

**THE EUROPEAN REGION OF
THE INTERNATIONAL LESBIAN AND GAY ASSOCIATION
ILGA-EUROPE**

Please reply to: Nigel Warner,
141 Cloudesley Road,
London N1 0EN
UK

nwarner@gn.apc.org
Tel/Fax: 44-171-278-1496

ILGA-Europe has consultative status with the Council of Europe

29 February 2000

BY FACSIMILE AND AIR MAIL

Judah Gribetz, Esq.,
Special Master / Distribution,
c/o RICHARDS & O'NEIL,
885 Third Avenue,
New York, NY 10022

Re: In Re Holocaust Victims Assets Litigation
Case No CV-96-4849 (ERK)

Dear Special Master Gribetz,

On behalf of the organisations set out below, we submit the attached proposal for a plan of allocation in respect of the homosexual victims and targets of Nazis persecution:

Agudah (Association of Gay Men, Lesbians and Bisexuals in Israel)
European Region of the International Lesbian and Gay Association (ILGA-Europe)
Homosexuelle Initiative (HOSI) Wien
International Gay and Lesbian Human Rights Commission (IGLHRC)
Lesben- und Schwulenverband in Deutschland (LSVD)
World Congress of Gay and Lesbian Jewish Organizations (WCGLJO)

These organisations are all members of the Pink Triangle Coalition, an international coalition for coordinating affairs relating to the Nazi persecution of gay men and lesbians.

We appreciate how difficult is the role of those charged with deciding finally on any allocations. We put forward the following suggestions with a view to ensuring that the legitimate interest of homosexual persecutees and targets of persecution who are deceased and without heirs is given due attention, and in the hope that our thoughts, tentative as they must be, are a constructive contribution to your deliberations.

It is only recently that we have learned of the possibility of making this proposal and inevitably a number of elements remain to be firmed up.

The support for this proposal of the World Congress of Gay and Lesbian Jewish Organizations is subject to final ratification by its Board.

We would be very grateful for any suggestions you have as to the contents of our proposal, which we would be happy to develop further in consultation with yourself.

Yours sincerely,

A handwritten signature in black ink that reads "Nigel Warner". The signature is written in a cursive style with a long horizontal flourish at the end.

Nigel Warner
For the Board of ILGA-Europe

Holocaust Victim Assets Litigation (Swiss Banks Litigation)

Proposal for *cy pres* allocation to establish a foundation for education about, and research into the Nazi persecution of homosexuals, in memory of the victims and targets

Date: 29th February 2000

Summary of proposal

The information needed to determine a per case dollar amount applicable under the four classes of asset claim does not exist in respect of homosexual persecutees both because of the nature of their persecution by the Nazis, and because homosexuals continued to be persecuted in Germany and Austria for many years after the end of the Nazi era.

It is therefore proposed that the allocation of an overall amount to the benefit of the homosexual persecutees be determined by use of a broad key, which it is suggested, could be approximately 1% of the total settlement sum. This takes account of the fact that the persecution influenced the actions of two million or more homosexual men and women, a proportion of whom are likely to have deposited assets in Swiss Banks.

It is believed that only a small proportion of this overall amount is likely to be taken up by individual claims, leaving the great majority available for *cy pres* uses. It is proposed that this amount be used to establish a Foundation with the broad objects of education about, and research into, the Nazi persecution of homosexuals.

Education has a most important role to play in combating the prejudice and discrimination faced even today by many of the victim groups. This is very much the case for lesbians and gays, who continue to face high levels of discrimination and oppression in many countries around the world, both at the hands of the state and of private individuals.

The continuing hostility towards homosexuals both in Germany/Austria and more widely in the period since the war means that the Nazi persecution of homosexuals is often under-represented, or not represented at all, at memorial sites and museums, and in Holocaust education programmes. It also means that research into this subject has been seriously neglected.

Accordingly, there is a real need for a Foundation to support work in this area. This work would be a fitting memorial to the persecutees, ensuring that their suffering is never forgotten, and helping to dispel the prejudices which were at the root of this suffering and which still exist today, to the immeasurable benefit of succeeding generations of lesbians and gays.

1. History of the Nazi Persecution of Homosexuals

Two summaries of the history of the Nazi Persecution of Homosexuals are provided with this proposal: a paper by the Pink Triangle Coalition, "Nazi Persecution of Gay Men and Lesbians" (Appendix 1), which was submitted to the London Conference on Nazi Gold (1998) and published in the official proceedings; and the United States Holocaust Memorial Museum's booklet "Homosexuals" (Appendix 2).

Key elements of this history can be summarised as follows:

- The ideological basis for the persecution of homosexuals stemmed directly from three fundamental elements of Nazi thinking: its racial theories, its population politics, and its conception of gender roles.
- Homosexual community life was totally destroyed. All emancipation organisations, publishing houses, social organisations and meeting places were closed down. Many of the community's leaders were arrested within weeks of Hitler coming to power.
- The persecution relied not just on the activities of the Gestapo or SS, but on civil institutions -- the police, law courts and judiciary -- and on hostile members of the general public, whose information was often the trigger for arrests.
- The principal legal instrument used against homosexuals was Paragraph 175 of the Penal Code, which since 1871 (continuing the practice in many of the pre-federation German states) had made anal intercourse between males a criminal offence. In 1935, the Nazis radically extended the scope of paragraph 175, in effect criminalising homosexuality as such, so that even "covetous looks", gossip and denunciations could be a sufficient basis for prosecution. An estimated 100,000 men were the subject of investigations during the Nazi period on the basis of this law. Of these, some 50,000 were convicted, many receiving lengthy terms of imprisonment. An unknown number were sentenced without trial or on the basis of forced confessions or denunciations
- Between 5,000 and 15,000 homosexual men were sent to concentration camps, where they could suffer terrible deprivations, and according to the testimony of survivors, were often treated particularly severely by guards and inmates alike because of widespread prejudices against homosexuals. Perhaps as many as 60% died.
- An undetermined number were forced into military service in high-risk punishment battalions.
- The widespread climate of terror affected not just those who were arrested, but all homosexual men and women. Unknown numbers fled abroad, entered into marriages to avoid detection, and/or had to cope with severe psychological disturbances.
- While lesbians in Germany were not the subjects of criminal prosecutions¹, their meeting places and associations were closed, and the climate of intolerance and discrimination drove them into invisibility.

¹ This contrasts with Austria, where homosexual acts between women were a criminal offence. Some women (how many is not known) were prosecuted.

2. Treatment of homosexuals persecuted by the Nazis in the post-war era

Far from being recognised as victims of persecution after the end of the war, homosexuals found themselves in a society in which their suffering was ignored and oppression and injustice continued. Some were required to serve out the prison sentences imposed on them by the Nazis while others were even re-arrested. The Nazi version of Paragraph 175 remained in force in West Germany until 1969, where, in the 20 years prior to repeal, more than 100,000 men were exposed to preliminary proceedings under this law. In East Germany it remained in force until 1968 (but in the 1871 version from 1950). The equivalent provision of the Austrian penal code was not repealed until 1971. Survivor testimonies indicate that for many the suffering was compounded by the fact that social attitudes and the continuing climate of intolerance left them unable to tell even their close family about their experiences. The trauma of their experiences had to be borne without the support of family and friends. For example, Pierre Seel, a concentration camp survivor whose letter of support for this proposal is attached, remained silent about his experiences for 40 years.

Homosexual victims of the Nazis were also excluded from consideration for compensation. Not only was there the danger that prospective claimants would open themselves to renewed state persecution, the majority of compensation provisions did not include persecution on the basis of homosexuality as grounds for compensation. The few homosexuals who received compensation in Germany did so on the basis of "hardship" funds initiated in the late 1980's². In the case of Austria, as recently as 1995 the parliament rejected a proposal to extend to homosexual victims the compensation rights enjoyed by other classes of victim.³ Acts of injustice have continued until the immediate past in Germany also - in 1998, when the German *Bundestag* passed a "Law to Annul Unjust Sentences Imposed During the National Socialist Administration of Criminal Justice", the homosexual victims of the Nazis were excluded.

3. The Persecution of Homosexuals and the Swiss Banks Settlement

When the survivors returned from the camps and prisons the continuing oppression forced them to hide their homosexuality, and remain silent about their experiences. As a result the Nazi persecution of homosexuals was largely forgotten until the publication of the first testimony of a survivor, Heinz Heger, in 1972. The first systematic research findings were not published until 1977.⁴ By then the number of survivors was dwindling, and for many of those that were still alive, the Nazi persecution and the decades of oppression which had followed left wounds too painful to reopen.

² These "hardship" funds provided very limited financial support to individuals suffering economic hardship. The original German compensation laws restricted claims to those made in the 1950's and 1960's.

³ Stenographisches Protokoll – 40. Sitzung des Nationalrates der Republik Österreich – 1. und 2. Juni 1995

⁴ "Homosexuality and Society" – Rüdiger Lautmann

As a consequence, the information needed to link individual homosexuals to the four assets Classes does not exist. Nonetheless general arguments and historical accounts can be used to show that homosexuals are likely to have belonged to each Class:

3.1 Deposited Assets Class

As noted above, the Nazi persecution of homosexuals created a climate of terror that affected all homosexual men and women. A 1928 estimate put the number of homosexually inclined men in Germany at 1.2 million, a figure that, in the light of modern research, may have been an understatement. A similar figure for homosexually inclined women can be hypothesised. It is not unreasonable to assume that some of these two million people would, in the climate of terror, which existed, have transferred assets to Switzerland, and that some of these would have died without claiming the assets. Some of these two million people would have belonged to more than one victim group, and would therefore have had particularly strong motivation for protecting their assets.

3.2 Looted Assets Class

Similarly, it is probable that some of the assets of homosexual victims of the Nazis were looted and transferred to Swiss Banks. In one of the rare homosexual concentration camp survivor testimonies, Heinz Heger describes the case of a young gay man (who was also Jewish) who had significant property in Switzerland, and was attempting to buy his way out of Sachsenhausen.⁵

3.3 Slave Labor Class I

Slave labour units were a feature of all concentration camps. Homosexual persecutees were present in the great majority of camps, particularly those in Germany and Austria, and testimonies (e.g. from non-gay prisoners in Sachsenhausen, Buchenwald and the Emsland camps) confirm that they were amongst those forced to engage in slave labour.

3.4 Refugee Class

Given the climate of terror during the Nazi period in Germany and Austria, and the large population affected, it is again reasonable to envisage homosexuals as amongst those who sought, and were refused asylum in Switzerland. Social attitudes at the time were such that homosexual refugees would have been unlikely to disclose their true reason for seeking to escape.

In a testimony by a homosexual who did escape from Germany, Richard Plant, in the Prologue to his book, "The Pink Triangle", describes taking refuge in Switzerland, and the help provided by his landlady: "Those four rooms in Miss Gaby's attic were rarely left empty. Again and again, Jewish, Catholic, gay, and generally anti-Nazi friends and friends of friends would stay there for a while until they could find refuge elsewhere.... The Swiss authorities would frequently not permit the refugee to stay longer than three

⁵ "The Men with the Pink Triangle", p. 40

weeks, but it usually took at least six months to negotiate the necessary papers. To my recurring dismay and horror, many friends had no choice but to return to Germany. From there, few managed to keep in touch or survive – I simply lost them.”⁶

4. Proposal for allocation

4.1 A suggested allocation key

As outlined above, the information needed to determine a per case dollar amount applicable under the four classes in respect of homosexual persecutees does not exist.

It is therefore proposed that the allocation of an overall amount to the benefit of the homosexual persecutees be determined by use of a broad key, which we would suggest, tentatively, could be approximately 1% of the total settlement sum. In arriving at this suggestion, we have considered and rejected the idea that the key be based either on the estimated number of homosexuals incarcerated in concentration camps (which would have included members of other victim groups) or on the number prosecuted or convicted under Paragraph 175. We have done so because we believe that such figures would not do justice to the fact that the persecution influenced the actions of two million or more homosexual men and women, a proportion of whom are likely to have deposited assets in Swiss Banks.

4.2 The question of heirs

It must be presumed that the vast majority of the homosexual victims of Nazi persecution are deceased. For example, fewer than 10 of those who were sent to concentration camps are known to be alive today in Germany, and none are known in Austria. The deceased are in general less likely to have had children, and therefore more likely to have died without direct heirs than is the case with other victim groups.

Even where there were direct heirs, they may not be in a position to make a claim. Many homosexual victims drew a veil over their persecution out of fear of renewed persecution, shame, or the desire to try to forget. Indeed, given the state of attitudes to homosexuality at the time, a very significant proportion of the homosexual victims or targets may never even have informed their family of their sexual orientation.

If close relatives such as siblings were taken into the victim's confidence, they may also, given the negative attitudes of the time, not have passed on the information to the following generation.

Finally, the social networks based on religion or ethnic origin which are associated with some of the other major victim groups, such as the Jews, Roma or Sinti, or Jehovah's Witnesses, and the collective memory of such groups, does not exist for the heirs of the homosexual victims, the great majority of whom will themselves be heterosexual. They

⁶ “The Pink Triangle” by Richard Plant, pages 11 and 12

are therefore much less likely to be aware of a settlement such as this one, and of the possibility for making a claim.

In view of the foregoing it not surprising that the organisations supporting this proposal know of very few claims by survivors and heirs in respect of the Swiss Banks settlement.

Taking account of these factors, it is suggested that only a small proportion of any allocation of the overall settlement amount in favour of the homosexual class of persecutees is likely to be taken up by individual claims, leaving the great majority available for *cy pres* uses.

5. Proposal for *cy pres* uses

It is proposed that the amount, if any, allocated in respect of homosexuals persecuted by the Nazis for *cy pres* uses be used to establish a Foundation with the broad objects of education about, and research into, the Nazi persecution of homosexuals.

5.1 Education

The International Forum on the Holocaust held in Stockholm from 26 to 28 January 2000 emphasised that there is widespread international recognition of the need to ensure that people around the world are aware of the events of the Nazi era, and of the lessons for today.

Apart from any general need to educate succeeding generations about the Nazi period, education has a most important role to play in combating the continuing prejudice and discrimination faced even today by many of the victim groups.

This is very much the case for lesbians and gays, who continue to face high levels of discrimination and oppression in many countries around the world, both at the hands of the state and of private individuals. To give but two examples:

- In approximately 40 countries same-sex relations between women and between men remain illegal, while in a further approximately 40 countries same-sex relations between men remain illegal.
- In many countries violence against lesbian, gay, bisexual and transgendered people remains a serious problem. This tends to find its most extreme expression in some Latin American countries, where the level of murders, particularly of transgendered people, is a major source of concern. However research shows that even in countries such as Sweden, which lead in the recognition of the rights of sexual minorities, homophobic violence is a serious issue.

The fact that it remains *respectable* even in long-established democracies to advocate discrimination against lesbian, gay, bisexual and transgendered people gives added importance to the lessons which can be learned from the Nazi persecution of

homosexuals, and particularly from an understanding that so many of the prejudices which were used to justify that persecution remain alive today.

Educational and memorial projects of two distinct types are needed:

i. Memorial sites and museums

The belated recognition of the Nazi persecution of homosexuals, together with a reluctance in the past by curators and trustees at many memorial sites to make reference to it in their displays, mean that even today there are many sites where it is inadequately represented, and some where there is no representation at all.⁷ The Simon Wiesenthal Centre has proposed that every memorial site in Europe should be assessed for its historical integrity. Work is needed to ensure that the specifics of the treatment of homosexuals at these sites can be properly displayed and memorialised.

If the need to include information on the homosexual victims in displays is now rarely contested, that is not the case with memorials, which are more controversial and rarer⁸: a memorial to homosexuals side by side with those of other victim groups puts homosexuals symbolically on equal terms with these groups, something which many are unwilling to accept even today.

The Nazi persecution of homosexuals is also sometimes ignored or under-represented in displays in Holocaust museums, or in exhibitions relating to the Nazi period in more general historical museums.

Because of their high number of visitors, concentration camp memorial sites and Holocaust museums are of particular importance as a vehicle for education about the Nazi persecution of homosexuals. For example, Dachau and Bergen-Belsen together average one million visitors per annum (of whom a high proportion are from abroad) while the Washington Holocaust Museum has more than two million visitors each year.

ii. Holocaust education

In many general educational programmes about the Holocaust the Nazi persecution of homosexuals is ignored. A review⁹ carried out some eighteen months ago of School Boards' syllabuses from across the USA held by the Washington Holocaust Memorial Museum showed that none had developed appropriate coverage. Even in Germany the only places that individuals are likely to learn about this subject are the still relatively few

⁷ See for example, "Formen des Gedenkens an die Verfolgung Homosexueller in den deutschen KZ-Gedenkstätten" by Dr Thomas Rahe (a paper presented to the Berlin Colloquium on the Persecution of Homosexuals under the Nazis – February 2000)

⁸ Memorials exist at Mauthausen, Neuengamme, Dachau, and Sachsenhausen

⁹ The review was carried out by Jack Gilbert of the World Congress of Gay and Lesbian Jewish Organisations

concentration camp memorial sites that include references.¹⁰ There is a need for projects in many countries to ensure that this gap is filled.

5.2 Research

One consequence of the belated recognition of the Nazi persecution of homosexuals is that some of the basic research needed to gain a full understanding of the subject has still to be carried out. Examples of areas where more research is needed are as follows:

- The general situation for homosexuals in particular camps, and the fate of individual homosexual prisoners;
- The treatment of homosexual prisoners in conventional prisons. Some of these were under the control of the SS at certain periods, and may have involved extreme treatment;
- The subject of "medical" experiments carried out on homosexuals;
- The policy and role of the Allied, German and Austrian authorities with regard to the continued persecution of homosexuals in the immediate post-war years;
- The ideological background to the persecution, and particularly the similarities between the ideologies developed by the Nazis for different victim groups.

It should be stressed that the need for research goes beyond the historic and academic dimension, important though this is. It is needed to underpin the educational objectives of this Proposal:

- At the detailed level, for example, information on the treatment of homosexuals in a particular concentration camp is needed if that camp's display is to treat the theme in anything other than the most superficial terms;
- At the general level, a solid bedrock of scholarship is needed if the lessons of these tragic events are to be deployed convincingly in combating and preventing the prejudice and oppression still faced by lesbians and gays all round the world.

6 The proposed Foundation

Appendix 3 sets out a draft deed for the proposed Foundation. Certain details require further development, including the location of the Foundation, and the precise mechanism for the election of Board Members (the approach set out in the draft deed is the subject of continuing discussion between the Founding Organisations). The contents of the deed will also be affected by the laws and practices prevailing in whichever jurisdiction were chosen as the home of the Foundation.

Consideration would also be given to the alternative approach of setting up a Donor Determined Fund within an existing foundation, with a view to reducing administrative effort. However, if such an approach were adopted, the key controls, for example, on

¹⁰ See "Formen des Gedenkens an die Verfolgung Homosexueller in den deutschen KZ-Gedenkstätten" by Dr Thomas Rahe

objectives, on election and independence of the trustees, and on reporting and auditing of expenditure, would be maintained in line with those set out in the draft deed.

It is envisaged that the majority of the projects supported, at least in the early years of the Foundation, would be in the countries where the persecution of homosexuals was most intense, Germany and Austria. However expenditure on appropriate projects from other countries would not be excluded.

Depending on the size of any allocation, the foundation would either use the income generated by the allocation to support individual projects; or if the allocation were too small to generate a viable level of income, disburse the capital sum over a period of, for example, five years.

A provisional list of persons nominated by the Founding Organisations as candidates for directorship of the Foundation is set out in Appendix 4.

7. The Founding Organisations and the Pink Triangle Coalition

A description of the objects, history, and credentials of the Founding Organisations are set out in Appendix 5, and of the Pink Triangle Coalition in Appendix 6.

8. Letters of support from survivors

Letters of support for the proposed Foundation from two homosexual survivors of Nazi persecution, Gad Beck and Pierre Seel, are attached at Appendix 7.

9. Statements of support from prominent figures in politics and the field of research and education in the homosexual persecution of the Nazis

Statements of support are included in Appendix 8, together with brief biographical details of the some of the signatories. There are statements of support by two Members of Parliament, one from Austria, and one from Germany, and by many leading figures in the field of research in, and memorials to, the homosexual victims of the Nazis.

10. In preparing this proposal the authors conferred with Mr Morris A. Ratner of Lieff, Cabraser, Heimann and Bernstein, LLP, and will continue to confer informally with him.