

AUT-2021-3-003

a) Austria / b) [Constitutional Court](#) / c) / d) 07-12-2021 /
e) E 3149/2021 / f) / g) ECLI:AT:VFGH:2021:E3149.2021 / h) CODICES ([German](#)).

Keywords of the systematic thesaurus:

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

[05.03.32](#)

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

Keywords of the alphabetical index:

[Name, change, foreign national](#) / [Family name, change](#).

Headnotes:

The Name Change Law excludes the approval of a name change if the chosen family name is not in use for the identification of persons in Austria. However, especially for citizens with a migration background, the historical family reference is an important part of their identity. In particular, in cases where the previous name change was made under pressure from the original country of origin, it does not matter whether there are already other people in Austria who have the chosen family name.

Summary:

I. § 1 of the Name Change Law (hereinafter, the "Law") allows Austrian citizens to change their names. An application shall be approved if there is a reason within the meaning of § 2 of the Law and no reason for refusal according to § 3 of the Law. According to § 2.1, no. 11 of the Law, a name change may be made for "other reasons" that are not specified in more detail. As per § 3.1, no. 2 of the Law, however, a name change shall not be allowed if the chosen name is not in use in Austria to identify people.

The applicant, an Austrian citizen, requested a change of his surname. His family belonged to the Alevi and had lived for centuries under a name that they had to change due to a Turkish law of 1935. He wanted to use his family's original name again. The Administrative Court of Vorarlberg dismissed the application on the grounds that the family name requested was not in use in Austria.

The applicant filed a constitutional complaint with the Constitutional Court, claiming, in particular, that that interpretation of § 3.1, no. 2 of the Name Change Law violated [Article 8 ECHR](#).

II. The Constitutional Court held that according to § 2.1, no. 11 of the Name Change Law, a name change for "other reasons" is possible if an applicant wishes to adopt a different family name. In such a case, the name change may only be granted if it does not conflict with certain public interests which are reflected by grounds for refusal in § 3.1 of the Law. Those grounds for refusal and their interpretation must meet the requirements of [Article 8.2 ECHR](#). One of

those grounds for refusal is that the new family name is not used to identify people in Austria. This provision is based on the consideration that family names must have a real reference point in the social development of names in Austria and must not be fictitious.

The Court continued that it is not uncommon for Austrian citizens to have a migration background. As matters stand, this is rather a characteristic of Austrian history. For many people, the continuity of the family name reflects the historical context of their identity. This may particularly apply if names are changed at government instigation or under government pressure and if this is perceived as discrimination or actually takes place for discriminatory reasons. Particularly in such cases, [Article 8 ECHR](#) conveys the right to resume the original continuity in the family history visibly to the outside world – by taking the original family name.

The Constitutional Court added that if citizens want to build on their historical family tradition by adopting the appropriate family name, such a change cannot depend on whether the family name is in use in the sense that a family with this name has already lived in Austria. Otherwise, in such cases the externally visible establishment of family continuity by adopting the previous family name would never be possible; not even if the family had to change the name under pressure from their original country of origin. If § 3.1, no. 2 of the Law had such content, this would violate the right to identity as guaranteed under [Article 8 ECHR](#).

The Constitutional Court concluded that the Administrative Court had failed to recognise the connection with the historical name of the applicant's family and the relation of that name to Austria through his citizenship. Thereby, the Administrative Court had attributed a content to § 3.1, no. 2 of the Name Change Law incompatible with [Article 8 ECHR](#). This violated the applicant's right to private and family life.

Cross-references:

European Court of Human Rights:

- *Guillot v. France*, no. 22500/93, 24.10.1993;
- *Mikulic v. Croatia*, no. 53176/99, 07.02.2002;
- *Christine Goodwin v. United Kingdom* [GC], no. 28957/95, 11.07.2002;
- *Van Kück v. Germany*, no. 35968/97, 12.06.2003;
- *Burghartz v. Switzerland*, no. 16213/90, 22.02.1994;
- *Stjerna v. Finland*, no. 18131/91, 25.11.1994;
- *Johansson v. Finland*, no. 10163/02, 06.09.2007;
- *M.A. v. Denmark*, no. 6697/18, 09.07.2021;
- *Henry Kismoun v. France*, no. 32265/10, 05.12.2013;

- *S.V. v. Italy*, no. 55216/08, 11.10.2018.

Languages:

German.