Justice had announced. A new body established for the purpose in the Ministry of the Interior and a special unit of the federal police service also had responsibilities in that area, so it was also necessary to explain how the various bodies worked and how they cooperated with one another and with the local police.

53. The Committee would like the State party to provide further information about what it was doing to combat illegal immigration, notably through the intermediary of another newly-created special team and in cooperation with the immigrants' countries of origin, and to report the results of the measures that had been taken to prevent sexual abuse and child pornography, together with its plans in that connection for the next three years.

54. **Ms. Al-Thani** congratulated the State party on its policy for reintegration of the persons with a disability, and on the repeal of the act on the sterilization of minors with a mental disability, but she was concerned about the level of obesity among Austrian children (12 per cent) and invited the delegation to explain what preventive measures had been taken and, in particular, whether children were taught about diet at school and whether physical activity was encouraged.

55. The State party had provided useful figures on the consumption of alcohol, tobacco and drugs, but needed to explain what had been done to reduce those figures and why drug-related deaths were down but the number of users was rising. Austria, like other western countries, was aware of the problem of suicide among the young, and it would be interesting to know whether the practical measures it had proposed to take in that connection when the report was being prepared had in fact been taken and of what they consisted.

56. Lastly, female genital mutilation was a criminal offence, and perhaps the delegation could say whether anything was being done to prevent it and to increase awareness in vulnerable communities and among those likely to engage in the practice.

57. **Mr. Filali** observed that, for legally resident foreigners, the procedure of applying for family reunification was a veritable obstacle course, extremely slow and subject to quotas. Also, only children under 15 years of age could benefit. He wished to know where minors described as being "in custody pending deportation" were held, for how long they were held and whether anyone was officially appointed to take charge of them and act as their guardian.



58. He was surprised to see that the crime figures were static and asked whether that meant that the preventive measures were not working. It would be useful in that connection to have disaggregated statistics for the various types of offence committed. Also, the delegation might explain whether normal or special procedures applied to cases of sexual abuse by members of the clergy and what contact the authorities had with the Church in such cases.

59. **Ms. Vuckovic-Sahovic** was pleased to see that the law had been amended to enable people to be prosecuted for sex tourism and wished to know whether that legislative step had been accompanied by campaigns to increase awareness and whether the State party had any experience of the actual application of the legislation. The delegation might also provide further information on cases of minors being held in solitary confinement and on compliance with the principle that minors were to be held separately from adults.

60. **Ms. Ortiz** welcomed the important and innovative legislative amendment that Austria had adopted to combat the sale of children, imposing criminal sanctions on all forms of illegal adoption. In that connection, she wished to know more about national and international adoption and did not understand why the number of such adoptions was not available, or about the nature of the central authorities appointed to implement the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption. She also wished to know why, when it ratified the European Convention on the Adoption of Children, Austria had reserved the right not to order the termination of any obligation of a child's father and mother in respect of maintenance or inheritance, a reservation which it had renewed in 2000. Lastly, it would be useful to have more information about the work of the Association of Internet Service Providers' Stopline.

61. **Ms. Ouedraogo** noted that the State party had ratified the International Covenant on Economic, Social and Cultural Rights but that it had apparently not guaranteed economic rights in its legislation. The rules on social security differed in the various Länder and were a source of inequalities which the Federal Government should be at pains to eliminate by harmonizing the rules and promoting best practices. It was also surprising, in that connection, that there was less social security provision for children as they grew older, although adolescents required a substantial amount of health care.

62. The education system was not without its problems. Parents complained, in particular, that classes were too big. Children who did not have German as their mother-tongue had problems when it came to integration, raising doubts as to the effectiveness of the measures that had been introduced here. Schools had no social workers and they would benefit from more participation because it seemed that all decisions were taken by the head and there was no system for handling complaints. Exceptionally gifted pupils appeared to pose problems in the special schools where they were enrolled, suggesting that classes might be too big, that that solution might in fact be a form of stigmatization, and that the staff in charge might not have the necessary training for that particular task.

63. Lastly, she asked whether the delegation did not consider that holding unaccompanied minor asylum-seekers in custody for a long periods and subjecting them to radiological tests to determine their age was an infringement of their rights.

64. **Ms. Lee** noted that the number of pupils per class appeared to be excessively high at pre-primary level and to improve gradually at subsequent levels, whereas it would actually be logical for younger children to be in smaller groups. The disproportionate number of migrant children in special schools called for an explanation.

65. **Ms. Smith** asked what happened to unaccompanied minors if their application for asylum was rejected, whether some of them fled and, if so, how many, and whether they were then entitled to basic services such as medical treatment. The delegation might also

indicate whether it was true that Hindus were sometimes a source of problems and whether the age of legal capacity for asylum-seekers was in fact 18, as the information on that point was contradictory.

66. **The Chairperson** observed that there were a number of inconsistencies in the figures submitted in the written replies, in particular the figures relating to alternative care and juvenile justice: the figures provided in connection with children in conflict with the law appeared to be inexplicably low, and it would be useful if the delegation could provide clarification on that point.

*The meeting rose at 1.05 p.m.*