

Supplementary Report of the Austrian Ombuds Offices for Children and Youths on the 5th and 6th State Party Report of the Republic of Austria to the United Nations pursuant to Article 44(1b) of the Convention on the Rights of the Child

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Abbreviations and terms

KRK (CRC)	UN Convention on the Rights of the Child
EMRK (ECHR)	European Convention on Human Rights
BVG-Kinderrechte	Federal Constitutional Law on the Rights of the Child
5th and 6th Austrian State report	5th and 6th State Party Report of the Republic of Austria to the United Nations pursuant to Article 44 of the Convention on the Rights of the Child
Ombuds Offices for Children and Youths	The nine Ombuds Offices of the Austrian Federal States
	Ombudsperson/Office for Children`s Rights
Netzwerk Kinderrechte	National Coalition for the Implementation of the UN Convention on the Rights of the Child in Austria (National Coalition Austria)
B-KJHG	Bundes- Kinder- und Jugendhilfegesetz (Federal Child and Youth Welfare Act)

Introduction

The aim of this report is to present selected areas on the state of implementation of the UN Convention on the Rights of the Child (CRC) in Austria from the perspective of the nine Ombuds Offices for Children and Youths in the Austrian federal states.

The Ombuds Offices for Children and Youths of the federal states are the legally established representation of the interests of all children, adolescents and young adults up to the age of 21 in Austria, who cooperate intensively within the framework of the "Permanent Conference of Ombuds Persons for Children and Youths".

Formally, this report is based on the treaty-specific guidelines regarding the form and content of periodic reports to be submitted by States parties under article 44, paragraph 1 (b), of the Convention on the Rights of the Child, CRC/C/58/Rev.3.

- In terms of content, reference is made to the **Concluding Comments of the Committee** on the Rights of the Child on the third and fourth periodic report of Austria pursuant to Art. 44 CRC (CRC/C/AUT/CO/3-4). This is indicated in the respective heading by citing the concrete margin numbers of the Concluding Remarks in brackets.
- Concrete references to the **5th and 6th State Party Report of the Republic of Austria to the United Nations** in accordance with Article 44 of the Convention on the Rights of the Child, in short the 5th and 6th Austrian State Report, are indicated by reference to the respective margin numbers of the State Party Report.
- The reporting period runs from December 2012 to 31.12.2018.

Cooperating partnership of the Ombuds Offices for Children and Youths with the National Coalition for the implementation of the UN Convention on the Rights of the Child in Austria, the "Netzwerk Kinderrechte".

In their function as cooperating network partners, the Ombuds Offices for Children and Youths are regularly informed about the activities of the Children's Rights Network in terms of content and also support many of them, most recently in the preparation of the children's and youth report. The Ombuds Offices for Children and Youths therefore endorse the current report of the Austrian Network on Children's Rights (National Coalition) on the implementation of the UN Convention on the Rights of the Child in Austria.

In addition, selected current developments and challenges from the point of view of the Ombuds Offices for Children and Youths will be highlighted and concrete recommendations will be made. "Good practice" will be used to illustrate how the implementation of the CRC can actually succeed.

1. General implementation measures (Art. 4, 42 and 44 Par. 6)

Previous recommendations of the Committee (6)/(7)

The Ombuds Offices for Children and Youths of the Austrian Federal States as independent institutions (CRC/C/OPSC/AUT/CO/1, 14/15)

In the Concluding Comments to the First Report (CRC/C/OPSC/AUT/1) on the implementation of the Additional Protocol regarding child trafficking, child pornography and child prostitution of 3rd October 2008, the Committee recommended that the Ombuds Offices for Children and Youths are entrusted with the mandate to monitor the implementation of the CRC and the Additional Protocols and that they are provided with sufficient and equal resources.

In order to safeguard the particular rights and interests of children, an Ombuds Office for Children and Youths was established in each federal state in the course of the ratification of the CRC in 1992. The legal basis is § 35 of the Federal Child and Youth Welfare Act 2013 and the respective implementing laws of the federal states, as well as the Ombuds Office for Children and Youths Act in the federal state of Vorarlberg.

In fulfilling their statutory duties, the Ombuds Offices for Children and Youths work partisan for young people, mediate in conflicts and offer children, adolescents and young adults (in 2013 the competence was extended to persons up to 21 years of age) immediate and unbureaucratic advice and support in difficult situations.

They often act as Ombuds Offices, in particular for complaints about official measures. The services of these public institutions, which are not subject to directives, can be used confidentially, free of charge and also anonymously. Cooperation with and support of national/international networks is also part of the legal mandate. The Ombuds Offices for Children and Youths contribute their experience to current law-making and planning projects by submitting opinions.

The Committee's recommendation that the Ombuds Offices for Children and Youths shall by law be entrusted with the monitoring mandate has not yet been complied with.

On the contrary, the current amendment to the law described in the following, massively weakens the legal protection of the Ombuds Offices for Children and Youths - particularly with regard to their independence: Contrary to the numerous and profound reservations of experts, the Austrian Parliament decided in December 2018 to amend constitutional

competence. Accordingly, the federal legal framework for the area of child and youth welfare will cease to apply as of 1st of January 2020 and this matter is to be transferred to the federal states with regard to legislation and implementation. This also affects the federal legal basis of the Ombuds Offices for Children and Youths in the federal states.

The CRC celebrates its 30th anniversary in 2019. Children's rights are a cross-cutting issue and concern not only the area regulated by the Child and Youth Welfare Act, but all areas of children's and young people's lives. They must also apply equally to all children in Austria. With the Federal Constitutional Act on the Rights of the Child (BVG-Kinderrechte), which came into force in February 2011, Austria has set an important socio-political signal and declared the comprehensive well-being of children and young people to be a fundamental national goal. To ensure that this socio-political orientation continues to exist and is not jeopardised, strong Ombuds Offices for Children and Youths will continue to be needed in the future. The Ombuds Offices for Children and Youths of the federal states have established themselves as important independent and autonomous institutions for the protection of children's rights, both in individual cases and as interest groups on a structural level. This makes it all the more important for the Ombuds Offices for Children and Youths to be legally secured in order to keep an eye on children's rights and to function as independent monitoring institutions in line with the recommendations of the Committee on the Rights of the Child.

Recommendations:

- At the federal level, the Ombuds Offices for Children and Youths are to be anchored in the Federal Constitutional Act on the Rights of the Child as independent and autonomous institutions of the federal states. (BGBl. I Nr. 4/2011).
- The mandate of the Ombuds Offices for Children and Youths should be strengthened through their own "Ombuds Offices for Children and Youths Acts" as federal state laws. The institutions must be equipped with the appropriate monitoring mandate and sufficient human and financial resources.

Coordination (15)

Children's rights monitoring process

Regarding Par. 7 of the 5th and 6th Austrian State report: On the basis of the Committee's recommendation (to ensure a permanent and effective mechanism for coordinating children's rights at federal and federal-state level), a "Children's Rights Monitoring Board" was established in December 2012 at the then Ministry of Family Affairs. In the absence of sufficient resources, a legal basis and independence, it was renamed the "Children's Rights Board" after a lengthy discussion process, including a corresponding amendment of the statutes of the association. In the meantime it has developed into a solid advisory body of experts, but due to the structural shortcomings and positioning mentioned above it cannot provide genuine independent monitoring in the sense of the Paris Principles.

Recommendations:

- The establishment of an independent children's rights monitoring board with the legal mandate to coordinate child rights issues at federal and federal-state level, involving the Ombuds Offices for Children and Youths of the federal states.

Ratification of international human rights instruments (68)

The ratification of the Third Optional Protocol to the Convention on the Rights of the Child on a Notification Procedure is a current child rights requirement. With regard to **Par. 291 of the 5th and 6th Austrian State report**, it should be added that ratification would establish the possibility of an individual complaints procedure for children or their legal representatives. In the event of violation or lack of protection of their rights within the terms of the CRC, they could directly turn to the UN Committee on the Rights of the Child, which is currently not possible. This would also increase the visibility of the recommendations of the UN Committee on the Rights of the Child in Austria.

Recommendation:

- Prompt ratification of the Third Optional Protocol to the Convention on the Rights of the Child by Austria, regarding a Notification Procedure.

Reservations (8)/(9)

The withdrawal of the reservations against Art. 13, 15 and 17 as well as the declarations on Art. 38 CRC, as set out in **Par. 10 of the 5th and 6th Austrian State report**, is welcomed.

Legislation (10)/(11)

Federal Constitutional Law on the Rights of the Child (BVG-Kinderrechte)

The Ombuds Offices for Children and Youths expressly support the Committee's suggestion that all the rights of the CRC be anchored at a constitutional level. The Ombuds Offices for Children and Youths expressly criticise the fact that the social and cultural rights of the CRC are not anchored in the Federal Constitutional Law on the Rights of the Child, the ECHR or the Charter of Fundamental Rights of the European Union, and therefore not at a constitutional level. Children's rights in the sense of the CRC are oriented towards the special needs of children which are not protected by the catalogue of general fundamental rights in Austria. There are no essential fundamental rights guarantees, in particular regulations for child refugees, standards for family reunification, for juveniles under juvenile criminal law, for members of minorities or rights of review for children in alternative care (Art. 22, 10, 40, 30 and 25 CRC).¹ In addition, rights to health care, social security, an adequate standard of living, education, leisure, adequate media services and the responsibility of mass media, rights to the expansion of childcare facilities and services as well as right to quality standards of care and accommodation for minors (Art. 24, 26, 27, 28 f, 31, 17, 18 Par. 2 and 3 as well as 3 Par. 3 CRC) are not taken into account in the Federal Constitutional Law on the Rights of the Child.² In contrast to the commentaries stated in **Par. 13 of the 5th and 6th Austrian State report**, the basic concerns of the CRC are thus clearly not sufficiently guaranteed by constitutional law.

¹ Sax, EF-Z 2011/127, 206.

² Barth, iFamZ 2011, 60 (60).

Recommendations:

- Comprehensive anchoring of all children's rights in terms of the CRC, following the model of the ECHR.
- Complete deletion of the material legal reservation in accordance with Art. 7 Federal Constitutional Law on the Rights of the Child.
- Possibility of the Constitutional Court examining the compatibility of ordinary laws with CRC standards.

Child protection

Regarding Par. 18 of the 5th and 6th Austrian State report: Today, young people are networked across (federal state) borders and are accordingly mobile. Different laws lead to uncertainty among parents and young people. The harmonisation of the protection of minors in Austria has been a long-standing request of the Ombuds Offices for Children and Youths. Therefore, the decision of the Conference of State Youth Officers in March 2017 to harmonise the protection of minors throughout Austria in the following areas is to be welcomed:

- Age of consent for tobacco and alcohol consumption³
- Time frame for children and young people (without a supervisor) for going out to public places (so-called "curfews").

The amended laws for the protection of minors are due to come into force in 2019. Unfortunately, however, Upper Austria prevented the desired Austria-wide harmonisation by deviating in the area of curfews, which from the point of view of the responsible politicians, were too liberal.

Effective child and youth protection, however, cannot be guaranteed by complicated regulations on curfews, but requires effective protection and framework conditions in the public sphere, such as strict adherence to age limits for the sale of alcohol. In this respect, the test purchases already carried out by young people in some federal states have proved very successful. These test purchases can be used to document the extent to which the provisions of the Youth Protection Act regarding the sale of alcohol or tobacco to adolescents are complied with. In addition, this also sensitises shopkeepers and their employees to the protection of minors. Furthermore, targeted prevention and intervention measures must be

³ In addition, reference is made to the explanations in Chapter 7 on the health of adolescents.

taken to sensitise children, young people and their parents or legal guardians and strengthen their respective responsibilities. The regulations in the youth protection laws merely provide the external legal framework within which parents or legal guardians can make concrete - and of course much more restrictive - agreements.

Recommendations:⁴

- Intensified efforts to further harmonise the protection of minors throughout Austria, in particular by adapting the Upper Austrian Provincial Law to the Austrian framework of curfews.
- The Austria-wide harmonisation of youth protection laws must also be promoted with regard to "sanctions" for violations. In terms of "decriminalisation" and awareness-raising, consultation and social services should primarily be considered for young people.

Legislative competence in the area of child and youth welfare⁵

The Ombuds Offices for children and Youths criticise the amendment to the law passed in December 2018, which is intended to fully transfer the competence for "maternity, infant and youth welfare" in accordance with Article 12 (1) of the Federal Constitution Act to the federal states. As already stated at the beginning of this chapter, the federal legal framework for the area of child and youth welfare will cease to apply as of 01.01.2020. The Federal Child and Youth Welfare Act 2013 will therefore cease to apply. An agreement pursuant to Art. 15a of the Austrian Federal Constitutional Act (15a-Agreement) between the Federal Government and the federal states should, in the opinion of those politically responsible, serve as quality assurance. However, uniform minimum standards throughout Austria are not sufficiently protected within the framework of a 15a-Agreement, since such an agreement can be terminated at any time and its content can be changed. Moreover, no subjective rights for children and adolescents can be derived from a 15a-Agreement. From a child rights perspective, the Ombuds Offices for Children and Youths expressly rejected the amendment to the law that has now been passed, among others, for the following reasons:

⁴ Further details can be found in Chapter 7 on young people's health, alcohol consumption and smoking habits.

⁵ Further details can be found in Chapter 6 "Family environment and alternative care".

Lack of effect-oriented impact assessment

In the draft law, the impact assessment in no way examined the impact on the children and adolescents concerned. Austria has thus failed to fulfil its obligation to carry out an impact assessment of all state measures in line with children's rights, which it undertook by ratifying the CRC. The statement repeatedly made by the Committee on the Rights of the Child that the obligation to carry out an impact assessment based on the rights of the child should be provided as early as possible in any legislative process, was also ignored.⁶

Reinforcing regional disparities and standards

Regarding Par. 19 of the 5th and 6th Austrian State report: The Ombuds Offices for Children and Youths were significantly involved in the development of the Federal Child and Youth Welfare Act 2013 and welcomed the nationwide principles and standards in child and youth welfare that it established. However, five years after this Act came into force, the Ombuds Offices for Children and Youths and also the People's Advocate's Office found that there were still massive differences between the various federal states in terms of the services they offered, the services they provided and current practice. This was seen as one of the most serious problems in child and youth welfare, especially in the People's Advocate's Special Report "Children and their Rights in Public Institutions".⁷ Therefore, the view of the Republic of Austria that a high degree of uniformity and homogeneity was achieved through the Federal Child and Youth Welfare Act 2013 and the implementing laws of the federal states based on it, cannot be shared. However, it can be agreed that the first positive developments could be initiated in this direction.

In addition, it is extremely surprising and incomprehensible that, despite this positive balance drawn in the 5th and 6th Austrian State report on the Federal Child and Youth Welfare Act 2013, a few months later an amendment to the law was adopted which completely counteracts the successes of harmonisation that had been praised. Unfortunately, the results of the legislative evaluation report on the development of child and youth welfare⁸ were also

⁶ Committee on the Rights of the Child, General Comment No. 14 (2013) on the right of the child to give priority to its goodwill (Art. 3 para. 1), CRC/C/GC/14; Committee on the Rights of the Child, General Comment No. 14.

⁷ Further details on the Special Report of the People's Advocate's Office can be found in Chapter 6 of this report.

⁸ *Austrian Institute for Family Research at the University of Vienna, Evaluation of the Federal Child and Youth Welfare Act (B-KJHG) 2013, 2018.*

completely disregarded in the criticised current constitutional change of competences. On the contrary: it was withheld and unfortunately only published immediately after parliamentary decision-making.

Recommendations:

- Nationwide standards and specifications for the entire area of child and youth welfare are indispensable, especially with regard to the qualification of skilled workers, the legal entitlement to measures and the forms of care (staffing levels, group size, participation, "Advocacy by a trusted person"⁹).
- Statutorily established nationwide steering committee for the harmonisation and further development of standards in child and youth welfare.

Comprehensive policy and strategy (12)/(13)

National action plans, as described in **Par. 23 et seq. of the 5th and 6th Austrian State report**, can represent an important instrument for the participation of children and young people in national policy strategies, even if these were actually involved in their development. This was not the case when the current action plans were drawn up. It should also be pointed out that many of the demands of the National Action Plan on Children's Rights from 2004 are still relevant. This example shows that the importance of the National Action Plans depends on the effective implementation of the objectives.

Recommendations:

- Involving children and young people in the development process of future action plans.
- Revision of the 2004 National Action Plan on Children's Rights.
- Nationwide effective implementation of the objectives of the National Action Plans.

⁹ Further details on the "Advocacy by a trusted person" (Kinderanwaltschaftliche Vertrauensperson) can be found in Chapter 6 of this report.

Coordination (14)/(15)

Regarding Par. 34 of the 5th and 6th Austrian State report: The coordination bodies listed in the State report serve as important instruments for coordinating the implementation of the CRC. However, contrary to the Committee's recommendation, there is still no legal mandate for the coordination of children's rights at federal and federal-state level.¹⁰

Allocation of resources (16)/(17)

Regarding Par. 37 of the 5th and 6th Austrian State report: The Ombuds Offices for children and Youths generally applaud the creation of the so-called resource and data listing "Factbook: Children in Austria". However, this data collection only appears really sustainable if it is strategically oriented, regular and comprehensive, and if it is evaluated and repeated annually.

Recommendation:

- Systematic collection of relevant data, regular evaluation and annual compilation of the "Factbook: Children in Austria".

Data collection (18)/(19)

Regarding Par. 40 of the 5th and 6th Austrian State report: As already mentioned, the creation of the listing "Factbook: Children in Austria" is applauded. Following the abolition of the Federal Child and Youth Welfare Act in 2013, the obligation to generate and record data as stipulated by this legislation will have to be secured continuously.

Recommendation:

- The Federal Government's obligation to generate and record data must be legally ensured.

¹⁰ See also "Child Rights Monitoring Process," p. 8.

Dissemination and awareness raising (20)/(21)

The Committee's criticism that more efforts and resources are needed to raise public awareness of children's rights is shared. The Ombuds Offices for Children and Youths in particular are fulfilling this mandate in many areas. The following examples typify many other events, projects and publications of the Ombuds Offices for Children and Youths, which are intended to make the principles of the CRC known and understandable:

- Workshops in kindergartens, schools, supervised shared accommodation or youth centres on special children's rights, as well as mobbing and violence prevention workshops and scholastic development programmes, such as respect@school.
- Children's rights week, children's rights festivals, children's rights film festivals, awarding of children's rights and child protection prizes (with participative jury).
- Musical and theatre productions on children's rights.
- Apps for download:
 - "School Checker": Children and adolescents can inform themselves about the most important provisions of school law.
 - "Deine Rechte U18" (Your rights U18): Young people up to the age of 18 can inform themselves about the essential legal provisions regarding minors, be it in the protection of minors, criminal law or civil law.
- Further training for teachers and other multipliers.
- Information brochures, educational material and regular columns on special children's rights in print media.

Recommendations:

- Increased resources for nationwide prevention and information measures on children's rights and their enforcement, as well as the identification of relevant support services through state programmes and measures in cooperation with the Ombuds Offices for Children and Youths.

Training and further education (22)/(23)

Regarding Par. 49 – 64 of the 5th and 6th Austrian State report: The listed curricula, in which children's rights are already anchored, are to be welcomed in principle. However, this

covers neither all curricula of compulsory schools, polytechnic schools, general secondary schools, vocational middle and secondary schools and vocational schools, nor all curricula for teachers at teacher training colleges and universities. In addition, the Ombuds Offices for Children and Youths are of the opinion that both human rights education and children's rights education are needed. Contrary to what is stated in Par. 51 of the 5th and 6th Austrian State report, one cannot or only partially include the other.

In addition to the important education on children's rights for students and pedagogues, the Ombuds Offices for Children and Youths point to the further need for sensitisation and education regarding children's rights in the education and further training of all occupational groups that take care of, teach, look after or otherwise deal with children and young people, such as judges, police officers and doctors.

Recommendations:

- Stronger anchoring of children's rights in the sense of the CRC in all curricula of compulsory schools, polytechnic schools, general secondary schools, vocational secondary and higher schools and vocational schools, as well as in the curricula for teachers at teacher training colleges and universities.
- Stronger anchoring of children's rights in the education and further training of all occupational groups that take care of, teach, look after or otherwise deal with children and young people.
- Regular monitoring and review of the implementation of the Federal Constitutional Law on the Rights of the Child and the CRC through scientific monitoring and professional exchange.

2. Definition of the child (Art. 1)

In addition to **Par. 65 of the 5th and 6th Austrian State report**, reference should be made to the numerous definitions of children and adolescents in the various legal regulations. The distinctions between children and adolescents, minors of legal age and underage minors are confusing for the target group.

Recommendation:

- Adaptation and uniform definition of the group of persons under the age of 18 in the relevant laws, for example as "children" and "youths", while abolishing the conceptual distinction between underage minors and minors of legal age.

3. General principles (Art. 2, 3, 6 and 12)

Non-discrimination (24)/(25)

The Ombudsoffices for Children and Youths are concerned to note, that in Austria, due to several measures taken in recent years, an alarming number of children and youths are affected by indirect discrimination ("hidden discrimination"). The following children and adolescents have an increased risk of being indirectly discriminated:

- Refugee children ¹¹
- Unaccompanied minor foreigners ¹²
- Children with a first language other than German ¹³
- Children in families receiving the minimum benefit: The cutbacks in the minimum benefit have a massive impact on children and adolescents and represent unequal treatment of the children and adolescents concerned.¹⁴
- Children of so-called hardship or poverty travellers: Families with children from Eastern European countries often stay in Austria for weeks or months, sometimes without permanent residence. In many cases these children are excluded from school or kindergarten and there are no day-structuring or supporting services.
- Depending on the federal state, there is discrimination in access to medical or therapeutic services. In particular, children and youths with mental impairments or a need for curative education do not receive necessary therapy and support services at all or do so with a considerable delay.¹⁵
- Children who do not live in Austria themselves, but whose parents work in Austria and receive family allowances: Since December 2018, the family allowance as an exported benefit, has been indexed according to the purchasing power of the country

¹¹ Further details on refugee children and unaccompanied minor foreigners can be found in Chapter 9 of this report.

¹² Further details on refugee children and unaccompanied minor foreigners can be found in Chapter 9 of this report.

¹³ More details on children with a first language other than German can be found in Chapter 8 of this report.

¹⁴ Further details on the minimum benefit can be found in chapter 7 of this report.

¹⁵ More details on children with mental disabilities can be found in Chapter 7 of this report.

in which the child lives. This indexation adjusts the family allowance to a level corresponding to the foreign standard of living; the amount paid out can therefore be increased or reduced, which considerably disadvantages the children and young people concerned and violates the relevant principles of Regulation No. 883/2004 on the coordination of social security systems. In January 2019, the EU Commission will launch an EU infringement procedure against Austria in this matter.

Regarding Par. 74 of the 5th and 6th Austrian State report: In 2017, the Federal Ministry of the Interior and the Federal Office for the Protection of the Constitution and Counter-Terrorism established the "Nationwide Network on Extremism Prevention and De-radicalisation". In addition to the ministries, the federal states and experts from civil society, as well as the Ombudsoffices for Children and Youths, represented by the Vienna Ombudsoffice for Children and Youths, are also engaged in this network. As the first measure of the nationwide network "Extremism Prevention and De-radicalisation", a national strategy was developed in 2018. The Ombudsoffices for Children and Youths consider it essential that all types of extremism be included in the relevant programmes, be they religiously argued or politically motivated.

Recommendations:

- On the basis of the strategy developed for preventing extremism and de-radicalisation, a national action plan must be drawn up, which must be pursued and implemented consistently and nationwide.
- In particular, prevention programmes are recommended from the elementary school level onwards, that aim at sensitization to discrimination of all kinds and development of counter-strategies as well as building up resilience: By means of age-appropriate workshops, by means of ethics classes and cross-sectional religious education several times a year in order to achieve mutual understanding through information, through making commonalities tangible, through the reduction of prejudices and the strengthening of a me and a we identity, and through anti-discrimination and anti-racism.
- In tertiary prevention, in addition to *Boja* and *Neustart*, based on "Exit" in Berlin, a special low-threshold contact point is recommended for young people who are in the process of leaving an extremist group. In addition to self-reflection in dealing with one's own ideology, this should offer therapeutic services as well as living

environment-oriented social work with regard to the building up of a livelihood and security concepts against threats from members of the former extremist peer group. This should be carried out in the sense of participation and authenticity with the integration of "EaEs" (Experts-at-Experience) and the use of low-threshold online counselling.

Consideration of the child's opinion (28)

Children's guardian

The children's guardian (Art. 104a Non-Contentious Proceedings Act - Außerstreitgesetz) is an essential instrument for incorporating the child's opinion or will into custody and contact proceedings. In proceedings concerning custody and contact rights, the children's guardian is appointed to represent the child concerned in highly controversial cases. Its task is to accompany the child through the proceedings and, as the "voice" of the child, to ensure that his or her will and concerns are heard in court. This instrument has proved to be very effective since it was established in law in 2010. However, it is viewed critically that there is still no entitlement to the appointment of a children's guardian; at present, this can only be suggested to the court. In addition, the appointment of a children's guardian is only possible in highly contentious proceedings and is only possible for children under the age of 14, and only under certain conditions for young people under the age of 16. On the positive side, it should be mentioned that, since 2018, following a suggestion of the Ombudsoffices for Children and Youths, a children's guardian is now also, "if possible", to be appointed in proceedings under the Hague Convention on Child Abduction on the basis of an amendment to the Child Repatriation Act.

Recommendations:

- Legal entitlement to the appointment of a children's guardian.
- The possibility of appointing a children's guardian also for over 14-year-olds.
- Mandatory appointment of a children's guardian in all custody and contact legal proceedings if no amicable solution can be reached by the parents in an initial mandatory clearing or mediation or in cases of witnessed violence towards close caregivers.

- Mandatory appointment of a children's guardian in all care proceedings regarding decisions to withdraw custody on suspicion of endangering the welfare of the child.

Regarding Par. 105 of the 5th and 6th Austrian State report: "Political education" in schools is important for the exercise of democratic rights. Therefore, the anchoring of the subject "political education" in the curricula is welcomed. At the same time, the independent exercise of democratic rights requires a participatory learning process, which currently does not fit sufficiently within the framework of school education. Participation projects such as those presented in **Par. 106 of the 5th and 6th Austrian State report** are therefore essential and should be expanded.

Recommendations:

- Increased focus on the subject of "political education" at schools and interdisciplinary approaches.
- Expansion of involvement and participation opportunities for children and youths in all socio-political measures, especially at a municipal level.
- Consideration of the opinions of children and youths in public discussions, including the recommendations of the Federal Youth Council's Guide to media reporting corresponding to children's rights. 16

4. Civil rights and basic freedoms (Art. 7, 8 and 13 – 17)

Right to identity (29)/(30)

The possibility of an anonymous birth to prevent the killing of new-borns immediately after birth is strongly supported. The number of anonymous births in Austria in 2017 was 37, of which 3 children were found in so-called baby hatches. ¹⁷

At the same time, the child has the right to know its origin, which is why support and counselling of mothers is essential. This is because informing a child about his or her origin is extremely important for personality development. For example, the right to information in

¹⁶ See "Good Practice" on "Protection of privacy" in Chapter 4.

¹⁷ See Statistik Austria, Child and youth welfare statistics 2017:

https://www.statistik.at/wcm/idc/idcplg?IdcService=GET_PDF_FILE&RevisionSelectionMethod=LatestReleased&dDocName=110538.

the case of medically assisted reproduction is to be regarded as positive. In addition, the need for an anonymous birth can be counteracted by increased engagement of early intervention and pregnancy counselling, as well as prevention through expanded, recognised concepts of sexual education and the thematisation of contraception.

Recommendations:

- Strengthening of preventive measures through sex education and information on contraception.
- Increased use of early intervention and pregnancy counselling to prevent the necessity of an anonymous birth.
- Introduction of a voluntary confidential register for parents in the event of an anonymous birth, to which affected children have access at the age of majority.
- Psychosocial care for young people who, when they reach the age of majority, receive the available documentation on their anonymous birth.

Protection of privacy (31)/(32)

Regarding Par. 115 of the 5th and 6th Austrian State report: The legal provisions and the recommendations of the Austrian Press Council on the protection of the privacy of children and adolescents in media reporting and media use are to be regarded as positive. However, these measures are, despite awareness raising and education in schools, not always sufficient to comprehensively protect the right to privacy.

Especially in media reports on juvenile delinquency, the right to privacy is frequently violated, especially by releasing names or origin, or by publishing photos or images of places of residence of (alleged) perpetrators.

Good Practice:

- With the support of the People's Advocate's Office, the Federal Youth Representation has drawn up a guide to media reporting corresponding to children's rights.¹⁸ On the basis of the topics crime, leisure, training and education, the labour market, health

¹⁸ Federal Youth Representation, Children's Rights in Reporting, A Guide for the Media and Institutions. (Bundesjugendvertretung, Kinderrechte in der Berichterstattung, Ein Leitfaden für Medien und Institutionen.) https://volksanwaltschaft.gv.at/downloads/3qf9s/bjv_medienleitfaden_kinderrechte.pdf.

and addiction, children with disabilities, family, violence, poverty as well as asylum and refuge, it was made clear that there is still a great need for improvement in reporting on socially disadvantaged children and youths. On the one hand it was criticised that the presentation is one-sided, selective, problem- or deficit-oriented, in which the young people are connoted with predominantly negative attributions and the disadvantageous structural framework conditions are less addressed. On the other hand, in the course of drawing up this guideline, it was found that children and young people affected, seldom have a say in the media reports concerning themselves or their life situation. The analysis of the life situations of young people is carried out almost exclusively from an external perspective. It ignores the fact that children and young people themselves are experts in their own lives. This was the conclusion reached by the 2018 "Media study on socially disadvantaged children and adolescents and child poverty in Austrian mass media", initiated by the People's Advocate's Office and the Poverty Conference.¹⁹

Recommendations:

- Measures for the implementation of the Guide to media reporting corresponding to children's rights of the Federal Youth Representation.
- Anchoring children's rights in the training and further education of journalists for greater sensitivity and objectivity.

Regarding Par. 123 of the 5th and 6th Austrian State report: With the school year 2018/19, the compulsory subject "Digital Basic Education" was included into the curriculum of secondary level I. This is expressly welcomed.

Recommendations:

- Within the framework of the subject "Digital Basic Education" at schools, the focus on "Media Competence and Human Rights Education" must be anchored.

¹⁹ People's Advocate's Office, media study on socially disadvantaged children and adolescents and child poverty in Austrian mass media, June - August 2017.

https://volksanwaltschaft.gv.at/downloads/5qnas/Medienstudie_Kinderarmut_2018.pdf

- Increased use of peer education, extensive thematisation in schools and information for parents and other caregivers to raise awareness of cyberbullying, grooming and “No-hate speech”.

5. Violence against children (Art. 19, 24, Par. 3, 28, Par. 2, 34, 37 (a) and 39) (33)/(34)

Regarding Par. 129 of the 5th and 6th Austrian State report: The studies cited make it clear that measures to protect children against all forms of violence must be given the highest priority. Violence and sexual assaults affect all areas of young people's lives. They range from family violence to violence and bullying at school and on the Internet to bullying, physical and sexual assault in institutional care, in sports and in various leisure clubs.

Since 1989, violence in upbringing has been prohibited by law in Austria. However, the awareness of the population and the actual parenting behaviour lag massively behind the good legal foundations. On the occasion of the study "25 years of legal prohibition of violence", 58 % of respondents nationwide stated that they were aware of a ban on violence in upbringing. According to the results, up to 25 % of 6 to 14-year-olds suffer from a violent upbringing style, 7-10 % are likely to experience occasional and sometimes even severe violence or even mistreatment.²⁰ Two surveys commissioned by the Ombudsoffices for Children and Youths of Upper Austria and Salzburg, also from 2014, essentially confirm these results, according to which the legal prohibition of violence in upbringing is still unknown to about one third of the adult population. Disinformation also exists with regard to what is covered by the prohibition of violence: while almost all respondents consider severe violence to be prohibited, the picture is less clear for milder forms of violence. After all, 38 % believe that a light slap in the face is permitted. It is alarming that psychological violence, such as humiliating, insulting and yelling at children, is predominantly not considered as forbidden violence. 63 % believe that this is allowed.²¹

While the justification of violence as an "educational tool" is decreasing according to various studies, the reasons for violence and neglect often lie in parents' psychological stress

²⁰ Study: The right to a non-violent childhood. 25 years of legal prohibition of violence - an interim balance. (Studie: Das Recht auf eine gewaltfreie Kindheit. 25 Jahre gesetzliches Gewaltverbot – eine Zwischenbilanz.) <https://www.frauen-familien-jugend.bka.gv.at/familie/gewalt/forschung/gewaltfreie-kindheit.html>

²¹ 25 years of nonviolence in upbringing, *Spektra*, <https://www.kija-ooe.at/2718.htm> as well as *Institut für Grundlagenforschung*, https://www.kija-sbg.at/fileadmin/user_upload/Studie_25_Jahre_Gewaltverbot.pdf

situations. Far too many children of all ages are also indirectly affected by domestic violence, mostly towards their mothers. They have to watch and hear violence against and between their caregivers. Often, these children have to subsequently suffer violence themselves.

Potential for improvement is also seen in the teachers' perception of the statutory duty to inform child and youth welfare in accordance with Art. 37 of the Federal Child and Youth Welfare Act (Bundes-Kinder- und Jugendhilfegesetz). The relevant knowledge and a trustful network in general as well as in specific individual cases are prerequisites for a responsible and child-friendly perception of this legal protective measure. Often, concerns about the consequences of a breach of the obligation to maintain confidentiality or of data protection stand in the way of effective cooperation in the interests of the child concerned.

Recommendations:

- State measures and sufficient resources to raise awareness for non-violent upbringing and information on the legal prohibition of violence.
- Low-threshold support services for parents in the area of "early intervention".
- Expansion of child protection centres, counselling and protection facilities for women with children and for girls.
- Mandatory appointment of a children's guardian in the event of experienced violence towards close caregivers in order to avoid further traumatization through the perpetrator's right to contact.
- Cooperation is the central issue in child protection. Missing or inadequate forms of case-related and cross-case cooperation lead to losses of information and context, which are detrimental to the children at risk. In the sense of a "community of responsibility for children", legally standardised cooperation (e.g. between schools and child and youth welfare and the health sector) with clear definition of roles seem sensible.

Abuse and neglect (35)/(36)

Regarding Par. 137 of the 5th and 6th Austrian State report: The process initiated to develop uniform standards and to improve the training level of staff in alternative care

facilities is one of the main achievements of the Federal Child and Youth Welfare Act. This path must be consistently pursued - despite the upcoming changes in legal competence.²²

Recommendations:

- Access to an external ombudsperson and to a counselling centre is seen as an essential aspect of violence prevention for children and youths living in institutions. In this regard, reference is made to the recommendation for the nationwide implementation of the child rights instrument "Advocacy by a trusted person" ("Kinderanwaltliche Vertrauensperson").²³
- It is also recommended that age-appropriate sex education, sexual pedagogy and the prevention of sexual abuse, starting at kindergarten age, be developed as a matter of public concern.

Non-violence (39)

Regarding Par. 134 of the 5th and 6th Austrian State report: Violence against and among children and adolescents is a serious, socially relevant problem. It takes place in the family, at schools, in leisure time and on the Internet. Mobbing, exclusion and violence lead to deep suffering, violate human dignity and trust in interpersonal relationships.

It is regrettable that the National Strategy of the Federal Ministry of Education, Science and Research for the Prevention of Violence in Schools under the title "White Feather" has no longer been actively pursued in recent years.

Prevention of violence in schools and kindergartens

The Ombudsoffices for Children and Youths are increasingly concerned with violence and bullying at schools in their counselling activities. The number of cases is increasing every year, and in most federal states this issue is the focus of counselling.

In an international (OECD) comparison, Austria has the highest rate of bullying in schools: every fifth pupil is bullied. This figure is largely in line with the results of a survey conducted

²² Further details can be found in Chapter 1 of this report under "Legislative competence in the field of child and youth welfare".

²³ Further details can be found in Chapter 6 of this report.

in Upper Austria in 2016.²⁴ According to the survey, around 22 % of 14 to 18-year-olds were bullied and cyberbullied at school for at least one month. Around 28 % of young people are or were afraid of at least one pupil at school. Every tenth young person has already been approached or written to by strangers on the Internet in a sexualized way.

Good Practice:

- With its own Mobbing and Violence Prevention Centre ("Mobbing und Gewaltpräventionsstelle"), the Ombudsoffice for Children and Youths Upper Austria offers a wide range of specialised assistance and expertise. In recent years, the quality and quantity of the services have continuously developed and today cover all social levels of the "school system": the school level, the class level and the individual level. In around 300 workshops in co-moderation every year, violence prevention and intervention are combined with non-violent conflict resolution and the teaching of social skills. The central importance of emotions (fears, anger, grief ...) and the relationship level for dealing with violence and conflicts is at the centre. In the workshops, real, concrete conflicts and experiences of violence of young people are discussed and solutions are shown. In addition to individual counselling and psychotherapeutic support for those affected, the special school development programme "respect@school", numerous further training programmes for pedagogues and information for parents are of great importance in the cross-institutional cooperation between the school, security and administration sectors.
- In Carinthia, there has been a broad-based "anti-mobbing strategy" for schools since 2017, which was set up by the regional school board in cooperation with the Carinthia Ombudsoffice for Children and Youths.

Recommendations:

- Violence prevention concepts which, as an overall strategy, are established in all educational institutions, as early as possible in elementary education and at a primary level (kindergarten and primary school). This makes it possible to reach children and young people from all population groups, regardless of the willingness of their family caregivers.

²⁴ Study "Right to protection from violence", (*Studie „Recht auf Schutz vor Gewalt“*), <https://www.kija-ooe.at/2718.htm>

- School-external bullying counselling centres to which all children and young people can turn regardless of the willingness of the school.
- Extensive initiatives for the development and implementation of school development, team development and participation projects in schools.
- Increased efforts to integrate pupils with different migration backgrounds and measures to prevent intercultural violence.
- The personality, attitude and relationship skills of pedagogues are crucial for the quality of educational services. Special attention must therefore be paid to these central competences in training and further education. This is a prerequisite and basis for imparting knowledge in a sustainable manner and an essential contribution to enabling children and young people to develop a secure identity.
- Qualitative and prompt coaching for pedagogues to support them in difficult situations.
- Expansion of girls' and boys' work in and outside schools with the aim of offering different roles for identification based on the pillars of equality and emancipation and to set an example of non-violent interaction, not least in order to counteract the increasing violence against women and girls.

6. Family environment and alternative care (Art. 5, 9 – 11, 18, Par. 1 and 2, 20, 21, 25 and 27, Par. 4)

Children that grow up in alternative care (40)/(41)

In recent years, reports by former "institutionalised children" about humiliation, violence and sexual assault in institutions of the church, the state and federal institutions have shaken the public. At the same time, a process was initiated, in which the Ombudsoffices for Children and Youths are actively involved. Many Ombudsoffices for Children and Youths function (functioned) as contact points for those affected ("victim protection centres"), work (worked) in victim protection commissions and are (were) directly confronted with the biographies of former institutionalised children. This intensive examination of the past also revealed the mechanisms and structures that made a "closed system" possible. Many of the former institutional and foster children stated that they felt helpless and at the mercy of their situation. If they had dared to tell outsiders about their distress, they would not have been believed.

In connection with the Federal Act on the Implementation of the Optional Protocol of 18th of December 2002 to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT Implementation Act), independent human rights commissions were set up in Austria to monitor places of deprivation of liberty and, in the course of this examination, also to monitor the work of the executive bodies. The commissions are based at the People's Advocate's Office. On the basis of the common human rights objectives, the Ombudsoffices for Children and Youths concluded a cooperation agreement with the People's Advocate's Office in 2012.

Children and adolescents in institutional or alternative care have a constitutionally guaranteed right to special state protection and assistance in accordance with Art. 2 Par. 2 Federal Constitutional Law on the Rights of the Child (BVG-Kinderrechte). Institutional or other alternative care (e.g. by foster parents) is a great challenge for the young people concerned themselves, but also for the professionals involved. In addition to basic child rights standards, binding quality criteria, the best financial and organisational conditions and qualified personnel are decisive for the success of non-family care. Furthermore, the comprehensive participation of children and young people living in socio-educational institutions is important.

Good Practice:

- The establishment of the "Advocacy by a trusted person" (Kinderanwaltliche Vertrauensperson) has proved its worth. This person acts as an external point of contact to which children in institutional or alternative care can turn for questions and in case of conflicts. Children and adolescents are regularly visited by employees of the Ombudsoffices for Children and Youths in the institutions in order to gain a personal impression of the living conditions of the respective children and adolescents. The concerns and problems are heard and, if necessary, passed on as a "voice" for the children. Experience shows that it is easier for children and youths to get help in the event of a need through low-threshold access and personal contact beforehand. At present, this service is mainly focused on children and young people in socio-educational institutions of child and youth welfare. In some federal states, such as Tyrol, this service also exists for institutions providing care for the disabled. It would be desirable to extend this service to all children and youths in public institutions, i.e. also to institutions providing care for the disabled, to all residential homes or boarding schools for training purposes, to young people in child and youth

psychiatry, to institutions providing basic care for asylum seeking minors and to prisons in which young people are detained.

Recommendations:

- Ensuring adequate accommodation (local, spatial and structural) through sufficient and suitable places for each child and youth.
- Creation of the legal framework and provision of resources for the implementation of "Advocacy by a trusted person" (Kinderanwaltliche Vertrauensperson) in all federal states for all children and adolescents in institutional or alternative care.²⁵
- Expansion of individual personal care measures and outpatient support for families, as well as work with the system of origin (keyword "parental work") in the case of alternative care with sufficient resources and services.
- Implementation of participation models for children and young people in socio-educational institutions.
- Implementation of sexual education and violence prevention concepts in all public institutions.
- Consistent participation of children and adolescents in the choice of the type of care they need when alternative care becomes necessary.
- Regular and child-friendly information for children and adolescents on the reasons for and duration of alternative care.

Care Leavers – help for young adults

Care Leavers are young people who have spent part of their lives in state care (e.g. in institutions, residential groups or foster families) and are at the transition to an independent life. Only in exceptional cases can the child and youth welfare service extend care to a maximum of 21 years. Thus Care Leavers, who usually need more time to grow up due to traumatic experiences and who, moreover, cannot fall back on a supporting family network, are usually left to take care of themselves from the age of majority.

²⁵ People's Advocate's Office, *Special Report on Children and their Rights in Public Institutions 2017*, www.volksanwaltschaft.gv.at/downloads/evrov/Sonderbericht_Kinderrechte_2017.pdf

Recommendations:

- Young adults should have a legally guaranteed entitlement - at least until the age of 25 - to the continuation of suitable and necessary services within and outside child and youth welfare if and as long as their personality development does not guarantee an independent and self-determined life. Attention must be paid to the continuity of relationships. The service of transitional support should include a follow-up component.
- The utilization of assistance for young adults must not be linked to conditions that have a potentially stigmatising effect, such as socio-psychiatric or socio-educational diagnoses.
- The support service by child and youth welfare should also be offered if it has never been used before, i.e. for the first time, or has not been used for a while. Termination of the service should not exclude the right to its later continuation. Many young people want to leave care at the age of 18, but later discover that they still need support and are then usually more motivated to accept support.
- It is recommended that a specialised contact office be set up for young Care Leavers to ensure that they are able to seek help as unbureaucratically and purposefully as possible. The services regarding an independent life should include a flexible mixture of different forms of help such as counselling (e.g. in case of addiction), support (e.g. in finding accommodation and dealing with the authorities) or therapy.

Awareness raising of foster parents

The often still lacking awareness of foster parents being a form of "substitute parents" occasionally leads to conflicts between foster parents and natural parents and thus to loyalty conflicts of the children and adolescents concerned. Therefore, awareness raising and professional support is important for the role as foster parents, but also for the system of origin, in order to maintain contacts with the biological parents as unburdened as possible.

Recommendations:

- Strengthening and legal safeguarding of the framework conditions for foster parents in their activities as professionals.

- Adequate remuneration for work as foster parents and guaranteeing of insurance coverage in order to make care places attractive and to be able to expand the range of care places on offer.
- Raising the awareness of foster parents in their role as substitute parents.
- Training and support of foster parents regarding the child's right to contact with its natural parents.
- Accompanying work with the system of origin.

7. Disability, basic health care and social services (Art. 6, 18, Par. 3, 23, 24, 26, 27, Par. 1 – 3 and 33)

Children with disabilities (44)/(45)

Inclusion of children with disabilities is a widely discussed topic in kindergartens and schools and is implemented in many parts of the education system. In the area of child and youth welfare, there are very few institutions that work inclusive in the classical sense. Children and adolescents who are mentally and/or physically handicapped are cared for by Disability Assistance. In many cases, therefore, there are disagreements between the various service providers regarding responsibility or coverage of costs. This can lead to parents not taking advantage of help or to long delays in the course of help.

It is advisable to merge the services of assistance for the disabled and child and youth welfare services into one system. To achieve this, the procedures for determining needs and planning assistance must be further developed and child and youth welfare must be equipped accordingly. In addition, individually adapted outpatient help would be required for intensive support at home with the aim of preventing inpatient care or alternative care.

In June 2018, the Ombudsoffices for Children and Youths organised a symposium on the subject of "1 child, 3 systems – Living environments of children and adolescents in public institutions", during which it became clear that it is hardly possible for a child to switch to child and youth welfare services after receiving services for the disabled. For this reason, it is particularly important to pay attention to the actual support needs of children and adolescents when making diagnoses in order to ensure equal opportunities as far as possible in the long term.

Recommendations:

- Paradigm shift through the complete opening of child and youth welfare services with the guiding principle of "inclusion".
- Adaptation/amendment of laws and implementation of new structures and simplification of administrative procedures.
- Reducing social barriers and changing attitudes towards children and young people with disabilities.
- Individual, prompt help and support instead of cost reduction.
- Expansion of cooperation and collaboration between all institutions (kindergarten, school, health care, etc.).
- Creation of smooth transitions between youth and adult support.

Health and health care (46)/(47)

Children and adolescents with mental illnesses

The main points of criticism with regard to the care of children and adolescents with mental illnesses are the shortfall in the number of beds required, inadequate outpatient care and inadequate follow-up care. Not providing care for children or providing care too late, insufficiently or inadequately is associated with considerable effects on their development opportunities and health. Due to behavioural abnormalities, mental illnesses and psychosocial symptoms, they are often unable to successfully continue their school and vocational training or to behave in an age-appropriate manner and are thus at risk of losing social contact.

Recommendations:

- Sufficient space and personnel for child and adolescent psychiatric institutions.
- The earliest possible diagnosis and treatment of psychosocial symptoms.
- Establishment/expansion of outpatient clinics according to the psychiatric plan 2017, of infant psychosomatic departments and psychosomatic day clinics, as well as establishment of continuous treatment for young mentally ill people between the ages of 16 and 25 for integrated care, also through mobile crisis teams.
- Adequate follow-up care after inpatient care in the sense of effective treatment: establishment of partially supervised shared accommodation with a very flexible

scope of care, therapeutic shared accommodation, external shared accommodation, special inpatient rehabilitation facilities for children and adolescents.

- Adequate range of practicing specialists for paediatric and adolescent psychiatry with health insurance contracts, psychotherapy paid by health insurance, clinical psychology, ergo-therapy and physiotherapy as well as logo-therapy.

The stressful situation of children of mentally ill parents should also be emphasised. These children are three to seven times more likely to develop mental disorders themselves. According to an Austrian study from 2014 (Nagl-Cupal et al., 2014), about 42,000 children between the ages of 5 and 18 years in Austria permanently cared for at least one - often also mentally ill - parent. These so-called *Young Carers* are exposed to a considerable permanent strain and need special support measures.²⁶

Recommendations:

- Targeted prevention programs to reach these (caring) children.
- Relief through assistance for the treatment of the sick parent on site.
- De-tabooing of the topic through awareness raising and education about mental illnesses.
- Sufficient age-appropriate information and counselling services for children and adolescents in order to obtain child-friendly answers to their questions; also counselling for close persons in their private environment.

Health of youths (50)/(51)

Smoking and alcohol consumption of youths

As already mentioned in Chapter 1 of this report (legislation, protection of minors), the Austria-wide standardisation of the provisions of the federal-states youth protection laws concerning the distribution of alcohol to young people, implemented at the beginning of 2019, is welcomed. As a result, children and adolescents up to the age of 16 may not, as before, purchase, possess or consume alcoholic beverages. For 16 to 18 year olds, the

²⁶ https://www.ig-pflege.at/downloads/news/2013/Kinder-und-Jugendliche-als-pflegende-Angehoeerige_Webversion.pdf?m=1368013137

consumption, purchase and possession of beverages containing distilled alcohol is now prohibited.

Austria is the European leader in terms of the number of young people who smoke. A quarter of daily smokers start smoking before they turn 15, more than half before they turn 17.²⁷

For this reason, the following legal initiatives, which raise the age of consent for smoking to 18 years, are expressly welcomed: The amendment of the Tobacco and Non-Smokers Protection Act, according to which a smoking ban was introduced on 01.05.2018 within school grounds, in cars in the presence of under 18-year-olds and on 01.01.2019 a ban on the sale and distribution of tobacco products to under 18-year-olds. This will be supplemented by the initiative of the federal states to harmonise youth protection laws at the beginning of 2019, which only permit smoking from the age of 18.

Recommendations:

- General ban on cigarette vending machines.
- Comprehensive accompanying prevention measures for specific target groups to inform and educate about the consequences and risks of alcohol and nicotine consumption.
- Austria-wide test purchases by young people to improve awareness for the protection of minors among tradespeople and their employees.
- Austria-wide introduction of a quality award, a kind of "seal of approval for the protection of minors", for particularly exemplary companies that consistently pay attention to compliance with the laws concerning the protection of minors and also to the necessary training and sensitisation of their employees.
- Media protection should also be regulated more comprehensively and in a more contemporary manner throughout Austria. In the focus should be both: covering the latest technologies such as Internet and streaming services by protection regulations,

²⁷ Statistik Austria, Federal Ministry of Health, Austrian Health Survey 2014, (Statistik Austria ,Bundesministerium für Gesundheit, Österreichische Gesundheitsbefragung 2014), www.statistik.at/web_de/services/publikationen/4/index.html?includePage=detailedView§ionName=Gesundheit&pubId=714

and promoting orientation through media education and training for children and young people when using new media.

Regarding Par. 203 of the 5th and 6th Austrian State report: The fact that there is still no general ban on smoking in gastronomy is criticised as being contrary to children's rights. It can be regarded as scientifically clearly proven that passive smoking has a very high risk potential and can trigger serious illnesses just like the active consumption of tobacco. Young people in particular, who work in gastronomic businesses, where smoking is permitted, are sometimes exposed to high doses of cigarette smoke. The provision which came into force on 01.09.2018, according to which the employment of young people in areas of gastronomic businesses in which smoking is permitted and the young people concerned are directly exposed to the effects of tobacco smoke, is permitted for a maximum of one hour per day, is not sufficient to provide young people with lasting protection against the harmful consequences of passive smoking. There is no reasonable limit indoors up to which passive smoking is considered harmless.

Furthermore, the addiction-preventive effect of a smoking ban in gastronomy must be mentioned, since the exposure to smoking influences children and adolescents in their own smoking behaviour. A general smoking ban in gastronomy protects young people from starting smoking themselves or influences their existing smoking behaviour.

Recommendation:

- A general smoking ban in gastronomy.

Right to an adequate standard of living

The draft law on the Basic Law on Social Welfare, presented by the Federal Government at the end of November 2018, stipulates, among other things, serious difficulties in obtaining social welfare as well as a degressive gradation of the upper limits of monthly social benefits for underage children. For the first minor child, for example, 25% of the maximum benefit is paid, for the second 15% and from the third minor child on only 5% of the maximum monthly benefit. This cap will put many families, especially those with many children, in precarious situations. The planned different maximum benefits, depending on the number of children, also contradict the reality of life, the actual cost of living, as well as the principle of equality

and the principle of priority for the best interests of the child. It is to be feared that these savings will have a negative impact on all areas of life of the children and youths concerned, such as educational opportunities, age-appropriate participation, social contacts and child-oriented leisure activities.

Contrary to the above-mentioned development, the Ombudsoffices for Children and Youths have been calling for years for an increase of the maximum benefits of monthly social welfare benefits for children and young people, which correspond to the real costs.

Recommendations:

- The planned changes in social welfare should not be made in order to safeguard children's rights. The short- and above all long-term consequences and effects for the young people affected are out of proportion to the expected savings in public expenditure.
- A child cost analysis, in which the actual needs by age are scientifically determined.

8. Education, leisure time and cultural activities (Art. 28 – 31)

Education, including vocational training and career guidance (52)/(53)

Improvement for prematurely born children

With the 2017 education reform, an improvement was achieved for prematurely born children, i.e. children born before the calculated date of birth. With the new regulation in Art. 2 Par. 2 Compulsory Schooling Act (Schulpflichtgesetz), parents of prematurely born children are given the option to choose the calculated and not the actual date of birth for the school entry date or the child to be exempted from compulsory schooling for an additional year.

Good Practice:

In the focus project "Premature children and school" in Carinthia, five specialist events in the years 2011 to 2015 focused on the structured networking and knowledge exchange of all occupational groups involved. This initiative also made it possible to achieve the aforementioned change in the law.

Recommendation:

- Targeted measures for the further training of pedagogues in order to sensitise them to the special needs of these children and to convey specific pedagogical ideas.

German-language advancement classes

Regarding Par. 180 of the 5th and 6th Austrian State report: As of 01.09.2018, so-called German advancement classes for children who are unable to follow regular lessons due to a lack of sufficient knowledge of German were introduced (Art. 8h School Organisation Act, Schulorganisationsgesetz). These children then attend their own "German advancement class" as extraordinary pupils. School-age children whose first language is not German are clearly disadvantaged for a disproportionately long time, since children with "insufficient knowledge of German" can be denied being in a regular class for up to two years. In addition to stigmatisation, these children are also excluded from being taught democratic values: Since they are extraordinary pupils and cannot participate in the pupils' representation, the school forum and the school community committee, their right to participation is violated. This model is not very promising for the integration of children.

Recommendation:

- Language must not be an obstacle: Ensuring equal access to education for all children in Austria, regardless of their first language, by creating the necessary framework conditions for the adequate fostering and support of all children within the framework of regular education.

School social work, school psychological and school medical services

The establishment of school social work or the provision of psychosocial support (counselling teachers, school psychologists, social pedagogues, etc.) is to be welcomed, whereby it must be critically emphasised that different regulations exist in each federal state or even within a federal state with regard to the field of activity, position under employment law and availability, which counteract and weaken the efficiency and effectiveness of this form of support.

The services offered by school physicians are not sufficiently available nationwide. Therefore, the need for action in schools cannot be met.

Recommendations:

- Legal safeguarding that the pedagogical and psychosocial care is provided in a child and age appropriate way, and that, with the involvement of their parents, the best opportunities for the present and the future are guaranteed for the children, irrespective of language skills and ethical, social and cultural affiliation.
- Nationwide expansion and, at least at a federal-state level, development of uniform regulations and quality standards for school social work.
- Provision of sufficient Austrian-wide resources for the school medical and school psychological service.
- Establishment of framework conditions for a contemporary and future-oriented school, which is a place for the development and protection of children, oriented towards their rights and where a culture of peace can develop.

„Home schooling“

The Ombudsoffices for Children and Youths are repeatedly concerned with cases in which children and youths grow up and/or are educated in more or less closed systems, be it in institutions, in private schools, in sect-like communities, but also in families. Every kind of closed system bears a potential risk. It was observed that, unfortunately, even domestic education, which in individual cases can be justified, was abused to isolate children from their environment, to manipulate them with one-sided information and to injure their body and soul. In particular, the lack of proof of qualification, the lack of transparency and the lack of external contacts are seen as problematic. School as a social system also has a high socialisation function.

Recommendations:

- Registration for home schooling should not only have to be notified to the school authorities, but should also be subject to an explicit authorisation procedure with accompanying measures. The socio-emotional development of the child and the entire family situation must be taken into account on a regular basis.

- No public status for private schools with sect-like characteristics.
- Anchoring of educational objectives in accordance with the CRC, teaching of children's rights as well as access to counselling services and "Advocacy by a trusted person" in the statutes of private schools.
- It must be ensured in an appropriate and confidential manner that child's rights and the prevention of violence, contacts with outsiders, knowledge of "Advocacy by a trusted person" and other contact points in the event of violations of children's rights are thematised.

Mandatory education for youths

The introduction of a statutory mandatory education in 2016 for young people who have completed compulsory schooling and do not find an apprenticeship or attend further education is generally welcomed, although there are numerous points of criticism.

For example:

Pursuant to Art. 3 of the Mandatory Education Act, asylum seekers who are minors and no longer obliged to go to school are not covered by the scope of the Mandatory Education Act and, following a decision of the Federal Government in autumn 2018, currently cannot continue their apprenticeship, **contrary to what is stated in Par. 224 of the 5th and 6th Austrian State report.**

Good Practice:

- The training project "Talent Development" (Federal government, Federal state Styria, EU)²⁸ is designed as a school with boarding house for unaccompanied minor refugees. Subareas of the project are language and education, integration and values, talent development and preparation for the job. The aim of the project is to enable young people to complete an apprenticeship in a job defined as an understaffed profession in Austria, in order to be able to work as skilled workers. (Note: This project, which received the UN Public Award in June 2018, is also affected by the termination of apprenticeships for minor asylum seekers).

²⁸ <https://talente-entwicklung.com/>

Recommendations:

- Equal training opportunities for all young people in Austria, including asylum seeking minors.
- Changing the title of the law “Mandatory Education Act” (“Ausbildungspflichtgesetz”) to “Federal Law Standardising the Right to Education for Young People” (“Bundesgesetz mit dem das Recht auf Ausbildung für junge Menschen normiert wird”).
- Training should be tailored to the needs and abilities of young people and not to the needs of companies.
- Expansion of participation rights of young people in the development of the perspective and care plan stipulated in Art. 5 of the Mandatory Education Act (see p. 41, mandatory education for youths)
- Establishment of support and motivation services for young people, in particular through intensive counselling, social work or therapeutic interventions.
- Creation of new training and work places, support and development services to enable compliance with legal requirements.

9. Special protection measures (Art. 22, 30, 32, 33, 35, 36, 37 (b)-(d), and 38 – 40)

Asylum seekers and refugee children (54)/(55)

The subject of child trafficking and the situation of refugee children in Austria was the topic of the symposium of the Ombudsoffices for Children and Youths of the federal states “Lost in Migration – Fleeing Unaccompanied Minors” in Linz in 2017. The publication “Lost in Migration – Fleeing Unaccompanied Children and Adolescents”²⁹, produced in this context, contains practice-relevant information and instructions for action. It is aimed at all specialists and professional groups involved in the care of unaccompanied minors, as well as at representatives of executive authorities and the authorities concerned.

²⁹ <https://www.kija.at/files/KiJA-Broschuere-Fachtagung-LiM-2017.pdf>

Furthermore, in cooperation with Missing Children Europe, the Ombudsoffices for Children and Youths published the German translation of the SUMMIT Study³⁰ with best-practice models for cooperation between authorities and institutions. This collection of methods includes instructions for action, aid organisations and hotlines for missing minors. It is structured into three categories: Measures to prevent the disappearance of unaccompanied children and adolescents, reaction to the disappearance of an unaccompanied child or adolescent, and aftercare of a previously missing child or adolescent.³¹

Asylum procedure and deportation practice

The tightening of asylum and aliens laws that has been ongoing in recent years and the correlating more restrictive administrative and deportation practices have been massively criticised and rejected. In particular, the political decision taken in August 2018 to deport asylum seekers even during an ongoing apprenticeship as well as to generally stop access to apprenticeships for asylum seekers is criticised. The accommodation of refugees without specialist personnel and pedagogical concepts in institutions that are not in compliance with the best interests of the child and are therefore unsuitable, is also viewed with the greatest concern and opposition.

The Ombudsoffices for Children and Youths of the federal states are also concerned about the plans of the Federal Government to, in future, locate the legal advice and representation of asylum seekers within the Ministry of the Interior, which could pose a threat to adequate legal protection for refugees.

Recommendations:

- Legal anchoring of a mandatory comprehensive examination of the best interests of the child in the entire asylum procedure based on Art. 138 of the General Civil Code, supplemented by criteria such as ties and socialisation in Austria, length of stay in relation to age, physical and mental health (trauma consequences) as well as access to the health system, chances of survival, education and development opportunities in the country of origin.
- Age-appropriate and native language information on their rights in the asylum procedure, children's rights and aid organisations for asylum seeking minors prior to their first examination.

³⁰ Safeguarding Unaccompanied Migrant Minors from going Missing by Identifying Best Practices and Training Actors on Interagency

³¹ <http://missingchildreurope.eu/SUMMIT>

- Age determination only in case of justified suspicion and in the presence of a trusted person.
- Prompt appointment of a qualified and trained legal guardian for unaccompanied minors seeking asylum.
- Support for unaccompanied minors seeking asylum to travel safely and legally to another country and for family reunification.
- From the first day of stay in Austria, best possible accommodation and care in pedagogical institutions appropriate to the age of the children and adolescents instead of in unsuitable large-scale accommodations.
- Implementation of the minimum standards developed by UNICEF for the protection of children in refugee camps in Austria.³²
- More efficient and shorter asylum procedures and ensuring legal protection through independent legal advice and representation.
- Opening of access to apprenticeships for asylum seeking minors.
- Creation of a residence permit for young people in training until the end of their training/apprenticeship with the possibility of at least a two-year follow-up employment.
- A halt to deportation to countries where the lives of the refugees are in danger.

In addition, the Ombudsoffices for Children and Youths refer to the report "Child Refugees in Austria", which was drawn up in December 2017 on behalf of the Children's Rights Board³³, and expressly affiliate with the further statements and recommendations of the National Coalition in the area of "Asylum Seekers and Refugee Children".

Sale of children, child trafficking and abduction (60 – 65)

Regarding Par. 272 of the 5th and 6th Austrian State report: As a member of the Working Group on Child Trafficking of the Task Force on Human Trafficking, which is based at the Federal Chancellery, Section V, Family and Youth, the Ombudsoffices for Children and

³² <https://unicef.at/kinderrechtsarbeit-oesterreich/kinderschutz-in-fluechtlingsunterkuenften/>

³³

<https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=5&ved=2ahUKEwIU16uN87XgAhXmwsQBHe8IC4sQFjAEegQIAxAC&url=https%3A%2F%2Fwww.asyl.at%2Fadincludes%2Ffdd.php%3Fdatei%3D180.16.ma%2Ckrb-bericht-kinderfluechtlinge.pdf&usg=AOvVaw2hFhICpSKhXSP4oWoD7nmz>

Youths actively contribute to the implementation of the developed "Guidelines for Action to Identify and Deal with Potential Victims of Child Trafficking" in the respective countries. One of the greatest difficulties in identifying victims of child trafficking is the fact that, on the one hand, there is still little or no knowledge of child trafficking among caregivers as well as the general population and, on the other hand, that children often do not perceive themselves as victims of child trafficking. The children are in a particularly vulnerable position due to a strong dependency relationship, they are deprived of the opportunity to be children and they often do not know where they can get help.

As stated at the beginning of this chapter, unaccompanied minor refugees are particularly vulnerable to child trafficking.

Recommendations:

- Establishment of an Austria-wide protection facility for victims of child trafficking.
- Training on child trafficking for all relevant occupational groups on the basis of the "Guidelines for action to identify and deal with potential victims of child trafficking".
- Increasing information and awareness of the population about child trafficking.

Other proposals for further development of the UN Convention on the Rights of the Child

Both in their function as representatives of the interests of children, young people and young adults up to the age of 21 and in the direct counselling and support of these young people, the Ombudsoffices for Children and Youths repeatedly find, that the UN Convention on the Rights of the Child does not cover all areas of young people's lives.

Further development of the UN Convention on the Rights of the Child is recommended in the following areas:

- Extension of the scope of application of the UN Convention on the Rights of the Child up to the age of 21 (young adults).

The independence of young adults in Austria, but also internationally, is shifting more and more. Despite formal majority - in Austria at the age of 18 - most young adults are still

dependent on multiple forms of support (financial, emotional etc.) of their family. This is also reflected in the fact that in Austria today, young women live in the parental household on average up to 24 years of age and young men even up to 26 years of age. In this phase of life, young people, especially those who do not have a supporting family network, have a great need for accompanying support and representation of their interests in order to be strengthened in their own independence.

- Inclusion of the right to an intact environment as an additional right for children.

Climate change and environmental degradation are among the greatest threats to humanity, especially to children. Habitats suitable for children will be irreparably destroyed unless sustainable measures are taken. In a recent survey conducted by UNICEF and Eurochild in November 2018, more than 45 percent of the 14,000 young people surveyed, consider the protection of the environment to be the most urgent issue, placing it among the top three important areas identified by young people. The current worldwide student protest movement "Fridays for future" also underlines the urgency of this issue.

It is therefore suggested that current developments be taken into account at the international level and that the UN Committee on the Rights of the Child be asked to initiate the extension of the UN Convention on the Rights of the Child to include the right to an intact environment as the 55th article as soon as possible.