



Individual Submission for the Universal Periodic Review of Austria, 2011

I Preface

1. This report of the officially registered association "Aktive Arbeitslose" (meaning in English: active unemployed) was compiled for the UNO-UPR of Austria at the beginning of 2011. As the name tells, subjects of this association are topics of unemployment, precarious living, poverty and accompanying forms of social exclusion.
2. Its sociopolitical activities include public actionism as well as the observation of developments in society. Der Verein kann als gesellschaftspolitisch aktiv bezeichnet werden, was öffentliche Aktivitäten als auch die Beobachtung der gesellschaftspolitischen Entwicklungen beinhaltet.
3. The age of this association is less than one year. Nevertheless its most active members have already several years experience in nongovernmental activism and research.
4. Explanation of abbreviations: BMS corresponds to the Austrian form of social welfare for employable and its administration, AMS to the administration of unemployment insurance including its continuation called "Notstandshilfe".

II Summary , General Situation

5. There is no lack of commitments to the state's constitution and international conventions. The current situation may be summarized as follows:
6. On the one hand the end justifies the means, which applies for legislative as well as the law implementation. Principles of constitution or human right conventions are only subordinate or seen as obstructive.
7. On the other hand state offences are hard to prosecute. Even repeated state offences lead barely to effective charges against responsible administrative bodies or personnel. Many concerned are scared of taking measures because of fear on disadvantages or even discrimination. Such a fear seems not to be unjustified. Complaints on unlawful compulsion by a public official get suspended by the public prosecutors or are refused an application at the police.
8. A highlight of special problems are existence threatening (money cutting) sanctions. Suspicion suffices for execution of such sanctions.

III Political Situation

9. Registered unemployed have no statutory representation for direct or indirect participation in legislation (contrary to pupils, students, employees, pensioners).
10. Welfare measures for unemployed are treated as insurance benefits (by the law AIVG --- "Arbeitslosenversicherungsgesetz": law of unemployment insurance). Because of this construction politicians deny a basic right for an insurance benefit.
11. Judgements of highest courts are invalidated by legalizing the condemned drawbacks. The reenactment of the law AIVG in 2007 is an example: transfer jobs (with loan employment), work trainings, work trials, private employment agencies (as replacement for public employment service) and accompanying care. The higher court of justice doubted the conformance of the last item with human rights (conflict with article 8 of the ECHR -

European Convention on Human Rights)-, judgement: VwGH GZ 2004/08/0017). The other items have been regularly condemned by this court.

IV Recommendations and Claims

12. In the following sections there are more suggestion than mentioned here. Through lack of place only very important or not further occurring ones are listed here:

13. Foundation of independent and effective bodies for legal protection.

14. Ratification of Social Charta of the EU and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights by the Austrian state.

15. Embodiment of economical and social rights as subjective rights and thus as suable.

16. Foundation of special institutions for a human rights monitoring of AMS, and for the enforcement of rights by participation of associations by affected persons.

17. Creation of representing bodies for jobless, which have sufficient codetermination in legislature and administrative power.

18.Sanctions (esp. exclusions from services) shall not be executed before the end of regular preliminary proceedings and an issuing of an official letter.

19.Sanctions shall not violate the subsistence minimum and shall not endanger a person's existence.

20. Knowledge of basic rights shall be enhanced within affected persons and public administration.

V Institutions

21. *AMS*: The Austrian Chamber of Labour (AK) is the only legal body for unemployed persons. It gives only advice and support for suits which is at it's own discretion. Since a few years refuses occasionally this duty, though this is illegal. The right for voting and the memberships got restricted since the ÖVP-FPÖ-government (around 1995-2005). There is a conflict of interests since representatives of the AK are involved in advisory and management boards

22. *AMS, BMS*: Adjudication authorities run the advisory services. There are no Independent bodies for advisory or accompanying services with professional background in law and socioeconomics.

23. *AMS*: There is a last resort after avenue of appeal ("Volksanwaltschaft") for the public administration. It has no executive powers and even nor right of access on information. In the yearly reports it claims partial success including withdrawal of decisions by some of the administrative bodies. Yet this depends on the good will of an administrative body.

24. *AMS*: Advisory Boards of the AMS decide on sanctions. Thus these are sovereign bodies. Such boards include representatives of management and labour force bodies: Chamber of Labour, labour unions, Federal Economic Chamber, Association of manufacturers. The AMS gets 2 representatives - the other one each. These boards decide usually on appeals of decisions which have been established through direct or indirect orders just by the deciding board. Concerned persons do not learn about the formation of the deciding boards

VI Compliance and Implementation of Human Rights

25.**Right of existence:** *AMS, BMS*: Sanctions consist in suspension of benefit payments. Without respect for subsistence limits the whole amount of benefits gets retained for 6 or 8 weeks. Usually the extent of the cause is not checked, such that the commensurability gets not considered in principle. Sanctions are executed before the end of preliminary proceedings and without a direct or immediate right of appeal.

26. *BMS*: Time periods ere not defined for sanctions which enables arbitrary many sanctions. Data on sanctions at the AMS are automatically transferred to the BMS administering body and lead furthermore to more sanctions which riddles the right on existence furthermore.

27. *BMS*: The standard rate of the BMS social welfare is slightly about 700 Euro which is beyond the 950 Euro of the EU-SILC limit of poverty for 2008.

28. **Protection against unemployment:** *AMS:* Unemployment compensation is only entitled after an expectancy period (of one year for first time job loss). There is no right for unemployment compensation without sufficient unemployment assurance (e.g. school graduates). **Discrimination:** Illness and Age amount about 40% of the causes for job termination recording to latest studies. Policy and government seem not take initiative against. There are special programs for older employed, yet the discrimination through separated work places gives only minimal advances without structural changes (e.g. part-time jobs for older workers).

29. *AMS:* The AMS demands from registered unemployed to approach at job applications with special printed forms. A company or institution shall record information the applicant's performance (reasons for rejection etc.). This is common praxis discriminates registered unemployed from the outset.

30. **Forced Labour:** *BMS:* The rules for the BMS are formulated like a intricate mask of forced labour. Especially the federal state of Salzburg authorizes its BMS bodies for assignment of forced jobs for a maximum period of 18 months. That may happen more than one time (§16, law for social welfare of Salzburg).

31. *AMS, BMS:* Verification of fitness for work allow measures of work training ("Arbeitstraining") or work trials ("Arbeitserprobung"). These measures for registered unemployed are effectively indistinguishable from forced labour (Par. 9 AIVG).

32. **Education choice:** *BMS:* Education of adolescent is restricted at BMS. After an interrupt of an education a young person may continue (the same or another one) with the deprivation of the social welfare benefits.

33. **Social rights:** Laws for wage floors are completely missing. Single branches of business know bargaining agreements which are not based on wage floors. The Committee On Economic, Social And Cultural Rights urged already Austria on this issue (E/C.12/AUT/CO/3, 25 January 2006).

34. **Family:** *BMS:* The new BMS accepts obligations in respect of care and upbringing of children only below an age of 4 years (before below 6). Yet there are not enough child care centers in parts of the country.

35. *AMS, BMS:* Bank statements, existing assets and health conditions of family members are collected without a purpose. The concerned persons are not clear defined (undefined notions in the law text). Income of life partners is considered for a common income. This amounts to existential pressure such that different legal residences in pretence are the lightest reactions. The financial pressure leads again and again to break up of partnership or marriage.

36. **Fair Trial:** *AMS, BMS:* Sanctions (of benefits) are seldom communicated notwithstanding clear legal rules defining obligations of notification or proceedings. Sanctions are usually caused by unchecked suspicions of third parties. Concerned persons are not asked for a hearing, or a position statement. Lawful regulations demand the loose of unemployment compensation of registered unemployed with a minor income by self-employment for indefinite time. Thus it may happen that they drop out of social (esp. health) insurance. That may happen to family members, too.

37. *AMS, BMS:* Reports, statements and notes of files have been deliberately withheld the concerned persons in known grave cases. These are not able to properly formulate appeals without complete knowledge of accusations. The right of access to records has been undermined through provision of incomplete personal records. Host of assigned measures usually keep the assignment notices notwithstanding these to be personally addressed to the concerned persons. Afterwards these persons are unable to check the assignment on their legal basis. That hinders legal measures against illegal assignments. Administrative decisions of first order often are written with text modules without any concrete statement of grounds.

38. *AMS, BMS:* Sanctions and appeals against are usually decided without hearings (and without right on hearings).

39. *BMS:* Limitation periods of sanctions are missing. Long lasting cases weigh the same as shortly repeated cases which causes more severe sanctions to the extent of complete cuts of

benefits.

40. Deadlines for filing appeals against official notifications are very short (2-6 weeks). Public authorities have much more time. **Data Protection:** AMS, BMS: The same of above accounts for data protection Time limit for appeals on official notifications of the DSK (federal commission on data protection) is 2 weeks and have to belodged to a high court.

41. AMS: Data get principally stored without expiration which generates unavoidably purpose-free data pools. Especially health data and data of behaviour or performance at job applications or course measures get stored by the AMS. Such data are stockpiled for the later argumentation on sanctions or special measures. Most of the concerned persons do not know about or have not given any consent. Of course, the purpose of these data is not known at the time collection. And the data are not checked for quality, reliability or authenticity.

42. AMS,BMS: If a person's fitness for work shall be determined then personal and sensible data without a clear correlation are investigated. This includes a "social case history", an "assessment of cultural competency" and a "review of personal prospects". Accumulated data get transferred to the AMS, social insurances and BMS related agencies. Some public authorities transfer data or notes on official actions to (local) sites of the AMS without any legal justification (case at AMS Judenburg). The AMS may use these (secret) informations against concerned persons.

43. **Health:** Latest studies tell the old story of the strong connection between unemployment and illness. But victims of structural violence or violence by governmental agencies find no offers for treatment.

44. AMS: In the case of sanctions the AMS invokes the blocking of the so called e-card which you need for medical practices. Thus visits often have to be cancelled or delayed for a later date. Such blockings are reversible yet completely illegal.

45. **Privacy:** AMS, BMS: Accompanying care (section 11) is executed without control by judges though being an intrusion of privacy.

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