

AUT-2020-1-001

a) Austria / b) [Constitutional Court](#) / c) / d) 10-03-2020 / e) G 228-233/2019-12 / f) / g) ECLI:AT:VFGH:2020:G228.2019 / h) CODICES ([German](#)).

Keywords of the systematic thesaurus:

[03.07](#) General Principles - Relations between the State and bodies of a religious or ideological nature.

[05.03.20](#) Fundamental Rights - Civil and political rights - Freedom of worship.

Keywords of the alphabetical index:

[Secularism](#), religious holidays.

Headnotes:

The public holiday on Good Friday was abolished in Austria. Good Friday had formerly been a paid public holiday for members of certain churches. These churches have no right to maintain a specific public holiday. Although the specific selection of public holidays may initially have had religious reasons, holidays today mainly pursue goals of personal rest and relaxation. Therefore, the abolition of the public holiday on Good Friday does not directly affect the churches in their legal sphere.

Summary:

I. In Austria, Good Friday has been a public holiday for employees who are members of the Evangelical Churches of the Augsburg and Helvetic Confessions, the Old Catholic Church and the United Methodist Church. After the Court of Justice of the European Union had qualified that regulation as unjustified discrimination on the grounds of religion (CJEU 22/1/2019, C-193/17, *Cresco Investigation*), Good Friday as a public holiday was abolished in March 2019 and instead, a "personal holiday" was introduced. Each employee may now unilaterally determine one "personal holiday" per year, irrespective of his or her possible religious confession.

The above-mentioned churches filed a constitutional complaint with the Constitutional Court claiming, in particular, that the abolition of Good Friday as a public holiday and the introduction of a "personal holiday" would interfere directly with their inner church life and violate their constitutionally guaranteed right to religious freedom. Since members of the Roman Catholic Church were not deprived of a holiday, the applicant churches further considered the principle of equality violated. Moreover, since the applicants also conclude collective agreements as employers, they argued that their right to freedom of association was violated as well.

III. The Constitutional Court recalled that a fundamental requirement for admissibility of constitutional complaints against general norms is that the law at issue directly affects the legal sphere of the person concerned.

On the constitutional level, the right to freedom of religion is protected by Article 15 of the Basic Law on the General Rights of Nationals (hereinafter, "StGG") and [Article 9 ECHR](#). The Court noted that Article 15 StGG includes the right of legally recognised churches and religious communities to administer their internal affairs independently. Religious freedom according to [Article 9 ECHR](#) further comprises the practice of religion and the autonomous administration of internal affairs by ecclesiastical or religious bodies.

[Article 9 ECHR](#) and Article 15 StGG, which are to be read in conjunction, in particular protect the conduct of worship services, religious celebrations and the practice of customs at the time and the place the churches themselves determine autonomously and without influence of the state. Accordingly, it would directly affect the legal sphere of churches if the state prohibited religious celebrations or banned access to church.

The contested provisions, however, – namely regulations on working hours and labour law, which entail that apart from Sundays and public holidays, members of a legally recognised church or religious society can only practice their religion by taking a day off, – did not directly affect the legal sphere of the Churches.

Moreover, the Constitutional Court held that the applicant churches had no right to introduce or to maintain a specific legal holiday; such an obligation of the state could not be derived from either [Article 9 ECHR](#) or from Article 15 StGG. The original, historical justification for some public holidays with religious aims could not create a legal sphere for the applicant churches. The Court pointed out that nowadays, public holidays mainly pursue profane goals of personal rest, reflection, relaxation and distraction, even though the specific selection of the holidays may have originally been based on religious reasons. All people should be able to achieve these goals irrespective of a religious commitment.

Finally, the Court established that it could not be inferred from the reasoning of the complaint that by abolishing Good Friday as a public holiday, the applicant churches in their capacity as employers would be directly affected in their legal sphere. From a pure labour-law perspective, the abolition of that holiday rule means – for the applicant churches as employers – that their employees are obliged to provide services on Good Friday, unless they take a day off.

The Constitutional Court therefore concluded that the elimination of the holiday regulations with regard to Good Friday did not directly affect the applicant churches in their legal sphere. Therefore, the constitutional complaint was rejected as inadmissible.

Cross-references:

European Court of Human Rights:

- *Cha'are Shalom Ve Tsedek v. France*, no. 27417/95, 27.06.2000;
- *Hasan und Chaush v. Bulgaria*, no. 30985/96, 26.10.2000.

Court of Justice of the European Union:

- C-193/17, 22.01.2019, *Cresco Investigation*, ECLI:EU:C:2019:43.

Federal Constitutional Court of Germany:

- BVerfGE 125, 39;

- BVerfGE 111.

Languages:

German.