

TWENTY-SECOND REPORT - PART III

on the implementation of **Article 17 and 18**

EUROPEAN SOCIAL CHARTER

(Reporting period 1 January 1999 to 31 December 2002)

submitted by the Federal Government of the

REPUBLIC OF AUSTRIA

under Article 21 of the European Social Charter,

the instrument of ratification of which

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In accordance with Article 23 of the Charter,
copies of this report have been communicated to

The Austrian Trade Union Federation
(Österreichischer Gewerkschaftsbund)

The Federal Chamber of Labour
(Bundesarbeitskammer)

The Austrian Economic Chamber
(Wirtschaftskammer Österreich)

The Federation of Austrian Industry
(Vereinigung der Österreichischen Industrie)

The Presidential Conference of Austrian Chambers of Agriculture
(Präsidentenkonferenz der Landwirtschaftskammern Österreichs)
and

The Congress of Austrian Chambers of Agricultural Labour
(Österreichischer Landarbeiterkammertag)

Contents

	Pages
<i>Article 7 paragraph 2</i>	
Supplementary questions in Conclusions XV-2 on Article 7 paragraph 2	3
<i>Article 17</i>	
The right of mothers and children to social and economic protection	4 - 28
<i>Article 18</i>	
The right to engage in a gainful occupation in the territory of other Contracting Parties	29 - 33

ARTICLE 7

THE RIGHT OF CHILDREN AND YOUNG PERSONS TO PROTECTION

Article 7 paragraph 2

Supplementary questions in Conclusions XV-2 on Article 7 paragraph 2:

As can also be seen from the relevant EU country report of the European Agency for Safety and Health at Work, young persons are a priority target group in the preventive worker protection activities of AUVA (Allgemeine Unfallversicherungsanstalt – General Accident Insurance Institution). In this context, AUVA, particularly in the period referred to, launched a number of measures along three lines, working in synergy with one another.

1. The Order on the prohibition of and restrictions on employment (KJBG-VO) assigns competence to AUVA for the preparation of guidelines for vocational school instruction on dangers at work. If evidence is given that apprentices have attended instruction on dangers, they can be employed at an earlier date by enterprises on operations with certain hazardous materials, subject to supervision. At present, there are AUVA guidelines on danger instruction in 74 trades using dangerous tools or materials. The general part of the guidelines, with a list of the trades referred to, is transmitted in **Annex A**.
2. In order to improve co-operation between schools and AUVA prevention experts, the Institution is holding a series of seminars on health and safety at work (GSA). The purpose of these tutorial courses is to integrate GSA instruction into vocational education, by which means AUVA fills in the gaps in teacher training. These seminars are related to the European Agency's target of an "Occupational Health and Safety Passport", and AUVA is involved in the continuing discussions on European harmonisation.
3. For prevention among young workers in general and in support of danger instruction in vocational schools, AUVA has developed special information and visual aids, which are made available on request to all enterprises and vocational schools, in the form of media packages. On the basis of statistics on causes of accidents, the material deals with safe operation of electrical devices, machine safety, safety on building sites, personal protective equipment, skin protection, protection against cuts and puncture wounds as well as tidiness and cleanliness. Information leaflets on the media packages are transmitted in **Annex B**.

In conclusion, the data requested on the rate of work accidents and occupational diseases are presented in **Annex C**.

The table shows the number and rate of all work accidents in the years 1999 to 2003 and a breakdown of the figures by age (young workers up to 18 and adult workers 18 and above). The accident rate among young workers is on the average twice as high as among adults. Unfortunately, there is no sign of a distinct decline in the trend, so that AUVA will continue to intensify its work along the three lines mentioned above and step up interaction between them in future.

ARTICLE 17
**THE RIGHT OF MOTHERS AND CHILDREN
TO SOCIAL AND ECONOMIC PROTECTION**

Article 17 paragraph 1

Ad A (a. and b.):

The previous reporting should be updated as follows:

Public health insurance

Legislative basis (as amended in each case):

- General Social Insurance Act (ASVG), BGBl. No. 189/1955,
- Farmers' Social Insurance Act (BSVG), BGBl. No. 559/1978,
- Social Insurance Act for Commerce, Trade and Industry (GSVG), BGBl. No. 560/1978,
- Civil Servants' Health and Accident Insurance Act (B-KUVG), BGBl. No. 200/1967

The nationality of the insured persons and their family members is irrelevant with regard to entitlements to public health insurance benefits. The statutory regulations apply to the entire territory of the State.

Children and spouses who qualify as dependants of health insurance participants receive treatment for illness, home nursing and maternity benefits in principle on the same conditions and to the same extent as the insured persons themselves. Such co-insurance is provided free of charge to children, dependants who devote themselves or have devoted themselves for four years to bringing up children and to persons with a special social need for protection.

a) **Health care for children qualifying as dependants:**

Children qualifying as dependants of an insured man or woman receive medical assistance and medicinal drugs under ASVG, BSVG, B-KUVG or GSVG provisions if they have their normal place of residence in Austria, do not have health insurance under a different legal regulation and have no statutory entitlement to health care themselves.

Care in a public hospital is granted without limitation in time if and for as long as the nature of the illness so requires. According to the ASVG, a certain contribution to costs is payable by the insured person for at most four weeks of hospital care per calendar year.

A prescription charge is payable for the supply of medicinal drugs. Treatment charges or contributions to costs are payable for the take-up of medical assistance in public health insurance under the B-KUVG, BSVG, and the GSVG.

Dental treatment and dentures: The public health insurance scheme grants necessary dental treatment and essential dentures, though with supplementary contributions by the insured persons.

Sickness benefit: The sickness benefit to persons insured under the ASVG can be increased by a percentage increment from a certain point in time for children qualifying as dependants.

b) **Maternity benefits for insured persons and family members:**

Insured women and women qualifying as dependants are granted the following benefits in kind in the event of maternity: assistance by a midwife, medical assistance if necessary; medicinal drugs and appliances, care in a hospital (also in a maternity home).

A confinement benefit is payable to insured persons under the ASVG for the last eight weeks before the expected delivery, for the day of delivery and for the first eight weeks after delivery. It amounts to the average working remuneration per calendar day in the last 13 weeks or the last three calendar months, less statutory deductions. After premature or multiple births, mothers receive the maternity benefit for 12 weeks after delivery.

Maternity benefits for married women are also granted after dissolution of the marriage through death of the insured person, annulment of the marriage or divorce, provided that delivery takes place before the 302nd day after dissolution of the marriage.

Dependants of persons performing compulsory military service, women in national service, severely injured persons under the Army Relief Act (HVG) and the War Victims' Relief Act (KOVG) as well as victims under the Persecution Victims' Relief Act (OFG) are also covered by public health insurance.

Expenditure on public health insurance benefits for dependants

The share of expenditure on benefits for co-insured dependants in total expenditure on insurance benefits was as follows:

	Total expenditure on benefits in €m	Total expenditure on benefits for dependants in €m	%
1998	€8.58 m	€1.61 m	18.7
1999	€9.14 m	€1.66 m	18.2
2000	€9.45 m	€1.67 m	17.7
2001	€9.78 m	€1.70 m	17.4
2002	€10.14 m	€1.71 m	16.9

There are no statistics on the number of mothers and children entitled to protection under public health insurance, but it can be assumed that the relevant percentage is scarcely less than 100%.

Accident insurance

Legislative basis (as amended in each case):

- General Social Insurance Act (ASVG), BGBl. No. 189/1955,
- Farmers' Social Insurance Act (BSVG), BGBl. No. 559/1978,
- Civil Servants' Health and Accident Insurance Act (B-KUVG), BGBl. No. 200/1967

The nationality of the insured persons and their dependants is irrelevant with regard to entitlement to accident insurance benefits. The statutory regulations apply to the entire territory of the State.

a. Children's supplement:

A children's supplement amounting to 10% of the disabled persons' pension (but with a maximum of €76.31) is payable for every child of a severely disabled person, until the child reaches the age of 18. In the case of children at school or undergoing vocational training, the period of drawing the allowance can be extended up to the age of 27; however, there is no time limit in the case of relevant physical or mental handicap.

b. Orphans' pensions:

Orphans' pensions are payable as follows: 20% of the assessment basis for each child who has lost one parent and 30% for each child who has lost both parents.

	Expenditure on orphans' pensions under accident insurance in €million
1998	€17.92 m
1999	€18.07 m
2000	€17.77 m
2001	€17.30 m
2002	€17.27 m

c. Special support

For the duration of treatment after an accident, the injured person or his/her dependants can be granted special support, depending on the severity of the consequences of injury and the duration of treatment.

d. Family (daily) allowance:

If the injured person is granted care in a hospital, spa or other institution for treatment after an accident, he/she is entitled under certain conditions to a family benefit; the entitlement to such a benefit exists only under ASVG accident insurance regulations.^

Statutory pension insurance

Equalisation supplement:

An equalisation supplement to pension insurance benefits is granted if the total income of the beneficiary is below certain standard rates graded by family status. The standard rate applicable increased annually for every child as follows:

1999	by ATS 864,-
2000	by ATS 885,-
2001	by ATS 898,-
2002	by € 67,15

Children's supplement:

A children's supplement amounting to 5% of the calculation base, and of at least ATS 244.- (as from 1 January 1989) and at most ATS 650.- per month, is granted to old age (disability) pensions for every child up to completion of the 18th year of life, and, subject to the same requirements as in accident insurance. Beyond the 18th year of life children's supplement is granted only upon special application:

Minimum amounts:

1999	ATS 320,-
2000	ATS 322,-
2001	ATS 325,-
2002	€ 29,07

Expenditure on children's supplements from pension insurance funds:

1999	ATS 350,0 m
2000	ATS 340,0 m
2001	€ 28,3 m
2002	€ 27,0 m

Orphans' pension:

The orphans pension amounts for a single orphan to 40 %, for a double orphan to 60 % of a widow's or widower's pension calculated at a percentage of 60.

Beyond the 18th year of life an orphan's pension is granted only upon soecial application.

Expenditure on orphans' pensions from pension insurance funds:

1999	ATS 816,5 m
2000	ATS 855,0 m
2001	€136,6 m
2002	€139,0 m

Unemployment insurance:

Legislative basis: Unemployment Insurance Act 1977 (AIVG), BGBl. No. 609, as amended.

Family supplements:

Pursuant to § 20 of the Unemployment Insurance Act, family supplements to the basic unemployment insurance benefits (unemployment benefit, unemployment assistance) are also granted. The family supplements are granted for the spouse, parents, grandparents, children and grandchildren, stepchildren, adopted children and foster-children (persons eligible for the supplement), if the unemployed person makes a substantial contribution to their subsistence. A family supplement is not payable if the persons eligible for the supplement can reasonably be expected to bear the costs of adequate subsistence by their own efforts and out of their own resources, in particular by using their own labour potential. The supplement can be granted only once per eligible person. It amounts to €0.97 per day per eligible person.

Health insurance of the unemployed:

In addition, beneficiaries as well as family members for whom family supplements are drawn are covered by health insurance during the period of receiving the benefit. The benefits paid to beneficiaries and their family members under the health insurance scheme are the same as those to which employed persons are entitled. The health insurance contributions are paid out of unemployment insurance funds.

Childcare benefit:

The Public Employment Service can grant a number of benefits in support of reintegration into the labour market. An important aid to mobility is the childcare benefit (KGH), by which up to 90% of the costs of accommodating a child can be paid in order to support the take-up of employment, to safeguard employment or to make possible participation in a labour market policy (re-)integration scheme.

This subsidy is payable to women and men who need care places for their children, because:

- They wish to take up employment,
- They wish to participate in a scheme with a labour-market policy impact (e.g. a course),
Or because
- Their financial circumstances have basically deteriorated despite employment,
- Important changes in working hours make it necessary to use a new care institution or form of care, or
- Because the person previously providing care is no longer available.

Further requirements are that the child must be living in the joint household and be younger than 15 (in the case of a disabled child, younger than 19). The grant of allowances is also tied to certain (family) income limits.

The amount of the childcare allowance is graded and depends on

- The gross (family) income,
- The childcare costs incurred,
- The duration and type of accommodation of the child (full-day, half-day or hourly care in a kindergarten, after-school day-care centre, etc.)

The allowance is granted for half a year in each case. Thus, an application must be made every half-year. The allowance can be paid for up to three years per child (if the allowance requirements are met).

Application must be made before taking up work or participation in a course and before accommodation of the child in a care institution.

The development of benefits is shown in the following table:

	Number of beneficiaries and expenditure 2000	Number of beneficiaries and expenditure 2001	Number of beneficiaries and expenditure 2002
Number of beneficiaries - Childcare allowance	15,327	14,839	12,828
Expenditure on childcare allowance	€8.4 m	€8.4 m	€7.7 m

Childcare benefit:

Legislative basis: Childcare Benefit Act, BGBI. I No. 103/2001, as amended.

The childcare benefit (KBG) is payable for children born on or after 1 January 2002.

The requirements for drawing the benefit are in principle an entitlement to family benefit for the child, a joint household with the child and compliance with the additional income limit.

As to the family allowance, it is sufficient if there is an entitlement for the child but it is irrelevant which parent has that entitlement.

The instrument applicable to EEC or EU citizens is Regulation (EEC) No. 1408/71 of the Council on the application of social security schemes to employed persons and their families moving within the Community. That regulation is based on the principle of the employing State.

Therefore, the primary competence for the payment of family benefits (including the childcare benefit) lies with the Member State in which a parent is employed. Adjustments may be payable in the State of residence if the family benefits of the employing State are lower. If the two parents are employed in different States, the childcare benefit is granted in the employing State in which the child is permanently resident (the country of residence principle).

If neither the father nor the mother is entitled to family benefit, the parent who can demonstrate certain insurance periods on the basis of gainful employment can also draw childcare benefit.

The childcare benefit is payable to the natural parents, the adoptive parents or the foster-parents.

The benefit amounts to €14.53 per day, that is to say, approximately €436 per month, and is paid at most up to the 30th month of the child's life (if only one parent draws the benefit). If the parents alternate in drawing the benefit, the period of granting the benefit is extended at most up to the 36th month of life.

Alternation between the parents is possible twice, but for at least three months in each case.

The childcare benefit is payable for the youngest child, and at the earliest from the child's birth.

In the case of multiple births, the childcare benefit for the second and each further child will be raised by 50% from the year 2004.

The childcare benefit is not payable during the period of drawing confinement benefit. However, if the confinement benefit is lower than the childcare benefit, the difference is payable.

The additional income limit amounts to €14,600 per calendar year. “Additional income” is in principle defined as the total of all taxable income received during the period of drawing childcare benefit. However, only the income of the parent who draws the childcare benefit is taken into account in calculating the income. The family income is irrelevant. If the additional income limit is exceeded, the childcare benefit paid in the relevant calendar year is repayable.

For health policy reasons, payment of the childcare benefit has been linked to undergoing the mother-child card examinations (five during pregnancy and five after birth of the child). If the examinations are not conducted and certified, the childcare benefit is payable at only half of its level as from the 21st month of the child’s life. In exceptional cases, certification of individual examinations is waived (e.g. in the case of adoptions, late determination of pregnancy).

Additional financial support for low-income parents and low-income lone parents exists in the form of a supplement to the benefit that is payable on application and amounts to €6.06 per day (approximately €181 per month). It is a kind of loan that is repayable if certain income limits are exceeded.

The health insurance scheme that is competent with regard to applications for childcare benefit and the supplement is that with which the parent in question is insured or was most recently insured. The benefit is paid monthly in arrears.

For protection under social welfare law, persons drawing childcare benefit are covered by health insurance during the period of drawing the benefit. In addition, 18 calendar months of the period of drawing childcare benefit (as from 2004: 24 months) are rated as genuine contributory periods in pension insurance and thus recognised as pensionable. In addition, periods up to at most the child’s fourth birthday are counted as fictitious qualifying periods.

As of the end of October 2003, the persons drawing childcare benefit numbered 119,947, though this figure is not very meaningful because the scheme had not yet fully developed by then.

As of the end of December 2003, the persons also drawing a supplement numbered 17,671, that is to say, 14.7% of all beneficiaries.

Training allowances of the Federal authorities.

Public Employment Service subsidisation of apprenticeship training:

An instrument used by the Public Employment Service in the youth area is the allowance for the subsidisation of training under the Vocational Training Act, which is divided into several subprogrammes. The most important aim is the creation of training places for young persons with labour market problems. However, the instrument also serves, for example, to reduce discrimination against women in working life and to improve the quality of training. Subsidisation takes the form of a grant towards training costs (monthly lump-sum rate). The training is usually carried out in an enterprise. However, in addition, allowances can be granted for training places in training institutions recognised under § 2 or § 30 of the Vocational Training Act which receive no specific subsidisation from the Public Employment Service. According to current guidelines, the group of persons primarily eligible for subsidisation is defined as follows:

- Girls in apprenticeship trades with a low proportion of women
- Specially disadvantaged persons seeking apprenticeship places. These include:

- Young persons with physical, psychological and mental impairment or social maladjustment.
- Young persons who attended a general special school for part or all of their compulsory education or who attended a senior elementary school for pupils with special educational needs, and school-leavers with learning difficulties (e.g. failure to pass the final examination of the last grade of compulsory education).
- Apprentices who have lost their training places outside the statutory probation period.
- Young persons who are drawing a benefit under the Unemployment Insurance Act.
- The *Land* offices of the Public Employment Service are also empowered to prescribe special subsidisation provisions with regard to the duration of registration between the end of compulsory education and the commencement of the subsidy payment and with regard to the inclusion of school dropouts.
- Persons who have already reached the age of 19 at the beginning of apprenticeship training, whose employment problem can be solved by apprenticeship training.
- Persons seeking an apprenticeship place who require extra qualifications outside the occupational profile (additional inter-enterprise training).
- Participants in integrative vocational training. These are young persons who are considered to be unsuitable for apprenticeship training for one of the following reasons related to their individual situations:
 - Young persons with no leaving certificate or a negative certificate from a senior elementary school,
 - Young persons who were receiving support for persons with special educational needs at the end of compulsory education and were at least to some extent taught according to the syllabus of a special school, or
 - Disabled persons within the meaning of the Disabled Persons' Recruitment Act or the relevant *Land* Disabled Persons Act, or
 - Persons in whose cases, exclusively for reasons related to their individual situations, placement as apprentices pursuant to § 1 BAG must be assumed to be impossible in the foreseeable future, on the basis of vocational guidance action or because of a previous unsuccessful attempt at placement in such apprenticeships.

Amount and duration of the allowance:

The subsidy is regarded as a grant towards the costs of apprenticeship training or integrative vocational training (apprenticeship pay, personnel and operating expenses) and is awarded as a monthly lump sum. The *Land* offices of the Public Employment Service can autonomously determine the amount of the allowance, up to the prescribed Federal ceilings, though these maximum amounts vary according to the target group of persons and the operating institution:

Group of persons	Enterprise	Training institution
Girls Disadvantaged persons Participants in integrative vocational training	Up to €302.00	Up to €453. 00
Persons over 19	Up to €755.00	Up to €755.00
Additional inter-enterprise training	Up to 50% of costs up to €604.00	Up to 50% of costs up to €604.00

Subsidies are granted and applications must be made for one year of apprenticeship training in each case. The allowance can be granted for a maximum of three years

Subsidisation of apprenticeship places by the Public Employment Service 2000 - 2002

	Number of subsidies authorised	Expenditure of budget resources
2000	6,060	€28.7 m
2001	4,119	€11.2 m
2002	4,124	€8.6 m

The *Laender*, local authorities and other entities, organisations, enterprises, etc. also award training subsidies.

There is no statutory entitlement to the grant of a training allowance.

Programme of action under the Youth Training Consolidation Act

Legislative basis: Youth Training Consolidation Act, BGBl. I No. 91/1998, as amended.

An instrument for dealing with problems in the youth labour market, apart from the subsidisation of apprenticeship places, is the Youth Training Consolidation Act (JASG), which assigns to the Public Employment Service the task of compensating for the shortage of apprenticeship places by providing a suitable safety net. The provision of additional apprenticeship training places in special institutions is intended to give a chance of training to all young persons who have not found a suitable apprenticeship place after completing their compulsory education. In that context, the aim is, in particular, to devote particular attention to the special situations and needs of certain young persons, such as scholastic deficits and personal disabilities, and to guide them towards future-oriented training (new regulations on vocational training, etc.). The chief function of these JASG programmes, in the form of 10-month courses with prior vocational guidance modules, is to provide a temporary bridging solution until a regular apprenticeship place can be taken up in an enterprise. The possibility of transfer to the course for the next training year, which is provided for in existing Public Employment Service guidelines, allows in principle longer participation in the action programme (until the entire apprenticeship period has been served).

The target groups of the action programme are:

- Year 2002 and 2003 school-leavers who are seeking apprenticeship places.
- Participants in earlier JASG courses who have not been able to find apprenticeship places despite intensive efforts.
- In line with labour market policy aims, special attention should be devoted to disabled young persons as well as to those with special placement difficulties (persons seeking apprenticeship places from earlier school-leaving years, the long-term unemployed, persons with learning difficulties as well as school dropouts).

The general prerequisite for participation is registration of young persons with the Public Employment Service as seeking apprenticeship places and evidence that they have themselves made at least five unsuccessful applications for places.

The following types of action are taken under the action programme:

- Vocational training preparation projects
 - Vocational guidance and/or vocational preparation: Clarification of individual occupational prospects for pre-course preparation (see below) or for the direct take-up of an apprenticeship place in an enterprise.
 - Counselling of girls seeking apprenticeship places: Utilisation of counselling services specifically geared to this target group, with the primary counselling aim of expanding the range of occupational choices for girls, which is limited by gender-specific role patterns. Particular emphasis should be placed on non-traditional future-oriented occupations.
- Courses:

10-month courses in training institutions, to teach first-year apprenticeship skills and knowledge (and, in the event of extension of the course, those of later years), the share of practical training being at least 60%. In addition to imparting purely technical knowledge, the courses should also give training in procedures for seeking apprenticeship places or work and in job applications. According to labour market policy aims, JASG courses should be related to occupations actually in demand in the relevant regional labour market. The overriding aim is placement in a “regular” training place. Where this is unsuccessful, despite intensive efforts, a course building on the most recent course attended should be organised in each case.
- Supplementary support:

To support the aim of training, additional technical and educational help can be provided by means of counselling enterprises commissioned by the Public Employment Service. In that context – for example, in co-operation with a counselling centre for girls – support measures specific to girls (e.g. personality-related training, coaching or regular group chat sessions) can in particular also be provided.

Number of young persons subsidised under JASG programmes in training years 2001/02 and 2002/03

	Women	Men	Total
Training year 2001/02 (JASG IV)	1,146	1,019	2,165
Training year 2002/03 (JASG V)	2,842	2,936	5,777

Expenditure on JASG programmes by year (€m)

2000	2001	2002
34.5	26.6	21.8

Supplementary comments of the Laender:

Carinthia:

With regard to economic and social protection, it is pointed out that there is the fullest possible availability throughout the *Land* of childcare institutions with flexible opening hours, which take into account the principle of the compatibility of working life and family

responsibilities. Other measures are the *Land* of Carinthia childcare benefit – which was introduced as a pilot project as of 1 January 2001 and will be discontinued on 31 December 2004 – and the family subsidies under the Carinthian Family Subsidisation Act, LGBl. No. 10/1991, as amended.

The childcare benefit is intended to enable mothers to choose between caring themselves for their children in the first years of life or of using the benefit to finance the parents' contribution to a childcare place.

For the protection of mothers, particularly in the event of violence in the family, three women's shelters were constructed in Carinthia in the reporting period.

Childcare institutions have been constructed and the childcare benefit has been introduced, for the economic and social protection of children.

Furthermore, assisted-living facilities for mothers and children have been set up for their economic and social protection.

Foster-families, homes, flat-sharing communities, family flat-sharing arrangements, a child protection centre, a crisis intervention centre and a number of further youth welfare facilities (social services, parenting support) provide help for the social protection of children.

Ad B to E:

No relevant changes.

Ad F (a. and b.):

The previous reporting should be updated as follows:

Under the federal system, legislation and implementation with regard to maternity, infant and youth welfare are divided in Austria between the Federal and the *Land* authorities. Pursuant to the Austrian Federal Constitution (Article 12 (1) 1.), the Federal authorities are responsible for legislation on the principles of maternity, infant and youth welfare and the *Laender* for rules and regulations and for implementation.

According to the relevant provisions of the Youth Welfare Acts of the Federal *Laender*, specially trained persons must be employed in child and youth welfare. In that context, with differences between the individual Federal *Laender*, a distinction is sometimes made between personal custody and statutory care. In principle, youth welfare services are available for all minors, but they are taken up only where there is genuine need.

Pursuant to § 16 of the Youth Welfare Act 1989, foster-children below the age of 16 may be taken into care only with the consent of the public youth welfare authority and by persons who – to put the matter briefly – are not family members of the foster-child. There is supervision of such foster-children, which must be carried out by the youth welfare authority at appropriate intervals, but at least once a year.

Under the Child Law Amendment Act 2001, BGBl. I No. 135/2000, which entered into force with effect from 1 July 2001, the youth welfare authority is responsible by law for the care of any under-age child found in Austria whose parents are not known. That also applies in respect of the administration of assets and legal representation if a child is born inside Austria and no parent has been assigned custody in that respect.

In matters other than the determination of paternity and the enforcement of the child's maintenance claims, the youth welfare authority can become the legal representative of the child, if it declares its willingness to take on such representation and the legal representative consents thereto in writing.

Under the Youth Welfare Act 1989, child-rearing assistance includes in particular parenting support and taking into care. If the parents/guardians do not consent to the parenting assistance action to be taken by the youth welfare authority, that authority must order the action necessary to protect the minor's well-being. In that context, the youth welfare authority can apply to the guardianship and curatorship court for the complete or partial transfer to it of custody of the child (that is to say, parental rights and duties), if the entire removal of the child from his/her previous environment is necessary against the will of the parents/guardians and the accommodation of the child with relatives or other suitable persons on close terms with him/her is not possible.

Ad G:

Reference is made to the previous reporting in reply to question H of the old questionnaire.

The following two innovations should be emphasised with regard to the reporting period.

Under the Criminal Law Amendment Act 2001, BGBl. I No. 130, the penalty for severe sexual abuse of under-age persons leading to death was raised to lifelong imprisonment in accordance with § 206 (3), last case, of the Penal Code.

Pursuant to the Criminal Law Amendment Act 2002, BGBl. I No. 134/2002, and after repeal of § 209 of the Criminal Code (“Homosexual indecency with persons under 18”), the Constitutional Court inserted a new § 207b of the Criminal Code that is gender-neutral and criminalises three cases of sexual abuse of young persons, without reference to a particular sexual orientation.

§ 207b (1) penalises sexual acts with persons who have not yet reached the age of 16, exploiting a particular lack of maturity of the victim and the age-related superiority of the offender. § 207b (2) penalises sexual acts with persons who have not yet reached the age of 16, exploiting the victim’s position of constraint. Under § 207b (3), any person becomes liable to criminal prosecution who, directly by payment, induces a person who has not yet reached the age of 18 to undertake sexual acts or to permit sexual acts to be carried out on him/her.

There are psychosocial facilities for child victims of violence and sexual abuse.

Psychosocial facilities:

Support in court proceedings consists of psychosocial and legal assistance in the period before, during and after lodging a criminal charge, or police investigation and criminal proceedings in court.

In the framework of “support in court proceedings”, for which a special fund was set up, the Federal Ministry of Justice pays the costs of psychosocial care and representation by a lawyer in the criminal court proceedings for victims of violence who require help. Legal support includes in particular counselling and representation by lawyers in entering a charge and in criminal court proceedings as well as free counselling by therapists and social workers.

Special institutions (Ombudsperson for Children and Youth, child protection centres, etc.) are intended exclusively for children and young persons who have been victims of sexual abuse or maltreatment as well as for the persons to whom they can relate or whom they trust.

Comments of the Laender:

(Supplementing previous reporting)

Carinthia:

Pursuant to § 2 (1) of the Carinthian Youth Welfare Act, public youth welfare benefits are to be granted if and to the extent that parents/guardians do not protect the welfare of minors. Intervention in family relations and the private sphere is permissible only so far as is necessary for the welfare of a minor, and in particular if violence was used in upbringing or if physical or mental suffering was inflicted.

Pursuant to § 7 (3) of the Act, the tasks of the social services for the welfare of minors include supporting the family in applying appropriate and responsible parenting methods, taking into account the necessity of non-violent upbringing.

Parenting support includes in particular promotion of family parenting skills, particularly for the implementation of non-violent upbringing (§ 27 (2) b of the Act).

Taking into account § 26 (3) of the Act (providing that the least intrusive effective action must be taken in each case), action is taken in the area of prevention (awareness campaigns, inquiries, brochures, etc.) and parenting help is also offered, either as support while leaving the minor in the family, or, as a last resort, by removing the minor from the family of origin and accommodating him/her, according to age and personality, in a care place or a socio-educational institution.

The available psychosocial facilities in such cases are homes, flat-sharing communities, family flat-sharing groups, a crisis intervention centre, the Psychological-Psychotherapeutic Service, etc.

The Carinthian Youth Protection Act also provides for the protection of children and young persons against physical or moral dangers.

§ 1 c of the Carinthian Youth Protection Act formulates as one of the aims of the Act that the physical, mental, psychological, moral, personality and social development of children and young persons must be encouraged and that they must be protected against influences that might unfavourably influence their development.

Pursuant to § 9 (3) of the Carinthian Youth Protection Act (admittance to catering establishments and other premises), children and young persons may not be admitted to night clubs, bars, brandy shops, premises classified as brothels or similar establishments under § 2 (4) of the Carinthian Prostitution Act or to other premises which, in view of their type, location, furnishings or operating methods or because of their predominant clientele, may have an unfavourable effect on children or young persons within the meaning of § 1 c. The same applies to entertainments which, owing to the type of performance or acts depicted can be assumed to have a potentially brutalising influence on children and young persons or a potentially negative effect on their physical, mental, psychological, moral, personality or social development.

According to § 11 (1) of the Carinthian Youth Protection Act (publications, products and services that constitute a danger to youth) it is prohibited to offer, present, transmit or make accessible to children or young persons publications, products or services which may endanger their physical, mental, moral, psychological, personality or social development, in particular by the glorification of violence, discrimination against persons on grounds of race, colour, national or ethnic origin, gender or religious beliefs or by the portrayal of or pimping for pornographic acts.

Any person who offers or displays on a commercial basis publications, products or services within the meaning of paragraph 1 must take suitable action to ensure, in particular by partitioning off premises, restriction of opening hours, posting of notices, oral indications, etc. that children and young persons are refused entry. The authorities are entitled in individual cases to issue instructions prescribing the action or precautions that are necessary for the protection of children and young persons.

In the event of infringements, adults are liable to fines of up to €3,633.64.

In order to ensure the closest possible monitoring of compliance with the Carinthian Youth Protection Act, the police authorities and officers entrusted with monitoring enforcement are regularly instructed, to devote particular attention to compliance with its provisions, for the welfare and protection of children and young persons. Annual statistics are prepared on the enforcement of the Act.

To improve awareness of and compliance with youth protection regulations, as well as to prepare efficient strategies for the avoidance and control of infringements against youth protection provisions, a youth protection offensive is now taking place, involving all responsible parties and parties concerned.

Violence and sexual abuse:

Education, destigmatisation and information are important forms of action for creating awareness of the problem of violence against children and young persons and also for bringing about important changes in thinking and action in the longer term. In recent years,

this process of social and also individual awareness creation has been implemented in Carinthia by means various inter-related measures:

- The organisation of series of talks on the subject of violence and sexual abuse in Carinthian cities and local authority areas in order to reach out to the population;
- Conclusion of an agreement with the Carinthian Bar Association regarding free legal representation of minors who are victims of violence;
- Establishment of the Victims' Assistance Fund to finance psychotherapy for victims of violence
- Preparation of information material for social workers and clients;
- Organisation of annual congresses on the protection of children, etc.
- Institutionalisation of a network of all authorities and institutions throughout Carinthia active in the field of child and youth protection. Networking operates on two levels
 - At the Land level, a supraregional coordination team has been set up, consisting of representatives of the following institutions: Youth Welfare Authority, Police Directorate for the *Land* of Carinthia, criminal investigation authorities, Ombudsperson for Children and Youth, the *Land* School Board for Carinthia, the *Land* Kindergarten Inspectorate, the Youth Welfare Medical Service, the Psychological-Psychotherapeutic Service, the Youth Section, the Carinthian Medical Chamber and the *Land* hospitals.
 - The following institutions at regional level in the districts are also involved: the Youth and Family Section or the Youth Office, the Police and Gendarmerie, the District School Board/Schools Psychological Service, the Psychological-Psychotherapeutic Service, the Youth Welfare Medical Service and the kindergartens and childcare institutions. Depending on the matters to be dealt with and regional conditions, other institutions can be incorporated (e.g. women's shelters, counselling centres, the Ombudsperson for Children and Youth, etc.).
 - The working meetings of these regional coordination teams deal primarily with questions of improving co-operation in child and youth protection. Related topics such as prevention are also dealt with.
 - Coordination of this network is the responsibility of the youth welfare authority, because decisions important for the benefit of children and young persons are made here.

Upper Austria:

§ 16 (1) of the Upper Austrian Youth Welfare Act 1991 provides that the family services must devote particular attention to the practice of non-violent parenting. Overall, youth welfare counselling and care in the parenting area are also directed particularly towards "parenting support" with the general aim of non-violent parenting. Thus, § 36 (2) 2 of the Upper Austrian Youth Welfare Act 1991 provides that family parenting skills, particularly for implementation of non-violent parenting, can be promoted, for example by continuous counselling, attendance at parental instruction courses, parents' groups, information evenings and the like.

There are six child protection centres in Upper Austria, whose counselling and therapeutic services focus on psychological pressure, physical and sexual violence. In the year 2002, the services of psychologists, psychotherapists and qualified social workers were provided to approximately 2,500 persons.

Tyrol:

The protection of children and young persons from physical and moral dangers is one of the chief tasks of the youth welfare authorities, the Ombudsperson for Children and Youth, the Child Protection Centre, the Child Protection Group in the University Clinic for Paediatric Medicine, the “*Mannsbilder*” Counselling Centre for Men, and the Crisis Intervention Centre. The Intervention Centre against Violence in the Family (Federal Act for Protection against Violence in the Family) should also be mentioned.

The Ombudsperson for Children and Youth prepares teaching material for children and young persons and offers information to schoolteachers, kindergarten teachers and all persons working in the children and youth area.

Psychosocial and legal support in court proceedings (promoted by the Federal Ministry for Justice and the Federal Ministry for Social Security and Generations) is available for children and young persons who are victims of abuse/maltreatment. That project was initiated in Tyrol by the Ombudsperson for Children and Youth and the Youth Welfare Department, which continues to organise regular meetings of the relevant support staff. Five institutions offer victims such help, which is free of charge: the Innsbruck Child Protection Centre, the Parenting Counselling Unit, the Counselling Unit for Men, the Women Against Rape Group, and the Evita Counselling Centre for Women and Girls.

In recent years, the experts (qualified social workers) of the youth welfare units have maintained a good professional standard, particularly in the area of investigating cases of endangerment. On the one hand, this serves to protect the child/young person and on the other hand it ensures the transparency of action by the authorities vis-à-vis families of origin. In view of its competence, the Youth Welfare Authority in Tyrol is perceived by many professionals and also by the general public as the relevant authority and interlocutor in questions of endangerment of the welfare of children and young persons.

In the event of imminent danger to the welfare of a child or young person, the youth welfare authority, by virtue of § 215 of the General Civil Code, must itself temporarily take the necessary action for upbringing and care. Within eight days, it must then apply to the court for a decision on the matter. Youth welfare services are differentiated and range from assisted-living services for young persons to parenting support by professionals, who visit parents and offer help on the spot in the upbringing and care of children.

Vienna:

In the year 2002, a so-called clarification procedure was initiated 6,485 times after reports or discovery of endangerment. Social workers from the regional centres clarify with the child affected, the family and the child's environment what action is necessary to ensure that any further endangerment is averted. If necessary for the child's protection, he/she can be accommodated in a crisis foster-family or a crisis centre. The majority of reports are related to neglect.

The purpose of this action is to work out an individually tailored form of care, in agreement with the parents/guardian, which will ensure protection of the child against further violence. If this agreement with the parents/guardian cannot be achieved, it is the task of the social workers to encroach upon the rights of the parents/guardians, even against their will, and to apply to the competent court for appropriate action.

Ad H:

In civil proceedings, a child is represented by a parent; however, if the parents cannot agree on the representation of the child, the parent who initiates the proceedings is the representative. If there is a conflict of interests between the parents and the child, the court must appoint a curator, who represents the child before the court in the matters in question. A conflict curator must, for example, be appointed with regard to a child's maintenance claims against the parent entrusted with sole custody.

In matters of care and upbringing (custody and visiting rights), a child of at least 14 years old can act independently before the court. This competence includes the right to submit motions to initiate proceedings, other motions and appeals. However, if the child is not capable of understanding and discernment in the individual case, the court can pronounce that he/she does not have competence in the concrete case.

Children who have not yet reached the age of 14 must in principle be heard in proceedings regarding care and parenting and visiting rights/the right of personal contact. No interrogation may be carried out if that would lead to a delay in the proceedings that would endanger the child's welfare or if an intelligible statement by the child is not to be expected. In addition, children who have not yet reached the age of 10 must be given a hearing, if necessary by the youth welfare authority, an assistance institution of the juvenile court or an expert.

Ad I:

The previous reporting in reply to question G of the old questionnaire should be updated as follows:

Juvenile offenders are subject to the Austrian Juvenile Court Act 1988, BGBl. No. 599/1988, which has recently been amended in several respects (see the current version, **Annex 15**).

Only a few special aspects of the Juvenile Court Act (hereinafter referred to as "JGG") will be mentioned here, and it should be mentioned that the aim of JGG is that the problems of juvenile crime should not be solved exclusively by means of penal law measures.

§ 1 of the Act defines minors as all persons under 14; a young person is one who has reached the age of 14 but not yet the age of 18. In addition, the concept of the "young adult" was created. That means persons who have reached the age of 18 but not the age of 21. Though adult criminal law applies in principle to that age group, the special development-related characteristics of young adults have been taken into account in certain special provisions of material criminal law and procedural law, and supporting measures have been created for that group of persons.

Pursuant to § 4 (1), minors who commit offences liable to criminal prosecution are not punishable. Young persons are not punishable in the following instances: by virtue of § 4 (2) JGG, that is to say, on grounds of immaturity, or in the case of offences committed by persons under 16 in which there is no serious culpability and also where special preventive requirements do not make punishment necessary, or subject to the provisions of § 42 of the Criminal Code (acts not liable to prosecution).

Pursuant to § 5 JGG, certain special provisions apply to the punishment of juvenile offenders. For example, the main purpose of applying juvenile criminal law is to deter the offender from committing acts liable to prosecution.

The penalty of life imprisonment and the penalty of imprisonment of 10 to 20 years or, alternatively, life imprisonment, has been replaced by the penalty of imprisonment for 1 to 15

years if the juvenile commits the crime after reaching the age of 16, and in other cases by the penalty of imprisonment for 1 to 10 years.

The penalty of imprisonment for 10 to 20 years has been replaced by the penalty of imprisonment for 6 months to 10 years.

The maximum of all other imprisonment sentences is reduced to half. The minimum has been abolished.

The maximum monetary fine in the form of an income-related daily rate has been reduced to half.

Monetary fines whose calculation is related to the value of an asset, utility or damage may be imposed only to the extent that they do not endanger the career of the person charged.

Other special features of the JGG are the provisions concerning diversion, conviction without punishment (§ 12 JGG), and conviction with reservation of punishment (§ 13 JGG) that deviate from the general rules under §§ 90a ff of the Code of Criminal Procedure.

In addition JGG provides inter alia that private prosecutions for juvenile crimes are not admissible (§ 44 of JGG). Furthermore, the Act contains inter alia provisions regarding the costs of criminal proceedings (§ 45 of JGG), reimbursement of costs related to the issue of instructions as well as special procedural provisions related to crimes of young adults (§ 46a). Particular stress should be laid on § 46a of JGG, according to which criminal proceedings for acts committed before reaching the age of 21 lie within the jurisdiction of the court competent for juvenile crimes.

With regard to the pre-trial custody of young persons, JGG contains provisions in its §§ 35 to 37 for remand prisoners and in its §§ 51 to 60 for convicts and persons committed that deviate from the general rules of criminal procedure.

The purpose of these provisions is to counteract the unfavourable consequences of imprisonment and to improve the background conditions for exercising an educational influence. Thus, committal and pre-trial custody of a young person and also of a young adult must not be imposed or upheld if its purpose can be achieved, or has been achieved, by orders under family law or youth welfare law; furthermore, it may be imposed only if the related disadvantages for the development of the personality and career development are not incommensurate with the significance of the crime and the punishment to be expected.

Also, in the case of young persons or young adults, deferral of imprisonment for the purpose of promoting the later career is also possible for periods of more than one year, in order to make it possible to complete vocational training. Imprisonment of young persons is oriented exclusively in the light of special preventive considerations, and vocational training is of major importance even during imprisonment. The juvenile prisons are staffed with specially qualified and trained personnel (courses in educational methods, psychology and psychiatry).

The Act provides that sentences must be served in institutions for young persons specially intended for that purpose or in special departments of institutions for the imprisonment of adults. A special institution for young male offenders exists in Gerasdorf am Steinfeld, Lower Austria. Since there is no special institution for young female offenders, sentences of over six months are served in the prison in Schwarzenau am Steinfeld, Lower Austria.

Pre-trial custodial sentences are served only in special departments of the prisons attached to the courts. Young persons must be separated from adults, who are not subject to youth imprisonment regulations.

The following innovations should be emphasised:

Under the Juvenile Court Amendment Act (BGBl. I No. 19/2001), which entered into force with effect from 1 July 2001, the upper age limit for young persons was reduced from 19 to 18, and the newly defined age group of “young adults” was defined, that is to say, persons who have reached the age of 18 but not the age of 21.

The amendment took into account the fact that people growing up often experience a personal crisis (the so-called “crisis of adolescence”) in which they are more prone to commit criminal acts than other persons. Though adult criminal law applies in principle to this age group, certain special provisions of material criminal law and procedural law have taken into account the special development-related characteristics of young adults, and supporting measures have been created for this group of persons. The “young adults” now also appear before the “juvenile-court judge” and benefit from his special knowledge and experience.

Until the middle of the year 2003 there was an independent juvenile court in Vienna, which was dissolved as of 30 June 2003. Matters under its jurisdiction were assigned to the *Land* Criminal Court of Vienna and to the locally competent Viennese district courts.

Under the Federal Act BGBl. I No. 30/2003 (entry into force: 1 July 2003), the exceptional provision of § 29 JGG (Determination of local jurisdiction according to the residence of the person charged) was restricted to young persons; therefore, the general rule of §§ 51ff of the Austrian Code of Criminal Procedure, according to which local jurisdiction is in principle determined according to the scene of the crime now applies to young adults. As a result there has been a transition from the “residence principle” to the “crime scene principle” (which applies generally otherwise under criminal law) as the criterion for local jurisdiction (§ 29 of JGG) in the case of young adults (18 to 21).

Supplementary questions in Conclusions XV-2 on Article 17:

The role and tasks of the Ombudspersons for Children and Young Persons:

Ombudspersons for Children and Young Persons are active in all the Federal *Laender*.

With regard to the tasks of the Offices of the Ombudspersons for Children and Young Persons, § 6a of the Tyrolean Youth Welfare Act is transmitted as an example (**Annex 16**).

Taking a child into State care:

The court can withdraw custodial rights of the parents, if they endanger the welfare of the child by their conduct.

Applications for the withdrawal of custodial rights can be submitted by a parent, relatives in the vertical ascending line, adoptive parents, or the youth welfare authority.

A child of at least 14 years can submit a relevant application only with regard to care and parenting.

All other persons can apply to the court for withdrawal of custody, but in that case the court must intervene officially. Full custodial rights or custody only in certain areas can be withdrawn from the parents.

A presumptive foster-parent needs a permit from the youth welfare authority to take a child into care; this is not awarded generally but only for the concrete case in question.

For the award of that authorisation, the foster-parents' family circumstances, parenting skills, ability to cope with stress, and willingness to cooperate with the natural parents and the youth welfare authority are assessed.

The question whether and to what extent a relationship with the child existed before taking into care is also relevant to the decision.

In a number of Federal *Laender*, attendance at a special training course is compulsory, in others it is considered to be highly desirable.

The authorisation of a foster-place is issued as a ruling from the district administrative authority. An appeal to the *Land* Government is possible in the event of a negative ruling.

Accommodation with foster-parents is considered only if care by relatives is not possible. In the case of babies and infants, placement in the foster-family is in any case preferable to institutional care.

In the year 1999 (last available Federal Statistics), 13,649 minors received parenting support within the family, while 9,617 children and young persons were in full care in that year, 4,112 of them with foster-parents (5,505 in institutions). The most important institutional forms of care are socio-educational flat-sharing communities, assisted-living facilities, homes and children's villages (*Kinderdörfer*), while new forms and variants are continually developing.

Both foster-parents and institutional care facilities are subject to monitoring by the youth welfare authorities, which must inspect the facilities or the foster-families on the spot at least once a year. In the event of complaints, an immediate inspection takes place. In the course of inspection, instructions for remedying deficiencies are issued, but permits can also be withdrawn.

Additional comments of the Laender:

Carinthia:

The role and duties of the Ombudspersons for Children and Youth:

Since 1980 there has been growing awareness at both international and national levels of the need to set up an ombudsperson system for children and youth. This development was supported by the 1989 United Nations Convention on the Rights of the Child, which has been in force in Austria since 5 September 1992.

In 1989, the institution of the Ombudsperson for Children and Youth was provided for in a basic Federal Act on the youth welfare system of the Federal authorities. According to that Act, the nine Federal *Laender* were required to amend their *Land* legislation. Between 1989 and 1995, Children and Youth Ombudspersons' Offices were set up in all nine Federal *Laender*. The legal foundations, rights and powers of these Offices have been developed step by step.

In addition to the nine *Land* Ombudspersons' Offices for Children and Youth, the Office of the Federal Ombudsperson for Children and Youth was set up in 1991 within the Federal Ministry of the Environment, Youth and the Family. The Federal Ombudsperson for Children and Youth is the lady superintendent of the Youth Welfare Department and is responsible to the Ministry.

Structure:

Although the relevant structures, financial resources, responsibilities and tasks vary among the Federal *Laender*, the Ombudspersons' Offices are:

- Independent institutions of the *Land* Governments. By virtue of an Act of constitutional rank, the Ombudspersons for Children and Youth have discretionary powers in carrying out their duties,
- The Ombudspersons for Children and Youth are appointed by the competent *Land* Governments by means of an objective and transparent procedure.
- The offices must be provided with the necessary staff and budget.
- In most Federal *Laender*, the period of office of the Ombudsperson for Children and Youth is five years, with the possibility of reappointment.

Tasks:

The Ombudsperson for Children and Youth has the following tasks:

- Representation of the rights and interests of minors and their families,
- Provision of counselling on all matters affecting children, young persons and their families.
- Processing of complaints with regard to courts, administrative authorities or other institutions in the interest of children and young persons.
- Cooperation with all institutions working in the youth welfare field.

Competence:

All *Land* offices are required to provide the Ombudsperson for Children and Youth with the necessary support and any information requested.

The Ombudsperson for Children and Youth must present the *Land* Government with an annual report on the activities and experience of the Office.

In individual cases, the Ombudsperson for Children and Youth endeavours,

- To protect the welfare of the child
- To provide information and advice
- To mediate
- To hold consultations with family members, teachers, social workers, judges and all those who aim to achieve an amicable solution in the event of a conflict between young persons and families or the authorities

Main problems in individual casework:

- Conflicts between family members
- A wide variety of legal questions
- Violence in the family, sexual violence, neglect
- School problems
- Youth offenders
- Foster-families
- Custody, visiting rights
- Unaccompanied minor refugees

Operating principles of the Ombudspersons for Children and Youth:

Equal worth: Children are human beings of equal worth, with the same entitlement as adults to respect of their human dignity.

Equality: Children are neither quite different from nor the same as adults. The portrayal of children as small adults negates their special need for protection deriving from their stage of

development. The portrayal of children as basically different beings makes them into passive objects of welfare action without any personal competence.

Competence: Children, according to their age, are able to express needs, wishes and ideas. It is the task of the adults to adapt to children's forms of expression and not vice versa.

Anonymity and confidentiality: Absolute confidentiality is guaranteed.

Costs: The services of the Ombudspersons for Children and Youth are given free of charge.

International co-operation and partnerships:

- ENOC - European Network of Ombudspersons for Children
- EFCW/IFCW - European the/International Forum for Child Welfare
- CRIN - Child Rights Information Network
- Telefono Azzuro (Italy)
- Czech Society for Social Pediatrics
- UNICEF

Taking children into State care:

A child is taken into State care, particularly if the family of origin has inadequate parenting skills, by assigning custody to the youth welfare authority, at least in the areas of care and upbringing, either by agreement or on the basis of a court decision.

Depending on the age and personality of the child, the youth welfare authority later accommodates him/her in a suitable foster-family or other socio-educational youth welfare institution.

The Federal *Land* of Carinthia has a wide and varied range of care facilities outside the family for satisfying the individual problem- and age-related needs of children and young persons.

The following forms of care, with different organisational structures and objectives, are available:

Homes:

- Flat-sharing communities
- Family flat-sharing groups
- Associations of flat-sharing groups
- Children's villages (*Kinderdörfer*)
- Crisis intervention services
- Extramural forms of assisted living
- Foster-families

The various services work on the basis of the relevant socio-educational plan, which specifies the target group to be cared for, the age structure, placement indication/counter-indication, parenting aims, parenting services, etc. Owing to the range of services available, the individual needs of the children and young persons can be taken into account to a very wide extent, so that they can be offered the best possible living conditions.

In all these services, care is taken to ensure that the residential units are relatively small and manageable (groups with a maximum of 10 places).

The services are subject to technical inspection by the authorities

The following facilities are available for foster-families:

1. New guidelines for the selection of new foster-parents: Standard and binding guidelines for the selection of new foster-parents have been created jointly with qualified social workers. These guidelines regulate selection procedure and criteria.
2. Preparatory seminars for new foster-parents: Applicants for places as foster-parents, who have satisfied the selection procedure (see 1 above) and have been found to be suitable in principle must attend a two-day preparatory seminar, concentrating on personal experience and motivation analysis, before being allotted a foster-child.
3. Continuous further training: Further training courses for all foster-parents are held twice a year. These full-day courses offer both technical training and also an opportunity for exchange of experience between foster-parents and youth welfare authority staff.
4. Training record card: Attendance at further training courses, seminars, lectures, etc. is entered in this training record card for foster-parents, as evidence of technical qualifications.
5. Foster-Parents Service facilities: Conclusion of non-standard contracts between the foster-parents and the applicant organisation (SOS-Kinderdorf), giving protection under social insurance law. The foster-parents employed receive ongoing support and assistance from women psychologists of the Foster-Parents Service, (assistance in crisis situations, documentation of care, etc.). Participation in the further training courses (see 3 above) is compulsory for the foster-parents employed.
6. Monitoring of care is the responsibility of the authorities.

Number of children/young persons taken into State care

Year	Children/young persons in care, total	Thereof in homes and other institutions	Thereof foster-children
1999	1,017	556	461
2000	1,011	591	448
2001	909	592	317
2002	919	626	293

Minors are given support and assistance in the framework of social welfare services, for example, by socio-educational family assistants, group services for minors in separation situations, by the Psychological-Psychotherapeutic Service, assistance with schoolwork, and youth holiday schemes. Furthermore, extramural care and intensive family services are provided; approximately 3,080 children and young persons received approximately 192,500 hours of services in the reporting period.

Lower Austria:

In most cases, children are taken into State care after an agreement between the parents/guardians and the locally competent youth welfare authority, and in rare cases by action because of imminent danger and subsequent transfer of parenting rights to the youth welfare authority by the court.

If this measure takes the form of care of the child outside the family with foster-parents – who receive a care allowance from the *Land* for that service – a permit is granted under a supplementary administrative procedure to take a child from outside the family into care.

The number of children in care naturally fluctuates within a year, so that the following figures can only be a guide.

In the year 1999, for example, 260 families received parenting support from social services at the request of the youth welfare authority. The incidence of such action has risen sharply. 1,010 children were already able to remain with their families despite support in 2001 while the 2002 figure was 1,219.

The number of children in foster-families and youth homes or flat-sharing communities has been relatively constant for many years. Most recently, the number of children in homes increased. Thus, for example, 850 children were accommodated in foster-families in Lower Austria in 2001 and 881 children in institutions, while the number of children in homes rose to 939 and the number of foster-children fell to 809 in 2002.

In recent years, there have been major changes in the form of facilities available. Whereas only a few large institutions with more than 60 care places have survived, the number of flat-sharing communities of 10 to 20 places has increased. A new innovation has also been parenting care that is not locally based as well as part-time care (halfway-house forms). Each full-care institution is subject to regular inspection by the *Land* Government, in respect of its overall organisation and also with regard to the progress of each individual child.

Young persons can raise complaints concerning care to the inspectors and also to the district social workers in the context of routine contacts, insofar as they are able to make coherent statements. Children's relatives can complain to the youth welfare authorities or to the *Land* Government. If a child was taken into care by order of a court, the curatorship court is also a possible point of contact. Before a child is taken into care as well as regularly in the progress conferences, an exchange of information between professionals of the institution and the youth welfare authority must take place regarding possible contacts between the child and persons close to him/her. Alternatively, consultations can take place with close relatives and, if appropriate, an agreement can be made.

Tyrol:

Number of children receiving assistance from the youth welfare authority in the family context in the year 2002: 934.

In the context of full care, some 528 children and young persons were accommodated in homes and flat-sharing communities and 272 in foster-families.

Supervision of public youth welfare institutions is the responsibility of the Youth Welfare Department in the Office of the Tyrolean *Land* Government. Complaints on occurrences in youth welfare institutions can be made at any time to the Ombudsperson for Children and Youth or to the special youth welfare department.

Complaints are thoroughly examined in all cases and a reply or comment is transmitted to the complainant. Furthermore, the institutions are visited regularly every year as well as in cases of special need. Only appropriately trained professional staff are employed in public youth welfare institutions.

There is no provision in law for restrictions on the maintenance of personal contacts by a child or young person (for educational reasons, any restriction would have to be discussed and agreed with the young person in the individual case). Work and contact with the system of origin/ parents of the children and young persons is already regarded as desirable by the staff of the institutions and the social workers of the youth welfare units and is to be further developed in future – as is already possible in individual cases. The law has no provision for interference with the property of the child or young person.

Vorarlberg:

The following remarks describe the role and tasks of the Ombudspersons for Children and Youth in Vorarlberg:

The *Land* Youth Welfare Act determines the tasks of the Ombudsperson for Children and Youth as follows: counselling of minors, parents/guardians and legal representatives, assistance in conflicts between minors and parents/guardians on the one hand and authorities or youth welfare institutions on the other hand and between minors and parents/guardians, establishment of contacts between minors and parents/guardians and the authorities and institutions if required, advisory services to the *Land* Government in planning, research and public relations work in the sphere of youth welfare and the submission of annual reports.

The procedures for taking a child into State care in the *Land* of Vorarlberg are as follows:

With regard to assistance in parenting, the *Land* Youth Welfare Act provides that the least intrusive action must be taken in each case. Taking into full care is therefore decided on according to the degree of impairment of the child's welfare (if protection of the minors cannot be guaranteed by other measures) and in the light of the prognosis for the future guarantee of the child's welfare in his/her family. The individual steps of the process (investigation, decision, form of accommodation, agreement, mediation) are described in a catalogue of action.

In the year 2002, approximately 1,400 minors received support within the family in Vorarlberg (extramural family assistance). On 31 December 2002, 451 minors were accommodated outside their families, 233 minors were in institutions and 218 in foster-families. Vorarlberg has a flat-sharing group for mothers and children, a crisis intervention group, institutions with quasi-family flat-sharing groups, flat-sharing groups, a socio-educational boarding institution, assisted-living services for young persons as well as forms of full care not tied to a particular locality.

Institutions for the care and upbringing of minors require a permit under the *Land* Youth Welfare Act and are subject to inspection by the public youth welfare authority.

Complaints regarding parenting assistance can be made informally (without a special procedure) to the youth welfare departments of the District Governors' Offices, the Office of the *Land* Government and the Ombudsperson for Children and Youth.

Vienna:

At the end of 2002, 1,108 children were living with foster-families. Of these, 471 children were housed with Viennese foster-families and 637 with families in other Federal *Laender*. At the end of 2002, 21 of those children were housed with crisis foster-parents, in which case it is decided within eight weeks whether, and if so what, further action is necessary.

Juvenile offenders:

Reference is made to the replies to question 1.

ARTICLE 18

THE RIGHT TO ENGAGE IN A GAINFUL OCCUPATION IN THE TERRITORY OF OTHER CONTRACTING PARTIES

Article 18, paragraph 1

Ad A and C:

The permits for the employment of aliens required by employers under the provisions of the Aliens' Employment Act, BGBl. No. 218/1975, as amended, are awarded liberally within the maximum Federal quota and the *Land* quotas established annually. Similarly, the provisions of the Federal Act on the Entry, Residence and Establishment of Aliens (Aliens Act 1997-FrG) BGBl. I No. 75/1997) are applied as liberally as possible.

Strictly speaking, foreigners who wish to engage in gainful activity in Austria need an Austrian residence document for entry into and residence in the country (residence permit or establishment permit), which also covers gainful activity. The residence document confers not only the right to residence in Austria during its period of validity but also (usually) the right of multiple entry into Austria.

Since Austria's entry into the EEA, nationals of an EEA Member State have been exempted from visa requirements and have had freedom of establishment; therefore, they merely need a valid travel document. In addition, they enjoy mobility on the Austrian labour market. The Aliens' Employment Act, which regulates the access of foreign workers to the Austrian labour market, is no longer applicable to this group of persons. Spouses and children (aged up to 21, or beyond if receiving maintenance) of an EEA citizen resident or at least regularly dwelling in Austria enjoy freedom of establishment and mobility on the Austrian labour market even if they are not themselves EEA citizens. If they are not in any case exempted from visa requirements on the basis of bilateral agreements, they are entitled to entry or residence documents.

On the basis of bilateral agreements and the EU-Switzerland Agreement on Free Movement of Persons, which entered into force on 1 June 2002, Swiss citizens are entitled to an indefinite stay after entry with a valid travel document. However, in order to engage in gainful activity for the first time as employed persons, they need the necessary permits under labour market law, which, however, are granted without a labour market review and quota restrictions. Irrespective of their nationality, spouses and children (aged up to 21, or beyond if receiving maintenance) of Swiss citizens resident or at least regularly dwelling in Austria themselves receive establishment permits outside the quotas and the necessary permits under labour market law on the same conditions as Swiss citizens. All Swiss citizens and their third-State family members who were lawfully employed in Austria as of 1 June 2002 are permitted to take up any employment on the Austrian labour market without any further labour market review. After five years of lawful residence in Austria, Swiss citizens are entitled to permanent work permits.

The initial admission of further foreign workers from abroad to take up employment in Austria is subject to certain restrictions, as the result of the maximum quota system under the Aliens' Employment Act. This restriction on further new admissions is necessary in order to give Austrian workers and foreign workers who have already established themselves here – in particular, family members of a migrant worker entering Austria in the context of family reunification – better chances of access to the labour market.

The quota system operates as follows:

The binding maximum Federal quota determines the highest permissible proportion of foreigners in the potential workforce.

All authorised employed and unemployed aliens are included in the maximum Federal quota; according to the Aliens' Employment Act, they may not account for more than 8% of the total Austrian potential workforce.

The Order on exceeding the maximum Federal quota (BHZÜV) ensures that certain groups of aliens whose employment is in the public or the general economic interest can be admitted even if the maximum Federal quota is exceeded, but up to the level of at most 9% of the total Austrian potential workforce.

Furthermore, applications for employment permits cannot be refused on grounds that the maximum Federal quota is exceeded if the alien in question has acquired an entitlement to unemployment insurance benefits.

Maximum *Land* quotas

Separate maximum *Land* quotas are determined in order to protect the maximum Federal quota; the total of all the maximum *Land* quotas is less than the maximum Federal quota.

If a maximum *Land* quota is exceeded, an investigation procedure comes into effect.

Special quotas

Under § 5 of the Aliens' Employment Act, the Federal Minister of Economics and Labour can determine special quotas by issuing Orders to meet short-term requirements for skilled foreign workers and harvest helpers.

Employment permits that are issued in the context of such a quota also constitute residence permits for the duration of the employment. In such cases, the period of validity of the employment permit may not exceed six months, or six weeks under a harvest helper quota.

Ad B:

The latest data on employment permits issued or refused are given below:

2002

Number of initial employment permits issued	24,551
Number of extensions authorised	8,693
Number of initial employment permits refused	8,640
Number of extensions refused	129

Since the vast majority of the migrant workers employed in Austria come from States that are not signatories of the Social Charter, the vast majority of work permits refused also refer to workers from those States.

Most migrant workers who are not nationals of an EU Member State (so-called third-State nationals) and their family members hold long-term work authorisations such as work permits and permanent work permits. The 2002 annual average of work permit holders was 18,974 and that of permanent work permit holders was 179,952.

The number of permanent work permit holders has remained at a constantly high level, though the naturalisation of migrant workers and their family members has sharply increased since the end of the 1990s (2002: 36,011 naturalisations, including 80% from non-EEA States).

Supplementary questions in Conclusions XV-2 on Article 18 paragraph 1

Decline in the number of employment permits: Are specific measures planned for non--EEA citizens whose States of origin are ESC Contracting States?

Through the 2002 reform of aliens law, the labour market access of family members of migrant workers lawfully employed in Austria was further considerably eased, with effect from 1 January 2003, in particular by the introduction of the establishment permit, which every alien can receive after five years of lawful establishment and with which he/she has an unlimited right of establishment and unrestricted access to the labour market, as well as through the permanent work permit for young aliens who have attended their last year of compulsory education in Austria (see also the remarks on Article 19 paragraph 6, "Access to the labour market" in the 21st Austrian report, **Annex 17**).

The imminent implementation of various EU directives adopted in the EU bodies at the end of 2003 will further improve the integration of third-State migrant workers with many years of residence in Austria and their family members.

Article 18 paragraph 2

Ad A and C:

The previous reporting should be updated as follows:

Engaging in gainful employment by aliens in Austria is regulated by the Federal Act of 20 March 1975, BGBl. No. 218, regulating the employment of aliens (Aliens' Employment Act – AuslBG), as amended.

Pursuant to the provisions of the AuslBG, labour market authority permits are needed for the employment of an alien. With regard to the types of procedure or types of work authorisations, please see the remarks in the 21st Austrian report on Article 19 paragraph 2 (Ad A and B – **Annex 18**) and on paragraph 6 ("Access to the labour market" – see **Annex 17**).

On initial admission, not only the criteria of key personnel status or certain integration characteristics, but also in particular the following requirements under labour market law must be met: the situation and development of the labour market must allow the employment and there must be no objections on the basis of important public interests or general interests of the economy (§ 4 (1)). After the *Land* maximum quotas have been exceeded, a stricter labour market review procedure becomes operative (§ 4 (6)) and, after the Federal maximum quota is exceeded, only the groups of persons mentioned in the Order on exceeding the Federal maximum quota may be admitted. Furthermore, an initial admission can be refused on the grounds mentioned in § 4 (3) (AuslBG), for example, if the employer has repeatedly infringed the provisions of the AuslBG, if the employer does not comply with prevailing wage and working provisions, or if the alien cannot produce the appropriate residence permit pursuant to the Aliens Act 1997 in the employment permit procedure.

The operation of the aliens procedure in Austria is governed by the principles of the General Administrative Procedures Act 1991, BGBl. No. 51, as amended. Accordingly, the regional offices and *Land* offices competent with regard to the employment of foreign workers must issue rulings on applications for the grant of employment permits and in the case of refusal of the admission of key personnel. Both the employers and – if personal circumstances of the

aliens were decisive with regard to the decision, also the aliens – have the right of appeal against such decisions.

Ad B:

No relevant changes.

Supplementary questions in the Conclusions XV-2 on Article 18 paragraph 2:

Questions related to the loss of employment/right of residence or the extension of the employment permit and the right of residence:

Employment permits and the admission of key personnel are tied to particular posts with particular employers, as defined according to local and vocational criteria, but that does not rule out a change of employment by the alien, whatever the reason. In principle, however, a new employment permit or key personnel admission permit is required for every change of employment defined by vocational and local criteria that is not covered under the terms of the original employment permit or key personnel admission permit.

Aliens (in particular family members under family reunification) with an all-purpose establishment permit or with entitlement to unemployment benefit can use the services of the Public Employment Service in seeking employment in the event of loss or change of employment.

In the event that they are placed in employment by the Public Employment Service, there is provision for the automatic grant of an employment permit. A new key personnel admission authorisation with a new employer is also granted without problems, if the qualification requirements of the post are sufficiently high.

After one year's employment, the alien can receive a work permit (valid for two years) for the Federal *Land* or *Laender* in which he/she was last employed under an employment permit or key personnel admission procedure and can take up any gainful employment there without any further formality.

Holders of permanent work permits or establishment permits (work authorisations which grant access to any employment throughout the Federal territory – validity five years or unlimited) can again take up employment without any further formality in the event of loss or change of employment.

Employment permits and key personnel admission authorisations (with one and the same employer) are extended without problems if the labour market requirements continue to be met.

Authorised employment of 18 months within a framework period of 24 months before the application for extension is necessary for the extension of a work permit.

A permanent work permit must be extended if the alien has been lawfully employed for at least two-and-half years within a framework period of five years before the application for extension and if he/she does not yet have an establishment permit (document with unlimited right of establishment and unrestricted access to the labour market).

Average duration of procedures for obtaining an employment permit:

First of all, it should be pointed out that the statement in the first sentence regarding “provisional work permits” is incorrect. Such provisional work permits are issued not after four months but already after six weeks in the event of delay by the Public Employment Service not caused by fault of the employer and the alien foreign worker.

For key personnel admissions and employment permits, the procedure lasts three to four weeks on the average. Work permits and permanent work permits are issued immediately if all data and background documents are presented.

Fees:

The fees charged by the Public Employment Service for employment permits cover the administrative expenses caused by the employer's application. This fee is charged to the employer and not to the foreign worker.

Article 18 paragraph 4

No relevant changes.