



Convention on the Rights of the Child

Distr.: General
24 July 2012

English only

Committee on the Rights of the Child

Sixty-first session

17 September – 5 October 2012

Implementation of the Convention on the Rights of the Child

List of issues concerning additional and updated information related to the third and fourth combined periodic report of Austria (CRC/C/AUT/3-4)

Addendum

Written replies of Austria*

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not edited.

Part I

In this section, the State party is requested to submit its responses to the following questions (30 pages maximum).

Reply to the issues raised in paragraph 1 of the list of issues (CRC/C/AUT/3-4)

Federal Constitutional Act on the Rights of the Child, Federal Law Gazette I No. 4/2011:

1. Since 2005 the Austrian constitution states that "children and juveniles are to be allowed the optimal intellectual, mental and physical development to let them become healthy, self-confident, happy, performance - oriented, dutiful, talented and creative humans capable to take over responsibility for themselves, fellow human beings, environment and following generations, oriented in social, religious and moral values." (Art. 14 para. 5a B-VG).

2. Thus, a special constitutional law on the rights of the child was passed in 2011. At the heart of this constitutional law there is the entitlement of the child to particular protection and care in conjunction with the key requirement that priority is given to the best interest of the child. The best interest of the child has to be balanced with other legal interests, e.g. the right of the parents to the respect of their privacy and family life. Special reference should further be made here to the right of the child to express its views freely and to its views being given due weight, the prohibition of child labor, the protection of children from all forms of violence as a disciplinary measure and from exploitation or (sexual) abuse by adults, as well as the rights of children with disabilities.

3. On the European level, the Charter of Fundamental Rights of the European Union (hereinafter referred to as the EU-Charter of Fundamental Rights), promulgated in OJ No. C 303 of 14 December 2007, p. 1, contains a specific provision on the rights of the child (Art. 24). In this context, it should be mentioned that the Austrian Constitutional Court, in its ruling of 14 March 2012 (U 466/11, U 1836/11) stated that "the rights guaranteed by the EU-Charter of Fundamental Rights may also be invoked before the Constitutional Court as constitutionally guaranteed rights and that they are a yardstick for constitutional review in matters where the Charter of Fundamental Rights applies. This is in any event true when a guarantee by the Charter of Fundamental Rights is similar to constitutionally guaranteed rights under the Austrian Federal Constitution in terms of wording and precision."

Withdrawal of reservations

4. In addition to what was said in paragraph 14 of the Report, please be advised that this discussion is ongoing, involving representatives of the ministries concerned and civil society.

Reply to the issues raised in paragraph 2 of the list of issues

5. As described in the Austrian State Party Report in paragraphs 20-25, Austria has numerous mechanisms of cooperation and coordination in respect of policies to implement the Convention on the Rights of the Child.

6. Beyond that, also the *Human Rights Coordinators of the Federal Ministries and the Länder*, and the coordinating function of the Federal Children's and Young People's Ombudsman, can be mentioned. As the Federal Constitution contains detailed provisions on the competences of the regional administrative bodies, there is no overarching institution with comprehensive coordinating tasks.

Reply to the issues raised in paragraph 3 of the list of issues

7. All the systems existing in Austria are described in paragraphs 36 through 44 of the State party report.

Reply to the issues raised in paragraph 4 of the list of issues

8. In Austria, in the early 1990s, intercultural education was introduced as an “educational principle”, which is a recommendation to teachers to take certain aspects into account across the curriculum. Intercultural education aims at a mutual understanding between pupils of various social, cultural and linguistic backgrounds and aims at making them aware of similarities and differences and at combating Eurocentrism and racism.

9. To support teachers in this field, the initiative “Interculturality and multilingualism – a chance not to be missed!” (“Interkulturalität und Mehrsprachigkeit – eine Chance!”) was launched by the Federal Ministry for Education, Arts and Culture. Since the school year 2006/07 thousands of pupils and teachers have been encouraged to tackle linguistic and cultural diversity in their own living environment. All the school projects within the framework of this initiative are documented on the website www.projekte-interkulturell.at. In addition, teachers are offered the opportunity to take part in seminars devoted to this subject matter. So far, four seminars have been offered, each of which was attended by about 70 teachers. Due to the overwhelming success, the project will be continued.

Specific measures (examples)

10. Aktionstage Politische Bildung (Action Days for Democratic Citizenship Education): These “action days” are held every year (April/May), with numerous events being organized on human rights as well as racism and xenophobia.

11. Educational materials: Zentrum polis has been commissioned by the Federal Ministry for Education, Art and Culture (BMUKK) to devote issues of the magazine “polis Aktuell” to topics such as “Heimat” (“homeland” - familiarity and alienness, migration, fleeing a country etc.), social marginalization (with a focus on the Roma in Austria) and on practical suggestions for dealing with these questions in the classroom. Zentrum polis also offers information for practitioners on intercultural learning and human rights education, e.g.: “Heimat ist für mich...” (“For me, homeland means...” – for primary schools), “Religious symbols in schools? A parliamentary discussion” (secondary school, first stage). The educational package “Das große Plus” (“The Big Plus”) contains information on the societal and economic contributions people with a migrant background make to life in Austria.

12. The BMUKK also supports competitions on education for democratic citizenship in schools and cooperates with various organizations in brining relevant workshops to schools. All these measures contribute to more understanding and tolerance.

Legislation

13. Austria has an extensive set of rules to combat every type of discrimination, intolerance and hate speech. Incitement to hatred is a punishable act under criminal law (sec. 283 of the Austrian Criminal Code) and so is libel motivated by racism (sec. 117 para. 3 in conjunction with sec. 115 of the Criminal Code) re-engagement in National Socialist activities (Prohibition Act). Moreover, Austrian law defines the following acts as punishable acts under administrative law: discrimination on grounds of race (Art III para. 1 sub-para. 3 EGVG / Introductory Act to the Administrative Procedure Act – with extended protection under an amendment of 1 September 2012) and the dissemination of National Socialist Ideas (Art. III para. 1 sub-para. 4 EGVG). Austrian criminal law (sec. 33 sub-para. 5 Criminal Code) has also defined special aggravating circumstances applying to

perpetrators who commit punishable acts for racist, xenophobic or other specially reprehensible reasons.

14. Pursuant to sect. 117, para. 3, of the Criminal Code, a libel consisting in abuse, threat of abuse or revilement / mockery violating the human dignity of a person because this person belongs to a group listed in sec. 283 para. 1 of the Criminal Code (a church or religious community or other group defined according to criteria of race, color of skin, language, religion or ideology, nationality, original or national/ethnic origin, gender, disability, age or sexual orientation) is a punishable act that is prosecuted ex officio.

15. Pursuant to sect. 12 para. 1 and sect. 29 para. 1 of the Austrian Act on Associations, and sec. 6 and sect. 13 of the Austrian Public Gathering Act, respectively – always in conjunction with Art 11 para. 2 of the European Convention on Human Rights - associations and gatherings which violate Austrian law may be prohibited or broken up.

16. Using all legal means at their disposal, the Federal Ministry of the Interior (BM.I) and the security forces are consistent in their fight against right-wing extremism whenever it violates Austrian criminal law.

National Action Plan for Integration

17. In the framework of the “National Action Plan for Integration”, Austrian has also adopted measures against racism. In addition to consistent repression, a number of preventive actions have been taken:

- To keep (Skinhead) groupings from getting the public attention they are seeking, relevant events are not permitted or closely monitored. For this purpose, the Federal Office for State Protection and Counter-Terrorism (Bundesamt für Verfassungsschutz und Terrorismusbekämpfung, BVT) prepared and distributed information material to municipalities to show the authorities in charge of approving events as well as event location operators the legal options they have to prohibit or break up right-wing extremist events, concerts or gatherings of Skinheads (possibly also soccer hooligans) on suspicion of re-engagement in National Socialist activities.
- Since 2010 a pilot project is under way to train officials at regional level in preventing right-wing extremism; subsequently, this type of training will be offered all over Austria.
- Events organized by the law-enforcement authorities in cooperation with NGOs (“Stopline” and ISPA - Internet Service Providers Austria) serve to inform and sensitize the Austrian public.
- The Offices for State Protection and Counter-Terrorism of the Länder support the school boards of cities and Länder in their efforts to prevent the dissemination of racist, xenophobic and anti-semitic ideologies in schools.
- It is easy for citizens to report re-engagement in National Socialist activities to police; the BM.I introduced an online reporting office which can be reached by e-mail (meldestelle@interpol.at) as early as in 1997.
- Law-enforcement statistics have separate categories for the acts motivated by anti-semitism, right-wing extremism, racism or xenophobia which were reported to the police.
- To be able to continue fighting these acts effectively, the specialists of the BM.I analyze the strategies of perpetrators on an ongoing basis and cooperate actively in cross-border projects, in particular with neighboring countries and European police departments.

Human Rights Education/Training

18. Human rights are an important part of the education and training of police officers. Trained prevention specialists run projects for the prevention of violence and juvenile delinquency on an ongoing basis (“OUT – The Outsiders” or “BLEIB SAUBER - Jugend OK”/“STAY CLEAN- Youth OK”, a project initiated in 2007 which also brings on board municipal politicians, schools, youth and educational institutions, the hospitality industry, associations, sports clubs etc.).

Reply to the issues raised in paragraph 5 of the list of issues.

19. For many years, the Federal Ministry of Economy, Family and Youth has cooperated with the initiative saferinternet.at, a partner of the EU network for secure Internet use. Under this cooperation, brief workshops for youth groups and school classes, parents, educators and multipliers in youth work are organized; moreover, information material is published jointly. The aim is to inform about the opportunities and threats linked with the Internet and to improve the skills of Internet users.

20. The project “Click & Check” initiated by the Criminal Investigations Office of the Land of Upper Austria is amongst other things devoted to phenomena such as “happy slapping”, cyberbullying etc., as well as with the dissemination of political or religious contents. The goal is to foster the responsible use of modern communication media (mobile phones and Internet) by young people.

Reply to the issues raised in paragraph 6 of the list of issues.

21. Under the Austrian Federal constitution, youth welfare is matter of the Länder in terms of implementing regulations and enforcement. The measures described below are exemplary and can be found in similar shapes and forms in all the Austrian Länder.

22. The Youth Welfare Statistics available on www.bmwfj.gv.at (a compilation of statistics from the Länder, which are in charge of this matter) reflects the number of children accommodated in institutions and with foster families, the legal basis for out-of-home care (by mutual agreement with parents or based on custody transfer by court order), as well as the children’s age and gender breakdown.

23. Using a variety of methods, the public youth welfare service seeks to have a detailed overview of the number of minors accommodated in youth welfare institutions, capacities, use of capacities as well as continuing education and training events attended in all the Länder. In Upper Austria, there is an Intranet exchange reflecting the use of capacities in residential groups which is updated on a daily basis to show availabilities.

24. Socio-pedagogical institutions (apartment-sharing communities, supported residential groups, children’s villages etc.) designated to take on minors and ensure their entire upbringing must be approved by the governments of the Länder. For approval, they have to submit a specialized concept prepared in accordance with recognized scientific findings. The decree establishing the creation and operation of such an institution prescribes care quality (maximum number of young people to be taken care of, minimum staffing levels etc.). Foster families are tested for their psychological and physical aptitude to bring up and rear the respective child.

25. All Länder have quality management systems and regular evaluation instruments of their own. In Vorarlberg, these are based on “quality for children”, internal standards of the institutions, as well as on numerous requirements issued by internal bodies and on guidelines.

26. Depending on the Land, a “home supervisor” (or similarly named official) reviews adherence to the quality requirements prescribed by law, decree and guidelines in all live-in

institutions of the Land at intervals of one or two years. In Salzburg, annual reviews are done in a standardized way, they include an on-site inspection and one-on-one or team interviews based on a questionnaire with the young people and the caregivers. Complaints or recommendations are discussed in the interviews and documented in the final report.

27. In the Tyrol, the Youth Welfare Department carries out evaluations by interviewing representatives of the regional administrative authorities, meeting those responsible at helper conferences and by analyzing final reports. A few years ago, socio-pedagogical institutions and social services for youth welfare were trained to use a self-evaluation system based on the European quality management system E.F.Q.M. (this process was followed through by Frey Academy for several years).

28. The regional administrative authorities not only carries out structural reviews but also case-related spot checks (e.g. in case of complaints); in this context orientation on the conditions of life and participation are central criteria (Burgenland, Carinthia, Lower Austria). In the Tyrol social workers conduct personal interviews about the quality of the institutions with the children and youth accommodated there. In Vorarlberg, case management, the agreement entered into between parents, possibly the child/youth, the institution and the youth welfare services, is a central instrument in handling individual cases; it is reviewed by youth welfare services in the court of support planning or case control. In Vienna, the social worker managing a case will regularly check if parents still need support in rearing and educating their children and if this is in the continued interest of the child. The social workers organize case management conferences, stay in touch with the social worker in charge of the foster parents and the socio-pedagogues in charge of the children, and accompany work with the respective parents. Children and youth concerned are included in the case management conferences in an appropriate way in accordance with the contents dealt with and their age.

29. In the Tyrol the Child and Youth Advocate's Office holds consultation hours in some socio-pedagogical institutions. During meetings, the advocate gathers information and experiences which is shared with the youth welfare services in the form of suggestions. It is a low-threshold opportunity to discuss problems with external confidants; in the event that appropriate resources are available, this scheme will be expanded.

30. In Lower Austria periodic contacts between the social worker in charge of the case and the pedagogical director of the institution are part of family work during out-of-home care for children/youth (to ensure that the termination of such periods is prepared in a timely manner).

31. Complaints management procedures are in place in all Länder; these may even lead to the closing of institutions.

Training and Continuing Education

32. In youth welfare institutions, the care and upbringing of minors is restricted to specialists who are also personally suited for the task. Specialists are defined as persons who have completed training at a Social Work Academy or University of Applied Sciences/College for Social Pedagogics, or who have completed a university program of pedagogics, educational studies or psychology, or who have completed their training as psychotherapists, clinical psychologists or health psychologists.

33. There is compulsory continuing education for caregivers in the institutions; like supervision is offered and finance by the public youth welfare services (financed through daily rates invoiced to social services).

34. In the various guidelines on performance-based and quality-oriented control, provisions on training and continuing education were included. For example, Upper Austria

has a mandatory requirement of 32 hours of continuing education within two years. In Styria, training must be equivalent to at least 60 ETCS credits.

35. External seminars for employees of the youth welfare services are serve this purpose (e.g. the meeting of the Child and Youth Advocate's Office on children in out-of-home care: "Herausgerissen" - Was stärkt fremduntergebrachte Kinder?" / "Taken away – how can children in out-of-home care be supported?" - November 2012).

Reply to the issues raised in paragraph 7 of the list of issues

Integration in the Educational System

36. The integration of children with disabilities in regular primary schools and secondary schools, first stage, as an educational option was enshrined in legislation in 1993 and 1996 respectively. Since then, parents have a choice for children and youth with special educational needs: they may opt for special schools where the curriculum is designed in keeping with the disability of their children or register them at a regular school, where inclusive education is offered in so-called integrated classes.

37. Children with special educational needs may at present attend special schools for up to twelve years or complete compulsory education by attending school for eight years and one year of schooling at a polytechnic institute (or a one-year domestic science school as from the academic year 2012/13). Currently, about 50% of all pupils with special educational needs are taught in integrated classes at regular schools.

38. There are plans for more pilot projects to integrate pupils with special educational needs in the second stage of secondary schools. The legal requirements for attendance of intermediate and higher vocational schools and the second stage of general secondary education have already been created in that deviations from curricula are possible and special tuition has been expanded.

39. The guidelines on quality standards in integrated classes (circular letter No. 18/2008) serve to assure quality in inclusive education. The project "Personal assistance to pupils at federal schools" provides pupils with physical disabilities at federal schools who fulfill the requirements for attending intermediate and higher vocational schools or the second stage of general secondary education but need assistance during classes with precise that personal assistance which enables them to later on lead a self-determined life (in place since 2008/09; presently 32 pupils with assistants).

National Action Plan for people with disabilities - 2012-2020 (see II/c)

40. In keeping with the equal opportunities legislation of some Länder, the support services of the federal level and the Länder seek to foster the development potential of all children early on and even preventatively.

Measures taken by the Länder

41. Burgenland: The Act of the Land on Child Education and Care 2009 (Bgld. KBBG 2009), Law Gazette of the Land No. 7, as amended, further improved the system of integrating children with special needs in the child-care facilities of Burgenland.

42. Carinthia focuses on the self- and co-determination of those concerned, and on networking in the local community, with offerings close to home and inclusive regular schools (at present, 80% of children with special educational needs attend regular schools).

43. Upper Austria created a children and youth competence center in 2012; it is geared to using an interdisciplinary approach as it helps children with emotional, cognitive, social and behavioral problems or disorders, and offers parents far-reaching support.

44. In accordance with the UN Convention on the Rights of Persons with Disabilities, Upper Austria has introduced a number of benefits and measures to support the integration of persons with disabilities in the labor market under the Upper Austrian Equal Opportunities Act (vocational qualifications, work assistance and accompaniment, sheltered workplaces etc.).

45. Mobile support and help is available to children aged three and over with disabilities for their leisure time in the Land of Upper Austria, whereas personal assistance is offered for the age group 6 and over. Vacation programs are eligible for financial support.

46. In Lower Austria an additional educator in schools to work with children with disabilities is financed to foster inclusive tuition. Moreover September 2012 will see an inclusive sports and games event for a total of 350 children with and without disabilities.

47. In Salzburg the authorities already check youth welfare institutions for the greatest extent of suitability for persons with disabilities and barrier-free design as well as privacy before granting approval to these institutions.

48. Awareness-raising is important in Vorarlberg where an equal opportunities prize can be won every year (http://www.vorarlberg.at/vorarlberg/gesellschaft_soZIALES/soZIALES/integrations_behinderten/info/vorarlbergerchancenpreis.htm). In March 2012 the government of the Land adopted a concept for special needs support to and inclusion of children with disabilities in kindergartens and compulsory education. This enables children with a considerable degree of special needs to attend primary school and middle school in their home communities. Access to inclusive, high-quality and free primary and secondary education for all children is aimed for.

49. Under the umbrella of Family Help institutions, the Land of Vienna offers children with disabilities between the ages of 0 and 15 care within or close to the family in their accustomed surroundings for the time required.

Measures to protect children with disabilities from violence and abuse in institutions:

50. When cases of violence against children in institutions became known in 2010, both the federal government and the Länder responded in such a way as to help all children (with or without disabilities).

51. Apart from giving the Austrian Ombudsman Board the authority to audit (see Question II b), the Federal Ministry of Economy, Family and Youth also published a manual for violence-free socio-pedagogical institutions and established a free hotline for children affected by violence at a child protection center. These measures were advertised at all schools (posters, flyers) and on the Internet.

52. The child and youth advocates (Kija) in almost all the Austrian Länder introduced initial contact points or victim protection centers for children who experienced (sexualized) violence in public or private institutions; these centers offer anonymous, free and confidential counseling. Vienna and Lower Austria entrusted special ombudspersons at the advocates' offices with this task.

53. In 2010/2011 some Länder and the organizations operating and funding related institutions cooperated in devising action plans and standards according to the guidelines of the Federal Ministry of Economy, Family and Youth applying in cases of sexual abuse in youth welfare institutions. For example, the organizations operating such institutions in Salzburg have been called upon to prepare sexual education concepts and to cooperate with institutions funded by the Land of Salzburg (e.g. first-love walk-in centers, drug counseling centers etc.).

54. In Carinthia, institutions are regularly checked on the basis of a checklist; in this context, the professionalism of staff, co-determination by residents, the composition of networks (characteristics of partners) and continuing education offerings to protect children with disabilities from violence in institutions are under scrutiny.

55. To protect children in institutions from violence and abuse, Burgenland makes the operation of institutions for the care, promotion or training of persons with disabilities contingent on a permit issued by the government of the Land. The institutions are regularly checked by specialists from the relevant authority on the occasion of unannounced visits.

Reply to the issues raised in paragraph 8 of the list of issues

56. In spite of several amendments in coordination with the Länder (in total, four drafts were distributed for examination) and agreement of the federal government to refund the projected additional costs until 2014, three Länder continue to ask for further negotiations in respect of federal funding to obtain higher annual contributions or funding for an unlimited period from the federal government. Adoption of the bill by parliament will only be possible once the issue of financing has been settled.

Reply to the issues raised in paragraph 9 of the list of issues

57. Pursuant to sec. 13 para. 2 of the Austrian Aliens Police Act (FPG) as amended by the Aliens Law Amendment Act (FrÄG) 2011, the interests of the child as well as privacy and family life must be taken into account at any stage of official acts by immigration police.

58. Since 2009 the Aliens Police Act was amended several times. The procedure for identifying age was enshrined in the FrÄG 2009 (in force since 1 January 2010) with the principle “when in doubt, it is assumed that the person concerned is a minor” being included in the law (sec. 12 para. 4 FPG).

59. The Aliens Law Amendment Act (FrÄG) 2011 (in force since 1 July 2011) the principle already followed in practice, i.e. not to take children under the age of 14 into custody pending deportation, was committed to paper (sec. 76 para. 1a FPG). Although the application of more lenient means was restricted to persons up to the age of 16, the principle of proportionality is central to any decision in respect of custody with a view to deportation; the application of more lenient means have to be checked and given priority (see also: Family accommodation).

60. As per 1 December 2011 a system of independent and free legal counseling was established (sec. 84-86 FPG). Every alien, including children, is given free legal advice in matters involving termination of residence in Austria; if the person concerned so wishes, advisors also act as legal counsels in related proceedings. Such advisory services on behalf of the Republic of Austria are provided by the non-profit organizations “ARGE Rechtsberatung” and “Menschenrechte Österreich” (see also II/a-c).

Reply to the issues raised in paragraph 10 of the list of issues

61. To the extent that this is possible, juvenile suspects are to be taken into pre-trial custody in a separate prison ward. Juveniles must be separated from adult inmates, or at least from such inmates who might have a detrimental effect on the juveniles (sec. 36 para. 1 and 3 Act on Juvenile Courts - JGG).

62. Juvenile offenders must serve prison terms in special penitentiaries, other institutions for the enforcement of prison sentences or special wards. Juvenile inmates must be separated from adult inmates who are not subject to the juvenile corrections system. However, separation may be foregone if circumstances are such that there is no indication

that detrimental influence or any other disadvantages for the juvenile delinquents has to be feared.

63. The legal framework is in place to prevent negative effects of the corrections system on juveniles.

64. In this context, recent developments have insofar been favorable as the number of juvenile inmates has gone down considerably.

Table 1

Juvenile inmates

<i>Annual average</i>	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Youth											
	155,0	180,6	209,8	260,5	212,6	181,7	174,8	155,2	194,9	198,3	149,8
19-21 years old											
	399,8	463,3	533,1	674,3	727,6	689,2	653,7	533,3	576,0	541,9	532,5
Adults											
	6.489,6	6.817,5	7.147,2	7.480,3	7.915,2	7.979,8	8.115,6	7.553,8	7.596,1	7.901,0	8.121,8
Total	7.044,3	7.461,4	7.890,0	8.415,1	8.855,3	8.850,6	8.944,0	8.242,3	8.367,0	8.641,3	8.804,0

65. Since last year, juveniles who have to expect a longer term are transferred to Gerasdorf as quickly as possible; this way, capacities in this institution are better used whilst the situation at the prison of Vienna-Josefstadt is eased, with the situation of juvenile delinquents having clearly improved. With Austrian support, an international research program on juveniles experiencing violence in custody (Titel: "End violence against children and juveniles in custody") is currently conducted. The Austrian partner organization is the Ludwig Boltzmann Institute of Human Rights.

Reply to the issues raised in paragraph 11 of the list of issues.

66. Irrespective of the fact that trafficking for adoption has been sufficiently regulated in sec. 194 of the Austrian Criminal Code (ACC), it should be pointed out in the criminal law context that an adjustment of sec. 194 ACC according to the recommendation concerning Art. 3 para. 1 lit a (ii) will be done in 2012.

67. In civil law terms, the Austrian Family Law Amendment Act (FamRÄG) 2010 brought provisions governing the approval of adoptions in Austria and a procedure for the recognition of foreign adoption decisions. Since then, children have an independent right of consent and the requirements for inquiries about prospective adoptive parents were improved (in particular by requesting criminal record information). The procedure for the recognition of foreign adoption decisions is governed by sec. 91a to 91d of the Non-Contentious Proceedings Act (Außerstreitgesetz), allowing biological parents and the youth welfare organization to file an application for the non-recognition of an adoption.

Reply to the issues raised in part II of the list of issues

(a) New bills or laws, and their respective regulations

Federal Constitutional Act on the Rights of the Child (see I/1)

Amendment of the Criminal Code (Strafgesetznovelle) 2011

68. The Amendment of the Criminal Code (Strafgesetznovelle) 2011 improved the protection of children from sexual exploitation and sexual abuse by introducing new criminal offences – the initiation of sexual contacts with minors (sec. 208a ACC) and viewing child pornography (sec. 215a para. 2 ACC). Moreover, the jurisdiction of Austrian courts was extended to also cover trafficking in human beings and sexual offences against children committed abroad. Pursuant to sec. 64 para. 1 sub-para. 4a ACC certain offences can be punished in Austria without the need for the offence to be punishable in the country where the crime scene is located if

- (a) the perpetrator or the victim is Austrian or has his/her normal residence in Austria;
- (b) other Austrian interests were violated by the offense; or
- (c) the perpetrator was a non-Austrian at the time of the offense, resides in Austria and cannot be extradited.

69. Such offenses include amongst other things, genital mutilation in the sense of Sec. 90 para. 3, extortionate abduction (sect. 102), delivery to a foreign power (sect. 103), slave traffic (sect. 104), trafficking in human beings (sect. 104a), serious coercion under sect. 106 para. 1 sub-para. 3 (i.a. coercion to enter into marriage), unauthorized arrangements of adoption (sect. 194), sexual abuse of a vulnerable or psychologically impaired person (sect. 205), aggravated sexual abuse of minors (sect. 206), sexual abuse of minors (sect. 207), pornographic representations of minors pursuant to sect. 207a para. 1 and 2, sexual abuse of juveniles (sect. 207b), promotion of prostitution and pornography involving minors (sect. 215a) and cross-border trafficking in prostitutes (sect. 217).

Family Law Amendment Act (FamRÄG) 2010: See Part I, question 11

Child care allowance act

70. Amendments to the Child Care Allowance Act (KBG; 1 October 2010): By introducing an income-related child care allowance, parents who only wish to withdraw from the working life for a brief period and have a higher income get an opportunity of compensating for lost earnings during parental leave. With the introduction of the individualized additional earnings threshold, up to 60% of the previous income can be earned.

Amendment to the Family Burden Equalization Act (Familienlastenausgleichgesetz) 2011:

71. In September a school start bonus of 100 euro is paid out for every child between the ages of 6 and 15 (instead of a double family allowance) and the excess payment for text books was revoked.

72. The additional earnings threshold over the family allowance for a child who is of age was raised from 9000 to 10,000 euro per year.

73. Family allowance will also be due for youth doing volunteer work (as from June 2012).

Child care (Federal Law Gazette I No. 99/2009):

74. Agreement under Article 15a of the Austrian Constitution on half-day compulsory early advancement of children in child-care institutions free of charge: Starting from the kindergarten year 2010/2011, kindergarten attendance (minimum 16 hours) became compulsory between September and June (not during school breaks) for children who turned five before and on 31 August. In addition to school breaks and days on which schools are closed, parents may also take 3 weeks of holidays with the child during the year. Child care (Federal Law Gazette I No. 120/2011):

75. Agreement under Article 15a of the Austrian Constitution on the expansion of institutional child care offerings: this arrangement emphasizes new places in child-care facilities for under 3-year-olds and longer opening hours. In-home day care providers are to be specially supported.

76. The federal government provides a total of 55 million euro for the expansion, the Länder (the matter being within their jurisdiction) have to co-finance the project by providing funds in the same amount. Annual grants of 15 million euro are available for the years 2012-14.

77. By the end of 2014 the percentage of under 3-year-olds in child care facilities (incl. in-home day care providers) is to be increased from 19% to roughly 28%. As the Barcelona goal has already been exceeded in the age group of 3 to 6 year-olds, regional gaps in child care offerings are to be closed for this age group.

Federal Act on the Employment of Children and Youth (sec. 5a KJBG)

78. The minimum age for light and occasional work was raised to 13 in keeping with Art. 7 of ILO Convention No. 138 in 2010.

Amendment to the Public Service Act (Dienstrechts-Novelle) 2008, Federal Law Gazette I No. 147/2008 (BKA):

79. If nursing or care for a close relative is required during recreational holidays (sec. 71 and 76 of the Public Service Act/BDG 1979): If nursing or care is required for more than 3 days, recreational holidays are interrupted and release for care purposes starts.

Amendment to the Public Service Act 2009, Federal Law Gazette I No. 153/2009:

80. The second amendment 2009 set forth that discrimination due to pregnancy and motherhood was discrimination ex lege under the Federal Act on Equal Treatment.

Federal Act amending the Federal Equal Treatment Act, Federal Law Gazette I No. 6/2011:

81. This amendment was the translation of ruling C-303/06 issued by the European Court in the legal matter “Coleman” on 17 July 2008 into the Federal Equal Treatment Act. The ruling found that the protection of the right to equal treatment had to be extended to persons who were not personally discriminated against on grounds stated in the law but were affected by discrimination due to their “close relationship” with a person discriminated against.

Act Accompanying the Budget Act 2011, Federal Law Gazette I No. 111/2010:

82. Early paternity leave for fathers (sec. 75d Public Service Act 1979, sec. 290 Contractual Employees Act/VBG, sec. 75f Judges’ and Public Prosecutors’ Service Act/RStDG, sec. 58e Service Act for Teachers Employed by the Länder/LDG 1984, sec. 65e Service Act for Teachers in Agriculture and Forestry Education Employed by the

Länder/LLDG 1985). As a measure to promote “the participation of fathers in child care after birth” a legal entitlement to unpaid early paternity leave for fathers from the birth of a child was introduced. Considering important requirements to be met in the workplace, the beginning and duration of early paternity leave can be chosen at discretion; however, they need to be notified no later than two months prior to the expected date of birth of the child. Early paternity leave may last for up to four weeks.

83. The Act promulgated in Federal Law Gazette I 9/2012 amending the School Organization Act, the Act on Federal Schools in Agricultural and Forestry Education, the Act on Compulsory Education 1985, the Act on School Education, the Act on Part-Time Education for Persons in Employment, the Act on Secondary School Leaving Exams for Persons in Employment and the Act on Financial Support for Pupils 1983, pursues the following goals:

- the development of a concept for a new type of “secondary education, second stage” (upper secondary school) with specific support structures, identifying differences between pupils in their individual learning situations, with a strong focus on individual advancement (early identification of problems, supported learning, deepening of knowledge etc.). Repeating a year is to be the last resort, which is to increase motivation and enhance performance;
- the promotion of inclusive education, integrating pupils with special educational needs by transforming pilot projects whereby pupils with special educational needs attended polytechnic institutes into regular forms of tuition, and by introducing the option of inclusive education at one-year domestic science schools;
- creating a framework for modular tuition in other schools than those for part-time students in employment.

Austria-wide means-tested minimum income

84. Agreement between the federal government and the Länder under Article 15a of the Austrian Constitution on Austria-wide means-tested minimum income.

Länder Legislation

85. Burgenland: The Act of the Land on Child Education and Care 2009 (Bgld. KBBG 2009), Law Gazette of the Land No. 7, most recently amended by the Act promulgated in Law Gazette of the Land No. 67/2009;

86. Carinthia: The following Carinthian laws were amended: Youth Protection Act/Jugendschutzgesetz, Youth Welfare Act/Jugendwohlfahrtsgesetz, Child Care Act/Kinderbetreuungsgesetz and Equal Opportunities Act/Chancengleichheitsgesetz.

87. Salzburg: Regulation issued by the government of the Land of Salzburg of 15 September 2010 designating objects which are especially dangerous for young persons.

88. Styria: Numerous amendments to the Styrian Act on Persons with Disabilities/Behindertengesetz (2009-2011):

- Regulation issued by the Styrian government on training courses for child caregivers and providers of in-home day care;
- Amendment to the Styrian Act on Child Education and Care (2010);
- Acts and Regulations of the Land of Styria 2011:
 - Styrian Regulation implementing the Minimum Income
 - Styrian Act implementing the Organization of Compulsory Education 2011

- Styrian Regulation implementing the Youth Welfare Act 2011
- Styrian Regulation on Benefits and Considerations under the Budget Regulation issued by the Styrian government on Obligatory Compensation from Parents and Children of Recipients of Assistance under the Styrian Social Assistance Act
- Amendment to the Styrian Cinema Act 1983

89. Vorarlberg: In 2009 the diet of the Land of Vorarlberg adopted a special act on play areas (in addition to the provisions of the regional building code) whereby public play areas for children are safeguarded and planned in a participatory procedure.

90. In 2011 the protection of children under the Youth Welfare Act of the Land was improved by offering youth welfare services better access to the Central Register of Residents, the CID file index, the Central Violence Protection File, and to special information on sexual offenders in accordance with sec. 9a of the Criminal Records Act.

91. Vienna: Agreement under Art. 15a para. 2 of the Austrian Constitution (B VG) between the Länder of Burgenland, Carinthia, Lower Austria, Upper Austria, Salzburg, Styria and Vienna on the Compulsory Wearing of Helmets during Winter Sports (Law Gazette of the Land of Vienna No. 1/2010).

92. Act on Compulsory Early Advancement in Child-Care Facilities (Wiener Frühförderungsgesetz/WFfG) (Law Gazette of the Land of Vienna No. 21/2010): Implementation of the Agreement under Art. 15a B VG on the expansion of child-care facilities and the introduction of compulsory early linguistic advancement in child-care facilities.

93. Act on Means-Tested Minimum Income in Vienna (Wiener Mindestsicherungsgesetz/WMG) (Law Gazette of the Land of Vienna No. 38/2010): In 2011 the indicative rate for the means-tested minimum income available to minors was increased by 50% as from 1 March 2011 to markedly improve the financial safeguarding of children. This amendment was promulgated in Law Gazette of the Land of Vienna No. 2/2011. The indicative rates were raised to maintain the intrinsic value of this benefit (amendment promulgated in Law Gazette of the Land of Vienna No. 3/2011).

94. Regulation issued by the government of the Land of Vienna (Law Gazette of the Land of Vienna No. 16/2011) (Extended prohibition and limitation of youth employment in the presence of certain physical influences such as vibration, electromagnetic fields, laser equipment as well as optical and ionizing radiation).

(b) New institutions (and their mandates) or institutional reforms

95. From 1 July 2012 on the Austrian Ombudsman Board (Volksanwaltschaft) will have new additional competences: the Ombudsman Board and its commissions will be designated as “national prevention mechanism” as provided for in UN-OPCAT. The Ombudsman Board will have special commissions for this purpose, which are going to be established in accordance with the “Paris Principles”. They are tasked with the visit and the monitoring of all places under federal administration where persons are detained. Additionally, a human rights advisory board will assist the Ombudsman Board.

96. Furthermore, the federal provinces (“Länder”) can opt to designate the Austrian Ombudsman Board and its commissions as the competent “prevention mechanism” for those institutions which would fall within their jurisdiction. This would include socio-pedagogical facilities under the administration of the federal provinces, in which measures of the youth welfare service are implemented, if those measures have the character of depriving children of their liberty. The necessary legislation would have to be adopted by

the federal provinces by the end 2012, with the exception of those federal provinces, where the Austrian Ombudsman Board was already designated to be the competent authority for institutions under the administration of the Länder.

Developments in the Länder

97. In Burgenland seven youth welfare institutions, socio-pedagogical or socio-therapeutic residential groups were newly opened.

98. In Lower Austria a risk assessment questionnaire was developed for use when there is reason to suspect physical, psychological or sexual violence or neglect of a person with intellectual and/or multiple disabilities. The questionnaire is to clarify in case of exposure and to help hone perception for an early identification of risks and the preparation of an interview for further risk assessment with a specialist. The questionnaire supports structured assessments and creates a basis for risk minimization or prevention measures.

99. Based on the assessment, obligations of the institution to document or report and take immediate action will be weighed. In particular, the assessment helps clarify if a functional supervisor should be informed and involved. In the event of severe violent incidents and clear indications of violence or massive neglect, immediate steps have to be taken to prevent further risks.

100. In Vorarlberg child and pupil care has continuously been expanded, improved and developed further: http://www.vorarlberg.at/vorarlberg/frauen_familie/familie/kinderbetreuungvorarlberg/weitereinformationen/daten_fakten/berichte.htm

101. In the years 2009 and 2010 three pilot projects under the heading “Frühe Hilfen” (“Early Help”) were subsidized in Vorarlberg. Since 2011 the “Frühe Hilfen” program has been put in place area-wide: http://www.vorarlberg.at/vorarlberg/jugend_senioren/jugend/jugendwohlfahrt/weitereinformationen/fruehehilfen/fruehehilfen.htm

102. Out-of-home care options and walk-in centers of youth welfare (e.g. supported residential groups for children) and integration assistance (residential groups for children with severe disabilities) were expanded.

103. Preparations are under way for the establishment of a competence center for child protection issues. This new institution will strengthen participation and cooperation as well as quality development, qualification and continuing education in matters of child protection. Moreover, the competence center is to conduct well-founded public relations work in the field of child protection.

104. In Vienna foster parents for times of crisis and crisis centers are available if the protection of a child aged 0- 3 reported as exposed to risks cannot be appropriately safeguarded in a walk-in center. If the separation of mother and child is to be avoided in the interest of the child and under the proviso that the future outlook is positive, mother and child may be accommodated at a mother-and-child institution of Caritas Wien (“Haus Luise”) funded to 100% by the City of Vienna. This option has been available since July 2011. The goal of out-of-home care for mothers and children is the quick and well-founded diagnostic clarification if whether the well-being of the child is in jeopardy or not. Out-of-home care of this type is limited to eight weeks; once this period is over, a reliable assessment should be available as to whether the mother is capable of acting in the interest of the child’s well-being in the longer run and sufficiently sustained, and if it is highly likely that she will quickly catch up and learn the missing skills required to take care of and the rear the child.

105. In 2011 an independent Ombudsman Board for children living in socio-pedagogical residential groups was established within the Vienna child and youth advocate’s office.

(c) **Recently introduced policies, programmes and action plans and their scope and financing**

Health

106. To improve the health and health framework for children and youth, a child health strategy has been in place in Austria since September 2011; it was devised in a broad intersectoral and interdisciplinary process and comprises numerous recommendations for measures in line with a twenty objectives. The strategy has been published on: http://www.bmg.gv.at/home/Schwerpunkte/Praevention/Eltern_und_Kind/Kindergesundheitdialog.

107. Austria contributed to the Council of Europe Guidelines on child-friendly health care, which is based on the rights of the child and was adopted at the Council of Europe's Conference of European Ministers of Health in Lisbon in 2011.

Children with Disabilities

108. In implementing the UN Convention on the rights of persons with disabilities (CRPD), the Austrian government is currently establishing a National Action Plan on Disability for the years 2012 to 2020. In this plan, a special chapter is dealing with children with disabilities (Article 7 CRPD) and provides different measures in order to support the inclusion of children with disabilities into society.

Trafficking of Children/Human Beings

109. In November 2004 the Austrian council of ministers adopted a resolution to form a task force to combat human trafficking (Task Force Menschenhandel, TF-MH) under the direction of the Federal Ministry for European and International Affairs (BMEIA) so as to coordinate and intensify Austrian measures in the fight against this type of crime. The task force comprises representatives of all the ministries, external services, Länder and NGOs concerned. On 10 March 2009 the first Austrian National Coordinator for the Fight against Trafficking in Human Beings was appointed.

110. The main assignments of the task force include drawing up the Austrian National Action Plans (NAP) to fight human trafficking, implementing them, monitoring their enforcement and reporting. So far, the federal government has adopted three NAPs (for the periods 2007-2009, 2009-2011 and 2012-2014). the Austrian NAPs reflect a comprehensive approach in the fight against human trafficking which included national coordination, prevention, victim protection, prosecution of criminals and international cooperation.

111. In 2007 a special working group on child trafficking was created within the task force. The activities of the working group focus on raising awareness to help identify victims of child trafficking and the development of a "National Referral Mechanism - NRM" which takes the different circumstances in the Länder into account. The reports drawn up by the working group for the periods 2007-09 and 2009-11 were approved by the Austrian government.

Repatriation of Aliens

112. If alternatives such as voluntary return are not accepted, repatriation is a legal sanction when procedures under alien police law have been completed and exhausted. The repatriation of families with children is one of the most difficult and sensitive tasks for authorities and police. The process underlying this special challenge was optimized on the basis of years of experience in September 2010. Families are repatriated together as a matter of principle to avoid separation and unnecessary stress for the children.

113. In view of the program adopted by the Austrian Council of Ministers on 19 October 2010 the following measures were taken.

114. A pool of staff was created for family repatriations – families are not accompanied to the plane only, they are collected from their residential address: Law-enforcement officers with special training are available, they are members of the “deportation staff pool” or officers with peer support training, youth contact officers, officers trained in violence prevention; they are deployed at an earlier stage in the procedure now. In the case of families and unaccompanied minors, arrests and transportation to the family accommodation pending deportation as well as the transfer to the airport are carried out by such specially trained staff.

115. Plain-clothes officers without visible weapons: Whenever families need to be arrested, officers do not wear uniforms as a matter of principle and they do not carry weapons and other means of defense visibly.

116. Deployment of staff with psychological training: The youth welfare services are asked for support to ensure psychological assistance.

117. Families are not taken to Police Detention Centers, not even for brief periods, special infrastructure for family-friendly accommodation has been created.

118. Accommodation for families in the special center exceeds the criteria issued by the Human Rights Advisory Board in that respect and provides new and better standards of family repatriation. Families are prepared for their departure from Austria within 48 hours (exploratory talks, medical check-ups etc.).

119. In the special center, families are held under the provisions of the Aliens’ Police Act and the Detention Regulations. The latter governs the obligations of the authorities vis-à-vis the aliens detained, which includes all necessary care measures (such as medical examinations). The application of the Detention Regulations creates certainty, not only in respect of the tasks to be fulfilled by the authorities but also as regards the rights of the persons concerned.

120. By definition, detention comes with restrictions – including restricted freedom of movement. Therefore, it is necessary for police to do duty at the Family Accommodation Center at Zinnergasse. However, it was made clear that the families concerned must be supervised by plain-clothes officers. The detained families are accommodated in twelve housing units for one family each (two adults, three children). In addition to each family having an independent unit and privacy, there are common areas (common rooms, playroom...) which also give the families some elbow room.

121. Establishment of a coordination body and review of the deportation procedure by the Federal Ministry of the Interior (BM.I): All persons eligible for deportation who have been in Austria for longer than three years, who have been in receipt of an expulsion order for more than one year or for whom a security directorate has to issue a statement in proceedings in which a residence title on humanitarian grounds was applied for whilst one of the other criteria applies, have to be reviewed by the coordination body (at the BM.I). The situation of children is given special consideration in this context.

122. To further sensitize the authorities to the fundamental rights requirements under Article 8 of the European Convention on Human Rights in the context of aliens’ law, training courses were run Austria-wide in December 2010, discussing the review scheme under Article 8 of the ECHR with the rulings of supreme courts (European Court of Human Rights and Austrian Constitutional Court) and case studies.

123. Human Rights Advisory Board: In May 2010 the Human Rights Advisory Board appointed a working group on “Minors in Proceedings under Aliens’ Law” to update and

expand its report “Minors in Custody Pending Deportation” dating from the year 2000. the working group includes members of the Advisory Board and its commission as well as representatives of the BM.I, the Vienna youth welfare services, UNHCR and NGOs.

124. The report contains information on reviewing the well-being of children, in particular in case of unaccompanied minors, on the establishment of age in case of undocumented young persons, legal capacity, legal representation and child custody, imposition of detention and detention conditions in custody pending deportation, arrest and deportation of families with children and young family members.

125. The report also covers an extensive list of international standards in relation to national laws and practice. In view of international requirements and standards, there are several suggestions which, in the opinion of the Human Rights Advisory Board, can be implemented in the short and medium term and would serve as intermediate stages on the way to full convergence on what partly are very high standards.

The Austrian Roma Strategy

126. One focus of this strategy includes measures in the educational system for the social integration of Roma (see attachment). The strategy is being implemented on an ongoing basis.

Developments in the Länder

127. In Burgenland the educational framework plan designed by the Länder and the federal government was introduced.

128. In Oberösterreich an element of protection from violence and abuse in institutions was introduced in the Upper Austrian Equal Opportunities Act/OÖ ChG (cf. sec. 26 to 30); based on this, the Land is responsible for high-quality offerings (including quality assurance and control). Reporting obligations in the event of suspected neglect, abuse or sexual abuse of children have been clearly defined. The operators of institutions subject to the ChG have to take appropriate measures to ensure that staff is able to identify suspicious developments and report them to the competent authority (cf. sec. 29 Oö. ChG).

129. In 2011 the government of the Land of Lower Austria (with the support of regional administrative authorities financing third-party care) created the framework conditions which will make it possible to offer children more walk-in centers and mobile help which should partly make out-of-home care unnecessary. It is clear that this will only help some of the persons concerned and full out-of-home care will continue be required. Nevertheless this aspect should support the right of the child to live in his/her own family (to the greatest possible extent). In this context, an intensified program to broaden the availability of walk-in centers and mobile social services has been prepared.

130. In Salzburg a plan governing the procedures in case of sexual assaults in youth welfare institutions is being drawn up, and operators are called upon to prepare a sexual education concept specific to the institution.

131. In Styria the Office of the Child and Youth Advocate authored a “Manual for Children and Youth Mainstreaming” in 2009. The purpose is to take the needs of children and youth into account in legislative processes from an early stage. The manual helps assess the impact of a regulation, law or administrative rules on children and youth. Effects are to be predicted to the greatest possible extent and will be observed further down the line; ideally, negative effects are to be avoided from the start or defused. The manual is to raise awareness for the rights and interests of children and youth with decision-makers and NGOs.

132. Vorarlberg took numerous measures relevant to the rights of the child (including youth participation, child- and family friendly municipalities). Detailed information can be found on the following websites:

<http://www.invo.at/foerderung/jugend-politik/jugend-politik>

<http://www.aha.or.at/>; www.koje.at

<http://www.aha.or.at/leben-a-z/politik/vorarlberg/frageraum-politik>

<http://www.aha.or.at/leben-a-z/politik>

http://www.vorarlberg.at/vorarlberg/frauen_familie/familie/familie/weitereinformationen/familieplus/familieplus.htm

133. Many municipalities are working on play area concepts to implement the Play Area Act of the Land and the guidelines to promote play areas.

134. Child participation was extended and is not possible in another ten municipalities of Vorarlberg: By now, about 50% of Vorarlberg municipalities (representing 80% of the population) deal with the topic of children and youth participation: <http://www.vorarlberg.at/pdf/handbuchentgueltig.pdf> The government of the Land provides cash and in-kind support.

135. In spite of the tight financial situation, existing activities, institutions and projects were and are continued.

136. In the past few years, the focus in Vienna has been on child and youth participation, and this was also taken into consideration in technical planning and development. Children and youth are increasingly included in the help process.

137. Social workers inform children and youth, parents and persons having custody about the rights of the child in talks and by handing out information material.

138. Under the new participatory model “Socio-pedagogic diagnosis / socio-pedagogic case understanding” children living in youth welfare institutions are given more opportunities of co-determination.

139. In 2010 the telephone number of the telephone counseling service “Rat auf Draht” (147) was posted in all socio-pedagogic institutions, thus informing children and youth about the possibility to get external advice. In the event of problems within the residential group, “Rat auf Draht” makes contact with the youth welfare services. If a child or young person needs a personal meeting, “Rat auf Draht” staff can bring in the Child and Youth Advocate’s Office in as a contact point.

140. Carinthia is considering the incorporation of the CRC in the constitution of the Land.

(d) Recent ratifications of human rights instruments

141. On 23 September 2010 Austria ratified the Council of Europe Convention on the avoidance of statelessness in relation to State succession (entry in force: 1 January 2011).

142. On 22 December 2010 Austria ratified the 1996 Hague Convention on jurisdiction, applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children (entry into force: 1 April 2011).

143. On 25 February 2011 Austria ratified the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (entry into force: 1 June 2011).

144. On 20 May 2011 Austria ratified the Revised European Social Charter, (entry into force: 1 July 2011).

145. The Austrian Parliament has approved in March 2012 the ratification of the International Convention for the Protection of all Persons from Enforced Disappearance. The deposit of the instrument of ratification is presently prepared.

146. In addition, the ratification of the Council of Europe Convention on Cybercrime (CETS No. 185) was confirmed by the CoE on 13 June 2012; it will be in force as from 1 October 2012.

Reply to the issues raised in part III of the list of issues

1. Statistical data on how many children are living in foster care settings disaggregated by sex, age and socio-economic background.

147. Youth welfare statistics contain information on the legal grounds on which a child was placed in a foster family (agreement or court order), the age and sex of the child as well as the duration of out-of-home care. Case-related socio-economic information is not included into the statistics.

148. The most recent youth welfare statistics can be found on the website of the Family Ministry (www.bmwfj.gv.at/Familie/Jugendwohlfahrt/Seiten/Statistik.aspx). For the figures of 2009-2011, see table below.

Table 2

Youth welfare statistics, 2009-2011

Age and sex of minor	Full out-of-home care as at 31/12/2009			Out-of-home care ended in year under review			
	Number of foster children as at 31/12	due to an agreement	due to a court order	less than 12 months	up to 2 years	up to 5 years	longer than 5 years
Austria-wide							
0 to 5 years of age							
female	674	272	405	53	20	14	1
male	689	286	393	55	28	24	3
Total:	1,363	558	798	108	48	38	4
6 to 13 years of age							
female	988	458	528	39	21	24	30
male	973	490	477	32	25	22	30
Total:	1,961	948	1,005	71	46	46	60
14 to 18 years of age							
female				27	12	18	

<i>Age and sex of minor</i>	<i>Full out-of-home care as at 31/12/2009</i>			<i>Out-of-home care ended in year under review</i>			
	531	298	223				116
male	516	292	218	19	10	17	118
Total:	1,047	590	441	46	22	35	234
Total of minors as at 31/12/2009	4,371	2,096	2,244	225	116	119	298

<i>Age and sex of the minor</i>	<i>Full out-of-home care as at 31/12/2010</i>			<i>Out-of-home care ended in year under review</i>			
	Number of foster children as at 31/12	due to an agreement	due to a court order	Duration of out-of-home care			
				less than 12 months	up to 2 years	up to 5 years	longer than 5 years
Austria-wide							
0 to 5 years of age							
female	705	326	376	70	20	4	3
male	777	378	397	50	25	8	1
Total:	1,482	704	773	120	45	12	4
6 to 3 years of age							
female	999	556	440	35	16	9	9
male	999	583	417	39	20	15	16
Total:	1,998	1,139	857	74	36	24	25
14 to 18 years of age							
female	514	340	174	35	18	18	74
male	469	299	168	14	11	16	76
Total:	983	639	342	49	29	34	150
Total of minors as at 31/12/2010	4,463	2,482	1,972	243	110	70	179

Age and sex of the minor	Full out-of-home care as at 31/12/2010		Out-of-home care ended in year under review				
	Number of foster children as at 31/12	due to an agreement	due to a court order	less than 12 months	up to 2 years	up to 5 years	longer than 5 years
Austria-wide							
0 to 5 years of age							
female	745	335	406	82	14	9	2
male	835	418	416	65	12	10	1
Total:	1,580	753	822	147	26	19	3
6 to 13 years of age							
female	1,032	567	450	60	7	5	12
male	963	552	428	58	22	7	9
Total:	1,995	1,119	878	118	29	12	21
14 to 18 years of age							
female	507	318	177	49	21	10	50
male	462	294	174	53	12	9	54
Total:	969	612	351	102	33	19	104
Total of minors as at 31/12/2011	4,544	2,484	2,051	367	88	50	128

2. Please provide information on the number of complaints and number of victims of sexual abuse and exploitation of children disaggregated by sex and age, and the number of investigations and prosecutions carried out in this regard and pending cases.

149. The number of cases has been published in the website of the Family Ministry: www.gewaltinfo.at. For the figures of 2009-2011, please see the attachment.

150. Apart from the known option of statistical analysis broken down according to individual punishable acts, the automation of court proceedings/ACP (“Verfahrens-automation Justiz/VJ”) introduced as per 1 October 2011 has made it possible and includes an obligation to capture additional known victim-related information (nationality, sex and date of birth); since 1 December 2011 this information is furnished in a structured way when police reports are sent via the electronic legal communications/ELC system (“elektronischer Rechtsverkehr/ERV”) and can be incorporated into the ACP case files.

3. Please specify the number of children with disabilities up to the age of 18, disaggregated by age, sex, type of disability(if relevant) and socio-economic background covering the years 2009, 2010 and 2011:

- (a) Living with their families;
- (b) Living in institutions;
- (c) Placed in foster care;
- (d) Attending regular schools;
- (e) Attending special schools; and
- (f) Not attending school.

151. Since Austria does not have a system for the classification of pupils with special educational needs broken down according to disabilities, statistics only include those pupils to whom a decision of the District School Board was issued, identifying their special educational needs. This way the number of pupils in inclusive tuition and special schools can be established; however, there is no breakdown for type of disability. (For the available statistics, broken down according to school type and Länder, please see the attachment.).

152. The determination of special educational needs is based on a special pedagogical opinion (possibly several opinions) which has to state “if the pupil is unable to follow tuition in primary school, lower secondary school or a polytechnic institute due to a physical or psychological disability without special educational support” (sec. 8 of the Compulsory Education Act).

153. This is to ensure that every child gets the required special educational support if needed. To give the school boards practicable instruments to determine special educational needs, the Federal Ministry of Education, Art and Culture issued a related circular in 2008.

154. In Austria, care for children with disabilities is a matter of the Länder, which is why no Austria-wide statistics are available. Individual Länder have reported as follows:

155. In Upper Austria persons with impairments are defined as persons with mental, physical, psychological and sensory impairments.

156. No information is available according to type of impairment and to socio-economic background of children.

157. Persons with impairments from Upper Austria aged 0 to 18 who live in a residential facility under the Upper Austrian Equal Opportunities Act (incl. foster families): 227 children and youth aged 3 to 18 (136 male/91 female) (Status of information queried as at 26 April 2012).

158. In Lower Austria about 50 children with disabilities (up to the age of 18) live in “Behindertenhilfe” institutions (“Behindertenhilfe” being a non-profit association providing assistance to people with disabilities). The term “disability” covers a broad range, including autism, epilepsy, sclerosis, cerebral or general retardation as well as multiple disabilities.

159. “Behindertenhilfe” institutions in the Land of Salzburg offer a total of 70 places for full out-of-home care for minors with disabilities. In addition minors with disabilities may be living in boarding schools and educational facilities. Some minors with disabilities are accommodated in youth welfare institutions.

160. In Styria a total of 1,258 (male: 768, female: 489) persons under 18 years of age were in full out-of-home care in “Behindertenhilfe” institutions as per February 2012. The largest number of children with disabilities is found in orthopedagogic kindergartens. However, these do not qualify as “full out-of-home care” because the children reside with

their parents and attend kindergarten during the day. Older children are placed in institutions as from the age when they start training as apprentices, and this type of care is defined as “an apprentices’ or pupils’ residential institution”.

161. In Vorarlberg about 470 children (260 male/210 female) aged 3 to 15 (the age when children are in child care or compulsory education) who are eligible for levels 2 to 7 of the care allowance due to their disabilities receive a benefit (“integration assistance”) under the Equal Opportunities Act of Vorarlberg and the Integration Assistance Regulation, respectively.

162. In Vienna 223 children (135 male/ 88 female) live in institutions: Breakdown according to age groups: 0- 6 yoa: 32 / 6-10 yoa: 50 / 10- 14 yoa: 59 / 14- 18 yao: 82

163. As per 31 December 2011, 112 children and youth with disabilities were in full out-of-home care with foster parents or close relatives.

4. Please provide, if available, statistical data on:

(a) The number of children in migrant situations and refugee children.

Applications for Asylum by Minors

<i>per 1.3.2011</i>	<i>> 14 years</i>	<i>14-18 years</i>	<i>per 1.3.2012</i>	<i>> 14 years</i>	<i>14-18 y.</i>
January	1	69	January	2	36
February	2	46	February	4	37
March	1	64	March	2	44
April	3	43	April	2	51
May	2	54	May	3	55
June	3	51	June	3	67
July	6	48	July	3	85
August	2	66	August	4	162
September	2	46	September	15	110
October	4	58	October	8	156
November	7	56	November	0	125
December	1	52	December	11	136
Total	34	653	Total	57	1.064

(b) The number of children and adolescents who abuse substances and alcohol.

Alcohol

164. As already stated in the 3rd and 4th periodic report of the Republic of Austria to the UN (page 100) the following surveys which Austria participates in also include information on alcohol consumption by young persons:

- Eurobarometer: a regular survey carried out on behalf of the European Commission; about 1000 persons are polled (most recently in April 2010). Available on the Internet at http://ec.europa.eu/public_opinion/archives/ebs/ebs_331_en.pdf.
- ESPAD: “The European School Survey Project on Alcohol and Other Drugs” is a Europe-wide survey among 15- to 16-year old pupils regarding consumption of and attitude to alcohol, tobacco and other drugs (mostly recently carried out in 2007): www.espad.org/austria

- HBSC (Health Behaviour in School Aged Children); this survey under the aegis of WHO comprises data on the health (including alcohol consumption) of pupils aged 11 to 15, based on a questionnaire to be filled in by respondents (most recently in 2005/06): <http://www.euro.who.int/>
- GPS: “General Population Survey” – a representative survey of the Austrian population (aged 14 and over) on substance use and consumption patterns, carried out on behalf of the Ministry of Health by the addiction research center “Ludwig-Boltzmann-Institut (LBI) für Suchtforschung” (2008): www.api.or.at/akis/download/gps2008band1.pdf

165. Austrian data on the consumption of alcohol are in particular included in the most recent representative survey of 2008 (please follow this link: letzte Repräsentativerhebung 2008. The following details are extracts from the survey.

Table 3

Age starting to drink alcohol

(Translation: Männer = male; Frauen = female; at the age of 4-24 years)

Question: "At what age did you start to drink alcohol?"

	Männer				Frauen			
	15-19	20-39	40-59	60-99	15-19	20-39	40-59	60-99
mit 4 Jahren	0%	0%	0%	0%	0%	0%	0%	0%
mit 5 Jahren	1%	0%	0%	0%	0%	0%	0%	0%
mit 6 Jahren	1%	0%	1%	0%	0%	0%	0%	1%
mit 7 Jahren	1%	1%	1%	1%	1%	0%	0%	1%
mit 8 Jahren	2%	1%	1%	1%	1%	1%	1%	1%
mit 9 Jahren	3%	1%	2%	1%	1%	1%	1%	1%
mit 10 Jahren	6%	2%	3%	3%	1%	1%	1%	1%
mit 11 Jahren	11%	2%	4%	3%	4%	2%	2%	1%
mit 12 Jahren	17%	7%	7%	6%	12%	4%	3%	2%
mit 13 Jahren	29%	14%	11%	8%	25%	9%	5%	4%
mit 14 Jahren	45%	26%	22%	18%	44%	21%	14%	9%
mit 15 Jahren	66%	41%	41%	28%	61%	36%	23%	13%
mit 16 Jahren	78%	64%	63%	49%	71%	56%	42%	25%
mit 17 Jahren	81%	71%	72%	59%	74%	65%	55%	36%
mit 18 Jahren	83%	78%	81%	70%	76%	73%	66%	53%
mit 19 Jahren	84%	80%	82%	75%	77%	74%	68%	56%
mit 20 Jahren		82%	83%	81%		76%	75%	67%
mit 21 Jahren		82%	84%	82%		76%	75%	67%
mit 22 Jahren		82%	84%	82%		77%	75%	68%
mit 23 Jahren		83%	84%	83%		77%	75%	68%
mit 24 Jahren		83%	84%	83%		78%	75%	69%

Quelle: „Repräsentativerhebung 2008“ (Uhl et al., 2009a)

Frageformulierung: „In welchem Alter haben Sie zum ersten Mal ein Glas mit einem alkoholischen Getränk konsumiert?“

Table 4

Daily consumption of alcohol in the past 12 months

	15-year olds	16-17 year olds	18-20 year olds
Male	0%	2%	2%
Female	0%	0%	0%
Total	0%	1%	1%

Source: Representative survey 2008 (Uhl et al., 2009a)

Comment: Calculated on the basis of annual prevalence (statement: “Yes, I drank alcohol every day”)

Table 5

Alcohol intoxication in young persons

	15-year olds	16-17 year olds	18-20 year olds
male	73%	79%	78%
female	61%	76%	70%
Total	67%	77%	74%

Source: Representative survey 2008 (Uhl et al., 2009a)

Wording of question: "Have you ever been tipsy or not?"

Table 6

Attitude toward age limits for youth in various drinking situations

	... to clink glasses with sparkling wine on a special occasion (e.g. New Year's Eve, birthday)?	...to have a glass of beer, wine or sparkling wine with a meal or on a festive occasion?	... to have a glass of liqueur, schnapps or a cocktail with a meal or on a festive occasion?
at 15 or younger	44%	22%	9%
at 16	36%	44%	26%
at 17	4%	7%	7%
at 18	14%	3%	51%
above 18	2%	3%	7%

Source: Representative survey 2008 (Uhl et al., 2009a)

Wording of question: "Do you think it is appropriate for parents to allow their child..."

Table 7

Attitude toward age limits for youth according to types of beverage

	Beer	Wine	Spirits	Alcopos or mixed drinks with spirits
at 15 or younger	8%	6%	2%	3%
at 16	55%	47%	13%	21%
at 17	6%	5%	4%	4%
at 18	29%	37%	68%	59%
above 18	4%	5%	14%	13%

Source: Representative survey 2008 (Uhl et al., 2009a)

Wording of question: "Which age limit should apply for youth in bar and pubs etc. as regards the legal consumption of these beverages?"

Illicit Drugs

166. According to a representative survey carried out in the general population Austria-wide in the year 2008 3.8% of 15 year-olds, 6.4% of 16 year-olds, 4.9% of 17 year-olds and 4.4% of 18 year-olds used illicit drugs at the time of the survey (Austria-wide representative survey on substance use, survey 2008, www.bmg.gv.at).

167. In the most recent "European School Survey Project on Alcohol and other Drugs" 4.2% of the 14-year-old pupils polled stated that they were using illicit drugs at the time (European School Survey Project on Alcohol and other Drugs, ESPAD Austria 2007, www.bmg.gv.at).

168. In 2010 a total of 2,092 cases (counseling, treatment, care) were initiated in drug user support facilities: Short-term contacts: 1,195, low-threshold counseling: 112, longer-term outpatient therapy: 684, in-patient therapy: 101 (in 36 cases, out-patient care was given to 10 to 14 year-olds. Source: Special analysis of the Standardized Documentation for Drug User Support Facility Clients (DOKLI), client year 2010).

5. In addition, the State party may list areas, affecting children that it considers to be of priority with regard to the implementation of the Convention.

Regulatory impact assessment

169. Regulatory impact assessment concerning projects of the federal government for children and youth is being prepared for inclusion in the federal Budget Act. In this context, the following issues will i.a. be reviewed: compensation for the costs arising to parents for children, balancing family and work as well as earning an income from work and raising an income for the family, child care in the family, close to the family and outside the family, the protection of the physical and psychological integrity of young persons, the development and education of young persons and the participatory opportunities of young persons, in particular in societal decision-making processes (Regulation on regulatory impact assessment concerning children and youth).

Child Health

170. In September 2011 the Child Health Strategy was published, it is being implemented to improve child health and the framework conditions for children and youth, and to raise awareness for the importance of preventative health care.

Child Care

171. Federal subsidies are to be used to expand the range of child care in the Länder, in particular for children under 3, the Barcelona goal of 33% is to be reached.

172. By extending the range of care offerings and the learning opportunities thus created, integration and equal opportunities are to be improved for all children. This will i.a. also facilitate the reconciliation of family and work and reduce the risk of poverty for young families.

173. In 2010 a compulsory kindergarten year was introduced to for the linguistic advancement of children; 16 hours of kindergarten per week are free of charge. A second kindergarten year is to enhance the advancement effect even further; it is now being tested in two model regions (Salzburg and Lower Austria).

Schools

174. Apart from continuous efforts for a school system which does justice to the abilities of all children in a better way, the further expansion of opportunities for pupils with disabilities to take part in inclusive tuition in regular schools is one of the priorities.

Youth Policy

175. The Ministry of Family and Youth is currently working on a Youth Policy Strategy 2012-2020 which includes a wide variety of issues, such as participation, volunteer work, vocational education and employment.

Youth Labor Market

176. Given the training guarantee and the dual vocational training system in place, all young persons who want to start working after compulsory education are to be integrated in the labor market and trained in accordance with their interests.

The Fight against Child Pornography and Sexual Offenses

177. At present, the Federal Ministry of Justice is working on the translation of Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children and child pornography into national legislation.

178. At the BM.I an intelligence unit for child pornography has been formed; it seeks to fight the production and dissemination of visual child pornography material by means of CID work.

179. Officers of the BM.I trained in prevention support kindergarten teachers, teachers and parents in matters of education on sexual abuse.

180. In the past few years, the Austrian Federal Bureau of Criminal Investigations has stepped up its efforts and cooperation with NGOs in the fight against sex tourism and related offenses committed by Austrians abroad.

The Fight against Child Trafficking

181. At present, the Federal Ministry of Justice is working on the translation of Directive 2011/36/EU on the prevention of and fight against human trafficking into national legislation.

182. Unaccompanied minors of no fixed abode, in particular those who are deployed in Vienna to commit punishable acts and are arrested, may be provided with care and support by the youth institution "Drehscheibe". The police liaison officers of the country of origin are involved in repatriation and reintegration, they are an important link to the social welfare institutions of the country of origin.

183. To sensitize law-enforcement officers to "human trafficking", the issue has been included in the basic training of all police officers. Related training has been carried out by the BM.I in cooperation with ECPAT-Austria.

184. The BM.I also works closely with Europol and Interpol in the fight against human trafficking, both on the strategic and operational levels.

Developments in the Länder

185. Subject to budgetary possibilities, Burgenland is trying to expand the range of mobile support in child-rearing and to recruit more foster parents, especially for younger children.

186. Subject to budgetary possibilities, Styria is working on new offerings (pilot projects) at the intersection of youth welfare/psychiatry for children and youth.

187. The organization for people with disabilities "Behindertenhilfe" is seeking to expand offerings for the integration of children with disabilities (i.a. by introducing new care options and re-organizing existing offerings, e.g. in child care and school assistance).

188. Vorarlberg refers to the activities described in section II/c (establishment of a victim protection office, the concept "Support for special educational needs and inclusion of children with specific impairments", the Play Area Act ...).

189. Moreover, emphasis will be placed on the extension and improvement of advice for children and pupils. Youth work in associations and open youth work are given continuous support.

190. Vienna seeks to further expand and deepen the enforcement of the rights of the child. For this purpose, the standards in Vienna's child protection regime were further developed and strengthened, e.g. by introducing the dual-control system in clarification proceedings, in planning assistance, in relation to foster children and in the field of adoption. The rights of the child in the Vienna child protection regime were also reinforced through new forms of participation for children in socio-pedagogic institutions (e.g. through the participatory instrument of "socio-pedagogic diagnosis" or the introduction of special ombudspersons at the advocates' offices. Moreover, offerings for children with special needs were greatly expanded and diversified.

Annexes

Example to III /3

Services for children with disabilities in the province of Styria

<i>Type of service</i>	<i>total</i>
Vocational integration/Training on the job to support the integration in the labor market (Berufliche Eingliederung Arbeitstraining)	11
integration in workshops (preparation, education, re-training) (Berufliche Eingliederung in Werkstätten - Vorbereitung, Ausbildung, Umschulung)	80
Employment in institutions for psychological handicapped persons (Beschäftigung in Einrichtungen für psychisch beeinträchtigte Menschen)	1
Employment in day care facilities (Beschäftigung in Tageseinrichtungen mit Tagesstruktur)	16
Employment in productive/creative workshops (Beschäftigung in Tageswerkstätten produktiv/kreativ)	22
Serviced flat sharing for psychological handicapped persons (Betreute Wohngemeinschaft für psychisch beeinträchtigte Menschen)	1
Child Care with remedial pedagogic (therapeutic) approach in integration-groups (HPKiG Integrationsgruppe)	292
Child Care with remedial pedagogic (therapeutic) approach - additional integrative activities (HPKiG Integrative Zusatzbetreuung)	575
Child Care with remedial pedagogic (therapeutic) approach in cooperative-groups (HPKiG Kooperative Stammgruppen)	24
Day-Care for pupils with disabilities in hearing/speaking (Tagesbetreuung hör-sprachbeeinträchtigte Schüler)	99
Training on the job with reduced demands (Teilqualifizierungslehre/Lehrausbildung)	1
Part-time cared living (Teilzeitbetreutes Wohnen)	1
Apartments for persons with disabilities with trainings (Trainingswohnung für Menschen mit Behinderung)	22
Cared living facilities (Vollzeitbetreutes Wohnen für Menschen mit Behinderung)	5
Cared living facilities for persons with psychological disabilities (Vollzeitbetreutes Wohnen für psychisch beeinträchtigte Menschen)	1
Cared living facilities for persons with disabilities in hearing/speaking (Wohnbetreuung, behinderte, hör-sprachbeeinträchtigte Schüler und Lehrlinge)	30
Apartments for pupils in professional schools (Wohnen für Fachschüler)	5
Apartments for pupils up to the age of 15 years (Wohnen für Pflichtschüler)	72
Total / Gesamtergebnis	1258

Attachments*

- ☐ Criminal Statistics (III/2)
- ☐ School statistics – special schools and integration (III/3)

Glossary to the attachment School statistics – special schools and integration (Q III/3):

Integrationsklassen	Integrated classes
Volksschulen	Primary schools
Hauptschulen	Secondary modern schools
Neue Mittelschulen (NMS)	New secondary schools
Sonderschulen	(segregated) special schools
Sonderpädagogischer Förderbedarf	special educational needs (SEN)
(Allgemeinbildende) Pflichtschulen (APS)	(general) complementary schools

Glossary to the attachment "Criminal Statistics" 2011

Gliederung	Explanations to the statistics
Opfertabelle	Statistical table according to age and gender of the victim
Ausgewählte Delikte	criminal offences - types of violence

* Attachments can be consulted in the files of the secretariat.

Abbreviations

UN-KRK	UN-Convention on the Rights of the Child
BKA-VD	Bundeskanzleramt - Verfassungsdienst Federal Chancellery - Constitutional Service
BMeiA	Bundesministerium für europäische und internationale Angelegenheiten Federal Ministry for European and International Affairs
BMG	Bundesministerium für Gesundheit Federal Ministry for Health
BM.I	Bundesministerium für Inneres Federal Ministry of the Interior
BMJ	Bundesministerium für Justiz Federal Ministry of Justice
BMUKK	Bundesministerium für Unterricht, Kunst und Kultur Federal Ministry for Education, Arts and Culture
BMWFJ	Bundesministerium für Wirtschaft, Familie und Jugend Federal Ministry of Economy, Family and Youth
