

Austria

Constitutional Court

Important decisions

Identification: AUT-2014-2-002

a) Austria / **b)** Constitutional Court / **c)** / **d)** 12.03.2014 / **e)** B 166/2013 / **f)** / **g)** / **h)** www.icl-journal.com; CODICES (German).

Keywords of the systematic thesaurus:

2.1.1.4.4 Sources – Categories – Written rules – International instruments – **European Convention on Human Rights of 1950.**

2.1.1.4.18 Sources – Categories – Written rules – International instruments – **Charter of Fundamental Rights of the European Union of 2000.**

5.2.2.11 Fundamental Rights – Equality – Criteria of distinction – **Sexual orientation.**

5.3.32 Fundamental Rights – Civil and political rights – **Right to private life.**

5.3.34 Fundamental Rights – Civil and political rights – **Right to marriage.**

Keywords of the alphabetical index:

Charter of Fundamental Rights of the European Union, application / Couple, same-sex / Discrimination, sexual orientation / Equality / Marriage, same-sex.

Headnotes:

Neither Article 14 ECHR, read in conjunction with Article 8 ECHR, nor the general principle of equality enshrined in Article 7 of the Federal Constitutional Act must be construed as precluding the application of a provision that limits the right to marry to heterosexual couples.

Summary:

I. The applicants, two male Dutch citizens who married under Dutch civil law in 2002, requested to renew their marriage in Austria, where they have been living for several years. They claimed that, when dealing with local authorities in addition to their social

and business life, the validity of their marriage has been continually challenged.

The Governor of Tyrol (*Landeshauptmann von Tirol*), acting as the competent registry office of last instance, refused the applicants' request. According to Austrian civil law, marriage is restricted to heterosexual relationships. Same-sex couples can enter a so-called registered partnership (*Eingetragene Partnerschaft*) under the Registered Partnership Act of 2009 (*Eingetragene Partnerschaften-Gesetz*).

The applicants lodged a constitutional complaint against this decision, claiming they were discriminated because of their sex and sexual orientation. They maintained that national legislation was contrary to the constitutional principle of equality, as laid down in Article 7 of the Federal Constitutional Act (*Bundes-Verfassungsgesetz*), Article 14 read in conjunction with Article 8 ECHR as well as Article 21 of the Charter of Fundamental Rights of the European Union (hereinafter, "CFR").

II. The Constitutional Court endorsed the Governor's finding that same-sex marriage is not recognised in the Austrian legal system. The Governor, hence, was not obliged by virtue of the principle of equality to interpret Austrian civil law as allowing same-sex partners to marry. The reason is that neither Article 14 ECHR nor Article 7 of the Federal Constitutional Act imposes an obligation to grant a same-sex couple, such as the applicants, access to marriage.

Regarding Article 21 CFR, the Constitutional Court considered the scope of its application. It claimed that the rights guaranteed by the Charter of Fundamental Rights of the European Union may be invoked as constitutionally guaranteed rights, provided that the guarantee enshrined in the Charter of Fundamental Rights of the European Union is similar in wording and purpose to rights guaranteed by the Austrian Federal Constitution, as is the case with Article 21 CFR.

However, the Constitutional Court found that the national provisions relevant to the case did not implement EU law within the meaning of Article 51.1 CFR, as interpreted by the Court of Justice of the European Union in its settled case-law. Consequently, Article 21 CFR does not apply in the present case. The Constitutional Court added that, even if the Charter of Fundamental Rights of the European Union were applicable, the provisions at issue (as construed by the Governor) would not violate Article 21 CFR, owing to the broad discretion granted to the Contracting States on the issue of same-sex marriage.

Cross-references:

- nos. U 466/11, U 1836/11, 14.03.2012, *Bulletin* 2012/2 [AUT-2012-2-003].

European Court of Human Rights:

- *Schalk and Kopf v. Austria*, no. 30141/04, 24.06.2010.

Court of Justice of the European Union:

- no. C-206/13, 06.03.2014, *Siragusa*.

Languages:

German.

