

German-Speaking Countries and Human Rights: Austria, Germany and Switzerland

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Countries where German is spoken have generally similar approaches to human rights and embrace international human rights instruments, such as the International Court of Justice, the European Convention of Human Rights,¹ and the Geneva Conventions that set the standard for human rights. Germany has a strict legal code defending human rights since the extremes of World War II and the National Socialist regime. The constitution, the “Grundgesetz,” of 1949, has as its first sentence, “Human dignity is inviolable.”² Austria, the Hapsburg Empire before 1918, existed for most of its history as a multicultural entity where human rights, especially cultural expression and language use for its many nationalities, were hotly debated already in the 19th century. The bill of rights is the “Basic Law on the General Rights of Nationals of the Kingdoms Represented in the Council of the Realm,” issued by Emperor Franz Josef in 1867.³ Constitutional civil liberties thus originated as an imperial edict predating the constitution; the contemporary adjustment is that the European Convention of Human Rights is directly applicable in constitutional law in Austria. Switzerland is one of Europe's oldest democracies where human rights are constitutionally guaranteed.

Switzerland supports all international human rights instruments, is the depositary state of

¹ Hellenic Resources Network, “The European Convention on Human Rights and its Five Protocols”, 27 Sept. 1995. <http://www.hri.org/docs/ECHR50.html> (1 Sept. 2008).

² General Electric's Germany & Europe RoundTable, “Basic Law for the Fed.Rep. of Germany,” 17 August 1993. <http://www.psr.keele.ac.uk/docs/german.htm> (1 Sept. 2008)

³ Bundeskanzleramt Rechtsinformationssystem, “Constitution of Austria” 2008. www.ris.bka.gv.at/erv/erv_1867_142.pdf (1 September 2008).

the Geneva Conventions and the headquarters of human rights-related NGOs, including the Red Cross.

But, in all of these developed democracies, the press and Amnesty International report cases of alleged abuse, involving attacks by extremist groups and the use of excessive force by the police, especially against foreigners, and problems with police accountability measures. These issues and efforts at reform are the topics of this exploration of human rights.

Austria

Austria follows the “European Convention on Human Rights,” adopted under the auspices of the Council of Europe in 1950 to protect human rights and fundamental freedoms. The first section guarantees a fair trial and forbids discrimination because of sex, race, color, language, and religion. Any person in Europe who feels his or her rights have been violated under the Convention by a state party can take a case to the Court, giving the individual an active role on the international arena.

Austria has, however, been cited for cases of extreme brutality during arrest, with treatment amounting to torture. It is legal to use extreme force in subduing detainees, or in force-feeding detainees if their health is threatened by a fast. An example is Cheibani Wague, a refugee in Austria detained for involvement in a fight by the police, and who died from lack of oxygen in 2003.⁴ Video footage from a bystander portrayed gross negligence on the part of the policemen, who used their own weight to press him to the

⁴Amnesty International, “Document: Austria. Court delivers verdict in Case of Cheibani Wague,” 9 Nov. 2005.
<http://www.amnesty.org/en/library/asset/EUR13/002/2005/en/dom-EUR130022005en.html> (1 September 2008).

ground, as well as by the doctor who was attending. The policemen and doctor were given suspended sentences or acquitted.

That notwithstanding, Austria has a large population of refugees and many organizations helping refugees, such as the Vienna Social Fund, the Catholic organization ‘Caritas,’ and „Agentur no_milk///no_honey“ which provided temporary housing tents for homeless refugees.⁵ For the celebration of Mozart’s birth in 2006, the American director Peter Sellars organized a festival for refugee and integration projects named after Mozart’s Freemason Lodge, ‘New Crowned Hope,’ and invited artists and architects to take part in the competition. One project at the ‘Integration House Vienna,’ where refugees receive counseling and training, includes rooftop meeting space as well as a stage, because foreigners are allowed to work on artistic projects such as plays.⁶

Germany

Germany has the most direct pronouncement in its constitution about human rights: "Human dignity is inviolable," and the right of asylum is constitutionally guaranteed. Germany sees itself, however, as a “wehrhafte Demokratie” (democracy that defends itself)⁷; neo-fascists or other groups perceived to threaten democracy are not covered by human rights legislation. In 1994, a paragraph explicitly forbidding denial of Nazi crimes was added. Several extremist parties, such as the ultraconservative National Democratic Party of Germany (NPD) and the communist platform of the Left Party, are

⁵ Social Impact Austria, “Social Impact – Kunst und Aktionsforschung” 2003. <http://nomilk.social-impact.at/frame.html>, (31 August 2008).

⁶ Holzinger, Gregor et al, “Welcome to Vienna, the roof garden project of Integrationshaus Wien”, p. 282-300 in *New Crowned Hope*, Folio Verlag: Vienna, 2007.

⁷ Konrad Adenauer Stiftung, ‘Wehrhafte Demokratie’, 20 June 2008. <http://www.kas.de/wf/de/71.6249/> (1 Sept. 2008).

under surveillance by the German authorities, and even the Church of Scientology is under suspicion for the alleged goal of infiltrating the government.

Refugees flock to Germany; about 180,000 illegal⁸ as well as legal aliens are presently in Germany. The number of refugees overwhelmed German institutions after the fall of the wall in 1989. In 1992, 60% of the refugees coming to Europe were headed for Germany, where they were housed until their cases were heard. Asylum law was then changed in 1993 to restrict the right to asylum.⁹ Many are placed in holding areas, often close to the airport at which they arrived, and are not allowed to work. A recent case in which asylum was granted: on July 23, 2008, the Federal Office for Refugees repealed its decision to forcibly return Mohamed A. Ferah, who had arrived in May from Eritrea, but his application had been rejected.¹⁰

The plight of refugees is still uncertain in Germany. Since Saddam Hussein was deposed, for example, the refugee status of thousands of Iraqis has been rescinded despite the security situation in Iraq. The United Nations refugee agency (UNHCR) criticized Germany on August 22, 2008 for first allowing and then withdrawing their refugee status.¹¹

⁸ Deutsche Welle, "Afghan refugees live Precariously in Germany" 30 April 2007. <http://www.dw-world.de/dw/article/0,2144,2462390,00.html> (1 September 2008).

⁹ Sam Blay et al, "Recent Changes in German Refugee law: a critical assessment", *American Journal of International Law*, 4/94, The 'Lectric law Library, 2006. <http://www.lectlaw.com/files/int07.htm> (1 Sept. 2008).

¹⁰ amnesty international belgique, "isavelives," 25 July 2008. <http://www.isavelives.be/en/taxonomy/term/298>, (31 August 2008).

¹¹ Deutsche Welle, "United Nations Agency for Refugees Criticizes Germany," 22 Aug. 2008, <http://www.dw-world.de/dw/article/0,2144,3586145,00.html> (31 August 2008).

Switzerland

Switzerland is the depository for the regulations for human rights, the ‘Geneva Convention,’ as well as home to many NGOs, including the Red Cross. It is one of the oldest democracies with the oldest constitution in Europe and has four official languages: German, French, Italian and Raetoromansch. Basic freedoms are guaranteed in its constitution dating back to the 14th century.¹² All have the right to call for a vote to amend the constitution, provided there is enough support from the populace. The conservative Swiss People’s Party recently attempted to limit the rights of minorities in Switzerland with an amendment. In May 2007 it launched an initiative to ban construction of minarets which failed, claiming not opposition to Muslims, but that minarets suggest a claim to political power.¹³

A UN Special Rapporteur given the mandate to investigate contemporary forms of racism was critical of the government’s lack of policy and action against growing xenophobia. Federal elections in October 2007 included election posters for the Swiss People’s Party of white sheep kicking a black sheep off the Swiss flag.¹⁴ The Federal Council expressed the importance of freedom of expression, particularly in political debate, and let the courts determine if a law had been infringed. Another contested

¹² University of Bern, “Switzerland Constitution”, 14 June 2007.
http://www.servat.unibe.ch/icl/sz00000_.html#A025 (1 Sept. 2008).

¹³ Swiss Confederation News, 27 August 2008.
<http://www.news.admin.ch/message/?lang=en&msg-id=20878> (1 Sept. 2008).

¹⁴ Foulkes, Imogene, BBC Geneva, “Swiss Row over Black Sheep Poster”, 6 September 2007. <http://news.bbc.co.uk/2/hi/europe/6980766.stm>(1 September 2008).

decision by the Federal Council was authorization of taser weapons and police dogs during the expulsion of foreign nationals, condemned by human rights organizations.¹⁵

Conclusion

Austria and Germany guarantee human rights for their citizens and refugees, especially against the historical background of the discriminatory actions of the National Socialists in WWII in Germany and Austria. Switzerland, too, officially bans any violation of human rights in its governmental institutions and, in 1998, paid millions to survivors of concentration camp inmates who died leaving money in bank accounts which were subsumed by the banks themselves.¹⁶ But on the ground and in practice, human rights violations, especially against refugees, violations occur. Monitoring by organizations in the UN and Amnesty International and reporting in the press keep up the international pressure for countries to live up to their own laws and improve their records.

¹⁵ Amnesty International, “Swiss Confederation” May 2008. <http://thereport.amnesty.org/eng/Regions/Europe-and-Central-Asia/Switzerland> (31 August 2008).

¹⁶ CNN.com, “Swiss Banks reach Agreement with Holocaust Survivors,” 12 August 1998. <http://edition.cnn.com/WORLD/europe/9808/12/swiss.banks/> (1 Sept. 2008).