



# Austria

## Ratified the European Convention on Human Rights in 1956

### National Judge: Gabriele Kucsko-Stadlmayer

[Judges' CVs](#) are available on the ECHR Internet site

Previous Judges: Alfred Verdross (1959-1977), Franz Matscher (1977-1998), Willi Fuhrmann (1998-2001), Elisabeth Steiner (2001-2015)

[List of judges of the Court since 1959](#)

The Court dealt with 239 applications concerning Austria in 2018, of which 231 were declared inadmissible or struck out. It delivered 5 judgments (concerning 8 applications), 3 of which found at least one violation of the European Convention on Human Rights.

Applications processed in	2017	2018	2019*
Applications allocated to a judicial formation	228	239	107
Communicated to the Government	25	7	7
Applications decided:	287	239	94
- Declared inadmissible or struck out (Single Judge)	245	227	92
- Declared inadmissible or struck out (Committee)	12	3	2
- Declared inadmissible or struck out (Chamber)	3	1	0
- Decided by judgment	27	8	0

\* January to July 2019

For information about the Court's judicial formations and procedure, see the [ECHR internet site](#).  
Statistics on interim measures can be found [here](#).

Applications pending before the Court on 01/07/2019	
Total pending applications*	175
Applications pending before a judicial formation:	74
Single Judge	24
Committee (3 Judges)	38
Chamber (7 Judges)	12
Grand Chamber (17 Judges)	0

\*including applications for which completed application forms have not yet been received

## Austria and ...

### The Registry

The task of the Registry is to provide legal and administrative support to the Court in the exercise of its judicial functions. It is composed of lawyers, administrative and technical staff and translators. There are currently **643** Registry staff members.

## Noteworthy cases, judgments delivered

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### Grand Chamber

#### **X and Others v. Austria (no. 19010/07)**

19.02.2013

The case concerned the complaint by two women who live in a stable homosexual relationship about the Austrian courts' refusal to grant one of the partners the right to adopt the son of the other partner without severing the mother's legal ties with the child (second-parent adoption).

Violation of Article 14 (prohibition of discrimination) taken in conjunction with Article 8 on account of the difference in treatment of the applicants in comparison with unmarried different-sex couples in which one partner wished to adopt the other partner's child

No violation of Article 14 taken in conjunction with Article 8 when the applicants' situation was compared with that of a married couple in which one spouse wished to adopt the other spouse's child

See also [press release in German](#)

#### **S. H. and Others v. Austria (no. 57813/00)**

03.11.2011

The case concerned the complaint by two married couples from Austria about the ban on medically-assisted procreation techniques that they wished to use.

No violation of Article 8 (right to respect for private and family life)

See also [press release in German](#)

#### **Stummer v. Austria**

07.07.2011

The case concerned a former prisoner's complaint of his non-affiliation to the old-age pension system for work performed in prison and his consequent inability to receive pension benefits under that scheme.

No violation of Article 14 (prohibition of discrimination) in conjunction with Article 1 of Protocol No. 1 (protection of property)

No violation of Article 4 (prohibition of slavery and forced labour)

#### **Maslov v. Austria**

23.06.2008

10-year exclusion order against a Bulgarian national, minor at the time, following his criminal convictions. The order was issued despite the non-violent nature of his offences, the lack of ties with his country of origin and his good conduct after being released the second time from prison.

Violation of Article 8 (right to respect for private and family life)

## Noteworthy cases, judgments delivered

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### Chamber

#### **Cases concerning Article 2 (right to life)**

##### **Kurt v. Austria**

04.07.2019

The case concerned the murder of the applicant's son by his father after previous allegations of domestic violence by the applicant against the father.

No violation of Article 2

#### **Cases concerning Article 3 (prohibition of torture and /or inhuman or degrading treatment)**

##### **Mohammed v. Austria**

06.06.2013

The case concerned the complaint of a Sudanese national that his forced transfer from Austria to Hungary under the EU Dublin Regulation would subject him to conditions amounting to inhuman treatment, and that his second asylum request in Austria did not have a suspensive effect in relation to the transfer order.

Violation of Article 13 (right to an effective remedy) in conjunction with Article 3 on account of a lack of protection against forced transfer in the course of the proceedings concerning his second asylum application while having – at the relevant time – an arguable claim that his Convention rights would be violated in case of his transfer.

No violation of Article 3 if Mr Mohammed was to be transferred to Hungary in view of

[recent legislative amendments in Hungary improving the situation of asylum-seekers.](#)

**[I.K. v. Austria](#) (no. 2964/12)**

28.03.2013

The case concerned the complaint by a Russian national of Chechen origin that his removal from Austria to Russia would expose him to the risk of ill-treatment, as his family had been persecuted in Chechnya.

[Violation of Article 3](#)

**Cases concerning detention pending expulsion**

**[Palushi v. Austria](#) (no. 27900/04)**

22.12.2009

Concerned an asylum seeker who was subject to ill-treatment causing injuries and received no adequate medical care during his detention with a view to expulsion in Vienna Police Prison.

[Two violations of Article 3 \(prohibition of inhuman or degrading treatment\)](#)

**[Rusu v. Austria](#)**

02.10.2008

Detention of a Romanian citizen pending expulsion and failure to inform her promptly and in a language she understood of the reasons.

[Violation of Article 5 §§ 1 \(f\) and 2 \(right to liberty and security\)](#)

**Case concerning forced labour (Article 4)**

**[J. and others v. Austria](#) (no. 58216/12)**

17.01.2017

The case concerned the Austrian authorities' investigation into an allegation of human trafficking.

[No violation of Article 4 \(prohibition of forced labour\)](#)

[No violation of Article 3 \(prohibition of inhuman or degrading treatment\)](#)

**Cases concerning Article 5 (right to liberty and security)**

**[Kuttner v. Austria](#)**

16.07.2015

The case essentially concerned a convicted offender's complaint about the delay in dealing with his application for release from a psychiatric institution.

[Violation of Article 5 § 4](#)

**[Elsner v. Austria](#) (nos. 1-6)**

24.05.2011

The case concerned the complaint by Helmut Elsner, a former bank manager and a well-known figure in Austria, that his detention on remand in criminal proceedings against him was unlawful and excessively long, and that public statements by politicians amounted to finding him guilty before his conviction by a court.

[No violation of Article 5 § 3](#)

**Cases concerning Article 6**

**[Right to a fair trial](#)**

**[J.M. and Others v. Austria](#)**

**(nos. 61503/14, 61673/14, and 64583/14)**

01.06.2017

The case concerned the sale of shares of an Austrian bank and the subsequent proceedings brought against a politician and two managers of the bank (the applicants) for breach of trust consisting of a six million euro payment made to a financial consultant for his role in the sale. The sale was at the centre of much media controversy in Austria and led to parliamentary enquiries.

[No violation of Article 6 §§ 1 and 3 \(d\) \(right to a fair trial and right to obtain attendance and examination of witnesses\)](#)

**[Saccoccia v. Austria](#)**

18.12.2008

Execution by an Austrian court of a US court order on forfeiture of assets located in Austria which were considered to derive from money laundering. The applicant complained about the lack of a hearing in Austria.

[No violation of Article 6](#)

No violation of Article 1 of Protocol No. 1 (protection of property)

**Lückhof and Spanner v. Austria**

10.01.2008

Obligation under Austrian law to disclose driver of one's car at a given moment does not violate one's right to remain silent and privilege against self-incrimination.

No violation of Article 6 § 1

Right to a fair trial within a reasonable time

**Blum v. Austria**

05.04.2016

The case concerned disciplinary proceedings against the applicant, a practicing lawyer.

Under Article 6 § 1 of the Convention, Mr Blum complained in particular that the disciplinary council had not held an oral hearing before deciding on the interim measure against him.

Violation of Article 6 § 1

Right of access to court

**Wallishauser v. Austria**

17.07.2012

The case concerned the lack of access to court in respect of claims arising out of the employment contract of a local employee of the United States embassy in Austria.

Violation of Article 6 § 1

**Cases concerning the rights of homosexuals**

**P.B. and J.S. v. Austria (no. 18984/02)**

22.07.2010

The applicants are a homosexual couple. The case concerned their inability under Austrian law to have one partner's sickness and accident insurance extended to the other partner.

Violation of Article 14 (prohibition of discrimination) in conjunction with Article 8 (right to respect for private and family life) until 30 June 2007, when Austria abolished the preferential treatment of non-married partners of the opposite sex as regards insurance cover

No violation after that date

**Schalk and Kopf v. Austria**

24.06.2010

Complaint by a same-sex couple about the authorities' refusal to allow them to contract marriage. The applicants alleged that they were discriminated against on account of their sexual orientation since they were denied the right to marry and did not have any other possibility to have their relationship recognised by law before the entry into force of the Registered Partnership Act in January 2010.

No violation of Article 12 (right to marry)

No violation of Article 14 (prohibition of discrimination) in conjunction with Article 8 (right to respect for private and family life)

**Family cases: custody and access**

**Kopf and Liberda v. Austria**

17.01.2012

The case concerned the complaint by former foster parents about not being able to have contact with the child they had fostered.

Violation of Article 8 (right to protection of private and family life)

**Sporer v. Austria**

03.02.2011

Concerned the complaint of the father of a child born out of wedlock that he was discriminated against in particular in comparison with the mother, in that he had no opportunity to obtain joint custody without her consent.

Violation of Article 14 (prohibition of discrimination) taken together with Article 8 (right to respect for family life)

See also [press release in German](#)

**Freedom of religion cases (Article 9)**

**Gütl v. Austria and Löffelmann v. Austria**

12.03.2009

**Lang v. Austria**

19.03.2009

The applicants in all three cases were members of Jehovah's witnesses. They complained of the fact that they were refused exemption from military and alternative civilian service.

Violation of Article 14 (prohibition of discrimination) in conjunction with Article 9

**Verein der Freunde der Christengemeinschaft and Others v. Austria**

26.02.2009

The case concerned the Austrian authorities' refusal to grant a religious community legal personality.

Violation of Article 14 (prohibition of discrimination) in conjunction with Article 9

**Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria**

31.07.2008

Prolonged failure to grant legal personality to a religious group; inconsistent application of qualifying periods for eligibility to register as a religious society and the length of proceedings.

Violation of Article 9, Article 14 (prohibition of discrimination) in conjunction with Article 9

Violation of Article 6 § 1 (right to a fair hearing within a reasonable time)

**Freedom of expression cases  
(Article 10)**

**E.S. v. Austria**

25.10.2018

The case concerned the applicant's conviction for disparaging religious doctrines; she had made statements suggesting that Muhammad had had paedophilic tendencies.

No violation of Article 10

Press release in [German](#).

**Ärztchamber Für Wien and Dorner v. Austria**

16.02.2016

The applicants in this case are the Vienna Chamber of Medical Doctors (*Ärztchamber für Wien*) and Walter Dorner, who was the Chamber's president at the time of the events. The case concerned their complaint about decisions by the domestic courts prohibiting them from making certain negative statements about a private company.

No violation of Article 10 - in respect of M. Dorner (the Court further declared the Vienna Chamber of Medical Doctors' application inadmissible)

**Standard Verlags GmbH v. Austria (No. 2)**

04.06.2009

Newspaper article disseminating gossip about the married life of the former President for which the paper had to pay compensation.

No violation of Article 10

**Falter Zeitschriften GmbH v. Austria**

22.02.2007

The applicant company was ordered to pay compensation for publishing an article criticising the discontinuation of preliminary proceedings against members of the Austrian Freedom Party, suggesting that K., the leader of the Party's local Vienna branch would otherwise have been convicted.

Violation of Article 10

**Nikowitz and Verlagsgruppe News GmbH v. Austria**

22.02.2007

Journalist and publishing company being ordered to pay fine in connection with a satirical article written in response to a public hysteria following the accident of Hermann Maier, a skiing champion.

Violation of Article 10

**Standard Verlagsgesellschaft mbH v. Austria (No. 2)**

22.02.2007

Successful injunction proceedings by Mr Haider, then Regional Governor of Carinthia against the applicant company, which had published a front-page article alleging that Mr. Haider had deliberately misled the Regional Government and breached the Regional Constitution.

No violation of Article 10

**Arbeiter v. Austria**

25.01.2007

Concerned the interim injunction against a regional politician after publishing an article in which he criticised Mr K., an entrepreneur, for his plans to break up a good health system in order to take over hospitals using his newly-founded company.

Violation of Article 10

**Vereinigung Bildender Künstler v. Austria**

25.01.2007

Concerned court decisions prohibiting the applicant association from displaying at exhibitions a painting of 34 public figures all naked and involved in sexual activities.

Violation of Article 10 (freedom of expression)

**Ferihumer v. Austria**

01.02.2007

Concerned an injunction against the applicant after he had made statements in a regional newspaper in respect of teachers allegedly applying pressure on pupils and parents and their abuse of authority.

Violation of Article 10

**Case concerning discrimination  
(Article 14)**

**Ratzenböck and Seydl v. Austria**

26.10.2017

The case concerned the complaint by a heterosexual couple about being denied access to a registered partnership, a legal institution only available to same-sex couples. The applicants maintained that they were discriminated against based on their sex and sexual orientation.

No violation of Article 14 taken in conjunction with Article 8 (right to respect for private and family life)

**Raviv v. Austria**

13.03.2012

The case concerned the complaint that the special pension insurance regime in Austria, under which victims of Nazi persecution have the possibility of paying retroactive social security contributions on a voluntary basis in order to be entitled to an old-age-pension, was discriminatory.

No violation of Article 14 in conjunction with Article 1 of Protocol No. 1 (protection of property)

**Case concerning the right to vote**

**Frodl v. Austria**

08.04.2010

Sentenced to life imprisonment for murder, the applicant was excluded from the electoral register.

Violation of Article 3 of Protocol No. 1 (right to free elections)

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**Noteworthy cases, decisions delivered**

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**Haupt v. Austria**

01.06.2017

The applicant, Herbert Haupt, was Chairperson of the Austrian Freedom Party between 2002 and 2004, and Vice Chancellor of the Federal Government between February and October 2003. In an episode of the satirical comedy show *Das Letzte der Woche* (which aired in September 2003), the host suggested that Mr Haupt was “usually surrounded by little brown rats”. This was regarded as an allusion to neo-Nazis. Mr Haupt brought proceedings in Austria against ATV, the television company which had broadcast the programme. Though his claim had been initially successful in 2004-5, his case was ultimately rejected after the Supreme Court re-opened proceedings in 2009.

Application declared inadmissible as manifestly ill founded.

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**Noteworthy pending cases**

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**Lewit v. Austria (no. 4782/18)**

Case [communicated](#) to the Government in June 2018

The case concerns the applicant’s complaint that a newspaper published two defamatory articles about Holocaust survivors such as him.

Mr Lewit relies on Article 8 (right to respect for private life) of the Convention.

**Kilic v. Austria (no. 27700/15)**

Case [communicated](#) to the Government in May 2017

The case concerns a complaint by two Turkish nationals, husband and wife, whose two youngest children, R. and M., were taken into foster care, after they had been found to be in an alarming state of negligence.

Relying on Article 8 (right to respect for family life) of the Convention, the applicants complain that the domestic courts dismissed their application for custody over R. and M.

Furthermore, relying on Article 8, and, in substance, on Article 9 (right to freedom of



thought, conscience and religion) of the Convention, the applicants complain that R. and M. have been placed with a Christian foster care family and are now growing up without learning the Turkish language and culture and that they have no contact with the Muslim religion and tradition.

**Polat v. Austria (no. 12886/16)**

Case [communicated](#) to the Government in May 2017

The case concerns the death of Ms Polat's new-born boy in a state-run hospital and his subsequent autopsy performed without Ms Polat's consent.

Relying mainly on Articles 8 (right to respect for private life) and 9 (right to freedom of thought, conscience and religion) of the Convention, Ms Polat complains that the hospital carried out a

post-mortem examination on her prematurely born son against her will.

**Tretter and Others v. Austria (no. 3599/10)**

Case [communicated](#) to the Government in May 2013

The case concerns complaints under Articles 8 (right to respect for private life and correspondence), 10 (freedom of expression) and 13 (right to an effective remedy) of the Convention as regards the amendments of the Police Powers Act, which entered into force in January 2008 and extended the powers of the police authorities to collect and process personal data.

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