

**Austria:**

# **Constitutional Court Upholds Stigmatisation of Anti-Homosexual Legislation's Victims**

**RKL announces application to the European Court of Human Rights**

Just two days after historic Ceremonial Act "Against Sexual Apartheid" celebrating 15 years of RKL in Austrian federal parliament the Austrian Constitutional Court brings about severe disappointment for the victims of Austria's former anti-homosexual criminal legislation. With their judgment just delivered (VfGH 04.10.2006, B 742/06) the Constitutional Court's judges uphold the continuing nationwide storage of such convictions in the Registry of Convictions. Rechtskomitee LAMBDA (RKL) announced an application to the European Court of Human Rights (ECHR).

The applicant before the Constitutional Court in 1997 had been convicted twice to imprisonment under the infamous Art. 209 Criminal Code (CC). One of these convictions upon advice of his defence counsel he challenged in the European Court of Human Rights (ECHR). He did not so concerning the other conviction as his legal aid representative assigned to him by the Republic of Austria in these other proceedings told him that would be without prospect of success.

This was not the case. The ECHR found Art. 209 and convictions based on it to constitute severe violations of human rights and condemned Austria (*L. & V. vs. Austria*, 09.01.2003). As a consequence of this judgment the domestic proceedings have been reopened and the man has been acquitted. The second Art. 209-conviction however still is not just standing, but even in addition registered in the national Registry of Convictions. The Minister of Justice refused a pardon.

The man therefore applied to the Minister of Interior which is the competent authority for matters of the national Registry of Convictions for, at least, a deletion of this Art. 209-conviction from the Registry. He by this explicitly did not ask to set aside the conviction or to eliminate it from jurisdiction. He just asked for an end to the continuing storage of the conviction by the police and the transfer of this data to the Courts and other authorities.

Nevertheless the Constitutional Court now confirmed the negative decision of the Minister of Interior by saying that "it cannot be the business of the Registry's authorities to decide if and in how far certain convictions be eliminated from jurisdiction".

## **Art. 209's "uncompatibility with human rights" set under quotation marks**

Remarkably the Constitutional Court judges in this judgment described their repeal of Art. 209 in 2000 as based upon "unreasonableness of the regulation" and did set under quotation marks all references to Art. 209's "uncompatibility with human rights" which has been declared repeatedly by the ECHR.

The judges took their decision just two days after historic Ceremonial Act "Against Sexual Apartheid" celebrating 15 years of RKL in the lower chamber of Austrian federal parliament. This first honouring of an LGBT organisation in a national parliament worldwide took place in attendance of highest representatives from the judiciary, administration and politics.

Just this summer the Upper Regional Court of Vienna, in a decision confirming heavier punishment due to a criminal record according to Art. 209, said that Art. 209 might have violated the equality clause but "did not lack general moral understanding".

“It is really sad that the European Court of Human Rights again has to be confronted with still undead Austrian anti-homosexual criminal legislation”, says *Dr. Helmut Graupner*, president of the Austrian lesbian and gay rights organization *Rechtskomitee LAMBDA (RKL)* and counsel of the applicant, “Federal parliament could prevent this repeated shame for our country but RKL-advisory-board’s member Terezija Stoisits’ bill for an Amnesty-, Rehabilitation- and Compensation Act still has not been dealt with there for over one year now.”

*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. October 2<sup>nd</sup>, 2006, RKL’s 15 years anniversary has been celebrated in historic Ceremonial Act “Against Sexual Apartheid” in the lower chamber of Austrian federal parliament. This first honouring of an lgbt organisation in a national parliament worldwide took place in attendance of over 500 guests including highest representatives from the judiciary, administration and politics.*

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2006-10-19