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**T H E A U S T R I A N
„ M E N S C H E N R E C H T S B E I R A T “
(H U M A N R I G H T S A D V I S O R Y C O U N C I L)**

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APT Workshop: The European Convention for the Prevention of Torture after 15 years: How to improve the implementation of CPT's Recommendations?

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The Austrian „Menschenrechtsbeirat“ (Human Rights Advisory Council)

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I. Establishment and Functions

The Austrian Human Rights Advisory Council (AHRAC) has been established in June 1999 in response to recommendations made by the European Committee for the Prevention of Torture (CPT) in its 1st and 2nd report on its regular visits to Austria.

Already in 1990, in its first report, the CPT, having found a serious risk of ill-treatment in Austrian police custody, recommended to the Austrian authorities “to explore the possibility of empowering an independent body to inspect on a regular basis the conditions of detention in prison jails” (para. 87 of 1st Report). In its 2nd Report of 1994 the CPT reiterated its recommendation (para. 92-94) and recommended more specifically that “the Austrian authorities create without delay a body composed of independent persons entrusted with conducting an investigation into the methods used by officers of the Security Bureau” in Vienna (para. 19 of 2nd Report). Consequently, the Austrian Ministry of the Interior, which was also under some public pressure as a result of the publication of the CPT report, made preparations to implement the recommendation. However, the decisive momentum came from the tragic death of Mr. Marcus Omofuma, a Nigerian citizen, on his deportation to Bulgaria in May 1999. Mr. Omofuma died from suffocation as a result of being gagged with adhesive tape covering his mouth up to his nose. Such a practice of treating foreigner under an expulsion procedure which had been noted by the CPT in its 2nd Report in 1994, asking the Austrian authorities for their comments (para. 29 of the 2nd Report) had been denounced by the Minister of Interior.

The AHRAC was established by a regulation of 30 June of 1999 (BGBl. II Nr. 202/1999) and an amendment of the law on the security police (§ 15a-c), which was adopted with constitutional rank, as an advisory body to the Minister of the Interior on issues of the protection of human rights. For this purpose the AHRAC was given the **mandate** to observe the activities of the security services, the authorities under the Minister of the Interior and all bodies with powers of direct command and compulsion to observe and to monitor decisions and orders with regard to the protection of human rights. For this purpose the AHRAC can act on its own decision or on the request of the Minister of the Interior to whom the AHRAC makes its proposals for improvements. The main purpose is the **prevention** of any form of ill-treatment in line with the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of 1987.

II. Structure

The **Human Rights Advisory Council** is composed of 11 members and the same number of deputy members, which are fully independent in implementing their tasks. The chairman and his deputy are

proposed by the president of the Austrian Constitutional Court from the members of the Constitutional or Administrative Court or from the constitutional law professors of Austrian Universities. The members of the AHRAC act in their personal capacity on a voluntary basis and are mandated for a period of three years.

Regarding the **composition** of the AHRAC, the constitutional amendment provides that three members are coming from the Ministry of the Interior, one from the Federal Chancellery and one from the Ministry of Justice, whereas five other members, usually experts, are nominated by private, non-governmental organisations, which are active in the protection of human rights. The Minister of the Interior formally appoints the nominees.

Accordingly, the AHRAC is only in charge of institutions related to the Ministry of the Interior and has no mandate with regard to institutions of the Ministry of Justice like the penitentiary system. It has a **Secretariat**, which is part of the Ministry of the Interior, but operating under the direction of the chairman of the Advisory Council, who also represents the AHRAC in public.

For the implementation of the monitoring and observation of police activity six **Commissions** have been established, which are in charge of particular regions in line with the Austrian organisation of the courts. Accordingly, the commissions, which have also a small secretariat, are based in Vienna (3), Graz, Salzburg and Innsbruck. Each Commission consist of 5 experts plus the chairperson, who are remunerated for their services on the basis of their activities. In the composition of the Commissions, explicit attention was given to the representation of both sexes, of different professions and also of members of minority groups.

Furthermore so-called “**delegations**” can be established for particular purposes like the observation of police behaviour during a demonstration or a major police raid on which the AHRAC needs to be informed.

The Commissions and Delegations are working under the supervision of the AHRAC, to which they report on all missions undertaken. The Commissions provide quarterly summary reports on their activities.

III. Activities

The Commissions are expected to visit all police stations and other places of activity of organs of the public security service in a regular and comprehensive way. They decide on their programme of **visits**, which need not to be announced. They have access to all information required, including the right to speak to persons detained in private. The reports of the commissions consist of the facts established and measures and recommendations considered necessary. There are **regular reports** on all visits undertaken, which are analysed by the AHRAC with the help of its secretariat and there are so called “**urgent action reports**”, which draw attention to a human rights problem, which needs to be addressed immediately. The urgent action reports are usually discussed at the next session of the AHRAC. In cases of particular urgency the Chairman may taken action in the mean-time. The Commissions also meet among themselves and identify common concerns to be addressed by the Advisory Council.

The Human Rights Advisory Council meets about 8 times per year. It normally does not deal with individual cases, but sees its task in addressing structural problems of human rights, which can be taken up on the basis of the reports of the Commissions or as part of the working programme of the AHRAC. The first such structural issue was a report drawn up on the request of the Minister of the Interior on “problematic deportations” which resulted in 32 recommendations to the Minister, including the taking of a human rights observer on board of problematic deportation flights. In order

to prioritise major issues to be addressed, a working group of the AHRAC identified risks and weaknesses in the system of the security service related to human rights on which basis a working programme was elaborated which in the following has been updated and amended mainly in response to problem areas identified by the Commissions.

Reports of the AHRAC are usually elaborated by **working groups** of the AHRAC in which members of the competent institutions, like the police are equally present as members from the Human Rights Advisory Council, the commissions and NGOs. So far five partly very comprehensive **reports** have been presented to the Minister of the Interior, i.e. the report on problematic deportations, the report on the problem of juveniles in detention awaiting deportation, the report on human rights issues in the context of detention of women, the report on the problem of information of detained persons and the report on the medical care for detained persons. Each report consists of findings, conclusions and recommendations. In addition the AHRAC is making recommendations on the basis of urgent action reports and on other topics, which it has taken up like the treatment of persons on hunger strike to avoid deportation or on the use of discriminatory language by police officials. Their recommendations can have far-reaching results, like the closure of detention facilities, which do not meet the minimum standards. In line with a recommendation of the CPT in 1999 (para. 18 of the 3rd Report) the AHRAC publishes a yearly activity report of which so far two volumes have been issued (report 1999-2000 and report 2001).

The work of the Commissions and of the AHRAC is undertaken on a confidential basis, but the AHRAC may address to the public by informing about its activities and by expressing concern on certain issues or developments, when it considers this necessary. For example, in the recent draft amendment to the Austrian Law on Foreigners certain recommendations of the AHRAC regarding the treatment of minors awaiting deportation as well as the method of determination of age have not been taken into account, which resulted in the first extra-ordinary meeting of the Advisory Council and a public statement on its concerns. In order to have a dialogue on the activities of the Advisory Council with the civil society, about twice a year a meeting between (NGO-) members of the AHARC, members of Commissions and NGOs is organized by the Secretariat.

IV. Evaluation of First Period (1999-2002)

The experience of the AHRAC can generally be considered a success story with some question marks. It has been possible to set up the full structure of the Advisory Council and the Commissions in spite of hesitations and suggestions to start with a more limited structure for the beginning. It has also been possible to obtain the necessary funds from the Ministry of the Interior and establish the expertise needed in the Secretariat of the Advisory Council for the analysis of the reports and the assistance to the working groups as well as the evaluation of the implementation of the recommendations of the AHRAC. A generally good working climate has been established within the AHRAC between its members although their views can sometimes differ considerably.

Likewise, initial reservations by the members of the security authorities could largely be overcome and trustful cooperation on the basis of dialogue could be established between the members of the Commissions and Delegations and the security services, in particular the police. However, in certain instances there is still need for improvement. One major case of controversy arose in the context of the imprisonment of one member of a Commission for whom a German warrant appeared for a crime alleged to have taken place nearly 20 years ago, which later was withdrawn. The allegedly humiliating behaviour of certain police officers in this case caused strong criticism from parts of the public. This case is subject to a judicial investigation that has not yet been completed.

As can be seen from the report of the Advisory Council on 2001 the 6 Commissions undertook 425 visits and observed 11 demonstrations or raids. They produced 10 urgent action reports. A data base

has been created in the Secretariat of the AHRAC for the analysis of the reports. A major issue were the **standards of detention**. In this context the AHRAC asked the Commissions to give special attention to the documentation of detention. The Commissions are working on the harmonization of their standards of review using CPT standards as guidance.

The AHRAC is presently undertaking an **evaluation** of the implementation of its recommendations to the Minister of the Interior until June 2001 numbering 116. In the Ministry of the Interior a special division has been established which acts as the counterpart of the Advisory Council and which has undertaken its own evaluation, leading to the result that most recommendations had been implemented. However, the independent evaluation of the Advisory Council found that a considerable number of recommendations had not been implemented or fully implemented.

At the end of its term of three years there have been debates in the Advisory Council as well as in the public on what could be called “structural deficits” of the AHRAC, i.e. that the high-ranking members coming from the Ministry of the Interior, among them the director for public security, who heads the whole security services, can hardly act only in their personal capacity and that the AHRAC being placed in the Ministry does not show sufficient independence from the Minister of the Interior. The argument was put forward that the recently adopted proposal for a universal system of the prevention of torture by an optional protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of 1984, which also foresees national institutions has a larger independence of those institutions in mind than it is the case for the AHRAC. However, one could also argue that the independence of the system of the Austrian Human Rights Advisory Council is largely based on the work of the six commissions which are fully independent in their activities and do not have any member of the security services in their ranks.

The advantage of the present setting can be seen in the fact that the confidence built among the members on the basis of a permanent dialogue and the competent leadership of the AHRAC chairmen often allows to address and resolve problems in direct communication without having to go through a long formal procedure and that much can be achieved on the basis of good will and common commitment to the purposes and objectives of the AHRAC. On the other hand this kind of approach could also compromise the preparedness of members of the AHRAC to confront the Minister of Interior more directly and make more use of their independence when they find that he has not done the necessary to implement the recommendations.

Another issue is the relationship between the AHRAC and the six Commissions which do the main work on the spot, but are not represented in the AHRAC and therefore cannot directly follow in which way the Advisory Council is dealing with their findings and concerns. From time to time the AHRAC is organising meetings with the heads of the Commissions as well as with all the members of the Commissions to discuss the collaboration and address issues of common concern. This has partly been connected with trainings of the members of the Commissions in which also former and present CPT members were involved. The Commissions, in view of their activities and experience are generally aiming at more autonomy and a stronger position in the structure of the AHRAC. Whereas in the original phase the AHRAC has been the main actor, since the establishment of the commissions, an important and still increasing part of the dynamics is coming from the Commissions, which raises the issue of clarification of the future relationship between the Advisory Council and the Commissions. After three years of existence only, the whole structure is still in a process of searching for an optimal way of implementing its tasks. Generally, the Austrian Human Rights Advisory Council can be considered as an example of good practice, although there is still room for improvement.

V. Outlook

The second period of the AHRAC is to start in July 2002 when the Minister of the Interior has appointed its members. A general meeting of the AHRAC is planned in order to discuss the

performance so far and to provide and develop ideas for an even more efficient approach in the future. This will include structural issues of its work although it would need legal amendments to introduce major changes, which are not likely in the present somehow restrictive political environment in Austria and in Europe in general.

Stronger emphasis should be put on the inclusion into the training of members of the security service of the by now 218 recommendations of the AHRAC, which are not always known and well understood.

It will be interesting to see how and to what extent the CPT will make use of the information and experience collected by the AHRAC in the future and how a possible cooperation will be structured. The AHRAC is also interested to learn about similar institutions elsewhere in Europe in order to exchange experiences.

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