

AUT-2021-3-002

a) Austria / b) [Constitutional Court](#) / c) / d) 06-12-2021 / e) G 247/2021 / f) / g) ECLI:AT:VFGH:2021:G247.2021 / 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.
- [05.02.02.12](#) Fundamental Rights - Equality - Criteria of distinction - Civil status.
- [05.03.33](#) Fundamental Rights - Civil and political rights - Right to family life.
- [05.03.44](#) Fundamental Rights - Civil and political rights - Rights of the child.

Keywords of the alphabetical index:

Unmarried couples, right to adopt / [Child, adoption](#) / [Child, best interests](#).

Headnotes:

According to § 191.2 of the Civil Code, a child may, in general, only be adopted by two persons married to each other. In the light of [Article 8 ECHR](#) taken in conjunction with [Article 14 ECHR](#), as well as the principle of equality, this provision must be interpreted to the effect that it does not prevent unmarried couples from adopting a child either simultaneously or successively.

Summary:

I. The first and the third applicants live in a non-marital partnership. The third applicant is the adoptive father of the minor second applicant. When the first applicant and the child (represented by her adoptive father) signed an adoption contract, the District Court did not approve the contract on the grounds that only spouses or registered partners were allowed to adopt jointly, whereas cohabiting partners were excluded from an adoption.

The applicants filed an application before the Constitutional Court claiming, in particular, that § 191.2 of the Civil Code violated the right to respect for private and family life, the right to equality and the right of a child to the best possible development and fulfilment and to the protection of the child's interests (Article 1 of the Federal Constitutional Act on the Rights of Children).

II. The Constitutional Court held that the principle of equality and [Article 8 ECHR](#) taken in conjunction with [Article 14 ECHR](#) required that the legal situation be interpreted in such a way that joint (simultaneous or successive) adoption is also open to cohabitants if the general requirements are met. The competent court has to examine in each case whether the (simultaneous or successive) adoption is in the best interests of the child and whether a relationship exists or is to be established that corresponds to the relationship between biological parents and their children (cf. § 194 of the Civil Code).

The Constitutional Court had no doubts that the legal requirements for adoption and, in particular, the safeguarding of the best interests of the child, could also be met in a stable, long-term relationship. Unlike the previous law that had been repealed by the Court by its Judgment of 11 December 2014, § 191.2 of the Civil Code does not provide any restriction on joint adoption. That provision only sets out that as a rule, married couples may only adopt simultaneously and that there are certain exceptions to this principle. An interpretation to the effect that unmarried couples were generally prevented from adopting would violate [Article 8 ECHR](#) taken in conjunction with [Article 14 ECHR](#), as well as the general principle of equality under Article 7 of the Federal Constitution.

Cross-references:

Constitutional Court:

- G 119-120/2014, 11.12.2014, [[AUT-2015-1-001](#)].

European Court of Human Rights:

- *Fretté v. France*, no. 36515/97, 26.02.2002;

- *E.B. v. France*, no. 43546/02, 22.01.2008;

- *X and others v. Austria [GC]*, no. 19010/07, 19.02.2013;

- *Zaunegger v. Germany*, no. 22028/04, 03.12.2009.

Languages:

German.