

AUT-2025-2-002

a) Austria b) Constitutional Court c) d) 24/06/2025 e) G 152/2024
f) g) ECLI:AT:VFGH:2025:G152.2024 h) Codices (German)

Keywords of the Systematic Thesaurus

5.3.5.2 · Fundamental Rights - Civil and political rights - Individual liberty - Prohibition of forced or compulsory labour

Keywords of the alphabetical index

Penalty, Social work

Headnotes

A legal provision that requires young people who have violated youth protection regulations (e.g. a smoking ban) to perform social work as a punishment is not contrary to the prohibition of forced or compulsory labour under [Article 4 ECHR](#), provided that the social work is not unfair, oppressive or involves hardship.

Summary

1. According to the Styrian Youth Act, young people are prohibited from consuming tobacco products, among other things. Violation of this prohibition constitutes an administrative offence, punishable by a fine of up to €300. However, as part of the penalty, the young person may be required to attend counselling sessions or group work, or undertake training on the subject of youth protection, for a total duration of up to eight hours, if this is deemed necessary for preventive reasons. Legal guardians may also be invited to attend these sessions. Alternatively, the young person may be required to perform social work, particularly in the youth, health and disability sectors, elderly care or animal welfare institutions. The total amount of social work to be performed may not exceed 36 hours in total, or six hours per day. The young person must provide proof of completion of the assignment at the request of the authority.

2. In the present case, a young person was found guilty of smoking a cigarette in May 2024, thereby violating the Youth Act. In accordance with § 27.4 of the Act, the administrative authority imposed a penalty on her, requiring her to perform ten hours of social work at the Red Cross, Deutschlandsberg district office, by 13 November 2024 at the latest, with proof of completion to be provided by 14 November 2024 at the latest. Failure to perform the social work would result in a coercive fine of up to €726, and payment of this fine would not release the young person from the obligation to perform the prescribed penalty. The young person appealed against the penalty order to the Styrian Administrative Court. During these proceedings, the Styrian Administrative Court requested a constitutional review of § 27.4 of the Youth Act. In the court's opinion, the contested provision constitutes criminal law under the European Convention on Human Rights and violates the prohibition of forced or compulsory labour ([Article 4 ECHR](#)). While a limited obligation to perform work in solidarity with a democratic society is not incompatible with the European Convention on Human Rights, the European Convention on Human Rights's wording already clarifies that normal civic duties are not considered forced or

compulsory labour. However, the penalty imposed cannot be considered a civic duty, since the legislature expressly designated forced labour as the penalty itself. There is no legitimate restriction on the prohibition of forced labour. The forced labour to which the complainant had been sentenced did not fall under the exceptions provided for in [Article 4.3 ECHR](#), as it was not work carried out in the context of imprisonment, military or civilian service, or in the event of emergencies and disasters, nor was it part of normal civic duties. The penalty imposed could not be regarded as a normal civic duty or an educational measure because the legislature expressly designated it as a penalty. The Styrian Administrative Court therefore requested that § 27.4 of the Youth Act be repealed as unconstitutional.

3. According to [Article 4.2 ECHR](#), no one shall be required to perform forced or compulsory labour. This prohibition only covers highly personal obligations to perform work that are not voluntary. Furthermore, whether work constitutes forced or compulsory labour is determined by whether it is unjust, oppressive, or results in avoidable hardship. [Article 4.2 ECHR](#) is based on the definition of forced or compulsory labour in Article 2 of the International Labour Organisation's 1930 Forced Labour Convention, which states that it is "any work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself or herself voluntarily". The European Court of Human Rights determines whether a measure falls under the prohibition of forced or compulsory labour pursuant to [Article 4.2 ECHR](#) on the basis of an overall assessment, taking particular account of the exceptions set out in [Article 4.3 ECHR](#), which clarify how a measure is classified as forced or compulsory labour. Although the prohibition of forced or compulsory labour is to be understood comprehensively, its boundaries sometimes need to be defined by way of interpretation.

Despite the primary purpose of such an order being to teach young people the importance of social responsibility, this measure, imposed by the administrative authority instead of or as part of a penalty, constitutes work that the young person does not perform voluntarily. According to § 27.4 of the Youth Act, this work is considered a functional equivalent to a fine for misconduct committed by the young person, and is preferable in certain cases. The young person is also obliged to carry out this measure. Therefore, the order to perform social work involves an element of coercion, as required by [Article 4.2 ECHR](#) for the existence of forced or compulsory labour.

However, the official order to perform social work, as specified in more detail in the regulation, which is provided for in § 27.4 of the Youth Act as a punishment or part of a punishment, does not constitute forced or compulsory labour within the meaning of [Article 4.2 ECHR](#):

According to [Article 4.3.a ECHR](#), work normally required of a person deprived of their liberty in a manner consistent with fundamental rights, or conditionally released from custody, does not constitute forced or compulsory labour under [Article 4.2 ECHR](#). In the present case, the social work order is not imposed during detention or in connection with the young person's conditional release from detention; rather, the work replaces an administrative penalty in the form of a fine. Article [4.2](#) and [4.3](#) ECHR permit measures such as the social work in question if the young person is lawfully detained or if the social work is ordered as a condition of their release on parole. This means that, in all cases, [Article 4.2 ECHR](#) does not consider the compulsory performance of such social work in connection with a penalty to be unlawful forced or compulsory labour. However, [Article 4.3.a ECHR](#) does not entirely exclude the substitution of work for a criminal sanction from the remit of [Article 4.2 ECHR](#), as this provision only applies to individuals lawfully detained, not to those who have been fined. The idea underlying [Article 4.3.a ECHR](#), namely that work which is

proportionate and cannot be characterised as unfair, oppressive or involving avoidable hardship in connection with a constitutionally permissible criminal sanction, is not subject to the prohibition of forced or compulsory labour under [Article 4.2 ECHR](#), is relevant to the situation under consideration here, insofar as ordering social work pursuant to § 27.4 of the Youth Act serves a comparable public interest. Young people who have committed an administrative offence that qualifies as a misdemeanour, thereby disregarding regulations that ensure coexistence in society based on respect for the rights of others and a common order, should be made aware of their social responsibilities. Activities in social institutions authorised under § 27.4 of the Youth Act demonstrate the importance of social activity for society. They are therefore a suitable alternative to fines for juveniles, as they have a socially equitable effect compared to fines under § 27.3 of the Youth Act and serve the special preventive purpose of juvenile punishment. This sanction is limited to the scope of these social services, as defined in § 27.4 of the Youth Act, and is subject to a legally defined timeframe. The extent of the sanction within this framework is determined by the severity of the administrative offence under §§ 27.1 and 27.2 of the Youth Act. Due to the low degree of wrongdoing involved in the administrative offences covered by the regulatory system, it is important to note that the scope of social work that can be legally ordered is so limited that the social service's contribution to the public interest in teaching young people the importance of social responsibility is the only factor that determines the obligation to perform the service, rather than any possible income for the institution in which it is performed. In light of [Article 4.2 ECHR](#), § 27.4 of the Youth Act limits the authority's decision-making power in that they may only order social work appropriate to the young person's stage of development, avoiding any risk of unfairness, oppression or avoidable hardship.

Given this, and the fact that § 27.4 of the Youth Act imposes strict time limits on the measure in line with its preventive nature as a proportionate response to minor misconduct by young people, with the aim of promoting social responsibility, the provision of social work under § 27.4 of the Youth Act does not constitute forced or compulsory labour as defined in [Article 4.2 ECHR](#). Therefore, § 27.4 of the Youth Act is not contrary to the prohibition of forced or compulsory labour under [Article 4.2 ECHR](#).

Cross-references

Federal Constitutional Court:

- 2 BvR 209/84, 13.01.1987.

European Court of Human Rights:

- *Van der Musselle v. Belgium*, 8919/80, 23.11.1983

- *Stummer v. Austria* (GC), 37452/02, 07.07.2011