



Study on children's involvement in judicial proceedings – contextual overview for the criminal justice phase – Austria

June 2013

This National Report has been prepared by Dr. Julia Behrens for Milieu Ltd in partnership with ICF GHK under Contract No JUST/2011/CHIL/PR/0147/A4 with the European Commission, DG Justice.

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Executive summary

The Austrian criminal justice system provides for extensive rights for children, in particular for child victims. The system for the most part takes into account the best interests of the child, adapting to the level of development and special requirements of the child.

The specific rights of children as victims, witness and suspects must be distinguished. Most rights of adult victims and witnesses also apply to child victims and witnesses. Provisions in criminal law regarding child suspects, accused and offenders, including procedural provisions, mostly differ from those applying to adults.

Child victims

In Austria, a crime can be reported by anyone. There are no age restrictions and thus no specific provisions for children. The Federal Ministry of Economy, Family and Youth's Victim Assistance Service (*Prozessbegleitung*) gives victims of an act of violence or sexual abuse the right to get psychological and judicial support free of charge. This support lasts from the time the crime is reported until the end of the proceeding. It ensures that children are promptly and sufficiently informed of their rights. This information is provided in a child-friendly manner and in a language they understand. In addition, the child always needs to be accompanied by a parent or a legal representative.

Several provisions in Austria protect the child victims' privacy and family life. For instance, they do not need to testify against family members and they have the right to be interviewed separately from the offender. The police officer, public prosecutor and the judge must be specifically trained in communicating with children.

The victim (child or adult) has the right to be present during the main hearing and to ask questions to the defendant, to witnesses and experts as well as to be asked about their claims. A legal representative can support the victim in enforcing their rights.

Another way for parents or legal representative to participate on behalf of the child in the trial is to take on the role of civil claimant (*Privatbeteiligung*) seeking civil damages for the offence caused. If the public prosecutor drops the proceedings, a civil claimant can declare subsidiary prosecution (*Subsidiaranklage*) if the offender is not a child.

Child witnesses

Witnesses (children or adults) have the right to Victim Assistance Service (*Prozessbegleitung*) if they are close relatives of a person who died due to the crime or relatives who witnessed the crime.

Child suspects, defendants and offenders

Only children who have reached the age of 14 are held responsible for criminal offences. The police or the public prosecutor must inform the suspect as soon as possible about the initiation of an investigation against him/her and the offence of which s/he is suspected, as well as their rights during the proceedings.

A suspect or defendant has the right, at any stage (even prior to interview), to consult with a defence counsel if this does not constitute a risk to the investigation. Upon request, a child has the right to be accompanied by a person of trust, if a defence counsel does not represent him/her. The parent or the legal representative of the child suspect has the same right to receive information as the child.

Pre-trial detention can only be imposed, enforced and maintained on children if its purpose cannot be achieved by family law measures or less invasive measures, and if it is proportionate to the level of development of the child.

Several measures are in place to protect the privacy and personal data of children who are or have been involved in judicial proceedings.

Alternatives to judicial proceedings, such as diversion, are in place to protect the child from long lasting and burdensome proceedings.

The accused has the right to be heard in criminal proceedings. The parent or legal representative of the accused child has a right to be heard and to be present during acts of investigation and gathering

of evidence to the same extent as the accused himself.

Legal remedies are not specifically stipulated for children. A convicted child (child with legal representation or adult) can appeal to a higher court against any court decision of conviction or lodge a so-called nullity appeal for observance of the law.

The Austrian law provides for a wide range of measures and sanctions for children in conflict with the law ensuring the principle of proportionality. The measures include: refraining from sentencing, diversion, conviction without sentence, conviction with a suspended sentence or fine and prison sentences.

Children of 14 years or above in Austria can be deprived of liberty as a preventative measure, through pre-trial detention, as a criminal sentence, and as detention pending deportation.

The Federal Police Directorate in Vienna maintains a criminal register for Austria, which includes information of children and adults on all final convictions by Austrian criminal courts. Regarding access to the information of the register, children are specifically protected in order to avoid the stigmatisation of offenders as much as possible.

Main strengths regarding child suspects, defendants and offenders

- A suspect or defendant has the right, at any stage (even prior to his examination), to consult with a defence counsel if this does not constitute a risk to the investigation. Upon request, a child has the right to be accompanied by a person of trust, if he/she is not represented by a defence counsel.
- The Austrian law provides for a wide range of measures and sanctions for children in conflict with the law ensuring the principle of proportionality.

Main gaps regarding children as victims and witnesses, suspects, defendants and offenders

- The appointment of a psychologist for the child during proceedings is a discretionary decision of the judge. This should be a legally binding right, in order to better meet the child's needs.
- Only the victim and the witness under 14 years of age have the right to special protection under the Criminal Code of Procedure. This constitutes a gap for child victims and witnesses, who are older than 14 and also vulnerable.
- The absence of an age limit for pre-trial detention and the frequent imposition of pre-trial detention on children, in particular on first offenders.
- The right of the child suspect to be accompanied by a person of trust only applies upon request. This leads in practise to the situation that many children waive this right, which increases the risk of self-incrimination.
- There is a lack of legal-welfare activities, accommodation in child homes, counselling and support for families or of education.
- The increasing crime rate of children younger than 14 years constitutes a challenge. Measures of reintegration of children under the age of 14 need to be enhanced.

Abbreviations

CA	Competent Authority
CoE	Council of Europe
EC	European Commission
ERA	European Law Academy
EJTN	European Judicial Training Network
EU	European Union
MACR	Minimum age of criminal responsibility
VOG	Crime Victims Act (<i>Verbrechensopfergesetz</i>)

1 Overview of Member State's approach to children in criminal proceedings and specialised services dealing with such children

Children as victims and witnesses

The focus of criminal justice in Austria has recently shifted to the improvement of the situation of victims, with particular concern for child victims¹. Victims' rights were considerably enhanced in Austria by the [Framework Decision on the Standing of Victims in Criminal Procedures](#) of 2001. In particular, the reform of the Code of Criminal Procedure of 2008 has accorded far-reaching rights for victims as regards communication and information as well as rights of cooperation and control². The best interests of the child are especially taken into account, although only until the age of fourteen. Concepts like the holding of interview by video transmission, questioning by experts, using separate waiting rooms, are for the most part standard in Austria³.

The Victim Assistance Services (*Prozessbegleitung*) established by the Federal Ministry of Economy, Family and Youth needs especially to be highlighted. It provides victims of violence or sexual abuse, and in party witnesses, psychological and judicial support free of charge from the reporting of a crime until the end of the legal proceedings. Amongst others, the Ombuds-Offices for Children and Youths supported these Services with corresponding projects. In about 50 Austrian victim support institutions funding contracts were signed with the regional child protection centres for the provision of this service⁴.

Furthermore, Child protection Centres (*Kinderschutzzentren*), the Young Persons' Representative (*Jugend-anwaltschaft*) and youth welfare organisations (*Jugendwohlfahrtsträger*) provide for specific support for children as victims of crimes. Victim support organisations, such as "[Der weiße Ring](#)", can support the victim during criminal proceedings.

Child suspects, defendants and offenders

The legal consequences for children committing criminal offences under the Austrian Criminal Code are stipulated in the Juvenile Courts Act (*Jugendgerichtsgesetz*). This Federal Act aims at taking into account the age-, and maturity-related characteristics of child delinquency. It contains substantive provisions on the investigation, court and imprisonment procedures⁵.

In Austria the public prosecutor mainly has three different possibilities to complete criminal proceedings: He can dismiss a criminal case, terminate it by measures of diversion or he can bring the suspected person before court by accusation⁶.

In Austria, there are no specialised courts specifically competent for hearing juvenile cases. Courts competent for criminal cases nevertheless handle juvenile cases in specific departments, where juvenile judges sit. Within district and regional courts, specialised departments are competent for juvenile criminal cases. To spare juvenile victims from a direct confrontation with the accused, specific provisions enable the court to question victims in separate rooms. The questioning can be transmitted live to the courtroom so that all

¹ Report by the Minister of Justice of Austria: ['Response of justice to urban violence'](#) 2012, p. 29 (pp.1-71). For the purposes of this study, only a brief overview is provided of the key elements of the institutional and legal framework relevant to children as victims, witness and suspects. For a broader description of the Austrian criminal justice systems please see the European Commission's E-justice portal https://e-justice.europa.eu/content_judicial_systems_in_member_states-16-at-en.do?member=1.

² *ibid* 20.

³ [Report of the Austrian Ombuds-Offices for Children and Youths to the United Nations on the Convention on the Rights of the Child](#) 2012, p. 39 (pp. 1-44).

⁴ *ibid*.

⁵ Report by the Minister of Justice of Austria: ['Response of justice to urban violence'](#) 2012, p. 9 (pp.1-71).

⁶ *ibid* 21.

parties can follow it. Even in cases where a co-defendant is an adult, the proceedings take place before a juvenile judge to ensure the observance of the procedural provisions of the Juvenile Courts Act (*Jugendgerichtsgesetz*)⁷.

Offences with a maximum sentence of up to one year fall within the remit of district courts. Offences with a maximum sentence of more than one year fall within the remit of regional courts.

Within the competence of regional courts:

- offences with a range of sentences of up to five years are adjudicated by a single judge;
- offences with a range of sentences of more than five years are adjudicated by a court of lay assessors;
- and offences with a minimum sentence of more than five years and a maximum sentence of more than ten years as well as certain political offences are adjudicated by a jury court⁸.

Important assistants in juvenile criminal cases are social workers, the Juvenile Court Assistance (*Jugendgerichtshilfe*) and the probation assistant.

The Juvenile Court Assistance can take measures to eliminate harm and danger for the upbringing or health of the child or give recommendations to the custody court or the youth welfare office⁹.

Social workers associated with Court Assistance are also entitled to take part in the main trial on the side of the accused and can take the role of defence counsel in district court proceedings¹⁰.

A probation officer is entitled to be present and to be heard at the main trial giving him/her the opportunity to report on the criminal and personal background of the child¹¹.

The organisation 'A New Start – Probationary Services, Conflict Solution, Social Work' (*'Neustart'*) plays an important role in helping children to reintegrate in to the society by offering different kinds of services, like probation services, anti-violence training or community services.

Training requirements

The judges and prosecutors in charge of juvenile criminal matters are theoretically required by law to be pedagogically skilled and to have a certain expertise in psychology and social work¹².

All future judges and public prosecutors go through a mandatory four year **initial training** period. Within the initial training, future judges and prosecutors attend special seminars focusing on the treatment of juvenile victims and witnesses in court as well as on juvenile criminal law. Also, all future judges and prosecutors have to serve a minimum period of two weeks at a victim protection agency or a welfare institution¹³.

Particular attention is paid to advanced training. An initiative has been launched to provide professional judges and prosecutors in charge of juvenile criminal matters with specialised – and mainly interdisciplinary- training. For example, a course ("Curriculum") especially tailored to the requirements of the Juvenile Court Act has been run since 2007¹⁴. This **continuous**

⁷ Information collected in writing from the Austrian authorities.

⁸ Section 27 of the Juvenile Courts Act. Report by the Minister of Justice of Austria: ['Response of justice to urban violence'](#) 2012, p. 18 (pp.1-71).

⁹ Section 48 n. 3 of the Juvenile Courts Act.

¹⁰ Report by the Minister of Justice of Austria: ['Response of justice to urban violence'](#) 2012, p. 20 (pp.1-71).

¹¹ *ibid.*

¹² Section 30 of the Juvenile Courts Act. Report by the Minister of Justice of Austria: ['Response of justice to urban violence'](#) 2012, p. 18 (pp.1-71).

¹³ Information collected in writing from the Austrian authorities.

¹⁴ Information collected in writing from the Austrian authorities.

training programme for judges and prosecutors offers a wide range of seminars and consists of six modules dedicated to equip judges and prosecutors in charge of juvenile penal cases with specific psychological, pedagogical and social knowledge. These seminars have a high take-up with judges and prosecutors¹⁵.

Judges and public prosecutors are also given the opportunity to participate in a number of **international training courses** provided for example by the Academy of European Law (ERA) and the European Judicial Training Network (EJTN) tackling topics such as (sexual) violence against children, crimes with vulnerable victims and dealing with victims of sexual violence¹⁶.

Lay judges must be persons experienced in dealing with children, such as a teacher or someone working in youth welfare or some other project beneficial to young people¹⁷. In addition, the law stipulates that at least one lay assessor or two jurors must be the same gender as the accused¹⁸.

Qualification standards for staff of the Victim Assistance Services (*Prozessbegleitung*) are in place and further education and training is offered. Other professional groups (such as lawyers, police officers or non-governmental victim support organisations) are increasingly able to deal with victim support at courts through training and education. However, this mostly happens upon the private initiative of individuals¹⁹. There is an informal memorandum of understanding concerning standards for the Victim Assistance Services (*Standards für Prozessbegleitung*)²⁰.

Definition of the child

The Juvenile Courts Act does not refer to the term child. It distinguishes between "under-age persons" who have not yet attained the age of 14 and "juveniles" who are between 14 and 19 years old²¹.

However, for the purposes of this study the definition of children will follow the [Council of Europe's Guidelines](#) on child friendly justice, according to which a 'child' means any person under the age of 18 years, unless the term 'juvenile' is directly translated from an Austrian legal provision.

The age of 14 is the minimum age of criminal responsibility (MACR), when the child shows a sufficiently mature moral and mental state of development at the time of the offence so that he or she recognises the unlawfulness of the offence and is able to act in line with that recognition²². The evolving capacity and maturity of the child is carefully assessed by the judge and by the juvenile court assistance (*Jugendgerichtshilfe*)²³.

A juvenile who has not reached the age of 16 cannot be punished for an offence without serious guilt, except special reasons justify the application of criminal law relating to juvenile offenders to prevent the juvenile from criminal acts²⁴.

There is no age limit to report a crime or to be heard as a witness in Austria. However, victims who are less than 14 years old, have to be interviewed in the presence of a confidant and by a specially trained police officer or another qualified person²⁵.

¹⁵ Information collected in writing from the Austrian authorities.

¹⁶ Information collected in writing from the Austrian authorities.

¹⁷ Section 28 of the Juvenile Courts Act.

¹⁸ Report by the Minister of Justice of Austria: '[Response of justice to urban violence](#)' 2012, p. 19 (pp.1-71).

¹⁹ [Report of the Austrian Ombuds-Offices for Children and Youths to the United Nations on the Convention on the Rights of the Child](#) 2012, p. 40-41 (pp. 1-44).

²⁰ Information collected in writing from the Austrian authorities.

²¹ Section 1 n. 1 of the Juvenile Courts Act.

²² Section 4(2) of the Juvenile Courts Act.

²³ Section 4(2) n. 1 of the Juvenile Courts Act.

²⁴ Section 4(2) n. 1 and Section 47 of the Juvenile Courts Act.

²⁵ "My rights during the investigation of a crime" in Austria at [European E-Justice Portal](#).

Protection from discrimination

The Federal Constitutional Law on the Rights of the Child (*BVG-Kinderrechte*) aims to strengthen children and juveniles as independent holders of basic human rights and to implement the standards of the UN-Convention on the Rights of the Child. Regarding the principle of non-discrimination, the Austrian provinces developed various concepts for the integration of vulnerable children, such as migrants²⁶.

However, according to the Austrian Ombudspersons for Children and Youths and the National Coalition, Austrian legislation still has gaps regarding the protection of the child in the field of health, education, leisure time, combating child poverty and protection against age discrimination. In addition, a child-oriented enforcement of these rights is not sufficiently guaranteed²⁷.

²⁶ [Report of the Austrian Ombuds-Offices for Children and Youths to the United Nations on the Convention on the Rights of the Child](#) 2012, p. 12 (pp. 1-44).

²⁷ [Report of the Austrian Ombuds-Offices for Children and Youths to the United Nations on the Convention on the Rights of the Child](#) 2012, p. 7 (pp. 1-44).

2 Child-friendly justice before and during criminal judicial proceedings

2.1 The child as a victim

2.1.1 Reporting a crime

There are no specific provisions on a child's ability to report crimes. Therefore, the rules for adults apply to children as well. Any person, being a victim or not, can report a crime to any police station or public prosecution office. There are no formal requirements for the reporting of a crime. The crime can thus be reported in writing or orally. The police fill-in an official form, generally computer-based. It is not obligatory to include personal details, such as the home address, in the report. However, a signature of the person reporting a crime is required, if possible²⁸.

Whoever reports a crime must be given a crime reference number and contact details for the police officer dealing with their case to be able to follow up on the case. Where a child reports a crime, the reference number is given to the parent or legal representative²⁹.

Victim support organisation, such as "[Der weiße Ring](#)", can support the victim in reporting the crime. Furthermore, Child Protection Centres (*Kinderschutzzentren*), the Young Persons' Representative (*Jugendadvokatur*) and youth welfare organisations (*Jugendwohlfahrtsträger*) provide specific support for children as victims of crimes.

The Federal Ministry of Economy, Family and Youth provides the Victim Assistance Services' (*Prozessbegleitung*) which gives victims of violence or sexual abuse psychological and judicial support free of charge from the point where they report a crime until the end of the proceedings³⁰.

The report can be submitted in German as well as in other [official languages](#) spoken in the respective province and if not possible otherwise in English or another language. If the person reporting the crime does not speak German or another official language, an interpreter can assist³¹.

The police and the public prosecutor are obliged to investigate the facts of any suspected criminal offence as soon as they obtain knowledge of it through any kind of information, such as a report, the media or by other means³². There is no specific time-limit for reporting and investigating an offence. However, after a certain period of time, which depends on the crime, the public prosecutor or the judge can refuse to examine the case³³.

2.1.2 Provision of information

There are no specific provisions relating to children, so a child has the right to receive the same information as an adult victim. However, the Victim Assistance Service (*Prozessbegleitung*) of the Federal Ministry of Economy, Family and Youth ensures that children are promptly and sufficiently informed of their rights and that this information is provided in a child-friendly manner and in a language they understand, e.g. through a brochure for children called "Milli goes to court" ([Milli ist beim Gericht](#)).

²⁸ "My rights during the investigation of a crime" in Austria at [European E-Justice Portal](#).

²⁹ There is no specific provision regarding the rights of children to report a crime. This information was obtained during an interview with a representative of a victim support organisation.

³⁰ Section 66(2) of the Code of Criminal Procedure.

³¹ "My rights during the investigation of a crime" in Austria at [European E-Justice Portal](#).

³² Section 2(1) of the Code of Criminal Procedure.

³³ Section 57 of the Criminal Code.

Besides the psychological and judicial support, a parent³⁴ or another person of trust has to accompany the child during the criminal procedure, including the first interview³⁵. Consequently, that person is also informed about the rights of the child victim.

The following information needs to be given to any victim (children or adults) in criminal proceedings as soon as the investigation starts³⁶:

- all the rights of the victim, such as the right to be relieved of the duty to testify if this would incriminate a relative³⁷;
- the right to refuse to answer individual questions, if the answer would be shameful or could bear the danger of a considerable financial loss; if the question concerns the most private sphere; if the questions about details of sexual offences are unacceptable (however, if the testimony is essential to the proceedings in these cases, the victim can nevertheless be obliged to answer these questions)³⁸;
- the right to be questioned in the presence of a confidant, if the victim is under 14 years of age³⁹;
- the contact details of and the services provided by victim support organisations, if the public prosecutor decides to not continue the proceedings⁴⁰;
- the possibility of claiming compensation according to the Code of Criminal Procedure⁴¹;
- the possibility of claiming compensation according to the Crime Victims Act (*Verbrechensopfergesetz (VOG)*)⁴²;
- the right to be informed of the release of the offender from custody in case of serious crimes, such as domestic violence, otherwise this information is given to the victim upon request. The information given by the police or the public prosecutor has to include grounds and must state if the offender had to accept special duties⁴³;
- the right to be notified of the termination of the proceedings and of the outcome of the court proceedings to the extent that they relate to the victim⁴⁴;
- the right to pursue proceedings, which have been terminated⁴⁵;
- the right to Victim Assistance Service (*Prozessbegleitung*)⁴⁶;
- if sexual integrity could have been violated, the victim has the right to be informed before the first statement about the right to be heard during the investigation stage by a person of the same sex, if possible; and the right to refuse to answer questions about details of the crime⁴⁷;
- the right to a lawyer⁴⁸;

³⁴ The term 'parents' is defined in the Council of Europe Guidelines and for the purpose of this study as person(s) with parental responsibility, according to national law. In case the parent(s) is/are absent or no longer holding parental responsibility, this can be a guardian or an appointed legal representative.

³⁵ Section 160(3) of the Code of Criminal Procedure.

³⁶ "My rights during the investigation of a crime" in Austria at [European E-Justice Portal](#) and Sections 10(2), 66 and Section 70 of the Code of Criminal Procedure.

³⁷ Section 70(1) 156(1) n.1 and 157 of the Code of Criminal Procedure.

³⁸ Section 158(1) n. 1 of the Code of Criminal Procedure.

³⁹ Section 160(3) of the Code of Criminal Procedure.

⁴⁰ Section 206(1) of the Code of Criminal Procedure.

⁴¹ Section 67 of the Code of Criminal Procedure.

⁴² Section 10(2) of the Code of Criminal Procedure.

⁴³ Section 177(5) of the Code of Criminal Procedure.

⁴⁴ Sections 194, 197(3), 206, 208(3) of the Code of Criminal Procedure.

⁴⁵ Section 195(1) of the Code of Criminal Procedure.

⁴⁶ Section 66(2) of the Code of Criminal Procedure.

⁴⁷ Section 70(2) of the Code of Criminal Procedure.

⁴⁸ Section 73 of the Code of Criminal Procedure.

- the right to access the files. Access can be denied or limited only if the inspection of files could endanger the investigation or influence your testimony as witness⁴⁹;
- the right to an interpreter⁵⁰;
- the right to give testimony outside the main proceedings and the right to not meet the offender during the entire proceedings⁵¹.

2.1.3 Protection from harm and protection of private and family life

Protection from harm and protection of private life

Several provisions in Austria protect victims in general and children in particular from harm and from violation of their private life. The victim needs to be informed about these rights.

See also [Section 2.1.2](#).

If the victim feels threatened by the offender, the police can upon application evict the threatening person from a common apartment and neighbourhood and define a protection zone forbidden for this person. The barring order protects all persons living in the apartment (house). It is issued for a period of two weeks and can be extended to four weeks⁵².

Furthermore, the victim can apply for an interim injunction ("Protection against violence in apartments" or "General protection against violence" or "Protection against invasion of privacy") with the civil local court of the place of his or her residence⁵³. The Domestic Abuse Intervention Centre or the Violence Protection Centres can provide support for the application of the interim injunction. The injunctions are issued by the court and can be enforced by the police. An interim injunction can cover a period ranging from six months up to the termination of the proceedings⁵⁴.

In case of conflicting interests between parents and children, the youth welfare office will represent the views and the best interests of the child. The youth welfare office can also apply for an interim injunction (protection against violence) and its enforcement if the legal representative of the child fails to apply for it without undue delay⁵⁵.

If the victim or witness is in danger, they can also be protected through the special Witness Protection Programme of the Austrian Federal Criminal Police Office⁵⁶.

A victim and witness who is afraid for their or a third person's life, health, physical well-being or freedom, have the right to give their statement anonymously. In this case they are not obliged to give answers that could reveal their identity. Only facial expression has to be observable, for the judge to estimate the credibility of the statement⁵⁷.

Concepts like the interview by video transmission, questioning by experts, separate waiting rooms etc. are standard in Austria⁵⁸. Some of them are especially prepared for children's questioning. In each court there is a videoconferencing system installed. In the Federal Ministry of Justice, mobile videoconferencing systems for unusual situations are available⁵⁹.

The Victim Assistance Service ([Prozessbegleitung](#)) funded by the Federal Ministry of Justice gives victims of a deliberate act of violence or dangerous threat to their sexual integrity the right to receive psychological and judicial support free of charge from the point where they

⁴⁹ Section 68 of the Code of Criminal Procedure.

⁵⁰ Section 66, 56 of the Code of Criminal Procedure.

⁵¹ Section 165 of the Code of Criminal Procedure.

⁵² "My rights during the investigation of a crime" in Austria at [European E-Justice Portal](#).

⁵³ "My rights during the investigation of a crime" in Austria at [European E-Justice Portal](#) and Section 66 of the Code of Criminal Procedure.

⁵⁴ "My rights during the investigation of a crime" in Austria at [European E-Justice Portal](#).

⁵⁵ Section 211(2) of the General Civil Code.

⁵⁶ Section 66(2) of the Code of Criminal Procedure.

⁵⁷ Section 162 of the Code of Criminal Procedure.

⁵⁸ [Report of the Austrian Ombuds-Offices for Children and Youths to the United Nations on the Convention on the Rights of the Child](#) 2012, p. 39 (pp. 1-44).

⁵⁹ Information collected in writing from the Austrian authorities.

report a crime until the end of the proceedings. Assistance is also available to close relatives of a person killed in the crime or relatives who have witnessed the crime. The service is provided by established specialised victims' protection organisations (such as child protection centres, counselling centres or intervention centres). The members of staff are social workers, psychologists or comparable professionals with additional – obligatory – legal training regarding criminal proceedings⁶⁰. Victim Assistance Service also includes the legal services, including legal aid and representation before the authorities. Lawyers in cooperation with established specialised victims protection organisations provide these services⁶¹.

In order to prevent violations by the media of the privacy rights of the child, the court can order the public to leave the courtroom⁶². If the media publishes the name, picture or other facts of the victim or witness, so that a larger group of persons can identify them, they have the right to claim compensation of up to 20.000 Euro from the respective media institution⁶³.

For more information on protecting the child from harm during interviews, please see [Section 2.1.5](#).

Protection of family life

Any witness has a right to be relieved of the duty to testify if this would incriminate a relative and has to be informed of this right before giving testimony⁶⁴. Any person has the right to refuse to testify against close relatives to protect their family life⁶⁵.

There is no specific provision for children who do not yet have the intellectual maturity to sufficiently understand the importance of their right of refusal to testify.

2.1.4 Protection from secondary victimisation and ensuring a child friendly environment

The Austrian legislation provides for several measures to ensure that proceedings involving children are dealt with as quickly as possible to protect the best interests of the child, mainly through the Victim Assistance Service ([Prozessbegleitung](#)) and the right to be accompanied by a person of trust, a psychologist and a lawyer.

Victims organisations try to familiarise children with the layout of the court and the roles and identities of the officials involved before proceedings begin, e.g. through the brochure for children called "Milli goes to court" ([Milli ist beim Gericht](#)).

Child friendly environment

There are no special courts, provisional decisions or preliminary judgements when children are involved in criminal judicial proceedings in Austria. However, in order to lower the stress for children in criminal proceedings through more child-friendly settings, the police and judicial authorities are encouraged to protect the best interests of the child during the entire process by adapting to the child's pace and attention span and by trying to keep disruption and length of proceedings to a minimum. Some courts provide for toys in the waiting rooms⁶⁶. There are special waiting-areas for witnesses⁶⁷.

For more information on protection from harm please see [Section 2.1.3](#) and on protection during interviews [Section 2.1.5](#).

⁶⁰ Section 38a of the Police Law (*Sicherheitspolizeigesetz*) and "My rights during the investigation of a crime" in Austria at [European E-Justice Portal](#).

⁶¹ Section 66(2) of the Code of Criminal Procedure.

⁶² Section 229(1) n. 3 of the Code of Criminal Procedure.

⁶³ Section 66(2) of the Code of Criminal Procedure.

⁶⁴ Section 157(1) n.1 of the Code of Criminal Procedure.

⁶⁵ Section 155 of the Code of Criminal Procedure.

⁶⁶ Information obtained during an interview with a representative of a victims support organisation.

⁶⁷ "My rights during the investigation of a crime" in Austria at [European E-Justice Portal](#).

2.1.5 Protecting the child during interviews and when giving testimony

Any victim (child or adult) has the right to refuse to answer individual questions, if the answer would be shameful or if concerns the most private sphere. However, if the testimony is essential to the proceedings in these cases, the victim can nevertheless be obligated to answer these questions⁶⁸.

Victims who are less than 14 years old, have to be questioned in the presence of a confidant and by a specially trained police officer or another qualified person⁶⁹. Children who are 14 years old or above do not enjoy such rights, which can be considered as gap in the Austrian legislation, as these children might be still vulnerable⁷⁰.

Furthermore, a victim of a sexual offence can ask to be interviewed by a person of the same sex⁷¹. Children are, if possible, only interviewed once and only by one person⁷².

To avoid possible harm or secondary victimisation, the Austrian law provides for the so-called 'contradictory procedure'⁷³. This means that the interview takes place only in the presence of the presiding judge and a person of trust, such as the parents or a guardian, without meeting the offender. The offender, his/her lawyer and the other participants can follow the interview on a screen in a separate room.

This option applies upon application of the public prosecutor to victims who are vulnerable due to their young age or their emotional or physical condition. If the victim is under the age of 14 and their sexual integrity may have been violated by the crime, they must be heard in this way. An expert (for example a psychiatrist) can perform the interview⁷⁴. It constitutes a gap that this rule does not apply to older children, who are still vulnerable⁷⁵.

The child's testimony can be videotaped and shown during the trial, so that the child only needs to be interviewed once. His/her age and conditions must be taken into consideration. All courts in Austria have the necessary audio-visual equipment. An expert (for example a psychiatrist) should assist or perform the interview⁷⁶.

Every interview is written down. While there is no legal obligation to record statements/interviews, all statements taken during the 'contradictory procedure' are recorded as a standard procedure in Austria⁷⁷.

Regarding the victims' support of the Victim Assistance Service (*Prozessbegleitung*) during the entire proceedings, including the interviews, please see [Section 2.1.3](#).

Admissibility and value of evidence

In order to protect children, an oath is not administered to children⁷⁸. This does not diminish the value given to a child's testimony or evidence as an oath is exceptionally taken in all proceedings⁷⁹.

All types of evidence may be presented in the proceedings. In case someone wants to present a protocol of civil proceedings (in which the possibility of taking an oaths exists), there are no rules concerning admissibility of interviews not sworn under oath⁸⁰.

⁶⁸ Section 158(1) n. 3, (2) of the Code of Criminal Procedure.

⁶⁹ "My rights during the investigation of a crime" in Austria at [European E-Justice Portal](#).

⁷⁰ Information obtained during an interview with a defence counsel.

⁷¹ Section 70(2) n. 1 of the Code of Criminal Procedure.

⁷² Information obtained during an interview with a defence counsel.

⁷³ Section 165 of the Code of Criminal Procedure.

⁷⁴ Section 165(3), (4) of the Code of Criminal Procedure.

⁷⁵ Information obtained during an interview with a defence counsel.

⁷⁶ Section 165(5) of the Code of Criminal Procedure. "My rights during the investigation of a crime" in Austria at [European E-Justice Portal](#).

⁷⁷ Information collected in writing from the Austrian authorities.

⁷⁸ Information obtained during an interview with a judge.

⁷⁹ According to an interview with a judge.

⁸⁰ Information collected in writing from the Austrian authorities.

2.1.6 Right to be heard and to participate in criminal proceedings

Only the suspect has a general right to be heard in criminal proceedings⁸¹. The victim (child or adult) has the right to be present during the main hearing and to question the defendant, witnesses and experts, as well as to be heard about his or her claims and to receive translation⁸².

Judges, prosecutors and the criminal police are obliged to find out the truth as far as possible. This encompasses the obligation to hear the victim as a witness⁸³.

Regarding options to participate in civil proceedings or subsidiary prosecution, please see [Section 2.2.8](#).

2.1.7 Right to legal counsel, legal assistance and representation

All victims (adults and children) have the right to legal representation to enforce the rights of the victim on their behalf. A legal representative can be any attorney at law or a victim support organisation or any other qualified person⁸⁴. This service is not free of charge for the victim and the representative does not necessarily have to be a lawyer. To help victims to get in contact with the appropriate victim support organisation the Federal Ministry of Justice funds the Victims' Hotline (0800 112 112), a round-the-clock hotline free of charge⁸⁵.

For victims of a deliberate act of violence or dangerous threat to their sexual integrity the Victim Assistance Service (*Prozessbegleitung*) provides for judicial support free of charge from the reporting of a crime until the end of the proceedings⁸⁶. For more information on this service please see [Section 2.1.3](#)

In addition, a civil claimant (*Privatbeteiligung* – please see [Section 2.1.8](#) for more information) has the right to a legal counsel free of charge, if he does not already have Victim Assistance Service (*Prozessbegleitung*)⁸⁷.

In case of conflicting interests between parents and children, the youth welfare organisations (*Jugendwohlfahrtsträger*) represent the views and interests of the child.

2.1.8 Remedies or compensation exist for violation of rights and failure to act

On behalf of the child victim, a legal representative can bring a private action (*Privatanklage*) without needing to have recourse to the public prosecution office for specific minor and personal offences, which are not prosecuted by the public prosecutor *ex officio*⁸⁸.

The child represented by his or her legal representatives may claim for civil damages (*Privatbeteiligung*) for the offence caused⁸⁹. The claim has to comprise an estimate of the loss caused by the crime in financial terms and a justification. During the investigation the claim has to be addressed to the police or the public prosecutor. It can be submitted in written form or made orally. During the trial the claim has to be submitted before all the evidence is compiled and before the court closes the main proceeding for sentencing⁹⁰. A civil claimant has the right to request the collection of evidence that could serve to convict the offender or to justify the claim for compensation and to appeal against the court's decision to close the case⁹¹. He has the right to a legal counsel, if he does not already have Victim Assistance Service (*Prozessbegleitung*) and if such legal representation is required in

⁸¹ Section 6 of the Code of Criminal Procedure.

⁸² Section 66(1) n. 5, 7 of the Code of Criminal Procedure.

⁸³ Section 3(1) of the Code of Criminal Procedure.

⁸⁴ Section 73 of the Code of Criminal Procedure.

⁸⁵ "My rights during the investigation of a crime" in Austria at [European E-Justice Portal](#).

⁸⁶ Section 66(2) of the Code of Criminal Procedure.

⁸⁷ Section 67(7) of the Code of Criminal Procedure.

⁸⁸ Section 71 of the Code of Criminal Procedure. Such offences are, inter alia, defamation (Sections 111 to 115 of the Criminal Code) or violation of the privacy of correspondence (Section 118 of the Criminal Code).

⁸⁹ Section 67 of the Code of Criminal Procedure.

⁹⁰ "My rights during the investigation of a crime: Civil claimant" in Austria at [European E-Justice Portal](#).

⁹¹ "My rights during the investigation of a crime: Civil claimant" in Austria at [European E-Justice Portal](#).

the interest of justice, in particular to avoid additional civil proceedings. This service is free of charge, if the civil claimant cannot afford legal representation without getting into financial difficulties⁹².

The Federal Ministry of Justice is planning to introduce a new law which provides for legal and psychological assistance for victims of sexual offences under the age of 14 years in all cases on an obligatory basis⁹³.

If the public prosecutor drops the proceedings, a civil claimant can declare subsidiary prosecution (*Subsidiaranklage*), if the offender is not a child⁹⁴. The subsidiary prosecutor has the same rights as someone lodging a private action (*Privatanklage*), which means almost the same rights as the public prosecutor⁹⁵.

If the civil claimant not present at the main hearings without permission and if he does not declare the subsidiary prosecution, the proceedings will be dropped again and the offender will be acquitted.⁹⁶

2.2 The child as a witness

2.2.1 Reporting a crime

Everyone has the right to report a crime. Therefore, the same general rules as described in [Section 2.1.1](#) also apply to child witnesses. The Victim Assistance Service (*Prozessbegleitung*) gives assistance also to relatives of the victim who have witnessed the crime⁹⁷.

2.2.2 Provision of information

There are no specific provisions relating to the way information must be given to a child witness. The brochure for children called "Milli goes to court" (*Milli ist beim Gericht*) explains procedures and rights of children in criminal proceedings in a child-friendly manner.

The judge needs to provide the following information to a witness (child or adult) in criminal proceedings:

- obligation of the witness to testify and to say the truth⁹⁸;
- all the rights of the witness, such as the right to be relieved of the duty to testify⁹⁹;
- the right to refuse to answer individual questions, if the answer would be shameful or could bear the danger of a considerable financial loss for the witness or a family member; if the question concerns the most private sphere. If the testimony is essential to the proceedings in these cases, the victim can nevertheless be obliged to answer these questions¹⁰⁰;
- about the right to refuse to have the interview recorded by video/audio¹⁰¹.

Regarding witnesses under 14 years of age, the judge needs to inform them in criminal proceedings about the right to be questioned in the presence of a confidant¹⁰².

⁹² Section 67(7) of the Code of Criminal Procedure.

⁹³ Information collected in writing from the Austrian authorities.

⁹⁴ Section 72 of the Code of Criminal Procedure. According to Section 2 of the Juvenile Courts Act a juvenile is a person who has reached the age of 14 but not yet the age of 18.

⁹⁵ Section 71(5) of the Code of Criminal Procedure.

⁹⁶ Section 72(2) of the Code of Criminal Procedure.

⁹⁷ Sections 66(2) and 65 n. 1(b) of the Code of Criminal Procedure.

⁹⁸ Section 154(2) of the Code of Criminal Procedure.

⁹⁹ Section 159(1) of the Code of Criminal Procedure.

¹⁰⁰ Section 158 of the Code of Criminal Procedure.

¹⁰¹ Section 97(1) of the Code of Criminal Procedure.

¹⁰² Section 160(3) of the Code of Criminal Procedure.

Regarding additional rights of the child witness, who is also the victim of the crime, please see Section [2.1.2](#)

2.2.3 Protection from harm and protection of private and family life

The Victim Assistance Service (*Prozessbegleitung*) gives assistance free of charge to relatives of the victim who have witnessed the crime.¹⁰³ Please see Section [2.1.3](#). for more information.

If other persons are present during the examination, it must be ensured that, as far as possible, the public will not get to know the personal details of the witness¹⁰⁴. In the case of a serious threat to his/her life, health, physical integrity or freedom, the witness has the right to refuse to answer to certain questions. Here it is also permissible that he disguises or changes his/her appearance, so long as the judge can still see his/her facial expression to assess the credibility of his/her testimony¹⁰⁵. For the same reasons, the judge can exclude the public from the main hearing either *ex officio* or upon request of the witness¹⁰⁶.

The public may be excluded furthermore if the personal areas of his/her life or his/her personal secrets are to be discussed¹⁰⁷.

In cases where the victim has been intimidated by the accused, it is possible for the public prosecution service to apply for pre-trial detention for a limited period of two months¹⁰⁸.

For more information on the protection of privacy and from harm of the child witness, please see Section [2.1.3](#).

2.2.4 Minimising the burden of proceedings and ensuring a child friendly environment

There are no other provisions specifically applying to witnesses other than those described in Section [2.2.3](#) With respect to witnesses who are also the victim of the crime, please see Section [2.1.4](#).

2.2.5 Protecting the child during interviews and when giving testimony

There are no other provisions specifically for witnesses other than those described in Section [2.2.3](#) With respect to witnesses who are also the victim of the crime, please see Section [2.1.5](#).

2.2.6 Right to be heard and to participate in criminal proceedings

The witness (child or adult) is obliged to testify and has the right to be relieved of the duty to testify if the conditions referred to in Section [2.2.2](#) apply. However, only the suspect, and to some extent the victim, has the right to be heard in criminal proceedings¹⁰⁹.

With respect to witnesses who are also the victim of the crime, please see Section [2.1.6](#).

2.2.7 Right to legal counsel, legal assistance and representation

If the witness is a relative of the victim who has witnessed the crime, he has a right to legal assistance by the Victim Assistance Service (*Prozessbegleitung*)¹¹⁰.

With respect to witnesses who are also the victim of the crime, please see Section [2.1.7](#).

¹⁰³ Sections 66(2) and 65 n. 1(b) of the Code of Criminal Procedure.

¹⁰⁴ Section 161(1) third sentence of the Code of Criminal Procedure.

¹⁰⁵ Section 162 of the Code of Criminal Procedure.

¹⁰⁶ Section 229(1) n. 3 of the Code of Criminal Procedure.

¹⁰⁷ Section 229(1) n. 2 of the Code of Criminal Procedure.

¹⁰⁸ Section 173(2) n. 2 of the Code of Criminal Procedure.

¹⁰⁹ Section 6 and Section 66(1) n. 7 of the Code of Criminal Procedure.

¹¹⁰ Sections 66(2) and 65 n. 1(b) of the Code of Criminal Procedure.

2.2.8 Remedies or compensation for violation of rights and failure to act

A witness, who is not a victim of a crime, cannot launch any complaint, legal appeal or judicial review processes. With respect to witnesses who are also the victim of the crime, please see [Section 2.1.8](#).

2.3 The child as a suspect/ defendant

2.3.1 Age of criminal responsibility

The minimum age of criminal responsibility (MACR) in Austria is 14¹¹¹.

The Austrian Juvenile Courts Act (*Jugendgerichtsgesetz*) applies when a juvenile commits an offence which is punishable under generally applicable law¹¹². A 'juvenile' is any person who has completed the fourteenth but not yet the eighteenth year of age at the time of the offence¹¹³.

A child of 14 years or above is only held responsible under the Austrian Criminal Code, when he or she shows a sufficiently mature moral and mental state of development at the time of the offence so that he or she recognizes the unlawfulness of the offence and is able to act in line with that recognition¹¹⁴.

A juvenile who has not reached the age of 16 cannot be punished for a misdemeanour without serious guilt, except special reasons justify the application of criminal law relating to juvenile offenders to prevent the juvenile from criminal acts¹¹⁵.

Therefore, the minimum age of criminal responsibility (MACR) in Austria does not depend solely on age but also on the child's mental state of development.

There is no age limit for children to be imprisoned in pre-trial detention or custody. However, the main purpose of the Juvenile Courts Act is to prevent children of 14 years or above from committing offences. The prison sentence for a child of 14 years or above is about half that of adults. It is even lower for children between the age of 14 and 16¹¹⁶. In minor cases, the judge can refrain from imposing criminal penalties¹¹⁷.

The provisions of the Juvenile Courts Act apply to offences that have been committed as juveniles, even if the offender has become an adult in the meantime¹¹⁸.

2.3.2 Provision of information

Regarding the instructions given to child suspects in Austria, the same rules apply as for adults¹¹⁹.

The police or the public prosecutor must inform the suspect as soon as possible about his/her rights during the proceedings¹²⁰.

The information must include especially:

- the initiation of an investigation against him/her and the offence of which s/he is suspected¹²¹;

¹¹¹ Section 4(1) of the Juvenile Courts Act.

¹¹² Section 1 n. 3 of the Juvenile Courts Act.

¹¹³ Section 1 n. 2 of the Juvenile Courts Act.

¹¹⁴ Section 4(2) n. 1 of the Juvenile Courts Act.

¹¹⁵ Section 4(2) n. 1 and Section 47 of the Juvenile Courts Act.

¹¹⁶ Section 5 of the Juvenile Courts Act.

¹¹⁷ Section 6 of the Juvenile Courts Act.

¹¹⁸ Information collected in writing from the Austrian authorities.

¹¹⁹ Section 37(1) of the Juvenile Courts Act.

¹²⁰ Section 50 of the Code of Criminal Procedure.

¹²¹ Section 50 of the Code of Criminal Procedure.

- the right, at any stage, even prior to interview, to consult with defence counsel if this does not constitute a risk to the investigation. For children, the legal representative can even appoint a lawyer against the child's will¹²²;
- the right to apply for legal-aid defence counsel¹²³. The defence counsel must not take part in the interview, but may ask supplementary questions once the interview has been finished. During the interview, the accused must not consult with his/her defence counsel on the answers to specific questions. However, calling in a defence counsel may be waived, whenever it appears to be necessary in order to avoid any risk to the investigations, or an impairment of the evidence. In this case, an audio or video recording can be made.
- the right to consult the file¹²⁴;
- the right to comment on the allegations raised, or to remain silent¹²⁵. The accused shall also be informed of the fact that his/her testimony serves his/her defence, but that it may also be used as evidence against him/her¹²⁶.
- The right to request the taking of evidence¹²⁷;
- the right to appeal against measures taken by the prosecuting authorities or the criminal investigation department, as well as against court decisions¹²⁸;
- the right to be assigned a translator/interpreter¹²⁹;
- the right to participate in a cross-examination of witnesses¹³⁰;
- the right to participate in a reconstruction of the offence¹³¹.

The interview should give the suspect an opportunity to explain his/her personal circumstances and to dispel the grounds for suspecting him/her and to assert facts that speak in his/her favour¹³². He/she is allowed to provide additional comments in writing within a reasonable time frame on complicated questions that require expertise or evaluation by an expert¹³³.

All forms generated by the Federal Ministry of Justice contain instructions on legal remedies¹³⁴.

Neither promises, nor representations should be made; neither threats, nor coercive means applied on the accused to make a confession or to provide other information. The freedom of determining his/her will and to apply his/her will, as well as using his/her memory and his/her capacity to understand must not be impaired by any measures or physical intervention. The questions addressed to an accused must be precise and clearly understandable; they must not be vague, ambiguous or prejudicial. He/she may only be asked questions that confront him/her with circumstances that still need to be determined by his/her answers if this is required to understand the context. These questions and the answers given to them shall be

¹²² Section 58(1)(4) of the Code of Criminal Procedure.

¹²³ Section 61, 62 of the Code of Criminal Procedure.

¹²⁴ Section 51 to 53 of the Code of Criminal Procedure.

¹²⁵ Section 49 n. 4 of the Code of Criminal Procedure.

¹²⁶ Information collected in writing from the Austrian authorities; Section 164(1) of the Code of Criminal Procedures.

¹²⁷ Section 55 of the Code of Criminal Procedure.

¹²⁸ Sections 106, 87, 108 of the Code of Criminal Procedure.

¹²⁹ Sections 56 of the Code of Criminal Procedure.

¹³⁰ Sections 165(2) of the Code of Criminal Procedure.

¹³¹ Sections 150 of the Code of Criminal Procedure.

¹³² Section 164 of the Code of Criminal Procedure.

¹³³ Information collected in writing from the Austrian authorities; Section 164(3) of the Code of Criminal Procedures.

¹³⁴ Information collected in writing from the Austrian authorities.

recorded word for word. Questions are not admissible when they treat a fact as having been admitted, although the accused has not admitted to the fact¹³⁵.

During the first interview of a child, he or she is to be informed of their right to be accompanied by a person of trust upon request, if they are not represented by a defence counsel¹³⁶.

The parent or the legal representative of the child suspect has the same right to receive information as the child¹³⁷.

2.3.3 Immediate actions following first contact with police or other relevant authority

Once proceedings have been initiated, investigations should be conducted as soon as possible into the child suspect's life and family background, development previous conduct and all other circumstances apt to assist in assessing the child's physical, mental and emotional character. In case of doubt, this investigation can be done by a doctor, a psychologist or a psychotherapist¹³⁸.

Youth welfare organisations (*Jugendwohlfahrtsträger*) as well as the guardianship court (*Pflegschaftsgericht*) must be informed of the proceedings¹³⁹.

If a child is arrested and cannot be immediately released, the parent or legal representative or another person living with the child, the probation officer and the youth welfare must be informed without undue delay about the arrest¹⁴⁰.

Regarding the apprehension and transportation of the arrested child, the same rules as for adult apply. The public prosecutor and the court must be informed without undue delay about the arrest¹⁴¹. All measures by the police, the public prosecutor and the judge must respect the dignity, rights and legitimate interests of the person concerned¹⁴².

Special rights are granted in case of an arrest of an offender. The accused has to receive the arrest warrant immediately or at least within 24 hours after his/her arrest. Immediately or shortly after his/her arrest, the accused has to be informed that he/she may contact a relative or any other person he/she trusts, a lawyer, that he/she may apply for a counsel appointed by the court and that he/she has the right to appeal against the arrest or the arrest warrant and can at any stage apply for his/her release¹⁴³.

The parent or legal representative of the accused child has a right to be heard, to ask questions and make applications or to be present during acts of investigation to the same extent as the accused him/herself¹⁴⁴. The same applies to the right to access the files, unless the parent or legal representative is suspected of participating in the child's offence¹⁴⁵.

A compulsory defence counsel must be appointed by the presiding judge, if the child does not have a defence lawyer or legal representative or if the child allegedly committed a serious offence¹⁴⁶.

Furthermore, the presiding judge can upon request appoint a person of trust for the accused child at any stage in the proceedings if the circumstances do not warrant the appointment of

¹³⁵ Information collected in writing from the Austrian authorities; Section 164(4) of the Code of Criminal Procedures.

¹³⁶ Section 37(1) of the Juvenile Courts Act.

¹³⁷ Section 38 of the Juvenile Courts Act.

¹³⁸ Section 43(1) of the Juvenile Courts Act.

¹³⁹ Section 33 of the Juvenile Courts Act.

¹⁴⁰ Section 35(4) of the Juvenile Courts Act.

¹⁴¹ Section 172(1) of the Code of Criminal Procedure.

¹⁴² Section 5(2) of the Code of Criminal Procedure.

¹⁴³ Information collected in writing from the Austrian authorities; Section 171 of the Code of Criminal Procedure.

¹⁴⁴ Section 38(1) first sentence of the Juvenile Courts Act.

¹⁴⁵ Section 38(1) second sentence of the Juvenile Courts Act.

¹⁴⁶ Section 39 of the Juvenile Courts Act.

compulsory defence counsel. This person of trust, which can be a parent or legal representative, a relative, a teacher, or a representative of the youth welfare (*Jugendwohlfahrtsträgers*) or the juvenile court assistance, should ensure that this information is provided in a child-friendly manner and in a language children understand, taking into account the age and maturity of the child¹⁴⁷.

Regarding the rights of which the youth is to be informed at the beginning of the investigation, please see [Section 2.3.2](#).

Regarding the legal time limits and more information on arresting a child, please see [Section 2.3.4](#)

2.3.4 Conditions for pre-trial detention/custody

Pre-trial detention can only be imposed, enforced and maintained on children of 14 or above if its purpose cannot be achieved by measures under family law or less invasive measures and if it is proportional with regards to the development of the child¹⁴⁸.

For example, as a less invasive measure, the child can promise to stay at fixed address until the end of the proceedings¹⁴⁹.

Otherwise, regarding the conditions on pre-trial detention, the same rules apply as for adults. The public prosecutor can apply for imposing or maintaining pre-trial detention if the accused has been heard by a judge and if the accused is strongly suspected of the offence and if there is a ground for arrest¹⁵⁰. A ground for arrest exists if, on the basis of certain facts, it is established that the accused has fled or is hiding, that there is a risk that the accused will evade the criminal proceedings or the accused's conduct gives rise to the strong suspicion that he will influence witnesses, experts or other accused persons, remove evidence or otherwise influence the investigation of the truth¹⁵¹.

Regarding the length of pre-trial detention, there are specific provisions for children of 14 or above. A child must be released from pre-trial detention after three months, if the trial has not started. However, if he is suspected of a serious crime he is to be released after one year. Such an extension of pre-trial detention can only be imposed if the trial has not started and if the pre-trial detention is absolutely necessary due to the unusual extent of the investigation or if other important reasons do not yet admit pronouncement of judgement and justify continuation of pre-trial detention¹⁵².

The parent or legal representative or any other relative living together with the child, the juvenile court assistance (*Jugendgerichtshilfe*) and, if the child is on probation, a probation officer has to be informed of the detention immediately unless the child disagrees to do so for a major reason¹⁵³. In the pre-trial phase it is up to the juvenile court assistance to identify the salient facts on which to base decisions as to pre-trial or preliminary detention¹⁵⁴.

There is no age limit for pre-trial detention in Austria and in practice pre-trial detention of juveniles, even of first offenders, is regularly imposed¹⁵⁵.

Juveniles should be placed in pre-trial detention in a special department of the prison separated from adults, if possible, except when the physical, mental and emotional state of the child allows pre-trial detention together with adults¹⁵⁶.

¹⁴⁷ Section 37 of the Juvenile Courts Act.

¹⁴⁸ Section 35 of the Juvenile Courts Act.

¹⁴⁹ Section 173(5) n. 1 of the Code of Criminal Procedure.

¹⁵⁰ Section 173(1) of the Code of Criminal Procedure.

¹⁵¹ Section 173(2) of the Code of Criminal Procedure.

¹⁵² Section 35(3) of the Juvenile Courts Act.

¹⁵³ Section 35(4) of the Juvenile Courts Act.

¹⁵⁴ Report by the Minister of Justice of Austria: '[Response of justice to urban violence](#)' 2012, p. 20 (pp.1-71).

¹⁵⁵ According to an interview with a defence counsel.

¹⁵⁶ Section 36(3) of the Juvenile Courts Act.

Furthermore, the execution of pre-trial detention should be structured in an educational manner ensuring that child in custody is kept in conditions that are safe and appropriate to his or her needs¹⁵⁷.

2.3.5 Protection of private and family life

Several measures are in place to protect the privacy and personal data of child offenders who are or have been involved in judicial proceedings.

In order to protect the child's privacy, only the main investigative judicial proceedings is open to the public (with exceptions). However, the public can never be excluded from the giving of the judgment¹⁵⁸.

Third parties can only have access to the files if they have a well-founded legal interest and no significant public or private interests are opposed to the access to the files¹⁵⁹.

To prevent violations by the media of the privacy rights of the child, the judge can order the public to leave the courtroom¹⁶⁰. In general, during trials (of adults and children) audio and video recordings as well as photos are prohibited¹⁶¹. The dissemination of information of the trial is forbidden if the public are excluded from the trial. The court can oblige the participants of the trial not to disclose what happened in the courtroom, to prevent violations by the media or criminal justice officials of rights to privacy¹⁶². Moreover, the identity of the accused child is specifically protected from being revealed¹⁶³. The child can sue for compensation if any report in the mass media discloses his/her identity¹⁶⁴.

In addition, the release of information on juvenile criminal cases is closely restricted in order to protect them from negative future impact. Relevant information has to be passed on to the Youth Welfare Agency. For reasons of reintegration and avoiding stigmatisation, access to criminal records of children offenders is restricted. After a specific period of time has elapsed the police record is deleted automatically. The convicted person is then considered as having a clean criminal record¹⁶⁵.

Moreover, under certain circumstances (i.a. maximum sentence of 6 months) the disclosure of the criminal records is restricted to only certain public authorities under certain circumstances¹⁶⁶.

The presiding judge can exclude the accused child for the duration of discussions in the deliberations, which could be disadvantageous to his/her education and development. He must be informed of the deliberations held in his/her absence insofar as is necessary for the purposes of his/her defence¹⁶⁷.

The juvenile court assistance (*Jugendgerichtshilfe*), the accused child, his/her parent or legal representative, his/her defence counsel and the victim and the victim's attorney, the courts, public prosecutor and the police have access to the file of the accused¹⁶⁸.

Furthermore, the family of the child is protected in so far as any witness has a right to be relieved of the duty to testify if this would incriminate a relative¹⁶⁹.

¹⁵⁷ Section 36(4) of the Juvenile Courts Act.

¹⁵⁸ Information collected in writing from the Austrian authorities.

¹⁵⁹ Section 77 of the Code of Criminal Procedure.

¹⁶⁰ Section 42 of the Juvenile Courts Act.

¹⁶¹ Section 228(4) of the Code of Criminal Procedure.

¹⁶² Section 230a of the Code of Criminal Procedure.

¹⁶³ Section 7a Media Act (*Mediengesetz*).

¹⁶⁴ Report by the Minister of Justice of Austria: ['Response of justice to urban violence'](#) 2012, p. 20 (pp.1-71).

¹⁶⁵ Report by the Minister of Justice of Austria: ['Response of justice to urban violence'](#) 2012, p. 20 (pp.1-71).

¹⁶⁶ Information collected in writing from the Austrian authorities; Section 6 of the Act on the Cancellation of Criminal Records.

¹⁶⁷ Section 41 of the Juvenile Courts Act.

¹⁶⁸ Section 50(2), 38(1) of the Juvenile Courts Act, Section 51, 57, 68, 76 of the Code of Criminal Procedure.

¹⁶⁹ Section 70(1) and 156(1) n. 1 of the Code of Criminal Procedure.

2.3.6 Alternatives to judicial proceedings

The public prosecution office can do away with the prosecution of children of 14 or above and impose conditions and instructions upon the accused instead (diversion), provided an offence is punishable with a fine or a sentence of less than five years. This option applies if there are no grounds of general prevention that make it seem indispensable to institute criminal proceedings, including the pronouncement of a sentence. Furthermore, the child's guilt must be considered minor and the offence must not have caused the death of another person.

In particular, the following conditions and instructions can be applied:

- instruction to pay a sum of money to the Federation;
- instruction to perform a service of a non-profit-making nature;
- imposing a probation order including probation support service;
- instruction to attempt to reach a mediated agreement with the victim (perpetrator-victim mediation) thereby trying to make reparation for the offence¹⁷⁰. The victim's consent is not required¹⁷¹.

The public prosecutor must explain the consequences and conditions of this alternative to judicial proceedings in detail to the suspect, in particular the fact that it means admitting the offence and that the proceedings end without a judgement. The child must understand that, in case the public prosecutor offers him/her an alternative to judicial proceedings he can opt for judicial proceedings. If he accepts the offer, the judicial proceedings will start if he does not fulfil the conditions¹⁷².

The juvenile court assistance (*Jugendgerichtshilfe*) can support the child in reaching a mediated agreement with the victim¹⁷³. The accused and victim support organisation 'A New Start – Probationary Services, Conflict Solution, Social Work' (*'Neustart'*) can provide an experienced social worker acting as conflict regulator or mediator in order to achieve a settlement or reconciliation without a trial or a conviction.

The alternative measures are recorded in the court register for a period of ten years. However, no entry in police records is made, i.e. the child evades a criminal record. For more information on criminal records, please see [Section 3.1.4](#).

Furthermore, the judge can decide not to impose a sentence, if it is a minor offence and if the conviction itself seems to be reason enough for the child to not re-offend¹⁷⁴. Please see [Section 3.1.2](#) for more information.

2.3.7 Minimising the burden of proceedings and ensuring a child friendly environment

Various measures limiting the burden of proceedings for children offenders have already been described in [Section 2.3.3](#) and [2.3.5](#).

There are no specific procedures or special courts providing a child-friendly, non-intimidating setting. Nor are there any specific procedures in place such as provisional decisions or preliminary judgements avoiding undue delay for criminal proceedings where children

¹⁷⁰ Section 7 of the Juvenile Courts Act. Diversion also exists for adults (Section 198 of the Criminal Procedural Code).

¹⁷¹ Section 8(3) of the Juvenile Courts Act.

¹⁷² Section 207 of the Code of Criminal Procedure.

¹⁷³ Section 48 n. 2 of the Juvenile Courts Act.

¹⁷⁴ Section 12 of the Juvenile Courts Act.

offenders are involved¹⁷⁵. However, judges are always – not only in cases involving child offenders – obliged to move their cases forward as fast as possible¹⁷⁶.

The court and the public prosecutor can appoint the juvenile court assistant (*Jugendgerichtshilfe*) to take measures to eliminate harm and danger for the up-bringing or health of the child or to give recommendations to the custody court or the youth welfare office¹⁷⁷. The primary function of the juvenile court assistant lies in supporting the courts and the public prosecutor's office in dealing with child offenders. Throughout the entire proceedings they are entitled to make suggestions regarding how to avert dangers for the child's health or educational development¹⁷⁸. A particularly useful service they perform are comprehensive reports on the background, living conditions and family circumstances of the child serving as guidance for the courts in their decision-making processes, particularly regarding sanctions and the severity of the sentence¹⁷⁹. In case of doubt, a medical expert or a psychologist can be consulted¹⁸⁰.

2.3.8 Protecting the child during interviews and when giving testimony

As soon as possible, the police or the public prosecutor must inform the suspect (child or adult) about his rights¹⁸¹. For the protection of the child it is specifically important that he knows his/her right to remain silent and to be accompanied by a person of trust provided he is not represented by a defence counsel¹⁸².

The right to be accompanied by a person of trust only applies upon request. In practise, this leads to the situation that many children waive their right to be accompanied, which bears the risk of self-incrimination¹⁸³.

Please see [Section 2.3.3](#), [2.3.5](#) and [2.3.10](#) for more information on measures to protect the child during interviews and when giving testimony.

2.3.9 Right to be heard and to participate in criminal proceedings

The accused has the right to be heard in criminal proceedings¹⁸⁴. During the main trial, the accused has the right to make a statement after the testimony of every witness, expert or other accused¹⁸⁵. This is especially true for cases in which the accused is kept in pre-trial detention¹⁸⁶.

The legal representative of the accused child has a right to be heard and to be present during acts of investigation and gathering of evidence to the same extent as the accused him/herself. The same applies to the right to inspect the files, unless the legal representative is suspected of participating in the accused's misconduct or insofar as he has been convicted of participation¹⁸⁷.

¹⁷⁵ The interviews with judge and a defence counsel revealed this as a massive gap in the Austrian legal framework.

¹⁷⁶ Information collected in writing from the Austrian authorities; Section 57(1) of the Austrian Judges and Prosecutor Service Law (*Richter- und Staatsanwaltschaftsdienstgesetz*), Section 9 of the Code of Criminal Procedure.

¹⁷⁷ Section 48 n. 3 of the Juvenile Courts Act.

¹⁷⁸ Section 48 n. 3 of the Juvenile Courts Act.

¹⁷⁹ Section 43 of the Juvenile Courts Act.

¹⁸⁰ Report by the Minister of Justice of Austria: '[Response of justice to urban violence](#)' 2012, p. 21 (pp.1-71).

¹⁸¹ Section 50 of the Code of Criminal Procedure. Please also see [Section 2.3.2](#).

¹⁸² Section 49 n. 4 and Section 37(1) of the Juvenile Courts Act.

¹⁸³ This information come from an interview with a defence counsel.

¹⁸⁴ Section 6 and Section 66(1) n. 7 of the Code of Criminal Procedure.

¹⁸⁵ Section 248(3) of the Code of Criminal Procedure.

¹⁸⁶ Information collected in writing from the Austrian authorities.

¹⁸⁷ Section 38(1) of the Juvenile Courts Act.

If a probation assistant has already been appointed for the child he/she also has the right to be present during the gathering of evidence and during the trial. He/she also has the right to be heard¹⁸⁸.

The presiding judge can exclude the accused child during deliberations which could be disadvantageous for him/her. He must be informed of the deliberations held in his/her absence in so far as is necessary for the purposes of his/her defence¹⁸⁹.

The accused (adult or child) has the right to inspect those files which are available to the police, the public prosecutor and the court as well as to inspect officially impounded pieces of evidence¹⁹⁰. He can apply for the taking of evidence¹⁹¹.

An accused (adult or child) who does not have a sufficient command of the court language may demand that an interpreter be called into the proceedings free of charge¹⁹².

The accused has

- the right to consult the file¹⁹³;
- the right to request the taking of evidence¹⁹⁴;
- the right to appeal against measures taken by the prosecuting authorities or the criminal investigation department, as well as against court decisions¹⁹⁵;
- the right to be assigned a translator/interpreter¹⁹⁶;
- the right to participate in a cross-examination of witnesses¹⁹⁷;
- the right to participate in a reconstruction of the offence¹⁹⁸.

Please see [Section 2.3.10](#) for more information on how the legal counsel supports the child in his/her right to be heard and to participate.

2.3.10 Right to legal counsel, legal assistance and representation

With respect to the questioning, a combination of the general rules and of rules specifically relating to children suspects applies. The appointment of a legal counsel is mandatory only under certain circumstances (see details below in this section). Where the child is not represented by a legal counsel, the child can request to be represented by a person of confidence. The child must be informed of this right in the legal caution, in the summons to appear or, at the latest, before the beginning of the interview¹⁹⁹. A person of confidence may be the legal representative of the child, a guardian, a relative, a teacher, an educator or a representative of the Youth welfare (*Jugendwohlfahrtsträger*), the juvenile court assistance service (*Jugendgerichtshilfe*) or the probation service²⁰⁰. The legal representative can also appoint a legal counsel against the child's will²⁰¹.

Before the beginning of the questioning both adults and children suspects must be informed, inter alia, which offence they are suspected of and that they have the right to consult with a legal counsel²⁰². The suspect has the right to consult a lawyer during his/her questioning.

¹⁸⁸ Section 40 of the Juvenile Courts Act.

¹⁸⁹ Section 41 of the Juvenile Courts Act.

¹⁹⁰ Section 51 of Code of Criminal Procedure.

¹⁹¹ Section 55 of Code of Criminal Procedure.

¹⁹² Section 56 of Code of Criminal Procedure.

¹⁹³ Section 51 to 53 of the Code of Criminal Procedure.

¹⁹⁴ Section 55 of the Code of Criminal Procedure.

¹⁹⁵ Sections 106, 87, 108 of the Code of Criminal Procedure.

¹⁹⁶ Sections 56, 126(2a) of the Code of Criminal Procedure.

¹⁹⁷ Sections 165(2) of the Code of Criminal Procedure.

¹⁹⁸ Sections 150 of the Code of Criminal Procedure.

¹⁹⁹ Section 37(1) of the Juvenile Courts Act.

²⁰⁰ Section 37(2) of the Juvenile Courts Act.

²⁰¹ Section 58(1)(4) of the Code of Criminal Procedures.

²⁰² Section 164(2) of the Code of Criminal Procedures.

However, the lawyer may not participate in the questioning itself in any way, but may ask additional questions after the end of the interview. During the interview the accused may not discuss possible answers to the questions. The presence of a defence counsel can be prohibited where that is necessary to prevent a threat to the investigation. In this case, a sound or video recording of the interview should be made²⁰³.

A child must be appointed a compulsory defence counsel free of charge by the presiding judge, if the obligation to pay for one would be hamper his or her advancement or if an adult would have the right to one²⁰⁴. This is under the Code of Criminal Procedure, inter alia, the case if the suspect cannot afford a defence counsel and if the defence counsel is needed for the defence of the accused. This is always the case

- for the entire proceedings, including interviews, if the suspect is in pre-trial detention;
- for the entire proceedings, including interviews, if the suspect is in an institution for mentally disturbed offenders;
- during the main hearing, if it is held at the Regional Court as court with a jury or as court with a panel of professional and lay judges ;
- during the main hearing, if it is before a single judge and the offence may carry a prison sentence of more than three years;
- if the suspect is blind, deaf or dumb, otherwise disabled or incapable to understand the language of the court and therefore incapable to defend him/herself;
- in appeal procedures;
- if the factual or legal issues are complex²⁰⁵.

Under these circumstances the child suspect must be appointed a compulsory defence counsel free of charge for the entire proceedings before a Regional Court and, with respect to proceedings before a Local Court, if that is necessary to preserve the rights of the child and, in any case, if no legal representative is willing or capable to represent the child²⁰⁶. In these situations, the child cannot waive his/her right to a defence counsel. In proceedings before the Local Courts, the court and the public prosecutor can appoint the juvenile court assistance (*Jugendgerichtshilfe*) to defend the child²⁰⁷.

The legal representatives have extensive rights during the proceedings of the child. For example, inasmuch as the suspect has a right to be heard or to be present during the investigation or the taking of evidence, also the legal representative can exercise this right. This applies also to the right to access to records as far as the legal representative is not a suspect in the same matter him/herself²⁰⁸. Furthermore, the legal representative has the right to lodge an objection against the bill of indictment and to lodge an appeal also against the will of the child²⁰⁹. If the court is aware that education and upbringing of the child is the task of a person other than the legal representative, these rights may also be exercised by this person²¹⁰.

The rights of the legal representative are exercised by the defence counsel if the legal representative is suspected or charged of participating in the child's offence or if no legal

²⁰² Section 164(1) of the Code of Criminal Procedures.

²⁰³ Section 164(2) of the Code of Criminal Procedures.

²⁰⁴ Section 39 of the Juvenile Courts Act.

²⁰⁵ Section 61(1) and (2) of the Code of Criminal Procedure.

²⁰⁶ Section 39 of the Juvenile Courts Act.

²⁰⁷ Section 48 n. 5 of the Juvenile Courts Act.

²⁰⁸ Section 38(1) of the Juvenile Courts Act.

²⁰⁹ Section 38(3) of the Juvenile Courts Act.

²¹⁰ Section 38(4) of the Juvenile Courts Act.

representative can assist the child in the proceedings. This does not apply to the right of the legal representative to waive legal remedies which can be exercised only by them²¹¹.

2.3.11 Remedies or compensation for violation of rights and failure to act

Legal remedies are not specifically stipulated for children. Therefore, the same rules as for adults apply²¹². A convicted criminal (child with legal representation or adult) can appeal to a higher court against any court decision of conviction or lodge a so-called nullity appeal for observance of the law²¹³.

In the case of judgements by district courts and by single judges at regional courts, a full appeal can be lodged. Its purpose is to challenge both the guilty verdict and the sentence. In these proceedings, the convicted can request that new evidence be taken or present new evidence²¹⁴.

In the case of judgements by courts of lay judges or courts with a jury, the convicted can only appeal against the sentence, but not the verdict of guilt. These judgements can only be challenged by an appeal for nullity in which errors in procedure, errors in the reasons for the decision and errors in law can be claimed. The judge's assessment of the evidence cannot be challenged²¹⁵.

If the convicted intends to appeal against a judgement he must announce it within three days. The court will then issue the judgement in writing and serve it to the convicted and the defence counsel. The defence counsel must then file the appeal in writing within four weeks²¹⁶. The prosecution has the same right of appeal²¹⁷.

If the convicted is cleared of the charges after the appeal and was detained during the proceedings, he must be compensated²¹⁸.

The legal representative of the child has the right to the same legal remedies as the child on his/her behalf. He can also lodge them against the will of the child. This right also applies in cases where the legal representative is suspected of participating in the accused's misconduct²¹⁹.

Children only have to pay back the costs of the proceedings, if payment does not seriously jeopardise their livelihood²²⁰. If it does, the costs are covered by the state.

Child offenders have the right to apply for legal aid under the same conditions as adults²²¹. If the accused is not in a position to bear the entire costs of a defence counsel without affecting the subsistence necessary for a basic standard of living for him/herself and his/her family, the court decides, upon an application, to assign a defence counsel. The defendant does not have to bear the costs or only parts of the costs, if this is in the interest of administering justice and especially in the interest of mounting a sufficient defence²²².

Similarly to accused adults, accused children have the right to be informed about the fact that he/she is suspected of a crime and of his/her rights in proceedings²²³. He/she will also be informed of his/her right to nominate a legal counsel²²⁴ that can attend his/her

²¹¹ Section 38(5) of the Juvenile Courts Act.

²¹² Section 31 of the Juvenile Courts Act.

²¹³ Section 280 of the Code of Criminal Procedure.

²¹⁴ My rights in criminal proceedings in Austria: after the trial at [European E-Justice Portal](#).

²¹⁵ My rights in criminal proceedings in Austria: after the trial at [European E-Justice Portal](#).

²¹⁶ My rights in criminal proceedings in Austria: after the trial at [European E-Justice Portal](#).

²¹⁷ My rights in criminal proceedings in Austria: after the trial at [European E-Justice Portal](#).

²¹⁸ According to the [Criminal Law Compensation Act](#).

²¹⁹ Section 38(3), (5) of the Juvenile Courts Act.

²²⁰ Section 45 of the Juvenile Courts Act.

²²¹ Section 61, 62 of the Code of Criminal Procedures.

²²² Section 61 of the Code of Criminal Procedures.

²²³ Section 50 of the Code of Criminal Procedures.

²²⁴ Section 58 of the Code of Criminal Procedures.

interviews²²⁵ and that in case of limited economic resources a legal counsel will be appointed to him/her free of charge under the legal-aid system²²⁶.

Information will also be provided concerning his/her rights to inspect his/her file²²⁷ and to comment on the accusations against him/her. He/she can decide not to give testimony and can also ask to submit his/her own evidence.

The accused has the right to take part in the trial, in the cross- examination of witnesses and co-accused persons²²⁸. He/she can also participate in the reconstruction of the offence²²⁹ and in establishing findings²³⁰. He/she can also ask the assistance of an interpreter or translator²³¹.

Concerning remedies and objections, the accused has to be informed of his/her right to file an objection against a violation of a personal right, to file legal remedies and means of redress as well as to complain against the application of coercive measures. He/she can also apply for the discontinuation of the investigative proceedings²³².

Special rights are granted in the case of an arrest of an offender stipulated in Sec. 171. The accused has to receive the arrest warrant immediately or at least within 24 hours after his/her arrest. Immediately or shortly after his arrest the accused has to be informed that he may contact a relative or any other person he/she trusts, a lawyer, that s/he may apply for a counsel appointed by the court and that he has the right to appeal against the arrest or the arrest warrant and can at any stage apply for his/her release.

²²⁵ Section 164(2) of the Code of Criminal Procedures.

²²⁶ Sections 61 and 62 of the Code of Criminal Procedures.

²²⁷ Sections 51 and 53 of the Code of Criminal Procedures.

²²⁸ Section 165(2) of the Code of Criminal Procedures.

²²⁹ Section 150 of the Code of Criminal Procedures.

²³⁰ Section 127(2) of the Code of Criminal Procedures.

²³¹ Section 55 of the Code of Criminal Procedures.

²³² Section 106 of the Code of Criminal Procedures.

3 Child-friendly justice after judicial proceedings

3.1 The child as a victim or offender

3.1.1 Provision of information

Provision of information to the victim

The victim (child or adult) has the right to be notified of the development of the proceedings²³³. This includes

- upon application information about the termination of pre-trial detention²³⁴;
- information about the termination of prosecution and the option to apply for a continuation of the proceedings and the right to present a statement²³⁵.

If the victim has not yet been fully compensated for his/her damages, s/he must be given the opportunity to present a statement before the termination of the proceedings²³⁶. The victim also needs to be informed if the defendant is willing to offer compensation for the offence²³⁷.

A child needs to exercise these rights through a legal representative.

The court has to inform the youth welfare office, if an interim injunction in connection with domestic violence concerns a child²³⁸.

There is a general obligation for judges that the judgement of the court has to be short and concise. In an oral ruling, the court has to take care that the parties involved understand everything. Also, written judgements of the court have to be comprehensible; uncommon words and court jargon should be avoided²³⁹.

Provision of information to the offender

If the defendant is found guilty, s/he will first be given the grounds for the judgement orally²⁴⁰. Within four weeks s/he will receive it in writing²⁴¹. The judgement sets out the details of the defendant, the court and the circumstances which were decisive for fixing the punishment, for the measures ordered, or for the non-disciplinary measures imposed²⁴².

The defendant must also be informed about his/her right to judicial review. In this regard, please see [Section 2.3.11](#).

3.1.2 Sentencing

Austrian law provides for a wide range of measures and sanctions for children of 14 or above in conflict with the law, upholding the principle of proportionality. The Austrian Juvenal Penal System can be characterised as following “procedural decriminalization”.

Some measures are similar to adult sanctions and some only apply to children of 14 or above²⁴³. The measures include:

- refraining from sentencing²⁴⁴,

²³³ Section 66(1) n. 4 of the Code of Criminal Procedures.

²³⁴ Section 177(5) of the Code of Criminal Procedures.

²³⁵ Section 66(1) n. 4, Section 194 and 195 and 197(3), 206(1) of the Code of Criminal Procedures.

²³⁶ Section 66(1), 206(1) of the Code of Criminal Procedures.

²³⁷ Section 206(2) of the Code of Criminal Procedures.

²³⁸ Section 382c of the Execution Order (*Exekutionsordnung*).

²³⁹ Information collected in writing from the Austrian authorities: Section 53(2) (3) of the Rules of internal organisation of courts first and second level of jurisdiction.

²⁴⁰ Section 268 of the Code of Criminal Procedures.

²⁴¹ Section 270(1) of the Code of Criminal Procedures.

²⁴² Section 270(2) of the Code of Criminal Procedures.

²⁴³ Section 5 of the Juvenile Courts Act.

²⁴⁴ Section 6 of the Juvenile Courts Act.

- diversion (alternative to judicial proceedings applied by the public prosecutor)²⁴⁵,
- conviction without sentence²⁴⁶,
- conviction with a suspended sentence²⁴⁷;
- fine and prison sentence²⁴⁸.

Moreover, fines can be imposed instead of short prison sentences (up to six months), if the maximum prison sentence for the criminal offence does not exceed five years, in special cases ten years²⁴⁹. Early release from an unconditional prison term is possible after one half of the sentence (at least one month) has been served, provided the prognosis is positive. Compared to adults, grounds of general prevention remain out of consideration²⁵⁰.

All sanctions are imposed by a court. Only “diversion” can also be offered by the prosecutor. The office of public prosecution has to withdraw from the prosecution under certain circumstances. One of the requirements can be that the suspect pays an amount of money to the benefit of the Federal State or that the suspect has explicitly agreed to render community service without any remuneration. In these cases, the proceeding may be continued in any event on the suspect’s request, which will lead to a trial in front of a judge²⁵¹.

The prosecutor and the judge can drop the proceedings and refrain from sentencing if the offence is punishable by a fine or not more than five years of imprisonment, unless measures of diversion appear necessary to prevent the child from re-offending. This option does not apply, if the offence caused the death of a person²⁵².

Regarding details on the option of **diversion**, please see [Section 2.3.6](#).

Conviction without sentence is an option after the trial if only a short sentence is expected. Where appropriate, judicial discretion allows a judge to convict the child but abstain from passing a sentence, if the conviction is sufficient to avoid further offences and no exceptional general preventative grounds prevent such an approach. Thus the wrongfulness of his/her actions it is made clear to the child but without stigmatisation²⁵³. The conviction is recorded in the register but will be deleted after three years. For more information about criminal records, please see [Section 3.1.4](#).

Conviction with a suspended sentence is an alternative to a conviction without sentence. If a conviction and the mere threat of a sentence alone, or in combination with other measures, are considered sufficient to prevent the child from further criminal action, the court can retain the right to pass a sentence with a probation period of between one and three years. The court has to explain the grounds and conditions of the decision to the child in simple words and inform him/her that he will be sentenced if he commits another criminal offence within the probation period²⁵⁴. The conviction is deleted from the criminal record after three years. For more information about criminal records, please see [Section 3.1.4](#).

Fines and prison sentences applying to convicted children are stipulated in the same provisions as for adults in the Criminal Code, but apply with some modifications. The court must impose the sanction in accordance with the principle of proportionality taking into account the child’s age, physical and mental well-being and development. The aim of the

²⁴⁵ Section 7 of the Juvenile Courts Act.

²⁴⁶ Section 12 of the Juvenile Courts Act.

²⁴⁷ Section 13 of the Juvenile Courts Act. Imprisonment can be suspended in whole (Section 43 of the Criminal Code) or in part (Section 43a of the Criminal Code) for a probation period which lasts from one to three years.

²⁴⁸ Section 5 of the Juvenile Courts Act.

²⁴⁹ Section 37 of the Criminal Code.

²⁵⁰ Section 17 of the Juvenile Courts Act.

²⁵¹ Information collected in writing from the Austrian authorities.

²⁵² Section 6 of the Juvenile Courts Act.

²⁵³ Section 12 of the Juvenile Courts Act.

²⁵⁴ Section 13 of the Juvenile Courts Act.

sanctions is primarily to prevent renewed criminal offences and to apply prison sentences only as measures of last resort (*ultima ratio*)²⁵⁵.

Fines are expressed in daily rates. The maximum daily rate for children amounts to half of what could be imposed on adults²⁵⁶. The amount of daily rates is determined according to the respective offence and the degree of responsibility of the child²⁵⁷. The level of the daily rate is to be determined by the net daily income or pocket money of the child but also based on personal circumstances. The minimum is €4 and the maximum is €5000²⁵⁸.

Determining prison fines, the respective sentence stipulated in the Criminal Code for the same offence committed by adults applies to children of 14 years or above with the following adaptations:

- Life or 10-20 year sentences are replaced by 1-15 years if the child committed the offence when he was 16 or older and 1-10 years if he was younger than 16 years²⁵⁹.
- 10-20 years of prison for adults is replaced with a sentence of 6 months up to 10 years²⁶⁰.
- Regarding all other sentences, half of the maximum applied to adults is imposed on children of 14 years or above. There is no minimum sentence for child offenders²⁶¹.

The prison term can be suspended in whole or in part²⁶².

During the day, prisoners, adults or children, have to be kept together and at night they should be kept apart, unless they wish to stay with someone else²⁶³. There are no special rules for juvenile prisoners in this regard²⁶⁴.

Prisoners in general – adults and children - are allowed to communicate in writing²⁶⁵, to make and receive phone calls²⁶⁶ as well as to have visits²⁶⁷, except when restrictions are required in the interests of justice or to prevent an adverse influence on the prisoner²⁶⁸. Every prisoner is allowed to have a visit of at least half an hour every week and a visit of at least one hour every six weeks as well as visits by lawyers or other public institutions (e.g. in the case of a foreign prisoner the consular representation of the home country²⁶⁹.)

Juvenile prisoners must have the opportunity to have visits from their family for an hour at least every week²⁷⁰. When juveniles are kept in cells, they must be given the opportunity to have a conversation twice a day²⁷¹.

²⁵⁵ Section 5 of the Juvenile Courts Act.

²⁵⁶ Section 5 n. 5 of the Juvenile Courts Act.

²⁵⁷ Section 37 of the Criminal Code. For instance, according to Section 127 of the Criminal Code for theft the maximum daily rates are 360 for adults, i.e. the maximum daily rates would be 180 for juveniles. The minimum amount of daily rates is two days (Section 19(1) of the Criminal Code). The individual amount between two days and the respective maximum amount of daily rates being imposed depend on the degree of responsibility of the offender.

²⁵⁸ Section 19 of the Criminal Code.

²⁵⁹ Section 5(2)(a)(b) of the Juvenile Courts Act.

²⁶⁰ Section 5(3) of the Juvenile Courts Act.

²⁶¹ Section 5(4) of the Juvenile Courts Act.

²⁶² Section 17 of the Juvenile Courts Act.

²⁶³ Section 124(1) (4) of the Prison Act (*Strafvollzugsgesetz*).

²⁶⁴ Information collected in writing from the Austrian authorities.

²⁶⁵ Section 87-90b of the Prison Act.

²⁶⁶ Section 96a of the Prison Act.

²⁶⁷ Section 93-96 of the Prison Act.

²⁶⁸ Section 86(2) of the Prison Act.

²⁶⁹ Information collected in writing from the Austrian authorities.

²⁷⁰ Section 58(7) of the Juvenile Courts Act.

²⁷¹ Section 58(8) of the Juvenile Courts Act.

Adverse consequences that the defendant will suffer in addition to the direct consequences of the conviction, such as the automatic loss of their job, their driving licence or their permit of residence are forbidden with respect to child offenders²⁷².

The serving of the sentence by children can be delayed for more than one year if necessary for the development of the child, or for family, professional, educational or financial reasons²⁷³.

Provisional probation service may only be ordered by the court if the accused agrees. When the accused has a legal representative, he/she must be informed as well²⁷⁴. All sanctions are imposed by a court and can be reviewed by the higher court²⁷⁵.

It is a mitigating circumstance if the perpetrator committed the act after having completed the 18th year of his/her life, but before having completed the 21th year of his/her life²⁷⁶.

The organisation 'A New Start – Probationary Services, Conflict Solution, Social Work' ('[Neustart](#)') plays an important role in helping children to reintegrate into society by offering different kinds of services, like probation services, anti-violence training or community services.

3.1.3 Deprivation of liberty

Regarding **pre-trial detention** please see [Section 2.3.4](#).

Detention of children takes place in prison separated from adults, unless there is no risk that the child could be negatively influenced in his/her development by being imprisoned together with adults²⁷⁷.

It is up to the discretion of the judge whether a convicted person between the age of 19 and 27 should be imprisoned with children or with adults. When the convict is older than 27, he has to be placed in an adult prison²⁷⁸.

Youth prisons are staffed with professionals specialised in working with children²⁷⁹. They are specially qualified and trained (classes in pedagogics, psychology and psychiatry) and must have specific pedagogic skills²⁸⁰. During detention, children should be educated in accordance with their previous experience and qualification²⁸¹.

All prisons, where a large number of young offenders are held in custody on a regular basis, maintain separate youth wards which are each laid out for about 20 young offenders. Recourse to physical restraint and the use of force is in general to be reported by the staff²⁸².

It is possible to grant Probationary Service as an additional measure if an accused is released on probation or if the sentence is rendered on probation²⁸³.

3.1.4 Criminal records

The Federal Police Directorate in Vienna maintains a criminal register for Austria, which includes information of child offenders and adults. It contains all final convictions by Austrian criminal courts, all final convictions by foreign courts of Austrian citizens and such persons

²⁷² Section 5(10) of the Juvenile Courts Act.

²⁷³ Section 52 of the Juvenile Courts Act.

²⁷⁴ Information collected in writing from the Austrian authorities; Section 179 of the Code of Criminal Procedure.

²⁷⁵ Information collected in writing from the Austrian authorities.

²⁷⁶ Information collected in writing from the Austrian authorities; Section 34(1) n. 1 of the Criminal Code.

²⁷⁷ Section 55 of the Juvenile Courts Act.

²⁷⁸ Section 55 (4) of the Juvenile Courts Act.

²⁷⁹ Section 54 of the Juvenile Courts Act.

²⁸⁰ Report by the Minister of Justice of Austria: '[Response of justice to urban violence](#)' 2012, p. 31 (pp.1-71).

²⁸¹ Section 53 of the Juvenile Courts Act.

²⁸² Information collected in writing from the Austrian authorities.

²⁸³ Information collected in writing from the Austrian authorities; Section 50 and 52 of the Criminal Code.

who are domiciled or resident in Austria, as well as decisions by national and foreign criminal courts relating to these convictions²⁸⁴.

Diversion measures (see [Section 2.3.6](#)) are not based on a conviction and are thus not to be included in the criminal record of the child²⁸⁵.

Regarding access to the information of the register, children are specifically protected in order to avoid the stigmatisation of offenders as much as possible. Before a crime record is deleted, information about juvenile offences can only be given to courts, public prosecution and prison administrations, criminal investigation departments of the police and a few specific administrative bodies. Depending on the sentence of the offence, the information will be deleted after three to five years²⁸⁶.

²⁸⁴ 'My rights after the trial in Austria', [European E-justice portal](#).

²⁸⁵ [Website of the Austrian Government](#).

²⁸⁶ Section 3 Act on the Cancellation of Criminal Records (*Tilgungsgesetz*). [Website of the Austrian Government](#).

4 Strengths and potential gaps

Strengths regarding child victims and witnesses

In summary, the criminal judicial system for child victims and witnesses can be described as advanced and satisfactory. In particular, the following aspects should be highlighted:

- The Federal Ministry of Economy, Family and Youth's Victim Assistance Service (*Prozessbegleitung*) gives victims and to some extent witnesses of a deliberate act of violence or dangerous threat to their sexual integrity the right to receive psychological and judicial support free of charge²⁸⁷.
- Several provisions in Austria protect the child witness' privacy and family life. For instance, the child witness does not need to testify against family members and has the right to be examined separately from the offender²⁸⁸.
- Extensive victim's rights, such as the right to question the defendant, witnesses and experts, as well as to be heard about their claims.
- Rights of the victim to become a civil claimant (*Privatbeteiligung*) to be compensated for the civil damages caused by the offence or to declare subsidiary prosecution (*Subsidiaranklage*).

Gaps regarding child victims and witnesses

Despite the overall positive protection system of victims and witnesses in criminal proceedings in Austria, the following gaps could be identified:

- The appointment of a psychologist for the child during proceedings is a discretionary decision of the judge. This should be a legally binding right, in order to better meet the child's needs²⁸⁹.
- Only the victim and the witness under 14 years of age have the right to special protection under the Criminal Code of Procedure. This constitutes a gap for minor victims and witnesses, who are older than 14 and also vulnerable²⁹⁰.
- The Ombuds-Office for Children and Youth has criticised the implementation of child-friendly settings in court. For instance interview rooms are not always separately accessible or waiting rooms are not equipped with a play corner²⁹¹.
- According to the Ombuds-Office for Children and Youth, the Victim Assistance Services' budget of €800 to €1200 per case is insufficient. In addition, it should be extended to other crimes than the ones currently covered and to civil cases²⁹².
- The Austrian Ombuds-Offices for Children and Youth claims a need for action with regard to public reporting by journalists on TV, radio, in electronic and print media. Violations of the right to privacy for child and juvenile victims of physical, sexual and psychological violence have been observed. Hence, an improvement of media-law

²⁸⁷ Please see Section [2.1.3](#).

²⁸⁸ Please see Section [2.1.3](#).

²⁸⁹ Section 66(2) of the Code of Criminal Procedure. According to an interview with a member of a victim support organisation, victims do not always apply for such service for various reasons.

²⁹⁰ E.g. Section 156(1) n. 2 of the Code of Criminal Procedure provides for the right to not meet the offender during the proceedings for victims who are younger than 14 years old. According to an interview with a member of a victim support organisation, Victims older than 14 years are often also vulnerable and need special protection.

²⁹¹ [Report of the Austrian Ombuds-Offices for Children and Youths to the United Nations on the Convention on the Rights of the Child](#) 2012, p. 39 (pp. 1-44).

²⁹² *ibid.*

regulations effectively guaranteeing the right to privacy of children and measures for voluntary self-control of media is required²⁹³.

Strengths regarding child suspects, defendants and offenders

- Only children who have reached the age of 14 are held responsible for criminal offences. The police or the public prosecutor must inform the suspect as soon as possible about the initiation of an investigation against him and the offence he is suspected of as well as about his rights during the proceedings²⁹⁴.
- A suspect or defendant has the right, at any stage (even prior to interview), to consult with a defence counsel if this does not constitute a risk to the investigation. Upon request, a child has the right to be accompanied by a person of trust, if he/she is not represented by a defence counsel. The parent or the legal representative of the child suspect has the same right to receive information as the child²⁹⁵.
- Several measures are in place to protect the privacy and personal data of children who are or have been involved in judicial proceedings²⁹⁶.
- Alternatives to judicial proceedings are in place to protect the child from long lasting and stressful proceedings²⁹⁷.
- The accused has the right to be heard in criminal proceedings. The legal representative of the accused child has a right to be heard and to be present during acts of investigation and gathering of evidence to the same extent as the accused himself²⁹⁸.
- The Austrian law provides for a wide range of measures and sanctions for children in conflict with the law, upholding the principle of proportionality²⁹⁹.
- Access to the information of the criminal register is limited regarding children's offences³⁰⁰.

Gaps regarding child suspects, defendants and offenders

Despite the overall positive protection of child suspects, defendants and offenders in criminal proceedings in Austria, the following gaps could be identified:

- The absence of an age limit for pre-trial detention and the frequent imposition of pre-trial detention on children, in particular on first offenders³⁰¹.
- Proceedings where children are involved do not take place in specific youth courts. Although judges and prosecutors in charge of juvenile criminal matters are theoretically required to be pedagogically skilled and to have a certain expertise in psychology and social work, in practice, little attention is paid to this requirement in staffing juvenile departments³⁰².
- The right to be accompanied by a person of trust only applies upon request. This leads in practise to the situation that many children waive this right, which increases the risk of self-incrimination³⁰³.

²⁹³ [Report of the Austrian Ombuds-Offices for Children and Youths to the United Nations on the Convention on the Rights of the Child](#) 2012, p. 24 (pp. 1-44).

²⁹⁴ Please see Section [2.3.1](#).

²⁹⁵ Section 38 of the Juvenile Courts Act. Please also see Section [2.3.7](#).

²⁹⁶ Please see Section [2.3.5](#).

²⁹⁷ Please see Section [2.3.6](#).

²⁹⁸ Please see Section [2.3.9](#).

²⁹⁹ Please see Section [3.1.2](#).

³⁰⁰ Please see Section [3.1.4](#).

³⁰¹ This information was obtained during an interview with a defence counsel.

³⁰² Report by the Minister of Justice of Austria: '[Response of justice to urban violence](#)' 2012, p. 18 (pp.1-71).

³⁰³ This information was obtained during an interview with a defence counsel.

- The increasing crime rate of children younger than 14 years constitutes a challenge. Measures of reintegration of minors under that age need to be enhanced³⁰⁴.
- As many victims prefer to be interviewed by an expert of the same gender, there is a shortage of female experts available to assess children in custody and criminal proceedings³⁰⁵.

³⁰⁴ *ibid.*

³⁰⁵ [Report of the Austrian Ombuds-Offices for Children and Youths to the United Nations on the Convention on the Rights of the Child](#) 2012, p. 40-41 (pp. 1-44).

Conclusions

The criminal judicial system for children victims can be considered overall as child-friendly and even exemplary in taking into account the child's age, physical and mental well-being.

The protection of child victims is driven by several policy initiatives, legislation and support of governmental and non-governmental institutions. Child and adult victims enjoy the same rights to a large extent. However, some rights only apply to child victims until they have reached the age of 14 taking into account their particular vulnerability, and children between 14 and 18 may be less protected.

Child witnesses are also well protected, although given their less vulnerable position their protection is less extensive than the rights of the victim.

Regarding child suspects, defendants and offenders the criminal justice system is targeted at the reintegration of the child and at avoiding renewed criminal offences.

Despite the overall good protection of children in criminal proceedings, some gaps could be identified. Please see [Section 4](#) on strengths and gaps.

For further improvements, the following recommendations can be given:

- An age limit for pre-trial detention should be introduced³⁰⁶.
- The right to be accompanied by a person of trust during the proceedings should be mandatory³⁰⁷.
- A stronger involvement of legal-welfare activities is needed³⁰⁸.
- Accommodation in juvenile homes, counselling and support for families should be improved³⁰⁹.
- Measures of reintegration of children younger than 14 years who have committed a crime need to be enhanced³¹⁰.

³⁰⁶ This information was obtained during an interview with a defence counsel.

³⁰⁷ This information was obtained during an interview with a defence counsel.

³⁰⁸ Report by the Minister of Justice of Austria: '[Response of justice to urban violence](#)' 2012, p. 29 (pp.1-71).

³⁰⁹ Report by the Minister of Justice of Austria: '[Response of justice to urban violence](#)' 2012, p. 29 (pp.1-71).

³¹⁰ *ibid.*

Annex – Legislation reviewed during the writing of this report

- Police Law (*Sicherheitspolizeigesetz*) of 31 October 1991
- Juvenile Courts Act (*Jugendgerichtsgesetz*) of 20 October 1988
- Media Act (*Mediengesetz*) of 12 June 1981
- Code of Criminal Procedure (*Strafprozessordnung*) of 30 December 1975
- Criminal Code (*Strafgesetzbuch*) of 23 January 1974
- Cancellation of Criminal Records (*Tilgungsgesetz*) of 15 February 1972
- Prison Act (*Strafvollzugsgesetz*) of 25 March 1969
- Austrian Judges and Prosecutor Service Law (*Richter- und Staatsanwaltschaftsdienstgesetz*) of 29 December 1961
- Execution Order (*Exekutionsordnung*) of 27 May 1896
- General Civil Code (*Allgemeine Bürgerliche Gesetzbuch*) of 1 June 1811