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LANZAROTE CONVENTION

Council of Europe Convention on the protection of children
against sexual exploitation and sexual abuse

Replies to the general overview questionnaire

AUSTRIA

Replies registered by the Secretariat on 31 January 2014

Introduction:

The replies to this questionnaire were collected by the Federal Ministry of Justice. The following state bodies/agencies contributed to responding to this questionnaire:

- the Federal Ministry for European and International Affairs (FMEIA)
- the Federal Ministry of Economy, Family and Youth
- the Federal Ministry of the Interior
- the Federal Ministry of Labour, Social Affairs and Consumer Protection
- the Federal Ministry of Health
- the Federal Ministry for Education, Arts and Culture
- the Austrian Development Agency (ADA)
- the Austrian Child Protection Centres
- the ombudspersons' offices for children and adolescents
- the NGO "End Child Prostitution Child Pornography and Trafficking of Children for Sexual Purposes - Austria" (ECPAT-Austria).

Question 1:

Lit. a:

With respect to the term "child" which, for the purposes of the Lanzarote Convention, is used in relation to persons under 18 years of age, several concepts used in Austrian law must be explained in more detail. According to Section 74 paragraph 1 subparagraphs 1 and 3 of the Austrian Criminal Code (*Strafgesetzbuch - StGB*), a minor (*Unmündiger*) is a person who did not yet complete the fourteenth year of one's life; an underage person (*Minderjähriger*) is a person who did not yet complete the eighteenth year of one's life. A juvenile (*Jugendlicher*) is a person who has completed the fourteenth year, but not yet the eighteenth year of one's life (Section 1, subpar. 2 of the Juvenile Courts Act [*Jugendgerichtsgesetz – JGG*]). Pursuant to Section 4 par. 1 of the Juvenile Courts Act a person under the age of 14 cannot be held responsible under criminal law, i.e. such person cannot be arrested and juvenile criminal law is not applicable; if need be the youth welfare office may take measures. At the age between 14 and 18 a defendant is subject to juvenile criminal law and is deemed to be a juvenile under the Austrian penal system."

Section 21 par. 2 of the Civil Code (*Allgemeines Bürgerliches Gesetzbuch*) provides for the same definitions of minor and under age person as Section 74 subpar. 1 and 3 of the Criminal Code.

According to Section 4 subpar. 1 of the Federal Child and Youth Services Act (*Bundes-Kinder- und Jugendhilfegesetz 2013 – B-KJHG*) “children and adolescents” are all persons who have not completed the eighteenth year of their lives.

Lit. b:

In general the rights provided to children in the Code of Criminal Procedure (CCP) are accorded to all persons who are not proven to be adults.

Lit. c:

Under Austrian criminal law the uniform protective age for self-determined, consensual sexual acts by minors is fourteen years. However, the law provides for a very extensive criminal protection of persons under the age of 18 years from sexual exploitation (see e.g. Sections 207b, 214, 215, 215a, 216, 217 of the CC).

Question 2:

A discriminatory implementation of the Convention is prohibited for the following reasons due to the Austrian constitutional law:

1. On the one hand, this is due to the general equality principle (*Gleichheitsgrundsatz*):

Under Article 7 par. 1 of the Austrian Constitutional Law (*Bundes-Verfassungsgesetz; B-VG*) and Article 2 of the Basic Law on the Rights of Citizens (*Staatsgrundgesetz; StGG*) all citizens are equal before the law. This equality principle guaranteed by constitutional law prohibits unobjective differentiations and calls for general objectivity by the legislature. For the executive, the equality principle contains an obligation to apply all legal provisions vis-à-vis all citizens in the same manner and prohibits the use of arbitrariness.

There is also a general prohibition against arbitrariness and a general requirement of objectivity among foreigners, since according to the constant case-law of the Austrian Constitutional Court (*Verfassungsgerichtshof*), Article I of the Federal Constitutional Law for the Implementation of the International Convention on the Elimination of Racial

Discrimination 1973 (*Bundesverfassungsgesetz zur Durchführung des Internationalen Übereinkommens über die Beseitigung rassistischer Diskriminierung*), Fed. Law Gazette no. 390/1973, contains a prohibition for both the legislature and executive to differentiate between foreigners without a reasonable justification. The equality principle is thus extended, requiring in equal treatment of all foreigners.

2. On the other hand, children enjoy additional rights specifically granted to them:

The protection of any child against sexual abuse and sexual exploitation is enshrined in the Federal Constitutional Law on the Rights of Children (*Bundesverfassungsgesetz [BVG] über die Rechte von Kindern*), Fed. Law Gazette vol. I no. 4/2011. Under Article 5 every child has a right to be brought up without violence. Sexual abuse is explicitly prohibited, and every child has the right to be protected against economic and sexual exploitation. Every child who is a victim of violence or exploitation, is entitled to adequate compensation and rehabilitation. Special attention should be paid in this context to the fact that Article 1 of the Federal Constitutional Law requires public and private institutions to give precedence to the wellbeing of the child with regard to all measures concerning children.

3. The wording of the obligation enshrined in Article 2 of the Council of Europe Convention also corresponds to the accessory prohibition against discrimination of Article 14 of the Convention, which is of constitutional standing in Austria. In conjunction with the right to sexual self-determination enshrined in Article 8 of the Convention, this prohibition against discrimination also guarantees a certain degree of protection vis-à-vis the legislature and the executive.

4. Finally, mention must also be made of the protection against discrimination provided for in Articles 20 and 21 of the Charter of Fundamental Rights of the European Union, which applies to the implementation of EU law. Article 20 loc. cit. stipulates that everyone is equal before the law. Under Article 21 loc. cit. any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited. In its ruling of 14 March 2013, U 466/11, U 1836/11, the Austrian Constitutional Court held “that the rights guaranteed by the Charter of Fundamental Rights can also be asserted before the Constitutional Court as rights guaranteed by constitutional law and within the sphere of application of the Charter of Fundamental Rights serve as a yardstick in proceedings for a general judicial review of statutes or administrative acts regarding their constitutionality (*Normenkontrolle*). This is certainly the case where the respective guarantee of the Charta of Fundamental Rights is similar with regard to its

formulation and specification to the constitutionally guaranteed rights of the Austrian Federal Constitution.

5. In summing up, it can therefore be said that there is an effective protection in Austria against any discriminatory implementation of the Convention, a protection that can be enforced in particular by relying on the rights guaranteed by the Austrian constitutional law.

Question 3:

Lit. a:

1. Legislative measures:

The 10th clause of the Austrian Criminal Code (*Strafgesetzbuch - StGB*) contains offences against the sexual integrity and self-determination (Sections 201 to 220b).

In the Austrian Code of Criminal Procedure (CCP) (*Strafprozessordnung – StPO*) there are numerous provisions to protect child victims of sexual abuse and sexual exploitation during the criminal proceedings.

A means to protect children in the Austrian Code of Penal Records (*Strafregistergesetz 1968 - StRegG*) constitutes the right for the youth welfare service or for education authorities to obtain information from the police about convictions for sexual crimes and coherent suspensions from severe occupations related to the intended engagement of individuals at child care facilities, schools or other educational establishments (Section 9a para 2). Starting with the beginning of 2014 each employer in the field of supervision, care, training and schooling of persons under age has the right to request a criminal record including these data from every future employee. Persons in search of work therefore have the duty to cooperate to get salaried (Section 10 para 1a and 1b).

Measures to prevent dangers for the public safety and family violence are provided for in the Security Police Law (*Sicherheitspolizeigesetz – SPG*).

A broad range of measures in the Civil Code (*Allgemeines bürgerliches Gesetzbuch - ABGB*) in combination with the offers and measures in the Federal Child and Youth Service Act 2013 (*Bundes-Kinder- und Jugendhilfegesetz – B-KJHG*) ensures the protection of and assistance to child victims of sexual abuse and sexual exploitation.

2. Other measures:

Most of the publicly financed 400 family counselling centres in Austria give guidance for men, women and young people on how to live responsible sexuality and they also support parents in sexual education of their children.

Projects conducted by NGOs to prevent sexual abuse such as trainings for teachers, pupils and youth workers on pornography on the internet are financially supported.

There is information in order to support sexual education for parents, teachers and young people themselves: Brochures like "Love; Sex and so..." (<http://m.bmwfj.gv.at/Jugend/Gesundheit/Documents/Love%20Sex%20und%20so%202012.Pdf>), "Sexuality on the internet" (a brochure for parents; <http://m.bmwfj.gv.at/Jugend/Gesundheit/Documents/Elternratgeber%20Sexualität%20u.%20Internet.pdf>); "No safe place - (K)ein sicherer Ort. Sexuelle Gewalt an Kindern" (a brochure on sexual violence is widely distributed among teachers, child minders, youth workers etc.; <http://www.gewaltinfo.at/uploads/pdf/KSO-2013.pdf>); "Gewalt gegen Kinder und Jugendliche. Leitfaden für die Kinderschutzarbeit in Gesundheitsberufen" these guidelines for doctors should support to detect any form of violence on children). There is also information on websites (of the Federal Ministry of Economy, Family and Youth) (www.familienberatung.gv.at; www.eltern-bildung.at) about sexuality and on sexual violence within the family or via internet on (www.gewaltinfo.at). Remedial work with young sexual offenders is financed through the youth welfare system and by the criminal justice system.

Lit. b:

Following the combined 3rd/4th State Report on the implementation of the CRC the federal Government set up a comprehensive Children Rights Monitoring mechanism. To this effect, a Children Rights Monitoring Board was established in 2012 in charge of analyzing the Concluding Observations of the CRC Committee in detail and preparing suggestions for improvements in relevant fields, in accordance with the Convention on the Rights of the Child and the Constitutional Act on the Rights of Children. In the framework of this monitoring mechanism twelve thematic working groups (PG 1 - 12) have started to work. One working group (PG 7) is dedicated to the further repression of any violence against children and infringements of their sexual integrity.

Lit. c:

1. On 1 January 2013 the Youth Check (outcome-oriented impact assessment) went into effect. The law stipulates that all new legislative and regulatory proposals be evaluated for the potential consequences they could have for children, young people and young adults. Subject of the evaluation is inter alia whether the legislative or regulatory proposal essentially affects children's protection, support to health, progress and development (for further details see: <http://www.bmwfj.gv.at/Jugend/Jugendstrategie/Jugendcheck/Seiten/default.aspx>).

2. For the last years the focus of the attention has been the adoption of child-friendly legislative and other measures, such as the increase of penalties for offences against the sexual integrity of children or for violent crimes, the introduction of provisions to support children as victims of criminal offences during the criminal proceedings (e.g. psychosocial and legal assistance to victims).

Question 4:

Lit. a:

1. The Federal Ministry of Youth involves children in decision making processes via their representations but not directly.

The "Austrian National Youth Council" (OJV) which is set up by law and financed publicly represents 2,9 million children and young adults. It has to be involved in all political projects like all other social partners. The Youth Check (outcome-oriented impact assessment) makes it easier for youth organisations, in particular the National Youth Council, to become involved in the legislative process. OJV provides young people with a strong collective voice towards policy and decision-makers at all levels and actively advocates for their interests and, OJV in particular focuses on promoting active participation of young people in decision-making processes. In cooperation with partner institutions such as ECPAT and the Austrian Centres for Child Protection, it is involved in the drafting of state policies, programmes or other initiatives also concerning the fight against sexual exploitation and sexual abuse of children.

As such OJV was invited to the Coordination Committee set up within the Federal Ministry of Economy, Family and Youth to discuss and coordinate issues of the optional protocol to the CRC on child trafficking, child pornography and child prostitution (OPSC). OJV issued an

expert opinion in October 2012, drawing special attention to the specific needs of children who have suffered from (sexual) abuse in the circle of trust.

Another important partner in discussing measures relevant to the OPSC is ECPAT. ECPAT Austria's statute foresees full participation of youth at all governance and program levels. A representative of the CYA (Committee for Youth Action) is full member of the ECPAT Austria Board. The CYA is an independent informal body and is comprised of volunteer youth who support and supplement the work of ECPAT Austria. I.e. the CYA was very actively involved in developing and conducting public awareness raising activities in 2009 and 2010 in the framework of the campaign "Stop Sex-Trafficking of Children and Young People", a cooperation project of the ECPAT network and The Body Shop (private sector cosmetics company).

Since January 2013 ECPAT Austria is implementing a 2-years Daphne project, "Make-ITSafe Peer Experts", which aims at building capacity on young people from schools and youth centres, enabling them to become experts for IT/social media in order to pass the knowledge to other peers and/or raise awareness among peers on internet/social media safety issues.

2. The national strategy for the implementation of a "violence free school" has been developed and will be continued by the Federal Ministry for Education.

Lit. b:

The child victim's views, needs and concerns are taken into account via psychosocial and legal victim support measures taken in the course of court proceedings which is given obligatory for free. The youth welfare authorities have to take account of the best interest of the child and give due weight to the opinion of the child when providing supporting measures.

Question 5:

Lit. a:

On the basis of the Youth Welfare Law 1989 ombudspersons offices for children and adolescents were established in all nine regional governments (*Laender*). With the new Federal-Children and Youth Service Act 2013 their responsibilities and role have been made more concrete. The regional governments have to secure sufficient funds and freedom in fulfilling their duties. The ombudspersons are exempted from accountability to other administrative bodies. As an independent ombudsman office, they represent and protect the

interests of children and adolescents in the law making process, provide counselling on questions and problems of concern to children and adolescents and give information on children's rights. The responsibilities are described more or less similarly in the nine regional laws as follows:

- To counsel children, persons legally responsible for a child and legal guardians in all matters relating to the position of the child and the tasks of the persons legally responsible for the child;
- To act as a mediator between youth welfare institutions, the parent(s), the school, the kindergarten and the children and adolescents;
- To organize information events on issues of special importance to children;
- To evaluate and initiate legal provisions, regulations and other legal measures from the point of view of children and adolescents;
- To make recommendations to improve the living conditions of children and adolescents;
- To suggest special inspections of private youth welfare institutions in case of grievances;
- To protect the interests of children and adolescents in all planning and research projects.

Besides, the ombudsperson offices the OJV and child protection centers (see question 4) are important independent institutions in charge of promoting and protecting the rights of the child.

Lit. b:

1. The Austrian Federal Office of Criminal Investigation keeps the "Police Crime Statistics", which contains data about the number of offences and information about perpetrators and victims of violence, disaggregated according to gender, age and relationship of victim and perpetrator.

2. Information on judicial convictions can be found in the Judicial Criminal Statistics (Gerichtliche Kriminalstatistik) which are published by Statistik Austria. Furthermore data is published in the criminal justice report (Sicherheitsbericht 2012) which includes figures concerning the offenders as well as the victims.

3. The statistics of the youth welfare authorities contain data about the number of interventions taken in order to protect the interests and safeguard the well-being of the child (including domestic/sexual violence), age and gender of the involved children, legal

circumstances but not the concrete reason of their interventions. The annual statistics of the NGO-child protection centres can be collected in reports on violence. The focal point on violence (within the Federal Ministry responsible for Family and Youth) as national partner to the Council of Europe and World Health Organization does not collect data.

4. One of the working groups (PG 1) of the Children Rights Monitoring Board is setting up a data collection system about the life situation of children in Austria in variable contexts according to international comparable criteria. After analysing the collected data, an annual updated Factbook "Children in Austria - Kinder in Österreich" is going to be published.

Lit. c:

According to Section 65 in combination with 67 of the Security Police Law (*Sicherheitspolizeigesetz – SPG*) a person's DNA may be compiled in the course of identification procedures if the person concerned is suspected of having committed a dangerous assault (e.g. a sex offence) and if it can be expected with respect to this offence or the personality of the person concerned that he would leave traces when committing further dangerous attacks which would make it possible to identify him on the basis of genetic information compiled.

The competent authority in Austria is the Austrian Federal Office of Criminal Investigation (*Bundeskriminalamt - .BK*).

Question 6:

Lit. a:

1. There is a working group responsible for the coordination and discussion of issues concerning the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (OPSC). Headed by the Federal Ministry for Family and Youth, the Ministries for the Interior, Justice, Education and Women's Affairs as well as representatives of the Laender and NGOs (ECPAT, Youth representation ...) and the Internet Service Providers (ISPA, ÖIAT) are members. Another working group focuses on the prevention of sex tourism. In this working group besides ECPAT the travel companies are the most important partners. The third working group within this ministry dealing with child trafficking issues coordinates the work among relevant ministries, Laender, youth welfare and NGOs (ECPAT, IOM, UNICEF ...).

2. Following the combined 3rd/4th State Report on the implementation of the CRC the federal Government set up a comprehensive Children Rights Monitoring mechanism. To this effect, a Children Rights Monitoring Board was established in 2012 in charge of analyzing the Concluding Observations of the CRC Committee in detail and preparing suggestions for improvements in relevant fields, in accordance with the Convention on the Rights of the Child and the Constitutional Act on the Rights of Children.

In the framework of this monitoring mechanism twelve thematic working groups (PG 1 - 12) have started to work. Among others, Data collection, Enforcement of the best interests of the child principle, participation, child health-monitoring, prevention of violence (also on the internet) and victim protection are subjects of main concern.

3. At the local level, the "Platform against domestic violence" - which is a long-term-program (since 1993) of the Federal Ministry of Family and Youth - is a network of experts from child protection centers. The aim of the platform is to network with teachers, child minders, doctors, police, etc. in order to better detect victims of violence and to protect them in the best possible ways. Prevention of sexual violence is also an important issue of the network.

Lit. b:

The above mentioned working groups aim at enhancing cooperation between relevant stakeholders with a view to better preventing and combating sexual exploitation and sexual abuse of children.

The Network of the Austrian Child Protection Centres is active in the prevention of sexual violence and sexual abuse of children. Besides their primary function, they are also financially supported for workshops in schools, seminars with teachers and parents and awareness raising on the subject. The Network is an important partner of the state authorities in the development of laws and measures concerning the subject.

Lit. c:

1. Men Counselling Centres are financially supported among others for special programs for young perpetrators of sexual violence; youth welfare authorities can send young perpetrators to these programs.

2. There is a range of partnerships and different forms of cooperation between the Prison Service and private non-profit organizations, e.g. with

- “Männerberatung”- Male Counselling (www.maenner.at), which organization offers for single and group counselling,
- the Probation Service “Neustart” (www.neustart.at) in particular dealing with pre-release preparation,
- Office for Youth and Family (Municipal Department - MA 11) working in the area of transition/release management
- The organization “Drehscheibe (turntable)” offers social educational housing care groups to unattended minor refugees (<http://www.wien.gv.at/menschen/magelf/kinder/drehscheibe.html>)

In the Annex of the "Victim Protection Decree" (ref. No: BMJ-VD41501/0020-VD2/2013), which applies to all persons falling victim to an act of violence, a dangerous threat or an act against their sexual integrity while being detained in an Austrian prison, the respective victim protection organisations in all Federal Provinces (psychosocial and legal process assistance) are listed. There are cooperations with the following institutions:

Weißer Ring [White Ring] (www.weisser-ring.at),

Emergency call for victims (www.opfernotruf.at),

Protection centre against violence (www.gewaltschutzzentrum.at),

Organisation Save the Child - Austria (www.rettet-das-kind.at),

Organisation Lichtblick [Ray of Hope] (www.kindernotruf.at),

Organisation Promente Carinthia (www.promente-kijufa.at),

Organisation Assistance for Children, Parent/Children Protection Centre Carinthia (www.kinderschutzzentrum-kaernten.at),

Social Welfare Association in Carinthia (AVS) (www.avs-sozial.at),

Die Möwe [the sea-gull] -Non-Profit Centre Ltd for Children Protection (www.die-moewe.at),

Organisation Women for Women (www.frauenfuerfrauen.at),

“Kidsnest”-Company Ltd for the Protection of Children + Juveniles (www.kidsnest.at),

Organisation Women Counselling Mostviertel (www.frauenberatung.co.at),

Organisation Assistance for Children and Parents – Centre for Children Protection Linz (www.kinderschutz-linz.at),

Organisation Autonomous Women's Centre (www.frauenzentrum.at),

Operating agency Children Protection Centre WIGWAM (www.wigwam.at),

Children Protection Centre Innviertel (www.kischu.at),

Family Academy of Kinderfreunde [children's friends] Upper Austria (www.kinderfreunde.ee),

Organisation Women's Shelter Linz (www.frauenhaus-linz.at),

Organisation Help Centre for Young Persons, Children Protection Centre TANDEM (www.tandem.or.at),

Organisation Social Centre Vöcklabruck – help for people in need, Helpdesk IMPULS (www.sozialzentrum.org/impuls/),

Institute for Social Welfare - IfS, non-profit company Ltd. (www.ifs.at),

Organisation Emergency Call for Women Salzburg (www.frauennotruf-salzburg.at),

Organisation "Kolping-Family Hallein", women's shelter Hallein, house Mirjam (www.kolping.at/frauenhaus-hallein.html),

Relief organisation Volkshilfe Styria Operating Company Ltd, children protection centre Liezen (www.kinderschutz-zentrum.at),

Organisation Help for Children and Parents – children protection centre Graz (www.kinderschutz-zentrum.at),

Organisation "Save the Child Styria" (www.rettet-das-kind-stmk.at),

Organisation Austrian Kinderfreunde [children's friends], Provincial organisation Styria, children protection centre Upper Mur Valley (www.kinderfreunde-steiermark.at),

Organisation Women's Shelters Styria, organisation for direct help to threatened and abused women and their children (www.frauenhaeuser.at),

Helpdesk TARA (emergency call for women) (www.taraweb.at),

KITZ children protection centre (www.gfsq.at),

Organisation "Women against Rape" (www.frauen-gegen-vergewaltigung.at),

Tyrolean Children Protection Company Ltd (www.kinderschutz-tirol.at),

Organisation EVITA – Helpdesk for women and girls (www.evita-frauenberatung.at),

Organisation Women's Shelters in Vienna (www.frauenhaeuser-wien.at),

Organisation TAMAR, helpdesk for ill-treated and sexually abused women and children (www.tamar.at),

Organisation Information Desk for Men (www.maenner.at),

Organisation LEFÖ - counselling, education and assistance for migrants (www.lefoe.at),

Organisation Vienna Intervention Centre against Violence in the Family (www.interventionsstelle-wien.at),

Organisation Women against Sexual Exploitation of Girls, helpdesk for sexually abused girls and women (www.maedchenberatung.at) and

Organisation Emergency Call, counselling of raped women and girls (www.frauenberatung.at).

In the Remand Prison Vienna-Josefstadt (juvenile department) the organization Male Counselling is employed and their services are purchased for psychotherapeutic single and/or group treatments. An in-house multi-professional team (i.a. including social workers, psychologists, (social) educationalists, and employees from the Youth Justice Work Agency) renders a prior assessment on which measure would be most appropriate in any individual case.

Also in the Penitentiary for Juveniles in Gerasdorf the services of the Organisation “Male Counselling” are purchased for psychotherapeutic single and group treatments after a professional team having assessed the individual case, moreover there are further external psychotherapists (independent/self-employed, without affiliation with any relevant organisation).

Moreover, in cases of juvenile sexual offenders there is close cooperation with the organisation “Neustart” (release on probation with special release requirements and

instructions in the course of pre-release preparation, such as continuation of therapy, etc.), also in cooperation with the competent court of execution.

In case of need, there shall be professional cooperation with the Municipal Department MA 11 in the course of pre-release preparation.

Question 7:

The Austrian Development Agency supports the project "*Don't look away – be aware & report the sexual exploitation of children in travel and tourism!*" (EUR 40.200,- or 14,98% of total costs for 3 years; co-funding by the European Union). The project aims at raising awareness of travellers and the tourism sector and at promoting reporting. It builds on successful campaigns in the past and is implemented by the NGO ECPAT, including ECPAT Austria.

Question 8:

Lit. a:

1st indent:

1. The brochure "Love, Sex and so..." which is distributed via schools also contains some information on sexual violence and where to find more information about the risk of sexual violence under different circumstances, also via the use of new information and communication technologies (www.gewaltinfo.at).

2. The federal ministry for education provides appropriate teaching materials, supports school projects to prevent sexual abuse in cooperation with experts and organizes trainings for e.g. teachers, school psychologists.

Since sex education must be seen as a part of children's overall education, the cooperation of their parents is of vital importance. Schools have a responsibility for rounding out, deepening, and if need be correcting children's existing knowledge about sexuality.

2nd indent:

1. Information is distributed widely via the website www.gewaltinfo.at. The brochure "No safe place. Sexual violence against children" was sent to judges, kindergartens, teachers, street

workers etc. Furthermore a guideline for the medical sector to detect (sexual) violence was sent to health workers and hospitals. A new brochure on "How to detect violence against children and how to react in the best possible way" will be published and distributed in April 2014. This brochure was produced in cooperation with the Council of Europe (illustrations are donated by the CoE).

2. In the education and gender sensitive training of youth workers children's rights, sexual education and sexual violence play a core role. Seminars like "Interculturality and Sexuality" are offered and gender sensitive work with boys is promoted in several youth clubs in Vienna and other cities. Workshops and trainings are offered for girls on the protection against (sexual) violence.

3. The federal ministry for education provides appropriate teaching materials, supports school projects to prevent sexual abuse in cooperation with experts and organizes trainings for e.g. teachers, school psychologists.

4. International and national trainings of investigators are conducted to encourage awareness of the protection and rights of children.

- Europol training course in SELM/Germany "Combating the Sexual Exploitation of Children on the Internet"
- Interpol training „Computer Facilitated Crimes against Children"
- Internet investigation training for local Investigator

5. In Austria every future judge and public prosecutor goes through a mandatory four year initial training period. Within the initial training future judges and prosecutors attend special seminars that concentrate on protection and treatment of children. Also, all future judges and prosecutors have to serve a minimum period of two weeks at a victim protection agency or welfare institution. In addition, they receive a particular three-day training course on human rights issues, which also includes the special topic of rights of children.

Continuous training offers a wide range of courses in family law and criminal law, e.g. „Interrogation of victims including minors“, „Access to justice for victims of crime“, „Treatment of traumatized victims“, „Legal and psychosocial process monitoring“ etc.

Members of welfare institutions and victim protection agencies also often act as lecturers in the training period of judges and prosecutors to increase the awareness of needs of children.

3rd indent:

1. Above mentioned brochures and website also inform about indicators and ways to report suspicions to youth welfare authorities. The report of suspicions to youth welfare authorities is obligatory for persons working with children and adolescents in the health, social and educational sectors as well as at courts.

2. Within the initial training future judges and prosecutors attend special seminars that centre on treatment of victims in court as well as on the topics of (sexual) violence against children, paedophilia and pedosexuality or crisis management. These seminars are very well frequented by members of the courts and by public prosecutors.

Judges and public prosecutors are also given the possibility to participate in a number of international trainings as provided by e.g. ERA and EJTN concerning the mentioned topics, for example on fighting cybercrime and child pornography on the internet, sexual violence on minors, crimes with vulnerable victims and dealing with victims of sexual violence. These seminars also offer the opportunity to enhance cross-border cooperation between judges and prosecutors.

Lit. b:

1. All the above mentioned information is also directed towards the general public. It is distributed for free via the website of the ministry: www.bmwfj.gv.at

The Website www.gewaltinfo.at describes inter alia indicators of sexual violence, law, and helplines etc. (<http://www.gewaltinfo.at/fachwissen/formen/sexualisiert/>, http://www.gewaltinfo.at/hilfe-finden/gewalt-erkennen/sexuelle_gewalt_erkennen.php).

The brochures have been sent to the target groups along with a letter which should encourage recipients to support the work preventing (sexual) violence against children. Besides consultation of experts about the usability of content and presentation of the material no formal assessment of the impact has been done.

2. The federal ministry for education published a guideline “Sex education in school” in order to promote sex education in the school classroom.
<http://www.schulpsychologie.at/psychologischebrgesundheitsfoerderung/sexualerziehung/>.

3. In the supervised visits, which are financed by the Federal Ministry of Labour, Social Affairs and Consumer Protection (BMASK), the emphasis lies on securing the child’s wellbeing and the prevention of violence. As the specific requirements and necessary

qualifications in respect of sensitization and dealing with cases (of suspicion) in the context of violence are not yet enshrined in the Austrian Law, the BMASK has financed the elaboration of a curriculum and a training course based thereupon.

Starting in November 2013, the second training course in respect of sensitization and dealing with cases (of suspicion) of domestic violence, sexual abuse and other severe cases – financed by the ministry – will be conducted for persons who supervise contacts of low-income divorced or separated parents (BesuchsbegleiterInnen) to their children in ministry-sponsored organisations.

Lit. c:

Section 282 par. 1 of the CC penalizes the incitement to commit a punishable offence on the one hand, and to express approval of an already committed criminal act on the other hand. If the offender has incited to commit a particular concretized criminal offence, he/she, depending on the respective penalty range, may be criminally liable as an inducing offender under Section 12, 2nd case of the CC, in conjunction with the respective provision of the criminal law, as well as under Section 282, par. 1, 1st case of the CC.

Question 9:

Lit. a:

1. According to Section 220b of the CC (suspension from occupations) the court has to exclude the perpetrator of a criminal offence against the sexual integrity and self-determination of persons under age, who at time when the offence was committed exercised or intended to exercise a gainful employment or a voluntary activity in an association or other institution which includes the education, schooling or supervision of persons under age or other intense contacts with persons under age, from exercising these or comparable activities for a duration of at least one year up to five years, if there is a danger that the perpetrator would otherwise, by exploiting an opportunity offered by this activity, commit further criminal offences of that kind entailing not only light consequences.

In certain cases the ban has to be pronounced for an indefinite period of time (e.g. recidivism of the perpetrator during the time of the ban). The person who exercises an activity knowing that he/she was banned from its exercise is to be sentenced to imprisonment of up to six months or a fine of up to 360 daily rates.

2. In the course of any recruiting procedure for positions in the federal service and the state service (e.g. teaching staff) the personnel administration has to check the applicant's criminal record information. If recruitment is for positions in institutions providing care for children or young people or education or teaching of children or young people it is mandatory to seek additional information on sex offenders (Section 9a Code of Penal Records *Strafregistergesetz 1968*) which would include notice of specific orders of the court to refrain from certain activities (Section 3 par. 4 to 6 *Vertragsbedienstetengesetz 1948 idF des Bundesgesetzes Federal Law Gazette.vol. I no. 120/2012*).

3. According to Section 8 par. 3 of the Federal Child and Youth Services Act the child and youth services authority is allowed to obtain information about convictions for sexual crimes and coherent suspensions from occupations related to the intended engagement of individuals who should look after children and adolescents.

4. Starting with the beginning of 2014 each employer in the field of supervision, care, training and schooling of persons under age has the right to request a criminal record including these data from every future employee. Persons in search of work therefore have the duty to cooperate to get salaried (Section 10 para 1a and 1b of the Code of Penal Records).

5. The provisions concerning the expungement of convictions can be found in the *Tilgungsgesetz 1972 (TilgG 1972)*.

If someone has been convicted only once, according to Section 3 *TilgG 1972* the period of expungement amounts to five years, if he was sentenced to a maximum of one year imprisonment or only to a fine, ten years if he was sentenced to a term of imprisonment of more than one but not more than three years and fifteen years if he was sentenced to more than three years in prison.

According to Section 4 *TilgG 1972* the period of expungement extends if someone is finally convicted before one or more prior convictions have been expunged. In these cases the expungement of all convictions only occurs together.

According to Section 4a *TilgG 1972* the period of expungement doubles in case of a conviction for an offense under Section 201, 202, 205, 206, 207, 207a or 207b of the Criminal Code (*Strafgesetzbuch*) to an unconditional imprisonment. In case of a conviction for another sexually motivated crime according to the 10. clause of the Criminal Code the period of expungement extends by half.

Sentences to life imprisonment cannot be expunged and also eliminate the expungement of all other convictions (Section 5 TilG 1972). In equal measure any sentence for a sexually motivated crime according to the 10. clause of the Criminal Code to a term of imprisonment of more than five years principally cannot be expunged.

Lit. b:

1. As above-mentioned, the ban according to Section 220b of the CC applies not only to gainful employment but also to voluntary activities that are exercised in an association or other institution.

2. There is no obligatory screening of candidates to voluntary activities as voluntary activities should not be handicapped by formalities. Organizations occupying voluntary workers rather take care of the awareness, education and personality of their voluntary staff. These organizations have also got the opportunity to ask candidates to show them a criminal record including additional information about convictions for sexual crimes and coherent suspensions from occupations, if their work will primarily concern supervision, care, education, training and schooling of persons under age (Section 10 para 1a and 1b of the Code of Criminal Records).

Question 10:

Lit. a:

1. Men counselling centres, which are subsidized by the Federal Ministry of Economy, Family and Youth offer counselling and therapy to all men who fear that they may commit any of the offences established in accordance with the Convention free of charge.

A special programme (LIMES) for young men who committed sexual offenses is also supported by the Federal Ministry of Economy, Family and Youth.

2. The Federal Ministry for Labour, Social Affairs and Consumer Protection has financed the establishment of the federal working committee of victim-oriented anti-violence-programmes in Austria in 2012 together with the Federal Chancellery, Division for Women, as well as its follow-up in 2013. This working committee aims at the development of uniform standards in the work with perpetrators throughout Austria. Basis for the federal working group's activities is a survey on work with perpetrators in Austria, which has already been carried out, registering Austrian-wide data on competences, cases, funds etc.

Additionally, the BMASK supports Men's Counselling Agencies focusing on gender-sensitive work with boys throughout Austria and cooperates with the NGO „White Ribbon“ regarding sensitizing and awareness-raising measures.

Lit. b:

1. In case a suspected person is released from pre-trial detention the court can give him/her the instruction to undergo either a psychotherapeutic or medical treatment, provided that he/she consents to the instruction (Section 173 par. 5 subpar. 9 of CCP). If an offender is sentenced to imprisonment and the court conditionally suspends the execution of the sentence or if a prisoner is granted conditional release, he/she has to be given instructions by court if this is necessary to deter him/her from committing further punishable acts. Provided that he/she consents, the convicted person may be instructed to undergo either a psychotherapeutic or medical treatment (Section 51 par. 3 of CC).

According to Section 56 par. 2 of the Execution of Prison Sentences Act prisoners have to be treated with psychotherapy, if this is appropriate to achieve the objectives of the prison sentence.

2. In general all persons convicted to an unconditional sentence have to be treated in accordance to their personal sentence management plan based on a risk and needs assessment. But there is no treatment plan with remand prisoners because the period of detention is usually too short for sentence planning.

1st indent:

The instruction to undergo a therapy according to Section 51 of the CC can be given to persons subject to criminal proceedings who are released from pre-trial detention, to convicted persons subject to suspended sentences or on conditional release. Section 51 of CC also applies to young offenders who reached the age of criminal responsibility (14 years or older).

The treatment according to Section 56 of the Execution of Prison Sentences Act applies to all prisoners.

2nd indent:

The court can commission an expert to determine which programme or measure is appropriate in the individual case. Besides, before every decision about a conditional release of a perpetrator who was convicted for a criminal offence against the sexual integrity and

self-determination the court has to commission a comment of the centre for the examination and evaluation of violence and sexual offenders (*Begutachtungsstelle für Gewalt- und Sexualstraftäter – BEST*) according to Section 152 par. 2 of the Execution of Prison Sentences Act. Likewise a comment of the BEST has to be commissioned before the decision on whether the perpetrator shall serve the (rest of the) sentence in the form of electronically monitored house arrest (Section 156d par. 3 of the Execution of Prison Sentences Act). When the execution of the sentence in the form of electronically monitored house arrest is ordered, the perpetrator can be given the instruction to participate in an intervention programme.

3rd indent:

There are specific programmes for young offenders. The Youth Justice Work Agency in Vienna (*Wiener Jugendgerichtshilfe*) for instance offers social educational workshops for juvenile offenders in the Remand Prison Vienna-Josefstadt three times a year; in the Penitentiary for Juveniles in Gerasdorf (preventive) sex education classes held by trained sex pedagogues are offered especially for pre-release preparation.

4th indent:

1. The consent of the person concerned is necessary according to Section 51 par. 3 of the CC for the imposition of the instruction to persons subject to suspended sentences or on conditional release.

2. The refusal to undergo a programme is not formally stated as a right of the prisoners but in fact makes participation in practice not promising. Should the convicted juvenile offender not show adequate compliance with therapeutic interventions or programmes it shall be the task of the professional team or services to carry out the necessary motivational work.”

Question 11:

Lit. a:

1. Austria (BMWFJ-Federal Ministry of Economy, Family and Youth, Dept. for Tourism) has been very active in the fight against sexual exploitation of children in tourism for many years. The association of tour operators and travel agencies has signed the "Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism" in 2001.

The national tourism authority (BMWFJ), in strong cooperation with the tourism stakeholders and Non-Governmental Organisations (strongest partner here: ECPAT) set numerous measures for awareness rising. Among these measures, the preparation and distribution of accompanying material for the tourism industry, teaching material to be used in schools and the organisation of train-the-trainer courses were supported.

Trainings for hotel and tourism manager ("Code of contact"= contract concluded by tourism enterprises, committing themselves to fulfil certain conditions) are offered to encourage the participation (private sector) in the elaboration and implementation of policies or programmes to prevent sexual exploitation and sexual abuse of children.

The BMWFJ/Austria initiated the campaign in 2009 together with the Federal Ministry of Economics and Technology and the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth of Germany and the State Secretariat for Economic Affairs (SECO) of Switzerland. In each of the countries a reporting address at the police has been installed and recognition features have been used (e.g. identical video spots). The campaign is ongoing in all the three countries (France and Luxemburg joined the campaign in 2011).

For more than 7 years a round-table (twice a year, participants are tourism stakeholders and other Ministries) has been organised by the BMWFJ twice a year. Among other topics (ethics in tourism, CSR...), the exchange of experiences and new ideas, discussions of further and monitoring ongoing measures against sexual exploitation of children in tourism have been in the focus of these meetings.

Since 2003, ECPAT Austria is the focal point for the international "Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism". In this capacity, ECPAT is in constant exchange with relevant partners from the Austrian tourism industry on different levels: consultancy and training on the implementation of the Child Protection Code; training on child protection in tourism in general; evaluation and monitoring.

ECPAT is also a member of the "Round Table on Ethics in Tourism", hosted by the department for International Tourism Relations under the Federal Ministry of Economy, Family and Youth. In this capacity ECPAT is also the key partner in the Government-driven so called "Trilateral campaign "Don't Look Away" which was initiated by the department for International Tourism Relations in 2010. For the first time, Germany, Switzerland and Austria joint forces in bringing forward a campaign on stopping child sex tourism.

2. The communication technology sector (ISPA, Safer Internet) is member of the Coordination Committee discussing issues of the optional protocol to the CRC on child trafficking, child pornography and child prostitution (OPSC).

Lit. b:

Firm collaboration with various NGO's (ECPAT, Safer Internet) and media have been elaborated to encourage the financing of projects and programmes carried out by civil society. Proceeds of crime cannot be used to finance the projects.

Lit. c:

1. About 40 child protection centres and 400 family counselling centres out of which 94 concentrate on (domestic) violence are financed by the Federal Ministry of Economy, Family and Youth. Further funds are dedicated to the "platform against domestic violence" which also is active in preventing and protecting children from sexual exploitation and sexual abuse. Parental education, which is supported with 1,4 mio/ year, contributes to the prevention of sexual abuse of children by providing effective sexual education.

2. The federal ministry for education supports NGO's to enhance the prevention of sexual exploitation and sexual abuse of children. Current examples include the support of a symposium "The role of resilience factors in the prevention of children and adolescents", which took place in November 2013 and workshops in schools in cooperation with experts.

Question 12:

Lit. a:

The quantity of ordered brochures and information material is taken as an indicator for their effectiveness. The children's ombudsperson's office of Carinthia has commissioned a study to evaluate the notifications to the police about sexual violence, sexual abuse and sexual exploitations about who has notified at what stage and under which circumstances, have the victims been accompanied by professionals or not. The study will be finished in spring 2014.

Some NGOs have evaluated publicly supported projects - i.e. the Man Counselling Centre of Vienna has evaluated their work with perpetrators recently and ECPAT Austria has evaluated the in-flight Video "Child abuse is not a peccadillo" (2001).

Lit. b:

With regard to preventive measures, folders for the civil society are created, e.g. by ECPAT. Measures have also been taken by the prevention department of the Federal Ministry of the Interior.

Campaign: “Don't look away” and HAVEN (Halting Europeans Abusing Victims in Every Nation) – fight against travelling sex offenders.

Question 13:

Lit. a:

1. According to Section 78 par. 1 CCP a public authority or public agency is obliged to make a report to the criminal police or to a public prosecutor service if it learns about a suspicion of a punishable act which concerns its statutory area of activities. According to par. 2 loc. cit. no duty to make a report as defined in par. 1 exists if the report impaired an official activity the effectiveness of which requires a confidential personal relationship, or if and as long as there are sufficient reasons to assume that the act will shortly not be punishable anymore because of measures to make good the damage caused. In any case the public authority or public agency shall do anything necessary to protect the victim or any other person from danger; if necessary, a report has to be made also in the cases of par. 2 (par. 3 loc. cit).

2. In general professionals working in contact with children are bound by confidentiality rules as long as there is not higher interest in the sense of the child or the young adult (between the age of 19 to 21, see also Section 6 Federal Child and Youth Services Act). This rule does not create an obstacle for the reporting of suspicions of sexual crimes as in such cases the higher interest of the child generally requires a report of this suspicion to the competent authorities.

A further exception concerning the above mentioned confidentiality rule exists for requests for information by the courts or the prosecution in criminal proceedings relating to a concrete suspicion that children and young adults have been abused, tortured, neglected or were victims of a sexual abuse.

The report of suspicions to youth welfare authorities is obligatory for persons working with children and adolescents in the health, social and educational sectors as well as at courts. In

case the professionals are bound by confidentiality rules they are exempted in case of reasonable suspicion of sexual violence (<http://www.gewaltinfo.at/recht/mitteilungspflicht/>).

3. Doctors are bound by confidentiality rules, but these rules have exemptions in case of suspicion of sexual abuse of children (Section 54 Abs. 5 und 6 *Ärztegesetz 1998 - ÄrzteG*). Section 54 par. 5 of the *ÄrzteG* obliges doctors to report suspicions of sexual abuse of persons under age gained within the exercise of his/her profession to the security authorities. In case a near relative arouses suspicion, the report of the suspicion can remain undone as long as it is required by the best interests of child and a collaboration with the youth welfare authorities takes place and where appropriate a child protection unit in a hospital is involved.

Lit. b:

1. Everyone who gains knowledge of a criminal offence is authorised to report to the criminal police or Public Prosecutor. Furthermore, everyone who, based on particular facts, can assume that a person is committing or has just committed a crime or that the police are searching for this person in relation to an offence is allowed to apprehend the suspect in a proportionate way. Security authorities are to be informed without delay (Section 80 CCP „*Anzeige- und Anhalterecht*“).

2. There is a set form which should encourage and support any person who knows about or suspects, in good faith, sexual exploitation and sexual abuse of children to report the facts to the competent authorities. It is provided in the above mentioned brochures and also online www.gewaltinfo.at and www.bmwfj.gv.at.

The brochure on "How to detect violence against children and how to react in the best possible way" also will give guidelines to teachers when and whom to report any kind of suspect (see question 8a).

3. A further measure to encourage reporting is the establishment of a reporting unit for child pornography and sex tourism with children (*Meldestelle Kinderpornographie und Sextourismus mit Kindern*) where anyone can report any such perception to a central unit in the Ministry of the Interior/Austrian Federal Office of Criminal Investigations.

Question 14:

1. 94 out of about 400 publicly financed family counselling and child protection centres offer free and anonymous consulting in cases of (sexual) violence. All of them communicate their services by different local and regional means.

2. In 2011 an extra helpline 0800-240 268 for children who have experienced any kind of violence ("Bei Gewalt ruf uns an: Helping Hand(y) Hotline 0800/240 268") was introduced. To encourage victims and also persons responsible for children to consult the helpline (daily from 8-8, anonymous and free of charge) three rounds of advertising had been launched: posters and flyers were distributed in all schools and also print- and online-media were used.

3. With regard to the fight against the sexual abuse of minors it is also possible in Austria to report any such perception to a central unit in the Ministry of the Interior/Austrian Federal Office of Criminal Investigations, which initiates further actions/investigations/proceedings ("reporting unit for child pornography and sex tourism with children", „Meldestelle Kinderpornographie und Sextourismus mit Kindern). In addition, there is an excellent cooperation with private institutions, which are for instance forwarding suspected cases to the Austrian Federal Office of Criminal Investigations.

Question 15:

Lit. a:

1. According to Section 66 para 2 of the Austrian Code of Criminal Proceeding (CCP) all victims who are strongly affected emotionally, which include, without limitation, persons who, by means of a criminal offence, might have been exposed to violence, dangerous threat or infringement of their sexual integrity, have a special standing in the proceedings which has to be respected by the prosecuting bodies ex officio. They are entitled to assistance during the criminal proceedings which shall be granted upon request if and to the extent that psychosocial and legal assistance during the proceedings is required in order to make the stresses and strains of the proceedings bearable for the victim and to guarantee at the same time that the victim can exercise his or her procedural rights. Victims should be informed about their essential rights and the prerequisites for assistance during proceedings at the latest prior to their first interrogation.

With the 1st of January 2014 the right to have a psychosocial assistance during the proceedings has to be granted for victims of infringement of their sexual integrity, who were under the age of 14 (*Sexualstrafrechtsänderungsgesetz 2013*). This helps to strengthen the legal position of child-victims in the proceeding even more. But it has to be said, that in cases where children were involved it was already very common to grant the right of psychosocial and legal assistance.

2. The Austrian social security system offers thorough medical and therapeutical care to child victims and their relatives via the health system and the health insurance respectively. According to the Austrian social security system in case of sickness the following benefits are in place: Treatment by doctors, Hospital care, medicines, medical rehabilitation psychotherapy. These benefits are available not only to insured persons, but also to children of insured persons (until to the age of 18).

Which measures are necessary in a particular case is the decision of the treating doctor. If necessary, psychotherapy is also given to the victim`s relatives (decision of a doctor).

3. Additionally, the Victims of Crime Act (*Verbrechensopfergesetz - VOG, Fed. Law Gazette. No. 288/1972*) has already been providing numerous financial (state) benefits for victims of violent and sexual delicts since decades. Among the numerous assistance benefits regulated by the VOG for sexually abused children, the assumption of costs caused by causal psychotherapy (*Kostenübernahme für kausale Psychotherapien*) introduced in 1999 is to be emphasized especially. In Fed. Law Gazette vol. I. No. 40/2009, another important measure for improving the financial situation of victims was set by the introduction of a lump sum compensation for pain and suffering. Lastly, several compensation sums were markedly raised, application periods were harmonised resp. prolonged and an assumption of costs for a crisis intervention was introduced in the VOG with Fed. Law Gazette. vol. I No. 58/2013.

1st and 2nd indent:

Youth welfare authorities are obliged by their regulations to provide assistance which is adapted to the victims' needs according to age and maturity
<http://www.bmwfj.gv.at/Familie/KinderundJugendhilfe/Seiten/BundesKinderundJugendhilfege setz.aspx>.

3rd indent:

Psychotherapy is also given to the victim`s relatives (decision of a doctor).

Close relatives of child victims of abuse are entitled to benefits of the VOG as well.

According to the standards for the assistance in cases of violence against persons under age, in cases of possible infringements of the sexual integrity of a person under age the assistance during the criminal proceedings is also granted to the reference person of the person under age concerned.

Lit. b:

1st indent:

1. Pre-trial detention must be imposed if a person is urgently suspected of having committed a punishable act and if one of the reasons for detention stipulated by law (risk of absconding, risk of collusion, and risk of committing and/or perpetrating an offence) prevails (Section 173 ss. CCP).

2. On request of the victim a perpetrator can be banned via an interim injunction for a defined period from

1. entering the apartment and its immediate neighbourhood ("Protection against violence in apartments (*Schutz vor Gewalt in Wohnungen*, Section 382b of the Enforcement Code - *Exekutionsordnung*), and/or

2. staying in certain places and from contacting the endangered person - General protection against violence (*Allgemeiner Schutz vor Gewalt*, Section 382e of the Enforcement Code).

2nd indent:

The Civil Code (Section 211 para 1) allows youth welfare authorities to remove a child from the family (persons responsible for their care) when it is in imminent danger. The youth welfare authorities have to apply by court for approval of this decision within eight days.

According to § 211 para 2 of the Civil Code the youth welfare office can also apply for an interim injunction (protection against violence) and its enforcement if the legal representative of the minor fails to apply for it without undue delay.

Lit. c:

1st indent:

The youth welfare law determines the conditions and duration of such removal as always the least severe measure possible has to be chosen (principle of subsidiarity in Section 1 par. 5 of the Federal Child and Youth Services Act). Youth welfare authorities remove children only when it is in the best interest of the child and as long as it is in their best interest.

2nd indent:

The Federal Ministry of Justice has assigned 46 Victim Support Organisations to provide psychosocial and legal assistance to victims and – if necessary and in accordance with the law – the close relatives of the child. 16 Victim Support Organisations are working mainly with children. Legal assistance is provided by lawyers contracted by the Victim Support Organisation that may represent the victim in the criminal proceeding in order to safeguard the victims' rights as well as (if requested) the position as civil claimant (see sec 66 and 67 Criminal Code of Procedure - CCP). Psychosocial assistance is granted by specially trained persons. It includes the preparation of the victim for the possible emotional burden related to the criminal proceeding as well as to accompany the victim as a person of trust to the interrogation and the trial.

Lit. d:

Section 64 para 1 subpar. 4a of the Criminal Code (criminal actions in foreign countries) in conjunction with the principle of legality (Article 18 of the Constitutional Law) ensure that victims of an offence can make this complaint. In this context it is also to refer to the principle of ex proprio motu (Section 2 CCP), which underlines the principle of legality: accordingly, the police and the prosecution are obliged under their legal duties to investigate ex officio each known suspicion of a crime in an criminal investigation proceedings.

Question 16:

Lit. a:

The following criminal offences of the Austrian Criminal Code correspond to the criminal offences of the Convention:

Article 18:

Par. 1:

The offence according to Article 18 par. 1 of the Convention is covered by Sections 206 and 207 of the CC which penalize any sexual contact with minors. Under Section 206 (severe sexual abuse of minors) anyone who has sexual intercourse or performs a sexual act equal to sexual intercourse with a minor, or induces a minor to perform a sexual act or to have a sexual act performed on him/her, is to be sentenced to imprisonment from one year up to ten years. A penalty increasing qualification applies if the offence results in a grievous bodily injury, a pregnancy or the death of the victim or the victim is set into a torturous state for a longer time or is humiliated in a special manner. In case of the death of the victim, the imposition of life imprisonment is also possible.

Section 207 (sexual abuse of minors) penalizes other sexual acts than the ones covered by Section 206 which are performed on minors, the basic penalty being imprisonment from six months up to five years. A penalty increasing qualification applies if the offence results in a grievous bodily injury, a pregnancy or the death of the victim or the victim is set into a torturous state for a longer time or is humiliated in a special manner. In case of the death of the victim, the imposition of life imprisonment is also possible.

Par. 2 1st indent:

Section 201 (Rape) penalizes sexual intercourse or sexual acts equal to sexual intercourse performed by using force, deprivation of liberty or dangerous threat. The offender is to be sentenced to imprisonment from one year up to ten years.

A penalty increasing qualification applies if the offence results in a grievous bodily injury, a pregnancy or the death of the victim or the victim is set into a torturous state for a longer time or is humiliated in a special manner. In case of the death of the victim, the imposition of life imprisonment is also possible.

Who, except of the cases mentioned in Section 201, coerces a person by using force or dangerous threat to perform a sexual act or have a sexual act performed on him/her, is to be punished for sexual coercion according to Section 202 of the CC. The basic penalty is imprisonment from six months up to five years. A penalty increasing qualification applies if the offence results in a grievous bodily injury, a pregnancy or the death of the victim or the victim is set into a torturous state for a longer time or is humiliated in a special manner. In case of the death of the victim, the imposition of life imprisonment is also possible.

If the victim of the rape or sexual coercion is under 14 years of age, the perpetrator is to be punished for both the rape/sexual coercion and the (severe) sexual abuse of minors.

Par. 2 2nd indent:

This provision is implemented by Section 212 of the CC (abuse of a position of authority). Section 212 par. 1 penalizes a person who performs a sexual act, has a sexual act performed on him/her, or with the intent to sexually stimulate himself/herself or a third person, induces the victim to perform a sexual act on himself/herself.

The perpetrator of the offence under par. 1 commits the offence against a person under age who is either related to him/her in degressive line, or his/her adopted child, stepchild or ward (subpar. 1) or against a person under age who is under the perpetrator's education, schooling or supervision (e.g. the perpetrator is a person cohabiting with the child, such as the mother's new partner) and the perpetrator abuses his/her position towards the victim (subpar. 2).

Par. 2 penalizes the same sexual acts as par. 1. However the perpetrator's position is different. Par. 2 applies if the perpetrator commits the sexual act as a doctor, psychologist, psychotherapist, nurse or pastor with a person he/she is in charge of professionally (subpar. 1), as an employee of an educational establishment with a person that is looked after in the establishment (subpar. 2) or as an official with a person entrusted to his/her care (subpar. 3).

Par. 2 applies regardless of the victim's age, whereas par. 1 only applies to persons under age.

If the victim is under 14 years of age, the perpetrator is to be punished for (severe) sexual abuse of minors (Sections 206 or 207) and abuse of a position of authority according to Section 212.

Par. 2 3rd indent:

The behaviour referred to in this provision is covered by Sections 205 and 207b par. 1 and 2 of the CC:

According to Section 205 par. 1 of the CC anyone who abuses a defenceless person or a person, who as a consequence of a mental disease, intellectual disability, deep disturbance of consciousness, or other grave psychic disturbance equivalent to one of these conditions, lacks the capacity either to appreciate the meaning of his/her behaviour or to conform his/her conduct to this appreciation (= psychologically impaired person), by way of abusing this

condition, thereby having sexual intercourse or performing a sexual act equal to sexual intercourse with the person, or, with the intent to sexually stimulate himself/herself or a third person, inducing the person to perform a sexual act or to have a sexual act performed on him/her, is to be sentenced to imprisonment from one year up to ten years.

Section 205 par. 2 of the CC penalizes other sexual acts than the ones covered by par. 1 of this provision which are performed on a defenceless or psychologically impaired person, the basic penalty being imprisonment from six months up to five years.

A penalty increasing qualification applies if the offence results in a grievous bodily injury, a pregnancy or the death of the victim or the victim is set into a torturous state for a longer time or humiliated in a special manner. In case of the death of the victim, the imposition of life imprisonment is also possible.

In addition, Section 207b of the CC aims to protect juveniles who have not yet completed the 16th or 18th year of age from sexual abuse. Par. 1 of the cited law protects juveniles under the age of 16 years who, for certain reasons, are not sufficiently mature to understand the meaning of a sexual act or to act according to this understanding or whose capability to do so is clearly limited. The penalty is imprisonment of up to one year.

Par. 2 of Section 207b of the CC applies if the perpetrator abuses a position of vulnerability of a juvenile under the age of 18 years for sexual acts. The penalty is imprisonment of up to three years.

Article 19:

Par. 1:

According to Section 215a par. 1 of the CC (promotion of prostitution and pornographic performances involving persons under age) anyone who recruits or offers or procures a person under age to a third party, regardless of whether he/she already engages in prostitution, to engage in prostitution or to participate in pornographic performances, or offers or procures such a person to another person for that purpose, is to be sentenced to imprisonment from six months up to five years. The same punishment shall be imposed on anyone who exploits a person under age engaged in prostitution or participating in a pornographic performance in order to obtain a pecuniary benefit for himself/herself or for a third party.

Anyone who commits any of the aforementioned offences against a minor (under 14 years), as a member of a criminal organization, by using serious violence against a person, or in such a manner that the offence, either with intent or gross negligence, jeopardises the life of that person or results in a particularly severe disadvantage for him/her, is to be sentenced to imprisonment from one year up to ten years (Section 215a par. 2).

Par. 2:

According to Section 106 par. 1 subpar. 3 of the CC anyone who, by using force or dangerous threat, coerces a person into prostitution or into participating in pornographic performances is to be sentenced to imprisonment from six months up to five years. Anyone who commits such an offence against a minor (under 14 years) is to be sentenced to imprisonment from one year up to ten years (Section 106 par. 3 of the CC).

According to Section 215a par. 1 of the CC anyone who exploits a minor engaged in prostitution or participating in a pornographic performance in order to obtain a pecuniary benefit for himself/herself or for a third party is to be sentenced to imprisonment from six months up to five years. Anyone who commits such an offence against a minor (under 14 years) is to be sentenced to imprisonment from one year up to ten years (Section 215a par. 2 of the CC).

Par. 3:

According to Section 207b par. 3 of the CC anyone who induces an underage person to perform a sexual act or to have a sexual act performed on him/her by directly offering him/her money, is to be sentenced to imprisonment of up to three years.

Article 20:

Section 207a of the CC criminalizes all forms of production and distribution of pornographic representations of persons under age as well as the acquisition of such representations. A pornographic representation involving underage persons (*pornographische Darstellung Minderjähriger*) is defined in Austrian criminal law (Section 207a par. 4 of the CC) as the realistic representation of a sexual activity performed on a minor (person under 14 years) or of a minor on himself/herself, on another person or with an animal, as well as a realistic representation of activities involving a minor which, due to their nature, produce the impression of showing a sexual activity performed on a minor or a sexual activity performed by the minor on himself/herself, on another person or with an animal. In addition, this applies to all realistic representations of genitals or the pubic area, insofar as they are distorted for

no purpose other than to arouse sensation, and independent from any other expressions of life for the sexual stimulation of an observer, as well as to all visual representations, which as a result of a modification or not, under given circumstances convey the impression to be such a representation.

As regards persons under age who have reached the age of consent (14 to 18 years of age), generally the same applies as to minors under the age of consent, only that in this case the representation of the aforementioned sexual activities or aforementioned actions must be in the same way distorted for no purpose other than to arouse sensation, and independent from any other expressions of life for the sexual stimulation of an observer, to fulfil the elements constituting this offence.

The term "representation" comprises unmodified representations of real activities or real events with real persons or representations of real persons, as well as virtual pictures, i.e. representations which are based on a representation of real things and have been correspondingly altered or generated completely artificially. The Austrian law also penalizes the offence of "simulated pornography", i.e. representations of real events which involve a person under age in such a way that an objective observer gets the impression of a real sexual activity, even when the offender knows that, in actual fact, no sexual act has been performed.

Under Section 207a par. 1 anyone who produces, offers, procures, makes available, presents or otherwise makes accessible to a third party any pornographic material involving a person under age, is to be sentenced to imprisonment of up to three years.

Anyone who, for the purpose of dissemination, produces or imports, transports or exports a pornographic representation of a person under age or commits the act under par. 1 on a commercial basis, is to be sentenced to imprisonment from six months up to five years (Section 207a par. 2 first sentence). The perpetrator is to be sentenced to imprisonment from one year up to ten years if the offence is committed by a person who is a member of a criminal organization, in such a manner that it results in a particularly severe disadvantage for the person under age, or if the offender produces pornographic material involving a person under age by using serious violence, or if he/she, either with intent or by gross negligence, jeopardizes the life of the depicted person under age when producing the pornographic material (Section 207a par. 2 second sentence of the CC).

Procuring for oneself, possessing and knowingly obtaining access on the internet to any pornographic material involving a person under age is to be sentenced to imprisonment of up

to one year, in case the depicted person is a minor (under 14 years) the term of imprisonment is up to two years (Section 207a par. 3 and par. 3a of the CC).

The punishability of the production and possession of pornographic representations of persons under age at the age of consent is excluded when it is targeted for the personal use by the person under age and done with his/her free consent (Section 207a par. 5 subpar. 1). The same applies to the production and possession of virtual pornographic materials showing persons under age at the age of consent, if no real pornographic material has been used in the process of production, and if targeted for own private use, provided that the act does not entail the risk of it being disseminated (Section 207a par. 5 subpar. 2).

Article 21:

Par. 1:

According to Section 215a par. 1 of the CC anyone who recruits or offers or procures a person under age to a third party, regardless of whether he/she already engages in prostitution, to engage in prostitution or to participate in pornographic performances, or offers or procures such a person to another person for that purpose, is to be sentenced to imprisonment from six months up to five years. The same punishment shall be imposed on anyone who exploits a minor engaged in prostitution or participating in a pornographic performance in order to obtain a pecuniary benefit for himself/herself or for a third party.

Anyone who commits any of the aforementioned offences against a minor (under 14 years), as a member of a criminal organization, by using serious violence against a person, or in such a manner that the offence, either with intent or gross negligence, jeopardises the life of that person or results in a particularly severe disadvantage for him/her, is to be sentenced to imprisonment from one year up to ten years (Section 215a par. 2).

Par. 2:

According to Section 106 par. 1 subpar. 3 of the CC anyone who, by using force or dangerous threat, coerces a person into prostitution or into participating in pornographic performances, is to be sentenced to imprisonment from six months up to five years. Anyone who commits such an offence against a minor (under 14 years) is to be sentenced to imprisonment from one year up to ten years (Section 106 par. 3 of the CC).

According to Section 215a par. 1 of the CC anyone who exploits a minor engaged in prostitution or participating in a pornographic performance in order to obtain a pecuniary

benefit for himself/herself or for a third party is to be sentenced to imprisonment from six months up to five years. Anyone who commits such an offence against a minor (under 14 years) is to be sentenced to imprisonment from one year up to ten years (Section 215a par. 2 of the CC).

Par. 3:

According to Section 215a para 2a of the CC anyone who knowingly attends pornographic performances involving a person underage is to be sentenced to imprisonment of up to one year. In case the person involved in the pornographic performance is a minor (under 14 years), the punishment shall be imprisonment of up to two years.

Article 22:

Section 208 of the CC protects persons under the age of 16 against moral endangerment. Par. 1 of the provision penalizes the performance of any act that is appropriate to endanger the moral, psychological or health development of a person under the age of 16 years, in front of a minor or a person under the age of 16 years who is under the perpetrator's education, schooling or supervision, with the intent to sexually stimulate himself/herself or a third person, unless according to the circumstances of the case the endangerment of the minor or the person under 16 years of age is excluded. The penalty is imprisonment of up to one year. Likewise is to be sentenced who, except of the case mentioned in par. 1, causes a minor to witness a sexual act with the intent to sexually stimulate himself/herself or a third person (Section 208 par. 2). Who, with the intent to sexually stimulate himself/herself, causes a minor to witness a criminal offence under Sections 201 to 207 or 207b of the CC is to be sentenced to imprisonment of up to two years (Section 208 par. 3 of the CC).

Article 23:

Section 208a par. 1 of the CC penalizes any person who with the intent to commit a criminal offence under Sections 201 to 207a par. 1 subpar. 1 of the CC,

1. by means of telecommunication or a computer systems or
2. in any other manner by way of deceiving about his/her intent

proposes or arranges a meeting to/with a minor and takes a concrete step leading to such a meeting. The penalty is imprisonment of up to two years.

Section 208a par. 1a of the CC criminalizes a person who contacts a minor by means of telecommunication or a computer system with the intent to commit a criminal offence under Section 207a par. 3 or par. 3a of the CC in relation to a pornographic representation (Section 207a par. 4) of that person. The penalty is imprisonment of up to one year or a fine of up to 360 daily rates.

According to Section 208a par. 2 of the CC shall not be punished under Section 208a par. 1 or par. 1a a person who voluntarily and before the authorities (Section 151 par. 3 of the CC) have learned of his/her offence, abandons his/her plans and informs the authority about his/her guilt.

Article 24:

Par. 1:

According to Section 12 of the CC not only the immediate offender, but also anyone who instigates another person to commit an offence, as well as any person who contributes to its commission by aiding and abetting, will face the same level of punishment. Therefore every person who causally contributes to the commitment of an offence is considered an offender, even if the different forms of participation are defined separately in the respective provision. The liability to penalty of two or more persons involved is independent of each other. Assisting offenders are thus also punishable if the immediate offender is exempted from criminal liability due to for example insanity defence, or is under the age of criminal liability (monistic model of perpetration -*funktionale Einheitstäterschaft*). Every offender is criminally liable for the committed offence by his/her individual guilt, and his/her activity must fulfil particular elements of criminal intent defined for the respective criminal offence.

Par. 2:

Pursuant to Section 15 of the CC the criminal liability for intentionally committed offences does not only refer to a perpetrated, but also to an attempted offence and participation in an attempt. The attempt is thus, generally speaking, punishable like a perpetrated offence. The fact that an attempted offence has not been completed is only a mitigating circumstance according to Section 34, subpar. 13 of the CC. The punishability of an attempt does not only apply to the person who directly undertook the attempt, but also to every person participating in the attempt. Inducing someone to, and assisting in an offence, which does not get beyond the stage of attempt, is punishable as an attempt to commit an offence. In addition, the attempted committal of an offence as well as the attempt to induce another person to commit an offence is also punishable. However, under Austrian law, the attempt to assist in the

commission of an offence is not punishable, provided that the actual committal has not been at least attempted (impunity of attempted assistance).

Lit. b:

The above-mentioned criminal offences do not differ from the Lanzarote Convention benchmark.

Lit. c:

Section 214 of the CC penalizes procuring sexual contacts with persons under age in return for remuneration. Anyone who, with the aim of gaining a pecuniary or another advantage, arranges a personal contact between a minor and a third party for the performance of a sexual act, is to be sentenced to imprisonment from six months up to five years. If the person has reached the age of 14, the maximum term of imprisonment is reduced to two years.

Under Section 215 of the CC anyone who induces another person to engage in prostitution is to be sentenced to imprisonment of up to two years.

Furthermore, Section 216 of the CC (procurement) penalizes exploitation of a prostitute (this provision is construed neutrally as to gender). Section 217 (transnational prostitution trade) aims at protecting persons, irrespective of their age or gender or whether they are already engaged in prostitution or not, from being procured or recruited for prostitution in a foreign State.

Lit. d:

As mentioned above under Question 16 lit. a., most of the criminal offences related to sexual exploitation and sexual abuse of children provide for different terms of imprisonment according to whether the offence was committed against a minor or a person under age who has reached the age of sexual consent (e.g. Sections 106, 207a, 215a of the CC). As for the rest, the low age of victim may be regarded as an aggravating circumstance, since the Criminal Code (Section 33) does not provide for a closed list of aggravating circumstances.

Question 17:

The Austrian Federal Statute on the Responsibility of Entities for Criminal Offences (*Verbandsverantwortlichkeitsgesetz – VbVG*) provides for a general criminal liability for legal

persons and other bodies like partnerships for all criminal offences (including those covered by the convention), intentional and negligent, in addition to and independent of the liability of natural persons involved.

The criminal liability of a legal person requires that a criminal act has been committed for the benefit of the legal person or in violation of obligations of the legal person. The liability according to Article 26 para 1 is explicitly provided in Section 3 para 2 VbVG for an offence committed by a person with a leading position in a legal person (a so-called “decision-maker”). The liability according to Article 26 para 2 is established in Section 3 para 3 VbVG for an offence by a person under the authority of a legal person based on the lack of supervision or control of a person in a leading position.

Question 18:

Lit. a:

1. The sanctions for the criminal offences mentioned in Question 16 lit a. with regard to natural persons are criminal sanctions (in general deprivation of liberty, in less severe cases also a fine). Most of the offences mentioned under Question 16 lit a. have penalty increasing qualifications. The terms of imprisonment foreseen in the various provisions of the CC are cited under Question 16 lit a.

2. The criminal sanction against a legal person is a fine. The Law provides – as it does for fines against natural persons – for a daily rate system: The amount of the fine depends on two factors, firstly on the gravity of the offence, expressed by the maximum term of imprisonment of the offence provided by the penal law. In this regard, the law provides a sliding scale of maximum fines from 40 to 180 daily rates. Secondly the amount of fine depends on the return of the legal person. The daily rates for a legal person shall be equal to one 360th of the yearly proceed, reduced or augmented by up to 30% taking into consideration its overall economic situation. Therefore it is the obligation of the court to assess the daily rates based on the income situation and financial performance of the company. The maximum daily rate is fixed at EUR 10.000,- and the minimum daily rate at EUR 50,-. It has to be stressed that the minimum rate is only relevant for companies, which do not have gained profit over a reasonable period of time. It enables the court to assess a fine also in cases where the financial situation basically would not allow to fix a fine. This provision therefore aims to provide proportionate criminal penalties over legal persons in such cases.

Lit. b:

1. Section 33 subpar. 2 of the CC constitutes that previous convictions are an aggravating circumstance. According to Section 73 of the CC (Foreign convictions) – provided that a statute does not explicitly refer to the conviction by a domestic court – foreign convictions are equal to domestic convictions, if the offender was convicted for an offence which is punishable by a criminal court also under Austrian law, and if the judgment was rendered as a result of proceedings which were in conformity with the principles set forth in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

As far as the application of Section 73 of the CC is concerned, the Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States which has substantially facilitated and improved the exchange of information on convictions arising from criminal conviction of citizens of the Union, has to be mentioned.

Information on third country convictions which are not covered by the above-mentioned Framework Decision has to be gathered via the channels of mutual legal assistance. In this case, the exchange of information is widely happening on the basis of Art 22 of the European Convention on Mutual Assistance, ETS No. 030.

It is important to stress that according to the Austrian Judicial Criminal Statistics (*Gerichtliche Kriminalstatistik*) the vast majority of perpetrators of sexual abuse and sexual exploitation of children in Austria are national citizens without previous criminal convictions. In 2012, out of 532 offenders of sexual crimes only 21 were foreigners with previous convictions. There is no information on whether the previous judgements of these 21 persons were rendered in Austria or abroad. Therefore, in practice there is not very often a need to make use of Section 73 of the CC.

2. The general rules of criminal law apply according to Section 12 para 1 VbVG also to legal persons. Final sentences passed by another Party in relation to the offences established in accordance with the Convention can therefore be taken into account against legal persons in the same way as against natural persons.

Question 19:

According to Section 62 of the CC, the provisions of the Austrian Criminal Code are applicable to all offences which have been committed in Austria. According to Section 63, they also apply to offences committed on board of an Austrian ship or aircraft, no matter where it is located.

According to Section 64 par. 1 subpar. 4a of CC the provisions of Austrian law, regardless of the provisions of the law in the territory in which the offence has been committed, also apply to criminal offences which have been committed abroad, if they constitute, inter alia, a severe coercion under Section 106 par. 1 subpar. 3, rape (Sec 201), sexual coercion (Sec 202), sexual abuse of a defenceless or psychologically impaired person (Sec 205), severe sexual abuse of minors (Sec 206), sexual abuse of minors (Sec 207), pornographic representations involving persons under age under Section 207a par. 1 and 2, sexual abuse of juveniles (Sec 207b), abuse of a position of authority (Sec 212), promotion of prostitution and pornographic performances involving persons under age (Sec 215a), transnational prostitution trade (Sec 217), **and**

1. either the perpetrator or the victim is an Austrian national or has his/her habitual residence in Austria, **or**
2. the offence impairs other Austrian interests **or**
3. the perpetrator was an alien at the time the offence was committed, is staying in Austria and cannot be extradited.

As far as Austrian jurisdiction is not already established on ground of the aforementioned provisions, the general provisions of Section 65 of the CC may also apply (in case of offences committed abroad). Under this provision, 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.

Question 20:

Most of the aggravating circumstances referred to in Article 28 of the Lanzarote-Convention correspond to penalty increasing qualifications of the various criminal offences mentioned under Question 16a:

Serious damage to the physical or mental health of the victim (letter a) is a penalty increasing qualification under Sections 201 par. 2, 202 par. 2, 205 par. 3, 206 par. 3 and 207 par. 3 of the CC. If the offence was preceded or accompanied by acts of torture or serious violence (letter b), penalty increasing qualifications under Sections 207a par. 2 and 215a para 2 of the CC apply. That the offence was committed against a particularly vulnerable victim (letter c) forms part of the constituent element of the offences under Sections 205 and 207b par. 2. Besides, the circumstance that the victim is a minor is a penalty increasing qualification under Sections 106 par. 3, 207a and 215a. The fact that the offence was committed by a by a person abusing his/her authority (letter d) is a constituent element of Section 212 of the CC. In case the offence was committed within the framework of a criminal organisation (letter f) penalty increasing qualifications under Sections 207a par. 2, 215a par. 2 and 216 par. 3 apply. The fact that the perpetrator has been previously convicted of offences of the same nature (letter g) is an aggravating circumstance according to According to Section 33 par. 1 subpar. 2 of the CC.

Section 33 of the CC contains a non-exhaustive list of aggravating circumstances. Therefore the judge can take all the circumstances mentioned in Article 28 of the Convention into account when determining the sanction in a specific case. Section 33 of the CC therefore provides flexibility with regard to new developments and new international instruments (the law does not have to be changed each time).

In addition, according to Section 39a of the CC in case an adult has committed a criminal offence by using force or dangerous threat against a minor, higher mandatory minimum sentences apply. In case the criminal offence does not provide for a mandatory minimum sentence at all, Section 39a of the CC determines mandatory minimum sentences.

Question 21:

Lit. a:

According to the Austrian Code of Criminal Procedure, victims, irrespective of their status as private parties joining the proceedings to claim damages, have a special legal standing in criminal proceedings. They are entitled to receive comprehensive information about the proceedings and their legal status; they are granted special party rights and may demand the reinstatement of proceedings stayed by the public prosecutor's office. In addition, persons who are victims of violence or whose sexual integrity has been violated on the one hand, or dependants of a person whose death might have been caused by a criminal offence on the

other, are entitled to psychosocial and legal assistance during the proceedings. The Federal Ministry of Justice may assign Victim Support Organisations to provide psychosocial and legal assistance to victims (Sec 66 par. 2 of the CCP). Legal assistance is provided by lawyers contracted by the Victim Support Organisation that may represent the victim in the criminal proceeding in order to safeguard the victims' rights as well as (if requested) the position as civil claimant (see sec 66 and 67 of the CCP). Psychosocial assistance in practice is granted by specially trained persons. It includes the preparation of the victim on possible emotional burden related to the criminal proceeding as well as to accompany the victim as a person of trust to the interrogation and the trial.

According to Section 10 par. 2 of the CCP the criminal police, the public prosecutor's office or the court have to take into account the victims' rights and interests and have to inform victims about their rights in criminal proceedings as well as possibilities to receive compensation and support. This obligation includes providing the information in a manner which may be understood by the victim taking into account language barriers or other barriers. If the victim may not follow in German an interpreter has to be appointed when giving the information.

Furthermore according to sec 70 CCP as soon as the investigative proceedings are initiated against a specific accused person, the criminal police or the public prosecutor's office shall inform the victims on their crucial rights (sec 66 and 67). This may only be omitted as long as it would jeopardize the purpose of the investigations. Victims, as defined under sec 65, subpar. 1 lit. a or b (victims of violent acts, threat or sexual abuse as well as their next to be killed) shall be informed on the prerequisites of procedural assistance at the latest prior to their first examination. Section 70 par. 2 of the CCP provides that victims, whose sexual integrity could have been affected, shall be informed on the following rights, to which they are entitled, at the latest prior to their first examination: to request to be examined, if possible, by a person of the same gender during the investigative proceedings, to refuse answers to questions from their most private sphere of life or questions about details of the criminal offence, if they find it unreasonable to be expected to describe them (Section 158 par. 1 subpar. 2), to request to be examined with consideration during investigative proceedings and during the main trial (Sections 165, 250 par. 3), to request for the main trial to be closed to the public (Section 229 par. 2). Nevertheless it has to be pointed out, that the information has to be provided in an appropriate manner in order to ensure that the information is understood by the victim.

According to Section 195 of the CCP the victim has the right to request the continuation of the prosecution. In case the prosecutor does not continue with the prosecution the review is to be conducted by the regional court.

Lit. b:

See Lit.a.

Lit. c:

This provision is implemented by Sections 66 ss. of the CCP. According to Section 66 par. 1 subpar. 7 victims have the right to be present during the main trial, and to interrogate the accused witnesses and expert witnesses and to be heard in relation to their claims.

Lit. d:

According to Section 10 par. 3 of the CCP all authorities, institutions, or persons having an active part in the criminal proceeding are obliged to respect the victim's dignity and to take into account the victims interests as well as to inform the victims on his or her main rights and the possibilities to receive compensation or other assistance.

According to Sec 229 of the CCP the public may be excluded from the trial among other reasons in order to protect the witness' identity or if questions of private matters or matters of secrecy in respect of the accused, the victim, the witness or a third person are to be discussed.

Sections 10 par. 3, 161 par. 1 and Sec 165 of the CCP provide for protection of the identity of the victim and or witness. In addition the already mentioned Section 228 par. 4 and 247a of the CCP and Section 7a par. 1 subpar. 1 of the Law on the Media protect the victim's privacy and photographic images as well as from persons in a similar position.

Lit. e:

Sections 10 par. 3, 161 par. 1 and 162 of the CCP incorporate provisions on the protection of the identity of the witness. According to Sec 162 of the CCP a witness may be granted anonymously providing deposition if it is to be feared that the witness or a third person would be exposed to a danger for life, health, physical integrity or freedom by the disclosure of the identity. According to Sec 229 par. 1 subpar. 3 of the CCP the public may be excluded from the trial in order to protect a witness giving an anonymous deposition in respect of Sec 162 of the CCP.

Lit. f:

Release from pre-trial detention:

If the victim has requested it, he/she shall be informed of the release of the accused person under stating the reasons for that, prior the judge decides the verdict. In any case victims of violence in homes (Section 38a Security Police Law) and the victims in accordance with Section 65 subpar. 1 lit. a (e.g. victims of infringements of their sexual integrity) are immediately to inform in this sense (Section 177 subpar. 5 of the CCP).

Release from detention:

Victims of infringements of their sexual integrity have the possibility to request being informed about the perpetrator's release from detention by the prison administration (Section 149 par. 5 of the Execution of Prison Sentences Act [*Strafvollzugsgesetz – StVG*]).

Lit. g:

This letter is implemented by Section 165 of the CCP (Adversarial Interrogation of an Accused or a Witness):

Sec. 165. (1) The adversarial interrogation, as well as audio or video recordings of such an examination of the accused or of a witness shall be admissible if there is reason to fear that an interrogation will not be possible in the trial for factual or legal reasons.

(2) The court shall conduct an adversarial interrogation upon an application by the public prosecutor, applying the provisions of § 249 and § 250 in analogy (§ 104). The court shall give the public prosecutor, the accused, the victim, the persons joining the proceedings as private parties and their representatives an opportunity to take part in the examination and to ask questions.

(3) When examining a witness, the opportunity to take part in the interrogation shall be restricted – upon application by the public prosecutor or ex officio – to such an extent, giving due consideration to his/her young age, or his/her mental or physical state, or in the interest of establishing the truth, that the parties in the proceedings (paragraph (2)) and their representatives can follow the interrogation and exercise their right to ask questions by using technical equipment for audio and video transmission, without being present during the interrogation. When a witness has not yet reached the age of fourteen, in particular, an expert may in such cases be instructed to conduct the examination. Care shall be taken in

any event that there is no encounter between the witness and the accused, as well as other parties to the proceedings.

(4) A witness who has not yet reached the age of fourteen and might have been injured in his/her sexual sphere by the offence with which the accused has been charged, shall be examined by the court in the manner described in paragraph (3) in any event; all other witnesses listed in § 156 (1) items 1 and 2 may be so examined if they or the public prosecutor apply for it.

(5) Before examining a witness, the court shall also inform the witness that the record may be read out in the trial, and that audio or video recordings of the examination may be shown, also if he/she should refuse to testify in the further course of the proceedings. The expert shall provide the witness with this information and the information pursuant to § 161 (1), whenever an expert has been instructed to conduct the interrogation (paragraph (3)). In this context, the age and condition of the witness shall be taken into account. The information and statements made in this connection shall be put on record.

(6) In all other respects, the provisions of the present chapter shall be applied in analogy. Victims— independent of their position as civil claimants – have the right to be present during the main proceeding, to question the accused, the witnesses and experts and to be heard concerning their claims (section 66 subpar. 7 of the CCP).

Lit. h:

According to section 67 par. 7 of the CCP civil claimants have to be granted legal aid by providing for a lawyer, as far as they are not awarded trial assistance (section 66 par. 2) and as far as this representation by a lawyer is in the interest of justice, especially in the interest of an appropriate enforcement of their claims in order to avoid a subsequent civil procedure if they are otherwise not able to pay the costs of their legal representation without putting their necessary maintenance in danger. The necessary maintenance is the maintenance that the persons themselves and the families they have to support need in order to lead a simple life. For providing and appointing such a lawyer sections 61 par. 4, 62 par. 1, 2 and 4 apply correspondingly.

Question 22:

Lit. a:

According to Section 10 par. 3 of CCP all authorities, institutions, or persons having an active part in the criminal proceeding are obliged to respect the victim's dignity and to take into account the victims interests as well as to inform the victims on his or her main rights and the possibilities to receive compensation or other assistance.

In order to prevent secondary traumatisation, the possibility of interrogation with special care (Section 165 of the CCP) was introduced in 1993 (in a separate room without the physical presence of the parties, in particular the accused, perhaps interrogation by a psychologist instead of a judge). This instrument is compulsory for witnesses who have not completed their fourteenth year of age and who might have been violated in their sexual sphere by the criminal offence the accused is charged with. Because this special interrogation is recorded on a video and this recording may be presented at the main trial, there is no need for the witness to appear before the court during the trial. This is in line with Art 6 of the ECHR, because the accused person had the right and possibility to ask questions during the interrogation in the pre-trial stage through the judge or the psychologist in the separate room. It is also possible (not compulsory) to use this special interrogation when the witness (victim) is at a higher age regarding the emotional and mental health status, the age (still a child until 18) or in the interest of the establishment of the truth.

Furthermore, the following – and even mentioned - provisions purpose to protect children against further traumatization: Sections 9, 66 (2), 156 (1) Z 2, 160 (1) (2) (3) and 162 of the CCP.

Lit. b:

The Austrian criminal proceedings are based on the principles of ex proprio motu (sec. 2), the truth of research and objectivity (sec. 3) and the principle of accusatory (sec. 4).

Lit. c:

According to Section 58 par. 3 subpar. 3 of the CC the period of time until the victim of a punishable offence against physical integrity and life, against freedom or against sexual integrity has completed the twenty-eighth year of his/her life is not included in the period of limitation, in case the victim was a person under age at the time the offence was committed.

Lit. d:

Following Section 160 para 3 of the CCP it is compulsory for the interrogations of a child (witness) who has not completed the age of 14 to have a person of trust (confidant). In case of a conflict of interest between the holder of the parental responsibility and the victim the court will cooperate with the youth welfare office and they will appoint a person special representative (*Kollisionskurator*) if necessary.

Lit. e:

The victim has the possibility to charge a victims' protection association with his/her representation in the criminal proceedings (Section 73 of the CCP).

Lit f:

Covert investigations are allowed insofar as they are not conducted systematically or for a longer period of time. A systematic covert investigation for a longer period of time is permissible only if the crime investigated is punished by more than one year imprisonment, meaning that also systematic and longer covert investigations can be used for the offences covered by the Convention.

Lit. g:

The existing and very technical possibilities to identify child pornographic material from various data sources are constantly being improved. This is essential, since perpetrators are always looking for more complex ways to conceal an offence.

Question 23:

Lit. a:

1st indent:

Criminal proceedings have to be carried out without unjustified delay according to Section 9 of the CCP.

2nd indent:

At court there are rooms adapted for the interrogation of children. In addition, it is possible to interview children in premises that are especially adapted for this purpose and technically equipped (e.g. hospitals, child protection facilities).

3rd indent:

According to Section 165 par. 3 of the CCP an expert may be instructed to conduct the examination.

4th and 5th indent:

The adversarial interrogation of a witness (section 165 of the CCP) provides for the possibility to read out the record in the trial and to show audio or video recordings of the examination. Thus there is no necessity to interview the child repeatedly.

6th indent:

Children under 14 years of age must be accompanied by a confidant (Section 160 par. 3 of the CCP), older children can request to be accompanied by a confidant to the interview (Section 160 par. 2 of the CCP).

Lit. b:

The adversarial interrogation of a witness (Section 165 CCP) allows for the possibility to videotape the interview with the child and to show the video recordings of the examination in the trial.

Lit. c:

According to Section 229 of the CCP the public may be excluded from the trial among other reasons in order to protect the witness' identity or if questions of private matters or matters of secrecy in respect of the accused, the victim, the witness or a third person are to be discussed.

According to Sections 247a and 250 par.3 CCP witnesses can be examined through the use of video transmission without being present in the courtroom.