



## WRITTEN STATEMENT

by

## HOMOSEXUAL INITIATIVE (HOSI) VIENNA

to the

### Supplementary Human Dimension Meeting

### FREEDOM OF ASSEMBLY, ASSOCIATION AND EXPRESSION: FOSTERING FULL AND EQUAL PARTICIPATION IN PLURALIST SOCIETIES

Vienna, 29-30 March 2007

#### *Freedom of expression under serious threat in Austria Aftermaths of the dark years of the rightwing government still to be felt today*

The situation regarding freedom of expression and opinion in Austria had seriously deteriorated during the period of the conservative/right-wing (ÖVP/FPÖ) government between 2000 and 2006. Politicians of Jörg Haider's "Freedom Party" (FPÖ) had filed hundreds of law suits for libel/defamation against critical journalists, representatives of other political parties, and political opponents, including NGOs. The sheer number of these law suits is unbelievable.

This also caused harsh criticism expressed in the 2000 report of the three wise men Martti Ahtisaari, Jochen Frowein and Marcelino Oreja, mandated by Austria's 14 European Union partners to examine thoroughly the commitment of Austria's (then) government to the common European values.

In paragraphs 93-103 of their report, the three wise men actually describe and heavily criticise how the FPÖ had systematically used libel procedures and court cases to intimidate journalists and political opponents and, thus, to suppress criticism and freedom of opinion and expression. This intimidating practice was also highlighted in one of the three wise men's general conclusions (para. 112 of the report).

FPÖ party-leader Jörg Haider's "personal" lawyer, Dieter Böhmendorfer, whose law firm was dealing with most of these libel suits, later became Federal Minister for Justice.

The situation was aggravated by the fact that the government had "willing executioners" in the justice system, disguised as "independent judges". Again, this was strongly criticised by the three wise men (para. 99 of their report).

The avalanche of law suits against critical journalists and representatives of civil society and political opponents had a devastating impact on freedom of expression in the country. Only a few rich and powerful media could afford to get dragged into these costly and long lasting court cases - on an average, such a court case could easily cost 25,000 euros; and if a case has had to be brought to the European Court of Human Rights (ECtHR), the average duration of getting a final judgment in Strasbourg is around eight years. As a result of this systematic intimidation, many journalists and media exercised an extensive self-censorship and refrained from any critical reporting about the government in general and the FPÖ and their activities in particular. This situation has improved only recently with the Freedom Party and its split-off, the BZÖ, voted out of government in 2006.

In addition, the first judgments of the ECtHR in Strasbourg dealing with convictions by Austrian courts in such libel cases were recently handed down, and Austria was convicted, on a long series of occasions, for violating the European Human Rights Convention.

As a result of these many successful applications in Strasbourg, a debate has started as to amend the relevant legislation to give stronger legal guarantees regarding the right to freedom of opinion and expression, and to limit the discretion of the judiciary to interpret the libel provisions in the law. Moreover, too little has been done to train the judges to apply correctly the European Human Rights Convention with regard to this fundamental right, and to remove those judges from the judiciary who are unwilling and reluctant to respect the Convention.

Later, even conservative politicians followed the bad example of the Freedom Party, and also Homosexual Initiative (HOSI) Vienna became a victim of this strategy of intimidation: an ÖVP member of Parliament sued our organisation for libel. Our case was also cited in the advance summary of concerns submitted by the London-based NGO "**ARTICLE 19 - Global Campaign for Free Expression**" to the United Nations Human Rights Committee which will soon consider Austria's fourth periodic report submitted to this Committee pursuant to Article 40 of the International Covenant on Civil and Political Rights:<sup>1</sup> "ARTICLE 19" writes:

*We are concerned that this is indicative of **a systematic failure in the Austrian domestic legal and justice system** to strike the correct balance between freedom of expression and the protection of reputation. Defamation continues to be a criminal offence in Austria, which we strongly believe is a problem in itself and potentially one of the root causes of the failure of the system. Two other issues raise concern: the high numbers of claims brought by politicians, and an apparent judicial bias towards them; and a recent trend in members of the judiciary suing for defamation.*

*There was an unprecedented number of cases brought by politicians after the right-wing Freedom Party (FPÖ) entered into a coalition government with the People's Party (ÖVP) in 2000. The formation of the new coalition government and the subsequent imposition of EU sanctions led to heated debate. Dozens of*

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<sup>1</sup> [www.article19.org](http://www.article19.org); [www.ohchr.org/english/bodies/hrc/hracs89.htm](http://www.ohchr.org/english/bodies/hrc/hracs89.htm)

*media, intellectuals, artists and even student groups who expressed criticism of the new government were sued for defamation or insult, particularly by politicians of the Freedom Party and their former leader, Jörg Haider, and got convicted. Examples include university professor Anton Pelinka, who was convicted for blaming Haider of 'down-playing' National Socialism; the Socialist Youth for writing that Haider 'tolerated' and 'allowed' a certain 'closeness' of himself and his party 'to the tradition of fascism'; and the Green party's newspaper for publishing a caricature of a FPÖ politician in a brown Nazi shirt making an obscene gesture. Even the producers of the game 'Trivial Pursuit' were sued and convicted for defamation for printing on one of the game's playing cards that Haider consistently referred to concentration camps as 'punishment camps', thereby generating public anger.*

*While this wave of cases brought by politicians has subsided to some extent, criminal defamation laws continue to impinge on legitimate public debate. For instance, in April 2006, the Viennese NGO 'Homosexual Initiative of Vienna (HOSI Wien)' was convicted under both the criminal and civil defamation law for referring to an ÖVP politician as an 'intellectual descendent' of the Nazis in one of their press statements. The politician had defended and justified his party's refusal to amend the Federal Nazi Victims Compensation Act (Opferfürsorgegesetz - OFG) to include Nazi victims persecuted on the grounds of their homosexuality, which would have granted them a legal entitlement to compensation. HOSI has appealed the criminal conviction (the case is now pending at the second instance) but has refrained from pursuing the civil case because it cannot afford the legal costs. It is collecting donations to be able to take the case to the European Court of Human Rights in Strasbourg.<sup>2</sup>*

*We are very concerned that this use of defamation law has a severe chilling effect on the exercise of the right to freedom of expression. Even though fines imposed usually are not existentially threatening and prison sentences are no longer applied, the legal costs of the court cases can be prohibitively high. Moreover, the possible criminal conviction is a harsh measure with serious consequences for the individual, and often grossly disproportionate to the harm caused by the statement - even more so if applied for criticism that is legitimate in the context of political debate in a democracy.*

**HOSI Wien also strongly believes that there is a structural problem here, and the right to freedom of opinion and expression must be more clearly defined and guaranteed by Austria's legislation. This structural problem and the systematic failure described by "ARTICLE 19" paved the way and made it possible for a rightwing and extremist government ignoring fundamental human rights to transform Austria into a banana republic in the field of freedom of expression, a condition Austria is only slowly recovering from - first of all thanks to the rulings of the European Court of Human Rights.**

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<sup>2</sup> <http://www.hosiwien.at/sos/> or in English: [www.hosiwien.at/sos/index\\_e.html](http://www.hosiwien.at/sos/index_e.html)