

Austria



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BRIEF HISTORICAL OVERVIEW

In 1768, Austrian Empress Maria Theresia enacted the *Constitutio Criminalis Theresiana*, which provided, in paragraph 74, the death penalty for homosexual activities. The convict should, according to that paragraph "be exterminated from the earth by burning to death." Under Joseph II, who succeeded Maria Theresia, the penal codes were revised. The Austrian Code of 1787 distinguished between criminal and political felonies, and homosexuality fell within the range of the latter: "Somebody who disparages humanity to such extent as to decay in carnal desire with the same sex, is guilty of a political crime." Under this code, homosexuality was punished with imprisonment, forced labor, and flogging.

In 1803 this penal law was replaced with a new code in which "illicit practices against nature" were punishable with imprisonment for six months to one year. Section 129 of the Austrian code of 1852 increased the penalty for such

"crimes" to imprisonment for one to five years, a sentence which could be extended to 20 years according to the severity of the case.

After the seizure of power by the Nazis (1933 in Germany, 1938 in Austria), so-called "Rosa Listen" (pink lists) of known gay men were drawn up. Many of these men were imprisoned in concentration camps, where they were identified with a "Rosa Winkel" (pink triangle). The persecution of lesbians was somewhat different. Along with sex workers, they were arrested under charges of demoralization of the troops, asocial behavior, and criminality. Many were kept in

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brothels or psychiatric hospitals. Others went directly to the concentration camps where they wore not the "Rosa Winkel" but the "Schwartz Winkel" (black triangle) identifying them, together with sex workers, as asocial.

LEGAL REFORM

The situation of lesbians in Austria after World War II was generally that of social repression and isolation. Though there were some attempts to organize groups, few spoke out publicly until the late 1960s. In 1971, Section 129, which criminalized homosexual acts, was repealed. However, protests from conservative circles and the church led to the adoption of four new articles which place restrictions on lesbians and gay men in their public and private lives:

- Article 209 dictates a higher age of consent for gay male sex. Men over the age of 19 are not allowed to be sexually active with men under the age of 18. (The age of consent for heterosexuals and lesbians is 14).
- Article 210 (which has since been repealed) prohibited male prostitution.
- Article 220 prohibits production and distribution of any material which presents homosexuality in a positive way.
- Article 221 prohibits both the establishment of lesbian and gay organizations and membership in such organizations.

Lesbian and gay organizations have formed despite these restrictive laws. In 1980, the first national lesbian meeting took place and since 1983, lesbians have met annually. While Articles 220 and 221 are rarely enforced directly to imprison lesbians or gay men, they do have several secondary effects. For example, in September 1990, Article 220 was used against two publications put out by Homosexuelle Initiative (HOSI), a Vienna-based lesbian and gay organization. The provincial court in Vienna seized the HOSI publications *Tabu* and *Lambda News*. *Lambda News* was seized by the authorities because of the following sentences: "From our own experiences we know that for young lesbians and gays, growing up believing they are the only ones with this 'problem' can be a very tough time. Isolation and weariness with life are often the result. Contact with kindred persons can help a lot." According to the judge, these sentences were promoting homosexuality and therefore in violation of Article 220.

Another example of the use of these provisions came in 1988. At the unveiling of a memorial to concentration camps victims, lesbian and gay activists wanted to draw attention to the lack of information and public awareness about homosexual concentration camp victims. A peaceful demonstration was held in Vienna with a banner bearing the

words "1000e homosexuelle KZ Opfer warten auf ihre Rehabilitierung" ("Thousands of homosexuals are waiting for compensation"). The police violently interfered and confiscated the banner. The Constitutional Court ruled that "the carrying and prominent display of the banner—in itself an attempt to disturb the commemoration ceremony—warranted the action of the police in order to protect the event from interference." The court reminded members of HOSI that they could not claim to be exercising their right to free speech because Article 220 prohibited the promotion of homosexuality.

In another instance of censorship, lesbian activists met with a series of obstacles in their attempts to display a poster with the slogan "Lesbians exist always and everywhere." The conflict started in 1988 on International Women's Day. Viennese lesbians and feminists wanted to draw attention to the situation of women through slogans displayed in public advertising spaces and commissioned an advertising firm to put up posters on trams. While 14 posters with the slogans "Power makes women powerful" and "The present time is feminist or it doesn't exist" were displayed on trams throughout Vienna for a whole month, the posters with the slogan "Lesbians exist always and everywhere" were not put on the trams. The advertising firm justified its refusal to carry out this part of the contract by citing national policy and public morals. Despite Article 220, a group of lesbians sued the advertising firm and won the suit. The advertising firm appealed the judgment, but in January 1990, the appellate court upheld the ruling. Although this judgment represented a triumph for lesbians in Austria, the posters were never seen by the public. The Viennese Traffic Management refused to display the slogan on the grounds that it would not be fair to female passengers, since, it argued, those reading the signs might assume that all the women on the train were lesbians.

SOCIAL POLICY

In terms of Austrian social policies, lesbians are subsumed under the category of "single women," regardless of the fact that many lesbians have long-term partners. The fact that their partnerships with other women are not acknowledged puts lesbians at a disadvantage under the Austrian legal system. For instance, Austrian fiscal law considers lesbians "single women," and lesbian couples are not granted the reduction in income tax that is granted to heterosexual married couples. The same situation can be found in the health insurance system: lesbians cannot be insured with their partners.

Under inheritance law, a lesbian's long-term partner does not exist. After the death of a partner, many lesbians suffer a loss that is often unacknowledged and at the same time may be confronted by a family claiming ownership of the couple's joint possessions. Lesbians also have no legal means to enter the tenancy contract of their deceased partner and are often forced to leave the apartment that they have paid for together. In the case of the paid caretaking leave for close relatives, although the phrasing is gender-neutral ("the person with whom the employee lives in a partnership"), there is still no paid leave for lesbians to care for their partners.

LESBIAN LIFE TODAY

HOSI Vienna, the oldest lesbian and gay organization in Austria, was founded in 1979 by gay men; in 1981, a lesbian group began meeting weekly in the HOSI center. In recent years a remarkable variety of groups have developed within the lesbian and gay community, including Homosexuelle und Kirche (Homosexuals and the Church), Judische Homosexuelle (Jewish Homosexuals), Rechtsgruppe (Legal Advice Group), and Lesben uber 30, (Lesbians over 30). However, there are still relatively few specifically lesbian groups in Austria. Many lesbians work within feminist organi-

