



## Obligation for lawyer to act as unpaid legal guardian to a mentally ill person does not constitute forced labour

In today's Chamber judgment in the case [Graziani-Weiss v. Austria](#) (application no. 31950/06), which is not final<sup>1</sup>, the European Court of Human Rights held, unanimously, that there had been:

**No violation of Article 4 (prohibition of forced and compulsory labour)** of the European Convention on Human Rights; and,  
**No violation of Article 14 (prohibition of discrimination) taken in conjunction with Article 4** of the Convention.

The case concerned the obligation for a lawyer (or a public notary, but not other categories of persons with legal training) in Austria to act as unpaid guardian to a mentally ill person.

### Principal facts

The applicant, Wolfgang Graziani-Weiss, is an Austrian national who was born in 1963 and lives in Linz (Austria).

A practising lawyer, he was informed in July 2005 that the Austrian courts planned to appoint him as legal guardian (*Sachwalter*) to a mentally ill person, K.. According to the courts, neither the association of guardians (*Verein für Sachwalterschaft*) nor any known relative could take over guardianship of K..

Mr Graziani-Weiss submitted that he objected to the appointment on the ground that it would disturb his family life with his wife and two children and that, given his involvement in leading a church choir, he had no time to take on such a duty. He further argued that he was not trained to deal with mental illness and that he would have to take out separate insurance cover which K. did not have the money to pay for.

Finding the reasons for his refusal insufficient, the courts appointed Mr Graziani-Weiss legal guardian of K. in September 2005. He was to deal with such matters as managing K.'s income and representing him before the courts and other authorities. The courts further held that helping weaker members of society was a civic duty and providing help on legal matters was part of practising lawyers' core professional duties.

He appealed, alleging that it was discriminatory to oblige practising lawyers and notaries to act as guardians as other people who have studied law – such as judges and public servants – have the same legal knowledge but are not under any such obligation.

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<sup>1</sup> Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution)

This appeal was dismissed. Ultimately, in March 2006, his extraordinary appeal on points of law to the Supreme Court was also dismissed as it found that the case did not raise an important question of law.

## Complaints, procedure and composition of the Court

Relying on Article 4, Mr Graziani-Weiss alleged that his being obliged to act as a legal guardian amounted to forced or compulsory labour. He also alleged, under Article 14, that the duty of practising lawyers or public notaries, but not other categories of persons with legal training, to act as guardians was discriminatory.

The application was lodged with the European Court of Human Rights on 31 July 2006.

Judgment was given by a Chamber of seven, composed as follows:

Françoise **Tulkens** (Belgium), *PRESIDENT*,  
Elisabeth **Steiner** (Austria),  
David Thór **Björgvinsson** (Iceland),  
Dragoljub **Popović** (Serbia),  
Giorgio **Malinverni** (Switzerland),  
András **Sajó** (Hungary),  
Guido **Raimondi** (Italy), *JUDGES*,

and also Françoise **Elens-Passos**, *DEPUTY SECTION REGISTRAR*.

## Decision of the Court

### [Article 4 \(prohibition of forced and compulsory labour\)](#)

The Court observed that Mr Graziani-Weiss had to have been aware that he might be obliged to act as a guardian when he decided to become a practising lawyer and that this contained an element of prior consent. Indeed, representing someone before the courts and authorities and managing their property was not outside a practising lawyer's normal activities. Nor had Mr Graziani-Weiss claimed that acting as K.'s guardian placed an excessive burden on him: the number of cases in which he had to act as K.'s guardian were neither significant nor particularly time-consuming or complex. Moreover, it was acceptable that, in certain circumstances where the person concerned lacked sufficient means, guardians did not receive remuneration. In this context it had to be born in mind that practicing lawyers and public notaries had privileges *vis-à-vis* other professional groups, such as the right to represent parties in certain kinds of court proceedings. The Court therefore concluded that the services Mr Graziani-Weiss had been required to take on had not constituted forced or compulsory labour. Accordingly, there had been no violation of Article 4.

### [Article 14 \(prohibition of discrimination\) taken in conjunction with Article 4](#)

The Court reiterated that discrimination meant treating people in relevantly similar situations differently without an objective and reasonable justification. It accepted that the practice of appointing lawyers and public notaries as guardians, but not those who had legal training, amounted to a difference in treatment. However, there was a significant difference between the professional groups of practising lawyers, and the other categories of persons who had studied law or had legal training but were not working as practising lawyers. Practising lawyers have rights and duties which are governed by specific laws and regulations such as having to pass an examination and take out insurance against damage claims before practising. They are also subject to disciplinary law and exempt from the duty to be represented by counsel before courts

where representation is normally mandatory. Limiting the duty to act as legal guardian to public notaries and practising lawyers was not therefore discriminatory as they were not in a relevantly similar situation to other persons with legal training. There had therefore been no violation of Article 14 in conjunction with Article 4.

*The judgment is available only in English.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.