



Morality-Case

European Court of Human Rights Deals With "Undead" Homophobic Law

RKL calls for rehabilitation of victims

Years after repeal by the Constitutional Court the Vienna Appeals Court justified former anti-homosexual Art. 209 of the Austrian Criminal Code as morally understandable (OLG Wien 13.06.2006, 20 Bs 155/06z). The European Court of Human Rights now communicated the case to the Austrian government (*E.B. vs. Austria III*, 27783/09).

The Vienna Appeals 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". So offenders who have a criminal record under Art. 209 are 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 It had been repealed by a verdict of the Constitutional Court in 2002 due to violating the fundamental right to equality.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 more than half a million Euros in damages.

Rehabilitation-Bill not yet reintroduced

A bill for rehabilitation and compensation of Art. 209-victims has not yet been reintroduced again into parliament after last year's elections.

"The morals the Appeals Court addresses 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. We are delighted that the European Court of Human Rights goes about taking an end to this."

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, theologian Univ.-Prof. Dr. Kurt Lüthi, Life-Ball-Organisator 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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