
Austria

Constitutional Court

Important decisions

Identification: AUT-2014-3-003

a) Austria / b) Constitutional Court / c) / d) 08.10.2014 / e) G 97/2013 / f) / g) / h) www.icl-journal.com; CODICES (German).

Keywords of the systematic thesaurus:

2.1.1.4.4 Sources – Categories – Written rules – International instruments – **European Convention on Human Rights of 1950.**

3.21 General Principles – **Equality.**

5.2.1 Fundamental Rights – Equality – **Scope of application.**

5.3.32 Fundamental Rights – Civil and political rights – **Right to private life.**

5.3.39 Fundamental Rights – Civil and political rights – **Right to property.**

Keywords of the alphabetical index:

Private life, burial / Property, right, scope.

Headnotes:

Neither the right to respect for private life nor the general principle of equality denies the State the right to determine that dead bodies must be placed in the morgue of a (public or private) grave structure. The personal right to give instructions as to the treatment of his or her body after death does not fall within the scope of the right to property.

Summary:

I. Under the Vienna Act on Dead Bodies and Burials (*Wiener Leichen- und Bestattungsgesetz*), after being examined by the coroner, dead bodies must be kept in the morgue of a grave structure until the day of the funeral.

The applicant wished that her dead body be placed in the cooling chamber of a private undertaker of her

choice and worthy of her trust. She lodged a constitutional complaint against the above-mentioned provision of the Vienna Act on Dead Bodies and Burials, claiming that it was contrary to her right to respect for her private life, to the principle of equality as well as to her right to property, as laid down in Article 8 ECHR, in Article 7 of the Federal Constitutional Act (*Bundes-Verfassungsgesetz*), and in Article 1 Protocol 1 ECHR, respectively.

II. The Constitutional Court held that the manner in which a dead body is treated by public authorities may constitute an interference with the right to respect for private life.

Though, the Court found that this interference served a legitimate aim – the prevention of risks to public health – and was justified under Article 8.2 ECHR, taking into account the wide margin of appreciation afforded to the States in such matters. In particular, the Court pointed out that the individual's interest in his or her dead body being treated according to his or her wishes is duly taken into account. That is, individuals were granted a lot of freedom as to the construction of the burial place, the type of burial, the arrangement of the funeral as well as the design of the tomb.

For the same reasons, the legal provision at stake proved to be justified in the light of the general principle of equality.

Finally, the Court recalled that the legal provision contested did not fall within the sphere of the constitutionally guaranteed right to property, as the right of disposal with regard to a corpse did not qualify as asset.

Cross-references:

European Court of Human Rights:

- *Dödsbo v. Sweden*, no. 61.564/00, 17.01.2006;
- *Şişman v. Turkey*, no. 46.352/10, 21.01.2014.

Languages:

German.

