

# Austria

## Constitutional Court

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### Important decisions

*Identification:* AUT-2016-1-001

a) Austria / b) Constitutional Court / c) / d) 08.03.2016 / e) E 1477/2015 / f) / g) / h) 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.**  
 3.17 General Principles – **Weighing of interests.**  
 3.19 General Principles – **Margin of appreciation.**  
 5.3.27 Fundamental Rights – Civil and political rights – **Freedom of association.**  
 5.3.32 Fundamental Rights – Civil and political rights – **Right to private life.**

*Keywords of the alphabetical index:*

Suicide, assisted.

*Headnotes:*

If the national authorities forbid the establishment of an association aimed at supporting assisted suicide, this may be considered to be necessary in a democratic society for the protection of health or morals as well as for the protection of the rights and freedoms of others within the meaning of Article 11.2 ECHR.

*Summary:*

I. The applicants gave notice to the competent authority of the establishment of an association named “*Letzte Hilfe – Verein für selbstbestimmtes Sterben*” (“Last resource – association for self-determined death”). According to the statutes of this association, one of its aims was to provide advice on suicide to members of age who suffer from an incurable, serious illness, are severely disabled or suffer from unbearable pain, at their explicit wish.

The competent authority, after consultation with the Ministry for Justice, prohibited the applicants from establishing this association. The reason for this decision was that the existence of such an association would run counter to Article 78 of the Penal Code, according to which involvement in suicide is prohibited and punishable by imprisonment of between six months and five years.

Under Article 12 of the Law on Associations of 2002, the establishment of an association is forbidden if the association would be unlawful in terms of its purpose, name or organisation.

II. The Constitutional Court recalled that administrative measures concerning the setting up of an association affect the core area of the right to freedom of association as enshrined in Article 11 ECHR. Therefore an interference with the exercise of this right will not be compatible with Article 11.2 ECHR unless it is prescribed by law and is necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.

The applicants asserted that the legal ban on assisted suicide, because of which the establishment of the association was forbidden, is unconstitutional.

The Constitutional Court pointed out that a wide margin of appreciation is left to the State in determining the need for declaring certain types of conduct to be punishable offences. In this particular case, the Court did not find that this margin had been exceeded. In particular, it held that Article 78 of the Penal Code is in conformity with the right to respect for private life. In this context, the Court referred to the judgment of the European Court of Human Rights in *Pretty v. The United Kingdom* according to which “it is primarily for the State to assess the risk and the likely incidence of abuse if the general prohibition on assisted suicide were relaxed or if exceptions were to be created”.

For the same reason, the State is also free to forbid the establishment of associations intended to assist in ending life. This interference in the right to freedom of association may be justified as necessary in a democratic society for the protection of health or morals as well as for the protection of the rights and freedoms of others and, accordingly, there is no violation of Article 11 ECHR.

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*Cross-references:*

European Court of Human Rights:

- *Pretty v. The United Kingdom*, no. 2346/02, 29.04.2002, *Reports of Judgments and Decisions* 2002-III; *Bulletin* 2002/1 [ECH-2002-1-006].

*Languages:*

German.

