



**HOMOSEXUELLE INITIATIVE WIEN**

1. L e s b e n - u n d S c h w u l e n v e r b a n d Ö s t e r r e i c h s

# **DOSSIER**

presented by HOSI Wien to  
the three Wise Men,

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and Marcelino OREJA,**

**at the hearing of Austrian NGO representatives  
in Heidelberg on 29 August 2000**

**IMPACT AND REPERCUSSIONS OF THE POLITICAL  
NATURE OF THE FPÖ (AND THE ÖVP) ON THE**

## **SITUATION OF GAY MEN AND LESBIANS IN AUSTRIA**

► **NO COMPENSATION FOR NAZI VICTIMS**

► **HUMAN RIGHTS VIOLATIONS**

► **HOMOPHOBIC ATTACKS BY THE FPÖ**

# Introduction

Austria's human rights record concerning gays and lesbians is very poor and the lowest in the European Union.

The blame for this situation is on both parties forming the current government, the FPÖ and the ÖVP. They held a majority also in the previous Parliament and hardly allowed any progress. Within the previous SPÖ/ÖVP coalition government, the ÖVP had blocked any reform.

With this human rights record, Austria should have never been allowed to join the European Union. Although the Copenhagen criteria for EU accession countries had already been adopted in 1993, they were not applied when Austria joined in 1995. At that time, Austria's penal code still provided for a total ban on gay and lesbian organisations and on positive information on homosexuality (Articles 221 and 220), clearly violating the human rights to freedom of assembly and association and of expression. Both articles were repealed in 1996. While the ÖVP voted against the repeal of these articles, the FPÖ voted in favour of repealing the ban on associations but was opposed to repealing the ban on information. However, two FPÖ members of Parliament missed the vote, and thus also this article was abolished.

With regard to the basic human rights of lesbians and gay men, the ÖVP obviously has been even worse and more anti-human rights and anti-democratic than the FPÖ. Therefore, we regret that the three wise men have not been mandated with examining also the political nature of the ÖVP. This is obviously a serious omission.

This dossier will deal with three main issues which all can be summarised as features genuinely characterising the political nature of the FPÖ - and the ÖVP for that matter:

- the lack of compensation for the homosexual victims of the nazi regime
- the human rights violation against homosexual men by up-holding a discriminatory age of consent (Article 209 of the penal code) although this has been qualified as a human rights violation by competent human rights organs
- homophobic attacks against lesbians and gay men by the FPÖ.

## 1. Homosexual victims of the nazi regime excluded from compensation regulations:

Homosexuals were one of the groups of people explicitly persecuted by the nazis. They wanted to completely eradicate homosexuality. Persecution by the police and courts was intensified. An estimated number of 15,000 gay men and lesbian women were sent to concentration camps during the nazi era. Gay men were an own category and had to wear a specific symbol – the pink triangle. Lesbians usually were labelled with a black triangle that marked so-called “asocial persons”. Austria’s Federal Nazi Victim Compensation Act provides for compensation only for those persecuted on religious, political and racial grounds but not on grounds of sexual orientation.

When the Compensation Act was last amended on 1 June 1995, both ÖVP and FPÖ voted down the amendment to extend the scope of the law to also cover persons persecuted on grounds of their sexual orientation.

On the same day, the Parliament adopted a law to establish a “National Fund for the Victims of National Socialism”. The scope of this fund includes persons persecuted on

the grounds of their sexual orientation. However, it does not provide a general legal right to compensation but only to receive one single amount of money for those in financial need.

The refusal of ÖVP and FPÖ to grant compensation to the homosexual victims of the nazi regime is in clear and sharp contrast to the Declaration given by the new government as a preamble to their coalition programme where it is stated:

*Austria accepts her responsibility arising out of the tragic history of the 20<sup>th</sup> century and the horrendous crimes of the National Socialist regime. Our country is facing up to the light and dark sides of its past and to the deeds of all Austrians, good and evil, as its responsibility. (...) The Federal Government is committed to a self-critical scrutiny of the National Socialist past. It will ensure unreserved clarification, exposure of the structures of injustice, and the transmission of this knowledge to coming generations as a warning for the future.*

This declaration is obviously just lip service  
- the government continues to ignore its  
obligations. This is, however, not surprising  
in light of the 1995 ÖVP and FPÖ vote in  
Parliament.

**We, therefore, demand that the homosexual  
victims of National Socialism be fully recog-  
nised and compensated without any delay  
on the same footing as those persecuted on  
political, racial and religious grounds by  
amending the Federal Nazi Victim  
Compensation Act accordingly.**

## 2. Article 209 of the penal code constitutes a human rights violation

Article 209 of the Austrian penal code provides for a higher age of consent for male homosexual relations (18 years) than for heterosexual and lesbian relations (14 years) if one partner is over the age of 19. If both partners are below the age of 19, homosexual acts are no criminal offence. This provision was introduced in 1971 when the total ban on male and female homosexuality (even among consenting adults) had been repealed. Two attempts to repeal Article 209 failed in the previous Parliament due to the opposition of ÖVP and FPÖ which had a majority. The ÖVP had blocked any reform of Article 209 while in coalition with the SPÖ.

Since the introduction of Article 209, around 1,000 persons have been prosecuted and sentenced according to this provision which two international human rights organs have classified as a breach of the human rights conventions (see article and statistics in *LAMBDA-Nachrichten* # 1/96 - enclosure A - and below). There are still between 20 and 40 convictions under Article 209 every year.

Year	Reports filed to the police	criminal proceedings	judicial inquiries	convictions in court
1996	45	26	16	
1995	35	27	17	
1994	59	44	23	
1993	58	46	19	
1992	54	32	14	
1991	50	29	14	
1990	54	37	31	
1989	44	28	31	
1988	146	51	38	
1987	84	41	32	

Article 209 also affects non-EU citizens legally residing in Austria. They risk to be deported in case of conviction on the basis of this human rights violating provision. This would be a special hardship for those second or third generation immigrants who have been born in Austria and lived all their life here but do not have Austrian citizenship.

**We demand that the repeal of Art. 209 and the release from prison of all persons jailed under this law are recommended to be made conditions for the repeal of the measures against Austria - in line with the repeated appeals of the European Parliament (see pp. 9-10). We also demand that all those people convicted and sentenced under Article 209 since its introduction in 1971, around 1,000 men, receive compensation for the time in detention based on a law provision that is a breach of the human rights conventions.**

## **Two recent cases to illustrate the absurd consequences and negative impact of Article 209:**

### **The case of Michael Wodicka**

In July 2000, Michael Wodicka, 20, living in Vienna, was convicted in court for breach of Article 209, because he had, when he still was 19, gay sex with a 16 year-old boy. It did not matter that it was a consenting sexual relationship and that it was an established fact in court that it was the 16 year-old boy who took the initiative for this relationship. Moreover, the relationship came to the knowledge of the police only when they caught the 16 year-old with another male partner and, consequently, interrogated him for other partners. In these interrogations, the boy mentioned the relationship with Wodicka. A typical crime without any victim.

### **The case of August Sulzer**

In 1999, August Sulzer was accused of caressing the genitals of an adolescent male and, for this offence, sentenced under Article 209 to a one-year prison term and to detention in an institution for mentally abnormal offenders for an indefinite time. The court based this conviction upon the

expert report of a forensic psychiatrist who had established an inclination of Mr Sulzer to aggressive behaviour while, at the same time, he had found an extreme humane and helpful personality. Moreover, the psychiatrist diagnosed chronic alcoholism, which was established on the information by the defendant that he used to drink three to four glasses of beer twice to three times a week on an average. The expert report concluded that, due to these disorders and the criminal record of the defendant (including, however, just one previous conviction for a sexual offence), further offences with grave consequences had to be expected.

Detention in an institution for mentally abnormal offenders lasts for an indefinite period, potentially also for lifetime. A release can only be ordered by a court convinced that the detainee is healed and does not constitute any danger any longer. Even then, release can only be granted upon probation with the probation period being ten years.

In May 2000, the Regional Court at Graz had to make the annual review with regard to the necessity of further detention. The judge refused to release Mr Sulzer although he did not see the detainee face-to-face. He based his decision solely on the expert evidence given during the trial one year ago and on the up-dated report of the prison psychiatrist who, however, had not seen the detainee face-to-face either. This psychiatrist declared in his report that the evidence of the psychiatrist given at the trial (with whom, by the way, he runs a joint practice in Graz) would still be valid. He established that no changes had occurred with the detainee so far. Changes could only be expected after years of therapy of the detainee's sexual disorders. On this basis, Mr Sulzer might be detained for lifetime - just because he had caressed the genitals of an adolescent male.

**These are human rights violations and psychiatric abuses which can only be compared with those in Soviet gulags.**



## A short chronology of appeals and failed attempts to repeal Article 209:

**27 November 1996:** ÖVP and FPÖ voted down a bill to repeal Article 209.

**8 April 1997:** The European Parliament adopts its report and resolution on the observance of human rights in the European Union in 1995 (document A4-0112/97), the first year of Austria's membership in the EU. In paragraph 140 of the resolution, the EP urges Austria to repeal the unequal age of consent provision for male homosexual relations.

**1 July 1997:** In application # 25186/94, Euan Sutherland against the United Kingdom, the European Human Rights Commission in Strasbourg finds "that no objective and reasonable justification exists for the maintenance of a higher minimum age of consent to male homosexual, than to heterosexual, acts" (paragraph 66 of the opinion) and concludes "that in the present case there has been a violation of Article 8 of the Convention, taken in conjunction with Article 14 of the Convention" (para. 67).

Opponents of a reform of the similar age of consent provision in Article 209 put forward the formalistic argument that this decision,

since it concerns a British complaint, does not effect the Austrian law; and that it was not confirmed by the European Court of Human Rights (the British government accepted the opinion of the Commission and, therefore, did not appeal to the Court).

**17 February 1998:** The European Parliament adopts its report and resolution on the observance of human rights in the European Union in 1996 (document A4-0034/98). In paragraph 69 of the resolution, the EP urges Austria once more to repeal the unequal age of consent provision for male homosexual relations.

**17 July 1998:** Fully aware of the July 1997 decision of the European Human Rights Commission and the two EP resolutions of 8 April 1997 and 17 February 1998, the ÖVP and FPÖ voted down another bill to repeal Article 209.

**17 September 1998:** The European Parliament adopts a resolution on equal rights for gays and lesbians in the EC (document B4-0824 and 0852/98). In this resolution, the EP, "considering that, for reasons of credibility towards the applicant coun-

tries when demanding from them the observance of human rights, EU member states such as Austria need to repeal their own legislation discriminating against lesbians and gay men, in particular existing discriminatory age of consent provisions" (consideration C), and "regretting the refusal of the Austrian Parliament to vote for the repeal of Article 209, the higher age of consent provision for gay men, on 17 July 1998, thus knowingly ignoring both the decision in the Sutherland case and the urgent demands towards Austria expressed by the European Parliament in its abovementioned resolutions of 8 April 1997 and 17 February 1998" (consideration G), "calls on the Austrian Government and Parliament to immediately repeal Article 209 of the Penal Code and to immediately provide for an amnesty for, and the release from prison of, all persons jailed under this law" (paragraph 1).

**5 November 1998:** After the consideration of Austria's third periodic report submitted under Article 40 of the International Covenant of Civil and Political Rights, the United Nations Human Rights Committee notes in its concluding observations: "The Committee considers that existing legislation on the minimum age of consent for sexual relations in respect of male homosexuals is discriminatory on grounds of sex and sexual orientation. It requests that the law be

revised to remove such discriminatory provisions." (para. 13)

**17 December 1998:** The European Parliament adopts its report and resolution on the observance of human rights in the European Union in 1997 (doc. A4-0468/98). In paragraph 53 of the resolution, the EP reiterates the demand towards Austria to repeal Article 209.

**16 March 2000:** The European Parliament adopts its report and resolution on the respect for human rights in the European Union in 1998-99 (doc. A5-0050/2000). In paragraph 60 of the resolution, the EP once more urges Austria to repeal Article 209 and to immediately release from prison all those jailed under this provision.

**7 April 2000:** At a press conference on the occasion of the official opening of the European Monitoring Centre on Racism and Xenophobia in Vienna, Nicole Fontaine, president of the European Parliament, declared, replying to a question of a journalist, that the unequal age of consent legislation, indeed, constitute a breach of human rights and, therefore, Austria is violating the EU Treaty. This must be made clear to the Austrian Government, this is not an interference in internal matters but a matter of respecting human rights, Fontaine added.

### 3. Homophobic attacks by the FPÖ

Sexism and homophobia are siblings of racism and xenophobia. The political nature of the FPÖ is certainly the best proof for this theorem. In order to maximise its votes, the FPÖ, in its political campaigns, is appealing to the lowest instincts in people instead of to solidarity. "Scapegoating" is one feature, marginalising of specific groups another. And this is not limited to foreigners, ethnic minorities or immigrants. This pattern is also applied to people the FPÖ calls "social parasites" or to homosexuals for that matter.

HOSI Wien has put together examples of homophobic attacks against lesbians and gay men by FPÖ politicians. However, we do not include in this list political statements in which FPÖ politicians speak out against the demands of the gay and lesbian movements, formulate their opposition to law reform or the recognition of same-sex couples, or criticise the granting of subsidies to gay and lesbian projects. This has always been a preferred FPÖ playground for polemics and demagoguery. However, we want to consider these statements as permissible positions in the political discourse although they often have a homophobic undertone.

Therefore, we only list examples where the FPÖ used homophobic attacks as a political weapon to stir up anti-homosexual feelings and resentments in the population.

**November 1993:** The then FPÖ secretary-general Walter Meischberger, in a speech at the party convention of the FP Tyrol, named the Liberal Forum (which had split away from the FPÖ under the leadership of Heide Schmidt) a *Schwuchtelpartei*, meaning a "clique of queers" - and that was not positively meant (see *Der Standard* dated 30 November 1993 - enclosure B).

**January 1994:** At a meeting to open the electoral campaign for the regional elections in Salzburg, the leaders of the FP in the city and in the *Land* of Salzburg, Siegfried Mitterdorfer and Karl Schnell, made several homophobic remarks which were reported by *Die Presse* on 14 January 1994 (enclosure C).

**July 1994:** Peter Westenthaler, today leader of the FPÖ in the Parliament, then city councillor in Vienna, accused a city councillor of the Socialist Party of having committed a crime under Article 209 of the penal

code (sex with a juvenile person between 14 and 18). The accusation turned out to be completely fabricated. A full account of this unprecedented smear campaign in Austrian politics is given in *Falter* # 30 of 29 July 1994 (enclosure D).

**September 1994:** During the general election campaign, the FPÖ intensifies its attacks against personalities using homosexuality as a weapon to inflict damage on political opponents, especially from the SPÖ. In full-page advertisements, the FPÖ accused a high-ranking, openly lesbian employee of the State Television ORF to have used her relationship with a former cabinet minister to get this job. The FPÖ even mentioned the full names of the two persons (see *Neue Kronenzeitung* dated 18 September 1994 - enclosure E). Hans Pretterebner, FPÖ candidate for the Parliament and later MP, offered his magazine *Top* as a platform for a smear campaign against the SPÖ minister for cultural affairs, Rudolf Scholten, who had defended himself by affidavit against accusations of having betrayed his wife with a man (see *NEWS* # 36/94 dated 8 September 1994 - enclosure F).

**March 1995:** Hilmar Kabas, FP city councillor in Vienna, called the Rosa Lila Villa, an independent gay and lesbian community centre in Vienna, "a subsidised brothel" (*Der Standard* of 20 March 1995).

**Autumn 1996:** In the campaign for the provincial elections in Vienna in October 1996, Rainer Pawkowicz, late leader of the FP Vienna, had published advertisements attacking the SPÖ and ÖVP for granting subsidies to a gay and lesbian cultural festival (see enclosure G).

**26 January 2000:** Doris Tazl, FP leader in the city council of Salzburg, called homosexuals "criminal elements" Salzburg youth must be protected from. Original quote from Tazl's press release which dealt with the plans to organise a Berlin-style love parade in the city of Salzburg in summer 2000: *Die letzte Berliner Love Parade war ein Forum für Punker, Homosexuelle, offenen Suchtgiftmissbrauch und Radikale. Ich kann mir nicht vorstellen, dass die Salzburger für eine solche Veranstaltung Verständnis aufbringen. - Die Stadt Salzburg ist aufgefordert, ihre Bewohner und insbesondere die Jugendlichen vor diesen kriminellen Elementen zu bewahren.*