

Your Friend and Helper?



To protect and serve? An officer patrols Karlsplatz underground station Photo: Herbert Oczerec/APA

Vienna's police have a dismal record of racism, and the courts aren't doing much to change it. Yet, there are signs of change

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by Jamie Hershing and John Hodgson

On the afternoon of 11 Feb. 2009, Mike Brennan stepped out of the underground at Vienna's Spittelau station. Before he could walk away from the carriage, he was thrown to the ground, his attacker pushing his knees into Brennan's back, fracturing two vertebrae, while another punched him from the side.

The assailants turned out to be plainclothes officers from the Vienna police who had mistaken Brennan for a suspected drug dealer travelling in the same carriage – apparently because they both were black. As Brennan, a sports teacher at Vienna International School, struggled to get compensation through the courts, the case focused international attention on racism in the Austrian police. Now, three years later, has anything changed?

Friedrich Kovar, Vienna police spokesperson for human rights, categorically denies that racial profiling – the stopping and searching of members of ethnic minorities for no other reason than their appearance – takes place in Austria.

The practice, according to the United Nations Human Rights Council, violates the human right to non-discrimination. Kovar points out that, since 2005, human rights courses have been a compulsory part of Austrian police training, focusing on case studies of how respectful treatment can be reconciled with law enforcement.

Yet in spite of this, reported incidents of racial profiling have actually increased. The annual *Racism Report* published by ZARA, an NGO in Vienna recorded 67 incidents in 2010. Strikingly,

this figure has nearly doubled from before human rights were incorporated into police training: in 2004, 38 incidents were reported.

To Kovar, however, it appears natural that police officers searching for a suspected drug dealer with dark skin would also question other black people in the vicinity. Those who feel they are being interrogated for no reason, therefore, are simply "in the wrong place at the wrong time."

From victim to perpetrator

It is precisely this elision – of racism and "reasonable" investigations – that makes racial profiling so hard to pin down. A clearer indicator of efforts to end racism within the police force, therefore, may be whether individuals who feel they have been held unjustly can gain redress swiftly. Yet this, too, is far from the case.

Wolfgang Zimmer, the spokesperson for ZARA, says that individuals who complain to officers about mistreatment, perversely, are often subsequently fined for aggressive behaviour themselves.

Similarly, Mike Brennan maintains that the officers who assaulted him did not produce their badges until his Austrian girlfriend arrived at the scene – a charge the officers denied. "I feel I was attacked the way I was because of my race," Brennan says, "and also because of the way the officer treated me, for example, unprofessionally and disrespectfully."

The authorities' handling of Brennan's case was uncooperative at best, if not outright fraudulent. Initially, the police force was reluctant to

view the incident as anything more than a "regrettable mix-up". This was followed by the mysterious leak of a statement from an anonymous eyewitness who claimed to have seen Brennan moving freely around his hospital room without his crutches, suggesting he was feigning injury. The leak was made before doctors identified the broken bones in Brennan's back.

Police: innocent as charged

With police authorities appearing to close ranks, could pressure from the judiciary make officers more accountable? In Brennan's case, investigations by the public prosecutor indeed resulted in criminal charges of negligent bodily harm against one of the officers involved. The first hearing in the case, held in June 2010, raised hopes further, when the presiding judge decided that negligence charges might not be enough.

"Is there no other way to arrest someone suspected of committing a crime?" asked Justice Margaretha Richter at the time, before referring the matter to a higher court.

In January 2011, an initial verdict indeed found the officer guilty of negligent grievous bodily harm, fining him €2,800. Decisive factors influencing the judge's decision were the police's error in confusing Brennan with the drug dealer, and the error of assuming that Brennan would attempt to flee the scene – both arguably racist assumptions.

Yet this finding was partially overturned last September when, following the officer's appeal, Vienna's State High Court (*Oberlandesgerichtshof*) reduced the fine to €1,680.

"The Senate has established that the act was committed under circumstances that come close to being justifiable," explained the court's spokesperson, Leo Levanic-Iwanski. "Moreover, the negligence was slight, because Brennan's description almost matched that of the actual suspect."

The High Court's reversion to the racial stereotype, thus, completed the circle, offering backing to continued discrimination in everyday policing.

So, after a three-year ordeal, Brennan has still received no compensation for the injuries he sustained, and has no recourse remaining in the criminal courts. He is currently considering civil action.

"The case took entirely too long," Brennan ventured. "I think it was very clear what he did. There are facts, evidence, and witnesses. What else should there be?"

As the police cover their tracks, and the courts stall, pressure for more accountable and egalitarian policing could come only from politics. A good start, writes Katharina Leitner in a recent study by the Austrian Integration Fund (ÖIF), is the commitment in the current government programme to raise the proportion of minorities in the police force itself. According to the study, about 7% of those currently enrolled in police training are first- or second-generation immigrants. This is still lower than the 18% that would be necessary to reflect their proportion in the general population, but it is better than Germany's showing, where only 2% of police officers have a migration background, compared to 20% in the population at large. Austria may be making progress after all. ♦

An Abridged History of Violence: Notable Cases of Abuse by the Austrian Police

May 1999
Markus Omofuma



The 25-year-old Nigerian suffocates after being bound and gagged by Austrian immigration police on a deportation flight to Sofia, Bulgaria, a procedure that investigations later reveal was common. The three police officers responsible receive suspended sentences for causing death through negligence. They are allowed to continue in service.

April/May 2000
Richard Ibekwe



A 26-year-old Nigerian dies on 2 May in police custody. Police arrested him three days before during a narcotics raid in the 17th District. While he officially died of an overdose, eyewitnesses at Ibekwe's arrest claim police assaulted him. An investigation into police brutality is halted in February 2001 due to lack of evidence.

July 2003
Seibane Wague

As the Mauritanian physics student suffers a mental breakdown in Vienna's Stadtpark, he is restrained and beaten by police for causing a public disturbance. As Wague resists being restrained, emergency doctors inject him with a strong anti-psychotic. Wague dies during the incident, and video footage recorded by a bystander causes a public outcry. One police officer and emergency doctor ultimately receive suspended sentences for causing death through negligence, though both are allowed to continue in service.

August 2004
Edwin Ndupu

The inmate at Lower Austria's Krems/Stein prison officially dies from a fat embolism caused by self-inflicted injuries. The 38-year-old Nigerian allegedly threatened fellow inmates and prison guards with a knife. 15 wardens seize Ndupu to bring him under control. They bind his hands and feet and put him in solitary confinement. He continues to resist, requiring sedation. Ndupu never regains consciousness. Guards who came into contact with his HIV infected blood get a compensation payment of €2,000.

April 2006
Bakary J.



As the Gambian's deportation flight is postponed, he is taken to a warehouse and badly abused by officers of the special forces unit WEGA, suffering a broken jaw and eye socket. After four years of disciplinary proceedings, two officers are dismissed from service. One of them receives the maximum fine: five times his monthly income.

Feb. 2009
Mike Brennan



The American teacher is assaulted by police in an underground station, suffering two fractured vertebrae. The officers claim they mistook him for a drug dealer they were tracking. One of them is convicted of grievous bodily harm, but his fine is reduced by the final court of appeal from €2,800 to €1,680. Both officers continue in service.