

Statement of the Austrian Children and Youth Ombuds Offices Regarding the General Comment 27 – Access to Justice and Effective Remedies

At the Austrian Children and Youth Ombuds Offices (Kinder- und Jugendanwaltschaften Österreichs), we are happy to hand in a statement to the General Comment 27. We want to highlight the importance of this GC's topic and are therefore very glad the Committee is taking actions to improve the access to justice and remedies from a children's rights perspective.

We are dedicated to defending children's rights, providing counseling for young people and their caregivers, and maintaining close contact with schools, institutions such as group homes in child and youth welfare and the children of Austria themselves. Access to justice is therefore one of the main aspects of our work. In this statement, we want to elaborate on (1) our understanding of access to justice, (2) areas in which we see potential for leveling-up and (3) a conclusion.

I. Access to Justice and Effective Remedies

We appreciate the wide understanding of access to justice and effective remedies as presented in the concept note of the GC 27.¹ From our point of view, access to justice unfolds in three steps: participation, mediation and, as the last possible step, litigation.

a. Participation

To ensure that children have sufficient access to justice, another fundamental principle of child-friendly justice must be upheld: the children's right to participation. This means that knowledge is very important, as well for children (regarding their rights) as for adults (regarding children's perspectives and wishes). Young people have a right to be informed about their rights, about the specific procedural steps and about the options available to them. If children and young people are able to participate in making the rules for their safety, it can lead to less cases of harmful practices and more efficient interventions. It should also be recognized that factors such as disability, language or social conditions can present particular barriers to access to justice that need to be addressed.

¹ Concept Note: General Comment on Children's Rights to Access to Justice and Effective Remedies, 1, 3.

Therefore, we emphasize the principle of participation also in the context of access to justice and remedies.

b. Mediation

We are confronted with many cases in which children's rights are not sufficiently respected. From our point of view, it is important to emphasize that only very few cases of children's rights violations are actually brought to court. Rather, the vast majority of potential children's rights violations are resolved through counseling or mediation. One reason for this is that there is often a lack of fundamental understanding for child rights approaches, which can be overcome through the advice of experts. If all parties are brought together to look at the problem from a children's rights perspective, good and sustainable solutions can be found. The stress and anxiety caused by extended legal processes can have a lasting negative impact on their well-being. Additionally, the bureaucratic decision-making processes often involved in these cases can be harsh and overwhelming for children, leading to long-term emotional and psychological strain. These prolonged and complex procedures can make it even more challenging for children to navigate the justice system, further exacerbating their sense of powerlessness and vulnerability.

Therefore we emphasize interdisciplinary collaboration and counseling as key factors for the effective adaptation to children's rights standards.

c. Litigation

As an ultima ratio, we consider it important to strengthen access to judicial decisions on possible violations of children's rights. This may be unavoidable in the case of grave violations, or it may be necessary when there is a systemic problem that makes it impossible to respect children's rights. Furthermore, areas in which children and young people are inevitably involved in legal proceedings undoubtedly fall into this category. In any of these cases young people and their caregivers have to know where they can get help. The information needs to be available and understandable. Additionally we stress that in situations where the systemic issues present themselves clearly, strategic litigation can be a helpful tool to improve the children's rights situation.

Therefore, we emphasize understandable and clear procedural options as integral components for the implementation of children's rights.

II. Areas for leveling-up regarding access to justice and effective remedies

As already mentioned above, we see access to justice and remedies as a fundamental requirement for the effective implementation of children's rights. In this respect, there is a wide range of issues and areas to consider.

a) Legal Support Systems

Access to justice involves ensuring that legal resources are available and accessible in a manner suited to children. This includes a child-friendly legal framework where laws and procedures are adapted to be understandable and accessible for children. For this to happen, access to justice requires the provision of free or affordable legal aid to ensure that children are adequately represented in legal matters. It is essential to eliminate barriers to ensure that children can physically reach legal

institutions and afford legal services, while also addressing psychological and social barriers such as fear, stigma and social norms that may deter children from seeking justice. Raising awareness and education play a crucial role, including educating children about their rights and available remedies, and informing communities and parents about the importance of children's rights and access to justice. Effective remedies involve ensuring that legal responses are appropriate and timely, with proceedings conducted without undue delay. Remedies should be tailored to the specific circumstances and needs of children. We share the wide understanding of remedies,² and we also stress the importance of transparency and predictability of remedies.

Practical Examples:

As Children and Youth Ombuds Offices our mission is to support children so that their rights are granted. We try to be accessible and reach out to young people – be it physically through our visits to social-psychological institutions or digitally through our social media. We regard the opportunity of having our own ombuds office responsible for children's rights as very positive and important for the actual access to rights. The task as ombudspersons in welfare systems is to support children, adolescents and young adults in full-time education and in institutions of residential education in their personal concerns and to mediate in problems in their social environment. The main focus of this work is to establish a relationship of trust through regular contact with the children, adolescents and young adults in their care, as well as to provide information on children's rights and other support services. Experience has shown that a non-bureaucratic approach and personal contact in advance make it easier for children and young people to seek help when they need it.

Furthermore, the *Kinderbeistand* and the legal and psycho-social litigation support are two positive examples from Austria that contribute to effective access to justice. The *Kinderbeistand* is a trained professional who acts as a communication channel for minors in custody proceedings. A *Kinderbeistand* helps to understand the rights and strengthens the child's independent position in the process. The legal and psycho-social litigation support is a free support in certain criminal proceedings. Experts are called in free of charge to support children in the respective procedures tailored to their needs.

Potential for leveling-up:

- Strengthening ombuds offices as bodies for access to justice for children and young people and knowledge about the support systems
- Implementation of people as mediators for children and young people in court proceedings to strengthen their independent procedural position
- Enabling strategic litigation as an ultima ratio for the implementation of children's rights
- Assurance of the legal anchoring of the activity of the child welfare ombudsperson with the obligation of contact to all children, adolescents and young adults in institutions with possible restrictions of liberty in the sense of Art. 4 OPCAT

² Concept Note: General Comment on Children's Rights to Access to Justice and Effective Remedies, 2, 7.

b) Legal Framework

Often we experience that the legal frameworks are not adequately aligned to the children's rights. On the constitutional level, this can be seen in the example of climate change or inclusive education. In these areas, children often do not yet have access to justice and often cannot claim and enforce their rights. We experience that fundamental and human rights of children enshrined in the CRC or the Austrian constitution often cannot be effectively demanded and how difficult it is to resolve these issues through legal proceedings. Barriers could for example be the insufficient experience on how to make use of children's rights in court proceedings or the lack of specific regulations for the particular situation in which a court has to make a decision. Particularly in the case of key provisions such as the best interests of the child, the right to participation or the right to protection against discrimination, it is important to establish specific provisions, as recourse to general provisions may result in inadequate legal protection.

Furthermore legal proceedings are often not designed for children to be a part of them. Thus, there is a lack of child-friendly legal information, leading to children being unaware of their rights and the ways to enforce them. Other barriers to accessing justice can include factors such as disabilities, language, or social conditions. Especially in the education system, we see that children with disabilities face big problems in accessing justice, as they are not adequately represented or heard.

Practical Examples:

In Austria, a *Kindeswohlkommission (Best interest of the child commission)* was installed to examine how the rights of children and young people and in particular the best interest of the child were taken into account in proceedings regarding asylum and immigration law. This system analysis can help to identify specific hurdles within the legal framework. The results stated, among other things, that the assessment of the best interest of the child was often not sufficient and specific enough to the child in question and that specialized legal provisions on the best interest of the child are needed.

The Austrian legal framework also shows discrimination and exclusion concerning the access of unaccompanied minor refugees to supreme court justice (supreme administrative court as well as constitutional court): For a certain process stage in the asylum and alien law procedures unaccompanied minors only have legal guardians in the first two stages of the proceeding (the Bundesamt für Fremdenwesen und Asyl as well as the Bundesverwaltungsgericht) unless a guardian has already been appointed by the civil court. For this reason, unaccompanied refugee minors are regularly denied access to the highest courts and cannot pursue their rights to the best possible extent.

Potential for leveling-up:

- Development of specific legal bases for children's rights principles in the different legal areas
- Development of accessible legal texts taking particularly vulnerable groups into account and perception of the dissemination of the knowledge of these rights as a state obligation
- Raising awareness of the use of children's rights among legal practitioners including system analyses on the use of children's rights
- Closing the gaps in the legal protection system for unaccompanied refugee minors by ensuring continuous legal representation in asylum and alien law proceedings.

c) Safeguarding:

One important factor is the access of children to basic information about their rights. This could be achieved in schools, not only by providing regular courses or external workshops, but also through permanent displays in common areas of the schools that provide information about children's rights and available counseling services. Children need to know exactly whom they can address and what steps need to be taken in order to have their rights restored. This principle applies equally to their free time. Information should be available in the places where children spend their time, such as sports clubs, youth centers, and above all on the internet and social media platforms. In addition, public spaces where children's rights are often at risk, e.g. swimming pools, should also provide such information. The internet and especially social media can further be used not only to share information about children's rights and their possibilities, but also about ombudspersons for children's rights and counseling services, making them more approachable.

We would also like to stress that sufficient resources for interdisciplinary work are necessary in order to build structures for effective child protection and positive interaction. Due to their particular vulnerability, children need support systems, including social workers, psychologists, psychiatrists and other professionals to help them process and claim their rights. The lack of knowledge about children's rights and the peculiarities of the education system are obstacles to access to justice and remedies in this area. We focus on the legal status of minors in crisis centers and socio-educational institutions as well as on their legal options in the event of violations of their rights. Children and young people have a high level of protection of their right to special protection in child and youth care. However, practice shows that there are often obstacles to the legal enforcement of these children's rights. Improving child-friendly information about legal options and procedures in the event of a complaint as well as the accessibility of internal complaints bodies are considered useful.

Practical Examples:

Austria is currently working on the comprehensive implementation of safeguarding concepts in many different sectors. This process is positive and also necessary. It has been shown that the existing child protection mechanisms are not sufficient to protect the rights of children and young people. It should be emphasized, for example, that child protection concepts have already been anchored in law in elementary education and the school system. In addition, there are already several efforts to link the

funding criteria for associations to the implementation of safeguarding concepts. This not only creates a clear path for access to justice, but also for increased awareness of children's rights in the respective areas.

Potential for leveling-up:

- Legal anchoring of safeguarding concepts in all areas including the commitment of the private sector through inclusion of safeguarding concepts as a funding criterion
- Ensuring resources for participatory development of safeguarding concepts and interdisciplinary work to prevent child rights violations
- Ensuring accessible, child-friendly information about the existing safeguarding and support systems and procedures available for children to reclaim their rights in settings where they are most vulnerable

III. Conclusion

In conclusion, the Austrian Children and Youth Ombuds Offices have identified significant challenges in ensuring that children and young people have adequate access to justice. Many children are not fully aware of their rights, and existing systems are often not designed with their needs in mind, which hampers their ability to seek and obtain justice effectively. To address these issues, it is crucial to focus on enhancing child-friendly legal procedures, increasing awareness of rights throughout society, and ensuring that children are actively involved in shaping the systems that affect them.

We are very glad to be able to provide input and would like to emphasize that we hope to be involved in the further development of the GC 27 and the improvement of the access to justice and effective remedies for children and young people.

