

# AUT-2022-3-004

a) Austria / b) [Constitutional Court](#) / c) / d) 29-09-2022 / e) SV 1/2021 / f) / g) ECLI:AT:VFGH:2022:SV1.2021 / h) CODICES ([German](#)).

## Keywords of the systematic thesaurus:

- [02.01.01.04.04](#) Sources - Categories - Written rules - International instruments  
- **European Convention on Human Rights of 1950.**
- [03.19](#) General Principles - **Margin of appreciation.**
- [05.03.13.03](#) Fundamental Rights - Civil and political rights - Procedural safeguards, rights of the defence and fair trial - **Access to courts.**

## Keywords of the alphabetical index:

[International organisation, staff, protection of fundamental rights / Privileges and immunities](#) / [International organisation](#), immunity from jurisdiction.

## Headnotes:

The principle of proportionality inherent in [Article 6.1 ECHR](#) cannot be applied in such a way as to compel an international organisation like the Organisation of the Petroleum Exporting Countries OPEC (hereinafter, "OPEC") to submit itself to national jurisdiction in relation to employment contracts. However, the headquarters State is required to convince itself that employees have available to them reasonable alternative means to protect effectively their rights. As for the Headquarters Agreement between the Republic of Austria and OPEC of 1974, it lacked such safeguards entirely; against that background, the rule of immunity from jurisdiction accorded to OPEC violated [Article 6.1 ECHR](#).

## Summary:

I. Since 1965, the Organisation of the Petroleum Exporting Countries (hereinafter, "OPEC") has had its seat in the City of Vienna. In 1974, the Republic of Austria and OPEC concluded a new Headquarters Agreement (hereinafter, the "Agreement"). Article 3.3 of the Agreement provides that, except as otherwise provided in the Agreement, the courts and other appropriate organs of Austria shall have jurisdiction, as provided in applicable laws, over acts done and transactions taking place in the headquarters seat. As per Article 9 of the Agreement, OPEC and its property, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except in so far as in any particular case OPEC shall have expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.

The applicant was member of the staff of OPEC from 1 July 1999 until 5 December 2017. On 5 December 2017, his employment was terminated without notice. In December 2020, the applicant instituted legal proceedings against OPEC before the Vienna Labour Court for pay

claims incurred since 5 December 2017. The Vienna Labour Court rejected that action, as OPEC had not waived its immunity from national jurisdiction.

The applicant lodged a constitutional complaint with the Constitutional Court. He argued that the Agreement, in particular Article 9, ran counter to Article 6.1 as well as [Article 13 ECHR](#), as it allowed OPEC to deny the applicant the right of access to court or to reasonable alternative means providing legal redress.

II. The Constitutional Court, referring to the case-law of the European Court of Human Rights, recalled that the right of access to the courts is not absolute, but may be subject to limitations. In this respect, the State enjoys a certain margin of appreciation. However, the limitations applied must not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with [Article 6 ECHR](#) if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved.

The Constitutional Court shared the view of the European Court of Human Rights that the attribution of privileges and immunities to international organisations is an essential means of ensuring the proper functioning of such organisations free from unilateral interference by individual governments. In particular, the immunity from jurisdiction commonly accorded by States to international organisations under the organisations' constituent instruments or supplementary agreements is a long-standing practice established in the interest of the good working of these organisations. As a result, the rule of immunity from jurisdiction, which had been applied in the present case, has a legitimate objective.

Yet, where a State attributes to international organisations certain competences and accords them immunities, it would be incompatible with the purpose and object of the Convention, if the State were thereby absolved from its responsibility under the Convention in relation to the field of activity covered by such attribution. Therefore, immunity from national jurisdiction accorded to an international organisation can only be justified by compliance with a treaty commitment if the organisation is considered to protect fundamental rights, as regards both the substantive guarantees offered and the mechanisms controlling their observance, in a manner which can be considered at least equivalent to that for which the Convention provides.

In the present case, the Constitutional Court found that Article 9 of the Agreement also applied to disputes falling within the competence of Austrian labour courts. In this respect, it affected proceedings concerning civil rights and obligations within the meaning of [Article 6.1 ECHR](#).

While this rule of immunity from national jurisdiction pursued a legitimate aim, neither Article 9 nor any other provision of the Agreement provided for reasonable alternative mechanisms available to present or former members of the staff of OPEC in case of labour disputes.

The Constitutional Court therefore concluded that Article 9 of the Agreement violated [Article 6.1 ECHR](#), as it interfered with the fundamental right of access to court in a disproportionate manner.

**Cross-references:**

European Court of Human Rights:

- *Boivin v. 34 Member States of the Council of Europe*, no. 73250/01, 09.09.2008;
- *Perez v. France* [GC], no. 47287/99, 12.02.2004;
- *Waite and Kennedy v. Germany* [GC], no. 26083/94, 18.02.1999, [[ECH-1999-1-005](#)].

Languages:

German.