
INTERNATIONAL HELSINKI FEDERATION FOR HUMAN RIGHTS

HONORARY CHAIRMAN
Yuri Orlov

EXECUTIVE DIRECTOR
Aaron Rhodes

DEPUTY EXECUTIVE DIRECTOR
Brigitte Dufour

ADVISORY BOARD (CHAIR)
Karl von Schwarzenberg

EXECUTIVE COMMITTEE
Sonja Biserko
Holly Cartner
Bjørn Engesland
Krassimir Kanev
Andrzej Rzeplinski

PRESIDENT
Ludmilla Alexeyeva

VICE PRESIDENT
Ulrich Fischer

TREASURER
Stein-Ivar Aarsæther

Wickenburgg. 14/7, A-1080 Vienna, Austria; Tel +43-1-408 88 22; Fax 408 88 22-50
e-mail: office@ihf-hr.org – internet: <http://www.ihf-hr.org>
Bank account: Bank Austria Creditanstalt, 0221-00283/00, BLZ 12 000

ANNUAL REPORT 1999

Austria

IHF Focus:

Freedom of the media; misconduct of law enforcement officials and ill-treatment; protection of ethnic minorities; tolerance and non-discrimination; religious tolerance; protection of asylum seekers and immigrants; human rights defenders.

Austria's human rights record remained affected by the restrictive asylum policies and an amendment to the asylum law introduced in 1998 by the Ministry of the Interior regarding the "safe third country" principle. Other human rights problems included racially motivated ill-treatment of asylum seekers and immigrants by the police and the continuing discrimination against ethnic minorities. Despite criticism by European bodies, Austrian parliament failed to abolish article 209 of the penal code that discriminated against male homosexuals concerning the age of consent. In addition, Austria continued to ignore international obligations set forth by the European Court of Human Rights concerning the freedom of the media and implemented discriminating policies toward religious minorities.

Two proposed legislative changes also raised concern among human rights groups as potential threats to basic human rights. These included amendments to the law on security police (Sicherheitspolizeigesetz) and on the secret services of the Austrian army (Heeresnachrichtenamt and Heeresnachrichtendienst). Both amendments, which were under discussion in a parliamentary committee as of this writing, could interfere with the right of privacy through their provisions on the collection of personal data on individuals.

Freedom of the Media

Austria continued to violate a ruling of the 1993 European Court of Human Rights concerning the monopoly of television by the Austrian Broadcasting Corporation (ORF).¹ The monopoly of national radio was gradually dismantled since rewritten radio frequency rules went into effect on 1 April 1998. Several private radio stations began broadcasting throughout Austria and, consequently, increased variety in the general situation on media information.

The IHF has consultative status with the United Nations and the Council of Europe.

MEMBER AND COOPERATING* COMMITTEES IN:

Albania – Austria – Azerbaijan – Belarus – Bosnia-Herzegovina – Bulgaria – Canada – Croatia – Czech Republic – Denmark – Finland – France – Georgia³
Germany – Greece – Hungary – Italy – Kazakhstan – Kosovo – Kyrgyzstan – Latvia – Lithuania – Macedonia – Moldova – Montenegro – The Netherlands
Norway – Poland – Romania – Russia – Serbia – Slovakia – Slovenia – Sweden – Switzerland – Ukraine* – United Kingdom – United States – Uzbekistan³

COOPERATING ORGANIZATIONS:

The European Roma Rights Center – Human Rights Without Frontiers – Mental Disability Advocacy Center

Torture, Ill-Treatment and Misconduct by Law Enforcement Officials

Police officers, in particular of the Vienna police, were charged with several abuses against foreigners, especially against Africans. The Ministry of the Interior argued that such cases were outcomes of "individual misconduct," denying any structural problem of the Vienna police. Similarly, the ministry continued to refuse to establish an independent fact-finding committee to look into such cases.

In the unofficial ranking of the UN Committee for the Prevention of Torture (CPT) of 1998 Austria is listed among the states where people in police custody face serious risks of being ill-treated.²

- According to Amnesty International, He Xiuqin, He Xiuzhen and Ni Tongjun (of Chinese origin) were ill-treated by police upon their arrest in a Chinese restaurant and subsequent detention. The three individuals claimed that three police officers entered the restaurant on 2 July and ordered He Xiuqin and He Xiuzhen to produce their IDs, which they did. Then a police officer told He Xiuqin that she was under arrest, alleging that her Chinese passport was forged. ³

- On 29 November APA reported on the alleged ill-treatment of a dark-colored Austrian citizen. The man, who wished to remain unidentified, claimed that he had been stopped by three police officers who alleged that he had driven the wrong direction on a one-way street. As he was ordered to show his passport, he said that he was an Austrian citizen and therefore did not have to show his passport. Subsequently the man was allegedly beaten by the police officers – in the presence of his wife and his child. He was severely wounded and lost consciousness after a hit on the back of his head. He was handcuffed, insulted and brought to a police station. After the interrogation and after he had complained about serious pain he was brought to a Vienna hospital. The man was hospitalized for several days due to injuries he had suffered. ⁴

- In a similar case, Austrian citizen Mr. C. was stopped by the Vienna police while driving his car with his wife and his six-week-old son. The police officers immediately shouted at Mr. C., reproaching him that he drove in the wrong direction of a one-way-street and insulted him with expressions such as a "stupid nigger" or a "stupid immigrant." Mr. C. was ordered to get out of the car and to identify himself. While Mr. C. rightly claimed that, as an Austrian citizen, he did not have to carry a passport, a police officer answered that "it is [his] fault being a nigger." The situation escalated when other police forces were requested. The police officers threw Mr. C. on the ground and beat him with severe brutality on his back and stomach. The arriving police officers cuffed Mr. C.'s hands and feet and brought him to police custody. Mr. C. was later transferred to a Vienna hospital where he had to stay for 11 days to recover from his injuries. As of this writing, a court case against the police officers is pending. However, Mr. C. is accused of obstructing an officer in the performance of his duties, of causing physical injury and other offences.

- According to "Helping Hands," Mr. G., Austrian citizen of Romanian origin, was ill-treated in January. Mr. G. was near a supermarket, which had been broken into immediately before he arrived there. The police officers arrested Mr. G. and reportedly beat him, insulted him and threatened him with deportation. He was questioned about his alleged accomplice, but as he could not answer, he was handcuffed and arrested. He was neither allowed to inform his wife nor his lawyer. Mr. G. was released from custody the next day when it was evident that he had not been involved in the burglary. Since this incident, Mr. G. suffered from psychological problems and was hospitalized for two weeks in a special clinic. The judicial proceeding against the police officers were pending as of this writing. 5

- In July a Sudanese refugee couple was reportedly threatened and beaten by a

police officer upon arrest.

The officer reportedly humiliated the couple by insulting Mr. M. with expressions such as "asshole"

and "idiot" or by saying that "we throw you back, somewhere to Africa" and was accused of dealing with

drugs. Mr. M. did not want to take legal steps against the police officer because he feared for his personal security.⁶

Protection of Ethnic Minorities

Austria ratified the Council of Europe's Framework Convention for the Protection of National Minorities in March 1998, and it came into force on 1 July.⁷ Therein Austria declared the ethnic groups consisting of Austrian citizens – who, according to the law on ethnic groups (Volksgruppengesetz)⁸ have another mother tongue than German and have proper national characteristics - as "national minorities." However, as of this writing, no further steps have been taken for the implementation of the principles set out in the Framework Convention in Austrian legislation.

Roma and Sinti

In 1998, Franz Fuchs was arrested and charged with sending a series of letter bombs to foreigners and individuals involved in minority politics and the responsibility of the killing of four Roma in Oberwart (Burgenland) in February 1995,⁹ of which the apparently imaginative "Bajuvarian Liberation Army" had claimed responsibility. In early 1999, a court found Fuchs guilty, handed down a life sentence and referred him to psychiatric treatment.

On 8 October the Austrian Constitutional Court overturned an Administrative Court decision dating from November 1996 not to rule, for procedural reasons, in a case of alleged ill-treatment of Roma. The case involved the Yugoslav Roma couple Nicola and Violetta Jevremovic who were beaten by riot police in their flat in Vienna. A lower court had sentenced them to four and two months in prison, respectively, for aggressive behavior against law enforcement officials. The Constitutional Court ruled that the Administrative Court had "exercised arbitrariness in its ruling" and sent the case back to the latter for retrial.¹⁰

Intolerance, Xenophobia and Racial Discrimination

Discrimination on Ethnic Grounds

The IHF continued to receive reports on discrimination on ethnic grounds. Particularly dark-skinned individuals faced discrimination in the labor and housing market and were regularly suspected being drug dealers by the police. Even a judge resorted to direct racial vocabulary.

- In October, in a public trial at the criminal district court (Landesgericht für Strafsachen) in Vienna, Judge Henriette Braitenberg-Zennenberg encouraged the defendant to use the expression "bimbo" (e.g., an expression similar to "nigger") about the prosecuting party, and the judge herself used the word throughout the trial. When confronted with the issue in a parliamentary question, the minister of justice only downplayed the issue saying that the expression had not been used in a racist or xenophobic manner.¹¹

Homosexuals

In a vote on 17 July 1997 the Austrian parliament once again failed to repeal article 209 of the penal code, which stipulates that the age of consent for both heterosexual relationships and relationships between homosexual girls be 14 years while homosexual men are "protected" until the age of 18. Each year some 20 individuals have been convicted under this article. It provides for a minimum penalty of six months in prison and a maximum of five years' imprisonment.

Thus, in 1998, Austria continued to disregard the decision of the European Commission of Human Rights adopted on 1 July 1997. In a case of a UK citizen against the UK, the Commission found that

"no objective and reasonable justification exists for the maintenance of a higher minimum age of consent to male homosexuals, than to heterosexual acts" and that a

provision providing for unequal age of consent was a violation of article 8 of the ECHR, taken in conjunction with article 14 of the ECHR.

Same sex relations continued to suffer legal discrimination in a wider range of areas, social security being among the most important ones. For example, a same sex partner who was not employed could not be co-insured with the partner's social insurance, this being possible for non-married heterosexual couples. Thus, the same sex partner remained without social health insurance coverage. Neither the law nor any law-related official regulations offered any explanation for this unequal treatment.

- On 15 June the Austrian Constitutional Court refused to deal with a complaint filed by a homosexual who was not covered by his partner's health insurance, invoking his constitutional right to non-discrimination on the grounds of gender. The court stated that, given the legal-political discretionary margin attributed to parliament by the Austrian constitution, the request had "too little prospect to succeed" to justify in-depth consultations by the Constitutional Court.

- On 17 September the European Parliament adopted a resolution reaffirming the Parliament's defense of the human rights of gays and lesbians. It called Austria to immediately repeal the discriminatory article 209 of the penal code, to release from prison all persons jailed under this article and to provide amnesty for those charged under it.

The International Lesbian and Gay Association (ILGA) reported that five Austrian gay groups had filed suits against the right-wing Catholic newspaper Der 13. The newspaper cited homosexuals as "...rats, crawling out of their holes, only to be fed lovingly by church people and politicians" and called for the "formation of militias to fight state-supported ... lechery." The paper said that homosexuals should be punished with whips.¹²

Religious Tolerance 13

The Austrian system of relationships between the state and religious communities is

historically rooted in the principle of recognition and non-recognition of religions. Until 1998, the Austrian religious system was based on a two-tiered system with churches and religious societies recognized by law (Religionsgemeinschaften) on the one hand, and religious organizations registered according to the Law on Associations. In January 1998 a new law went into effect establishing an intermediary third category of religious denominational communities (Religiöse Bekenntnisgemeinschaften) officially registered but not recognized by law.

In 1998, twelve religions fell into the first category of recognized churches and religious societies. According to article 15 of the Fundamental Law, they enjoyed the juridical status of a corporation of public law (Körperschaft öffentlichen Rechts). This privileged status was tied to a series of advantages such as exemption from property taxes, entitlement to state-collected church taxes (Kirchenbeitrag), the right to engage in religious education in public schools, to receive subsidies for running private schools, to air radio and TV broadcasts, immunity from securing work or residence permits for foreign religious workers who act as ministers, missionaries or teachers, and so forth.

Legal recognition could be obtained by a special law or by a special decree issued by the competent Ministry of Education and Culture on the basis of a general law about the recognition of churches and religious societies (Anerkennungsgesetz), which dates back to the Austrian monarchy (1874) and remained in force throughout 1998. In 1992, the government issued a decree giving the possibility for religious societies to obtain the status of juridical person on the basis of the Law on Associations, a practice existing for almost 20 years, though, with no strong legal basis.

The new law of 1998 set out additional criteria for religious denominational communities for possible recognition as a "state recognized church or religious society." These additional criteria forced such communities to wait for a minimum of 10 years for the recognition procedure and to prove its existence for at least 20 years in Austria. Furthermore, the number of adherents of a community must reach a minimum of 16,000 (0.2 percent of the Austrian population). With these additional criteria, the Austrian government introduced a double standard of recognition, which is detrimental to any new "competitor" with the religious establishment and purposefully discriminatory, since only four of the twelve already recognized churches and religious societies in Austria meet this qualification.

The new religious legislation will enable the state to deny legal status to so-called "cults" – which are often deemed as "harmful" – including Pentecostal and other

small Protestant churches, and therefore will block their development.

The Austrian Congregation of Jehovah's Witnesses, which numbered about 21,000 members and had been applying for years for the status of state-recognized religion - without getting any reply from the relevant authorities - will now have to wait for 10 years before being able to introduce an admissible application. Human Rights Without Frontiers suspected that the new legislation was pushed through with such haste because Jehovah's Witnesses were on the verge of forcing a decision from the Constitutional Court with regard to their application for recognition after they had been persistently ignored and put on hold by the Ministry of Education and Culture for the last 30 years.

In July the Ministry of Education granted the status of a religious denominational community to eight religious communities, including Jehovah's Witnesses, Baptists and Seventh Day Adventists. The Ministry rejected the application of the Sahaja Yoga group while the Church of Scientology and the Hindu Mandir Association withdrew their applications.

Protection of Asylum Seekers and Immigrants

In September, Austria's Minister of Interior, Karl Schlögl, in the framework of the European Presidency, presented a proposal for the revision of the 1951 Geneva Convention to "complement, amend or annul the Geneva Convention"¹⁴ and to change European asylum policy. According to an extract of the discussion paper, the "guarantee [of asylum] should not be understood to be an individual right, but a political offer on the part of the host country." The discussion paper met with vehement criticism from human rights groups and international organizations, including the UNHCR and was subsequently amended by the Ministry of Interior.

In 1998, according to official figures, 13,808 asylum seekers submitted their asylum applications to Austrian authorities. According to the Ministry of the Interior, only 412 applicants were granted asylum, which was not even 3 percent.¹⁵

In July 1997, the Austrian parliament adopted a new asylum law, which came into force on 1 January 1998. The IHF reported on its concerns on the new law¹⁶ and repeatedly urged the Austrian government to amend its legislation. In the course of 1998, the general situation of asylum seekers improved slightly, notwithstanding some regulations, which still posed a threat to basic human rights of asylum seekers.

On the positive side, the newly established second instance of the Independent Federal Asylum Senate (Unabhängiger Bundesasylsenat) came up to its expectations. The appeal procedures of negative asylum decisions improved clearly, and the different senates regularly carried out additional fact-finding on individual cases and took into account information on "third countries" in its decisions. 17

- On 27 July the Austrian Constitutional Court, on request of the Independent Federal Asylum Senate, ruled that the provision providing for an appeal within two days was unlawful. The Constitutional Court pointed out that the two-day period was incompatible with the rule of law and changed the period for appeal to a minimum of eight days. 18

In the fall of 1998, a proposed amendment to the asylum law raised serious concerns about the rights of the majority of asylum seekers who attempted to enter Austria by land. This draft amendment provided that, by law, the neighboring countries of Austria were automatically qualified as "safe third countries." Substantial criticism by human rights groups led to a new proposal, which the Austrian parliament adopted. In it, the Minister of the Interior was given the right to issue a decree that the neighboring countries be "safe third countries." This formulation still substantially diminishes the chances of the majority of asylum seekers (who arrive by land) to be recognized as refugees.

In 1998, twenty percent of all asylum applications were handled in the accelerated asylum procedure. This procedure allows the Austrian state to return people arriving through "safe third countries," or whose claims were judged "clearly unfounded" without the full asylum procedure. However, the Federal Independent Asylum Senate decided in every third appeal that the accelerated procedure could not clearly assess that the application was "clearly unfounded"¹⁹ when the asylum seeker invoked fear of persecution.

Until the fall 1998 escalation of the Kosovo conflict, several asylum applications of Kosovo Albanians were rejected as "clearly unfounded." The asylum authorities argued with an expected peaceful solution of the conflict under the mediation of the international community, downplaying the individual, well-grounded fear of persecution. Authorities granted Kosovo Albanians only temporary protection against deportation despite the fact that the right to asylum could clearly be invoked by

refugees from Kosovo.²⁰

According to the UN Convention on the Rights of the Child, a child who is seeking refugee status shall receive appropriate protection and humanitarian assistance.²¹ Moreover, the 1997 Austrian Aliens Law²² provided that juvenile asylum seekers be accommodated in facilities other than police custody. Both the above-mentioned provisions notwithstanding, 773 youths ended up in police custody in Austria in 1998 and less than 40 juvenile asylum seekers were held in facilities for youths.²³ The practice to hold youths in custody also violated the regulations on police detention facilities (Polizeigefangenenhausordnung), which forbid the detention of youths under 16 years of age.

Moreover, by Austrian law, minors had to be guaranteed accommodation and care that corresponds their age and personal development. The fact that the European Committee for the Prevention of Torture (CPT) in its 1995 report criticized the conditions in Austrian detention facilities for foreigners added to the concerns.²⁴ In some cases, minors were taken into custody for the maximum legal period of six months.

- On 20 May, during the escalation of the Kosovo conflict, a 17-year-old Kosovo Albanian girl was taken into custody in Bruck/Leitha (Burgenland). Serbian forces had killed her father a couple of months prior to her arrival in Austria, and threatened and intimidated the girl and her sister. The girl's relatives living in Austria offered to take care of her, but authorities refused to release her until the girl's mental stability was seriously affected - and only following an order from the Ministry of the Interior. ²⁵

Minors were also sent back to their countries of origin without any prior assurances that they would receive appropriate protection, an act in violation of European standards. ²⁶

On 13 July two juveniles of the age between 16 and 18 were returned to Hungary. They ended up to the community shelter of Győr, a facility that has been heavily criticized by human rights groups.²⁷

Human Rights Defenders

The main achievement in 1998 was the establishment of an NGO human rights network. More than 20 Austrian-based NGOs, including the IHF, agreed to cooperate and coordinate their activities through this network. In June a catalog of demands to structurally embody human rights in Austria was submitted to the Austrian government. The Austrian government agreed to finance the post of a coordinator of the network for one year.

FOOTNOTES:

1. European Court of Human Rights, Case of Informationsverein Lentia and Others vs. Austria, 24 November 1993.
2. ainfo, April 1999, page 13.
3. Concerns in Europe: July – December 1998, Amnesty International.
4. Austrian Press Agency, 29 November 1998.
5. Polizeiübergriffe in Österreich 1997-1998, Helping Hands.
6. Ibid.
7. BGBl. III-120/1998
8. BGBl. 396/1976
9. For details, see IHF Annual Report 1996.
10. Roma Rights, Winter 1998, p.23.
11. Der Standard, 16/17 January 1999.
12. The International Lesbian and Gay Association, ILGA Bulletin 1/1998; www.ilga.org.
13. Based on information from Human Rights Without Frontiers, a cooperating organization of the IHF.
14. Der Standard, 7 September 1998, quoting the Austrian Minister of Interior.
15. BMI; Sektion III, Asylstatistik 1998, page 3.
16. See Gertraud Hödl, Petra Winter, Auf der Suche nach einem sicheren Hafen. Zur rechtlichen Stellung und Lebenssituation von Fremden in Österreich, IHF, 1998.
17. Anny Knapp, "Erfahrungen mit dem Asylgesetz," asylkoordination aktuell, No. 4, 1998.
18. Der Standard, 29 July 1998.
19. Anny Knapp, "Erfahrungen mit dem Asylgesetz," asylkoordination aktuell, No. 4, 1998.
20. Ibid.
21. see Convention on the Rights of the Child, article 22.
22. Article 66(1), Fremdengesetz 1997.
23. Neue Zeit, 12 May 1999.

24. Heinz Fronek, "Die Situation von unbegleiteten minderjährigen Flüchtlingen in Österreich," Studie aus dem Projekt: Entwicklung und Initiierung von Maßnahmen zur Unterstützung von unbegleiteten minderjährigen Flüchtlingen. Ein Beitrag zum UNO-Menschenrechtsjahr 1998, Vienna 1998, p. 107.

25. .Ibid., p. 108.

26. Ibid.

27. Profil, 15 June 1998. See also Hungary.

