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N o t e V e r b a l e

The Permanent Mission of Austria to the United Nations Office in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights in Geneva and with reference to communication AL AUT 2/2022 dated 20 May 2022 from the Chief of Special Procedures Branch in the Office of the High Commissioner for Human Rights, conveying a communication sent by four Special Rapporteurs, has the honour to transmit the following observations by the Austrian authorities based on information available and received, as requested by the mandate holders.

The Permanent Mission of Austria to the United Nations Office in Geneva avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights in Geneva the assurance of its highest consideration.

Geneva, 8 July 2022



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Observations by Austria

in response to the communication from OHCHR of 20 May 2022

conveying a joint communication sent by Special Rapporteurs

23 June 2022

In response to the communication received on 20 May 2022 from the Chief of Special Procedures Branch in the Office of the High Commissioner for Human Rights, conveying a communication sent by four Special Rapporteurs, Austria has the honour to transmit the following observations based on information available and received, as requested by the mandate holders.

At the outset, Austria reiterates that fighting antisemitism at national, European and international level is a top priority for Austria. In 2021, Austria adopted a national strategy in this regard, which was reviewed in early 2022. As an active member of the International Holocaust Remembrance Alliance (IHRA), Austria was amongst the first countries which adopted the IHRA working definition on antisemitism in 2016.

On 27 February 2020, the Austrian parliament adopted a unanimous resolution that calls on the Austrian government to condemn the BDS movement and its goals, in particular the call for a boycott of Israeli Products, companies, artists, scientists or athletes. In addition, it calls for not providing premises and infrastructure to organisations and associations that make antisemitic statements or challenge Israel's right to exist.

The BDS-Austria movement operates the website www.bds-info.at as well as channels on Facebook, Instagram and Twitter. Their movement's campaigns are often referred to as antisemitic.

With regard to the motion by the Vienna City Council and the lawsuit mentioned in the received communication, the City of Vienna has informed that the BDS-Austria is spreading the photo of a poster on social media using the name and the logo of the City of Vienna without its consent. The poster shows a black tree and a blue barrier wall made of concrete elements, on which the words "FREE PALESTINE" and "VISIT APARTHEID" are written. The logo of the City of Vienna is clearly recognizable next to it.

Several photos of this poster have been published on Facebook, Twitter and Instagram. These photos are marked with the text "Seen in Vienna. We are pleased that the City of Vienna is also taking note of apartheid in Israel and is publicly posting it" (see e.g. <https://www.facebook.com/236083199913439/posts/1765048770350200>).

These publications accuse the City of Vienna of making a statement that it has never made. In particular, the impression is given that the City of Vienna would share and support the views of the BDS movement. This is certainly not the case.

Since the photos with the text have not been taken offline despite a cease and desist order, the City of Vienna was therefore compelled to take legal action against BDS-Austria with the Commercial Court of Vienna to protect its rights. The lawsuit cites the motion of the Vienna City Council adopted at its 39th session, but the allegation that the City of Vienna has filed this lawsuit *on the basis of* this motion is false. On the contrary, the violation of the rights of the City of Vienna and the persistent refusal by BDS-Austria to take the photos and the text offline were decisive. A lawsuit would have been filed irrespective of the above-mentioned motion of the Vienna City Council.

The City of Vienna's lawsuit is based on the gross violation of the rights of the City of Vienna, including the violation of the personal and name rights as well as defamation. The lawsuit, however, does not constitute an attempt of intimidation or even a violation of human rights and fundamental freedoms. It is a common procedure in such cases, in which after examination of the facts and in view of a persistent violation, a lawsuit is filed. In April 2022, the Commercial Court of Vienna issued an injunction in favour of the City of Vienna. Subsequently, an appeal was filed. No decision was taken by the Court so far.

For the above-mentioned reasons, the motion adopted by the Vienna City Council as well as the lawsuit brought before the Court do not constitute an infringement of human rights and fundamental freedoms. The effects of this municipal council decision can only be such that certain private-sector services (e.g. rental of premises) could potentially not be granted to the BDS movement. This is, however, permissible as long as the principle of equality is not violated. In addition, the BDS movement could seek legal protection if it disagrees with the decision taken. The motion adopted by the Vienna City Council therefore neither interferes with the freedom of expression nor does it affect the right to assembly at all.

The protection of human rights defenders is a priority of the Austrian foreign policy. Austria actively participated in the formulation of the EU guidelines on human rights defenders adopted in 2004. They contain specific guidelines for EU Member States and their

representatives abroad to promote and protect human rights defenders and their work, such as regular dialogue with them or EU interventions in favour of human rights defenders who are at risk, monitoring of legal proceedings and moral and financial support.

Within the United Nations, Austria is actively involved in negotiations of resolutions promoting and protecting human rights defenders in the Human Rights Council and the UN General Assembly. Austria is particularly committed to combating impunity and practical measures within the framework of UNESCO, the Council of Europe and the OSCE. The safety of journalists, who often work for promoting human rights, democracy and the rule of law, is also a priority focus for Austrian foreign policy. In this context, Austria reiterates its support of the work of respective Special Rapporteurs.