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Vienna 5th June 2008



Statement from Amnesty International

The Human Rights Organisation, Amnesty International stands up for the Ten imprisoned Animal Protectionists

In a two page statement the organisation describes a string of offences against Austrian criminal law.

Amnesty International emphasises, once again, that political and social activism as a freedom of expression is a protected human right.

The statement criticises the use of sec 278a of the criminal code for demonstrators noting "It seems inadequate to postulate a group involved in organised crime from a situation where a number of demonstrators arrange to resist state authority".

Amnesty International pointed out that well known environmental organisations such as Greenpeace, for example, that might engage in actions such as occupying an atomic power plant could be said to have committed an offence under this law in doing so, and that as a consequence those who donate to their organisation could be charged with financing terrorism under criminal law.

It is also pointed out that the term "organised crime" is characterised by the intent to enrich oneself and refers to the gravest crimes, for which the intention to maximize profits is characteristic (drug trafficking and smuggling, weapons trafficking and smuggling, theft and trafficking of stolen art work, procuration of prostitutes, trafficking in human beings, illegal gaming and gaming fraud, protection rackets, money laundering and so on).

The appropriateness of the house searches also came under criticism, in particular the reports that those held in custody were refused their right to contact a lawyer of next of kin

Amnesty International is concerned about, and has strongly criticised the claim from Public Prosecutor that no allegations are aimed at organisations, whilst searches of offices rendered many organisations unable to function due to seized technology, equipment and data

[View a translation of the complete statement below.](#)

[For the original document in German](#)

Translation of the statement from Amnesty International:

(1) Amnesty International can of course make no statement with regard to whether the accused are guilty of the criminal acts of which they are accused (criminal damage to property, duress, menacing threat) and would like to remind here of the presumption of innocence anchored in the European Convention on Human Rights (Article 6 para 2) and in the Austrian Code of Criminal Procedure (Sec 8).

(2) Amnesty International states here firstly that in terms of human rights all nations have the obligation to protect people's physical integrity property, and that freedom of opinion has its limits where others' rights are violated. Laws protecting people's physical integrity and property thus are valid for active members of civil society as a matter of course, regardless of the issue they are committed to working for.

As an embodiment of the freedom of expression, political and social activism – no matter for which issue – enjoys special protections only so long as it is non-violent and respects the human rights of others. Commitment to a cause does not justify damaging property or threatening people. Criminal investigations or other measures taken against members of civil society are therefore not problematic in and of themselves from the human rights perspective.

(3) Amnesty International does, however, state that the case at hand manifests concerns that our organisation previously expressed in a position paper on the Austrian Criminal Code Reform Act (Strafrechtsänderungsgesetz) of 2002 with regard to the criminal offences stipulated in Sec 278 et seqq. relating to criminal associations or organisations:

Whilst Amnesty International recognises the necessity of amending the Austrian Criminal Code to harmonise with the UN Convention on Transnational Organized Crime, in our view this amendment was effected in a disproportionate manner that exceeds the standards of the UN Convention. In connection with the draft version of Sec 278 of the Criminal Code, Amnesty International has already previously stated that although criminal offences such as resistance to state authority or serious damage to property are most certainly not socially adequate behaviours in a democratic society and must be prohibited by criminal law in any event, it seems inadequate to postulate a group involved in organised crime from a situation where a number of demonstrators arrange to resist state authority.

In our position paper on the Criminal Code Reform Act of 2002, Amnesty International warned that the new catalogue of offences relating to organised crime and terrorism was formulated in an exaggerated manner. Amnesty International pointed out that well-known environmental organisations such as Greenpeace, for example, that might engage in actions such as occupying an atomic power plant, could be said to have committed an offence under this law in doing so, and as a consequence those who donate to their organisation could be charged with financing terrorism under criminal law.

Amnesty International points out that the term "organised crime" is characterised by the intent to enrich oneself and refers to the gravest crimes, for which the intention to maximise profits is characteristic (drug trafficking and smuggling, weapons trafficking and smuggling, theft and trafficking of stolen art work, procuration of prostitutes, prostitution, trafficking in human beings, illegal gaming and gaming fraud, protection rackets, illegal dumping of dangerous materials, illegal transfer of technology, money laundering, and terrorism; see also Article 5 (1) of the UN Convention on Transnational Organized Crime).

Amnesty International calls attention to the fact that intent to enrich oneself does not exist in the case at hand. The information available to us indicates that the Public Prosecutor also does not claim that there is such an intent. Amnesty International is, therefore, irritated that the allegedly specific evidence has not resulted in criminal proceedings on the grounds of damage to property, duress or menacing threat, but that charges related to a general crime of membership in a criminal organization, the vagueness of which crime we perceive to be problematic, are apparently being pursued instead.

(4) With respect to the house searches and seizures, Amnesty International makes reference to the human rights imperative of appropriateness, which has also found expression in the Austrian Code of Criminal Procedure. Existing accounts of the situation raise doubts with respect to the appropriateness of how the house searches and arrests were made by the police. Therefore, Amnesty International urgently recommends an independent and unbiased investigation of these measures and expressly welcomes the initiation of appeal procedures by defence counsel. With reference to Article 4 para 7 of the Personal Freedoms Act (Bundesverfassungsgesetz über den Schutz der persönlichen Freiheit, PersFrG), Amnesty International believes that particular attention must be paid to the fact that those held in custody have reported that the authorities have refused to allow them to contact legal counsel.

Amnesty International also points out that the search warrant (which is at our disposal) does not clearly indicate which evidence was to be secured. The expression "electronic storage media as well as relevant documents and objects" is very general in its wording. Amnesty International has observed the use of such pre-written text blocks as substantiation for infringements of fundamental freedoms in other contexts, and fears that the use of such gives rise to doubts about how carefully the human rights boundaries are observed in individual cases.

(5) Amnesty International is concerned about reports which indicate that the extent and nature of the house searches and seizures were such as to possibly impede the legitimate work of legal civil organisations. While the Public Prosecutor responsible for this case stresses that the allegations of criminal offences are not directed at any associations, the reports we have received indicate that the seizure of materials in the associations' offices were carried out in a manner that has left them deprived of the resources (e.g., donor databases) they would require in order to continue working.

In this context, Amnesty International stresses that criminal investigations against individuals should not be mingled with any membership in institutions or associations of civil society that they might have. Every effort must be made by the authorities to avoid creating the impression that they consider it at least acceptable to have impeded the work of legal associations.

(6) Amnesty International is concerned about information received from the accused's legal counsel, according to which access to the files was limited to an extent that specific information was not available, not even regarding what is claimed to be the 'reasonable suspicion' (dringender Tatverdacht) or the 'probable cause' (Haftgrund) for the arrests. Thus, the information that is necessary for the defence of those being held and for any questioning of their custody is being withheld from their lawyers.

Amnesty International points out that under Article 5 para 2 of the European Convention on Human Rights, every person under arrest must be informed promptly of the reasons for their arrest and of the nature of the accusations being made against them. Pursuant to Sec 51 para 2 last sentence of the Austrian Code of Criminal Procedure, following the ordering of investigative custody, it is not permissible to restrict access to documents that the accused requires in order to defend himself in an appeal against the 'reasonable suspicion' held against him and the 'probable cause' being given for his arrest.

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