



# Convention on the Rights of the Child

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## Committee on the Rights of the Child Sixty-first session

### Summary record of the 1737th meeting

Held at the Palais des Nations, Geneva, on Monday, 24 September 2012, at 3 p.m.

*Chairperson:* Mr. Zermatten

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

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

*Third and fourth periodic reports of Austria (continued) (CRC/C/AUT/3-4; CRC/C/AUT/Q/3-4 and Add.1)*

1. *At the invitation of the Chairperson, the delegation of Austria took places at the Committee table.*
2. **Mr. Koompraphant** asked what steps had been taken by the State party to prevent and eliminate discrimination against children with disabilities.
3. **Ms. Al-Asmar** wished to know whether there was any monitoring of the quality of childcare in alternative care facilities.
4. **Ms. Herczog** asked whether the State party was planning to extend the period of paid parental leave and to take steps to promote women's participation in the labour market. It would also be useful to know whether support was provided for victims of domestic violence benefiting from protection measures, whether there were any measures to prevent such violence, such as family conferencing and parental education activities, and whether police officers received appropriate training. She wished to know who took the decision to place children deprived of parental protection in an institution or in a foster family and whether there were programmes to prevent the institutional placement of children. She enquired whether the State party took steps to expose cases of paedophilia in Church-run institutions and, lastly, why the fact of abandoning a baby anywhere other than in a "baby flap" was a criminal offence.
5. **Mr. Cardona Llorens**, noting that about a half of persons with disabilities did not live with their families, wondered whether there existed a support programme designed to enable the children of persons with disabilities to live with their parents. He would be interested to learn what the State party was doing to promote inclusive education, which allowed children with disabilities to be in the same class as children without disabilities, in preference to integrated education, whereby special classes in ordinary schools catered to children with disabilities. He asked whether the helplines installed in residential institutions for children with disabilities were accessible to all children and whether other means were made available to those who could not use the telephone. It would also be useful to know what was being done to prevent the sterilization of children with disabilities; although prohibited by law, it was still practised. Lastly, was sign language taught in teacher training institutions?
6. **Mr. Tichy** (Austria) said that the Council of Europe Convention on Cybercrime had been ratified and would enter into force for Austria on 1 October 2012. Following amendments to the Constitution in 2012, the ombudsman institution was now expressly required to monitor the human rights situation and was consequently fully compliant with the Principles relating to the status of national institutions for the protection and promotion of human rights (Paris Principles). It had also been mandated to serve as the national preventive mechanism under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It cooperated closely with other human rights bodies.
7. **Mr. Filler** (Austria) said that the lowering of the voting age from 18 to 16 in 2007 was an important measure which had encouraged young people to participate in the political life of the country. Since 2008, children had had the right to be represented by a legal advisor in family law proceedings and their opinion was increasingly taking into account, particularly with regard to custody and visiting rights.

8. In 2010, the minimum age for occasional light work had been set at 13, as against 12 previously.
9. While it was true that the Constitutional Act on the Rights of the Child was silent about the right to leisure, its article 1 specified that the best interest of the child must always be the primary consideration and its article 4 stipulated that due weight should be given to the child's views on any matter concerning the child.
10. **The Chairperson** asked how light work was defined, while noting that work performed in the family setting could not be monitored.
11. **Mr. Orthofer** (Austria) said that the annual budget of the Federal Youth Representative Council was set by law and totalled nearly €6 million. For several years, a working group of the Ministry for Family, Economic Affairs and Youth had been taking action to raise the awareness of tourism professionals regarding the question of sex tourism. Another working group had been set up in 2010 to combat prostitution and sexual exploitation, mainly on the Internet.
12. The children's helpline had existed for about 30 years. In addition, each Land had its own Children's Ombudsman. Complaint mechanisms had been put in place in schools and there were plans to make them available in children's homes. Information on children's rights, non-violent education and high-risk behaviours was disseminated to parents, educators and other professionals who worked with children.
13. **Ms. Schmölzer** (Austria) said that, in order to combat xenophobia and racism at school, "educational principles" such as intercultural education and education for citizenship had been introduced into school curricula and were taught in various subject courses. In 2000, the Ministry of Education, Art and Culture had established a Holocaust Education Institute. In-service training was given to teachers on the subject and courses on human rights and children's rights were provided for secondary school pupils. The Constitution had been translated into 23 languages, including the languages of migrant communities, in terms easily understandable to children.
14. **The Chairperson** asked why children's rights were only taught from secondary school level. He also wished to know whether the State party was proposing to appoint school ombudsmen in view of the significant problems of discrimination existing in schools.
15. **Ms. Schmölzer** (Austria) said that education for tolerance and respect for other cultures began in nursery school. Whenever necessary, social workers and psychologists gave support to teachers and parents.
16. **Ms. Klein** (Austria) said that, as part of the effort to combat discrimination, the offence of "Verhetzung" (incitement to commit acts of violence against particular groups and hate speech) had been broadened to cover racial discrimination and discrimination on grounds of ethnic origin, sexual orientation, age and disability. There had already been convictions under that provision. The luring of children for sexual purposes ("grooming") had been a criminal offence since 1 January 2012 and was punishable by up to 2 years' imprisonment.
17. The identity of child victims was protected by law and the Media Act stipulated that victims whose identity or private life had been disclosed by a media outlet could claim compensation up to €20,000, according to the circumstances.
18. **The Chairperson**, noting that Austrian media showed little respect for the identity and image of children, wished to know whether there existed a code of conduct for the media and whether there had already been any convictions or licences withdrawn because of a failure to respect the privacy of victims.

19. **Mr. Tichy** (Austria) said that the institution of press counsellor had been re-established in 2010. The code of honour of that self-regulating body stipulated that protection of the privacy of children must take precedence over information.
20. **Mr. Aigner** (Austria) recalled that the right to life was enshrined in the Constitution and that the Internet site of the Ministry of Health contained information in several languages on compulsory vaccinations. The main difficulty for the authorities lay in the rejection of the well-substantiated reasons for vaccination.
21. A recent study on the behaviour of children at school showed that nearly a quarter of pupils smoked and that 2.9 per cent used drugs every day. Nearly 20 per cent of young people were cannabis-users. A €2.8 million budget allocation had been earmarked for a campaign to raise awareness of the harmful effects of alcohol and tobacco.
22. According to a study conducted by the University of Vienna in 2009, the suicide rate in Austria was slightly higher than the average in member countries of the Organization for Economic Cooperation and Development (OECD) for the whole of the population and lower than the average in the 10 to 14 age group. Recent figures showed that the number of suicides among children was on the decline.
23. **The Chairperson** asked whether there were criminal penalties for drug use.
24. **Mr. Aigner** (Austria) said that, for the past 10 years, Austria had been concentrating on prevention rather than punishment and that drug users could get help from the drug treatment services established throughout the country; there they could obtain alternative substances which enabled them to go back into the labour market, regain their place in the community, lead a family life and exercise an occupation. Only dealers were liable to criminal punishment.
25. **Mr. Ruscher** (Austria) said that the question of cybercrime fell within the remit of the Ministry of the Interior and that 300 public sector officials had been given the necessary training. Several projects had been carried out in schools and video tutorials had been posted on the Internet. Every police station had at least one officer qualified to deal with the question and they all worked in close collaboration with Europol.
26. Prevention activities involving all educational stakeholders were organized in schools in order to combat all forms of violence, including street violence, and racism.
27. Whenever there was a doubt about the age of a young asylum seeker, he or she was required to undergo a medical examination. An unaccompanied minor, whether a refugee or an asylum seeker, could apply to the police or the authorities for protection and request the assistance of a legal representative and an interpreter, in accordance with the Dublin Principles.
28. **Mr. Kotrane** questioned the relevance of the measures to determine the age of a minor; they were contrary to European guidelines and to the Committee's general comment No. 6 on the treatment of unaccompanied and separated children outside their country of origin (CRC/GC/2005/6).
29. **Ms. Lee** enquired about the means available to unaccompanied minors to challenge a decision affecting them and expressed concern about the fate of asylum seekers under the age of 14 who had been placed in detention in the Traiskirchen centre.
30. **Mr. Ruscher** (Austria) said that Austria had adequate financial, social and educational means to take care of unaccompanied minors and that no child under the age of 14 had been placed in detention. The Traiskirchen centre was an open reception centre for asylum seekers, where adults and children were separated, and to which non-governmental organizations and interpreters had constant access. Any minor whose application for asylum had been rejected could appeal to the court responsible for asylum cases. On the

question of determining the age of asylum seekers, he noted that in 2011, 206 of 1,342 who had claimed to be minors had in fact reached their majority.

*The meeting was suspended at 4.25 p.m. and resumed at 4.40 p.m.*

31. **Mr. Tichy** (Austria) explained that the age of military service had been set at 17 as many young people wished to perform it at the end of their secondary education, before going on to higher education or embarking on working life. The Austrian contingents involved in peacekeeping activities were made up of volunteers who had already completed their military service. The teaching provided at the military school of Militärrealgymnasium in Wiener Neustadt was supervised by the Ministry of Education and pupils did not handle weapons.

32. **Ms. Schmölzer** (Austria) said that the parents of a child with a disability could choose between special schooling for the child or integration into an ordinary school, after being informed of the two systems by the district school council. Fewer and fewer children were being enrolled in special schools.

33. **Mr. Cardona Llorens** requested further information about the material organization of integrated education; that form of education was also very enriching for able-bodied children. He was concerned about the fact that parents could choose between the two systems of schooling as he feared that that would favour specialized education. He wished to know whether the situation was the same in all the Länder.

34. **Ms. Schmölzer** (Austria) explained that the type of schooling depended essentially on the child's disability and that all decisions on the matter were taken in consultation between the parents, the child, professionals, the district authorities and the regional authorities.

35. **Mr. Orthofer** (Austria) said that, under the National Action Plan for people with disabilities, the amount of financial assistance granted to families had been doubled and was now €138 a month for each child. Families were also entitled to a number of allowances, including domestic help, an allowance for a child with a disability from birth, free transport between home and school and tax relief. The right of children not to be discriminated against for reasons of disability was enshrined in the Constitution.

36. **Ms. Klein** (Austria) said that child abandonment was legal in Austria, on the strict condition that the child's life should not be put in danger. That was the reason for the introduction of baby flaps. A parent who put his or her child's life in danger was liable to a prison sentence of up to 5 years, while one who caused the child's death through negligence was liable to 10 years' imprisonment.

37. Children were entitled to give their consent to adoption from the age of 14 and could, from the age of 5, avail themselves of their right to be heard in an adoption procedure concerning them. Austria was planning to prohibit in its Criminal Code the fact of improperly inducing consent, as an intermediary, for the adoption of a child, in accordance with international standards.

38. **Mr. Kotrane** asked whether the fact of facilitating adoption for remuneration, as an intermediary, constituted a criminal offence equivalent to the sale of a child, as stipulated in the Optional Protocol on the sale of children, child prostitution and child pornography.

39. **Ms. Klein** (Austria) said that the mere fact for an intermediary of deriving financial gain from an adoption or promising a reward to parents upon their consent to adoption was punishable as a criminal offence. Since December 2011, Austria had been maintaining an updated database, disaggregated by age and sex, on the victims of trafficking for the purposes of sexual exploitation or exploitation through work. Between 2011 and 2012, no minor had been a victim of trafficking within the meaning of the Supplementary Protocol to

the United Nations Convention against Transnational Organized Crime to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

40. Explicit, realistic pictorial depictions of child pornography were prohibited in Austria. Animated cartoons were excluded from that prohibition. The production of pornographic material involving a child over the age of 14 was not punishable, provided that the child had expressly consented thereto and the material was intended for the child. The virtual pornographic depiction of a child over the age of 14 was also tolerated, provided that the material produced was intended for the exclusive use of the author, without intention of disseminating it and that the minor had consented thereto.

41. **The Chairperson** expressed surprise that the State party considered a child to be capable of consenting to be the subject of a pornographic production. That was not in accordance with the Optional Protocol to the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, to which Austria was a party.

42. **Mr. Kotrane** said that the Committee maintained its recommendation that the definition of child pornography should be amended to include cartoon representations of children.

43. **Ms. Nores de García**, recalling that children must be regarded first and foremost as victims, asked why, in some Länder, children who engaged in prostitution could be fined.

44. **Ms. Klein** (Austria) explained that, the first time they were taken in for questioning, it was simply ascertained whether they formed part of an organized trafficking network. If the offence was repeated, they were liable to administrative penalties in order to dissuade other minors from engaging in prostitution. Statistics had shown that the number of child victims of trafficking for the purposes of sexual exploitation was very small in Austria.

45. **Mr. Kotrane** said that he did not understand the logic of penalizing child victims and recalled that the Committee advocated readaptation and education rather than repression.

46. **Ms. Klein** (Austria) said that the number of juvenile detainees was constantly falling, as preference was increasingly being given to alternative non-custodial measures. There was only one prison for juveniles and young adults. Juveniles placed in traditional detention centres were separated from adults. By law, the pretrial detention of minors could not exceed 1 year but, in actual fact, it lasted on average no more than 49 days.

47. Up to the age of 14, child victims were systematically heard under a special, child-sensitive procedure, known as “friendly” questioning, which could also be used, on request, for minors over the age of 14.

48. Austria had extended its extraterritorial jurisdiction to acts covered by the Optional Protocol committed outside its territory, without the condition of double criminality, when the victim or perpetrator was an Austrian national; foreigners living in Austria or persons whose habitual residence was in Austria could not be subject to extradition. Forced marriages and female genital mutilation could lead to prosecution under the same conditions.

49. **The Chairperson** asked what the State party thought had been achieved by the lowering of the voting age to 16 in 2009.

50. **Mr. Ruscher** (Austria) said that the results of that measure had not been evaluated but that it had, in theory, enabled some 200,000 young people to exercise their right to vote and had triggered some lively debates among those concerned.

51. **Mr. Lee** wished to know whether steps had been taken to actively promote breastfeeding and to restrict advertising for breast milk substitutes.

52. **Mr. Pollar** enquired whether the State party had taken steps to ensure respect for children's right to leisure, including the right to a play area where noise was permitted.

53. **Mr. Aigner** (Austria) said that it was difficult to demand companies in the food industry to stop promoting their products. The decision whether or not to breastfeed lay essentially with mothers and it was difficult for the State to intervene.

54. **Ms. Klein** (Austria) said that Austria recognized children's right to play and that the general tendency was to accept the noise made by children when playing.

55. **Ms. Varmah** (Country Rapporteur) expressed appreciation of the quality of the dialogue established with the delegation of Austria and welcomed the progress made by the State party since consideration of its last periodic report. She urged it to continue its efforts, while giving particular attention to dissemination of the Convention, the allocation of resources to critical areas of childhood protection, the withdrawal of reservations to the Convention, the prevention of discrimination, health care and education for children with disabilities and juvenile justice.

56. **Mr. Tichy** (Austria) assured the Committee of his country's determination to offer a protective framework adapted to the needs of children, based on the observations made by the Committee.

*The meeting rose at 5.55 p.m.*