



**NETZWERK KINDERRECHTE ÖSTERREICH
NATIONAL COALITION (NC) FOR THE
IMPLEMENTATION OF THE UN CONVENTION ON THE
RIGHTS OF THE CHILD IN AUSTRIA
www.kinderhabenrechte.at**

**Contribution of the Austrian National Coalition for the Implementation of the
Convention on the Rights of the Child, to the Universal Periodic Review NGO
reporting process**

Statement adopted by the National Coalition on 18 May 2010¹

Introduction

The Austrian Child Rights Network/National Coalition for the Implementation of the Convention on the Rights of the Child in Austria is a network of like-minded independent organisations and institutions working in the field of child rights protection. Since our establishment in 1997 in the context of the preparation of the first alternative („shadow“) report we have been engaged in child rights monitoring, information and awareness-raising, as well as in advocacy for children’s rights in Austria. Moreover, our Coalition is member of the European Children’s Network/Euronet and of the EU Fundamental Rights Agency’s Fundamental Rights Platform.

Our Coalition has recently started preparations for its third child rights alternative report, which should be ready by the beginning of 2011. For the first time, this process will include direct feedback from children and young persons on their own experiences in Austrian child rights protection.² The following should be seen as an overview of key child rights concerns of our Coalition regarding the situation in Austria.

Summary: key concerns in relation to the protection of children’s rights in Austria

- Inadequate legal status of the Convention on the Rights of the Child – need for comprehensive constitutional incorporation
- Child rights-based child and youth welfare legislation reform
- Revision of the National Plan of Action for the Rights of Children and Adolescents (2004)
- Mainstreaming child rights protection and cross-sectoral coordination and monitoring; child rights research agenda
- Thematic concerns, including in regard to child support in family law proceedings; child protection from violence; care and assistance to child refugees and trafficked children; child-oriented health system; anti-poverty package for children; educational reform

Key concerns in relation to the protection of children’s rights in Austria

- **Legal status of the UN Convention on the Rights of the Child (CRC – Art 4 CRC)**

¹ Based on a draft by Helmut Sax, Ludwig Boltzmann Institute of Human Rights, and feedback from the network. Please note: key concerns and demands of the network are underlined. Key elements of this paper have also been included in the submission by the Austrian NGO UPR-Plattform; this paper, however, aims to highlight and give more details to difficulties in child rights protection in Austria.

² For further information on this FEEDBACK-Report please consult the network website at: www.kinderhabenrechte.at (16 May 2010).

One key issue on which the Coalition has lobbied right from its beginning is the incorporation of children's rights in the Austrian Constitution. Austria ratified the Convention on the Rights of the Child in 1992, although with very weak incorporation into the Austrian domestic legal order: first, the CRC was not given Constitutional rank (like it had previously been the case with the European Convention of Human Rights), and secondly, due to a domestic reservation declared by the Parliament, the CRC was denied direct applicability. As a consequence, no public authority/court may use the CRC itself as legal basis for any decision. A study mandated by the Family Ministry and the Child and Youth Ombudsoffices in Austria in 1998 has shown the need for improved constitutional rights protection for children³, and while political parties claimed support for such demands since then, it took the government until 2009 to bring forward a proposal for the Parliament.

However, the Draft „Constitutional Act on Children's Rights“⁴ has several weaknesses from the Child Rights Coalition's point of view: first of all, it starts from a selective approach, by not incorporating the whole Convention, but only elements of it (based on Art 24 of the EU Fundamental Rights Charter, but without all other general human rights foreseen there). Consequently, key child rights e.g. on adequate standard of living, health, full right to education, to play, non-discrimination of children irrespective of nationality, for instance, are missing.

Even worse, the government-sponsored Draft includes a broad limitation clause for the rights of the draft, which was not foreseen by the CRC, but copied from the ECHR and inserted here. Finally the Draft lacks any constitutional guarantees to child-friendly access to justice to claim those rights, or any much needed accompanying measures on information, awareness-raising, training (e.g. for those working in the legal profession) and evaluation of the impact of these planned new rights.

Our Coalition deplores that after so many years' time for preparation, the government Draft fails to send a clear message to children, parents and legal professionals for a shift towards a strong legal rights-based protection of children's interests in Austria.⁵ A vote in the Austrian Parliament on 10th December 2009 did not reach the required 2/3 majority and the Coalition calls on the government to review the Draft, withdraw all reservations to the CRC both internationally and domestically, and to include representatives from the Child Rights Coalition in this review process.

Apart from this, several other child rights areas for concern remain in Austria, here, in relation to the **legal, political and structural framework**:

- **Child and Youth Welfare legislation reform (Art 9, 20 CRC)**

Following media reports about severe maltreatment of young children, eventually leading to their death, the Federal Ministry for Family and Youth Affairs initiated in early 2008 a review process of existing child and youth welfare legislation, with three expert working groups and recommendations to include, for instance, key child rights principles for general guidance in the law, address the need for cooperation between different actors and initiate a shift towards preventive action and incorporate the need for nation-wide statistics and research – in line with demands from the Child Rights Coalition.

³ Study undertaken by Coalition member Ludwig Boltzmann Institute of Human Rights, Vienna.

⁴ For details on the Draft, see website of the Austrian Parliament, http://www.parlament.gv.at/PG/DE/XXIV/A/A_00859/pmh.shtml (16 May 2010).

⁵ For a documentation of the discussion, and the latest position paper from the Coalition, see: www.kinderhabenrechte.at (16 May 2010).

However, two years later, new legislation is still not adopted – on the contrary: as youth welfare matters fall primarily under the responsibility of the “Bundesländer” (nine Austrian provinces), with the federal level having competence only on some general standard-setting level, any reform basically needs the support of the Länder, and many of them opposed the new draft legislation (over the last year), in particular (also) for financial reasons. The Coalition is concerned that any political compromise reached in the future will also mean a negative compromise in relation to child protection standards that might lead away from earlier ambitions when the review process had started.

- **Revision of the National Plan of Action for the Rights of Children and Adolescents (Art 4 CRC)**

In 2003 another even more ambitious process had started to elaborate a National Child Rights Action Plan for all children living in Austria. After year-long consultations with civil society and children, the government adopted an Action Plan in November 2004.⁶ Unfortunately, the implementation process proved to be difficult, the work of an inter-institutional state and non-state support Working Group coming to a halt in 2007 after a “progress report” by the ministries involved. Again, this may be attributed partly to the lack of extra resources for implementation, partly due to unclear division of implementation responsibilities between the federal and the “Länder” level, partly due to the lack of a monitoring system for assessing progress, and partly due to lack of political will from the subsequent governments to continue with this Action Plan. The Coalition calls on the government to revise the Action Plan and renew its efforts for implementation.

- **Mainstreaming child rights protection, coordination, research (Art 2, 3, 4 CRC)**

In general, the cross-cutting nature of child rights protection is causing a lot of structural and organisational problems in standard-setting and implementation in practice, both on the horizontal level between various federal Ministries and on the vertical level due to the federalist state structure, and the sometimes overlapping competences without clear lead between the federal, the Länder and the local/municipal level. In all its Concluding Observations on Austria so far the UN CRC Committee has deplored the lack of common coordination and monitoring mechanisms in Austria.⁷ This leads to gaps in child rights protection and implementation of CRC standards in key areas of child and youth policy, such as prevention and protection of children from violence, including sexual violence in institutions, and exploitation, including child trafficking as well as discriminatory practices concerning access to family and social welfare benefits for children, depending on the area of residence/Bundesland in which they are living.

In a similar context, recurring criticism both from the CRC Committee and the Coalition has been focusing on the lack of commitment to improved collection of child-focused data, nationwide statistics and research on child rights protection in Austria. There is no dedicated budget line or regular funding programme available for specific child rights research, and in many cases rights-based research is done just on a voluntary basis by students e.g. from legal, development or social services studies. In addition, at the end of 2009 one of the few existing research institutions, the Austrian Institute for Youth Research, had to be closed after contributions of public authorities had been cut down.⁸

⁶ See the government’s child rights website at: www.kinderrechte.gv.at (16 May 2010), section on „In Österreich“.

⁷ UN Documents CRC/C/15/Add.98 (7 May 1999), Para 10; CRC/C/15/Add.251 (31 March 2005), Para. 11; CRC/C/OPSC/AUT/CO/1 22 (October 2008), Para. 11.

⁸ See the Institute’s announcement on their website, at: <http://www.oeij.at/> (16 May 2010).

Finally, **several thematic issues of concern** remain in Austria, including:

- **Family law matters (Art 12, 18, 27 CRC):** child representation in parental conflicts (“Kinderbeistand”) is still not fully implemented;⁹ reform of maintenance regulations is needed to ensure easier access to funds.
- **Violence prevention and protection (Art 19 CRC):** a major study¹⁰ in 2009 has shown that despite a ban on violence in the Austrian Civil Code already dating back to 1989, physical and in particular psychological forms of punishment still persist and need to be addressed by a range of actors of different sectors; apart from that sexual violence against children in church institutions, as well as various forms of violence against children in other institutions, became major issues for discussion in Austrian media, public and politics.¹¹
- **Child refugees and trafficked children (Art 22, 35):** continuous changes in legislation in the field of asylum, entry and stay of nationals of other countries make it more and more difficult to maintain at least basic standards of refugee protection and child rights protection. Recent amendments, starting in 2010, allowed for easier use of x-ray testing for age assessments, leading to the result that many asylum-seekers were declared to be adults and left without provision for specific care, prone to be returned, according to the EU Dublin II regulation, to countries through which they have first entered the EU.¹² In relation to trafficked children, despite efforts of an inter-institutional Taskforce Working Group on Child Trafficking¹³ a national referral mechanism for trafficked children still does not exist in Austria.
- **Child health (Art 24 CRC):** a recent first Annual Report on Child Health¹⁴ by the Austrian League for Health of Children and Adolescents in January 2010 showed the urgent need to adapt existing public health structures to the needs of children and contemporary forms of health risks, including child-focused data, improved access to therapeutic services and specific qualifications among health professionals.
- **Child poverty (Art 27 CRC):** the Austrian Institute for Children's Rights and Parental Education undertook a comprehensive assessment of living conditions of children, including material, social, cultural and developmental dimensions in 2009/10; findings show the need for wide-reaching measures cutting across different policy fields, e.g. through improved access to information on support services, educational support, flexible child care services, support to single-parent-households, review of housing conditions and a minimum income for children.¹⁵
- **Educational reform (Art 28, 29; 12, 2, 23 CRC):** there is an on-going public and political debate for many years already in Austria about educational reform, triggered not

⁹ See the position paper of the Austrian Child and Youth Ombudspersons at <http://www.kija.at/sbg/Positionspapiere/Kinderbeistand-Gesetz.pdf> (16 May 2010).

¹⁰ See Federal Ministry for Economy, Family and Youth Affairs, Familie – Kein Platz für Gewalt!?, 2009, available at http://www.kinderrechte.gv.at/home/upload/10%20news/gewaltbericht_2009.pdf (16 May 2010).

¹¹ See e.g. statement by the Vienna Child and Youth Ombudspersons in March 2010, at: http://www.kja.at/index.php?option=com_content&task=view&id=166&Itemid=1 (16 May 2010).

¹² See, for instance, the article „Reifeprüfungen“ in the Austrian political magazine „Profil“, 26 April 2010.

¹³ For information on the Working Group, see: <http://www.kinderrechte.gv.at/home/im-fokus/kr-auf-schutz/kinderhandel/content.html> (16 May 2010).

¹⁴ See Austrian League for the Health of Children and Adolescents, Bericht zur Lage der Kinder- und Jugendgesundheit in Österreich 2010, http://www.kinderjugendgesundheit.at/fileadmin/files/TopThema/Pressekonferenz/Bericht_zur_Lage_der_Kinder-und_Jugendgesundheit_2010_72dpi_Online.pdf (16 May 2010).

¹⁵ Hackl et al., Armut aus Kinderperspektive - Eine interdisziplinäre Annäherung an das Phänomen Kinderarmut, Institut für Kinderrechte und Elternbildung, Vienna 2009/10; download: <http://www.kinderrechteinstitut.at> (16 May 2010).

least by rather weak results of the latest OECD PISA Study. One controversy relates to the organisational structure of the Austrian school system, in particular for secondary education, which consists of different school types formally related to different learning achievements and needs of the children (“Hauptschule”, “secondary higher education/Gymnasium”, “Sonderschulen”) in practice, however, leading to a kind of early segregation of children (at the age of 10) according to the social status of their families. Apart from that there is less discussion about educational aims and reform of the curricula and training of teachers, which still lacks mandatory training on social skills development, conflict management and mediation and dealing with diversity in class. The Coalition views participation of students in these discussions and non-discrimination of children/comprehensive inclusion of children (both in relation to children with disabilities¹⁶ and children from abroad) as key principles for educational reform in Austria and it is concerned that current discussion of spending cuts in the wake of the international economic crisis might lead to further postponement of these efforts.

Contact: Helmut Sax, helmut.sax@univie.ac.at or Daniela Gruber-Pruner, daniela.gruber-pruner@kinderfreunde.at (current executive director of the network)

The Austrian National Coalition for the CRC (“Netzwerk Kinderrechte Österreich”, www.kinderhabenrechte.at) has been established in 1997 as a network of independent child rights organisations and institutions for the promotion of the implementation of the **UN Convention on the Rights of the Child (CRC)** in Austria. The mandate of the National Coalition includes:

- Independent monitoring of the implementation of the CRC and related child rights standards, in particular by preparing “shadow reports” on the child rights situation in Austria
- Information and awareness-raising about the CRC principles and its importance for practical work
- Lobbying for a child rights-based approach, acknowledging children and young people as bearer of human rights, strengthening their status in society, also within a generational dialogue, and calling for accountability of the duty bearers for protecting the rights of the child.

Current members (as of 2010) include: Akzente Salzburg; asylkoordination österreich; Austrian child protection Society/ Österreichischer Kinderschutzbund – Verein für gewaltlose Erziehung; Austrian Committee for UNICEF; Austrian League for Child and Youth Health; Austrian National Youth Council/Österreichische Bundesjugendvertretung; Austrian Scout Movement/Pfadfinder und Pfadfinderinnen Österreichs; Austrian Society of Paediatrics/ Österreichische Gesellschaft für Kinder- und Jugendheilkunde; Austrian Society of Child and Adolescent Psychiatry/ Österreichische Gesellschaft für Kinder und Jugendpsychiatrie; boJA - Bundesweites Netzwerk Offene Jugendarbeit/youth social services network; Child and Youth Ombudspersons of all 9 Austrian provinces (Burgenland, Carinthia, Lower Austria, Upper Austria, Salzburg, Styria, Tyrol, Vorarlberg, Vienna); ECPAT Austria; FICE Austria / Kinderrechtbüro Österreich; Don Bosco Flüchtlingswerk Austria; Institute for Children's Rights and Parental Education; Katholische Jungschar Österreichs/Catholic Child Movement Austria; KIB Children Care; Kinderbüro Steiermark/Children's Bureau Styria; Kuratorium Kinderstimme; Ludwig Boltzmann Institute of Human Rights (BIM); Österreichische Kinderfreunde (Austrian Kinderfreunde)/Rote Falken; Pro Juventute Austria; SOS Children's Villages Austria; Welt der Kinder, Vorarlberg; WienXtra Vienna; *associated member*: “Rat auf Draht” child helpline

¹⁶ See the Draft Statement (28 April 2010) of the Austrian Monitoring Committee for the UN Convention on the Rights of Persons with Disabilities on the need for inclusive education in Austria, available at www.monitoringausschuss.at (16 May 2010).