

AUT-2022-1-001

a) Austria / b) [Constitutional Court](#) / c) / d) 08-03-2022 / e) E 3120/2021 / f) / g) ECLI:AT:VFGH:2022:E3120.2021 / h) CODICES ([German](#)).

Keywords of the systematic thesaurus:

[03.16](#) General Principles - **Proportionality**.

[03.17](#) General Principles - **Weighing of interests**.

[05.03.21](#) Fundamental Rights - Civil and political rights - **Freedom of expression**.

[05.03.28](#) Fundamental Rights - Civil and political rights - **Freedom of assembly**.

Keywords of the alphabetical index:

[Demonstration](#), [ban](#) / [Public order](#), [threat](#) / [Terrorist organisation](#), symbols, ban.

Headnotes:

In the absence of clear evidence of a threat of violence or serious disturbance, the fact that the symbol of a terrorist organisation (the flag of the PKK) is prohibited by law cannot automatically justify a prohibition on holding a gathering at which that symbol would be displayed.

Summary:

I. In February 2021, the applicant gave notice to the competent police authority for Vienna (*Landespolizeidirektion Wien*) of an intended demonstration to take place in Vienna under the theme of "peace and democracy for Kurdistan". The applicant also notified the authority of his intention to use the flag of the Kurdistan Workers' Party (hereinafter, "PKK"), showing a red star on a yellow background in a green circle on a red flag, at the demonstration.

The *Landespolizeidirektion Wien* informed the applicant that, under the Federal Act on Symbols (*Symbole-Gesetz*) of 2014 as amended in 2019, using the flag of the PKK in public is an administrative offence, which is why the assembly would be prohibited. However, the applicant insisted on using the flag, because showing the flag of the PKK would be essential to the aims of the demonstration. As a consequence, the assembly was prohibited. The Regional Administrative Court of Vienna (*Verwaltungsgericht Wien*) upheld that administrative decision.

The applicant filed a constitutional complaint with the Constitutional Court, alleging a violation of his right to freedom of assembly. In particular, the applicant claimed that the relevant provisions of the *Symbole-Gesetz*, on which the challenged ban was based, were contrary to the constitution.

II. The Constitutional Court held that a legal ban on using certain symbols, as set out in the *Symbole-Gesetz*, constituted an interference with the applicant's right to freedom of expression under [Article 10 ECHR](#). According to the well-established case-law of the European Court of Human Rights, an interference with the right to freedom of expression is in breach of Article 10 unless it satisfies the requirements of the second paragraph of that Article, i.e. it is prescribed by law, pursues a legitimate aim and is necessary in a democratic society.

The Court acknowledged that the prohibition at issue is intended to prevent disorder and to protect the rights of others. In the EU, the PKK is regarded as a terrorist organisation which, by its intention, runs counter to the principles of democracy and rule of law. Moreover, there is a close network between the Turkish community in Austria and Turkey, causing security developments in Turkey to affect the security situation in Austria. For that reason, the PKK also poses a specific threat to social cohesion and social peace in Austria.

The Court also found that the legislator is free to fight ideas threatening democracy not only by imposing a ban on organisations spreading such ideas but also by prohibiting the use of symbols expressing these ideas. However, such a prohibition can only be regarded as "necessary in a democratic society", i.e. proportionate to the legitimate aims pursued, if the symbol would be used specifically as a means of disseminating hate or promoting violence.

The Court observed that the *Symbole-Gesetz* is perfectly in line with that approach, as the gestured or graphic representation of symbols is only prohibited if such a use of the symbol is intended to endorse or propagate the (anti-democratic) ideas of the group concerned (§ 2.3 of the *Symbole-Gesetz*). For that reason, the Court did not share the applicant's misgivings about the constitutionality of the *Symbole-Gesetz*.

In light of the above considerations, an automatic reliance on the fact that the flag of the PKK is prohibited by law cannot in itself justify a ban on a peaceful assembly at which that symbol would be displayed. In the present case, however, the competent authorities had simply relied on the general provisions of the *Symbole-Gesetz* without clarifying whether there was a real risk of violent action, incitement to violence or any other form of rejection of democratic principles. By preventing the applicant from holding that gathering, the authorities had applied the relevant law, i.e. the Federal Act on Assemblies (*Versammlungsgesetz*), in a manner that was therefore disproportionate to the right to freedom of assembly and thus violated [Article 11 ECHR](#).

Cross-references:

European Court of Human Rights:

- *Nejdet Atala v. Türkiye*, no. 76224/12, 19.11.2019;
- *Polat v. Türkiye*, no. 64128/11, 07.05.2019;
- *Akyüz v. Türkiye*, no. 63681/12, 07.05.2019;
- *Kiliç and Eren v. Türkiye*, no. 43807/07, 29.11.2011.

Languages:

German.