

Violence Against Children in AUSTRIA

Relevant extracts from an NGO alternative report presented to the UN Committee on the Rights of the Child

CRC Session 38, 10 - 28 January 2005

National Coalition for the Implementation of the UN Convention on the Rights of the Child in Austria
– English

[www.crin.org/docs/resources/treaties/crc.38/Austria_ngo_report\(E\).doc](http://www.crin.org/docs/resources/treaties/crc.38/Austria_ngo_report(E).doc)

[...]

The general situation of children and adolescents in Austria is satisfactory when compared to many other countries. Nevertheless, the benchmark for evaluation of the current status of realisation of children's rights is the maximum possible for the individual state. Following from this, there is still urgent need for improvement in several child rights areas, such as: treatment of child refugees, juveniles in conflict with the law, (risk of) child poverty, prevention of violence and abuse etc.

[...]

- **The NC demands** that the UN Convention on the Rights of the Child should be included in the national constitution and at regional level in those Länder where it has not been included so far (only Upper Austria has yet included references to the CRC in its constitution!).
- **The NC also demands** that protection of children's rights should be strengthened and secured on a European level. A positive aspect is the inclusion of Children's Rights in the Charter of Fundamental Rights (Art. 24) and in the draft constitution of the EU convention.

[...]

With the Parent Child Relation Amendment Act (Kindschaftsrechtsänderungsgesetz, KindRÄG 2001) which came into force on 7/1/2001, a long-standing claim of the NC was finally met: the age of majority was reduced from 19 to 18 years.

The most problematical issue, however, is that when attaining the age of 18 youth welfare measures come to an end in most of the case. As a result, for those children living in difficult situations, things become even worse. Minors who need the help of youth welfare measures in organizing their lives, are often not (yet) capable of recognizing and bearing the consequences of their actions. A breaking off of support is counter-productive as these youths often have not completed vocational training. The same applies for advance payments for child maintenance ("Unterhaltsvorschuss") which cease to be paid at the age of 18 in general. Hence, in order to obtain maintenance support 18 year olds must file claims at court by themselves, which creates for these young adults the risk of cumulating costs. These adverse effects often become worse due to the fact that some youth welfare benefits running for a longer period of time and to be started already at the age of 16 or 17 (e.g. for extended school/work integration and placement measures) are frequently not granted any longer right from the beginning.

The NC demands continued state support for both cases (child maintenance advance payments, youth welfare benefits) until these adolescents are able to take care of themselves.

[...]

The frequently concluded so-called "behaviour agreements" ("Verhaltensvereinbarungen") at school should be abolished anew, as they do not serve to increase democracy, but repression in schools.

[...]

Adults and above all parents still need to be trained in the importance and awareness of this right [Right to Privacy]. Children and adolescents often tell that this basic right of privacy (for instance, in regard to their personal e-mails, letters, diaries, ...) is violated in their daily life.

[...]

All children should have equal access to high-quality services in the areas of education, media and leisure activities (TV information, pre-schooling programs etc). Moreover, there are no radio and TV programs for children speaking minority languages.

[...]

In Austria there are, as mentioned in the State Report, student magazines and a youth Internet radio network, but there is no national daily children's magazine, no open channel or radio broadcast where children may talk about their opinions regularly as individuals and separate from school. In this very closed media setting implementation of the freedom of expression is therefore very limited.

[...]

Age limitations are different in the Länder and insufficient communication results in lacking acceptance of age ratings of movies. There are, however, notes on media being harmful to the youth in the youth protection provisions of the Länder, nonetheless, there is no Austrian-wide valid age limit system (on videos and DVDs, movie classifications are made through reference to the German system (German film industry - FSK; computer games and CD ROMS - USK)).

As far as cultural activities are concerned, we find that the support for children and youth culture is a problematic area with no specific concept for the support of children and youth media and no designated budget. There should be a designated budget for child and youth media of about 20 % of the whole cultural budgets of federal, regional and municipal levels. In this regard it is alarming that the Austrian Institute for Youth Research has been at risk by rigid austerity measures!

[...]

The competences concerning youth welfare are being shared between the federal government and the Länder. The federal government is responsible for setting fundamental laws, the Länder for setting implementation laws and for executing them. As a result, the individual youth welfare institutions of the Länder apply different execution laws and administrative tools and children and adolescents in Austria are cared for in very different qualities. Länder-specific conditions for accommodation are more and more oriented towards financial considerations instead of the children's welfare. There are no binding pedagogic minimum standards for describing the welfare of the child. Basically, youth centers belonging to a province are given priority to private institutions. Private institutions are forced to sign contracts which sometimes threaten their existence from the economical point of view. The variety of privately-owned social and family pedagogic and therapeutical institutions oriented towards the needs of children is currently jeopardized.

[...]

The National Coalition demands:

➤ Abolition of the "Schulunfähigkeit" ("non-capability of attending school")

The law still contains the term "Schulunfähigkeit" although Art. 2 (prot.1) of the ECHR and Art. 28 CRC determine that nobody must be denied the right of education.

➤ Abolition of a school that may only be attended by "healthy" children"!

§ 3 para. 1 lit. c SchUG determines that being acceptance to an Austrian school depends on the required health and physical fitness. This regulation discriminates disabled students and contradicts the corresponding article of the constitution and must therefore be abolished.

➤ Abolition of the nation-wide "limitation" of the permitted number of disabled children when permanent posts are planned!

[...]

6.1.2. "No barriers" because of non-bureaucratic personal and material support

The NC demands:

➤ School Transport:

Disabled children and adolescents are to be transported to school with the same means of transportation as other children! If necessary, the necessary staff must be made available to accompany them! Parents of children with special needs in integrative classes often have to organize these transports themselves (they are mostly organized for special schools!). This includes more work and is often a disadvantage for working mothers.

➤ Organization and equipment of the school, school rooms and the working place: Schools must be organized and equipped adequately and systematically for children and adolescents with special

needs – and not only “if required”! There is a good reason why seriously disabled children are not excluded from integration. The necessary subsidiary services, nursing staff etc. and supporting material (adapted PCs, ...) are currently often not provided at all or only through difficult individual initiatives.

- Children and adolescents with impaired hearing currently do not or barely have the chance of experiencing inclusive schooling as there are not sufficient teachers who know the sign language.

[...]

Austria is a rich country and the system of social security helps reducing poverty significantly. Without any social transfers, altogether 41 % of the Austrian population would have to face poverty risks. Due to these allowances, however, it is “only” 11 % according to the Social Ministry’s Report on the State of the Social System 2001-2002. Thus, benefits for children and families are rather comprehensive when compared to the average European standards, nevertheless, poverty is still a reality.

11 % of people at risk of poverty (876,000 people) and 4 % living in acute poverty (313,000 people) clearly show that the Austrian social system is no longer “poverty-resistant”. This includes, of course, also children and adolescents and their families:

- In accordance with the European Household Panel 2002, 14 % of the male (126,000) and 16 % of the female (142,000) persons under the age of 20 are at risk of poverty. Compared to the total risk figure of 12 % these groups therefore show a high level of poverty risk!
- In total, these groups constitute 28 % of the poverty-risk population!
- In the area of acute poverty, the situation is similar: 4 % of the male (40,000) and 5 % of the female (49,000) children and adolescents are living in acute poverty (average 4 %), this is also 28 % of the Austrians who live in acute poverty.

When considering child and youth poverty, the whole family must be considered as usually the parents or legal guardians are poor and not the children themselves:

When comparing the allocation of incomes according to household types, it becomes obvious that households with 2 and more children and single parents are significantly “over-represented” with the lowest incomes.

The threat of poverty also applies to 2 types of families who are significantly more jeopardized by poverty. These are single parents without earned income (50 % risk of poverty!) and families (extended households = MPH) with 3 or more children (approx. 16 % risk of poverty) (see table 1).

Despite social-security payments, a total of 457,000 people of households with children were threatened by poverty in 1999!

[...]

Children growing up in poverty-risk households face disadvantages concerning their development at school and vocational education, family relationships and interactions, leisure time and interaction in groups of the same age. These burdens hamper their emotional, social, somatic and physical well-being.

[...]

Since the last report, two federal government measures, which especially cause concern amongst the members of the NC in relation to the quality of the educational systems in general, as well as to the free and equal access to education:

- Increase of the maximum number of students per class: this measure – bringing the number of children up to 36 children per teacher – renders individual support for individual students impossible. Educational experts have been advocating for years that the maximum number of students per teacher should be decreased instead of increased.
- Introduction of tuition fees for tertiary education: the Winter Semester of 2001, saw the introduction of a compulsory fee of € 363,36 per student/per semester. This measure makes access to universities more difficult, above all for students from lower and medium income

classes, students with children, students from large families etc. This measure is not compatible with the demand for equal opportunities in the education system.

[...]

Concerning the residence status of migrants the FrG 1997 has brought significant improvements and security. Nevertheless, one problematical issue remains in relation to adolescents in conflict with the law: they are protected from deportation only if they have already grown up in Austria and have already been lawfully residing here for several years.

[...]

Legal capacity of asylum seekers according to § 25 of the Federal Act on Granting Asylum (AsylG) was lowered to 18 years in the law amending the Asylum Law in 2001. Unaccompanied minors over 14 years of age are allowed to submit an application for asylum. The competent youth welfare officer may then act as legal representative in the procedure for granting the right of asylum. Interviews with minor asylum seekers may not be conducted without their legal representative (§ 27 para. 3 AsylG). Therefore, the Asylum Law recognizes that minors need special protecting. In practice, however, this regulation is often fulfilled insufficiently and to varying degrees.

Due to the large numbers of asylum procedures, interviews are rather quickly dealt with. In some of the Länder, interviews with several UMR are brought together on one day. This is supposed to save travelling time for the representative of the youth welfare office, but, in fact produces increased time pressure for the interviews taking place.

Many adolescents describe the interviewing atmosphere as being a strain. The situation at the Federal Asylum office can evoke painful reminders of incidents of interrogation and intimidations which the adolescents had experienced in their own countries. The interviewees must plausibly describe their persecution and escape. In doing so, they partly re-live experienced despair, stress and anxiety. Non-verbal expressions – deprecatory gestures, shaking of the head et al. and comments from the officials (e.g. about the age of the interviewee), which are translated only partly, adds to an increased feeling of uncertainty of the applicant.

[...]

8.1.3. Custody pending deportation

It is still legal in Austria to take minors into custody pending deportation, although § 66 of the Aliens Act 1997 provided that in principle “less severe means” should be used. On 9 December 1999, the BMI issued a decree (file no: 31.340/12-III/16/99) ruling that custody pending deportation for minors must only be used as the last resort. Nevertheless, custody pending deportation continued to be applied in the following number of cases: 129 UMR in the 2nd half of 2000, 217 in the 1st half of 2001, 278 in the 2nd half of 2002 and 47 in the 1st half of 2002 (reply from the Minister of the Interior (4236/J) upon parliamentary request).

This continued practice prompted the Human Rights Advisory Council (established as an independent monitoring and consultation organ at the Ministry of the Interior) to prepare a report on minors awaiting deportation and to present 43 recommendations to the Federal Ministry of the Interior. In its report, the Council comes to the conclusion that imposing custody pending deportation on minors and its current manner of implementation contradicts the international minimum standards for the treatment of imprisoned children and adolescents.

[...]

The NC demands improvement of the situation of minor aliens in Austria:

- The child has a clear right to its family – family reunification must therefore not depend on annual residence permit quotas.
- According to Art 1 CRC, a “child“ is a person under the age of 18 - there must be no age limitation within the framework of family reunifications.
- Delinquency of minor aliens must not result in deportation.
- The Aliens Act sets the age of legal capacity already at 16 – the NC calls for the increasing of this age to 18 in the best interests of the child.
- No custody pending deportation for minor refugees!
- Unaccompanied minors need special protection as provided for in the CRC.

- The establishing of a wide network of "institutions for initial care and treatment" suitable for children and adolescents. These are to provide the necessary basic - medical, social and legal care for UMR, and to determine the individual need for care and aftercare.
- Accommodation and care in adequate institutions according to the relevant standards of the youth welfare system – there must not be any "second class adolescents".
- Access to German training courses, education and work. This right must not be denied for reasons of costs or legal regulations.

[...]

After heated political and public debate, the Vienna Juvenile Court, however, was dissolved in July 2003, which removed a central element of the internationally recognized Austrian model of juvenile justice. Matters of jurisdiction for juvenile offenders as well as the juvenile prison system were integrated in the general court organization. Massive problems in handling juvenile delinquents have now resulted.

Case study: in August 2003, a 14-year-old Rumanian adolescent (imprisoned in the Vienna-Josefstadt Prison for committing professional theft - which is a problematic offence in itself especially for adolescents; value of the goods: slightly over € 50,--) was raped by three other adolescents. This, however, seems to have been only the tip of an iceberg, because just shortly after the juvenile court had been dissolved, another adolescent was imprisoned and isolated in a "disciplinary cell" for four days. The Ministry of Justice regretted the incidence, but concluded that such incidences cannot be prevented.

The NC maintains that the state is obliged to provide adequate supervision so as to prevent (more) attacks on imprisoned adolescents.

A further problem is that this prison is massively overcrowded. It was originally planned for about 900 prisoners, but currently, there are more than 1,200 detainees. Adult areas have been reduced to create room for adolescents – according to internal information, there are almost no free adult areas - all lounges have been converted to cells to create room (Quote: "We are no hotel and therefore, we cannot reject anyone"). Bunk beds are increasingly used as otherwise, there would be no room at all. There is not enough qualified personnel. Ensuring relevant standards, such as adequate occupational opportunities, are impractical/virtually impossible.

In all cases, inadequate adolescent and adult segregation clearly contradicts CRC standards (Art 37) – installing an extra juvenile court (including its own prison administration) must be given top priority. Additionally, the imprisonment of juvenile offenders must only be used as a last resort.

The NC therefore demands:

- A separate juvenile court with clear and small units
- An independent and adequately qualified youth prosecution service
- Juvenile Court Assistance Service throughout Austria – including guardianships
- More personnel and financial resources for adolescents, meaning that instead of imposing prison sentences more focus on crime prevention and re-socialization
- Specialized mandatory training for judges and for public prosecutors in juvenile justice cases
- Extension of the monitoring and advisory competences of the independent Human Rights Advisory Board to the judicial/prison system (so far, competence is limited to the police/ Federal Ministry of the Interior)
- Assurance of resources for psycho-social care including qualified interpreters who speak the mother tongue of the prisoners (currently, only 16 % of all prisoners are Austrians)
- Regular checks on the suitability of the measures taken (including alternative accommodation)
- Amending the Juvenile Courts Act (Jugendgerichtsgesetz): prison standards (outdoor activities, sports and occupation) must be more clearly defined as legal entitlements.

[...]

Commercial sexual exploitation of children through pornography, prostitution and "child sex tourism" constitute a fundamental violation of children's rights. It's a crime consisting first of the immediate

sexual abuse of the child itself, and of, second, transfer of money or other “benefit” to the child or a third person. Child trafficking must be seen as one particular abhorring form of exploitation, treating the child like an commodity in the sex market.

The UN Convention on the Rights of the Child provides for fundamental obligations by all States parties for protection of children from any kind of sexual exploitation; these standards have been further elaborated by the 2000 Optional Protocol on sale of children, child prostitution and child pornography. Austria has ratified the Optional Protocol in May 2004, along amendments in the penal code; however, there is still urgent need for continued comprehensive implementation of the Protocol.

The NC demands:

- Implementation strategy for the Stockholm Agenda (1996) and the Yokohama Global Commitment (2001), within the framework of the drafting process of the Austrian National Plan of Action for Children’s Rights started in 2003, and by taking into account the Austrian government’s Action Plan against child abuse and child pornography on the internet (1998);
- Research and analysis on scope and dimensions of sexual exploitation in relation to Austria, including an assessment of the existing territorial legislation
- Implementation of the Code of Conduct for the Protection of Children from Sexual Exploitation, in cooperation with the tourism industry
- Assistance, psycho-social support and residence permit for children and adolescents as victims of sexual exploitation and trafficking