

ALTERNATIVE REPORT ON THE IMPLEMENTATION OF THE OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY



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April 2008

Austria

The Austrian Kinder und Jugendanwaltschaften (children`s ombudsoffices) fully support the following report.



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Editor:

ECPAT Austria
Diefenbachgasse 36/3
1150 Vienna, Austria
<http://www.ecpat.at>

Compilation text and coordination: Marion Kreissl (ECPAT Austria)

This shadow report was coordinated by ECPAT Austria and created together with UNICEF Austria, the Ludwig Boltzmann Institute of Human Rights, Stopline Austria, ECPAT Austria Committee for Youth Action, Don Bosco Flüchtlingswerk Austria- Coordinator Separated Children in Europe Programme Austria, Volkshilfe Vienna- SOPHIE, as well as Carolin Tener & Tina Ring, experts in the field of child prostitution.

This report was enabled through the financial as well as technical support of ECPAT International.

Cooperation/Experts: Margit Ammer, Fevzije Bahar, Angela Heitzeneder, Cordula Höbart, Eva van Rahden, Laura Lechner, Barbara Linder, Martha Miklin, Margit Pollheimer, Anne- Sophie Richter, Tina Ring, Helmut Sax, Barbara Schloßbauer, Anna- Katharina Skorpik, Carolin Tener, Barbara Unterlerchner, Astrid Winkler

Translation: Marion Kreissl, Katrin Lankmayer, Laura Lechner, Martha Miklin, Julia Planitzer, Anne- Sophie Richter, Julia Rührlinger, Barbara Schloßbauer, Anna- Katharina Skorpik

Editing: Catherine Prewett- Schrempf, Astrid Winkler, Clare Gregory, Angela Heitzeneder, Catherine Beaulieu

List of Abbreviations

ABGB	Austrian Civil Code
ADA	Austrian Development Agency
AKH	General Hospital Vienna
ARHG	Extradition and Judicial Assistance Law
Art.	Article
AsylG	Asylum Law
BGBL	Federal Law Gazette
BIM	Ludwig Boltzmann Institute of Human Rights
BKA	Federal Criminal Police Office
BMGFJ	Federal Ministry for Health, Youth and Family
BMI	Federal Ministry of the Interior
BMJ	Federal Ministry of Justice
BMSG	Federal Ministry of Social Security and Generations
BMUKK	Federal Ministry for Education, Art and Culture
BMWA	Federal Ministry for Economy and Employment
B-VG	Federal Constitutional Law
CRC	Convention on the Rights of the Children
CSEC	Commercial Sexual Exploitation of Children
CWCC	Cambodian Woman's Crisis Centre
CYA	Committee for Youth Action
DAPHNE	European Project working with perpetrators
DSA	diplomatic social worker
ECHR	Convention for the Protection of Human Rights and Fundamental Freedoms
EU-JZG	European Judicial Cooperation Law
FH	College of higher education
FPG	Alien Law
ICMPD	International Centre for Migration Policy Development
ILO	International Labour Organization
IOM	International Organization for Migration
IRU	International Romani Union
ISPA	Austrian Internet Service Provider Association
JGG	Juvenile Court Law
KIJA	Children's ombudsmen
MA	Magistrate department
Mag	Master
MAG	Magistrate
NAP	National Action Plan
NGO	Non-Governmental Organization
NRM	National Referral Mechanisms
OPSC	Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography
PolKG	Police Cooperation Law
Par.	Paragraph
P.	Page
SDÜ	Schengen Agreement
Sec.	Section
StÄG	Criminal Law Modification Law
STD	Sexually transmittable diseases
StGB	Austrian Criminal Code

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StPO	Code of Criminal Procedure
THB	Trafficking in Human Beings
UNGASS	United Nations General Assembly Special Session
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations International Children's Emergency Fund
UNODC	United Nation's Office on Drugs and Crime
YAP	Youth Rights Action Plan

Introduction

This shadow report was coordinated by ECPAT Austria and created together with UNICEF Austria, the Ludwig Boltzmann Institute of Human Rights, Stopline Austria, ECPAT Austria Committee for Youth Action, Don Bosco Refugee Association Austria- Coordinator Separated Children in Europe Program Austria, Volkshilfe Vienna- SOPHIE, as well as experts in the field of child prostitution. The organizations kindly submit this report pursuant to Article 45 (a) of the UN Convention on the Rights of the Child and express their gratitude for the Committee on the Rights of the Child's recognition thereof.

At this point sincere thanks are given to all participating organizations and persons for their extraordinary commitment. Special thanks are given to all interview partners as well as all persons who provided their knowledge and time towards the creation of this report.

To write this report, existing information¹ was collected, evaluated and gaps were identified. To generate the data ECPAT Austria used different standardized methods to gain well-founded conclusions concerning the areas in which deficits of information were found. For this, ECPAT Austria developed a questionnaire, which was sent out to members of the Austrian civil society. With the help of the partners, interviews were conducted with selected target persons, which in some way or another deal with one of the three areas of the Optional Protocol. This information was evaluated and discussed. In a next step this information was included in this report and is meant to be an **impulse to carry out more detailed studies or data collections in the affected areas.**

In the context of the **preparation of the World Congress III on the commercial sexual exploitation of children in Brazil 2008**², the authors of this report hope to make a contribution to the evaluation of the measures taken by the Austrian government in these areas. It is also meant to follow-up to the previous commitment of Austria through its participation in and signing of the final documents of both preceding World Congresses (in Stockholm 1996 and Yokohama 2001).

General information

It has to be pointed out that the three categories of child trafficking, child prostitution and child pornography bear areas of overlap. **All three areas are interconnected to a certain extent.** Statements made in this report about only one of these areas should therefore be interpreted as bearing significant for the other OPSC areas.

Definitions

This report uses the term "child prostitution" as per the OPSC language. Still the writing organizations feel that this term is problematic to the extent that it can blur the distinction between prostitution as a voluntary sexual service for money between two adults on the one hand, and the commercial sexual exploitation of children in prostitution on the other. The term "child prostitution" bears the danger of trivializing this serious crime, as well as of discrediting the legal sex work in Austria.³ **The following report will therefore use the term "commercial sexually exploited child in prostitution" for children affected, rather than the term "child prostitute".**

Regarding the **distinction between the terms "sale of children", which is used in the OPSC, and "child trafficking", which is used in the Palermo Protocol, the use of the latter term in this report shall refer to both.** The use of the term "child trafficking" will therefore not be limited to instances where children are "transferred for remuneration or consideration"⁴, nor will it be limited to sexual exploitation or other single

¹ It has to be noted that there is little or no information regarding the three areas of the Optional Protocol in Austria.

² For further information see also: http://www.ecpat.net/World_Congress/en/index.html, access at 20.03.08, 14:25

³ SOPHIE- Volkshilfe Vienna, Statement from 04.03.2008

⁴ Art. 2(a) OPSC

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forms of exploitation.⁵ The term ‘child trafficking’ will be used to describe situations in which children are recruited, transported, transferred, harbored or received for the purpose of exploitation, including **at a minimum** prostitution or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude; adoption or the removal of organs.⁶ The term “Child trafficking” will include all the different forms, whether the focus lies on the exploitation, remuneration or consideration aspect.

Finally, the writing organizations would like to point out **that in this report the term “affected by...” is preferred to the more standard term “victim”**⁷. The latter will nevertheless be used in chapter 6 (Protection of the rights of the victims), because of its use in legal definitions in this context (under victim protection law).

The term “child” is used in its meaning of the UN Convention on the Rights of the Child and refers to any person up to the age of 18.⁸

⁵ At the press event, “Together against human trafficking” of the Austrian government on 16th October 2007, though child trafficking was not explicitly equated with trafficking for sexual exploitation (as is very often the case in other areas), however **a tendency by some parties to equate child trafficking with other forms of exploitation, which are more visible (begging, stealing) could be noted**. Without well-founded scientific studies there is a risk of child trafficking being reduced in its meaning and extend, and therefore inappropriately analyzed and tackled.

⁶ Art. 3(a) Palermo Protocol.

⁷ On this topic see also: IOM (2007): The IOM Handbook on direct Assistance for Victims of Trafficking. Source: <http://www.iom.int/jahia/Jahia/cache/offonce/pid/1674?entryId=13452>, last access: 20.03.2008, 14:55, p.xif.

⁸ See Article 1

Recommendations

Previous CRC Committee Recommendations in relation to Austria 2005

(UN Doc. CRC/C/15/Add.251, 28 January 2005)

The Concluding Observations of the CRC Committee in relation to the last Austria CRC State report have not been fully implemented in the following areas, which are also particularly relevant in the OPSC context (*for a full quote of the recommendations [in italics] see the respective sub-chapters below*):

- Legislation – no constitutional rights, legislative review (para. 9)
- Coordination – no effective coordination mechanism (para. 11)
- National Plans of Action - insufficient human and financial resources, no indicators for monitoring and evaluation (para. 13)
- Data collection – no comprehensive, disaggregated collection of data (para. 17)
- Non-discrimination – harmonisation of youth welfare legislation, evaluation still pending (para. 24)
- Sexual exploitation, pornography and trafficking – no full implementation of Action Plans, identification, training, appropriate recovery and reintegration programmes (para. 52)
- Dissemination – no comprehensive public debate about reporting process (para. 57)

General Recommendations

- In all OPSC related implementation measures, the following CRC rights and corresponding standards as developed by the CRC Committee should be particularly taken into account:
 - Best interests of the child
 - Right to non-discrimination, including in relation to gender, nationality, ethnic origin/e.g. belonging to Roma groups and all other forms of discrimination as outlined in article 2 of the CRC
 - Right of the child to participation and to freedom of expression
 - Right to information
 - Right to protection from violence and exploitation
 - Right to privacy, including protection of personal data
- Affected children must never be criminalised
- In particular, there is a lack of involvement of children and adolescents and their organisations and representative institutions (such as the “Bundesjugendvertretung”/ Austrian Federal Youth Representative Council) in the development, implementation, monitoring and evaluation of OPSC-related activities
- All Action Plans should be adequately funded , include a timeframe and monitoring mechanisms
- Implementation of the remaining measures foreseen in the National Plan of Action for Children’s Rights (2004), in chapter 11 (“Protection from economic and sexual exploitation and child trafficking), especially in the areas of child sex tourism, awareness-raising and training
- Enhanced cooperation between governmental authorities, NGOs, civil society and the international community (see chapter “Cooperation”)
- More government resources should be allocated to research on the OPSC issues
- Appropriate coordination and monitoring mechanisms should be developed to overlook and evaluate the implementation and sustainability of policies relevant for OPSC-related domains

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- Withdrawal of the reservations to the OPSC (*page 1, I*)
- Incorporation of the rights of the child into the Austrian Federal Constitution (*page 1, I*)
- Definition of clear roles and responsibilities for all relevant stakeholders regarding the implementation of the OPSC (*page 1, I*)
- Measures and corresponding budget allocations to implement the OPSC in its various aspects must follow a long-term implementation plan (*page 14, III*)

[CRC Committee Concluding Observations 2005 – Legislation, para. 9]

The Committee recommends that the State party continue and strengthen its efforts to incorporate the rights of the child in the Constitution both at Federal and Länder level. The Committee also recommends that the State party take all necessary measures to ensure that its domestic legislation fully conforms to the principles and provisions of the Convention, in particular with regard to its articles 10, 20 and 22 of the Convention.

[CRC Committee Concluding Observations 2005 - National Plans of Action, para. 13]

The Committee recommends that the YAP be finally approved by the Parliament and that the State party ensure that sufficient human and financial resources are timely allocated for its effective implementation and that it promotes and facilitates an active involvement of children and youth, parents and other interested and relevant bodies. It further recommends that the State party develop indicators for monitoring and evaluating the plan.

[CRC Committee Concluding Observations 2005 - Sexual exploitation, pornography and trafficking, para. 52]

The Committee recommends that the State party:

strengthen its efforts to formulate and effectively implement a National Plan of Action against commercial sexual exploitation and trafficking as agreed at the First and Second World Congresses against Commercial Sexual Exploitation of Children (1996 and 2001), taking into account the Optional Protocol to the Convention on the Rights of the Child on sale of children, child prostitution and child pornography and the existing National Plan of Action of 1998 against Sexual Abuse and Child Pornography in the Internet. International and especially regional cooperation should be further strengthened; ...

Facts and figures, research

- Systematic data collection, empirical research and assessment of existing measures is urgently needed in all OPSC-related areas as a basis for adequate policy development, legislation and other implementation measures. There is a clear lack of data and assessment of activities (with a focus on identifying existing best practices also in other countries).
 - More research and systematic data collection especially in the domain of children commercially sexually exploited in prostitution, including quantitative data (*page 3, II*)
 - More research on the overlaps between asylum-seeking children and trafficked children / children in prostitution (*page 5, II*)
 - Better documentation of the various manifestations of trafficking in human beings (*page 5, II*)

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- More research on the phenomenon of Roma begging with children (*page 7, II*)
 - More information and systematic data collection on extraterritorial legislation (*page 7, II*)
 - Development of indicators for data collection (*page 8, II*)
- Integration of OPSC-related issues into already existing data collection and assessments. Ideas from the following recommendations should be taken into account, but are not limited to these:
- Disaggregation of data in the Security Report of the Federal Ministry of Internal Affairs and the Federal Ministry of Justice (*page 2, II*)
 - Better disaggregation of data in the Alien Statistics (*page 6, II*)
- Establishment of a central database for Europe on human traffickers and persons affected by human trafficking (*page 6, II*)
- Establishment of data collection systems disaggregated by nationality and ethnicity (Roma!) (*page 7, II*)
- Systematic evaluation of the implementation of the OPSC by state institutions (*page 8, II*)

[CRC Committee Concluding Observations 2005 - Data collection, para. 17]

The Committee recommends that the State party strengthen its efforts to develop a system for a comprehensive collection of comparative data on the Convention. This data should cover all children below the age of eighteen years and be disaggregated, with specific emphasis on vulnerable groups, ...

Prevention and awareness-raising

- More attention from public authorities (medical, youth welfare, etc.) given to children commercially sexually exploited in prostitution, pornography and trafficking, and to vulnerable and marginalized groups affected (page 17, IV)
 - Cooperation and networking with counseling centers and schools
 - Dissemination of information to employees of the youth welfare on the OPSC
- Information material – gender neutrally formulated for children commercially sexually exploited in prostitution, trafficking and pornography
- More information in youth magazines or on the Internet regarding STD's or the use of condoms etc.
- Good prevention material about protection measures, gender-neutrally formulated, that is distributed in public places i.e. in bars etc. (with pictures, that can be understood without being able to understand German)
- More prevention work targeting (potential) perpetrators (*page 18, IV*)
- Strengthening of awareness-raising efforts in schools and in child and youth work not only on sexual violence and exploitation, but also on OPSC issues, with special emphasis on peer education
- Wider dissemination of the OPSC to the public, i.e. through campaigns(*page 2, II*)
 - Awareness raising about the extent of trafficking (all its forms!)
- The Austrian Government, through the Austrian Development Agency (ADA), and in cooperation with partners from the international community, should continue to finance organizations doing awareness-raising campaigns (targeting especially vulnerable groups, including minorities such as Roma)

[CRC Committee Concluding Observations 2005, Dissemination, para. 57]

The Committee further recommends that the second periodic report and written replies submitted by the State party and related recommendations (concluding observations) it adopted be made widely available, including through Internet (but not exclusively), to the public at large, civil society organizations, youth groups, and children in order to generate debate and awareness of the Convention, its implementation and monitoring.

[CRC Committee Concluding Observations 2005 - Sexual exploitation, pornography and trafficking, para. 52]

The Committee recommends that the State party:

... c) promote and support the implementation of the "Code of Conduct for the protection of children of sexual exploitation in tourism"; ...

Capacity building and training

- All agencies and institutions dealing with affected children in OPSC-related domains should establish training programs to ensure that staff responsible for the identification, care and protection of affected children understand the rights of the child, are age and gender-sensitive, and possess the necessary skills to assist children throughout the process (including prosecution matters).
- Training should be equally distributed regionally within Austria and its provinces

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- Continued and extended trainings for government officials in the countries of origin of children trafficked to Austria

[CRC Committee Concluding Observations 2005 - Sexual exploitation, pornography and trafficking, para. 52]
The Committee recommends that the State party:

... b) strengthen the capacity of the police and relevant personnel to receive complaints and investigate cases of trafficking and sexual exploitation in a child sensitive manner, inter alia, by increasing human and financial resources, and where necessary, by providing appropriate training; ...

Protection and care

- Specific gender-sensitive care services for children in drug addiction treatment centers (short and long-run therapies) are absolutely necessary
- Specific gender-sensitive projects for vocational training designed for affected children, including former drug addicts
- Establishment of an institution doing outreach work specifically targeting children commercially sexually exploited in prostitution as well as trafficking (*page 5, II*)
- Strengthening capacities of existing care facilities (*page 11, III*)
- The considerate examination must be applicable for all procedures dealing with child trafficking (at the moment, only trafficked children who have been sexually abused have the right to a considerate examination) (*page 29, VI*)
- Establishment of binding criteria for a Best Interest Determination (BID) in accordance with the UNHCR Guidelines on Formal Determination of the Best Interests of the Child
- Institutionalize the use of the above established BID criteria by the relevant authorities (especially, but not limited to Youth Welfare Authorities) and ensure they apply to all OPSC areas
- Consistent application of the “Benefit of the doubt”-principle in age assessments, i.e. when in doubt that a person is a child, there should be a presumption to that effect
- Child trafficking: Establishment of a comprehensive National Referral Mechanism (implementation in all 9 provinces of Austria) for trafficked children in Austria, including additional capacities and resources for identification, cooperation and information exchange between governmental officials and specialized NGOs, support and assistance and integration and/or voluntary, assisted return/reintegration of children
- Right to residence permits (and/or Asylum) for all trafficked children for the purpose of protection and care (including full access to social services) and possibility for integration depending on the results of the BID process and risk assessment, right of adolescents to vocational training and work and follow-up care for affected children once they reach the age of 18
- Child trafficking: to ensure the best interests of the child, mothers who are trafficked with their children should receive assistance in the same location. The trafficked women, who are mothers, should not be criminalized, like all victims of human trafficking.
- Child prostitution: Low threshold possibilities for legitimate income are required, as well as aid to exit, shelters and relaxing rooms around the clock as well as basic primary care and psychological

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and medical (gynecological) services, which can be used anonymously; more outreach / street work are essential to reach the persons concerned

- It is most relevant to have in place or to develop a low threshold care concepts which is guided by a comprehensive approach. legal assistance, psychological and medical offers, of which can be made use of anonymously, also outreach or rather street work are essential to reach the persons concerned
 - low threshold programmes for either jobs or on-job trainings; which can help to exit from prostitution and point out alternatives to street life and create new life perspectives
 - For the shelters - existing or, if necessary, new ones - the following criteria should apply: not linked to any conditions, anonymous, voluntary access, open 24 hours a day, allocates sleeping berths also during the day(as prostitution mostly takes place during the night); if it's a shelter solely for girls, it should consists exclusively of female staff;

[CRC Committee Concluding Observations 2005 - Non-discrimination, para. 24]

The Committee recommends that the State party undertake efforts to harmonize the legal framework for child and youth welfare and care services and to introduce minimum standards in compliance with the Convention at the länder and district level. In addition, the Committee recommends that the State party systematically monitor and evaluate the quality, accessibility and availability of these services.

[CRC Committee Concluding Observations 2005 - Sexual exploitation, pornography and trafficking, para. 52]

The Committee recommends that the State party:

... d) ensure that children victims of trafficking, prostitution and pornography in the State party have access to appropriate recovery and reintegration programmes and services.

Cooperation

- Cooperation of state actors (various ministries, provinces, etc.) on Monitoring and Evaluation such as the CRC and OPSC reporting processes
- Further cooperation with NGOs on CRC and OPSC monitoring processes
- Improved cooperation of relevant actors in OPSC-related areas, in particular concerning child prostitution and trafficking, such as police, judiciary, youth welfare authorities, medical professionals (for identification, support), intervention centres and NGOs
- Enhanced international cooperation in OPSC-related domains (especially cooperation between countries of origin, destination and transit in the domain of child trafficking regarding data collection, prevention, reintegration, identification, protection and prosecution matters)
- Development of systematic repatriation mechanisms in the domain of child trafficking (*page 33, VII*)
- Establishment and institutionalisation of bi- and multilateral monitoring mechanisms targeting trafficked children who have been repatriated to the country of origin or integrated in the country of destination or a third country (*page 34, VII*)

[CRC Committee Concluding Observations 2005 – Coordination, para. 11]

The Committee recommends that the State party undertake all measures to ensure the establishment of a permanent and effective coordination mechanism on the rights of the child at Federal and Länder level and

that sufficient financial and human resources are allocated for the effective functioning of such a mechanism. (para. 11)

Prohibition and related matters

- Children exploited in OPSC areas must never be criminalised or treated as offenders *(page 23, V)*
- The Criminal Law must follow a victim-centered approach *(page 31, VI)*
- Abolish administrative penalties in the federal laws that penalize minors in prostitution (which can also be seen as a preventive measure, as children would not rely on further prostitution to pay their debts)
- Revision of provisions in the Alien Law and the Asylum Law regarding age limits regarding legal capacity (children at the age of 16 are capable of acting legally) *(page 22, V), as well as harmonizing age limits for Austrian and Non- Austrian children*
- The range of sentences for criminal offences in the domains of the OPSC must be reviewed and partly raised *(page 24, V)*
- Offenders should be made responsible for checking the appropriate age when engaging in sexual activity with a person (i.e. by checking the official registration card for prostitutes)
- The argument that an offender thought the person he/she engaged with was over 18 years of age must never be taken into consideration

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I. General Guidelines

The initial report on the implementation of the OPSC⁹ (further referred to as "state report") is restricted to the listing of relevant legislation, as well as to some partly older preventive and cooperation measures. **The preparation and development process of the state report is not described in detail, and it seems that no statistics or other appendixes have been added.**¹⁰

The information provided on the legal status of the OPSC in Austrian internal law is incomplete. , The Federal Constitutional Law of Austria (Art. 50/2 B-VG) limits the implementation of the OPSC.¹¹ Upon adopting the CRC, Parliament declared a specific reservation to implement this treaty through enactment of separate legislation ("Erfüllungsvorbehalt"). No such separate and specific CRC implementing legislation has been passed and as a consequence, although the CRC has entered into force for Austria on the level of international law, it has no direct legal applicability on the domestic level. At present the CRC does not have the status of a constitutional law (which means that it doesn't have a higher ranking function over normal laws), nor can it be applied directly. The same situation holds true of the OPSC, which was approved by the parliament as a regular legal basis and subject to restriction on implementation.

See State report Art.5

This is in **conflict with a statement within the state report about Art. 5**, which refers to a reportedly self-executing character of international legal agreements.

The **reference to the implementation of the four basic principles of the Convention on the Rights of the Child (CRC) is only partially reflected in the state report** and there are no passages addressing this. The principles of the best interests of the child and the right to life, survival and development are at best reflected by some penalty increasing qualifications applicable to some offences (i.e. §§ 104a, 206, 207, 207a, 214, 215a, 216 StGB)¹². The range of applicable court sentences is low, which could impact on the preventive effect of some regulations (see Chapter IV).. **In all these regulations there is no recognizable reference to the CRC principles of non-discrimination and respect for the views of the child.**

Implementation difficulties

Due to the federal structure of Austria, the responsibility for implementing the CRC is shared between the different federal state actors, the provinces and the municipalities. In practice, there are severe problems regarding coordination and cooperation. For instance, the implementation of the Young Rights National Action Plan 2004 (YAP 2004)¹³ has been a slow process, in spite of the establishment of a workgroup consisting of ministries, representatives of the provinces, municipalities, federal youth representatives, children's ombuds offices and the Austrian Child Right Network/NGOs. This is due not only to the lack of resources and political will, but also to the lack of clarity around the roles and responsibilities of states/provinces/municipalities and NGOs for its implementation. In November 2007, an implementation report for 2004-2007 was presented¹⁴, but the next steps remain undefined. Further implementation problems are mentioned in different passages of the report (see Chapter III).

⁹ OPSC, Federal Law Gazette, BGBl III 93/2004

¹⁰ According to e-mail by the Federal Ministry of Health, Family and Youth from 04.12.2007 as well as to official statement of the Federal Ministry of Justice from 22.11.2007

¹¹ According to Art. 50 Sec. 2 B-VG (Federal Constitutional Law), this treaty is to be fulfilled by the enactment of relevant laws (Federal Law Gazette, BGBl. III No. 93/2004, §0)

¹² See state report (BGBl III93/2004), pages 3-4.

¹³ See <http://www.kinderrechte.gv.at/home/in-oesterreich/nap---nationaler-aktionsplan/content.html> , last access 27.03.08

¹⁴ See <http://www.kinderrechte.gv.at/home/in-oesterreich/nap---nationaler-aktionsplan/content.html> , last access 27.03.08

II. Data

The collection of data on the number of children affected by the topics of the OPSC remains a major challenge. **There are no reliable data or statistics; no district has a systematic approach in gathering this information.** Due to the lack of such data it is very difficult to lobby for increased governmental action. It is therefore essential that **Austria put in place a comprehensive data collection system on the areas covered under the OPSC in order to ensure that disaggregated data is systematically collected and analysed in order to guide policies and assess their implementation.** Such data should also include the number of arrests and prosecutions for all OPSC offences.

General Information

The Federal Ministry of Interior together with the Federal Ministry of Justice in Austria issue a comprehensive Security Report on an annual basis.¹⁵ This report contains detailed factual information from law enforcement agencies and from justice departments. The range of topics covered is broad – from terrorism, to drug abuse, and people smuggling. The **Hotline for Child Pornography at the Federal Ministry of Interior**¹⁶ is mentioned in one chapter but no detailed statistics are provided.¹⁷ Apart from this, the **other topics of the OPSC** are not explicitly mentioned. While Trafficking in Human Beings is addressed in the chapter “Night Life related Crime”¹⁸ and in connection with criminal offences committed in the red-light district,¹⁹ trafficking in children is not analyzed separately and **hardly mentioned.**²⁰ Children who have been commercially sexually exploited in prostitution who arrived from Berlin in 2005/2006 and worked in Upper Austria are mentioned in one sentence of the report. Further explanations and statistics in these sections (see ANNEX) do not allow for any conclusions to be made in relation to the age of the persons involved.²¹ Besides this, “sexual crimes” are documented and broken down into districts,²² but because of the way information is collected and the various crimes categorized, **no conclusion** can be reached about the incidence of each **OPSC crime in the individual districts.**²³

The number of convictions of juveniles has decreased in the last few years²⁴. However, these **data do not allow conclusions to be drawn on the links between these convictions and the topics of the OPSC, as for instance between theft committed by trafficked children or drug abuse in connection with child prostitution.**

Besides this data, little information exists in Austria that addresses the topics of the OPSC or allows for a realistic analysis of the current situation. The existing reports are only available in German on the Website of the Federal Ministry of Interior.²⁵

Child Pornography

Data regarding **child pornography** and its distribution online is published by the private Austrian hotline against child pornography, **Stopleveline**. Stopleveline publishes annual reports.²⁶ These mainly contain data relating to the type and extent of child pornography on the Internet and the country of apparent origin, but not in

¹⁵ See i.e. BMI/BMJ: Security report 2006 from http://www.parlament.gv.at/PG/DE/XXIII/III/III_00114/pmh.shtml; Security report 2005 from http://www.parlament.gv.at/PG/DE/XXIII/III/III_00005/pmh.shtml

¹⁶ There exist 2 main hotlines, the public Hotline for Child Pornography at the Federal Ministry of Interior and the private Internet hotline Stopleveline

¹⁷ See BMI/BMJ: Security report 2006, p. 284

¹⁸ See BMI/BMJ: Security report 2006, p. 225ff.

¹⁹ See BMI/BMJ: Security report 2006, p. 229

²⁰ Only when it comes to international instruments (Conventions) or international projects.

²¹ See BMI/BMJ: Security report 2006, p. 231

²² See BMI/BMJ: Security report 2006, p.168 ff

²³ For this the detailed statistical Annex would need to be analyzed, which is currently not the case (see http://www.parlament.gv.at/PG/DE/XXIII/III/III_00114/imfname_100252.pdf, S. 106 ff.)

²⁴ BMI – criminal statistic of the Austrian executive, 1990 to 2007, 21.01.2008

²⁵ See <http://www.bmi.gv.at/publikationen/>

²⁶ See www.stopleveline.at

regard to the actual children affected.²⁷ Based on the **statistics of Stopline**²⁸ the following can be observed: while the number of incoming reports decreased slightly in 2006 (2,000) compared with 2005 (2,100), the number for **2007, with nearly 2,800 reports**, is well above that of former years. It can also be seen that the percentage of reports that actually contain illegal content, remains constant over the years. For 2006 this percentage was nearly 40%, in 2007 it decreased slightly to 35%.

One of the major **countries of origin** in 2005 as well as in 2006 was the **USA**, followed by **Russia**. This was true also for 2007, when Panama also accounted for a high percentage. Increased hosting of illegal websites can also be observed on host servers from South Korea, Spain, Japan and Thailand.

It can further be seen that mainly **websites, file-sharing programmes and e-groups** with illegal content are reported to Stopline. The number of reported news groups is constantly decreasing.

Occasionally Stopline is confronted with questions about why there are more **frequent reports in particular months** or why some areas are more often affected. In this context, Stopline can only speculate. However, discussions especially with staff members of other hotlines continuously confirm the assumption that the **media** - particularly reports about the recent dismantling of a paedophile ring or interviews with abused persons- plays an **important role in raising the awareness of the public**. This is often reflected in an increasing number of incoming reports to the hotlines.

The **Hotline for Child Pornography at the Federal Ministry of Interior** collects more detailed statistics,²⁹ including the number of pending court cases and convictions. However these are not published but rather used for internal evaluation in regard to trends, new technologies and so on.³⁰

In general it can be said that, based on the statistics and media reports,³¹ Austria is **mainly a country in which child pornography is consumed**, and not much material is produced. Nevertheless there are **indications of the production of child pornographic material** as shown in the Case Story of Tener/Ring (see ANNEX), in which a father took pornographic pictures of his daughter.

Child Prostitution

There are no official numbers or statistics on the subject of child prostitution. Only within the statistics of criminal complaints and convictions can some numbers be found, but there are unfortunately of limited significance to analyze the topics further. The number of reported crimes related to the **sexual abuse of minors under 14 years of age** (§207 StGB) and the **severe sexual abuse of minors under 14 years of age** (§206 StGB) decreased from 2004 to 2005 by 19% and 20%.³² Regarding convictions in cases of statutory rape involving minors (**§§ 206, 207 StGB**) a 25,8% decrease from 2005 to 2006 can be observed. The actual number sank from 182 to 135.³³

Reliable information on the existence of the problem in Vienna originates from institutions that have regular contact with Austrian children who are commercially sexually exploited in prostitution.³⁴ A qualitative **study from 2005**³⁵ gives further information about the existence of child prostitution. Altogether 40 interviews were carried out in Vienna and 5 in Salzburg.³⁶ The majority of respondents were under the age of 18.³⁷ In Salzburg some of the juveniles interviewed were older, but reported becoming involved in

²⁷ see <http://www.stopline.at/index.php?id=306&L=0>

²⁸ See also ANNEX

²⁹ See therefore e.g. the statistics in the article on Kurier (2007): Operation Flo against Child porn, 26.02.2008

³⁰ Interview with KI Harald Gremel, Child Pornography Hotline, Federal Ministry of Interior, 26.02.2008

³¹ See Media reports from the beginning of 2007 on the „Operation Flo“, where the fight against a pedophile ring had extensive success - 2361 suspects in 77 countries, 23 from Austria, child pornographic material on Austrian servers.

³² On the basis of reports made, see “BMI- Daten Fakten 2005”, p. 8, from: <http://www.bmi.gv.at/publikationen/>

³³ see Statistik Austria, Judicial Criminal Report, Convictions according to crime areas 2005 and 2006

³⁴ Such as the STD medical centre of Vienna, MA15, as well as the homeless shelter for juveniles in Vienna, “A_way”

³⁵ see Shaw, Sarah (2005): Anyone’s Daughter. The Etiology and Experience of Female Adolescent Prostitution in Austria. Policy and Perspectives. Vienna

³⁶ see Shaw, 2005:113; at which has to be remarked that 35% of the respondents in Vienna and 40% in Salzburg do come from other districts; see figure 2: Origin of respondent

³⁷ See Shaw, 2005; Figure 1: Age of respondent

ALTERNATIVE REPORT ON THE IMPLEMENTATION OF THE OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

prostitution when they were under 18 years of age (40%) or 19 (20%).³⁸ **The study of Tener/Ring 2006**³⁹ mainly focused on the qualitative data collection of Austrian children commercially sexually exploited in prostitution in Vienna (25 interviewees) and is therefore not representative for the whole of Austria. It nevertheless demonstrates the existence of the phenomenon.

According to the STD medical centre⁴⁰, Austrian children who are commercially sexually exploited in prostitution are mainly getting involved to acquire drugs. However, this doesn't seem to be a prominent factor in the cases of non-Austrian children commercially sexually exploited in prostitution when they are exploited by traffickers⁴¹. The **STD medical centre** doesn't have official data on prostitution of male children, as the institution mainly employs female social workers. It is therefore especially difficult to evaluate this phenomenon.⁴² According to information received from a social worker regarding the situation 5 years ago⁴³, which highlights the urgent need for a study in this area, there is credible information on male children⁴⁴ (here mostly organised and in connection with child trafficking), who are commercially sexually exploited in prostitution in Austria. However **there are currently no studies in this area.**⁴⁵

Furthermore, there is **no official data on the age** of the affected children, but among the cases of child prostitution known by the STD medical centre, the youngest minors were between the **age of 15 and 16**. They don't know of any cases of prostitution of **minors under the age of 14**.⁴⁶ Nevertheless the **initiation age** in some cases, is **under 15 years**, as the studies of 2005 and 2006 show.

According to the STD medical centre, there is **no data on the proportion of Austrian/Non-Austrian children commercially sexually exploited in prostitution and their country of origin**.⁴⁷ However, it is suggested that there are **links between organised child prostitution and child trafficking**. A 15 year-old girl has informed the STD medical centre of the City of Vienna (MA 15) of a café on the Gürtel of Vienna, where approximately 20 women – some underage – were hidden and forced to provide sexual services. The exploiters were not Austrians. There is also reason to believe that the women are highly dependent on their exploiters.⁴⁸ The study of Shaw in 2005 included 25% Non- Austrian interview partners. The study of Tener/Ring did not include Non-Austrians. Nevertheless there are suggestions inferred from the area of asylum seekers that there would be a connection **between asylum seekers and people affected by trafficking**.⁴⁹ The focus here is especially on sexual abuse. Further connection can be seen between **child prostitution and asylum seeking minors**,⁵⁰ not connected to the area of child trafficking.

According to Volkshilfe Vienna- SOPHIE,⁵¹ the phenomenon of minors on the streets or in red-light districts⁵² who are engaged in commercial sexual exploitation has only occurred in isolated cases. In 2007, there were two cases of minors engaged in prostitution. As there is no institution or organization doing outreach work specifically targeting children, it is extremely difficult to identify occurrence of this problem

³⁸ In Vienna the initiation age of more than 70 percent of the respondents was between 15 and 16; see Shaw, 2005; Figure 23: Age at initial experience in prostitution

³⁹ Tener/Ring (2006): Auf dem Strich. Mädchenprostitution in Wien. (On the streets. Girls prostitution in Vienna.) Milena, Vienna

⁴⁰ The STD medical center is an institution of the city of Vienna (magistrate 15) offering medical services to sex workers

⁴¹ Interview with Mag. (FH) DSA Elisabeth Mayer, STD care centre, MA 15; 20.02.08

⁴² Interview with Mag. (FH) DSA Elisabeth Mayer, STD medical centre, MA 15; 20.02.08

⁴³ Interview with Uwe Hinczica, Social Worker, 21.02.08

⁴⁴ It now seems that over 80 percent of male adults in prostitution, as well as children who are commercially sexually exploited in prostitution in Vienna are non- Austrian and come from new EU- member states. Statement Volkshilfe Wien- Sophie

⁴⁵ Interview with Uwe Hinczica, Social Worker, 21.02.08

⁴⁶ Interview with Mag. (FH) DSA Elisabeth Mayer, STD medical center, MA 15; 20.02.08

⁴⁷ Interview with Mag. (FH) DSA Elisabeth Mayer, STD medical centre, MA 15; 20.02.08

⁴⁸ Interview with Elisabeth Mayer – promises of the human traffickers is, for example, to work as baby-sitter

⁴⁹ Examples: a girl from Chechnya and one from Burkina Faso were in the care of Caritas and subsequently the suspicion was confirmed that they were affected by child trafficking. For three girls from Moldavia and a Chinese boy in the care of Caritas there was a strong suspicion that they were affected by child trafficking. See Interview with Sandra Edthofer, Caritas WG Refugio; On 07.03.2008

⁵⁰ See for example the case of two Nigerian girls who are commercially sexually exploited in prostitution,- Interview with Sandra Edthofer, Caritas WG Refugio; 07.03.2008

⁵¹ Volkshilfe Wien is engaged in supporting active or former female sex workers with SOPHIE – A Place of Education since 2003.

⁵² In places like studios, shopping malls, bars, peep shows or massage salons.

or following up on single cases and therefore collecting further information on their situation.. Although SOPHIE developed internal guidelines for a National Referral Mechanism (NRM), this can not replace a coordinated and officially planned NRM for the topics of the OPSC, as SOPHIE`s competences and resources lie within the field of adult female prostitution. There is no organization reaching out to the target group of children commercially sexually exploited in prostitution, which is urgently needed⁵³ (see also Chapter 6). This is especially important as not all the needs of children can be evaluated and met while in contact with them through outreach work. They need to be referred to other competent and responsible institutions.

It is even more difficult to evaluate the phenomenon of upscale prostitution.⁵⁴ In this area there has been, for example, one prominent case in the media in 2006⁵⁵. In general and particularly in the media there is a tendency to promote a culture of youth, which also reflected in the society.⁵⁶

Child trafficking

There is detailed information about smuggling (see for example, the "Smuggling Reports"⁵⁷), but there is **no comprehensive summary of the various manifestations of THB**.⁵⁸

In particular, the areas of trafficking in organs and trafficking for the purpose of adoption are not well documented. Only media reports communicate police engagement and the existence of these phenomena in Austria.⁵⁹

The **Alien Statistics**⁶⁰ provide information on existing and requested residence permits for humanitarian reasons.⁶¹ The statistics are disaggregated by sex, but not by country of origin, reason for requesting residence permit or by age. Therefore there is no information on the number of children holding this residence permit, or among them, how many have been trafficked.

According to **information from the Asylum Area** (see also footnotes from the above-section on child prostitution), the number of cases that show a link between asylum-seeking minors and children affected by trafficking has been limited to 10-15 cases in the past few years. In the Asylum Area, girls often pretend to be adults in order to avoid problems.⁶² If **Trafficking in Human Beings is to be acknowledged as a reason for granting asylum** (this might be taken into consideration in a single case and would be the first time ever that this is acknowledged⁶³ – see also the case story in the ANNEX), there must be statistics available that are not only disaggregated by the result (asylum granted or denied) and the country of origin,⁶⁴ but also by the reason for seeking asylum.

⁵³ See Telephone interview with Martin Haiderer, manager A_way, from 20.03.08

⁵⁴ Volkshilfe Wien – SOPHIE, Statement from 04.03.2008

⁵⁵ i.e. „Model agency was prostitution ring“(Standard, 12.5.2006); “Punish the punters!” (Falter 50/06, Dezember 2006); “Sex with a 17 year-old girl: Lawyer under suspect” (Oberösterreichische Nachrichten – News Upper Austria, 31.10.2006); Salzburger Nachrichten: “Sex-Vorwürfe: Verfahren gegen Fagan eingestellt”. 06.03.08

⁵⁶ Volkshilfe Wien – SOPHIE, statement from 04.03.2008

⁵⁷ According to the report on organised smuggling published by the Federal Criminal Police Office, in 2004 25% of the smuggled persons were aged between 0 and 18 years. In the years 2005 and 2006 this proportion decreased and reached only 20%. The biggest proportion with 45% (2004), 49% (2005) and 48,2% (2006) concerned the age group 19-30. These findings do not give much information about trafficked minors.

⁵⁸ Only the explanations in the Security Report which are concealed however between numerous other pieces of information and which are not treated separately as in the Smuggler Report.

⁵⁹ See illegal adoption: “An 11 year-old Ethiopian girl wants to return to Africa. The child is waiting in a children’s home for months now – its future is still uncertain.” – Die Presse, 06.08.2007

⁶⁰ See www.bmi.gv.at/publikationen/, **all residence permits granted in 2007**: for humanitarian reasons: 84 males, 104 females, in total: **188; prolongations**: for humanitarian reasons: 39 males, 46 females, in total **85**

⁶¹ These permits are mainly granted to trafficked persons

⁶² See telephone calls with Heinz Fronek, Asylkoordination; Mr.Walcher, Youth Welfare Authority Vienna; Otto Hollerwöger, Integrationshaus; Martin Helm, Caritas Refugio in March 2007

⁶³ see Interview with Gerhard Wallner, Diakonie, 10.03.08- the Asylum procedure is currently not finished (date:01.04.08), therefore there is no further knowledge of this possibility

⁶⁴ See asylum reports on www.bmi.gv.at/publikationen/

Europol asked its member States to install a central database on human traffickers and persons affected by Trafficking in Human Beings. The Federal Criminal Police Office focuses on the installation of such a database taking into account the legal data protection regulations.⁶⁵

Data is nevertheless available within certain organisations. **According to the 2006 annual report of LEFÖ, 8% of trafficked women were aged between 17 and 18.⁶⁶ Also in 2007, 18 persons below the age of 18 were cared for by the intervention centre.⁶⁷** There is no further information on the situation in the various Länder (provinces) and no other disaggregated data are available.

In addition, there are **statistics from the “Drehscheibe” Vienna⁶⁸** that have been set up thanks to the personal commitment of its director. These statistics are **limited to the city of Vienna and the activities of the “Drehscheibe”.** Furthermore, they only concern children that who have been caught by the police⁶⁹. The statistics do not reflect the actual number of affected children, as many children are arrested two or three times (there is a great number of children who run away and are subsequently again arrested by the police). The statistics also don't say anything about the kind of referral (by the police, by the “Drehscheibe” itself, by others, etc.), which would contribute to a better understanding of identification patterns. There is information on the number of children received per month. The information on the countries of origin of the accommodated children is only disaggregated by “Bulgaria” and “other countries”. In addition the data is **disaggregated according to the age of the children.** The **majority of accommodated children in the “Drehscheibe” was below the age of 14 and therefore below the age of criminal responsibility.⁷⁰**

There is also information that trafficked male persons are sexually exploited through prostitution.⁷¹ The statistics of the “Drehscheibe” (also deals with many male children who are affected)⁷² are not disaggregated by gender.

The measures taken by the “Drehscheibe” and the Rumanian authorities (see chapter 8) in 2003 showed their impact in 2005. In total, only 8 Rumanian children were accommodated in 2005. In 2005, the number of Bulgarians accommodated was 650 and of other nationalities, 51. In 2006, the number of Bulgarians accommodated could be reduced to 233 because of cooperation with the Bulgarian government. The number for other nationalities was 76. In 2007 until May, only one Bulgarian was accommodated. Regarding the numbers of the Bulgarian children accommodated it is worth mentioning that there are about 250 children who had to be accommodated repeatedly by the “Drehscheibe”. About 10% of the accommodated children are being sexually abused. According to police statistics, most of the children are brought to the “Drehscheibe” (the majority of whom by the police) because they were found on the streets begging or stealing, but they are only arrested once in ten times.⁷³

In light of the alarming extent to which the **Roma people are affected by child trafficking,** it is particularly important to establish data collection systems disaggregated by nationality and ethnicity in this field. According to the International Romani Union in Austria, not only **are there no specific numbers or statistics** regarding to what extend the Roma children are affected by the issues covered under the OPCS, but there are also **no statistics on the proportion of Roma people in the total Austrian population.⁷⁴** The startling phenomenon of begging in the Roma community which has gained increased attention through policy and media activities in larger cities⁷⁵ (e.g. Vienna, Graz), has not yet been the topic of a study or assessment. This lack of basic data as well as the absence of a thorough evaluation not only inhibit an

⁶⁵ BMI/BMJ Security Report 2006, p.226

⁶⁶ LEFÖ – Intervention centre for trafficked women (2006): Activity report 2006, Vienna, p.14

⁶⁷ Email by Evelyn Probst, LEFÖ-Intervention centre for trafficked women, 19.03.2008

⁶⁸ The Drehscheibe is an institution of the Youth Welfare in Vienna (MA 11), taking care of unaccompanied foreign children

⁶⁹ Only a smaller percentage is referred to this institution by other institutions/persons, etc.

⁷⁰ The majority was arrested by the police because of begging or stealing, which can be an explanation for the young age of the affected persons.

⁷¹ Interview with Uwe Hinczica, social worker, from 21.02.08

⁷² Interview with Norbert Ceipek, director of the „Drehscheibe“ Vienna from 09.05.07

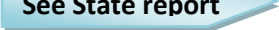
⁷³ Statistics of the „Drehscheibe“ Vienna, April 2007

⁷⁴ Interview with Fevzije Bahar, International Romani Union, from 25.02.2008

⁷⁵ See amongst others Salzburger Nachrichten (2007): Begging with children soon forbidden. By Maria Zimmermann on 28.12.2007

understanding of the occurrence of these phenomena, but furthermore prevent the development of adequate interventions and strategies for the people concerned.

Extraterritorial legislation

There is **no data on extraterritorial legislation** in the State Report.  The crime statistics (separated in police and court crime statistics) of the "Statistik Austria" (that receives data from the Ministry for Internal Affairs) doesn't mention if a crime that was reported to the police or tried in court has been committed abroad.⁷⁶ The informant from the Federal Criminal Police Office could not respond to the question regarding the number of extradition requests, as these were a matter "*from court to court*".⁷⁷ According to information from the Federal Ministry of Justice (BMJ), the Federal Criminal Police Office does not have statistics addressing the number of extradition requests. Regarding extradition requests between EU member countries, the Ministry of Justice is not involved anymore according to information from the informant; requests for referral on the basis of the European arrest warrant were dealt with directly from authority to authority. Further questioning directed to the Federal Criminal Police Office was not answered in spite of repeated requests.

As there is **a lack of reliable, disaggregated data** in most of the areas covered by the OPSC and a lack of concrete will to establish independent monitoring mechanisms in these fields, **no indicators have been developed so far.**

Currently, **a systematic evaluation of the implementation of the OPSC by state institutions is not planned.**

The main challenges for such an evaluation are the lack of clarity in regard to the various levels of responsibility on a federal level as well as within the relations between government, provinces and municipalities as well as the lack of data, especially in the fields of child trafficking and child prostitution.

Finally it should be mentioned that there are several possibilities to integrate statistics and data on the areas covered under the OPSC in existing statistics, but this has not taken place yet.

⁷⁶ See www.statistik.at/web_de/statistiken/soziales/kriminalitaet

⁷⁷ Interview with Harald Gremel, Child Pornography Hotline, Federal Ministry of Interior, 26.02.2008

III. GENERAL MEASURES OF IMPLEMENTATION

While large parts of the State Report reproduce the text of legal provisions, **overall it fails to account for their actual implementation.** There is no cited jurisprudence that applies the CRC or OPSC (for example on the obligation to take custody of unaccompanied minors without Austrian citizenship⁷⁸) or statistical data

(for example concerning police complaints or convictions).

See State report

The State Report provides insufficient information on concrete extradition measures and the result of international cooperation around criminal prosecutions.

Responsibility for Implementation

Within the federal structure of Austria, legislative and executive powers are divided among the federal, municipal and provincial levels. **A permanent and effective coordination mechanism that would enable monitoring of the CRC including the Optional Protocols, and that has also already been recommended by the Committee on the Rights of the Child in its Concluding Observations regarding Austria (1999 and 2005⁷⁹), doesn't exist to date.**

As far as OPSC-related competences are concerned, the **Ministry of Justice** is generally responsible for criminal law and the organisation of courts (substantive and procedural law), including for example the position of minors in court, witness protection and support measures, assumption of custody; statistics of convictions. Investigation of cases of human/child trafficking lies within the responsibility of the **Ministry of Internal Affairs**, also smuggling, immigration law, right of residence, right of asylum, law relating to aliens, foreigner's employment law (apprenticeship, vocational training); criminal prosecution to judicial-administrative criminal offences, including child trafficking but also the management of the **Hotline for Child Pornography at the Federal Ministry of Interior**, cooperation with international criminal prosecution agencies (Interpol, Europol, etc.), the treatment of children by law enforcement authorities; statistics related to complaints.

The **Ministry for Health, Family and Youth** is responsible for Youth Welfare (however, only at the level of framework legislation; more specific provisions and implementation of youth welfare legislation lies within the competences of the 9 provinces), including custody/ legal representation; coordination of the National Action Plan for children's rights; supporting children's and youth organizations; data collection on youth welfare and family judicial tasks; for the coordination of the sub- working group on trafficking in children in the **Task Force on Trafficking in Human Beings (THB)**.

The **Ministry of Education**, respectively the school authorities on Länder (province)- and community level play an important role in the domain of prevention, by sensitizing the students on the objectives and contents of the OPSC and on children's rights when developing the curricula; the **Ministry for European and International Affairs** is charged with representative and coordinating functions, especially in regard to the international monitoring procedures such as the State Reports to the CRC; in addition it coordinates the inter-institutional Task Force on Trafficking in Human Beings. The Foreign Ministry together with the **Austrian Development Agency (ADA)** are also responsible for international development cooperation, including ADA-supported anti-trafficking projects in South Eastern Europe. The **Ministry for Women's Affairs** is responsible inter alia for gender equality efforts and in relation to the trafficking Task Force (see below), it coordinates the sub- working group on prostitution.

The **Task Force on Trafficking in Human Beings** was formed to put in place measures against human trafficking. It consists of various ministries, representatives of the provinces, the Lefö-Intervention Centre for Women affected by Trafficking, the Ludwig Boltzmann Institute for Human Rights and ECPAT (in the

⁷⁸ Decree of the Supreme Court, 19.10.2005, OGH 7 Ob 209/05v, From: http://www.asyl.at/umf/umf/u_obsorge_ogh.php, last access: 18.03.08, 11:09

⁷⁹ See concluding observations: Austria CRC/C/15/Add.98., as well as Austria. 31/03/2005. CRC/C/15/Add.251, From: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.15.Add.251.En?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CRC.C.15.Add.251.En?Opendocument), as well as <http://tb.ohchr.org/default.aspx?country=at>, last access: 23.03.08, 19:58, See http://www.kinderhabenrechte.at/fileadmin/download/nc-homepage_concluding_observations_deutsch.pdf (p. 14 / para.10)

trafficking sub-group)⁸⁰. Since 2007, contact persons have been appointed at provincial level to raise awareness and to coordinate activities against child trafficking. In 2007 a **sub- working group on child trafficking** was set up within the Task Force, including ECPAT. Throughout 2008 the sub-working group is planning to elaborate **proposals for better coordination and care of children affected by trafficking** within the framework of a National Referral Mechanisms (NRM). A second **sub working group designs measures for the improvement of working conditions and social security measures of prostitutes** in Austria, **under the coordination of the Ministry for Women's Affairs**. This sub-working group comprises of experts of the ministries and civil society⁸¹. It is expected to elaborate a report in May 2008, including concrete recommendations to counter the sexual exploitation of minors in prostitution.⁸² **These positive developments are welcomed, although information exchange especially with civil society could be further improved. The active involvement of key actors for child rights issues from the provinces is also needed.**

In the BMWA's tourism section, the implementation of the Code of Conduct is also discussed and a central topic in **the Round Table on Ethics and Tourism** where representatives of the ministry, ECPAT Austria and RESPECT meet regularly. **Even if the cooperation works out well and all actors get actively involved in the issues, concrete goals and key activities still need to be defined.**

In 1998, a **Hotline for Child Pornography at the Federal Ministry of Interior** was created the responsible federal police department cooperates closely with Interpol and Europol in order to tackle the international dimension of child pornography, through joint activities and exchange of information⁸³ (see also chapter 5).

Coordination with civil society

There are varying instances of cooperation with civil society on the implementation of the OPSC. The **Hotline for Child Pornography at the Federal Ministry of Interior** cooperates closely and successfully with the private Internet hotline from Stopleveline.⁸⁴ Personnel meetings for the exchange of legal and technical knowledge and experience take place several times a year.⁸⁵ If an incident is reported to Stopleveline it is, after the initial clearing of non- relevant reporting, referred to the **Hotline for Child Pornography at the Federal Ministry of Interior**, which take further measures for criminal investigation. Another success of Stopleveline is its integration within the Inhope International Association,⁸⁶ which allow immediate and informal cross-border cooperation.

After a 2006 qualitative study of Tener/Ring⁸⁷ containing data on minors exploited in prostitution in Vienna was released, three round tables **were formed** in Vienna in 2007. This followed an invitation from Town Councilor Sandra Frauenberger⁸⁸. As a result, continuing networking activities are conducted **four times a year between the Round Table participants. They also agreed to create an educational information folder** for children commercially sexually exploited in prostitution and initiate further cooperation with the police in Vienna, refraining from using penalties for the children concerned⁸⁹ (see also Chapter 5). Initiating awareness raising activities in schools on this issue is also planned.

Overall there is good cooperation between the Youth Welfare authorities in Vienna and shelters such as "a_way".⁹⁰ For example, youngsters who need care on a long term basis are being transferred from

⁸⁰ There is not yet a clear underlying concept of involvement of NGOs.

⁸¹ Volkshilfe Wien – SOPHIE, et al. are present

⁸² Official statement of Federal Minister Doris Bures from 19.03.2008

⁸³ Interview with Harald Gremel, Child Pornography Hotline, Federal Ministry of Interior, 26.02.2008

⁸⁴ The Stopleveline has been incorporated within the **ISPA**(Internet Service Provider Austria) as an institution of voluntary self-control of the Austrian internet service providers. Stopleveline enables the anonymous reporting of child pornography by Internet users.

⁸⁵ See for example www.stopleveline.at

⁸⁶ See www.inhope.org- The International Association of Internet Hotlines: 30 hotlines in 27 countries worldwide

⁸⁷ Tener/Ring (2006): Auf dem Strich. Mädchenprostitution in Wien. (On the streets. Girls prostitution in Vienna.) Milena, Vienna

⁸⁸ Town Councilor responsible for the areas of integration, women's issues, consumerism and human resources. See also Volkshilfe Wien - SOPHIE-BildungsRaum statement from 04.03.2008

⁸⁹ Email Statement from Gerda Matejik on behalf of Beate Wimmer-Puchinger, responsible for women's health in Vienna, from 20.03.08

⁹⁰ A_way is a homeless shelter for young people, provided by Caritas

the shelter and placed under the care of the Youth Welfare authorities.⁹¹ **However there is a strong need to expand the capacity of existing care facilities** for example that of low threshold shelters such as a way⁹² (see chapter 6).

Furthermore Vienna's "Drehscheibe"⁹³ informally cooperates with the International Romani Union when Roma children are caught by the police and brought to the Drehscheibe. Conversations in the children's mother tongue has not only been conducive for gaining information, but has also served to build up trust with the affected children. This collaboration is possible due to the personal engagement of the Drehscheibe's director. The spokesperson of the International Romani Union is still in close contact with some of the children that have been repatriated by the Drehscheibe and aware of their whereabouts (see also chapter 7).⁹⁴

Dissemination of the OPSC/Training of relevant stakeholders

There has not been a governmental campaign to inform the public about the OPSC.⁹⁵ The documents can be accessed via the Homepage of the Ministry for Health, Family and Youth, but they are not easy to find

See State report art. 9/2

for people who are not familiar with children's rights.⁹⁶ There are also no child friendly versions of the documents available.⁹⁶

Educational projects on children's rights only sporadically address the OPSC issues. For example: 1. between 2004 and 2006, ECPAT Austria held a touring exhibition called "Hinschauen statt Wegschauen" ("Look at – don't look away") to outline the problem of child sex tourism and the corresponding laws. This project was supported financially by ADA, the Federal Ministry of Social Security and Generations (BMSG) and partly by the Federal Ministry of Economic Affairs and Employment and the OSCE. There was also co-operation with representatives from the private industry, for example the Vienna Airport. 2. In 2007 the Ministry of Economic Affairs and Employment tasked ECPAT Austria with the elaboration of a series of measures for raising awareness about CSEC in the tourism industry. In this context, information material for travelers, information-tools for travel agencies and tour operators as well as education material for primary and secondary schools of tourism were developed. 3. In April 2008 a 3-year EU-project is starting, in which ECPAT Austria is taking part through its member-organization RESPECT, whose central concerns are education and awareness-raising measures in the field of CSEC in tourism.

See State report art. 9/2

Regarding **training**, the Youth Welfare authority personnel in Vienna must attend 40 hours of general training per year.⁹⁷ A whole range of topics is offered and the choice which course the employee will attend is left to the discretion of the employee in consultation with his/her superior. There is no central body responsible for coordinating the equal distribution of knowledge as to the various topics regionally (in the 23 districts of Vienna). Nevertheless, the **possibility to attend such training courses is an important starting point.** It is reported that Lower Austria offers similar training courses as well, but there is no further information on the situation in other provinces.⁹⁸

Regarding training for law enforcement, the International Organization for Migration (IOM) supported two training sessions conducted in Vienna between 2003 and 2004, under the project 'Victim Assistance for Minors: Capacity Building via Training and Exchange of Information/Best Practices in the EU, Candidate and Third Countries'. IOM's partners in this project included the Stability Pact for South Eastern

⁹¹ Interview with Monika Niederle, President of the International Federation for Educative Communities FICE, 23.03.2008

⁹² Email Statement from Gerda Matejick on behalf of Beate Wimmer-Puchinger, responsible for women's health in Vienna, from 20.03.08

⁹³ The Drehscheibe is an institution of the Youth Welfare in Vienna (MA 11), taking care of unaccompanied foreign children

⁹⁴ Interview with Fevzije Bahar, Spokesperson of the International Romani Union, 25.02.2008

⁹⁵ This is also true of the Optional Protocol on the Involvement of Children in Armed Conflict.

⁹⁶ See <http://www.kinderrechte.gv.at>

⁹⁷ MAG 11 (2008): Education program, January-December 2008

⁹⁸ Interview with Monika Niederle, President of the International Federation for Educative Communities FICE, 23.03.2008

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Europe Task Force on Trafficking in Human Beings; EUROPOL; Bundespolizeidirektion Wien (Vienna Police); the Southeast European Cooperative Initiative Centre for Combating Trans-Border Crime; IOM Prague; and the Bundesfachverband Unbegleitete Minderjährige Flüchtlinge (Federal Association for Unaccompanied Minor Refugees). An important aspect of the project was the forging of sustainable partnerships.⁹⁹

A follow-up of this initiative was undertaken in 2005-2006 by the Austrian Federal Ministry of the Interior in cooperation with several other stakeholders. The project 'Comprehensive Training for Law Enforcement Authorities responsible for Child Trafficking/Minors' consisted of a rapid assessment of the situation in the participating countries and an international training seminar which gathered law enforcement authorities from 39 countries - European Union member States, candidate countries and non-EU countries. It also included the elaboration of a Resource Book for Law Enforcement Officers on Good Practices in Combating Child Trafficking.¹⁰⁰ Since 2005, ECPAT Austria is developing training programs and a trainer manual on child trafficking in the framework of joint European projects, coordinated by the ECPAT Europe Law Enforcement Group. Since then, two Multi-Stakeholder Trainings had taken place in the Czech Republic (as part of a Twinning project) and, another two in Austria in December 2008 and January 2008. In general, ECPAT Austria is intending to develop its training programs further and providing trainings, on a regular basis, regarding child trafficking, awareness raising on the risks for young people in the internet (peer-to-peer training) as well as on prevention of child sex tourism for the tourism sector.

In addition, government funded **trainings on trafficking in human beings** take place in cooperation with LEFÖ- Intervention centre for trafficked women¹⁰¹. **These courses are carried out once a year in the framework of special police training and are not focused on child trafficking. Trafficking in Human Beings is also part of the basic training of the police, but again focus on child trafficking is lacking.** During police basic and special training, some training on OPSC related issues is available, for instance victim sensitizing¹⁰² as well as violence against women and domestic violence.

The **Austrian Federal Armed Forces**¹⁰³ has informed ECPAT Austria that a **training course on Trafficking in Human Beings** would take place in May 2008. ECPAT Austria has been invited to facilitate a session on child trafficking on the same occasion.

The **Ludwig Boltzmann Institute of Human Rights** has been involved in strengthening victim protection as well as increasing the capacities of institutions involved in the fight against THB, for example in Turkey, Romania and Croatia.

In 2007 ECPAT initiated a multi-stakeholder training on child trafficking in cooperation with governmental actors. Participants include representatives of the police, justice and youth welfare authorities, medical practitioners and other stakeholders from organisations working with asylum seekers and violence against women. The trainings took place within the framework of an ECPAT Europe Law Enforcement group project on the implementation of multi-stakeholder trainings on child trafficking on the basis of training manual¹⁰⁴ which has been co- jointly developed and adapted to the Austrian national context. An evaluation of these trainings has been initiated and will be completed in 2008 In 2008 ECPAT plans to develop the trainings further and adapt them for specific stakeholders such as youth welfare authorities, police, NGOs working with asylum seekers, etc..

Regarding **trainings on the prevention of child sex tourism**, in 2008 ECPAT and RESPECT plan to take measures to train relevant stakeholders (in schools, in tourism, etc.) as well as general measures of

⁹⁹ IOM Austria. *Victim Assistance for Minors: Capacity Building via Training and Exchange of Information/ Best Practices between EU, Candidate and Third Countries from Dec. 2003 to Dec. 2004*. Accessed on 2 August 2005 from: http://austria.iom.int/en/artikel.php?menu_id=125&artikel_id=438&history_back=true.

¹⁰⁰ IOM Vienna, *Resource Book for Law Enforcement Officers on Good Practices in Combating Child Trafficking* - Executive Summary, 17 March 2006, accessed from http://www.austria.iom.int/en/images/uploads/Resource%20Book%20Summary%20%281%29_1143553189.pdf

¹⁰³ According to information provided by a participant of the ECPAT multi-stakeholder-training on child trafficking

¹⁰⁴ ECPAT Europe Law Enforcement Group (2006): *Combating the Trafficking in Children for Sexual Purposes. A Training Guide*. Amsterdam, Bangkok, adapted to the Austrian national context by ECPAT Austria.

awareness raising, as part of a 3 year project financed by the European Commission and the ADA (involving 5 European countries as well as partners from the South).

In spite of the above mentioned initiatives, it seems that the **focus of the trainings offered by the government on child trafficking is limited to a small number of professions** (police, judges and attorneys)

See State report art. 8/4

and topics

Governmental budget

As the topics of the OPSC are not explicitly mentioned in Law on the Federal Budget and since it would take considerable efforts to break down and categorize expenditures in the fields of Justice, Internal Affairs or Youth Welfare relating to the OPSC, no concrete data can be given in this respect.

It should be mentioned that two surveys on the issue of child prostitution have been carried out which have been partly financed and supported by the government: for example the survey on "Girls prostitution in Vienna"¹⁰⁵. The survey was carried out between 2003 and 2005. The **Office for Women's Affairs of the Vienna City Magistrate (MA57) and the College of higher Education of St.Pölten** gave financial support.

The Saferinternet.at project, an initiative to support the safe use of the Internet throughout Austria, has been partly financed by the government.¹⁰⁶

Also the (non monetary) governmental support through the participation of law enforcement authorities as well as youth welfare personnel from Vienna and Lower Austria in the ECPAT multi-stakeholder-training on child trafficking in 2007 and 2008 must be mentioned. The same applies to the measures that have already

been mentioned in article 10 paragraph 3 and 4 of the state report.

See State report

These selective measures show that some commitment exists on the part of the government. However, measures (and corresponding budget allocation) to implement the OPSC in its various aspects need to follow a long-term implementation plan with efficient coordination mechanisms in order to tackle the phenomena of the OPSC in an adequate way. Unfortunately, this is currently not the case.

Overall Strategy – National Plans of Action

There have been several attempts to tackle aspects of sexual exploitation and child trafficking by developing and **implementing National Action Plans, but due to a lack of adequate resources and effective structures, these have not shown the expected results.**

Austria has three national plans of action that deal with CSEC. The first two, adopted in 1997 and 1998 respectively, do not reflect a comprehensive understanding of the extent and dimensions of CSEC in Austria, nor do they consider how Austrian nationals contribute to the problem abroad. A third, much more comprehensive NPA - the *National Plan of Action for Children's Rights*, based on the *Convention on the Rights of the Child (CRC)* and incorporating the objectives and goals of the document *A World Fit for Children* - was adopted in 2004 as a result of the commitment made by Austria at the UN Children's Summit held in 2002 in New York. Nevertheless, this NPA also presents problems in relation to its design and implementation.

The first Plan - ***Violence in Society, Violence in the Family, Child Abuse, Sexual Abuse of Children, Violence against Women, Violence among Juveniles, and Violence in the Media***¹⁰⁷ – was adopted in 1997 as a common initiative undertaken by the Ministries of the Environment, Youth and Family, Justice and the Interior. However, this Plan mainly addresses violence against women; the only part relevant to CSEC is the trafficking section, which lacks clear goals and concrete measures. No tangible timeframe or implementation measures are outlined, nor is the role of non-governmental organizations (NGOs) or of child and youth participation.

¹⁰⁵ Tener/Ring (2006): Auf dem Strich. Mädchenprostitution in Wien. (On the streets. Girls prostitution in Vienna.) Milena, Vienna

¹⁰⁶ See <http://saferinternet.at/services/english/>

¹⁰⁷ See www.kinderrechte.gv.at/home/upload/downloads/politische%20beschlusse/mr_beschluss_gewalt_1997.pdf

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The second Plan, **Action Plan against Child Abuse and Child Pornography on the Internet**¹⁰⁸, was adopted in 1998. Still, that Action Plan suffers from similar problems: the Plan has a very narrow focus on Internet pornography, and only considers the risks for children visiting harmful sites, disregarding those victimised in the production of child pornography. Issues related to the prostitution of children and trafficking in children for sexual purposes, as well as measures related to prevention, protection, rehabilitation, and child participation, have not been taken into consideration. There is no mention of rehabilitation and reintegration schemes for foreign children exploited by Austrian nationals. Furthermore, responsibility for the Plan's implementation is unclear, and it has no timeframe.

On the other hand, the development of the **National Plan of Action for Children's Rights**¹⁰⁹ in 2003/2004 involved various sectors, including civil society as well as all ministries and - initially - delegates also from the Austrian federal provinces. A major survey among children and youth was conducted to identify their concerns. The process led to a comprehensive consultation report covering all aspects of child rights, including CSEC, with almost 700 concrete recommendations altogether (It contained also several recommendations made by the Austrian National Coalition on Children's Rights¹¹⁰, later included in their Alternative Report to the Committee on the Rights of the Child in 2004¹¹¹. After reviewing the consultation report, however, the Government produced a final official action plan with only nine implementation measures left in the area of exploitation of children/ child trafficking). The NPA was also only adopted by the Federal Government, leaving out the governments of the federal provinces, which, according to the country's federal system, are legally responsible for youth welfare matters. In addition, no mechanisms for child and youth participation were envisaged in the Plan's implementation, and they are only indirectly represented by institutions dealing with child welfare or by umbrella organizations of youth groups. The working group responsible for following up the NPA implementation lacks a clear mandate as well as financial resources to undertake such a task. Despite a very promising start, the NPA process suffers from a lack of strong political leadership for promoting and protecting child rights and from a deficient allocation of financial resources. The governmental representatives of this working group presented a report of implementation at the end of 2007¹¹², but the follow-up and the future activities of the working group have not been defined since then.

¹⁰⁸ See <http://www.bmgfj.gv.at/cms/site/attachments/4/8/3/CH0503/CMS1071832716983/aktionsplan.pdf>

¹⁰⁹ See http://www.kinderrechte.gv.at/home/upload/30%20oesterreich/nap_041123_ov.pdf

¹¹⁰ A platform consisting of all children's ombudspersons of the Länder, the Austrian Federal Youth Representative Council, UNICEF Austria and several other child rights organisations in Austria, see www.kinderhabenrechte.at

¹¹¹ See http://www.kinderrechte.gv.at/home/upload/downloads/monitoring/zusatzbericht_2004_2_krk_staatenbericht.pdf

¹¹² See http://www.bmgfj.gv.at/cms/site/attachments/0/8/6/CH0583/CMS1201618235635/mrv-nap-umsetzungsbericht_071121.pdf

IV. Prevention

Attention to endangered/marginalized groups

There are **no public institutions that pay specific attention to the topic of child prostitution and all the endangered and marginalized groups affected by this phenomenon.** Drug support facilities are in contact with endangered groups i.e. Austrian children who are commercially sexually exploited in prostitution for the procurement of drugs. Furthermore minors, who can for one reason or the other not live at home, are accommodated in crisis or care centres of the Vienna Youth Welfare authorities (see Chapter 6). The focus of these various interventions and care institutions is mainly on the prevention of sexual violence by measures of the available youth welfare services (external lodging when having problems in the family, etc.).

Particular attention to endangered groups is often given in the form of prohibitions. With issues such as child pornography, the discussion focuses mainly on the call for more severe punishment, the registration of sexual offender's, etc.¹¹³ The city of Vienna recently changed the Vienna Security Law **to prohibit begging with children on the streets.**¹¹⁴ **This approach is in no case sufficient,** particularly as the laws already in existence are inadequately applied.¹¹⁵ The enactment of new laws/restrictions, without accompanying social measures and the related increase of social resources¹¹⁶, will not cause any positive changes for the children affected by the topics of the OPSC. Rather the phenomena of begging with children on the streets will probably only shift from Vienna to other cities, where no charges are faced. **Generally, the security aspect, as well as the expulsion of marginalized groups from public view, seems to have priority over coordinated and holistic social measures. In addition the debate around these issues does not reflect the complexity of the phenomena.**

Policies/Programs

There are no specific prevention programs or policies in existence which deal with one of the three topics of the OPSC. Youth welfare authorities and schools are facing great challenges, lacking financial and human resources. **Policies only exist in the context of sexual violence and abuse within the family, as well as within the context of sexual violence against children in general.** However, there are **problems with the coordination** also within these areas, especially between child protection groups in hospitals, the police and the youth welfare authorities, which need to work closely together. This was the main topic in the **Enquete "Identification of violence against children" from February 21st 2008.** Further measures in this area have a strong focus on Austrian children, as well as on issues within the family. The risk is that marginalized groups such as children commercially sexually exploited in prostitution, asylum seeking children and children affected by child trafficking are overlooked as a result. Partially, it seems as if there is a lack of awareness that the youth welfare authorities are responsible for all children and youth on Austrian territory.¹¹⁷

Other institutions like **Child protection groups in hospitals¹¹⁸ and the ombudspersons (KIJA) only marginally deal with the topics of the OPSC.**¹¹⁹ **Respectively there seems to be limited awareness of these**

¹¹³ Compare: Discussion in media concerning „Operation Flo“ at the beginning of 2007

¹¹⁴ See Wiener Landes-Sicherheitsgesetz, LGBl. For Vienna Nr. 51/1993, in der Fassung LGBl. für Wien Nr. 35/2005, is going to be changed <http://www.wien.gv.at/recht/landesrecht-wien/begutachtung/html/2008002.html>, last access on 27.05.08

¹¹⁵ There are no convictions according to §104a Trafficking in Human Beings at the moment

¹¹⁶ There are already indications at this stage that for the new "begging with children" law, only the additional costs for the executive are calculated, the affected social institutions, such as the "Drehscheibe" Vienna are not considered in the calculations following the law (see <http://www.wien.gv.at/recht/landesrecht-wien/begutachtung/html/2008002.html>). Further it seems that there has not been any assessment of what happens to the affected children, when this law is enacted (especially what negative effects could be triggered).

¹¹⁷ See Youth Welfare Law, 1989 **BGBl. Nr. 161/1989**, § 3

¹¹⁸ See Art. 9 Abs. 3 und 4, Facilities of an interdisciplinary team, ideally consisting of paediatricians, gynaecologists, nurses, educators specialised in trafficking in children, child psychologists and social workers. In case of need these experts have the possibility to cooperate with the authorities, the police and youth welfare services. This facility also has to contend with a the lack of resources and a

issues.¹²⁰ With the majority of institutions dealing with sexual abuse, only few of them connect their expertise with the topics of the OPSC.

On a political level the issue of trafficking in children is addressed within the ministerial/institutional “Task Force for trafficking in human beings” where it has been discussed in a sub-working group for trafficking in children. This sub-working group will draw up a report **in April 2008, and if targeted measures are suggested and a follow up takes place, this initiative could be used as an example for policy making in other fields of the OPSC.**

Another important topic is the work with **perpetrators**. It is an **irreplaceable cornerstone in the prevention work on the issues of the OPSC**. Unfortunately there is only limited information available on this subject. In any case, **measures concerning these matters need to be extended.**

On a **multilateral, regional and bilateral level, prevention measures against offenders are aggravated by the misinformed belief that these crimes are a minor problem.**¹²¹ Regarding the development, dissemination and implementation of prevention measures, so far the role of the State is less

See State report Art. 10/3+4

satisfying.

Promotion of Public Awareness

The OPSC and underlying principles are practically not mentioned by government in public. As previously mentioned, the current lack of basic studies hinders the development of adequate measures (see also chapter III). For example, more knowledge of the coherence between abuse in the family and child prostitution would be needed in order to integrate the OPSC issues into already existing measures.

The public broadcast TV ORF¹²² launched the campaign “**Rat auf Draht**”,¹²³ through which professional help over the telephone around the clock, as well as online consulting services are available anonymously to children and adolescents all around Austria. This initiative also regularly produces advertising TV and radio spots on relevant issues concerning children and adolescents (for example, currently for the secure use of new media) which also serves to raise awareness of the total population. Such initiative could also be used to highlight the OPSC issues.

The Federal Ministry for Health, Family and Youth supports the information work of several NGOs, albeit very selectively (see chapter III). Nevertheless, the measures supported are of important

See state report to Art. 9 par.2.

help.¹²⁴

taken in other States.¹²⁵

However, these could be extended following initiatives

Measures supported by the Ministry of Education, Arts and Culture primarily concentrate on the prevention of sexual violence in general. They do not explicitly deal with the three fields of the OPSC. Children are taught to say “no”. “My body is mine” is one of the few projects that addresses children

follow up - see Email Statement, chief of the department for child and youth, Hospital Wiener Neustadt, Main Attending Dr. Olaf Arne Jürgenssen, 26.02.08

¹¹⁹ In contrast to the remarks of the state report unto Art 9 par. 9 and 3, it is true that the KIJs do work to counter violence against children and youth, but do not deal with the OSPC. – see Email Statement from 18.03.08 of Dr. Anton Schmid, child and youth lawyer (child ombudsman) in Vienna.

¹²⁰ They deal with cases of abuse and maltreatment of children in general, but they don't feel responsible for, i.e. the identification of children affected by trafficking, child prostitution, etc.

¹²¹ Interview with Mag. (FH) DSA Elisabeth Mayer, STD medical center, MA 15

¹²² See <http://www.orf.at>

¹²³ This campaign is subsidized by the following ministries: Federal Ministry of the Interior, Federal Ministry for Health, Youth and Family BMUKK. The Youth welfare of all Federal provinces.

Those financial means cover about 40% of personnel costs and are to be reviewed annually. See: Email Statement of Michaela Circa, director of Rat auf Draht, from 2008-03-08. See also <http://rataufdraht.orf.at/>

¹²⁴ It has to be noted that, for example, the so-called In-flight-video was created together with UNICEF, which is not mentioned in the state report.

¹²⁵ The In-flight- Video is only shown for 1 or 2 selected destinations of Austrian Airlines flights to Asia. This could be extended to at least all longer flights, following the British Air and Air France examples.

directly and thus has a preventive effect regarding the fields of the OPSC. **However, a direct focus on the set of problems is lacking here too.** Furthermore, though measures in schools are very important, they cannot reach the target groups (e.g. commercially sexually exploited children in prostitution, etc.) if the individuals do not attend school regularly.

On a project level, the public awareness for child protection and prevention has been boosted by NGO-initiatives. In the framework of a DAPHNE II project coordinated by the Austrian Ludwig Boltzmann Institute for Human Rights, **teaching material dealing with “Trafficking in women and young people – European dimensions of a human rights violation”**¹²⁶ has been developed in cooperation with Italy and Poland.

UNICEF Austria sensitizes the public on child trafficking and called in a **Round Table on Child Trafficking** in February 2007, in which the following organizations took part: Ludwig Boltzmann Institute of Human Rights, Norbert Ceipek (Director of Drehscheibe Vienna – Centre for unattended minor foreigners), ECPAT Austria, FICE (International Organization engaged in child and youth care), IOM (International Organization for Migration), ICMPD (International Center for Migration Policy Development), LEFÖ-IBF (Intervention Centre for persons concerned with women trafficking) and UNODC (United Nation’s Office on Drugs and Crime). The Round Table considers itself as a network of International Organizations, NGOs, research institutions and other relevant offices and meets regularly to exchange information and plan common activities in the field of awareness raising and legal representation.

Since its beginnings, ECPAT member RESPECT and – since its foundation in 2003 – ECPAT itself, have focused on **raising awareness of sexual exploitation of children in tourism**. Corresponding measures have been solely initiated and taken by civil society (e.g. ECPAT, Missio, RESPECT) and, to some extent, - on the instigation of NGO’s - publicly funded. This particularly concerns lobbying activities for the implementation of the international “Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism”,¹²⁷ which was (initially created by ECPAT Sweden and Swedish tour operators in 1998, by the Austrian tour operators and travel agencies. For this purpose, continuous measures have been taken, to a large part funded by the EU as well as by the ADA, and to a lesser extent by ministries such as the BMWA and the BMGJF (previously BMFG/BMSG).

Hence, awareness-raising is conducted by non-State rather than State actors, and is directed especially to parents, teachers and educational staff, who are told how to identify abuse. In particular, concerning the internet, there are possibilities for parents to learn how to protect their children.

Awareness raising on the side of potential perpetrators and effective - also cross-border - criminal prosecution are still fundamental challenges for measures against child prostitution, child trafficking and child pornography, with technological developments in the online-media playing an important role in the field of child pornography. For this reason, a fast establishing of contacts on the one hand and the securing of evidence on the other hand are matters of international cooperation, otherwise conviction by national courts is hardly possible. Thus, this matter must be focused on when the legal requirements for international criminal prosecution come to be analyzed. The Ministry of the Interior’s **Hotline for Child Pornography** confirmed that within Interpol or Europol this cooperation with the affected persons/countries worked in a very successful way. However, **contacts with countries that do not actively take part in common activities or that do not – or only conditionally - make child pornography a punishable offence (for example many Asian countries) are problematic.**¹²⁸

In spring 2007, the Parliament decided on a **“Package of measures against Internet criminality and dubious and illegal Internet services”**.¹²⁹ With regard to child pornography, the subsequent conference of the Advisory Council for Information Society of the Federal Chancellery particularly referred to the already

¹²⁶ Nachbaur, Dina (2007): Der Handel mit Frauen und Jungen Menschen- Europäische Dimension einer Menschenrechtsverletzung. Bausteine für den Unterricht. Daphne Programm

¹²⁷ www.thecode.org

¹²⁸ Interview with Harald Gremel, Hotline for Child Pornography, Federal Ministry of Internal Affairs, 26.02.08

¹²⁹ http://www.austria.gv.at/site/cob_21642/4302/default.aspx

existing Internet hotline Stopleveline. Consequently, the **information campaign “Safe use of the Internet”** was created as a concrete measure of the package.¹³⁰

State agencies increasingly focus on guardians, especially on teachers and educational staff, so they are trained to identify any abuse of minors at an early stage and are able to react.

Microsoft Austria has launched the **initiative “Safe on the Internet”**, which also warns against risks in connection with online media.¹³¹ However, the issues of child pornography are not explicitly mentioned. The brochure for children points out that there are “forbidden” or “disgusting” matters on the Internet and that these can be reported to Stopleveline, but this is just one of many other points. The brochure for adults and companies as well as the homepage generally do not give any attention to this issue. Saferinternet.at focuses particularly on the safe use of mobile phones as well as a diligent and skilled use of the Internet, especially regarding downloads and paid subscription services.

Effectiveness Evaluation- Measures

There is **no official data from public authorities**. On the part of organizations there are few public statistics available. Stopleveline has analyzed incoming notices for years and compares the relevant data on a monthly basis to provide, for example, an indication of the awareness level. Also, on the basis of investigated probable countries of origin, correspondent conclusions are made, especially regarding those countries with which close cooperation to combat the criminal offense would be necessary.¹³²

¹³⁰ <http://www.help.gv.at/Content.Node/172/Seite.1720000.html>

¹³¹ See <http://sicheriminternet.at/allgemein/index.html>

¹³² See <http://www.stopleveline.at/index.php?id=306&L=0>

V. Prohibition and Related Matters

Age limits

Under the Austrian Criminal Code, “minor” is generally defined as a person under the age of 18. However, the law draws a distinction between minors below the age of 14 and those between 14 and 18. For example, only the latter are subject to criminal liability (§ 74 (1) Z 1 StGB¹³³). Increased maximum penalties apply for sexual offences against children below 14 years old, for example in §§215a (2) or 104a (4) StGB. § 207a StGB.

The Criminal Code contains a problematic provision at §207a StGB (5), under which the consent of a minor under the age of 14 to produce or possess pornographic material for his/her own personal use leads

to an exemption from any legal punishment.

See State report Art. 3 par.1 lit c.

Child trafficking

The enforcement of child trafficking laws is problematic on a number of fronts. These difficulties are compounded by the fact that the **distinction between affected person and offenders is often difficult** or impossible to make.

Children affected by trafficking are often treated as offenders by law enforcement. Conversely, traffickers take advantage of the fact that the police cannot charge children under the age of 14 (as they cannot incur criminal liability) and instead place them in open institutions. This makes it easier for the traffickers to gain back control over them and has adverse effects on children exploited in burglary or begging (or a combination of both). Such situations have been observed in cases of affected persons arrested by the police and subsequently referred to Vienna’s Drehscheibe.¹³⁴

It is recommended that guidelines for procedures by the relevant authorities be developed and implemented and that the persons affected by child trafficking and child prostitution (see later) are never treated as offenders. In the present situation this regrettably is not always the case.¹³⁵

Of equally serious concern is the differential treatment of Austrian and children under the age of 16 provided under The Alien Law (FPG) and the Asylum Law (AsylG). According to §16 AsylG, mature minors - minors between 14 and 18 years, are able to file petitions by themselves. §12 FPG provides that these acts of procedure can only be made by a person under the age of 16 if they are to the minor’s advantage.

However, according to §12 Abs. 1 FPG, when foreign minors turn 16, they are capable of acting legally and can act as well to their disadvantage. This rule is problematic and **in opposition to the prohibition of discrimination of Art. 14 ECHR¹³⁶, as well as to Art. 2 of the CRC. It should always be forbidden to make distinctions on the basis of nationality between unattended minor asylum seekers and Austrian minors. §21 ABGB rules that Austrian minors are not able to initiate legal proceedings to their disadvantage.**¹³⁷

Child prostitution

Overall, offenders are often not punished while **minors, who are at the wrong place at the wrong time, are charged.** Children who are commercially sexually exploited in prostitution are more prone to being apprehended by the police than offenders, because they can be found in specific streets/locations. **Persons affected by child prostitution are treated like offenders by the law**, because minors are not allowed to engage in prostitution¹³⁸ and **have to pay administrative penalties** (see below). **This conflicts with a statement in the state report whereby “the person affected is not punishable as he or she is the ‘object’**

¹³³ Criminal code, BGBl. Nr. 60/1974 idF BGBl. I Nr.112/2007. See also the Juvenile Criminal Law (JGG), BGBl. 599/1988 idF BGBl. I Nr. 109/2007.

¹³⁴ See Statistik Drehscheibe Vienna, April 2007

¹³⁵ In particular, the situation in other provinces than Vienna is extremely unclear

¹³⁶ See Convention for the Protection of Human Rights and Fundamental Freedoms (as amended by Protocols No. 3,5, 8, 11) (ECHR), <http://conventions.coe.int/Treaty/en/Treaties/Html/005.htm>, letzter Zugriff am 29.03.2008

¹³⁷ See Aziz, Sinur (2005): Aufsatz zum Thema „unbegleitete minderjährige Flüchtlinge“ im Rahmen der Lehrveranstaltung „Grazer Refugee Law Clinic“. From: http://www.asyl.at/umf/ber/Hausarbeit_asyl_umf.pdf, last access: 18.03.08, 14:08, S. 15f.

¹³⁸ See Prostitution Law of the nine federal states, for example Viennese prostitution LGBl für Wien Nr. 7/1984 idF LGBl. Nr. 17/2004

See State Report, Art. 3 par. 1 b+c

protected by this provision.

Though this may be true of the criminal law (§215a StGB), it does not apply to the prostitution laws of the federal provinces. Almost 100% of the known children who are commercially sexually exploited in prostitution have had previous contact with the police, because of theft or drug trafficking.¹³⁹ Affected children report having the impression that they were treated like offenders in most cases.¹⁴⁰ This also accounts for the low reporting to the police of violence on the part of the “client”¹⁴¹: by doing so, the affected children would declare their illegal status and become subject to conviction themselves.

In addition, the conviction of the offenders is often not pursued because they testify that they believed the girls were not underage. As far as child prostitution is concerned, it is **not understandable that such testimonies are taken into consideration, since the “client” is responsible to clarify the age by i.e. asking for the official prostitution card**, which will also indicate the age of the prostitute, as well as medical checks.

The state report places a lot of emphasis on criminal law, but furthermore also “Länder”(province)-laws set age limits at which prostitution is allowed. In the federal provinces of Vienna¹⁴², Tyrol¹⁴³, Salzburg¹⁴⁴, Upper Austria¹⁴⁵ and Carinthia¹⁴⁶ the age limit is 18 years, which corresponds to the CRC principles. The federal states of Styria¹⁴⁷, Lower Austria¹⁴⁸ and Burgenland¹⁴⁹ allow prostitution at the age of 19 years. In Vorarlberg¹⁵⁰ it is de facto not allowed. The regulations of the federal province laws include a legal penalty according to **administrative law for engaging in prostitution below the age limit. Usually, minors are imposed a fine¹⁵¹, which as many NGOs have observed can only be paid with money from further prostitution.** As Prantner points out: “If the age is below the legal age limit, according to these federal province laws, it is not the customer who is chargeable but rather the person who should be protected(...)”

This **exemption from legal punishment on the part of the customers and criminalization of the girls and young women according to the federal province laws** is contradictory to the Austrian criminal code (StGB), whereby customers of a minor person – under 18 years – are chargeable for the crime of sexual abuse.¹⁵² A **recommendation for the abolishment of these administrative penalties** seems to be very reasonable from the minor’s perspective.

Length of Sentence

Article 3 of the EU Council Framework Decision on combating trafficking in human beings (2002)¹⁵³ demands that “effective, proportionate and dissuasive criminal penalties” be inflicted for related criminal offences. If the offence has been committed against a person who was particularly vulnerable, it shall be

¹³⁹ Interview with Mag. (FH) DSA Elisabeth Mayer, STD medical center, MA 15

¹⁴⁰ Tener/Ring (2006): Auf dem Strich. Mädchenprostitution in Wien. (On the streets. Girls prostitution in Vienna.) Milena, Vienna

¹⁴¹ Especially due to their young age and illegal status, they are more frequently affected than adult prostitutes. see Shaw survey, Tener/Ring survey

¹⁴² Wiener Prostitutionsgesetz, LGBl. Nr. 07/1984 idF LGBl. Nr. 17/2004.

¹⁴³ Tiroler Landes-Polizeigesetz LGBl. Nr. 60/1976 idF LGBl. Nr. 56/2007.

¹⁴⁴ Salzburger Landes-Polizeistrafgesetz LGBl. Nr. 58/1975 idF LGBl. Nr. 114/2006.

¹⁴⁵ Oberösterreichisches Polizeistrafgesetz LGBl.Nr. 36/1979 idF LGBl.Nr. 77/2007.

¹⁴⁶ Kärntner Prostitutionsgesetz LGBl.Nr. 58/1990 idF LGBl Nr 10/2005.

¹⁴⁷ Steiermärkisches Prostitutionsgesetz LGBl. Nr. 16/1998 idF LGBl. Nr. 56/2006.

¹⁴⁸ Niederösterreichisches Prostitutionsgesetz idF LGBl. 4005-1.

¹⁴⁹ Burgenländisches Landes-Polizeistrafgesetz LGBl.Nr. 35/1986 idF LGBl. Nr. 34/2001.

¹⁵⁰ The Vorarlberg law about matters of the vice squad (Sittenpolizei) (LGBl.Nr. 6/1976 idF 1/2008) rules, that initiation and exercise of prostitution is only allowed in brothels as subjects of authorisation. Up until now there hasn’t been any authorisation, therefore prostitution isn’t legal in Vorarlberg.

¹⁵¹ If the children can not afford the fine („Uneinbringbarkeit“) imprisonment in lieu of a fine is executed („Ersatzfreiheitsstrafe“)

¹⁵² Prantner, Marie-Theres (2007): „Die Rechtslage in Österreich“, in: Interkulturelles Zentrum und Volkshilfe Wien (Hg.): wenn SEX ARBEIT war..., Eigenverlag, Vienna. P. 27; See also: „Sexarbeit, Frauenrechtsverletzung oder eine Arbeit wie jede andere?“, Download at <http://www.sophie.or.at/SOPHIE/wp-content/uploads/2006/12/Prantner%202006%20-%20Sexarbeit%20im%20europaeischen%20Vergleich.pdf> .

¹⁵³ EU Council Framework Decision of 19 July 2002 on the combating trafficking in human beings, 2002/629/JHA

punishable by terms of imprisonment with a maximum sentence of at least 8 years. According to Article 3, a person shall be considered to have been particularly vulnerable at least when the person was under the age of sexual consent under national law¹⁵⁴ and the offence has been committed for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including pornography. **§§ 215a (2) case 2 and 104a (4) StGB meet this condition as their maximum sentence is 10 years custodial sentence.**

Furthermore, Article 3 of the Framework Decision demands this length of sentence to be at least up to 8 years if – the person’s life has been deliberately or recklessly endangered, or – the criminal offence has been committed by use of serious violence, or – the person has suffered particularly serious harm due to the criminal offence, or – the criminal offence has been committed within the framework of a criminal organisation. § 104a (4) StGB meets these conditions, §217a (2) StGB as well, § 215a (2) case 1 StGB establishes the penalty for these cases at merely 6 months up to 5 years custodial sentence. **Thus, the protection of children aged 14 to 18 years that are recruited or placed for the purpose of the promotion of prostitution and pornographic exposure, is much lower than called for by the EU framework agreement.**

It is worth mentioning here that **the recently established criminal offence of human trafficking (§104a StGB) has not led to a single conviction to date.** The reasons given for this are on the one hand problems of securing evidence and on the other hand also formal aspects of data collection, which leads to the fact that this offence is not shown separately in statistics.¹⁵⁵

Another way to demonstrate that the range of sentences for the above mentioned criminal offences is too low, is to compare it with the statutory punishment spectrum for property offences. For instance, the penalty assessed for breaking and entering (breaking a door open suffices to constitute this offence), according to § 129 StGB is consistent with the punishment spectrum for severe sexual abuse of minors according to § 207 StGB: 6 months up to 5 years custodial sentence.

In accordance with the statutory punishment spectrum of the individual offences § 17 StGB differentiates between **non-indictable offences and indictable offences.** The criterion for this distinction is the different qualification in committing the crime, for instance offences on a commercial basis, serious violence or endangerment of life. Referring to this, § 104a (1) StGB is a non-indictable offence, § 104a (3) and (4) StGB are indictable offences. § 206 StGB and § 207 StGB are non-indictable offences due to the high statutory range of punishment, § 207a StGB is a non-indictable or indictable offence, depending on the qualification of the crime. This applies to § 214 StGB and § 215 StGB accordingly, whereas § 216 StGB exclusively constitutes a non-indictable offence.

In view of the statutory punishment spectrum (e.g. the production of child pornography faces a sentence of up to 3 years which makes it a non-indictable offence) there is a need to deliberate whether this is appropriate in view of the severity of the offence.¹⁵⁶

Limitation Periods

According to § 57 (3) StGB, the limitation period is 10 years if the sentence applicable to the offence is more than a 5-year custodial sentence (but not exceeding 10 years); and 5 years if the applicable sentence is more than 1 year, but at most a 5-year custodial sentence.

There is a special provision for sexual offences against minors: According to § 58 (3) Z 3 StGB, the limitation period concerning sexual offences against minors starts when the affected person reaches the age of legal majority. **However, Trafficking in Human Beings is not covered by this rule if it is not committed in the context of sexual exploitation.** If another criminal offence is committed during the limitation period (i.e. against the sexual integrity of a person- of the same legally protected interest), the limitation period is renewed and newly set jointly for all criminal acts on the basis of the last committed offence.

¹⁵⁴ 14 years, see §§ 206, 207 StGB in conjunction with § 74 (1) Z1 StGB

¹⁵⁵ Only the „leading offence“ (with the highest sentence) is declared in the statistics

¹⁵⁶ It must be pointed out, though, that a custodial sentence cannot always be the only and best alternative. In any case, alternative domains of offender work, such as therapy etc., have to be extended in Austria. This also applies to preventive offender work.

Cooperation with law enforcement agencies

With regard to international police assistance and the intervention of security agencies and their institutions abroad as well as foreign security agencies and their institutions in the federal territory, the employees of the Police Hotline for Child Pornography of the Federal Ministry of the Interior (BMI) refer to the **Austrian police cooperation law (PolKG)**¹⁵⁷, an arrangement which has proved of value in practice.¹⁵⁸ The **Schengen Agreement (SDÜ)**¹⁵⁹ can also be referred to. The Europol agreement also plays an important role in the pursuit of criminal offences.

Due to the commencement of the **EU-JZG**¹⁶⁰ and the **simplified handover proceedings, general prosecution activities, at least in the European area, have been considerably facilitated**. In addition, there are numerous general bilateral agreements.

See State report

Regarding the **implementation of OPSC Art 5**, which requires criminal offences in the legal sense of OPSC Art 3 (1) to be “extraditable” criminal offences, the state report only indicates that concerning this matter no special implementation measures are required, as implementations according to international law in Austrian laws **are directly applicable (self-executing) upon ratification**. This is **inconsistent with the restriction on implementation of the OPSC as explained in Part 1 of this report and pursuant to which laws must be enacted for the OPSC to become applicable**.¹⁶¹

Concerning OPSC Art 5(2), the report mentions that Austria does not make extradition dependent on the existence of any treaty, without mentioning what the legal basis would be in this case. The “Extradition and Legal Assistance-Law”¹⁶² (ARHG- Auslieferungs- und Rechtshilfegesetz) might be considered here. Additionally, judicial cooperation with the member states of the European Union in criminal law (**EU-JZG**) **based on a EU framework decision, which represents an important basis according to information from the federal ministry for judiciary affairs, is not mentioned at all in the state report**.

See State Report

Concerning OPSC Art 5(5)¹⁶³ the state reports refers to “*similar clauses of § 65(1) StGB*”. **The report does not explain that § 65 (1) StGB could only be applied if no domestic jurisdiction could be established in § 64 StGB**. In view of Art 6 OPSC, as well as of Art 10(1) OPSC, the state report mentions that Austria has the ability to achieve judicial assistance based on numerous bi and multilateral agreements, especially through the agreement of the Council of Europe Convention on Mutual Assistance in Criminal Matters of April 20th 1959 together with the first Additional Protocol and the European Union Convention on Mutual Assistance in Criminal Matters of May 29th 2000. Even without a contractual legal basis, legal assistance can - on a reciprocal basis (reciprocity), be given. The state report makes no mention of the Framework Decision on the European arrest warrant, which is implemented in the Federal Law concerning judicial cooperation with the European member states (EU-JZG)¹⁶⁴. **The state report lacks explicit references to the ARHG and the**

See State Report

PolKG.

The state report does not mention any examples of international cooperation in practice. According to information from the Federal Criminal Police Office, Interpol-cooperation with North-America works very

¹⁵⁷ Austrian police cooperation law (PolKG), BGBl. I Nr. 104/1997 idF BGBl. I Nr. 146/1999, vgl. <http://www.ipa-ooe.at/Deutsch/Polizeikooperationsgesetz.pdf>

¹⁵⁸ Interview with Harald Gremel, Hotline for Child Pornography, Federal Ministry of Internal Affairs, 26.02.08

¹⁵⁹ Agreement for the implementation of the Schengen Agreement of June 14th of 1985 - BGBl. III Nr. 90/1997 in conjunction with the accession declaration of April 28th of 1995 about the accession of Austria to the Schengen Agreement

¹⁶⁰ EU- JZG, SEV Nr. 185, November 23th of 2001.

¹⁶¹ Such criminal offences are deemed to be included in any existing and future extradition agreements, Art 5(1) OPSC.


¹⁶² **Extradition and judicial assistance code (ARHG)**, BGBl Nr 529/1979 idF 164/2004. The V chapter provides the obtain of extradition, of transit and issuing of legal assistance as well as adoption of prosecution and the control of execution

¹⁶³ See OPSC, BGBl III Nr 93/2004.

¹⁶⁴ See EU- JZG, „Federal act about the judicial cooperation in criminal law with the member states of the European Union“ – this act regulates the so-called international arrest warrant - BGBl I Nr 36/2004 idF BGBl I Nr 38/2007, www.bmeia.gv.at/aussenministerium/aussenpolitik/voelkerrecht/staatsvertraege/bilaterale-staatsvertraege.html?no_cache=1.

well in Europe. However, cooperation with Asian countries is complicated by the discussion around the criminalisation of child pornography, a topic on which more awareness needs to be created.¹⁶⁵

Confiscation, seizure of property

The Austrian report only deals with the law itself but not with politics and practices regarding the confiscation and seizure of materials, assets or other goods linked to a crime: 

With regard to the implementation of OPSC Art 7 (a), the report does not mention § 20a nor § 20c StGB, which establish exemptions from forfeiture. **The report also does not mention OPSC Art 7(c), which requires states parties to shut down premises which are used to commit crimes.**

Exterritorial Legislation

Regarding the implementation of OPSC Art 4, the report lists §§ 64(1) Case 4 and Case 4a as well as § 65 StGB without mentioning their practical application.

In summary, § 64 (1) Case 4¹⁶⁶ and C4a¹⁶⁷ StGB provide a “special” statutory basis to make certain offences committed by Austrian citizens in a foreign country liable to prosecution under Austrian law, **irrespective of the law of the foreign jurisdiction**. As a result, it is no longer possible for Austrians to “purchase” sexual contacts with minors without facing conviction, even though this would not be criminalised under the law of the country where the crime is committed.¹⁶⁸ When **provisions of the law of the country where the offence is committed are more lenient** than those in Austria, perpetrators nevertheless remain subject to Austrian law (§ 64 (2) StGB).

In order to enable the prosecution of the offences of “gross” sexual abuse of minors (§§ 206, 207 StGB)¹⁶⁹, promotion of prostitution and pornographic depiction of minors (§ 215a StGB), Austrian suspects need to have their habitual residence¹⁷⁰ within the Austrian state.¹⁷¹

Under § 65 StGB Austrian nationals as well as foreign nationals caught in Austria who cannot be extradited on other ground than the character of their offence, are subject to Austrian jurisdiction also for offences committed abroad, provided that the principle of double criminality applies.¹⁷² The applicability of double criminality restricts this rule.

The **Austrian extradition/mutual judicial assistance procedures can be found among others in international agreements or – unless otherwise provided in other intergovernmental agreements – in the Extradition and Judicial Assistance Code (ARHG)**. Between member states of the European Union this is regulated by the “federal law on judicial cooperation in criminal cases with the member states of the European Union” (EU-JZG). See also Police Cooperation Law (PolKG).¹⁷³

When the police receive information about a crime committed in a foreign country, it passes the information on to the state prosecutor, who may then issue a warrant to arrest the suspect upon their re-

¹⁶⁵ See BGBl I Nr 36/2004

¹⁶⁵ Interview with Harald Gremel, Hotline for Child Pornography, Federal Ministry of Internal Affairs, 26.02.08

¹⁶⁶ Slavery (§ 104 StGB), Trafficking in Human Beings (§ 104a StGB) und transnational prostitution (§ 217 StGB).

¹⁶⁷ (aggravated) sexual abuse (§§ 206, 207 StGB), pornographic depiction of minors (§ 207a(1)(2) StGB), sexual abuse of adolescent (§ 207b(2)(3)), promoting prostitution and pornographic depiction of minors (§ 215a).

¹⁶⁸ see ECPAT, 2006: 22

¹⁶⁹ Prior to the change of the criminal law 2004 (BGBl I Nr 15/2004), Austrians could only be prosecuted in Austria for pornographic depiction of minors, i.e. minors under 14, but not for “mündige Minderjährige”, i.e. adolescent between 14 and 18 (§ 207a Abs 1 and 2 StGB). In addition, the extraterritorial legislation has been expanded to apply to the delicts “sexual abuse of adolescent” (§ 207b Abs 2 and 3) and “promotion of prostitution and pornographic depiction of minors” (§ 215a); i.e. “mündige Minderjährige” (minors between 14 and 18) are included, too. See ECPAT International (2006): Global monitoring report on the status of action against commercial sexual exploitation of children Austria. Thailand, p. 22.

¹⁷⁰ According to the House of Judiciary Committee (JAB 409 BlgNR 20. GP, 7), who made a comment on Z4a in § 64 Abs 1 StGB,

¹⁷¹ § 12 ARHG as a constitutional law protects Austrian citizens from extradition; but not within the European arrest warrant, cf. EU-JZG; Austria obtained an exemption clause until the end of 2008). The Austrian report interpreted the alternatively given requirements of Austrian interests as a crime against Austrian citizens which is irrelevant in this cohesion.

¹⁷² Further, there cannot be a prosecution if a foreign court has already passed a sentence. .

¹⁷³ Federal law of the international police cooperation, BGBl I Nr 104/1997.

entry in the country. **According to the Federal Criminal Police Office (BKA), crimes committed in foreign countries are seldom reported.** Many such countries lack the capacity to address such crimes and in many instances perpetrators chose destinations characterized by a weak legal apparatus and low enforcement.

At national level it is essential to raise awareness about the commission of crimes abroad and to educate bystanders (the ones "looking away") to report seen cases. On an international level many steps need to be taken to increase the exchange information and knowledge, but also regarding the implementation of relevant legal provisions.¹⁷⁴

According to the Federal Criminal Police Office, the **European arrest warrant has generally greatly facilitated prosecutions**, since the handling is now a lot easier and subject to fewer formalities.

A country only checks if the crime that somebody is accused of, is ACTIONABLE (i.e. not an administrative offence); then the arrest warrant will be implemented.¹⁷⁵

The Federal Criminal Police Office also mentioned that the **"informal" exchange between the authorities** (for example in the context of conferences) **contributes to further collaboration.** Regarding child pornography, Interpol would be the best platform for the exchange of information and collaboration.¹⁷⁶ The respondent of the Federal Ministry of Justice reports that he has not come across any problems in the international collaboration in recent years.¹⁷⁷

However some NGOs have been involved in or following cases presented in the media:

ECPAT Austria got involved in a case in 2007/08, in which an Austrian citizen had sexually abused minor boys in India. He was sentenced to 2 years imprisonment by the Vienna Criminal Court. Both English and French witnesses testified in court. Several months passed before they were heard. They had to establish contact with four organizations (NGOs, among them ECPAT) and numerous authorities, until the case was finally tried. According to the witnesses, the Indian authorities were, indifferent to the case, which one of them had observed with his own eyes. Austrian authorities announced furthermore that they had difficulties in cooperating with the Indian authorities in regards to this case. By chance, a policeman was in Delhi and could fly to the site of the crime to arrange a photo documentary.¹⁷⁸

In 2005, an 86-year-old Austrian was arrested in Vietnam. The man had abused several boys there and in Europe. The accused, who worked as a voluntary worker in an aid organization, was extradited to Austria with help from Interpol and at the end of 2006 was condemned to 8 years' imprisonment.¹⁷⁹

In 2003, a 73-year-old Austrian was arrested in Cambodia, after having been found in a hotel room with a girl, declared to be 14 years old and to have been abused by the man since the age of 8. Although the primary accusation sounded in statutory rape, the man was freed later on, when the parents of the girl assured that in truth she was 16 years old. The Cambodian Woman's Crisis Centre (CWCC) doubts that in Cambodia a fair process can be possible¹⁸⁰ and requested that the lawsuit be conducted in Austria.¹⁸¹

¹⁷⁴ Interview with Harald Gremel, Hotline for Child Pornography, Federal Ministry of Internal Affairs, 26.02.08

¹⁷⁵ Interview with Harald Gremel, Hotline for Child Pornography, Federal Ministry of Internal Affairs, 26.02.08

¹⁷⁶ Interview with Harald Gremel, Hotline for Child Pornography, Federal Ministry of Internal Affairs, 26.02.08

¹⁷⁷ MMag. Göth-Flemmich, Federal Ministry of Justice, answered the following questions via E-Mail: 8.2.2008: How many applications for extradition have been filed in the field of sexual exploitation of children committed by Austrian citizens in foreign countries (or have been filed within the last 3 years)?

¹⁷⁸ See *Die Presse* (2007): Zwei Jahre Haft für "Sextourist" aus Linz, vom 18.12.2007 („Two years imprisonment for sex tourist from Linz), From: <http://diepresse.com/home/panorama/oesterreich/349685/print.do>, 29.01.08

¹⁷⁹ See „Kinderschänder in Tirol verurteilt“, APA 28.08.2006, From: <http://www.nachrichten.at/apanews/apac/471777?PHPSESSID=1000966baaead9c21af463098c804a7f>, last access: 24.03.08, 12:27

¹⁸⁰ The lawyer of the girl said, that no witnesses have been invited to be heard.

¹⁸¹ ECPAT International (2006): Global monitoring report on the status of action against commercial sexual exploitation of children Austria. Thailand, p. 12, see *The Cambodia Daily*, 20.11.2003.

VI. Protection of the rights of victims¹⁸²

The state report mainly informs about **existing regulations within the Austrian Penal Code and Code of Criminal Procedure.**¹⁸³ The state report **does not contain any information about measures which would**

ensure the application of these regulations in practice.

See State report

Practical application requires a balanced approach between the right of the accused to a fair trial and the victim's right to protection.

“Considerate” examination

Through the so called “considerate” examination it is possible for people directly affected, as well as for witnesses **to give testimony without appearing in court in person.** Nevertheless this possibility is **not offered to all persons, nor can it be considered an unqualified right.** Section § 165 (StPO)¹⁸⁴ of the Code of Criminal Procedure establishes the possibility of a considerate examination. In Vienna, an underage person is normally interrogated by experts. **Where the person is under 14 years of age and there is a possibility of sexual harm, the court is required to carry out a considerate examination in every case (see Section 165 par. 4).**

Following a considerate examination, the person does not have to make a testimony at the main hearing (see Section 156 of the Code of Criminal Procedure). However in general, children **do not have the complete right to refuse to give evidence** where they are not relatives of the accused. In addition, children who are **affected by trafficking do not have the right to a considerate examination if the child trafficking does not involve sexual abuse.** A considerate examination is possible after a request for this examination is filed and may be granted at the discretion of the court.

Rights of victims

Victims are instructed of their rights by police, public prosecution and of the trial judge. The rights of victims (Sections 66, 67 of the Code of Criminal Procedure) consist of the following:¹⁸⁵

- presence of a trusted person
- right to access files
- right to information about the progress of proceedings,
- right to interrogation by a person of the same sex (in the case of sexual offences),
- right to considerate examination which includes an adversary examination according to Section 165 of the Code of Criminal Procedure
- interrogation in the absence of the accused according to Section 250 of the Code of Criminal Procedure
- psychosocial and legal assistance (Section 66 par. 2 of the Code of Criminal Procedure),
- right to join the proceedings as a private party.

Needs and participation of victims

Attention to the special needs of victims who are minors is subject to the legal framework. In practice, this **depends upon the “good will” of the judges.**¹⁸⁶ There is no right to such special consideration. In general, **the procedural rights of children do not in essence differ from those of adults.** Upon request, victims receive **psychosocial and legal assistance** (Section 66 par. 2 Code of Criminal Procedure).

¹⁸² See Introduction for the discussion about using the terms victim or persons concerned. It needs to be pointed out that the term “victim” is used preferably instead of “persons concerned” in this chapter, because it states a legal definition in this context.

¹⁸³ Code of Criminal Procedure, Federal Law Gazette Nr. 631/1975 as amended by Federal Law Gazette I Nr. 109/2007.

¹⁸⁴ Interview with Mag.a Bettina Moog on the 17.01.2008

¹⁸⁵ Interview with Mag.a Bettina Moog on the 17.01.2008

¹⁸⁶ Interview with Mag.a Bettina Moog on the 17.01.2008

Due to the uneven allocation of resources and the lack of specialized support organizations for child victims of crime (i.e. for trafficked children there exists only one small specialized organization in Vienna),¹⁸⁷ it is difficult to ensure that the right to psychosocial and legal assistance is upheld in practice.

Another important amendment to the Code of Criminal Procedure is the inclusion of a possibility to make a **fundamental rights complaint**¹⁸⁸ during the proceedings (Section 106 Code of Criminal Procedure).

Due to the lack of personnel and other resources, it is often **not possible to carry out an extensive determination of the best interests of children in accordance with the UNHCR Guidelines on Formal Determination of the Best Interests of the Child**¹⁸⁹ (see also chapter 7).

Age assessment

Age assessment **is not adequately carried out by the relevant authorities**.¹⁹⁰ Experts agree that **no scientific and exact method exists in this regard and** margins of error of one to two years must generally be taken into account. **The 'benefit of the doubt' approach is not followed.** The age assessment is often carried out in an arbitrary way that overlooks the relevant psychosocial.¹⁹¹ This affects the application of the OPSC, as criminal capacity is determined by the age limit of 14 years (see chapter 6). In some cases an age assessment might be required to determine criminal capacity and justify the opening of proceedings (for example for petty crimes committed by children affected by trafficking). In addition, the age limit of 18 years is relevant; often underage persons exploited in prostitution declare themselves as having reached majority.¹⁹²

Amendments to the Code of Criminal Procedure

The new Code of Criminal Procedure has incorporated some positive amendments regarding rights of victims (already mentioned above). There are rights to petition for:

- Closed sessions for the main procedure
- The hearing of evidence
- An application to request expert evidence
- Exclusion of the accused person during interrogation

Previously, the victim didn't have a right to petition, there was only the possibility to plead. The right to petition is mainly relevant in procedures with a jury. Another amendment is the inclusion of a **right to psychosocial and legal assistance for relatives of the victim, which is valid for certain victim groups**.¹⁹³

It must be mentioned that, in general, the role of the victim is still underappreciated in Criminal proceedings, especially if the victim is a child. The Criminal Law still is not sufficiently victim-oriented. For example, **expert evidence about the capacity of the child to testify is obtained even after the child has been interrogated.** This has **negative consequences which are twofold: 1. The credibility of the child is often being questioned afterwards and 2. The child is obliged to undergo the painful hearing nevertheless.** Despite this, the amended Code of Criminal Procedure raises great expectations.¹⁹⁴

¹⁸⁷ The crisis centre of the City of Vienna called „Drehscheibe Augarten“ supports persons affected by child trafficking and child prostitution.

¹⁸⁸ Explanatory report to the Law accompanying the reform of the criminal procedure (Strafprozessreformbegleitgesetz II; pages 4-5) http://www.justiz.gv.at/cms_upload/docs/strafprozessreformbegleitgesetz_II_erlaeut.pdf

¹⁸⁹ See UNHCR (2006): UNHCR Guidelines on Formal Determination of the Best Interests of the Child Provisional Release, May 2006, <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain/opensslpdf.pdf?docid=447d5bf24>, 27 Feb. 2008, 10:16

¹⁹⁰ The information stems from the Asylum- area, but it can be supposed that age assessment of persons concerned in the domains of the OPSC meet similar problems

¹⁹¹ See for example <http://salzburg.orf.at/stories/259618/>

¹⁹² Or at least the documents that the affected children got from their traffickers declare majority.

¹⁹³ Interview with Bettina Moog, 17th January 2008

¹⁹⁴ See BGBl.Nr. 631/1975 last amended by BGBl. I Nr. 109/2007, StPO

Facilities of care and support

At the federal level, there is no facility responsible for the care of children affected by the OPSC offences. Some help programmes exist but they focus on victims of sexual abuse or violence within the family.

Generally, the Youth Welfare Authorities are responsible for all children and young people below the age of 18 who cannot be cared for – for whatever reason – by other persons. ¹⁹⁵However, minors do get in contact with various other care facilities than those of the Youth Welfare, which are low threshold facilities. In the domain of **child prostitution**, ¹⁹⁶ the children are often referred to facilities for drug users or to medical care in hospitals. Generally, the inhibition threshold for this target group to make use of a care facility is very high, as many of them have already had negative experiences in this regard and particularly mistrust adults. In addition, the facilities are often not adapted to address the special needs of these particular target groups. ¹⁹⁷

¹⁹⁵ Interview with Monika Niederle, President of the International Federation for Educative Communities FICE, 23.03.2008

¹⁹⁶ It has to be taken into consideration that the experiences of the authors concerning the above mentioned institutions are restricted to the domain of child prostitution, but this doesn't have to mean that they are not relevant for children affected by trafficking as well.

¹⁹⁷ See Telephone interview with Martin Haiderer, manager A_way, from 20.03.08

VII. International Assistance and Cooperation

Austria participated in both the First World Congress against commercial sexual exploitation of children in Stockholm in 1996 and the Second World Congress in Yokohama in 2001. It has also signed the Stockholm Declaration and Agenda for Action¹⁹⁸ and the Yokohama Global Commitment (see ANNEX). The participation and engagement of the Austrian Government can also be expected at the coming World Congress III in Brazil in November 2008. Even though this participation in international child rights activities shows commitment, there still lacks a coordinated strategy. For example, at the UN General Assembly's World Children's Summit 2007, there was no participation from the Austrian Federal Government or from Austrian children and adolescents at all. The principle of youth participation is rarely applied on an international level and there is no coordinated selection process conducted by the responsible authorities. Based on information collected, most coordination at regional and international level has focused 1) on strengthening law enforcement cooperation and training concerning human trafficking; 2) on supporting NGO- or IGO-led projects, focusing on prevention of child sex tourism, reintegration of victims of trafficking and protection of vulnerable groups, both in source and destination countries.¹⁹⁹ As mentioned before some of those projects have been carried out in relation to child sex tourism, particularly the implementation of the *Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism*, in partnership with stakeholders in Africa and Eastern Europe. These projects were coordinated by the ECPAT Austria member, Respect, and co-financed by the Austrian Development Cooperation and by the OSCE.

Further the book "Children walking the streets - Report on the German- Czech border"²⁰⁰ written by the German author and social worker Cathrin Schauer, generated much discussion about the problem of child prostitution in the **border area of Germany-Austria-Czech Republic**. The book²⁰¹, based on a study involving 500 children and 200 interviews with abused children, police officers, social workers and prostitutes, exposed the wide scope of the problem and revealed the significant involvement of German men and, to a lesser extent, Austrian offenders sexually exploiting minors at the Austrian-Czech border. This state of affairs was confirmed to ECPAT by the child protection centre "Waldviertel" following the book presentation in 2003. Prevention material (project posters, flyers, etc.) was developed and made available in 10 languages and targets women and girls who are directly affected.²⁰²

A certain reluctance to address the problem exists on the part of the ministries in the federal states of Upper Austria and Lower Austria. **Sporadic cooperation with Czech ministries on a local scale is reported to take place.** For example, a conference²⁰³ / exhibition, was organized in November 2006 by a Czech Member of the European Parliament (Green Section) in Brussels. A representative of the Upper Austrian government was also invited.

In the framework of the EU program AGIS, between 2005 and 2006, KARO e.V.²⁰⁴ conducted the project "cross-border cooperation with local ministries and social work in the areas of forced prostitution, women trafficking and sexual exploitation of children in the areas of prevention, research, evaluation, sensitization, education and networking", which included among other things training for German, Czech and Austrian police officers.

In the last few years, efforts for stronger international cooperation in relation to child trafficking have been made. Since 2005, the project 'Comprehensive Training for Law Enforcement Authorities responsible for Child Trafficking/Minors' has been undertaken as a partnership between the Austrian

¹⁹⁸ See www.ecpat.net/eng/A4A02-03_online/ENG_A4A/Appendices_1_Stockholm.pdf, last accessed 20.03.08, 14:19

¹⁹⁹ State Report, Article 10 paragraph 3 and 4

²⁰⁰ "Kinder auf dem Strich - Bericht von der deutsch-tschechischen Grenze"

²⁰¹ The book was published by United Nations Children's Fund UNICEF and the children's rights organization ECPAT in Germany in 2003

²⁰² Info and Download: www.karo-ev.de/informationen/serious-line.html

²⁰³ Title of the activity: Prostitution of minors in the German-Czech-Austrian border region

²⁰⁴ Karo is a NGO, which acts in the border area of Germany and Czech Republic, which offers help and advisory service for prostitutes and carries out research projects, www.karo-ev.de.

Federal Ministry of the Interior, the International Organization for Migration (IOM) Vienna, the Ministry of Foreign Affairs of Sweden, the Belgian Federal Police, EUROPOL and the OSCE.²⁰⁵

To some extent, good coordination is taking place at European level. In particular, police and judicial cooperation has been strengthened with the Czech Republic, Romania and Bulgaria (see also chapter VI "Repatriation") due to the high number of cases of organised crime involving children (begging networks mainly). But there is still a lack of institutionalised collaboration mechanisms involving state authorities, with a focus on children. In reference to the various bilateral or multilateral arrangement, mentioned in the State Report under Article 10 paragraph 1, it has to be emphasized that it is unclear how these agreements specifically address the issue of children exploited in the areas of the OPSC as it is stated in the OPSC, Article 10.

Overall however, there is still a lack of an institutionalized collaboration mechanism to address the problem (for example cross-border cooperation of ministries; cross-border education and sensitization; studies and evaluation of the actual state of affairs).

Training of relevant actors also takes place at an international level (either initiated by, or in cooperation with, international organizations). See chapter 2. For **international cooperation in criminal cases** see chapter 4.

Repatriation

At a federal level, there exist no international cooperation measures and no government action regarding repatriation of persons affected by child trafficking. In practice, repatriation is conducted by the organization "Drehscheibe" in Vienna, mainly to Rumania, Bulgaria, Slovakia and Hungary.

The repatriations to Rumania and Bulgaria are operated directly by the "Drehscheibe" of the city of Vienna. Children are sent to a crisis centre in the country of origin, which decides on further actions.²⁰⁶ The "Drehscheibe" is the only care facility for unaccompanied foreign minors²⁰⁷ in Austria. It was created out of an urgent need to shelter foreign minors who have been caught by the police. The "Drehscheibe" suffers from a lack of resources like most of the Youth Welfare institutions. Consequently some problems arise: The children do not really come to trust the personnel and many of them run away. To counter this problem **measures to build trust** have been taken (reception and care in the mother tongue) – this has happened because of the individual engagement of the director of the "Drehscheibe" but this initiative is not institutionalised. In addition, many children cannot cope with the procedure of "voluntary" repatriation, as they might have wished to migrate before having been trafficked. Also, if the "Drehscheibe" assures the repatriation to **professional Crises-Centres in the countries of origin**,²⁰⁸ the children know or are told by other children or traffickers that they would be sent home, exposing them to possible further harm.²⁰⁹ This poses a challenge regarding the prevention of re-victimization. Another problem is the **fear of organised crime** which forces many of the children and adolescents to return to the traffickers after a short-term accommodation in the "Drehscheibe."

So far there has been good collaboration with the "Drehscheibe" of the city of Vienna, especially in 2004 and 2005 when it was confronted to a large number of children who had been apprehended by the police for robbery or prostitution. However, as already mentioned such collaboration was largely due to the personal commitment of the "Drehscheibe" 's director, **allowing for contact to be established with the authorities and the federal ministries in the countries of origin (mainly Rumania and Bulgaria).** Currently, the **cooperation between the city of Vienna and the federal governments in the countries of origin** of the children and adolescents concerned²¹⁰ remains informal.

²⁰⁵ ECPAT International, Global Monitoring Report on the status of action against commercial sexual exploitation of children – Austria, 2006; German translation, page 15ff;

²⁰⁶ Interview with Norbert Ceipek, Drehscheibe Wien from 06.02.08

²⁰⁷ This excludes unaccompanied minor asylum seekers, as they are accommodated in other facilities.

²⁰⁸ These centres were launched with the support in capacity-building of the "Drehscheibe" and the City of Vienna in Bulgaria and Rumania – see also chapter 8

²⁰⁹ Interview with Fevzije Bahar, Spokesperson of the International Romani Union, 23.02.2008

²¹⁰ Interview with Norbert Ceipek, Drehscheibe Wien from 06.02.08

In the past, social workers from the city of Vienna were sent to Rumania and Bulgaria to train personnel in crisis centres. **The costs of the training by Austrian personnel were covered by the city of Vienna.**²¹¹ Based on this model, the “Drehscheibe” could work with the federal ministries in other countries, to set up local **crisis centres that would be** financed by the latter.

Repatriations in other countries are organized by IOM.²¹² IOM receives requests from “Drehscheibe” or NGOs (Caritas, association for Human Rights, SOS Mitmensch) and organizes the return with the IOM-mission of the country concerned. In most cases it is concerned with unaccompanied underage asylum seekers – there is no data about children affected by child trafficking.²¹³

Frequently, the **UNHCR Guidelines on Formal Determination of the Best Interests of the Child**²¹⁴ are not followed because of the lack of capacity. Additionally, the **services offered to children affected by child trafficking in Austria are also restricted due to the limited residence status that can currently be offered.**²¹⁵ Also, the principle of participation is not sufficiently implemented. For example the Youth Welfare institutions, **lack evaluation systems allowing for an assessment of the services offered.**²¹⁶ The decision concerning the adequacy of the repatriation of trafficked children is made by the “Drehscheibe” in Vienna, or NGOs, which are responsible for the support of unaccompanied minor asylum seekers.²¹⁷ As mentioned above, there is no reliable data about the number of affected children, in the other federal states there are no cases officially declared.

Follow-up²¹⁸

Follow-up measures for persons affected by child trafficking are not institutionalised. There are irregular monitoring reports from the crisis centers in the countries of origin concerning children that were repatriated to Rumania and Bulgaria by the “Drehscheibe”. These **reports are often fragmentary or contradictory.** While Bulgaria does send collective reports, these are completely lacking in other countries. Apart from this, **due to a lack of resources, there are only limited possibilities in Austria to review these reports** or to keep track of them. When children repatriated to Rumania and Bulgaria are transferred to the youth welfare office in the country of origin, further monitoring is not possible. **Thus, the well-being of the children cannot be guaranteed. The risk of repeated recruitment by child traffickers persists.** The International Romani Union (IRU) in Austria is able to make statements about the whereabouts of the Rumanian children under their care. Thus, the **spokeswoman of the IRU is still in contact with about 8 to 10 girls that were brought back to their home countries (Romania, Bulgaria).** According to her, most of the girls had a **desire to migrate prior to their exploitation, which is one reason that some of them are currently located in other countries (e.g. Italy)** and presumably²¹⁹ fell again into the hands of traffickers (or continue begging, etc).

Even after the child is **returned by IOM** and handed over to its parents or a legal guardian, **no monitoring** takes place, as the Austrian government does not provide funds for this.

National Referral Mechanism

At the moment there is **no National Referral Mechanism for persons affected by child trafficking in Austria.** The Austrian government, which developed an inter-ministerial working group addressing

²¹¹ Interview with Norbert Ceipek, Drehscheibe Wien from 06.02.08

²¹² See www.austria.iom.int

²¹³ Interview with IOM from 08.02.2008

²¹⁴ See <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain/opendocpdf.pdf?docid=447d5bf24>

²¹⁵ At the moment there is only the possibility of a humanitarian residence permit, for which there is no legal claim. Though, we have information from the asylum area, that Trafficking in Human Beings eventually can be claimed as an asylum cause – see also case study from the Asylum area in the ANNEX

²¹⁶ Interview with Monika Niederle, President of the International Federation for Educative Communities FICE, 23.03.2008

²¹⁷ Evtl. LEFÖ, Away

²¹⁸ The content of this chapter is mostly limited to the area of child trafficking, since the international cooperation around the other topics of the OPSC has already been described in detail in the previous chapters. On other issues there is no information available (i.e. child prostitution at the Austrian- Czech border). For information on national Follow up measures see chapter 7.

²¹⁹ Accurate and reliable statements cannot be made for lack of monitoring and follow-up.

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Trafficking in Human Beings, and a subordinate working group addressing child trafficking (see chapter I), is analyzing the present situation and developing further strategies. **Most persons affected by child trafficking in Austria are not identified.** There needs to be a multi-stakeholder involvement in the identification process. **At the moment, the police complete most of the identification work.** In the nine federal states there are different approaches regarding the measures to be initiated once a person affected by child trafficking is identified. **At present, referral to specialized institutions only works in a limited way, because there is only one institution in Austria for children and youth – “Drehscheibe” Vienna (MA 11) –** which is responsible among other things for the care of persons affected by child trafficking. Further, **in other federal states there are hints about numbers of persons affected by child trafficking**²²⁰ (but there is a lack of institutions, and the existing ones specialize in assisting foreign, often heavily traumatized persons affected by child trafficking). Because the institutions of “Jugendwohlfahrt” (social services for the youth) in each federal state are responsible for all children (whether foreign or not) on their territory, **persons affected by child trafficking are also brought to general institutions, where the care givers are often not prepared or trained for the difficult situation of dealing with persons affected by child trafficking.** The consequences are as already mentioned: 1) The children affected by child trafficking are not identified or noted as such; 2) they don't receive the special treatment they require.²²¹

Similar conclusions can be made regarding **the identification and care of children who have been commercially sexually exploited in prostitution.** For example, persons affected are forwarded to STD medical center (MA 15) by the police.²²² More detailed information does not exist.

²²⁰ Especially by organizations, which work in the field of asylum. See Interview with Gerhard Wallner, Diakonie at 10.03.08, and with Sandra Edthofer, Caritas WG Refugio at 7.3.08, as well as with employees of youth welfare, but only a few

²²¹ ECPAT Europe Law Enforcement Group (2006): Combating the Trafficking in Children for Sexual Purposes. A Training Guide. Amsterdam, Bangkok, adapted to the Austrian national context by ECPAT Austria.

²²² Interview with Mag. (FH) DSA Elisabeth Mayer, STD medical center, MA 15

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Domestic Abuse Intervention Centre Vienna

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ECPAT Austria

<http://www.ecpat.at>

ECPAT International Child and Youth Advisory Committee

<http://www.eicyac.org>

International Organization for Migration

<http://www.iomvienna.at/index.php>

Intervention centre for trafficked women

<http://www.lefoe.at>

KARO ev.

<http://www.karo-ev.de>

Legal Data Base

<http://www.ris.bka.gv.at>

Microsoft Austria`s initiative

<http://www.sicheriminternet.at>

Publications and Statistics, Federal Ministry of Interior

<http://www.bmi.gv.at/publikationen/>

Saferinternet.at Initiative

<http://www.saferinternet.at>

Telephone hotline for children

<http://rataufdraht.orf.at>

The International Association of Internet Hotlines

<http://www.inhope.org>

Information on Care+ Service Providers for THB

<http://www.westinfo.at/beratung.htm>

RESPECT- Institute for Integrative Tourism and Development <http://www.respect.at/content.php?lang=1->

ECPAT International information on World Congress III on commercial sexual exploitation of children http://www.ecpat.net/World_Congress/en/index.html

"Internet sicher nutzen"

<http://www.help.gv.at/Content.Node/172/Seite.1720000.html>

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Information on foreign policy

<http://www.bmeia.gv.at/aussenministerium/aussenpolitik/internationale-zusammenarbeit.html>

Information on bilateral agreements

http://www.bmeia.gv.at/aussenministerium/aussenpolitik/voelkerrecht/staatsvertraege/bilaterale-staatsvertraege.html?no_cache=1

Statistics on child pornography

<http://www.stopline.at/index.php?id=306&L=0>

Interviews/Written statements

Email Statement of Michaela Circa, director of Rat auf Draht, from 08.03.2008

Email by the Federal Ministry of Health, Family and Youth from 04.12.2007

E-Mail from MMag. Göth-Flemmich, Federal Ministry of Justice, 08.02.2008

Email Statement, Head of the department for child and youth, Hospital Wiener Neustadt, Prim. Dr. Olaf Arne Jürgenssen, 26.02.08

Email from Evelyn Probst, LEFÖ-Intervention centre for trafficked women, 19.03.2008

Email Statement from 18.03.08 of Dr. Anton Schmid, child and youth lawyer (child ombudsman) in Vienna

Email Statement from Gerda Matejik on behalf of Beate Wimmer-Puchinger, responsible for women`s health in Vienna, from 20.03.08

Interview with Fevzije Bahar, International Romani Union, from 25.02.2008

Interview with Norbert Ceipek, director of the "Drehscheibe" Vienna from 09.05.07

Interview with Norbert Ceipek, Drehscheibe Wien from 06.02.08

Interview with Sandra Edthofer, Caritas WG Refugio; 07.03.08

Interview with Harald Gremel, Child Pornography Hotline, Federal Ministry of Interior, 26.02.2008

Interview with Uwe Hinczica, Social Worker, 21.02.08

Interview with IOM from 08.02.2008

Interview with Mag. (FH) DSA Elisabeth Mayer, STD ambulatory, MA 15; 20.02.08

Interview with Mag.a Bettina Moog on the 17.01.2008

Interview with Monika Niederle, President of the International Federation for Educative Communities FICE, 23.03.2008

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Official statement of Federal Minister Doris Bures from 19.03.2008

Official statement of the Federal Ministry of Justice from 22.11.2007

Volkshilfe Vienna – SOPHIE, statement from 04.03.2008

Telephone calls with Heinz Fronek, Asylkoordination; Mr. Walcher, Youth Welfare Authority Vienna; Otto
Hollerwöger, Integrationshaus; Martin Helm, Caritas Refugio in March 2007

Statistik Drehscheibe Vienna, April 2007

ANNEX

Organisations

ECPAT Austria

ECPAT Austria currently comprises 11 well-known child rights and development organizations. The main focal areas of ECPAT in Austria are combating child sex tourism, networking and training on raising awareness of child trafficking as well as better care and protection for affected children. Building up a youth network and preventive measures regarding child pornography addressing children and youths are further focal points. ECPAT Austria is a member of the ECPAT International global network of organizations and individuals which is working at all levels to build collaboration among local civil society and the broader child rights community to form a global social movement with the aim of eliminating the commercial sexual exploitation of children. For further information: www.ecpat.at

CYA (Committee for Youth Action) ECPAT Austria

We are a group of young students of different faculties, such as law, tourism and international development. We have become involved with the abatement of commercial sexual exploitation of children. Our main concern is to give children and young persons a voice and empower them through active, participative work as well as via information campaigns. The ECPAT-Youth Council is part of EICYAC – ECPAT International Child and Youth Advisory Committee, which is an international advisory committee of elected young persons of different regional ECPAT groups. EICYAC's aim is to involve children and young persons in the campaign against commercial sexual exploitation of children. CYA's field of activities include designing and implementing projects which deal with educating and sensitizing, supporting projects and campaigns and organizing topical workshops and trainings.

For further information: www.eicyac.org

UNICEF Austria

UNICEF is the emergency fund of the United Nations and works in over 150 countries and territories to help children survive and thrive, from early childhood through adolescence. UNICEF supports child health and nutrition, good water and sanitation, quality basic education for all boys and girls, and the protection of children from violence, exploitation, and AIDS. UNICEF is funded entirely by the voluntary contributions of individuals, businesses, foundations and governments.

UNICEF in Austria is represented by the Austrian National Committee for UNICEF. The work of the 36 National Committees for UNICEF in the Industrial Countries consists of fundraising for projects in developing countries, informing the public about the situation of children worldwide and lobbying for the rights of the child.

Ludwig Boltzmann Institute of Human Rights

The Ludwig Boltzmann Institute of Human Rights (BIM) is an independent academic human rights research and service institution. It was founded in 1992 and is headed by Manfred Nowak and Hannes Tretter. The primary focus of BIM is on research activities in the field of human rights, on national, European and international levels. BIM staff is also extensively involved in human rights teaching and training. It is BIM's main objective to offer a link between academic research and legal practice, with a commitment to cooperation and networking with inter-state, state and non-state partners and organizations.

Stopline Austria

Stopline is the Austrian Internet Hotline that can be addressed by Internet users – also anonymously – if they come across illegal online content, child pornography as well as radical right-wing content. Since its foundation in 1998 Stopline has been operated by ISPA, the Austrian Internet Service Provider Association, as a self regulatory body on the basis of the ISPA Code of Conduct. The hotline is authorised by the Austrian

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administration and holds close contacts to the Federal Ministry of Interior (Criminal Intelligence Service Austria and the Federal Agency for State Protection and Counter Terrorism) and the Austrian Internet Service Providers. Stopleveline is founding member of INHOPE, the association of hotlines against illegal online content (www.inhope.org). Further Information: www.stopleveline.at

Don Bosco Refugee Association Austria

The Don Bosco Refugee Association Austria is an initiative of the Salesians of Don Bosco, the Salesian Sisters of Don Bosco and of the organization Youth One World for the assistance of separated children and refugee children. Since 2003 the association provides support to young asylum seekers, refugees and migrants in their living situation in Austria. Since 2004 15 separated children are taken care of in the home for young people called "Abraham" in Vienna, and since 2003 within the project "Tobias" volunteers are going to offer leisure time activities and support to asylum seeking families in Burgenland on a weekly basis.

SOPHIE, Volkshilfe Vienna

Since 1996 Volkshilfe Vienna has participated intermittently in projects designed to support adult female prostitutes. In July 2005 the project SOPHIE started with the overall objective to improve the quality of the living and working conditions of adult female sex workers. Volkshilfe Vienna is one of the major non-profit social service providers in Vienna to cater for the needs of the elderly and people in need.

Austrian Ombudsoffices for children and youth (Kinder- und Jugendanwaltschaften)

The Austrian Kinder- und Jugendanwaltschaften are defined by Law as independent Ombudsoffices for the Rights of the Child. The duties of the Ombudspersons are to promote the interests of children vis-à-vis public and private authorities, to protect children's rights and to support the development of the conditions under which children grow up. The Kinder- und Jugendanwaltschaften give advice in individual cases, comment on laws which influence children's lives and monitor the improvement of the living conditions of children. We are free to cooperate with any authority or private institution and to use any method to speak on children's behalf to the public.

Case stories

Gabriele²²³

Gabriele was born in Vienna and spent her first years with her parents and her brothers in a flat in Vienna. During her childhood and youth she spent a few years with her grandmother and also in various children's homes. She also reports that she lived with her aunt because she ran away from home.

For many years Gabriele suffered sexual abuse from her father. „... **my father assaulted me ... between my 3rd and 16th year of age ... first he touched me with his fingers and when I was older he used his penis ... then I got pregnant from him ... I had my first child, then the second and the third ... well the second I would have received, but I lost it, because he kicked me in my stomach ... and the third I had aborted.** Gabriele remained silent for all the years that she was exposed to the sexual violence of her father because of her fear.

When Gabriele was 9 years old her father also used her for pornographic purposes. She tells that he as well as his friend forced her into sexual activities in front of a running camera. **“My father sold me to a friend who made pornographic videos with me ... well, either they simply penetrated me or I had to make it orally ...”.** In the beginning she did not realise what happens to her. **“... in the beginning I did not realise but then I did ...”.** After some time also her mother became aware. **“One day my mother was upstairs with Karl and he just looked at the video where I was shown and she sees that and asks “What are you doing with my child? ... well and suddenly the police came and he was arrested ... he also went naked, stark-naked on the street, wearing a coat and when a child passed by “do you want a lollipop”, gave him a lollipop and suddenly opened his coat ...”.**

Gabriele's father was – as well as his friend Karl – convicted for his activities and imprisoned for one and a half years. Since he was released Gabriele has seen her father a few times. **“On the street ... and he asked me if I want to move in with him because he is aware that I live on the street and he said ‘you can move in with me, but you have to let me fuck you and you have to prostitute yourself for me’ ...”.**

Gabriele had her first experience with drugs when she was 14 years old.

At the age of 16 she prostituted herself for the first time. She tells about her feelings in this situation: **“Disgusting ... it was so repulsive ... so ... that's what you have to do ... and he pays for it so you have to do him the favour, and he pays money for that ... then he wanted to do it without condom and so on .. no I don't do that ... then he hit me ...”.**

²²³ The following case story was made up by the both writers Carolin Tener and Tina Ring from material of their survey: Tener/Ring (2006): Auf dem Strich. Mädchenprostitution in Wien. (On the streets. Girls prostitution in Vienna.) Milena, Vienna

Nina²²⁴

Nina grew up with her biological parents until she reached the age of four. As her father died, Nina's life changed completely. As her mother was an alcoholic, she lived with her grandmother from that time on. When Nina was 12 years old, her grandmother died. That was a very painful loss for her. **"...when my grandma died, I felt that my life was over..."** Nina says that she lost control from that time on. Nina went back to her mother, who had married again in the meantime and had two other children. Her mother's new partner – as other family members too – attacked her violently.

Nina doesn't like to be reminded of her school time. **"Yes, they always messed around with me...scurvy sod and such things..."** Nina finished the 9th school-year²²⁵, but she broke off her apprenticeship shortly before the end. Nina's puberty was characterized by auto aggressive behaviour – she said that she had bulimia and harmed herself. She regularly had conflicts with her step-father that often resulted in violence. Nina ran away from home several times and says that her parents refused to let her come back home when she reached age 14. **"...they threw me out and then I took an apartment...a very cheap one...I had to take an apartment, because I didn't want to live on the street...I let a 14-year-old junkie live at my place, who has approached me at Karlsplatz²²⁶ when I was on the way to my regular haunt..."** Through this friend, Nina made first experiences with drugs. Nina can barely remember her first time when she had to prostitute herself, as the 15-year old girl was full with drugs at that time: **"...he²²⁷ has approached me and showed me how to prostitute myself and stuff like that...and then I tried it. It was just a gruesome feeling and I was so full with drugs that I didn't realize what was happening...because you can't do such things when you are sober...at least I can't...I could never prostitute myself the way I am now...I couldn't..."**

Nina who prostitutes herself for five years now, describes her punters in the following way: **"...most of them actually also have child's safety seats in the back...absolutely ordinary family men...most of them were Turkish, but I didn't go with them...actually absolutely ordinary older men...the whole range of society ...people, who you would never think of as going on the streets...just like very ordinary men...they simply go for younger girls. I think, that they, I don't know, maybe feel inferior and then feel proud when having a 14 year-old girl in the car...that's what I rather believe...that this is their problem...or that they do not get sex at home...or that their claims are not satisfied at home...most of them get violent by the time...there are a lot of violent punters...I mean, 70 percent of them are violent and 30 percent are actually really nice men...where you think...young men...who would never go on the streets and buy a girl...in the 2nd district²²⁸ they were actually nicer than there²²⁹..."**

²²⁴ The following case story was made up by the both writers Carolin Tener and Tina Ring from material of their survey: Tener/Ring (2006): Auf dem Strich. Mädchenprostitution in Wien. (On the streets. Girls prostitution in Vienna.) Milena, Vienna

²²⁵ In Austria, the compulsory education takes 9 years

²²⁶ Place in Vienna that is known for its drug scene

²²⁷ The junkie living at her place

²²⁸ Vienna consists of 23 districts

²²⁹ In the 15th district

Possible under aged girl seen in red light district in Vienna, beginning of December 2007²³⁰

A girl wearing lots of brash make-up has been seen by some SOPHIE-street workers in a red light district in Vienna at the beginning of December 2007. She was standing there in a group together with other sex workers from Bulgaria.

This was one of the rare suspicious cases where SOPHIE street workers may have found a minor working in the prostitution area. While the group of the Bulgarian women was around it was impossible to get in contact with the girl, though she was keeping eye contact with the street workers and was listening attentively, but she preferred not to speak at all.

While standing with these women, there was no chance of bringing up the topic of minors also it would have been a security risk to talk about it at this moment. It seemed as if the group had been watched by the men standing nearby.

On the next day, the team talked about what they had seen and what they should do next so they could help the girl without endangering her. On the same day, delegates from ECPAT, the police and the Ludwig Boltzmann Institute for Human Rights discussed what the Street workers had observed the evening before. They intensively talked about what would be best for the girl and in what way any interventions would affect her.

They decided to get in touch with the "Drehscheibe"²³¹ and make a report to the police. A report to the authorized police station was depraved as it has already been by the SOPHIE team, because a police operation with uniforms and police cars may have scared the group, they would have gone underground and the girl would disappear.

So SOPHIE got in contact with the Drehscheibe. During this phone talk it became explicit that neither the Drehscheibe nor the youth welfare service of this district had been mandated to work on the streets. They only deal with children and youth if they decide to go there by themselves or if the police drop them off.

So the question now was, how they could intervene without revealing SOPHIE as the denouncing institution. This was important since SOPHIE needs to be trusted by the women on the streets, so there work could be affective. The needed to stay in touch so they would either find the girl or making social helping possible.

A few days later the possible under aged girl has been seen again, in the same area in a similar situation. Thereupon the police gave instructions to anonymously follow the hint, which has been done.

Some time later one of the SOPHIE street workers reported that she had seen the girl at the STD-outpatient clinic. This has been discussed at the next meeting together with some workers from the STD-clinic. They underlie doctor-patient confidentiality. So the conclusion is that this girl/young woman has a control card for prostitutes, which means according to her documents she should be over 18 years of age.

Within the SOPHIE team they clarified how to handle similar cases in the future and an internal guide has been compiled. A National Referral System would make things a lot easier in these areas.

²³⁰ This case scenario has been reported by street workers from Volkshilfe Wien- SOPHIE

²³¹ The Drehscheibe is an institution of the MA 11 – youth welfare Vienna, taking care of unaccompanied foreign children

Asylum Area²³²

During their asylum procedures, two young Nigerian women have become acquainted with Gerhard Wallner who is appointed as a legal representative for asylum seekers in asylum procedures by the NGO "Exit"²³³. Joana Adesuwa-Reiterer from "Exit" knows more about the story of the two women: they were brought to Austria under false premises and they were told that they would have to work off their debts accumulated through the journey – 40.000-45.000 € for each of them. Under compulsion they were told to engage themselves in prostitution as this was the best way to pay off the debts in a relatively short-time period. At the moment of entering Austria both women were still minors, by now one is 22 and the other one 24 years old.

The girls gained confidence in Joana Adesuwa-Reiterer and then Gerhard Wallner and finally told their stories and talked to them about their problems here in Austria and the problems their families face in Nigeria (threats and attacks on family members and on the family's house). They were intimidated by using Voodoo and are also being prosecuted and threatened here in Austria. Many times their accommodation facilities were located and "Madam", the woman the girls have to work for and who receives the girls' income, sent them back to walk the streets. They were even detected after LEFÖ²³⁴ had accommodated them in one of their secret flats. Then they were offered to be left alone if they paid off 20.000€ straight away. Both young women have also made complaints to the police with the support of "Exit".

The girls have the telephone number of the responsible police officer of the Task Force on Trafficking in Human Beings and are allowed to call any time when being threatened.

If the Federal Asylum Agency declares their cases as cases of Trafficking in Human Beings, then the girls have a chance to receive the status of recognised refugees in Austria, as being affected by Trafficking in Human Beings might develop as a reason for being granted asylum. At the moment, the procedure is still running.

²³² Information stems inter alia from Gerhard Wallner, Diakonie (Laura Gatner – house), telephone call March 10th 2008

²³³ EXIT is a non-profit organization based in Vienna, Austria, aimed to contributing in eradicating female trafficking and violence against women and children from Africa. See http://ngo-exit.com/index.php?option=com_content&task=view&id=34&Itemid=58, last access 27.03.08

²³⁴ Lefö runs several flats for the Accommodation of trafficked women, see www.lefoe.at

Further relevant instruments regarding children`s rights instruments

Regarding the international fight against the economic exploitation of children, we would like to refer to the detailed regulations of the below-mentioned **ILO Conventions** as well as to relevant reports compiled by the Austrian government.

Regarding child trafficking, the regulations of the OPSC are supplemented by the **Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, as an amendment to the UN Convention on Transnational Organized Crime (UN Protocol on Trafficking in Persons)**, as well as the **Council of Europe Convention on Action against Trafficking in Human Beings**. Both have been ratified by Austria (see below).

By means of the **Hague Adoption Convention**, international adoptions shall be carried out for the benefit of the child and with the protection of the child`s basic rights, and, moreover, the kidnapping and sale of children as well as child trafficking shall be prevented.²³⁵ Regarding the status of the implementation of

these regulations, there is no information in the state report.

See State report

The following instruments regarding the child`s rights have been signed or ratified by Austria:

- Council of Europe Convention on Action against Trafficking in Human Beings: ratified in October 2006
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, as an amendment to the UN Convention on Transnational Organized Crime (Palermo Protocol): ratified and effective since 12/2005
- ILO- C138: Minimum Age Convention, 1973, ratification: 2000
- ILO- C182 Worst Forms of Child Labour Convention, 1999- ratification, December 2001
- Forced Labour Convention, 1930 (No. 29)- ratified 1960
- Abolition of Forced Labour Convention, 1957 (No. 105)- ratified 1958
- Stockholm Declaration and Agenda for Action, signed 1996
- Yokohama Commitment, signed 2001
- UNGASS Children – “A World Fit For Children”, May 2002

Austria`s agreement on the final document of the UN General Assembly Special Session (UNGASS) on Children 2002 resulted in the design of the “Young Rights” 2003/2004 national action plan (NAP)²³⁶. This National Action Plan (NAP), which was unanimously decided on by the federal government`s Council of Ministers in November 2004, also included a passage on exploitation/child trafficking for the first time.

²³⁵ See http://www.noel.gv.at/Gesellschaft-Soziales/Familien/Adoption/Adoption_Besonderheiten.wai.html , last access 26.02.08

²³⁶ See <http://www.kinderrechte.gv.at/home/in-oesterreich/nap---nationaler-aktionsplan/content.html> , last access 27.03.08