



EUROPEAN COURT OF HUMAN RIGHTS  
COUR EUROPÉENNE DES DROITS DE L'HOMME

## FOURTH SECTION

### **CASE OF STEPHAN KUCERA v. AUSTRIA**

*(Application no. 13810/22)*

### JUDGMENT

Art 6 § 1 (criminal) • Oral hearing in administrative criminal proceedings against the applicant held via videolink for all participants based on procedural rules enacted in the context of the COVID-2019 pandemic • In case-circumstances the applicant was able to fully enjoy his rights with respect to the holding of an oral hearing

Art 6 § 1 (criminal) • Public hearing • Information about the applicant's hearing via videolink was sufficiently accessible to the public

Art 6 § 3 (c) • Defence through legal assistance • Applicant and his lawyer were free to arrange their participation via videolink separately or jointly and to make arrangements for a separate private communication channel between them during the hearing • Manifestly ill-founded

Prepared by the Registry. Does not bind the Court.

STRASBOURG

9 December 2025

**FINAL**

**09/03/2026**

*This judgment has become final under Article 44 § 2 of the Convention.  
It may be subject to editorial revision.*



**In the case of Stephan Kucera v. Austria,**

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Lado Chanturia, *President*,

Lorraine Schembri Orland,

Anja Seibert-Fohr,

Ana Maria Guerra Martins,

Anne Louise Bormann,

Sebastian Rădulețu,

András Jakab, *judges*,

and Simeon Petrovski, *Deputy Section Registrar*,

Having regard to:

the application (no. 13810/22) against the Republic of Austria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Austrian national, Mr Stephan Kucera (“the applicant”), on 9 March 2022;

the decision to give notice to the Austrian Government (“the Government”) of the complaints, under Article 6 §§ 1 and 3 (c) of the Convention, concerning the hearing held by videolink (alleged violation of the right to participate effectively in the hearing and the alleged lack of a public hearing) in an administrative criminal case against the applicant and to declare inadmissible the complaints under Article 6 § 3 (d) and (e) in that the video hearing violated the principle of equality of arms and his right to examine the witness for the prosecution and to free interpretation;

the parties’ observations;

Having deliberated in private on 18 November 2025,

Delivers the following judgment, which was adopted on that date:

## INTRODUCTION

1. The case concerns the applicant’s complaints under Article 6 §§ 1 and 3 (c) of the Convention in relation to an oral hearing, held in an administrative criminal case against him, that took place via videolink on the basis of procedural rules enacted in the context of the pandemic caused by the coronavirus-2019 disease (hereinafter “COVID-19”).

## THE FACTS

2. The applicant was born in 1981 and lives in Vienna. He was represented by Mr T. Praschl-Bichler, a lawyer practising in Vienna.

3. The Government were represented by their then Agent, Mr K. Bühler, Head of the International Law Department at the Federal Ministry for European and International Affairs Agent.

4. The facts of the case may be summarised as follows.

## I. THE FACTUAL CONTEXT OF THE COVID-19 PANDEMIC IN AUSTRIA

5. As regards the national context of the COVID-19 pandemic in Austria (for the global context, see the Grand Chamber judgment in the case of *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* ([GC], no. 21881/20, §§ 11-18 and 64, 27 November 2023), a first nationwide lockdown was ordered from 16 March to 11 April 2020, which imposed a number of measures with a view to combatting the spread of COVID-19, including various restrictions on fundamental rights. Subsequently, Parliament enacted several legislative acts aimed at containing the spread of COVID-19 while maintaining the functioning of public life in the best way possible (see also paragraphs 29-34 below concerning the relevant legislative provisions adopted in that context). From 12 April to 31 August 2020 a gradual easing of restrictions took place, but a renewed increase in the number of daily infections was registered again from 1 September 2020 until 14 February 2021, which led to the introduction of various preventive measures such as keeping a minimum distance of one metre, the mandatory wearing of masks and other suitable technical and organisational measures at workplaces (the instalment of partitions or acrylic screens and so on). A second nationwide lockdown was subsequently introduced, which lasted from 3 November to 6 December 2020. The period from 15 February until 6 June 2021, in turn, was marked by mass vaccination, a stepped-up testing frequency and the opening of schools accompanied by prevention measures.

## II. PENALTY NOTICE ISSUED BY THE MUNICIPALITY OF VIENNA

6. On 20 April 2020 the municipality of Vienna issued a penalty notice (*Straferkenntnis*) against the applicant for breaching the Vienna Betting Act (*Wiener Wettengesetz*). It was alleged that there had been no appropriate system controlling entry into the premises of a betting shop for which he had been the responsible authorised representative (*verantwortlicher Beauftragter*) when the competent authorities had inspected that betting shop on 24 April 2019. As the responsible authorised representative, he had been responsible for ensuring compliance with the Vienna Betting Act. The municipality issued him with a fine of 6,600 euros (EUR) plus costs of EUR 660, with five days and fourteen hours' imprisonment in default of payment.

## III. PROCEEDINGS BEFORE THE VIENNA REGIONAL ADMINISTRATIVE COURT

7. On 19 June 2020 the applicant lodged an appeal with the Vienna Regional Administrative Court (*Verwaltungsgericht Wien*) in which he

contested, *inter alia*, the facts established by the municipality of Vienna in its penalty notice (see paragraph 6 above). He also requested that a public oral hearing be held in any event (*jedenfalls eine öffentliche mündliche Verhandlung*).

8. On 10 September 2020 the Regional Administrative Court summoned the applicant to a hearing that was scheduled to take place on 22 October 2020 via videolink. As regards the holding of the hearing, it referred to section 44(1) of the Administrative Court Procedure Act (*Verwaltungsgerichtsverfahrensgesetz*, see paragraph 35 below). The court asked the applicant to provide his email address and contact its registry with a view to conducting a technical test prior to the hearing. It also asked him to download the Google Chrome app on a computer or smartphone and to inform it if he did not have technical equipment at his disposal suitable for audio and video transmission. The court informed the applicant that, under section 44(5) of the Administrative Court Procedure Act, he could waive his right to the holding of an oral hearing at any point up until the start of the hearing. It further pointed out that, under section 44(2) of the same Act (see paragraph 35 below), a failure to appear despite having been duly summoned would not prevent the hearing from being held or a judgment from being handed down.

Lastly, the court noted that, as a precautionary measure with a view to combatting the spread of COVID-19, all persons wishing to enter the building of the Regional Administrative Court would have their body temperature read by means of a contactless infrared thermometer. Once inside the court building, a minimum distance of one metre between all persons would have to be kept. It was also mandatory to wear face masks covering mouth and nose. Furthermore, all persons wishing to access the part of the building where the courtrooms were located would have to undergo a security check. However, as the hearing would be held via videolink, no entry would be granted to the courtroom.

9. Furthermore, according to the submissions by the parties (see also paragraphs 70-71 below), information about upcoming hearings before the Regional Administrative Court scheduled in a given week were displayed on the court's official bulletin board by indicating the respective courtroom. The bulletin board itself was located inside the court building in its entrance area. The precautionary measures against COVID-19 (see paragraph 8 above) were thus applicable to persons wishing to consult the court's bulletin board. The general security check, on the other hand, was only applicable to persons wishing to access the part of the court building where the courtrooms were located (*ibid.*).

### **A. Oral hearing via videolink**

10. On 22 October 2020 the oral hearing took place as announced, via videolink. The judge was present in a courtroom on the premises of the court, from where she connected to the video-conference, while the clerk of the proceedings (*Schriftführerin*) and the parties to the proceedings (the applicant and his lawyer, the municipality represented by two legal representatives), as well as two witnesses, all joined separately via a live audio and videolink.

11. After the formal opening of the online hearing, the applicant's lawyer indicated that he was having problems with the connection. He complained in particular that he could hear a loud background noise (*lautes Rauschen*) and that he could barely or only partially follow the hearing. The clerk and one of the two representatives of the municipality logged out of the video-conference and back in again. According to the record of the hearing (*Verhandlungsprotokoll*) (which did not need to be signed by the parties to the proceedings, but only by the person presiding over the hearing held via videolink – see section 3(5) of the COVID-19 Administrative Proceedings Ancillary Act in paragraph 32 below), the participants were subsequently able to follow the proceedings. However, in subsequent appeals to higher domestic courts (see paragraphs 25 and 27 below), the applicant alleged that there had been constant sound problems (*ständige Tonprobleme*) during the video-conference.

12. During the hearing the judge opened the proceedings for the taking of evidence (*Beweisverfahren*).

13. The applicant's lawyer objected to the hearing being held via videolink, alleging that that was a breach of the principles of a public hearing and equality of arms guaranteed under Article 6 of the Convention, among other things. He insisted that the principle of immediacy in criminal proceedings required that oral hearings should only take place via communications technology if no other possibilities existed that would avoid or minimise interferences with fundamental rights. He also contended that the public could not participate in any way in the hearing because it was being held via videolink.

14. One of the two legal representatives of the opposing party (the municipality of Vienna) explicitly concurred with the concerns expressed by the applicant's lawyer regarding the alleged breach of the principles of immediacy and equality of arms (see paragraph 13 above).

15. The presiding judge continued the hearing via videolink without addressing the objections raised by the applicant's lawyer and supported by one of the municipality's legal representatives (see paragraphs 13-14 above).

16. According to the record of the hearing, more background noise (*Hintergrundgeräusch*) was audible during the questioning of one of the two witnesses (one of the officials who had inspected the betting shop in question in April 2019 and who appeared as a witness for the prosecution, see

paragraph 6 above). The presiding judge asked one of the two representatives of the municipality to log out of the video-conference and back in again.

17. At the end of the hearing the applicant's lawyer again referred to his earlier submissions and added his closing arguments (*Schlussausführungen*).

18. The record of the hearing indicated that the reading out of the record of the hearing had been dispensed with (*auf die Verlesung der Verhandlungsschrift wird verzichtet*), that the parties had read along on the screen and that an uncorrected record of the hearing would be sent to them.

19. The judge then closed the hearing, without having addressed the objections to the hearing being held via videolink raised by the applicant's lawyer and supported by one of the municipality's legal representatives (see paragraphs 13-14 above).

20. During the proceedings before the Court, the Government submitted photocopies of two photographs showing an A4 sheet of paper with a transparent cover (hereinafter "the notice") stating "Public Participation" (*Teilnahme der Öffentlichkeit*) and displaying two further lines of text which seemingly contained the information necessary to access the video-conference. In one photograph the notice was hanging freely from a doorknob while in the other it was partially jammed in the doorframe of the hearing room. The Government submitted that the photographs had been taken on 22 October 2020 (the day of the hearing via videolink) at 12.12 p.m. and 12.13 p.m., respectively, which is to say immediately after the end of the hearing which, according to the record of the hearing, had ended at 12.08 p.m.

## **B. Decision of the Regional Administrative Court**

21. On 15 March 2021 the Regional Administrative Court dismissed as unfounded the applicant's appeal and upheld the penalty notice, including the fine of EUR 6,600, with five days and fourteen hours' imprisonment in default of payment. It further ordered him to pay costs of EUR 1,320 in respect of the proceedings before it.

22. As regards the objection raised by the applicant in relation to the hearing being held via videolink, the Regional Administrative Court referred to section 3(2) and (3) in conjunction with section 6(1) of the COVID-19 Administrative Proceedings Ancillary Act (*Verwaltungsrechtliches COVID-19-Begleitgesetz*, see paragraphs 32 and 33 below), under which it was possible to hold hearings in the form of video-conferences. The court held that the concerns regarding a potential violation of Article 6 of the Convention were unfounded and referred, in that connection, to a number of judgments of the Court (namely, *Sayd-Akhmed Zubayrayev v. Russia*, no. 34653/04, §§ 27 and 32-33, 26 June 2012; *Sakhnovskiy v. Russia* [GC], no. 21272/03, §§ 95 and 98, 2 November 2010; *Gennadiy Medvedev v. Russia*, no. 34184/03, §§ 37-38, 24 April 2012; and *Yevdokimov and Others v. Russia*, nos. 27236/05 and 10 others, §§ 42-43, 16 February 2016).

23. Concerning the substance of the case, the court noted that it had concerned a fine of EUR 6,600, with five days and fourteen hours' imprisonment in default of payment, and that the applicant had been represented by a lawyer and had furthermore participated himself in the oral hearing via videolink. There had been no breach of the principle of equality of arms as all the participants had attended the oral hearing via videolink. When the applicant's lawyer had complained of problems with the sound quality, the presiding judge had ordered that measures be taken, namely that certain participants log out and back in again, until the sound quality had been such that all participants had been able to hear in an unimpeded manner.

24. In addition, there had been a notice on the door of the hearing room (from which the presiding judge had participated in the online hearing via videolink) on which the access information for the video-conference had been displayed, in case any members of the public had wished to participate in the oral hearing. Accessing the oral hearing via videolink could have been easily accomplished by entering that access information into a smartphone. In the event, however, no members of the public had participated in the oral hearing.

#### IV. PROCEEDINGS BEFORE THE CONSTITUTIONAL COURT

25. On 15 April 2021 the applicant lodged a complaint with the Constitutional Court (*Verfassungsgerichtshof*). He submitted, *inter alia*, that the rights guaranteed under Article 6 of the Convention had to be ensured irrespective of sections 3 and 6(1) of the COVID-19 Administrative Proceedings Ancillary Act, and that these rights were not restricted by those provisions. He argued that the right to a hearing included the physical presence of the accused in the hearing room. The Regional Administrative Court had erroneously applied the Court's case-law, according to which the physical presence of the accused could be dispensed with under certain circumstances, as that related to appeal proceedings but not to first-instance proceedings, as in his case (in that connection he referred to the case of *Sinichkin v. Russia*, no. 20508/03, § 31, 8 April 2010). The applicant further alleged that there had been constant sound problems during the video-conference (see paragraph 10 above) and that the restriction of his rights had not pursued a legitimate aim, nor had it been justified in any other form. He also disputed that the information to access the video-conference had been displayed on the door of the hearing room and contended that the public had therefore been unable to participate in the hearing.

26. On 22 June 2021 the Constitutional Court declined to deal with the applicant's complaint for lack of prospects of success. In the context of (the original version of) sections 3 and 6(1) of the COVID-19 Administrative Proceedings Ancillary Act, it referred to one of its previous decisions of 8 October 2020 (E 1873/2020, see paragraph 36 below) concerning a civil administrative case in which it had held that the holding of oral hearings using

suitable communication technologies, as a protective measure against COVID-19, did not violate the right to an oral hearing guaranteed under Article 6 of the Convention. The Constitutional Court concluded that the legal issues at stake in the case did not require specific constitutional consideration and referred the decision to the Supreme Administrative Court (*Verwaltungsgerichtshof*).

## V. PROCEEDINGS BEFORE THE SUPREME ADMINISTRATIVE COURT

27. In his extraordinary appeal (*außerordentliche Revision*) to the Supreme Administrative Court of 20 August 2021, the applicant, *inter alia*, reiterated his arguments raised before the Constitutional Court (see paragraph 25 above).

28. On 18 January 2022 the Supreme Administrative Court rejected the applicant's extraordinary appeal. It noted, *inter alia*, that in view of the restrictions on freedom of movement and interpersonal contact introduced owing to COVID-19, the legislature had extended the use of technical equipment for audio and video transmission in accordance with section 3(2) of the COVID-19 Administrative Proceedings Ancillary Act on 13 May 2020 to "oral hearings, questionings, inspections and the like", "oral hearings that would otherwise have to be held on site" and the taking of "evidence" for a limited period of time, namely until 31 December 2020 (see paragraph 31 below). The video-conference had been held on 22 October 2020, and thus within the time-limit. The legislature had clearly provided for the possibility of holding oral hearings in the (physical) absence of all participants using suitable technical equipment for audio and video transmission, and the Regional Administrative Court had made use of that possibility. The purpose alone, namely the restriction of interpersonal contact owing to the COVID-19 pandemic, meant that holding the oral hearing by videolink could be considered justifiable, especially since all parties to the proceedings in question had taken part. The Regional Administrative Court had made it possible for the public to follow the hearing by displaying the information to access the video-conference on the door of the hearing room. The existence of clear and relevant regulations meant that holding the hearing by videolink had not been unreasonable (in that connection, the court referred to the decision of the Constitutional Court of 8 October 2020 (E 1873/2020, see paragraph 36 below) and to the Court's judgment in the case of *Kozlitin v. Russia*, no. 17092/04, § 73, 14 November 2013). Nor had there been any deviation from the previous case-law of the Supreme Administrative Court regarding oral hearings.

## RELEVANT LEGAL FRAMEWORK AND PRACTICE

### I. THE COVID-19 ADMINISTRATIVE PROCEEDINGS ANCILLARY ACT

29. On 20 March 2020 Parliament enacted, *inter alia*, the Federal Act on Accompanying measures relating to COVID-19 in administrative proceedings, in proceedings in the administrative courts as well as in proceedings in the Supreme Administrative Court and in the Constitutional Court (*Bundesgesetz betreffend Begleitmaßnahmen zu COVID-19 im Verwaltungsverfahren, im Verfahren der Verwaltungsgerichte sowie im Verfahren des Verwaltungsgerichtshofes und des Verfassungsgerichtshofes*), abbreviated to the COVID-19 Administrative Proceedings Ancillary Act (*Verwaltungsrechtliches COVID-19-Begleitgesetz*). That Act entered into legal force on 22 March 2020 and was subsequently amended three times in 2020. Originally its legal force was to last until 31 December 2020, but the Act's validity was repeatedly extended until 30 June 2023, when it expired.

30. Section 3 of that Act, as in force from 22 March until 14 May 2020, provided (*mutatis mutandis*) that, if COVID-19-related restrictions on freedom of movement or on interpersonal contacts were in force, oral hearings, questioning, inspections and the like were to be conducted in proceedings before administrative courts only if absolutely necessary to uphold the due administration of justice in administrative matters. Where questioning, inspections or an oral hearing were deemed absolutely necessary, the possibility of conducting them in the (physical) absence of all participants by using suitable communication technology was provided for.

31. Section 3(1) of the Act, as in force from 15 May until 2 July 2020, provided that it was permitted to conduct oral hearings, questioning, inspections, the taking of evidence and the like only if it was ensured at the given location that a minimum distance of one metre could be kept between those present and that all those present wore an adequate mechanical protective mechanism (mask) covering the mouth and nose. Under section 3(2), public authorities were allowed to use suitable technical equipment for audio and video transmission to conduct oral hearings, questioning, inspections and the like.

32. Section 3 of the Act, as in force from 3 July until 31 December 2020, regulated, *inter alia*, the holding of oral hearings, questioning, inspections, the taking of evidence and the like, and read, in so far as relevant, as follows:

“(1) For the duration of the validity of the COVID-19 Restrictions Relaxation Regulation (*COVID-19 Lockerungsverordnung*) ... or any other regulation issued on the basis of section 2(1) of the COVID-19 Measures Act (*COVID-19 Maßnahmengesetz*) ..., an administrative body conducting an oral hearing ..., questioning ..., an inspection or [which is] taking evidence or the like must ensure that the participants in the official act, with the exception of the official bodies, comply with the provisions of the regulation applicable to entering the setting of the official act; section 34(2), (4) and (5)

[of the General Administrative Procedure Act (*Allgemeines Verwaltungsverfahrensgesetz*)] shall apply.

(2) The authority may:

1. conduct oral hearings, questioning, inspections and the like using suitable technical equipment for audio and video transmission;

2. hold oral hearings, which would otherwise have to be held on the spot, at the seat of the authority or at the place which appears most appropriate in view of the circumstances, using suitable technical equipment for audio and video transmission, in which case on-site inspections and the taking of evidence must take place before the hearing; or

3. take evidence using suitable technical equipment for audio and video transmission.

(3) The parties and other participants, the necessary witnesses and experts, the interpreters and other persons [who should be] present at the official proceedings shall be given the opportunity to participate in the official proceedings in question using technical equipment for audio and video transmission. The authority shall request the parties and other participants to state whether they have access to such technical equipment for audio and video transmission; should that not be the case, the official proceedings may also be conducted in their absence. In that case, the authority must give the parties and other involved participants who are unable to participate in the official act for that reason the opportunity to exercise their rights or to participate in the determination of the facts in some other suitable manner.

...

(5) If an official act is carried out using technical equipment for audio and video transmission, a record need not be signed by any person other than the person who presided over the official act. If the record is created electronically, the signature of the person who presided over the official act may be replaced by a procedure to prove the identity ... of the person who presided over the official act and of the authenticity ... of the minutes ...”

33. Section 6(1) of the COVID-19 Administrative Proceedings Ancillary Act, a provision with constitutional status (*Verfassungsbestimmung*), concerned proceedings before the administrative courts and proceedings before the Supreme Administrative Court as well as the Constitutional Court. It read, in so far as relevant, as follows at the material time:

“(1) ... Sections 1 to 5 shall apply *mutatis mutandis* (*sinngemäß*) to proceedings in the administrative courts if, at the least, the [General Administrative Procedure Act] is also applicable to those proceedings ...”

34. As submitted by the parties, according to the relevant explanatory memorandum attached to draft bill (*Initiativantrag*, 437/A BlgNR27. GP 4), section 3(2) of the Act (see paragraphs 31-32 above) was meant to enable hearings (and other official acts) to be held via videolink to the greatest extent possible, in order to permit the public to continue interacting with public authorities despite the restrictions on freedom of movement and on interpersonal contacts imposed to prevent and combat COVID-19. The public authorities were entitled to discretion, as in other investigative proceedings,

in their use of videolinks, such that they were only used in a way that was not in conflict with, *inter alia*, Article 6 of the Convention, or any other constitutional law provisions.

## II. THE ADMINISTRATIVE COURT PROCEDURE ACT

35. Section 44 of the Administrative Court Procedure Act (*Verwaltungsgerichtsverfahrensgesetz*) regulated the holding of hearings (*Verhandlung*) in administrative matters and read, in so far as relevant, as follows:

“(1) The administrative court shall hold a public oral hearing [*öffentliche mündliche Verhandlung*].

(2) The hearing shall not be held if the party’s application or the appeal is to be rejected or if it is already clear on the basis of the file that the decision contested in the appeal is to be set aside.

(3) The administrative court may dispense with a hearing if

1. the appeal only alleges an incorrect legal assessment;
2. the appeal is only directed against the amount of the penalty;
3. the contested decision imposed a fine of less than 500 euros; or
4. the appeal is directed against a procedural decision

and no party has requested that a hearing be held. The appellant must request that a hearing be held in the appeal ... An application to hold a hearing can only be withdrawn with the consent of the other parties.

(4) ... the administrative court may refrain from holding a hearing, regardless of whether or not a party has applied for one, if it has to take a decision [in a given case], [and] the files indicate that the oral discussion cannot be expected to clarify the case further and Article 6 § 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms ... does not preclude the cancellation of the hearing.

(5) The administrative court may refrain from holding ... a hearing if the parties expressly waive this. Such a waiver can be declared up to the start of the ... hearing ...”

## III. CASE-LAW OF THE CONSTITUTIONAL COURT

36. In its decision of 8 October 2020 (E 1873/2020) the Constitutional Court reiterated its previous case-law to the effect that, in principle, the failure to hold an oral hearing as required constituted a violation of the constitutionally guaranteed right to one under Article 6 of the Convention. However, the right of a party to an oral hearing was not absolute: according to the case-law of the Court and – following it – of the Constitutional Court, an oral hearing could be omitted if the factual issue was undisputed and only a legal issue was to be decided, or if the case was not particularly complex.

37. In the relevant case, which concerned a civil administrative matter, one of the parties to the proceedings had requested, in April 2019, that an oral

hearing be held. The competent regional administrative court, as a court of first instance, had indeed scheduled such a hearing for 16 March 2020, which had however been cancelled to prevent the spread of COVID-19, on the basis of section 3 in conjunction with section 6(1) of the COVID-19 Administrative Proceedings Ancillary Act as in force at the material time (see paragraphs 30 and 33 above). That court had instead given its decision on 4 April 2020 without holding a hearing. The Constitutional Court observed that the legal conditions for an oral hearing to be held, in accordance with Article 6 of the Convention, had been fulfilled, and that if the holding of such an oral hearing had been absolutely necessary, it could have been conducted in the (physical) absence of all participants by using suitable communication technologies. The obligation to hold an oral hearing as guaranteed by Article 6 of the Convention had not been restricted by section 3 in conjunction with section 6(1) of the COVID-19 Administrative Proceedings Ancillary Act. There had therefore been a violation of the constitutionally guaranteed right to hold an oral hearing in that case.

## THE LAW

### ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

38. The applicant complained that he had not been permitted to participate in person (rather than virtually) in the hearing held before the Regional Administrative Court, even though that court had been sitting as first-instance court. Furthermore, he complained that the public had been excluded from the hearing and challenged whether the access information had indeed been displayed on the door of the hearing room, and claimed that the costly technical requirements for participation had hindered (part of) the public from doing so. Lastly, the applicant alleged that there had been an infringement of his right to be effectively defended by a lawyer, submitting that he and his lawyer had had to attend the hearing using two different videolinks and had been physically located in different rooms, making any confidential conversation between them impossible. He relied on Article 6 §§ 1 and 3 (c) of the Convention, which reads, in so far as relevant, as follows:

“1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing ... the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society ... or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

...

3. Everyone charged with a criminal offence has the following minimum rights:

...

(c) to defend himself in person or through legal assistance of his own choosing ...”

39. As regards the preliminary question of the applicability of Article 6 of the Convention to the case at issue, the Court notes that it is common ground between the parties that the proceedings before the Regional Administrative Court concerned the determination of a “criminal charge” against the applicant in the meaning of the Convention. The Court sees no reason to disagree. Indeed, according to its established case-law, Article 6 § 1 of the Convention applies, under its criminal head, to administrative offences like the one at issue in the present case and the corresponding administrative criminal proceedings under Austrian law (see *Gradingner v. Austria*, 23 October 1995, § 36, Series A no. 328-C, and *Baischer v. Austria*, no. 32381/96, § 22, 20 December 2001; compare also with *Kindlhofer v. Austria*, no. 20962/15, § 30, 26 October 2021, albeit in the context of Article 2 of Protocol No. 7 to the Convention). Moreover, the domestic courts did not dispute the applicability of Article 6 to the proceedings at issue (see paragraphs 21, 26 and 28 above). The Court concludes that Article 6, under its criminal head, is applicable to the present case.

40. The Court further notes that the applicant raised three different complaints under Article 6 §§ 1 and 3 (c) of the Convention. It will therefore examine them separately, in the following order: (A) the right to an oral hearing and (physical) presence at the hearing; (B) the right to a public hearing; and (C) the right to effective legal assistance.

## **A. The right to an oral hearing and presence at the hearing**

### *1. Admissibility*

41. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

### *2. Merits*

#### **(a) The parties’ submissions**

##### *(i) The applicant*

42. The applicant argued that the hearing before the Regional Administrative Court held via videolink could not be equated with an oral and public hearing. He insisted that the Court’s case-law on the right to an oral hearing and to presence at that hearing meant presence in person, that is to say, physical presence (see paragraph 25 above). The domestic courts had denied him that right by referring to the Court’s case-law relating to the possibility of proceedings being held by videolink in the case of appeal courts when the accused had already had an oral hearing at the first instance in which he or she had participated in person. The circumstances of the case at hand had, however, differed from such situations as there had been no hearing at which the applicant could participate in person, that is, by way of his physical

presence. Moreover, the applicant insisted that, to a large extent, questions of fact had been at issue, not just questions of law. The penalty that had been imposed on him was itself to be considered serious and potentially detrimental to his professional advancement. Furthermore, the restriction on his right to have, and be present at, an oral hearing had had no legitimate purpose and was not otherwise justified.

43. Moreover, the applicant maintained that there had been constant sound problems during the video-conference. The questioning of the only witness for the prosecution had had to be interrupted because of the connection problems. The applicant insisted that only the two most severe episodes of sound problems had been noted in the record of the hearing which, as he pointed out, had not been signed by him and his lawyer.

44. The applicant also submitted that the restriction of his fair-trial rights could not be justified in the public interest. Under the Court's case-law, only "exceptional circumstances" could have justified such a restriction (he referred to the case of *Fröbrich v. Germany*, no. 23621/11, §§ 35-36, 16 March 2017), and protection against infection during a pandemic could not generally be recognised as such an exception. It could have been possible to hold the hearing in one of the large hearing rooms, some of which were new and equipped with safety partitions. The (abstract) risk of an infection could have been reduced to a minimum. There had also not been any time pressure to prosecute in his case, as there had been a long time left until the applicable limitation period ran out.

(ii) *The Government*

45. The Government submitted that the holding of an oral hearing via videolink had had a clear legal basis in domestic law, namely the COVID-19 Administrative Proceedings Ancillary Act. It had also pursued a legitimate aim, namely that of combating the spread of COVID-19 to protect the health of the general public by reducing the number of infections, to prevent the breakdown of public healthcare owing to hospitals experiencing capacity overloads, to keep the administrative courts operational as they were part of Austria's critical infrastructure and to prevent delays in administrative criminal proceedings. In the view of the Government, allowing the holding of oral hearings via videolink was among the first measures taken by Austria in this regard.

46. The Government argued that the applicant's fair-trial rights had been respected during the hearing. Both he and his lawyer had been able to participate in it in full. By September and October 2020 the use of video-conferencing for holding oral hearings had become common practice. The applicant, who had been represented by a lawyer throughout the proceedings, had not objected to the use of a videolink until the hearing had begun. He and his lawyer had been free to inform the court that they lacked the technical equipment to participate in the video-conference. They had been

further free to attend the hearing by connecting from one and the same location, via the same or two different devices, and a private conversation between them could have been requested, and arranged, at any time during the hearing. The problem with disruptive background noise, which had occurred twice during the video-conference, had been immediately resolved, and the applicant's lawyer had been able to question the two witnesses without any restrictions.

47. The Regional Administrative Court had no less restrictive measure than a video-conference at its disposal. At the time of the summons in September 2020, that court had only a very limited number of courtrooms available. Those had had to be equipped with the structural safety features prescribed by law (be large enough to permit sufficient physical distancing, acrylic glass panels and so on) – which took time to complete. The judge had thus not been able to predict, at the time of the summons, whether enough courtrooms complying with the mandatory health provisions would be available by the time of the hearing. In the interest of the proper administration of criminal justice it had been important to avoid delays in these and other proceedings, which could have led to a predictable backlog of cases and, potentially, impunity owing to the expiry of the statute of limitations. Furthermore, all the participants in the proceedings had taken part by videolink in the same way.

**(b) The Court's assessment**

*(i) General principles established in the Court's case-law*

48. An oral, and public, hearing constitutes a fundamental principle enshrined in Article 6 § 1. This principle is particularly important in the criminal context, where generally there must be at first instance a tribunal which fully meets the requirements of Article 6 (see *Findlay v. the United Kingdom*, 25 February 1997, § 79, Reports of Judgments and Decisions 1997-I), and where an applicant has an entitlement to have his case “heard”, with the opportunity, *inter alia*, to give evidence in his own defence, hear the evidence against him, and examine and cross-examine the witnesses (see *Jussila v. Finland* [GC], no. 73053/01, § 40, ECHR 2006-XIV).

49. Furthermore, although this is not expressly mentioned in paragraph 1 of Article 6, the object and purpose of the Article taken as a whole show that a person “charged with a criminal offence” is entitled to take part in the hearing. Moreover, sub-paragraphs (c), (d) and (e) of paragraph 3 guarantee to “everyone charged with a criminal offence” the right “to defend himself in person”, “to examine or have examined witnesses” and “to have the free assistance of an interpreter if he cannot understand or speak the language used in court”, and it is difficult to see how he could exercise these rights without being present (see, among many others, *Sejdovic v. Italy* [GC], no. 56581/00, § 81, ECHR 2006-II; see also *Colozza v. Italy*, 12 February 1985, § 27,

Series A no. 89, and *Belziuk v. Poland*, 25 March 1998, § 37, *Reports* 1998-II).

50. The Convention leaves the Contracting States wide discretion as regards the choice of the means put in place to ensure that their legal systems are in compliance with the requirements of Article 6. The Court's task is to determine whether the result called for by the Convention has been achieved. In particular, the procedural means offered by domestic law and practice must be shown to be effective where a person charged with a criminal offence has neither waived his right to appear and to defend himself nor sought to escape trial (see *Medenica v. Switzerland*, no. 20491/92, § 55, ECHR 2001-VI, and *Somogyi v. Italy*, no. 67972/01, § 67, ECHR 2004-IV).

51. The Court has further held that the duty to guarantee the right of a criminal defendant to be present in the courtroom – either during the original proceedings or at a retrial – ranks as one of the essential requirements of Article 6 (see *Stoichkov v. Bulgaria*, no. 9808/02, § 56, 24 March 2005).

52. While the defendant's participation in the proceedings by video-conference is not as such contrary to the Convention, it is incumbent on the Court to ensure that recourse to this measure in any given case serves a legitimate aim and that the arrangements for the giving of evidence are compatible with the requirements of respect for due process, as laid down in Article 6 of the Convention (see *Marcello Viola v. Italy*, no. 45106/04, § 67, ECHR 2006-XI (extracts), with further references). In a previous case concerning the use of a videolink, the Court also held that it must be ensured that the applicant is able to follow the proceedings and to be heard without technical impediments, and that effective and confidential communication with a lawyer is provided for (see *Sakhnovskiy v. Russia* [GC], no. 21272/03, § 98, 2 November 2010).

53. In another case concerning a hearing held via videolink during the COVID-19 pandemic, the Court found that the use of videolink had served a legitimate aim, namely to reduce the spread of COVID-19. As to the requirement for due process, the Court considered it important that in the circumstances of that case, even if the use of videolink had had an impact on the immediacy of the trial in technical terms, it had not been one that could have given rise to concerns that the judges adjudicating the case had not themselves taken the important evidence. Not every deficiency in respect of the principle of immediacy will in and of itself necessarily lead to the conclusion that the trial was unfair overall. Moreover, in that case, the Court found that importance had to be attached to the fact that the second part of the hearing, where a videolink had been used, had essentially related to more technical legal issues relevant to the sentencing in a situation where guilt had already been established. It therefore considered the application manifestly ill-founded and declared it inadmissible (see *Alppi v. Finland* (dec.), no. 15736/22, §§ 22-24, 28 November 2023).

*(ii) Application of the above principles to the present case*

54. The Court notes at the outset that the present case concerns the hearing held by the Vienna Regional Administrative Court via videolink on 22 October 2020. It is not disputed between the parties that there was an oral hearing, and that the applicant was able to participate in it. The case is therefore to be distinguished from those cases in which oral hearings were held in the absence of the accused. The central question in the present case relates rather to the manner in which the hearing was held and in which the applicant participated in it, namely via videolink.

55. The Court has previously had occasion to examine cases in which one of the parties to the proceedings participated via videolink (in most instances the accused, as in, for example, *Sakhnovskiy*, cited above, § 23; for a – rare – case in which it was not the accused but one of three judges who participated via videolink because he had had to undergo a COVID-19-related quarantine, see *Alppi*, cited above) while the other participants were all physically present in the courtroom. The novel factual scenario in this case is that all the participants in the proceedings (the judge, the clerk, the applicant, his lawyer, the two legal representatives of the opposing party and the two witnesses) attended the hearing via videolink, each using a separate live audio and videolink (see paragraph 10 above).

56. The Court must therefore determine whether holding the oral hearing in a purely virtual manner satisfied the Convention requirements in the specific circumstances of the present case. It will do so by examining first whether it had a basis in law and whether it pursued legitimate aims.

57. The Government submitted that the holding of the oral hearing via videolink was based on the COVID-19 Administrative Proceedings Ancillary Act and that the aim of doing so was to combat the spread of COVID-19 so as to protect the health of the general public by reducing the number of infections, to prevent the breakdown of public healthcare owing to hospitals experiencing capacity overloads, to keep the administrative courts operational as they were part of Austria's critical infrastructure and to prevent delays in administrative criminal proceedings (see paragraph 45 above). The Court concludes that the central aim advanced by the Government was the protection of public health, coupled with ensuring the functioning of administrative justice.

58. In this context, the Court cannot but emphasise again the exceptional circumstances which existed at the relevant time, with the emergence of the COVID-19 pandemic presenting States with the challenge of protecting public health while guaranteeing respect for every person's fundamental rights. All the member States of the Council of Europe decided to restrict certain fundamental rights. During the first phase of the pandemic, a large number of international organisations and bodies underlined the need to take urgent measures with a view to mitigating the impact of the pandemic and compensating for the lack of a vaccine and medication. Those same bodies

also called on States to ensure that the rule of law, democracy and fundamental rights were maintained (see *Communauté genevoise d'action syndicale (CGAS)*, cited above, § 162). There is no denying that the COVID-19 pandemic demanded adaptation and special measures to counteract its effects. Indeed, it was a global pandemic in which States found themselves in an exceptional and unforeseeable context at the relevant time (see *Pasquinelli and Others v. San Marino*, no. 24622/22, § 106, 29 August 2024).

59. As regards the relevant measures taken by Austria in the initial stages of the pandemic, the Court observes that as early as 20 March 2020 Parliament enacted the COVID-19 Administrative Proceedings Ancillary Act (see paragraph 29 above). The version in legal force at the material time specifically permitted the holding of oral hearings, questioning, inspections, the taking of evidence and the like by means of suitable technical equipment for audio and video transmission (see paragraph 32 above). It follows that there was a clear legal basis in domestic law for holding the applicant's hearing via videolink. The Court furthermore reiterates that in adopting legislation intended to strike a balance between competing interests, States must in principle be allowed to determine the means which they consider to be best suited to achieving the aim of reconciling those interests (see *Pasquinelli and Others*, cited above, § 108, and similarly, *Communauté genevoise d'action syndicale (CGAS)*, cited above, § 163, where the Court underlined, in the unprecedented and highly sensitive context of the COVID-19 pandemic, the importance for the national authorities to be given the opportunity to strike a balance between competing private and public interests or between different rights protected by the Convention, taking into consideration local needs and conditions and the public-health situation at a given time). The Court also notes that the Constitutional Court clarified that the COVID-19 Administrative Proceedings Ancillary Act did not restrict the obligation to hold an oral hearing as guaranteed by Article 6 of the Convention (see the Constitutional Court's decision of 8 October 2020 described in paragraph 36 above).

60. Turning to the hearing in question, the Court observes that it took place in October 2020, with the summons having been sent in September 2020. At that time there was still no vaccine against COVID-19 (see *Communauté genevoise d'action syndicale (CGAS)*, cited above, §§ 11-18, for a full description of how the pandemic developed on a global level). At the national level, following a first lockdown ordered in the spring of 2020 and a subsequent easing of the restrictions, a renewed increase in the number of daily infections was registered starting from 1 September 2020. A second lockdown (lasting from 3 November until 6 December 2020) was ordered shortly after the date of the events at issue in the present case (see paragraph 29 above). This background also distinguishes this case from those in which the participation in an oral hearing via videolink occurred for other

safety reasons, as a security precaution in relation to, for example, the participation of members of organised crime organisations, or for reasons of judicial expediency (see *Marcello Viola*, cited above, § 72, where the Court considered that the applicant’s participation in appeal hearings via videolink pursued legitimate aims under the Convention, namely the prevention of disorder, the prevention of crime, the protection of witnesses and victims of offences from threats to their rights to life, freedom and security, and compliance with the “reasonable time” requirement in judicial proceedings).

61. The Court observes that in the case of *Alppi* (cited above, § 22), it held that the use of a videolink in that case had served the legitimate aim of reducing the spread of COVID-19. It sees no reason to deviate from that conclusion in the present case. It reiterates the very specific context of the COVID-19 situation, namely a public health emergency, posing significant health considerations for society at large. Indeed, the COVID-19 pandemic threatened to have very serious consequences not just for health, but also for society, the economy, the functioning of the State institutions and the organisation of life in general, and was therefore a situation that qualified as exceptional and unforeseeable circumstances (see *Central Unitaria de Traballadores/as v. Spain*, no. 49363/20, § 83, 17 October 2024, with further references). It notes in that connection that in the same time period as the one at issue in the present case (on 21 October 2020, that is, one day before the virtual hearing held in the applicant’s case), the Court itself held a hearing, sitting as a Grand Chamber, via videolink on account of the public-health crisis resulting from the COVID-19 pandemic (see *Denis and Irvine v. Belgium* [GC], nos. 62819/17 and 63921/17, § 9, 1 June 2021).

62. Having satisfied itself that the holding of the oral hearing via videolink in the applicant’s case had a basis in domestic law and pursued a legitimate aim within the meaning of the Convention, the Court will now turn to the manner in which the hearing was held. It observes that the hearing concerned proceedings at first instance and that the applicant disputed certain facts alleged by the Municipality of Vienna in its penalty notice (see paragraph 7 above). It can therefore agree with the applicant that the hearing also concerned the establishment of facts and did not only relate to questions of law which could be decided on the basis of written materials, and that his personal attendance was important to him (see paragraph 42 above), although that is not decisive in itself for the necessity to hold a hearing (see *Jussila*, cited above, §§ 41 and 44). However, the Court reiterates that a defendant’s participation in proceedings via videolink is not as such contrary to the Convention (see *Marcello Viola*, cited above, § 67). While the physical presence of an accused in the courtroom is highly desirable, it is not an end in itself: it rather serves the greater goal of securing the fairness of the proceedings, taken as a whole (see *Golubev v. Russia* ((dec.)), no. 26260/02, 9 November 2006).

63. In that regard, the Court underlines that the sanction at issue was a fine (see paragraph 6 above), that the applicant had been represented by a lawyer and that he himself (and his lawyer) had participated in the video-conference (see paragraph 10 above). Moreover, his lawyer did not object to the holding of the hearing via videolink before the hearing actually took place, but only once it had begun (see paragraph 13 above). As also pointed out by the Government (see paragraph 46 above), the applicant and his lawyer had been free to attend the hearing by connecting from one and the same location, on the same or two different devices. Indeed, the Vienna Regional Administrative Court did not oblige the applicant and his lawyer to participate in the hearing via videolink from two separate locations (see the summons in paragraph 8 above). They were free to arrange their participation separately or jointly. Furthermore, they were able to present arguments and to put questions to the witnesses. In other words, they were able to follow the proceedings and to be heard without technical impediments (see *Sakhnovskiy*, cited above, § 98).

64. As regards the issue of the technical connection problems raised by the applicant, the Court observes that, according to the record of the hearing, sound problems occurred twice during the hearing. Both times the problem was easily and quickly resolved (see paragraphs 11 and 16 above). Most importantly, however, the record further states that a reading out of the record of the hearing had been dispensed with (see paragraph 18 above). In other words, the parties, and therefore also the applicant and his lawyer, agreed that the record would not be read out at the end of the hearing. That possibility would, however, have provided them with the opportunity to request that, for example, a remark about constant sound problems be added to the record. However, they did not do so. The Court therefore cannot agree with the applicant's arguments in that respect and concludes that there is insufficient evidence before it which would attest to the presence of constant technical problems during the oral hearing held via videolink and to his thus being unable to participate effectively in the proceedings.

65. The foregoing considerations are sufficient to enable the Court to conclude that, in the circumstances of the present case, the applicant was able to fully enjoy his rights with respect to the holding of an oral hearing despite its being held via videolink for all participants to the proceedings.

66. There has accordingly been no violation of Article 6 of the Convention as regards the applicant's right to an oral hearing.

## **B. The right to a public hearing**

### *1. Admissibility*

67. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

## 2. *Merits*

### (a) **The parties' submissions**

#### (i) *The applicant*

68. The applicant submitted that the hearing held via videolink had not been public and insisted that there had been no notice displaying the access information for the video-conference on the door of the hearing room. He considered that it had not been argued by the Government that that notice had already been present during the hearing. The photographs showing the notice, which were submitted by the Government during the proceedings before the Court (see paragraph 20 above), had reportedly also been taken only after the hearing had ended. The applicant pointed out that the judge of the Regional Administrative Court had responded to his argument that the public had had no opportunity to attend the hearing with silence, and that she had not mentioned the notice that had allegedly been hanging from the door of the courtroom. Furthermore, he doubted whether the information on the notice, which was limited to the heading "Public Participation" and the indication of a link and a conference ID, would have been sufficient for interested members of the public to understand from the notice alone that the hearing would take place as a video-conference and that it would be possible to participate by entering a link on the internet.

69. Moreover, even if the notice had been hanging on the door of the courtroom, not everyone possessed a smartphone, let alone one with the specific Google app required to participate in the video-conference installed on it. That would also have meant using one's mobile broadband, which was usually limited and subject to charges. Furthermore, the public could not be equated with a few privileged smartphone owners who, in addition, would have needed to have the necessary technical know-how to participate via videolink. The older part of the population in particular was often not sufficiently adept with technology to be able to log into a video-conference.

70. Lastly, the applicant pointed out that while there was indeed a board displaying all the hearings scheduled in any particular week in the entrance area of the Regional Administrative Court, no access details for hearings held via videolink were displayed on the said board. In his case, this meant that only the number of the courtroom from which the presiding judge participated in the video-conference was displayed. The applicant argued that the public was therefore not informed of the actual location of his hearing via that board. In his view, for members of the general public to attend such a hearing they would thus have to undergo a complicated procedure – they first had to find out which courtroom the hearing would be in, then find their way through the court building to that courtroom, and then connect to the video-conference on their own technical device, provided that they had brought along such a device in the first place. The applicant further contested the Government's submission that there had been freely accessible Wi-Fi available at the court

for general use and that that had been indicated accordingly. He concluded that the hearing held via videolink had not been public, as the public had had no realistic opportunity to participate in it and had thereby been excluded from it.

*(ii) The Government*

71. The Government argued that the hearing had been accessible to the public. It had been very easy to obtain information about upcoming hearings before the Regional Administrative Court, thanks to its official bulletin board displaying the calendar of all the hearings scheduled in a given week. The notice on the door of the courtroom from which the presiding judge had participated in the video-conference had displayed the necessary access information (an internet address and conference ID). Anyone arriving at the door of that courtroom would have been able to access the video-conference on a smartphone, tablet or similar device. The video-conference could thus have been accessed from that or any other location with internet access. It had not been necessary to download an app or to have technological skills beyond those needed for the everyday use of a smartphone, tablet or similar device. The Government furthermore submitted that the use of smartphones had been quite widespread among all age groups in Austria, and that the costs of their use had been part of the individual cost of living. As Wi-Fi had been freely available throughout the court building, there had been no need to use mobile broadband to participate in the video-conference. There had therefore not been any disproportionate obstacle to the public accessing the video-conference.

72. As regards the applicant's allegation that the notice with the access information had not been displayed on the door of the courtroom, the Government pointed to the photocopies of the two photographs submitted during the proceedings before the Court (see paragraph 20 above). Moreover, the public could still have accessed the hearing even had the said notice not been hanging on the door because the presiding judge would have simply informed anyone entering the courtroom of the possibility to participate in the video-conference.

**(b) The Court's assessment**

*(i) General principles established in the Court's case-law*

73. The public character of proceedings before the judicial bodies referred to in Article 6 § 1 protects litigants against the administration of justice in secret with no public scrutiny; it is also one of the means whereby confidence in the courts, superior and inferior, can be maintained. By rendering the administration of justice visible, publicity contributes to the achievement of the aim of Article 6 § 1, namely a fair trial, the guarantee of which is one of the fundamental principles of any democratic society, within the meaning of

the Convention (see *Sutter v. Switzerland*, 22 February 1984, § 26, Series A no. 74, and *Riepan v. Austria*, no. 35115/97, § 27, ECHR 2000-XII).

74. Whilst the member States of the Council of Europe all subscribe to this principle of publicity, their legislative systems and judicial practice reveal some diversity as to its scope and manner of implementation, as regards both the holding of hearings and the “pronouncement” of judgments. The formal aspect of the matter is, however, of secondary importance as compared with the purpose underlying the publicity required by Article 6 § 1. The prominent place held in a democratic society by the right to a fair trial impels the Court, for the purposes of the review which it has to undertake in this area, to examine the realities of the procedure in question (see *Sutter*, cited above, § 27).

(ii) *Application of the above principles to the present case*

75. Turning to the present case, the Court first notes that the public was not formally excluded from the hearing held via videolink (contrast, for example, *Krestovskiy v. Russia*, no. 14040/03, § 26, 28 October 2010). However, hindrance in fact can contravene the Convention just like a legal impediment. The Court has previously held that a trial will comply with the requirement of publicity only if the public is able to obtain information about its date and place and if that place is easily accessible to the public. In many cases these conditions will be fulfilled by the simple fact that a hearing is held in a regular courtroom large enough to accommodate spectators. In the case of a trial being held outside a regular courtroom, the State is under an obligation to take compensatory measures to ensure that the public and the media are duly informed of the place of the hearing and are granted effective access (see *Riepan*, cited above, §§ 28-29). The Court must therefore determine whether the hearing in the applicant’s case, which was held via videolink and therefore outside a regular courtroom, was easily accessible to the public. This includes, in particular, having to determine whether the information that the hearing would take place only online was easily accessible to the public, together with whether there were any factual or technical obstacles in accessing that information and, subsequently, the online hearing as such.

76. The Court sees no reason to doubt that members of the public could participate in the hearing once they had the information necessary to access the video-conference and the corresponding technical possibility and know-how. It is, however, firstly disputed between the parties whether the notice with the necessary access information had been displayed on the door of the courtroom. In that regard, the Court observes that during the proceedings before it the Government submitted photocopies of two photographs; in one the said notice is hanging freely from a doorknob while in the other it is partially jammed in the doorframe (see paragraph 20 above). Nothing has been brought to the Court’s attention, nor does it see any reason,

to doubt the veracity of those photographs. However, it notes that the times indicated on them clearly show that the photographs were taken after the hearing had ended. In this context, the applicant pointed out that the judge presiding over the hearing had responded to his argument that the public had had no opportunity to attend the hearing with silence, and that she had not mentioned the notice (see paragraph 68 above). The Court also notes the fact that in none of the domestic court decisions is there any mention of the photographs, nor were they, for example, appended to any of those court decisions, despite the fact that the applicant raised his complaint about the (lack of) public character of his hearing before the domestic courts and consistently challenged the existence of the notice. Moreover, the Supreme Administrative Court held it as established that the notice had been on the door, seemingly without having received any evidence to that effect (see paragraph 28 above). Consequently, the Court is not in a position to establish at which point in time the notice had been put up on the door of the courtroom, namely whether that was before the commencement of the hearing via video-conference or after it had ended.

77. Be it as it may, given that the hearing was not held in an actual courtroom but in a purely virtual manner, a factual scenario which the Court has not yet had occasion to examine, the State was under the obligation to take compensatory measures to ensure that the public and the media were duly informed of the venue for the hearing (see *Riepan*, cited above, § 29). The Court notes that it was not in dispute between the parties that information about the hearings that would be held before the Regional Administrative Court in a given week could easily be obtained by consulting that court's bulletin board, which was located within its building (see paragraphs 70 and 71 above). Despite the then on-going COVID-19 pandemic, access to the court building remained possible (see paragraph 8 above). The information that the hearing was held in the form of a video-conference, in turn, either was available on the door of the courtroom indicated on the bulletin board or if not, the judge presiding over the hearing, who was herself present in the courtroom (see paragraph 10 above), could have informed anyone entering the courtroom of the possibility to participate in the video-conference (see paragraph 72 above). While it is true that one would have to undergo a security check before being able to access that courtroom, this in itself cannot be considered as hindrance in fact, as this was in any event a prerequisite for accessing any courtroom and, thus, any court hearings being held in person. Consequently, the Court can accept that, in the particular circumstances of the present case, displaying the number of the courtroom of the presiding judge on the bulletin board was sufficient as a compensatory measure to ensure that the public and the media were duly informed of the venue for the hearing.

78. The Court further notes the remaining arguments submitted by the parties, notably whether the general public could be expected to possess both

the necessary technology and know-how to participate in the video-conference (see paragraphs 69-71 above). It is not the Court's task to express a view on whether the choices made by the Contracting Parties in how to organise the holding of online court hearings are appropriate or not; its task is confined to determining whether their choices in this area produce consequences that are in conformity with the Convention (see, *mutatis mutandis*, as regards the limitations on access to a court, *Zubac v. Croatia* [GC], no. 40160/12, § 81, 5 April 2018). In the present case, the Court considers that the consequences of the choices made fulfilled the requirements of the Convention. Furthermore, it should also be emphasised that the public character protects litigants against the secret administration of justice with no public scrutiny (see *Riepan*, cited above, § 27). Or to put it differently, it is a right of the litigants that the hearing is public and not a right of the members of the public to participate in the hearing. The differentiation is important here, because even if certain parts of the population did not possess the necessary know-how or the technical equipment (such as a smartphone), other parts of the population were still undeniably able to access the hearing electronically, thereby sufficiently ensuring the effectiveness of the right to a public hearing for the litigants in the present case.

79. The foregoing considerations are sufficient to enable the Court to conclude that, in the very specific circumstances of the present case, the information about the applicant's hearing via videolink was sufficiently accessible to the public.

80. There has accordingly been no violation of Article 6 of the Convention as regards the applicant's right to a public hearing.

### **C. The right to effective legal assistance**

81. The applicant's third and last complaint related to the conditions under which he and his lawyer had to participate in the video-conference. In particular, he complained that they had had to attend the hearing by using two different videolinks and could not be present together in the same room. That had made it impossible for them to communicate effectively and confidentially.

82. An accused's right to communicate with his advocate out of hearing of a third person is part of the basic requirements of a fair trial in a democratic society. While restrictions may be imposed on an accused's access to his lawyer if good cause exists, the question, in each case, is whether the restriction, in the light of the entirety of the proceedings, has deprived the accused of a fair hearing. Any measures restricting the rights of the defence should be strictly necessary (see *Marcello Viola*, cited above, §§ 61-62).

83. However, the present case should be distinguished from those cases in which restrictions were imposed by the relevant court. As already noted in paragraph 63 above, the Vienna Regional Administrative Court did not oblige

the applicant and his lawyer to participate in the hearing via videolink from two separate locations (see the summons in paragraph 8 above). They were free to arrange their participation separately or jointly. They were also free to make arrangements with a view to providing for a separate private communication channel between them, such as a telephone line or an instant messaging service, during the hearing itself. There is nothing in the case file to indicate that any security measures were ordered by the court that could have prevented confidential communication between the applicant and his lawyer.

84. It follows that this complaint does not disclose any appearance of a breach of Article 6 of the Convention and must therefore be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention as manifestly ill-founded.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints concerning the applicant's right to an oral and public hearing admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 6 of the Convention as regards the right to an oral hearing;
3. *Holds* that there has been no violation of Article 6 of the Convention as regards the right to a public hearing.

Done in English, and notified in writing on 9 December 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Simeon Petrovski  
Deputy Registrar

Lado Chanturia  
President