

# AUT-2020-2-003

a) Austria / b) [Constitutional Court](#) / c) / d) 14-07-2020 / e) G 202/2020 / f) / g) ECLI:AT:VFGH:2020:G202.2020 / h) CODICES ([German](#)).

## Keywords of the systematic thesaurus:

- [03.16](#) General Principles - Proportionality.
- [03.19](#) General Principles - Margin of appreciation.
- [05.01.05](#) Fundamental Rights - General questions - Emergency situations.
- [05.02](#) Fundamental Rights - Equality.
- [05.03.39.03](#) Fundamental Rights - Civil and political rights - Right to property - Other limitations.
- [05.04.19](#) Fundamental Rights - Economic, social and cultural rights - Right to health.

## Keywords of the alphabetical index:

[COVID-19](#), [epidemic](#), [pandemic](#) / [Right to property](#), compensation for loss of earnings, economic support measures / Entry ban, ban on operation.

## Headnotes:

The property restrictions as provided in § 1 of the COVID-19 regulation of 15 March 2020, Federal Law Gazette II no. 96/2020, including an entry ban on customer areas of business premises and leading to a temporary closure of shops and businesses are necessary in order to avoid the spread of the COVID-19 pandemic.

The right to property under Article 5 of the Basic Law on the General Rights of the Citizens of 21 December 1867 and [Article 1 Protocol 1 ECHR](#) is not absolute and does not always include the right to claim compensation.

An entry ban for customer areas constitutes a significant interference with the fundamental right to property provided in Article 5 of the Basic Law on the General Rights of the Citizens of 21 December 1867.

An entry ban for customer areas combined with economic support measures does not constitute a disproportionate interference with the fundamental right to property under Article 5 of the Basic Law on the General Rights of the Citizens of 21 December 1867.

Differing measures with similar objectives, under the COVID-19 Measures Act and the Epidemics Act 1950, which differ in scope, do not violate the principle of equality as provided

in Article 7.1 of the Federal Constitutional Act and in Article 2 of the Basic Law on the General Rights of the Citizens of 21 December 1867.

The legislator enjoys a wide margin of discretion when combating the economic consequences of the COVID-19 pandemic.

**Summary:**

I. § 1 of the COVID-19 regulation of 15 March 2020, Federal Law Gazette II no. 96/2020 (hereinafter, "Regulation-96"), put a ban on entering customer areas of business premises and therefore, shops had to close. § 2 of Regulation-96 provided for certain exceptions. According to § 4.2 of the COVID-19 Measures Act, which is the legal basis of Regulation-96, the provisions of the Epidemics Act 1950 on the closure of establishments are not applicable where a regulation under § 1 of the COVID-19 Measures Act has been issued. In contrast to § 32 of the Epidemics Act 1950, however, the COVID-19 Measures Act does not provide for compensation for loss of earnings incurred by companies affected by measures taken under that act.

The applicants which are business companies with several branches in Austria filed a constitutional complaint with the Constitutional Court, alleging, in particular, the violation of their right to property according to Article 5 of the Basic Law on the General Rights of the Citizens of 21 December 1867 (hereinafter, the "Basic Law") and [Article 1 Protocol 1 ECHR](#), as well as a violation of the constitutional principle of equality laid down in Article 7.1 of the Federal Constitutional Act and in Article 2 of the Basic Law.

II. The Constitutional Court held that the lack of a right to compensation does not violate the fundamental right to property or the principle of equality. To begin with, the Constitutional Court observed that a ban on entry for business premises would have the same effect on the affected companies as a ban on operation and thus constitutes a significant interference with the fundamental right to property. However, the Constitutional Court held that the ban on entry was and is embedded in an extensive package of measures which aims to cushion the economic impact of the ban on entry on the companies concerned and of the consequences of the COVID-19 pandemic in general. The Constitutional Court held that this package would be a substitute for the entitlement to compensation according to the Epidemics Act 1950.

In particular, the Constitutional Court pointed out that affected companies are legally entitled to financial support such as benefits for short-time work. With regard to these support measures, the ban on entry does not constitute a disproportionate interference with the fundamental right to property. A right to compensation for all companies affected by the ban on entry cannot be derived from the right to property: All companies in trade and service industries with customer areas (apart from the exceptions provided for in § 2 of Regulation-96) were affected by the entry ban and the adverse consequences associated therewith. The property restrictions were deemed necessary in order to avoid further spread

of the COVID-19 pandemic. Therefore, the Constitutional Court held that in the present constellation, no obligation could be derived from the fundamental right to property to provide an additional claim for compensation.

The Constitutional Court noted that in addition, it does not violate the principle of equality that the COVID-19 Measures Act lacks a right to compensation in the event of a ban on entry, while the Epidemics Act 1950 grants such a right for loss of earnings in the event of the closure of companies. These provisions cannot be compared with each other since the Epidemics Act 1950 is only aimed at fighting the spread of local epidemics, e.g., by closing certain business facilities (especially factories) presenting a specific risk for spreading an epidemic – in contrast to large-scale measures affecting the whole retail economy as laid down in the COVID-19 Measures Act.

Furthermore, the Constitutional Court pointed out that the legislator enjoys a wide margin of discretion when combating the economic consequences of the COVID-19 pandemic. The decision to embed the ban on entry into a separate rescue package (instead of resorting to the regime of the Epidemics Act 1950), which essentially pursues the same objective as the right to compensation for loss of earnings under the Epidemics Act 1950, does not run counter the principle of equality.

4. The Constitutional Court concluded that in an overall view, the lack of compensation does not constitute a breach of a constitutional right.

**Cross-references:**

European Court of Human Rights:

- *Sporrong-Lönnroth v. Sweden*, no. 7151/75 *et al.*, 23.09.1983

- *Phocas v. France*, no. 17869/91, 23.04.1996

Languages:

German.