

## ■ PREFACE

*Claudia Fuchs & Konrad Lachmayer*

### **The Right to a Fair Trial in the Case-Law of the Austrian Constitutional Court**

In a 2007 judgement, *Vilho Eskelinen and others vs Finland*, the European Court of Human Rights (ECtHR) considered the scope of the right to a fair trial (Article 6 ECHR) in the context of civil proceedings, referring in particular to the acceptable length of proceedings and the necessity of an oral hearing. Apart from these questions it was the extension of Article 6 to disputes concerning civil servants that attracted interest: Until then, the ECtHR's jurisprudence had recognised a separate category of "political rights" barring the application of rights deriving from Article 6 ECHR. Thus, cases involving civil servants, conscripts, non-criminal tax disputes, election disputes, and refugees have always been declared inadmissible insofar the complainants relied on this Article.

The evolution regarding civil servants, emanating mainly from the *Eskelinen*-judgement, posed a challenge to constitutional adjudication on the Member States' level. National Constitutional Courts, including the Austrian Constitutional Court, who until then followed the ECtHR's exemption-judicature concerning civil servants, had to consider the modified case-law. Indeed, in recent cases the Austrian Constitutional Court – notwithstanding critical remarks concerning the ECtHR's newly adopted approach – also changed its standing jurisdiction to ensue the *Eskelinen*-jurisprudence (see inter alia VfSlg 18.309/2007).

The *Eskelinen*-judgement gives the most recent example on the impact of the ECHR as a whole (in Austria enacted on the level of constitutional law) and the ECtHR's quite dynamic judicature on Austria's legal order. It also marks the most recent step in a changeful history of the implementation of Article 6 ECHR in domestic law. With regard to the broad scope of guarantees granted under this provision, its effects can be spotted in an abundance of organizational and procedural provisions in the domestic legal order.

In this issue, the Constitutional Developments Section puts a focus on the Austrian Constitutional Court's case-law on Article 6 ECHR. *Philipp Cede* gives an introduction to the relevant decisions. Recent judgements on the matter are discussed by *Katharina Egyed*, *Johanna Fischerlehner* and *Anke Sembacher*.

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Also in this issue: *Bedanna Bapuly* takes a close and critical look at the European Arrest Warrant.

Recently published books in the field of international constitutional law are reviewed by *Caroline Kerschbaumer* and *Tobias T. Molander*.

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Editors-in-Chief

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