

European Court of Human Rights

No Protection for Abused Juvenile

Application of a 16year-old victim of Art. 209 against Vienna police declared inadmissible

As revealed lately the European Court of Human Rights refused to deal with the application of a 16year old gay adolescent, on whom was diagnosed a contusion of the head after he refused to name his sex-partners during a nightly four hours interrogation by detectives of the Vienna Police Department. Also the fact that in Austria the application of the juvenile had been decided by an official of the Vienna Police Department only is no problem for the Strasbourg judges.

The case *R.R. vs. Austria* (Appl. 46608/99) started when in an evening in fall 1996 the young man arrived at a Vienna hospital and complained about headache and vertigo. He told the doctors that he had been beaten on his head by police officer when he refused to name his sex-partners during a four hours interrogation the night before. The doctor on duty diagnosed a contusion of the head. The hospital made a report to the police.

The Vienna state prosecution office dropped the case against the detective (who himself already had a criminal record).

The adolescent applied to the Independent Administrative Senate, where just an official of the Vienna Police Department decided on this application against the Vienna Police Department. The officer rejected the application against his own police authority on the ground that there were no visible injuries. Before the Senate not only the doctor of the hospital repeated his diagnoses of a contusion of the head but also the father of the juvenile confirmed that R.R. did not leave their home between the interrogation at the police and the visit of the hospital and that nothing happened in the home what could have caused the contusion.

The Constitutional Court as well as the Administrative High Court refused to even deal with the application against the rejection. Despite the fact that the Constitutional Court itself in another case expressly declared that the official who rejected the application due to his affiliation to the Vienna Police Department could not be regarded as independent (VfGH 02.10.1997, B 2434/95).

Dashed hopes for justice

The adolescent hoped to find justice at the European Court of Human Rights (ECHR) and has been disappointed bitterly.

According to the case law of the ECHR a human rights violation is established if someone incurs injuries while staying with the (police) authority, unless the authority provides a plausible different explanation for the injuries (cf. for many others *Ribitsch vs. Austria*, 04.12.1995; *Hugh Jordan vs. UK*, *McKerr vs. UK*, *Kelly and others vs UK and Shanaghan vs. UK*, 04.05.2001; *Altay vs. Turkey*, 22.05.2001; *Abdurrahman vs. Turkey*, 14.02.2002). In addition the ECHR requires independent inquiries into such allegations and qualifies a lack of such independent inquiries as well as a violation of the Convention (cf. for many others *Hugh Jordan vs. UK*, *McKerr vs. UK*, *Kelly and others vs UK and Shanaghan vs. UK*, 04.05.2001; *Paul & Audrey Edwards vs. UK*, 14.03.2002).

R.R. proofed the contusion of the head and that he sustained it during his stay at the police department. Nevertheless now three judges of the ECHR (among them the Austrian judge Dr. Elisabeth Steiner) – despite their own case-law – decided not to deal with the application of the juvenile. In a letter to the adolescent he is informed that the Court could not find “any appearance” of a violation of the Convention. This decision is final; no correspondence will be carried on it and the files will be destroyed one year after.

“We are deeply disappointed”, comments Dr. Helmut Graupner, president of the Austrian lesbian and gay rights organisation *Rechtskomitee LAMBDA* and representative of the applicant, “This decision not only leaves this juvenile unprotected but turns out as a European-wide license for torture not resulting in visible injuries”.

Rechtskomitee LAMBDA (RKL), founded in 1991, on a supra-partisan and denominational level is working for the implementation of human rights for homo- and bisexual men and women. In its honorary board it convenes so prominent members as the Chairman of the Social-Democratic Party of Austria (SPÖ) Dr. Alfred

Gusenbauer, President MP Peter Schieder, MP Mag. Terezija Stoisits (Green Party), the well-known child and adolescent psychiatrist Univ.-Prof. Dr. Max Friedrich and the Ombudspersons for Children and Adolescents of Vienna DSA Monika Pinterits und Dr. Anton Schmid, the Secretary General of Amnesty International Austria Mag. Heinz Patzelt and the well-known human rights experts Univ.-Prof. Dr. Manfred Nowak and Dr. Lilian Hofmeister, the sexologists ao.Univ.-Prof. Dr. Josef Christian Aigner and Univ.-Lekt. Dr. Rotraud Perner, the theologian Univ.-Prof. Dr. Kurt Lüthi, entertainer Günter Tolar and many more.

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UN-Anti-Torture Convention 1984

Art. 1 “For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. ...”

European Convention on Human Rights 1950

Art. 3 “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

European Court of Human Rights 2001

„The Court re-iterates that Article 3 enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment ... Articles 2 and 3 ... rank as the most fundamental provisions of the Convention,, (*Z. and others vs. UK*, 10.05.2001, par. 73, 109)
