

## **The Human Rights Advisory Board**

The Human Rights Advisory Board (HRAB) was established in 1999 in response to repeated recommendations by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). It consists of eleven members and the same number of deputy members, who are appointed by the Federal Minister of the Interior for an office period of three years. The members of the HRAB are not subject to directions when implementing their tasks - they are fully independent and act on an honorary basis.

The mandate of the HRAB is the monitoring and observation of all activities of the security services, the authorities under the Minister of the Interior and all bodies with power of direct command and compulsion. On the basis of its substantive and conceptual work with regard to the protection of human rights, it issues recommendations to the Minister of the Interior.

For the thorough evaluation of police activity with special emphasis on maintaining human rights standards, six expert committees have been set up, which are in charge of particular regions in line with the Austrian organisation of the courts. The committees visit and monitor all places of detention and other places under police control. They assumed their duties in July 2000.

The Federal Minister of the Interior has to provide the HRAB with the financial means necessary for implementing its tasks. A permanent Secretariat has been established in the Ministry of the Interior in support of the HRAB and its committees.

All bodies of the security services are obligated to cooperate with the HRAB and its committees. The committees must be provided with all information they require and be granted access to all files and all office rooms. Police agents are released from their duty to official secrecy.

### **Legal Foundation**

The importance for such a monitoring body to be independent has been emphasized by adopting a regulation on constitutional level.

§§ 15a, 15b and 15c of the Security Police Act as well as the Ordinance II 1999/395 (MRB-V) on its implementation contain provisions on the organisation and tasks of the MRB.

In accordance with the constitutional provisions of § 15a of the Security Police Act it is the responsibility of the MRB to monitor and examine on a continuous basis and from the human rights perspective the activities of the safety and security authorities, the authorities otherwise subordinated to the Federal Minister of the Interior and the bodies with direct administrative powers of command and compulsion. The MRB will become active on its own initiative or on request by the Federal Minister of the Interior. It has the task of submitting proposals for improvement to the Federal Minister of the Interior. The MRB is made up of eleven members and eleven deputy members, who are not bound by instructions in the discharge of their duties, i.e. they are independent.

§ 15b of the Security Police Act lays down that the members and deputy members of the MRB are appointed by the Federal Minister of the Interior for an official term of three years. The President of the Constitutional Court has the right to propose candidates for the office of the chairperson of the MRB, who has to be selected from among the members of the Constitutional and Administrative Courts as well as the circle of persons having the right to teach at Austrian universities. The Federal Chancellor and the Federal Minister for Justice propose one candidate each. Five members (deputy

## **Austrian Delegation to the Human Dimension Seminar 2009**

### **Written Contribution**

#### **The Human Rights Advisory Board**

members) are proposed by private non-profit organisations dedicated to the safeguarding of human rights. The remaining three members (deputy members) are appointed by the Federal Minister of the Interior without proposals. The members of the MRB exercise their offices on an honorary basis. § 15, clause 1, subclause 2 of the Security Police Act provides for the following reasons of termination: expiration of term, dismissal by the Federal Minister of the Interior, resignation or death of the member.

In accordance with § 15c of the Security Police Act, the MRB is entitled to instruct delegations or committees to pay calls to all services of the security forces and all places, where administrative command and compulsion powers are exercised by the security forces. A delegation consists of members or deputy members appointed by the MRB. To monitor the arrest of people in services of the security forces, committees have to be established. Adequate regional representation has to be ensured in the number of committees required to guarantee the performance of tasks. A committee consists of experts appointed by the Advisory Board and is headed by a personality of renown in the field of human rights who may be called in and appointed in advance or on specific occasions by the MRB. The security forces are obliged to support the MRB in the performance of its activities. The head of a service visited has to grant inspection into files and give information. There is no duty to official secrecy in this respect. The delegation or committee has to be granted access to all rooms of the service. Furthermore, the request by the delegation or committee to contact detained persons without the presence of third parties has to be complied with.

The means necessary to carry out the tasks of the MRB (staff, operating expenditure) have to be provided to MRB by the Federal Minister of the Interior (§ 15c, clause 5 of the Security Police Act).

After consultation of the Advisory Board, the Federal Minister of the Interior has to enact rules of procedure for the MRB by ordinance. The chairperson will have the casting vote in the case of equality of votes; the rules of procedure will also lay down the procedures and the taking of minutes for meetings, decision-making in preparing recommendations, criteria for establishing qualified minority opinions and the realisation of visits to services by delegations and committees (§ 15c, clause 6 of the Security Police Act).

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Further provisions on the committees of the MRB are included in §§ 15 and 16 of the rules of procedure (Art 1 MRB-V). They stipulate inter alia:

The committees have to monitor the arrest of people in offices of the security forces. For the district of the Intermediate Court Vienna three committees and for every other district one committee will be set up. They have to monitor the envisaged exercise of administrative command and enforcement powers by the security forces on request of the MRB and in urgent cases on request of the MRB's chairperson.

The committees are made up by five to eight members. Personalities of renown in the field of human rights will be appointed to head the individual committees. The other members of the committee are appointed by the Advisory Board on proposal by the heads. In this context, it is a sine qua non that the expert knowledge required to carry out the duties is available within the committees. Furthermore, attention has to be paid to a balanced representation of both sexes, in any case

## **Austrian Delegation to the Human Dimension Seminar 2009**

### **Written Contribution**

#### **The Human Rights Advisory Board**

appointment of at least one woman for every committee is compulsory. In the exercise of their duties, the committees will make use of the secretariat established for them.

The MRB has to issue guidelines on the structure, operational procedures and visits of the committees; in particular they have to include provisions on the composition and operational procedures of the committees during visits and on reporting to the MRB.

The visits of the committees will take place on a regular basis and cover the entire Austrian territory on the one hand and in the event of specific circumstances brought to its knowledge on the other hand. They do not have to be announced in advance. The committees have to report the MRB on every visit made. These reports have to state the facts determined, measures deemed necessary by the committee as well as recommendations.

In accordance with § 17 of the rules of procedure of the MRB, it shall prepare a yearly report on its activity, including the activities of the committees. In this context § 513 of the Security Police Act stipulates that the recommendations made by the MRB to the Federal Minister of the Interior in the respective year have to be included in the (annual) security report of the Federal Government to the Nationalrat.

#### **Historical Background**

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited Austria for the first time in 1990.

Its subsequent report contained a recommendation to the Austrian authorities to create an independent body entrusted with the regular inspection of the conditions of detention in all police detention centres. On the occasion of its second visit in 1994, the CPT reiterated and specified this recommendation. In response to the publication of the CPT's report, the Federal Government drafted the necessary legal foundation for the implementation of such an independent body in June 1996.

The Notes to the Bill on a Security Act Amendment submitted by the Federal Government in November 1998 to the Nationalrat (Austrian Parliament) stated, however, that the HRAB's functions as envisaged in the respective bill are not to be limited to monitoring detention. It was suggested that the HRAB should monitor all activities of the security authorities from the perspective of human rights and submit proposals for improvement to the Federal Minister of the Interior.

When Marcus Omofuma, a Nigerian criminal detainee seeking unjustified asylum in Austria, came to death in police custody in the course of his deportation to Bulgaria in May 1999, the efforts to create a body safeguarding human rights were intensified. The Federal Minister decided to set up such an advisory board by ordinance before the adoption of the above-mentioned Amendment of the Security Police Act. A few days after establishment of the Advisory Board on 5 July 1999, the Nationalrat adopted the 1999 Amendment of the Security Police Act, which inter alia contains provisions on the HRAB. The provisions entered into force on September, 1st 1999.

#### **Structure**

The HRAB is composed of eleven members and the same number of deputy members, which are formally appointed by the Minister of the Interior for an office period of three years.

## **Austrian Delegation to the Human Dimension Seminar 2009**

### **Written Contribution**

#### **The Human Rights Advisory Board**

The chairperson and his or her deputy are proposed by the Austrian Constitutional Court from the members of the Constitutional or Administrative Court or from the constitutional law professors of the Austrian Universities.

The following institutions also nominate one member and deputy member each:

- The Federal Chancellor
- The Minister of Justice
- Five private, non-governmental organisations, which are devoted to safeguarding human rights

Three more members and deputy members are appointed by the Minister of the Interior without prior nomination.

#### **Field of activities**

The HRAB's mandate goes beyond the recommendations issued by the CPT (compare "2. Historical Background").

On the one hand, the HRAB does not limit its monitoring activities to the situation of detained persons. All activities of the security services can be investigated from the viewpoint of safeguarding human rights. The HRAB sets its own priorities in this line of work.

On the other hand, the HRAB does not only report single grievances. It engages in a substantive and conceptual work in order to issue proposals for improvement to the Minister of the Interior. These proposals target particular aspects of the security services' duties as well as their organisational framework. Consequently, the proposals by the HRAB are aimed at a structural and institutional level. This clearly distinguishes the HRAB from criminal courts and disciplinary bodies.

The emphasis of the HRAB's activities lies on identifying possible structural deficiencies, which may, however, be done on the occasion and by the example of significant individual cases. Furthermore, it has to carry out a preventive function in the exercise of duties of the security services by making appropriate improvement proposals as contemplated by the human rights legislation. Therefore, the HRAB's main task is to analyse the structural foundations of police activities from the human rights perspective. This means in particular to understand grievances and intrusive behaviour not as isolated one-time incidents but as rooting in the system.

Yet the HRAB is not limited to the general and non-binding. Its task is to ensure the evaluation of the whole sphere of governmental responsibilities from the perspective of human rights comprehensively all over Austria. Therefore, it uses regionally organised expert committees (compare The Committees of the HRAB). These committees have to do the actual work of "monitoring the arrest of people in representations of the security forces" locally by serving "as the instrument of the HRAB".

The security services are obligated to support the HRAB in its work. The committees must be granted access to all files and all information they require. Police officers are released from official secrecy in this case. The delegation or commission must furthermore be granted entry in all office rooms and they must be allowed to talk to detainees in private.

According to § 13 MRB-V, the HRAB can set up working groups, which are entrusted with the preparation, analysis and consideration of certain topics before the following session. External experts may also be members of these working groups.

## **Austrian Delegation to the Human Dimension Seminar 2009**

### **Written Contribution**

#### **The Human Rights Advisory Board**

Finally, the HRAB publishes one annual report on its activities, including the activities of the committees (§ 17 MRB-V). The Security Act guarantees that the recommendations made by the HRAB are included in the annual Security Report by the Federal Government to the Austrian Nationalrat (Austrian Parliament).

### **Reports**

The HRAB has since published the following reports:

- Report on "problematic deportations"
- Report on the problem of minors as immigration detainees
- Report on human rights issues in the context of the detention of women
- Report on the problem of information of detained persons
- Report on the medical care of detained persons
- Comments on the order of the Federal Minister of the Interior regarding the provision of federal care for asylum seekers and the asylum legislation 2004
- Report on the conditions of detention in police cells
- Study and report on the habitual language use of police officials
- Report "Use of police force - fixation methods - positional asphyxia"
- Report on appropriate state's response on alleged human rights violations
- Annual activity reports

In addition to that, the HRAB has issued recommendations to the Federal Minister of the Interior on the following topics: discriminating use of language by the security services, large-scale police operations, immigration detainees in hunger strike, border police posts, immigration detainees in prisons and detaining married couples together.

The reports and recommendations in German can be downloaded here

[http://www.menschenrechtsbeirat.at/cms/index.php?option=com\\_content&task=category&sectionid=10&id=45&Itemid=74](http://www.menschenrechtsbeirat.at/cms/index.php?option=com_content&task=category&sectionid=10&id=45&Itemid=74)

### **Commissions**

The HRAB's commissions and delegations can visit any place under control of the security services. The monitoring of detention in police stations or police detention centres has to be effected by the commissions. In addition to that, the commissions can observe the exercise of power of direct command and compulsion (demonstrations, raids etc.). According to § 15c of the Security Amendment Act, the HRAB has to set up as many committees as necessary for fulfilling its mandate. Every commission is in charge of a particular region in line with the organisation of the Austrian courts. Accordingly, they are based in Vienna (3), Graz, Salzburg and Innsbruck.

### **The Composition of the Commissions**

The six commissions consist of at least five and at most eight members each. The chairperson of each commission is appointed by the HRAB from persons who are actively engaged in the field of human rights. The other members are appointed by the HRAB on the proposal of the chairpersons. In the

## **Austrian Delegation to the Human Dimension Seminar 2009**

### **Written Contribution**

#### **The Human Rights Advisory Board**

composition of the commissions, explicit attention was given to equal representation of both sexes and of all relevant professions. Experts who are members of the security services have been excluded from the committees.

Up to now, the HRAB has appointed six chairpersons and five further members for each commission. The commissions took up their work in July 2000.

#### **The Tasks of the Commissions**

The tasks of the commissions are to monitor the detention of persons in all places under police control. They also observe instances of direct command and compulsion by the security services. Since the commissions function as "the instrument of the HRAB", the focus of their activities lies on identifying possible structural deficiencies, which may be done on the occasion and by the example of significant individual cases. Furthermore, they act preventively by making appropriate proposals of improvement for the exercise of duties of the security services.

The commissions' visits take place regularly and comprehensively all over Austria. They may also be occasioned by grievances the committees have become aware of. Visits need not be previously announced.

The visits can be carried out by the whole commission or by a delegation thereof, which must consist of at least two members. Every delegation must possess the necessary legal-administrative and medical-psychological know-how.

All bodies of the security services are obligated to cooperate with the HRAB and its commissions. The commissions must be provided with all information they require and be granted access to all files and all office rooms. Police agents are released from keeping the official secret. Furthermore, the commissions must be allowed to talk with certain detainees in private if they so wish.

The commissions report to the HRAB on all missions undertaken. These reports must contain in particular all collected data and facts as well as the measures deemed necessary by the committee and its further recommendations.

#### **Essays about the HRAB**

Below you can find a number of articles about the Human Rights Advisory Board in English. The most current essay by Ursula Kriebaum analyses the organisation, mandate and work of the Austrian Human Rights Advisory Council and its six Commissions bearing in mind the criteria for national preventive mechanisms formulated in Articles 17 to 23 of the Additional Protocol to the UN Convention against Torture. Ursula Kriebaum is a former deputy member of the HRAB.

[\*Ursula Kriebaum, The Austrian Human Rights Advisory Council \(2004\)\*](#) in *Harald Christian Scheu/Stanislava Hýbnerová (Ed.)*, International and National Mechanisms against Torture, Právnická fakulta UK Praha, 2004.

[\*Walter Suntinger, The Human Rights Advisory Council in Austria \(2002\)\*](#)

[\*Wolfgang Benedek, The Austrian "Menschenrechtsbeirat" \(2002\)\*](#)

[\*Gerhart Holzinger, The Human Rights Advisory Board of the Ministry of the Interior \(2000\)\*](#)