

## **File on the Background of Persecution of Homosexuals Due to Sexual Orientation During the Nazi Period and Afterwards (WA-132/04)**

In the Middle Ages, any deviation from heterosexual love between spouses was deemed to be heresy, sin or obsession. Religious models of explanation were in the foreground. In early Modern Times, any sexual behaviour that deviated from the heterosexual norm was interpreted as being the product of a "criminal mind" which had to be castigated.

With the emergence of the so-called "modern science" a new phase began: Medicine opposed the criminalization of homosexuality that had been common until then, seeing persons with behaviour that deviated from the majority as being sick individuals requiring treatment. "It was seen as a great advance for humanity that homosexuals no longer ended up in jails but rather in the medical practice or in psychiatric ward."<sup>1</sup> These persons were given a variety of exotic names until, at the end of the 19<sup>th</sup> century, the new terms "homosexuality" and "heterosexuality" were introduced, which had been coined by the Austrian writer Kertbeny in 1869.

In Germany, homosexuals could live rather freely during the Weimar Republic in spite of § 175, which since 1871 persecuted contacts between homosexuals; the gay movement became stronger, was well organized and usually backed by men, while "women were more poorly organized"<sup>2</sup>. The "Wissenschaftlich-Humanitäres Komitee" (WHK, "Scientific Humanitarian Committee") founded by Magnus Hirschfeld in 1897 deserves special mention. In 1929, the Criminal Law Committee ("Strafrechtsausschuss") of the Reichstag recommended annulling § 175, but before this could be put into effect Hitler was named Reich chancellor on January 30, 1933.

In Austria there was a paragraph on homosexuals, which also included women, banning both male and female homosexuality.

As early as 1929, the NSDAP announced that it would combat homosexuality as well as any form of free sexuality in a declaration of principle, since this was opposed the "struggle for existence" and was "malicious instincts of the Jewish soul (...), really indecent aberrations from Syria (...), crimes to be sanctioned by means of hanging or extradition"<sup>3</sup>. The massive social discrimination and disdain of homosexuals was desired and even encouraged. In March 1933 the Hirschfeld Institute for Sexual Research was destroyed. Gay bars were closed in the "Clean Reich" initiative, all homosexual organizations banned, leading members arrested and sent to concentration camps. Regular police raids made it dangerous to meet. The organizations of the gay movement were among the first, with the German Communist party (KPD), the German Socialist Party (SPD) and the unions, to be banned and suppressed.<sup>4</sup>

In 1935, § 175 was made more severe. Letters, gestures and even gazes that ran counter to the "healthy sensitivity of the people" were sanctioned, and the number of individuals condemned rose dramatically. Following the Roehm affair, persecution was further increased. Heinrich Himmler even ordered that a central file be created for homosexuals. In 1937, Himmler ordered that homosexual members of the SS (Schutzstaffel) be degraded in public, sent to a concentration camp after serving their term of imprisonment and killed there while trying to flee "to least keep free the good blood that we have in the Schutzstaffel and

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<sup>1</sup> Grossmann, Thomas. Eine Liebe wie jede andere. Mit homosexuellen Jugendlichen leben und umgehen. Reinbeck b. Hamburg: Rowohlt, 1988; p. 35.

<sup>2</sup> Hauer, Gudrun. "Homosexuelle im Faschismus". In: Lambda-Nachrichten 1/1984.

<sup>3</sup> Rosenberg. Völkischer Beobachter, 2.8.1930.

<sup>4</sup> Hauer, Gudrun. "Homosexuelle im Faschismus", in: Hauer, Gudrun/Schmutzer, Dieter (ed.). Das Lambda-Lesebuch. Journalismus andersrum; p. 107-125, p. 111.

this ongoing recovery of blood that we are bringing up for Germany”<sup>5</sup>. In 1941, the death penalty was introduced for members of the SS and the police who violated § 175.

At the end of 1935, measures for “preventive combating of crime by the police” were to help capture so-called “Volkschädlinge” (pests harmful to the people). The police could now enforce preventive custody on asocial or dangerous individuals, that is, also against homosexuals. In 1936, the “Reich central office for combating abortion and homosexuality” was founded; until 1939 it was assigned to the “Secret State Police” (Gestapo). Most of the homosexuals arrested were sent to a concentration camp – either after serving their term of imprisonment or right away, that is without a trial or court proceeding. At the camps, they were branded as “pink triangles” to be “bettered by systematic work”<sup>6</sup> – unless they agreed to be castrated. Towards the end of the war, homosexuals were sent to the front in delinquent battalions.

The number of gays killed in the concentration camps cannot be exactly determined. Grossmann, for instance, speaks countless thousands, Sommer cites similar figures, whereas Hauser speaks of about 15,000 gay men.<sup>7</sup>

It can be stated with certainty that men wearing the pink triangle in the camps usually had a special status and were at the very bottom of the prisoner hierarchy. They were often isolated from other inmates, suffered under special repressive measures and tortures by the SS and were assigned to particularly feared work commandos with extremely high rates of mortality. They were not allowed to seek treatment in the sick bays, and a number of them were used for fatal “medical experiments”. They were usually marginalized from the other groups of inmates and “could often only survive by offering sexual services, as bedfellows of (...) inmate functionaries”<sup>8</sup>. In this social situation, it is “not surprising (...) to find a strikingly large number of explicit reports on an increased likelihood of death”<sup>9</sup> among the men wearing a pink triangle. This triangle was “almost always a certain death sentence”<sup>10</sup>.

While there was less direct police pressure on lesbians than on gays, the former suffered more from material pressures than the latter. At that time, lesbians were denied their own sexuality that was detached from motherhood. Both lesbians and gays were arrested and deported, denounced, spied on, ridiculed in public, were forced to forego friendship, love and sexuality, spend years in prison or in a concentration camp and were all too often sentenced without a trial, for “whoever thinks of man-male or woman-female love, is our enemy!”<sup>11</sup>.

In addition to the personal suffering and painful death, a large part of the history of the homosexuals’ emancipation movement was lost, for as a result of the “systematic persecution of the homosexuals in concentration camps also the memory of the first champions of homosexual emancipation was erased”<sup>12</sup>.

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<sup>5</sup> Himmler, Heinrich. “Über die Frage der Homosexualität und ein natürliches Verhältnis der Geschlechter zueinander” (On the issue of homosexuality and a natural relationship between the sexes), speech given to SS functionaries in Bad Tölz on Feb. 17, 1937.

<sup>6</sup> Hauer: p. 112

<sup>7</sup> Cf. on this: Sommer, Kai. Die Strafbarkeit der Homosexualität von der Kaiserzeit bis zum Nationalsozialismus: eine Analyse der Straftatbestände im Strafgesetzbuch und in den Reformentwürfen (1871-1945). Dissertation. Frankfurt/M., Vienna et al: Lang, 1998. Also: Grau, Günter (ed.). Homosexualität in der NS-Zeit. Dokumente einer Diskriminierung und Verfolgung. Frankfurt/M.: S. Fischer, 1993. Also: Fischer, Doris. Homosexualität im Dritten Reich. Diskriminierung und Verfolgung. Vienna: Univ. Vienna; master’s thesis, 1995.

<sup>8</sup> Hauer: p. 118.

<sup>9</sup> Lautmann, Rüdiger/Grikschat, W./Schmidt, E., “Der rosa Winkel in den nationalsozialistischen Konzentrationslagern”. In: Lautmann, Rüdiger (ed.). Seminar: Gesellschaft und Homosexualität. Frankfurt/M.: Suhrkamp, 1977, p. 325-365; p. 347 ff.

<sup>10</sup> Hauer: p. 120.

<sup>11</sup> Klare, Rudolf. Homosexualität und Strafrecht. Hamburg, 1937.

<sup>12</sup> Grossmann: p. 122.

Homosexuals in Austria and Germany<sup>13</sup>, however, had to continue to hide even after the war was over, since criminal persecution did not end with the Nazi regime. It is a fact that this group of victims was neither rehabilitated nor did it receive any compensation. Even those who were sent to a concentration camp after serving their term of imprisonment did not receive any reparations.<sup>14</sup>

After 1945, § 175 continued to be valid in the Nazi version both in Germany and East Germany until 1969. It was argued that it had been formulated in an orderly way and was not a specifically Nazi-influenced law. Homosexuals were not compensated for social and retirement insurance for the time they spent in concentration camps, and when convicted again it was even seen as a previous offence.

In Austria, the homosexual paragraph of the First Republic that applied for both men and women once again came into effect. This so-called total ban on homosexuality (it prohibited any homosexual act, that is, even such between two adults in private) was only abolished in 1971 as part of the big penal law reform and replaced by three special paragraphs (§§ 209, 220, 221 Criminal Law Code). Until less than thirty years ago, homosexuality was regarded as a crime<sup>15</sup>, while in other countries the situation was very different: In France for instance, the total ban on homosexuality had already been lifted in the course of the French Revolution, that is, in 1789.

In 1997, §§ 220, 221 of the Penal Law Code were revoked, which had prohibited promotion of homosexuality and establishing organizations to promote it. Until they were abolished, these paragraphs were by no means moot. While they were still in effect they obstructed necessary information campaigns on homosexuality for young people and information on counselling possibilities geared to the youth. § 1 of the meanwhile revised pornography law had prohibited homosexual pornography. Austrian customs had referred to these paragraphs at the end of the 1980s, at the peak of the Aids crisis, to confiscate at the German-Austrian border Aids information brochures for homosexual men which had been published by the German AIDS help organization.

Only in 2002, § 209 of the Penal Law Code which set down a minimum age of 18 years for homosexual contacts between two men (offence, minimum imprisonment of 6 months), whereas the minimum age for homosexual contacts between two women and for heterosexual contacts was 14 years<sup>16</sup>, was abolished as unconstitutional, since “according to the European Commission on Human Rights and the UNO committee for human rights a higher minimum age for homosexual and heterosexual acts represented a violation of human rights conventions”<sup>17</sup>. The European Parliament had asked Austria five times to abolish § 209, and twice to immediately release all individuals arrested for this reason. The President of the European Parliament, Nicole Fontaine, had even declared that Austria was also violating the EU agreement as a result of this continuing serious violation of human rights.<sup>18</sup>

The Austrian Federal government was late in implementing in 2004 the EU employment guideline (guideline 2000/78/EC) which prohibits the discrimination of an individual due to his

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<sup>13</sup> Cf. on this: Ackermann, Heinrich. Co-lecture at the 39<sup>th</sup> German legal experts conference (section c: Fundamental issues of adjustment of the Criminal Code), printed in: Proceedings of 39<sup>th</sup> German Legal Experts Conference 1951. Munich: 1951, sect. c. Also: Jäger, Herbert; Schorsch, Eberhard (ed.). Sexualwissenschaft und Strafrecht. Stuttgart: 1987.

<sup>14</sup> Cf. on this: Stümke, H.G.; Finkler, R. Rosa Winkel, Rosa Listen: Homosexuelle und ‘Gesundes Volksempfinden’ von Auschwitz bis heute. Rowohlt: Reinbek, 1981.

<sup>15</sup> Cf. on this: Grauper, Helmut. Homosexualität und Strafrecht in Österreich: Eine Übersicht. Vienna: Rechtskomitee Lambda, 1991.

<sup>16</sup> Cf. on this: Graupner, Helmut. Sexualität, Jugendschutz und Menschenrechte. Über das Recht von Kindern und Jugendlichen auf sexuelle Selbstbestimmung. Ph.D dissertation. Frankfurt/M., Vienna et al: Lang, 1996.

<sup>17</sup> Högl, Christian. In: HOSI Wien weist auf Menschenrechtsverletzungen hin: Presseaussendung der HOSI vom 28.7.2000. Vienna: HOSI, 7/2000.

<sup>18</sup> Ibid.

race, ethnic origins, religion, worldview, handicap, age and sexual orientation in the professional realm. It also failed to apply the protection against discrimination to all realms of life. For many of the cited discriminated groups such a protection exists in legal provisions – but not for lesbians and gay men. Other member states of the EU are way ahead of Austria, as regards their legal situation.<sup>19</sup> This is evidenced by effective anti-discrimination laws and the possibility of entering into a registered partnership or even marriage as a homosexual couple.<sup>20</sup>

It must furthermore be noted that the Republic of Austria continues to discriminate homosexual individuals and their life partnerships in a number of legal instances, while the City of Vienna already in 1998 founded the “Vienna anti-discrimination center for homosexual styles of life” and has done everything possible to counter discrimination, be this in individual regulations, also on taking time off to care for an ailing partner, leave for visiting a partner in a hospice, Vienna residences and in training, or in the form of laws, as for instance the “Vienna Declaration for Justice and Equality” (2000), the amendment to the law for protection of children and young people (2002) or the Vienna Anti-discrimination law (2004).

Wit Haeberle “it remains to be hoped that the discrimination of homosexuals will soon end”, for sexual orientation should “be just as little as sex, race, religion and nationality a reason to deny someone of the same rights. Thus the struggle of homosexuals for equality, just like that of other suppressed people, deserves to be fully successful.”<sup>21</sup>

In the 1970s, the second German gay movement took up the pink triangle as a symbol of identification for gays and thus expressed, along with the new connotation of the word “schwul” (German for gay), a new emancipated and self-assured approach to one’s own homosexual orientation. This is reflected in the many organizations, groups, initiatives and media that today are fighting against social taboos and legal inequality of homosexuals. The pink triangle has meanwhile been replaced by the rainbow flag which today is seen internationally as the symbol of the lesbian and gay movement.

In 1984, the Austrian HOSIS (homosexual initiatives) erected the world’s first monument for the homosexual victims of the Nazi rule at the Mauthausen memorial. In 1985 Neugamme followed, in 1987 Dachau and Amsterdam with a living monument, in 1989 Berlin-Nollendorfplatz, in 1990 Bologna, in 1991 Sachsenhauser, in 1994 Frankfurt am Main with the “Frankfurt Angel”, in 1995 Cologne.

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<sup>19</sup> Cf.: Konrad, Heinrich. Probleme der eheähnlichen Gemeinschaft im Strafrecht. Frankfurt/M.: 1986. Also: Risse, Jörg. Der verfassungsrechtliche Schutz der Homosexualität. Baden-Baden: Nomos, 1998. Also: Grib, Susanne. Die gleichgeschlechtliche Partnerschaft im nordischen und deutschen Recht. Ph.D dissertation. Munich: Ars Una, 1996

<sup>20</sup> A detailed overview can be found in: International Lesbian and Gay Association (ILGA)-Europa (ed.). Gleichstellung von Lesben und Schwulen: Eine relevante Frage im zivilen und sozialen Dialog. With support from the European Commission. Brussels: ILGA-Europa, 1998.

<sup>21</sup> Haeberle, Erwin J. Die Sexualität des Menschen: Handbuch und Atlas. Berlin, New York: de Gruyter, 1983; p. 497.