



**Convention on the
Rights of the Child**

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COMMITTEE ON THE RIGHTS OF THE CHILD

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 44 OF THE CONVENTION**

**Second periodic report of States parties due in 1999
AUSTRIA* ****

[11 November 2002]

* For the initial report submitted by Austria, see CRC/C/11/Add.14; for its consideration by the Committee on 29 of January 1999, see CRC/C/SR.507 a 509 and CRC/C/15/Add.98. The annexes may be consulted in the files of the secretariat.

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1. INTRODUCTION

1. The ratification of the UN Convention on the Rights of the Child (CRC) by Austria was effected by depositing the ratification document on 6 August 1992 (published in Federal Law Gazette no. 1993/7) and formally entered into force on 5 September, 1992. The initial report of Austria (CRC/C/11/Add.14) was examined by the Committee of the United Nations on the Implementation of the Convention on the Rights of the Child at its 507th to 509th session (see CRC/C/SR. 507-509) on 12 and 13 January, 1999. In its Concluding Observations the Committee responded positively to the Austrian report with respect to the implementation of the Convention on the Rights of the Child, highlighting in particular the following positive aspects: The prohibition of all forms of corporal punishment as from 1989, further efforts to increase protection of children from maltreatment and abuse the functioning system of children's and adolescents' ombudsmen at federal and Länder levels, the functioning system of comprehensive pupils' representation extraterritorial jurisdiction for the sexual exploitation of children.
2. The second State Party Report of Austria under the CRC describes Austrian legislation as it relates to the rights of the child. However, the focus is on measures closely related to the Concluding Observations of the Committee on the Rights of the Child (hereinafter referred to as "Concluding Observations") and to the measures implemented from 1996 to April 2002, as well as, changes in national, regional and local legislation and practice. The activities of the Länder were summarized in 2000/2001. They should be understood as examples, as are the projects and measures of the federal state, and the list is by no means exhaustive.
3. During the period under review, many suggestions raised in the Concluding Observations were implemented in the Parent Child Relation Amendment Act (Kindschaftsrechts-Änderungsgesetz 2001 – KindRÄG 2001 (Federal Law Gazette I. no. 135/2000) in the spirit of the CRC.
4. The act strengthens the legal position of adolescents and young people by lowering the age of majority from 19 to 18, the enhanced consideration of their wishes in the context of custody matters and extended rights to file applications and legal capacity in proceedings of minors over 14.
5. In the relations of parents and children, responsibility for the child is emphasized to a greater extent as the powers summarized under the notion of "custody" are not primarily to be understood as rights but as tasks of the parents, and the "right to visitation" is also laid down as a right of the child; its enforcement has been improved and joint custody after divorce is now possible.
6. If they are mature enough, children must give their consent to medical treatment and diverging decisions of the parents in serious medical matters may have to be examined by a court if the child is expressly against these. Civil law now prohibits the permanent inability to reproduce to be caused in children and the possibility that a curator can give his/her consent was restricted to serious medical-somatic cases when a disabled or physically ill person is of age.
7. The present report also describes new measures of family support, adaptations of legislation applying to immigrant and refugee children, changes in juvenile justice – to name but

a few – in which the recommendations of the Committee were borne in mind. Apart from legal innovations the report also contains a few important measures and activities of the federal state and the Länder relevant to the rights of the child.

8. Data and statistics on CRC-relevant topics, resolutions and government decisions, contributions by NGOs and the Concluding Observations of the Committee on the rights of the child are attached in the annex. Legislation can be viewed in the legal information system of the Federal Chancellery, RIS at www.ris.bka.gv.at.

9. Further information on children and adolescents in Austria and related issues are also found in the reports "4. Österreichischer Familienbericht: Familie – Zwischen Anspruch und Alltag" (1999) and "Gewalt in der Familie. Von der Enttabuisierung zur Professionalisierung" (2001) as well as "3. Bericht zur Lage der Jugend in Österreich" (1999) (all available on the website of this Ministry, www.bmsg.gv.at).

10. Austria has made all possible efforts to secure and foster the value of children in society by many dispositions, based on the recommendations of the Committee on the rights of the child. Those responsible are aware of the fact that the public sector and policymakers are constantly called upon to continue pursuing this goal for the benefit of children in this country.

Ministries – Responsibilities

11. The report quotes the ministries in charge by using abbreviated names referring to the relevant policy area for convenience. This is to avoid recurrent indications that some ministry names changed in February 2002. The short versions stand for

12. Ministry of Youth = the ministry in charge of children and adolescents: Until 2000: Federal Ministry for Environment, Youth and Family Matters (BMUJF) (1996: BMJF) Since April 2000: Federal Ministry for Social Security and Generations (BMSG)

13. Family Ministry = the ministry in charge of families: Until 2000: Federal Ministry for Environment, Youth and Family Matters (BMUJF) (1996: BMJF) Since April 2000: Federal Ministry for Social Security and Generations (BMSG)

14. Ministry of Social Affairs = the ministry in charge of social security: Until 2000: Federal Ministry for Labour, Health and Social Security (BMAGS) Since April 2000: Federal Ministry for Social Security and Generations (BMSG)

15. Ministry of Labour = the ministry in charge of labour market matters: Until 2000: Federal Ministry for Labour, Health and Social Security (BMAGS) Since April 2000: Federal Ministry for Economic Affairs and Labour (BMWA)

16. Ministry of Economic Affairs = the ministry in charge of economic matters: Until 2000: Federal Ministry for Economic Affairs: Since April 2000: Federal Ministry for Economic Affairs and Labour (BMWA)

17. Ministry of Women's Affairs = the ministry in charge of women's general concerns: Until 2000: Federal Chancellery – Federal Ministry of Women's Affairs and Consumer Protection: Since April 2000: Federal Ministry for Labour, Health and Social Security (BMSG)

18. Ministry of Health = the ministry in charge of health matters: 1996-97: Federal Ministry for Health, Sport and Consumer Protection (BMGSK): Until 2000: Federal Ministry for Labour, Health and Social Security (BMAGS) Since April 2000: Federal Ministry for Social Security and Genera (BMSG)

19. Ministry of Education = the ministry in charge of education matters: Until 2000: Federal Ministry of Education and Cultural Affairs (BMUK) Since April 2000: Federal Ministry for Education, Science and Culture (BMBWK)

20. Foreign Office = the ministry in charge of foreign affairs Federal Ministry for Foreign Affairs (BMaA)

21. Interior Ministry = the ministry in charge of home affairs Federal Ministry of the Interior (BMI)

22. Ministry of Justice = the ministry in charge of justice matters Federal Ministry of Justice (BMJ)

Important Acronyms:

23. CRC = UN Convention on the Rights of the Child. Concluding observations = concluding observations of the Committee of the United Nations on the Implementation of the Convention on the Rights of the Child which examined the Austrian initial report at its 507th to 509th session (see CRC/C/SR. 507-509) and published the observations on 12 and 13 January 1999.

| | |
|------|-------------------------------------|
| UN | United Nations |
| ECHR | European Court on Human Rights |
| ECHR | European Convention on Human Rights |
| NGOs | Non-governmental organizations |

2. GENERAL INFORMATION

The Status of the Convention in the Austrian Legal System

24. Under Austrian Federal constitutional law (art. 9 para. 1 of the Federal Constitutional Law (B-VG)), the “UN Convention on the Rights of the Child“ (CRC) is seen as an integral part of Austrian law. Therefore, domestic legal rules must be interpreted so that they do not contradict the Convention. Since the Convention was approved by the Nationalrat (National Council) with a reservation as to its execution, it cannot be directly applied as such but requires the adoption of laws. This procedure is in complete accordance with article 4 of the Convention.

Review of reservations with respect to the CRC with a view to their withdrawal

25. Austria has maintained reservations affecting art. 13 and 15 of the CRC with regard to the European Convention on Human Rights, on the one hand, and art. 17 of the CRC regarding the basic rights of freedom to information and press freedom, on the other hand. The rights of the CRC addressed here pertain to basic rights which in Austria are not just guaranteed by constitutional law and are thus subject to review by the Constitutional Court but are also subject to the jurisdiction of the European Court for Human Rights. Austria has – as laid down in no. 7 of the “concluding observation” – planned to review the reservations affecting article 13 and 15 as well as article 17 of the Convention in the light of the Vienna Declaration and the action plan of 1993. Such a review is to take place with a view to comparable provisions of the European Convention on Human Rights (ECHR) and the harmonization of the legal framework in the light of the “favorability clause” contained in art. 41 of the CRC. At the time of the report, this review had not yet been completed.

26. In this connection, it should be emphasized that Austria is among the first countries of the European Council to sign the 12th Additional protocol to the ECHR submitted in Rome for signing on November 4, 2000. This additional protocol includes a general ban on discrimination and can thus be applied in keeping with the Convention to matters relevant to children.

Institutional Measures for the Implementation of CRC

1 Coordination of the Regional Bodies on a Federal Level and in the Länder

27. The recommendation made under no. 8 of the “concluding observation” has been complied with in the following way. Since the structure of the Austrian Federal Republic divides the competencies for governing the rights of children provided for in the Convention between federal government and the Länder, the implementation of the CRC requires coordination between the two levels and mediating activities in both legislation and implementation. Matters related to children’s rights can be found as “cross-sectional material” even on the federal level in various ministries (Ministry of Youth and the Family, Health, Education, Justice, Interior, Labour, Ministry for Foreign Affairs and the Federal Chancellery, etc) and on the Länder level mainly with respect to youth welfare and extra-curricular education as well as the departments responsible for family, social issues and education. For this reason the Youth Ministry assumed the coordination of the implementation of the Convention on the Rights of the Child in 1994.

28. A central element of the coordination between the federal level and the Länder is the reciprocal study of the drafts of laws and ordinances based on expert reports in which NGOs are also included, to the extent that the projects affects their realm of work. Moreover, a number of formal and informal mechanisms have a coordinating function, such as the regular conferences of the chiefs of provincial youth and family departments, advisory boards, committees (e.g., the family policy committee in the Family Ministry, the committee for the Internet and new media in the Federal Chancellery, the permanent conference of the ombudsmen for children and adolescents, the Bundesjugendring (umbrella organization of youth organizations), or federal youth representation, etc.) as well as the working groups created on specific topics (e.g., working group in charge of revising sexual criminal law, a working group for reforming divorce law as well as law governing child-parent and child relationship), research projects and commissions (e.g., project on family counselling in court, mediation and assistance for children whose parents are separating or divorced.)

29. One of the mandates of the Constitutional Court and the Administrative Court is to check whether the authorities are acting in compliance with the constitution, the law and international law within the legal system and in the implementation of the CRC. This court exercises a controlling and coordinating function in matters where the state acts in a sovereign context according to the constitution. Coordination of the children and adolescent ombudsmen who are largely active in political tasks takes place in the standing committee of the Austrian children's and adolescents' ombudsmen.

30. In 1999, the Ministry of Youth created the "Steering Committee on the Implementation of the Rights of the Child", a committee based on the voluntary work of representatives from government agencies, NGOs, the children and adolescent ombudsmen in the Länder and experts on the rights of the child. It primarily serves the purpose of providing a forum for the regular exchange of information and ideas and has the function of a network ensuring a quick flow of information without bureaucratic obstacles. It also gives a timely indication of need to take action regarding the implementation of the Convention and should thus facilitate harmonious procedure among all government agencies.

31. A leading role in the "Steering Committee" is played by the human rights coordinators appointed on the basis of the resolution of the federal government of 7.15.1999 in all the federal ministries and in the government offices of all nine Länder. The task of these coordinators is to respect and implement the basic human rights for a society based on democratic principles and codetermination by compiling government reports relevant to human rights. The work of the human rights coordinators is intended to improve a structured dialogue on human rights in Austria.

32. Thus the recommendation of the Committee found in no. 10 and 13 of the Concluding Observations is fully met by calling for the coordination and monitoring of the implementation of the Convention on all levels (federal and state) by a government office, on the one hand, and taking active measures to incorporate NGOs in the implementation of the Convention, on the other.

33. Taking into account the concern of the Committee expressed in no. 8 of the Concluding Observations, according to which the Federal Government has on occasion made it difficult for the federal state authorities to implement the provisions of the Convention and to also guarantee the principle of non-discrimination in harmony with the provisions of article 2, the coordinating government office for implementing the CRC (Ministry of Youth) has suggested that an independent group of experts on the rights of the child be asked to study the harmonization demands of the children-relevant provisions of the federal states.

Compilation of the 2nd national report on the implementation of CRC

34. As was already the case in the compilation of the first state report, the coordinating Ministry of Youth has now, too, invited all of the relevant government agencies both on the federal and provincial level to participate and intensify the cooperation with non-state organizations as regards human rights in general, but in particular with respect to the rights of the child. These efforts have been especially directed at the NGOs represented in the "National Coalition on the Implementation of the Rights of the Child" with respect to the rights of the

child, in particular the ombudsmen for children and adolescents as well as the organizations for children and adolescents (for list see annexes C and D). The Länder governments as well as the ombudsmen for children and adolescents have, to varying degrees, made use of the possibility to present their thematic focus. The measures taken by the Länder reported on the present second national report thus illustrate the regional developments taking place in children and family policy and of related activities that can apply to other federal states with a different orientation.

3. GENERAL MEASURES FOR THE IMPLEMENTATION OF THE CRC

Measures for the ongoing implementation of the CRC (Art 4 and 42)

35. Based on the parliamentary discussion of the UN Convention on the Rights of the Child, the Austrian federal government accepted a package of measures in 1994 for implementing the Convention as a mandate of the Nationalrat.

2 Parliamentary resolution E 156-NR XVIII. GP

36. In connection with the parliamentary approval of the CRC the Nationalrat concluded that the rights of the child and the respect for its special needs in Austria were largely guaranteed by the constitution. Notwithstanding this situation, it asked the Federal Government with the resolution of June 26, 1992 (E 59-NR/XVIII. GP) "by recourse to independent experts to review the legal material relevant to the rights of the child to see whether it complies with the Convention on the Rights of the Child and to report to the Nationalrat no later than January 7, 1993 on necessary reforms and to formulate concrete recommendations for laws if necessary" and "to prompt a corresponding review of the legal provisions in the provinces."

37. The experts on children's rights asked to systematically review the Austrian legal situation to see whether it complies with the Convention stated the following in the "expert report on the "UN Convention on the Rights of the Child": a) the Austrian legal system for the most part complies with the "Convention on the Rights of the Child", b) individual provisions of the Austrian law seem at best problematic in light of the convention, and c) certain changes in Austrian law against the background of the general goals of the UN Convention on the Rights of the Child are to be recommended. On the basis of this expert report and the discussions based on it in the sub-committee of the family committee of the National Council the parliament finally unilaterally passed with votes from all the parties represented in the Nationalrat, resolution E 156-NR XVIII. GP, in which the federal government was asked to provide for the realization of a number of specific objectives related to children's rights in the interest of children and youth (annex B). This scientific and parliamentary discussion of CRC is the basis for the systematic further development of Austrian children's rights policy whose implementation is described in this report.

3 Resolution of the Federal Government against violence in society

38. On 9.30.1997 the Austrian federal government accepted the declaration of the Council of Ministers (Ministerratsvortrag) against violence in society, violence in the family, child abuse, sexual child abuse, violence against women, violence among youth and violence in the media.

4 Action Plan of the Federal Government against Sexual Child Abuse and Against Child Pornography in the Internet

39. On 12.10.1998 the Austrian Federal Government accepted the programme of action against sexual abuse and against child pornography in the Internet. The goal of this action plan which provides for a comprehensive cooperation between the economy and government offices, is the criminal prosecution of the production, the possession and the distribution of child pornography (see annex B).

5 Family Assistance

40. In the period under report, the federal government has taken a number of measures with which the financial situation and the basic conditions of families has been considerably improved (see remarks on art. 27 in chap. 8).

Initiatives to incorporate the basic principles of the CRC in the constitution – rights of the child in the context of basic rights

41. In the parliamentary deliberations on the CRC (resolution E 156 NR 18. GP) a debate began on if and how the rights of children are to be incorporated in the constitution. Since then NGOs have been calling for an expansion of the existing basic laws of the Austrian constitution by integrating specific rights of children and youth. This concern was backed by a study commissioned by the Ministry of Youth together with the children and adolescent ombudsmen of the provinces, “The Constitutional Implementation of the UN Convention on the Rights of the Child in Austria” . The conference of the provincial governors (Landeshauptmännerkonferenz) also basically took a positive stand on anchoring the principles of the CRC in the constitution.

42. By contrast, the federal government continues to hold the view that the basic rights and rights to freedom for human beings enshrined in the Austrian constitution should in principle be independent of their age so that children basically have the same protection of basic rights as adults in keeping with the Convention. Differences only arise from the nature of the matter since this is called for by the principle of equality as well as the principle of impartiality deriving from it. If children require special protection in individual areas from the perspective of the principle of equality this is to be guaranteed and is ultimately to be put into perspective before the (Austrian) Constitutional Court.

43. Individual provinces have explicitly incorporated the rights of children in the provincial constitution (e.g., Upper Austria) while others have integrated objectives in the provincial constitution (Salzburg) or in relevant laws according to which “young people are to be protected and supported, taking into account the Convention on the Rights of the Child” (Vienna).

44. The above-mentioned discussion on the issue corresponds to no. 9 of the ”concluding observation“ of the committee in which the careful review of existing laws in terms of their compliance with the provisions of the convention is acknowledged. Here positive note was taken of the fact that the State party was seeking to have the possibility of integrating the principles and provisions of the Convention in a parliamentary hearing and to invite the provincial parliaments (Landtage) of the nine provinces to review the same possibility in connection with the reform of their provincial constitutions.

45. In this context, it should be pointed out that the 12th Additional Protocol to the ECHR which also contains a general ban on discrimination (and thus also finds application in matters related to children in keeping with the Convention) has already been signed by Austria. After this Additional Protocol comes into effect one can appeal to the European Court for Human Rights on the cited discriminations and issues related to obligations of the government to provide a guarantee.

Harmonization of legislation/implementation of the CRC in the Länder

46. In the period under review, there have mainly been initiatives to harmonize the youth protection laws in the individual Länder. On this matter, the Ministry of Youth commissioned a study, in cooperating with all the federal states, in 1995 to explore the possible harmonization of the youth protection laws of the Länder, in particular the various age limits pertinent to youth protection and offered to support the Länder in their initiatives to reach further harmonization. One result of this moderation process that can be named is the readiness of the Länder to exchange information on a reciprocal basis and to coordinate the new structure of their youth protection acts and the cooperation of the Länder Vienna, Lower Austria and Burgenland. These three federal states have established a harmonization commission so that in 2002 a uniform law with respect to its fundamentals will have come into effect in each of these states.

Combating Child Poverty

47. Notwithstanding the general increase in prosperity in recent decades and the marked improvement of the situation of socially disadvantaged persons, combating poverty will continue to be a central goal of Austrian social policy.

48. According to the ECHP (European Community Household Panel) the threshold of the risk of poverty in Austria was € 8.721 annually for a one-person household in 1999. Approximately 900,000 persons had a per-capita income below this value in 1999. This amounts to 11% of the population, a value that lies one quarter below the EU average. According to the ECHP 300,000 persons can be described as acutely poor. Acute poverty is assumed if, in addition to scarce financial resources, there are still tangible limitations on meeting basic life needs.

49. According to the ECHP, the financial risk of poverty is more than twice as high in households with spouses (life companions) and children, in which only one person works, than in households with two working parents. In single-parent households without working income the risk of poverty is even four times higher than in working single parents.

50. The rate of the risk of poverty among children and youth is, at 13%, 2 percentage points higher than that of the entire population. Of the persons threatened by poverty, approx. 60,000 live in single-parent households, 60,000 in households with at least two adults and a child, about 150,000 in families with two children and approx. 180,000 in families with three children.

51. As a result of the expansion of family allowances in Austria (Austria ranks top in Europe with family allowances that are for the most part paid to households with children without checking the actual need for such support!) a significant contribution was made to combating poverty: the rate of child poverty was reduced by more than half, i.e., without these payments (allowances) twice as many families would lie below the poverty line.

52. Family policy is based on the principle of the horizontal equalization of family burdens which, in turn, results in a redistribution of state benefits from persons without child-care obligations to persons with child-care obligations. In spite of this orientation, there is considerable vertical redistribution to lower income groups.

53. As an OECD study (1998) shows the initiatives taken by Austria to reduce child poverty in the period of report has been exceptionally successful: in international comparison Austria ranks second after Luxembourg with regard to family support taking into account the professional activities of both parents, with regard to the support of sole-breadwinner households, Austria ranks fifth behind Iceland, Luxembourg, Belgium and Germany. In view of the latent threat of poverty of children, the Austria federal government has adopted a comprehensive reform for supporting families with children in keeping with the recommendation contained in no. 24 of the "concluding observation". In 1999 and 2000, this reform resulted in financial improvements for families in two phases. As a consequence of the additional payments resulting from the so-called "family tax reform 2000" as of 1999 and 2000 the position calculated by the OECD should have been further consolidated.

A finding of the Constitutional Court in 1997 (October 17, 1997, G 168/96-36) resulted in the reform of family taxation, with family allowances and the tax-deductible allowance for child support being increased. Thus, the average required maintenance of children ("existential minimum") was de facto made tax-deductible and families with little income received proportionately more relief. (More information on art 27 "securing the standard of life" in chapter 8.)

54. As a result of the resolution of the European Council in December 2000 in Nice, the Social Ministry, together with other federal ministries, the provinces, the social partnership, the league of towns and municipalities, the NGOs and representatives of science developed a national action plan for combating poverty and social marginalization. The implementation and evaluation of this national action plan is an important step toward a more effective combating of poverty and social marginalization. Since Austria is a highly developed welfare state, in many areas the focus is less on quantitative than qualitative improvements. In particular, an intensification of cooperation of all the major actors should shift the focus more to the related activities.

Dissemination of the Convention on the Rights of the Child

55. Under no. 31 of the "concluding observation" the Committee recommends that the first State report on the implementation of the CRC be sent to all interested persons in the English-language version. The German-language version was published in the Internet and is now, complemented by the concluding recommendations of the Committee, available as a book publication (Verlag Österreich, ISBN 3-7046-1525-0).

56. The second Austrian government report to which government institutions on a federal level, provincial governments and the ombudsmen for children and adolescents established here, as well as NGOs have contributed, will also be presented in the Internet and subsequently published as a book immediately after it has been presented to the Committee for the Rights of Children.

57. Especially important for increasing public awareness for the rights of children was the broadcasting of the series "The Rights of Children" by the Austrian Television Station ORF in the summer of 1998. In December of 1987 ORF and the Federal Chancellery, together with the TV journal "tele" launched the campaign "Tolerance ... Children Set an Example".

58. Together with Austrian organizations for the rights of children, recognized figures from public life and with the participation of children, the youth ministry compiled a new brochure on the rights of children in 1000. "The Rights of Children" conveys, in a generally accessible language, the content of the CRC and should thus contribute to the raising of further awareness for the rights of children in the spirit of the Convention.

59. In accordance with the recommendations set forth in no. 15 and no. 25 of the "concluding observation" the following measures are cited by the provisions of the Convention for systematic training and education of all professional groups working for and with children, such as judges, lawyers, law enforcement officers, civil servants, persons who work in training schools or detention centres for children, teachers, persons who work in the health sector, including psychologists as well as social workers:

60. Under the title "Can childhood still be saved? – chances for development and future perspectives for children of our time" a six-semester lecture series has been taking place at the University of Graz since winter semester 1999/2000, organized by the Institute for Education of the University of Graz, the office of the ombudsman for children and adolescents in Graz as part of a series of events. This lecture deals with topics relevant to children and youth, including the UN Convention on the Rights of the Child.

61. From May 12 to May 16, 1999, the Catholic youth organization organized a "euroforum" on "Children's Rights", a meeting bringing together young people from all over Europe, at which the central focus was "the rights of children". In the report on the situation of children for the year 2002, the leisure-time situation of handicapped children was the focus of the scientific study, whereas in the report of 2003 the focus will be on children and media: Internet in work.

62. On September 21, 1999 a meeting organized by the Youth Ministry took place on the theme „Children need Love ... and Space“ which dealt with the habitats of children in big cities.

63. On the occasion of the 10th anniversary of the CRC, the Ministry of Youth offered information, discussion and a quiz on the CRC on the Internet homepage www.kinderinfo.at with the title "Express your opinion! – 10 years of the CRC". Here children were invited to express their opinions on the rights of children and the most important topics.

64. Moreover, NGOs and institutions (Europäisches Zentrum, the Austrian youth organization Bundesjugendring, UNICEF, Lower Austrian children's and adolescents' ombudsmen, friends of children, the teachers' training college) have organized a series of events on the rights of children to mark the 10th anniversary of the CRC.

65. In the realms of education in human rights at schools, the "rights of children" was selected as the main topic on the occasion of the 10th anniversary of the CRC for the year 1999. As part of the implementation of the CRC in Austria, the introduction of the ombudsman system

for children and adolescents in Austria, the right to education and the implementation of children's rights in education, everyday school life and as part of the school partnership information was distributed and related measures were taken for continuing training and education: e.g. "rights of children" continued training events for teachers from all school types (April 1999), continued training for teachers as part of the Austrian cultural cooperation with Hungary; seminar on human rights education with a special focus on the rights of children; workshop on "rights of children" as part of the side program of the "Interpädagogica 99 – Fair for Education" in Salzburg (November 1999); the initiative "experts for schools on the theme of human rights" as well as lectures, workshops, discussions, etc. also on the topic of the rights of children for schools. In addition, school lectures on the topic of the rights of children are to be held as part of pedagogical conferences.

66. As a result of a joint initiative of the Austrian UNICEF committee "Open Up – Your Opinion is Wanted" – an initiative on the Convention on the Rights of the Child – a copy of the folder on the initiative on children's rights was sent to each school by the Ministry of Education. With this initiative children and youth are to be motivated to deal with the contents of the Convention on the Rights of the Child and with the social reality in which children grow up. School children should become familiar with the rights of children and should be enabled to demand their own rights and to advocate the rights of others. On the Internet school platform <http://www.schule.at> further information relevant to the rights of children is provided. Above all, however, the text of the CRC can be read and downloaded. The folders of the initiative "Open Up – Your Opinion is Wanted", in which the text of the Convention is contained, were also produced in Braille and given to the Austrian organization of the blind.

67. Pro Juventute did a bulk mailing to 2.7 million households. All recipients can obtain the brochure on the "Rights of the Child" free of charge. The children's and adolescent ombudsmen in Salzburg have produced a postcard folder "Children have Rights" (edition of 20,000) and distributed this, inter alia, at the events marking the world children's day in Salzburg, Saalfelden und Tamsweg.

68. The CWC, die Friends of the Children and the Roten Falken (Red Falcons) invited the public to the 1st International World Children's Conference in Vienna, which stood under the motto "Catch the Future". Children and adolescents from all over the world were asked to discuss the issue of children's rights and to express their opinions. Children and youth organizations expressed their concern about the violation of children's rights. Concurrently, 2,000 boys and girls from 29 nations came together at an international camp in Wines (Burgenland) where they also elaborated demands relating to children's rights.

69. In June 2001, the association "Festival for Children's Rights", organized the first international Festival for Children's Rights in Linz. This festival, in which numerous delegations from different countries in Europe participated, is supposed to reveal the problems arising when implementing the rights of children, on the one hand, and to analyse the development of the rights of children and the activities underway in the various countries, on the other hand. By organising a "Kids Parade", an attempt will be made to reach as much of the public as possible to promote a greater awareness for the rights of children among children, adolescents and adults.

70. In July 2001, an information brochure of the children and adolescents' ombudsmen of Austria was published under the title "Rights of Children – What Parents Want to Know".

71. All of these activities geared to disseminating information on the "UN Convention on the Rights of the Child" (e.g., UNICEF: "The Rights of Children. For Children and Adults") were made possible by public mandates, subsidies given to children and youth organizations or project funding. Last but not least, the (financial) support of the NGOs working with children and youth or supporting them should be mentioned, such as youth organizations, consulting centres, concrete projects, etc. Furthermore, we refer the reader to measures described in chapter 9.2, educational goals.

4. DEFINITION OF THE CHILD

72. Some aspects of the definition of the notion of the "child" in the Austrian legal system were changed in the period under review, mainly as a result of the Parent and Child Amendment Act of 2001. Since the lower age of majority also affects other definitions, all relevant legal realms will be listed here for the sake of completeness.

Age of majority

73. With the reform of the law governing the relations of parent and child through the Parent and Child Amendment Act of 7.1.2001 a young person in Austria attains the age of majority on his/her 18th birthday and thus assumes full capacity to perform legal acts, as it is the case in other member states of the European Council. Prior to this, the minor is basically not capable of performing legal acts. The Parent and Child Amendment Act of 2001 which determines the legal relations between children and parent(s) as well as the legal status of the child seeks to take into account developments in all of society and the growing desire of young people today to assume greater responsibility and autonomy.

Schooling and education

74. General compulsory schooling commences on 1. September following a child's sixth birthday and lasts for nine school years. If a child has not yet attained "school age" there is also school care in primary schools (pre-school class in primary schools). If the child has attained "school age" at an earlier age, it can begin school ahead of time. In this case the head of the school is obliged to get a personal impression of the child and to seek an expert report from a school psychologist (only with the consent of the parents or guardians) and, if necessary, to obtain an expert report from a school doctor.

Legal age of sexual consent

75. The legal age of sexual consent for girls and boys is fourteen. The legal age of consent for male adolescents engaging in homosexual sexual contacts with adults over the age of 19 is 18. Regarding pornographic representations with minors (para. 207a Penal Code (stab)) – child pornography – the legal age of consent for children and adolescents is fourteen. As laid down in para. 206 of the Penal Code (stab), the legal age of consent is the age as of which sexual contacts are basically permitted (save forced acts and certain abusive acts). Before reaching this minimum age limit all sexual acts are basically prohibited. There are exceptions for adolescents: sexual contacts which do not involve sexual intercourse are not prosecuted if the age difference between

the adolescents is not more than four years and the younger partner has reached the age of twelve. If there is sexual intercourse, it is not subject to criminal prosecution if the age difference is not more than three years and the younger of the two is already thirteen.

76. The special provision for homosexual contacts among men/boys in para. 209 (Penal Code, StGB) stipulating that if one of the two men is older than 19, while the other is younger than 18, the older of the two is liable to prosecution was repealed by a ruling of the Federal Constitutional Court on 25 June, 2002. Legislators are to adopt a regulation in conformity with the principle of equal treatment by February 2003.

77. In no. 14 of the Concluding Observations the Committee expressed concern about the remaining cases of sexual discrimination. It recommended that the State party consider commissioning an in-depth study on age groups, sexual self-determination and sexual relations taking into account the present legal framework, its implications and effects on children in the light of the principles and provisions of the Convention so that they are implemented in a way that is amenable to the realization of the rights of girls and of boys taking into consideration the well-being of the child.

78. In no. 18 of the Concluding Observations the Committee also expressed concern over the fact that the existing laws only protect children from sexual exploitation through pornography or prostitution up to the age of 14. The committee recommended to the State party that it undertake all appropriate measures to ensure that the age of sexual consent does not clash with the right of all children to enjoy full protection from exploitation. In this sense the Committee suggested an ongoing review of the recommendations that were formulated in the action plan adopted at the Stockholm World Conference against the commercial sexual exploitation of children in 1996.

Legal age of marriage

79. In Austria a person is eligible to marry if he/she is fit to marry and has attained the legal age of marriage. The fitness to marry is defined on the basis of the general rules governing the capacity to perform a legal act. Persons without the capacity to perform a legal act (children under the age of seven and persons over the age of seven who cannot reason for themselves) cannot enter into a marriage. With the lowering of the age of majority as a result of the Parent and Child Amendment Act of 2001, the unequal treatment of man and woman in defining the legal age of marriage (18 for men, 15 for women) that had been in effect until then was eliminated. Now all persons who attain the age of 18 can marry. The court can declare a 16-year old woman of marriageable age, if she files a petition and the future spouse has reached the age of majority and the person appears mature for marriage (para. 1 of the Marriage Act). Irrespective of the legal age of consent to marry, a minor requires the permission of his. If the necessary permission is not given, the court may grant it on the request of the fiancé, if no justified reasons exist for a refusal (para. 2 and para. 3 of the Marriage Act). A married minor is legally on a par with a person of age as regards her personal situation for the duration of the marriage.

Medical questions

80. Austrian laws do not define a legal minimum age for medical counselling and treatment without parental consent. The Committee thus expressed its concern under no. 16 of its Concluding observations that the required assignment to the courts would deter children from seeking medical care, a fact that could be detrimental to the well-being of a child. In accordance with art. 3 and art. 12 of the Convention, the Committee recommended that an appropriate age and structures for medical counselling and care without parental consent be laid down by law.

81. The Parent and Child Amendment Act of 2001 takes into account the recommendations of the Committee to the extent that the requirement of a parental authority to approve medical treatments of minors is only given when the child cannot give this approval itself as a result of its lacking ability to understand and discern. Legally, it is assumed that the ability to understand and discern is present from the age of 14 on. If a minor who does not have the necessary ability to understand and discern consents to medical treatment which is normally associated with a serious or lasting impairment to the freedom from bodily harm or personality, then the treatment can only be given with the consent of the parent or legal guardian. The approval of the child with the ability to understand and discern as well as the consent of a parent or legal guardian are not required if the treatment is needed so urgently that the delay that would result from seeking the consent or approval would endanger the life of the child or would entail the risk of serious impairment to health.

82. If the treatment involves any appreciable harm to the minor, its statement should only be legally binding if the parent or legal guardian has had an opportunity to exhaustively discuss the treatment with the child and the doctor beforehand.

83. If the child lacks the necessary ability to understand and discern, the parents should basically decide if the child should undergo medical treatment. If consent is withheld wrongly from a medical perspective and as a result, the well-being of the child is endangered, the doctors have recourse to the court of guardianship pursuant to para. 176 of the General Civil Code (ABGB.)

84. The Parent and Child Amendment Act of 2001 especially takes into account the criticism voiced in no. 17 of the Concluding Observations in that it now generally prohibits medical measures that are taken to bring about permanent sterility in minors (para. 146 d of the General Civil Code (ABGB).) By expressly prohibiting “sterilization” neither the child itself (even if it has the ability to understand and discern) nor the parents nor other legal representatives can give their approval to a permanent sterilization.

The child’s right to progressive self-determination

6 Self-determination as regards habitual residence

85. The right to self-determination of a child/adolescent, as regards his habitual residence, is not dependent on rigid age limits, but on whether and to what extent it is still necessary for his/her care and upbringing (General Civil Code, sec.146 b). Following the amendment of para. 195 of the Penal Code (StGB) as a result of the Criminal Law Amendment Act of 1996, the age limit for the liability to punishment for taking in a child against the will of the parent or legal guardian was lowered to 16. Moreover, an exception to liability of punishment was provided for in the event that a younger child requires protection for justified reasons.

86. Thus, it was not called into question that the right of the parent or legal guardian to determine the habitual residence of a child or adolescent is a right worth protecting. The subject of protection in the new para. 195 of the Penal Code (StGB) is therefore no longer the “power” of the parent or legal guardian, but rather his right to determine the habitual residence of the child (para. 146b of the General Civil Code (ABGB)). The criminal law clause of para. 195 StGB is now only referred to as a misdemeanour/offence against “child rearing”, with the “child” being deemed as a minor under the age of 16.

87. If, by contrast, someone keeps a minor against his/her will, then the statutory offences of deprivation of liberty (para. 99 of the Penal Code (StGB)) or duress (para. 105 of the Penal Code (StGB)) continue to have an effect.

88. Moreover, the prerequisites for the law of criminal procedure were changed by the reform insofar as – beyond the prosecution petition of the parent or legal guardian – an authorization of the youth welfare office is also required, if the minor has not yet turned 14, that is to say, no longer is under age. Prior to seeking authorization the public prosecutor must convince himself and make sure that the youth welfare agency has enough grounds for decision that will enable him to observe the 14-day deadline laid down in para. 2 sec. 5 of the StPO.

89. The reason for exemption from punishment, recently introduced in para. 4, should not run counter to a special need of children for protection, in that it does not aim at objectively endangering of a child’s well-being, but someone on the basis of existing circumstances has subjective reason to assume that without his action the bodily or psychological well-being of a person under the age of 16 would be seriously endangered. Grounds for assuming such a serious endangerment of the well-being of body and mind are given mainly if the person under 16 reports about maltreatment, sexual abuse or (grave) neglect, shows injuries and/or clear signs of anxiety states, or other considerable disturbances of his psychological and physical well-being. It could possibly be enough for a child that has run away from home, to strongly resist –without naming the exact reasons – against having to return to a habitual place of residence specified by the parent or legal guardian.

90. The reason for exemption from punishment basically only comes into effect if the “perpetrator” has notified the legal guardian, the youth welfare agency or the police of the minor’s residence without undue delay. This obligation to register should prevent abuses and ensure that the youth welfare office (in the case of imminent danger) can by itself temporarily take the necessary measures to ensure the care and upbringing of a minor until a court ruling has taken place or a court has ordered the withdrawal or limitation of the right of the parent or legal guardian to care and determine the habitual place of residence to safeguard the well-being of the minor (para. 215 sec. 1 of the General Civil Code (ABGB)) – with the assessment of “dangerous circumstances” for the child is rightly not left to the private calculation of a stranger. With this amendment the “self-determination right as regards habitual residence” was relativized for minors under the age of 16 by authorizing a third party to protect the child if its physical and psychological well-being is seriously endangered.

7 Self-determination as regards the capacity to perform legal acts

91. As of July 1, 2001, a young person attains the age of majority at the age of 18 and thus assumes full capacity to perform legal acts (Parent and Child Amendment Act of 2001). Until then, the minor basically does not have full capacity to perform legal acts.

92. Children who have not yet attained the age of seven have no capacity to act. They can only acquire rights and bind themselves through their legal representatives. Legislation, however, makes some exceptions: If a minor conducts a legal act that is normally conducted by a minor of that age and which relates to a trivial matter of daily life (so-called “pocket money” transactions), this becomes legally effective retroactively when the commitments concerning the child are fulfilled. Minors who are not of age (persons between seven and fourteen) have a limited capacity to perform legal acts. Apart from the so-called “pocket-money transactions” they can only perform a legal act serving their advantage. If a minor under age performs a legal act without the consent of his legal representative, the transaction is not null and void, as in the case of children under seven, but becomes legally effective retroactively when the commitments concerning the child are fulfilled. Minors who are of age (i.e. between 14 and 19 years) may on their own account enter into contractual obligations to provide services. This does not include services based on an apprenticeship or other training contract. The minor who is of age can thus dispose of and assume obligations in respect of objects put at his disposal and in respect of income accruing to him from gainful activity to the extent that this does not put the satisfaction of his standard of living at risk (sect. 151, 152, sect. 865 of the General Civil Code). On attaining the age of 14, a child also becomes liable for acts under civil law (General Civil Code, sect. 153), i.e., the child is considered liable for damages under the pertinent provision of the law.

93. To the extent that a child lacks the necessary capacity to understand and discern or the capacity to perform a legal act required by one or more matters as a result of noticeably delayed development, mental illness or a mental handicap, the court shall have a say through official channels or at the request of the person who has been fully or partially entrusted with the care of the child. This statement will come into effect if it is not revoked or limited in time by the court, at the most up to when the child reaches the age of majority. (para. 154b General Civil Code (ABGB).)

8 The child’s right to be heard in court

94. The reform of the law governing parent and child relationships as a result of the Parent and Child Amendment Act of 2001 is based on the postulate that minors should be granted a personal hearing and be informed to the greatest possible extent in guardianship proceedings that affect them. In the case of court decisions that affect the care and upbringing of the child (for example, in cases of the divorce or separation of parents), provision is made in section of 182b of the Act on Non-litigious Jurisdiction (AußStrG) for “taking the child’s opinion into account “: the court shall, ‘if at all possible’, grant the child a personal hearing (see also chap.5 on art.12).

95. Minors who are of age (from the age of 14 to 18), in particular, can now also file petitions of relevance to the proceedings in these legal areas. If the proceeding is not initiated by a petition filed by a minor who is of age, then he should be involved in the proceeding at the latest beginning with his hearing. Moreover, the personal examination of minors is foreseen in proceedings regarding childcare and education, visiting rights and adoption.

96. Pursuant to para. 29 sec. 2 of the Youth Welfare Act of 1989 the youth welfare agency has to hear the at least ten-year old personally and the child that has not yet attained the age of ten if at all possible. Thus, according to para. 13, sect. 1 of the Vorarlberg provincial youth welfare (execution) act, for instance, the at least ten-year old minor must be heard personally before concluding an agreement on voluntary education assistance. Minors under the age of 10 are to be heard personally, if there are no special reasons speaking against this. The cooperation

with those who have been entrusted with the upbringing, education and care of the child and the minors is to be strived for. If possible their wishes are to be taken into account (para. 3 sec. 4 Youth Welfare Act (L-JWG).) para. 17 sec. 4 2nd and 3rd clause L-JWG lay down the rights of minors in a special proceeding for granting permission that a person take charge of the care and education. Similar provisions can be found in all other provincial youth welfare acts.

9 The obligation to give evidence

97. Austrian law on civil procedure is flexible as regards the examination of children as witnesses, to the extent that persons who are incapable of communicating their perceptions or were, at the time to which their statement refers, incapable of perceiving the relevant circumstance shall not be examined as witnesses (sect. 320, no.1 of the Code of Civil Procedure.) Children may be examined as witnesses in both civil and criminal proceedings as soon as they are individually capable of giving evidence. No age limit is established.

98. With the Criminal Code Amendment Act of 1998 the status of witnesses was improved with the possibility of empathetic and considerate questioning (i.e., without direct confrontation with the suspects, in separate rooms, by means of video). It is now obligatory that 14-year old witnesses who are the victims of sexual offences be questioned with empathy and in a considerate manner. In general, victims of sexual offences are now also entitled to apply for empathetic and considerate examination. Witnesses with whom it is expedient in their own interest or in the interest of discovering the truth (i.e., even without an application) are also to be questioned with empathy and in a considerate manner in the main hearing. The possibility for questioning by an expert no longer only exists in witnesses under the age of 14 but also beyond this age limit, in particular, also among adolescents.

10 The child's right to vote

99. The right to vote in elections to the Nationalrat and to the parliaments of the Länder is not obtained until the eighteenth birthday. Children within the meaning of the Convention are therefore excluded from voting in elections to the institutions of representative democracy. The right of adolescents who have attained the age of 16 to vote in municipal council elements was introduced in the period under report in the following Länder: Burgenland, Carinthia und Styria. (For more details on this see art. 12 in chap. 5).

11 Work – paid work

100. While the term 'child' as used in the Convention on the Rights of the Child has extensive significance and in principle includes every person who has not yet reached the age of 18, a distinction is made between 'children' and 'adolescents' in the provisions of employment protection law, most notably in the Children's and Adolescents' Employment Act (Kinder- und Jugendlichenbeschäftigungsgesetz) and the Agricultural Employment Act (Landarbeitsgesetz.) Minors who have either not finished compulsory schooling or who are subject to compulsory schooling or have been exempted therefrom are regarded as 'children' until 1 July of the calendar year in which they reach the age of 15. From that time on until their eighteenth birthday or until termination of any apprenticeship or other training arrangement lasting at least one year, but not after the date of their nineteenth birthday, they are deemed to be adolescents.

101. Children up to the age of 12 may only cycle when accompanied by adults. If they have passed a cycling test and are therefore in the possession of a cycle permit, children over 10 may also cycle alone. Light motorcycles (motor-assisted bicycles, scooters and mopeds) may be driven from the age of 16 with a licence for light motorcycles (theoretical knowledge required). In the Länder a provincial governor can rule the issuing of the license for light motorcycles when the child reaches the age of 14. This is, for instance, the case in districts lacking sufficient means of public transport. In principle, a driving licence can be obtained at the earliest at the age of 18. Exceptions exist for agricultural vehicles which can already be driven by a 16-year old after fulfilling other conditions (proof of the necessary mental and physical maturity). Moreover, adolescents who have reached the age of 17 have the possibility to obtain a learner's permit.

Passports

102. The parents or the person legally responsible for the child may have a passport issued for the child. However, children may also be included on the identity card or passport of the parents or person who is responsible for the care and upbringing of the child, but only until the age of 12. A child of 14 may – with the approval of his legal representative – also apply for a passport. If there are indications that an adolescent intends to go abroad, and if this would jeopardize his well-being, the issuing of a passport will depend on the authorization of the court of guardianship. The same applies if the person legally responsible for the child opposes the application.

13 Age of criminal liability

103. With regard to criminal liability, the Juvenile Courts Act (Jugendgerichtsgesetz) of 1988, Federal Law Gazette No. 599, distinguishes between 'under-age persons', i.e., persons who have not yet attained the age of 14, and 'adolescents', i.e. persons who have attained the age of 14, but are not yet 19 years old. As a result of the lowering of the age of majority from 18 to 17, the Juvenile Courts Act has been adjusted and the upper age limit for the application of juvenile criminal law was reduced from 18 to 17. As of 18, adult criminal law applies, with some elements of young adult criminal law having been integrated in the criminal law for delinquents who have not yet reached the age of 21. Criminal proceedings against young adults (18 to 21 year-olds) are conducted by the Juvenile Courts or court divisions for juvenile criminal cases under partial application of the Juvenile Courts Act notwithstanding the (somewhat modified) application of the general material criminal law.

14 Youth protection; sale of restricted goods

104. The objective of youth protection provisions is to protect young persons from dangers that could negatively impact on their physical, mental, psychological, moral or social development and to promote their readiness to assume responsibility for themselves.

105. According to the provisions of the Austrian Federal Constitution youth protection is a matter of the Länder. Therefore there are nine youth protection laws in Austria. To date only three Länder have met the demand to unify the many youth organizations, the system of children's and adolescents' ombudsmen as well as the Ministry of Youth and harmonized their youth protection acts.

106. Children and adolescents are defined differently in the individual Youth Protection Laws: In some of the Länder all persons who have not reached the age of 18 are deemed young people or adolescents. Others define children as persons up to the age of 14 and adolescents as persons from the age of 14 up to the age of 18. In one Land children are persons who have not yet reached the age of 12 and adolescents are persons from the age of 12 to 18.

107. All youth protection acts govern entry to generally accessible places, visiting public events as well as prohibited premises (e.g., brothels, swinger clubs, peepshow, betting shops, gambling halls), smoking and the consumption of alcohol and narcotics as well as media, objects and services that are detrimental to young people.

108. Consumption of illegal drugs is completely prohibited, while alcohol consumption and smoking are bound to age limits. The use of the media that promote aggression and violence or show pornographic acts are subject to restrictions.

109. Violations of the youth protection acts are punished with fines and imprisonment among persons above the age of 18. Adolescents are summoned to information talks and counselling sessions or social services and under special circumstances, fines are also possible.

15 Compulsory and voluntary military service

110. The compulsory recruitment of children for action in armed conflicts is prohibited by the Military Service Act of 1990, BGBl. Nr. 305/1990. Every Austrian male is liable for military service from the age of 17. However, a man can basically not be called up for military service until he turns 18, and only then if he is fit for military service. Military service can, however, already be done early at the age of seventeen. This provision should primarily take into account specific necessities of schooling and/or training of the young men who have to do military service and thus serves only the interests of those affected. The approval of the legal representatives (generally the parents) is without exception not required for voluntary registration to be legally binding.

111. On 5.19.1999 the Nationalrat passed a resolution regarding measures to be taken to protect children in wars and armed conflicts, in which the Federal Government was asked to advocate on an international level raising the minimum age for recruitment to the armed forces from 15 to 17 years and to 18 in operations/actions in hostilities (E 182-NR/XX.GP). Subsequently, the optional protocol to the Convention on the Rights of the Child on the inclusion of children in armed conflicts was ratified on 2.1.2002.

112. As part of the amendment of the military service act 199 1999, Federal Gazette (BGBl.) I no. 140/2000, which came into effect on 1.1.2001, it was clearly stated that in keeping with the resolution of the Nationalrat that a direct participation of soldiers that have not attained the age of 18 in hostilities as part of their action is generally regulated (essentially national defence according to para. 2 sec. 1 lit. a of the Military Act (WG). Many years of experience have shown that about 430 persons are affected by this provision per year. Only on the basis of voluntary registration can they be recruited to do their military service already before they reach the age of 18. In the future this will still be possible without limitations, and also all areas of military

training can also be completed before the child turns 18 and be used in operations without the risk of “direct hostilities.”

16 Competence of children to act in various realms of life

113. The amendment to the citizenship act of 1998 (Federal Gazette (BGBl.) I 124/1998) foresees that adolescents as of the age of 14 can apply by themselves for Austrian citizenship. The required consent of their legal representative can be granted by the Guardianship Court instead, if this serves the well-being of the adolescent.

114. According to para. 25 sect. 2 of the Asylum Act (AsylG) of 1997, minors of age whose interests are not asserted by their legal representatives can apply for asylum on their own. According to para. 14 Aliens Act (FrG) adolescents as of the age of 14 can apply for entry and residence title themselves with the approval of their legal representatives. In proceedings on whether a person should be expelled from the country or turned back at the border, ban on residence, extradition, custody pending deportation, etc. – they already have full capacity to act legally from the age of 15 on. (para. 95 FrG 1997). Adolescent aliens under the age of 16 whose interests are not asserted by their legal representatives (so-called “unaccompanied minors”) can only engage in legal proceedings to their own advantage (para. 95 sect. 3 FrG).

17 Equalization of Family Burdens Act (FLAG 1967)

115. According to para. 2 of the equalization of family burdens those persons who have a domicile or their habitual residence in the territory of the Federal Republic of Austria are basically entitled to family allowance. This applies to a) minors, b) children who are of age who have not yet turned 26 and are undergoing professional training or continuing their training in a vocational school, if they are unable to practice their profession because they have to attend school; c) for children who are of age and who will probably be unable to earn their own livelihood, due to a physical or mental handicap, that appeared before they turned 21 or during a later vocational training but no later than before they turned 27.

116. Beyond this para. 2 lists a number of specifications regarding prolongation of the entitlement to make claims up until the age of 27 under certain conditions (pregnancy/civil and/or military service) and regarding household status.

117. Children in the sense of para. 2 sect. 3 are physical children, adopted children and their descendents, step children and foster children (para. 186 and para. 186a of the General Civil Code (ABGB).)

5. GENERAL PRINCIPLES

Ban on Discrimination (Art 2)

118. The general ban on discrimination is enshrined in the Austrian Federal Constitution by the provision on equality which appears in several places, primarily in Article 7, para. 1 and 2 of the Federal Constitution (also known by the German acronym B-VG) which stipulates: "All federal nationals are equal before the law. Privileges based upon birth, sex, estate, class or religion are excluded. Nobody must be discriminated due to a handicap. The Republic (federal state, provinces and municipalities) stands up for equal treatment of handicapped and non-handicapped persons in all areas of daily life. The federal state, provinces and municipalities

stand up for the factual equality of men and women. Measures to foster the factual equal treatment of women and men, including, without being limited to, the removal of actually existing inequalities, are admissible."

119. Art. 6 of the Austrian State Treaty contains an obligation to safeguard human rights and fundamental freedoms for all persons living under Austrian sovereignty, without regard to race, sex, language or religion, and a prohibition to discriminate against Austrian nationals on account of these characteristics. Art. 7 of the State Treaty of Vienna enshrines the rights of Slovene and Croatian ethnic minorities.

120. Further provisions affording protection from discrimination comprise Art. 14 of the European Convention on Human Rights and Fundamental Freedoms (which has constitutional status in Austria), the Constitutional Act to Implement the International Convention on the Elimination of All Forms of Racial Discrimination (Federal Law Gazette no. 390/1973, which in Art. 1 provides for the general equality of non-Austrians amongst each other in correspondence with Art. 7, para. 1 B-VG), and the Convention on the Elimination of All Forms of Discrimination Against Women. Moreover, it is pointed out that the 12th Additional Protocol to the ECHR will enter into force in Austria in the near future.

18 Equality of Illegitimate and Legitimate Children

121. The percentage of children born out of wedlock is relatively high: in the year 2001 a total of 24,584 illegitimate children were born, which is an increase of 1.4% over the year 2000. The rate of illegitimate children thus rose from 31.2% to 32.9%. It differs regionally: while it is more than 40% in Carinthia and Styria, it amounts to roughly 35% in Upper Austria, Salzburg, and Tyrol, and to about 25% in Vienna, Lower Austria, Burgenland as well as Vorarlberg.

122. In all matters of family and probate law, illegitimate children are equal to legitimate children. As the parents of every other illegitimate child get married at some point after the child has been born, the children who were originally illegitimate at the time of birth are subsequently considered legitimate by law (legitimization).

19 Non-Discrimination of Disabled or Non-Austrian Children

123. The amended Act on the Organization of Schools (Federal Law Gazette no. 766/1996) which entered into force on 1 September 1997 changed the schooling of disabled children to the extent that the principle of integration practised at primary schools was extended to secondary modern schools and the first four years of education at grammar schools. Pursuant to § 17 of the Act on Compulsory Education, children who are staying in Austria temporarily are entitled to attend school. If they have their permanent residence in Austria, they are subject to compulsory education (§ 1 of the Act on Compulsory Education). Attending school comes with a number of benefits children are entitled to (educational allowance, free public transport, textbooks either free of charge or for a small contribution towards costs).

20 Non-Discrimination in Youth Welfare

124. Under § 3 of the Austrian Youth Welfare Act (JWG) minors staying in Austria are entitled to youth welfare; no qualified right of residence is required. Austrian and stateless

minors are also entitled thereto if they are staying abroad if their habitual residence is in Austria. This is a fundamental principle that has been transferred to the legislation of the provinces.

21 Anti-Discrimination Projects: The "PAVEMENT" EU Project

125. To combat and avoid any and all forms of discrimination, PAVEMENT, a transnational project supported by the European Commission, was initiated. Austria participates along with other EU member states (Italy, France, Spain, Germany). PAVEMENT is to reflect pioneering measures for the successful and efficient implementation of Art. 13 of the Treaty of Amsterdam introduced by service providers in Austria and Europe, using the example of law-enforcement services. Art. 13 of the Treaty of Amsterdam states that the Council of the European Union can take appropriate measures to combat discriminations on grounds of sex, race, ethnic origin, religion or attitude, age, a handicap or sexual orientation.

22 Further Training of Law-Enforcement Officers for Better Ways of Dealing with Non-Austrians

126. Since 1995 the Federal Police Directorates and the NGO Volkshilfe Österreich have organized further training courses to help law-enforcement officers improve the way in which they deal with non-Austrians. The workshops are geared to contributing to a better understanding of the circumstances of life and the situations of non-Austrians, helping law-enforcement officers to assess these situations better and to act with less prejudice. It also enables officers to better understand situations of conflict rooted in different cultural backgrounds, and to handle them in conformity with human rights. Thereby, they shall better comprehend what the work of NGOs, their methods, goals and motivations are about.

The Well-Being of the Child (Art 3)

127. The value attached to the "well-being of the child" in Austrian society is best expressed in the relevant legislation. § 178a of the Austrian Civil Code (ABGB), as a mainstay of Austrian family law states "consideration for the well-being of the child" as the central norm for the assessment of the well-being of the child which is the supreme principle and guideline for the interpretation of child-related laws: "When assessing the well-being of the child, the personality of the child, his/her needs, and in particular his/her talents, capabilities, interests and development potential as well as the parents' circumstances shall be considered accordingly." Pursuant to § 137, para. 1 ABGB fostering the well-being of the child is a general educational goal: "Parents shall ensure the education of their minor children and foster their well-being in general." The Austrian Civil Code expressly states that spouses shall shape their marital community, in particular housekeeping, gainful employment, assistance and custody in consideration of each other and the well-being of the children while aiming at a balance of their contributions. Moreover, the well-being of the child has to be considered by law in numerous other contexts.

128. In custody cases, the well-being of the child is generally the decisive guiding principle for the courts, and violating the well-being of the child constitutes a typical reason why a court of appeal or the Supreme Court would repeal a court decision. The principle of the well-being of the child is also the basis of all measures that aim at looking at and considering family law matters not only from the angle of the parents but also, or even primarily from the perspective of the child. This is illustrated by the right to visitation (§ 148 ABGB) and relevant rulings: in its

ruling 6 Ob 2398/96g of 10 April 1997 the Supreme Court found that under Austrian law, the opinion that a child was entitled to personal contact with the parent was to be preferred and – in the literal interpretation of § 148 ABGB – the sole right of the parent to visitation vis-à-vis the child was a contradiction of values in itself. Even if the CRC did not contain a direct entitlement of the child, legislative intention was quite clear, i.e. the entitlement of the child was to be safeguarded. Even without further implementation of the CRC in national law, an obligation of the parent to maintain contact with the children not living with him/her could be affirmed de lege lata. This would necessarily lead to the conclusion of the parent's corresponding obligation.

129. In accordance with this ruling, the child's right to personal contact with the parent not in charge of care and education was expressly articulated as a right of the child in the Act amending Child Custody legislation 2001. Supreme Court rulings also formulated guidelines – which cannot be generalized – for the consideration of the well-being of the child when custody is awarded in divorce and legal separation cases: these include e.g. safeguarding continuity in education, the principle that siblings should not be separated, the priority of education by the mother in cases of infants while parents have equal status in education after infancy.

23 Court Measures When The Well-Being of Children Is Jeopardised (§ 176 ABGB)

130. If parents jeopardize the well-being of their minor child by their behavior, the court has to take the necessary measures to safeguard the well-being of the child, no matter who turns to the court. In particular, the court may revoke custody in whole or in part or withdraw rights of permission and consent which parents have by law. In individual cases, the court may step in and grant permission or consent if there were no well-founded reasons for withholding these. However, custody may only be restricted by court orders to the extent that this is necessary to safeguard the well-being of the child. Every parent, grandparent and – as a novelty introduced by the Act amending Child Custody legislation of 2001 – relatives in direct ascending line, have the right to apply for custody proceedings, as have the Youth Welfare Office, foster parents and – minors who have legal capacity (i.e. are over 14 years of age; this is also a new feature), to the extent that matters of his/her care and education are concerned. Other persons may propose that such dispositions be taken. Court measures such as the revocation of custody or an order restricting custody may be required if parental duties are not fulfilled or seriously neglected, if the parent concerned abused his/her educational right or is not capable of fulfilling educational duties.

24 The Well-Being of the Child in Youth Welfare

131. The work of Youth Welfare is illustrated by means of an example from the province of Salzburg: by introducing the "Assistance Plan" in youth welfare, it made sure that all youth welfare measures correspond to the goals outlined in the Youth Welfare Rules (JWO 1992) and thus Art. 3 CRC; by the same token, the annual check (Assistance Plan Conference) conforms with Art. 25 CRC. In addition to public and free youth welfare, children's protection centres, homes for battered women, as well as ombudsmen for children and adolescents offer guidance and help. The unit of the provincial administration of Salzburg in charge of family matters runs a counselling centre in the city of Salzburg as well as 11 field offices which are visited by about 35,000 clients per year for a total of some 7,500 guidance talks. Roughly 10% of the children who come to educational counselling are referred to various types of therapy. The mother and parent counselling centres offer the following services: about 860 preparatory courses for birth and parenthood (more than 7,000 participants), about 220 occasions when information was

provided in maternity wards (about 1,000 participants), mother/parent counselling hours (about 25,000 participants), group activities (about 35,000 participants), some 270 care and nutrition counselling events, 50 occasions when counselling was provided by social workers, and about 1,000 cases of psychological counselling.

132. In 1998 the first Youth Welfare Report (1993-1997) was published. In addition to information about the legal background, the environment, financial development and statistical details about cases handled by youth welfare offices, it also contains standardised descriptions of youth welfare services drawn up along the lines of product descriptions. The comparison of the status quo with the desirable situation has resulted in an action plan which is to be implemented by mid-2002.

133. A significant development is found in the fact that priority is given to outpatient-type care (therapeutic family care, socio-pedagogical family care) which is in principle preferred to admission to an institution if it leads to the appropriate results.

134. In particular, youth welfare offices have to offer social services, such as "parents' schools", mother/parent counselling, educational and family counselling, to minors if this appears more purposeful and promising in fostering the well-being of the child than granting assistance in education. Fostering and safeguarding the "well-being of minors" is also the leitmotif of the Provincial Youth Welfare Act of Vorarlberg (L-JWG). The following quotes are examples of L-JWG provisions that reflect the general spirit of the law. § 1, para. 1: Public youth welfare serves the purposes of fostering the free development of a minor's personality as a member of humanity by offering assistance and of safeguarding it by means of suitable measures. § 2, para. 2: The rights and obligations of those entitled to bring up children involved in the case for and education of children shall take precedence over measures pursuant to the J-WG. Interventions of the public youth welfare offices shall only be admissible if and to the extent to which those entitled to bring up children do not safeguard the minor's well-being. This shall include, without being limited to, the use of violence or the infliction of physical or psychological suffering on the minor. § 3, para. 3: The fundamental importance of the family for the development of the minor shall be borne in mind. Family realms and relationships shall only be affected to the extent that this is necessary in the best interest of the minor. The well-being of minors is the central focus of several other provisions of the L-WG (§ 13 para. 2 and 3). The Provincial Youth Welfare Acts of other Länder contain analogous provisions.

25 Improving the Position of Children in Penal Proceedings

135. In § 162a the 1998 Act Amending the Penal Code (Strafrechtsänderungsgesetz), which took effect on 1 October 1998, further extends the obligation of considerate interrogation so as to take the well-being of the child into account in penal proceedings to an even greater extent and avoid secondary victimization in such proceedings. In particular, it is now mandatory to interrogate children who have fallen victim to sexual abuse in a considerate manner.

The Ombudsman System for Children and Adolescents (Art 4)

136. In item 4 of its "Concluding Observations/Comments" the Committee welcomed the introduction of the ombudsman system for children and adolescents in each of the Länder and at

federal level. The ombudsman offices were established by law and are funded by the Länder; their primary task is to counsel minors, persons legally responsible for children and legal guardians in all matters relating to the position of the minor and the tasks of the person legally responsible for the child as well as to assist in cases of disagreement and dispute about care and upbringing (§ 10 JWG 1989, Federal Law Gazette no. 1989/161).

137. The competencies and tasks of the children's and adolescents' ombudsmen differ from province to province. They are contact points for all issues and problems relating to children and adolescents, they consider themselves a representation of interest for children and adolescents, they are independent ombudsmen offices to safeguard those interests and they prepare reports about their activities.

26 Hotlines for Children and Adolescents

138. These are either toll-free lines or can be used at the cost of a local call so that they are readily accessible to children – the hotline provider either covers the complete costs of the call or the difference between the costs of a local and a long-distance call.

139. ORF Hotline for Children and Adolescents “On-line Counsel” (“Rat auf Draht”): Since 1987 the widely known hotline of the Austrian Broadcasting Corporation has offered low-threshold counselling in all age-specific matters for children and adolescents. The hotline is run with the support of the Ministry of Youth, the Ministry of the Interior, the City of Vienna and Telekom Austria. To make it easier for children in distress to get advice and assistance, if required, the service range of “On-line Counsel” was broadened and the “Emergency number for children – 147” (a 24-hour service) was established. Callers may remain anonymous and the number is toll-free from anywhere in Austria.

140. The hotline was publicised via television and the fact that callers may remain anonymous helps them speak about delicate issues. “147 – ON-LINE COUNSEL” is a first contact point. Counsellors refer callers to the competent institutions and public authority and provide first aid in emergencies. For interventions it is required that the young callers state an express request.

141. In 1998 118,800 calls were registered by the 147 children's hotline. Since its inception and the introduction of the 24-hour service an increasing number of children and adolescents have used it. In 1999 the number of calls was 474,096, since 2000 it has risen to roughly 1 million. Most callers were between 11 and 14 years of age, with more girls calling than boys. The “hit parade” of counselling issues correspond to the age group: love/worries, sex education, problems with boyfriends/girlfriends, problems at school and in the family. An increasing number of adolescents address questions or experiences relating to violence in the family, sexual abuse or suicidal thoughts.

142. The hotline is also a contact point for adults (parents and persons of reference) when they encounter problems with children and adolescents.

143. At the end of the school year the daily paper KURIER offers a school report hotline to help parents and pupils with their concerns. Further questions can be clarified by the Vienna School Service, either via the Internet or by means of the brochure “General Secondary Schools

– My perfect right". The Vorarlberg "children's and adolescents' phone" is a 24-hour low-threshold service. In Styria adolescents get counselling from adolescents by phone or e-mail in the "teens 4 teens" project.

27 School Service Offices

144. Since 1 January 1978 the School Service Office of the Federal Ministry of Education, an "office without red tape", has been open for questions, concerns and complaints from the entire field of education. It can be contacted by phone, personally or in writing. The School Service Offices of the School Councils for the Länder as well as the School Council for the City of Vienna provide special know-how in regional matters.

The Right to Life, Survival and Development (Art 6)

145. The legally protected rights to life and physical integrity of children are as important as those of adults. These rights are protected by several statutory provisions. In particular, it is the task of the public youth welfare authorities (§ 1 para. 1 sub-para. 1. Youth Welfare Act 1989), "to make provision for taking care of mothers, mothers-to-be and their unborn children, as well as infants and their parents" (Maternity and Infant Welfare) and (sub-para. 2) "to promote the development of minors by offering assistance in care and upbringing, and to safeguard it with upbringing measures (Youth Welfare)."

28 The Protection of Life under Penal Law

146. The right to life is in principle subject to absolute protection; however, this is infringed by the "abortion limit" – the immunity from prosecution for termination of pregnancy under the following conditions (§ 96 Penal Code)

If the termination of pregnancy is carried out by a doctor within the first three months of pregnancy, following medical counselling, or if the termination of pregnancy is necessary to avert a serious risk that cannot be averted otherwise to the life, or serious damage to the physical or mental health, of the pregnant woman, or if there is a grave risk that the child will be seriously handicapped mentally or physically, or the pregnant woman was under age at the time of conception, and the termination is performed by a doctor in each case, if the termination of pregnancy is performed where medical assistance cannot be obtained in time in order to rescue the pregnant woman from a direct risk to her life that cannot be averted otherwise (§ 97 Penal Code). The penal provisions contained in §§ 96 through 98 of the Penal Code directed against the termination of pregnancy are based on the following principles: Maintaining the principle that human life is to be protected by the means available under penal law not only after birth (§ 96 Penal Code); Recognising the right of the woman in a conflict situation to decide for a termination of her pregnancy within the first three months of pregnancy after consultation with a doctor (§ 97 para. 1 sub-para. 1 Penal Code); Exempting termination of pregnancy from punishment without a time limit if there are medical, embryopathic or under-age indications (§ 97 para. 1 sub-para. 2 Penal Code); Having terminations of pregnancy carried out by doctors unless there is danger to the life of the pregnant woman and medical assistance cannot be obtained in due time (§ 97 para. 1 sub-para. 3 Penal Code).

147. In the preparatory deliberations on this law it was stressed that termination of pregnancy was not to be regarded either as a socially desirable or medically recommended method of birth

control, but that, conversely, penal law does not represent an effective remedy for the prevention of abortions. Rather, setting up counselling centres that provide information to prevent unwanted pregnancies, and eliminating situations of need and distress which could turn a child into an overwhelming problem represent more effective measures to prevent terminations of pregnancy than the threat of penalties. This led to the adoption of the Family Counselling Promotion Act (Familienberatungsförderungsgesetz, Federal Law Gazette no. 1974/80).

148. More than 300 family counselling centres are now funded on the basis of this act, and 84 of them focus on counselling in situations where a pregnancy gives rise to conflicts or problems. In 2000 folders and posters in the surgeries of general practitioners and gynaecologists as well as pharmacies advertised the service.

149. Killing a child at birth is a criminal offence: a mother who kills her child during delivery or while still experiencing the effects of the birth process shall be punished by imprisonment of one to five years (§ 79 Penal Code). Moreover, the abandonment of a child already born is also liable to prosecution (§ 82 Penal Code). The abandonment of a child with intent to jeopardise his/her life (§ 82 para. 2 Penal Code) is punishable by six months to five years of imprisonment. According to the practice of the courts, this also applies to the abandonment of a baby when the provision of sufficient nourishment is neglected.

150. Further punishable offences in this context include the gross neglect of care, education or supervision causing the neglect of under-age persons (§ 199 Penal Code) or "the gross neglect of under-age, younger (i.e. under 18 years of age) or other defenceless persons" (§ 92 para. 2 Penal Code) for whose care or custody the perpetrator is responsible, as a result of which considerable damage is caused to the health or physical or mental development of the person entitled to such custody and care.

29 The Problem of Sterilising Mentally Disabled Children

151. The problem that the forced sterilization of mentally disabled children is legal with parental consent was addressed by the Committee in item 17 of its "Concluding Observations/Comments". This has now been changed as medical measures causing permanent inability of reproduction (§ 146d ABGB) were generally prohibited in the Parent and Child Amendment Act of 2001 (Federal Law Gazette I no. 135/2000). Since "sterilization" is expressly prohibited, neither the child itself (even if he/she is capable of understanding and judging the matter) nor the parents or other persons legally responsible for them can consent to measures causing the permanent inability of reproduction. To ensure that the unwanted pregnancies of mentally disabled children are avoided to the greatest possible extent, organizations for the disabled offer appropriate care and counselling on birth control.

30 The "Baby Nest and Anonymous Birth" Initiative

152. In September 2000 a parliamentary inquiry involving experts from Germany and Austria was held about the topic "baby flap and baby nest" to discuss the legal and factual problems of introducing reception points for "abandoned children". The parliamentary inquiry reached the conclusion that there is no need for society to penalise what are often very young mothers in distress who for whatever reason feel unable to declare their children available for adoption or

act in panic after birth. Rather, so-called "baby flaps" or "baby nests" were to be created for such emergencies along the same lines as in Austria's neighbouring countries: these special reception points for babies are holes in the walls of hospitals leading to warm cots where mothers can safely leave their children.

153. If the public authorities make such a facility available, persons who use or provide these facilities cannot be punished for doing so. For this reason, the "Federal Act to amend the Juvenile Court Act 1988, the Penal Code and the Court Organization Act" repealed the passages by which the facts constituting the offence of "leaving a minor" (§ 197 Penal Code), i.e. the abandonment of a child without any intent to jeopardise the latter's life, is punished.

154. To prevent mothers from giving birth to children in situations of distress without medical assistance and abandoning them in the hope that others will assume responsibility for them, an environment for baby nests and anonymous births was created. Custody of these children is taken over by the youth welfare authority which also searches for adoptive parents. For a short period after the birth mothers may come forward and reclaim the children. Anonymous counselling services are to contribute to leading pregnant women in crises to the possibility of anonymous birth because this is the only way to ensure that they and their children will be given care and medical assistance before, during and after birth.

Respect for the Views of the Child (Art 12)

155. The obligation arising under Art. 12 to guarantee the child that appropriate account will be taken, corresponding to age and maturity, of his or her opinions in all matters that concerning him or her is something that affects all areas of the child's life: the family, school or other forms of child care, proceedings at court or with the authorities, as well as processes of formulating political objectives and decision-making.

156. To further strengthen the legal position of minors the Parent and Child Amendment Act 2001 expressly provides that parents must take the child's will into account in all matters concerning the care and upbringing of the child unless this would negatively affect the child's well-being or unless the parents' personal circumstances prevent this. The will of the child is all the more decisive the more he/she is able to understand the reasons for and meaning of a certain measure and is able to shape his/her wishes accordingly. At the same time, the requirement of hearing minors in proceedings concerning their care and upbringing as well as the right to personal contacts (see 4.6) was introduced.

157. The Parent and Child Relation Act now follows the postulate that minors must be heard and informed to the greatest possible extent in proceedings concerning their care and upbringing. Pursuant to § 182 b of the Act on Non-Litigious Proceedings, court orders concerning the care and upbringing of children (e.g. respective proceedings or the right to personal contacts in the case of the parents' divorce/separation) must not be issued without first "taking the child's opinion into account" by "hearing the child personally if at all possible". Usually, minors are heard by a guardianship court, or the youth welfare authority, a court expert or existing institutions of the Juvenile Court Assistance, or in any other appropriate way if the minor is not yet 10 years of age, if this is required by his/her development or state of health, or if a serious and uninfluenced expression of opinion cannot be expected. Children under 10 years of age are to be heard by the child psychologists of the Youth Welfare Office or in some other suitable way. The hearing may be refrained from if the hearing itself or the resulting delay jeopardise the

well-being of the child or if, in view of the age and capability of the child to understand the matter on hand, a well-founded opinion cannot be expected (§ 182b Act on Non-Litigious Proceedings).

31 Party Rights in Court Proceedings

158. The Parent and Child Amendment Act 2001 gave children above the age of 14 independent capability to act in family courts in the context of proceedings concerning their care and upbringing or the right to personal contact. They may act independently in that they are e.g. allowed to file applications to initiate proceedings. The courts must ensure, by means of appropriate instructions and information, that they are actually able to exercise their party rights in court proceedings. If necessary, available counselling services must be pointed out. However, the fact that children over 14 are legitimised to file their own applications and act in their own proceedings does not preclude the right of those legally responsible for them to file applications and act in proceedings on behalf of the children. The court has to engage with the substance of both applications (those filed by children and parent) and to take a decision to ensure the well-being of the children.

159. If minors file applications themselves, they must be supported in accordance with their development and understanding at an early stage, e.g. on the occasion of a court office day, when legal counselling is given and judges are available outside the formal setting. This way independent access to court is facilitated. If the minor has to be confronted with an application initiating proceedings filed by the other side, the court must choose an appropriate point of time to first involve the minor in the proceedings.

160. Party rights to the extent described had already been granted by the courts to children above the age of 14 prior to this amendment.

32 Co-Determination and Self-Determination in Matters of Schooling

161. The views of children in school matters are taken into account pursuant to §§ 57a and 58 of the Schooling Act (Schulunterrichtsgesetz, SchUG). In this context § 57a deals with the rights of individuals whereas § 58 leg. cit. governs collective rights. According to § 57a pupils are entitled to be heard and make proposals and comments in all matters of schooling.

162. Pursuant to § 11 para. 7 of the Regulation on the Assessment of Performance (Leistungsbeurteilungsverordnung) provides that objectively arguable views of pupils do not have to be considered even if they deviate from the view of the teacher. This does not contradict Art 12. On the one hand, the provision does not seek to attain that taking the child's opinion into account is mandatory when governmental bodies take a decision, it merely wishes to ensure that the child is given an opportunity to express his/her view. On the other hand § 11 para. 7 of the regulations is to be construed in such a way that the objectively arguable opinion of the pupil should not take precedence over the objectively arguable opinion of the teacher in a matter of assessing school performance.

163. In schooling matters pupils are in principle represented by the persons legally responsible for them: from the age of 14, a pupil shares responsibility with his/her parents for

fulfilment of the requirement of regular school attendance. Pupils will, however, only have independent capacity to act in some schooling matters from fifth grade (9th year of schooling) upwards. To represent the interests of pupils, school spokespersons elect pupils' representatives for each province (Land). The winners of the elections make up the federal association of pupils' representatives.

164. In March 2001 the "Participation Working Group" (Arbeitsgemeinschaft Partizipation), which is composed of representatives of all Austrian units in charge of youth matters at the level of the provinces and representatives of the Ministry of Youth, organised a conference entitled "Participation and Education" which was attended by staff of the provincial governments' units in charge of youth matters and of the Provincial School Councils of all provinces. Working parties and discussion fora for the 40 participants dealt with demands and strategies pertaining to the issue of what education can do to enable children and adolescents to participation in decision-making processes. It was concluded that children and adolescents should be given more rights and the participation of children and adolescents should be anchored in youth work in and out of school. Institutions involved in youth work in and out of school should cooperate more closely for this purpose.

165. In October 2000 the Styrian Children's and Adolescents' Ombudsman cooperated with the Community Counselling Office, LOGO-jugendmanagement:steiermark and arranged a simulation of elections to the provincial parliament for 12 to 18-year old pupils at four selected schools (HTL Kapfenberg, LBS Mureck, BG/BRG Knittelfeld and LBS aT Graz-St.Peter School Centre while the actual elections were underway, too. The purpose of the simulated election was to attain a lowering of the voting age in municipal and provincial elections to 14 and to show that young people are interested in politics.

33 Co-Determination as an Apprentice or Adolescent Employee

166. The Employment Principles Act (Arbeitsverfassungsgesetz) provides that companies with at least five adolescent employees must have special representative bodies which are formed for the adolescents. The Youth Assembly chooses from among its members the Youth Representative and the Assembly of Youth Representatives, which consists of all the youth representatives of a company, choosing from among its members the Central Youth Representative. In a group of companies, the youth representatives or central youth representatives may form a Joint Committee. The Youth Representative has the task of looking after the economic, social, health-related and cultural interests of the adolescent employees of a company.

34 Democratic (Political) Participation of Children and Adolescents

167. The right to vote in elections to the National Council or the parliaments of the Länder is obtained at the age of 18. Since the opportunities for cooperation, participation and the involvement of children in local decision-making processes (such as referenda or citizens' action groups) depend on being of voting age, children and adolescents are excluded from any form of democratic cooperation, participation or involvement.

168. In August 2000 the right to vote in municipal elections and elections of mayors as from the age of 16 was introduced by resolution of the Carinthian provincial parliament. Pursuant to § 16 para. 1 of the Carinthia Regulation on Elections to Municipal Councils and Mayors' Elections

(Kärntner Gemeinderats- und Bürgermeisterwahlordnung) all Austrian nationals and nationals of EU member states who turned 16 before January 1 of the year in which the elections are held, who are not barred from voting and who have their domicile in the respective municipality are entitled to vote. Based on this first step towards lowering the voting age, similar measures were taken in other provinces, too: Styria and Burgenland have also lowered the voting age at municipal level.

35 Participation of Adolescents at the Municipal, Regional and Federal Levels

169. Opportunities for codetermination for children and adolescents have meanwhile come quite a long way in Austria:

35.1 Measures for Enhanced Participation of Children in Decision-Making Fora

170. From 1- 3 July 1998 an EU Participation Congress was held in Graz; a final document drawn up by the young participants was adopted on the occasion. An "Implementation Committee" composed of young people followed up on the implementation of demands. Two members of the committee presented the final document at a meeting of the Council Working Group "Youth" which dealt with the entire participatory process and discussed it with representatives of governments.

171. The "Youth Forum" participation model: During the Austrian EU Presidency twelve young people aged 17 to 23 were selected to advise the Minister of Youth as a personal think-tank; they were actively involved in the Minister's work as they had an opportunity of participating in meetings. The Youth Forum and adolescents from other organizations were also involved in the preparation of the Austrian proposal for the EU Council Resolution on Youth Participation.

172. During the Austrian Presidency the Resolution of the Council and the Ministers of Youth meeting within the Council on youth participation was adopted on the basis of an Austrian initiative on 19 November 1998 (see Annex).

35.2 Measures for the Enhanced Participation of Children and Adolescents

173. On the basis of the European Summer Schools 1997 and 1998 and the Municipal Days of the Ministry of Youth's Youth Forum in 1999 youth@genda, the first forum for young municipal councillors in Austria took place at Obertrum from 14 to 17 July 1999. It aimed at fostering a direct exchange of views among adolescents, young decision-makers from municipalities and mayors, and at the development of practical projects for political decision-making processes at a regional level. Since then youth@genda has become a regular event organized by the Ministry every year.

174. The 3rd Report on the Situation of Young People published by the Ministry of Youth in 1999 contains a first inventory, typology and assessment of results pertaining to youth participation projects in associations or clubs as well as in non-affiliated youth work, especially at municipal level. In respect of the outcome of such projects in terms of the effect they had on the young people, the experts found that democratic awareness in 85% of the adolescents who took part in youth participation projects had become sounder. The spirit of solidarity had

increased in 83%, 88% were more capable of working in a team, 85% had a more realistic view of the world, and 80% said that their ability of coping with problems had improved.

175. The amendment of the Styrian Act on the Rights of the People (Steiermärkisches Volksrechtegesetz, Provincial Law Gazette no. 51/1999) which took effect on June 8, 1999 provides that municipalities should inform children and adolescents of any projects and plans that concern them and have them participate in opinion-forming processes. Considerations, proposals and results of deliberations among children and adolescents should be taken into account by the municipality.

176. In October 2000 the Styrian Children's and Adolescents' Ombudsman cooperated with the Community Counselling Office, LOGO-jugendmanagement:steiermark and arranged a simulation of elections to the provincial parliament for 12 to 18-year old pupils at four selected schools (HTL Kapfenberg, LBS Mureck, BG/BRG Knittelfeld and LBS aT Graz-St.Peter School Centre while the actual elections were underway, too. The purpose of the simulated election was to attain a lowering of the voting age in municipal and provincial elections to 14 and to show that young people are interested in politics.

177. Vienna, with its special structural givens of a big city, has introduced a number of participatory models for children and adolescents, which are to allow for enhanced codetermination in municipal politics. Several district councils have established projects in which young citizens may present their wishes, ideas and demands to political decision-makers (usually after an age-specific stage of preparation in workshops). Examples include; the Children's and Adolescents' Advisory Council of Meidling, the Pupils' Parliament of Margareten, the Youth District Representatives of Rudolfsheim-Fünfhaus, "Word-Up"- the Pupils' Forum of Donaustadt. Throughout Vienna, discussion meetings with students of vocational schools (apprentices), pupils' parliaments and other participatory projects take place (concerning e.g. the amendment of the Youth Protection Act).

178. In March 2001 the "Participation Working Group" (Arbeitsgemeinschaft Partizipation), which is composed of representatives of all Austrian units in charge of youth matters at the level of the provinces and representatives of the Ministry of Youth, organised a conference entitled "Participation and Education" which was attended by staff of the provincial governments' units in charge of youth matters and of the Provincial School Councils of all provinces. Working parties and discussion fora for the 40 participants dealt with demands and strategies pertaining to the issue of what education can do to enable children and adolescents to participation in decision-making processes. It was concluded that children and adolescents should be given more rights and the participation of children and adolescents should be anchored in youth work in and out of school. Institutions involved in youth work in and out of school should cooperate more closely for this purpose.

36 The Institutionalization of Children's and Adolescents' Participation

179. When discussing the 3rd Report on the Situation of Young People in Austria, the National Council called upon the Federal government on 18 June 1999 to implement youth promotion and youth representation on the basis of a Youth Promotion Act (192/E and 194/E NR/XX GP).

36.1 The Federal Act on the Promotion of Youth

180. On 1 January 2001, the new Act on the Promotion of Out-of-School Youth Education and Youth Work ("Act on the Promotion of Youth", Jugendförderungsgesetz, Federal Law Gazette I no. 126/2000 of 29 December 2000) came into force. The law aims at financial support to measures of out-of-school measures in youth education and youth working, in particular for the development of intellectual, psychological, physical, social, political, religious and ethical capabilities of children and young persons. Young persons within the meaning of the law are defined as people up to the age of 30, there is no differentiation between children and adolescents. The funding systems of the individual Länder are not affected by the law.

36.2 The Federal Act on Youth Representation

181. On 1 January 2001, a new Act on Youth Representation took effect; it contains new provisions for the participation of young people at federal level by involving representatives of youth organizations and non-affiliated youth work, thus anchoring it in legislation. The law provides that, in matters concerning the interests of Austrian young people, the Federal Youth Representation is on a par with the statutory representative bodies of employees, employers, farmers and the Austrian Senior Citizens' Council.

182. The introduction of the Federal Youth Representation (Bundes-Jugendvertretung, BJV) by the law has to be seen against the background of Art 12 and 15 of the UN Convention on the Rights of the Child, the National Council resolution E 156-NR XVIII GP conforming with the Convention, as well as the Resolution of the EU Council and the Youth Ministers meeting within the Council on youth participation dated 26 November 1998 (13688/98 JEUN 61 SOC 472) as well as National Council resolution E 192-NR/XX GP.

6. FUNDAMENTAL RIGHTS AND FREEDOMS

Name, Descent and Nationality (Art 7)

37 Name

183. A child's birth is registered in the register of births. Prior to entry into the register of births, the persons authorized to apply for registration (normally, both parents for children born in wedlock or the mother for children born out of wedlock) must state in writing the first name they wish to give to the child (§ 21 para. 1, Civil Status Act; PStG). Should the parents fail to agree on a name, the competent child-custody court shall be notified, which then has to decide on the naming.

184. A child's surname depends on whether the child is born in or out of wedlock. Pursuant to § 139 of the Austrian Civil Code (ABGB), a child born in wedlock shall be given the common surname of its parents; should the parents have no such common name, the child shall be given such surname as the parents, prior to or during the marriage ceremony, have determined to be the name of any children descended from their marriage, or, failing such provision, the father's surname. Pursuant to § 165 ABGB, a child born out of wedlock shall be given the mother's surname (as at the time of the child's birth). Subject to the approval by the regional administrative authorities of a change of name, the child may be given the established father's surname or the surname of the mother's husband.

185. The 1999 amendment to the Civil Status Act has created the legal basis for the naming of stillborn children. For this purpose, special documents are available at the civil status registry offices.

Descent

186. A child's descent is determined by its birth. A child is assumed to be born in wedlock (and descended from the mother's husband) when born after its mother's marriage and prior to the dissolution or declaration of nullity of its mother's marriage. The same shall be true when the child is born prior to the completion of the 300th day from the death of its mother's husband. This assumption may be refuted by means of a court decision stating that the child is not descended from its mother's husband (§ 138 para. 1 ABGB). The same shall be true when the child is born after completion of the 300th day from the death of its mother's husband. This assumption may also be refuted by means of a court decision (§ 155 ABGB). In the case of children born out of wedlock, the father is assumed to be the man who has cohabited with the child's mother for a period of not more than 300 and not less than 180 days prior to the birth (§ 163 para. 1 ABGB). A child born out of wedlock can be affiliated to a person only by means of a judgment or the acknowledgement of paternity (§ 163 b ABGB). It is also possible to acknowledge the paternity of an unborn child. The child's mother or the child have the right to object to such acknowledgement in court. The legal representative shall arrange for the establishment of paternity, except where the establishment of paternity proves prejudicial to the child's welfare or the child's mother makes use of her right not to reveal the name of the child's father.

187. The 2001 Parent and Child Amendment Act provides for a simplified procedure for the establishment of paternity for such cases where all persons involved are aware of the fact that the paternity as established does not correspond with the biological facts. In such cases, contentious proceedings in which the child concerned would be the defendant and, should the case be lost, would have to bear the cost risk associated therewith, shall be avoided. If, at the time of the acknowledgement, another man's paternity has already been established, the acknowledgement shall take legal effect only when a generally binding declaration has been made to the effect that the other man is not the father of the child concerned. However, any acknowledgement of paternity declared at a time when another man's paternity had been established shall be effective if the child's mother names the person acknowledging paternity as the child's father and the child consents to the acknowledgement. In the case of minors, the competent youth welfare service, in its capacity as the legal representative, shall declare its consent. In doing so, it shall consider the minor's will to the greatest possible extent. The acknowledgement shall be effective as of the time of the declaration thereof. The man whose paternity had been established may object to the acknowledgement in court.

39 Medically Assisted Reproduction

188. The Reproductive Medicine Act (FMedG, Federal Law Gazette (BGBl) 1992/275) has created the basis for married couples and partners living together as cohabitants (principle of equal treatment) to make use of medically assisted reproduction techniques, provided, however, that any other possible and reasonable treatments ("fertility treatments") have failed; as a general principle, medically assisted reproduction may use only eggs and sperm from the would-be parents (homologous system). Donor insemination is permitted (heterologous system), while "egg donation", "sperm donation" in in-vitro fertilization and surrogacy are prohibited.

189. If the child's mother underwent insemination as part of a medically assisted reproduction procedure within a period of not more than 300 and not less than 180 days from the birth, it will be assumed that the man, whose sperm was used for this purpose, is the child's father. If the child's mother underwent donor insemination as part of a medically assisted reproduction procedure, it will be assumed that the man who consented to such medically assisted reproduction by signing a court or notarial act is the child's father. A third party donor whose sperm is used for medically assisted reproduction cannot be established as the father of the child procreated by means of the donor's sperm.

190. In such cases where a child has been conceived by means of donor insemination as part of a medically assisted reproduction procedure, § 20 of the Reproductive Medicine Act states that such child (having attained the age of 14) shall have the right to information and inspection of the records to be kept by the medical institutions on the child's biological father, thus expressly establishing for a child conceived by means of advanced reproductive medicine the right to information on its descent.

40 Nationality

191. Pursuant to § 7 para. 1 of the Austrian Nationality Act (StbG), children born in wedlock obtain Austrian citizenship at birth if, at that time, one of the parents holds Austrian citizenship or a parent that died prior to the child's birth held Austrian citizenship at the time of death. Pursuant to para. 3 of the aforementioned provision, a child born out of wedlock obtains Austrian citizenship at birth if its mother, at that time, holds Austrian citizenship. A child born out of wedlock may obtain Austrian citizenship by subsequent legitimation if its father holds or held Austrian citizenship (§ 7 a para. 1 StbG). Furthermore, a child of less than six months that is found on Austrian territory on its own shall be deemed an Austrian citizen, until the contrary is proved (§ 8 para. 1 StbG).

192. For the purpose of Art 7 para. 2 of the Convention, reference is made to § 14 StbG, which provides for milder requirements for the acquisition of citizenship for children born in Austria and stateless since their birth. A stateless child obtains Austrian citizenship by virtue of a constituent administrative act. In such cases, the authorities may use their discretion. Such procedure requires declarations of intent of the individual concerned (application) and of the competent authorities (order). On the basis of the 1998 amendment to the Nationality Act, Federal Law Gazette I no. 124/1998, effective as of January 1, 1999, minors who have attained the age of 14 may file applications for the grant of citizenship on their own; such application is subject to the legal representative's consent. Failing the legal representative's consent, the child-custody court may instead give its consent in such cases where there are substantial reasons so to do. In general, orders related to matters of nationality are issued by the government of the federal province, where the concerned person's main place of residence is located. Failing such residence or in case of foreign residence, orders related to matters of nationality are issued by the government of the federal province where the competent registry (municipality) is located. The material requirements for the acquisition of Austrian citizenship include permanent residence in Austria for a period of at least ten years, on the one hand, and compliance with the requirements for the grant of citizenship as defined by law on a taxative basis, on the other.

193. Pursuant to § 10 para. 4 StbG, the provision requiring permanent residence in Austria for a period of ten years may be dispensed with in the case of minors who have been resident in Austria for at least four years, as well as in the case of aliens who have been resident in Austria for at least six years, where reasons warranting particular consideration (such as proof of sustained personal and occupational integration, grant of asylum in accordance with the 1997 Asylum Act, BGBl. I no. 76/1997, birth on territory) are given. In exercising their discretion, the authorities shall be guided by considerations relating to the common good, public interest and the overall behaviour of the party; the refugee status of the person concerned shall be of special regard for the granting of citizenship. In this context, § 10 para. 5 StbG thus implies that the granting of asylum shall always be regarded as a reason of particular relevance for the granting of citizenship.

194. To sum up, it can be said that the Austrian legal system is fully in harmony with the provisions as set out by Article 7 of the Convention.

Preservation of Identity (Article 8)

195. On a national basis, the child's rights to a name, nationality, knowledge of its parents' identity, as well as its rights to preserve its identity, nationality, name and legally accepted family relations are safeguarded by rules of civil and administrative law and, in some cases, by sanctions under administrative law. The first name and surname of a child older than 14 years may be changed only with the child's consent.

196. Adoption constitutes an exceptional case defined by law, in which a change in family relations is permitted and the adoptive parents may change the child's first name before it attains the age of 2. However, such a change must be examined to ascertain whether it is in the child's interest (§ 179 ff. ABGB). Changing the name of a 14-year old child is subject to the child's personal consent thereto.

197. In the case of unlawful disclosure of the identities of victims, and persons suspected, of a criminal act as part of media coverage, § 7a of the Austrian Media Act, under certain circumstances, allows for a special claim for damages under civil law for such persons. Pursuant to this Act, making a juvenile's identity public in any case constitutes a violation of those interests of the person concerned warranting protection.

198. In order to protect the concerned person's family and private life, as well as to protect the administration of civil law, no information on the private and family life in the secrecy, of which any party or any third party has a reasonable (objectifiable) interest and which has become known exclusively as a result of the procedure, shall be published. Any disclosure of such information in printed publications, broadcasts or any other means by which such information becomes public knowledge is liable to prosecution in accordance with § 301 StGB.

Right to Freedom of Expression (Article 13)

199. The right to freedom of expression is constitutionally guaranteed for anyone, thus including, of course, children and juveniles. Pursuant to § 13 of the Basic Law on the General Rights of Nationals (StGG), anyone has the right to "freely express their opinion orally, in writing or in print, or by visual means within the limitations defined by law". On a constitutional level, the freedom of information is additionally guaranteed by Article 10 of the European

Convention on Human Rights (ECHR). In view of the fact that, on the one hand, the limitations defined in Article 13 para. 2 of the Convention are less stringent than the limitations provided for by Article 10 para. 2 of the ECHR, and that, on the other hand, the scope of the freedom of information and freedom of the press is determined by constitutional law, Austria has decided to make a reservation, not least for the benefit, and protection of the interests, of children.

41 School Magazines

200. § 3 para. 1 sub-para. 5 of the Austrian Students' Representation Act provides the cross-school students' representatives (provincial and federal representations and representations of central educational institutions) with the right to "consultation in matters concerning the publication of school magazines". The Media Act grants school magazines privileges as compared to other printed matter by permitting them to be sold in public places by persons under 18 and to be distributed free of charge by persons under 14. The prohibition of censorship embodied in constitutional law (StGBI. no. 3/1918) also applies to school magazines. Headmasters shall not make the distribution of school magazines at their schools conditional on prior inspection.

201. In the federal provinces, a number of children's magazines (e. g. Magazin Ultimo, Zappalot, wuwawi, fritz, woom, KECK and WU-WA-WI), special magazines for persons engaged in youth work projects/youth welfare services (Ultimo Spezial, Kids & Teens), magazines of youth organizations and school magazines are available.

42 Youth Internet Radio Network

202. A youth Internet radio network as well as a regional youth information service with Internet access points have been established with public funds. In 1998, the Austrian Federal Ministry of Education and Art launched the "Schülerradio 1476" project, which offers students a forum for free expression of their opinions, concerns, ideas, etc. The topics discussed focus primarily on school-related matters (e. g. project classes) and social issues (e. g. homelessness, racism, violence). Topics that are discussed regularly include relations with fringe groups, conflicts and ways of solving them. From January 1998 to August 2000, the school radio was on air twice a week. In the school term 2000/01 it was broadcast by the Austrian national radio and TV network ORF on medium-wave frequency, and since the school term 2001/02 it has been transmitted five times a week, thus giving a total of for more than 600 broadcasts.

Access to Suitable Information (Article 17)

203. Access to suitable information (for children's rights refer to Chapter 3.5) as well as the protection of children against harmful media influence is an important public concern. The existing legal instruments for the limitation of the dissemination of violent and violence-inducing images, texts and games through mass media as well as video and computer games offer a good framework; however, in the light of the rapid developments in the media sector – particularly the Internet –, they must be reviewed and extended.

204. Pursuant to its legal programme mandate, as defined in the ORF Act as amended by BGBl. I no. 83/2001, the Austrian national radio and TV network ORF is obliged to take into reasonable consideration concerns relating to family, children and equality of women and men, as well as to support and promote public and youth education with a special emphasis on school and adult education.

205. In addition, the ORF Act – in compliance with the 89/552/EEC directive as amended by the 97/36/EC directive (“Television without frontiers” directive) – provides that any radio or TV programmes that might affect the physical, mental or moral development of minors must be identified. Such programmes must be identified by acoustic means when being announced or by optical means throughout the entire broadcast. The Federal Government, by decree, may define the details of such optical or acoustic means of identification. In addition, in order to ensure that minors normally do not have the possibility to listen to or watch such programmes, the ORF must select the broadcasting time accordingly or must take other appropriate measures. Under no circumstances must the ORF broadcast any programmes that seriously affect the physical, mental or moral development of minors, including, in particular, programmes showing “pornography or gratuitous violence”.

206. Furthermore, the ORF Act prohibits the inclusion of appeals to call value-added telephone services in programmes the contents of which primarily address minors.

207. The advertising provisions contained in the ORF Act also include provisions for the protection of minors. TV advertising must cause neither physical nor mental harm to minors and shall not address minors with any direct sales appeals which might take advantage of their lack of experience and credulity. It must not contain any direct calls on minors to make their parents or any third party buy any of the advertised goods or services. Furthermore, it must not take advantage of the special confidence that minors have in their parents, teachers or other confidential persons, and it must not show minors in dangerous situations without good cause.

208. As a general principle, the ORF must not broadcast any ads aimed at minors immediately before or after children’s programmes.

209. TV advertising for alcoholic beverages must not specifically address minors and, in particular, must not show minors drinking alcohol.

210. The aforementioned advertising provisions and labelling duties also apply to private radio and TV networks (Private Television Network Act– PrTV-G, BGBl. I no. 84/2001).

211. In addition to the legal provisions for the protection of minors, the ORF, on its own account, committed itself several years ago to report on the circumstances and effects of violent actions in an unspeculative manner and to refrain from using violent programme contents solely for the purpose of viewing figure maximization.

44 Internet and New Information Offers

212. In 1997, the Federal Ministry of Internal Affairs established a report centre for child pornography and revival of National Socialist propaganda (e-mail: infomaster@bmi.gv.at; interpol@abacus.at; web-site: <http://www.bmi.gv.at/Meldestellen.html>).

213. Since October 1998, the “Internet and New Media Committee“ (<http://www.bka.gv.at/medien/bin.htm>), installed to provide a forum for cooperation and exchange of information concerning legal issues relating to the Internet and new information technologies between the federal ministries, business representatives, users and providers, has held regular meetings. This committee discusses primarily the legal aspects and developments arising on both a national and international level in connection with the convergence of the telecommunications, mass media and information technology sectors. As a coordinating body, the committee focuses particularly on the implementation of the provisions prepared by the European Commission in the “Internet Action Programme Committee“.
214. The Association of Austrian Internet Service Providers (ISPA), in its capacity as a member of the committee, has agreed to take all necessary measures to keep the network of its members free from illegal contents such as “child pornography“. The means by which this shall be accomplished include: Preparation and application of a code of ethics for Internet providers; Voluntary self-regulation in the form of an independent provider hotline (<http://www.hotline.ispa.at>); Cooperation with the report centre of the Ministry of Internal Affairs and the judicial authorities.
215. The ISPA report centre (<http://www.stopline.at>) registers anonymous reports of dubious material on the Internet, checks it and forwards it to the authorities, if necessary. At the same time, the service providers concerned are notified. Of the material reported in 2000, one third was identified as unlawful material in legal examinations.
216. These measures of voluntary self-regulation of Internet providers are part of the implementation of the EU Council Recommendation on the “Protection of minors and human dignity in the audiovisual and information services“ (of September 24, 1998).
217. Another objective of the committee is to develop concepts for better information of parents, educators, and teachers in order to make more efficient use of the possibilities offered by the new services and instruments for the protection of minors. Among others, this includes the identification of high-quality contents and services for juveniles and the facilitation of access to such contents.
218. As part of the EU “Safer Internet Action Plan“, the Institute for Renunciation of Violence, supported by the Federal Ministry of Environment, Youth and Family Affairs, has launched the "Safer use of Internet" project, in which, in cooperation with partners from other EU member countries, information materials for children, juveniles, teachers and adults are prepared and tested, in order to create a basis for further full-coverage national information campaigns.
219. Furthermore, it must be noted that, pursuant to the Communication Organization Act, establishing an Austrian communications authority (KommAustria) and a federal communications senate (KommAustria Act – KOG, BGBl. I no. 32/2001), the duties imposed on KommAustria by law include the obligation “to ensure compliance with the minimum standards prevailing in Europe by content providers, particularly with respect to child, youth and consumer protection”.

45 “Recommendation Lists” for Computer and Video Games

220. The Federal Ministry of Environment, Youth and Family Affairs publishes a booklet called "Tips for computer games", which is updated on an annual basis and gives parents, educators, persons engaged in youth work and interested persons a review of the ever increasing number of new games available in the market. In accordance with the motto “Recommend good games instead of forbidding bad ones”, the booklet, which is also available as CD-ROM, offers guidance in buying decisions. The objective of the booklet, which is to be understood as a "positive list", is to encourage conscious reflection on the computer games offered and the buying decision. Parents, educators and youth workers should give up their detached view of this type of game and try to understand why children are fascinated by it. In 1998, the Institute for Renunciation of Violence initiated the “Erste.Mediapark“ project (<http://www.mediapark.at>) – an Internet project that focuses on a joint review of audiovisual media, movies, TV, videos, PC games, Internet and books as well as on the presentation of positive media products.

46 Board of Film Classification

221. The Federal Ministry of Education has established a board of film classification, the so-called “Jugendfilmkommission“ (JFK), which provides an age-specific classification of cinematographic films (review of films, taking into consideration the provisions contained in the Youth Protection Act) on the basis of the following criteria for the rating of the harmfulness of films: Sensory over-stimulation of children (auditory and visual); Impairment of the psychic and emotional development of children by causing fear, bewilderment and emotional shock; Impairment of the mental and cognitive development of children; Impairment of the socio-ethical and moral development of children (serious disorientation with respect to the differentiation between good and evil; unnecessarily brutalising film effects; depiction of sadistic and gratuitous torture; offence against moral standards and social taboos); Impairment of the religious feelings of children; Degrading of religious doctrines and symbols, incitement of religious intolerance; Impairment of the democratic civic attitude (by positive depiction of totalitarianism, political extremism, sexism and discrimination of ethnic and religious minorities)

222. The JFK recommends films in the form of positive classification in order to help parents to fulfil their responsibilities with respect their children’s use of media.

47 Youth Protection Provisions Contained in the Austrian Industrial Code

223. Pursuant to § 87 para. 1 of the 1994 Industrial Code, BGBl. no. 194, a person engaged in a trade shall forfeit his/her trading licence if he/she, as a result of serious offences against the legal provisions and protective interests to be complied with in connection with the respective trade, no longer fulfils the reliability standards required for carrying on such trade (sub-para. 3). Protective interests as defined by sub-para. 3, include, but are not limited to, the prevention of child pornography, drug consumption, drug dealing, illegal prostitution, as well as of the discrimination of persons solely on grounds of their race, colour, national or ethnic origin, religious denomination or any disablement (§ IX para. 1 sub-para. 3 EGVG); this shall also apply for “serious“ offences against the youth protection legislation of any of the federal provinces of Austria.

224. Freedom of thought, conscience and religion is enshrined in the Austrian constitution. On reaching the age of 14, the child is free to choose the religious confession he or she wishes to adopt. On reaching the age of 12, he or she may not be instructed against his or her will in a confession other than the one he/she has been brought up with so far. Under § 1, para. 1 of the Act on the Religious Education of Children (Religionsunterrichtsgesetz) the religious instruction of their faith is compulsory if the pupil belongs to an officially recognised church or religious community. This provision applies to both public schools as well as private schools with public status. Pupils under the age of 14 may be exempted from religious instruction if their parents request this in writing at the beginning of the school year. Pupils over the age of 14 may request their exemption themselves at the beginning of the school year. Pupils who do not wish to take part in religious education may opt to participate in an ethics course offered at schools as a trial programme.

48 Documentation and Information Centre for Issues of Sects

225. On 1 September 1998 the Federal Act on the Establishment of a Documentation and Information Centre for Issues of Sects (Federal Office for Sects), Federal Law Gazette no. 150/1998, led to the establishment of such a federal office, which is a legal entity in its own right. Its task is to document the dangers emanating from sects and jeopardising, in the case of those concerned, certain objects deserving special protection, such as the free development of the human personality, the integrity of family life, the financial independence of persons and the free mental and physical development of children and adolescents. Moreover, the office disseminates information and thus raises awareness with the individual, enabling him or her to take independent and responsible decisions in matters of faith.

226. Even though adolescents are not the main target group of so-called sects, they may become psychologically dependent on esoteric, occult or satanic groups. Risks may also arise from the membership of one parent in a so-called sect. In accordance with the resolution adopted by the Austrian Parliament on 14 July 1994, the Ministry of Youth prepared an information brochure entitled "Sects – Knowing About Them spells Protection" ("Sekten – Wissen schützt"), 350,000 copies of which were distributed to inform parents, relatives and multipliers about these risks. Moreover, the Ministry of Education developed educational materials about the topic and distributes these at schools, and provided special training about the psychological effects of destructive cults and ideologies for children and adolescents to school psychologists. Since 1998 one family counselling centre per province has been subsidised by the Ministry of Family Matters to support relatives and adolescents in the event of problems within the family arising when a member of the family joins a so-called sect.

Freedom of Association and Peaceful Assembly (Art 15)

227. Freedom of association and peaceful assembly is constitutionally guaranteed by article 12 of the Austrian Basic Law on the General Rights of Nationals (StGG), by article 11 of the European Convention on Human Rights and Fundamental Freedoms (ECHR) and item 3 of the resolution of the Provisional National Assembly of 30 October 1918. Since the restrictive options provided for in article 12, para. 2 of the StGG do not coincide with those of article 11, para. 2 of the European Convention on Human Rights and Fundamental Freedoms, a reservation was entered to ensure that the ECHR, which has constitutional status, takes precedence over the

UN Convention on the Rights of the Child. These rights enshrined in constitutional law also have special importance due to the rulings of the Austrian Constitutional Court and the European Court of Human Rights.

Protection of Privacy (Art 16)

228. Articles 8 and 12 of the European Convention on Human Rights (ECHR), which rank as constitutional law in Austria, protect both adults and children in their private and family lives. In family law, these fundamental basic rights are expressed in the principle of family autonomy (§ 137 a of the Austrian Civil Code) according to which third parties may intervene in parental rights only to the extent permitted to them by the parents themselves, directly on the basis of legislation or through an official decree. One significant aspect of the protection of children's privacy is their right to the secrecy of correspondence.

229. Art 16 of the CRC comprises the right to "considerate interrogation" and the prohibition of publishing the photographs of young victims and perpetrators. According to the rulings of the Supreme Court, the right to personal dignity is among the objects subject to absolute legal protection for all human beings, children, adolescents and adults alike. As children possess the same personal dignity as any other person, they are in principle and according to the letter of the law entitled to full protection against injury to their honour or reputation. Injuries to personal dignity may also be punished under penal law: § 111 of the Penal Code "Defamation", § 115 of the Penal Code: "Insult").

230. To protect the family life and privacy of those involved in guardianship proceedings, stepped-up protection from the dissemination of information acquired in the course of proceedings is necessary. Information about circumstances pertaining to private and family life the secrecy of which is in the well-founded (objectifiable) interest of a party to the proceedings or a third party must not be published (general prohibition of publication) if such information was obtained in the proceedings exclusively. The publication of such information in print, on broadcast media or in any other way that makes it accessible to the public at large is punishable under § 301 of the Penal Code. If it is in the best interest of a minor, the court also has to oblige the parties concerned to keep secret certain facts they have exclusively learnt in the course of proceedings (§ 182 d of the Federal Act on Non-Litigious Matters / AußStrG – individual obligation to secrecy).

49 The Use of Statements Obtained by Torture

231. The ban on torture and any inhuman or degrading treatment (Art 3 ECHR) ranks as constitutional law. As Austria has ratified the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Art 15) the use of statements obtained by torture is prohibited.

7. FAMILY ENVIRONMENT AND ALTERNATIVE CARE

232. The situation of families in Austria is the central issue of the family report which since 1969 has been issued in ten-year intervals by the Austrian federal government. The 4th family report published in 1999 under the title “Families – between Demands and Daily Routines” focuses on important family-policy issues of current interest. Starting from a socio-demographic description of families at the turn of the millennium, the social rules and individual objectives with respect to marriage, family, and number of children, as well as the goals, costs and effects of family-policy measures were set out and evaluated. Important debates on and changes in family law, as well as various theoretical approaches to family issues, conclude the first volume of the family report. In a second volume, a team of scientists addressed one of the most important topics of the discourse on family and women’s policies, the compatibility of job and family. The first step taken in this context consisted in elaborating the theoretical and empirical foundation for the discussion of this issue, while the second step was to describe compatibility strategies which already exist in Austria and in other European countries. In conclusion, the authors tried to identify new forms of partnerships to ensure the compatibility of and to re-distribute childcare duties and gainful employment. The issue of domestic violence is dealt with by a separate document, which was published in the “Violence Report – from the Breaking of Taboos towards Professionalization” of the Federal Ministry of Family Affairs (2001).

Parental Custody (Art. 5)

233. Under the relevant legislation, custody - i.e. the parental rights and duties - of a child born in wedlock is granted to both parents upon the birth of the child, while custody of a child born out of wedlock is only granted to the mother. Apart from the right and duty of parents to ensure the care and upbringing of the child, custody also involves the administration of the child’s property and the legal authority to represent the child.

234. In accordance with the principle of family autonomy inherent in Austrian family law (§ 137 a, Civil Code), third parties are allowed to interfere in the legal relations between parents and children only to the extent such interference is permitted by the parents themselves, by law or by an official order.

235. The reform of the Parent-Child Relations Act implemented in 2001 illustrated once again that the term “custody” should be considered not so much a right than rather a parental responsibility towards the child. The term “custody” refers to the comprehensive responsibility parents have to assume for their minor children, whereby it is intended to stress the fact that parents must base their decisions on matters regarding the care and upbringing of their child on the child’s wishes, unless this runs counter to the child’s well-being and to their conditions of living.

50 Custody of children born in wedlock

236. Parents of children born in wedlock are granted a joint custody right. If one parent, for whatever reason, is not able to exercise his or her custody right, the other parent enjoys the sole custody right. Hence, a parent is granted sole custody if the other parent has died, if his or her place of abode has been unknown for at least six months, if contact with him or her may not be

established or may only be established under disproportionately great difficulties, or if his or her custody right has been partly or fully revoked. If the parent having sole responsibility for the child is prevented from exercising his or her custody right, the competent court of justice has to decide for the child's benefit and good whether custody will be granted to the other parent or whether custody will be granted to the child's grandparents (grandparent) or to foster parents (foster parent), and if so to which (§ 145, para. 1, Civil Code). If custody passes over to the other parent or if it is transferred by court, the child's property and all documents and certificates relating to the child must be handed over, provided that the passing or transfer of custody also refers to such property and documents (§ 145, para. 3, Civil Code). In general, the court (or the competent youth welfare institution) may only interfere with this parental right of care and custody if the child's well-being is in danger. Custody as a central parental right may be fully or partly transferred to the competent youth welfare institution, if the child's interests are put at risk and his or her complete removal from the present environment becomes therefore necessary against the will of the person having custodial power, and if it is not possible to place the child with relatives or other suitable persons closely connected with the child (§ 176 a, Civil Code). Finally, the court may also transfer full or partial custody to a child's foster parents (§ 186 a, Civil Code).

51 Custody of children born out of wedlock

237. Custody of children born out of wedlock is generally granted solely to the mother. If the mother is prevented from exercising her custody right, the court has to decide to whom custody will be transferred (father, grandparents or grandparent, youth welfare authorities, foster parents). If the parents and the illegitimate child live in the same household, the parents can agree to share the custody of the child. The court must approve of such agreement if it is concluded for the best interests of the child. The 2001 Parents and Child Amendment Act provided for another alternative which also allows parents not living in the same household as the illegitimate child to agree that full or partial custody is bestowed on the father. For this purpose, the court must be furnished with an agreement which settles the question with which parent the child will live for most of the time. If the child will mainly live in the father's household, custody must always be granted to the father. The court must approve of the agreement if it serves to promote the well-being of the child. Hence, unmarried parents (living in separate households) – as well as divorced parents – have the opportunity jointly to assume legal responsibility for the child. However, it is not possible to transfer parental responsibilities – i.e. custody – from the mother to the father only on the ground of such agreement.

238. In the event that a parent requests the revocation of the joint custody and an amicable settlement – either in court or with the help of mediation – cannot be reached, the court has to grant custody solely to one parent, with the best interests of the child being its primary consideration.

52 Custody after divorce, dissolution or annulment of marriage

239. Before the reform of the Parent-Child Relations Act, divorced parents were only able to obtain joint custody of their child, if they continued to live in a common household after their divorce. The 2001 Parents and Child Amendment Act eliminated this restriction. In the event that the marriage of a legitimate child's parents is divorced, dissolved or annulled, both parents will retain their custody rights. However, there is the possibility of delivering to the court an agreement on the custody, whereby it may be determined that custody will be granted either to

one parent or to both parents. In the event that both parents obtain custody, the custody right of one parent may be restricted to certain matters. In each case of custody being shared by both parents, the court must be furnished with an agreement identifying the parent in whose household the child will mainly live. This parent must always be granted full custody. The court must approve of the agreement if it serves to protect the well-being of the child. Thus, in order to obtain joint custody after a separation or divorce, parents are no longer required to live in a common household with the child! Now, parents no longer need to apply for joint custody, but may request its revocation.

240. If an agreement on the child's principal place of residence or on the granting of custody is not concluded within a reasonable period of time following the divorce, dissolution or annulment of the parents marriage, or if such agreement does not serve to promote the child's well-being and if no amicable settlement may be reached, the court must decide which parent will be solely responsible for the child in the future. If after a divorce, dissolution or annulment of their marriage both parents share the custody of the child and one parent requests the revocation of such custody, and provided that no amicable settlement may be reached (if necessary by way of mediation), the court must grant sole custody to one parent, with the best interests of the child being its basic consideration. An agreement regarding both parents' joint custody and the child's place of residence may also be submitted to the court by parents whose marriage was divorced before 1 July 2001.

241. The legal basis for joint custody of divorced parents living in separate households established by the reform of the Parent-Child Relations Act is derived from the now indisputable psychological observation that the relationship between children and both parents is of tremendous significance for a child's development. In order to meet a child's natural need for protection, safety and continuity to the best-possible extent, the relevant legislation requires parents to reach an agreement on the child's principal place of residence. This precondition of determining a "place of residence of the first order" is to provide children with clear guidelines and stability with respect to their social environment in case of their parents' separation or divorce.

53 Termination of custody

242. Parental custody ends upon the child's majority. When the child has attained majority the legal representative must hand over to the child his or her property and all personal documents and certificates. Independent of age, the child's right to be financially supported by his or her parents may continue to exist. The parents' maintenance obligation is only discharged when the child is able to support him- or herself, which is the case if a young person is able to earn his or her own living.

Parents' responsibility for their children (Art. 18, para. 1 - 2)

243. In Austria, childhood is still characterised as "childhood in the family" (see: family forms in Austria, Annex A, Tables 1-2). Matrimonial and family law is characterised by the principles of equality and partnership of spouses and parents. With respect to the relationship between parents and children, special mention must be made of § 137, para. 3, Civil Code on the equal treatment of father and mother and of § 144, Civil Code, whereby parents should act in mutual

consent when exercising their rights and fulfilling their duties. If such mutual consent is not reached, the right and obligation to care for the child is primarily bestowed on that parent who runs the household in which the child lives. Moreover, the parent responsible for the care of the child must only contribute to the child's maintenance to the extent that the other parent is not able to fully cover the child's needs or would be required to pay an amount not commensurate with his or her own conditions of living.

54 Family support

244. One of the federal government's major goals is to implement adequate measures to turn Austria into a specifically family-friendly country and to acknowledge families' achievements, which are of significance to the whole society. The individual steps to accomplish these goals are to relieve families' financial burden by means of a differentiated system of cash and non-cash benefits, to create a family and children-friendly environment and to support families in fulfilling their duties by providing them with an appropriate infrastructure and other services.

245. The family-related benefits of the federal government, provinces, municipalities and social insurance institutions – cash benefits, tax allowances, non-cash benefits and infrastructure measures – are universal benefits for all families independent of their form and income, which, apart from a burden-sharing function, pursue the goal of preventing poverty. The most important family transfer payments and non-cash benefits are funded by the Families Burdens Equalization Fund (budget 2002: € 4,558 million).

246. Family allowance is paid at staggered rates on the basis of age and (as of 2000) number of children and amounts to € 105.4 per month for children up to 10 years, € 123.6 per month for children up to 19 years, and € 145.4 per month for children up to 26 years; parents receive an additional € 12.8 per month for their second child, and € 25.5 per month for the third and all further children. Seriously disabled children are granted an additional € 131 per month. Moreover, the children's tax credit of € 50.9 per month and child is directly paid to the parents together with the family allowance. For children not living in the same household parents receive a maintenance tax credit, and there is also a tax credit for sole earners and single parents.

247. During pregnancy and after the birth of the child, mothers receive an income compensation in the form of maternity allowance and business assistance and subsequently in the form of child-care allowance. For parents taking parental leave the time dedicated to the upbringing of the children is taken into account for their pension insurance. Non-cash benefits include free public transport for pupils and apprentices, a travel allowance for pupils and apprentices and the schoolbook campaign.

248. Furthermore, within the scope of the Families Hardship Equalization Fund the federal government provides financial assistance for families in need. Advance maintenance payments are intended to support children and the person legally responsible for them in the event that the person liable to provide maintenance fails to meet this obligation. In addition, the federal provinces provide support by means of family grants which depend on the relevant family's income situation. Family-related infrastructure offerings primarily refer to subsidised child-care institutions, which are financed by the federal provinces and by the municipalities.

249. Depending on the individual categories, the federal government, the provinces, municipalities and social insurance institutions spend up to 25 billion € on benefits granted to

children or to parents because of their children. This includes expenses for education, child-care facilities, housing development grants, attendance allowance, social insurance benefits, etc. A detailed description of the family benefits and measures under labour law effective since the 1998 family tax reform, the 1999 family package, and the 2000 Child-Care Allowance Act is provided in Chapter 8.

55 Parent education

250. On 1 January 2000, the legal basis for promoting high-quality parent education projects with funds from the Families Burdens Equalization Fund was created. Pursuant to § 39c of the Families Burdens Equalization Act, as amended, charitable institutions offering quality education for parents are eligible for governmental support, if so requested. If necessary, the federal government may contribute to the appropriate training and further training of expert staff. More detailed provisions on the promotion of parent education are contained in the Guidelines on the Promotion of Parent Education, which were published on 19 November 1999 in the Official Journal of Wiener Zeitung No. 223. A working group established in the Federal Ministry for Family Affairs has elaborated a training scheme which is intended to serve as a basis for enhancing professionalism and for quality assurance in the field of parent education. This scheme is to create comparable standards for expert staff for the whole of Austria, in order to improve the quality of the available parent education programmes. To encourage participation in these programmes, the federal government may implement measures necessary to raise parents' awareness of these issues, thereby acknowledging the fact that parent education constitutes one of the most essential instruments to strengthen parental skills and parents' child-rearing abilities and thus forms the basis for the primary prevention of different problems in everyday parent-child interaction. Parent education offers information, help and support and thereby promotes the non-violent upbringing of a child. In autumn 2001, an awareness-raising campaign was launched with the aim of introducing the concept of parent education to all mothers and fathers and of raising their interest in the existing programmes and showing them how to use them. The parents letters issued by the Ministry for Family Affairs designed to promote the non-violent upbringing of children constitute another instrument for the primary prevention of domestic violence. The parents letters are a low-threshold service, which helps parents to cope with everyday problems in the child's individual development stages, supports mothers and fathers through technical information and encourages them to reflect on and address these issues.

56 The role of youth welfare authorities in the support of parents

251. Legislation governing public youth welfare authorities lays down that the parental rights and duties of the persons responsible for the care and upbringing of their children take precedence over the services offered and measures implemented by the public welfare institutions. In Austria, the Youth Welfare Act (JWG 1989) and the Civil Code provide the framework for the establishment of help centres, youth welfare centres and a youth ombudsman scheme for children and young people, which assist children in emergency situations. Child-custody courts also function as a first point of contact for initiating the necessary measures relating to custody issues. They provide free legal information and, if required, record applications on days of office. Pursuant to Art. 12 of the Federal Constitutional Act, legislation concerning basic principles (Youth Welfare Act) comes within the responsibility of the federal government, while the implementing legislation and the enforcement of maternity and child and

youth welfare matters comes within the jurisdiction of the federal provinces. The federal provinces pass their own regional laws to determine which organizational units will perform the public welfare tasks.

252. Measures of child-rearing assistance are characterised by the priority attached to the family or a family-like environment. Child-rearing assistance may only be provided if the persons having parental power fail to ensure the care or upbringing of the minors or need support in doing so; see Annex A, Tables 19-20 (outline of cause/number of interventions by youth welfare authorities). Public youth welfare tasks must be performed by experts who have been trained in their special field of activity and have acquired the appropriate skills. Social services must be offered to minor children particularly in cases, where they seem to be more appropriate and more likely to succeed in promoting the child's well-being than child-rearing assistance. The range of social services includes schools for parents, counselling services for mothers and parents, child-care and family counselling. Provincial legislation may stipulate that primary, secondary and tertiary relatives, or relatives by marriage, of the child in care or guardians responsible for the care and upbringing of the child, are also entitled to a maximum compensation equivalent to the amount of the attendance allowance.

253. The 1998 amendment to the Youth Welfare Act for the first time defines the term of day care for children: day care refers to the regular and professional care for minors under 16 years which is provided for a part of the day by persons other than relatives or relatives by marriage of the first, second and third degree, adopting parents, guardians or other persons entrusted with the care and upbringing of the child and which is not provided by nursery schools, after-school day-homes or schools. The care may be provided either as individual care in the household of a suitable person (child-minder) or in groups if there exist appropriate rooms. Both child-minders and groups require authorization. The conditions for the issuance and revocation of such authorization must be determined under provincial legislation. After the child has attained majority, child-rearing assistance may be continued until the person has attained the age of 21 years, if this is necessary to secure the success of previous child-care assistance measures and if the young person concerned consents to such continuation.

57 Legislation concerning the protection of young persons

254. The Protection of Young Persons Acts passed by the federal provinces also serve to support parents and other persons having custodial powers in performing their parental responsibilities. The motto "help instead of punishment" is a major characteristic of the new Protection of Young Persons Acts. If a young person infringes the provisions of the Protection of Young Persons Act, the competent authority may order counselling sessions or social support measures and as a last resort impose a fine. Furthermore, in their legislation the federal provinces undertook to inform young people and the persons responsible for them about the contents and the purpose of the Protection of Young Persons Acts.

Recovery of maintenance for the child (Art. 27)

255. Pursuant to § 140, Civil Code, parents are obliged to provide maintenance for the child. The maintenance obligation is the same for legitimate children, illegitimate children or children whose parents are divorced. Both parents have to "... contribute in due proportion and within their abilities to covering the needs of the child in accordance with their conditions of living, thereby taking account of his or her talents, skills, inclinations and development opportunities.

The parent who runs the household, in which the child is brought up, contributes in this way to the child's maintenance. In addition, he or she must contribute to the child's maintenance to the extent that the other parent is not able to fully cover the child's needs or would be required to pay more than is commensurate with his or her conditions of living. The maintenance claim is reduced, if the child has an income of his or her own or, under consideration of his or her conditions of living, is able to support his- or herself." The amount of the maintenance payments thus depends on the one hand on the child's needs and on the other hand on both parents' conditions of living.

256. The assessment of the children's maintenance claims by the competent courts has remained unchanged for years: A person liable to provide maintenance must pay the following percentages of his or her average monthly net income: for a child between 0 and 6 years = 16%, 6 - 10 years = 18%, 10 - 15 years = 20% and for a child of 15 and more years = 22%. If the person liable to provide maintenance must support several children or a spouse without income, these percentages will be reduced by 1% and/or 2% for other children and by 3% for spouses without gainful employment.

257. In general, parents are obliged to enable their children to receive an education – including university education – which corresponds to their skills and talents. The parents' maintenance obligation remains in force during the whole period of training. However, the child must pursue his or her training in a serious and determined manner. In most cases, it is advisable to tolerate a one-time change of the child's course of studies, yet the course of studies should be completed within the average duration.

258. A major infringement of the maintenance obligation which puts at risk the financial support or education of the person entitled to maintenance payments is punishable under criminal law (§ 198, Criminal Code).

58 Tax-free subsistence minimum

259. The decision of the Supreme Constitutional Court, whereby at least half of the maintenance required for children must be exempt from the parents' income taxation, was of special significance with respect to the efforts made to secure adequate living standards for children in the period under review. The 1998 family tax reform resulting from this finding of the Supreme Constitutional Court led to 50% of the legal maintenance obligation being exempt from taxation. Thus, together with the family allowance, the subsistence minimum for children is free of tax. In order to counter the threat of poverty that may be observed particularly among families with several children, a multiple-child bonus was introduced for families with three and more children and a maximum annual income of € 38,720.09 (2001). All persons who have not been able to obtain the full amount of the single-parent or sole-earner tax credit due to insufficient income, will now be directly paid the full amount of this credit in form of a negative tax. The additional costs of about € 872 million will be covered in two equal amounts from the Families Burdens Equalization Fund and the budget.

260. Maintenance for minor children is secured by the Advance on Maintenance Act (UVG 1985, Federal Law Gazette No. 451), whereby the federal government (the Republic of Austria) has to grant an advance on the legal maintenance payments for minor children, if the child's habitual place of residence is in Austria and if the child is an Austrian citizen, is stateless or is a refugee under the Geneva Convention. Minor children are granted advance maintenance payments when the parent not living in the common household and liable to provide maintenance (in most cases this applies to the fathers) fails to meet his or her legal obligation, provided that the parent liable to provide maintenance is basically able to meet his or her maintenance obligation. The courts reclaim the amounts paid in advance from the defaulting maintenance debtors.

261. Pursuant to § 3 of the Advance on Maintenance Act, advance payments must be granted, if there exists an execution title enforceable in Austria, which could not be fully implemented in the last six months prior to the filing of the application. Furthermore, there is the possibility of receiving advance maintenance payments in those cases where there exists a maintenance title but the enforcement of such title seems to have no reasonable prospects of success because of lack of property on the part of the maintenance debtor or because there are no third-party debtors available (§ 4 Z 1) or if the maintenance debtor is serving a prison sentence for a term exceeding one month in Austria (Z 3). Advance payments at standard rates must also be granted in cases, where the amount of maintenance may not be determined because the debtor's place of residence is not known or the debtor is without gainful employment, except the debtor is not able to provide any maintenance payments or to provide a higher maintenance contribution (Z 2). Advance payments may also be granted if paternity with regard to an illegitimate child was established by a court of first instance, and in connection with the action for establishment of paternity a maintenance request was either granted (at least with a partial amount) by a court of first instance or if, in the event that paternity was established with final force and effect, a court settlement was reached on this matter. The persistent refusal to meet one's maintenance obligation is punishable under criminal law (§ 198, Criminal Code: Violation of Maintenance Obligation).

262. A claim to advance maintenance payments does not exist, if the child lives in the same household as the maintenance debtor or lives with a foster family, in a home or other institution because of social-assistance measures or because the public youth welfare office is fully responsible for the care and upbringing of the child.

263. The lowering of full age from 19 to 18 provided for by the 2001 Parents and Child Amendment Act results in the loss of one "advance payments year". A transition regulation for children who attain the age of 14 on 1 January 2001, stipulates that their claim for advance maintenance payments will remain effective until they have attained the age of 19.

264. In 1994, monthly advance maintenance payments were made for an average of 30,358 children (1995: 31,974, 1996: 33,212, 1997: 34,912, 1998: 36,546, 1999: 37,066, 2000: 38,000 children). In 2001, the Republic of Austria recorded 38,695 cases of advance payments totalling € 83,692,167 (outline see Annex A, Table 25).

265. Austria is a state party to the UN Convention of 20 June 1956 on the Recovery Abroad of Maintenance Payments and the Hague Convention of 15 April 1958 concerning the Recognition

and Enforcement of Decisions Relating to Maintenance Obligations towards Children. Moreover Austria has entered into numerous bilateral enforcement agreements, which in most cases permit the enforcement of maintenance decisions and settlements. The Foreign Maintenance Act, Federal Law Gazette No. 160/1990, also serves to facilitate the assertion of maintenance claims for minor children abroad, if the child lives in Austria and the maintenance debtor lives in a country which has entered into a reciprocity agreement with Austria, and vice versa. Reciprocity agreements exist with most federal states of the US, with Australia and with numerous Canadian provinces.

266. Legitimate, illegitimate and stepchildren who have lost one or both parents through death, are entitled to compensation of their maintenance claim in the form of an orphan's pension.

Separation from the parents (Art. 9)

267. If the parents – for whatever reasons – do not (or no longer) sufficiently fulfil their parental tasks, the child in need of protection is entitled to receive special protection by the state. This protection is ensured by the state authorities, such as courts and youth welfare authorities, which intervene, if required by the special need for protection on the part of the child deprived of his or her family environment and will provide for a different, more appropriate form of accommodation for the child. The child's separation from his or her parents on the grounds that his or her well-being is in danger is regulated in greater detail under §§ 176a and 176b of the Civil Code and under the provincial acts based on the 1989 Youth Welfare Act.

60 Children whose parents are separated or divorced

268. The number of divorces and of children and adolescents affected by their parents' divorce is continually increasing. While in 1987, 14,639 marriages were divorced, in 1997 the number had risen to 18,027. The number of children and adolescents between the ages of 0 and 19 affected by the divorce of their parents' marriage rose from 12,760 in 1987 to 16,437 in 1997. In 2000, 19,552 marriages were divorced with final force and effect (5.6% more than in the year before), of which 89.1% were divorced by mutual consent. 43 out of 100 marriages of an average year-group were divorced, affecting 18,044 minors. In view of this high and rising rate of divorces and children affected by their parents' divorce or separation (Annex A, Tables 9-12), major priority was attached to improving the child's position in divorce proceedings.

269. Since the entering into force of the 1999 Matrimonial Law Amendment Act, the spouse who is responsible for the care and upbringing of the common child and may therefore not be required to support him- or herself for the best interests of the child is entitled to maintenance payments in accordance with his or her living requirements regardless of fault. In this context, the unreasonableness of self-support is assumed to last until the child has attained the age of five.

61 Mediation in divorce proceedings and child custody matters

270. Based on the outcome of the mediation model project developed by the Ministries for Family Affairs and Justice, the Austrian parliament, with its order E 156 NR 18. GP of 14 July 1994, asked the federal government to propose specific logistic and organizational measures,

whereby couples seeking a divorce or separation will be enabled to find their own solution to their partner conflict and to maintain their parental responsibility in a way ensuring the well-being of the child. On 1 January 2000, the reform of the matrimonial and divorce law (Matrimonial Law Amendment Act of 1999 - EheRÄG 1999, Federal Law Gazette I 1999/125) became effective and constituted the first-time legal introduction of the “mediation” conflict resolution model. At the same time, the eligibility of mediation for public funding was firmly established by law.

271. If a party is not legally represented, the court is now obliged to ascertain this party’s level of information concerning the legal aspects of a divorce as well as its consequences (especially with respect to child-custody matters), including its implications related to social insurance, and to point out appropriate counselling facilities. If it is obvious that a party lacks the relevant information, the trial must be postponed, if so requested, in order to enable the party to obtain counselling. If necessary, the court has to instruct this party about the filing of such a request. If the court comes to the conclusion that the spouses are not able to bring about a reconciliation by themselves, the court is required to question the parties to form an opinion whether “mediation” would help to reach an amicable settlement of the marital conflict which is the reason for a potential divorce or separation. The court must inform the parties about suitable mediation facilities and, upon joint request by the parties, cover the daily rate for the recourse to this kind of assistance. The competent judge should be able to recommend the voluntary recourse to mediation to the parties seeking divorce. According to the Supreme Court of Justice mediation is not possible against the will of one of the parties involved (1 Ob 161/97a).

272. Although mediation is mainly used in divorce proceedings, the 2001 Parents and Child Amendment Act also provided for mediation being applied to conflicts regarding parent-child relations or child-custody issues, either in connection with divorce proceedings or independent of such proceedings, particularly to regulate both parents’ custody rights after a separation or divorce and to regulate issues relating to visitation rights. If the mediation process as a part of the overall divorce proceedings also touches upon rights and claims regarding parent-child relations, the running of time is suspended with respect to the areas concerned. Hence, a divorce mediation which also involves legitimate minor children may suspend the running of time for filing an action for denial of legitimacy or the period of limitation for the child’s maintenance claim for the whole of the mediation period.

273. If a mediator is used to help two spouses seeking divorce to reach an amicable settlement concerning their divorce and its consequences, the mediator is obliged to maintain unrestricted confidentiality; moreover, the mediator may not be examined on the contents of the mediation (civil law) and has the privilege to refuse to give evidence (Code of Criminal Procedure).

274. After the mediation as conflict resolution instrument was embodied in legislation for the first time by the 1999 Matrimonial Law Amendment Act and by the 2001 Parents and Child Amendment Act, the international conference “New ways in dealing with conflicts in cases of divorce and separation?” – “Potentials and limitations of the new conflict resolution instruments “mediation and child support” in creating a new conflict culture”, which was held by the Ministry for Family Affairs in Salzburg on 2 and 3 November 2001, outlined the significance and the potential but also the limitations of these new instruments with regard to problem cases in the field of matrimonial and parent-child issues in relation to their practical implementation.

275. The legal recognition of mediation as a conflict resolution instrument supplementing the traditional judicial divorce proceedings complies with the recommendation of the Council of Europe on family mediation and the European Convention on the Exercise of Children's Rights, which provides for an improvement of the child's procedural position through the development of conflict resolution procedures, such as mediation, in order to prevent children and young persons from being involved in court proceedings.

276. In order to legally ensure high-quality mediation services available for all citizens, mediation as well as parent and child support in cases of divorce and separation are eligible for funding under the Families Burdens Equalization Fund. This is to guarantee that family mediation is also accessible and affordable for economically weaker families, which otherwise could not or could hardly make use of these services due to economic reasons. The guideline on the promotion of mediation and parent and child support in cases of divorce and separation establishes a series of qualitative standards for the implementation of such projects.

62 Family counselling in court

277. The more than 300 family counselling centres supported by the Ministry for Family Affairs render counselling services in connection with family issues, particularly problems relating to divorce, custody and visitation rights, directly in the courts. Hence, their services are called "family counselling in court". Counselling comprises both legal and psychological aspects of an action under family law and is performed "close to the courts", i.e. counselling sessions are held parallel to the judges' legal counselling on the court's days of office on the court's premises. Counselling is confidential, anonymous and free of charge.

63 Parent and child support

278. The promotion of parent and child support is intended to offer children affected by a separation or divorce the necessary psychological help and to support them in coping with the problems arising from the divorce or separation of their parents. By providing parents who are seeking divorce or separation with information on the effects a separation has on the children concerned and by offering them advice and assistance, they are to be encouraged to support their children in this particularly difficult phase of their lives, for example in the context of educational groups for children. With regard to assistance for children showing a disturbed psychological behaviour, social-education groups may prove a valuable instrument to reduce the mental trauma of the child and to help him or her to re-establish his or her inner security. Children and young persons are offered the opportunity to speak about their experiences, thoughts, and feelings in a secure and protected environment and are thus supported in coping with their grief. Furthermore, the work in small groups, where they are shown that other children are also affected by this kind of problems and are taught how to learn from each other's experiences, helps them to better adjust to their new family situation.

64 Information right and right to be heard

279. If a parent was not granted custody, he or she is entitled not only to personal contact with the child but also to being informed on all important matters in due time by the custodial parent and to state his or her opinion on these matters within a reasonable period of time (§ 178, Civil

Code). If the custodial parent persistently violates his or her information duties, the court must, upon request, issue the appropriate orders. If the child's well-being seems to be put at risk, such orders must also be issued ex officio. If the compliance with the information right and the right to be heard constitutes a serious threat to the child's well-being, or if the non-custodial parent uses these rights in an abusive manner or in a manner which is not acceptable to the other parent, the court must, upon request, restrict or fully revoke these rights. Moreover, the information right and the right to be heard will be revoked if the non-custodial parent, for no reason, denies the child the right to personal contact.

65 Good conduct clause

280. The 2001 Parents and Child Amendment Act introduced a so-called "good conduct clause", which clearly establishes that the legislator wants to avoid any negative influence on the child. This good conduct clause applies both to parents living in a common household and to parents living in separate households, and furthermore to all persons having personal rights and duties vis-à-vis the child. In order to protect the child's well-being, the exercise of the rights and performance of the duties towards the child must avoid anything which impedes the relationship between the under-age child and other persons having rights and duties towards the child or which hinders such persons from fulfilling their tasks (§ 145b, Civil Code). Each parent is thus obliged – even in critical times – to avoid anything which negatively affects the relationship between the child and the other parent or makes it more difficult for this parent to fulfil his or her parental duties ("good conduct clause"). In special conflict situations and upon non-compliance with this good conduct clause the court may resort to enforcement measures appropriate for the given case.

66 Right to personal contact

281. The 2001 Parents and Child Amendment Act laid down that the right to personal contact, which according to legislation had so far only been granted to the parent not responsible for the care and upbringing of the child, is first and foremost the right of the child. If a parent does not live in the same household as the minor child, the child and the parent enjoy the right to personal contact. The way in which this right will be exercised is to be mutually determined by the parents and the child. If they do not reach such mutual consent, the child or one parent may request the court to settle the exercise of this right under consideration of the child's needs and requirements for the best interests of the child. Mature minors (children over 14 years of age) may file an application for a visitation arrangement on their own (i.e. without their legal representative). The right to personal contact between grandparents and their grandchildren remains valid as far as in exercising their rights the grandparents do not disturb the family life of the parents (or of the parent) or the relationship between the parents and the child.

282. The 2001 Parents and Child Amendment Act also introduced the possibility of maintaining social bonds and emotional relations to third persons who are of particular importance to the child, such as brothers and sisters, other relatives or godfathers/godmothers and sponsors. If the fact that a minor child is denied personal contact with a third person who is willing to maintain contact with the child would be detrimental to the child's well-being, the court must pass the necessary orders to settle the issue of personal contact, if so requested by the child, one parent, the competent youth welfare institution or ex officio (§ 148, Civil Code).

283. If an under-age child who has already attained the age of 14 years, by his or her own conviction, explicitly rejects his or her right to personal contact and if the explanation that the establishment or maintenance of personal contact with both parents serves his or her best interests as well as the attempt to reach an amicable settlement required of the court fail to be successful, applications for a visitation arrangement may be dismissed. Hence the “visiting contact” may neither be regulated nor enforced (§ 185b, Act on Non-Litigious Proceedings). The exercise of the visitation right may be restricted or forbidden on the grounds of non-compliance with the so-called “good conduct clause”.

67 Accompanied visits

284. In order to ensure a more effective enforcement of visitation arrangements, the 2001 Parents and Child Amendment Act provides for the possibility of “accompanied visits”. Under this scheme, the visiting person will be accompanied by a neutral third person, whose presence is agreed to by all parties concerned (e.g. to overcome difficulties in establishing the first contact or in re-establishing the contact between the child and a parent). This instrument will only be applied if the personal contact between the child and the parent not living in the same household is essential to the well-being of the under-age child. Accompanied visits may be ordered exclusively upon request, with each party to the proceedings, i.e. also the mature minor, being entitled to file the relevant application. The applicant itself must name a person or institution suitable for this purpose. However, the accompanying persons should basically be persons who have the necessary professional qualifications such as qualified social workers, psychologists, psychiatrists, psychotherapists, pastors, mediators, experienced voluntary social workers or private attorneys, provided that they have adequate professional experience in inter-human and intra-family conflict control and settlement. The person named as accompanying person is granted party status and the right to appeal.

285. A number of governmental and non-governmental institutions offer “protected visiting contacts”, which are intended to enable children to stay in contact with both parents even though there exist massive conflicts between their parents.

68 Information brochure for step families

286. In Austria, as many as 8 – 10% of all children are currently living in a stepfamily, which means that an increasing number of new partners assume parental functions and roles jointly with the natural parents. Nevertheless, in many cases there are no established patterns or guidelines which demonstrate how these functions and tasks may be fulfilled by the persons concerned and how the collaboration between several mothers, fathers and grandparents and the life with new brothers and sisters may be organised. The Ministry of Family Affairs has published two brochures based on a comprehensive study titled “The patchwork family or the step...” and “My step family – nothing like the fairy tales”, which are intended to inform mothers, fathers and children about behaviour that has proved very useful in facilitating life in a common household, and also to identify the kind of behaviour that is more likely to provoke conflicts. The brochure is to support “step families” in organising their family life in a way agreeable to all members of the family.

287. In Clause 9 of the “Concluding Observations” the committee expressed its concern regarding a number of contradictions between the national laws and the principles and provisions of the Convention, particularly with respect to the right to family reunification and several rights granted to children of immigrants, asylum seekers and refugees. The committee recommends that the state party take all measures required to ensure that all its national laws fully comply with the principles and provisions of the Convention, particularly with Articles 9, 10, 20 and 22.

288. In the period under review, new family-friendly regulations for the reunification of non-Austrian families were established: Foreign nationals resident in Austria on the basis of a residence permit in the cases identified under and for the purposes described in §s 7 para. 4 Z 1 and 2 of the 1997 Aliens Act, have the right to bring their spouses and unmarried minor children to Austria, provided that they do not intend to take up any gainful employment and provided that the other parameters defined by the Aliens Act are met. These persons’ right of residence is legally connected to the right of residence of the foreign national it is derived from.

289. If the foreign national intends to take up permanent residence in Austria, he or she may claim family reunification by declaration. In this case, the granting of the permit must be based on the decision whether the quota system allows the issuing of residence permits to the whole family; it is not possible to issue an immigration authorization which is restricted only to the applicant. Family reunification relates to spouses and unmarried minor children (legitimate and illegitimate children, i.e. including adopted and step children), and is based on the condition that there exist sufficient financial means to support the child as well as a title to accommodation which is in conformity with local custom and with housing standards applying to Austrian nationals. If the foreign national does not apply for family reunification, or if the members of his or her family do not file their application for the initial residence permit within the following calendar year, they will lose their right to reside in Austria (§s 20, Aliens Act).

290. The family members’ residence permit entitles them to take up residence in Austria and to enter the country for this purpose. After four years it ceases to depend on the validity of the residence permit of the foreign national who applied for family reunification. Children entering Austria for the purpose of family reunification are not granted a residence permit of their own until they come of age; in legal terms, they follow the parent who is responsible for their care and upbringing (§ 146, Civil Code). Minor foreign nationals over the age of 14 may apply for a residence permit by themselves; the issuing requires the consent of their legal representative (Legitimate children require the consent of their parents and illegitimate children require the consent of the mother. Otherwise the consent of the competent youth welfare office is required, without specific appointment in its function as official guardian by virtue of law).

291. § 21, para. 3 of the 1997 Aliens Act (Federal Law Gazette I No. 75) which set the age limit for family reunification at 14 years and was repealed by the Supreme Constitutional Court with its ruling of 19 June 2000, Ref. No. 16/00-6, for lack of objectivity and violation of the principle of equal treatment, was modified in accordance with the constitution. In November 2000, legislation was passed with effect from January 1, 2001, which raised the age limit for family-related immigration of unmarried minor children of foreign nationals legally residing in Austria pursuant to § 21 para. 3 of the 1997 Aliens Act to 15 years.

292. In Austria, family reunification is subject to the immigration quota system. Pursuant to § 19 para. 2 of the Aliens Act, the quota system does not apply to initial residence permits for nationals of non-EU countries who are employees of foreign information media or artists – they are entitled to residence permits under constitutional law – and for foreign nationals who are gainfully employed but do not come within the scope of application of the Foreign Nationals Employment Act. Moreover, the immigration quota system does not apply to non-EU nationals who need a visa to enter Austria but enjoy the freedom of establishment (e.g. non-EU nationals of EEA countries) and to spouses or unmarried minor children (up to 14 years of age) of the persons specified in this paragraph on the condition that they do not intend to take up gainful employment in Austria.

293. In 2000, the Aliens Act of 1997 was modified. Although the exemption from the visa requirement of a child who does not have Austrian citizenship still depends primarily on the mother's legal residence in Austria, it was also extended to those cases where not the mother but the father or any other foreign national (e.g. grandparents, uncle, aunt, brothers and sisters) are solely responsible for the care and upbringing of the child. This is always the case when the competent Austrian child-custody court, acting in the best interests of the child, has granted the custody right to one of these persons. The foreign national having the sole custody of the child must also be legally resident in Austria; since the mother attends to the care and upbringing of the newborn child, abuse is controlled. In this context, the definition of the terms "care" and "upbringing" is based on the family-law provisions of the Civil Code. In the course of the modification of the act it was furthermore attempted to accommodate those cases where the custody right is granted to an Austrian national. In these cases, the children are also exempted from the visa requirement. The duration of the exemption period was extended from three to six months, to allow some time for the resolution of difficult family situations. Further details on the principles of the Aliens Act with respect to minors are described in Chapter 12.

Children deprived of their family environment (Art 20)

69 Children without family environment

294. Abandoned children and children who, for whatever reasons, lack beneficial care through their parents have access to a comprehensive care system. In the event that an abandoned minor child is found somewhere in Austria (e.g. baby nest and anonymous childbirth) and his or her parents are not known, legislation provides for custody being granted to the competent youth welfare institution (§ 211, Civil Code). As concerns property management and legal representation, the aforementioned also applies if neither parent of a child born in Austria is entitled to act as his or her legal representative. Should the child's well-being not be safeguarded if he or she remains in the family environment, placement with a foster family, a children's home or any other institution (e.g. children's village or a common household run on socio-educational principles) must be considered ("complete education according to the Youth Welfare Act") (see Annex A, Table 20).

70 Foster children/parents

295. The 2001 Parents and Child Amendment Act defines "foster parents" as "persons, who are fully or partly responsible for the care and upbringing of the child and who have established

or will have to establish a relationship with the child which is comparable to that between natural parents and children". Such a relationship requires above all the child's full integration into the foster parent's household and daily life as well as the intention to establish an emotional relationship. Foster parents have the right to file applications in proceedings concerning the child. Such right to file applications also applies to proceedings not initiated by the foster parents. Other powers may only be transferred to the foster parents by contract by the persons having the custody of the child, unless the foster parents are granted full or partial custody by the competent court. Upon request of the foster parents (parent) the court must grant them full or partial custody of the child, if the foster relationship is intended to last for a longer period of time and if this is commensurate with the well-being of the child. If the parents/grandparents have the custody of the child and do not consent to the transfer, such transfer may only be ordered if otherwise the child's well-being would be put at risk.

296. At the time of the 1st State Report on the Convention on the Rights of the Child the number of foster children in Austria was continually decreasing. Well-targeted advertising measures and an improvement of social insurance and pension benefits succeeded in winning additional foster parents. At the end of 1999 the number of foster children amounted to 4,358.

297. With its "Home 2000" reform initiative the City of Vienna tries to substitute placement in homes by enhancing external forms of care, placement with foster parents or the establishment of crisis centres. This is to enable the children concerned to further experience family-like care and to remain within their circle of friends and within their habitual school environment.

298. The course in family education at the Wels College for Family Education introduced in 1999 is designed to enhance the quality of child care outside the child's own family (foster families and children's villages). A fixed part of the curriculum are the contents of the Convention on the Rights of the Child.

71 Missing children – juvenile runaways

299. In 1998, 79 children and adolescents ran away for the first time and 351 children below the age of 14 were reported missing to the Viennese police. In 905 cases the police were searching for adolescents up to the age of 19 years, nearly all of which returned home by themselves or were found by the police. The majority of the runaways were social problem cases or children and adolescents who ran away from community homes; only few adolescents run away because of problems with their parents or at school.

Adoption (Art 21)

300. Pursuant to § 179 a para. 1 of the Civil Code, the adoption of a child is based on a written agreement between the adopting person and the adopted child. The adoption contract requires the approval of the courts. When granting permission for adoption, the court must examine the legal requirements for consent to an adoption contract and take into account all relevant facts of the case ex officio. Prior to making a decision, the court is obliged to hear every minor child who has reached the age of 5, the parents of a child having come of age, the foster parents or the person in charge of the home in which the child lives as well as the competent youth welfare authorities (§ 181a para. 1, Civil Code). Between 1996 and 1999, adoptions of about 800 to 900 children (1999: 862) were authorised with final force and effect.

301. Arrangements for the adoption of a child in Austria fall within the responsibility of the youth welfare authorities. With regard to the adoption of children abroad, additional, stricter criteria have been stipulated by the provincial youth welfare acts. An inter-country adoption is only permissible if this is particularly or more conducive to the child's well-being than an adoption in Austria, or if this is justified by special circumstances and/or if the child's linguistic, religious and cultural background must be taken into account or if the child's well-being would otherwise be put at risk. This provision complies with the strict requirements of Art 21 b of the UN Convention.

302. Austria has ratified the European Convention of 24 April 1967 on the Adoption of Children (Federal Law Gazette No. 314/1980) and the Hague Convention of 15 November 1965 on Jurisdiction, Applicable Law and Recognition of Decrees Relating to Adoptions (Federal Law Gazette No. 581/1978). On the occasion of the ratification of the European Convention on the Adoption of Children, Austria has reserved the right pursuant to § 25 para. 1 of the Convention not to prescribe the discharge of all of the child's maintenance and inheritance-related obligations towards his or her father and mother, as defined under Art. 10 para. 2 of the Convention. The reservation which is effective for five years was renewed for another five years in 2000. Moreover, Austria has ratified the Convention of 29 May 1993 on the Protection of Children and Cooperation in Respect of Inter-country Adoption elaborated in the context of the Hague Conference on International Private Law. The Convention became effective in Austria on 1 September 1999 (Federal Law Gazette III/1999/145). The provincial governments were designated as central authorities, as defined under Art. 6 of the Convention, with geographical jurisdiction for the respective federal province. The Federal Ministry of Justice is the central authority responsible for the acceptance of applications from abroad with the task of submitting them to the locally competent provincial government and for fulfilling the general duties under Art. 7 para. 2 of the Convention.

Illicit transfer and non-return of children (Art 11)

303. Austria is a state party to the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction and to the European Convention of 20 May 1980 on the Recognition and Enforcement of Decisions concerning Custody of Children and Restoration of Custody of Children, which constitute a set of highly effective instruments to combat the illicit transfer and non-return of children.

304. Art. 38 para. 4 of the Convention on the Civil Aspects of International Child Abduction provides for an accession to this Convention only being effective in relation to the acceding state and the state parties which have declared to accept such accession. In contrast to other multi-lateral agreements where accession is effected by means of a unilateral declaration, the effectiveness of a state's accession to the aforementioned Convention in relation to Austria depends on Austria's declaration of acceptance.

305. In August 2001, the Republic of Austria declared its acceptance with regard to the accession of Brazil, Chile, Cyprus, Georgia, Iceland, Malta, Moldova and South Africa. The acceptance of these states' accession by Austria extended the Convention's geographical scope of application, whereby it should be mentioned that the criteria considered included both the

practical implications of this extension on Austria and the existence of a well-functioning judicial system in these countries.

306. By making specific actions concerning the relationship of an under-age child (up to the age of 18) with the person responsible for his or her care a criminal offence, it is intended not only to safeguard the custodial rights but also to protect the under-age child him- or herself. "Removal of a minor from the authorised person's custody" (§ 195, Criminal Code) and "obstructing custodial measures ordered by the authorities" (§ 196, Criminal Code) are offences liable to prosecution. For law enforcement purposes, the security forces (police) are obliged to assist in establishing the whereabouts of a minor if a request has been made under § 146 b of the Civil Code (§ 24 para. 1 Z 4, Law Enforcement Act).

307. With the aforementioned measures Austria complied with the committee's recommendation stated in Clause 19 of its "Concluding Observations" to enter into bilateral agreements with states which are not state parties to the above-mentioned Conventions and to provide them with a maximum amount of diplomatic or consular support, in order to solve cases of illicit transfer and non-return of children in these countries for the best interests of the children concerned.

Domestic violence against children (Art 19, Art 39)

72 Prohibition of corporeal punishment and the use of violence in Austria

308. In its "Concluding Observations", the Committee highlighted Austria's activities in connection with the issue of violence against children. These activities include the general ban on all forms of violence, especially physical and mental maltreatment of children, as well as efforts to improve the protection of children against maltreatment by means of the "Catalogue of Measures against Violence within the Family and Society" and the "Action Plan against Child Abuse and Child Pornography on the Internet". In the period under review, further steps were taken to prevent violence against children and to ensure the protection and/or mental recovery of victims of violence (see also Chapter 12.4-6).

309. Since 1989, any form of physical or mental violence against children has been banned as a means of education. This principle is illustrated by the central legal provision (§ 146a of the Civil Code): "... the use of violence and the infliction of physical or mental harm are unlawful." According to the decisions of the Supreme Court of Justice (24 June 1992, JBl. 1992, 639), non-compliance with the prohibition of violence and/or corporal punishment, as defined under § 146 a of the Civil Code, must be taken into account when assessing the legal relationship between children and parents, for example with regard to the revocation or restriction of the custody right (§ 176, Civil Code).

310. In order to reduce domestic violence, to protect victims of violence and to reduce the rate of recidivism among perpetrators, the executive agreement of 2000 stipulated the following goals and measures: To ensure optimal care and support for children who have become victims of (sexual) violence; special promotion of family counselling centres; protection groups for children; etc. to enhance the networking between parent education offerings and family counselling centres and other prevention and therapy services, to support victim protection facilities, such as women's shelters and children's protection centres. To sensitise society to all forms of violence and to introduce trial support for children and young persons

311. The absolute prohibition of violence (§ 146 a, Civil Code) is supplemented by a number of protective regulations. By introducing counselling and support services, such as the educational counselling services and the social services of the youth welfare office, and by increasing the number of children's protection centres and introducing emergency hot-lines for children, violence is to be eliminated from children's lives. The 1998 amendment to the Youth Welfare Act requires the youth welfare authorities to record personal data with regard to suspected incidences of neglect, abuse or sexual abuse of minors which are reported to them in compliance with § 37 or due to a professional authorization or obligation.

73 Protection of children against violence under criminal law

312. The central legal provision granting children protection against violence under criminal law is contained in § 92 of the Criminal Code. In accordance with the Convention on the Rights of the Child, children are protected against any form of physical or mental maltreatment (such as abuse, restriction of liberty). Anyone who grossly neglects his or her obligation to provide care and custody and in this way causes considerable harm to the health or physical or mental development of the person with whose care he or she has been entrusted is liable to prosecution.

74 Protection against domestic violence – “Violence Protection Act”

313. The Violence Protection Act (Federal Law Gazette No. 759/1996), which entered into force on 1 May 1997, took account of the fact that domestic violence is still a common social phenomenon, which manifests itself in various shapes in all strata of society. The Violence Protection Act provides the law enforcement authorities and the public security authorities with additional powers to intervene in cases of domestic violence. Thus, the legal instrument of an interim injunction was made applicable to a larger group of persons, the prerequisites for intervention on the part of the authorities were made less stringent and the enforcement of protective measures was facilitated. Moreover, cooperation between the courts and the law enforcement authorities in cases of domestic violence was also improved. In cases of violence or the threat of violence (also mental violence), the police is now obliged (§ 38 a, Law Enforcement Act) to remove the perpetrator from the joint home regardless of the status of ownership (exclusion order) and to prohibit him from returning for a period of ten days (barring order), unless the victim within this time files an application for an interim injunction with the competent court. If threatened “close” relatives within this time file an application for the issuing of an interim injunction, the barring order terminates upon delivery of the court's decision to the respondent, but not later than after a period of twenty days following the issuing of the barring order. Such a barring order may also be restricted to certain places such as the victim's way to/from work, the children's nursery school, the children's way to/from school, etc. Subsequent to the protective measure taken by the police, pursuant to § 382 (Enforcement Code), a civil-law barring order will be valid for up to three months; if it is linked to divorce action, the barring order will be valid until the end of the divorce proceedings.

314. In many cases, violence against children is perpetrated by one of the parents. In cases where one parent becomes violent against the child, but the other parent – for example for fear – is not willing to file the application for an interim injunction on behalf of the child, the application may be filed by the competent youth welfare office. If the victim is questioned in relation with a family-law injunction, her or she is allowed to have a person with whom he or she

has a relationship of trust sit in at the interview, provided that this person does not disturb the questioning (§ 55, para. 1, Enforcement Code). No special provisions were laid down concerning custody and visitation rights procedures for minors.

315. The crucial aspect of the new provisions to combat the problem of domestic violence is that the amended Law Enforcement Act also authorises the public security authorities to intervene if no criminal offence has been committed (yet). A barring order may also be issued independent of a prior removal from the joint home (Federal Law Gazette I No. 146/1999).

316. By providing special training for police officers and establishing victim protection facilities it is intended to ensure effective protection for victims of domestic violence. In this context, special mention must be made of the “trial support in cases of sexual abuse of girls, boys and adolescents” model project, which was initiated in 1998 by the Ministry for Family Affairs and is sponsored by the Ministry of Justice (also see Chapter 12.5).

317. Application of the Violence Protection Act: In 1998, the police had to intervene (exclusion/barring order) in more than 2500 cases; in every fifth case, the barring order was followed by an interim injunction. In the first year of the Act’s effectiveness (1 May 1997 – 30 April 1998), court orders (interim injunction) were applied for in 577 proceedings, 90% of which were granted; in 61% of the cases the decision was reached within five days, in another 24% within 10 days. In 1998, the police used its new powers in 2,673 cases. In 123 cases, an internal review of these orders resulted in their repeal by the police authority. The police authority recorded 252 cases of non-compliance with the aforementioned orders, which were punished in administrative penal proceedings, whereby it should be noted that several proceedings may be instituted against the same perpetrator. In 1999, the orders were repealed in 3,076 cases. In 2000 they were imposed in 3,354 cases and repealed in 116 cases. In 430 cases, administrative penal proceedings were instituted.

75 Intervention centres against domestic violence

318. In support of the Violence Protection Act, arrangements were made for the first time to ensure effective cooperation between law enforcement authorities and civil courts and to intensify cooperation with victim protection facilities. The preparations for these private victim protection facilities, the so-called “intervention centres against domestic violence” are based on the plan to create networking centres for swift and coordinated cooperation of all institutions and/or individuals involved in a specific case of violence against women and/or children.

319. The first intervention centre was established in 1996. Subsequently, close cooperation with the Ministry of the Interior and the Ministry for Women’s Affairs created the environment for building a support structure which in the long term will cover all of Austria. The intervention centres now existing in each federal province are to extend the number of branch offices in order to guarantee the regional supply of support services.

320. Austria’s reform activities in this area pursue a multi-institutional approach. The intervention centres against violence establish contact with the women affected and actively offer their help and support, particularly after police interventions. The police is authorised to transmit the necessary data to these victim protection facilities. Moreover, the intervention centres coordinate cooperation between all authorities involved (especially youth welfare

offices) as well as protection facilities for women, particularly women's shelters. Currently, there exist 21 facilities in Austria offering protection and shelter to abused women and children.

321. The conceptive activities of the intervention centres against domestic violence focus on the following two areas: Measures to improve the protection for and provide adequate support of women and children who have become victims of violence; Development of new approaches in dealing with perpetrators within the context of the family and in their immediate social surroundings with the aim of enhancing protection for women and children.

322. With regard to the first area, major emphasis is attached among other things to strengthening victims' rights in court. This will be effected on the one hand by enhancing victims' rights in court proceedings (e.g. provision of free legal assistance, improvement of the work of expert, model projects for trial support, etc.), on the other hand by extending the range of therapy facilities (adding the costs for psychotherapy for victims of violence to the catalogue of services available under the Act on Assistance to Crime Victims, systematic support for minor victims through tailor-made, comprehensive support programmes etc.). Effective victim protection also comprises systematic work with the perpetrators, as it is carried out by the Viennese intervention centres in cooperation with the men counselling centre within the context of a perpetrator programme.

323. In the period under review, Austria has made further efforts to combat violence against women and children, which are outlined in particular in the "25-Points Action Programme of the Federal Government against Violence in Society" of September 1997. In 1997, an advisory council for basic issues of violence prevention was established at the Ministry of the Interior, which is to advise the federal minister of the interior on promoting violence prevention activities but also on elaborating general strategies for a more effective cooperation between law enforcement authorities and victim protection facilities. The Prevention Advisory Council also assumed responsibility for the reporting on and continual implementation of the 25-points action programme. The working groups of the Prevention Advisory Council elaborate measures for the protection of victims of domestic violence. In this context, special mention must be made of the development of methods to improve cooperation between the youth welfare offices and the law enforcement authorities and the judicial branch, dealing with "Violence against Migrant Women" and "Psycho-Social Victim Support".

76 Physical and psychological recovery of victims of violence

324. Under the amendment to the Act on Assistance to Crime Victims (effective as of 1 January 1999) crime victims are entitled to medical assistance and may claim compensation for the costs of psychotherapy. By extending the scope of the right to recovery of a victim of violence or sexual abuse and by increasing the range of rehabilitation services major significance was attached to the recommendation of the committee stated under Clause 21 to fully implement the child's right to physical and psychological recovery and social re-integration in accordance with Article 39 of the Convention on the Rights of the Child.

325. The decision to report cases of sexual abuse to the police constitutes an enormous psychological burden for the affected children and the persons closest to them, which is further aggravated by the difficulties they experience in dealing with the legal system. A lack of knowledge concerning legal procedures, the wish finally to obtain justice, and the expectation that by reporting the offence everything will be all right create a situation which may hardly be overcome without adequate professional support. Sometimes this even leads victims to refrain from using their rights. In order to defuse this problem, in 1998 the Ministry for Family Affairs commissioned a model project called "Trial Support in Cases of Sexual Abuse of Girls, Boys and Adolescents". Within the scope of this model project, victims and the persons closest to them received psycho-social and legal counselling, support and assistance from the moment they decided to file the report. The experiences gained and evaluated within the framework of the model project revealed that the combination of psycho-social and legal assistance is highly effective and that support is required for the overall duration of the court proceedings – from the filing of the report to the conclusion of possible child-custody proceedings. Moreover, in many cases it is very reasonable and helpful to deal with the abuse in psycho-social terms, in the form of counselling or psychotherapy, which however is not included in the functions of trial support. Furthermore, it became clear that in cases of sexual abuse cooperation between the representatives of all institutions involved in the individual cases (youth welfare authorities, police, courts, counselling centres, etc.) is an absolute imperative. Based on the results gained from the model project a standardised offer of trial support services for abused and maltreated children is currently being created, which will finally be available all over Austria. An important step which was already taken in autumn 2000 is the training of trial support workers, who, apart from a sound knowledge of legal procedures, must also have the necessary counselling skills and the ability to speak and deal with children and young persons. In addition, the first steps to build cooperation structures were initiated in 2001, which will be continued with interdisciplinary seminars in 2002.

Periodic review of placement (Art. 25)

326. Placement of physically or mentally ill children and adolescents as defined under Article 25 is provided for in the Tuberculosis Act and the Placement Act, the latter concerning the placement of mentally ill persons in hospitals or psychiatric units. The conditions as to the permissibility of the restriction of personal liberty and treatment of mentally ill persons (also children) in a psychiatric hospital are laid down in the Placement Act (Federal Law Gazette 1990/155). Children/Adolescents may only be placed in a psychiatric hospital if they suffer from a mental illness, and not if they are merely mentally disabled, suffer from fits of rage, or show some other abnormal behaviour without suffering from any mental disorder at the same time.

327. In the rather rare event that a mentally ill or disabled child who has not attained the age of 14 may not be enabled to look after his or her own affairs with the support of his or her family or with the support of private or public welfare institutions for the disabled, the courts must decide on the appointment of a curator. When choosing a curator, the court must take into account the personal requirements of the mentally ill or disabled person. The function of the curator should therefore be assumed in the first place by a person closely connected with the child, for example suitable relatives/friends whom the child trusts; if this is not possible, a competent association ("Association of Curators") shall propose a curator who will perform this task either on a professional or on a voluntary basis.

328. With regard to matters such as the administration of property, representation before the authorities or social and medical care, the disabled child has a right to be informed and consulted by the curator. He or she must be informed in due time of any important measures intended to be taken and may express his or her opinion on all matters. The child's opinion must be taken into account by the curator when making a decision. The courts must check at appropriate intervals, whether it is in the child's interests to modify the contents of the curatorship or to cancel it as a whole.

329. The concern expressed by the committee under Clause 20 of its "Concluding Observations" with respect to the extension of the period of time allowed for the inspection of the placement of mentally disabled children ordered by court is thus taken into account. Hence, when determining the time intervals for the inspection of the placement the principles and provisions of the Convention are fully complied with for the best interests of the child.

8. HEALTH AND WELFARE

Disabled Children (Art 23)

330. In the past decade, the Austrian Federal Government has taken a number of legal and administrative measures based on a rehabilitation concept to integrate the disabled in everyday life (Disabled Persons Concept, Behindertenkonzept). To allow the disabled to participate in the social life of the community, special efforts are being made towards the social integration of disabled children; in particular, the integration of disabled children and healthy children is being promoted at a very early age. Special care and educational facilities to meet the needs of disabled children (e.g. special kindergartens or special schools) are being provided, and special financial assistance is being granted for the additional expenses incurred as a result of the child's disability. Generally, an additional € 131.- per month are paid on top of the family allowance if a child is considerably disabled, wither mentally or physically.

331. Like healthy children, disabled children are automatically insured with a working parents under the mandatory health insurance scheme, and the costs of medical treatment are covered by the insurance; they also receive rehabilitation treatment free of charge if this exceeds the financial possibilities of the parents. If the care of a disabled child living in the same household requires the full working capacity of a parent, this parent may pay his/her own pension contributions into the pension insurance fund during the time he/she is looking after the child. The costs for these contributions will be borne by the Family Burden Equalization Fund until the child turns 30.

The programming requirements for the Austrian Broadcasting Corporation under the relevant legislation provide that it shall ensure that the concerns of disabled persons be taken into account in an appropriate way.

78 Nursing Allowance for Disabled Children

332. The Federal Act on Nursing Allowance (Bundespflegegeldgesetz) and the corresponding acts at the level of the nine Länder introduced, as per 1 July 1993, a nursing allowance granted according to the same principles and objectives nationwide. If the eligibility criteria are met,

entitlement is independent of age, income and property as well as the type and cause of disability (physical, mental or psychological). Accordingly, the nursing allowance will also be granted for disabled children if they require constant care that exceeds 50 hours per month. Care criteria are defined as the need for support and assistance in everyday activities such as dressing, eating, washing or going out). The nursing allowance system is graded according to actual nursing needs.

Nursing allowance grades (2001)

| | | |
|---------|---|----------|
| Grade 1 | Nursing need of more than 50 hours per month | € 145.40 |
| Grade 2 | Nursing need of more than 75 hours per month | € 268.00 |
| Grade 3 | Nursing need of more than 120 hours per month | € 413.50 |
| Grade 4 | Nursing need of more than 160 hours per month | € 620.30 |
| Grade 5 | Nursing need of more than 180 hours per month | |

and additional extraordinary nursing needs € 842.40

| | | |
|---------|--|------------|
| Grade 6 | Nursing need of more than 180 hours per month and an additional need for care that cannot be coordinated in time (e.g. during the night) or permanent attention (including nights) | € 1,148.70 |
|---------|--|------------|

| | | |
|---------|---|------------|
| Grade 7 | Nursing need of more than 180 hours per month when limbs cannot be moved in a targeted way. | € 1,531.50 |
|---------|---|------------|

333. As serious disabilities require considerable extra care in children under the age of three in comparison with healthy children of the same age, the age limit of three years, which had been valid for some time, was abolished to avoid hardships.

79 The Federal Act on Disabled Persons

334. The Federal Act on Disabled Persons (Bundesbehindertengesetz) forms the basis of coordinated rehabilitation measures and selective counselling, care and support for the disabled in order to ensure an optimum of social integration. The Social Service of the Federal Ministry for Social Security serves as an information centre for all issue relevant to disability. Mobile counselling teams for children and adolescents have been established to look after children and adolescents with physical, mental and/or psycho-social impairments or threatened thereby. The teams consist of professional social workers, psychologists and physicians, they are available throughout Austria and provide qualified counselling according to the principles of prevention and integration, working out of regional centres. This ensures that they can be easily reached and the counselling services even visit homes, if required. Services for clients and their families range from information about assistance services, support when dealing with the authorities, medical and psychological diagnoses and opinions, psycho-social interventions as well as planning, referring to and organizing individual therapies.

80 The Integration of Disabled Children in Schools and Care Institutions

335. Appropriate legislation at the level of the Länder has taken been adopted in accordance with increased needs and a heightened awareness of the population with a view of the pedagogical requirements to be fulfilled to allow for the integration of disabled children. In Salzburg – to illustrate the development by way of an example – the integration of disabled children at kindergarten has been implemented since 1995/96. In 1998/99 a group of 34 children were attended to by seven mobile special kindergarten teachers, in 1999/2000 14 children who needed more support than others were members of normal kindergarten groups with additional assistants to care for them. In order to provide special development incentives for disabled children and to counteract their disability, integrated kindergartens, day care centres and primary school classes have been established in addition to special kindergartens – mainly in the larger towns and cities.

336. In the school entry stage of primary school, children with retarded development are to be assisted as teachers engage with them more intensely thus giving them a chance to attain the ability to go to school and to have largely equal opportunities when starting school. Disabled children in pre-school receive care funded from specific support resources. In the years 1997-2000 integration measures were e.g. also funded from resources of the "kindergarten billion".

337. An amendment of the Salzburg Act on Disabled Persons made e.g. sure that seriously disabled children would receive care funded from social assistance. The amendment of the Salzburg Act on the Implementation of the School Organization Act governs the integration of disabled children in secondary modern school in analogy to primary schools. The Salzburg Act on Kindergartens was also amended to include the integration of seriously disabled children in "integration groups". Moreover, funds are allocated to kindergartens for longer opening hours.

81 Education and Training for Disabled Children

338. The mandate to provide education and training for disabled children in such a way as to promote his/her social integration and individual development is fulfilled by a broad range of special schools on the one hand, and by Special Pedagogic Centres and integration measures covering the age group from 6 to 14. The public education system thus offers a choice of integrative and special schools.

339. Integrated schooling for children with special pedagogic needs was provided for by law for primary schools as from the school year 1993/94, and for secondary education stage I as from school year 1997/98. The introduction of joint integrated instruction for disabled and non-disabled children an important educational and political goal was achieved. Support teacher model: A special teacher works for a limited number of hours to assist individual pupils who need special pedagogic support (school experiment). Cooperative class: A normal class and a special school class cooperate in variable degrees, e.g. forming a joint instruction group in certain subjects. Small-scale class (Support class): A class with fewer pupils than usual is taught by a special schoolteacher according to the regular school curriculum to the extent that this is possible. The aim is to re-integrate the pupils in regular schools (school experiment). Special school/special school classes: Disabled children may continue to attend special schools as the

overall pedagogic concept of the school may be best adapted to the special needs and skills of children with a certain type of disability.

340. At present school organization only allows for joint integrated schooling of children with and without the need of special pedagogic support (i.e. in regular schools) up to the eighth year of schooling. After that pupils with disabilities have to attend special schools or school experiment at Polytechnic Schools, occasionally one-stage vocational middle schools also offer access for the disabled.

341. As from the school year 2001/02 the integration of pupils with special pedagogic needs has been extended to pupils in the ninth year of compulsory education as a year of vocational preparation (ninth year of general special school) was introduced.

342. Moreover, § 32 para. 2a of the School Education Act allows older persons to complete their compulsory education within a certain time frame (NAP measure).

343. To foster integration by means of financial and human resources as well as methodical and didactic know-how special pedagogic centres, which are mainly located at special schools, were provided for by law.

82 The Integration of Disabled Adolescents into Working Life

344. The targeted preparation of disabled adolescents for the working life may take place in integrated classes at Polytechnic Schools (school experiment) and, as from 2000/2001, in the form of a preparatory year at special schools or in integrated education. Measures for vocational choice and vocational rehabilitation are discussed with the disabled adolescent; these are offered to enable him/her to find a job or apprenticeship vacancy. Integration into working life is supported by allowances for apprenticeships, training or retraining, job search, trial jobs, vocational preparation and job training. Disabled children can complete an apprenticeship in a training shop in conjunction with vocational school or, if necessary, in special institutions for the physically or sensorially disabled. Moreover, to allow disabled adolescents to integrate into gainful employment the Disabled Employment Act (Behinderteneinstellgesetz) promotes the creation and maintenance of training and work places for disabled persons. Larger business with more than a specified number of employees are obliged to employ a certain number of disabled persons; if this mandatory number is not met, compensation must be paid. The revenue generation from such compensation per mandatory job opening for a disabled person and month are paid into a compensation fund and are earmarked to support the integration of disabled persons. In 2000 employers paid a total amount of € 54,068,590 into the fund. To give employers an incentive to employ disabled persons and to strike a fair balance between those who employ disabled persons and those who do not, legislation governing the protection from dismissal during the early stage of employment (prolongation of the trial period) was somewhat relaxed in the latest amendment of the Disabled Employment Act (effective as from 1 January 2002) and compensation was increased to € 196.22.

345. A premium is granted for the training of disabled adolescents. Clearing teams are to be established to support the integration of disabled school graduates into working life. This will find the package of vocational integration measures best suited to the individual case with those concerned. Moreover, qualification projects for school graduates with disabilities are in the planning stage. A number of qualified projects for vocational integration, especially at the

school-vocation interface, have been designed for disabled adolescents and these are also financed from resources of the European Social Fund.

346. The federal government has also adopted a resolution concerning an employment campaign for people with disabilities ("billion for the disabled"). As from 2001 approx. € 72.7 million of additional funds per year will be made available for the integration of disabled persons in the working life. These funds are to finance coordinated qualification and employment measures as well as further activities for first entry into the labour market for about 12,000 participants per year. The package of measures includes inter alia integration allowances where wage costs are taken over by the state for a certain period as an incentive to employ disabled adolescents, additional training and qualification projects, job assistance as well as studies and apprenticeship allowances. The measures planned under the "billion for the disabled programme" will be managed by the Federal Office for Social Affairs and Matters of the Disabled. All relevant partners at the level of the Länder will be involved and existing coordination structures will be used to control and implement these measures in the regions.

347. To safeguard the special economic, social, health-related and cultural interests of disabled employees, a representative for the disabled has to be elected in every company employing more than five preferred disabled persons permanently. If a company employs disabled adolescents, a youth representative has to be elected, too.

348. Disabled persons with a disability degree above 25% are eligible for a tax allowance under the Income Tax Act. People with a disability degree of over 50% enjoy certain privileges on a "disability pass" in the individual Länder (e.g. reduced fares on public transport, reduced admission to museums, theatres, public baths etc.). People with a permanent walking disability are favoured by fiscal law (an allowance on the motor-vehicle tax) and if it has been established that it is unreasonable for them to use public transport, they are entitled to a motorway decal (proving the pre-payment of motorway toll) free of charge and to park in no-parking zones (§ 29 b of the Highway Code, StVO) so they can participate in urban individual transport with as few obstacles as possible. This purpose is also served by construction standards geared to the disabled for public buildings, streets and pavements as well as public transport

349. In order to make up for disadvantages at work due to a disability, training and retraining as well as trial jobs are offered within the scope of "qualification and employment projects". Moreover, trainee positions and jobs are created and maintained by job grants under the Disabled Employment Act (e.g. for the adaptation of rooms and sanitary facilities, the conversion of facilities and machinery). Vocational rehabilitation possibilities (such as job choice, try-out jobs, job training, qualification and employment measures) serve the (re-) integration of disabled persons (adolescents) in the free labour market.

350. Integrative operations are a further opportunity for the (re-) integration of disabled (young) persons in the working life. Work in integrative operations means an opportunity for the disabled to improve their working capacity in order to find work in the general labour market (again). If this is not possible, integrative operations offer permanent jobs. If it is impossible to integrate a disabled person in the general labour market or integrative operations, the available skills are maintained and developed as far as possible in day-care centres and institutions with accommodation facilities by means of occupational therapy. Work assistants employed by

private associations for the disabled look after disabled adolescents in the search for and maintenance of jobs and try to solve any problems as may arise on the job through communication with the family, the employer and the authorities.

83 The Land of Vorarlberg – An Example of Policies for the Disabled

351. Disabled minors have access to the entire range of assistance offered under the Vorarlberg Act on Disabled Persons: the objective of integration assistance is their full or partial integration in gainful employment by empowering disabled persons to have a normal place in the community within their possibilities (to live in human dignity). The Vorarlberg Rehabilitation Programme defines rehabilitation as a "progressive coordinated process aiming at the best possible participation of disabled persons in community life", i.e. disabled persons are to be helped to attain the highest possible degree of physic, mental, social, vocational or economic capacity. The guidelines for reaching the objectives of integration assistance are as follows: early identification and treatment, leaving the disabled person in the family, taking into account the rights of parents and codetermination as well as optimal rehabilitation. The options available for rehabilitation depend on the disabled person's capabilities and reasonable as well as possible rehabilitation objectives: the integration measure to be chosen in the individual case should be such that the best possible success can be expected with the lowest possible expenditure and the lowest possible degree of intervention in the life environment of the disabled person. Measures under integration assistance include medical rehabilitation (e.g. treatment, medical assistance, medication and curative aids, treatment in institutions and homes, prostheses and other aids, financial assistance), occupational empowerment (appropriate schooling, vocational training, retraining and additional training, try-out jobs) as well as social integration and adaptation (help to find a job, a job in a protected workshop or a so-called "protected job"), counselling and care for the disabled person and his/he family as well as allowances.

352. A "protected job" is defined as a job where a disabled person unable to compete successfully in the regular labour market receives adequate pay in keeping with his/her reduced working capacity as well as necessary personal care (Vorarlberg currently has 625 protected jobs).

353. The early identification of disabled children is an important goal of policies for the disabled in Vorarlberg. Thus it is possible to offer early support or treatment quickly and without bureaucratic obstacles. The capabilities of minors can be brought to fruition in an optimal way and the effects of a disability can be identified at an early stage. A comprehensive programme was developed in cooperation with institutions of non-governmental welfare, especially the Working Group for Preventive Health Care and Social Medicine. It includes the following elements: capturing details of disabled children in the course of Mother-Child Pass examinations, the issuance of a rehabilitation certificate (doctors in private surgeries outside institutions can use these to arrange for appropriate check-ups and treatment), counselling days for special pedagogies and child psychiatry, mobile rehabilitation services, early psychological services, early special education, integration kindergartens, integration in regular schools etc.

84 Integration in Kindergarten and Regular Schools

354. In the school year 1998/99 a total 77 with special needs requiring support were looked after in 43 integrated kindergarten groups in Vorarlberg, which aimed at fully integrating the children after a preparatory stage without requiring a change of group or contact person. Out of

36 special kindergarten teachers 14 were available for integrated groups. Mobile special kindergarten teachers of the Working Party for Preventive Health Care and Social Medicine are a tried and tested means to counsel and support kindergarten groups, kindergarten teachers who do not have special training, parents and kindergarten operators. In 1998 a position for a special kindergarten teacher was created in the Office of the Vorarlberg provincial government; this person counsels and supports the Kindergarten Inspectorate in matters of integration. Kindergarten teachers are also offered related training which is very much sought after.

355. The system of special pedagogical support in the Vorarlberg school system consists of two dovetailed structures: special schools structured according to the type of support required and a system of joint education in general compulsory schools that is highly variegated in terms of organizational forms and offers a widened range of educational services. A total of 267 teachers instruct 910 pupils at 20 special schools with 131 classes.

356. Apart from the general special schools, the following additional schools exist: the Private Primary School for Deaf and Hearing-Impaired Children in Dornbirn, the Provincial Special School for Physically Disabled Children in Mäder, The Provincial Special Education School Jagdberg in Schlins, the Carina School and Curative Institution in Feldkirch and the Provincial Special School Jupident in Schlins. Children and adolescents are assisted by the following types of qualified special educators: special school teachers, speech therapists, mobile teachers for children and adolescents with impaired vision, mobile teachers for children and adolescents with impaired hearing, counselling teachers, teachers at curative institutions, teachers for basal support, co-teachers or support teachers as well as teachers for specific learning assistance.

357. The efforts to promote the social inclusion of children with disabilities which the Committee took note of in item 22 of its Concluding Observations have thus been successfully continued in keeping with Article 23 of the Convention during the period under review.

85 The Problem of Sterilising Mentally Disabled Children

358. The problem that the forced sterilization of mentally disabled children is legal with parental consent was addressed by the Committee in item 17 of its Concluding Observations/Comments. This has now been changed as medical measures causing permanent inability of reproduction (§ 146d ABGB) were generally prohibited in the Parent and Child Amendment Act of 2001 (Federal Law Gazette I no. 135/2000). Since "sterilization" is expressly prohibited, neither the child itself (even if he/she is capable of understanding and judging the matter) nor the parents or other persons legally responsible for them can consent to measures causing the permanent inability of reproduction. To ensure that the unwanted pregnancies of mentally disabled children are avoided to the greatest possible extent, organizations for the disabled (such as "Lebenshilfe" which acts nationwide) offer appropriate care and counselling on birth control.

86 Workshops for the Parents of Mentally Disabled Children

359. Since November 2000 a nationwide initiative for disabled and non-disabled persons living side by side has offered workshops to support and the parents of disabled children, help them develop personally and expand their skills so as to improve the quality and quantity of

integrative measures. Parents of disabled children are given various opportunities to take care of their personal needs and to engage with principles of inclusive education. "Experienced" parents of disabled persons and experts in matters of integrated education, law and therapeutic programmes offer a wide and variegated range of qualified services enabling people to discover their own capabilities and to identify resources for self-determined life. By working together and reflecting on problems in a group of parents with largely the same concerns, coping with emotional strains and feelings of guilt becomes easier. Parents learn to identify the problems surrounding a disability in their societal context, not as individual difficulties.

Health and Health Services (Art 24)

87 Reducing the Rate of Infant Mortality

360. The measures which the State Parties are called upon to implement in Art 24, para. 2 have been translated into reality in a number of programmes in Austria. They have contributed to reducing the rate of infant mortality (during the first year) from 16.8 per mil in 1977 to 9.8 per mil in 1987 and 4.7 per mil in 1997. Since then, the rate has been below 5 per mil with some regional differences. In 2000, 378 children in Austria were stillborn (4.2 per mil) the rate of perinatal deaths (the sum total of stillborn children and those who die during the first week after birth) was 6.7 per mil. These values are considerably below EU averages.

361. Health care for children is based on the conviction that potential health hazardous for an unborn child, an infant or a toddler have to be diagnosed and treated at an early stage (early encouragement). The so-called Mother-Child Pass programme was created to make sure that the free medical check-ups for pregnant women and children up to the age of 5 are actually used.

88 The Mother-Child Pass Check-up Programme

362. The Mother-Child Pass Programme comprises five check-ups for the expectant mother, including two series of laboratory blood tests and an internal check, as well as the following check-ups for children: five check-ups including examinations by an orthopaedist, an otolaryngologist and an ophthalmologist during the first year and further check-ups at the end of the second, third and fourth year. Two ultrasonic examinations of the pregnant woman, two ultrasonic examinations of the child's hips and another examination by and ophthalmologist when the child turns two are also included.

363. The examinations are carried out free of charge by registered doctors and child-welfare centres, costs are borne by the federal state (two thirds are paid out of the Family Burden Equalization Fund) and the social insurance carriers (one third).

364. Financial incentives are offered to ensure that parents use these services even without any obvious reason. If all the check-ups of the expectant mother and child listed in the Mother-Child Pass were done, the parent who was the primary care provider for a child born between 31 December 1996 and 31 December 2001 is entitled to a bonus of € 145.35. The parent must be domiciled in Austria and the child must be staying in Austria permanently. The child or one of the parents living in the same household must be an Austrian national or one of the parents must have lived in Austria for three years prior to the first birthday of the child. The taxable family income must not exceed a certain limit in the year after the child is born. Special provisions

apply to EU/EEA nationals. Since 1 January 2002 the bonus has been replaced by the child-care benefit which is linked with the examinations under the Mother-Child Pass programme.

365. The Mother-Child Pass examination programme ensures intensive health care for expectant mothers and children up to the age of five. Moreover, an extensive range of information on infant care and nursing, infant care classes, parent classes and child-welfare centres is offered in the Länder and municipalities.

89 Preventive Health Care by Vaccination Strategies

366. The Ministry of Health has prepared a vaccination schedule targeted at all children from their birth to the end of compulsory education. These include all the vaccinations generally recommended for children by the Supreme Medical Officer: diphtheria, tetanus, pertussis, haemophilus influenzae b, poliomyelitis, measles, mumps, rubella and hepatitis B.

367. The implementation of the vaccination schedule began in 1998. Since then, vaccinations for children can be obtained free of charge. The costs of sera are borne by the federal state (two thirds) and the social insurance carriers (one third), the costs of administering the vaccinations are borne by the Länder.

368. Since 2001 infants above three months can be vaccinated with a combination serum that covers diphtheria, tetanus, pertussis, haemophilus influenzae b, hepatitis B and poliomyelitis.

369. The vaccination schedule presented below (Status: Dec. 2001) is regularly revised and adapted to the latest scientific findings:

| | 1 st year | | | 2 nd year | | Childhood | | | Adol./Adult |
|-------------------------|----------------------|-------------------|-------------------|----------------------|--------------------------|----------------------|-----------------------|--------------------------|---------------------|
| | 3 rd m | 4 th m | 5 th m | 2 nd year | after 14 th m | 7 th year | 13 th year | 14/15 th year | over 15 years |
| Hepatitis B | 1.HBV | (2.HBV) | 3.HBV | 4.HBV | | | HBV | | HBV |
| Diphtheria, p | 1.DtaP | 2.DtaP | 3.DTaP | 4.DTaP | | dT | | DT | DT: every 10 years |
| H.infl H.influenza B | 1.HIB | (2.HIB) | 3.HIB | 4.HIB | | | | | |
| Poliomyelitis | 1.IPV | 2.IPV | 3.IPV | 4.IPV | | IPV | | IPV | IPV: every 10 years |
| Measles, mumps, rubella | | | | | 1.MMR | 2.MMR | rubella (MMR) | | |

370. One examination by the school physician per school year is mandatory for each pupil of school age, additional check-ups by the school physician may be carried out with the pupil's consent. The health insurances invite apprentices to take part in voluntary youth check-ups free of charge.

371. The task of school physicians is to counsel pupils in health-related matters in the school and instruction context and to carry out the requisite examinations. The related law also provides for the mandatory check-up once a year. In all matters concerning the pupils' state of health and health education, school physicians have an advisory function.

372. A basic decree on "Health Education" takes the promotion of health at schools into account. It focuses on measures in the following fields: nutrition, exercise, smoking, drugs, AIDS and increasingly, psycho-social health. Apart from medical care, Children's AIDS Assistance ("Kinder-Aidshilfe"), a non-profit organisation caring for children concerned by HIV, offers information and supports HIV-positive children, their parents and relatives, e.g. by intervening when problems arise about admission to kindergarten or school. Children with AIDS are admitted to schools without restriction. Many hospitals which provide in-patient treatment to children over prolonged periods have started up school operations.

373. Austria participates in the European Network of Healthy Schools, a joint project of the World Health Organization, the European Union and the Council of Europe, as well as in the international WHO survey "Health attitudes of schoolchildren aged 11, 13 and 15". The network "Healthy Schools" seeks to support the personal competencies of pupils in terms of health awareness but also wishes to address the issue of teachers' health. Projects are carried out by team that includes representatives of the entire school community (teachers, parents, pupils).

374. Under the Health Promotion Act (Gesundheitsförderungsgesetz) adopted in 1998 the Fund Healthy Austria (Fonds Gesundes Österreich) was founded; in 2000 and 2001 the fund's projects focused on children and adolescents.

375. Due to the fact that 12% of children and adolescents in Austria suffer from obesity, The Vienna University Clinic for Paediatrics created an out-patients department for disorders of the fatty metabolism, nutrition matters and overweight counselling. Since 2000 50 strongly overweight "11th Congress on Obesity" was held in Vienna, dealing inter alia with the main causes of obesity (fast food, sweets, lack of exercise).

376. The Länder also engage in important programmes and activities that give clear preference to aspects of prevention. Activities in the province of Vorarlberg serve as an illustration: health promotion has become an important pillar in medical and social care. About 30 years ago, the Working Group for Preventive Health Care and Social Medicine (AKS) was founded and preventive health care programmes were launched in cooperation with the Land, the social insurance and the municipalities. By now the AKS has run about 30 preventive health care programmes with affiliated risk-group programmes (e.g. caries prevention, vaccination programmes, early recognition of metabolic disorders, cardiac and circulatory diseases and cancer in adults, a screening programme to counter crib death, the Vorarlberg Cancer Register. "No Smoking", the nutrition coordinating body etc.) as well as numerous projects in kindergartens and schools. The health promotion scheme linked up with the scientific

programmes of the WHO under a contract concluded with the World Health Organization and was thus placed on a broader foundation. Initiatives in primary preventive health care in a local context which citizens themselves are active in, e.g. parent counselling, "Healthy Habitats", school and health districts etc. are of great importance, various out-of-school youth associations also contribute greatly to primary prevention (youth centres, youth meeting points, youth organizations), as do sport clubs. Fostering the family as a significant support in health and social contexts is also specially important in active health promotion. The "SUPRO" drug prevention workshop provides primary and secondary prevention for special target groups under the Vorarlberg Drug Concept of 1991. The "Healthy Vorarlberg" fund was created by the regional health insurance and the Land for health promotion and preventive care. In past 5 years the Land as well as the municipalities have cooperated with various social insurance carriers and other institutions in carrying through the "Safe Municipalities" project (accident prevention in the home, in sport and leisure time) in the entire province. The "Health Promotion Platform" captures data about all these services, helping them to network and evaluating them. The "Umbrella Network Project" in the border region of Vorarlberg and the Swiss canton St. Gallen serves to keep track of and treat sexually communicable diseases among prostitutes. The Vorarlberg "AIDS Assistance" organization receives funding for its work.

91 The "Baby-Friendly Hospital" Initiative

377. The Austrian UNICEF Committee launched the "Baby-Friendly Hospital" initiative which is supported by a network of professional associations and public bodies (including the Supreme Medical Officer, the Austrian Medical Society, the Family Ministry, The Austrian Society for Gynaecology and Obstetrics, the Austrian Paediatric Society, the Austrian Professional Organization of Midwives, La Leche League Austria, the Professional Association of Graduated Social Workers). So far eleven hospitals have been awarded the UNICEF/WHO certificate for "Baby-Friendly Hospitals": Oberndorf hospital; Amstetten hospital; Linz General Hospital; Korneuburg hospital; St. Leonhard sanitarium, Graz; Hohenems hospital; Tulln regional hospital; Bludenz hospital; Nussdorf birth clinic, Vienna Semmelweis Obstetric Clinic, Vienna; Wiener Neustadt hospital. The Austrian Federal Health Institute (Österreichisches Bundesinstitut für Gesundheitswesen, ÖBIG) was commissioned by the Ministry of Health to prepare a survey on breast-feeding frequency and duration in Austria in August 1997. The survey aimed at current data about breast-feeding behaviour in Austria.

378. The regulation of the Federal Ministry of Health on "Infant formula and follow-on formula" which took effect on 9 August 1995 (Federal Law Gazette no. 531/1995) inter alia stipulates compositions and ingredients for healthy infants and toddlers up to the age of 3 while expressly pointing out that information about these products should not keep mothers from breast-feeding. All the products must contain an indication that breast-feeding is the superior method. Producers and traders of infant formulae are prohibited from handing out, directly or indirectly, via institutions or persons working in health care any infant formula, samples or similar promotional items free of charge or at reduced prices. Moreover, advertising materials must not contain pictures idealizing the use of infant formula.

379. The Act on the in vitro Fertilization Fund (In-vitro-Fertilizations-Fonds-Gesetz, 1999) established a public fund which bears the costs of 70% of treatment and medication for four attempts at in vitro fertilization per pregnancy sought if the requirements for entitlement are met. This measure is based on the fact that the United Nations/WHO consider the wish to have a child as a fundamental right and define infertility as a disease. Another reason was that about 30,000 couples in Austria would like to have children but are biologically unable to. As more costly methods of reproductive medicine are unaffordable for some, the IVF Fund is to help couples in this respect.

93 Sex Education

380. In the cooperative sex education model "Love Talks" which is funded by the Family and Education Ministries parents, teachers and pupils in higher grades in secondary education get together; talking about various topics, they get to know each other's point of view and jointly plan sex education projects in school (e.g. workshops on sex education, excursions to a gynaecologist's surgery, an obstetrics ward etc., sex education books for primary schools). The project "Love Talks" is also implemented in the lower grades of secondary education (secondary academic schools and secondary modern schools) as well as in primary schools and kindergartens but the children and adolescents there are not involved in the preparatory workshops. The "Love Talks" model has been a part of in-house further training since 1999 (Schulinterne Fortbildung, SCHILF). Moreover, teaching materials for sex education have been developed, such as the media package "Don't talk about the stork" (for sex education in primary school), the information package "No chance to AIDS" and "AIDS Information for Use in Schools" or the brochure "Balloons in your body". Sex education is a fundamental principle followed by the Austrian school system. A continued professional development programme for teachers instructs them on how to use teaching materials for sex education.

94 Preventive Measures against Sexually Communicable Diseases

381. Even though the international survey on youth sexuality and AIDS reveals relatively low concerns about AIDS among young people living in Austria, AIDS is still an important issue which they engage with: in 1994 82% of polled adolescents engaged with AIDS whereas 18% did not deal with the issue at all (cf. Wimmer-Puchinger 1994), in 1998 98% of respondents aged 16.8 years on average perceived AIDS as a "serious problem" (cf. AIDS Youth Survey, Fink/Wimmer-Puchinger 1998).

382. The "AIDS Youth Survey 1997" was the basis prompting the Ministry of Health to cooperate with the AIDS Assistance organizations in Austria to launch a campaign informing young people how to protect themselves from HIV/AIDS and other sexually communicable diseases. The campaign was carried out using cinema commercials, comic strips, posters and brochures. Apart from counselling and (psycho-social) care, preventive work also focuses on certain young target groups.

95 Measures to Prevent Smoking

383. In the framework of an EU project, teaching materials on the prevention of smoking for pupils of level of education 1 to 8 in schools based on the WHO approach "life skills education"

(self-perception, coping with stress, communication, steadfastness, problem-solving were developed and tested in Austria, Germany, Denmark and Luxemburg. Materials for the levels 1 to 4 have already been published. The Ministry of Education tested the materials "Fit and Strong for Life" ("FIT und Stark fürs Leben") in cooperation with the University of Salzburg in 18 pilot schools in the school years 1997/98.

384. The school year 1998/1999 saw the competition "Be Smart – Don't start" which was organized by the Austrian Cancer Assistance association in cooperation with the Ministry of Education; it was aimed at pupils of level 7 and 8 and sought to keep non-smoking pupils from smoking at a young age already or if possible, at all, and to reduce cigarette consumption in those pupils who have already made their first experience to keep them from becoming regular smokers, or helping them to quit. Due to the huge success – 560 schools participated in the competition – it was extended to younger pupils and continued.

96 Alcohol

385. Apart from awareness-raising measures about the problems brought on by alcohol by using information material (brochures, films and teaching aids), specially endangered groups are being addressed by works doctors and in schools to guide them towards the existing network of counselling and care institutions as early as possible. The survey "Consumption of alcohol and psycho-active substances in Austria, considering problematic patterns of use" done by the Ludwig Boltzmann Institute for Addiction Research revealed that 6% of adolescents in the age group 16-19 consume alcohol on a regular basis. The representative survey of 93/94 (the basis for the manual on alcohol in Austria) showed that roughly one third of 16 to 17-year old respondents drank alcohol regularly – which means once a week – while the rate was 49% among 18 to 20-year old respondents.

| Alcohol consumption | daily | sev. times/week | once/week | less than that | never |
|------------------------|-------|-----------------|-----------|----------------|-------|
| Adolescents' responses | 1% | 6% | 31% | 25% | 37% |

Modelled on the WHO European Conference of Ministers "Youth and Alcohol" held in Stockholm from 19 to 21 February 2001 and in keeping with the declaration "Youth and Alcohol" prepared there, the Youth Ministry is preparing measures and proposals for preventive measures. The first step was the experts' meeting "Youth and Alcohol" on 23 November 2001 which was held in cooperation with the Alcohol Coordination and Information Office (Alkohol Koordinations- und Informations Stelle, AKIS) at the Anton-Proksch Institute (API) and the Ludwig Boltzmann Institute for Addiction Research (LBI Sucht).

97 Suicide

386. The Ministry of Health commissioned the preparation of a "Manual for Suicide Prevention" which contains a list of all related institutions in Austria and a survey of suicide prevention in practice and research, including the specific target groups of children and adolescents. Suicides among children are extremely rare in Austria. In 1996 5 children under 15

years of age committed suicide, no more than a total of 2 cases involving children under 10 are known from the past 20 years. The critical stage of suicidal thoughts start at the age of 14.

387. A problematic issue discovered last year are suicide fora on the Internet where young people exchange experiences and suicidal thoughts. As these are closed user groups the members exert mounting pressure on each others, urging them to commit suicide. Due to the sect-like character of these fora and due to inquiries of concerned parents with offices counselling in matters of sect membership, the Federal Office for Sects has created an inter-ministerial and inter-disciplinary working group. Practical measures can be expected in 2002.

98 Child Safety in Road Traffic

388. According to current figures on accident on the way to school there were 592 such accidents in 1999, with 2 pupils being killed and 653 children and adolescents between 6 and 15 years of age being injured (Accidents on the Way to School 1990 - 1999 see Annex A, Tab. 26). A comparison with 1998 reveals an increase of almost 20% which, however, must not be interpreted as a continuous trend of the past 10 years.

389. Special protection gear for children is legally required in cars. Children must have seats and safety belts appropriate for their age, height and weight. Moreover, the use of safety belts is generally compulsory in Austria.

390. According to the Austrian Transport Association VCÖ half of all 6 to 14-year old children travel to school on buses and trains, 25% walk and 10% cycle. Roughly 15% are driving to school by car, this tendency is rising. The first initiative of the VCÖ and Mobilkom Austria for more safety on the way to school is the competition "School mobilizes" which is carried out with the support of the Ministry of Transport.

391. An important step in accident prevention was taken when blood alcohol level for motor vehicle drivers was lowered to 0.5 per mil on 6 January 1998. During the trial period, the blood alcohol level of drivers must not be above 0.1 per mil.

99 Child Safety on Playgrounds

392. To inform those in charge of operating and maintaining playgrounds about safety regulations and about planning, maintaining and repairing playgrounds and equipment, the Ministry of Education has cooperated with the Ministry of Youth and the institute "Living Safely" and published the brochure "Playing? Sure, and Safely!"

100 Child Safety at Home

393. To prevent accidents and to prepare parents for the early stages in their children's lives, the Family Minister and the institute "Living Safely" launched a large-scale information campaign entitled "Growing Up Safely" in the autumn of 1997. Young parents are informed about safety equipment such as window locks, protective grids for stoves, smoke detectors and medicine cabinets. The information brochure of the same title is available in German, Serbian, Croatian and Turkish.

Traditional Practices Prejudicial to the Health of Children (Art 24 para. 3)

394. Even though (female) genital mutilation would be subsumed under the facts constituting the offence of qualified bodily injury, it has expressly been clarified – in keeping with a resolution of the Austrian National Council that (female) genital mutilation is outlawed notwithstanding any consent of the person concerned. Thus all the (injuring) practices summed up under the notion "female genital mutilation" is punishable and any consent given by the person concerned will not be taken into consideration. The relevant amendment to the Penal Code (§ 90 governing consent to bodily injury) came into force on 1 January 2002 (Act on the Amendment of the Penal Code 2001, Federal Law Gazette I no. 130/2001).

Social Security (Art 26)

395. Austria is a signatory to Convention no. 102 of the International Labor Organization on Minimum Standards of Social Security (Federal Law Gazette no. 33/1970) and the comprehensive Austrian social security system under which roughly 99% of the Austrian population either have full health insurance coverage or are insured with a family member free of charge conforms with these standards. Children as the dependants of insured persons have full health insurance coverage. If the mother/father has health insurance coverage (as a self-employed or employed worker, under unemployment insurance or under a statutory pension insurance), the children (legitimate, legitimized, foster children, as well as the illegitimate children of an insured female and the illegitimate children of an insured male, provided that parentage has been ascertained) have health insurance coverage without additional contributions having to be paid until they are 18. Such coverage can be extended until the age of 27 if they receive vocational training or are enrolled in full-time education. If children live in the household of grandparents, they may be insured with them. The recipients of social welfare benefits and their children enjoy fee health insurance coverage. For orphans, health insurance is granted within the framework of the orphan's pension. Children who cannot earn their own income due to illness or disability, i.e. are unable to work, remain insured with their parent for an unlimited time.

396. If none of the above cases of mandatory insurance coverage applies, there is a possibility of voluntary insurance under the Health Insurance Scheme on payment of appropriate contributions (2001: between € 35.58 and € 254.99/month). Children entitled to benefits under statutory health insurance may obtain medical care from a general practitioner or specialist as well as in-patient treatment at a hospital, home care, medication, curative aids and the like, with the health insurance bearing the costs.

397. School-children and students are insured against the consequences of accidents in connection with school or university education (e.g. on the way to school, on school or university premises, at school events or when acting as a crossing guard) under a pupil and student accident insurance scheme. This insurance scheme covers the costs of medical treatment, medicine, curative aids, medical rehabilitation and therapeutic aids (such as crutches, wheel chairs, etc.) If the working capacity of the child is reduced by at least 20% as the result of such an accident and the condition lasts longer than three months after the accident, the child is entitled to a one-time payment of a "disability benefit". Disability benefits are staggered in fixed amounts according to the age of the insured and the degree to which working capacity is

reduced. If, at the prospective end of schooling, working capacity is still reduced by at least 50%, a "disability pension" will be granted continuously.

398. On the death of one or both parents, the claim to maintenance is replaced by a social insurance benefit. If the death of one or both parents was caused by a work-related accident or occupational disease, the child is entitled to an orphan's allowance, or an orphan's pension if the insured parent had been insured for a specified minimum period. Although the monthly payment cannot make up for the child's pain and sorrow over the loss of the parent, the insurance does compensation for the maintenance payments by the deceased parent. The orphan's pension for children who have lost one parent amounts to 24%, and for children who have lost both parents to 36% of the pension that would be due to the deceased.

399. Apprentices and (young) employees must be insured under the statutory health, accident and pension insurance scheme, including unemployment insurance if they earn more than a specified minimum income. During the first two years of an apprenticeship, the insured person does not have to pay a contribution, and during the first three years, employers do not have to pay contributions towards statutory health insurance.

400. As for the criticism voiced in item 15 of the Committee's Concluding Observations/Comments that Austrian laws and regulations do not provide a legal minimum age for medical counselling and treatment without parental consent, the following is to be borne in mind: When children obtain medical care for the account of the statutory health insurance, the status of being a relative of an insured person does not give rise to an independent entitlement to social security benefits (the only exception being the persons whose insurance is governed by the health and accident insurance for public servants). Much rather, their entitlement to care or benefits is derived from the entitlement of the insured person and must in fact be claimed on their behalf by the insured person. This structure may be deemed to be a consequence of the obligation of the insured person take care of his/her relatives, which is to a certain extent taken over (financially) by the health insurance. For this reason, the insured person must ensure that the relative who may enjoy benefits under his/her insurance coverage has a health insurance voucher for submission to the doctor (see chapter 4.5).

The Extension of Child-Care Services and Facilities (Art 18)

401. In item 23 of its Concluding Observations the Committee expressed its concern that in spite of the provision of additional resources, the number of places available in services such as kindergartens and pre-school facilities appeared to be inadequate. In the light of Art 18 para. 3 the Committee recommended to Austria to take all appropriate measures to increase the number of places in kindergartens and pre-school facilities, such as day care.

402. Financing and setting up childcare facilities are a responsibility of the Länder and municipalities. Priorities vary from Land to Land because of different regional situations and policy objectives. Focuses range from an extension of the number of facilities to prolonging opening hours and from extended traditional forms of care to increased support to day-care mothers, children's group etc. To improve the range of services available in regions which have lacked a sufficient number of facilities so far and for age groups where there has been a lack, the federal government embarked on two programmes co-financed with the Länder and municipalities.

403. Between 1997 and 2000 the federal government made an additional € 87.2 million available to the Länder to support them in the extension of child-care facilities. As the Länder and municipalities had to at least double the amount, a minimum additional investment of € 174.4 million was made in this field. The federal funds were allocated by a commission composed from the Minister of Social Affairs, the Minister of Finance and representatives of the Land concerned as well as Association of Cities and Municipalities. The focus was to be on additional places for children under the age of 3, school children, works child-care facilities and projects bringing together several municipalities. In total 32,188 additional places in childcare were created for all age groups. Out of these 11,135 offer care for children under 3 and school children or works childcare. Moreover, measures to extend the opening hours in the afternoon and during vacations, as well as projects for the integration of disabled children were implemented. Financial support for the training and professional development of day-care mothers/fathers has greatly boosted the quantity and quality of services available. In Vienna, Lower Austria, Upper Austria, Salzburg, Tyrol, Vorarlberg and Burgenland 26 companies used federal funding to create child-care facilities of their employees.

404. The right to a kindergarten place for every child of working parents is not currently laid down in the kindergarten laws of the Länder. However, by developing the kindergarten system, it is being attempted to provide as many kindergarten places as possible within the framework of the limited means available for this purpose. Child-care facilities such as kindergartens, day centres and day nurseries are primarily provided at the local level by individual municipalities or groups of municipalities. In addition, child-care services may be offered and provided by suitable private individuals or legally recognized churches or religious communities. Public child-care services – which are set up in response to demand – are open to everyone; private facilities will only receive public support if they are also open to everyone. Various kindergarten and day centre laws, such as the Upper Austrian kindergarten and day centre law, take the right of mentally or physically disabled children to integrated special care and support into account.

405. According to official Austrian statistics the number of day nursery places increased by 104% from 1980 to 1999, the number of kindergarten places rose by 36% and the number of day centre places rose by 40%. In 1999 264,000 children attended a day nursery, kindergarten or day centre; this corresponds to 5% of children aged 1 and 2, 77% of children from the age of 3 to the beginning of compulsory school and 5% of school children up to the age of 14. No figures for all of Austria are available for the number of places in other child-care facilities (day-care mothers, private children's groups, all-day schools etc.) The greatest need for care exists for children under 3 and school children who need afternoon care. The quantitative need for kindergarten places has largely been covered. Opening hours may still pose problems (vacations, daily opening hours).

406. According to the ÖSTAT survey about the year 1999/00 Austria had 548-day nurseries (288 public day nurseries), 4,773 kindergarten (3,438 public kindergartens) and 771-day centres (468 public centres). (Number of kindergartens/Number of children in child-care see Annex A, Tab. 21-24.) "Public" institutions are operated by the federal state, a Land, city or municipality whereas "private" facilities are run by businesses, associations, religious communities, private individuals or others.

407. The care of infants (1 ½ to 3 years of age) in day nurseries has little tradition. They are hardly made use of in Austria, which is on the one hand due to the small number of such facilities and on the other to the generous maternity leave for mothers and fathers with small children. They avail themselves of two and a half years of fully paid maternity leave or four partially paid years for looking after an infant. In 1995 only 5.6% of children under three and 66% of children between 3 and 6 years of age were in the care of institutions such as day nurseries or kindergartens. These services are concentrated in the larger cities, about two thirds of places are offered in Vienna.

408. In the scheduling of opening hours and holidays of child-care services there is a lack of consideration for working parents' needs. There are strong regional variations in opening hours: In the year 1999/00 almost all day nurseries were open all day without interruption; out of 548 (public and private) day nurseries 517 are open all day, the remaining 7 close at noon. Out of 4,773 kindergartens 2,560 (about 60%) are open all day, in the capital Vienna this goes for 95% of kindergartens. A further 988 kindergartens take care of children for half of the day and 646 are closed before lunch; the remaining 95 are only open during certain seasons. In the province of Styria 21% of kindergartens are open all day, in Tyrol the percentage is as low as 8% and in Vorarlberg 7%. A mere 24 out of a total of 4,773 kindergartens throughout Austria offer care on Saturdays and Sundays. In Lower Austria, there is no kindergarten offering weekend care, in Burgenland, Carinthia, Upper Austria and Salzburg there is one each.

409. To use Tyrol as an example – kindergartens remain open for longer hours in the morning. However, due to the fact that the population structure is largely rural, there is not much need for all-day facilities where children can also have lunch. Even in larger conurbations where all-day care is offered, the proportion of children who stay for lunch is negligibly small. Opening hours, and the issue of all-day care have to be determined in a mandatory assembly of the parents. All newly built, converted or extended facilities of the past few years have taken requirements for all-day care (kitchen, spaces for naps) into account. In the kindergarten year 1999/2000 11% of kindergartens in Tyrol offered all day care including lunch. Tyrol's family policy goal of equitably optimizing services in accordance with demand and potential utilization seems to have largely been implemented.

410. Since the number of single parents and "core families" without grandparents or close relatives to help out in emergencies is increasing, the demand for family assistants is constantly rising. Family assistants help out in unexpected emergencies and exceptional circumstances, for example helping the mother after the birth of a child by supervising the older children or doing the household chores when the mother is ill. An alternative to institutional care that is very much preferred, particularly in rural areas, is the "day-care mother". She usually looks after one or several children from infancy upwards, either all-day or half-day in her own home. This form of day care is offered on the private initiative of individuals or organizations. There are also individual cases of "self-organized children's groups" which are a hybrid of kindergarten and day-care mother. Such groups consist of a small number of children and are characterized by particularly strong involvement of the parents who (may) exert significant influence on the daily activities and pedagogical principles of the group.

411. According to the parents' statements, long closing times during vacation and unfavourable opening hours are reasons why child-care facilities are not used. Attendance also strongly depends on the age of the child: prior to the age of 1 hardly any external care is utilised,

but during the second year 3% of parents avail themselves of external care: The percentage rises to 12% in the third and 49% in the fourth year, 63% in the fifth year and 90% in the sixth year. Half-day care places are eventually needed much more urgently than full-day places, and the degree of utilization is also higher (ÖSTAT: Micro census special programme 1995).

412. According to the micro census special programme of September 1995 only 15.1 % (43,200 children) of school-children aged 7-10 are looked after in an institution at least once a week (apart from compulsory school attendance), i.e. mainly in all-day schools (36%) and day centres (35.2%) but also other institutions (16.3 %) and day homes (12.5 %). In the age group 10-15 the percentage of children looked after by an institution is 15.5 % (73,600) and the total is broken down as follows: 44.7% in all-day schools and 27.2% in other institutions, 18.6% in day homes and 9.5% in day centres (other institutions comprise e.g. boarding schools or private initiatives). Differences between regions or urban/rural areas are considerable. If one looks at the age group 6 to under 15, 29.6% of these children are looked after by an institution in Vienna whereas the percentage in Styria is as low as 8.6% and only 9.5% in Salzburg. In Burgenland hardly any children in this age group are looked after in day centres while other institutions and day homes are more important. The situation is similar in Vorarlberg; the percentage of children in care institutions after school is also below average. All-day schools have the relatively lowest significance in Salzburg and the relatively highest significance in Upper Austria (almost half of all children looked after) as well as Vienna (with the percentage of children being looked after in general being above average in both regions).

413. As from 1993 area-wide afternoon care for pupils in general compulsory education (special schools, primary schools, secondary modern schools and polytechnic schools) as well as the first four grades of secondary academic schools has been offered in all-day schools. In addition to regular instruction, a period of care consisting of subject-related studying time, individual studying time and leisure time is offered. To run an all-day school, human resources and space must be available and the school forum or the school community committee must be involved in the decision-making process. Subject-related supervision times require the presence of a teacher whereas teachers or educators may run the remaining part of afternoon care. Parents must pay graded contributions depending on the family income, consisting of the costs of meals and supervision.

414. The federal state grants subsidies to afternoon care by funding five teaching hours per week and class/group, as well as operating expenses for secondary academic schools as it operates these schools.

415. In September 2002 a micro census special programme carried out on behalf of the Family Ministry will check these services for correspondence with the actual needs of parents. The inquiry is to provide a well-founded basis for any revisions of the range of services as might be required due to demand.

101 Examples of the Extension of Child-Care Facilities

416. Legislation and execution in matters of kindergartens is a responsibility of the Länder: in Styria a new child-care law came into force on 1 September 2000. The new law covers all the

various forms of childcare, i.e. day nurseries, kindergartens, day centres, children's houses and day-care mother. Moreover, it also comprises care for those less than 3 years of age. At the initiative of the Styrian Children and Adolescents Ombudsman an expert committee on the issue "qualitative aspects in child care" with special consideration to the needs of children in the context of preventing violence" was created within the Youth Welfare Advisory Council.

417. In the Land of Salzburg the number of services in childcare has been greatly extended in the past 10 years. The tendency is especially strong in rural communities, with crèches (1993/94: 177; 1999: 507 places) and children's groups of mixed ages (1993/94: 76; 1999: 983 places).

418. The Burgenland has mainly implemented bilingual pre-school education in municipal kindergartens, while this facet is primarily up to private institutions of various ethnic groups in Carinthia and Vienna.

419. In the school year 1998/99, 573 kindergarten teachers, 36 special kindergarten teachers and 286 assistants looked after a total of 454 groups bringing together 9,722 children in 222 kindergartens in Vorarlberg alone. As for opening hours of kindergartens, the report for the beginning of the 1998/99 term came with a detailed inquiry about spatial prerequisites in Vorarlberg kindergartens. In this context, a total of 1,026 kindergarten places are designed in such a way that the children would also be able to stay for lunch but only 296 children actually avail themselves of the option.

420. In 1998 the Land of Vorarlberg paid a contribution of € 10,464,888, i.e. 47.5% of the entire personnel expenditure, to public and private kindergartens. Municipalities which were low on funds received € 1,380,784 from funds for special needs. For structural measures municipalities also received Länder funds amounting to € 959,281 and € 218,019 from funds for special needs. Contributions towards transport fares for kindergarten attendance (Kindergartenbesuch) amounted to € 72,673. Thus subsidies paid by the Land (not considering the large need for funding on the part of the municipalities and private institutions) was € 11,496,842 while allocations for special needs were € 1,598,802.

102 Child-Care Allowances by the Labour Market Service

421. By offering the child-care allowance the Labour Market Service has greatly contributed to help persons with children to take up work and find employment (15,565 cases of allowances paid in 2000). The allowance is a means-tested contribution towards care for the child. It is an instrument that was greatly extended in the past few years. In 2000 the Labour Market Service paid out € 8.4 million in allowances and additionally funded private child-care facilities (parents' initiatives, children's groups, day-care mothers/fathers, works kindergartens, private kindergartens etc.) with € 8.7 million.

Securing the Standard of Living (Art 27 paras. 1 - 3)

422. By international comparison Austria has an extensive and fairly effective system of family support. Between 1990 and 1996 family-related social benefits (under the EUROSTAT/ESSPROS System) rose by 55% while birth rates decreased slightly. They amount to 3.3% of GDP, compared with 2.1% in the EU-15.

423. In a comparison of family-related benefits carried out among all EU member states, the USA and Switzerland – involving grants and fiscal allowances pursuant to legislation in force in 1999 – Austria ranks second to Luxemburg only. (see also Chapter 8.7.1)

103 The Reform of Family-Related Benefits After a Constitutional Court Ruling

424. On the basis of a ruling by the Constitutional Court (1997) and in view of the fact that children are still more jeopardized by poverty, a comprehensive reform of family benefits was adopted and brought about significant improvements for families in the two stages of implementation (1999/2000): on the one hand, a family allowance graded according to the number of children was introduced, which took higher maintenance burdens caused by several children into account; on the other hand, the child-related tax allowance was raised and set at a uniform € 50.90 per month. The fact that family allowance is also graded according to the age of the child considers increasing maintenance expenditure for older children and thus conforms to civil-law principles. The child-care benefit introduced as from 1 January 2002 takes the burden off young families which are specially endangered to fall into the poverty trap because older employees usually earn more and one income has to be foregone when a child is born. The reform of family support comes with markedly higher direct transfer benefits per child for each family and specially assists families with several children, single parents and sole breadwinners, thus significantly reducing child poverty.

103.1 Maternity Benefits

425. Maternity benefits are paid to gainfully employed women during the period of protection starting eight weeks prior to delivery and ending eight (or twelve) weeks after delivery. When the period before the delivery is shortened (premature birth), the period is prolonged accordingly after delivery (maximum of 16 weeks).

426. Maternity benefits are calculated on the basis of the average income of the last three calendar months prior to the beginning of the period. Taxes and contributions withheld as well as the thirteenth and fourteenth annual salaries (holiday and Christmas pay) are taken into account in the calculation. Maternity benefits are also due if the women received unemployment benefits, maternity-leave pay or another benefits from the funds of unemployment insurance or if she had statutory insurance coverage without having to pay contributions during the last half year of a two-year maternity leave period.

104 Operating Assistance

427. During the period of protection self-employed women and women in farming are eligible for operating assistance of about € 22.3 per day which must be applied for with the Social Insurances for Trades and Crafts or for Farmers.

105 Child-Care Benefit

428. For children born as from 1 January 2002 maternity-leave pay is replaced by the child-care benefit. This benefit is paid to all mothers/fathers (adoptive and foster parents), regardless of whether they were gainfully employed prior to the birth or not. Thus housewives, students etc. are eligible for the benefit, provided that the child is eligible for family allowance and the person

lives in the same household as the child. If none of the two parents is eligible to receive family allowance for the child, the child-care benefit will only be paid if certain insured periods were obtained during previous gainful employment.

429. The child-care benefit amounts to € 14.53 per day (about € 436 per month) and is paid from the date of birth to the end of the 36th month at the most. If only one parent claims the child-care benefit, it will only be paid until the child reaches the 30th month.

430. The child-care benefit is suspended while maternity benefit is paid. However, if the actual maternity benefit is lower than the childcare benefit, the balance is due to the person entitled to the maternity benefit plus additional grant equals the child-care benefit.

431. The child-care benefit is always paid for one child only. If another child is born during the period of entitlement, the child-care benefit for the older child ceases to be paid and the benefit is paid for the newborn child. The benefit is due only once in cases of multiple births.

432. As from the 21st month of the child, the child-care benefit will be reduced by half (€ 7.27 per day) of the medical examinations during pregnancy or the five check-ups of the child foreseen in the Mother-Child-Pass Programme are not carried out, unless this is due to reasons outside the parents' control (e.g. adoption). Evidence for the check-ups must be furnished no later than 18th month of the child; if this deadline is not adhered to, the reduction of the benefit by half ensues.

433. An additional income up to a gross amount (i.e. before withholding of taxes and contributions) of € 14,600 per year is allowed while the child-care benefit is paid. This income limit refers to the parent who receives the child-care benefit. If the limit for additional income is exceeded, all the child-care benefit received during the respective calendar year must be repaid. Parents may also waive the parts of the child-care benefit; this must be notified in advance and must relate to a full calendar month.

434. While the child-care benefit is paid, parents may alternate twice in receiving it, with each period having to be at least three months long. In the event that the parent receiving the benefit is prevented from caring for the child due to unforeseen circumstances (death, serious illness, hospitalization), an exception can be made. The child-care benefit cannot be received by both parents at the same time, in doubt, the parent who is the primary caregiver will have priority.

435. Single parents and married couples (or life partners) with a low income may apply for an additional grant of € 6.06 per day to the child-care benefit. It is a kind of "loan" that has to be repaid if the income exceeds a certain level.

436. Persons receiving the child-care benefit also have health insurance coverage.

437. The child-care benefit and additional grant to the child-care benefit can only be obtained on request; related applications have to be submitted to the health insurance which the applicant is or lastly was insured with. If the application is filed with a delay, the benefit will be due retroactively, however, it will be limited to the period of the six months.

438. Appropriate transitional regulations were adopted for births between 1 July 2000 and 31 December 2001 so as to avoid that these children are less well off (see also Annex A, Tab. 38).

106 Parental Leave

439. Employees continue to be entitled to parental leave (i.e. release from work) until the 24th month of the child. Rules about part-time work remain unchanged: if neither the mother nor the father avails him/herself of the option of parental leave, part-time work (= a reduction of working hours by at least two fifths) up to the fourth year of the child can be agreed with the employer. If parental leave is taken, the possibility of part-time work is reduced accordingly.

440. The special protection from termination of employment and dismissal for employees ends four weeks after the end of parental leave or part-time work under the Act on Maternity Protection or the Act on Fathers' Parental Leave (Mutterschutz- oder Väter-Karenzgesetz, called Act on Parental Leave /Eltern-Karenzurlaubsgesetz until 1 January 2002).

441. The entitlement to parental leave under labour law, which ends at the end of the child's 24th month, or the option to agree on part-time work until the fourth year of the child does not automatically coincide with the right to the child-care benefit (maximum period of entitlement until the end of the child's third year).

442. As has been the case previously, an additional income up to a certain threshold is possible while the protection from termination of employment and dismissal during parental leave continues to apply. The novelty is that an additional income exceeding that threshold can be earned by agreement with the employer to work for no more than 13 weeks a year without losing the special protection privilege described above. This should enable employees to cover for colleagues on holiday or sick leave.

107 Family Allowance and Tax Allowances

443. Family allowance is in principle granted to Austrian nationals domiciled or having their habitual residence in Austria for underage children. Mothers take priority. Special regulations apply to non-Austrians. EEA/EU citizens are basically on a par with Austrians.

444. Family allowance is basically granted for children who have come of age and until they turn 26 if they do vocational training. For children who are of age and unable to work, there is no age limit. Family allowance is graded according to the age of the children: in 2002 the amounts are as follows: 0 - 10: € 105.4, 10 – 19: € 123.6 and 19 – 26: € 145.4.

445. If family allowance is received for two children as from 1 January 2002 the total amount is increased by € 12.8 per month, and above that, by € 25.5 per children for families with more than three children eligible for family allowance. An additional grant of € 131 per month is due for children with considerable disabilities. Applications must be filed with the Tax Office in charge of one's residential area.

446. Each taxpayer who is granted family allowance is also eligible for a tax allowance for children which amounts to € 50.90 per month and child as from 2000. The amount is paid out together with the family allowance without any separate application being required. Children who live abroad permanently do not qualify for the tax allowance for children.

108 Supplement for Several Children

447. The supplement for several children was introduced on 1 January 1999 and in 2002 amounts to € 36.4 per month for the third child and all further children who permanently live in Austria (with EU member states being an exception) who are eligible for family allowance. Entitlement is means-tested, the taxable family income must not exceed a certain amount in the calendar year prior to the year when the application is filed (in 2001 it was € 38,720). The supplement has to be applied for with the Tax Office in charge of one's residential area for each calendar year in the course of (employee) assessment.

109 Tax Allowance for Sole Breadwinners

448. The tax allowance is due to any sole breadwinner and amounts to € 364 annually. Sole breadwinners are defined as persons who have been married for more than six months in a calendar year and does not live permanently separated from the spouse who is liable to an unlimited extent to pay taxes or who has lived with a life partner in marriage-like community for at least six months in a calendar year, and if one of the two partners is eligible for the child-related tax allowance for at least one child.

449. The spouse must not earn more than € 2,200 per year (without children). In a marriage or marriage-like community with at least one child the income of the partner must not be more than € 4,400 annually. The maternity benefit, which is tax-free, must be taken into account in when calculating the threshold value.

110 Tax Allowance for Single Parents

450. A tax allowance of the same amount of € 364 annually is due to those persons liable to pay taxes who have not lived in a marriage or marriage-like community for more than six months per year and who are eligible for the child-related tax allowance for at least one child.

451. Applications for sole breadwinner/single parent tax allowances have to be filed with the Tax Office in charge of one's residential area. If calculated income tax is so low that the sole breadwinner tax allowance for one child or the single parent allowance does not have any effect, the amount of € 364 is paid out by the Tax Office (negative tax).

111 Tax Allowance for Maintenance

452. Persons who demonstrably pay statutory maintenance (alimony) and does not receive the family allowance is entitled to a tax allowance for maintenance amounting to € 25.50 per month for the first child, € 38.20 for the second child and € 50.90 for each further child. This allowance can only be considered in the course of (employee) assessment.

112 Mother-Child Pass Bonus and Infant Allowance

453. The Mother-Child Pass Bonus amounting to € 145.4 is granted when a child turns one and the examinations foreseen in the Mother-Child Pass Programme for pregnant women and child have been done. The person entitled is the primary caregiver, the key date is the child's first birthday. The parent must have his/her domicile in Austria, the child must stay permanently in Austria. The child or one of the parents living in the same household must be an Austrian national, or one of the parents must have completed three years of permanent stay in Austria

immediately prior to the first birthday of the child. The taxable family income in the year when the child is born must not exceed a certain amount (2001: € 38,720.09).

454. The infant allowance of € 73 per month is paid during the first year of the child (max. 12 times) to the parent who is the primary caregiver unless maternity benefit, parental leave pay or another comparable benefit is paid.

455. The child or the respective parent must be an Austrian national, or have completed three years of permanent stay in Austria immediately prior to the first birthday of the child. One parent must have a domicile in Austria and the child must live permanently in Austria. The taxable family income per month must not exceed a certain amount, in 2001 it was € 874.76 plus € 65,26 per child for whom the family allowance is obtained.

456. The infant allowance and the mother-child pass bonus must be applied for with the Tax Office in charge of one's residential area. For children born after 1 January 2002 the two benefits are replaced by the child-care benefit.

113 Benefits for Pupils, Apprentices, Students

457. Pupils attending a public school in Austria are entitled to such benefits.

Free Public Transport for Pupils

458. The basic requirement is that the pupils attend a public school or school with public status in Austria or a border region abroad and that he/she is eligible for family allowance. The age limit is 26. The related application must be filed for every school year. Forms certifying attendance of a particular school must be submitted to the transport company. For each pupil and school year, a contribution of € 19.6 has to be paid by means of payment orders issued by the Family Ministry.

Free Transport for Pupils in Non-Regular Traffic

459. If no appropriate means of public transport is available municipalities and school operators may apply with the Finance Directorate of the respective province for the establishment of non-regular transport. In this context special risks and long waiting periods must be taken into consideration. For each pupil and school year, a contribution of € 19.6 must be paid to the respective transport provider (for settlement with the Republic of Austria).

School Travel Allowance

460. School travel allowance will be granted if the pupil travels to school over a distance of more than 2 kilometres and if he/she cannot obtain free transport. No minimum distance is required for disabled children. The allowance is between € 4.4 and € 39.2 per month, depending on distance and number of days on which school is attended. Applications must be filed to the Tax Office in charge of one's residential area. On separate request, the allowance may also be paid every two months along with the family allowance.

461. Apprentices up to the age of 26 who are getting legally recognized apprenticeship training and are eligible for family allowance are also eligible for free transport. For a limited period of time the circle of eligible persons was extended to trainees in apprenticeship foundations under the Act on Safeguarding Youth Training (Jugendausbildungssicherungsgesetz) and those in pre-apprenticeships under the Vocational Training Act (Berufsausbildungsgesetz, as amended in 1998).

462. The related application must be filed for every year of apprenticeship training. Forms certifying the apprenticeships on the part of the employer must be submitted to the transport company. For each apprentice and year of training, a contribution of € 19.6 has to be paid by means of payment orders issued by the Family Ministry

Transport Allowance for Apprentices

463. If an apprentice cannot avail him/herself of free transport, transport allowance can be applied for if the distance between the apartment in Austria and the operations where apprenticeship training takes place is at least 2 kilometres. This minimum distance does not apply to disabled apprentices if the disabled apprentice has to rely on the means of transport to cover the distance. The allowance is only granted if the distance is travelled at least three times a week in each direction. It is € 5.1 per month when the distance is up to 10 kilometres or within the limits of one town and € 7.3 per month for a distance of more than ten kilometres. Applications must be filed to the Tax Office in charge of one's residential area..

Textbooks

464. To relieve the burden on parents due to the upbringing and education of their children, pupils of all school levels receive textbooks free of charge, which they are allowed to keep as their property. Since 1995/96 textbooks for all levels are purchased in collective orders for each school and distributed among the pupils. Per textbook and school year a contribution of 10% of the price has to be paid (this "retention" was introduced in 95/96). Textbooks and therapeutic teaching aids for disabled children which conform with their capabilities and disabilities are made available free of charge. These are ordered by schools. No retention applies to therapeutic teaching aids for the disabled, textbooks for children with visual impairments and pupils whose mother tongue is not German, as well as for bilingual instruction.

465. As from 1997/98 schools have been allowed to buy teaching aids (therapeutic, printed, audio-visual, computer-assisted, learning games) of their choice within limits of no more than 5% of the maximum amount per pupils and school type (10% as from 1998/99 and 15% as from 1999/2000). For pupils at special schools, all textbooks are free of charge without retention, for pupils in need of special pedagogical support the retention does not apply to the special pedagogic portion of materials.

466. Re-using textbooks has helped economize on new textbook orders; the money saved may be used to buy teaching aid of the school's choice (therapeutic, printed, audio-visual, data carriers, CD-ROMs, learning games) within the limit; the maximum is 15% of the applicable limit for textbooks.

School Allowance

467. As from school level 10, pupils with a certain grade average in the compulsory subjects receive a school allowance which depends on the parents' income, the pupil's income as well as the family size. It is paid out for a school year if it is applied for by 31 December (or, if the application is filed later, as from that date). Forms can be obtained from school headmasters/mistresses.

Accommodation Allowance

468. Pupils as from school level 9 requiring accommodation away from their parents' residence to enable them to go to school and if the daily travel from home to school and back would be unreasonable. A certain grade average in the compulsory subjects is required. Forms can be obtained from school headmasters/mistresses.

Study Grants

469. Socially needy students with good grades may apply for study grants. The amount is staggered according to the marital status of the student, the student's income, the income of his/her parents and/or spouse. The forms can be obtained from the scholarship offices of the Study Grant Authority.

114 Supplementary Measures

Severance Pay When Terminating Employment

470. If an employee terminates employment due to parenthood, he/she may be eligible for severance pay in certain circumstances.

Periods of Child Rearing

471. As from 1 January 2002 the first 18 months during which the child-care benefit is received (as from the date on which the child is born) are counted as periods giving rise to a pension entitlement in analogy to times when pension insurance contributions are paid. Since 1993, further times of child rearing up to the fourth birthday of the child are considered substitute qualifying periods under the pension insurance scheme increasing the pension entitlement. Overlapping periods of child rearing for several children are only counted once.

Voluntary Pension Insurance Contributions when Caring for a Disabled Child

472. Persons whose entire working capability is used to provide care for a disabled child living in the same household for whom an increased rate of family allowance is obtained, may pay voluntary pension insurance contributions. Up to the time when the child turns 30 (at the most), these contributions are fully paid from the Family Burden Equalization Fund. If the caregiver was gainfully employed earlier, voluntary participation in the pension insurance scheme must be applied for with the pension insurance in charge, in any other case, the Pension Insurance of White-Collar Workers has to be contacted.

473. Employees may ask to be released from work for a maximum period of one week's working hours to take care of a sick relative (spouse, life partner, child, adoptive or foster child in the same household), or if the primary caregiver for a child is unable to provide care (hospitalization, death). Once the first week has been used and the relative requiring care is a sick child under the age of 12 living in the same household, the caregiver is entitled to a second week of release from work. Applications must be submitted to employers.

Advances on Maintenance

474. Austrian or stateless children as well as children who are nationals of EU member states who have not yet turned 18 and have their habitual residence in Austria or an EU member states, and who do not live in the same household as the person owing maintenance are entitled to advances on maintenance if the person obliged to pay such maintenance does not fulfil the statutory obligations and enforcement (execution) is not possible or most likely unsuccessful. For children who turned 14 on 1 July 2001, such entitlement applies to the age of 19.

475. Advances will be paid out for a maximum of three years before another application has to be filed and circumstances will be examined again. The application must be filed with the guardianship or child-custody court.

Family Hardship Equalization

476. Families in need due to no fault of their own and persons living alone who receive family allowance as well as expectant mothers may receive financial grants or loans if they are Austrian nationals (or, in certain circumstances, EU nationals in Austria), recognized refugees under the Geneva Convention or stateless. They qualify for such grants or loans if they are hit by an emergency due to no fault of their own which threatens their subsistence and was caused by a special and unavoidable incident (e.g. death, sickness, disability, inability to work, accident, natural disaster) and cannot be coped with even though all statutory benefits the family is entitled to have been used. These grants are only transitional in nature, support for the continuous subsistence of a family cannot be given. There is no entitlement to benefits from the Family Hardship Equalization resources.

The Family Burden Equalization System

477. The socio-economic objective of the Family Burden Equalization Fund is compensation for maintenance burdens borne and care given by women and men who take care of children as mothers and fathers. The primary redistribution function for such burdens and benefits is horizontal in nature: funds are distributed from those who currently do not look after children and towards those who do, whereas the way in which money is obtained works vertically – the lower third of income earners received three times what it paid in whereas the upper quarter receives only half of what it contributed.

478. The Family Burden Equalization Fund does not have a separate administration, it is an earmarked position in the federal budget. According to the intergenerational contract of three generations it works in analogy to the pension insurance. Each employee finances the Family

Burden Equalization Fund by contributing 4.5% of his/her payroll amount before withholding of contributions and taxes (22.8% of the payroll are paid into the pension funds).

115 The Distribution Effects of the Family Package 1998 according to Social Status

479. According to a study prepared by the Austrian Institute for Economic Research (Österreichisches Institut für Wirtschaftsforschung, WIFO) dating 1999 the effect of family benefits based on the household/children figures of 1997 and the legal status of 2000 (full validity of the family tax reform) was such that roughly € 5.1 billion went directly to families as pecuniary benefits and benefits in kind. On average each child received monthly support of € 224 and each child-caring household received € 378.-. Notwithstanding the changes in family support of the mid-nineties called "austerity packages" individual support in 2000 went up by roughly 12% in comparison with 1993. Transfer benefits for lower income brackets (67% of the average income) are higher than the payroll and income tax burden (WIFO, 2002). The income tax burden on a family with a sole breadwinner earning an average salary and with two children was reduced by 8 percentage points to 2.8% in comparison with childless persons.

480. In spite of its horizontal orientation, the studies confirm that Austrian family support has considerable vertical effects, distributing benefits towards low-income families, thus making a major contribution to the fight against poverty.

115.1 Distribution Effect

481. In 1999

- a) 40.1% of family benefits went to the lower third of income brackets (1993: 39.8%)
- b) 34.4% to the middle third of brackets (1993: 34.2%)
- c) 25.5% to the upper third of brackets (1993: 26%).

115.2 The Importance of Family Support for Family Income

482.

- a) 40% of net income in the lower third of income brackets are due to family benefits
- b) 19% are due in the middle income brackets
- c) 9% are due in the top third.

115.3 Fighting Poverty

483. Family policy benefits make a major contribution to the prevention of poverty. This is corroborated by the WIFO study about the distribution effect of family benefits and the family tax reform quoted above. The number of children endangered by poverty was reduced by more than 100,000 or 53% in 2000 due to family support. This means that the child poverty rate has

been reduced from 11.9% to 5.5%. The rate for children in single-income families went from 16.1% to 6% and for children from single-parent families it went down from 32.8% to 16%.

Net Incidence – Contribution/Return Ratio

484. From a vertical perspective 60% of all households are net recipients. In the lower third of income brackets each household contributes € 136.6 to the system and is returned € 385.2. In the middle third contributions are roughly € 283.4 per household, the amount returned is € 344.5. Only the upper third pays in a monthly € 525.4 so it contributes twice as much as it receives.

485. According to social status, self-employed persons – with several children and longer training periods, in households of crafts persons and free-lance professionals – are net recipients of the family support system. They pay contributions to the Family Burden Equalization Fund via general tax payments but receive more the € 654 million or 13% of the funds.

116 Family Support in the Länder

486. All the Länder grant their own, primarily means-tested benefits in various shapes and forms. "Family supplements" are paid to families below a certain defined income threshold (this also means child-care benefits of the respective Land, or new types of family support etc., grants for founding a household, support on the occasion of pregnancy, help for families in emergencies, support to child-care facilities, grants for family holidays or support to families in case of multiple births etc.). During the period under review family support was further extended in most provinces (to include support when founding a family, for child care and in matters of schooling). For example, the "Platform for a Child-Friendly Society in Styria" published a brochure entitled "Poverty among Children in Styria" in 1998, which contained labour market and socio-economic recommendations as well as recommendations for the public and governmental sector which should lead to a sustainable improvement of the subsistence of children and adolescents. The Länder seek to create family-friendly environments in the municipalities and to help balance job and family life.

487. In summary, the following can be said about the concern expressed in item 11 of the Concluding Observations that changes of the nineties in family support ("austerity packages") might have a negative impact on children: the backlash in family support due to the austerity measures was compensated for by the "family package". Austria managed to raise individual support by roughly 12% in 2000 in comparison with 1993. The child-care benefit introduced in 2002 has provided additional input and apart from its primary objectives it also serves the prevention of poverty among young families (see also Chapter 3.4.)

488. Thus the measures taken during the period under review prepare the ground so as to decidedly counter with hard facts the Committee's concern about the large number of children living on the edge of poverty in Austria as voiced in item 24 of the Concluding Observations. However, the prevention of child poverty remains a top priority of the Austrian federal government and the process of reducing poverty progressively must continue in the light of the principles and provisions of the Convention, in particular Articles 2, 3, 6, 26 and 27.

489. Even though the social security system, and in particular the family support system of Austria can be considered generous by international comparison, Austria will seek, in conformity

with Article 4 of the Convention, to take further appropriate measures and use available resources so as to remove existing deficits.

9. EDUCATION, LEISURE AND CULTURAL ACTIVITIES

Education (Art 28)

490. § 2 of the 1st Optional Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms of 20.3.1952, which states that “nobody may be denied the right to education“, has constitutional status in Austria (Federal Law Gazette No. 210/1958). The state has the mandate to provide an appropriate range of educational and training facilities and to respect the right of parents to have their children educated and taught in accordance with their own religious and philosophical views. § 18 of the Basic Law (Staatsgrundgesetz) of 21.12.1867 on the general rights of citizens, which is also in force as constitutional law, stipulates that everyone is free "to choose his or her occupation or profession and to train for the latter how and where he or she wishes“.

491. In order to enable children with learning and/or behavioural difficulties to remain integrated in mainstream schools wherever possible, pupils experiencing serious problems at school are given the opportunity to receive assistance and counselling from the School Psychology and Educational Counselling Service. The School Psychology and Educational Counselling Service deals with three main areas: individuals (pupils, teachers, parents); sub-systems (family, classmates, friends, school); and the system as a whole (educational system, society). The three main objectives are prevention, intervention and rehabilitation; the three approaches for the achievement of these objectives are psychological counselling, psychological care and psychological therapy. In terms of counselling services the School Psychology and Educational Counselling Service provides pupils with guidance, information and support to assist them in recognising their strengths and weaknesses (diagnosis), identifying and analysing problems and developing perspectives for the future. An equally comprehensive service package is also available in the areas of psychological care and psychological therapy.

492. To avoid overburdening children in an early phase of their schooling with a subjective pressure to perform at school or a feeling of being out of their depth that may hinder their future development prospects, pupils are no longer required to repeat a failed year at this stage of their compulsory education. With the introduction of the “flexible school entry stage“ model in primary schools children are given up to three years to complete the first two grades (Primary Stage I), which enables each child's individual learning speed to be taken into account. This new model has already been tested in a pilot project in schools, which showed that only 4.6% of children require three years to complete this new Primary Stage whereas 14 % of children had previously had to repeat a year.

493. All schools and educational facilities in Austria – with the exception of universities – are provided free of charge. (Open) access to the universities is guaranteed by the University Studies Act (Universitäts-Studiengesetz), which stipulates that all persons who fulfil the academic entry requirements are entitled to enrol at an Austrian university. In cases of social need the Study Grants Act 1992 (Studienförderungsgesetz) provides for financial assistance for students whose parents have a low income and/or limited means. For children of asylum seekers who are without

means and in the care of the federal authorities, the Federal Ministry of the Interior meets the costs of the parents' contribution (deductible) for school textbooks. Since the academic year 2001/02 tuition fees in the amount of € 363.36 per semester have been charged in the university sector. To alleviate social hardship, students whose parents have a low income and/or limited means are also granted financial assistance to help pay their tuition fees (Study Grants Act / Studienförderungsgesetz).

494. Pursuant to § 47 of the School Education Act (Schulunterrichtsgesetz), disciplinary methods must be directed to the development of the personality and the community. Teaching staff are forbidden by law to resort to disciplinary means which violate the human dignity of pupils, such as corporal punishment, abusive remarks or collective punishment (§ 47 para. 3 of the School Education Act / Schulunterrichtsgesetz). The same applies to after-school detention. Finally, with regard to disciplinary methods mention should also be made of the Decree on School Regulations (§ 8) which implements § 47 of the School Education Act (Schulunterrichtsgesetz). Since corporal punishment and abusive remarks are to be classified as degrading treatment, reference is made to the overlap between section 28 para. 2 and section 37 subsection a of the Convention.

117 Compulsory free schooling

495 Compulsory schooling (§ 1 of the Compulsory School Attendance Act 1985 / Schulpflichtgesetz) is free of charge in all cases (§ 5 of the School Organization Act / Schulorganisationsgesetz, § 14 of the Compulsory School Maintenance Fundamental Act / Pflichtschulerhaltungs-Grundsatzgesetz). No fees are charged for attendance at compulsory state schools and other state-maintained schools. Compulsory schooling starts at six years of age and lasts for nine school years, thus the legal position in Austria exceeds the requirements laid down in section 28 para. 1 subsection a in this respect. The only exceptions to the generally applicable principle of free education are the contributions towards study materials and work equipment, the contributions towards catering and afternoon care and supervision in full-day schools and the contributions towards school events. The principle of free education does not release parents from their other financial obligations in connection with their children's schooling.

496. § 5 para. 2 subsection 1 of the School Organization Act (Schulorganisationsgesetz), which exempts contributions for study materials and work equipment from the principle of free education, does not constitute a contradiction of section 28 para. 1 subsection a of the UN Convention. This is because § 14 para. 3 of the Compulsory School Maintenance Fundamental Act (Pflichtschulerhaltungs-Grundsatzgesetz) qualifies this standard provision of school organization law in so far as such contributions may only be charged in compulsory technical and vocational schools and colleges which no longer belong to the primary level of education. Austria also complies with section 28 in terms of the development of different forms of secondary education: the great diversity of school forms and types provided for in the School Organization Act (Schulorganisationsgesetz), continuous pilot projects in schools and curricular autonomy all play an important role in this context

497. The same applies to the range of financial assistance measures available in cases of social need. These include the Pupils' Grants Act (Schülerbeihilfengesetz) and the regulation stipulating that the cost-covering contributions to be calculated for catering and afternoon care and supervision in full-day schools can be waived entirely in cases of social need. Further measures of this kind include the school textbook programme and the free transport programme for

schoolchildren, which despite the parents' contributions can be interpreted as financial assistance in the sense of section 28 para. 1 subsection b. The provisions for primary schools as detailed above also apply to secondary schools, thus the requirements of section 28 para. 1 subsection b are met.

498. To conclude, the misgivings expressed by the Committee in item 26 of its "Concluding Opinion" with regard to the government budget cuts (e.g. introduction of parents' contributions for school textbooks, limitation of the choice of optional subjects) can be dispelled, since no cases are known in which these measures could be said to have resulted in negative consequences for the ongoing realization of the right of the child to education and leisure in accordance with sections 28, 29 and 31 of the Convention.

499. Furthermore – taking the Federal Province of Tyrol as an example – funds from the Province Memorial Foundation and the Province budget are used to provide considerable levels of assistance for Tyrolean schoolchildren. The Board of the Province Memorial Foundation and the Federal Province of Tyrol provide grants for pupils from low-income families subject to social criteria, the aim being to facilitate school attendance for pupils who are not entitled to a federal school grant and/or boarding grant due to minor overstepping of the family income limits. The bodies mentioned also endeavour to intervene in cases of hardship. Under this assistance scheme boarding grants subject to social criteria are provided for pupils in the fifth to eighth grade inclusive who have compelling grounds for requiring boarding accommodation for school attendance purposes, and school grants for pupils in the ninth grade and above of academic secondary schools and lower and upper secondary technical and vocational schools and colleges. Financial assistance is only available for pupils in the tenth grade and above if they are able to prove their non-entitlement to any federal grants.

500. A further assistance measure are the travel subsidies granted by the Federal Province of Tyrol to schoolchildren who require boarding facilities, which ease the financial burden of the associated additional costs, particularly for families living in isolated areas. This Province subsidy scheme provides financial assistance for pupils who must be accommodated in a second place of residence (school boarding facilities, private lodgings) outside their principal place of residence for school attendance purposes. The granting of all Province travel subsidies is exclusively subject to social criteria. The scheme provides for reimbursement of travel costs up to an amount of € 835.74, less a deductible amounting to € 254.35 or € 341.56 (the latter applying to pupils who receive a federal boarding grant).

118 Freedom of science and its teaching – private schools

501. § 17 of the Basic Law (Staatsgrundgesetz) states that “Science and its teaching ... [are] free. Any citizen who has provided legal proof of his or her qualification to do so is entitled to found educational and training establishments and to provide instruction at the latter. Home tuition is not subject to any such restriction. The provision of religious education in schools shall be the responsibility of the relevant church or religious community. Supreme authority and control with regard to the entire education system shall be vested in the state“.

502. The establishment of private schools in accordance with the Private Schools Act (Privatschulgesetz) (Federal Law Gazette No. 244/1962) is subject to the requirement that the

statutory provisions laid down in this Act with regard to the school maintenance body, head teachers, deputy heads and teaching staff, school premises and teaching aids are fulfilled. The setting up of an educational establishment and the provision of instruction at the latter is therefore allowed provided these legal requirements are met. Parents can thus opt to have their children educated at a private school or even at home. School-age children receiving home tuition are required to sit an examination at a state school at the end of each school year to verify the effectiveness of the home tuition.

119 The dual system of vocational training – training of apprentices

503. Austria has the lowest level of youth unemployment in the EU. Apprenticeship in the form of a dual system, i.e. company-based on-the-job training combined with education at a part-time vocational school for apprentices, forms the nucleus of vocational training in Austria and is an essential reason for the good career opportunities enjoyed by young people. Training in an apprenticed trade or occupation is in principle open to all young people who have completed the nine years of compulsory schooling.

504. The "Package for Apprentices" that came into force in the year 2000 reduced the number of bureaucratic hurdles and made the training system for apprentices more flexible and attractive. By adapting the apprenticed trades and occupations to new developments in the world of work, facilitating transfer between the dual system and full-time technical and vocational education, enabling earlier admission to the Final Apprenticeship Examination, giving apprentices the opportunity to take the Vocational Matriculation Examination and providing financial incentives for companies training apprentices, the Package guarantees that a high standard of training will be maintained, even under changing economic conditions. To assist young people who are disadvantaged on the labour market in entering an occupation, apprenticeships for this group are subsidised by means of a flat-rate incentive to employers for training and/or wage costs.

505. Experience has shown that an apprenticeship is not always the most suitable immediate choice for a proportion of the young people seeking such a training placement. In order to avoid a situation in which the occupation of unskilled labourer is the only remaining choice, a special two-year apprenticeship ("pre-apprenticeship") is being created as an alternative option for this group. The intention is that completion of this simplified form of apprenticeship will then enable these young people to continue their training in a full apprenticeship. Since many young people only encounter difficulties in the initial phase of an apprenticeship, this new form of training will give them the chance to overcome these problems before going on to train for a further qualification.

506. The National Employment Programme includes, inter alia, the following initiatives in the field of education and training: Provision for a voluntary tenth or eleventh school year for the completion of compulsory education if schooling has not been completed in the regular manner measures to facilitate access to the non-university tertiary colleges improved networking of school and non-school careers counselling services creation of new apprenticed trades and occupations, particularly in the service and technology sectors internationalisation of apprenticeship training establishment of a clearing network for young people seeking apprenticeships

Accompanying Measures – Principles, Aims and Objectives of Education (Art 29)

507. The principles, aims and objectives of the Austrian education system are embodied in the School Organization Act (Schulorganisationsgesetz) (§ 2), according to which the tasks of schools are as follows: To foster the development of the talents and potential abilities of young people in accordance with ethical, religious and social values and the appreciation of that which is true, good and beautiful, by giving them an education corresponding to their respective stages of development and their respective courses of study, to equip young people with the knowledge and skills required for their future lives and occupations, to train them to acquire knowledge on their own initiative, to train young people to become healthy, capable, conscientious and responsible members of society and citizens of the democratic and federal Republic of Austria, to encourage them to develop an independent judgement and social understanding and to be open-minded to the philosophy and political thinking of others, to qualify young people to participate actively in the economic and cultural life of Austria, of Europe and of the world, to enable young people to make their contribution, in love of freedom and peace, to the common tasks of mankind.

Gender equality

508. At the legal level gender equality is promoted by the educational principle “Education towards Establishing Equality Between Women and Men“, which was introduced by decree in the school year 1994/1995 (Fundamental Decree Zl.15.510/60-Präs.3/95, Federal Ministry of Education Circular No. 77/1995) and made a compulsory item in the curricula of academic and vocational secondary schools as well as in the training of teachers and non-teaching supervisory staff. The educational principle of “Education towards Establishing Equality Between Women and Men“, as a temporary special measure in the sense of section 4 of the “United Nations Convention on the Elimination of All Forms of Discrimination Against Women“, aims to motivate all persons working in the educational sector to place increased emphasis on issues of gender equality in teaching curricula, in class, in school textbooks and in any other teaching materials used, as well as to encourage greater in-depth discussion of these issues in schools. This educational principle is intended as a contribution towards achieving the Convention's underlying aim of accelerating de facto equality between men and women.

509. The Decree on the Expert Commission for the Approbation of School Textbooks and Other Teaching Aids (Federal Law Gazette Part II, No. 248, 1998) has also been amended. This means that the Commission is now required to give due consideration to the principle of “equal treatment of women and men as well as educating pupils in the spirit of equal partnership in their relations with society" when making its appraisal.

510. In spite of coeducation, the formal embodiment in law of gender equality in schools and a definite increase in the proportion of girls in education and training in general, some gender-specific disparities persist in the choice of training and occupation. For more than ten years now the Federal Ministry of Education, Science and Culture has thus been implementing measures and initiatives aimed at counteracting the concentration of girls in areas of training corresponding to traditional gender-specific roles and encouraging girls to enter careers in the craft trades, technology, engineering and the natural sciences:

511. "Follow the New Gender Culture" campaign (round-table discussions with men and women in careers and occupations which are "non-typical" of their gender).

512. Under the "MiT – Girls/Women into Engineering and Technology" programme a series of technical schools organised special activities for girls (e.g. open days, parents' evenings, courses in engineering and technology, public speaking and presentation techniques, etc.). Austria (with Luxembourg and Belgium) is also involved in the EU LEONARDO project "fem-training-net", which aims to promote wider access of girls and women to the new information technologies.

513. By funding engineering, technology and computer courses for girls and providing support for associations and initiatives offering targeted counselling and assistance on the subject of "vocational guidance for girls", the Federal Ministry of Education, Science and Culture is attempting to counteract the tendency of girls to make one-sided career choices as a result of socialization.

514. A further important focus in the context of gender equality is the implementation of various projects to analyse the practice of coeducational instruction in schools. These projects try out other forms of instruction (e.g. single-sex classes) as well as carrying out targeted work with girls and boys in an attempt to make better provision for girls' requirements. Educational researchers are of the opinion that one of the reasons for girls' one-sided choices of career is the practice of coeducational teaching, which represents a handicap for girls in the natural sciences and technical subjects.

515. Effective from the school year 1998/99 the compulsory subject "careers guidance", which also includes gender-specific vocational counselling, was introduced into the curricula for the seventh and eighth years of general and academic secondary schools (Federal Law Gazette No. 60 and 61 of 26.2.1998).

516. The careers guidance programme "FIT – Women in Engineering and Technology" (launched several years ago in Graz) aims to encourage more female school-leavers to opt for a degree course in a technical subject. The programme enables girls in the eleven to twelve-year age group to visit the University of Technology in Graz, the University of Mining and Metallurgy in Leoben and various non-university tertiary colleges to gain an insight into the various technical degree courses available. After a comprehensive presentation of all degree courses on offer at these institutions the girls are given the opportunity to select a course and attend the relevant classes for a week. 24 schools in the Federal Province of Styria are currently taking part in this programme.

517. "Women in Industry" initiative.

518. The "Action Plan 2000. 99 Measures for the Promotion of Equal Opportunities in Schools and Adult Education" was launched in 1997 and promotes the enforcement of equal opportunities measures at various levels.

519. The following basic aims and objectives of education and training have been implemented in the curricula of compulsory general schools in Austria through the introduction of so-called educational principles: health education, inter-cultural education, reading, media education, music, political education (including peace education), sex education, language and

oral expression, environmental education, road safety and business education (money matters and consumer affairs). The objective of the educational principle of “inter-cultural education“ is, inter alia, to promote “ ... an understanding of and respect for cultural, linguistic and ethnic diversity, ... a critical awareness and analysis of ethnocentricity and euro centricity, prejudice and racism (and) to strengthen linguistic, cultural and ethnic identity“. Austria took charge of the local secretariat for this international project for the period 1998 – 2001.

Human rights

520. Human rights and the relevant Conventions are a permanent integral part of political education and are enshrined in the Austrian school curricula as follows:

521. The educational aims and objectives of the curricula of compulsory general schools and academic secondary schools contain the provision that teaching should actively contribute towards promoting democracy and commitment to human rights.

522. Human rights is a compulsory subject in the respective political education curricula for academic secondary schools and lower and upper secondary technical and vocational schools and colleges.

523. Furthermore, human rights are embodied in the Fundamental Decree on the Educational Principle "Political Education" in Schools, which was introduced in 1978 (Fundamental Decree 33.466/6-19a/78 – re-enacted by Fundamental Decree 33.466/103-V/4a/94) and applies to all types of school.

524. As Austria's contribution to the UN Decade for Human Rights Education 1995-2004 and to mark the 50th anniversary of the signing of the Universal Declaration of Human Rights, the Federal Ministry of Education, Science and Culture launched the international school partnership project "School Network on Human Rights". The international network, which was established in 1999, currently covers 42 schools from all over the world (Austria, Argentina, Bosnia-Herzegovina, Brazil, Cameroon, Chile, Columbia, India, Ireland, Italy, Mexico, Palestine, Russia, Sweden, Uganda, Ukraine, Uruguay). The project is implemented by the Intercultural Centre in Austria and monitored and coordinated by an international management team. The pupils look at human rights from their own perspective and in relation to their surroundings, focussing on a key issue (e.g. participation, acceptance and recognition of differences between people, children's rights and their violation, human rights in the context of violence and conflicts) which is explored by means of project-based teaching. The experiences and results from the various schools are then analysed, exchanged in international project groups and examined in relation to the Universal Declaration of Human Rights. In 1999 an international seminar was held for teachers from the participating schools to promote networking and an exchange of experience as well as to plan concrete cooperation measures and projects in the individual schools. The seminar focussed on human rights education, the history and theory of human rights, project-based teaching and project work and the development of international projects. Workshops were held at the 14 Austrian partner schools to raise the young people's interest, motivation and awareness for human rights issues, and, on the other hand, to generate support for the concrete project work in school. Since September 1999 the schools world-wide have been working on the themes of their respective project groups. In April 2000 this project

was presented with the "World aware Award for Global Education 2000" by the North-South Centre of the Council of Europe.

525. In 2001 a further teachers' seminar was held, with the emphasis on reviewing the project's progress, exchanging experience and longer-term planning of further activities to be continued beyond the project timeframe. Since 1998/1999 the Federal Ministry of Education, Science and Culture has been providing funding for the international schools project "School Without Racism", a participation project by young people for young people which is coordinated in Austria by the association Asylum Coordination and the working group Youth Against Violence. Pupils and teachers work together with the coordinating organizations to elaborate a project schedule, which must contain a specified number of lessons on the subject of racism per year and class. The teachers are supplied with materials and put in touch with outside speakers to assist them in planning their lessons, and external teaching modules are also available. The aim of the project is to carry out ongoing anti-racism work in the respective schools for at least one year.

526. The Federal Ministry of Education, Science and Culture's Political Education Department, which provides teachers and pupils with background information and materials on topical issues relevant to political education, regularly refers to materials on children's rights and literature on the Convention on the Rights of the Child in its circulars. Children's rights and their enforcement in Austria is a horizontal issue that forms an integral part of many key areas of the Political Education Department's work, which covers subjects such as inter-cultural and anti-racism education, poverty and social problems, democratization and political participation. When preparing material on themes such as globalization or migration the Department also takes specific account of the issue of children's rights.

Children's rights

527. Children's rights are a focal issue in the activities of the Service Centre for Education in Human Rights. The Service Centre was set up in 1997 by the Federal Ministry of Education, Science and Culture in cooperation with the Ludwig Boltzmann Institute for Human Rights. Its responsibilities include providing information and about teaching aids, materials, speakers, events and further training courses on human rights in general and children's rights in particular. Teachers from all over Austria are given advice and support on how to enforce children's rights in class.

528. A principal aim of the activities of the Service Centre for Education in Human Rights is to raise awareness of the Convention on the Rights of the Child and promote understanding of its contents. The Service Centre offers Austria-wide seminars for teachers and workshops for children and young people on children's rights issues and the Convention on the Rights of the Child. Since the year 2000 the Service Centre for Education in Human Rights has planned and organised a whole week of workshops for children and young people every year. The subject of this event in 2000 was responsibility, in the following year it was entitled "Everyone Has Rights", and in autumn 2001 the event focussed on dealing with conflicts.

529. The Service Centre for Education in Human Rights endeavours to promote a wide range of approaches to the subject, e.g. a several-day "Cinema Workshop on Children's Rights" or an anthology of children's and young people's literature dealing either implicitly or explicitly with the issue of children's rights. The newsletter "Teaching Human Rights. Information on Human Rights Education" is published quarterly and covers various human rights themes; the 2/99 issue

was devoted entirely to the subject of children's rights and provides an overview of the situation in Austria.

530. Above and beyond its own activities the Service Centre for Education in Human Rights also supports numerous other organizations and institutions which are involved in promoting children's rights in schools.

531. To mark the "International Year for a Culture of Peace" 2000 and the "International Decade for a Culture of Peace and Non-Violence for the Children of the World" 2001-2010, the Federal Ministry of Education, Science and Culture issued an administrative circular to the school authorities on 15.2.2000 inviting pupils and teachers to carry out initiatives or projects based on this theme. Besides the "School Network on Human Rights", the circular lists a series of other ongoing projects as examples:

532. "Physics and the Culture of Peace" competition for academic secondary schools organised by the "Network for Peace and Non-Violence";

533. "Fighting" (selection of texts for 6 to 10-year-olds on the subject of conflict resolution);

534. "War or Peace. From the Cult of Force to a Culture of Peace" exhibition by the Province of Burgenland;

535. "P.A.K.T. Young People Develop a Culture for Dealing With Conflict" project materials;

536. "Understanding" initiative by the Alpen-Adria-Alternativ association to compose the "world's longest poem";

537. "The Drums of Peace" poetry competition.

538. Schools are no longer mere disseminators of knowledge but are increasingly required to play an active role in the development of the child's personality. In order to enable schools to accommodate these educational challenges more effectively, an amendment to the School Education Act (Schulunterrichtsgesetz) Federal Law Gazette I No. 78/2001 in 2001 gave the school partnership bodies (School Forum and School Community Committee) the opportunity to lay down internal school codes of behaviour for the school community of pupils, teachers and parents/legal guardians and measures for the promotion of quality in school within the framework of the school regulations they enact. These codes of behaviour have a compulsory character in the sense of voluntary compliance. The intention is that all members of the school should feel bound to the code and accept any consequences agreed upon in the event of infringement. In legal terms these internal school codes of behaviour have the status of decrees.

539. Following on from the early warning system for unsatisfactory performance which has already been in place for some time, an amendment to the School Education Act (Schulunterrichtsgesetz) introduced an early warning system for behavioural problems. The aim of this second system is to draw parents' attention to special behavioural situations in good time, as well as to implement supportive educational measures to enable and ensure the development of socially appropriate behaviour. If a pupil shows signs of unusual behaviour, gravely neglects his or her duties, or if the behavioural situation otherwise demands it, a counselling session is to

be held with the child's parent or legal guardian with the emphasis on working out remedial measures to improve the child's behaviour.

540. In conclusion it can be seen that the wide-ranging choice of educational and training facilities offered by Austrian schools guarantees that pupils are given the opportunity to develop their various talents and physical and mental abilities. Although the school system is uniform in principle, the Austrian education system provides a large number of different types and forms of general and vocational schools and colleges, which are organised according to age group and level of maturity on the one hand and according to the different talents and abilities, life and career aims of the pupils on the other (§ 3 of the School Organization Act / Schulorganisationsgesetz). In order to guarantee children the widest possible freedom of choice in their education and training, the various school types and forms are harmonised with a view to permeability of educational pathways and transfer possibilities from one to another. In terms of the type of education provided schools can be divided into general schools, vocational schools and colleges and establishments for the training of teachers and non-teaching supervisory staff, and in terms of the level of education provided into primary schools, secondary schools and academies (i.e. universities and their equivalents).

120 School partnership

Codetermination of parents and pupils in decisions relating to the curriculum and teaching materials

541. Curricular autonomy – meaning that autonomous decisions regarding the curriculum may be initiated and taken by the School Forum and the School Community Committee – was introduced at secondary level (5th – 8th year) in 1993, representing an early and important emphasis towards democratic codetermination of curricular content in schools. The relevant school authorities define the overall framework within which schools can develop their own autonomous priorities and specializations. They are further required to examine the autonomously prepared curricula to ensure that comparability of final examinations and qualifications is maintained. Curricular autonomy with regard to non-compulsory options is provided for in Primary Stage 1, and all other primary and secondary schools may also enact their own autonomous school curricula. The pupils' representatives elected to the School Community Committee have the “right to participation in the choice of teaching materials“, as well as the right to co-decision in the teachers' conference on school textbooks and other teaching aids which selects the teaching materials actually purchased and/or used in school.

Involvement of pupils in decision-making

542. Since the school year 1997/98 provision has also been made for the 5th – 8th years of all schools to elect a deputy form spokesperson who may participate in the meetings of the school partnership bodies in a consultative capacity. This extension of the system of pupils' representation represents a step towards further democratization of the education system. The Pupils' Representation Act (Schülervvertretungsgesetz) also stipulates that regional and national pupils' representations are to be established in Austria. Each Federal Province has its own Province Pupils' Advisory Board, and there is also a Federal Pupils' Advisory Board for the country as a whole.

543. The "Social Work in Schools" model represents an important contribution to the enforcement of the economic, social and cultural rights of children as laid down in the Convention. "Social Work in Schools" is a model for cooperation between parents, teachers and pupils to support socially disadvantaged families, with the aim of preventing problematic developments such as failure in school and difficulties with integration, but also violence and drug abuse, in children from socially disadvantaged backgrounds. As a contribution to the Austrian EU Presidency the School Partnership Department at the Federal Ministry of Education, Science and Culture and the Federal Pupils' Advisory Board jointly planned and organised a conference entitled "How the School Partners' Behaviour Influences the Quality of Education" which was held in Vienna from 18–19 September, 1998. Within the framework of a SOCRATES project on "Participation in Schools", involving representatives from Belgium, France, Italy, the Netherlands, Austria, Portugal and Scotland, the School Partnership Department worked in close cooperation with parents', teachers' and pupils' representatives, contributing to agreements between the school partners and to discussions on the involvement of parents/legal guardians and pupils in quality assurance efforts in schools. The results were presented at an international conference (Edinburgh, 1998) by a teacher, a pupil and a parent representative. To mark the occasion of the 50th anniversary of the Council of Europe, on 18-19 June, 1999 the Federal Pupils' Advisory Board organised a simulated meeting of the Council of Europe at the University of Vienna on the subject of "Human Rights and Their Enforcement".

544. With a view to further democratization in schools in accordance with section 12 of the Convention on the Rights of the Child, the Federal Ministry of Education, Science and Culture integrates pupils' representatives into all its working groups. For example, pupils' representatives were involved in the following projects: Preparation of the handbook "Learning Democracy in Daily School Life"; Preparation of the guideline brochure "Consensus instead of Orders".

Training for participation at school

545. At school level, all pupils (not only pupils' representatives!) are trained to exercise their codetermination rights during political education classes and social studies classes, and by form teachers and pupils' representatives. Pursuant to § 3 para. 1 no. 8 of the Pupils' Representation Act (Schülervertretungsgesetz) the Province and national pupils' representations have the right to plan and carry out further training seminars for pupils' representatives. Pupils jointly undertake tasks that go beyond their individual codetermination work, including projects that further the political and cultural education of the pupils in the spirit of democratic principles and strengthen and develop social behaviour (§ 58 para. 3 of the School Education Act / Schulunterrichtsgesetz). Further training for pupils' representatives is also offered by private youth organizations such as the youth organization of the trade union movement, the Catholic Youth organization, the youth organizations loosely associated with the various political parties, etc. Some teacher training institutions also hold joint seminars for teachers, parents and pupils on partnership in schools. In Vienna the pupils' representatives and teacher mentors are prepared for their duties in a modular project run jointly by the City of Vienna, the Vienna Municipal School Board and the Province Federation of Parents' Associations at Compulsory State Schools / Landesverband der Elternvereine an Pflichtschulen.

546. In accordance with parliamentary resolution E 156-NR XVIII. GP, 2. c, which aims to create greater opportunities for codetermination in decision-making processes for all pupils, the

School Forum (head teacher and deputy heads/class teachers/parents' representatives) and/or the School Community Committee (three each of teachers', pupils' and parents'/legal guardians' representatives) have the right to submit a written opinion on the applications received for the post of head teacher and/or deputy head (§207e of the Act on the Service Rules for Civil Servants 1979, for state schools providing compulsory education: § 26a of the Act on the Service Rules for Provincial Teachers 1984). There is no provision for the right to opinion of individual pupils and/or pupils' representatives under the Service Rules.

547. The principles, aims and objectives of education listed under section 29 para. 1 subsections a to e are largely identical to the standard provisions laid down in § 2 of the School Organization Act (Schulorganisationsgesetz), which defines the tasks of Austrian schools. The educational principle of political education is stipulated as specified in section 29 para. 1 subsection b, and that of environmental education as specified in section 29 para. 1 subsection e. With regard to section 29 para. 1 subsection c, reference is made to the Austrian legislation governing ethnic minority schools, and also to the measures for the integration of children with a mother tongue other than German in class instruction.

Workshop for School Mediators

548. In the summer semester of 2000 the Province of Carinthia Child and Youth Advocacy Service trained 24 pupils as School Mediators at the Ingeborg Bachmann Classical Academic Secondary School in Klagenfurt. These School Mediators are available to their schoolmates to provide neutral mediation in the event of conflicts. The aim of the mediation training for pupils is to provide young people with the social competence to settle conflicts independently and on their own initiative, and, especially, to forego the use of force. A further medium-term aim is the establishment of a new conflict resolution culture in schools. The School Mediators advertise their dispute mediation services via their homepage, which also serves as a platform for all schools who have implemented school mediation projects and/or who are interested in such projects.

549. Similar training programmes are also being developed and carried on in other Federal Provinces. The Province of Styria Child and Youth Advocacy Service, for instance, has initiated school mediation projects in partnership with individual schools. In 2000 and 2001 respectively, a total of 42 children (aged between 11 and 14 years) and 29 teachers at the Fröbel and Albert Schweitzer General Secondary School in Graz and the Laßnitzhöhe Secondary School received training and further training in mediation. In each case follow-up coaching was offered in the schools for a period of 4 months, after which the schools took over full responsibility for the further running of the project themselves. Experience has shown that the opportunity for dispute resolution by their peers is well accepted by pupils, provided that the service is well promoted and the project supported and encouraged by the teaching staff. The pupils who took part in the training programmes have learned more about their personal handling of conflicts and gained in self-confidence and independence.

121 Participation of pupils with mother tongues other than German

550. In the school year 2000/01, 131,355 children with mother tongues other than German were attending Austrian schools (11.04 %). This group of pupils was particularly well-represented in schools providing compulsory general education (96,557). The Austrian education system provides the following measures to facilitate the educational integration of these children

and young people and increase their chances of success in their future educational and vocational careers:

551. Pupils who have difficulty following in class due to insufficient German-language skills are admitted as extraordinary pupils for a maximum period of twelve months and usually placed in a class corresponding to their age-group. The head teacher and deputy heads may authorise the extraordinary status for a further twelve months if necessary. During this one to two-year period the pupils' language difficulties are taken into account when assessing their performance. However, they may also move up to the next grade despite insufficient competence in German if this appears justifiable on educational grounds.

552. In Austria pupils with a mother tongue other than German who attend a school providing compulsory general education may also receive up to nine school years of special remedial tuition in German, for which there is also a separate curriculum. Remedial tuition in German may be offered parallel to normal classes (pupils are taught together as a separate group), integrated into normal classes (the class/subject teacher and the remedial teacher teach as a team) or, if there is no other alternative, as an extra lesson in addition to normal classes (in the afternoon, for example). For extraordinary pupils this remedial tuition may extend to up to twelve lessons per week, and for ordinary pupils to five or six lessons per week depending on the type of school. If the remedial instruction in German is provided in the form of extra lessons in addition to normal classes, care must be taken to ensure that the pupils are not overburdened in terms of time spent in class. School textbooks are also available for German as a second language.

553. In addition, "supplementary instruction in the mother tongue" is provided to preserve the cultural identity of pupils with a mother tongue other than German, and school textbooks and teaching materials in the mother tongue are currently being prepared and made available to schools. For pupils with a mother tongue other than German who do not belong to an indigenous ethnic minority, instruction in the mother tongue may be offered as an optional subject (with performance assessment) or as a non-compulsory non-assessed practical exercise comprising two to six lessons per week. A separate curriculum has also been decreed for mother-tongue instruction. Instruction in the mother tongue aims at developing biculturalism and at consolidating and furthering the children's bilingual abilities, with a particular emphasis on strengthening the personality and identity of the respective pupils. Instruction in the mother tongue may be integrated into normal classes or taught in addition to normal classes. Mother-tongue teaching is currently offered in 14 languages (Albanian, Arabic, Bulgarian, Chinese, Kurdish, Persian, Polish, Romanian, Serbo-Croat (Bosnian/Croatian/Serbian), Slovak, Slovenian, Spanish, Turkish and Hungarian), with Serbo-Croat and Turkish accounting for by far the greatest share. The native-speaker teachers are recruited and paid by the Austrian authorities, and are required to have completed a teacher training degree in their country of origin or in Austria. Teachers' handbooks and teaching materials for inter-cultural learning have also been produced.

554. To reflect the linguistic and cultural diversity in Austrian schools, the educational principle of "inter-cultural learning" was embodied in the curricula of compulsory general schools and academic secondary schools in the early nineties.

555. To promote "German as a foreign language" Austria offers regular further-training opportunities (e.g. seminars on Austrian geography, history and culture in Austria, "Austria Days" in various countries) for Germanists and German teachers from all over the world within the framework of bilateral and multilateral co-operations. Since 1995 the Austrian Language Diploma (ÖSD), an Austrian system for the certification of German language skills based on a pluricentric approach, has been available world-wide. Since the opening of the borders to the neighbouring eastern European states and at the request of the their local education authorities Austria has been undertaking measures to support the ongoing educational reforms by organising educational cooperation projects and sending Austrian officers for educational cooperation to implement them on the spot. Ongoing support for educational measures in schools in the eastern European partner states is jointly funded by the Federal Ministry of Education, Science and Culture, the Federal Ministry for Foreign Affairs and the Austrian CEEC Assistance Programme, with additional financing from international institutions. Since 1994 the "Kulturkontakt" association has been responsible for implementing these measures. Austria also participates in, inter alia, the "Council of Europe In-Service Training Programme for Educational Staff" and the "Language Learning for European Citizenship" programme, as well as the EURYDICE network and various OECD activities in the field of education and training. Financial assistance is also provided for school partnerships, pupil and class exchanges and bilateral language study trips with the aim of intensifying educational partnerships with eastern and central European countries.

556. In the Federal Provinces School Counselling Centres for foreigners/migrants have been established, which often work in close cooperation with non-school bodies and authorities (Youth Welfare Office, Social Welfare Office, etc.).

557. The "Pre-School Groups" pilot project was launched several years ago at numerous Viennese primary schools to prepare Austrian and foreign children who do not attend nursery school for life at primary school.

Leisure, Recreation and Cultural Activities (Art 31)

558. In Austria great importance is attached to the right of the child to rest and leisure and the right to engage in play and recreational activities appropriate to his/her age. Each Federal Province has its own Youth Affairs Department for the support of the youth movement, the task of which is to promote the development of children, adolescents and young adults by providing appropriate concepts, advisory services and material assistance which encourage young people to use their own initiative, as well as to support families in their educational role, particularly with regard to leisure activities. The youth welfare legislation stipulates that the state social services should endeavour to cooperate closely with the non-school youth education agencies and other institutions for the care and promotion of minors in the provision of youth welfare services.

559. The Federal Ministry of Social Security and Generations operates its own youth information desk with the aim of providing information and advice for young people, parents and multipliers in the fields of leisure and culture. The Ministry further acts as organiser or co-organiser of various leisure and cultural projects and events for young people, such as the National Youth Choir Festival and the National Youth Speech Competition. In the area of youth work with marginal groups, in summer 1998 a summer camp for adolescents affected by poverty (particularly young people from single parent families and homes) was run as a model project for the first time in connection with an international summer camp organised by the Catholic

Workers' Youth Association. The "Pedal Contact" project, also run by the Federal Ministry of Social Security and Generations, organises tandem cycling trips for mixed groups of sighted and visually impaired and/or blind young people. Further, in the area of youth work with marginal groups the Federal Ministry of Social Security and Generations has been cooperating with the Federal Ministry of the Interior and the Gerasdorf Young Offenders Institution since 1993, offering the young inmates educational leisure programmes to strengthen their sense of self-worth and develop their social competence in preparation for their release.

560. The Federal Ministry of Social Security and Generations also provides funding for family organizations to support holiday packages with an educational programme for low-income families.

561. The "Vienna Holiday Games", Europe's largest children's leisure initiative, is a "come along and join in" festival for children and parents that is held every summer in Vienna. The Holiday Games runs during their school holidays (from the beginning of July to the beginning of September) and provides a choice of approx. 9,500 different events and activities for children, including special family play schemes which give children and their parents the opportunity to play together. Disabled children are also given the chance to participate in the Holiday Games within the framework of an integration project. Another exemplary project worth a special mention is ZOOM – a children's museum in Vienna – which offers children from toddler age up to 12 years a fun introduction to the world of museums. Children's right to play has now been enshrined in the residents' regulations of the Viennese municipal housing complexes.

562. In the Federal Province of Salzburg a concept for playgrounds, meeting places and leisure and sport facilities for children and young people was developed, taking into account existing surveys and legal provisions. On the basis of an agreement between the Youth Affairs and Municipal Affairs spokespersons of the government of the Federal Province of Salzburg and the Salzburg Municipal Association, a certain proportion of funds from the Municipal Burden Equalization Fund was earmarked for municipal investments in meeting places and leisure and sport facilities for young people. In 1997 the Province Family Affairs Department and the Akzente Salzburg youth initiative jointly published the brochure "Play Worlds, Living Worlds, Designing family-friendly, close-to-nature experiences in municipalities, nursery schools and the school environment", which contains useful tips and suggestions for municipal councillors and local initiatives.

563. The "Youth Theatre" department of the Akzente Salzburg initiative arranges concessions for school classes taking part in theatre and cultural events and provides subsidies to help with travel costs, as well as initiating and promoting youth cultural projects (e.g. theatre and film, amongst others).

564. The "youth work" and "youth promotion" programmes run by the Youth Affairs Department of the Federal Province of Vorarlberg actively promote the development of children, youths and young adults up to 25 years of age. The Province's youth promotion activities extend, in particular, to the provision of youth meeting places and information and counselling facilities for children and young people, training and further training programmes for volunteers and professionals, initiatives, projects and programmes such as courses, cultural activities, youth media, gender-specific programmes and international projects to promote

exchange and understanding between young people, as well as preventative healthcare measures and schemes educating young people in how to lead a healthy lifestyle (§ 4 of the Province of Vorarlberg Young Persons Protection Act / Jugendgesetz). In 1998 the Youth Affairs Department supported a total of nine (private) legal entities operating holiday centres for children and young people (some which run several facilities). § 22 of the Province of Vorarlberg Youth Welfare Act / Jugendwohlfahrtsgesetz contains a special regulation on residential recreational centres and holiday camps for young people. During the school summer holidays the Vorarlberg Youth and Family Affairs Department organises the Family Week programme at the Lech-Stubenbach Young People's Residential Centre, which enables large families, families with infants and small children and single parent families in particular to spend an entertaining family holiday in a pleasant atmosphere at reasonable prices. The Lech-Stubenbach Young People's Residential Centre, which is transformed into a "large family home" for the period, represents a suitable alternative for families for whom a holiday in hotel accommodation is out of the question. Families can enjoy a shared week of relaxation and recreation with a varied programme of all-round activities; to relieve the burden on parents in-house childcare by trained nursery nurses is available on request.

565. These activities are given as examples; similar programmes and initiatives for families, children and young people are also provided by the other Federal Provinces.

122 Children's film – children's books – children's and youth theatre

566. The Austrian Film Promotion Fund promotes (children's) film production in Austria in cooperation with the Austrian public broadcasting corporation (ORF). The Vienna Film Promotion Fund promotes feature films, documentaries and special films for young people with a special focus on the city of Vienna. Children's film days and children's film festivals (e.g. the annual Vienna Children's Film Days) show films for children – often ones which have enjoyed international success – which create references to specific situations in the lives of children and aim to place the young audience in situations and locations which enable them to experience a sense of community and the fellowship of children. Children's and pupils' film festivals are also organised within the framework of media education classes in schools.

567. Children's theatre is mainly produced by independent theatre groups and the children's and youth theatre departments of some provincial theatres; occasional children's theatre festivals improve the supply of theatre activities for children. The "Theatre of Youth", a shining Austrian example on the theatre scene (since 1934), offers its audience of over half a million visitors a year productions aimed at theatre-goers from primary and lower and upper secondary schools and performed at four different venues in Vienna. No small part of the Theatre of Youth's success is due to its close cooperation with schools and teachers.

568. The ten publishing houses involved in the Working Group of Austrian Publishers of Books for Children and Young People devote a large part of their programme to children's and young people's literature. Another strong impulse for children's and young people's literature is provided by "Andersen Day", on which the Austrian publishers of books for children and young people present an anthology that young readers can obtain free of charge from booksellers.

10. SPECIAL PROTECTIVE MEASURES – CHILDREN IN DISTRESS

Refugee Children (Art 22)

569. Under the binding Convention on the Legal Status of Refugees (Federal Law Gazette no. 1955/55), as amended by the Supplementary Protocol on the Legal Status of Refugees (Federal Law Gazette no. 78/1974) the rejection, expulsion or deportation of an alien is prohibited to any country in which there is good reason to believe that his life or freedom would be in danger for reasons of race, religion, nationality, membership of a particular social group or political opinion (§ 57 para. 2 of the Aliens Act/Fremdengesetz/FrG 1997). Pursuant to § 57 para. 1 FrG also prohibits the rejection, expulsion or deportation of an alien to another country if there is good reason to believe that he would risk being subjected to inhuman treatment or punishment or the death penalty in that country. This also applies to unaccompanied minor aliens.

570. Moreover, there is a possibility to grant aliens whose request for a residence title would have to be rejected an ex officio residence permit for humanitarian reasons in special cases that require particular consideration (§ 10 para. 4 FrG). When using his discretion in such cases the Federal Minister of the Interior is assisted by the Integration Advisory Council. The granting of a humanitarian residence permit requires the approval of the Minister. These protective mechanisms conform with the respective postulates of the CRC.

123 Adapting the Age Limit for the Capacity to Take Part in Proceedings on one's Own Behalf

571. As the age limit for becoming of age was lowered from 19 to 18 in the Parent-Child Relation Act, Federal Law Gazette I no.82/2001, the Asylum Act 1997 had to be adapted accordingly. If the provision that aliens are actionable at the age of 19 had remained unchanged, persons who are of age would not have that capacity in asylum proceedings and no person legally responsible for them because neither the parents nor the youth welfare authorities which are by law in charge of unaccompanied minors would continue to be responsible for them after they have come of age. Under the Asylum Act 1997, as amended by Federal Law Gazette I no. 82/2001, Austrian law is decisive when establishing the date when the alien comes of age, regardless of the alien's nationality (§21 Austrian Civil Code). Thus aliens in asylum proceedings are capable of taking part on their own behalf when they have reached the age of 18.

124 The Legal Status of Minor Asylum-Seekers

572. The Federal Act on the Granting of Asylum (Bundesgesetz über die Gewährung von Asyl / Asylgesetz / AsylG 1997, as amended by Federal Law Gazette I no. 82/2001) governs the legal status of minors in asylum proceedings. Pursuant to § 25 para. 2 AsylG unaccompanied minors above the age of 14 may apply for asylum; for such unaccompanied minor aliens the local youth welfare authority in charge takes on legal responsibility by law. Pursuant to § 21 AsylG 1997 expulsion, a residence ban due to destituteness or custody pending deportation must not be ordered during asylum proceedings if an asylum seeker has a temporary right to stay.

573. In terms of substantive law, access to the asylum proceedings is guaranteed by being actionable. However, the personal capacity of the applicant to take part in legal proceedings is

required, which children within the meaning of the Convention do not usually have. For this reason § 25 para. 2 AsylG stipulates that the special protective needs of all minors have to be safeguarded and that the local youth welfare authority is appointed legal guardian for the duration of the asylum proceedings unless the child's interests are represented by his/her actual legal guardian. Moreover, § 13 of the Act on Administrative Proceedings (AVG) stipulates that the authority must grant the asylum seeker the necessary support to protect his/her rights in the proceedings under the principle of instruction and guidance.

574. Minor asylum seekers must only be interviewed in the presence of their legal representative, with the current guidelines for interviews by law enforcement officers applying.

575. If asylum is granted and the minors are recognized as refugees, they are on a par with nationals and their occupational and social integration must be guaranteed, they must be given access to the labour market and receive the same support from public funds as Austrians, if required. Minor aliens are subject to compulsory schooling (Compulsory Education Act / Schulpflichtgesetz, Federal Law Gazette no. 76/1985 as amended by Federal Law Gazette I no. 134/1998). Several months of language and integration courses are provided for refugees and persons displaced by war within the framework of federal assistance rendered by the Ministry of the Interior together with partner organizations, thus allowing an easier transition from assistance to independent life.

576. If the application for asylum is rejected, Aliens' Police must be notified without delay because the provisions on aliens (including expulsion, residence ban, custody pending deportation) may also be applied to minor aliens. However, it is possible to grant a limited residence permit (which can be extended) for the federal territory if deportation is legally or practically impossible, or if deportation of the alien is unreasonable for important reasons. For asylum seekers without provisional right to stay, an absolute prohibition of turning him/her back to the country of origin as well as of refoulement or deportation applies. Thus asylum seekers can only be taken or kept in custody pending deportation if they applied for asylum after alien law applied to them (§ 21 AsylG).

125 Unaccompanied Minor Aliens in the Federal Assistance System

577. Pursuant to § 1 of the Aliens Support Act (Bundesbetreuungsgesetz, Federal Law Gazette no. 405/91 as amended) the federal state grants support to needy aliens who applied for asylum under § 2 Asylum Act. Even though there is no legal entitlement to federal assistance unaccompanied minor aliens have also long been accepted under federal assistance system if they have been unable to provide an identity document. They are usually also kept within the system until they come of age or the asylum proceedings are completed even if they do not provide proof of their identity later on.

578. Pursuant to § 3 of the Regulation on Aliens Support (Bundesbetreuungsverordnung, Federal Law Gazette no. 31/92 as amended) federal support covers meals (contribution towards meals) accommodation, health insurance, pocket money of € 40 per month, clothing, school items, travel allowances, social care, burial costs, if required, and any assistance to return as may be needed.

579. Pursuant to § 4 para. 2 of the Federal Support Act, the federal state is to use, to the extent possible, facilities run by private individuals, humanitarian organizations or churches as well as

unaffiliated welfare institutions or facilities of the municipalities. Under § 5 of the Regulation on Aliens Support accommodation should as far as possible in keeping with the individual needs of the person looked after, his/her ethnic and national origin, any family ties as well as the special situation of single women, if applicable.

580. Unaccompanied minors in the federal assistance system are accommodated in such a way by approval of the guardian authority that their age and stage of development as well as their personal situation can be taken into account. For this purpose the Youth Welfare Office is always involved in each case of a minor asylum seeker. The office will also monitor if the relevant provisions and requirements are met and prepare submissions to the authorities. From January through May 2002 a total of 307 to 408 unaccompanied minor asylum seekers were looked after under the federal assistance system (see Annex A, Tab. 29).

126 Aliens Law Provisions Applying to Minor Aliens

581. The Aliens Act (Fremdengesetz 1997, FrG) includes special provisions for minors. In immigration procedures (for the granting and withdrawal of residence permits, or within the framework of special provisions for the immigration and residence of EEA citizens as well as measures to prevent immigration, terminate residence and effect deportation) minors have full legal capacity on reaching the age of 16; moreover, they are entitled to consult a legal representative or person of their trust in oral proceedings.

582. "Minor aliens who have reached the age of 14 may apply for the granting of an immigration or residence permit themselves. The issuance of such permits requires the consent of the legal representative which shall be proven by the applicant.

583. Minors who have not yet reached the age of 16 and whose legal representatives cannot safeguard their interests may take action in proceedings on their own behalf, provided that such action is beneficial to them. If children are unaccompanied, the youth welfare authority of the capital of the Land where the minor is staying becomes the legal guardian of the minor by law under § 95 para. 3 FrG.

584. Apart from legal guardianship in immigration proceedings, it is generally possible to appoint a counsel for the minor for individual acts in the context of care, upbringing, legal representation and asset management if the well-being of the minor is jeopardized by the behaviour of the parents – which would be the case when the minor is abandoned or left behind without supervision. In such cases the court may appoint a guardian or counsel, usually the welfare office.

585. In principle, family reunification is only possible for aliens up to the age of 15."

127 Custody Pending Deportation as the Last Resort for Minors

586. According to § 61 FrG aliens may be arrested and detained (pending deportation) if this is necessary to secure proceedings with a view to the issuance of a residence ban or expulsion until it can be enforced, or deportation, refoulement or transit (for a survey of the number of minors in custody pending deportation see Annex A, Tab. 30).

587. § 66 FrG states that the authority may refrain from custody pending deportation if it believes that the same end can be attained by more lenient means; the authority shall use more lenient means vis-à-vis minors unless it believes that the same purpose cannot be attained. If minors are concerned by custody pending deportation, the authority shall use more lenient means instead of ordering custody, e.g. instruct the minor to stay in accommodations designated by the authority or the obligation not to leave a certain place. In such cases aliens shall report to the law-enforcement authority made known to them every other day. This instrument is furthermore linked to the requirement that the alien agrees to be photographed and fingerprinted (§ 66 FrG). The provisions of § 66 FrG thus states a fundamental obligation of the authority not to order custody pending deportation and to use more lenient means when dealing with minors. Should the authority decide to order custody pending deportation in an individual case, the written decision on which this is based must always contain well-founded reasons why the application of § 66 FrG had to be refrained from. The authority must seek to keep custody pending deportation as short as possible. It is limited to two months but if it is not possible to ascertain the person's identity and nationality, it can be extended to a maximum total of six months. This makes it clear that the use of more lenient means is the rule for adolescents and that custody pending deportation on related premises is the exception.

588. Against the backdrop of the concerns voiced by the Committee in item 27 of the Concluding Observations about the application of this provision a comprehensive list of measures was prepared by the Ministry of the Interior and the Youth Ministry on the occasion of the 10th anniversary of the CRC on 20 November 1999. In keeping with these measures, all possibilities must be tried, notwithstanding legal provisions, to keep the number of minor in custody pending deportation as low as possible and, in particular in the light of Art. 37 CRC, to use custody pending deportation as the last resort to help Aliens Police to fulfil their tasks under Austrian law.

589. On the basis of this list of measures a decree of the Minister of the Interior was issued on 9 December 1999 (file no 31.340/12-III/16/99); it ruled that special provisions would have to be used when applying the Aliens Act in matters concerning minors. The decree particularly refers to § 95 FrG stating that minors have legal capacity in proceedings under the 3rd, 4th and 6th Chapter of the Aliens Act while minor aliens under 16 years of age whose interests cannot be safeguarded by their legal representatives may only act to their own advantage in proceedings. When immigration proceedings are instituted involving a minor alien under 16, the local youth welfare office is appointed legal representative of the minor.

590. Determination of age: Since the age of an alien is decisive for the decision as to whether custody pending deportation should be ordered or not, it was found that it is in practice very difficult to ascertain the age of aliens because of missing or clearly forged documents. As the authority is obliged to investigate and ascertain the material truth according to the provisions of the Act on Administrative Proceedings (AVG) the party's assertion is not enough to clarify the facts of case. First appearances will only serve as a basis for initial measures. In those cases where the minority of an alien cannot be established reliably, a medical expert opinion must be obtained.

591. Using more lenient means when minors are involved: If the authority comes to the conclusion that the alien is a minor, the following applies in the context of § 66 FrG: The

fundamental prerequisite for using more lenient means under § 66 FrG is that the purpose of custody pending deportation, i.e. to secure the proceedings for the termination of residence (residence ban or expulsion) can be attained in a different way until such termination is enforceable or deportation, refoulement or transit can be safeguarded. Cases where the authority has reason to believe, due to various circumstances, that the purpose of custody pending deportation (securing proceedings or deportation) cannot be attained in any other way is the exception to the rule under which there is a statutory obligation to use more lenient means when minors are involved. In practice, this is usually the case when an alien has already exploited the more lenient means on one occasion to go into hiding or if the minor has committed an offence. If the authority has to place a minor in custody pending deportation in individual cases, the decision on which this is based must contain well-founded reasons why it was not possible to use more lenient means.

592. The decree quoted above also clarifies that minors under 14 must in no case be taken into custody pending deportation but that more lenient means must be used in any event and if required. For minors serving a prison term, Aliens Police must carry out proceedings to terminate residence while they are detained and seek to avoid custody pending deportation to enforce the termination of residence.

593. Use of more lenient means on accompanying persons: If more lenient means are used when a minor is involved, the authority must also check whether or not the same can be used vis-à-vis any accompanying persons (persons who are legally responsible for the minor, adult siblings) who would qualify for custody pending deportation. Often enough, individual family members (e.g. the father) is taken into custody pending deportation. If the wife and children also meet the requirements for custody pending deportation, the idea of "keeping the family together" should not be exaggerated to such an extent that these persons are also taken into custody pending deportation. In such cases it will often be justified to use more lenient means on these accompanying persons because it does not have to be expected that the family of a person in custody pending deportation will go into hiding.

594. Another decree of the Federal Minister of the Interior dated 10 April 2000 (file no. 31.340/17-III/16/ 00) summarizes the central principles of the way in which Aliens Police deals with minors when using more lenient means pursuant to § 66 FrG: "The number of minors in custody pending deportation shall be kept as low as possible. In the light of Art 37 CRC the detention of a minor in custody pending deportation is to be regarded as the last resort in the fulfilment of the statutory tasks of Aliens Police." With this in mind, custody pending deportation following a prison term under a court sentence is to be avoided.

595. Minors under 14 must not be taken into custody pending deportation in any event.

596. If a minor who does not have legal capacity is accompanied by a parent or another adult accompanying person (e.g. adult siblings, relatives) the well-being of the minor shall be borne in mind when checking whether more lenient means can also be used vis-à-vis that person. If it is not clear whether a person is a minor or does not have legal capacity, Aliens Police must make all possible efforts (e.g. contacting the youth welfare office, consulting a doctor) to establish the age but eventually base the decision on a justifiable assumption.

597. The way in which "more lenient means are used when minors are involved" in accordance with the decrees is a way of detaining asylum-seeking children up to their deportation that is suited to ensure the well-being and to fulfil the requirements of Art 20 and 22 of the Convention.

598. Accommodation appropriate to the age and development of minors: If no lenient means can be used for the reasons stated above, special provisions for the detention of minor aliens apply (§ 68 para. 2 FrG): Aliens under 16 must only be taken into such custody if accommodation and care appropriate to their age and development are guaranteed. Basically, minors in custody pending deportation shall be kept separated from adults. However, if the parent of a minor is also taken into custody pending deportation, the family shall be detained together. As accommodation in keeping with the adolescent age of the persons concerned has recently been used in practice to a greater extent as an alternative to the detention of minors in prisons for custody pending deportation, treatment of minors in accordance with the Convention is adhered to in the enforcement of deportations and thus the mandate of the Austrian National Council given to the federal government to implement Art. 37 (b), (c) and (d) CRC to provide adequate accommodation and implement legislation in a humane manner has been complied with.

599. Minors and unaccompanied minors whose application for asylum has been rejected with final effect but who cannot be deported for legal or practical reasons and minors who are not covered by the federal assistance scheme are entitled to public welfare under the principle of territoriality (§ 3 of the Youth Welfare Act, JWG). In addition to other social services, this includes accommodation in homes or other youth institutions, support in education and vocational training, or pocket money to cover small personal needs of minor aliens over the age of 15 who are accommodated in homes. The competence of the authorities and the applicable laws pertaining to the protection of minors result from the Hague Convention of 5 October 1961 (Federal Law Gazette no. 146/1975) which is binding for Austria.

600. The many facets of these tasks requires close cooperation between asylum and aliens police authorities, youth welfare offices and NGOs. In 1999 the Interior Ministry submitted a proposal for "clearing offices" the Länder. Their task is to provide a first contact point for unaccompanied minor asylum seekers under 16 who are considered specially worthy of protection. According to the proposal, the status of an unaccompanied asylum seeker and his/her perspective in Austria are to be clarified within three months' time. If a return of the adolescent to his/her home country is not possible, measures are to be taken for his/her integration.

601. In 2001/2002 the Interior Ministry and several Länder cooperated in the framework of the European Refugee Fund and established six clearing offices which are pilot projects. They are run by NGOs and the allow for an initial clarification of the adolescent's status within a maximum period of three months and accommodation in keeping with the needs of adolescents. Currently, the projects are financed by the European Refugee Fund, the Interior Ministry and some Länder. The projects are run in Vienna (1), Lower Austria (2), Upper Austria (1), Salzburg (1) and Styria (1), their existence is for the time being limited and ends on 31 December 2002. The pilot projects are to be evaluated to identify a best practice model which will then serve as the basis of a nation-wide system of care and accommodation. In parallel to the clearing office projects negotiations are underway between the federal state and the Länder concerning a nation-wide structure so as to attain a jointly funded model for the fundamental care given to aliens in

need of assistance and protection into which measures for unaccompanied minors are to be integrated.

602. On 10 May 2001 the Austrian National Council adopted a draft resolution submitted by the Human Rights Committee in which the Interior Minister was asked to take the creation of clearing offices for unaccompanied minor refugees into consideration when planning the use of funds from the European Refugee Fund while also involving the Länder and designed an adequate range of pilot projects, as well as to aim at a model of cooperation between asylum authorities, aliens police and youth welfare offices working in a concerted and harmonized way,

603. In addition to the use of more lenient means under § 66 of the Aliens Act, this initiative is to contribute to ensuring the well-being of the child within the meaning of the UN Convention on the Rights of the Child to the best possible extent.

604. It should also be mentioned that the aliens who came to Austria as they were displaced by the war in former Yugoslavia, Croatia and specially Bosnia-Herzegovina were accorded special status due to their particularly endangered position. Thus they were able to stay in Austria without asylum proceedings for a limited period of transition. Practically all those displaced from Bosnia since 1993 were received in Austria and supported under a special programme of the federal state and the Länder.

129 Improving the Legal Situation of Minor Refugees

605. In the past few years, the legal representation of minor refugees has greatly improved: in Vienna, a competence centre was created to safeguard the interests of unaccompanied minor refugees and issues of residence permits on the one hand, and to provide them with legal counsels and contributes to the establishment and planning of appropriate accommodations and care while also coordinating their operations. The competence centre is currently staffed with five employees. Moreover, there is increasing readiness in the individual Länder to seriously improve accommodation and care for young refugees (resolutions of the provincial parliaments of Styria and Upper Austria).

130 Report of the Human Rights Advisory Council on "Minors in Custody Pending Deportation"

606. In view of the 10th anniversary of the CRC and the list of measures agreed between the Interior and Youth Ministries to improve the legal situation of minder refugees – with express reference to the CRC – the Human Rights Advisory Council, which was formed under the Police Act (Sicherheitspolizeigesetz, §§ 15a, 15b, 15c and 93 SPG, Federal Law Gazette no. 566/1991 as amended) and pertinent regulations (Federal Law Gazette II no. 202/1999 and 395/1999) dealt with these special problems. In its report on the issue of "Minors in Custody Pending Deportation" completed on 11 July 2000 the Human Rights Advisory Council expressly stressed the obligations under the CRC (in particular Art 1 and 37) as a yardstick for its findings and recommendations on the issue of deportations of minors. Based on the fundamental principle that the provisions of the CRC call upon the use of detention for minors under alien law as a last resort only, the HRAC recommended the following to the

607. Minister of the Interior: Comprehensive statistics differentiated according to age capturing all minor aliens taken into custody pending deportation or subject to more lenient means; Amending the Aliens Act so that legal capacity is attained when a person comes of age by law and that the youth welfare offices can act as legal representatives until the person concerned comes of age; The obligation of alien police to notify the competent youth welfare office of the arrest of a minor alien without delay; the introduction of permanent duty outside normal office hours in much frequented youth welfare offices; A statutory ban on custody pending deportation for minor aliens under 14; Assuming, when in doubt that an undocumented alien is a minor if his/her age cannot be unequivocally established and his/her majority is not evident; An amendment to the relevant law to extend the obligation to use more lenient means vis-à-vis minors under 14 to legally responsible accompanying persons even though the latter may be eligible for custody pending deportation; Avoiding custody pending deportation for minors who have served a prison term for a criminal offence; Establishing, on the basis of existing plans, accommodation and care facilities for unaccompanied minor asylum seekers that ensure minimum standards for the accommodation of adolescents; Clarifying the issue of funding to translate the clearing offices into reality as quickly as possible.

608. The comprehensive list of measures to improve the legal situation of minor refugees in Austria are audited to allay the concerns voiced by the Committee on the Rights of the Child.

Children in Armed Conflicts (Art 38)

609. As Austria holds the view that the participation of 15-year-olds in hostilities as soldiers is incompatible with the principle of the prime importance of the well-being of the child as laid down in Art. 3 CRC, Austria submitted an interpretative explanation when ratifying the Convention, stating that Austria would not avail itself of the possibility provided by the Conventions that set an age limit of 15 years for participation in hostilities.

610. In its meeting of 8 August 2000 the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts was adopted by the Austrian government for signature by the Federal President. The solemn signing by Austria took place on 6 September 2000 on the occasion of the United Nations "Millennium Summit". When ratifying the Optional Protocol as per 1 February 2002 Austria gave a binding declaration concerning Art 3 para. 2 confirming that the recruitment of persons under 18 years of age (persons past their 17th birthday) can only be effected if the person volunteers and has obtained the consent of the legal representative. The legal protection of volunteers under 18 for their decision is safeguarded (at the level of a simple law determining the age limit and at constitutional level in keeping with the principles of the rule of law). Bearing these legal requirements in mind, Austria actively advocated an improvement of the standards in Art 38 of the Convention when the Optional Protocol was prepared..

611. Under Austrian law, all male Austrians above the age of 17 are liable for military service (Art 9 a, para. 3 B-VG). The duration of military service as well as the age at which the recruitment of Austrian citizens is admissible is governed by a simple law, the Military Service Act (Wehrgesetz 1990, Federal Law Gazette no. 305/1990). All male Austrian citizens above the age of 17 and prior to reaching the age of 50 are liable for military service. According to § 18, para. 1 the following Austrian nationals may be recruited to the Federal Armed Forces: men who have turned 18 and are fit for military service, men under 18 but over 17 years of age may be recruited early if they volunteer. This applies to some 500 people every year and requires the

consent of the legal representative to be legally valid according to § 65c of the Military Service Act. An exception to the age limit for voluntary recruitment is granted for military schools which are in conformity with Art 28 and 29CRC. However, the exception does not turn adolescents under 18 into military targets during armed conflicts or persons involved in exceptional situations in the course of hostilities.

612. The amendment to the Military Service Act 1990, Federal Law Gazette I no. 140/2000 which took effect on 1 January 2001, the admissible age limited for the recruitment of soldiers to serve "directly in hostilities when deployed" was generally raised to the age of 18 and over and limited to military defence actions pursuant to § 2, para. 1, sub-para. a of the Military Service Act (WG). The supplement to § 47 para. 2 was added in the interest of improved protection of the rights of children within the meaning of the CRC.

613. As an alternative to military service men liable thereto are entitled to choose substitute civilian service (community service in hospitals, in ambulance services, in social services and assistance for the disabled, care for the elderly, nursing, care for drug addicts, care for asylum seekers and refugees, on assignments to combat epidemics or natural disasters as well as in civilian protection and other civilian defence areas).

614. Since the amendment to the WG 1990, Federal Law Gazette. I Nr. 140/2000, which took effect on 1 January 2001, women may volunteer for military training for a period of 12 months, voluntary armed manoeuvres (for training purposes) and functional services (to fulfil other military tasks in the interest of fast, economical, cost-effective and purposeful discharge of duties). Women are excluded from involvement in armed conflicts and not liable to do military service.

131 Measures to Protect Children in Wars with Armed Conflicts and from the Consequences of the Use of Mines

615. On the basis of the Ottawa Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction Austria adopted legislation (Federal Law Gazette no. III 38/1999) which reflects a comprehensive ban on the use, stockpiling, production and transfer of anti-personnel mines. In its resolution E 182-NR/XX.GP of 19 May 1999 the National Council called upon the federal government and the Ministry of Foreign Affairs to advocate within the EU measures and at bilateral and international level for the protection of children in wars and armed conflicts; in detail, the following issues were raised: A ban on the recruitment of minors by regular armies and guerrilla organizations; raising the minimum age for recruitment from 15 to 17, and to 18 for deployment in hostilities; Support to programmes for the demobilization and reintegration of child soldiers after the end of wars and conflicts by offering financial and human resources; The recruitment of minors, the kidnapping of persons in armed conflicts for the purpose of prostitution, military attacks on schools and institutions primarily used by children should be defined as war crimes and subjected to the jurisdiction of the International Court of Criminal Justice; Children under 18 should not be held responsible for crimes subject to the jurisdiction of the International Court of Criminal Justice.

616. Assistance in cases of discharge from the military or demobilization, social reintegration and to the physical as well as psychological recovery of persons who were recruited or deployed in hostilities contrary to the principles of the Optional Protocol to the Convention on the Rights of the Child on involvement of children in armed conflict is an important operational supporting measure which the States Parties transfer to their every-day life when repatriating such persons under 18. Austrian Development Cooperation has focused on demobilization and reintegration programmes and developed specific know-how in the field. As an example, the integrative human-rights based component of the country programmes for Mozambique and Rwanda is a case in point.

617. In this context please also refer to the Austrian Mine Action Programme described in Chapter 13.2.

11. SPECIAL PROTECTIVE MEASURES – CHILDREN IN CONFLICT WITH THE LAW

The Administration of Juvenile Justice (Art 40)

618. In Austria criminal liability starts at the age of 14 as a matter of principle. Adolescents under 14 years of age are not liable to punishment. Adolescents under 16 are not liable to punishment in misdemeanours (offences committed with intent liable to punishment not exceeding a three-year prison term and all offences due to negligence) if their guilt is not serious and if there is no need for punishment as a means of special prevention. The perpetrator's guilt is the basis for sentencing. When meting out a sentence the court must weigh aggravating and mitigating circumstances. Mitigating circumstances are taken into consideration when young adults (18-21) commit offences.

619. The punishment of criminal offences committed by juveniles and the special nature of juvenile court trials are governed by the Juvenile Court Act (Jugendgerichtsgesetz, JGG) 1988. Substantive juvenile criminal law only applies to adolescents under the age of 18. To young adults above 18 years of age regular substantive criminal law with some modifications is applied. The amendment of the JGG, Federal Law Gazette I no. 19/2001, introduced elements of "criminal law for adolescents" into the appropriate laws for offenders up to the age of 21.

620. Criminal proceedings against young people for offences committed prior to reaching the age of 21 are assigned to the departments of the district and regional courts in charge of juvenile delinquency. The procedural provisions of the Juvenile Court Act concern the following issues:

621. The exclusion of an entry in the record if the perpetrator is found guilty while sentencing was reserved (§ 32 para. 2 JGG),

622. The general right of appeal (§ 32 para. 3 JGG),

623. Joint proceedings involving adults and juvenile delinquents (§ 34 JGG: if an offence was committed by a juvenile delinquent and an adult, the court in charge of juvenile justice will conduct proceedings against both, with only a few exceptions applying),

624. The restrictions on pre-trial custody (§ 35 para. 1, second sentence JGG),

625. Special provisions for detention in pre-trial custody (§ 36 JGG),

626. The presence of a person of the suspect's trust in interviews and interrogations (§ 37 JGG),
627. The involvement of an appointed probation officer in the main trial (§ 40 JGG),
628. The provision about hearings during the temporary absence of defendants (§ 41 JGG) does not apply to young adults
629. In camera main trials (§ 42 JGG),
- Special inquiries concerning juvenile suspects (§ 43 para. 1 JGG),
630. Costs of proceedings (§ 45 JGG) are borne directly by the federal state and costs of ordered psychotherapy medical treatment and withdrawal are borne by the federal state under the principle of subsidiarity (§ 46 JGG),
631. The tasks of the Juvenile Court Assistance Office (§ 48 sub-para. 1 and 4 JGG).
632. The administration of juvenile justice is a task of specialized court departments at all levels. Pursuant to § 26 para. 7 Court Organization Act (Gerichtsorganisationsgesetz) Guardianship and custody matters concerning minors, juvenile criminal matters and youth protection cases must be allocated to the same court departments so that one court department might be in charge of all matters concerning the same minor. Criminal cases involving young adults are also assigned to these departments.
633. In trials by jury, the panel of jurors must include at least four jurors who are or were teachers, educators, or employed by public or private youth welfare services, and at least two jurors must be of the same sex as the defendant. Jurors are involved in the main trial and sentencing in matters where the penalty may be more than ten years of imprisonment and the reduced penalty is at least one year, and in certain political offences (§ 14 para. 1 sub-para 1 to 10 Code of Criminal Procedure, StPO).
634. Under Art 40 para. 2 sub-para. a of the Convention a principle in keeping with the rule of law which is enshrined in Art 7 of the ECHR, which has constitutional rank, and in § 1 of the Criminal Code states that a penalty or preventive measure may only be imposed for a offence that is expressly liable to punishment and was so at the time it was committed (prohibition of retroaction). Moreover a more severe punishment than that to which the offence was liable at the time it was committed must not be imposed; these principles must be applied to earlier offences if the laws applicable at the time of commission of the offence were not more favourable for the offender in their overall effect.
635. As to Art 40 para. 2 sub-para. b: To protect the principle "innocent until proven guilty" which has constitutional rank in Austria (Art 6 para. 2 ECHR) the rules of procedure as well as §§ 7 a and b of the Media Act (Mediengesetz) apply. In certain circumstances, it provides for special civil-law claims for damages up to € 14,34.57 for victims and suspects if their identity (names, photographs and other personal particulars) are disclosed without authorization in media reports. The law considers it a violation of the legitimate interests of a person if the identity of a juvenile is disclosed.

636. Another comment as to Art 40 para. 2 (b) (iv) is defendants must not be confronted with promises or representations or threats and coercive measures to prompt him/her to confess or provide other information. If the defendant refuses to answer a question, he must only be told that his/her behaviour will not impede inquiries and that he/she might forego the chance to state the reasons for his/her defence (§§ 202, 203 StPO). At the beginning of the interview by the pre-trial magistrate, the defendant must be instructed about the charges and that he/she is free to decide whether he/she wishes to make a statement or not or to consult with his/her defence counsel first. He/she must also be cautioned that statements may be used in his/her defence or in evidence against him/her (§ 179 para. 1 StPO).

637. The obligation under Art 40 para. 2 (b) (v) of the Convention is fulfilled due to the fact that legal remedies against all judgements and orders of a court are available. A (n adolescent) defendant must also be assigned an interpreter free of charge if he/she does not speak the language of the court sufficiently well. This is specially true for trials, inspection of the files or translator's help that the defendant might require when a court order or an application of the public prosecutor is communicated to him/her. An interpreter must in any event be appointed for the main trial and interrogations by the judge, and these services must be free of charge for the defendant.

638. As to Art. 40 para. 3: The possibilities for dealing with cases of juvenile delinquency without forma proceedings and subsequent sentencing have meanwhile been amended, supplemented and also made applicable to adults' criminal law. The options of waiving prosecution without any further measures or out-of-court settlements (victim/perpetrator mediation) continue to exist. Moreover, proceedings may be discontinued against payment of a fine or the acceptance of obligations or placement in the care of a probation officer (during a probation period) or community service. The tendency towards possibilities for the informal termination of proceedings has thus been maintained and expanded.

639. The "variety of dispositions" addressed in Art. 40 para. 4 exists.

Children Deprived of their Liberty (Art 37 lit. a, b, c and d)

132 Prohibition of the Death Penalty and Life Sentences for Adolescents

640. § 36 of the Austrian Criminal Code (StGB) provides that for punishable offences committed by a perpetrator under 21 no more severe penalty than 20 years may be imposed (§ 321 StGB), and penalties of ten to twenty years are replaced by five to twenty years.

133 Detention in Pre-Trial Custody

641. The following data comply with the Committee's request for information in item 29 of the Concluding Observations. The Juvenile Court Act 1988 and the application of out-of-court settlements (victim/perpetrator mediation) to juvenile offenders which is highly successful in international comparisons ensure full compatibility of juvenile justice with the Convention, in particular Art. 37, 39 and 40, as well as other relevant international standards in the area, such as the Beijing Rules, The Riyadh Guidelines and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

642. As to Art. 37 (b): Apart from Art. 5 ECHR applying, children and adults are protected by the Constitutional Act on the Protection of Personal Liberty of 29 November 1988 (Bundesverfassungsgesetz über den Schutz der persönlichen Freiheit, Federal Law Gazette no. 684). Pursuant to Art. 1 para. 2 nobody must be arrested or detained in any different way than the one that is prescribed by law. para. 3 states that the deprivation of personal liberty must only be provided for by law if and to the extent that this is reasonable to attain the purpose of the measure.

643. The principle of reasonableness under § 35 para. 1 JGG is specially marked because adolescents must not be detained or taken into pre-trial custody or such custodial measures must not be maintained if the same purpose can be attained by dispositions under family law or youth welfare law or by using more lenient means. Pre-trial custody must only be ordered if the disadvantages related thereto for the development of the adolescent's personality and his/he progress in not unreasonable in relation to the significance of the offence and the penalty to be expected.

644. As at 1 April 2002 a total of 203 juveniles (14-18 years of age; 194/m, 9/f) were detained in Austrian prisons, 130 of them were in pre-trial custody, 67 were serving a prison term (6 in custody for an administrative offence, or pending deportation, or institutionalized).

645. As to Art 37(c): Art 1 para. 4 of the Act on the Protection of Personal Liberty stipulates that somebody who is arrested or detained must be treated with respect for his/her human dignity and as gently as possible, and must only be subjected to those restrictions that are reasonable in relation to the purpose of detention or to ensure law and order at the place of detention. At the level of a simple law § 22 of the Act on the Execution of Sentences (Strafvollzugsgesetzes, StVG) contains an analogous provisions. The amendment to that act in 1996, Federal Law Gazette no. 763, in which § 14a StVG was inserted in the act, defines respect for human dignity as an aspect in internal audits of penitentiaries.

646. Appeals are possible at all stages of proceedings and in all types of proceedings..

133 Prison Terms for Children and Adolescents

647. Children and juveniles must only be deprived of their liberty on the basis of the relevant laws since minors and adults alike enjoy the right to human respect and personal freedom. Since even short-term detention has been observed to cause severe shock in juveniles, pre-trial detention is only applied after careful weighing of all aspects of the individual situation, and only if the disadvantages related thereto for the development of the adolescent's personality and his/he progress in not unreasonable in relation to the significance of the offence and the penalty to be expected (§ 36 para. 3 JGG).

648. As for the situation of juveniles in prisons, juveniles serve their prison terms in special prisons or at least in special departments of general penitentiaries. They are separated from adult prisoners as a matter of principle. This also applies to pre-trial custody (see. § 36 para. 3 JGG). They may receive one visitor for one hour at least once a week, receive schooling, if necessary, or have an opportunity to complete vocational training in the special prison.

134 Out-of-court Settlements (Victim-Perpetrator Mediation) for Juveniles

649. Out-of-court settlements of offences for juveniles (ATA-J) have been anchored in the Juvenile Courts Act (JGG) since 1988 and is being applied nation-wide. Over time the number of potential "candidates" for this solution has been observed to be on the rise (1994: 2,360 = 9.5% of young suspects, 1997: 2,727 = 9.8%). There are slight variations in the frequency of use in comparison among the four districts of Superior Regional Courts: while differences between Vienna (7.6%), Graz (8.4%) and Innsbruck (9.6%) are small, Linz is characterized by a somewhat higher rate of use (14.3%) among young suspects. .

650. The number of discontinued proceedings pursuant to the JGG rose in 1995 and 1996, slightly decreased in 1997, rose markedly in 1998 and 1999 and went down again in 2000, with 1,976 discontinued cases under § 6 JGG (not including alternative solutions) (1,882 without ATA/J and 94 cases settled under ATA/J).

135 Conditional Release

651. If a criminal has served half of the prison term he/she was sentenced to or that was reduced in an amnesty, or at least three months of the prison term, the remaining penalty can be suspended on probation if there is reason to believe that there is no need to have him/her serve the full term to prevent him/her from committing another offence. If the criminal has served two thirds of the term he/she was sentenced to or that was reduced in an amnesty, or at least three months, he/she may even be released on probation if there are no special reasons to believe that he/she will not commit any further offences when at large. The minimum time to be served for persons under 21 years of age is one month instead of three months.

136 Probation: Alternatives to Criminal Trials, Sentences, Unconditional Penalties

652. If the sentence imposed on a criminal is conditionally suspended or if he/she is conditionally released from prison or a preventive measure linked with the deprivation of liberty, the court must give instructions or order probation to the extent that this is necessary or purposeful to prevent the offender from committing further punishable acts. Probation will always be ordered if a criminal is conditionally released from prison for an offence committed before the age of 21. The exception to this mandatory probation order is constituted by the fact that the delinquent's personality and previous life warrant a waiver. Ordering probation is the normal case for young people under current legislation. Support by a probation officer should only be foregone in exceptional cases.

653. Apart from the fact that statistical data about the special case of conditional discontinuation of proceedings under §§ 17-19 SGG are scarce a total of 1,321 persons under the age of 19 were given a probation order in 1997 in all of Austria, which corresponds to 4.8% of suspects. While in 1994 probation was ordered in 29% of all potential cases, the rate of 1997 is 35% in total. The increasing use of probation as an alternative of criminal proceedings and sentencing is also reflected in the rate of juvenile suspects: the rate of suspects under 19 reported to court who were given a probation order instead of a sentence rose from 4.2% to 4.8%.

654. In 1997 a total of 4,392 young people enjoyed the intervention of a social worker to avoid a sentence: 16% of suspects under 19 were thus referred to assistance measures for delinquents prior to the imposition of an unconditional sentence. In comparison with 1994 (14%) this is an

increase showing that the justice system has more trust in the effectiveness of assistance measures to delinquents. When assistance measures for delinquents are used in juvenile proceedings as an alternative to "more severe" judicial measures, they are usually an instrument to avoid a formal sentence. Out-of-court settlement, support to meet requirements, and probation along with the provisional discontinuation of criminal proceedings account for a total of 77% of assistance measures to delinquents. By and large, the application of assistance measures can be considered equal to a waiver of judgement .

137 Postponement of the Execution of a Sentence

655. The option to postpone the execution of a sentence if the latter is not more than a prison term of one year and if postponement seems more purposeful for the delinquents progress in life than immediate execution (e.g. to complete vocational training) was extended to persons sentenced for offences they committed prior to the age of 21 (JGG 1988, Federal Law Gazette I no. 19/2001).

138 "Following Through in Proceedings"

656. The "Youth Assistance" concept in Vorarlberg was designed to support adolescents reported for a punishable offence. The programme aims at safeguarding the well-being of the child by rapid counselling, clarification of the child's history, arranging contacts with social services and possible preparing measures of educational support right after the report, fulfilment of the Juvenile Court Assistance Service (Jugendgerichtshilfe) pursuant to § 48 sub-para. 1 and 3 through 4 JGG following through with the adolescent until the criminal case is finished. The programme is implemented by the Association of Probation Officers and Social Workers. The Children's' and Adolescents' Ombudsman disseminates information by publishing the brochure "Recht so! Informationen für Jugendliche im Umgang mit Gericht und Polizei" (That's Right! Information for Adolescents dealing with Court and Police).

Recovery and Social Reintegration (Art 39)

657. Even though these are measures for the general protection of victims, not just the situations described in Art. 39 the latest amendment to the Act on Victims of Crime (Verbrechensopfergesetz) in Federal Law Gazette I no 11/1999 should be mentioned. On the basis of the amendment and Art. VI of the amended Code of Criminal Procedure 1999, Federal Law Gazette I. no. 55 victims of crime are entitled to be reimbursed for the costs of psychotherapy by the state. The amendment to the Code of Criminal Procedure forms the legal basis for the promotion of institutions supporting and assisting persons whose rights were infringed upon by a punishable act. These measures are not restricted to children and adolescents but the aim of improving the "fate" of minor victims of crime was a major motivation for the introduction of these innovations.

12. SPECIAL PROTECTIVE MEASURES: CHILDREN IN EXPLOITATIVE RELATIONSHIPS

Economic Exploitation of Children (Art 36)

658. The measures taken to protect children and young persons against (precipitate) consumption and its threats by limiting access to certain consumption opportunities – e.g. by graduating children’s and young persons’ capacity to contract and through the provisions of the Protection of Young Persons Act – are in conflict with the attractiveness participating in the world of consumption holds for children and young persons.

659. The issue of advertising for and with children is regulated in the Amendment to the Austrian Broadcasting Act of 1998 and addressed in so-called “soft - law“ instruments. The goal of the Amendment to the Austrian Broadcasting Act of 1993, with which the EC Directive concerning the Pursuit of Televisual Broadcasting was implemented in Austria, is to “guarantee that advertising directed at children or in which children appear is not prejudicial to their interests”: advertising (on the radio or on TV) “must not as a matter of principle be prejudicial to the interests of consumers”, TV advertisements must not show minors consuming alcohol and commercials must not specifically target minors and, moreover, must not make direct purchasing appeals to minors, thus taking advantage of their inexperience and credulity. In addition TV advertisements in which minors are directly invited to induce their parents or third parties to purchase the good(s) or services(s) advertised are forbidden. Finally, the trust minors place in their parents, teachers or other persons they confide in must not be exploited through advertising and it is forbidden to show minors in dangerous situations without justified reason.

660. Children and young people are forbidden to participate in games of chance (except for lotteries, the football pools, raffles or fun bazaars, etc.) and to play on gambling machines on which money can be won.

661. The efforts undertaken by business aimed at winning adolescents as consumers and customers (e.g. by banks for “youth accounts“) also lead young people to establish sometimes substantial – legally ineffective – commitments/obligations without the required involvement of their legal representative or the guardianship court. Often this legal imperfection was remedied tacitly, by simply keeping this bank account open upon the minor’s reaching majority for instance, and the commitment remained valid. Following adoption of the new regulations contained in the Amendment to the Parent(s) and Child Act (2001) such a proceeding is, however, no longer possible. In the event that the agreement of the minor’s legal representative, the consent of the other parent or the approval of the guardianship court are not obtained for a legal transaction requiring them, the child upon reaching majority will only be legally bound to this transaction on the condition that he/she declares in writing that he/she recognises such commitment/obligation as being legally effective. If the creditor requires the person having now reached majority to provide the respective statement such creditor must grant him/her an adequate period of time in which to do so.

662. The Ministry for Social Security and Generations, schools and debtor counselling associations run awareness-raising and information programmes aimed at conveying to young persons the value of careful consumption and the dangers involved in “making a career as a debtor“.

Child Labour (Art 32)

663. Austria ratified the ILO Convention No. 138 concerning the Minimum Age for Admission to Employment in September 2000. The ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour was ratified in December 2001 and the Recommendation No. 190 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour has already been submitted for the attention of the National Council (the Lower House of the Austrian Parliament).

664. Article 16 of the Austrian Civil Code prohibits slavery or bondage and the exercise of such power in Austria.

665. Under Austrian labour law children and young persons are treated as a group worthy of special protection. The protection of children and young people from economic exploitation and from performing any work that is likely to be harmful to their health and development is guaranteed by international agreements and numerous national laws, regulations and ordinances including the Federal Law on the Employment of Children and Adolescents of 1987 (Bundesgesetz über die Beschäftigung von Kindern und Jugendlichen 1987, KJBG) Federal Law Gazette No. 599/1987, last amended by Federal Law Gazette I No. 126/1997 and Nr. 98/2001.

666. In Austria child labour is generally inadmissible, hence children under 15 must not be used for work of any type. However, employment of children which serves the exclusive purpose of training or education and the occupation of one's own children with light work of short duration in the household (assisting in cooking, washing the dishes and tidying for instance) is not regarded as child labour, since such occupations do not carry the risk of economic exploitation and/or are not likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

667. As a matter of principle children may not be employed on Sundays, on statutory public holidays, or between the hours of 8 p.m. and 8 a.m..

668. For the participation of children in musical, theatrical or other performances as well as in photography, filming, television and tape recordings this prohibition applies for the period from 11 p.m. to 8 a.m. The admission of children to these types of employment requires an official permit from the authorities and must be of special interest for art, science or teaching. The use of children in variety theatres, cabarets, sex shops, dancing establishments, discotheques or similar establishments may not be authorised. Before the official permit is granted agreement must be reached with the competent school authorities, in the event of performances for commercial purposes the competent labour inspectorate must be heard. Compliance with these regulations is monitored by the district administrative body together with the labour inspectorates, the municipal authorities and the school's head teacher and deputy heads. In the event that the employer does not provide a guarantee for compliance with the legal provisions aimed at the protection of children/adolescents or the requirements provided for by law the employer will be refused permission for the further use of children in public shows by the authority granting the authorization.

669. As a result of the remark under Item 28 of the “Concluding Observations/Comments it is pointed out that subject to the restrictions set out above, the employment of children over the age of 12 is otherwise only admissible in the following cases: Work in enterprises in which only members of the owner’s family are employed, work in private households, errands, assistance at sports grounds and playgrounds, picking of flowers and equivalent activities.

670. It should be noted in this context that the activities set out under items 1 and 2 can also be exempted from the EU Directive on the Protection of Young People at Work; thus these activities are not in the least incompatible with the, by international standards extremely high, level of protection of children at work in Europe. As regards the activities set out under item 3, the legislator explicitly defined in 1997 that these types of work may not be performed in a commercial enterprise, nor may an employment relationship exist. The possibility that children from the age of 12 can in any way be made to join the world of work or be prevented by work from attending school is therefore ruled out.

671. Similarly, the employment of adolescents, i.e. children up to the age of 18, is only admissible subject to a number of restrictions: the time adolescents are allowed to work is limited to eight hours a day, their weekly working hours including the time spent at vocational school must not exceed 40 hours (under §. 11 of the Federal Act on the Employment of Children and Adolescents exceptions shall only be admissible if they aim at prolonging the adolescent’s free time or are made on the basis of the regulations under the collective agreements; in any case, however, the daily working time must not exceed nine hours). If adolescents are required to perform preparatory or shutting-down tasks the time taken up by this work shall as a matter of principle be compensated for by free time. Under § 12 of the Federal Act on the Employment of Children and Adolescents overtime because of preparatory or shutting-down tasks is only admissible in a few clearly defined cases. Where daily working time lasts longer than four and a half hours, a break of at least 30 minutes must be provided, which must be given after six hours at the latest. Following completion of the daily working time the adolescent is entitled to an uninterrupted rest period of at least twelve hours (§§ 15 and 16 of the Federal Act on the Employment of Children and Adolescents).

672. Adolescents may not be employed at night time between the hours of 8 p.m. and 6 a.m.; however, special regulations apply for adolescents employed in the hotel and catering industry, in enterprises operating more than one shift, in the case of concerts, theatrical or other performances, film, television and tape recordings, in bakeries or in health and patient care (§ 17 of the Federal Act on the Employment of Children and Adolescents). Adolescents may not be employed on Sundays or statutory public holidays. There are exceptions for individual activities, but as a general rule every second Sunday must be off. Only in the hotel and catering trade may the collective agreements admit employment on two consecutive Sundays; in any case, however, adolescents may not work on more than 23 Sundays throughout the calendar year (§ 18 of the Federal Act on the Employment of Children and Adolescents). As of 1 July 1997 the weekly rest period of 43 hours was extended to two calendar days which are usually required to be consecutive. The 5-day week was thus generally introduced for adolescents. Under § 19 of the Federal Act on the Employment of Children and Adolescents special regulations apply for individual activities, e.g. in the hotel and catering business and the processing of fresh food. Adolescents are entitled to 30 workdays of holiday per year (§ 32 of the Federal Act on the Employment of Children and Adolescents, Art. 2 of the Holiday Act, Urlaubsgesetz).

673. Under the Act on the Employment of Children and Adolescents the employer must make an assessment of the hazards to the health, safety and morality of the adolescent before he/she begins work and whenever there is a major change in working conditions. In this context the physical strength, age and level of training and instruction of the adolescent must be taken into account. The employer must adopt all the measures needed to protect safety, health and morality. Moreover, it is within the employer's responsibility to inform and instruct adolescents before they start work of any risks at work, the measures taken to prevent these risks and the corresponding equipment and its use. This information and instruction must be repeated at regular intervals, at least, however, once a year.

674. To enable the early detection of diseases the employer must inform adolescents annually and in good time of the significance of medical check-ups for adolescents and urge them to participate in such checks, granting them the necessary time off with continued remunerations.

675. By ordinance of the Federal Ministry for Labour and Transport on the Employment Prohibitions and Restrictions for Adolescents (Adolescents (Employment Prohibitions and Restrictions) Ordinance, KJBG-VO), Federal Law Gazette No. 599/1987, last amended by Federal Law Gazette II No. 436/1998, adolescents, i.e. persons who are not considered as children within the meaning of § 2 para. 1 of the Federal Act on the Employment of Children and Adolescents of 1987, namely until they have reached the age of 18, as well as minors within the meaning of § 2 para. 1a of the Federal Act on the Employment of Children and Adolescents, are forbidden to perform work with dangerous working materials, work involving exposure to physical agents, work involving mental and physical stress, work with dangerous equipment, as well as other dangerous and stressing work and work procedures, or such work is made subject to certain conditions. The Adolescents (Employment Prohibitions and Restrictions) Ordinance stipulates a number of enterprises and types of work which are absolutely forbidden for adolescents as a matter of principle and lists a number of other activities which are admissible for all adolescents who have reached the age of 17 and/or for adolescents who undergo professional training following 18 months of training and/or after 12 months provided that they have received the necessary instruction on the risks involved at vocational school. As regards training, the regulations contained in the Occupational Training Act (Berufsausbildungsgesetz) and the training provisions adopted apply. Moreover, the transportation of substantial amounts of money or valuables by adolescents at their own responsibility is forbidden.

676. Pursuant to § 6 para. 1 of the Protection of Workers Act (Arbeitnehmerschutzgesetzes, AschG), Federal Law Gazette No. 450/1994, all employers must take their employees' suitability as regards safety and health into consideration when assigning tasks to them. In this context particular attention must be paid to their constitution, bodily strength and qualifications. When assigning tasks to young or female employees or employees that require particular protection, such as disabled persons for instance, these groups' particular requirements as regards the protection of life, health and morality must be taken into account (§ 10 of the Protection of Workers Act).

677. Moreover, it should be emphasised that the provisions of the Maternity Protection Act (Mutterschutzgesetz) also apply to girls under 18. Thus a general ban on work applies for pregnant women eight weeks before and after delivery, as well as to certain potentially

dangerous activities and/or in all cases which involve a risk to the life and health of the pregnant girl or the unborn child.

678. The Federal Act on the Employment of Children and Adolescents prohibits corporal punishment and seriously abusive remarks, verbal insults, as well as piece-work (for adolescents who are under the age of 16 or in an apprenticeship or any other traineeship relationship lasting at least one year) and the use of adolescents for work hazardous to health and morality (a general employment prohibition for adolescents applies for certain operations and activities hazardous to health).

679. Any person who fails to comply with the Federal Act on the Employment of Children and Adolescents or an ordinance issued on the basis of the Federal Act on the Employment of Children and Adolescents shall be prosecuted and punished by the district administrative body with a fine of between € 72.67 and € 1,090.09, and of between € 218.02 and € 2,180.19 in the event of a repeat offence, or by imprisonment for a period of between three days and six weeks. Employers who are repeatedly punished for infringements of the above provisions may be banned from employing adolescents for a limited period or permanently by the administrative district authorities upon request of the labour inspectorate or any other authority responsible for safeguarding the protection of employees. In general the option of a ban on employment of adolescents is considered if the employer has been found guilty of a gross breach of duty concerning the adolescents employed by him or if there are grounds for considering the employer to be morally unsuitable to employ adolescents.

680. The Austrian Trade Law (Gewerberecht) does not explicitly provide for the withdrawal of the operating licence for particularly gross infringements of the ban on child labour. However, the business licence must be withdrawn if the proprietor of the business can no longer be deemed to have the required reliability for conducting the business as a consequence of severe violations against the legal provisions and protective interests to be observed and safeguarded in connection with the relevant trade. The legal provisions to be observed also include those of the Protection of Workers Act.

681. The district administrative bodies together with the labour inspectorates (each labour inspectorate must install at least one labour inspector for child labour and the protection of adolescents and apprentices), the municipal authorities and the head-teacher and deputy heads are jointly responsible for monitoring compliance with the provisions of the Federal Act on the Employment of Children and Adolescents. The obligation to report observations regarding the violation of child labour provisions applies to teachers at school, physicians and the representatives of private youth welfare organizations, as well as to all bodies whose competences include youth welfare matters.

682. Every calendar year the labour inspectorates must submit a report on their activities and their observations to the Federal Minister of Economics and Labour. Pursuant to § 19 of the Labour Inspection Act (Arbeitsinspektionsgesetz) the Federal Minister shall submit these reports in a concise form to the National Council and have them published. The annual reports submitted by the labour inspectorates include charts on complaints regarding child labour and the employment of adolescents broken down by Federal Province. In the year 1995 nine cases of violation of the Federal Act on the Employment of Children and Adolescents relating to child labour were reported, five in 1996, ten in 1997, seven in 1997, four in 1999 and in the year 2000 fourteen such cases were reported.

683. Besides, the Labour Ministry may mandate the labour inspectorates with the preparation of expert opinions and proposals in matters relating to the protection of workers. The Chambers of Labour may also set up apprentice and youth protection centres.

139 Ban on the Training of Apprentices

684. Under Art. 87 Sec. 4 of the Industrial Code (Gerwerbeordnung) of 1994 the authorities may refrain from withdrawing the trading licence if the employer was officially banned from training adolescents on the basis of § 4 of the Occupational Training Act, Federal Law Gazette 142/1969, and if this ban is deemed to suffice with a view to the peculiarity of the offence. This regulation will apply in particular to cases where the punishable act is closely related to the training of apprentices and the commission of the same or a similar offence is unlikely as a consequence of the ban under § 4. Pursuant to § 87 para. 5 of the Austrian Industrial Code of 1994 the authorities may refrain from withdrawing the trading licence if the employer was officially banned from employing children and adolescents on the basis of § 31 of the Federal Act on the Employment of Children and Adolescents of 1978, Federal Law Gazette No. 599 and if this ban is deemed to suffice with a view to the peculiarity of the offence. This regulation will apply in particular to cases where the punishable act is closely related to the employment of children and adolescents and the commission of the same or a similar offence is unlikely as a consequence of the ban under § 5.

140 Youth Spokesperson

685. In every business where at least five adolescents (i.e. not yet 18) are permanently employed, a youth spokesperson is to be appointed, whose task is to look after the social, health and cultural interests of the young people employed with the company.

686. Special protection is granted by the penal protection provision contained in section 93 of the Penal Code to "younger" persons (up to the age of 18) who are cared for by a guardian or an employer: a two-year prison sentence can be imposed for the overworking of minors, younger persons and those in need of care, if such overworking occurred, for example, as a result of malice or inconsiderateness, or endangered the lives of the persons concerned or inflicted severe bodily injury or damage to health. Abuse of the relationship arising from employment and the de facto position of authority existing between masters or employers and young apprentices, housemaids or other young employees (§ 212 of the Penal Code: "Abuse of position of authority") is likewise punished under criminal law. The employer must not use his position of authority to his own advantage; abuse of this relationship of trust and authority for sexual purposes will result in a term of imprisonment of up to three years.

687. In 1998 Austria contributed US \$ 237,941 to the ILO's IPEC Programme (International Programme for Elimination of Child Labour).

688. As a result of the amendment to the Act on Employment in Agriculture (Landarbeitsgesetz), Federal Law Gazette I No. 101/98, obstacles to ratification in the field of agriculture and forestry were removed and Austria ratified the ILO Convention No. 138 in December 2001.

689. The above representations clearly illustrate that in Austria effective protection is given against economic exploitation and the performance of any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development (Art. 32).

Drug Abuse (Art 33)

690. Children and adolescents require special protection against the dangers involved in the abuse of addictive products and substances, which, pursuant to the provisions of the Act on Addictive Substances (Suchtmittelgesetz), Federal Law I No. 112/1997 as amended (which replaced the Narcotic Drugs Act (Suchtgiftgesetz) of 1951) also include, beside drugs, other substances and pharmaceuticals having a psycho-active effect on the central nervous system (i.e. psychotropic substances). Particularly with regard to children and adolescents Austria has taken a wide range of measures geared to preventing the development of addiction and the abuse of drugs and other psycho-stimulants likely to lead to addiction, and to offering the necessary help and assistance in the event of problematic consumption of addictive substances or products. The measures taken in Austria to combat the use of drugs are in principle based on four pillars: prevention, abstinence-oriented therapy, risk limitation by means of substitutive measures and easy-access/drop-in care and counselling services, as well as punishment for dealing, particularly extensive trafficking in addictive products and substances.

691. In the field of addiction prevention Austria attaches much importance to primary and, increasingly, secondary prevention in order to avoid the development of addiction and/or problematic drug consumption. Measures aimed at the prevention of addiction are taken in various settings, such as in nursery schools, schools, at the workplace, in the field of out-of-school youth work, etc.. Beside special nursery school projects, schools form the most important setting for drug prevention measures targeted at children. In this context it should be noted that addiction prevention forms an integral element in the curricula of Austrian schools in the context of the educational principle of health promotion. Considerable importance is attached to addiction prevention in the field of out-of-school youth work, in which context the new media – and particularly the Internet – play an important role. Each federal province has its own specialised centre for the prevention of addiction, and these act as important competence centres in the field of primary and secondary prevention in Austria.

692. People with drug and addiction problems can make use of a wide range of health-related measures. Apart from the usual health care and protection institutions the range of facilities available includes specialised treatment, counselling, and care (withdrawal clinics, in-patient and out-patient treatment and care, short-term and long-term therapy, counselling centres, etc.) which are aimed at facilitating and promoting the (re)integration into society of people who suffer, or used to suffer, from addiction.

693. Abuse of and trafficking in addictive substances are offences punishable under criminal law. The production, import and export, purchase and possession of drugs, as well as the entrustment or distribution of drugs to others, are punishable by law with sentences of up to six months' imprisonment for minor offences and up to 20 years or lifelong imprisonment for major offences (for “large quantities“, involving severe violations of the Act on Addictive Substances). To fight the professional drug trade more effectively, stiff penalties have been introduced for the production, import or export, and trafficking of “larger quantities” of drugs. Any form of public propaganda encouraging drug abuse is illegal.

694. In line with the “Therapy instead of Punishment“ principle, the authorities try to tackle the problem of drugs by means of procedures corresponding to the nature of the individual problem: If drug abuse is suspected on the basis of certain evidence the health authorities intervene and refer the person concerned to a specialist sufficiently experienced in matters of drug abuse. Following this examination the authorities will work towards persuading the person concerned to undergo, if necessary, the required health-related measures (monitoring of his/her state of health by a physician, treatment by a physician including withdrawal and substitution treatment, psycho-therapy, clinical-psychological advice and care as well as psycho-social care). If the person concerned undergoes the health-related measures and only a minor drug offence is involved, the competent health authority is not obliged to fulfil its otherwise existing duty to notify the criminal prosecution authority. If a pupil is suspected of drug abuse, he/she can be requested by the head-teacher of the school to submit to an examination by the school doctor. If the pupil or his/her parents refuse such an examination, the head-teacher must inform the health authorities, which will then proceed as set out above.

695. If legal proceedings are instituted against an individual for purchasing or possessing a “small quantity” of drugs, the public prosecutor can, in certain conditions, temporarily suspend the charge for a probationary period of two years, provided the individual undergoes medical treatment or shows willingness to receive counselling from a probationary officer. If the addictive substance involved is neither “a small quantity for own use“ nor a “large quantity“, the temporary suspension of the charge is possible under certain conditions: this regulation also applies to typical drug-related crimes such as the provisioning and procurement of drugs (including forgery or theft of doctor’s prescriptions for addictive substances, etc.), provided that the offence involved is not a serious procurement crime. If the person concerned does not persistently evade the health-related measures and does not re-offend during probation, the temporarily suspended criminal proceedings instituted against him/her will be finally dropped.

696. In the event that the person concerned has already been convicted for this offence, the judge may suspend unconditional imprisonment for a certain period of time provided that the drug addict declares his/her willingness to undergo the necessary medical treatment. If the measure is successful the court may turn the unconditional imprisonment into a conditional sentence by defining a probation period, to the effect that the drug addict need not serve his/her prison sentence following successful treatment.

697. For some years the consumption of synthetic drugs among young people has been on the rise. After cannabis, "Ecstasy" has become the second most popular drug when it comes to young people’s consumption habits. However, the market for synthetic drugs is not differentiated. What gives reason for concern is that pills sold as “Ecstasy“ increasingly no longer contain (only) MDMA but also (other) sometimes highly noxious substances, such as pure amphetamine. Projects aimed at secondary prevention, particularly in the relevant youth scenes, have therefore gained in importance.

698. Alcohol and nicotine are not considered illegal substances in Austria. The regulation of their consumption by children and adolescents falls within the competence of the Federal Provinces. The youth protection laws prohibit children and adolescents under the age of 16 from smoking and drinking either generally or in public, and the same applies to the dispensing of alcohol and tobacco to this age group. The consumption of spirits, in general and/or in public, is

forbidden for children and adolescents up to the age of 18 (in one Federal Province up to the age of 16). The Industrial Code makes reference to the provisions on the protection of young persons adopted by the Federal Provinces and obliges the operators of restaurants, bars or inns to display the relevant provisions of the Protection of Young Persons Act (Jugendschutzgesetz) openly in their establishments. It is, however, admissible to sell alcoholic beverages to adolescents for consumption by adults outside of restaurants, bars or inns.

699. The results of the WHO study on "Health Behaviour in School-Aged Children (HBSC)" show that Austrian adolescents are among the European leaders as regards their regular (at least once a week) consumption of alcohol. According to the "Alkohol-Österreich" (Alcohol Austria) booklet, 2% of 16 to 17-year-olds already display problematic alcohol consumption patterns. To combat this development a coordination and information centre on alcohol (Alkohol-Koordinations- und Informationsstelle, AKIS) was set up in the year 2000; in the follow-up to the experts' meeting on "Youth and Alcohol" held in autumn 2001 concepts for a targeted stepping up of the measures aimed at preventing alcoholism are being elaborated.

700. Pursuant to the Tobacco Act (Tabakgesetz), Federal Law Gazette 431/1995 the warning "Smoking Endangers Your Health" must be printed on packages containing tobacco products – for tobacco products which are not destined for smoking the warning must read: "Tobacco Endangers Your Health" – and the packages must also display the following warnings in rotation: "Smoking Causes Cancer", "Smoking During Pregnancy Can Seriously Damage Your Child's Health" and "Smoking Endangers Other People's Health". In addition, a number of other restrictions on the advertising of tobacco products have been adopted: Billboard advertising of tobacco products is, for instance, not allowed in the direct visibility range of schools and youth centres, and advertising of tobacco products is generally prohibited in cinemas during performances suitable for young people, as well as on television and radio. It is also forbidden to advertise tobacco products specifically for young people and to advertise tobacco products via very popular personalities who may serve as idols for young people (such as competitive athletes, celebrities), as well as to distribute advertising articles to children and young people in connection with tobacco products. For the protection of non-smokers from passive smoking – and above all to reduce the danger to children's and adolescents' health – smoking has been banned in rooms used for instruction, training and negotiating purposes and school sports activities, and in public buildings, schools or other premises where children and adolescents are supervised or accommodated. An amendment to the Tobacco Act which provides for stricter regulations as regards the production, make-up and selling of tobacco products in line with the relevant EU provisions is in progress (see Chapter 8.2).

141 Cases Reported to the Public Prosecutor because of Violations against the Act on Addictive Substances

701. In the year 2000 the number of cases reported by the law enforcement authorities under the Act on Addictive Substances increased by 3 % to 18,125 (as compared to 17,141 in 1998 and 17,597 in 1999). While the Federal Provinces of Carinthia (-9.68%), Upper Austria (-2.66%), Salzburg (-14.98%), Styria (-4.73) and Vorarlberg (-36.02) registered a decline, the number of cases reported increased in Burgenland (40.30%), Lower Austria (10.54%), Tyrol (25.37%) and Vienna (9.86%).

142 Number of Drug Deaths

702. Whereas a constant decline in the number of drug deaths has been registered since 1995 (1995: 241, 1996: 230, 1997: 172, 1998: 162, of whom 138 were males and 24 females), their number increased in 1999 to 174 (126 male; 48 female) and in the year 2000 to 227. In 1998 the number of drug deaths under the age of 20 fell significantly from 20 in 1997 to 8, however in 1999 the figure rose again to 19 and in the year 2000 it even amounted to 25. In 1998 the youngest drug victims were two 17-year-olds, three 18-year-olds and three 19-year-olds, in 1999 three 15-year-olds, four 16-year-olds and two 17-year-olds died of drug consumption and in 2000 the victims included three 16-year-olds and five 17-year-olds. The share of female drug victims under the age of 20 rose significantly as compared to the previous years (1999: 68.42%, 1998 0%, 1997 35%) . (Statistics: see Annex A, Tables 35 – 37).

Sexual Exploitation and Sexual Abuse (Art 34)

703. As regards the number of offences reported to the police and the number of convictions by the criminal courts pursuant to Articles 206 and 207 of the Austrian Penal Code [(Serious), Sexual Abuse of Minors)] the following development can be observed:

| Year | Reported offences under Articles 206, 207 of the Penal Code | Convictions under Articles 206, 207 of the Penal Code |
|-------------|--|--|
| 1994 | 588 | 207 |
| 1995 | 610 | 198 |
| 1996 | 761 | 246 |
| 1997 | 895 | 215 |
| 1998 | 745 | 252 |
| 1999 | 690 (179/511) | 201 (68/133) |
| 2000 | 722 (257/465) | 224 (103/121) |

Source: Court crime statistics 1994 – 2000

704. Through the acceptance of the resolution of the government on “Violence in Society, Domestic Violence, Child Abuse, Violence against Women, Violence among Young People and Violence in the Media“ of 30 September 1997 and the adoption of the “Action Plan against Sexual Abuse and Child Pornography in the Internet” on 10 December 1998 a comprehensive package of measures against sexual abuse of children was tied up.

143. Extension of the Statutory Period of Limitation – Stiffening of the Penalty

705. Intercourse and any form of sexual activity with or in the presence of a person under 14 are liable to severe punishment. Articles 206, 207 and 212 of the Austrian Penal Code provide for the protection of children against the misuse of care or authority positions (parents, legal guardians, teachers, officials) for sexual purposes, including sexual activities with third parties.

706. As compared to the legal situation as presented in the first report, the Act Amending the Penal Law of 1998 (in force since 1 October 1998) introduced a number of essential

improvements, particularly in the interest of under-age victims of sexual crimes. The statutory period of limitation for certain sexual offences against minors was extended to the effect that, if necessary, it will not start running until the victim has attained majority, and the passage on sexual activities tantamount to intercourse was removed from the scope of § 207 of the Penal Code and transferred to §§ 206 ff of the Penal Code as a serious form of child sexual abuse. Thus the basic penalty incurred for this offence was doubled and the relevant higher qualified penalty can be applied. Consequently § 207 of the Penal Code now deals with “Sexual Abuse of Minors” and § 206 of the Penal Code with “Serious Sexual Abuse of Minors”.

707. As a result of the stiffening of the penalty for rape or child abuse with fatal outcome from a maximum of 20 years to lifelong imprisonment, the inequality between the treatment of property offences involving violence and fatal outcome on the one hand, and sexual offences involving violence and fatal outcome on the other was removed (Federal Law Gazette I No. 130/2001, in force since 1 January 2002).

144 Victim Protection Model Project aimed at minimising the distress caused to victims when being questioned in court

708. In addition to the existing provision stating that victims of sexual offences have the right to refuse to testify under certain circumstances following contradictory examination, the situation of witnesses was improved in so far as the opportunity of taking recourse to “gentle” questioning (i.e. without direct confrontation with the suspect, in separate rooms connected via video-link), which was introduced by the Criminal Proceedings Amendment Act (Strafprozessänderungsgesetz) of 1993, was intensified and expanded both for the preliminary proceedings and the main trial: the “soft” questioning obligation is therefore generally applicable for victims of sexual offences under the age of 14; moreover, victims of sexual offences are entitled to request “soft” questioning under this regulation. In the event that a less stressful questioning technique is considered appropriate for victims in their own interest and in the interest of ascertaining the truth, this procedure is also to be applied in the main trial, even if no plea for “soft” questioning has been made. The option of questioning witnesses by experts is now no longer limited to victims under the age of 14, but has been extended beyond this age group, i.e. to include adolescents in particular.

709. In order to minimise the distress caused by police questioning to under-age victims and to document the outcome as well as possible for the proceedings, a special questioning room with video equipment was installed in the criminal police counselling services and youth policing department at the Federal Police Headquarters in Vienna. This room caters for the needs of sensitive victims and is designed as a children’s room where children also have the opportunity to play. The aim of video-recording the questioning of minors is to convey a clear picture of the witnesses, their degree of maturity, facial expression and gestures to the police detectives, public prosecutors, judges and experts involved in the investigation and to convey an authentic picture of the situation. The overall impression of the victim thus gained by listening to and watching him/her facilitates decision-making throughout the entire proceedings. Pursuant to §§ 206, 207, 207a, 208, 83, 218 of the Penal Code video questioning requires the (oral) consent of the under-age victim and the (written) agreement of the victims' legal guardian. However, in the event that the perpetrator used a video camera while abusing the victim the authorities will in any case refrain from using video questioning. In the event that the child refuses this type of questioning he/she will be questioned in the traditional way.

710. Officers who question children as witnesses receive special training in questioning techniques in order to ensure that as little distress as possible is caused to the victim.

145 Disqualification from Public Service because of Sexual Offences

711. The stiffening of the provisions on removal from office of civil servants contained in the Criminal Law Amendment Act (Strafrechtsänderungsgesetz) of 2001 (Federal Law I No. 130/2001, in force since 1 January 2001) contributes decisively to the protection of children and adolescents against sexual aggression. Whereas previously the conviction of civil servants or contract staff for an offence committed with intent only led to removal from office when this conviction was connected to imprisonment of more than one year (even if the latter was entirely conditional) (§ 27 of the Penal Code, § 20 of the Civil Servants Act / BDG, § 34 of the Contract Staff Act (Vertragsbedienstetengesetz) of 1948), such civil servants can now also be removed from office when they have been sentenced to six months of unconditional imprisonment. At the same time the provisions regarding removal from office in the event of a conviction under criminal law under § 212 of the Penal Code “Abuse of a Position of Authority” were tightened in so far as the employment relationship of a civil servant will be automatically cancelled irrespective of the type of sentence passed. The aim of this provision is to protect children and adolescents as well as any other persons who are entrusted to the care of civil servants – in educational institutions, health care institutions or with the police authorities – from criminal offences on the part of individual members of the public service.

Protection from Maltreatment and/or Sexual Abuse (Art 19, 39).

146 Act on Assistance to Crime Victims

712. The demand that the state should assume the cost of therapy for victims of crimes, which had been voiced for many years, most recently by resolution of the National Council of 26 February 1998 (E-105-NR, XX.GP), was fulfilled on 1 January 1999 by means of the amendment of the Act on Assistance to Crime Victims (Verbrechensopfergesetz). Victims of a sexual offence are entitled to therapeutic treatment, the cost of which is covered by the state on the basis of the social law system. Moreover, in cases involving mental, physical and sexual violence against children recourse can be taken to child and youth advocacy services as well as the youth welfare intervention mechanisms. An emergency aid fund endowed with € 72,672,834 annually was set up in Vienna to provide rapid and unbureaucratic therapeutic assistance to victims of child abuse and violence. NGOs which offer therapy treatment to child victims of violence are granted financial assistance under the “Licht ins Dunkel“ campaign.

Duty to Report an Offence – Restrictions on the Duty to Report

713. If the suspicion of a prosecutable offence that falls within their administrative competence is brought to the attention of public authorities or government departments, they are obliged under § 84 of the Penal Code to report such an offence to the public prosecutor or the police authorities.

714. However, they are exempt from their duty to report if this information is likely to have an impact on an official activity which is based on a personal relationship of trust, or if it is to be

expected that the act will cease to be punishable. The authorities are at any rate obliged to undertake every effort to protect the victim or other persons from danger. Independent counselling centres are not subject to the duty to report, even if they are mainly funded by public monies.

715. Under § 54 the duty to report applies to physicians who in exercising their duty discover grounds for the suspicion that a minor has been maltreated, tortured, neglected or sexually abused. If this suspicion is directed against a close relative, the authorities may refrain from reporting this offence for as long as the well-being of the minor demands it and provided that the suspect cooperates with the youth welfare institutions and a child protection group is involved if necessary. Child protection groups are multi-disciplinary teams installed at hospitals that provide counselling on assistance measures in cases of suspected maltreatment and abuse of children.

147 Preventive measures against violence

147.1 Work with Perpetrators

716. Per decision of the Ministerial Council of 30 September 1997 against violence in our society and the action plan adopted by the Federal Government against child abuse in 1998, “work with perpetrators“ was explicitly postulated as a measure aimed at protecting children from sexual offences. To this end perpetrator-related measures against violence (e.g. group work, anti-violence training, psychotherapy) are to be developed and promoted and special “anti-violence centres“ set up. Moreover, concepts and concrete model projects in the field of anti-violence training for perpetrators as well as conflict training programmes for persons with a tendency towards the use of violence are to be developed by experts, and the institutions involved in “work with perpetrators“ and the intervention centres are to engage in an intensive sharing of the information and experience gathered. Consequently the pilot project “work with perpetrators of abuse“ was launched in 1997 and tested and evaluated at the Vienna counselling centre for men. In 1998 a Parliamentary enquiry on “Protection of Victims and Therapy for Perpetrators - Sexual Abuse of Children“ was held, during which approaches, opportunities and limits of the work with perpetrators was discussed.

717. In the same year research in the relevant literature was commissioned under the heading of “Work with Violent Perpetrators – International Models in Work with Perpetrators“, to explore the approaches taken in the English and German-speaking areas. The results of this research are now available for download on the homepage of the Federal Ministry for Social Security and Generations.

718. On the basis of the outcome of this survey of the models and approaches taken in work with violent perpetrators in Austria, a group of experts set up in 1998 elaborated standards which are used as guidelines for establishing and expanding work with perpetrators in Austria. The work undertaken by this expert group was documented in the brochure entitled “Work with Perpetrators – A Contribution to the Protection of Victims“ which was published in 2000.

147.2 Model Project “Psychological and Legal Support in Criminal Proceedings Related to Sexual Abuse of Girls, Boys and Adolescents“

719. The model project “Psychological and Legal Support in Criminal Proceedings Related to Sexual Abuse of Girls, Boys and Adolescents“ has been operative since 1998. Under this project

victims of sexual violence and their close relations/persons of trust are given psycho-social and legal support before, during and after the criminal proceedings in order to avoid secondary victimization as far as possible. The project, which is supported jointly by the Ministry for Family Affairs and the Ministry for Women's Affairs / Federal Ministry for Social Security and Generations was scientifically evaluated.

147.3 Platform Against Domestic Violence: "Gender-sensitive Work with Boys"

720. The platform against domestic violence was founded in 1992 and comprises 25 organizations active in the fields of prevention of violence and intervention against it, such as child protection centres, women's shelters, youth centres, and the like. Beside networking among the institutional and vocational groups active in the field of violence prevention, one of the main topics on this platform's agenda is gender-sensitive work with boys, which is carried out by the counselling centres for men set up in schools in virtually every Austrian Province and in out-of-school youth work. Within the framework of this project a gender-sensitive approach is taken to specific problems, such as conspicuous behaviour patterns shown or (sexualised) acts of violence committed by school pupils, by assuming that experiences and staging of violence are due to a lack of adequate male role models. This type of work in the field of violence prevention aims at providing the boys with new ways of perceiving themselves and others.

147.4 Awareness-raising Measures – Sensitising the Public

721. The exhibition "(No) Safe Place – Sexual Violence against Children" funded by the Family Ministry was shown in cooperation with the Federal Provinces in 34 towns and visited by almost 50,000 people over three years (1996-1999).

722. In 1994 the Ministry of Education published an information brochure for use in school classes entitled "Violence at School – Violence against Girls. Gender-specific Aspects and Prevention Work at School". Within the framework of violence prevention financial assistance is granted to a number of independent associations which are engaged in awareness-raising, counselling, care and prevention work aimed at preventing violence at schools, or which organise events on the topic of violence for teachers, pupils, parents and police officers.

723. The studies "Because Everything Hurts With Violence – Sexual Exploitation of Girls and Women with Disabilities" (1996) and "Sexualised Violence in the Everyday Life of Disabled Persons – Boys and Men with Disabilities as Victims and Perpetrators" (1997) have shown that men with disabilities are to a relatively high extent (13%) responsible for sexual offences against girls and women with disabilities. Austria participated in the comparative study carried out by the European Forum for Child Welfare (EFCW) entitled "Are Children Protected Against Violence in Europe?" dealing with the relevant legal provisions, policies and practices in the EU.

724. The association for non-violent education publishes "Kinderschutz Aktiv" (Active Child Protection) – a Journal by the Austrian Federation for Child Protection" (Österreichischer Kinderschutzbund). From 6 – 13 November 1998 an action week on the topic "Children are Unbeatable" took place, the central element of which was an exhibition entitled "Against Violence in Education".

725. The first national centre for family pedagogics for the training and further education of childcare professionals such as women working as “mothers” in SOS Children’s Villages, nursing staff and registered childminders was opened in 1999. The training syllabus focuses particularly on problem areas such as “Abuse of Children“, “Violence against Children” as well as work with minors who do not live with their parents and their backgrounds. The aim of this education is to enable childcare professionals to meet these challenges in a professional way in the family environments in which they are active, such as “their family” in the SOS Children’s Village, the foster family and also in their own families.

147.5 Further Education as a Preventive Measure

726. The Ministry for Women’s Affairs launched an anti-violence campaign in the course of which further education concepts on “Violence against Women and Children“ were elaborated and further training events on the topics “Sexual Violence against Girls and Boys” and “Acting against Violence against Women” (1996/97) were organised. The information material on the topic “Acting against Violence against Women and Children“, prepared for the first time in 1993, was revised, republished and distributed free of charge at the relevant institutions. A special round-the-clock help-line which offers abused women and women suffering from violence free and immediate information on the relevant women’s institutions and social assistance facilities was set up and advertised on TV. As the heavy use of this help-line clearly demonstrated that a first contact point offering information, assistance and counselling in the field of domestic violence was an absolute long-term necessity, a national clearing house was set up to run this help-line in the long term.

727. Regular workshops on “Protecting Migrant Women against Violence“ have been organised since 1999 in cooperation with the law enforcement agencies, youth organizations, counselling centres for migrant women and refugees, immigration authorities and women's counselling facilities. The aim of these workshops is to process real-life cases, exchange information and develop joint strategies, as well as to identify competent contacts at the local level.

728. The inquiry on “Fear of the Abused Child?! Child Protection between Medicine, Youth Welfare and the Law“ (1997) aimed to present models for dealing with violence against children, such as the “Child Protection Group“ model, and to share information on child protection work in practice. The substantial advantage of these child protection groups is their inter-disciplinary character and the involvement of different professional groups covering the medical and nursing professions as well as psychologists and social workers. This approach guarantees both high technical standards and a homogenous composition of the child protection groups at hospitals. The groups’ priorities are focused on ensuring the highest levels of expertise in recognising signs of abuse in children and dealing with abused children and their close relatives/persons of trust. In this context an information pamphlet on “Violence against Children – Recognising, Understanding, Helping” aimed at the educational and medical professions constituted an important contribution towards achieving this objective.

729. The Ministry for Education launched the following initiatives against (sexual) violence against children and adolescents: Words instead of Weapons – ideas for a better conflict culture; Sexual Violence against Children and Adolescents; Media Impetus (contributions on media education): violence and the media; Media Service on Violence: rental and sale of 16mm films, videos and audio tapes; Violence at School – Information and relevant materials

Violence at School – Information and relevant materials

730. The Ministry of Youth Affairs/ Ministry of Social Security and Generations in cooperation with the Ministry for Education published the sex education brochure “Don’t Tell Us About Storks Bringing Babies“ for children under the age of 10. The aim of this brochure is to remove the taboo surrounding the topic of sexuality and inform children about their own bodies. The brochure “Butterflies in My Tummy“ which has been published since 1994 is directed at adolescents who have reached puberty and addresses the manifold aspects of sexuality in a language teenagers can relate to. As of 2002 this brochure will be replaced by the revised and updated publication entitled “Love, Sex and All That“.

731. As a consequence of the resolution taken by the National Council on 19 September 1996 regarding the implementation of “measures to protect our children“, the Federal Ministry for Education launched an initiative aimed at sustainable prevention work in schools and teacher training institutions on the topic of “sexual violence against children and adolescents“. This initiative run jointly by the Austrian Youth Division of the Red Cross, the Austrian Institute for Family Research and the Youth Ministry /Ministry of Social Security and Generations aims at raising the school partners' awareness of this issue.

732. The “Platform Against Domestic Violence“, which is based on an initiative launched by the then Ministry for Family Affairs (now: Ministry of Social Security and Generations) and aims at super-regional networking of NGOs that care for victims of domestic violence, offers further education opportunities for those professional groups that might be faced with violence against children (nursery-school teachers, teachers, staff working at youth offices, etc.) and establishes links at a regional level between these and other competent professional groups (such as police officers, youth affairs offices, judges dealing with family matters, physicians, nursing staff) in order to enable them to recognise violence in good time and react appropriately.

733. The teacher training college in Salzburg has set itself the goal of equipping teachers to deal more effectively with their working environment at school. Beside a total of 43 teacher counsellors and 30 supervision groups the college also runs a three-semester course on “Orthopedagogic Work with Children having Behavioural Problems“ that aims at enabling teachers to enhance their scope of responses to difficult situations at school (mainly cases involving violence) and counteracting premature burnout syndrome. Moreover, the teachers hotline (+43 (0)662-625425) set up on 1 April 2000 offers immediate assistance to teachers in crisis situations.

734. In ten Lower Austrian districts the child protection centre “Die Möwe” (“The Seagull“) provided training for police officers as the professional group most frequently confronted with the problem of sexual abuse of children. The courses, which were funded by the Ministry of the Interior, focused on cooperation between police officers, youth departments and child protection centres in cases of suspected sexual abuse of children and adolescents, legal bases and procedures, sharing of experience in dealing with victims and their families as well as the opportunities for intensifying cooperation among the various institutions.

735. The St. Pölten office of the child protection centre “Die Möwe“ also prepared a guideline on “What to do in cases of sexual abuse of children and adolescents“ which is directed at parents, teachers, child pedagogues, executive officers and social workers.

736. In cooperation with “Die Möwe“ child protection centre the Vienna section of the Chamber for Workers and Employees organised a conference on “The Truth About Sexual Abuse of Children“ in September 1999. Approximately 300 participants from various professional backgrounds (physicians, teacher counsellors, health care and nursing staff, nursery nurses, teachers, psychologists, psychotherapists, lawyers, judges, social workers, public prosecutors) took part in this event, the aim of which was to contribute to enhancing the level of knowledge about sexual abuse and the approaches taken to tackle this issue, as well as encouraging networking between the various professional groups.

737. In order to improve cooperation among the above professional groups in connection with maltreatment or sexual abuse of children and adolescents and thus promote the professionalism of work in this area, the Federal Province of Styria in cooperation with the child protection centres in Graz and Knittelfeld organised planning games in a number of Styrian districts. The “COOPERATION – Assistance in Cases of Violence Against Children“ brochure was put together and made available to all professional groups involved.

738. With the assistance of the Child and Youth Advocacy Officer the government of the Province of Styria elaborated the “Help for Kids“ concept, offering legal and psycho-social support in cases of sexual and physical violence against minors. A specially trained expert will support victims and their close relatives throughout the entire proceedings, the aim being to establish a relationship of trust between the victim and the expert, elaborate measures for the benefit of the child in cooperation with the youth welfare department and other assistance facilities, to cooperate with the victim’s lawyer and accompany the child to appointments with authorities and court hearings. Psycho-social support during proceedings, victim protection work involving psycho-social assistance, particularly when coming to terms with the experiences, and the legal support during proceedings given by the victim’s lawyer are three separate elements of the overall assistance offered to victims of sexual abuse.

739. An inquiry into “Child Protection in Criminal Proceedings – Reality and Visions“, which dealt with the protection of minors who appear before court as victims or witnesses, was held from 18 – 19 June 1998 in Graz. In 1999 the Styrian Province parliament held an enquiry on the topic of “Violence and Sexual Abuse of Children and Adolescents“. The Youth Welfare Plan 2005 provides for gradually increasing the number of children protection centres in Styria, of which there are currently four (Graz, Knittelfeld, Deutschlandsberg, Weiz).

740. The Province of Vorarlberg offers round-the-clock in-patient assistance to under-age and adult victims in crisis. The “Against Domestic Violence“ network run by the Provincial Government Office is mandated with the following tasks: promotion of linkage, networking and cooperation between the competent authorities and assistance facilities, sharing of information, encouraging and coordinating public relations work, and evaluation. Besides the above, under-age victims of violence, abuse and severe neglect can also use the relevant assistance schemes offered via the education and youth counselling services located at the six counselling centres set up by the Institute for Social Welfare Services, the psychotherapy service for minors, in-patient care offered by the “Carina Orthopedagogic Centre“, the “crisis safety-net group“, family-like facilities such as the care provided by the Children’s Villages ((Vorarlberg Children’s Village

and SOS Children's Village) and socio-educational care at the Socio-Educational Boarding School), flat-sharing schemes, home care and the intensive programme offered to young persons by the Institute for Social Welfare Services, and care facilities set up under the "A Place in Times of Crisis" concept.

Combating Child Pornography

741. At a very early stage Austria already undertook measures to enable it to fight more effectively against sexual exploitation of children and its new international dimension (sex tourism with children and the Internet). Both the production and all forms of dissemination as well as the possession of pornographic material involving minors have been subject to criminal prosecution (§ 207a of the Criminal Code) since 1994. However, since the adoption of the Criminal Law Amendment Act of 1996, Federal Law Gazette No. 762, the sentence for production and dissemination of pornographic material involving minors has also been increased and the national jurisdiction on sexual abuse of children and child pornography has been expanded to enable prosecution for offences committed abroad.

742. Under section 207a of the Criminal Code all child pornography is considered an offence, i.e. not only true 'kiddy porn', but also material that gives an objective viewer the impression that its production involved the sexual abuse of a child or a minor.

743. The Criminal Law Amendment Act of 1996 also introduced extraterritorial prosecution of sexual offenders who commit acts of indecency with minors abroad and the production and dissemination of child pornography (§ 64 para. 1 of the Penal Code). Thus Austrian nationals having their permanent residence in Austria are liable to prosecution for such crimes in Austria, even if the crimes are committed abroad (see Chapter 12.7).

744. Austria contributed actively to the negotiations on the Cyber Crime Convention of the Council of Europe and signed the Convention together with 29 other states on 23 November 2001. The Federal Government plans to implement the obligations arising under this Convention as national law as soon as possible.

745. The action plan to fight child abuse and child pornography in the Internet, adopted in autumn 1998, provides, inter alia, for police security measures such as establishing a central reporting point for child pornography (meldestelle@interpol.at) and equipping the criminal investigation service with the necessary technical facilities. Under this action plan the Austrian Internet industry also assumed a number of obligations, including the elaboration of and compliance with an ISP code of good conduct to keep their networks free of child pornography by voluntary self-monitoring, the setting-up of a dedicated hotline (<http://hotline.ispa.at>) and stepping-up cooperation between the industry and governmental institutions (e.g. within the Internet Advisory Council launched by the Federal Chancellery).

746. During its EU Presidency Austria attached priority importance to international awareness-raising in the fight against child pornography and intensification of international cooperation between states and the Internet industry, as well as the relevant NGOs. In this context the following concrete measures were taken: Putting children's rights on top of the agendas of both the meeting of the General Affairs Council and the Europe Conference of 1998;

Swift implementation of the EU Action Plan for the safe use of the Internet; Austrian proposal for joint action to combat child pornography in the Internet; Continuation of the Daphne Programme aimed at supporting the NGOs in the fight against violence against women and children; Incorporating a special article on child pornography in the draft convention of the Council of Europe; Agreement between the EU and the USA on enhanced cooperation in the fight against child pornography in the Internet within the framework of the Trans-Atlantic Dialogue.

747. One of the highlights in the fight against child pornography in the Internet was the international conference on “Fighting Child Pornography in the Internet“, which was organised by Austria within the framework of the Trans-Atlantic Dialogue EU-USA (29 September – 1 October 1999) and attended by approximately 300 leading international representatives from the ministries of justice and home affairs as well as representatives from international and regional organizations, the industry (Internet Service Providers) and non-governmental organizations. The conference agreed to pursue the following goals:

748. World-wide criminalization of the production, dissemination and possession of child pornography: definition of world-wide, unambiguous and stringent laws against child pornography with extra-territorial application which deal with the new media and are open to further technical developments. The conference’s focus was on improving harmonization of the differing legal provisions regarding the definition of child pornography (particularly as regards age limits), the possession of child pornography, the responsibility of “Internet Service Providers“ and jurisdiction. Clear progress has already been made in this respect and consensus among the various states is increasing, with numerous states already having made the necessary amendments to their laws. The aim of the conference was to send a clear message to all those states which had not supported this process so far. Moreover, the closing of loopholes in the legislation and international monitoring of the introduction of stricter laws were envisaged.

749. Strengthening law enforcement at national level: this requires the setting up of specialised units which are adequately equipped and trained and have a prompt (round-the-clock) reaction capacity. Moreover, reinforcement of international cooperation, sharing of expertise and training and improvement of the tracing, search and investigation methods.

750. Improved international cooperation among the law enforcement authorities: One of the conference’s goals was to establish links between the individual national law enforcement bodies, as well as to clarify matters relating to the handling of cross-border legal questions and issues relating to competence and mutual judicial assistance in individual cases. Moreover, participants called for the establishment of an international centre (also conceivable within the framework of an existing institution) mandated with monitoring child pornography in the Internet (together with specialised national units and hotlines) to ensure immediate sharing of the latest information.

751. Partnership between governments and the Internet industry: partnership between governmental institutions and “Internet Service Providers“ (ISP) is of the utmost importance. The ISPs are an indispensable partner of law enforcement agencies in taking successful measures against specific perpetrators. Voluntary self-regulation replaces unrealistic and uneconomic liability regulations imposed on ISPs (e.g. for illegal content). The ISPs’ responsibility for reporting perpetrators and removing child pornography material from their networks as well as the question of preserving evidence should also be clarified at the international level. It was

agreed that the industry's codes of good conduct will be expanded and Internet users, particularly parents, are to be given the opportunity to protect children from harmful content on the Internet.

752. Promoting Hotlines/Tip-off lines: Hotlines and/or tip-off lines established by government institutions, the industry or NGOs, which people can call to report content involving child pornography play an essential role in the prosecution of such crimes (indeed, the increase in the number of reported cases and convictions is directly related to the establishment of such lines). Another objective is to improve networking among the various hotlines and to encourage the setting up of hotlines in countries where they do not yet exist.

753. Raising worldwide awareness and mobilising the public: The attendance of representatives from a large number of states and numerous important NGOs from all over the globe succeeded in arousing the media's interest, which resulted in large-scale coverage of the conference. The conference website, which includes all the papers and results as well as a useful list of all important links to initiatives against child pornography on the Internet, also contributed to raising the public's awareness, sensitising and mobilising people all around the world in the fight against child pornography.

754. The overall outcome of the conference was summarised in the jointly elaborated final document entitled "Vienna Commitment against Child Pornography on the Internet" which is available for download at (www.stop-childpornog.at). -

Extraterritorial Prosecution of Sexual Offenders

755. On the basis of the objectives adopted by the First World Congress against the Commercial Sexual Exploitation of Children (Stockholm, 27-31 August 1996) Austria expanded the provisions of § 64 of the Penal Code in its national legislation in so far as sexual offences against children committed abroad are now also punishable by national law. Consequently, irrespective of the laws applicable in the country where the offence was committed Austrian law is applicable when the perpetrator is an Austrian national and resides permanently in Austria (in force since 1 March 1997).

756. Due to the global nature of the phenomenon of sexual exploitation of young persons, the legislator considered it necessary to introduce a supplement from international criminal law that goes beyond § 65 of the Penal Code in so far as the two provisions applicable to sexual offences against minors, namely §§ 206 and 207 of the Penal Code ("Serious Sexual Abuse of Minors" and "Sexual Abuse of Minors", as well as the production and/or distribution of pornographic material involving children), if committed abroad, shall also be adjudged under Austrian law and by Austrian courts, irrespective of the law applicable in the country where the crime was committed. This is now guaranteed by the amendment to § 64 of the Penal Code. The limitation of the provision to "Austrian nationals having their habitual residence in Austria" is in line with the relevant international practice and is intended as a means of fulfilling the aim of this legislative initiative – i.e. fighting "sex tourism" and protecting children.

757. To accompany this legal measure the Youth Ministry in cooperation with national airlines, the tourism industry and tour operators launched an information campaign against international “Sex Tourism involving Child Abuse“. The in-flight video entitled “The Abuse of Children is Not a Peccadillo“, which was awarded the international TORUA D’OR 2000 prize, is used in cooperation with the Ministry for Economic Affairs and UNICEF and aims at raising general public awareness of the fact that sexual aggression against children is unacceptable and liable to criminal prosecution, irrespective of whether the offence is committed in an exotic holiday resort, in Austria or anywhere else in the world. The intention of showing this video during the flight is to make people travelling to these destinations aware of their social and ethical responsibility towards those – especially children – who live in the countries they visit, and of the gross injustice which is committed by tourists from mainly prosperous countries against – first and foremost – children living in economically less developed regions. In an additional information brochure the humanitarian, social, health and legal dimensions of the problem of “sex tourism” and its consequences for children are addressed and it is clearly pointed out that sexual abuse abroad is liable to criminal prosecution (e.g. by extraterritorial prosecution of sex offences committed abroad).

758. AUSTRIAN AIRLINES has supported this project since autumn 1999 by showing this video on its flights to India. The goal is to enhance cooperation with other partners, primarily airlines, the tourism industry and tour operators worldwide. This in-flight video project launched by Austria was presented at the First ECPAT Assembly in Bangkok (16 – 20 September 1999) and subsequently at the WTO General Assembly meeting on 24 – 30 September 1999.

759. ECPAT launched a national campaign on this topic in Austria, using their pamphlet “New Laws for Travellers – § 64 of the Penal Code“ to inform the public about the criminal offence of sexual abuse of minors and its legal consequences. In cooperation with its European partners the “Respect” centre for tourism and development elaborated a “Code of Conduct of the Tourism industry to Protect Children from Sexual Exploitation“ (www.theCode.org).

Sale, Trafficking and Abduction of Children (Art 35)

760. Cases of child kidnapping in Austria are extremely rare and take place in exceptional circumstances, such as during quarrels between parents about custody and the exercise of visiting rights by the parent who does not have custody. In Austria there have been no cases relating to the sale of children, nor are there specific legal provisions in this respect. However, the Penal Code contains a number of general provisions that apply to the phenomenon of the sale of children, such as “Surrendering persons to a foreign power” (§ 103), “Slave trafficking” (§ 104), “Withdrawal of a minor from the custody of a parent or guardian” (§ 195) and “Trafficking in human beings” (§ 217).

761. In its session of 8 August 2000 the Council of Ministers gave its approval to the signing of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography by the President of the Republic of Austria. Subsequently, in September 2000 the Optional Protocol was signed by the President and the ratification process started on 30 April 2002.

762. Pursuant to § 10 para. 4 of the Austrian Aliens Act (Fremdengesetz) of 1997 an ex officio residence permit for humanitarian reasons can be granted to women who have become victims of trafficking in human beings, in order to enable them to assert their civil law claims as well as to act as witnesses of such offences and thus guarantee that the offender can be persecuted. The residence permit requires the consent of the Federal Minister of the Interior, is granted for the time required to assert the civil law claims or for the duration of the criminal proceedings, and can be extended. In order to enable women to make use of this opportunity the “Intervention Centre for Women affected by Trafficking”, a Vienna-based victim protection facility, was set up in 1998. This centre serves as a vehicle for the provision of information to women who are suspected of having been victims of a crime against their right to sexual self-determination. This victim protection facility also offers (legal) counselling and assistance to these women, accompanies them to appointments with authorities and contacts the competent authority in order to request the residence permit. The “Intervention Centre for Women affected by Trafficking” is funded jointly by the Ministry for Women’s Affairs/Ministry of Social Security and Generations and the Federal Ministry of the Interior.

763. Through Article 1 of the Joint Action adopted by the EU Council on 16 December 1996, the mandate given to the drug division of Europol was extended to include the crime of facilitating and trafficking in human beings. The Joint Action on trafficking in human beings and sexual exploitation of children adopted by the EU Council on 24 February 1997 provides for taking measures at both the national and the EU level.

Prostitution of Minors

764. As regards the question of prostitution of minors raised under Item 18 of the Committee’s “Concluding Observations/Comments“, it is pointed out that numerous criminal law provisions (§§ 214 ff of the Penal Code) provide comprehensive protection and that, under the sharing of competences, the regulation of all matters regarding the exercise of prostitution lies within the responsibility of the individual Provinces (Provincial legal provisions of the local law enforcement authorities) and that the individual acts on protection of young people, vice squads, police fine, or prostitution in force in the Federal Provinces explicitly ban prostitution of adolescents and make it liable to prosecution. From the labour law point of view it should be noted that the Act on the Employment of Children and Adolescents of 1987 (§ 23) provides for a comprehensive protection of morality and that the Adolescents (Employment Prohibitions and Restrictions) Ordinance (§2) lists various establishments, such as sex shops, striptease bars, etc. where adolescents may not be employed. Prostitution of minors is strictly forbidden without exception in Austria, as is the performance of striptease or hostess services by children and adolescents.

765. The Federal Ministry for Youth Affairs / Ministry of Social Security and Generations commissioned the study “Anyone’s Daughter“ by Shaw /Mayer on the issue of prostitution of young people, which describes ways to assist adolescents who have drifted into the prostitution scene.

766. By implementing this comprehensive package of measures Austria is undertaking every effort to fulfil the requirements set out in Items 18 and 21 of the ”Concluding Observations/Comments“ as effectively as possible.

767. In Austria, ethnic groups and minorities are protected by a series of ethno-specific constitutional and general minority protection provisions (banning discrimination, etc.). Members of autochthonous ethnic groups enjoy special legal protection (national objective in the form of a commitment by the Republic, right to use their language as official language, school teaching in their native language, etc.). The school-related regulations applicable for autochthonous ethnic groups (e.g. the Minorities School Act for Carinthia; Minorities School Act for Burgenland; Article 67 of the State Treaty of Saint Germain) go far beyond the requirements set out under Article 30 of the UN Convention. Thus the two Minority School Acts (Minderheitenschulgesetze) not only contain provisions according to which members of autochthonous ethnic groups are to learn their native language, but also offer numerous forms of mother-tongue instruction, hence establishing pupils' legal entitlement to such instruction.

149 Minority School Act for Burgenland, Federal Law Gazette No. 641/1991 as amended

768. In Burgenland every pupil/student who is a member of the Croat/Hungarian ethnic group and holds Austrian citizenship has the constitutional right to use Croat/Hungarian at school or to learn the respective language as a compulsory subject (§ 1 of the Minority School Act for Burgenland).

769. In order to realise this legal entitlement the Minority School Act provides for the following: Monolingual primary schools, general secondary schools and pre-vocational schools (do not yet exist), bilingual primary schools, general secondary schools and pre-vocational schools (Annex A, B, C and D to the Burgenland Compulsory School Act, Burgenländisches Pflichtschulgesetz) and a bilingual academic secondary school (in Oberwart). Bilingual instruction is currently provided.

770. This legal right is guaranteed as follows:

Those primary schools, general secondary schools and pre-vocational schools which are located in the traditional settlement areas of the respective ethnic group and must be run on a bilingual basis are explicitly named in the Burgenland Compulsory School Act. In the traditional settlement area of their ethnic group pupils need not register for participation in bilingual instruction at primary school. Pupils who only wish to participate in lessons given in German at primary schools may withdraw from bilingual instruction. Pupils are required to register for participation in bilingual instruction in general secondary schools, pre-vocational schools and academic secondary schools (combined principle of registration for and withdrawal from bilingual instruction);

771. In all other primary schools, general secondary schools and pre-vocational schools which are not located in the traditional settlement area of the respective ethnic group in Burgenland, this legal right to bilingual instruction shall be complied with if "sustainable demand" exists (i.e. if more than a certain minimum number of pupils have registered for bilingual instruction; depending on the type of school this minimum number ranges from 7 to 9 pupils);

772. Another important ordinance in this context concerns the curricula for minority primary and general secondary schools in the Provinces of Burgenland and Carinthia. The following provisions are relevant in this respect:

773. “2 – Primary schools (primary school classes) where instruction is given in Croat, or Croat and German within the meaning of the Minority School Act for Burgenland Annex 2 (compulsory subjects “Croat, Reading, Writing“ and “Croat, Reading“; remedial instruction “Croat“; non-compulsory practical exercise “Modern Foreign Language“.

774. “3 – Primary schools (primary school classes) where instruction is given in Hungarian or Hungarian and German within the meaning of the Minority School Act for Burgenland Annex 3 (compulsory subjects “Hungarian, Reading, Writing“ and “Hungarian, Reading“; remedial instruction “Hungarian“; non-compulsory practical exercise “Modern Foreign Language“.

150 Minority School Act for Carinthia, Federal Law Gazette No. 101/1959 as amended

776. The right to bilingual instruction and education in the Federal Province of Carinthia is laid down in the State Treaty of 1955.

777. In line with the Minority School Act for Carinthia every pupil living within the area defined by the law must be granted the right to use Slovenian as the language of instruction or to learn it as a compulsory subject if this is the wish of the pupil’s legal representative (§ 7 of the Minority School Act for Carinthia). Thus the child’s parent or legal guardian must register the child for bilingual instruction.

778. The municipalities covered by this area defined by law must include those in which the particular primary and general secondary schools of relevance for the Slovenian minority are located and in which bilingual instruction was given in primary and general secondary schools at the beginning of the school year of 1958/59 (§ 10 of the Minority School Act for Carinthia. In the event that sustainable demand exists, bilingual instruction may also be provided in schools located outside the geographical area covered by the Minority School Act for Carinthia (§ 11 of the Minority School Act for Carinthia).

779. Apart from the more general forms of Austrian primary and general secondary school in which lessons are held in German, the following forms of primary and general secondary schools, as well as classes and departments in primary and general secondary schools, may be operated in the Province of Carinthia with a particular view to the Slovenian minority (§ 12 of the Minority School Act for Carinthia): Primary and general secondary schools with instruction in Slovenian; Primary schools with instruction in German and Slovenian (bilingual primary schools; within the meaning of this Federal Law this term also covers primary school classes where instruction is given in German and Slovenian (bilingual primary school classes) set up in primary schools where the language of instruction is German, as well as departments where instruction is given in German and Slovenian (bilingual school departments) in primary schools where the language of instruction is German. Departments where instruction is given in Slovenian set up in general secondary schools where the language of instruction is German.

780. Out of the three possibilities only variant b) has been realised so far, since this was the only alternative for which the Slovenian ethnic group expressed a demand.

781. In bilingual primary schools (primary school classes and primary school departments) all instruction in the first four school years must be given to an equal extent in German and

Slovenian; from the fifth grade on instruction must be in German, but Slovenian language classes must be provided as a compulsory subject four hours a week (§ 16 of the Minority School Act for Carinthia).

782. The curriculum for primary schools where lessons are given in German and Slovenian provides for the same educational principles as the curriculum for all other Austrian primary schools, the only difference being that the content is taught in both languages. Intercultural learning is enshrined as an educational principle, and lessons on the cultural heritage of the Slovenian ethnic group place particular emphasis on aspects shared by the German-speaking and Slovenian-speaking population. In this context § 19 of the Minority School Act for Carinthia provides for joint measures with German-speaking classes at the same school aimed at promoting community.

783. For bilingual primary schools (primary school classes and departments) the following special provisions apply under § 16a of the Minority School Act for Carinthia:

784. At pre-school level and in the first to fourth grade the number of pupils in one class must not fall below seven or exceed 20.

785. If at least nine pupils each are registered or not registered for bilingual instruction in the first to the fourth grade, parallel classes must be run at the respective grade.

786. In classes in the first to the fourth grade where students registered for bilingual instruction are taught together with pupils not registered for bilingual instruction, further teachers must be appointed to guarantee independent and responsible instruction and educational work in the compulsory subjects for an average of 14 hours per week (team teachers); the lessons given by team teachers in the individual classes must not amount to less than ten hours a week; in the event that team teachers undertake joint responsibility for the entire instruction and educational workload, they must also jointly assume the role of form teacher.

787. By registering their child or children for bilingual instruction, parents and/or legal guardians express their wish to make use of a special educational facility provided by the Austrian school system on behalf of their children. It is therefore inadmissible to investigate whether or not this pupil is a member of the Slovenian ethnic group, or to compel any individual to declare him/herself a member of an ethnic group.

788. The geographic definition of the primary and general secondary schools of particular relevance for the Slovenian minority is based on the provisions for the execution of the relevant Act for the Province of Carinthia (Provincial Law Gazette No. 44/1959). The following primary and general secondary schools are thus run in accordance with the above provisions:

District of Hermagor:

789. Primary schools: Egg bei Hermagor, Görtzschach-Förolach, St. Stefan im Gailtal
General secondary schools: Hermagor 1, Hermagor 2

District of Klagenfurt-Land:

790. Primary schools: Feistritz im Rosental, Ferlach 1, Ferlach 2, Ferlach 3, Grafenstein, Gurnitz, Keutschach, Köttmannsdorf, Ludmannsdorf, Maria Rain, Mieger, Radsberg, St.

Margareten im Rosental, Schiefeling, Wabelsdorf, Windisch Bleiberg, Zell Pfarre, Zell Winkel (external annexe of the primary school of Zell Pfarre)

General secondary school: Ferlach

District of Villach-Land:

791. Primary schools: Arnoldstein, Damtschach, Finkenstein, Fürnitz, Goritschach, Gödersdorf, Hohenthurn, Köstenberg Latschach, Ledenitzen, Lind ob Velden, Maria Elend, Nötsch, Rosegg, Rosenbach, St. Egyden / Drau, St. Georgen im Gailtal, St. Jakob im Rosental, St. Leonhard bei Siebenbrunn, Thörl Maglern, VS 1 Velden, VS 2 Velden

General secondary schools: Arnoldstein, Finkenstein, Nötsch, St. Jakob i.R., HS 1 Velden, HS 2 Velden

District of Villach-Stadt:

792. Primary school: VS 11 Villach / Maria Gail

General secondary schools: HS 1 Villach, HS 2 Villach

District of Klagenfurt-Stadt:

793. Primary schools (not included in the geographic area covered by the Minority School Act): VS 24 Klagenfurt, VS Hermagoras-Mohorjeva

General secondary schools: HS 3 Klagenfurt, HS 6 Klagenfurt, HS 13 Klagenfurt

District of Völkermarkt:

794. Primary schools: Bleiburg, Bad Eisenkappel, Diex, Eberndorf, Ebriach (external annex of the primary school of Bad Eisenkappel), Gallizien, Globasnitz, Greutschach (external annex of the primary school of Griffen), Griffen, Haimburg, Heiligengrab, Klein St. Veit, Kühnsdorf, Leppen (external annex of the primary school of Bad Eisenkappel), Loibach, Mittertrixen, Möchling, Neuhaus, Rinkenberg, Ruden, St. Kanzian, St. Margarethen ob Töllerberg, St. Michael ob Bleiburg, St. Peter am Wallersberg, St. Philippen ob Sonnegg, St. Primus im Jauntal, Schwabegg, Sittersdorf, Tainach, Untermitteldorf, VS 1 Völkermarkt, VS 2 Völkermarkt

General secondary schools: Bad Eisenkappel, Bleiburg, Eberndorf, Griffen, Kühnsdorf, Völkermarkt 1, Völkermarkt, 2 PL Völkermarkt

795. The geographic area defined by the Minority School Act for Carinthia currently covers 77 primary schools; in addition, bilingual instruction is offered in two primary schools not located in the area covered by this Act. During the school year of 2002/2002 these 79 schools were attended by a total of 5,735 pupils.

796. In 63 primary schools a total of 1,722 students, i.e. 30.03%, were registered for bilingual instruction. In Klagenfurt 116 pupils are given bilingual instruction in the two primary schools not covered by this Act.

797. The knowledge acquired in Slovenian during compulsory education can be expanded and deepened during further education at academic secondary schools and lower and upper secondary technical and vocational schools and colleges. These are the "Bundesgymnasium und Bundesrealgymnasium für Slowenen" academic secondary school in Klagenfurt where lessons are given in Slovenian (Art. V of the Minority School Act for Carinthia), and two upper secondary vocational schools where lessons are given in both German and Slovenian, the "Zweisprachige Bundeshandelsakademie in Klagenfurt" (Art. II of the Amendment to the Minority School Act, Federal Law Gazette No. 420/1990) and the "Höhere Lehranstalt für wirtschaftliche Berufe des Konvents der Schulschwestern" (a denominational private school) located in St. Peter bei St. Jakob im Rosental. Besides, lessons in Slovenian may be provided as a compulsory or non-compulsory option at all academic secondary schools and lower and upper secondary technical and vocational schools and colleges.

151 Ethnic Groups – Measures and Activities in Progress

798. Advisory Councils for Matters relating to Ethnic Groups were set up at the Federal Chancellery to provide guidance to the federal government and the federal ministers in all matters relating to ethnic issues. Such councils were set up for the Burgenland-Croat, Slovenian, Hungarian, Czech, Slovak and Roma ethnic groups.

799. Regulations relating to the use of their respective language as an official language are in force for the Burgenland-Croat, Slovenian and Hungarian ethnic groups.

800. Moreover, Austria ratified the Framework Convention of the Council of Europe for the Protection of National Minorities and the European Charter for Regional and Minority Languages.

801. The Burgenland Nursery Schools Act (Kindergartengesetz) was designed to meet the particular demands for bilingual education at a very early age for members of the Burgenland-Croat and Hungarian ethnic groups in state-run nursery schools in Burgenland. Thus in the settlement area of the Burgenland-Croat and Hungarian ethnic groups in Burgenland there is currently one private bilingual (Hungarian) parochial nursery school; in the 27 bilingual (Burgenland-Croat/German) state-run nursery schools approximately 600 children receive bilingual care for at least six hours per week. The bilingual nursery schools may only employ nursery nurses who can prove that they were trained in the language of the relevant ethnic group. The Provincial Government makes available auxiliary nursery nurses for nursery schools which are unable to recruit bilingually trained nursery nurses.

802. On the basis of the provisions of the Carinthian Nursery Schools Act of 1992 both state-run and private nursery schools are funded by the government. However, every nursery school operator is free to decide whether its nursery school should be run on a bilingual basis. As of 1 October 2001 a Nursery School Fund Act (Kinergartenfondsgesetz), Provincial Law Gazette No. 74/2001, entered into force which aims at promoting private bilingual or multilingual nursery schools located in the settlement area of the Slovenian minority.

803. In order to guarantee the best possible further training for bilingual nursery nurses the competent specialised departments of the Burgenland and Carinthian Provincial Governments offer a wide range of further training opportunities.

804. Another objective the authorities have set themselves it to build up a network aimed at elaborating and evaluating models in the fields of multilingual teaching and education. Considerable efforts have already been undertaken to incorporate international experiences as efficiently as possible into the field of early childhood education. The measures aimed at promoting ethnic groups also include incentives for the preparation of bilingual materials for nursery schools.

805. As regards the children and adolescents belonging to the Roma ethnic group (this umbrella term covers various groups including Roma, Sinti, Lowara, etc.) it should be emphasised that numerous Roma organizations, assisted by public funds, have achieved extraordinary successes. On the one hand various organizations run by Roma ethnic groups offer out-of-school learning assistance which means, inter alia, that Roma children no longer need to attend special schools in Burgenland. Similar efforts are also undertaken by the Vienna-based Roma association and the Linz-based Sinti association. Moreover, under the ethnic group promotion programmes the federal government encourages and supports cooperation between Roma associations and academic institutions. For instance, with university assistance the language spoken by the Burgenland-Roma has been codified and a teaching programme elaborated, and similar language projects are currently underway for other language variants spoken by the Roma. The fact that Burgenland-Romany has been codified in writing also means that it has been possible to produce educational material in this language for the first time. Particularly remarkable in this context is the fact that this scientific assistance has enabled computer learning games to be produced in the Roma languages, which is of special importance with a view to familiarising Roma children with modern technologies and facilitating their access to them. Such projects contribute to enhancing the value Roma children attach to Roma languages and thus strengthen their identification with their own language and culture. This play-like work on the computers installed at associations' club houses enables children to get in touch with modern technological developments and equipment. One of the outcomes of these very successful efforts has been the extremely active contribution made by Roma children and adolescents to widely acclaimed projects to raise public awareness, such as bilingual theatre productions. Moreover, from autumn 1999 Burgenland-Romany was included for the first time in the regular school curriculum in Burgenland, thus Roma children can now be given systematic instruction in the language of their ethnic group.

806. Also worthy of mention is the fact that employees of the Labour Market Service are specially trained to assist Roma adolescents in finding jobs. The provision of this special service is realised in cooperation with the Burgenland Roma association.

807. Based on an initiative launched under the EU Year against Racism and Xenophobia 1997 the then Ministry for Youth Affairs (now: Ministry for Social Security and Generations) in cooperation with the department for youth affairs of the Province of Burgenland has offered training for youth leaders targeted to the needs of the Roma ethnic group. For the purpose of enhancing integration youth work multipliers from other ethnic groups also participate in this programme. The first course was concluded in autumn 1998 with projects carried out by the

participants, and further such courses will be offered in future provided that the necessary budgetary means are available.

808. Furthermore, the Austrian broadcasting companies also contribute to promoting mutual understanding by broadcasting programmes for and about ethnic groups and immigrant minorities. Apart from numerous individual projects, particular mention should be made of the regular programme »Heimat, fremde Heimat« on both radio and television, as well as Burgenland-Croat and Slovenian programmes produced by the broadcasting studios of the Provinces of Burgenland and Carinthia, which make up 9% and 10 % respectively of the overall broadcasting time of these studios. The Amendment to the Austrian Broadcasting Act (Rundfunkgesetz) enabled cooperation between the ORF (the national Austrian Broadcasting Company) and private radio stations run by the ethnic groups. In addition, a representative of the ethnic groups is a member of the audience council of the Austrian Broadcasting Company that was set up as a result of this amendment.

809. By means of this comprehensive catalogue of measures Austria is responding to Item 30 of the Committee's "Concluding Observations/Comments" in order to safeguard the rights of children who are members of minorities and, in particular, to promote projects aimed at providing schooling assistance and linguistic and cultural support for children who are members of the Roma ethnic group, thus counteracting the risk of social or other discrimination against Roma children and other minorities in accordance with Articles 2 and 30 of the Convention. It should be noted in this context that the Austrian Committee for UNICEF has ensured that the UN Convention on the Rights of the Child is also available in the Romany language.

13. INTERNATIONAL HUMANITARIAN COOPERATION AND RELIEF ACTION FOR CHILDREN IN NEED

810. Within the framework of the "ÖSTERREICHS SCHULEN HELFEN" (Austria's Schools Help) initiative assistance is given to refugees, and particularly children and adolescents, in and around Kosovo. The project is part of the "Nachbar in Not" (Neighbour in Need) programme. The money is used to provide care and assistance to children and adolescents in the Austria camp, where approximately 3000 children and adolescents are accommodated and given food and lodging as well as initial social and psychological help.

811. Some 1.4 billion people world-wide – most of whom are women and children – are currently living in extreme poverty. Austria is committed to making a contribution to the fulfilment of the international development goal aimed at reducing the number of people living in extreme poverty in the developing countries by half by the year 2015, as laid down in the strategy for the 21st century adopted by the OECD in 1996.

812. Within the framework of Austrian development cooperation particular importance has been attached to the running of demobilization and reintegration programmes aimed at leading children used in armed conflicts or hostilities back into everyday life, an area in which Austria has gathered specific expertise. In this context the integrative human rights components contained in the country programmes for Mozambique and Rwanda for 2002 to 2003 should also be mentioned.

International Development Cooperation

813. In its development cooperation activities Austria approaches the broad issue of children in an integrated manner that encompasses the entire population. Austria perceives support for human security, incorporating political, economic, social, cultural and environmental dimensions, as a way of creating opportunities for each human being to have a decent life. This starts from the availability of basic needs including clean water, food, shelter and education and extends to social inclusion, self-determination and physical security.

814. In the social fabric, children are in a delicate situation; they may be perceived – according to the degree of human security – as assets or burdens. A lasting improvement of their position may only be achieved by increasing the entire population's subjective and objective perception of individual and collective security, taking into consideration the relations between various population groups – age groups, economic groupings, etc. To this end, Austria supports the governments of the partner countries in their attempts to reduce poverty and follow a participatory development approach. The specific needs vary substantially between regions and countries, according to their state of development, economic situation, political stability, presence of violent conflicts, etc. Austria's development cooperation programme includes a series of across-the-board activities that have a direct impact on the well-being of children and youth. These include the areas of gender equality and equity, support for the strengthening of human rights and democratic structures both central and local, as well as support for civil society and the environment. Austria contributes to these activities through both its bilateral and multilateral efforts.

815. The Initiative 20/20, to which Austria is also committed, provides additional funds for broad-based social services that help to create a basis for the well-being of children and youth, providing health care, education, food and clean water.

816. In addition to these general approaches Austria's bilateral development cooperation programme includes selected areas that particularly concern children and youth. For example, it focuses its support on an integrated juvenile justice system in Rwanda and Namibia. Concrete measures include an integrated policy development in the area of juvenile justice, the development of standards for promoting the legal protection of children, the establishment of a juvenile penal system, specific care measures for juvenile offenders and the legal training of prison officials, police, prosecutors and judges.

817. Another programme area is conflict prevention and post-conflict reconstruction, both of which are of particular importance for children and young people. This includes providing support for the social and physical well-being of children, combating sexual abuse of children, both girls and boys, and striving to reintegrate victims of violent conflicts into their societies. For example, Austrian projects provided physical, social and psychological support for children and young people who had experienced serious traumas during the war in Bosnia. These included programmes to integrate disabled young people into paid employment. An example of Austria's involvement in programmes to support children is the Austrian Centre for Social Services in East Jerusalem, which provides care and mental rehabilitation through play therapy.

818. The reintegration of child soldiers is another area in which Austria is making an active and important contribution to the peaceful reconstruction of countries.

819. Children's need to support themselves or contribute substantially to the income of the family in order to survive blatant poverty is one of the many causes of child labour. In some areas where AIDS has reduced the adult population, or in others where migration, both internal and international, has led to drastic changes in the population composition, the labour of children is crucial for the survival of the community. By participating in initiatives such as "Fair Trade" and "Clean Clothes", Austria strives to support the introduction of lighter work, medical care, safety standards, schooling and vocational training for children.

820. Tourism was selected as a new area for cooperation activities which has a strong impact on children and youth. Programmes include combating the sexual abuse of children by tourists and the psycho-social and health damage that this inflicts on society, including the spread of HIV/AIDS. These programmes are supported by awareness raising campaigns in Austria.

821. Austria's support for multilateral development cooperation focuses on poverty reduction. In this connection, Austria works together with UNDP, UNFPA and UNICEF to support their activities for children and youth, thus helping to ensure that the younger generations of society are given the opportunity to participate fully in development.

Austrian Mine Action Programme

822. Per decision by the Austrian Federal Government an amount of € 1,162,765.35 was made available in 1998 for specific measures aimed at assisting victims of mines and at promoting mine clearance programmes. Prior to this support was given under the Austrian development cooperation programme, CEEC Assistance Programme and other humanitarian relief programmes to measures involving mine clearance, training in mine removal, awareness-raising programmes and the rehabilitation of victims of land mines.

823. The regional focus of the Austrian mine action mission corresponded to the priorities Austria has set itself in the field of development assistance and humanitarian relief. Thus assistance has focused on Afghanistan, Bosnia-Herzegovina, Namibia (2000), Cambodia, Mozambique, Nicaragua and Uganda (since 2001). In order to enable Austria to maintain its proactive commitment to the international efforts undertaken in fighting the mines scourge, the Federal Government, in the interest of safeguarding the necessary consistency and foreseeability, set up a special item in the budget and earmarked a total of € 2,180,185.03 for mine action programmes in the year 2000. For 2001 and 2002 this figure amounts to € 1.1 million each year and for 2002 an additional € 1.9 million were pledged for the mine programme in Afghanistan. The Austrian government has actively championed a world-wide ban on anti-personnel mines and is continuing its efforts aimed at international strengthening of the Ottawa Convention, as well as supporting specific plans by international organizations and institutions actively working towards obtaining a ban on anti-personnel mines. In implementing the Austrian anti-mines action programme measures in the field of mine clearance, awareness-raising, assistance to victims of mines and reintegration are supported. Austria's participation in mine action programmes in third countries is based on the existing legal provisions and regulations applicable to certain activities of non-governmental organizations, and on contributions to programmes and projects of international organizations, such as, for instance, the United Nations, the United Nations Development Programme and the Committee of the Red Cross. Moreover, Austria supports

projects run by the countries affected in order to enable them to fulfil their obligations under the Ottawa Convention (e.g. the obligation to destroy stock-piled anti-personnel mines). The Austrian Ministry for Foreign Affairs mandated a study to give an overview and analysis of the existing technical and organizational potential for the implementation of and participation in mine action programmes. The measures supported by Austria under the mine action programme in principle focus on the priority countries of the development cooperation programme and the Stability Pact countries, which are particularly hard hit by the mines scourge. The Austrian projects are implemented in coordination and cooperation with other like-minded donors.

Recent developments:

824. Austria participated pro-actively in the Yokohama Process (Second World Congress against the Commercial Sexual Exploitation of Children, 17 - 20 December 2001 in Yokohama/Japan) and contributed to elaborating the action plan of the European (regional) Preparatory Conference in Budapest (20 - 21 November 2001) placing special emphasis on Internet-related measures and measures against sex tourism.

825. Austria signed the two Optional Protocols to the UN Convention on the Rights of the Child on the involvement of children in armed conflict as well as on the sale of children, child prostitution and child pornography on 6 September 2000 at the Millennium Summit. The Optional Protocol on the involvement of children in armed conflict was ratified on 1 February 2002 and the ratification process for the Optional Protocol on the sale of children, child prostitution and child pornography will be completed within the immediate future.

826. Besides, Austria would like to inform the competent bodies that the amendment to Art. 43, para. 2 of the UN Convention on the Rights of the Child regarding the increase of the number of members in the Committee on the Rights of the Child from 10 to 18 was adopted by the Austrian Ministerial Council and discussed by the Austrian National Council (the Lower House of the Austrian Parliament) in December 2001.

14. ACRONYMS AND ABBREVIATIONS

| | |
|---------|---|
| ABGB | Allgemeines Bürgerliches Gesetzbuch (Civil Code) |
| AsylG | Asylgesetz (Asylum Act) |
| Art | Article |
| AußStrG | Außerstreitgesetz (Act on Non-litigious Jurisdiction) |
| AVG | Allgemeines Verwaltungsverfahrensgesetz (Act on General Administrative Proceedings) |
| BG | Bezirksgericht (District Court) |
| B-VG | Bundesverfassungsgesetz (Federal Constitution) |
| CRC | Convention on the Rights of the Child |

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| CO | Concluding Observations |
| E | Entschließung (Resolution) |
| EheG | Ehegesetz (Marriage Act) |
| ECHR | European Convention / Court on Human Rights |
| EU | European Union |
| EuCJ | European Court of Justice |
| etc. | et cetera |
| FrG | Fremdengesetz (Aliens Act) |
| GewO | Gewerbeordnung (Industrial Code) |
| GP | Gesetzgebungsperiode (legislative period) |
| ILO | International Labor Organization |
| JFK | Jugendfilmkommission (Youth Film Commission) |
| JWG | Jugendwohlfahrtsgesetz (Youth Welfare Act) |
| JWO | Jugendwohlfahrtsordnung (Youth Welfare Rules) |
| KIJA | Kinder- und Jugendanwaltschaft (Childrens' and Adolescents' Ombudsman) |
| LG | Landesgericht (Regional Court) |
| L-JWG | Landes-Jugendwohlfahrtsgesetz (Youth Welfare Act of a Land) |
| HRC | Human Rights Convention |
| NR | Nationalrat (National Council) |
| OLG | Oberlandesgericht (Superior Regional Court) |
| OGH | Oberster Gerichtshof (Supreme Court) |
| ORF | Österreichischer Rundfunk (Austrian Broadcasting Corporation) |
| Öbl. | Österreichische Blätter |
| SPG | Sicherheitspolizeigesetz (Police Act) |
| StbG | Staatsbürgerschaftsgesetz (Nationality Act) |
| StGB | Strafgesetzbuch (Penal Code) |

| | |
|--------|---|
| StGG | Staatsgrundgesetz (Basic Law) |
| StPO | Strafprozessordnung (Code of Criminal Procedure) |
| UN | United Nations |
| UNICEF | United Nations International Child Emergency Fund |
| VD | Verfassungsdienst (Constitutional Service) |
| VfGH | Verfassungsgerichtshof (Constitutional Court) |
| VwGH | Verwaltungsgerichtshof (Administrative Court) |

15. Information about the Compilation of this Report

827. This report was compiled by the Federal Ministry for Social Security and Generations. Coordination and Editing: General Directorate V: Youth, Family, Men's and Senior Citizens' Matters, Dept. Youth Welfare (V/2).

Contributions were made by the following Federal Ministries:

828. Federal Chancellery – Constitutional Service, Federal Ministry for Foreign Affairs, Federal Ministry of the Interior, Federal Ministry of Justice, Federal Ministry of Education, Science and Culture, Federal Ministry of Economic Affairs and Labour, Federal Ministry of Transport, Innovation and Technology, Federal Ministry for Social Security and Generations – the General Directorates involved apart from the coordinating GD were: Women's Matters, Social Insurance, Care for the Sick and Disabled, Matters of the Disabled, Support and Social Welfare Matters and Health.

Contributions were made by the following Governments of the Länder :

829. Office of the Lower Austrian Government; Office of the Salzburg Government; Office of the Styrian Government; Office of the Tyrolean Government; Office of the Vorarlberg Government; Office of the Vienna Government;

830. Contributions of Non-governmental organizations were used in the report: members of the National Coalition for the Implementation of the CRC, and especially Children's and Adolescents' Ombudsmen as well as children's and youth organizations and counselling services.

16. ANNEX

The following information relevant to the report has been added in the annex :

831. Data and statistics on CRC-relevant topics

832. Resolutions – Bills – EU Resolution: Resolution of the Austrian National Council of 4 July 1994 for the implementation of the objectives of the CRC (E 156 – NR XVIII.GP)
Resolution of the government on violence in society, violence in the family, maltreatment of

children, sexual child abuse, violence against women, violence among adolescents, violence in the media (30 September 1997) Action Plan against Child Abuse and Child Pornography on the Internet (10 December 1998) EU Resolution on Youth Participation: Resolution of the Council and the Ministers of Youth meeting within the Council on youth participation (15 December 1998)

833. Reports by Non-Governmental Organizations: National Coalition für die Umsetzung der Kinderrechte; Österreichischer Bundesjugendring.(ÖBJR); Katholische Jungschar (KJSÖ) – Bundesleitung; Österreichische Kinderfreunde; Österreichisches Komitee für UNICEF (UNICEF Committee)

834. Reports by the Children's and Adolescents Ombudsmen: Styria, Salzburg, Lower Austria, Upper Austria, Tyrol, Vorarlberg;

835. The legal status of Children's and Adolescents Ombudsmen (laws of the Länder)

836. Concluding Observations of the Committee on the Rights of the Child. (CRC(C/SR. 507-509)

837. Organizations invited to report

838. Acronyms and Abbreviations
