

# Vienna Appeals Court says: Art. 209 Was Morally Right RKL: „Not our constitution’s morality“

The Upper Regional Court of Vienna in a decision of last June (OLG Wien 13.06.2006, 20 Bs 155/06z) said that former anti-homosexual Art. 209 of the Austrian Criminal Code was morally understandable. Rechtskomitee LAMBDA (RKL) criticizes this decision as shocking and announces an application to the European Court of Human Rights.

The Court had to decide if prior convictions under Art. 209 in a latter conviction can be used to the detriment of a defendant. The Upper Regional Court of Vienna said yes, because Art. 209 “did not lack general moral understanding, but only criteria of equal treatment”. Accordingly offenders who have a criminal record under Art. 209 have to be sentenced more severe than the ones without. This way the court lets Art. 209 unfold negative consequences long after its abolishment.

Art. 209 established a minimum age limit for consensual gay male sex of 18 years as opposed to 14 for heterosexual and lesbian conduct. It had been repealed by a verdict of the Constitutional Court in 2002 due to violating the fundamental right to equality. The European Court of Human Rights since then repeatedly has convicted Austria for the criminal persecution of gay men based upon Art. 209. In sum Austria had to pay already more than EUR 350.000,-- to the hitherto ten successful Art. 209-applicants.

A bill for rehabilitation and compensation of also those victims of Art. 209 which did not make it to European Court of Human Rights, has been introduced into federal parliament one year ago and has not been dealt with since then.

“This is not our constitution’s morality”, says Dr. Helmut Graupner, president of the Austrian lesbian and gay rights organization Rechtskomitee LAMBDA (RKL), “It is a morality of times gone, and it is frightening that there still are judges who base their decision on such thinking and thereby again are victimizing the victims of Art. 209. This case will be brought to the European Court of Human Rights.”

*Rechtskomitee LAMBDA (RKL), founded in 1991, on a supra-partisan and denominational level is working for the implementation of human rights for homo- and bisexual men and women. In its honorary board it convenes so prominent members as the Chairman of the Social-Democratic Party of Austria (SPÖ) Dr. Alfred Gusenbauer, President MP Peter Schieder, MP Mag. Terezija Stoisits (Green Party), the well-known child and adolescent psychiatrist Univ.-Prof. Dr. Max Friedrich and the Ombudspersons for Children and Adolescents of Vienna DSA Monika Pinterits und Dr. Anton Schmid, the Secretary General of Amnesty International Austria Mag. Heinz Patzelt and the well-known human rights experts Dr. Lilian Hofmeister und Univ.-Prof. Dr. Manfred Nowak, the sexologists ao.Univ.-Prof. Dr. Josef Christian Aigner, Prof. Dr. Rotraud Perner and Mag. Johannes Wahala, the theologian Univ.-Prof. Dr. Kurt Lüthi, entertainer Günter Tolar and many more.*

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