



T-ES(2014)THE-AT

LANZAROTE CONVENTION

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

Replies to the thematic questionnaire

AUSTRIA

1st thematic monitoring round

“Sexual abuse of children in the circle of trust”

Replies registered by the Secretariat on 31 January 2014

DATA COLLECTION

Question 1:

1st indent:

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. All courts and public prosecution offices make use of the Austrian Court Automation, a system designed to manage key data on more than 50 different proceedings such as data on victims (especially name, nationality, gender, date of birth), criminal charges and convictions.

However, since the definition of circle of trust does not exactly comply with definitions and categories defined in the system generated reports cannot exactly pinpoint that aspect of penal proceedings.

3. The statistics of the youth welfare authorities contain data about the number of interventions (including domestic/sexual violence), age and gender of the involved children, legal circumstances but not the concrete reason of their interventions.

4. The annual statistics of the NGO-child protection centres can be collected in reports on violence.

5. 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.

2nd indent:

Relevant data can be found in the Appendices:

Appendix 1 is an extract from the Police Crime Statistics (*Polizeiliche Anzeigenstatistik*) which shows the relation between the perpetrator and the victim for all relevant offences against the sexual integrity and self-determination between 2008 and 2012.

Appendices 2 to 6 are extracts from the complaints to the Police Crime Statistics which show in further detail the relation between the perpetrator and the victim between 2008 and 2012, e.g. for each of the various relevant offences (§ 201 – rape, § 202 – sexual coercion, § 205 – sexual abuse of a defenceless or psychologically impaired person, § 206 – severe sexual abuse of minors, § 207 – sexual abuse of minors, § 207b – sexual abuse of juveniles, § 217 – transnational prostitution trade):

First column: family relation in the common household (*familiäre Beziehung in Hausgemeinschaft*),

Second column: family relation without common household (*familiäre Beziehung ohne Hausgemeinschaft*),

Third column: acquaintanceship (*Bekanntschftsverhältnis*),

Fourth column: chance acquaintanceship (*Zufallsbekanntschft*),

Fifth column: no relation between perpetrator and victim (*Keine*),

Sixth column: relationship unknown (*Unbekannt*).

The subcolumns *Anzahl* (number) show the absolute number of cases, the *Zeilen %* show the percentage.

PREVENTION

Introduction:

As far as prevention measures are concerned, nearly all measures relate to the sexual abuse of children in the circle of trust. Besides the activities of the Federal Ministry of the Interior concerning dangers in the public area and on the Internet, all prevention measures are focused on the fact that children might be abused by persons in their circle of trust.

Question 2:

See question 8 GOQ: All information (brochures, website) given on the subject include facts about the risk of sexual violence within the circle of trust.

Question 3:

See question 9 GOQ.

Question 4:

See question 8 GOQ: All information (brochures, website) given on the subject include facts about the risk of sexual violence within the circle of trust.

Question 5:

1. Trainings of Europol and Interpol have been taken to ensure training for investigators dealing with cases where the alleged perpetrator of child abuse is a member of the victim's family.

2. Larger prosecution authorities (at least ten prosecutors) are required by law to establish departments of specially trained prosecutors competent for violence against children committed by persons of a socially close position and other forms of domestic violence (Section 4 par. 3a of the *Staatsanwaltschaftsgesetz – StAG*).

In addition to the special jurisdiction in connection with particular trainings for judges and public prosecutors, Austria also offers very specialised trainings concerning dealing with victims of child sexual abuse in victim's immediate social environment, e.g. „Dealing with underage victims of sexual abuse in civil and criminal law“, „Psychodynamics of violence within the family“, „Estimation of the dangerousness of perpetrators of violence within the domestic area“ etc.

Austria is also going to organize regular networking meetings for judges and public prosecutors to increase the skills of judges and prosecutors to deal with victims of child sexual abuse within the immediate social environment.

Question 6:

See questions 4 and 11 GOQ.

Question 7:

See question 10 GOQ.

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.

Question 8:

See question 13 GOQ: The brochure no save place - (K)ein sicherer Ort. Sexuelle Gewalt an Kindern (available on the website www.gewaltinfo.at) provides information about sexual violence against children and is also aimed at encouraging the reporting of sexual abuse of children in the circle of trust to the competent authorities.

Question 9:

Lit. a:

The Civil Code (Section 211) 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.

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).

2nd indent:

1. The Austrian social system offers thorough medical and therapeutical care to child victims and their relatives via the health system and the health insurance respectively. If necessary, psychotherapy is also given to the victim`s relatives (decision of a doctor).
2. Close relatives of child victims of abuse are entitled to benefits of the Victims of Crime Act as well.
3. According to the standards for the procedural assistance, 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:

According to Section 220b of the Criminal Code (Suspension from occupations - *Tätigkeitsverbot*) the court has to exclude the perpetrator of a criminal offence against the sexual integrity and self-determination of persons under age (including sexual abuse of children in the circle of trust), 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.

PROSECUTION

Question 10:

Lit. a:

According to Section 5 par. 1 of the Criminal Code (CC) a person is behaving intentionally who wants to produce the facts constituting an offence under the law; to this end it is sufficient that the offender seriously believes such production to be possible and that he/she resigns in it.

Lit. b:

The term “sexual activity” is not defined by law. According to the jurisprudence of the Supreme Court (see e.g. decisions No. 12 Os 5/09s of 26 March 2009, No. 14 Os 142/06y of 12 June 2007) sexual activities are defined as “acts related to sexuality according to their outward experience that are both from their meaning, their intensity and length of some substantiality and by that constitute an unacceptable, socially disturbing negative impact to the public area. The definition includes at least acts in which the parts of the body that belong to the immediate sexual sphere of either the victim or the perpetrator are brought into a not only volatile contact related to sexuality. It necessitates only an objective relation to sexuality, a sexual tendency is not necessary.” This definition includes all forms of an oral, vaginal or other penetration as well as intensive touches of the sexual organs of a person.

Question 11:

See question 17 of GOQ.

In view of the general criminal liability for legal persons for all criminal offences (including those committed in the circle of trust) no further measures are foreseen or considered necessary.

Question 12:

The fact that the sexual act was committed by a family member or a person having abused his/her authority is a constituent element of the offence of Section 212. If the victim is under 14 years of age and has therefore not reached the age of sexual consent, the perpetrator fulfils, due to simultaneous commission of two or more offences during an illegal act, the elements constituting the offence of severe sexual abuse of minors (Section 206) or sexual abuse of minors (Section 207) and abuse of a position of authority (Section 212). The fact that the perpetrator committed two criminal offences is an aggravating circumstance that is explicitly mentioned in Section 33 subpar. 1 of the CC.

Besides, 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). This mechanism provides for a quasi self-execution of international legal instruments.

As far as the level of penalties is concerned, Section 212 of the CC does not differentiate whether the relationship of the perpetrator to the child is within the context of family relations (Section 212 par. 1 subpar. 1) or of a professional or voluntary activity (Section 212 par. 1 subpar. 2 and par. 2).

Question 13:

Lit. a:

All the measures to protect child victims mentioned in the replies to questions 21 to 23 of the GOQ ensure that criminal proceedings are carried out in the best interests and respecting the rights of child victim. 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 victim's rights and interests. Following Section 160 par. 3 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 if necessary.

Larger prosecution authorities (at least ten prosecutors) are required by law to establish departments of specially trained prosecutors competent for violence against children committed by persons of a socially close position and other forms of domestic violence.

Lit. b:

See question 22 (d) of the GOQ.

Lit. c:

1. Parental rights are withdrawn by family court, if the best interests of the child are in danger (Section 181 of the Civil Code).

2. Every person subject to a suspended sentence or on conditional release can be given instructions according to Sections 50 and 51 of the CC (e.g. to announce every change of his/her whereabouts or of employment, to report regularly to the court or to another authority.)

According to Section 52a of the CC a person on conditional release who committed a criminal offence

1. against the sexual integrity and self-determination or

2. against physical integrity and life or freedom with the intent to sexually excite himself/herself,

shall be placed under supervision by the court during the probation period if the supervision of the perpetrator's behaviour (especially whether he/she obeys the instruction to undergo either a treatment for curing an addiction or a psychotherapeutic or medical treatment or the instruction not to exercise certain activities) is necessary to deter him/her from committing further punishable acts of the same nature. During the period of supervision the court has to monitor the behaviour of the perpetrator with the support of the probation service, the police authorities, the youth court service or other suitable institutions.

Question 14:

Lit. a:

According to Section 10 par. 2 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.

In order to prevent secondary traumatisation, the possibility of interrogation with special care (section 165 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 provisions – which have already been mentioned in the replies to the GOQ – purpose to protect children against further traumatization: Sections 9, 66 (2), 156 (1) subpar. 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 CPP), the truth of research and objectivity (sec. 3 CPP) and the principle of accusatory (sec. 4 CPP).

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.