

Criminal Record includes Anti-Homosexual Convictions

European Court of Human Rights Starts 5 Sets of Proceedings Against Austria

Rechtskomitee LAMBDA (RKL): "Hope for belated justice"

The European Court Human Rights these days has initiated five sets of proceedings against Austria on the basis that the nation-wide registry of prior convictions (the Criminal Record) still includes convictions under former anti-homosexual Art. 209.

Art. 209 of the Criminal Code stipulated a special minimum age limit of 18 years for homosexual contacts between men while for heterosexuals and for lesbians the age limit was 14 years.

In 2002 the Austrian Constitutional Court turned down Art. 209 (VfGH 21.06.2002, G 6/02). Soon after the European Court of Human Rights found convictions on the basis of Art. 209 to be serious violations of human rights (L. & V. vs. Austria 2003). Since then the age limit for all sexual contacts has been 14 years, no matter if heterosexual or homosexual relations.

This had no effect on prior convictions under Art. 209. Those convictions are still standing and they kept listed in the nationwide Criminal Record.

As late as 2006 Federal President Fischer, upon a proposal of then Minister of Justice Gastinger, by way of pardon deleted a big deal of those convictions from the Criminal Record.

Rehabilitation-Bill not yet reintroduced

Parts of the administration successfully opposed the repeal of all Art. 209-convictions from the Criminal Record. Those who, in their eyes, did not deserve the mercy of deletion of their conviction from the registry, were refused. Despite the fact that their convictions under Art. 209 without doubt constituted serious human rights violations; no matter what these victims of Art. 209 have done during the rest of their lives.

Some Art. 209-victims, who did not succeed in getting their convictions deleted from the registry, went to the courts. In Austria they did not find justice, neither in the Constitutional Court, nor in the Administrative Court, nor in the Supreme Court.

The European Court of Human Rights however accepted their applications and asked the Austrian federal government to justify the ongoing inclusion of Art. 209-convictions in the Criminal Record (A.V. vs. Austria, 48779/07; A.S. vs. Austria, 48777/07; E.B. vs. Austria, 31913/07; H.G. vs. Austria II, 38357/07; H.G. vs. Austria III, 48098/07). The government has been granted time for their submission until 20 January 2010.

"These proceedings are of utmost importance", says Dr. Helmut Graupner, president of Rechtskomitee LAMBDA (RKL) and counsel of the applicants, "Federal parliament could spare our country the disgrace of repeated conviction, but a bill for rehabilitation and compensation of Art. 209-victims has not yet been brought again in parliament after last year's elections".

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 former Prime Minister Dr. Alfred Gusenbauer, President of Federal Parliament Mag. Barbara Prammer, former Minister of Justice Mag. Karin Gastinger, the Honorary President of the Parliamentary Assembly of the Council of Europe Peter Schieder, Federal Ombudsman Mag. Terezija Stoisits, former Director of Public Security Dr. Erik Buxbaum, the former President of National Judges Association Dr. Barbara Helige, the Vice-President of the Vienna Bar-Association Dr. Elisabeth Rech, the President of D.A.S.-legal expenses insurance company Dr. Franz Kronsteiner, the President of Weisser Ring Dr. Udo Jesionek, the Secretary General of Amnesty International Austria Mag. Heinz Patzelt and the well-known human-rights experts Dr. Lilian Hofmeister and Univ.-Prof. Dr. Manfred Nowak, the constitutional law professors

Univ.-Prof. Dr. Christian Brünner, Univ.-Prof. Dr. Bernd-Christian Funk, Univ.-Prof. Dr. Heinz Mayer and Univ.-Prof. Dr. Ewald Wiederin, famous child- and adolescent psychiatrist Univ.-Prof. Dr. Max Friedrich and the Vienna Child- and Youth-Ombudspersons DSA Monika Pinterits and Dr. Anton Schmid, sexologists Univ.-Prof. Dr. Josef Christian Aigner, Univ.-Prof. Dr. Rotraud Perner and Univ.-Lekt. Mag. Johannes Wahala, theologist Univ.-Prof. Dr. Kurt Lüthi, Life-Ball-Organisor Gery Keszler and many more. October 2nd, 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 (<http://www.rklambda.at/festakt/index.htm>).

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