



PROTECTION CHILDREN AGAINST SEXUAL ABUSE IN THE CIRCLE OF TRUST: LEGAL FRAMEWORKS

A report about the situation in Austria, the
implementation of the Lanzarote Convention and
responses to Austria's replies to the questionnaire

Focus on cases of child sexual abuse where the presumed predator is
one of the parents of the victim

Vienna, January 2nd, 2024

Question 5a:

The child and youth welfare organizations are the entities to which all other entities such as judges, teachers, medical profession, etc. have to report a case of child endangerment, including presumed cases of child sexual abuse. The child and youth welfare organizations are however not legally required to file a police report or report to the public prosecutor in cases of a presumed child sexual abuse. Also, the child and youth welfare services are entitled to file a demand to the family court for suspension of the visitation right if the presumed child sexual abuser is the separated parent of the child. However, this practice is not mandatory and is rarely made use of. From cases that have been reported to us, not only do other organizations not always report presumed cases of child sexual abuse to the child and youth welfare organizations. On the other hand, the child and youth welfare organizations have no standard process to report presumed cases of child sexual abuse. They can decide independently whether to pursue allegations of child sexual abuse to the police. As per the following document, on page 16, we can see that the child and youth welfare organization of Vienna decides whether to report to the police or not on basis of the evidence **THEY** could find: <https://www.die-moewe.at/sites/default/files/M%C3%B6glichkeiten%20und%20Grenzen%20Wr%20KiJuHi%20-%20Horst%20Wolfger.pdf>

Similar, the guidelines of the child and youth welfare organization in Upper Austria, page 25 of the brochure (p.14 of the following pdf file). They state that the child and youth welfare organization will not report a criminal complaint to the police if a potential proceeding would harm the child more than it would help the child or if the trust relationship the child and youth welfare organization had built with the family would be endangered.

see : https://www.land-oberoesterreich.gv.at/files/publikationen/JW_sexuelleGewalt_Kinder_.pdf

This modus operandi has as a consequence that other professions such as children psychiatrists, forensic doctors or the police do not get the opportunity to help produce evidence.

- We firmly believe that the child and youth welfare organizations, which are represented by two social workers, do not have the professional capacities to decide if future evidence of a presumed case of child sexual abuse will be sufficient for a criminal proceeding to be successful. We therefore urgently call for a mandatory protocol for all child and youth welfare organizations to follow, that contains a compulsory evaluation of an independent and specialized child psychiatrist (with documented training on child sexual abuse, trauma and trauma response, victim dynamics).
- The mandatory protocol for the child and youth welfare organizations should also contain an obligation for them to file a formal request to the family court to immediately cease visitation rights and custody in case the presumed predator is a parent that does not live with the child.

We furthermore have documented cases of presumed “graphic representation of child sexual abuse” (formerly called “child pornography”), which were reported to the reporting office of interpol (meldestelle@interpol.at) and to the reporting office C4 ([Cybercrime Competence Center](#)). In both cases, the complaint was redirected to the local police. No house search or inspection of the electronic devices of the presumed abuser was ordered. Cases like these discourage other victims from reporting their case, as no evidence is being gathered and they might put themselves in danger if no protective measures are ensured after their reporting.

- We call for a nation-wide, mandatory protocol to follow in case of a reporting of “graphic representation of child sexual abuse” (formerly called “child pornography”). In case of a reporting of a presumed case of graphic representation of child sexual abuse, a house search including an inspection of all electronic devices of the presumed predator should be mandatory.

Question 7a:

There are no transparent or nation-wide procedures regarding how the child and youth welfare organizations (Kinder- und Jugendhilfe) should react to suspicions of child sexual abuse. Austria’s response to answer 7a of the questionnaire states “The risk assessment must be carried out in a structured manner and in compliance with professional standards.”- However, there is no transparent or official structured manner for risk assessment in case of child sexual abuse allegations such as a clear and official procedure for the child and youth welfare organizations. Even if in some Federal States (Bundesländer) there are guidelines of the risk assessment in case of child sexual abuse, these guidelines are not made public nor are they legally binding.

Furthermore, Austria states in its answer to question 7a, that the risk assessment by the child and youth welfare organizations has to be carried out in compliance with professional standards. The risk assessment of the child and youth welfare organizations is carried out by two professionals that can be of a number of different professional fields, in most cases social workers. Social workers and most other professions working as professionals for the child and youth welfare organizations do not have such specific professional standards of risk assessment of child sexual abuse as stated in Austria’s answer. Additionally, the professionals carrying out the assessment are not required to have training on trauma or child sexual abuse. They therefore lack the required professional knowledge for such an evaluation. This applies specifically for questioning methods and the evaluation of the reaction of traumatized, sexually abused children in loyalty conflict.

Generally, there is an ideology of protecting the perpetrator in the Austrian legal system. This can be seen even in documents of the child and youth welfare organizations, who recommend refraining from taking action against the presumed perpetrator in case of want for evidence according to the judgement of the social workers.

See: H. Wolfger, "Möglichkeiten und Grenzen der Wiener Kinder- und Jugendhilfe in der Abklärung einer möglichen Gefährdung des Kindeswohls", pp. 15 ff.:

sexuell

Gefährdungsabklärung bei Verdacht auf sexuellen Missbrauch


Prinzipiell gehört der Umgang mit dem Verdacht auf sexuellen Missbrauch von Kindern zu den anspruchsvollsten und schwierigsten Aufgaben der Kinder- und Jugendhilfe.

Ziel jeder Intervention muss natürlich sein, dass der sexuelle Missbrauch beendet und das Kind geschützt wird.


Die überwiegende Anzahl von sexuellen Übergriffen gegenüber Kindern findet im engen Sozialen Umfeld der Kinder statt, es ist sehr oft ein sich langsam, über Jahre hinweg entwickelndes Geschehen

Sexuelle Übergriffe sind zudem mit einem hohen Geheimhaltungsdruck verbunden, sie geschehen hauptsächlich durch Männer (80-90%). Die Opfer werden mit allen Mitteln zur Geheimhaltung verpflichtet und daran gehindert, über die erfahrenen sexuellen Übergriffe zu sprechen.

Abklärung einer möglichen Gefährdung des Kindeswohls



Kinder- und Jugendhilfe



Wien ist anders.


Horst Wolfger

Problemeinschätzungen und Interventionen bei Verdacht auf sexuellen Missbrauch werden im Allgemeinen im Team erarbeitet, es ist sinnvoll bei der Bewertung von Anhaltspunkten, der Reflexion und Planung der weiteren Vorgangsweise Beraterinnen spezialisierter Beratungsstellen im Bereich sexueller Missbrauch hinzuzuziehen.


Eine Einschaltung der Polizei muss sehr genau überlegt werden, da die Polizei bei Officialdelikten ermitteln muss. Wenn die Beweislage nicht ausreichend ist, führt das zu einer Einstellung des Verfahrens, stärkt den Täter in seiner Rolle und führt zu einer weiteren Traumatisierung des Opfers.

In der Phase eines ersten Verdachtes wird es eher nicht möglich sein, die Eltern auf die Vermutungen anzusprechen, besonders dann, wenn der Verdacht sich gegen ein Familienmitglied richtet. Das Risiko, dass die Äußerung eines Missbrauchsverdachtes eine weitere Abklärung erschwert, wenn nicht unmöglich macht, muss jedenfalls abgewogen werden. Verleugnungs- und Geheimhaltungsmechanismen sind bei innerfamiliären Missbrauch besonders stark.

Abklärung einer möglichen Gefährdung des Kindeswohls



Kinder- und Jugendhilfe



Wien ist anders.

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Found on: <https://www.die-moewe.at/sites/default/files/Möglichkeiten%20und%20Grenzen%20Wr%20KiJuHi%20-%20Horst%20Wolfger.pdf>

- We therefore call for a transparent, national, and legally binding procedure for all child and youth welfare services that should be made public. Specifically, an evaluation by a children's psychiatrist with formal training in child sexual abuse and trauma should be mandatory. An evaluation of the child by a psychologist will not be appropriate, as their formal training does not include trauma, an in-depth knowledge of pathologies and the knowledge to medically treat those pathologies.
- Austria already has specialized entities in hospitals, victims of child sexual abuse are however not referred to as part of a standard procedure. Immediate referral to those specialized entities at hospitals must become a legal standard!
- The legal framework should ensure that all evidence is viewed at court – whether it be medical reports, photos, videos, audios or witnesses of the child's relation. Currently, these evidences are usually disregarded in criminal or family rights proceedings.
- We recommend an e-learning program for all professions on child sexual abuse as already existent in Germany: <https://elearning-kinderschutz.de/>.
- We also recommend the establishment of a 24 hours phone hotline for medical professions as already existent in Germany: <https://kinderschutzhotline.de/>. They also specialize on the protocol for medical professions to follow in case of child sexual abuse.
- The gathering of evidence should include immediate house searches including electronic devices such as computers and mobile phones of the suspected perpetrator. Even if the child victim reports that the child sexual abuse was filmed, there is no standard procedure to verify the testimony of the child through a house search.
- Hearings, examinations, interrogations and questionings of all parties should be immediate and done by professionals with formal education on trauma and child sexual abuse. Some child victims whose abuse dates back too long do not want to talk about the sexual abuse anymore, hence the evidence for the child sexual abuse cannot be produced anymore. Questioning techniques must respect the traumatization of victims of child sexual abuse, as well as their loyalty conflict and fear of potential repercussions of the suspected perpetrator (especially in the case of non-conviction).
- Furthermore, we call for a compulsory and immediate evaluation of the suspected perpetrator, consisting both of a physical examination and a psychiatric evaluation. Currently, there is no deadline for a questioning or examination of the alleged perpetrator. Important evidence such as scratch or bite marks of the child from its self-defense is oftentimes lost due to the late examination.
- Case conferences (Fallkonferenzen) as already foreseen for cases of severe domestic violence should be mandatory for all cases of presumed child sexual abuse.

Furthermore, there are no guidelines regarding separated parents. After the separation of their parents, many children are exposed for the first time to an unsupervised contact with one of the parents. Children sex offenders who are parents therefore get access to their child for the first time for a longer time period without supervision, for example when exercising their visitation right. It is therefore critical to define specific procedures for victims of child sexual abuse of separated parents. Currently, the law does not specifically state how to proceed. Authorities apply the same general rules to children who incriminate one of their parents of sexual abuse, in spite of the particularities for children of separated parents: Each parent normally has unsupervised contact with the child. For most parents, one of the parents is the main caregiver and the child lives in their home the majority of the time. The other parent usually has visitation rights.

Question 7c:

In response to Austria's answer to question 7c:

Section 38a para. 1 Security Police Act is currently used in case of physical violence (domestic violence), but oftentimes not in case of child sexual abuse. The main reason is that the measure aims at a criminal conviction. However, for a criminal sentence, proof is required. If there is any doubt, charges are dismissed, and proceedings are closed. This does not mean, however, that the suspect did not commit the crime, it can mean that the crime could not be fully proven. In criminal proceedings, if there is a doubt, the suspect should not be convicted (in dubio pro reo). Child sexual abuse, however, is often hard to prove. There isn't necessarily physical evidence, often children also do not want to repeat their allegations in front of police officers, as they are in a loyalty conflict. As a consequence, there is a risk that if the suspect is not convicted in a criminal proceeding, the suspect would return to the home of the child. The consequences for the child can be dangerous and traumatizing. Furthermore, the family court can overrule a restraining order/ order of protection and order supervised contacts with the presumed predator. These supervised contacts can be equally traumatizing for the child victim.

- We therefore recommend that in case of suspected child sexual abuse, even if the criminal proceeding is dismissed or the suspect is not convicted, the case should be investigated to rule out child endangerment. There should be a legal framework to temporarily or permanently remove the suspected perpetrator from the family environment in case of reasonable suspicion of sexual abuse of a child living in the same environment together with the suspect, even without a criminal conviction.
- Furthermore, we believe that the case of separated parents should be included in this question: Visitation rights and custody should be stopped until the safety of the child can be guaranteed and all doubts concerning a possible child sexual abuse can be cleared.

Question 7d:

We are under the impression that the removal of the child victim from the family environment is not handled as a last resort – in some cases the child and youth welfare organizations are rather quick to remove child victims from their home. Especially in case of separated parents, it is unnecessary to remove a child from their home in which they are not allegedly sexually abused. The child and youth welfare organizations do have the possibility to autonomously request the family court to interrupt the visitation rights and custody of the suspected perpetrator (temporarily or permanently) in order to protect the child of possible further sexual abuse and / or re-traumatization. However, child and youth welfare organizations do not use this measure as a standard procedure.

We have recently been contacted by a mother whose children reported child sexual abuse by their father during the visitation time. The mother reported the case to the child and youth welfare organization. The child and youth welfare organization told the mother, they could only help the family if the mother was willing to sign a “help plan”. A disregard of this so-called “help plan” by the mother, once signed, can subsequently lead to the removal of the child from her home. Within the scope of the “help plan”, the child and youth welfare organization proposed a psycho-therapy for the children, which the mother was happy to accept. The visitation rights of the father were temporarily stopped. The mother and the children were psychologically evaluated, also questioning if the mother is able to educate her children. The suspected father, however, was never psychologically evaluated. The risk assessment of the father was limited to a conversation between the child and youth welfare organization and the father, in which he denied all allegations. The child and youth welfare organization informed the mother, that they could not find a timely therapy place for the children and therefore strongly recommend placing the children in an external therapy center, transferring custody of the children temporarily to the child and youth welfare organization.

If the mother did not accept the placement in the therapy center, she would have risked losing the custody over her children permanently due to “lack of cooperation with the child and youth welfare organization”. She was fighting for months to get the custody of her children back. Meanwhile, the father got full and unsupervised visitation rights back, no psychological or psychiatric evaluation was done on him.

- We therefore call for a binding legal framework that states that if the presumed victim of child sexual abuse does not live with the suspected perpetrator, the child should not be removed from its home. At the same time, child and youth welfare organizations should foresee in their standard procedure to immediately stop visitation rights and custody from the suspected perpetrator until all doubts that the child has been sexually abused by the parent have been cleared. A dropped criminal proceeding would not be enough, because, as mentioned before, this could be due to the lack of prove.

The procedure of removing a child from its home is not transparent, nor clearly defined. The evaluation is done by two professionals of the child and youth welfare organization. This evaluation is subject to the personal assessment of those two professionals. As the child and

youth welfare organization is not considered an authority, there is no possibility to complain or contest the removal of the child in an administrative legal process. Parents also do not have the right to inspect the records of the removal of the child. After the removal of the child from the home, child and youth welfare organization has to inform the court within eight days.

The court should evaluate within four weeks if the removal was legal. However, the deadline of four weeks is not legally binding. Some parents have to wait for months, even years until the removal of their child is ruled out by a court. However, the child and youth welfare organizations sometimes argue in the legal procedure, that if the removal of a child had been too long ago, even if the removal of the child from its home was not justified, the child should remain with the foster family, as the foster family has become the attachment figure of the child in the meantime and another change of the attachment figure would not be beneficial to the wellbeing of the child. Especially for young children this could already happen within as little as six months.

The child and youth welfare organizations do not set out conditions for the removal. The required "imminent danger" mentioned in section 211 para. 1 General Civil Code (ABGB) as an obvious endangerment of the child's welfare and the necessity of change of the existing situation" are evaluated in an arbitrary way. Parents are not informed that a procedure of the removal of the child from their home is ongoing, they are purposely surprised. Also, as demonstrated, there is no set duration for the removal, parents are left in the dark if there is a possibility for the child to rejoin the home. The will of the child is often not heard in the process.

- We therefore call for a nation-wide, transparent, and standardized process of the child and youth welfare organization. This procedure must have objective criteria and must ensure parents are informed that a procedure is ongoing. It must be clear to the parents which measures they must take in order to avoid the removal of their child from their home. The child's will should be taken into account without exception and with no age limit (for all ages). In order to avoid re-traumatizing the child, the removal of the child from its home should not only be in accordance with the child's will, it should be non-violent, and without the force of the police. If the child tries to fight off the removal, the removal of the child must be immediately stopped.
- Furthermore, there must be a possibility to contest the removal. The legal framework should foresee a legally binding deadline of maximum a week for the court to rule out if the removal of the child from its home was commensurate. If the allegations cannot be proven, the child should automatically be brought back into their parent(s) custody. The removal of the child from its main care giver and attachment figure can cause an additional trauma to the child, especially in a vulnerable moment such as suspected sexual abuse. The goal should be to ensure a stable environment for the child victim. The legal framework should clearly state that the removal of the suspected perpetrator from the home should be prioritized over the removal of the child from its home.

The untransparent rules, the long procedures, and the risk of durably losing custody of the child either to the suspected perpetrator or to the child and youth welfare organizations are known by many women. Some mothers also report having been victims of institutional violence: When they reported the child sexual abuse to the child and youth welfare organizations, the police or the (family) court, they and their children were not believed. Even worse: Some of them were accused of wanting to blackmail the suspected perpetrator, especially if it was the father of the child. The mothers are also accused of manipulating the child into making up the events of sexual abuse. In this case, unscientific concepts such as the Parental Alienation Syndrome (PAS), Attachment Intolerance (Bindungsintoleranz), the False Memory Syndrome or Münchhausen by proxy- Syndrome were used against them to dismiss their observations. Austria uses the ICD-10 classification. None of these concepts are recognized in ICD-10. These concepts are nevertheless used by accredited court expertise (eg. psychologists), child and youth welfare organizations, judges and other professionals dealing with custody and visitation rights.

There seems to be a gender-bias in the Austrian jurisdiction with a tendency to believe that women falsely accuse of sexual violence. However, several studies show that false accusations are extremely rare, as little as 1,3% (vs. 21% of false accusations in males):

- Barnett, Adienne (2020): Domestic Abuse and Private Law Children Cases. Hg.: Ministry of Justice (UK), S.20, Tab. 4.1
- Bala, Nicholas und John Schumann (2000): Allegations of Sexual Abuse When Parents Have Separated; Canadian Family Law Quarterly 17, S. 191-241.

These practices hold mothers back from seeking help in case they suspect child sexual abuse from the other parent or reporting the possible sexual abuse of their child. We have feedback from lawyers who had to advise their clients not to mention the sexual abuse because of the risk of losing custody over their children – even to the suspected perpetrator, therefore not being able to protect their children at all. We have several documented cases of mothers who did lose custody of their children because of child sexual abuse allegations despite existent medical reports.

- We call for a legal and explicit prohibition of the use of unscientific concepts (or their transliteration) such as the Parental Alienation Syndrome (PAS), Attachment Intolerance (Bindungsintoleranz), the False Memory Syndrome or Münchhausen by proxy- syndrome in cases of suspected child sexual abuse, child custody proceedings, visitation rights proceedings and all training programs, especially for social workers and other professions dealing with parental rights.
- We call for a mandatory psychiatric evaluation of the presumed predator of the child victim, both in case of a criminal proceeding as in case of a parental rights proceeding. Oftentimes, the parent who assists the child in reporting the child sexual abuse is accused of false accusation because of a psychological or psychiatric disease. As a consequence, many times, the parent who helps the child in reporting is evaluated, whereas the presumed predator is not evaluated.

Question 7e:

No mandatory data exchange between criminal court and family court is foreseen. Therefore, in child custody proceedings or contact rights proceedings, it is up to the judge of the family court to decide whether or not she or he wants to retrieve information on ongoing criminal proceedings such as a proceeding of child sexual abuse against one of the parents. In many cases, the information on these ongoing proceedings or pre-proceedings is not considered by the family court when ruling out visitation rights or custody over a child. We have documented cases where the family court decided to allocate shared custody or full custody to a parent who was the suspected perpetrator of the child victim of sexual abuse.

- We therefore call for a mandatory data exchange between criminal courts, child and youth welfare organizations, police, public prosecutors, and family court in case of suspected child sexual abuse.

The legal framework foresees an obligation for courts to inform the child and youth welfare organizations if suspicions of child sexual abuse are mentioned. However, it has been reported to us that courts have not informed child and youth welfare organizations about the possible child sexual abuse.

- We therefore call for a legal consequence in case of disregard by the court of their obligation to inform child and youth welfare organizations about the possible child sexual abuse.

Question 8:

In response to Austria's answer and repeating already stated above arguments: The criminal conviction of a parent of sexual child abuse is not sufficient as a protection of children against sexual abuse by their parent. A criminal conviction requires unambiguous evidence. In case of any doubts, the accused has to be acquitted for want of evidence (in dubio pro reo). A lack of evidence however does not mean that a child sexual abuse did not happen. It only means, that there was not enough evidence to convict the accused. Family courts however, as stated in Austria's answer, have a different decision basis: *"The basis of assessment for the deprivation or restriction of custody is always the best interests of the child."* (In dubio pro infante). Austria then, however states, that the basis for consequences for child custody and visitation rights is a conviction by a criminal court: *"If a parent has been convicted of offenses against sexual integrity and self-determination by a criminal court, this must also be taken into account in the guardianship proceedings. If sexual abuse has been established or a criminal court conviction has taken place, the question of whether this parent can exercise custody no longer arises."* These two statements are clearly contradictory.

- We therefore call for an explicit and mandatory investigation by the family court in case of allegations of child sexual abuse against a parent. In case of any doubt, the

child custody and visitation rights have to be permanently suspended in order to protect the child (in dubio pro infante)!

Question 9a:

As mentioned before, parental, visitation, and child hosting rights of parents against whom criminal proceedings for sexual abuse of their own child are pending are not automatically suspended. This is not part of any existing procedure, whether it be a police procedure / investigation, an investigation of the public prosecutor, the family or criminal court, or child and youth welfare organizations. The time between when the allegations of child sexual abuse are made official until the final court order can be extremely dangerous both for the child and for the other parent, potentially exposing them to violence and manipulation by the accused parent.

Furthermore, there is no automatic procedure to stop visitation, child hosting rights or parental rights even after conviction. In reality, children in Austria are even forced to visit the parent against whom criminal proceedings for sexual abuse are pending, until a court ruled otherwise. However, we observe in the current jurisdiction, that the right of contact of the parent towards the child is given priority over the child wellbeing and the child's will. Furthermore, judges of the family court, as can be deduced from Austria's answer to question 8 of the current questionnaire, only take into account convictions of parents by the criminal court for decisions on parental, visitation, and child hosting rights. Therefore, any pending proceedings are usually disregarded, putting children in danger, and giving the suspected perpetrator the opportunity to coerce or threaten the child in order to drop the allegations.

- We therefore demand an automatic suspension of parental, visitation, and child hosting rights of parents against whom criminal proceedings for sexual abuse of own child are pending. We also demand a suspension of parental, visitation, and child hosting rights of parents who have not been convicted, but whose case of child sexual abuse against their own child could not be proven wrong without a doubt. Additionally, we call for an immediate suspension of parental, visitation, and child hosting rights of parents against whom criminal proceedings for sexual abuse of any child are pending. The other parent, the child and youth welfare organizations and (family) courts should immediately be informed by the criminal court, police or public prosecutor that an allegation of child sexual abuse has been made against the parent, the reason being the high risk of perpetrators of child sexual abuse to repeat their actions even with their own children.

Question 9b:

We confirm Austria's answer that there is no automatic withdrawal of parental rights of parents convicted of sexual abuse of own child. The other parent of the abused child has to start a parental rights proceeding at their own cost, covering their lawyer and potentially court costs.

- We therefore call for an implementation of an automatic withdrawal of parental rights of parents convicted of sexual abuse of their own child, but also of sexual abuse of any child, as due to the risk of a relapse (40-50% according to international studies). The protection of the children from sexual abuse should not depend on the financial possibilities of the innocent parent.

Question 10:

Mothers who report in good faith suspected sexual abuse and sexual exploitation of their own child by the father of the child, can suffer severe consequences through judicial proceedings: On one hand, the accused father of the child can file a proceeding of (criminal) defamation and false accusation (§ 288 falsche Beweisaussage StGB (Criminal Code)). The grounds for a possibility to incriminate a mother of false accusation or defamation (§ 297 (Verleumdung) StGB (Criminal Code) is a non-conviction of the suspect. This means, if the suspect is not convicted, for example for want of evidence, he is free to start a judicial proceeding. The risk of such a proceeding together with the difficulty to prove child sexual abuse is one of the reasons that hold mothers back from reporting suspected child sexual abuse. They bear not only the financial risk of further judicial procedures, they also risk that a possible conviction of false accusation or defamation can be used against them in a parental rights proceeding, leading ultimately to the loss of their own parental rights.

- We call for an exclusion of the possibility of a judicial proceeding of defamation or false accusation for any person reporting child sexual abuse. The difficulty of proving child sexual abuse currently prevents people from reporting the case, partially due to the risk of facing later judicial proceedings.

Question 11:

There is no legal entitlement neither for the victims of child sexual abuse, nor for persons close to the victim for therapeutic assistance or emergency psychological care. The lack of budget allocated to such services means that most victims and persons close to them will never be able to get necessary psychological assistance. There are documented cases of child victims and their mothers who after two years have still not received psychological assistance or necessary medical assistance.

Furthermore, criminal courts currently argue that a therapy could distort the testimony of the victim about the child sexual abuse. However, therapy cannot distort a testimony. In any case it can help provide further evidence.

- We call for a legal entitlement to professional (emergency) psychological care. The public budget has to account for the high needs for this assistance.

- We call for a legal framework that ensures that therapy cannot be used against the victim by doubting the reliability of their testimony after therapy (prohibition of the unscientific “false memory syndrome”).

Question 12:

In response to Austria’s answer to question 12: *“The best interests of the child must be taken into account as a guiding principle in all matters concerning the minor child.”* As mentioned before, the “right of the child to contact to both parents” is seen as “best interests of the child” by child and youth welfare organizations and courts, whereas the child’s will and pending criminal investigations are not considered for parental rights. This leads to a total lack of protection of the child from the moment of the report of the sexual abuse until a decision on parental rights by a family court.

In case of separated parents, one of whom allegedly abused the child, the parental rights, amongst which the visitation right, are not per default suspended. This means that a parent who reports the sexual abuse of their own child by the other parent of the child risks post-separation violence when handing over the child to the other parent during the visitation time. Also, if the parent reporting the child sexual abuse of their own child is the main caregiver and the other parent is the suspected perpetrator, the reporting parent risks that the suspected parent cuts child support payments. Some mothers even report that they don’t ask the father for alimony, as they fear the lack of protection in family courts and a re-traumatization of the child victim and themselves.

Protection of (suspected) victims of child sexual abuse is standardized in criminal courts. However, even if a criminal proceeding is pending, these protective measures are not taken in parental rights proceedings or alimony proceedings. Additionally, as mentioned before, there is no automatic or mandatory communication between civil courts and criminal courts. This means, that if a child was allegedly abused by a parent, the child victim does not have to directly encounter the suspected perpetrator in the criminal courts. However, in parallel parental rights proceedings, the child might have to testify in the family court in presence of the perpetrator. We have been reported cases where the child had to undergo psychological evaluation (court expert/ Gerichtsgutachten) ordered by the family court in presence of the suspected perpetrator. The child was asked to sit on the lap of the father who was suspected of having abused the child, while the child had to answer questions by the court expert about the sexual abuse from the father.

- We call for an automatic suspension of all parental rights such as custody and visitation rights until all doubts of a suspected child sexual abuse could be dispersed.
- In case of a common household of the allegedly sexually abusive parent with the other parent, the removal of the suspected predator should automatically be instated.

- We call for the same protection of the child victim in family courts as in criminal courts if child sexual abuse by one of the parents is suspected.

Question 13a:

As mentioned before, if a person has been convicted of child sexual abuse, there is no automatic communication with the family court. The other parent(s) of the child or children are not systematically informed about the conviction or past conviction(s). The parental rights of a convicted criminal are not automatically retrieved. Child sex offenders can currently become parents without any protective measures such as supervision, and without their partner knowing about their criminal past. As a hypothetical example: a teacher is also a football trainer at the local football association. If he abuses children as a football trainer and is convicted, he will also lose his job as a teacher. However, he will still have full access to his children due to the lack of an automatic procedure of suspending parental rights.

- Knowing the relapse rate of child sexual perpetrators (40-50%), we see a necessity to install a legal framework that (future) parents and (future) spouses are informed about the conviction. Without that knowledge, the other parent cannot protect the child(ren) accordingly. Due to the extended possibilities to commit another crime as a parent, the supervision and the demanded measures should not have a time limit.
- The parental rights should automatically be retrieved if a person is convicted of child sexual abuse to any child.

Question 13b:

In response to Austria's response to question 13b: the information is not automatically shared with family courts.

- We call for a default procedure that includes the examination of an extended Criminal Records Act in criminal and parental rights proceedings, and in case of a report to the police of child and youth welfare organization about sexual abuse of a child.

Question 14a:

As mentioned before, even if a professional or volunteer working with children and suspected of sexually abusing a child can be immediately removed or suspended from his or her position, the parental rights to their own children remain untouched. There is no process of informing the other parent of the suspected perpetrator's child(ren).

- We call for an automatic and temporary suspension of all parental rights in case of a suspicion of a sexual abuse of any child by a parent.
- In case of a conviction of child sexual abuse, the perpetrator should automatically and permanently lose all parental rights to his or her own children.
- In case of suspicion or conviction of a parent for child sexual abuse, an automatic information should go out to the family courts, the other parent of the children of the (suspected) perpetrator, as well as to child and youth welfare organizations.

Question 14b:

The Austrian Ombudsmen have reported cases of sexual abuse between minors in a children's home that accommodates children and youth removed from their home by the child and youth welfare organization. Although the child endangerment was repeatedly reported to the child and youth welfare service for over a year and a half, no action was taken to protect the child victims: <https://kurier.at/chronik/burgenland/volksanwaltschaft-ortet-missstaende-in-jugendheim/300.105.910>

No consequences were brought upon the supervisors and responsibility of the entity or the child and youth welfare service.

- We call for an automatic criminal procedure against professionals working in the public, private or voluntary sectors failing to report offences of child sexual abuse and failing to immediately protect the victim of the suspected child sexual abuse.

Question 15a:

As per Austria's answer, we can conclude that no specific legal knowledge or training on child sexual abuse, trauma or post traumatic stress syndrome is required of the special representatives and guardians ad litem in order to safeguard the best interest of the child victim in a conflict of interest between the holders of parental authority and the child victims. The knowledge and training are not at any point controlled.

In family rights proceedings at the family court, a "Kinderbeistand" can be appointed, either on request of the legal guardian of the child, the child or youth or by the court. Kinderbeistand can be translated as children's assistant. Their scope is to voice the will of the child or youth and ensure their interests are taken into account during the whole process, including the appointments with court experts such as psychologists for evaluation (Gutachter*innentermine), appointments with the child and youth welfare services etc. The Child Assistant keeps the child up to date about their rights, the status of the proceedings.

Further information:

<https://www.justiz.gv.at/service/familienrecht/kinderbeistand.25c.de.html>

<https://jba.gv.at/geschaeftsbereiche/kinderbeistand/>

While the institution is generally highly beneficial for the child, it seems to not be available for criminal proceedings. It would be beneficial if the same person could follow the child in the criminal proceeding as in an eventual civil rights proceeding concerning the parental rights (limiting the number of times the child victim has to relate their case).

While the Child Assistant has to follow continuous training, there is no compulsory training on child sexual abuse, trauma, post-traumatic stress syndrome etc. The Child Assistant therefore lacks the formal training and knowledge to correctly assess the child's will in order to report it to the court.

If the child for example does not voice the opinion on whether it wants to continue visiting a parent, even if the child had already made allegations of child sexual abuse, the Child Assistant does not have the necessary professional background to understand the reasons for the silence of the child on this topic.

Furthermore, there is an institution called "Familiengerichtshilfe" (Family Court Assistance). Its scope is clearing, especially the evaluation of the contact right / visitation. The training of the professionals appointed as Family Court Assistants does not include training on child sexual abuse, victim dynamics, trauma and post-traumatic stress syndrome. We have observed that they lack knowledge to evaluate the truthfulness of allegations of child sexual abuse. Although they have to report to the court, it is their perception they have to report. There is no legal framework that ensures that all cases of child sexual abuse allegations are escalated and transmitted to the judge.

Further information:

<https://www.justiz.gv.at/justiz/familien-und-jugendgerichtshilfe/familiengerichtshilfe.2c9484853f60f165013f6671e26d24f7.de.html>

- We call for compulsory training of Child Assistants (Kinderbeistand), child and youth welfare organizations, family court assistants and other professions who may represent the child's interest in criminal or family court cases on child sexual abuse, predator-victim-dynamics, trauma, post traumatic stress syndrome and related topics.
- We also call for a central database of formal training of all professionals interfering in cases of child sexual abuse, where regular trainings of each professional is recorded. If their knowledge concerning child sexual abuse, trauma, loyalty conflicts, victim-dynamics etc. is not up to date or absent, these professionals should be excluded from the case.

Question 15 c:

As per Austrian's answer, the curator is not free of charge for the child victim. Same applies for the Child Assistant – the cost has to be covered by the parents. In case of very low income, the parents can ask for a temporary exemption of the fees (§§ 63 ff ZPO Verfahrenshilfe).

- We call for a cost-free service of the curator and the Child Assistant in case of allegations of child sexual abuse.

Question 17a:

The protective measures mentioned by Austria (§§ 66 and 67 CCP) are only applied to criminal proceedings. However, in family court proceedings, no protective measures are applied during the "interaction observation" (Interaktionsbeobachtung) by the accredited court experts (Gutachter*innen) or Family Court Assistance (Familiengerichtshilfe). As mentioned before, a child might be fully protected in a criminal proceeding, while he or she has to encounter the suspected predator in the family court or the interaction observation of the court expert or Family Court Assistance, even testifying in his /her presence and interact with him /her. These interactions are oftentimes video-recorded. The interactions can be highly traumatizing for the child victim.

- We call for an application of the same protective measures as in §§ 66 and 67 CCP for civil rights proceedings such as family court proceedings including all interaction with court expertise and Family Court Assistance if violence or child sexual abuse is involved.

Question 17b:

As mentioned before, Austria's answers refer only to criminal proceedings. However, a criminal proceeding isn't always carried out in case of child sexual abuse, not even when the child sexual abuse has been reported to child and youth welfare organizations. There are many reasons for this, such as lack of evidence, loyalty conflicts of the child if the predator was a parent, etc. In some cases, the child sexual abuse is only treated in family court. In other cases, the family court proceedings happen at the same time as the criminal proceedings. While the child is protected in the criminal proceedings, in the family proceedings and investigations, the child is without protection. We have reported cases of children who were re-traumatized during investigations of the family court, such as psychological evaluations by psychologists ordered by the court. These psychologists also do not need to have formal training on child sexual abuse, trauma, or post-traumatic stress syndrome.

- We call for the same protective measures for family court proceedings as for criminal proceedings. This should apply even for cases where the criminal case has been dropped or closed for want of evidence. The protection of the child should always prevail the interest of the parent, convicted or not.
- We also call for a central database of formal training of all professionals interfering in cases of child sexual abuse, where regular trainings of each professional is recorded. If their knowledge concerning child sexual abuse, trauma, loyalty conflicts, victim-dynamics etc. is not up to date or absent, these professionals should be excluded from the case.

Question 17b:

As mentioned before, professionals interfering in family courts do not require a specific training and can therefore not automatically safeguard the psychological well-being of the child victim.

- We call for a mandatory training on child sexual abuse, trauma, victim dynamics, predator-victim dynamics, trauma responses for all professionals interfering with a child victim of sexual abuse.

Question 18

In addition to the measures mentioned by Austria, these measures should be applied to proceedings at family courts as well. Furthermore, the will of the child should be part of the decision on parental rights, specifically of decisions on custody and visitation rights, and particularly in case of suspected child sexual abuse. The will of the child should be part of the decision independently of the age of the child (victim). Currently, the child can refuse the contact to one of the parents starting at the age of 14. In family court proceedings, a child has the right to be heard starting from the age of 10. However, the will of the child does not even have to be followed, as the child welfare is ranked higher. It is assumed that a 10 year old cannot know his or her best interest regarding visitation rights, custody and other parental rights.

Question 19a:

In the judicial area of civil rights, such as particularly family courts and parental rights proceedings, there is no legal framework that ensures the protection of a child that presumably suffered sexual abuse from one of their parents. The protective measures and procedures mentioned by the reply of Austria are limited to the criminal court. If charges are dropped because of want for evidence, the family court oftentimes assumes that no sexual abuse happened. The family court however can (and should) do their own investigation. But if they do so, there is no legal framework for the protection of the child victim.

Presumed child victims of sexual abuse can then be interviewed in the presence of the presumed predator, which happens particularly often when court experts (Gutachter*innen) or Family Court Assistance (Familiengerichtshilfe) are involved: Court experts or Family Court Assistants oftentimes require "interaction observations" (Interaktionsbeobachtung) between the parent and the child. In case the parent of the child is the presumed predator, it means that the presumed abuser and the potential child victim will lead to interact together to be observed. This can lead to a severe traumatization of the child.

Also

- We call for protection of presumed child victims during interviews in all judicial areas, including family courts and the process of evaluation by court experts (Gutachter*innen). Even if a criminal proceeding has not led to a conviction of the defendant and the child victim is party in a family court proceeding, the protective measures that are applied in criminal proceedings should be applied in family court proceedings and meetings with court experts (Gutachter*innen), until according to the court's own investigations any doubt if the child was sexually abused by one of the parents can be cleared (in dubio pro infante).

Question 19b:

None of the staff responsible for interviewing child victims is required to undergo suitable qualifying training. This is particularly severe during police investigations: Police officers do not receive compulsory training on how to interview child victims of child sexual abuse, trauma, loyalty conflicts and related fields. Whereas in some regions there are specialized police entities, this service is not offered on a nationwide basis.

We have a documented case of young child (kindergardener) who have presumably suffered child sexual abuse from their father, but the judge in the family court did not find the child credible, because he estimated that a re-enactment of a situation of child sexual abuse by the child was abstract and therefore not trustworthy. Also, videos that were previously recorded of the child re-enacting what happened to the child are many times not admitted in child custody proceedings or contact right proceedings. The same applies for videos that were recorded while the child was testifying about the child sexual abuse at home – they were not admitted in court. Neither were photos. Due to a lack of professional knowledge, when a child does not want to repeat the allegations several months after the presumed sexual abuse happened, the child is often deemed not credible.

- We call for compulsory training for all staff responsible for interviewing child victims in criminal or family court cases on child sexual abuse, predator-victim-dynamics, trauma, post-traumatic stress syndrome and related topics.
- We also call for a central database of formal training of all professionals interfering in cases of child sexual abuse, where regular trainings of each professional is recorded. If their knowledge concerning child sexual abuse, trauma, loyalty conflicts, victim-dynamics etc. is not up to date or absent, these professionals should be excluded from the case.

Question 19c:

Austria's national legal framework does not set a specific deadline for the delay in which interviews with child victims should be conducted after the offence. We have reported cases where children had to wait for weeks or even months until they were interviewed. Also, there is no deadline for interviewing / questioning the accused person. Important evidence is lost in both cases, specifically when the child reports to have physically resisted to the child sexual abuse (eg. biting, scratching). There should be mandatory deadlines for interviewing and physical examination, ideally immediately in order to secure physical evidence of the abuse.

If a child sexual abuse is both investigated in a criminal proceeding and additionally in a parental rights proceeding, there is no limitation on the number of times or the duration a child victim is interviewed. If a criminal proceeding led to a conviction, judges from family courts view the sexual abuse of the child to be proven. If, however, there was no conviction (eg. want for evidence or for doubts), or if there was no criminal proceeding for want of evidence,

and the sexual abuse is investigated at the family court, the child will be interviewed several times by a multitude of professionals and entities (eg. Child Assistants (Kinderbeistand), Family Court Assistance (Familiengerichtshilfe), accredited court experts (Gutachter*innen), judges, child and youth welfare organizations – there possibly several times). In case of appeal, the child can be interviewed additionally.

- We call for an immediate interview of the child and the presumed predator, including a physical examination in order to collect evidence of the child sexual abuse and prevent the drop of charges for want of evidence.
- There should be a mandatory, maximum deadline of 48 hours for an interview of both the victim and the alleged predator after a case of child sexual abuse has been reported to any of the legal entities, whether it be the police, the child and youth welfare organizations, family court, the public prosecutor etc..

Question 19c:

Child victims of sexual abuse can be interviewed several times in the family court by different professions and people, in addition to the interviews already done in the criminal proceeding. Given that judges of criminal proceedings are always different persons than judges in family courts, it is impossible to rule out the case by one judge. Especially if the charges against the alleged parent-predator were dropped but there is still doubts if the child could be safe in the presence of the presumed predator, the child will undergo several other interviews in the investigation of the family court.

- We call for a single, and mandatorily recorded interview of the child victim by a children and youth psychiatrist trained in child sexual abuse, trauma (response), post-traumatic stress and victim-dynamics.

Question 20e:

As mentioned before, if the presumed offender is one of the child victim's parents, and parental rights proceedings take place in the same time span as criminal proceedings, the child is protected from the contact with the presumed offender in criminal proceedings. However, no protection is granted in the parental rights proceedings. The parental rights are not automatically suspended from the presumed offender. It is legally possible that a child is shielded from any contact with the predator, but outside of the court premises, the child has to comply with the visitation rights with no protection at all.

- We call for an automatic suspension of all parental rights until all doubts could be eliminated on if the parent did or not sexually abuse their own child.



Question 20g:

When the defendant is the own parent, there is no protection against a face-to-face confrontation between the defendant and the child outside the criminal law court. If the parent has the visitation right, the child can be confronted with the parent who presumably abused the child both during visitation right, during custody / visitation rights proceedings, as well as in their own home if the alleged perpetrator is not already separated from the victim's other parent.

Question 20i:

No free legal aid is granted to the child victim of sexual abuse if the presumed abuser is their parent and they have to initiate a parental rights proceeding in order to protect themselves.

Question 20k:

The criminal court does not automatically inform the civil court, eg. the family court about the decision. If the child sexual offender is the parent of the child, no automatic procedure will follow by the family court, as it is not informed by default.

- We call for a compulsory notification of the family court by the criminal court about all advances and the decision in a case of child sexual abuse where the offender is a parent.