

S. L. v. Austria (Application no. 45330/99)

From DADEL

1) Reference Details

Jurisdiction: European Court of Human Rights

Date of decision: 9 January 2003

Link to full case:

<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=698754&portal=hbk&source=externalbydocnumber&table=1132746FF1FE2A468ACBCD1763D4D8149>

2) Facts

The Applicant, an Austrian citizen, claims to be a victim of a violation by Austria of Article 8 and Article 8 in conjunction with Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention").

The Applicant is a homosexual. He submitted that until the age of eighteen he could not enter into any fulfilling sexual relationship with an adult partner for fear of exposing that person to criminal prosecution under Article 209 of the Criminal Code. At the time, Article 209 of Criminal Code reads as follows: "A male person who after attaining the age of nineteen fornicates with a person of the same sex who has attained the age of fourteen years but not the age of eighteen years shall be sentenced to imprisonment for between six months and five years." The Constitutional Court found that Article 209 Criminal Code was unconstitutional in June 2002 and on 10 July 2002, Parliament decided to repeal the said provision.

3) Admissibility

The Court noted at the outset that though Article 209 of the Criminal Code had been repealed, it did not change the Applicant's victim status within the meaning of Article 34 of the Convention. Thus, where domestic authorities have not provided redress for a violation, a decision or measure favorable to the Applicant will not on its own deprive him of his victim status. In this respect, the Court held that the Constitutional Court's finding that Article 209 is unconstitutional did acknowledge the violation suffered by the Applicant. The Application was found to be admissible.

4) Merits

The Court referred to its jurisprudence and reiterated that sexual orientation is a concept covered by Article 14 and just like discrimination based on sex, discrimination based on sexual orientation requires particularly serious reasons to be justified. It did not find an objective and reasonable justification for why young men in the fourteen-to eighteen-year age bracket needed protection against any sexual relationship with adult men, while young women in the same age bracket did not need such protection against either heterosexual or lesbian relations. It cited with approval the Applicant's assertion that there was an ever-growing European consensus to apply equal ages of consent for heterosexual, lesbian and homosexual relations. The Court observed that in assessing the margin of discretion left to the states, the extent of common ground among European states is a decisive factor. The

Court found that that the Government had not offered convincing and weighty reasons justifying the maintenance in force of Article 209 of the Criminal Code. Given its decision on Article 8 in conjunction with Article 14, the Court found it unnecessary to examine the Applicant's complaint under Article 8 taken alone.

5) Decision

There has been a violation of Article 14 of the Convention taken in conjunction with Article 8. The Court considered it appropriate to award just satisfaction for non-pecuniary damage, even though Article 209 of the Criminal Code had recently been repealed and the Applicant had therefore achieved in part the objective of his Application.

The partly dissenting opinion did not agree with the majority on the question of compensation for non-pecuniary damages.