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COMMITTEE ON THE RIGHTS OF THE CHILD

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SUMMARY RECORD OF THE 1344th MEETING

Held at the Palais Wilson, Geneva,
on Monday 15 September 2008, at 3 p.m.

Chairperson: Ms. LEE

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS OF STATES PARTIES (agenda item 4) (continued)

Initial report of Austria on the sale of children, child prostitution and child pornography
(CRC/C/OPSC/AUT/1; CRC/C/OPSC/AUT/Q/1 and Add.1; HRI/CORE/1/Add.8)

1. At the invitation of the Chairperson, the delegation of Austria took places at the Committee table.

2. Mr. MANQUET (Austria) said that Austria had ratified the Optional Protocol on 6 May 2004 without reservations and that, as a member of the European Union and the Council of Europe, it was also bound by the relevant legal instruments of those organizations, including the Framework Decisions on the standing of victims in criminal proceedings of 2001, on combating trafficking in human beings of 2002, and on combating the sexual exploitation of children and child pornography of 2003, as well as by the Council of Europe Convention on Action against Trafficking in Human Beings of 2005 and its Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse of 2007, an instrument still to be ratified by Austria.

3. The Criminal Law Amendment Act of 2004 had made a big contribution to the transposition of the provisions of the Protocol into domestic law and to their application. It should be noted in that connection that some of the measures taken by Austria went further than the literal text of the Protocol, for example with regard to the liability of the clients of child prostitution to punishment. In order to make the problem of trafficking in children better known in Austria and improve the care of victims, the authorities had recently published a brochure for the police, the forces of law and order and non-governmental organizations (NGOs).

4. The Austrian Government was most anxious to improve the quantity and the quality of the statistics produced, especially the crime statistics. The issue had been included in its Programme for 2007-2010, and several working groups had already been established to tackle that task. The forthcoming early elections ought not to jeopardize the work done so far or the move to incorporate children's rights in the National Constitution. In addition, a recently drafted package of measures for the further improvement of the protection of children against violence, in particular sexual violence, should be approved by Parliament before the end of the present Government's term of office. In that political context, Austria was proud to announce that the voting age for national elections had been lowered to 16 years.

5. Ms. KHATTAB (Country Rapporteur) said that she was confident that the obligations contracted by Austria under the European legal instruments were a great asset in the fulfilment of its obligations under the Convention and the two optional protocols. She welcomed the many very positive steps taken by the authorities to ensure the full application of the Option Protocol under consideration, in particular the Criminal Law Amendment Act of 2004, and found the progress made by Austria in education, health care and social insurance encouraging. However, she would welcome further details of the situation of foreign students in the country's high schools (Hauptschulen).

6. In the course of the dialogue the members of the Committee would refer back to the general observations made following the consideration of the State party's second periodic report on the application of the Convention in 2005, emphasizing the points which should have received closer attention. It was regrettable that the initial report under the Optional Protocol

(CRC/C/OPSC/AUT/1) had not been drafted in accordance with the Committee's reporting guidelines. The delegation might also indicate whether civil society and children had been involved in the report's preparation.

7. Where statistics were concerned, the Committee regretted that the data on sexual offences against minors had not been disaggregated by age group and sex and that no data had been presented on child asylum-seekers and refugees. The Committee would also like to know what action the State party had taken to publicize the provisions of the Protocol in particular and of the Convention as a whole. It was concerned in that connection that scant attention had been given to the other issues relating to trafficking in children, in particular the sale of children, child prostitution and child pornography.

8. Neither the National Action Plan on the Rights of Children and Adolescents nor the National Action Plans to combat human trafficking, violence in society, and violence against juveniles covered all the matters addressed in the Protocol. The Committee was not clear about the follow-up measures taken in respect of those plans or about the resources allocated for their implementation. It also seemed that the State party still lacked a mechanism for coordinating the application of the Protocol and that, despite the creation of a task force on trafficking in children, it was not tackling all aspects of the problem (prevention, recovery, and reintegration). Additional information about the rehabilitation of children sold for adoption and the efficiency of the referral system would be welcome.

9. She noted that in spite of the stiffening of the legislation and the adoption of a code of conduct, Austrian nationals still engaged in sex tourism; the Committee would like to know how Austria was tackling that problem.

10. Mr. PARFITT asked whether the nine provincial ombudsmen responsible for dealing with complaints about the application of the Protocol helped to monitor the Federal State's fulfilment of its obligations under the Convention and whether they made recommendations on the application of the Protocol. He also asked whether an authentic coordination and care strategy was in place, country-wide, for victims of trafficking.

11. The delegation might also throw some light on the statistics supplied in the written replies (CRC/C/OPSC/AUT/Q/1/Add.1) for 2005, 2006 and 2007 concerning convictions under sections 194 and 215 (a) of the Penal Code, which criminalized respectively the provision of children for adoption and the encouragement of child prostitution and child pornography shows.

12. He would be grateful for any additional information about the procedures for "repatriation" of child victims of exploitation to their countries of origin, the bilateral agreements which the State party had concluded for that purpose with a number of East European countries, and the exact circumstances under which the children were sent home. It would also be useful to know whether responsibility for the social services for young people rested with the provinces or with the Federation.

13. Mr. KOTRANE noted with concern that only the intermediaries facilitating a child's adoption incurred sanctions and not the persons illegally adopting the child (section 194 of the Penal Code), that the possession and keeping of pornographic material did not fall within the scope of section 207 (a) of the Penal Code, and that the provisions of that section applied only to children aged under 14. He feared that the scope of those articles was more restricted than the activities addressed by the provisions of the Protocol and would like to have the point clarified.

14. With regard to offences committed abroad, he wished to know in which cases the principle of double incrimination applied. He took note with satisfaction of the entry into force in 2006 of the Enterprises Having Legal Personality (Criminal Liability) Act and asked whether any legal persons had yet been prosecuted for the offences covered by the Protocol.

15. Mr. PURAS asked what steps had been taken to ensure that a person's age was assessed by scientific methods allowing for margins of error and that the benefit of any doubt was given to individuals whose exact age could not be determined. The assessment of age was something which the Committee was concerned about, and it had stressed in its general comment No. 6 that an assessment should not be based solely on a person's physical appearance. The Austrian courts themselves had decided that such an assessment should not be based solely on an examination and that various professionals should contribute to it. It would be good to know whether that decision had been put into practice.

16. He asked whether any special training, in particular social and psychological training, was given to persons working on the rehabilitation of child victims and whether the social and psychological support provided was effective, whether it was monitored, and whether there were any plans to harmonize the diversity of strategies resulting from Austria's federal system.

17. Mr. CITARELLA asked whether Austrian law criminalized the sale of children. He also wished to know whether any cases of the sale of children, either national or transnational, were pending, whether there was any jurisprudence in that area, and how cases of that kind were handled by the courts.

18. Mr. FILALI said that he understood that an enabling decree was required before the international instruments to which Austria was a party could be implemented. He asked whether the courts could apply the Protocol by relying on the enabling decree relating to it.

19. He also wished to know whether persons convicted of offences covered by the Protocol could be awarded pardons or have their sentences commuted and whether they were monitored to prevent re-offending.

20. Paragraph 34 of the report stated that an offence committed abroad was punishable when it violated Austrian interests. Did that mean that a person who had committed an offence abroad against a non-Austrian would not be prosecuted in Austrian territory since no Austrian interest had been harmed?

21. Ms. AIDOO said that Austria had made praiseworthy efforts to disseminate information about matters relating to the sexual exploitation of children and trafficking in children and to provide training for professionals working in those fields, but it should also disseminate information about matters relating to the sale of children, especially in the community and the family and to children themselves. It would be interesting to know what action had been taken in that regard, both at the provincial and at the federal level.

22. Mr. ZERMATTEN noted with satisfaction that Austria had introduced an excellent training programme for judges which dealt specifically with the areas covered by the Protocol and that Austria was conscientiously complying with the Guidelines on Action on Children in the Criminal Justice System and the Guidelines on Justice Matters Involving Child Victims and Witnesses of Crime. However, he would like to know what the right to compensation amounted to, in law and in practice.

23. The CHAIRPERSON asked whether a child prostitute was regarded as an offender or a victim.

The meeting was suspended at 4 p.m. and resumed at 4.25 p.m.

24. Ms. HERCZOG asked whether, as a result of the Kampusch and Amstetten cases, steps had been taken to inform parents, children and the relevant professionals about ways of preventing abductions and sexual exploitation and whether special rehabilitation programmes had been put in place for the perpetrators of such acts.

25. Mr. MANQUET (Austria) said that action had been taken following those two cases, including measures to make the relevant professionals more aware. In the Kampusch case an in-depth inquiry had been conducted into the investigation carried out at the time, in order to learn the necessary lessons and prevent such acts being repeated. The Amstetten case, which had been reported extensively in the media, had left a deep scar on Austria's conscience. The two cases had prompted the formulation of legislative measures to impose severer penalties for the acts in question, which should be adopted in the near future.

26. Perpetrators of sexual violence in the home could be compelled to attend special rehabilitation programmes, in the course of the judicial proceedings, during detention, or after release on parole.

27. He was sorry that the report was not strictly in conformity with the reporting guidelines and he assured the Committee that the next report would follow those guidelines. With regard to the involvement of civil society and children in the preparation of the report, it should be noted that the Government took pains to ensure that children participated in the life of society; they had not been invited to take part in the preparation of the report because it was a report of the Government. NGOs had not been specifically consulted in the drafting of the report, but, in general terms, the Government did exchange information with them; they were moreover directly involved in the implementation of the National Action Plan and produced and distributed their own reports. It had to be admitted that the report was short on statistics, especially with regard to the number and classification of victims; the Government intended to correct that defect.

28. Every agency acted in accordance with its own mandate where prevention was concerned. Action had been taken by various bodies, including measures for applying the Protocol, drafting the necessary legislation, and training judges. The Ministry of Justice had itself introduced the principle of nationality, which made it possible to punish Austrian citizens who engaged in child prostitution or child pornography while abroad.

29. Ms. ORTHOFER (Austria), replying to the question on the follow-up of the national action plans, said that Austria had recently produced a report on the implementation of the National Action Plan drawn up following the special session of the General Assembly on children, held in 2002. Most of the 200 measures provided for therein had been carried out. Furthermore, additional credits had been allocated for awareness-raising activities on the rights of the child, and a web site, aimed chiefly at professionals but accessible to all, had been created in order to provide fuller information about matters relating to children's rights. The Plan had succeeded in enhancing awareness of children's rights on the part of the various agencies of the State and in drawing attention to the fact that all policies had implications for children. It had also had an influence on other national action plans, such as the one on social inclusion, which contained a special chapter on children, and on a number of projects to combat domestic violence.

30. There were nine provincial ombudsmen and one federal ombudsman; they had different terms of reference. All of them were aware of the need to make the rights of the child better known and were required to receive complaints from children. Of course, since the amount of the financial and human resources allocated by each province to its ombudsman's office depended on the province's capacity, there were disparities; but a bill to be adopted shortly would make it possible to harmonize the activities of the ombudsmen. However, the present diversity of the system did have the advantage of respecting specific regional characteristics.

31. The CHAIRPERSON asked whether the ombudsmen played any particular role in the application of the Optional Protocol and whether the intention was to eliminate the funding disparities.

32. Ms. ORTHOFER (Austria) said that the ombudsmen met in conference at least twice a year to discuss the most important child rights issues and could thus harmonize their approaches and make a major contribution to the drafting of legislation affecting children. They had, for example, participated very actively in the drafting of the Domestic Violence (Prevention) Act.

33. The CHAIRPERSON said that the Committee was worried about the fact that the State party had not established the powers of ombudsmen with respect to the Protocol and the oversight of its application

34. Ms. ORTHOFER (Austria) said that the institution known as the Kinderdrehscheibe (Children's Roundabout) had cooperation agreements with Bulgaria and Romania, the main countries of origin of child victims of trafficking who entered Austria, with a view to returning the children to their countries, where they were entrusted to the child protection system to prevent them from once again falling into the hands of traffickers and to ensure, as far as possible, that they were returned to their parents. The Kinderdrehscheibe staff received reports on the children's circumstances during the six months following their return to their countries.

35. Mr. PARFITT asked whether the Austrian authorities were considering extending that programme to other countries of Eastern Europe from which many child victims of trafficking came.

36. Ms. KHATTAB (Country Rapporteur) said that according to some sources, and probably because of a shortage of personnel and funding, nobody read the reports on children who had returned to their own countries. Was that true?

37. Ms. ORTHOFER (Austria) said that there was no doubt whatsoever that the reports were read. She added that Kinderdrehscheibe had dealt in that way with 700 children in 2006 and 40 in 2008. The Chairperson of Kinderdrehscheibe made regular visits to Bulgaria and Romania to monitor the children's reintegration, and the personnel of the child protection institutions of those two countries came to Vienna for training in child protection and the reintegration of child victims.

38. There were plans for extending the programme to other countries, but 95 per cent of the child victims of trafficking came from Bulgaria and Romania.

39. In September 2008 the Federal Ministry of the Interior had held a meeting of experts to produce a strategy for determining the age of unaccompanied minors, ensure that all children under the age of 18 received all the protection prescribed by the Convention, and prevent adults from profiting unlawfully from the programmes put in place for children. The intention was to

create a team composed of forensic scientists, radiologists, dentists and paediatricians trained in traumatology. Early in 2009 the Ministry of Health was to hold a national conference to formulate special guidelines on the determination of age and on the training programme for the personnel responsible for the procedure. Those measures were of course based on the principle of the best interests of the child.

40. The CHAIRPERSON said that in 2007 the Office of the United Nations High Commissioner for Refugees had published a document on the best interests of the child, on which the State party might rely in formulating those guidelines.

41. Ms. ORTHOFER (Austria) said that the web site mentioned earlier was a very useful tool for publicizing the Convention and the Optional Protocol. In addition, brochures had been distributed in all schools. For the past four years schools had been invited to take part in an annual art competition on the rights of the child for children in the 10-18 age group, in which prizes were awarded.

42. Furthermore, guidelines had been produced for doctors working with children. The child protection groups in the hospitals included doctors, nurses, psychologists and sometimes social workers specializing in children's problems. When those professionals suspected violations of children's rights, they agreed on the best action to take. All medical professionals had received pamphlets on sexual violence.

43. Ms. AIDOO asked whether the State party had introduced awareness-raising and training measures with respect to child pornography.

44. Ms. WIESELTHALER-BUCHMANN (Austria) said that the Ministry of the Interior had a service responsible for receiving reports of instances of child pornography and coordinating nation-wide the measures to combat that type of offence. It organized training for police officers and local authorities on all sexual offences, child pornography, the most up-to-date methods of investigation, and the importance of international cooperation among police authorities in that area. In addition, staff members of the Ministry of the Interior underwent special training in the United States in methods of child pornography investigation and prevention.

45. In 2007, as a result of the cooperation established with the media, more than 9,000 cases of child pornography on the Internet had been reported to the Ministry of the Interior by Internet surfers and police officers, as compared with 300 cases in 1998, the year in which the awareness-raising and training measures had been introduced.

46. Ms. KHATTAB (Country Rapporteur) asked about the status of children arrested while participating in child pornography and about the procedure followed.

47. Mr. PARFITT asked why the number of child pornography convictions was so small. He also asked whether, under the definition of child pornography given in the initial report, cartoon films depicting children engaging in sex acts would be regarded as representations of a pornographic nature.

48. Mr. MANQUET (Austria) said that only cartoon films containing realistic representations of children taking part in sex acts would be regarded as pornographic material.

49. The number of convictions for child pornography was increasing all the time. However, the statistics covered all the pornography-related offences which were discovered, including material

carried on the Internet. Some of the Internet material originated in other countries, and the Austrian authorities could not always intervene.

50. Ms. SMITH asked what the criminal law prescribed for minors in the 14-18 age group who kept pornographic material, including material solely for their personal use.

51. Mr. KOTRANE, referring to paragraph 34 of the report, said that the fact that the perpetrator of a criminal offence committed abroad must have both Austrian nationality and habitual residence in Austria if Austrian justice was to prosecute him or her seemed inconsistent with article 4 of the Optional Protocol.

52. Mr. MANQUET (Austria) said that possession of pornographic material by a minor was a criminal offence. The only exception was the case in which a young person kept his or her own pornographic image and had control of it.

53. Austrian justice always had jurisdiction over criminal offences committed abroad by Austrian nationals, provided that the condition of double incrimination was satisfied; that condition was not proscribed by articles 3 and 4 of the Optional Protocol.

54. Section 64 of Austria's Penal Code listed a number of offences whose perpetrators could be prosecuted in Austria when the offence had been committed abroad even if the acts in question, trafficking in children for example, were not punishable under the law of the country in which they had been committed.

55. With respect to other offences, such as the production of pornographic material or the commercial sexual exploitation of children, the perpetrator must satisfy both conditions, Austrian nationality and habitual residence in Austria, before Austrian justice could prosecute if the acts were not criminal offences under the legislation of the country in which they had been committed.

56. Mr. KOTRANE said that the Committee was not sure that the State party was in conformity with article 4 of the Optional Protocol with regard to the two conditions, nationality and residence, which had to be met for Austria to establish its universal jurisdiction. Could an Austrian national who had engaged in sex tourism abroad be prosecuted in the Austrian courts only if he or she was habitually resident in Austria?

57. Mr. MANQUET (Austria) said that if the offence was a crime in the country in which it had been committed, it was sufficient for the perpetrator to have Austrian nationality.

58. Mr. KOTRANE said that many countries were very tolerant of child pornography and sex tourism and that the aim of the Protocol was precisely to ensure that persons who committed those offences in such countries could be prosecuted.

59. Ms. ORTIZ asked whether under Austrian law the authorities could request the extradition of a person who, as an intermediary, had improperly obtained consent in another country to the adoption of a child, in violation of the international legal instruments on adoption, and whether the State party had a central authority responsible for oversight of the activities of the bodies which operated the international adoption procedures.

60. Mr. MANQUET (Austria) said that the purpose of section 194 of the Penal Code was to apply the provisions of article 3 (ii) of the Optional Protocol and that any person who obtained by

improper means consent to a child's adoption, even if only as an intermediary, would be liable to prosecution, irrespective of whether the person possessed Austrian nationality. The Penal Code prescribed penalties, including prison sentences, in respect of all the aspects of the sale of children referred to in article 3 of the Optional Protocol, including prison sentences, and that the international adoption procedures were systematically monitored by the provincial child protection authorities.

61. A bill on the collection of data on sex offenders, including persons committing offences covered by the Protocol, was under consideration. Persons in either of those categories who were released on parole were specifically subject to monitoring, including by the visiting magistrates, and were not allowed to pursue occupations which brought them into contact with children.

62. Ms. RUSZ (Austria) said that in 2004 the Federal Ministry for European and International Affairs had created a task force to combat trafficking in persons, together with a working party to deal specifically with matters relating to trafficking in children; both those bodies worked in close collaboration with NGOs in carrying out awareness-raising campaigns and prevention projects in a context of transnational cooperation.

63. Mr. MANQUET (Austria), referring to the figures presented in table 1 of the State party's written replies, noted that when the same person had committed several offences at once, only the offence attracting the longest sentence of imprisonment was used for statistical purposes; that would explain, for example, why no offences under section 194 of the Penal Code had been included.

64. The CHAIRPERSON asked whether child victims of trafficking were regarded under Austrian law as victims or as violators of the immigration laws.

65. Mr. MANQUET (Austria) said that the fact that children were victims of trafficking did not shield them from domestic law when they committed offences of various kinds and that they could thus be both victims and offenders. However, infringement of the immigration laws was an administrative and not a criminal offence.

66. Ms. KHATTAB (Country Rapporteur) asked whether unaccompanied minors aged 16 or older qualified for legal assistance automatically and on the same terms as younger children and whether the telephone hotline for children was accessible free of charge throughout the country. She also wished to know whether children in distress who used the hotline were referred to the police or to NGOs which would take charge of them and provide them with psychological and social assistance.

67. Ms. ORTHOFER (Austria) said that all child asylum-seekers aged under 18 could apply for psychological and social assistance, which was funded by the State and dispensed by qualified NGO personnel.

68. The telephone hotline was free, and children arrested by the police for begging, theft or prostitution were referred to the child protection bodies. In Vienna it was the Kinderdrehscheibe which cared for such children before they were handed over to a similar institution in their country of origin. However, since the institutions in question were open, children placed in them often escaped. But it should be remembered that trafficking in children was not a very widespread problem in Austria.

69. Mr. MARQUET (Austria) said that since 2006 all child victims of offences had been entitled to free legal, social and psychological assistance, an entitlement which was shortly to be extended to children involved in civil proceedings. In criminal proceedings involving children, the young victims were kept apart from their alleged abusers, questioned by specialized personnel in a separate interview room, and questioned only once in the course of the preliminary investigation – unless they consented to appear before the magistrate for a second time if the magistrate so requested. The children in question were entitled to compensation.

70. Mr. PARFITT asked what the Government was doing to ensure that the services offered to child victims of trafficking did not vary from one province to another, as seemed to be the case, and that they were of equal quality throughout the country and measured up to the relevant international standards.

71. Ms. WIESELTHALER-BUCHMANN (Austria) said that the provinces collaborated closely with the Federal Government in combating human trafficking in general and trafficking in children in particular; a coordinator had been appointed in each province to deal with those matters.

72. Ms. KHATTAB (Country Rapporteur) welcomed the constructive dialogue established with the delegation of Austria, for it had enabled the Committee to gain a more accurate idea of the situation of children in Austria, especially with regard to the application of the Optional Protocol. The concluding observations which the Committee would formulate at the end of the current session would refer to the many efforts made by the State party to secure the full and comprehensive application of the Protocol and to the matters of concern which persisted despite those efforts.

73. Mr. MANQUET (Austria) also welcomed the quality of the dialogue established between the Committee and the delegation and assured the members of the Committee that he would convey all the observations in question to the competent Austrian authorities.

74. The delegation of Austria withdrew.

The meeting rose at 5.55 p.m.
