



**Submission to UN'CAT
Eingabe an UN'CAT**

**United Nations'
Comittee Against Torture**

**Austria's 5th periodic report 2010
CAT/C/AUS/4-5, shadow report from**

**Sex-Workers Forum
Sexworker-Forum**



EINGABE VOM SEXWORKER-FORUM AN UN'CAT

Gemäß "Übereinkommen gegen Folter und andere grausame und unmenschliche Behandlung oder Strafe" berichten die Staaten regelmäßig dem Ausschuß gegen Folter über die Umsetzung.

Österreich hat 2009 einen Bericht abgeliefert, über den der Ausschuß im April/Mai 2010 beraten wird. Die Vereinten Nationen haben NGOs eingeladen, eigene Stellungnahmen (Schattenberichte) dazu abzugeben.

Das Sexworker-Forum www.sexworker.at hat eine Stellungnahme verfasst. In diesem Schattenbericht wird die erniedrigende Behandlung von Frauen im Sexwork durch staatliche Organe kritisiert.

- 1.) Obwohl die Regierung sich schwerpunktmäßig mit Asylfragen auseinandergesetzt hat, ignoriert ihr Bericht die Frage, wie sich asylsuchende Frauen ihren Lebensunterhalt sichern / ihren Lebensstandard verbessern können. Dass ihnen als praktisch einzige Einkommensmöglichkeit die Tätigkeit als registrierte Prostituierte bleibt, stellt eine erniedrigende Behandlung dar, erschwert durch die unten dargelegten Zustände bei der Registrierung.
- 2.) Frauen mit atypischem Sexualverhalten, also neben Sexworkern und ehemaligen Sexworkern z.B. Frauen aus der Swingerszene, sind das Ziel systematischer verdeckter Ermittlungen zur Ausforschung von Wohnungsprostitution, die auch ohne rechtliche Grundlage durchgeführt werden. Die betroffenen Frauen sind dabei sexuellen Übergriffen durch verdeckte Ermittler ausgesetzt, die zumindest den Schweregrad erniedrigender Behandlung annehmen.
- 3.) In Wien erreichen die Zustände bei der Zwangsuntersuchung von Sexworkern den Schweregrad erniedrigender Behandlung. Die

Untersuchungsstelle fungiert als moderner Pranger, wo Sexworker schon beim Betreten und Verlassen der Öffentlichkeit präsentiert werden! Der (nach dem internationalen Stand der Wissenschaft völlig überflüssige) Zwang zur intimen Untersuchung ist nicht nur an sich schon in psychischer Hinsicht belastend, darüber hinaus wird dabei auch auf eine durchaus mögliche Wahrung der Intimsphäre verzichtet, und es gab auch Beschwerden über schmerzhafteste körperliche Beeinträchtigung.

- 4.) Gegen diese Übergriffe gibt es in Österreich keine wirksame Möglichkeit zur Beschwerde, weswegen diese Missstände bereits seit mehreren Jahren zu beobachten sind. Insbesondere die Unabhängigen Verwaltungssenaten haben eine Rechtssprechung entwickelt, bei der Beschwerden von vorne herein aus Formalgründen aussichtslos sind. Es gibt im Verwaltungsrecht auch kein ausdrückliches Verbot der Folter oder der Verwertung von Folterergebnissen.

Darüber hinaus hat die Rechtssprechung zur Sittenwidrigkeit der Prostitution zu einem Klima der Stigmatisierung geführt, in dem Übergriffe gegen Sexworker toleriert werden. Überhaupt wird aus dem Bericht der Regierung offenkundig, dass zuwenig Augenmerk auf Formen der psychologischen Folter gelegt werden. Gerade Frauen sind davon betroffen.



Submission from
Sex-Workers Forum of Vienna
to the
UNITED NATIONS' COMMITTEE AGAINST TORTURE
pertaining to
Austria's 5th periodic report CAT/C/AUS/4-5
at the 44th session (26 April to 14 Mai 2010)

Vienna, Austria, 19 February 2010

SUBMISSION FROM SEX-WORKERS FORUM TO UN'CAT

1. Introduction

1.1 Author, sources and abbreviations

The author, Sex-Workers Forum, is an incorporated non-governmental not-for-profit organization, chartered at Vienna, Austria, and working to protect and promote the human rights of voluntary sex-workers in Central Europe, with a particular focus on Austria.

For the original texts of Austrian laws and court decisions, the author refers to the national legal information system, www.ris.bka.gv.at. The website www.sexworker.at contains supporting material about concrete cases, where sex-workers describe their situation to the public. The website of the TAMPEP network, www.tampep.eu, a pan-European network for the production of resources for sex-workers, has material for a comparison of the situation of sex-workers across Europe.

This communication uses the following abbreviations:

CAT: International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

CCPR: International Covenant on Civil and Political Rights

CEDAW: International Convention on the Elimination of All Forms of Discrimination against Women

CERD: International Convention on the Elimination of All Forms of Racial Discrimination

CESCR: International Covenant on Economic, Social and Cultural Rights

1.2 Executive Abstract

This communication concerns Article 16 CAT (degrading treatment) under gender aspects. It informs the Committee about practices of the

State Party that deny women in sex-work protection against degrading treatment (psychological maltreatment, sexual assaults) by public officials.

- In Austria, sex-work is legal, but sex-workers are required to undergo regular medical checks and register with the local authorities (see background information). This communication informs the Committee about the persistence of degrading treatment of women, who are examined at the Vienna communal health office.
- The report of the State Party focused on asylum related issues. Nevertheless, the report missed the issue of asylum seeking women. De facto, the State Party does not allow them to secure their livelihood through work, with the only exception of sex-work. This may amount to a degrading treatment, considering the need, the lack of other choices, and the cultural background of these women.
- Special police units use undercover methods to find women providing sexual services without registration; such failure to register is a misdemeanor. This communication informs the Committee about cases in several Austrian provinces, where women, whom police suspected of providing sex-work without being registered, were subject to degrading treatment.
- This report informs the Committee about case law, which indicates that in these cases there is no effective remedy for the victims. This report moreover informs the Committee on a culture of stigmatization, which encourages the described maltreatment, and ensures impunity for perpetrators.

1.3 Background information: regulation of sex-work

In Austria, voluntary sex-work is legal, but regulated at the national, provincial and municipal levels.

- National regulations pertaining specifically to sex-work are: Administrative Penal Act, AIDS Law, Alien Police Law, Civil Code, Immigration Police Law, Income Tax Law, National Insurance Act, Penal Code, and Sexually Transmitted Diseases Law.

- The provinces of Carinthia, Lower Austria, Styria, Upper Austria (from 2010), and Vienna have specific laws on sex-work, in Burgenland, Upper Austria (prior to 2010), Salzburg and Tyrol sex-work is addressed under the Provincial Administrative Penal Code, and in Vorarlberg the Provincial Police Law on Vices addresses sex-work.
- Municipalities apply these laws and other administrative regulations, e.g. provincial building codes, to further regulate sex-work.

Sex-workers are legally considered to be self-employed and required to pay income taxes. Since 1997 they are also required to pay social insurance. Sex-workers are also required to register with the local authorities (police department or municipal authority, depending on the province). As part of the registration, sex-workers are obliged to attend weekly medical inspections for STDs (sexually transmitted diseases) and quarterly mandatory tests for HIV. Sex-workers in the provincial capitals may/must attend the compulsory health checks at certain public health offices; elsewhere they have to visit specialists at their own costs. A control card, which sex-workers are required to carry and show to police, confirms compulsory checks. In the case of an infection, authorities confiscate it until the completion of treatment. Registration is open to Austrian nationals, EU citizens, and asylum seekers (since 2003), but in the practice of Schengen visa to no other foreigners. Failure to register is a misdemeanor that is penalized under the Administrative Penal Act.

2. Degrading Treatment (Article 16 CAT)

Article 16, section 1, of CAT prohibits acts of degrading treatment, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. Moreover, by this Article, the obligations of Articles 10 to 13 apply also to degrading treatment. Article 12 obliges the State Party to effective investigations of maltreatment and Article 13 gives

victims of degrading treatment the right to an effective complaint. Article 10, section 1, obliges the State Party to educate officers about the prevention of degrading treatment, section 2 obliges the State Party to include the prohibition of degrading treatment in their rules of conduct, and Article 11 obliges the State Party to monitor these rules and their implementation.

2.1 Medical inspections

A key element of the State Party's policy on sex-work is compulsory medical inspection of sex-workers. In Austria, each registered sex-worker is obliged to show up once in a week at a public health office for examination.

The implementation at the province of Vienna is a point of serious concern. The Communal STD Ambulatory at Thomas-Klestil-Platz 3, Vienna, is responsible for the medical inspection of about 1,850 registered sex-workers (data of 2007). The service is only accessible for 20 hours a week, and grossly understaffed to handle more than 90 gynecological and other medical examinations per hour. As a consequence, sex-workers are treated as objects, violating their dignity:

- Waiting sex-workers are degraded by exposing them to the prying eyes of Peeping Toms and sometimes even exposing them to harassment by pimps, both outside the office building and inside. Thus, by putting sex-workers into a showcase, the health-office functions as a sort of pillory. Moreover, this brings into play also Article 6 CEDAW, which would oblige the State Party to protect women against pimps.
- Fellow sex-workers or even uninvolved persons may unintentionally overhear or even watch the gynecological examinations of others. This puts shame on the publicly exposed women, who are examined nude with spread legs. (For the context with degrading treatment c.f. case study 4 about avoiding humiliating nudity, British Institute of Human Rights, The Human Rights Act, London 2008.)

- There are also reports of involuntary examinations, where police accompanied handcuffed women to the examination. Thereby arise also concerns as regards the right to the liberty and security of a person, as guaranteed by Article 9, Section 1 CCPR.
- There are also repeated reports from sex-workers, whom apparently overcharged doctors at the STD ambulatory advised to take certain prescription drug, without explaining to them the purpose of the medication (or checking for allergies, first). Other sex-workers reported physical injuries and pain as a result of the medical treatment. Here emerge also concerns from Article 7 CCPR, prohibiting torture from involuntary medical experiments.
- Despite repeated complaints, also public ones, the situation persists. However, sex-workers are not allowed (not even at their own costs) to see their personal gynecologists, instead.

There are additional aggravating factors:

- The examination is not confidential, as the check is a prerequisite for obtaining an official document (control card): In the case of a STD, this document is withheld and the concerned authorities are informed about the STD of the particular person. Also sex-workers who do not show up lose their registration. This lack of confidentiality raises also concerns in the context of Article 17 CCPR that protects against unlawful or arbitrary interferences with one's privacy.
- This is in particular problematic for the mandatory HIV testing, as it deprives sex-workers of the right “to the enjoyment of the highest attainable standard of physical and mental health”, as enshrined in Article 12 CESCR. For, mandatory HIV testing and dispersing the outcome is definitely not state of the art. As pointed out by the “UNAIDS/WHO Policy Statement on HIV Testing” of 2004, sex-workers need to be empowered and reached through voluntary programs.

- The compulsory examination also endangers the health of sex-workers. For, there emerges a dangerous belief amongst clients that registered sex-workers are certified as “safe for unsafe sex”, whence registered sex-workers face an increasing demand for sex without condom. As a consequence, in Austria the rate of STDs is significantly higher, than in Germany, where there are no compulsory examinations (*Epidemiologic Bulletin* 49/2009 of Robert Koch Institute, Berlin, www.rki.de). Moreover, the medical inspections focus on STDs, only, but health officers do not communicate this fact clearly to sex-workers, who as a consequence often miss their regular gynecological general checkups, considering them to duplicate the compulsory inspections.
- From this situation there arise also concerns from Article 1 CEDAW, as any factual interference into a human right that specifically impairs the enjoyment of this right by women, even if it is couched in neutral terms and affects only a minority of women, is a “discrimination against women”. Without objective justification, the medical examinations focus de facto on women, even though it is men, who infect women (e.g. for sex without condom, a HIV positive man is ten times as infectious, as a HIV positive woman, source: *Varghese/Maher/Peterman/Branson/Steketee*, Reducing the risk of sexual HIV transmission: quantifying the per-act risk for HIV on the basis of choice of partner, sex act, and condom use, in *Sexually Transmitted Diseases* 29/2002, pp 38-43).

The described treatment of women at the Vienna health office is falling within the ambit of Article 16 CAT, as it is humiliating and violates the medical ethics' principles of confidentiality, counseling, and consent. Hence, the humiliation of the women involved goes far beyond the level that would be inevitable for compulsory medical examinations. (These ethical principles were also considered by the United Nations' Committee on Economic, Social and Cultural Rights, in General Comment 14, para 12c, 11 November 2000: “All health facilities, goods

and services must be respectful of medical ethics and culturally appropriate, i.e. respectful of the culture of individuals, minorities, peoples and communities, sensitive to gender and life-cycle requirements, as well as being designed to respect confidentiality and improve the health status of those concerned.”)

2.2 Asylum seeking women

Although large sections of the report by the State Party concern issues related to migration and asylum, the report does not mention specifically asylum-seeking women. The negligence of the State Party to improve their social situation may amount to degrading treatment.

- As the United Nations Committee on Economic, Social and Cultural Rights observed (E/C.12/AUT/CO/3 of 25 November 2005, para 19): “The Committee is concerned about reports that social assistance benefits provided to asylum-seekers are often considerably lower than those received by citizens of the State party.” However, asylum-seeking women are not permitted to accept some “regular” form of employment to secure their livelihood and the subsistence of their families. Labor and immigration regulations leave sex-work as the only viable source of income for asylum seeking women, regardless of their qualifications. Media regularly criticized this situation (e.g. journalist *Sibylle Haman* on 13 Mai 2009 in *diepresse.com*, Quergeschrieben).
- For these asylum-seeking women, the registration as a prostitute and the compulsory medical examination is a particular shameful procedure, considering the situation described in section 2.1, aggravated by racial prejudices of certain health officers, and the incompatibility of such an occupation with the cultural values of the women. The fact that for them prostitution is the only means to secure their livelihood, given the inadequate public support, may amount to forced prostitution that is incompatible with human rights and human dignity, as was pointed out by the European Court of Human Rights (case of *Tremblay v France*, 11 September 2007).

- Further concerns arise, as this policy of the State Party infringes upon the “right to free choice of profession and employment”, guaranteed to women by Article 11 section 1(c) of CEDAW. Concerning additional aspects of racism, e.g. CERD, the author recalls the United Nations’ Committee against Racial Discrimination recommendation for “the State party to consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families” (CERD/C/AUT/CO/17 of 14 August 2008, para 27).

The author wishes to point out that the Sex-Worker Forum considers voluntary sex-work as a viable job option for women. For, as is suggested by the work of sociologist *Laura María Agustín* (*Sex at the Margins: Migration, Labor Markets and the Rescue Industry*, London, 2007), there are women, who enjoy the thrill of the red-light experience, who make conscious and rational decisions to go into sex-work, and who also migrate for this purpose. However, a legal restriction of job-opportunities for women to sex-work alone violates the dignity of the affected women. Where women are de facto forced to secure their livelihood through prostitution, the State Party violates the obligations to protect them against degrading treatment.

2.3 Undercover investigations

The State Party follows the strategy of controlling registered sex-workers and prosecuting unregistered ones. The implementation of this policy since 2004 is a point of serious concern and affects women in general.

In 2004 the Minister of the Interior authorized the systematic use of covert investigations to fight the petty crime of unregistered prostitution (source: Parliamentary Gazette no 737/2004, www.parlament.gv.at/PG/PR/JAHR_2004/PK0737/PK0737.shtml, stating that the Minister, responding to a question about illegal

prostitution in private apartments, informed the Parliament about the use of covert investigations). Subsequently, undercover police officers contacted women, whom they suspected of not registered prostitution. Under a false identity, they entered the women's homes and offered them money for sex. If a woman rejected this, the officers left their victim without explanation; otherwise they started investigations on illegal prostitution.

Since 2004 there are numerous cases (see also section 2.4), where police officers, protected by the privacy of the homes they intruded, exposed women to degrading treatment by forced nudity and other acts of sexual violence. There is a spillover effect to women in general, as even women who do not engage professionally in sex-work face the risk of such intrusions, if their sex-life arouses suspicions by the police.

- Physical violence occurred for case number 2005/22/1335-23 at the Administrative Panel of Tyrol of 29 December 2005. This case concerns one of the first undercover investigations after authorization by the Minister of the Interior. Police entered the home of a woman under a false pretense and used force to stay. The violence escalated, leaving the woman handcuffed, with bare breasts (forced nudity), and bruised. For formal reasons, the Panel did not consider the women's complaint about degrading treatment. The perpetrators enjoy impunity.
- A recent case, pending at the Constitutional Court, demonstrates the persistence of such degrading treatment. In the typical case, a police officer, posing as a sex-partner, asks for nudity and/or other sexual favors prior to disclosing his real identity. In such cases, the victim is deceived to engage in sexual acts against her will. Such cases illustrate, how covert investigations lead to psychological maltreatment. For the definitions c.f. the United Nations High Commissioner for Refugees (in Sexual and Gender-Based Violence against Refugees, Returnees and Internally Displaced Persons, New York 2003): „Consent is when a person makes an informed choice

to agree freely and voluntarily to do something. The phrase against her will is used to indicate an absence of informed consent. There is no consent when agreement is obtained through the use of threats, force or other forms of coercion, abduction, fraud, deception, or misrepresentation.“

- There are also cases, where police “visited” retired sex-workers late at night at their home under the pretense to verify that they do not engage in unregistered sex-work. Police disturbed the family life of these women and forced them exposing their past sex-life to their current partners. Apparently, the purpose of such unnecessary and arbitrary police intrusion was the intimidation of these women.

There are additional aggravating factors:

- Undercover investigations to discover prostitution are generally unlawful. For, while Security Police Act (SPG) regulates covert investigations, it does not allow them to discover unregistered prostitution or other petty crimes (ruling by the Administrative Court, VwGH 2005/01/0039 of 26 March 2007). Hence such intrusions are also violations of the private sexual life, protected by Article 17 CCPR. The United Nations' Human Rights Committee (General Comment 16 [32] in para 8) pointed out that “with regard to interferences that conform to the Covenant, relevant legislation must specify in detail the precise circumstances in which such interferences may be permitted. A decision to make use of such authorized interference must be made only by the authority designated under the law, and on a case-by-case basis”.
- Such police intrusion also violates the protection of the home by Article 17 CCPR, even if it is used for business; c.f. United Nations' Human Rights Committee (in General Comment 16 [32], para 5): “The term ‘home’ [...] is to be understood to indicate the place where a person resides or carries out his [her] usual occupation.” Thus, even where provincial laws give police the right to enter homes forcefully, if they suspect non-registered prostitution, as in

Salzburg (since 2003) and Vienna (since 2004), such interferences into private homes are not proportional to uphold public order, as these interferences into the secret sex life of women neither are justified by a pressing social need, nor do they provide any information, that could not be obtained by other less intrusive means (e.g. inquiry, observation).

- From this situation there arise also concerns from Article 1 CEDAW about discrimination against women. For, the undercover investigations focus typically on women, as for the police, women with unconventional sexual behaviors are suspicious for cultural reasons.

The described treatment of women by (male) undercover officers of the police is degrading, sexually assaulting, and not required by law. Therefore it violates Article 16 section 1 CAT. For, international humanitarian law and jurisprudence classifies sexual violence, including acts that a perpetrator caused by taking advantage of deceit (see Elements of Crimes to the Statute of Rome of the International Criminal Court) as degrading or inhuman treatment – and as an international crime, if it is part of a systematic attack (see Statute of Rome). In particular, as discussed by *Diane Marie Amann* (director of the California International Law Center at UC Davis) forced nudity is such an act of sexual violence (Prosecutor v. Akayesu Judgment by ICTR on charges of genocide and international crimes of sexual violence, in *American J. International Law*, vol. 93/1999, pp 195-199).

2.4 Lack of effective remedies

Women affected by the described degrading treatment were, in general, de facto deprived of the protection by the law against such interferences.

Concerning the medical inspections, there were unsuccessful complaints in the public. The author does not know of any successful formal

complaint. The same applies to the situation of asylum-seeking women. The persistence of this situation over many years indicates a systematic lack of effective remedies. (For this line of argument, see European Court of Human Rights, case of *Isayev v Russia*, 22 October 2009, paras 118 and 121.)

Concerning the undercover investigations, existing remedies were applied but proved to be ineffective.

- Where undercover officers explore the sex-life of a woman and consider that she pursues a swingers' lifestyle rather than unregistered prostitution, then officers do not inform this woman about the police intrusion. They leave her home, before or after engaging in sexual acts. There is no independent control of such intrusions. (As the Security Police Act does not allow such investigations anyway, see section 2.3 above, police does not inform the Independent Commissary of section 91c subsection 1 Security Police Act.) Neither can superiors control such intrusions, as undercover officers may pretend that their activities qualify as (their own) private life.
- Where undercover officers revealed their true identity to start investigations about unregistered prostitution, jurisprudence blocked complaints from victims (e.g. Administrative Panel of Tyrol, case numbers 2006/20/0194-6 of 3 April 2006 and 2008/12/1562-4 of 13 August 2008). For, covert investigations neither are "factual acts of police force" in the sense of the Act on Administrative Procedures (AVG), nor are they regulated by the Security Police Act (SPG). Thus, the two venues for complaints to obtain an assessment of the illegal character of the police intrusion are not applicable. Without such assessment, affected women cannot successfully pursue civil or criminal proceedings against the perpetrators. Authorities did not start effective criminal investigations against perpetrators on their own.

- Literature discusses also a systematic problem (that the State Party failed to address), when a case ends up, for example, with policemen blackmailing a woman to agree to sexual acts, or to accept working for bordellos, owned by the police officers. (Note that *Janice G. Raymond*, professor emerita at Amherst, Massachusetts, reported such cases: Prostitution on Demand, in *Violence Against Women* 10/2004, pp 1156-1186.) This woman will not enjoy the protection of the law, as courts assess policemen as more credible. Consequently, if she complains about sexual violence, her complaint will not succeed; instead she may face defamation charges.

The described situation indicates a systematic violation of Article 16 together with Articles 12 and 13 CAT, as far as degrading treatment of women is concerned. The systematic character of these violations is a result of lacking prevention, invoking Articles 10 and 11 CAT. For, on the one hand, the State Party ignores gender issues, as in the current report. On the other, the State Party pursues a policy of systematic stigmatization against women, who are suspected of / engaging in sex-work. Such stigmatization may create pathways for making women with unconventional sexual lifestyles vulnerable to maltreatment.

- The State Party qualifies a contract between a sex-worker and her client as contrary to public moral (since Supreme Court, 3Ob516/89 of 28 June 1989) and assessed sex-work as asocial behavior (since Supreme Court, 1Ob728/85 of 15 January 1986). As a consequence, sex-workers do not enjoy the full protection of the law. For example, they have no right to payment for their services (section 879 of the Civil Code), registered sex-work is a legal reason for the partner to obtain divorce, civil servants risk their jobs “for being in contact with the red-light scene” (c.f. Administrative Court, VwGH 2006/12/0169 of 14 June 2007), and sex-workers are excluded from legal rights to inheritance, also with respect to their parents (section 768, subsection 4, of the Civil Code). In addition, the State Party de facto prohibits and criminalizes sex-work altogether, as in the

province of Vorarlberg (restricting sex-work to licensed bordellos without issuing licenses).

- There arise additional concerns about the compatibility of such policies with accepted European humanitarian standards (see Parliamentary Assembly, Council of Europe, doc. 11352 of 9 July 2007): “Council of Europe member states [...] must avoid double standards and policies which force prostitutes underground or into the arms of pimps, which only make prostitutes more vulnerable – instead they should seek to empower them. In particular, member states should refrain from criminalizing and penalizing prostitutes.” Also, the United Nations’ Committee against the Discrimination of Women continuously urges State Parties to decriminalize sex-work (e.g. CEDAW/C/CHN/CO/6 of 25 August 2006).

3. Conclusion

The Committee may want to encourage the State Party to put more emphasis on gender-related aspects in preventing torture and other maltreatment, also psychological one, considering, in particular, the situation of sex-workers, asylum seekers, and other vulnerable groups of women.

In the academic community, the importance of gender issues for human rights protection is generally accepted (c.f. *Alice Edwards* of Oxford University: The “Feminizing” of Torture under International Human Rights Law, in *Leiden J. International Law*, vol. 19/2006, pp 349-391). The report by the State Party missed gender aspects of maltreatment, even mentioned the word “gender” only once, addressing the obligation of other states. As the cases reported in this communication illustrate, lacking awareness for gender issues may systematically weaken or even negate women’s rights for protection against maltreatment, in particular as concerns the typical psychological assaults against women. (In fact, the State Party report ignores the topic of psychological torture completely.) The suffering of women from “merely” mental pain, as

reported in this communication, may very well reach the threshold of severity that is characteristic of torture by physical pain. This view is supported by findings of *Metin Basoglu* (head of the trauma studies section at the London Institute of Psychiatry) together with *Maria Livanou* and *Cvetana Crnobaric* about psychological maltreatment, such as forced nudity (Torture vs. Other Cruel, Inhuman, and Degrading Treatment, in *Archive General Psychiatry*, vol. 64/2007, pp 277-285).

Moreover, the described cases indicate, that torture and maltreatment create problems in the context of administrative law, including fiscal administration. Other than for the Act on Penal Procedures or the Fiscal Penal Code, there is no explicit prohibition of torture in the Act on Administrative Procedures (AVG) or the Federal Fiscal Code (BAO). Moreover, in regulations for bureaucracy there is no obligation to initiate official investigations of torture, if there is evidence for it. On the contrary, these laws explicitly authorize the unrestricted use of

evidence (see sections 46 AVG, 166 BAO). Currently there is no jurisprudence that, for example, would prohibit tax office to assess income tax on the basis of evidence generated from torture by police officers on the behalf of this office. Exactly this problem (related to section 2.3) is now at the heart of a case pending at the Administrative Court.

signed:

Christian Knappik, executive manager
Sex-Workers Forum of Vienna
Verein: Sexworker Forum
ZVR-Zahl 699583522
Blumauergasse 4, A-1020 Wien, Austria

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International network and union of sex workers and supporters in German language regions A – CH – D.
Founded in Vienna February, 25th 2005.

Sexworker-Forum

Das ländergrenzenübergreifende gewerkschaftliche Netzwerk der Sexarbeiter und Unterstützer in den deutschsprachigen Regionen Aachen – Berlin – Frankfurt – Wien – Zürich ...
Gegründet in Wien, 25. Februar 2005.



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