

Austria's Supreme Court

Torture of Witnesses is Nothing to the Defendant

RKL: a case for the European Court of Human Rights

Austria's Supreme Court ruled that a defendant cannot (always) bring a complaint when the police exert illegal pressure upon witnesses in order to gain statements against him. Rechtskomitee LAMBDA (RKL), Austria's civil rights organisation for homo- and bisexual as well as transgender women and men, sees a clear case for the European Court of Human Rights.

The Supreme Court took that decision in criminal proceedings based upon Art. 207b Criminal Code (CC) which (in 2002) substituted anti-homosexual Art. 209 CC (gay age of consent of 18 versus 14 for lesbians and heterosexuals), which had been declared violating human rights by the European Court of Human Rights.

The police alleged that the defendant in this case had abused two 15-year-old adolescents. These two young men reported to the applicant that they had been put under considerable pressure and intimidated by the police officers, a kind of psychic torture, in order to deposit statements accusing him of sexual abuse. The police officers not only cursed at the defendant calling him „asshole“, „queer sow“, „children-fucker“, „sick“ etc., but even accused the juveniles themselves of criminal acts and dangled impunity if they testified against their friend. As they refused the officers initiated criminal proceedings against one of them.

Fair trial with (unsuccessful) torture?

The defendant launched a complaint to the state-prosecutor and alleged unfairness of the criminal proceedings. He failed at all levels.

The Supreme Court decided: it is only, when torture of witnesses is successful, only when witnesses testify against the defendant and these statements are used against him, that a defendant can complain. As long as witnesses resist and do not make statement to the detriment of the defendant or if detrimental statements are not used against a defendant, the torture does not regard the defendant and the proceedings against him stay fair (OGH 30.06.2010, 15 Os 127/09d).

„The use of torture and like pressures in order to get the defendant convicted is an exemplary case of unfairness and the defendant has a right to get that unfairness acknowledged“, says president of Rechtskomitee LAMBDA (RKL) and counsel of the applicant *Dr. Helmut Graupner*, „This decision is a clear case for 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 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 former 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, 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 the plenary session hall of 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>). Since 2010

RKL is a member of the Fundamental Rights Platform of the European Union Agency for Fundamental Rights (www.fra.europa.eu).

More information: Rechtskomitee LAMBDA, (++43 676 309 47 37), office@RKLambda.at; www.RKLambda.at

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