

**Dr. Dieter Böhmendorfer**  
**Rechtsanwalt**  
Bundesminister für Justiz a.D.  
Abgeordneter zum Nationalrat a.D.  
Gußhausstraße 6  
1040 Wien

**The Honorable Michael Mukasey**  
**Attorney General of the United States**  
**United States Department of Justice**  
**Tenth and Constitution Aves. N.W.**  
**Washington, D.C. 20530**

Wien, am 18.11.2008  
WeisSh/USA / B/Nr 5

Dear Mr. Michael Mukasey!

I was the Minister of Justice of the Republic of Austria from February 2000 to June 2004. During my term of office, the American citizen Sholam Weiss was extradited from the Republic of Austria to the United States of America. I authorized this extradition, was personally involved, and am familiar with the details of the case.

During the extradition proceedings of Mr. Weiss, the Republic of Austria, under the authority of the extradition treaty between both countries, asked the United States of America to give assurances that Mr. Weiss would have a full appeal as to guilt and sentence.

In response, assurances were given by the United States of America, specifically in two letters of the United States Department of Justice, dated February 8th, 2002 and May 14th, 2002, that if Mr. Weiss were extradited on the condition of specialty, denying one or more counts, then he would have a re-sentencing on the remaining counts, followed by a full appeal of his conviction and new sentence. Without these assurances given by the United States of America, I would have denied the extradition.

As the Minister of Justice who authorized the extradition and trusted the United States assurances, I am disappointed that after six years the United States still has not provided Mr.

Weiss a re-sentencing and full appeal, and it is now clear that the assurances cannot be fulfilled. This is extremely troubling to me, especially since I presented the U.S. assurances to others to rely upon, specifically the European Court of Human Rights, the United National Human rights Committee, European Parliament, Austrian courts, and the Austrian Jewish Community.

Further, I am personally insulted that attorneys of the U.S. Department of Justice have the temerity to deny their own assurances to Austria. And now, six years after the extradition, they argue that Austria's trust in the U.S. assurances was "not reasonable" and that the United States therefore has no obligation under the extradition treaty. For the United States government, which embodies the principle of the rule of law, to allow U.S. attorneys to take such actions effecting the relations between friendly nations, was in my view at the time of the extradition, impossible and even unthinkable.

The United States Department of Justice gave me the assurances with the understanding that I would not approve the extradition without them, and had full knowledge that I was providing these letters as assurances to others to rely upon. The May 14, 2002 letter (*attached*) was submitted in response to a request from the European Court of Human Rights for an "unequivocal declaration", and it clearly states both 1) that the presiding United States judge would be "required" to re-sentence Mr. Weiss, and 2) that an appeal of the new sentence would permit an appeal of his conviction, and gave the following explanation: "Under United States law, a defendant does not separately appeal his verdict and a sentence. Any appeal is from the final judgment, which contains both the finding of guilt and the imposition of punishment."

I relied upon the U.S. assurances to effectuate the extradition of Mr. Weiss. Had there been no United States assurances, I would have been obligated to deny extradition, and Austria would have been obligated to prosecute Mr. Weiss. Further, if Mr. Weiss were convicted in Austria, his sentence would not have exceeded 10 years. Thus, I believe that the Austrian Chancellor's request to your President (*attached*) to commute Mr. Weiss' sentence to 10 years in order to fulfill the US assurances is reasonable and makes good sense. It is perhaps the only solution available other than to return Mr. Weiss to Austria.

It is my sincere hope that you will support the Chancellor's request to your President for a

commutation of Mr. Weiss' sentence to 10 years. This would demonstrate that when the United States Department of Justice provides an assurance to the Ministry of Justice in Austria, the Ministry can be confident that the United States will stand behind its commitment.

Sincerely,



Dr. Dieter Böhmendorfer

*Attachments:*

*May 14, 2002 letter from the United States Department of Justice, Office of International Affairs, to the Austrian Ministry of Justice.*

*October 22, 2008 letter from Chancellor Gusenbauer to President Bush.*