



ngo group for the crc

STATE PARTY EXAMINATION OF AUSTRIA'S THIRD AND FOURTH PERIODIC REPORT

61ST SESSION OF THE COMMITTEE ON THE RIGHTS OF THE CHILD
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Austria ratified the Convention on the Rights of the Child (CRC) on 6 August 1992. On Monday 24 September 2012, the Committee on the Rights of the Child (the Committee) examined the third and fourth periodic report of Austria. It was last examined on 14 January 2005. The State party has reservations on articles 13, 15 and 17 and a declaration in relation to article 38, paragraphs 2 and 3.

Austria ratified the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in armed conflict (OPAC) on 1 February 2002 and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (OPSC) on 6 May 2004. It was last examined under OPAC on 14 January 2005 and under OPSC on 15 September 2008.

This review covered Austria's integrated CRC, OPAC and OPSC report.

Opening Comments

The delegation of Austria was led by H.E. Mr Helmut Tichy, Ambassador and Legal Advisor at the Federal Ministry for European and International Affairs in Vienna. He was supported by representatives from the Ministry for Economy, Family and Youth, Ministry of Health, Ministry for Education, the Arts and Culture, Ministry of the Interior, Ministry of Justice, and Ministry for European and International Affairs and representatives of the Permanent Mission of Austria to the UN at Geneva and two translators joined the delegation.

Mr Tichy stated that the CRC was the most comprehensive instrument in Austria regarding child rights. He recognised the need for an inter-disciplinary approach and stated that this presented particular challenges to a federal state such as Austria. He explained the division of functions between Federal and regional levels and stressed that there were functioning centralised coordination mechanisms. Regarding the Children's Ombudsman, he noted that there were offices at Federal and regional level.

Mr Tichy spoke of the importance placed on child-related policies in spite of the global economic crisis. It was explained that the incorporation of child rights into Federal Constitutional Law in 2011 had proved a very significant step. Under the Law, Article 1 provided for the consideration of the best interest of the child and Article 4 afforded due weight to the voice of the child. Other key rights included the right to a childhood free of violence; the right to special protection; and a strengthened promotion of the rights of children with disabilities. Mr Tichy noted that the Constitutional Law served as guiding principles as well as promoting rights in the public arena. The new law also enshrined key principles of the EU charter.

Mr Tichy noted that as of 1 January 2013, the child impact assessment would come into force ensuring the positive impact of all future legislative projects affecting children. He further explained that the voting age had been lowered from 18 to 16 to encourage youth participation in the electorate.

Further developments had been made regarding child abuse and violence. Mr Tichy stated that Austria had been the fourth country worldwide to prohibit violence against children in all contexts in 1989. Surveys had shown positive changes in the attitudes of the public toward corporal punishment with fewer parents resorting to violence as a form of discipline. The government had signed a bilateral agreement with Thailand to address 'sex tourism' crimes and offences committed by Austrians abroad. The State had also become party to the Council of Europe Conventions on the Protection of Children against Sexual Exploitation and Sexual Abuse and the Convention on Cybercrime. Austria had also extended its jurisdiction to incorporate new phenomena such as 'grooming'.

There had been significant achievements in areas of health and education including the reduction of class sizes and access to inclusive education for children with disabilities. An integrated system assisting migrant children had become government priority and topics such as cultural difference had been addressed in classroom debate.

Mr Tichy recognised that Austria still faced many challenges and noted upcoming government strategies to develop a youth policy, extend disability rights and protect children from trafficking.

Mr Bernard Gastaud and Ms Kamla Devi Varmah served as Country Rapporteurs. Mr Gastaud thanked the delegation for the State report and welcomed Austria's recent signature of the Third Optional Protocol to the Convention on the Rights of a Child on a Communications Procedure (OP3 CRC). He reiterated the head of delegation's assertion that the constitutional enshrinement of certain principles proved crucial; however, he questioned the State party's continued reservation under the CRC.

General Measures of Implementation

Reservations

The Committee noted that there had been an ‘on-going debate’ in the State party regarding its reservations under Articles 13, 15 and 17 of the CRC and asked about any progress in this area. The delegation stated that the government did not feel that the reservations harmed the substance of the CRC or affected its applicability. The rationale behind these reservations was explained as alignment with the European Convention on Human Rights which held a high status in the State party. It was felt that the reservations facilitated harmonisation between the instruments without restricting the rights of the child. The Committee noted that other parties to the European Convention had not made such reservations.

Data

The Committee asked about follow-up to various ministerial reports on data collection. The delegation recognised that it had received several recommendations from human rights bodies notably UPR pertaining to this issue. A meeting in December with the director of the Austrian Statistics Office had been scheduled to discuss data collection. The delegation noted that it was important to collate data correctly and as such a distinction had been made between traditional ethnic groups (of which there were six) and migrants. Previously, the categorisation as ‘non-German mother tongue’ had led to confusion in the collection of data. The government had sensed reluctance from some sectors of the traditional ethnic groups who had not wished to identify themselves in this way.

Ombudsman

The Committee asked about the complaints procedure facilitated by the office of the Ombudsman. It was noted that the State party had several National Human Rights Institutions; among them (NHRI), the Ombudsman’s office had assumed many of the roles and functions traditionally performed by an NHRI under the Paris Principles. The delegation noted that the specific focus on human rights had been afforded to the Ombudsman’s office under an important constitutional change that had broadened its mandate. The Ombudsman’s office worked closely with other relevant bodies such as the Child and Youth Advocates, which operated in each region.

The delegation explained that child access to the complaint mechanism was facilitated by the ‘147 Rat auf Draht’ help-line, which was widely recognised at both national and *Länder* level. A new flyer campaign had been initiated to strengthen awareness. In schools, an individual was nominated by the director to serve as a link between children and various the complaints mechanisms. Any child could go to this representative to seek advice or issue a complaint. The government planned to introduce a parallel system in care homes.

Coordination and monitoring

The Committee recognised existing challenges owing to the federal system in the State party. It expressed concern that in cases where the *Länder* operated differently this could lead to inconsistency and discrimination. The delegation reaffirmed that some competencies were given to the Federation and others to the nine *Länder* regions. It was stressed that these separate authorities must be respected but that coordination mechanisms had been well established. Representatives of the *Länder* and Federation such as the Human Rights Coordinators of the Ministries frequently met and discussed efforts. It was explained that pursuant to Article 15 of the Constitution the aim was not harmonisation, but rather consistent implementation of the same standards.

The delegation asserted that it was important to differentiate between the competent areas. The federal state remained responsible for areas such as the police, justice and social welfare systems whereas the competency of the regions was described as ‘fringe areas’; namely, addressing issues such as the age of alcohol consumption and street curfews. The delegation acknowledged that whilst this could result in the application of nine different systems, the Federal government only had the constitutional authority to set criteria, not control how the *Länder* adopted it. Local authorities had to agree to any suggested changes in order for them to take effect. It was explained that the amalgamation of the Federal Children’s Ombudsman office and the Child Rights department had helped strengthen coordination efforts. It was further noted that when the child impact assessment took effect in 2013, this would generate greater consistency across all nine regions.

The delegation noted that comprehensive states treaties had proven effective tools in terms of regulating consistency. It was stated that despite constitutional hurdles, harmonisation was taking place in several areas at a rapid rate. The Committee noted that the delegation’s input had been very helpful as the sharing of best practices was crucial.

New constitutional law

The Committee asked about the nature and scope of the New Constitutional Law 2011. The delegation explained that the new law focused more on civil and political rights than economic and cultural rights.

National action plan

The Committee asked about the National Action Plan (NAP) that had ended in 2007 and whether there were plans to embark on follow-up or implement a new strategy. The delegation explained that the government had concluded the NAP in 2007 as it was felt that most of the aims had been accomplished. The current government had decided that mainstreaming rights in areas such as education and penal law would prove more effective and as such, a strategy had been outlined in the government work programme 2011-2013. The most pressing issues had been linked to other strategies such as the National Plan for People with Disabilities and the National Plan against Human Trafficking, both of which contained chapters on children.

Budget

The Committee commended the efforts at fiscal consolidation in the State party which had limited the negative impact of the economic crisis on resources allocated for children. It was also noted that 0.42 per cent of its Gross Domestic Product (GDP) had been allocated to children abroad. The Committee asked how the process of budget allocation was monitored. The delegation replied that all budgetary planning had to be approved by the respective ministries depending on the proposed project.

International cooperation

Pertaining specifically to international cooperation, the delegation noted that in 2012 allocated funds had reached a new high of 77 million Euros for technical cooperation. It was confirmed that the Secretary of State had secured an additional 6.6 million Euros for the coming year.

Dissemination and training

The Committee asked about dissemination of the CRC. The delegation noted that the CRC had been translated into 23 languages, including most minority languages, and made understandable for younger children. It was also noted that human and child rights had been adopted into the school curriculum and was taught at secondary level. Other government schemes were in place to promote tolerance among people of different cultural backgrounds from kindergarten level.

Definition of the Child

Different definitions of the child were noted regarding voting age, age of sexual consent, adoption age and age at which young people could buy alcohol or tobacco in the State party. The Committee asked about measures to ensure consistency at Federal and *Länder* level.

General Principles

Non-discrimination

The Committee asked about the persistence of racist and xenophobic attitudes, especially toward Muslims, Jews, Roma and people of African or Latin American descent. The delegation noted the importance placed on intercultural education in schools and amongst the general public. It was explained that the principles of tolerance and equality had been absorbed into the curriculum and applied rigorously. The Holocaust Education Institute had been founded to teach about National Socialism and the Holocaust. The delegation added that following recommendations from The Committee on the Elimination of Racial Discrimination (CERD), the scope of the State party's criminal law had been extended to include discrimination on the basis of origin or sexual orientation. The Committee suggested that mediation in schools could prove beneficial in tackling discrimination

The delegation noted that 395 prevention officers had been newly trained under the Federal criminal office to tackle racist street violence. To date, they had tackled over 7,000 cases.

Best interest of the child

The Committee recognised that the best interest principle had been well integrated into legislation but wondered how it was implemented in practice

Right to life, survival and development

The Committee asked about the right to life including government action to prevent youth suicide. The delegation noted that the right to life was covered by the Constitution and that this included provisions for children.

Respect for the views of the child

The Committee recognised the lowering of the voting age and asked what measures were in place to promote individual expression in the spirit of Article 12 of the CRC. It also asked about the financing of the Federal Youth Representative Council and how these funds were secured in spite of the economic crisis. The delegation reiterated that the voting age had been lowered in 2007, accompanied by strengthened political education in schools. Whilst the exact number of those who voted in the last elections was unknown the delegation asserted that the campaign had been successful overall.

The delegation added that since 2008, children had been heard increasingly in cases concerning them, particularly through the Children's Legal Advisor in family law cases. It was noted that children were afforded the opportunity to voice their opinions in mediation proceedings. The Federal Youth Representative Council had been guaranteed six million Euros annually and this could not be affected by budgetary cuts as it was regulated by law.

Civil Rights and Freedoms

Baby flaps

The Committee recognised the justification for 'baby flaps' or 'baby boxes' under the child's right to life but expressed concern under the right to identity and the family life. It asked many questions about the nature and scope of this operation, as well as its legal backing, citing reports which suggested that toddlers had also been left in the baby flaps. The delegation spoke at length about baby flaps, reiterating that predominant support for this measure had come from NGOs not the government. Whilst the exact legal regulation was not known, the delegation assured the Committee that children left in the baby flaps were newborns.

There was no health legislation at the Federal level for these measures; it existed only at the regional level. It was explained that baby flaps had been introduced to combat abandonment, which was illegal under some circumstances in the State party. Leaving a child in a situation of risk or endangering the life of the child carried a sentence of up to five years imprisonment. Baby flaps were not advertised and counselling centres offering advice about adoption procedures were easily accessible. The delegation reiterated the importance to safe guard the right to life so that baby boxes would be seen as a last resort.

Corporal Punishment

The Committee asked about incidences of corporal punishment in the family and expressed concern that only 30 per cent of children knew about the illegality of this practice. The delegation asserted that the government had comprehensive data and had regularly monitored the practice of corporal punishment since it was banned in 1989. Research conducted in 1991 and 2001 showed a significant decline from 31 per cent to 4 per cent of mothers who would resort to minor forms of corporal punishment. All research findings had been published in book format and most were also available online. The Austrian Institute for Family Studies treated all types of violence and offered medical facilities and psychological rehabilitation

The 1997 law against domestic violence in the family had been amended in 2009 to contain stronger use of language about violence in the home as well as extending the prohibition to other areas of life such as....

Access to appropriate information and cybercrime

The Committee expressed concern about incidences of new phenomena such as 'cyber-mobbing', 'happy-slapping' and 'grooming' in the State party. The delegation noted the recent signing and ratification of the Council of Europe Convention on Cybercrime which would enter into force on 1 October 2012. Online efforts had been made to inform parents and educators about concepts such as cyber-mobbing

Grooming had become an offence in January 2012 and the State party decided to go beyond the provisions of the Council of Europe Convention and criminalise grooming in ‘real life’ as well as in the cyber context. The Federal criminal office had also made concerted efforts, tackling schools at regional and provincial levels. Police had been specially trained in this area and awareness-raising campaigns about ‘happy-slapping’ had been initiated.

Freedom of expression

The Committee asked what had been done to protect children from the hate speech of politicians. The delegation stated that there had been numerous prosecutions in this area including the conviction of a politician last year for hate speech.

Right to privacy

The Committee asked what measures were in place to protect the identity of a child in sexual assault and child welfare cases. The delegation noted that personnel at every level, including police, prosecutors and courts, must work to protect the identity of the victims. The public could be excluded from courts and victim statements could be made anonymously. If the media acquired private information, they were liable to pay compensation up to 20,000 Euros for disclosing it. There had been many cases of this, one of which had reached the European Court of Human Rights. The delegation noted the 2010 re-establishment of the Austrian Press Council, a self-monitoring body with a code of conduct that paid special attention to the privacy of minors.

Deprivation of liberty

The Committee asked about reports suggesting that children under 14 had been placed in detention centres. The delegation replied that under State law, no child under 14 could be placed in a detention centre. It noted that in Dreikirchen there was a ‘care facility’ but this was not a detention centre as no child was deprived of his or her liberty.

Family Environment and Alternative Care

Alternative care

The Committee expressed concern about the number of children under five, as well as children with disabilities, in alternative care settings. It was noted that the right to family environment was very important. It was asked how easy denouncing a case of abuse was in an alternative care environment, especially if the victim was a child with a disability.

Adoption

The Committee asked about the consent of the child in cases of inter-country adoption. The delegation noted that children over 14 had the right to give their consent and that those above five had the right to be heard. In 2010, procedures for regulating foreign adoptions had been established. Adoption would receive legal certainty in cases where adoptive parents asked for recognition of the decision. Where an intermediary received a reward or promised compensation to parents who would give up their child, this was prohibited by law.

Maternity leave

The Committee expressed concern about the short length of maternity or parental leave and asked what measures were in place to support low-income families in that regard.

Basic Health and Welfare

Children with disabilities

The Committee congratulated the State party for having banned the forced sterilisation of children with disabilities. The delegation explained that there had been significant policy developments relating to children with disabilities in recent years. The Ministry of Social Affairs had spent two years coordinating the National Plan for People with Disabilities and this had proved an important step in changing attitudes toward disability. The delegation highlighted financial support from the State, as well as added pension funds for parents, allowing them to stay at home with their child. Support varied depending on the *Länder*, but included measures such as tax deductions and free transport for children with disabilities to and from school.

Victims of sexual abuse

The Committee asked about the available legal and psychological support for victims of sexual abuse, as mentioned in the State Report

Pregnant mothers

It was noted that under the Strategy for Children's Health, pregnant mothers were provided with support from the very beginning of their pregnancy. There was a psychosocial clinic in Vienna, as well as various NGO initiatives funded by Federal and *Länder* government, which established mother-child centres to address problems experienced by the expecting mother. Through the Youth Welfare System, anonymous births were possible, though rare.

Vaccination

Widespread vaccination coverage was explained as challenging in the State party as a proportion of the population were not in favour of vaccinations. At Federal level, with the participation of nine regions, a major vaccination project had been undertaken aimed at total immunisation until the end of mandatory schooling at 15 years old. It had been financed through minimum legal health insurance provided by the State so that no child was excluded from the system. It was further explained that all information regarding vaccinations could be found on the webpages of the Ministry of Health in a variety of languages

Breastfeeding

The Committee asked about the low breastfeeding rate and advertisements in the State party encouraging alternatives to breast milk. The delegation affirmed that the Ministry of Health was entirely in favour of breastfeeding but that it proved challenging to impede imports and sales of foodstuffs. It was explained that midwives promoted breastfeeding but that ultimately the choice lay with the individual.

Drug and alcohol issues

The Committee asked about substance abuse and the prevalence of eating disorders amongst adolescents in the State party and expressed concern about low budget allocation in this area

compared to other sectors. The delegation noted that smoking amongst adolescents had increased between 1994 and 1998 but had declined in recent years. A new study suggested that approximately 25.4 per cent of 11 to 15-year-olds smoked. The delegation explained that as part of a preventive approach, an awareness-raising campaign called 'Real Cool' had been initiated in schools under the Ministry of Health to discourage youths from taking up smoking.

Where preventive measures had failed, treatment was widely available. The government's strategy for substance abusers was 'to heal rather than to punish'. Centres provided treatment and substitution programmes helped former addicts re-enter the labour force. It was explained that a new law was currently being drafted that would distinguish between young offenders who use substances for private consumption and those who trade and traffic drugs.

Harmful practices

The Committee noted that Female Genital Mutilation (FGM) had been criminalised by the State party, even when practiced abroad, and asked for updated information on the 2009-2011 Action Plan for the Prevention of FGM in Austria. The Committee also asked about measures taken to prevent forced marriages.

Education, Leisure and Cultural Activities

Inclusive education

Regarding inclusive education, the Committee recognised that whilst parallel schooling may prove beneficial for many students, an independent expert had reported that it could be damaging for children from minority backgrounds.

Leisure

Under right to leisure, the Committee asked about reports suggesting that noise made by children had been criminalised. The delegation explained that several Supreme Court rulings had ensured that noise made by children during play had to be accepted. Whilst there was currently little jurisprudence on this, the government felt that it was sufficient and that no specific law was required.

Vocational training

The Committee sought clarification about reports suggesting that the apprenticeship vocational system was not operating as well as the traditional educational system in the State party and asked how the government planned to tackle this.

Early childhood development

Regarding early childhood development, the Committee recognised the State provision of 16 hours a week of free pre-school education and asked about provisions for low-income families who could not afford to supplement this.

Children with disabilities

The Committee asked about inclusive education in the State party and posed questions relating to awareness campaigns about social inclusion, support for children in mainstream schools and sign language training. The delegation spoke at length on this topic. It was noted

that parents of a child with a disability could choose whether to include the child in a mainstream or segregated school. Where parents opted for inclusive schooling, the district school board would provide information about suitable schools in the local area.

Recent data had shown a substantial decrease in the number of children in specialised schools, which currently stood at approximately 13,000. The delegation agreed that inclusive education was the best option for *all* children to tackle stigmatisation and stimulate development but that ultimately the decision largely depended on the needs of the individual child and the capacity of the local schools. Within mainstream schools, the curriculum had been adapted to suit the needs of the child. The delegation noted that recent developments had proved successful but that further work was needed.

Special Protection Measures

Child labour

The Committee enquired about the monitoring system for ‘light and occasional work’, as well as the minimum age for engaging in hazardous work. The delegation reiterated that the 2010 Federal Act on the Employment of Children and Youth had raised the minimum age from 12 to 13 and this pertained to ‘unburdening work’ such as flower picking. Children were protected from child exploitation until they reached 16 years. It was noted that labour inspectors had the capacity to detect violations and there had been seven cases in 2009 and two in 2010. In respect of the ILO Conventions, the government did not see the need to raise the working age from 15 to 18 years.

Juvenile justice

The Committee commended the State party’s approach to alternatives to detention as an example of best practice, but was concerned about the one year pre-trial detention allowance. The delegation noted that numbers of juvenile offenders had dropped in recent years, as had the number of detainees, largely due to the introduction of house arrest and electronic tagging. It was reiterated that in centres hosting both adults and juveniles, they were to be kept separate at all times.

A task force had been established to decide whether a new prison was needed in Vienna but it had not yet reached a conclusion. Whilst juvenile pre-trial detention could last up to one year, it was noted that every attempt was made to deal with cases quickly and efficiently and the actual average detention time was 49 days.. Children under 14 could give evidence and statements under controlled circumstances with additional support from trained professionals and those over 14 could request the same measures if they wished.

Asylum seekers

The Committee asked about the system of age determination for unaccompanied minors. The delegation replied that these cases demanded a multifactorial analysis including x-rays of the jaw, caporal x-ray and a standard medical examination. It was explained that this procedure had been developed with international assistance and the sharing of best practices. In cases of doubt, individuals were assumed to be under 18 years, guaranteed by law. If the applicant rejected the results of the age determination this could be contested before an asylum court with a legal representative and interpreter present.

The delegation explained that every effort was made to provide protection and legal assistance to all unaccompanied children but this was only guaranteed where the child was less than 14 years old. The age had been established as 14 as anyone over this age could independently seek asylum.

The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (OPAC)

The Committee asked about children of 17 years old who could partake in military service. It also asked for more details about the military school operating in the State party. The delegation stated that the age of military service had often been contested including under the Universal Periodic Review. The rationale was that children could finish military service as quickly as possible after completing their education and before starting university. It was noted that in 2013 there would be a popular referendum about the continuation of military service. It was reiterated that no one of 17 could participate in hostilities or serve as a United Nations peacekeeper.

The military school was under the authority of the Ministry of Education and not the Ministry of Defence. Students there came into contact with military personnel only in the boarding houses, which were run by the military. It was stressed that the boarding school was in line with the provisions of OPAC and that they only dealt with arms as part of an extra-curricular activity.

The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (OPSC)

The Committee asked about developments under OPSC. The delegation noted the establishment of two Working Groups under OPSC, namely the Working Group on the Economy of Sex Tourism and the National Plan against Human Trafficking under the Ministry of Youth. It was also reported that another Working Group had been initiated on Prostitution and Sexual Exploitation with a particular focus on internet exploits. The delegation stressed that these Working Groups had allowed for vital collaboration between different experts. The electronic registration of the data of victims was also discussed, noting that since 2011 it had been possible to disaggregate the information by age, sex and violation. The data had shown that no one under 18 had been trafficked.

The delegation noted that children under 14 could give their consent for use of images of themselves. The Committee expressed concern about the low age of consent but the delegation reiterated that it was in line with the age of sexual consent in the State party. It was noted that there had been no criminalisation of digital pornographic material as this was considered a 'victimless crime'.

Regarding prostitution, the Committee expressed concern about the treatment of some child victims especially in the *Länder*. The delegation noted that this was under the competency of regional law but that general procedure in the Capital was that a singular offence was not punishable but afterwards a child prostitute could be subjected to fines. The rationale was that this prevented others from engaging in prostitution. The Committee expressed concern about the effect of these measures on the individual child in question.

Concluding Remarks

Ms Varmah thanked the delegation for a fruitful discussion though regretted that many questions had gone unanswered. She noted positive developments in several areas since Austria's last meeting with the Committee. The Rapporteur highlighted issues of concern including reservations under the CRC, coordination between Federal and *Länder* level and the treatment of minority groups within the health and education systems. She thanked the high-level delegation for their commitment to child rights.

Mr Tichy thanked the Committee for a very thorough and broad discussion. He expressed his gratitude to the civil society representative present at the meeting and stated that the government of Austria awaited with anticipation the Committee's concluding observations.