

Serious Blow Again for Federal Government

European Court of Human Rights Condemns Austria in Sensational Art. 209-Case

Platform Against Art. 209: “Rehabilitation Bill must be dealt with speedily”

As Platform Against Art. 209 just has been informed the European Court of Human Rights again condemned Austria for its years of criminal persecution of gay and bisexual men (*R.H. vs. Austria*). The case of R.H. caused sensation in 2002 as Austrian police authorities and judiciary expressed exceptional severity within the last days of Art. 209 thereby even breaking the law and conducting unfair criminal proceedings. Austria now has to pay EUR 44.000,-- as compensation.

The then 36 year old man when entering Austria in 1998 had been taken out of his car and arrested by the immigration police because a 17 year old young man was accompanying him. The young man had been intensively interrogated and deposited that he had sex with the man, who as a result spent over four months in custody on remand.

In answering questions by members of parliament then Austrian Ministers of Justice and Interior declared this all to be all right. The Administrative High Court saw that in a different way and declared the arrest of the man unlawful (VwGH 11.12.2001, 2000/01/0254).

Nevertheless he has been convicted in fall 2001 to six months incarceration by the Regional Court of Vienna for sexual contacts with three 16- and 17-year old adolescent men. On probation since he already had spent over four months in pre-trial detention. The three young men have been interrogated only before the police and in part took back their deposition later. They never gave testimony in court. No one ever saw them or could question them: neither the court, nor the prosecutor nor the defense. R.H. had been convicted on the basis of their statements before the police. R.H. contested that he had sex with them in Austria.

Appeals Court: “The majority of Austrians want it that way”

This was even to less for the prosecutor and on his appeal also to less for the Appeals Court. As the presiding judge declared during appeals trial, the “leniency“ of the first instance judge would be unconceivable considered the “grave guilt” incurred by the man. The Appeals court raised the jail sentence to nine months, one third of it without suspension despite the fact that the man had no criminal record whatsoever.

Addressing the human rights concerns raised and the application to, as the Upper Regional Court of Innsbruck did, ask the Constitutional Court to turn down Art. 209, the president just said: “The majority of Austrians want it that way, and you have to accept this”.

Already more than EUR 350.000,-- compensation for Art. 209-victims

The European Court of Human Rights in its judgment today explicitly holds that Austria never acknowledged the human rights violations committed against the applicants and that it did neither afford adequate redress for the victims. The Court awarded R.H. EUR 44.000,-- compensation.

In sum Austria has to pay already more than EUR 350.000,-- to the hitherto ten successful Art. 209-applicants. And there is still one more such application pending before the Court.

The applicants, having been successful in Strasbourg, now are entitled to a renewal of their criminal proceedings and to subsequent acquittal. Only victims of Art. 209 who gain a judgment by the European Court of Human Rights in their favour however can do so. All other victims who did not go to Strasbourg remain stigmatised, can not get rehabilitated, neither for the costs of their defense and the destruction of their life nor for the often inflicted ruin of their social existence.

Today's judgment of the European Court of Human Rights constitutes a serious blow for the Federal Government which still refuses rehabilitation and compensation even for those who have been convicted under Art. 209 and, in part, detained in institutions for mentally abnormal offenders. Their convictions are still standing and registered in the national registry of offenders. Also the police-files are still being kept.

Two classes of victims

Not only the Federal Government refuses to lift the convictions under Art. 209, but Minister of Justice, Mag. Karin Gastinger (as her ancestor), even hitherto persistently refused to suggest pardons to the Federal President. After the Federal President himself took action last summer Gastinger announced that she will check all Art. 209 convictions for possible pardon. This however would take one year.

Given lacking redress the European Court of Human Rights still repeatedly condemns Austria, be it upon applications of convicts (*L. & V. v. Austria* 2003; *Woditschka & Wilfling v. Austria* 2004; *F.L. v. Austria* 2005; *H.G. & G.B. v. Austria* 2005; <http://www.echr.coe.int>), or of juveniles who have been denied their right to engage in consensual sexual relations with adult partners (*S.L. v. Austria* 2003; <http://www.echr.coe.int>).

May 2005 the Court in a sensational judgment held that also acquitted victims of Art. 209 have to be compensated (*Thomas Wolfmeyer v. Austria*, <http://www.echr.coe.int>). And Amnesty International in its report 2005 called for rehabilitation and compensation of the victims of Art. 209.

“How is the federal government intending to keep on turning down human rights of lesbians, gays and bisexuals”, says Dr. Helmut Graupner, spokesperson for “Platform Against Art. 209” and attorney of the applicants, “Government coalition parties in Parliament must speedily deal with the draft-bill for a comprehensive Rehabilitation Act having been lying there unconsidered for months now”.

The interdenominational and supra-partisan Platform Against Article 209 comprises more than 30 organisations that joined in the fight against the discriminatory supplemental minimum age of 18 years for homosexual relationships between men only (in addition to the general age of consent of 14 for heterosexuals, lesbians and gays alike), as set forth in article Art. 209 of the Criminal Code. Nearly all associations of the homosexual movement, but also general organizations are members of the Platform, like AIDS-help-organisations, the Ombudspersons for Children and Adolescents of the States of Vienna and Tyrol, the Austrian National Student Union, the National Association of Probation, the Austrian Society for Sexual Research, and many others more. After the repeal of Art. 209 the Platform works for the release of all prisoners, for the deletion of all verdicts from criminal records and for just satisfaction of all victims of Art. 209. In addition it monitors the enforcement of the new Art. 209-substitute-provision, Art. 207b Criminal Code.

Full text of judgment:

<http://cmiskp.echr.coe.int////tkp197/viewhbkkm.asp?action=open&table=1132746FF1FE2A468ACCBCD1763D4D8149&key=46555&sessionId=5421195&skin=hudoc-en&attachment=true>

Replies of Ministers of Justice and Home Affairs:

http://www.parlinkom.gv.at/portal/page?_pageid=908,490386&_dad=portal&_schema=PORTAL
(Justice)

http://www.parlinkom.gv.at/portal/page?_pageid=908,490398&_dad=portal&_schema=PORTAL
(Home Affairs)

The mentioned Judgment of the Administrative High Court can be found at: www.ris.bka.gv.at.

More information:

Platform Against Art. 209: +43/1/876 30 61, 0676/3094737, office@paragraph209.at,
www.paragraph209.at

19.01.2006