

CONSTITUTIONAL COURT

SV 1/2021-23

29 September 2022

## IN THE NAME OF THE REPUBLIC

The Constitutional Court,

chaired by President  
Christoph GRABENWARTER,

in the presence of Vice-President  
Verena MADNER

and the members  
Markus ACHATZ,  
Sieglinde GAHLEITNER,  
Andreas HAUER,  
Christoph HERBST,  
Michael HOLOUBEK,  
Helmut HÖRTENHUBER,  
Claudia KAHR,  
Georg LIENBACHER,  
Michael MAYRHOFER,  
Michael RAMI,  
Johannes SCHNIZER and  
Ingrid SIESS-SCHERZ

as voting members, in the presence of the recording clerk  
Sofie SCHOCK,

decided today after private deliberations pursuant to Article 140a of the Constitution (*Bundes-Verfassungsgesetz, B-VG*) on the application filed by \*\*\*\*\* , \*\*\*\*\* , \*\*\*\*\*, represented by Sebastian Lenz, lawyer, Laurenzerberg 1, 1010 Vienna, seeking a ruling by the Court to find that (certain phrases of) Article 4 paragraph 1, Article 5 paragraphs 1 and 2, Article 9 and Article 10 of the Agreement between the Republic of Austria and the Organization of the Petroleum Exporting Countries regarding the headquarters of the Organization of the Petroleum Exporting Countries are unconstitutional as follows:

- I.
  1. Article 5 paragraphs 1 and 2 and Article 9 of the Agreement between the Republic of Austria and the Organization of the Petroleum Exporting Countries regarding the headquarters of the Organization of the Petroleum Exporting Countries, Federal Law Gazette *BGBI. 382/1974*, as amended by Federal Law Gazette *BGBI. III 108/2010* are unconstitutional.
  2. These provisions shall not be applied by the bodies competent to implement them after 30 September 2024.
  3. The Federal Chancellor is obliged to publish these sentences without delay in Federal Law Gazette III.
- II. The application is otherwise rejected as inadmissible.

## Reasoning

### I. The Application

On the basis of Article 140a in conjunction with Article 140 paragraph 1 subparagraph 1 point d of the Constitution (*Bundes-Verfassungsgesetz, B-VG*), the applicant requests that the Constitutional Court (cited without the highlighting in the original) 1

"repeal as unconstitutional the following provisions of the Agreement between the Republic of Austria and the Organization of the Petroleum Exporting Countries regarding the headquarters of the Organization of the Petroleum Exporting

Countries (Federal Law Gazette *BGBI. 382/1974* as amended by Federal Law Gazette *BGBI. III 108/2010*):

1. The word 'full' and the phrase 'in all respects' in the first sentence of Article 4 paragraph 1, the phrase '... which is inconsistent with a regulation of OPEC authorized by this article,' and the words 'No' and 'such' in the second sentence of Article 4 paragraph 1, and the phrase '... that OPEC claims it to be inconsistent with the regulation of OPEC' in the fourth sentence of Article 4 paragraph 1

*in eventu*: the entirety of Article 4 paragraph 1 with [the] wording [...]

2. The entirety of Article 5 paragraphs 1 and 2 with the wording [...]

*in eventu*: only Article 5 paragraph 1 with the wording [...]

3. Article 9 with the wording [...]

*in eventu*: the phrase 'OPEC and' in Article 9 only

4. Article 10 with the wording [...]

*in eventu*: the words 'executive' and 'judicial' in Article 10."

## II. The Law

1. The Agreement between the Republic of Austria and the Organization of the Petroleum Exporting Countries regarding the headquarters of the Organization of the Petroleum Exporting Countries, Federal Law Gazette *BGBI. 382/1974*, as amended by Federal Law Gazette *BGBI. III 108/2010* (hereinafter referred to as the Headquarters Agreement) reads as follows (the provisions challenged in the main claim are highlighted):

2

"The Republic of Austria and the Organization of the Petroleum Exporting Countries, desiring to conclude a new agreement regarding the seat of the Organization of the Petroleum Exporting Countries in the City of Vienna and to regulate questions connected therewith, have agreed as follows:

### Article 1

When used in this Agreement,

- a) 'OPEC' means the Organization of the Petroleum Exporting Countries;
- b) 'Government' means the Federal Government of the Republic of Austria;
- c) 'Secretary General' means the Secretary General of OPEC or any officer designated to act on his behalf;

d) – g) [...]

h) 'Archives of OPEC' means records and correspondence, documents, manuscripts, still and moving pictures, films and sound recordings belonging to or held by OPEC;

i) 'Officials of OPEC' means the Secretary General and all members of the staff of OPEC, except those who are locally recruited and assigned to hourly rates;

j) 'Property' means all property, including funds and other assets, belonging to OPEC or held or administrated by OPEC in furtherance of its statutory functions and all income of OPEC; and

k) 'Headquarters' means the headquarters seat of OPEC in accordance with Article 2 paragraph 2 as well as the Secretary General's Residence, and, as the case may be, any other land or building which may be temporarily included therein in accordance with the provisions of Article 2 paragraph 3.

#### Article 2

(1) [...]

(2) The headquarters seat of OPEC shall comprise the land, installations and offices that OPEC occupies permanently for its activities. Its area shall be defined by common understanding between the Government and OPEC.

(3) Any building outside the headquarters seat which is used with the concurrence of the Government for meetings convened by OPEC shall be temporarily included in the headquarters.

(4) [...]

#### Article 3

The Government recognizes the extraterritoriality of the headquarters seat, which shall be under the control and authority of OPEC as provided in this Agreement.

(2) Except as otherwise provided in this Agreement and subject to any regulation enacted under Article 4, the laws of the Republic of Austria shall apply within the headquarters seat.

(3) Except as otherwise provided in this Agreement, the courts or other appropriate organs of the Republic of Austria shall have jurisdiction as provided in applicable laws, over acts done and transactions taking place in the headquarters seat.

#### Article 4

(1) OPEC shall have the power to make regulations, operative within the headquarters seat, for the purpose of establishing therein conditions in all respects necessary for the full execution of its functions. No law of the Republic of Austria which is inconsistent with a regulation of OPEC authorized by this article shall, to the extent of such inconsistency, be applicable within the headquarters seat. Any dispute between the Republic of Austria and OPEC as to whether a regulation of OPEC is authorized by this article or as to whether a law of the Republic of Austria is inconsistent with any regulation of OPEC authorized by this article, shall be promptly settled by the procedure set out in Article 29. Pending such settlement,

the regulation of OPEC shall apply and the law of the Republic of Austria shall be inapplicable in the headquarters seat to the extent that OPEC claims it to be inconsistent with the regulation of OPEC.

(2) OPEC shall from time to time inform the Government, as may be appropriate, of regulations made by it in accordance with paragraph 1.

(3) This article shall not prevent the reasonable application of fire protection or sanitary regulations of the appropriate Austrian authorities.

#### Article 5

(1) The headquarters seat shall be inviolable. No officer or official of the Republic of Austria, or other person exercising any public authority within the Republic of Austria, shall enter the headquarters seat to perform any duties therein except with the consent of, and under conditions approved by, the Secretary General. The consent of the Secretary General may, however, be assumed in case of fire or other disaster requiring prompt protective action.

(2) The service of legal process, including the seizure of private property, shall not take place within the headquarters seat except with the express consent of, and under conditions approved by, the Secretary General.

#### Article 6

(1) The appropriate Austrian authorities shall exercise due diligence to ensure that the tranquility of the headquarters seat is not disturbed by any person or group of persons attempting unauthorized entry into or creating disturbances in the immediate vicinity of the headquarters seat, and shall provide on the boundaries of the headquarters seat such police protection as may be required for these purposes.

(2) If so requested by the Secretary General, the appropriate Austrian authorities shall provide a sufficient number of police for the preservation of law and order in the headquarters seat.

(3) The appropriate Austrian authorities shall take all reasonable steps to ensure that the amenities of the headquarters seat are not prejudiced and that the purposes for which the headquarters seat is required are not obstructed by any use made of the land or buildings in the vicinity of the headquarters seat. [...]

#### Article 7

The Government recognizes the juridical personality of OPEC and, in particular, its capacity:

- a) To contract;
- b) To acquire and dispose of movable and immovable property; and
- c) To institute legal proceedings.

[...]

#### Article 9

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.

#### Article 10

The property of OPEC, wherever located and by whomsoever held, shall enjoy immunity from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

#### Article 11

The archives of OPEC shall be inviolable wherever located.

[...]

#### Article 28

The Secretary General shall take every precaution to ensure that no abuse of a privilege or immunity conferred by this Agreement shall occur. Should the Government consider that abuse of a privilege or immunity conferred by this Agreement has occurred, the Secretary General shall upon request, consult with the Federal Minister for Foreign Affairs of the Republic of Austria to determine whether any such abuse has occurred. If such consultations fail to achieve within a reasonable time a result satisfactory to the Government and to the Secretary General, the matter may be referred by either party for final decision to a tribunal of three arbitrators: one to be chosen by the Federal Minister for Foreign Affairs of the Republic of Austria, one to be chosen by the Secretary General and the third, who shall be chairman of the tribunal, to be chosen by the first two arbitrators. If the tribunal is not constituted within three months from the date of the request made for the submission of the dispute to arbitration, the appointment of the arbitrators not yet designated shall be made by the President of the International Court of Justice at the request of the Government or of OPEC.

#### Article 29

Any dispute which may arise between the Government and OPEC as to the interpretation or application of this Agreement, shall, at the request of either of them, be referred to arbitration. The arbitration tribunal shall consist of three arbitrators: one to be chosen by the Federal Minister for Foreign Affairs of the Republic of Austria, one to be chosen by the Secretary General and the third, who shall be chairman of the tribunal, to be chosen by the first two arbitrators. If the tribunal is not constituted within six months from the date of the request made for the submission of the dispute to arbitration, the appointment of the arbitrators not yet designated shall be made by the President of the International Court of Justice at the request of the Government or of OPEC.

### Article 30

(1) This Agreement shall enter into force upon an exchange of notes between the Federal Minister for Foreign Affairs of the Republic of Austria and the Secretary General duly authorized thereto by Resolution of the Conference of OPEC.

(2) Upon the entry into force of this Agreement the 'Agreement between the Republic of Austria and the Organization of the Petroleum Exporting Countries regarding the Headquarters of the Organization of the Petroleum Exporting Countries' of June 24, 1965, ceases to be in force.

(3) Consultations with respect to modification of this Agreement shall be entered into at the request of the Government or OPEC. Any such modification shall be by mutual consent.

(4) This Agreement shall be construed in the light of its primary purpose of enabling OPEC at its headquarters in the Republic of Austria fully and efficiently to discharge its responsibilities and fulfill its purposes."

2. The relevant excerpts from the Statute of the Organization of the Petroleum Exporting Countries (hereinafter referred to as OPEC) approved by the Founder Members in January 1961, revised by the Conference in April 1965, and last amended in November 2020 (hereinafter referred to as the OPEC Statute) read as follows:

3

### "CHAPTER I Organization and Objectives

#### Article 1

The Organization of the Petroleum Exporting Countries (OPEC), hereinafter referred to as 'the Organization', created as a permanent intergovernmental organization in conformity with the Resolutions of the Conference of the Representatives of the Governments of Iran, Iraq, Kuwait, Saudi Arabia and Venezuela, held in Baghdad from September 10 to 14, 1960, shall carry out its functions in accordance with the provisions set forth hereunder.

#### Article 2

A. The principal aim of the Organization shall be the coordination and unification of the petroleum policies of Member Countries and the determination of the best means for safeguarding their interests, individually and collectively.

B. The Organization shall devise ways and means of ensuring the stabilization of prices in international oil markets with a view to eliminating harmful and unnecessary fluctuations.

C. Due regard shall be given at all times to the interests of the producing nations and to the necessity of securing a steady income to the producing countries; an efficient, economic and regular supply of petroleum to consuming nations; and a fair return on their capital to those investing in the petroleum industry.

### Article 3

The Organization shall be guided by the principle of the sovereign equality of its Member Countries. Member Countries shall fulfil, in good faith, the obligations assumed by them in accordance with this Statute.

[...]

### Article 5

The Organization shall have its Headquarters at the place the Conference decides upon.

[...]

### Article 6A

1. The Organization of the Petroleum Exporting Countries (OPEC), its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except insofar as in any particular case the Secretary General has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.

The Organization, the property and assets of the Organization, wherever located and by whomsoever held, shall enjoy immunity from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

2. The officials of OPEC and representatives of all Member Countries shall be accorded such privileges and immunities as necessary for the independent exercise of their functions in connection with the Organization.

3. The Organization of the Petroleum Exporting Countries shall make provisions for appropriate modes of settlement of:

a. disputes arising out of contracts or other disputes of a private law character to which the Organization is a party;

b. employment disputes between the Organization and its staff members, which shall be settled by a dispute resolution mechanism that protects the rights of the staff members, in accordance with the Organization's internal regulations.

4. The privileges and immunities to be accorded by the host country and the Member Countries to the Organization, its officials, and the representatives of its Member Countries shall be equivalent to the privileges and immunities stipulated in the Convention on the Privileges and Immunities of the Specialized Agencies, approved by the General Assembly of the United Nations on 21 November 1947.

5. The privileges and immunities conferred under the present Article are granted in the interest of OPEC and not for the personal benefit of the individuals themselves.

[...]



### CHAPTER III Organs

#### Article 9

The Organization shall have three organs:

- I. The Conference;
- II. The Board of Governors; and
- III. The Secretariat.

#### I. The Conference

#### Article 10

The Conference shall be the supreme authority of the Organization.

#### Article 11

A. The Conference shall consist of delegations representing the Member Countries. A delegation may consist of one or more delegates, as well as advisers and observers. [...]

B. – D. [...]

[...]

#### Article 15

The Conference shall:

1. formulate the general policy of the Organization and determine the appropriate ways and means of its implementation;
2. decide upon any application for membership of the Organization;
3. confirm the appointment of Members of the Board of Governors;
4. direct the Board of Governors to submit reports or make recommendations on any matters of interest to the Organization;
5. consider, or decide upon, the reports and recommendations submitted by the Board of Governors on the affairs of the Organization;
6. consider and decide upon the Budget of the Organization, as submitted by the Board of Governors;
7. consider and decide upon the Statement of Accounts and the Auditor's Report, as submitted by the Board of Governors;
8. call a Consultative Meeting for such Member Countries, for such purposes, and in such places, as the Conference deems fit;
9. approve any amendments to this Statute;
10. appoint the Chairman of the Board of Governors and an Alternate Chairman;
11. appoint the Secretary General; and
12. appoint the Auditor of the Organization for a duration of one year.

## Article 16

All matters that are not expressly assigned to other organs of the Organization shall fall within the competence of the Conference.

## II. Board of Governors

### Article 17

A. The Board of Governors shall be composed of Governors nominated by the Member Countries and confirmed by the Conference.

B. – E. [...]

[...]

### Article 20

The Board of Governors shall:

1. direct the management of the affairs of the Organization and the implementation of the decisions of the Conference;
2. consider and decide upon any reports submitted by the Secretary General;
3. submit reports and make recommendations to the Conference on the affairs of the Organization;
4. draw up the Budget of the Organization for each calendar year and submit it to the Conference for approval;
5. nominate the Auditor of the Organization for a duration of one year;
6. consider the Statement of Accounts and the Auditor's Report and submit them to the Conference for approval;
7. approve the appointment of Directors of Divisions and Heads of Departments, upon nomination by Member Countries, due consideration being given to the recommendations of the Secretary General;
8. convene an Extraordinary Meeting of the Conference; and
9. prepare the Agenda for the Conference.

[...]

## III. The Secretariat

### Article 25

The Secretariat shall carry out the executive functions of the Organization in accordance with the provisions of this Statute under the direction of the Board of Governors.

#### Article 26

The Secretariat of the Organization shall consist of the Secretary General and such Staff as may be required. It shall function at the Headquarters of the Organization.

#### Article 27

A. The Secretary General shall be the legally-authorized representative of the Organization.

B. The Secretary General shall be the chief officer of the Secretariat, and, in that capacity, shall have the authority to direct the affairs of the Organization in accordance with directions of the Board of Governors.

#### Article 28

A. The Conference shall appoint the Secretary General for a period of three years, which term of office may be renewed once for the same period of time. This appointment shall take place upon nomination by Member Countries and after a comparative study of the nominees' qualifications. [...]

B. – E. [...]

#### Article 29

The Secretary General shall:

1. organize and administer the work of the Organization;
2. ensure that the functions and duties assigned to the different departments of the Secretariat are carried out;
3. prepare reports for submission to each Meeting of the Board of Governors concerning matters which call for consideration and decision;
4. inform the Chairman and other Members of the Board of Governors of all activities of the Secretariat, of all studies undertaken and of the progress of the implementation of the Resolutions of the Conference; and
5. ensure the due performance of the duties which may be assigned to the Secretariat by the Conference or the Board of Governors.

#### Article 30

A. The Directors of Divisions and Heads of Departments shall be appointed by the Secretary General with the approval of the Board of Governors.

B. Officers of the Secretariat, upon nomination by their respective Government or by direct recruitment, shall be appointed by the Secretary General in accordance with the Staff Regulations. In making such appointments, the Secretary General shall give due consideration, as far as possible, to an equitable nationality distribution among Members, but such consideration shall not be allowed to impair the efficiency of the Secretariat.

#### Article 31

The staff of the Secretariat are international employees with an exclusively international character. In the performance of their duties, they shall neither seek nor accept instructions from any government, or from any other authority outside the Organization.

They shall refrain from any action which might reflect on their position as international employees and they shall undertake to carry out their duties with the sole object of bearing the interests of the Organization in mind.

#### Article 32

A. The Secretary General shall be assisted in the discharge of his duties by a Division of Research, a Division of Support Services, his own Office, and any division or department the Conference may see fit to create;

B. Notwithstanding the provisions of Article 33, and where the efficient functioning of the divisions and departments of the Secretariat so requires, the Board of Governors may, upon recommendation of the Secretary General, authorise the Secretary General to transfer functions or units from one division or department to another."

3. The relevant excerpts of the OPEC Staff Regulations approved by the Board of Governors in April 1978, as last amended in June 2016 (hereinafter referred to as the OPEC Staff Regulations), read as follows:

4

#### "PURPOSE AND SCOPE

##### Article 0.1

##### Purpose

These Regulations govern the conditions of employment of the Staff of the Secretariat of the Organization of the Petroleum Exporting Countries, and define their rights, duties and obligations.

They set forth the principles of personnel policy for the staffing and administration of the Secretariat, and shall be enforced by the Secretary General, assisted by the Support Services Division, and the Committees mentioned in Chapter XII.

[...]

## CHAPTER I DUTIES, OBLIGATIONS AND PRIVILEGES

### Article 1.1 Status

The Staff of the Secretariat are international employees [...]. They are subject to the authority of the Secretary General and are responsible to him/her for the discharge of their duties. [...]

[...]

## CHAPTER II ORGANIZATION OF THE STAFF

[...]

### Article 2.4 Line of Responsibility

Every Staff Member shall be directly responsible to the next higher position, and through the line of responsibility to the Head of Department or General Legal Counsel, Director of Division and the Secretary General. [...]

## CHAPTER III APPOINTMENT AND PROMOTION

### Article 3.1 Chief Executive

The Secretary General is the Chief Executive of the Secretariat and in this capacity, the responsibilities assigned to the different Divisions, Departments and Committees are exercised on his/her behalf and under his/her authority.

[...]

## CHAPTER XII COMMITTEES

### Article 12.1 Personnel Committee

a) A Personnel Committee shall be established by the Secretary General to perform the functions specified in Annex I and to hear complaints and appeals under the provisions of Articles 13.1 and 13.2.

b) The Personnel Committee shall consist of the Director of the Research Division, all Heads of Departments, the Head, Human Resources Section, and the General Legal Counsel. The Director of the Research Division, and in his/her absence the most senior Head of Department, shall act as Chairman. If a Committee Member

is unable to attend a meeting, he/she may deputise a senior member of his/her Department or Division to represent him/her.

c) The Personnel Committee will normally meet six times a year at intervals of two months, but may be convened at other times if needed.

d) The procedures and responsibilities of the Committee are described in Annex I and Articles 13.1 and 13.2.

[...]

## CHAPTER XIII COMPLAINTS AND APPEAL

### Article 13.1 Complaints and Appeal

Any complaints by a Staff Member who thinks that he/she has been unfairly treated as regards the application of the provisions of these Regulations or the terms and conditions of his/her employment, or that he/she has been subjected to unjustifiable treatment by his/her superior, may be submitted to the Secretary General, copy to the superior and to the Director, Support Services Division within three months from the date of such treatment. The Secretary General may refer the complaint to the Personnel Committee for observation and report. The Secretary General shall take appropriate measures within three months.

### Article 13.2 Procedures of the Personnel Committee

a) The Committee shall be convened by the Chairman within 15 days of the matter having been referred to it. Where the appeal is against a decision made by a member of the Committee, that member shall not be present at the proceedings.

b) When the Committee considers a case it shall hear the Staff Member or the person presenting the case on his/her behalf and/or shall consider correspondence and documents submitted by either party. It shall have the authority to call upon any Member of the Secretariat who may be able to provide information relevant to the issue before it.

c) The Committee shall by unanimity or by majority vote, adopt and submit a report to the Secretary General. This report should contain a summary of the matter, as well as the Committee's opinion and shall constitute the record of proceedings.

A dissenting member may, if he/she so requests, have his/her opinion recorded in the report.

d) The report to the Secretary General shall be submitted within 30 days of the date when the case was referred to the Committee. For practical reasons, the Secretary General may modify this time limit."

### III. Initial Proceedings, Application and Preliminary Proceedings

1. The applicant was employed by the Organization of the Petroleum Exporting Countries (hereinafter referred to as OPEC) as an internal auditor from 1 July 1999 to 5 December 2017. By an action brought before the Vienna Labour and Social Court (*Arbeits- und Sozialgericht Wien*) on 4 December 2020, the applicant sought a judgment ordering OPEC to pay him the remuneration owed under the contract of employment wrongfully terminated on 5 December 2017 with effect on the same day for the period from 1 December 2019 until his retirement on 31 January 2023 in the amount of EUR 664,409 plus 8.58% interest accrued from 1 January 2018 and to refund him for the costs of the court proceedings. The Vienna Labour and Social Court rejected the action in accordance with section 42 paragraph 1 of the Court Jurisdiction Act (*Jurisdiktionsnorm, JN*) by decision dated 13 April 2021 because under Article 9 of the Headquarters Agreement, OPEC enjoys immunity from every form of legal process and declared in this specific case that it does not waive its immunity. 5

2. The applicant appealed against this decision to the Vienna Higher Regional Court (*Oberlandesgericht Wien*) and brought the present application for review of the lawfulness of the Headquarters Agreement. In the application, the applicant sets out his concerns as follows: 6

2.1. Article 4 paragraph 1 of the Headquarters Agreement grants OPEC the power to make regulations, operative within the headquarters seat, which take precedence over the laws of the Republic of Austria, including in particular the constitutionally guaranteed rights to a fair trial under Article 6 paragraph 1 of the European Convention on Human Rights (ECHR), to an effective remedy under Article 13 ECHR and to the protection of property under Article 1 of Protocol No. 1 to the ECHR. OPEC has indeed made internal rules as defined in Article 4 paragraph 1 of the Headquarters Agreement, notably the OPEC Staff Regulations, Article 13.1 of which allows staff members to submit complaints to the Secretary General, which affects the applicant's aforementioned rights, because in OPEC's view the Staff Regulations can prevail over those rights. 7

2.2. Article 5 paragraphs 1 and 2 of the Headquarters Agreement infringe the applicant's constitutionally guaranteed rights to a fair trial under Article 6 8

paragraph 1 ECHR, to an effective remedy under Article 13 ECHR and to the protection of property under Article 1 of Protocol No. 1 to the ECHR because, as the Constitutional Court found in its decision of 25 November 2020 (SV 1/2019 and others), it precludes the valid service – which constitutes a sovereign act – on OPEC of actions and other documents of ordinary courts without OPEC's consent and thus the effective enforcement of rights in the initial proceedings. In the specific case, OPEC accepted receipt of the action brought against it before the Vienna Labour and Social Court through the intermediation of the Federal Ministry for European and International Affairs (*Bundesministerium für europäische und internationale Angelegenheiten*) but did not enter an appearance. The applicant cannot compel OPEC to do so, the applicant argued.

2.3. Article 9 of the Headquarters Agreement infringes the applicant's constitutionally guaranteed rights to a fair trial under Article 6 paragraph 1 ECHR, to an effective remedy under Article 13 ECHR and to the protection of property under Article 1 of Protocol No. 1 to the ECHR because it grants OPEC immunity from every form of legal process, despite the fact that its (current and former) employees have no access to any alternative legal remedies:

2.3.1. In matters which concern a person's civil rights, as the matter at issue undoubtedly does, Article 6 paragraph 1 ECHR grants everyone the right to a decision of an independent and impartial tribunal established by law. The immunity from Austrian jurisdiction accorded to OPEC on the basis of the Headquarters Agreement, which interferes with this right, in principle pursues a legitimate aim. The attribution of privileges and immunities to international organizations seeks to ensure their proper functioning free of unilateral state interference. In its judgments of 18 February 1999 (GC) in *Waite and Kennedy*, appl. no. 26083/94, and *Beer and Regan*, appl. no. 28934/95, both of which are regarded as leading judgments, the European Court of Human Rights (ECtHR) emphasizes that a material factor in determining whether limitations on access to national litigation is proportionate is whether the applicants had available to them a reasonable alternative means to protect their rights effectively. In its judgment of 6 January 2015 in *Klausecker*, appl. no. 415/07, the European Court of Human Rights held that an arbitral procedure is a reasonable alternative to national litigation.



Under Article 13.1 of the OPEC Staff Regulations, staff members have the right to submit complaints to the Secretary General. The Secretary General may refer complaints to the Personnel Committee for observation and report. The Secretary General receives the reports of the Personnel Committee and must then take appropriate measures. The Secretary General is not bound by the reports of the Personnel Committee, which has no decision-making power of its own. This does not satisfy the requirements of Article 6 paragraph 1 ECHR in any way because the Secretary General is not independent and staff members therefore do not have access to a tribunal. The Secretary General also lacks the necessary unbiased approach and impartiality. In the case at hand, it was the Secretary General who initiated the applicant's employment to be terminated. In addition, there is no provision requiring the parties to be heard or reasons for the decision to be stated. 11

As a former staff member, the applicant is prohibited *a priori* from submitting complaints to the Secretary General. This is evident from the use of the wording "a Staff Member" in Article 13.1 of the OPEC Staff Regulations and the fact that observation of and reporting on future conduct at work only makes sense in relation to current staff members. 12

Furthermore, OPEC has not submitted to the jurisdiction of the Administrative Tribunal of the International Labour Organization, which – subject to closer examination – would offer a reasonable alternative means of protecting the applicant's rights. 13

In his capacity as internal auditor, the applicant saw OPEC rely on the immunity accorded to it under Article 9 of the Headquarters Agreement to evade claims on a number of occasions. Although there is reason to suspect abuse of immunity, the applicant does not have standing to initiate arbitration proceedings between the Republic of Austria and OPEC as specified in Article 28 of the Headquarters Agreement. This means that no remedy or means of legal protection is available to him in this respect either. 14

2.3.2. As Article 9 of the Headquarters Agreement, as construed by the Austrian labour courts, thwarts protection of the right to a fair trial as defined in Article 6 paragraph 1 ECHR, this provision also infringes the right to an effective remedy under Article 13 ECHR. Article 9 of the Headquarters Agreement also infringes the 15

right to an effective remedy in conjunction with the right to protection of property as defined in Article 1 of Protocol No. 1 to the ECHR, which is a civil right within the meaning of Article 6 paragraph 1 ECHR and which, in accordance with the case law of the European Court of Human Rights, encompasses obligations on the state to ensure that an effective remedy is available to employees in the event that their employment is terminated.

2.4. Article 10 of the Headquarters Agreement infringes the applicant's constitutionally guaranteed rights to a fair trial under Article 6 paragraph 1 ECHR, to an effective remedy under Article 13 ECHR and to the protection of property under Article 1 of Protocol No. 1 to the ECHR because – even in the case of non-applicability of Article 9 of the Headquarters Agreement – a judgment obtained against OPEC from an ordinary court could not be enforced in enforcement proceedings. However, according to the judgment of the European Court of Human Rights of 19 March 1997 in *Hornsby*, appl. no. 18357/91, enforcement proceedings are an integral part of a fair trial under Article 6 paragraph 1 ECHR. Moreover, Article 10 of the Headquarters Agreement stands in the way of service of the action, it was argued.

16

3. The Federal Government submitted written observations asking that the application be rejected as inadmissible and, *in eventu*, dismissed as unfounded, and incorporating by reference as an integral part the entirety of its observations regarding both admissibility and the merits in the cases recorded under numbers SV 1/2019, G 124/2020, SV 3/2020 and SV 6/2020. Referring by analogy to the case law of the Constitutional Court regarding proceedings for review of the constitutionality of federal laws, the Federal Government (again) argues against admissibility of the application, stating that even if the challenged phrases and provisions of the Headquarters Agreement were found to be unconstitutional, this would not eliminate the unconstitutionality claimed. In this connection the Federal Government (again) expressly states that OPEC's immunity is enshrined not only in the Headquarters Agreement, but also in customary international law. Since OPEC, as an international organization, enjoys absolute immunity on the basis of customary international law, the Constitutional Court is prevented from taking account of the applicant's concerns.

17

4. The Federal Government also considers the application to be inadmissible for the following reasons: 18

4.1. In view of the decision of the Constitutional Court of 25 November 2020, SV 1/2019 and others, the application is too narrow in scope: In accordance with Article 3 paragraph 1 of the Headquarters Agreement, the (Austrian) Federal Government recognizes the "extraterritoriality of the headquarters seat" of OPEC. The inviolability of the headquarters seat pursuant to Article 5 of the Headquarters Agreement, which is addressed by the Constitutional Court in the aforementioned decision, is thus "derived from the 'extraterritoriality of the headquarters seat' of OPEC in accordance with Article 3 paragraph 1 of the OPEC Headquarters Agreement". Therefore, this provision – which is not challenged – also prevents valid service on OPEC of actions and other documents of ordinary courts without OPEC's consent and thus the enforcement of rights in the initial proceedings. The unconstitutionality claimed by the applicant would remain in effect by virtue of the continued inviolability of the OPEC headquarters seat. 19

4.2. In accordance with section 62 paragraph 1 second sentence of the Constitutional Court Act (*Verfassungsgerichtshofgesetz, VfGG*), an application requesting repeal of a statute as unconstitutional must set out in detail the concerns put forward against the constitutionality of the statute. The present application does not satisfy these requirements: 20

"The applicant makes a blanket assertion that all of the phrases and provisions challenged infringe Article 6 paragraph 1 ECHR, Article 13 ECHR and Article 1 of Protocol No. 1 to the ECHR, but fails to specify how each of the concerns applies to the individual provisions of the Headquarters Agreement: As regards Articles 4 and 9 of the OPEC Headquarters Agreement, the application merely sets out the concerns relating to Article 6 paragraph 1 ECHR and Article 13 ECHR; as regards Article 5 and Article 10 of the OPEC Headquarters Agreement, it sets out the concerns relating to Article 6 ECHR only. In addition, at no point does the applicant show why the phrases and provisions challenged infringe Article 1 of Protocol No. 1 to the ECHR."

5. OPEC, which received service of the application through the intermediation of the Federal Ministry for European and International Affairs, did not submit written observations. 21

## IV. Considerations

### 1. As to the admissibility

1.1. In accordance with Article 140a of the Constitution (*B-VG*), the Constitutional Court, applying by analogy Article 140 paragraph 1 subparagraph 1 point d of the Constitution (*B-VG*), also decides on the unlawfulness of international treaties on application by a person who, as a party in a legal matter that has been decided by an ordinary court at first instance, alleges infringement of their rights because of the application of an unlawful international treaty within the meaning of Article 50 paragraph 1 subparagraph 1 of the Constitution (*B-VG*), in connection with an appeal filed against that decision. In accordance with section 62a paragraph 1 first sentence of the Constitutional Court Act (*VfGG*), which pursuant to section 66 of the Constitutional Court Act (*VfGG*) applies by analogy, a person who, as a party to a legal matter decided by an ordinary court at first instance, claims infringement of their rights by the application of an unlawful international treaty as defined in Article 50 paragraph 1 subparagraph 1 of the Constitution (*B-VG*) can file an application for the international treaty to be found to be unlawful. 22

In accordance with Article 50 paragraph 1 subparagraph 1 of the Constitution, the Headquarters Agreement challenged is an international treaty (with the rank of statute) approved by the Austrian National Council. 23

1.2. The present application was brought in connection with the appeal against the decision of the Vienna Labour and Social Court of 13 April 2021. By that decision, the legal matter was decided at first instance by an ordinary court (Article 140a in conjunction with Article 140 paragraph 1 subparagraph 1 point d of the Constitution). 24

1.3. As claimant, the applicant is a party to the proceedings before the ordinary court and is therefore entitled to make an application under Article 140a in conjunction with Article 140 paragraph 1 subparagraph 1 point d of the Constitution. 25

1.4. The applicant has met the requirement that the application be brought in connection with an appeal by submitting the present application and bringing the 26

appeal against the decision of the Vienna Labour and Social Court of 13 April 2021 on the same day (see *VfSlg. 20.074/2016*).

In addition, the Constitutional Court finds that the appeal was filed in good time and is admissible on the basis of a communication to that effect from the Vienna Labour and Social Court dated 10 May 2021. 27

1.5. The applicant requests the repeal of (parts of) Article 4 paragraph 1, Article 5 paragraphs 1 and 2, Article 9 and Article 10 of the Headquarters Agreement. This request is to be construed as seeking a declaration that the provisions challenged are unconstitutional (cf. e.g. *VfSlg. 16.628/2002, 16.634/2002*). 28

1.6. Pursuant to section 62 paragraph 2 of the Constitutional Court Act (*VfGG*), an application to repeal a law or certain parts thereof, based on Article 140 paragraph 1 subparagraph 1 point d of the Constitution, can be filed only if the law is to be directly applied by the court in the pending case or if the constitutionality of the law is – or would be in the applicant’s opinion - an incidental question (*Vorfrage*) for the decision by the court in the pending case. Filing an application pursuant to Article 140 paragraph 1 subparagraph 1 point d of the Constitution (*B-VG*) therefore is conditional on the challenged provision being a condition for the decision by the ordinary court in the initial case (cf. *VfSlg. 20.029/2015; VfSlg. 20.010/2015*). 29

1.7. The following principles laid down for proceedings under Article 140 of the Constitution (*B-VG*) also apply in analogy for proceedings seeking the assessment of unlawfulness of international treaties having the rank of statute under Article 140a of the Constitution (section 66 of the Constitutional Court Act [*VfGG*]; see *VfGH 29.9.2021, SV 4/2020, G 250/2020* and others): 30

As the Constitutional Court has repeatedly stated in relation to proceedings for review of the constitutionality of federal laws initiated both *ex officio* and upon application (*VfSlg. 13.965/1994* with further references, *16.542/2002, 16.911/2003*), the scope of repeal of a statute subject to a review of constitutionality must be defined in such a way that, on the one hand, the content of the remainder of the statute is not changed completely and, on the other, 31

provisions which are inseparably linked with the part of the statute to be repealed are also included.

Based on this general tenet, the Constitutional Court has developed the view that if an application for review of the constitutionality of federal laws is to be admissible, the scope of the repeal of the statute for which the review is sought must not be too narrow (cf. *VfSlg.* 16.212/2001, 16.365/2001, 18.142/2007, 19.496/2011; *VfGH* 14.3.2017, *G* 311/2016). The applicant must challenge all provisions which form an inseparable unit for the purposes of an assessment of any unconstitutionality. It is then for the Constitutional Court to consider how such unconstitutionality – in the event that it shares the applicant’s view – can be eliminated (*VfSlg.* 16.756/2002, 19.496/2011, 19.684/2012, 19.903/2014; *VfGH* 10.3.2015, *G* 201/2014).

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An application which is too broad in scope will not be inadmissible in every case. Firstly, an application is not too broad in scope where the applicant challenges provisions that are applicable in the pending case and inseparably linked with such provisions; in accordance with section 62 paragraph 1 of the Constitutional Court Act (*VfGG*), however, the question of which provision or part of a provision must in the applicant's view be repealed and for what reason cannot be left open (see, with further references, *VfGH* 2.3.2015, *G* 140/2014 and others; cf. also *VfGH* 10.12.2015, *G* 639/2015; 15.10.2016, *G* 103-104/2016 and others). If such application is well-founded on the merits but the Constitutional Court repeals as unconstitutional only part of the provisions challenged, this will result – provided that the other procedural requirements are met – in partial dismissal of the case as unfounded (*VfSlg.* 19.746/2013; *VfGH* 5.3.2014, *G* 79/2013 and others).

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If the application also includes provisions which are not applicable (i.e. the application is too broad in scope) but which in light of the concerns raised are linked to the provisions which are applicable (and which in the applicant’s opinion constitute the core of the unconstitutionality), the following distinction must be made: If those provisions are obviously separable from the provisions that are applicable and which constitute the origin of the applicant’s constitutional concerns, the application must be rejected as partially inadmissible. If the application also includes provisions which are related to the provisions that are applicable and constitute the core of the applicant’s constitutional concerns so

34

specifically that it cannot be ruled out *a priori* that, in the event that the concerns are found to be correct, it may be necessary to repeal them (i.e. these provisions are not obviously separable), the application is admissible in its entirety (*VfSlg. 20.111/2016*). In accordance with the remarks above, however, this does not the case if the application also challenges provisions (all provisions of an entire statute, for example) without setting out specific concerns against them and showing how they are specifically related to the provisions that the Constitutional Court is required decide upon (*VfSlg. 19.894/2014; VfGH 29.9.2015, G 324/2015; 15.10.2016, G 183/2016* and others).

The Constitutional Court therefore decides – in light of the concerns raised and the necessity of identifying the provisions constituting the origin of those concerns while interfering with the substance of the law as little as possible – on the question of whether it may also be necessary to repeal provisions which are not applicable but which are inseparably linked with such provisions (cf. *VfSlg. 19.939/2014, 20.086/2016*), not when examining the admissibility of the application, but individually only when the Constitutional Court – provided that the application is determined to be well-founded – is required to define the scope of the provisions to be repealed.

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1.8. The Vienna Labour and Social Court rejected the action in the initial proceedings in accordance with section 42 paragraph 1 of the Court Jurisdiction Act (*JN*) due to lack of jurisdiction of the Austrian courts because under Article 9 of the Headquarters Agreement, OPEC enjoys immunity from every form of legal process and declared in this specific case that it does not waive its immunity. It is therefore obvious that Article 9 of the Headquarters Agreement, the first and second sentences of which are inseparably linked with one another, are applicable.

36

1.9. The challenge to Article 5 of the Headquarters Agreement is admissible for the simple reason that this provision – as set out by the Constitutional Court in the decision of 25 November 2020, *SV 1/2019* and others – is inseparably linked with Article 9 of the Headquarters Agreement.

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1.10. As Article 4 paragraph 1 and Article 10 of the Headquarters Agreement are not applicable in the present proceedings – and as in light of the concerns raised

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those provisions are obviously separable from the provisions that are applicable – the application is too broad in scope.

1.11. Arguing against admissibility of the application, the Federal Government submits that the applicant has framed the scope of the repeal too narrowly because the inviolability of the headquarters seat in accordance with Article 5 of the Headquarters Agreement is derived from the extraterritoriality of the headquarters seat pursuant to Article 3 paragraph 1 of the Headquarters Agreement, and that therefore Article 3 paragraph 1 of the Headquarters Agreement also precludes valid service on OPEC of claims and other documents of the ordinary courts without OPEC's consent, and thus the enforcement of rights in the initial case. 39

The Federal Government's submission is not right in this point. In this regard, it is sufficient to observe that Article 3 paragraph 1 of the Headquarters Agreement, which specifies recognition by the Federal Government (only), merely contains a declaratory reference to the inviolability of the headquarters seat provided for in Article 5 of the Headquarters Agreement. This obligation, which is defined in more detail only in the provisions which follow, does not preclude the exercise of Austrian jurisdiction (see also Article 3 paragraphs 2 and 3 of the Headquarters Agreement). 40

1.12. The Federal Government also submits that the application is inadmissible because the immunity accorded to OPEC is enshrined not only in the Headquarters Agreement but also in customary international law. Customary international law is part of the generally recognized rules of international law, which according to Article 9 paragraph 1 of the Constitution (*B-VG*) are an integral part of Federal Law and which the Austrian courts and authorities must therefore take into consideration *ex officio*. Referring to *VfSlg. 17.415/2004*, the Federal Government considers the immunity of international organizations under customary international law to have been settled by the Constitutional Court with reference to the case law of foreign (supreme) courts. This is in line with the case law of other national and international courts. Since OPEC, as an international organization, also enjoys absolute immunity merely on the basis of customary international law, the Constitutional Court is prevented from taking due account of the applicant's concerns. A finding that only Article of the 9 Headquarters 41



Agreement is unlawful would not alter OPEC's immunity and so would not eliminate the unconstitutionality claimed. The application must therefore be rejected as inadmissible.

The Federal Government's arguing on the admissibility of the application is not right. It cannot be assumed that there exists a general practice accepted as law (cf. Article 38 paragraph 1 point b of the Statute of the International Court of Justice, Federal Law Gazette *BGBI. 120/1956*, as amended by Federal Law Gazette *BGBI. 70/1960*) which obliges Austria to accord immunity to an international organization of which Austria is not a member even if no reasonable alternative remedy for settling employment disputes is available. The Constitutional Court sees no customary international law which would prevent it from taking account of the applicant's concerns and which would therefore render the application inadmissible as argued by the Federal Government. 42

1.13. The fact that the concerns as to the constitutionality of Article 5 paragraphs 1 and 2 of the Headquarters Agreement are described with sufficient clarity only with respect to Article 6 paragraph 1 ECHR but not with respect to Article 13 ECHR and Article 1 of Protocol No. 1 to the ECHR (section 66 in conjunction with section 62 paragraph 1 second sentence of the Constitutional Court Act [*VfGG*]), does not – contrary to the view taken by the Federal Government – render the application inadmissible, not even partially (cf. *VfSlg. 16.752/2002*). 43

1.14. As no other obstacles to the action have arisen in relation to Article 5 paragraphs 1 and 2 and Article 9 of the Headquarters Agreement, the application is admissible. To the extent that it is also directed against (parts of) Article 4 paragraph 1 and Article 10 of the Headquarters Agreement, however, it is too broad in scope and must be rejected as inadmissible. 44

## 2. On the merits

2.1. In proceedings initiated upon an application filed to review the constitutionality of a law pursuant to Article 140 of the Constitution (*B-VG*), the Constitutional Court must limit itself to deliberations on the concerns raised (cf. *VfSlg. 12.691/1991, 13.471/1993, 14.895/1997, 16.824/2003*). It must therefore 45

assess only whether the provision challenged is unconstitutional on the grounds set out in the application (*VfSlg. 15.193/1998, 16.374/2001, 16.538/2002, 16.929/2003*). This also applies to applications under Article 140a of the Constitution (*B-VG*) (cf. section 66 of the Constitutional Court Act [*VfGG*]).

2.2. The application is well-founded. 46

2.3. The applicant claims that Article 9 of the Headquarters Agreement infringes his constitutionally guaranteed right to a fair trial under Article 6 paragraph 1 ECHR because it accords OPEC immunity from the national courts despite the fact that its employees (including former employees) do not have access to alternative means of asserting rights deriving from a contract of employment before a court. OPEC does not offer its (former) staff members a remedy satisfying the requirements of Article 6 paragraph 1 ECHR in any way. 47

2.4. In accordance with Article 6 paragraph 1 ECHR, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law which will decide on their civil rights and obligations or the validity of any criminal charge against them. Also inherent in Article 6 paragraph 1 ECHR is a right of access to an independent and impartial tribunal or court established by law (cf. ECtHR, 21 February 1975, *Golder*, appl. no. 4451/70 [paragraph 36]). This right, which by its very nature calls for regulation by the state, is not absolute, however. In accordance with the established case law of the European Court of Human Rights, restrictions may be placed on it. Such restrictions must not impair the essence of the right and are permissible only if they pursue a legitimate aim and there is a reasonable relationship of proportionality between the means employed and the legitimate aim sought (ECtHR, 28 May 1985, *Ashingdane*, appl. no. 8225/78 [paragraph 57]; 19 June 2001, *Kreuz*, appl. no. 28.249/95 [paragraph 55]; cf. *VfSlg. 20.264/2018*; see also *Grabenwarter, Article 6 ECHR*, in: *Korinek/Holoubek et al. [eds.], Bundesverfassungsrecht, 8. Lfg. 2007*, paragraph 70). 48

2.5. The European Court of Human Rights has made clear in its case law that these requirements also apply in principle to employment disputes involving an international organization accorded immunity by treaty by a convention state 49

(Ullrich, *Die Immunität internationaler Organisationen von der einzelstaatlichen Gerichtsbarkeit*, HJIL 2011, 157 [163 ff.]).

2.6. In accordance with the case law of the European Court of Human Rights, the immunity from jurisdiction commonly accorded to international organizations pursues the legitimate aim of ensuring the proper functioning of the organizations free from unilateral interference by individual governments. The importance of this practice is enhanced by a trend towards extending and strengthening international cooperation in all domains of modern society. (ECtHR, 18 February 1999 [GC], *Waite and Kennedy*, appl. no. 26.083/94 [paragraph 63]; 18 February 1999 [GC], *Beer and Regan*, appl. no. 28934/95 [paragraph 53]).

As the European Court of Human Rights has held, it would be incompatible with the purpose and object of the Convention if, by attributing (privileges and) immunities to international organizations, the Contracting States were absolved from their responsibility under the Convention. The European Court of Human Rights recalls that the Convention is intended to guarantee not theoretical or illusory rights, but rights that are practical and effective. This is particularly true for the right of access to the courts in view of the prominent place held in a democratic society by the right to a fair trial (ECtHR, *Waite and Kennedy*, paragraph 67; see also more recently ECtHR, 6 January 2015, *Perez*, appl. no. 15521/08 [paragraph 93]).

For the European Court of Human Rights, a material factor in determining whether the limitation on access to a court inherent in the immunity from national jurisdiction enjoyed by an international organization is proportionate for the purposes of Article 6 paragraph 1 ECHR is whether applicants had available to them reasonable alternative means to protect their rights (leading cases: ECHR, *Waite und Kennedy*, paragraph 68; *Beer and Regan*, paragraph 58; cf. also ECtHR, 6 January 2015, *Klausecker*, appl. no. 415/07, [paragraph 69 et seq.]). It is not necessary for the alternative protection to match the national court system in every respect; protection need only be comparable, i.e. equivalent, and not identical (cf. ECtHR 9 September 2008, *Boivin*, appl. no. 73250/01 [paragraph 2]). Slightly inferior guarantees do not constitute an infringement of Article 6 paragraph 1 ECHR; Article 6 paragraph 1 ECHR is violated, however, if the alternative legal protection system of an international organization is manifestly

deficient (see ECtHR, 12 May 2009, *Gasparini*, appl. no. 10750/03; 16 June 2009, *Rambus*, appl. no. 40382/04).

For international organizations it is generally accepted that the possibility of recourse to an internal quasi-judicial body can constitute reasonable alternative means of protecting rights (cf. for example, proceedings before the NATO Appeals Board, ECtHR, 11 May 2000, *A.L.*, appl. no. 41387/98; proceedings before the Appeals Board of the European Space Agency, ECtHR, *Waite and Kennedy*, paragraph 69; *Beer and Regan*, paragraph 59). As the European Court of Human Rights has held, the option of lodging a complaint with the Administrative Tribunal of the International Labour Organization and the possibility of arbitration proceedings both offer reasonable alternative dispute settlement mechanisms (cf. ECtHR, *Klausecker*, paragraph 70 et seq.). 53

2.7. In light of that case law, Article 9 of the Headquarters Agreement violates Article 6 paragraph 1 ECHR: 54

2.7.1. Article 9 of the Headquarters Agreement (also) concerns the jurisdiction of the Austrian courts in employment proceedings. The provision therefore also concerns civil disputes, and thus civil rights within the meaning of Article 6 paragraph 1 ECHR. 55

2.7.2. Article 9 of the Headquarters Agreement limits access to a court in that a case may be brought before the Austrian courts only if OPEC has expressly waived its immunity in that particular case. The aim pursued by Article 9 of the Headquarters Agreement is to enable the proper functioning of the international organization (in this case OPEC) free from unilateral interference by the state in which its headquarters is located (in this case the Republic of Austria). This constitutes a legitimate aim as defined in the case law of the ECtHR set out above. 56

2.7.3. As long as the Headquarters Agreement does not guarantee – as already envisaged by OPEC in the new Article 6A of its Statute, which was inserted in November 2020 – that an appropriate mechanism is established for settling employment disputes to protect the rights of employees (see also the Explanatory Notes on the Government Bill regarding the insertion of Article 9 paragraph 2 into the Headquarters Agreement – deemed necessary based on Article 6 paragraph 1 57

ECHR – entered into between the Republic of Austria and the OPEC Fund for International Development, 5 *BlgNR*, 27th legislation period, 2), it cannot be presumed, even taking into account any margin of appreciation that the convention states may have, that the Republic of Austria, through Article 9 of the Headquarters Agreement, limits access to a court in employment disputes such as that in the initial proceedings in a proportionate manner and thus accords the international organization immunity from national jurisdiction in a manner consistent with Article 6 paragraph 1 ECHR.

## V. Result

1. Article 5 paragraphs 1 and 2 and Article 9 of the Agreement between the Republic of Austria and the Organization of the Petroleum Exporting Countries regarding the headquarters of the Organization of the Petroleum Exporting Countries, Federal Law Gazette *BGBI. 382/1974*, as amended by *BGBI. III 108/2010* are unconstitutional for violation of Article 6 paragraph 1 ECHR. In view of this result, there is no need to comment in more detail the other concerns raised in the application. 58
2. The provisions found to be unconstitutional shall not be applied by the bodies competent to implement them after 30 September 2024 (Article 140a subparagraph 1 of the Constitution [*B-VG*] in conjunction with section 66 subparagraph 2 of the Constitutional Court Act [*VfGG*]). The period during which the provisions found to be unconstitutional must continue to be applied – except in the initial case (Article 140a in conjunction with Article 140 paragraph 7 of the Constitution [*B-VG*]) – is based on Article 140a subparagraph 1 of the Constitution (*B-VG*). 59
3. The obligation of the Federal Chancellor to publish these rulings without delay derives from Article 140a in conjunction with Article 140 paragraph 5 of the Constitution (*B-VG*) and section 66 subparagraph 4 of the Constitutional Court Act (*VfGG*) in conjunction with section 5 paragraph 1 subparagraph 3 of the Federal Act on the Federal Law Gazette (*Bundesgesetzblattgesetz, BGBIG*). 60
4. This applicant is not awarded the costs sought because in the case of an application under Article 140a in conjunction with Article 140 paragraph 1 61

subparagraph 1 point d of the Constitution (B-VG) the competence to rule on the entitlement to costs rests with the ordinary court in accordance with the provisions applicable to the applicant's proceedings (e.g. VfSlg. 20.102/2016, 20.112/2016).

5. Pursuant to Section 19 paragraph 4 of the Constitutional Court Act (*VfGG*), this decision was taken without an oral hearing after private deliberations.

62

Vienna, 29 September 2022

The President:  
GRABENWARTER

Recording clerk:  
SCHOCK