

Locking children up is not a solution!

The child right to personal liberty

Alternatives to deprivation of liberty in Austria



Summary findings

of a Study by the Ludwig Boltzmann Institute for Fundamental and Human Rights (Vienna), commissioned by the Global Campus of Human Rights (Venice) with support from the Right Livelihood Foundation.
Helmut Sax, July 2022

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"It's my life!!! Deprivation of liberty? Self-determination!"

Feedback from youth participant

The right to personal liberty is one of the classical human rights whose origins go far back in history - as early as the Middle Ages, rich landlords in England were guaranteed protection by the Magna Carta (1215) against arbitrary arrest by the king. Deprivation of liberty means forcibly restricting a person's freedom of bodily movement, preventing the person from leaving a confined space. One may immediately think of detention and harsh prison conditions. However, the scope of application of the human right goes far beyond this. In 2019, the UN Global Study on Children deprived of liberty was the first global investigation into the extent to which children - i.e. young people up to the age of 18 years - are affected by deprivation of liberty, and to what extent alternative, more lenient, non-custodial means are available to them. It showed that restrictions of this right are indeed a global phenomenon, affecting more than seven million children worldwide. Moreover, it also highlighted that a majority of children is not deprived of their liberty in police custody or in prison, but that more than five million children are deprived of their liberty in a wide range of other institutions, from orphanages to institutions for the correction of "antisocial behaviour" of children to closed institutions for children with disabilities. As a result, the UN Global Study concluded with more than 170 recommendations to states and national leaders to avoid further violations of this child right as a matter of urgency.

Based on these findings, the current project examined the situation in Austria over a period of almost two years (2020-22) to determine the extent to which the right to personal freedom is guaranteed for children in this country. As in the international study, the focus was on the institutional context, i.e. not on possible restrictions in the context of the family and parental responsibilities, but on forms of deprivation of liberty in the context of institutions, regardless of whether they are run as closed or open institutions. Accordingly, the study started to examine forms of detention in the child justice context (pre-trial detention, prison), followed by custodial measures in the context of asylum and alien law ("detention pending deportation"),

and by the placement of children in psychiatric institutions of the health care system. However, as previous findings of monitoring and legal protection institutions (Ombudsman Board/OPCAT commissions, residential care representatives) have indicated, even in openly run institutions for persons with disabilities and child and youth welfare, children may be subjected to restraining measures that deprive them of their personal liberty, ranging from physical restraints (belts) and confinement in rooms to the administration of medication for sedation. And as already observed at the international level, there is also a finding for Austria that calls for increased attention to restraints of children's liberty outside of detention centres. It was not until mid-2022 that an amendment to the Psychiatric Placement Act was passed, which for the first time formulates specific requirements for dealing with children with mental illness - after all, a target group of several thousand young people in Austria. Furthermore, the investigations make it clear that a wide variety of restrictions of liberty also occur when dealing with children with disabilities, which - since an amendment to the Residential Accommodation Act in 2018 - lead to more than 2,000 reports per year of restrictions of liberty to the dedicated legal protection mechanism foreseen under this law, in institutions for persons with disabilities and general social care institutions for children. The reasons for this are manifold, including insufficient awareness of the effects of deprivation of liberty as a coercive measure and form of violence as well as insufficient training for dealing with escalating crisis situations, as well as inadequate staff numbers and group sizes.

Overall, the study has formed the picture of a tip of the iceberg of challenges. While on the surface restrictions of the child's right to personal liberty may now become increasingly visible, there are also far-reaching structural and conceptual deficiencies far below the surface. For instance, it was not only the COVID-19 pandemic, which led to institutional capacity challenges: the irregular joint placement of children in adult psychiatric wards was already criticised during the visit of the Council of Europe's Committee for the Prevention of Torture (CPT) in 2014, just as the shortage of child and youth

psychiatric specialists or the shortage of resources in child and youth welfare have been known for years. For a long time, as well, the reform of the system of preventive placement of persons who committed offences, but cannot be sentenced due to psychosocial disabilities, as part of the criminal justice system has been on hold - currently it is still permissible to commit juveniles to such an institution, with no time limit for the placement - in clear contradiction to child rights standards on deprivation of liberty as a last resort and only for the shortest appropriate period of time. Furthermore, the decentralised system of government in Austria in the areas of disability and child and youth welfare, has so far prevented uniform quality standards for care, training and mandatory child safe-guarding programmes in all institutions. However, it is not only resource issues that prevent the abolition of parallel, but qualitatively different support systems for children with and without disabilities, or the adoption of inclusion and deinstitutionalization strategies - there are also considerable economic interests in maintaining existing structures as well as questions of attitude and prejudice, which lead to the separation of children from families under the pretext of "family relief".

Methodologically, the project is based on extensive research and data collection, together with 25 interviews with a total of 29 experts from the fields of police and justice system, probation service, family and juvenile court assistance, correctional services, child and juvenile psychiatry, detention pending deportation, disability assistance, child and juvenile welfare, research and civil society, as well as with representatives of monitoring institutions (Austrian Ombudsman Board and national preventive mechanism/visiting commission, Residents' Representation, Patients' Ombudsman Board), supplemented by a focus group with all child and youth ombudspersons of the regions. Special emphasis was placed on experiences of affected children as an expression of a child rights approach

that tries to actively involve them as independent actors in research processes that affect them - a total of 12 adolescents with different institutional backgrounds accompanied the project, half of them were available for interviews; six inmates of the Gerasdorf juvenile prison in Austria participated in an on-site focus group and gave valuable feedback on their experiences during criminal proceedings and while in prison.

A major concern of the project was also to identify alternative, non-custodial approaches; and from the consultations especially with the juveniles it became clear that one key to this already lies in increased direct involvement of the young people itself. Early interventions in family crises, instruments of self-empowerment (including social network conferences as a means to avoid pre-trial detention), constantly available contact persons during procedures for placement, and youth-friendly information on procedural rights, continuity of care in institutions, low-threshold internal feedback in institutions and effective external complaint mechanisms (such as those advocated for by the Austrian child and youth ombudspersons) - all of these measures should contribute significantly to the prevention of crises situation, of, first, getting in conflict with the law, or before psychological disorders start to develop, or before parents feel overwhelmed in dealing with disabilities; and secondly, should also help to avoid escalations and restrictions of liberty during placement in an institution.

The following is a summary of the main findings of the project, divided into different areas of concern and professional target groups. This " implementation programme for non-custodial alternatives" is intended as an impetus for follow-up discussions - feedback is always welcome: helmut.sax@univie.ac.at (project lead). An abridged version revised by young people was also prepared; the study itself is available on the website of the Boltzmann Institute: <https://gmr.lbg.ac.at>.



"To be able to make decisions on my own. That my opinion is valued. I want to be seen as an adult, not a child."

Feedback from youth participant

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Implementation programme for non-custodial alternatives to protect the child right to personal liberty in Austria

Federal Constitutional Act on the Protection of Personal Freedom 1988

- Everyone has the right to liberty and security (personal freedom) (Art 1 para 1)

Federal Constitutional Act on the Rights of Children 201

- In all measures concerning children taken by public and private institutions, the best interests of the child must be a primary consideration (Art 1 clause 2)

General measures:

- Question any justification for deprivation of liberty, against the background of child rights standards on the primacy of the best interests of the child, protection against violence, participation rights and prohibition of discrimination, taking into account the three-stage "last resort" test:

- *primacy of not separating the child from parents, except in cases where the best interests of the child are at risk;

- *primacy of outpatient, inclusive care for the child over placement in institutions;

- *primacy of non-custodial means over placement in closed institutions or over the use of restrictions on personal liberty during crisis situations while in care;

- Raise awareness of deprivation of liberty as a form of (structural) violence in institutions, mainstreaming the consideration of lenient means in pedagogical concepts and de-escalation approaches in training programmes on violence prevention and child protection, including in child safeguarding policies for institutions;

- Implement a child and youth "participation package" for all children and young people in institutions (justice, migration, psychiatry, disability care, child and youth welfare):

- *Ensure that a contact person is available at all times in decision-making processes on possible measures involving deprivation of liberty to provide child-friendly information and counselling before, during and after the procedure (similar to support for victims during criminal proceedings);

- *Take measures to strengthen the quality of care relationships, the possibility of changing the caregiver in case of conflicts;

- *Interprete services must be sufficiently available for children, and providers must be qualified to deal with children;

- * Expand the technical infrastructure in facilities to enable external contacts through video conferencing, online meetings;

- *Mandatory involvement of children in the development of house rules (incl. questions of external contacts/visit rules, use of internet and mobile phones) as well as in questions of dealing with rule violations;

- *Ensure collective representation of children's and young people's interests in all facilities (children's teams, children's councils, inmate representatives etc);

- *Ensure low-threshold access for children to internal feedback and quality assurance measures and to external monitoring institutions (cf. model of the children's and youth ombudsperson for children in institutional care).

- Extension of support services for children and families beyond the age of 18, for a transitional phase up to the age of 24;

- Federal, decentralised structures must not be at the expense of uniform quality standards; alternatives to deprivation of liberty and restrictions on liberty should be integrated into supraregional, cross-sectoral exchange platforms (round tables - child and youth welfare, justice, health administration/

psychiatry) and training initiatives (cf. planned FICE training curriculum);

- Review ways of making social work with children and young people more attractive and conduct a nationwide mobilisation campaign to expand human resources;
- Expand of data collection and evaluation in the area of child and youth welfare (e.g. analyses of regional differences in residential care), in the area of asylum/ alien law (detention of children pending deportation, lenient means, families), in the area of justice (social indicators among adolescents), to record COVID-19 quarantine measures among children, in connection with a research agenda (cf. following areas); in addition to the current project, the child right to personal liberty, as well as other child rights guarantees, should be investigated in relation to parental responsibilities.

Measures in relation to the child justice system:

- Question deprivation of liberty as a sanction, limiting it to measures to protect against safety threats to one self or to others, and developing models for care and placement that combine the justice and child protection system;
- Remove juveniles with psychosocial disabilities from the system of preventive correctional measures; development of alternative youth psychiatric placement concepts, expansion of qualified aftercare facilities, strengthening of the expert system/availability of child and youth psychiatric expertise; sensitisation of the police;

- Expand support systems for children and adolescents to create a stable environment (including for unaccompanied minor asylum seekers, by ensuring immediate custody by child and youth welfare services); specific offers in prevention and reintegration for girls in conflict with the law;
- Examine ways to ensure non-discriminatory access to the instrument of the social network conference/ reduction of de facto access barriers, e.g. due to migration/refugee background;
- Strengthen cross-sectoral cooperation models for effective gate-keeping to avoid custodial measures, including protocols on information exchange and data protection;
- Expand cross-sectoral cooperation models to prepare for early release, early contact with probation services;
- Ensure consistent policies for dealing with the situation of young adults, incl. in coordination with offers and initiatives in the field of transitional psychiatry and child and youth welfare ("care leaver");
- Overall, strengthen the involvement of young people in decision-making processes on measures restricting freedom or alternatives, ensuring continuous information services adapted to young people, especially when arrested and detained, and ensuring continuous contact persons and procedural support for the duration of the criminal proceedings;



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- Ensure sufficient employment opportunities for inmates, as well as access to therapeutic programmes and anti-violence training;
- Mandatory further training measures and adoption of practical tools (cf. EU projects ProRPC, CLEAR Rights) for criminal police, lawyers/procedural assistance in dealing with juveniles in pre-trial proceedings;
- Multi-professional training and further education programmes for the police, judiciary, child and youth welfare services, psychiatry, etc. to raise awareness of the deprivation of liberty of juveniles and alternatives (diversion, directives, combination options/guardianship court), jointly implemented by the judiciary and child and youth welfare services;
- Strengthen complaint and feedback systems in juvenile detention, e.g. establishment of "inmate spokespersons" for effective representation of interests;
- Examine possible applications of electronically monitored house arrest in combination with other lenient means to avoid placement of juveniles in the penal system;
- Review legal framework conditions in accordance with child rights standards (reduction of maximum periods of pre-trial detention for juveniles to 30 days, raising of a minimum age for custodial measures to 16 years);
- Take awareness-raising measures to increase consideration of parental care obligations in the event of the conviction of a parent (incl. possibilities of care by fathers in custody) and examination of alternatives;
- Strengthen preventive approaches to dealing with extremism and radicalisation of young people and developing specific rehabilitation programmes for returnees from conflict regions/suspected terrorist involvement (cross-sectoral justice/social work);
- Expand the statistical recording of deprivation of liberty of juveniles/young adults by including data on arrests/detentions in the police crime report as well as a special summary analysis on juveniles/young adults within the framework of the justice section of the security report;
- Develop and implement a research agenda, inter alia, on cross-sectoral forms of open institutions

for convicted juveniles, evaluation of surveys on the handling of misdemeanours during detention, on the availability and effectiveness of aftercare programmes, on backgrounds and response options in the case of delinquency of girls, on the application of diversionary measures from a regional perspective (court practice, urban/rural relationship), significance of digital information and communication technologies in relation to deprivation of liberty and mobility;

- Ensure measures to examine the consequences of the COVID-19 pandemic on placement in the juvenile justice system and on monitoring of places of detention.

Measures in relation to migration-related detention:

- Establish a complete ban on detention pending deportation for unaccompanied minors as well as for accompanied minors including their family members, in compliance with CRC standards;
- Develop an alternative, non-custodial care model for children and families set for deportation, including quality standards for care, child safeguarding and clearly defined cooperation between police, asylum authority and child and youth welfare;
- Implement the recommendations of the Child Welfare Commission 2021, in particular guaranteeing access to guardians to unaccompanied asylum-seeking children right from the beginning of their stay in Austria, expansion of child-friendly procedural arrangements and participation rights for children and adolescents (ensuring a continuous contact person, access to child-friendly information, legal counselling with sufficient staff capacities), legal protection and complaint mechanisms, review of the implementation of deportations to avoid disproportionate means of coercion;
- Enhance the quality of asylum statistics to include child-specific data, especially with regard to detention pending deportation, lenient means, average duration of detention, number of detention pending deportation complaints;
- Review of the existing legal protection and access to child-friendly legal counselling during detention pending deportation and while staying in alternative places;
- Ensure effective, independent monitoring of children and families in detention pending deportation.

Measures in relation to psychiatric health care:

- Ensure measures for the preparation and speedy implementation of the amendment to the Psychiatric Care placement Act 2022, strengthen the gatekeeping approach, standards on more lenient measures/avoidance of measures restricting liberty;
- Focus on expansion of social psychiatric and social therapeutic services, including transition phase beyond 18 years of age, in coordination with child and youth welfare, in connection with family strengthening programmes;
- Focus on expansion of outpatient, day-care child and adolescent psychiatric services, integrated approaches (cf. Hamburg Model), home treatment/mobile services;
- Ensure measures to ensure that children and adolescents are not admitted to adult psychiatric facilities;
- Ensure uniform, nationally comparable documentation of measures restricting freedom (including administration of medication) and regular Austria-wide evaluation, also with regard to clear regional differences in the use of coercive measures;
- Implement urgently needed structural reforms - expansion of capacities (inpatient, outpatient), ensure affordability of access;
- Invest in major training programmes in child and adolescent psychiatry (specialists in child and adolescent psychiatry, clinical psychologists, qualified nursing staff), including qualifications such as children's rights/personal liberty, participation, de-escalation and conflict management, transcultural psychiatry);
- Strengthen access to information, participation, feedback and complaint possibilities for accommodated children and adolescents;
- Ensure child safeguarding policies with clear supervisory and implementation responsibilities for inpatient and outpatient services;
- Raise awareness and inform the public on child and adolescent psychiatric services for assistance in crises, avoidance of stigmatisation;
- Continue monitoring of institutional settings with regard to COVID-19-related measures and compatibility with the child's right to personal liberty.

Measures in relation to the care of children with disabilities:

- Develop a binding deinstitutionalisation programme, including resources for the expansion of alternative community-oriented concepts;
- Harmonise and expand of the permeability of the protection systems within the framework of disability assistance and child and youth welfare, with the aim of joint, inclusive care for all children;
- Expansion of participation opportunities for children with disabilities in decisions regarding accommodation, ensuring a low-threshold feedback culture within facilities, participatory creation of house rules, including on visitation regulations and external contacts, avoidance of relationship breakdowns (especially due to staff turnover);
- Establish at national level a legal right to personal assistance for children with disabilities and expand of family strengthening programmes;
- Develop and implement an inclusion strategy for the education sector to avoid segregation in education services;
- Expand of gatekeeping and interface management between disability assistance, child and youth welfare and psychiatry;
- Develop and implement training and further education offensive on topics such as protection against violence and avoidance of restrictions on freedom (including administration of medication), mobility, sexuality, participation and children's rights, media competence; incentive systems for making training in special/ remedial education more attractive;
- Organise a nationwide expert conference on the Residential Care Act, involving all relevant stakeholders, including service providers, monitoring bodies, as well as children with experience in institutions, to raise awareness of uniform child protection standards to avoid restrictions on freedom;
- Make regular monitoring of facilities for persons with disabilities a priority.

Measures in relation to the child and youth welfare sector:

- Strengthen of gatekeeping mechanisms led by child and youth welfare services, and including psychiatry, disability welfare, justice, police, primary care and school;

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- Expansion of specific services to support children and families in the case of children getting in conflict with the law before reaching the age of criminal responsibility;

- Ensure mandatory child safeguarding policies for all institutions, including clear internal responsibilities for case management and cooperation with parents and authorities, as well as increased training and implementation of de-escalation concepts in all child and youth welfare facilities;

- Strengthen of participation opportunities for children in decision-making processes, including access to information and continuous contact persons, preparation before institutional placement and support during the measure;

- Strengthen of family support programmes and early assistance, including offers to prevent the separation of children with disabilities; expansion of outpatient socio-therapeutic and socio-psychiatric offers to avoid inpatient care; inclusion of the expertise of family court assistance in the clarification of crisis developments;

- Ensure uniform standards for working with parents to prepare for the return of the child;

- Strengthen of measures to raise awareness about the FICE quality standards for children in institutional care;

- Expand and further strengthen services provided by foster families;

- Expand services for care leavers for the transition phase to independence up to the age of 24;

- Ensure COVID-19 follow-up monitoring in facilities to avoid unlawful isolation measures, no lowering of care standards for reasons of insufficient capacity;

- Implement increase joint exchange between monitoring institutions and child and youth welfare services with regard to the avoidance of restrictions on liberty in institutions;

- Ensure exchange and follow-up measures on the prevention of restrictions of liberty within the framework of child and youth welfare exchange platforms.

Measures in relation to monitoring and legal protection:

- Establish deprivation of liberty of children as a regular focus of all monitoring and legal protection mechanisms;

- Establish an exchange platform between the Ombudsman Board/OPCAT Commissions, residents' representatives, patients' ombudsmen and children's and youth ombudsoffices with regard to alternatives to the placement of children in closed institutions as well as on avoiding restrictions of liberty while in institutional care;

- Implement regular exchange of experience between relevant actors on good practices for child-friendly participation in monitoring processes;

- Establish an annual joint focus report of the monitoring bodies on the child right to personal liberty in Austria, including evaluation of statistical data and data from registers on measures restricting liberty, and data on complaints and access to compensation for affected children;

- In addition to the monitoring of institutions, establish an independent dedicated child rights monitoring body in Austria.



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Disclaimer

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