

# AUT-2019-2-002

a) Austria / b) [Constitutional Court](#) / c) / d) 18-06-2019 / e) E 5004/2011 / f) / g) / h) CODICES ([German](#)).

## Keywords of the systematic thesaurus:

[05.03.21](#) Fundamental Rights - Civil and political rights - **Freedom of expression**.

## Keywords of the alphabetical index:

[Freedom of expression](#) / [Language](#), offensive.

## Headnotes:

Football supporters expressed their negative attitude towards the police as part of the state power. Such criticism is acceptable conduct in view of the particular importance of freedom of expression in a democratic society. Holding up a banner with the inscription "ACAB" ("All cops are bastards") during a football game did not therefore constitute a violation of public decency under Vienna State Security Law.

## Summary:

1. According to Section 1.1 of the Vienna State Security Law (*Wiener Landes-Sicherheitsgesetz*, hereinafter, "WLSG"), any person offending public decency commits an administrative offence and shall be punished with a fine.
2. The applicant waived a large banner, which was several square metres in size, during a football match in 2017 in Vienna. The banner was inscribed with the phrase "ACAB" ("All cops are bastards"). He was consequently fined for violating public decency under Section 1.1 WLSG.

The applicant filed a constitutional complaint with the Constitutional Court, which alleged, particularly, that imposing the fine violated his right to freedom of expression guaranteed under [Article 10 ECHR](#). He claimed that by doing no more than holding the flag up he had expressed his critical attitude towards the police in a non-violent way. His criticism of the police was not aimed at insulting individual police officers.

3. The Constitutional Court held that the scope of protection of freedom of expression under [Article 10 ECHR](#) covers, among others, opinions and statements of fact. The fact that information or ideas are perceived as offensive, and in certain circumstances as disturbing or shocking, does not change the fundamental protection afforded to such communicative behaviour by [Article 10 ECHR](#). The applicant had expressed his critical attitude towards the police by waiving a large banner, several square metres in size, with "ACAB" inscribed on it. To the police and the majority of the public present in the stadium, the letters and the phrase, "All cops are bastards", which they stood for were familiar. Equally, the fact that they were intended to express an attitude rejecting the police was well-understood.

Therefore, punishing the complainant interfered with the fundamental right to freedom of expression.

Under Section 1.1 WLSG any contravention of public decency is punishable. The Constitutional Court noted that this provision may be considered to be a restriction on freedom of expression, which in the interest of maintaining public order etc., may be necessary in a democratic society within the meaning of [Article 10.2 ECHR](#). A violation of public decency may only then be assumed when the corresponding restriction of the right to freedom of expression is, beyond doubt, necessary in the individual case when taking into account the fundamental right in question. A decision of an administrative court can be unconstitutional, where it attributes to a law content that violates the limitations set by [Article 10 ECHR](#). The Constitutional Court observed that this applied in the present case.

Expression of an opinion as such cannot, in principle, be a violation of decency, unless it is subject to criticism for other, legitimate, reasons. If, however, an opinion is publicly expressed in a manner that exceeds the bounds of decency and does so in a way that makes interference with it necessary for the maintenance of public order, punishment for the violation of decency may be legitimate. In assessing behaviour that could be punishable, it is not just the wording of an expression that matters, but also the nature and circumstances of the statement, how, where, and which kind of public is confronted with it and by whom. In the present case, swinging a banner with "ACAB" inscribed on it was intended to express a negative attitude towards the police as part of the state's regulatory power. It did not constitute a specific insult to certain other persons i.e., police officers.

The Constitutional Court concluded that, considered overall, holding up such banners at a football match was, in any case, not suitable conduct to constitute the offence of violating decency. Considering all the circumstances of the case, such criticism expressed in the stadium is acceptable in view of the special significance and function of the right to freedom of expression in a democratic society. Punishing the applicant for a breach of public decency was therefore disproportionate in relation to his right to freedom of expression and thus violated [Article 10 ECHR](#).

#### **Cross-references:**

European Court of Human Rights:

- *Handyside v. United Kingdom*, no. 5493/72, 07.12.1976, Series A, no. 24;
- *Müller and others v. Switzerland*, no. 10737/84, 24.05.1988, Series A, no. 133;
- *Casado Coca v. Spain*, no. 15450/89, 24.02.1994, Series A, no. 285-A;
- *Vajnai v. Hungary*, no. 33629/06, 08.07.2008, *Reports of Judgments and Decisions* 2008;
- *Fratanoló v. Hungary*, no. 29459/10, 03.11.2011;
- *Steel and others v. United Kingdom*, no. 24838/94, 23.09.1998, *Reports* 1998-VII;

- *Sunday Times v. United Kingdom*, no. 6538/74, 26.04.1979, Series A, no. 30.

**Languages:**

German.