Notes on the Austrian Discourse on Moral Persons as Addressees of Genuinely National Fundamental Rights Provisions

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I. Synopsis

The present paper explores the Austrian discourse on moral persons[1] as addressees of genuinely national fundamental rights provisions[2]. It does so with a specific focus on moral persons under private law.[3] The core argumentative patterns emerging from the relevant case law and pertinent scholarly contributions across constitutional, civil, and corporate law are to be highlighted and systematised.

II. Introduction

The question of whether moral persons fall within the scope of fundamental rights provisions and can therefore[4] bear subjective fundamental rights is a long-standing

[1] This term, as used in the marginal note to § 26 ABGB ('*Aus dem Verhältnisse einer moralischen Person*'; see also § 286 sentence 2 and § 529 sentence 4 ABGB; all Austrian statutes can be accessed via www.ris.bka.gv.at with their title; amendments can be found by their OJ title), is subject to differing interpretations – see U. Torggler, *Die Verbandsgründung – de lege lata betrachtet* (Wien, 2009) 263 ff; Brauneder, 'Von der moralischen Person des ABGB zur juristischen Person der Privatrechtswissenschaft' (1982/83) *Quaderni Fiorentini* 263. Here, it is employed as an umbrella term to include all organisational forms of non-human legal entities. By contrast, most contemporary Austrian scholarship operates with the term *juristic person*, implicitly accepting the terminological inconsistencies such usage entails (see just § 10 IPRG). The same applies to most of the literature and case law discussed below. For consistency, undifferentiated references to non-human legal entities are rendered as *moral persons*, even where the original texts speak of *juristic persons*.

[2] The terminology partly follows Dopplinger, *Die Grundrechtssubjektivität staatlicher Akteure – Eine rechtsvergleichende Analyse des Grundrechtsverhältnisses* (Wien, 2020) 177 (there: genuinely national fundamental rights). It is meant to indicate that the provisions of the ECHR – which have been incorporated into the Austrian constitutional framework – are excluded from the analysis. Also excluded are the provisions of the EU Charter of Fundamental Rights, which, according to the case law of the Austrian Constitutional Court, may, under certain circumstances, serve as a standard of review in proceedings under Articles 139, 140, and 144 B-VG (see Austrian VfGH VfSlg 19.632; all decisions of the Austrian VfGH can be accessed via www.ris.bka.gv.at/vfgh with their case number). The paper therefore focuses primarily on the provisions of the StGG and on the few fundamental rights provisions incorporated into the B-VG, while also touching upon the DSG, the HausrechtsG, and the RassDiskrBVG.

[3] See FN 20.

[4] Since a subjective right (here: a fundamental right) exists only because, and insofar as, objective law (here: a fundamental rights provision) establishes it – Kelsen, *Reine Rechtslehre* (Wien, 1934) 48; Rüthers, Fischer and Birk, *Rechtstheorie und Juristische Methodenlehre,* 12th edn. (München, 2022) para. 63; Berka, Binder and Kneihs, *Die Grundrechte – Grund- und Menschenrechte in Österreich,* 2nd edn. (Wien, 2019) 156. In the debate examined here, the distinction between *fundamental rights* and *fundamental rights provisions* is often omitted (terminologically) for reasons of brevity (see also IV.C. and FN 160). For a position supporting a clear distinction, see Alexy, *Theorie der Grundrechte*, 9th edn. (Frankfurt am Main, 2020) 39 (FN 1).

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one.[5] Within the Austrian legal tradition, this interface issue[6] predates the very establishment of the Austrian Republic, being (essentially) as old as the StGG[7] itself – the first catalogue of enforceable[8] fundamental rights provisions enacted in 1867 in the Cisleithanian half of the Austro-Hungarian monarchy.[9] Importantly, the question is not merely a challenging doctrinal puzzle; it has substantial practical ramifications.[10] Its economic significance stems from the fact that today's national and international markets are dominated not by physical persons, but by moral persons.[11]

Given the considerable number of cases in which the Austrian Constitutional Court (VfGH) has ruled on fundamental rights complaints brought by moral persons,[12] one could conclude that the issue is, at least in practical terms, largely settled. And with

[5] From the early Austrian discourse, see Bernatzik, 'Kritische Studien über den Begriff der juristischen Person und über die juristische Persönlichkeit der Behörden insbesondere' (1890) *AöR* 169 (271 ff). Historically, the issue was often discussed in connection with the broader debate on the "essential nature" of moral persons and the limits of their legal capacity – Pernthaler, *Der Schutz der ethnischen Gemeinschaften durch individuelle Rechte – Eine staats- und rechtstheoretische Untersuchung* (Wien, 1964) 51 with FN 174; Bernatzik, (1890) *AöR* 169 (271 f); Jellinek, *System der subjektiven öffentlichen Rechte* (Freiburg, 1892) 243 ff. Today, literature discusses it under the topos of their "fundamental-rights-holder status" (*Grundrechtssubjektivität*; *Grundrechtsfähigkeit*; *Grundrechtsberechtigung*; *Grundrechtsträgerschaft*).

[6] From a material law perspective, the issue is situated at the intersection of civil, corporate, and constitutional law, with potential international and European-law dimensions.

[7] *Staatsgrundgesetz vom 21. December 1867, über die allgemeinen Rechte der Staatsbürger für die im Reichsrathe vertretenen Königreiche und Länder* RGBl 1867/142.

[8] Enforceability of the StGG was achieved with the establishment of the Reichsgericht in 1869. Indeed, in its very second (compiled) decision on a fundamental rights complaint, the Reichsgericht considered a case brought by a moral person – see Reichsgericht Hye 6, a case in which the Jewish Religious Community of Kalush complained of a violation of Article 2 StGG. In the absence of any appearance by a representative of the complainant at the public hearing, the Reichsgericht did not decide the case on the merits, but regarded the complaint as withdrawn.

[9] From a broader – less technical – perspective, the issue can even be traced back to the constitutional developments of 1848 and 1849, since both the April Constitution of 1848 and the March Constitution of 1849 included catalogues of fundamental freedoms. However, these provisions lacked enforceability, meaning that they are more accurately characterised as programmatic constitutional commitments rather than fundamental rights provisions in the modern sense. Going even further back, one might also see the enactment of the ABGB (1811) as a point of departure (see § 16, § 26 sentence 2 ABGB; see also III.C.6.).

[10] Where the application of a fundamental rights provision to a moral person is denied, any protection under that provision is necessarily denied as well. This applies to every dimension of protection afforded by the provision.

[11] Müller and Baldegger, 'Grundrechte juristischer Personen', in Bucher, Canaris, Honsell and Koller (eds.), *Norm und Wirkung – Festschrift für Wolfgang Wiegand zum 65. Geburtstag* (Bern, 2005) 551.

[12] See section III.A. with further references.

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domestic scholarly contributions on the matter spanning three different centuries,[13] one might further assume that it has been met with equally robust doctrinal inquiry. A closer look, however, reveals that the topic is far from being fully worked through. In fact, the pertinent Austrian scholarly discourse is still surprisingly unstructured[14] and, from a comparative perspective, doctrinally still somewhat underexplored[15]. In addition, more recent international impulses, like the US Supreme Court's noteworthy Citizens United[16] and Hobby Lobby Stores[17] rulings, have so far attracted virtually no attention in Austria.[18]

In light of these more recent developments and given the renewed international interest in the outlined topic, this contribution examines the Austrian *status quo*. It

[13] See, for example, Bernatzik, (1890) *AöR* 169; Ermacora, *Der Verfassungsgerichtshof – Rechtsgrundlagen und kommentarmäßige Erläuterungen unter besonderer Berücksichtigung der Rechtsprechung der Gerichtshöfe öffentlichen Rechtes* (Graz, 1956) 334 ff; Heißl, 'Grundrechtsträgerschaft juristischer Personen' (2016) *ZÖR* 215.

[14] This is partly due to the debate's framing around the (vague) topos of the moral person's "fundamental-rights-holder status" (see FN 5), which tends to conflate only loosely related problem areas. For a concrete example, see FN 20.

[15] Particularly striking is the absence of more detailed corporate-law perspectives. In Germany, see Wiedemann, *Gesellschaftsrecht – Grundlagen* (München, 1980) vol. I, 685 ff; Serick, *Rechtsform und Realität juristischer Personen – ein rechtsvergleichender Beitrag zur Frage des Durchgriffs auf die Personen oder Gegenstände hinter der juristischen Person*, 2nd edn. (Tübingen, 1980) 170 ff; Mertens, 'Die Grundrechtsfähigkeit der juristischen Person und das Gesellschaftsrecht' (1989) *JuS* 857; Jung, *Der Unternehmergesellschafter als personaler Kern der rechtsfähigen Gesellschaft* (Tübingen, 2002) 501 ff; Kingreen and Möslein, 'Die Identität der juristischen Person: Die Hobby Lobby-Entscheidung des U.S. Supreme Court zur Glaubensfreiheit gewinnorientierter Kapitalgesellschaften' (2016) *JZ* 57.

[16] Citizens United v. FEC, 558 U.S. 310 (2010). For an assessment from a corporate-law angle, see Avi-Yonah, 'Citizens United and the Corporate Form' (2011) *Accounting, Economics, and Law* 1; Strine and Walter, 'Conservative Collision Course: The Tension between Conservative Corporate Law Theory and Citizens United' (2015) *Cornell Law Review* 335.

[17] Burwell v. Hobby Lobby Stores, Inc., 573 U.S. 682 (2014). For an assessment from a corporate-law angle, see Buccola, 'Corporate Rights and Organizational Neutrality' (2016) *Iowa Law Review* 499; Kingreen and Möslein, (2016) *JZ* 57.

[18] With short references to both rulings, see just Dopplinger, 'Legal Persons as Bearers of Rights Under the ECHR' (2021) *VLR* 1 (2) and Hiesel, 'Der Roberts Court. Geschichte, Gegenwart und Zukunft' (2016) *ZÖR* 623 (640, 644). By contrast, these impulses and their implications have already received monographic treatment in Germany, see Baldegger, *Menschenrechtsschutz für juristische Personen in Deutschland, der Schweiz und den Vereinigten Staaten* (Berlin, 2017) 395 ff; Kreissl, *Die Religionsfreiheit juristischer Personen im Sinne des Art. 19 Abs. 3 GG* (Baden-Baden, 2020) 18 ff; Weitensteiner, *Person und Korporation* (Tübingen, 2023) 183 ff. See also Fleischer, 'Fiktionstheorie versus Theorie der realen Verbandspersönlichkeit im internationalen Diskurs', in Fleischer, Koch and Schmolke (eds.), *Gesellschaftsrecht im Spiegel großer Debatten* (Berlin, 2024) 31 (57 ff); Kingreen and Möslein, (2016) *JZ* 57.

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sets out to provide a comprehensive account of the Austrian discourse on moral persons as potential addressees of fundamental rights provisions, aiming to highlight and systematise the core argumentative patterns and assumptions underlying it. For this purpose, the analysis focuses on genuinely national fundamental rights provisions[19], as these form the starting point for the early scholarly debate on the topic and provide the normative basis under which the relevant early case law of the VfGH – and, before it, of the Reichsgericht – emerged. Furthermore, the inquiry focuses mainly on moral persons under private law[20]. The contribution does not primarily aim to introduce new arguments or take a distinct position. Rather, it seeks to systematise the debate as it currently stands (see III.) and to make explicit some of its underlying conceptual premises (see IV.).

III. Mapping the Discourse

A. The VfGH's Approach

In the more than one hundred years since its (initial)[21] establishment in 1919, the VfGH has dealt with a wealth of complaints brought by moral persons invoking various genuinely national fundamental rights provisions.[22] From the very outset, the Court recognised that such entities could, in principle, be bearers of fundamental rights under many fundamental rights provisions – while refusing recognition for others.[23] For the most part, however, it did so without explicitly engaging with the

[19] See FN 2.

[20] In general, both the literature and the VfGH approach the issue without drawing substantive distinctions between different organisational forms of moral persons under private law – but see, by contrast, Laurer, *Wirtschafts- und Steueraufsicht über Kredit- und Versicherungsunternehmungen* (Wien, 1972) 144 ff. A distinct strand of the debate, however, addresses moral persons under public law (e.g. territorial entities) and other "state actors". The reservations regarding their "fundamental-rights-holder status", however, stem from their proximity to the state, not from them being non-human legal entities. This strand of the debate will therefore not be explored further; for a detailed analysis, see Dopplinger, *Die Grundrechtssubjektivität passim*.

[21] On the "disablement" of the VfGH by the Dollfuß regime in 1933, see Techet, '"Entpolitisierung" der Verfassungsgerichtsbarkeit als erster Schritt zum Autoritarismus' (2023) *ZÖR* 685. It was only in 1945 that the VfGH was re-established.

[22] Notably, the very first (compiled) case in which the VfGH dealt with an alleged violation of constitutionally guaranteed rights arose from a complaint lodged by a moral person, see Austrian VfGH VfSlg (old compilation 1919-1920) 5. See also, from the VfGH's early case law, Austrian VfGH VfSlg 552; VfSlg 774; VfSlg 881; VfSlg 949; VfSlg 1082; VfSlg 1226; VfSlg 1267; VfSlg 1271; VfSlg 1279; VfSlg 1332; VfSlg 1371; VfSlg 1372; VfSlg 1383 (the complainant was a municipality); VfSlg 1408 (the complainant was a municipality); VfSlg 1430; VfSlg 1459; VfSlg 1519.

[23] See also Dopplinger, *Die Grundrechtssubjektivität* 6.

provisions' personal scope, directing its reasoning instead to the substantive dimension of the fundamental rights provisions invoked.[24]

In the few early cases in which the VfGH explicitly addressed a fundamental rights provision's personal scope, its reasoning was usually confined to holding that the specific provision was – "by its nature"[25] (see also III.C.5.) or by being a "strictly personal right"[26] – restricted to physical persons.[27] This points to a provision-specific mode of analysis rather than a horizontal approach. It also suggests that the VfGH considered explicit engagement with the "fundamental-rights-holder status" of moral persons necessary only where it sought to substantiate the *restriction* of a given fundamental rights provision to physical persons.

In some of its early case law, the Court justified not extending certain provisions to moral persons by noting that their normative elements presuppose traits or abilities unique to physical persons.[28] In other instances, justification rested on a restrictive textual interpretation of the personal normative elements of a specific provision (e.g. "everyone" or "citizens"; see also III.C.2.).[29]

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[24] See, for example, Austrian VfGH VfSlg 1226; VfSlg 1267; VfSlg 1271; VfSlg 1279; VfSlg 1332. The Court is, of course, not *required* to address a provision's personal scope explicitly, nor to do so before turning to relevant substantive issues. Rather, in its reasoning, it may proceed in whatever manner it considers most appropriate or practical. On the reasoning style of the VfGH, see Eberhard, 'Der Begründungsstil des österreichischen Verfassungsgerichtshofs' (2024) *ZÖR* 471.

[25] See VfSlg 1408 and VfSlg 1430 ('*seiner Natur nach*'); Ermacora, *Der Verfassungsgerichtshof* 334 f; Ermacora, 'Die Grundrechte in Österreich', in Bettermann, Neumann and Nipperdey (eds.), *Die Grundrechte – Handbuch der Theorie und Praxis der Grundrechte* (Berlin, 1966) vol. I/1, 129 (153).

[26] See VfSlg 1408 ('*höchstpersönliches Recht*').

[27] See also Dopplinger, *Die Grundrechtssubjektivität* 6.

[28] In Austrian VfGH VfSlg 1430, the Court held that the question of whether the right of equality before the law – *sedes materiae* being Article 7(1) B-VG – also extends to domestic moral persons must, at the very least, be answered in the negative in those cases in which its violation is alleged on the basis of characteristics that can arise only in physical persons and not in moral persons (in principle reaffirmed in Austrian VfGH VfSlg 2088; VfSlg 3254; VfSlg 3495; VfSlg 3703; VfSlg 3930; VfSlg 5453; VfSlg 7380; from the later case law, see VfSlg 13.511; VfSlg 13.405). Among those characteristics are precisely the characteristics highlighted in Article 7(1) B-VG – birth, sex, status, class, and religious confession. In all these respects, it is argued, only physical persons can suffer a violation of the right to equality before the law (see also III.C.5.). Later decisions took some of the edge off this approach in practice (see VfSlg 3254).

[29] In Austrian VfGH VfSlg 1141, the Court held that Article 6 StGG protects only the rights of *citizens*, whereas a cooperative ('*Genossenschaft*') as such has no claim to this protection. In Austrian VfGH VfSlg 1408, the Court held that, although Article 14 StGG states that religious freedom is granted to *everyone*, this wording does not suggest that the provision extends beyond physical persons (see also III.C.2.); rather, it merely underscores that the right is afforded to all inhabitants of the state territory, irrespective of their citizenship.

These early developments have shaped the VfGH's case law on the issue. In a significant portion of its later rulings on complaints brought by moral persons, the Court refrained from discussing the complainant's status as a fundamental rights holder and instead proceeded directly to substantive issues.[30] This illustrates the largely self-evident manner in which the VfGH approaches the "fundamental-rights-holder status" of moral persons.[31] Explicit acknowledgments that a provision extends to moral persons are limited to a few cases.[32] In addition, the argumentative patterns and conceptual assumptions employed by the Court in its early decisions to justify restricting certain provisions to physical persons can be traced in its subsequent case law – be it the view that a moral person cannot possess the human traits presupposed by certain provisions,[33] the restrictive interpretation of personal normative elements,[34] or even the reference to the "nature" ("essential nature"; see also III.C.5.) of a fundamental rights provision.[35]

From a methodological standpoint, the VfGH's relevant case law reveals a strong reliance on textual interpretation which, combined with the typically human-oriented phrasing of fundamental rights provisions, can result in rigid conclusions as to their applicability to moral persons in a given case. It is also notable that the Court's

[30] Austrian VfGH VfSlg 6095 (regarding freedom of assembly, Article 12 StGG); VfSlg 11.981 (regarding the domiciliary right, HausrechtsG); VfSlg 19.522 (regarding equality before the law, Article 7 B-VG) as well as VfSlg 15.739 and VfSlg 19.615 (regarding protection of legitimate expectations in tax law); VfSlg 7380 (regarding the right to a trial before the lawful judge, Article 83(2) B-VG); VfSlg 19.673 (regarding the right to data protection, § 1 DSG); VfSlg 3668 and VfSlg 5161 (regarding the right to form associations, Article 12 StGG); VfSlg 7230 (regarding freedom to acquire real property, Article 6 StGG); VfSlg 8968 (regarding freedom of property, Article 5 StGG and freedom of establishment, Article 6 StGG).

[31] See also Dopplinger, *Die Grundrechtssubjektivität* 26.

[32] See Austrian VfGH VfSlg 4940 and VfSlg 6665 (regarding freedom to conduct business, Article 6 StGG), VfSlg 5531 (regarding freedom of property, Article 5 StGG), and VfSlg 16.703 (regarding the right to equal treatment among non-nationals, Article 1(1) RassDiskrBVG).

[33] In Austrian VfGH VfSlg 5044, the Court held that the complaining moral person could not be violated in its constitutionally guaranteed right to freedom of choosing a profession (Article 18 StGG), since it goes without saying that it neither wishes to choose a profession nor to train itself in one. The VfGH added: Should the apprentices employed by it have been violated in this right, the complaining moral person is in any case not entitled to assert *their* rights. In VfSlg 8968, the VfGH held: An interference with Article 18 StGG is conceptually impossible, since in the case of a moral person, neither vocational training nor the choice of a profession can be spoken of. See also VfSlg 13.511 (regarding equality before the law), and VfSlg 13.513 (regarding Article 14 StGG).

[34] See Austrian VfGH VfSlg 10.547, which reaffirmed VfSlg 1408.

[35] See Austrian VfGH VfSlg 15.668 and VfSlg 17.230 (regarding Article 1(1) RassDiskrBVG).

reasoning draws upon "ontological" distinctions between humans and (fictive) moral persons (see IV.C.).[36]

Consistent with its characteristically concise style of reasoning,[37] the VfGH does not attempt to flesh out the dogmatic and theoretical foundations of its relevant decisions in a more comprehensive manner. Furthermore, at least with regard to the StGG, the Court could draw on the older case law of its predecessor (see III.B.), the Reichsgericht, although explicit references remained sporadic.[38] It therefore had no need to formulate a comprehensive *de novo* position on the issue.[39] Some[40] even regard the VfGH's case law as a *continuation* of the line already developed by the Reichsgericht.[41]

B. The Reichsgericht's Forgotten Case Law

As the initial forum for enforcing the StGG, the Reichsgericht was the first competent body to develop a framework for assessing whether moral persons could qualify as addressees of its provisions.[42] Already in its earliest decisions, the Court displayed a clear readiness to *extend* fundamental rights protection to such entities.[43]

This readiness was substantiated through various types of arguments. In one of its early relevant rulings, the Reichsgericht held that the rights guaranteed in Article 12 StGG were granted to "every Austrian citizen" and – as a "matter of logical necessity" – evidently also to every moral person in Austria.[44] Here, the extension of Article 12 StGG rested on textual interpretation.

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[36] Kolonovits refers to this delineation as a "comparison", see Kolonovits, *Sprachenrecht in Österreich* (Wien, 1999) 78.

[37] For a detailed analysis on the VfGH's approach to reasoning, see Eberhard, (2024) *ZÖR* 471 with further references.

[38] See Austrian VfGH VfSlg 1408, with references to Reichsgericht Hye 130 and Hye 481.

[39] See also Dopplinger, *Die Grundrechtssubjektivität* 6 f.

[40] See Dopplinger, *Die Grundrechtssubjektivität* 26; Pernthaler, *Die verfassungsrechtlichen Schranken der Selbstverwaltung in Österreich* (Wien, 1967) 105; Ermacora, 'Die Grundrechte' 129 (153).

[41] Whether one can indeed speak of a "continuation" – given the differences in the conceptual approaches of the two institutions (see III.B. and IV.C.) – cannot be conclusively assessed here.

[42] See FN 8.

[43] See also Dopplinger, *Die Grundrechtssubjektivität* 8.

[44] Reichsgericht Hye 176.

In another early decision, the Reichsgericht employed textual-systematic arguments, referencing the StGG's title and the wording of Articles 15 and 19. In doing so, the Reichsgericht inferred that the fundamental rights granted to "Austrian citizens" likewise extend to an association of Austrian citizens forming a society, a corporation, or a club, insofar as the "special nature" of a specific corporation or the charter of a club does not stand in the way.[45] In the same decision, the Court also justified its conclusion, alternatively, by recourse to general principles of law.[46]

In other rulings, the Reichsgericht inferred from the legislator's use of the "broadest and most comprehensive term" *everyone* in Article 13 StGG that the provision extends not only to individuals, but also to any lawful association, society, or corporation, unless specific statutory provisions dictate otherwise.[47] The Court reached the same conclusion by comparing the wording of Articles 13 and 11 StGG, inferring that the legislator understood *everyone* to include "legally recognised corporations".[48] Any exclusion of such entities would have therefore required an explicit legislative pronouncement.[49]

For the Reichsgericht, the human-oriented language of certain StGG provisions did not warrant restricting their protection to physical persons; unlike in the later case law of the VfGH, restrictive outcomes were not typically justified on textual grounds. In a ruling concerning Article 16 StGG, a provision referring to *the adherents of an unrecognised religious denomination*, the Court simply treated the inclusion of the complaining moral person as self-evident.[50] It then denied the alleged violation on substantive grounds, noting that the complainant had not been prohibited from holding a private religious service.[51]

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[45] Reichsgericht Hye 259. See also Reichsgericht Hye 1809, regarding Article 17(2) StGG.

[46] See Reichsgericht Hye 259 ('*nach allgemeinen Rechtsgrundsätzen*'). What exactly was meant by this remains unclear. Reichsgericht Hye 844 offers a possible indication, stating that associations, like all moral persons, are *generally* to be treated as equivalent to physical persons under Austrian law to the extent that their "nature" permits. This could be read to suggest a *presumption* of moral persons' fundamental-rights-holder status, one with which the Reichsgericht may have operated from the outset (see Reichsgericht Hye 129, the first merits ruling on moral persons' "fundamental-rights-holder status", where such status was assumed without any elaboration).

[47] See Reichsgericht Hye 393; Hye 985.

[48] See Reichsgericht Hye 393; Hye 404; Hye 985.

[49] See Reichsgericht Hye 393.

[50] See Reichsgericht Hye 481.

[51] See Reichsgericht Hye 481.

This ruling also illustrates that, in applying fundamental rights provisions to moral persons, the Reichsgericht proceeded from a markedly different conceptual basis than the VfGH (in some of its restrictive rulings)[52]. Importantly, the Reichsgericht did not frame the issue as one of ontological comparability with physical persons. Rather than treating complaining moral persons as strictly apersonal entities, the Reichsgericht understood the separateness of their legal spheres as relative, thereby leaving room for attribution (see also IV.C.). This approach likewise manifested itself in multiple cases concerning Article 19 StGG, in which the Reichsgericht drew on the personal substrate of the complaining moral persons to determine *their* "fundamental-rights-holder status".[53] In doing so, it confirmed that the provision – addressed to *all ethnic groups of the State* – extends to moral persons.

It is also noteworthy that the Reichsgericht sought to approach the issue horizontally, formulating arguments that could apply across the StGG provisions as a whole. Thus, for example, it held that "the provisions of the StGG" accrue not only to individual physical persons, but also to domestic corporations.[54] Overall, its case law shows a strong willingness to *extend* the StGG's provisions to moral persons, even where their wording pointed in the opposite direction. This approach, however, received little attention in later scholarship[55] and was overshadowed by the VfGH's case law, leaving little trace in today's scholarly debate.

C. The Scholarly Debate

Anyone delving into the Austrian scholarship on moral persons as addressees of fundamental rights provisions inevitably encounters a frustrating discrepancy: While the issue has, over time, attracted a considerable number of contributions from public, civil, and corporate law scholars, the dogmatic engagement has remained for the most part rather shallow.[56] The relative lack of interest in more thorough deliberation may be explained by the broad agreement on the outcome:[57] Austrian

[52] See, for example, the references in FN 33.

[53] From the early case law, see Reichsgericht Hye 129; Hye 219.

[54] See Reichsgericht Hye 1439.

[55] See Zußner, 'Art 14 StGG', in Kneihs and Lienbacher (eds.), *Rill-Schäffer-Kommentar Bundesverfassungsrecht,* 30th edn. (Wien, 2023) para. 42.

[56] See also Pernthaler, *Selbstverwaltung* 106.

[57] Similarly, regarding the protection of personality rights for moral persons, Fellner, *Persönlichkeitsschutz juristischer Personen* (Graz, 2007) 17 f.

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literature – whether explicitly or implicitly[58] – operates on the general consensus that moral persons are addressees of *certain* fundamental rights provisions.[59]

Accordingly, many contributions simply affirm or reject the extension of specific provisions without articulating the doctrinal basis for doing so.[60] Moreover, several contributions are confined to referencing the VfGH's pertinent case law and to listing the fundamental freedoms which, according to said case law, extend to moral persons.[61]

Other contributions, however, engage with the issue in greater doctrinal depth. Against this background, the following sections systematically reconstruct the argumentative patterns relied upon in the Austrian debate.

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[58] See Kalss, 'Europarechtliche und verfassungsrechtliche Rahmenbedingungen für das Umwandlungsrecht' (1995) *JBl* 420 (429).

[59] See, for example, Berka, 'Vorbem StGG', in Kneihs and Lienbacher (eds.), *Rill-Schäffer-Kommentar Bundesverfassungsrecht* (Wien, 2001) para. 55; Strejcek, 'Grundrechtssubjektivität', in Merten and Papier (eds.), *Handbuch der Grundrechte in Deutschland und Europa – Grundrechte in Österreich, der Schweiz und in Liechtenstein – Grundrechte in Österreich,* 2nd edn. (Heidelberg, 2014) vol. VII/1, 139 (para. 37); Benke and Steindl, '§§ 26, 27 ABGB', in Fenyves, Kerschner and Vonkilch (eds.), *Großkommentar zum ABGB – Klang-Kommentar*, 3rd edn. (Wien, 2014) para. 42; Aicher, S.-F. Kraus and Spendel, '§ 61 GmbHG', in Straube, Ratka and Rauter (eds.), *Wiener Kommentar zum GmbH-Gesetz* (Wien, 2022) para. 21; Koppensteiner and Rüffler, '§ 61 GmbHG', in Koppensteiner and Rüffler (eds.), *GmbH-Gesetz*, 3rd edn. (Wien, 2007) para. 30; S.-F. Kraus and U. Torggler, '§ 61 GmbHG', in U. Torggler (ed.), *GmbHG* (Wien, 2014) para. 15.

[60] A similar observation is made by Pernthaler, *Der Schutz* 51. See, for example, Kucsko-Stadlmayer, 'zu Artikel 3 StGG', in Korinek, Holoubek, Bezemek, Fuchs, Martin and Zellenberg (eds.), *Österreichisches Bundesverfassungsrecht,* 4th edn. (Wien, 2001) para. 9; Stolzlechner, 'Der Schutz des Hausrechts', in Machacek, Pahr and Stadler (eds.), *Grund- und Menschenrechte in Österreich – 40 Jahre EMRK – Wesen und Werte* (Kehl am Rhein, 1992) vol. II, 303 (316); Berchtold, 'Das Recht auf ein Verfahren vor dem gesetzlichen Richter', in Machacek, Pahr and Stadler (eds.), *Grund- und Menschenrechte in Österreich – 40 Jahre EMRK – Wesen und Werte* (Kehl am Rhein, 1992) vol. II, 711 (713); Khakzadeh, 'Art 4 StGG', in Kahl, Khakzadeh and Schmid (eds.), *Kommentar zum Bundesverfassungsrecht – B-VG und Grundrechte* (Wien, 2021) para. 4.

[61] See, for example, Aicher, '§ 26 ABGB', in Rummel and Lukas (eds.), *ABGB*, 4th edn. (Wien, 2015) para. 30; Aicher, S.-F. Kraus and Spendel, '§ 61 GmbHG', para. 21; Eckert, Schopper and Reheis, '§ 1 AktG – Begriff der Aktiengesellschaft', in Eckert and Schopper (eds.), *AktG-ON – Kommentar zum Aktiengesetz* (Wien, 2021) para. 15; Winkler and Gruber, '§ 61 GmbHG', in Gruber and Harrer (eds.), *GmbHG,* 2nd edn. (Wien, 2018) para. 23; Hengstschläger and Leeb, *Grundrechte*, 4th edn. (Wien, 2024) para. 1/45; H. Mayer, Kucsko-Stadlmayer and Stöger, *Grundriss des österreichischen Bundesverfassungsrechts,* 11th edn. (Wien, 2015) para. 1326; on freedom of religion Klecatsky, 'Die Glaubens- und Gewissensfreiheit und die Rechtsstellung der gesetzlich anerkannten Kirchen und Religionsgesellschaften', in Machacek, Pahr and Stadler (eds.), *Grund- und Menschenrechte in Österreich – 40 Jahre EMRK – Wesen und Werte* (Kehl am Rhein, 1992) vol. II, 489 (492).

1. A Cautious Tenor

A common point of departure in the pertinent literature is the premise that fundamental rights provisions were *originally* meant to protect physical persons, specifically the individual against absolutist arbitrariness[62] – an understanding typically defended with references to the provisions' wording and historical genesis.[63] Fundamental rights, it is said, find their deepest foundation in the concept of human dignity.[64] The human being would thus be their primary and original subject,[65] their nucleus and centre.[66] Furthermore, it is argued that the protection of personal freedom constituted the primary objective of the StGG's liberal catalogue of fundamental rights provisions.[67] Extending such provisions to moral persons is, accordingly, not to be taken as self-evident.[68]

This premise is challenged, however, by reference to evolving normative conceptions.[69] In addition, textual-systematic considerations are cited as indicating

[62] See Adamovich, Funk, Holzinger and Frank, *Österreichisches Staatsrecht – Band 3: Grundrechte,* 3rd edn. (Wien, 2019) para. 41.063. See also Bezemek, *Grundrechte in der Rechtsprechung der Höchstgerichte* (Wien, 2016) 50; Berka, 'Vorbem StGG', para. 55; Hengstschläger and Leeb, *Grundrechte* para. 1/45; Merten, 'Mischunternehmer als Grundrechtsträger', in Bernat, Böhler and Weilinger (eds.), *Festschrift Heinz Krejci zum 60. Geburtstag: Zum Recht der Wirtschaft* (Wien, 2001) vol. II, 2003; Koja, *Allgemeine Staatsrechtslehre* (Wien, 1993) 332 ff. See also Pernthaler, *Österreichisches Bundesstaatsrecht* (Wien, 2004) 631.

[63] Hengstschläger and Leeb, *Grundrechte* para. 1/45; Berka, 'Vorbem StGG', para. 55; Strejcek, 'Grundrechtssubjektivität', 139 (para. 37, FN 75); Kucsko-Stadlmayer, 'Die allgemeinen Strukturen der Grundrechte', in Merten and Papier (eds.), *Handbuch der Grundrechte in Deutschland und Europa – Grundrechte in Österreich, der Schweiz und in Liechtenstein – Grundrechte in Österreich,* 2nd edn. (Heidelberg, 2014) vol. VII/1, 95 (para. 28). But see Dopplinger, *Die Grundrechtssubjektivität* 182 ff. By contrast, advancing *concrete* subjective-historical arguments, Kröll, 'Art 17 Abs 1, 5 StGG', in Kneihs and Lienbacher (eds.), *Rill-Schäffer-Kommentar Bundesverfassungsrecht,* 13th edn. (Wien, 2014) para. 86.

[64] Pernthaler, 'Braucht ein positivrechtlicher Grundrechtskatalog das Rechtsprinzip der Menschenwürde?', in Akyürek, Baumgartner, Jahnel, Lienbacher and Stolzlechner (eds.), *Staat und Recht in europäischer Perspektive – Festschrift Heinz Schäffer* (Wien, 2006) 613; Berka, 'Vorbem StGG', para. 55; Berka, *Verfassungsrecht – Grundzüge des österreichischen Verfassungsrechts für das juristische Studium,* 8th edn. (Wien, 2021) para. 1238; Pernthaler, *Bundesstaatsrecht* 631.

[65] Berka, Binder and Kneihs, *Die Grundrechte* 109. See also Pernthaler, *Bundesstaatsrecht* 631.

[66] Klaushofer, 'Die menschenrechtliche Dimension Künstlicher Intelligenz' (2019) *ZÖR* 399 (FN 85).

[67] Binder, 'Die verfassungsrechtliche Sicherung der Wissenschaftsfreiheit in Österreich' (1973) *Wissenschaftsrecht, Wissenschaftsverwaltung, Wissenschaftsförderung* 1 (7).

[68] Berka, 'Vorbem StGG', para. 55; Berka, Binder and Kneihs, *Die Grundrechte* 117.

[69] Adamovich, Funk, Holzinger and Frank, *Österreichisches Staatsrecht* para. 41.063.

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that the protection of moral persons formed part of the Austrian fundamental-rights framework from the start.[70]

Finally, a separate line of reasoning emphasises that state arbitrariness is not restricted to physical persons.[71] In doing so, it holds that, as fundamental rights stem from the organic legal relationship between the individual and the state, all persons who belong to the state and live on its territory – both physical and moral persons – are generally subjects of such rights.

2. Textual Arguments

The cautious approach outlined above is sometimes associated with the wording of fundamental rights provisions. In particular, attention is drawn to personal normative elements that specify the addressees of the freedoms granted. The constitution, it is argued, expressly includes collective entities as fundamental rights holders only in exceptional cases.[72] As a rule, fundamental rights are guaranteed to "citizens" or "everyone".[73]

Other voices, however, maintain that such general formulations, in themselves, neither extend protection to moral persons nor confine it to physical persons.[74] The vast majority of provisions, it is argued, contain no textual pointers to the "fundamental-rights-holder status" of moral persons.[75]

3. Comparative Arguments

Further underlining the conceptually cautious tenor of the discourse, several scholars[76] note that the Austrian constitutional framework lacks a provision

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[70] Dopplinger, *Die Grundrechtssubjektivität* 182 ff. See also the similar line of argument advanced by Fröhler, 'Der Grundrechtsschutz der interessenvertretenden Körperschaften des öffentlichen Rechts', in Schäffer, König and Ringhofer (eds.), *Im Dienst an Staat und Recht – Internationale Festschrift Erwin Melichar zum 70. Geburtstag* (Wien, 1983) 9.

[71] Dantscher von Kollesberg, *Die politischen Rechte der Unterthanen* (Wien, 1892) vol. III, 226.

[72] Berka, Binder and Kneihs, *Die Grundrechte* 117. See also Ermacora, *Handbuch der Grundfreiheiten und der Menschenrechte* (Wien, 1963) 51.

[73] See Pernthaler, *Der Schutz* 51. See also (from the VfGH's case law) FN 29.

[74] See, for example, Heißl, (2016) *ZÖR* 215 (219); Dopplinger, *Die Grundrechtssubjektivität* 182.

[75] Heißl, (2016) *ZÖR* 215 (219). But see, for example, Muzak, 'Art 6 StGG', in Muzak (ed.), *B-VG*, 6th edn. (Wien, 2020) para. 2.

[76] Heißl, (2016) *ZÖR* 215 (226); Ermacora, *Handbuch der Grundfreiheiten* 25; Ermacora, 'Die Grundrechte' 129 (153); Korinek and Rose-Kaan, 'Rechtsprobleme um die ORF-Nachlese' (1981) *ÖZW* 65 (66); Fröhler, 'Der Grundrechtsschutz', 9; Ostheim, *Zur Rechtsfähigkeit von Verbänden im österreichischen bürgerlichen Recht* (Wien, 1967) 153; Loebenstein, 'Die Behandlung des

comparable to Article 19(3) of the German GG[77]. Said provision explicitly extends fundamental rights protection to non-human entities and has therefore been dubbed a "fundamental rights extension clause".[78]

The absence of such a clause is, however, not an Austrian peculiarity. Across Europe, most constitutional orders contain no equivalent rule.[79] The idea of introducing a corresponding clause in the Austrian legal framework was nevertheless considered more recently during the proceedings of the *Österreich-Konvent* (2003-2005).[80]

4. Functional Arguments

Against this backdrop, one doctrinal strand[81] advances functional arguments: If the moral person is merely a subject of attribution for legal relations that ultimately entitle or oblige physical persons, and the exercise of certain fundamental rights necessarily takes place in an organised form together with other fundamental rights holders, it makes sense – in the interest of effective fundamental rights protection – to recognise a limited capacity of moral persons to hold fundamental rights.[82] The actions of moral

österreichischen Grundrechtskataloges durch das Expertenkollegium zur Neuordnung der Grund- und Freiheitsrechte', in Machacek, Pahr and Stadler (eds.), *Grund- und Menschenrechte in Österreich – 70 Jahre Republik – Grundlagen, Entwicklungen und internationale Verbindungen* (Kehl am Rhein, 1991) vol. I, 365 (414); Marschhäuser, *Die Grundrechtsberechtigung juristischer Personen im Europäischen Verfassungsverbund* (Berlin, 2020) 46. On the limitations of Article 19(3) GG see Pernthaler, *Der Schutz* 51; Baldegger, *Menschenrechtsschutz* 75 f.

[77] Article 19(3) GG: '*Die Grundrechte gelten auch für inländische juristische Personen, soweit sie ihrem Wesen nach auf diese anwendbar sind.*' The German Grundgesetz can be accessed via www.gesetze-im-internet.de/gg/.

[78] See, for example, Kreissl, *Religionsfreiheit* 58.

[79] But see, for example, Article 12(2) Constitution of the Portuguese Republic and § 9(2) Constitution of the Republic of Estonia.

[80] See Grabenwarter, 'Entwurf eines Grundrechtskataloges für eine neue österreichische Bundesverfassung', in Österreich-Konvent, *Anlage A zum Bericht des Ausschusses 4 – Grundrechtskatalog* (2004) 43 (53): Article 22(3): '*Die Grundrechte gelten auch für juristische Personen, soweit sie ihrem Wesen nach auf diese anwendbar sind.*' The proposed clause corresponds almost exactly to Article 19(3) GG. Notably, the criterion of domestic status was not included.

[81] Berka, *Die Grundrechte – Grundfreiheiten und Menschenrechte in Österreich* (Wien, 1999) para. 165; Berka, Binder and Kneihs, *Die Grundrechte* 117.

[82] Berka, *Die Grundrechte* para. 165; Berka, Binder and Kneihs, *Die Grundrechte* 117 f. Similarly also Pernthaler, *Bundesstaatsrecht* 633 f. Pointing to the consideration of effective protection in support of applying freedom of communication to moral persons, see Berka, 'Die Kommunikationsfreiheit sowie die Informationsfreiheit, Freiheit der Meinungsäußerung, Pressefreiheit und Zensurverbot', in Machacek, Pahr and Stadler (eds.), *Grund- und Menschenrechte in Österreich – 40 Jahre EMRK – Wesen und Werte* (Kehl am Rhein, 1992) vol. II, 393 (408).

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persons therefore often embody activities of physical persons protected by fundamental rights.

Others add that, viewed more deeply, the "fundamental-rights-holder status" of moral persons is entirely dependent upon, or derived from, that of physical persons, since their establishment, capacity to act, procedural capacity, continued existence, and liquidation all ultimately depend on natural persons.[83] According to this line of reasoning, the "fundamental-rights-holder status" of moral persons is ultimately assigned a subsidiary character.

5. The "Essential Nature" Formula and Other Related References

Hardly any relevant scholarly contribution manages without the reductive[84] formula according to which moral persons may be holders of all fundamental rights that by their "essential nature" belong to them.[85] The demarcation according to the "essential nature" of the fundamental right in question is explicitly linked by some with Article 19(3) GG.[86] Others take it to mean that moral persons may invoke only those fundamental rights provisions in respect of which they are capable of suffering a

[83] Klaushofer, (2019) *ZÖR* 399 (FN 85).

[84] Pernthaler employs the adjective "stereotypical", see Pernthaler, *Selbstverwaltung* 106.

[85] Dopplinger, *Die Grundrechtssubjektivität* 186; Eberhard, 'Inländer-Grundrechte im Lichte des Gemeinschaftsrechts' (2001) *JBl* 294 (FN 4); Loebenstein, 'Die Behandlung' 365 (414); Oberndorfer, 'Die Berufswahl- und die Berufsausbildungsfreiheit: Art. 18 StGG', in Machacek, Pahr and Stadler (eds.), *Grund- und Menschenrechte in Österreich – 40 Jahre EMRK – Wesen und Werte* (Kehl am Rhein, 1992) vol. II, 617 (641); Korinek, 'zu Artikel 5 StGG', in Korinek, Holoubek, Bezemek, Fuchs, Martin and Zellenberg (eds.), *Österreichisches Bundesverfassungsrecht,* 5th edn. (Wien, 2002) para. 22 with FN 86; Pöschl, 'zu Artikel 6 Abs 1 1. Tatbestand StGG', in Korinek, Holoubek, Bezemek, Fuchs, Martin and Zellenberg (eds.), *Österreichisches Bundesverfassungsrecht,* 5th edn. (Wien, 2002) para. 13; Öhlinger and Eberhard, *Verfassungsrecht,* 13th edn. (Wien, 2025) para. 705; Schoditsch, *Grundrechte und Privatrecht* (Wien, 2019) 12; Ermacora, *Handbuch der Grundfreiheiten* 25; Ermacora, *Grundriß der Menschenrechte in Österreich* (Wien, 1988) para. 40; Berka, 'Vorbem StGG', para. 55; Berka, Binder and Kneihs, *Die Grundrechte* 118; Hengstschläger and Leeb, *Grundrechte* para. 1/45; H. Mayer, Kucsko-Stadlmayer and Stöger, *Grundriss* para. 1326; Zierl, 'Zur Rechts- und Parteifähigkeit im allgemeinen Verwaltungsverfahren' (1984) *ÖJZ* 113; Marschhäuser, *Die Grundrechtsberechtigung* 46. See also Merten, 'Mischunternehmer' 2003. Similarly also Jabornegg, '§ 1 AktG', in Jabornegg and Strasser (eds.), *Kommentar zum Aktiengesetz,* 4th edn. (Wien, 2006) para. 43; Berka, *Verfassungsrecht* para. 1239; Himberger, *Fernmeldegeheimnis und Überwachung – Schutzbereiche und Eingriffe, Durchführung und Kosten* (Wien, 2004) 72; Ostheim, *Zur Rechtsfähigkeit* 152; Bammer, 'Einleitung', in Doralt, Nowotny and Kalss (eds.), *Privatstiftungsgesetz* (Wien, 1995) para. 64; Antoniolli and Koja, *Allgemeines Verwaltungsrecht – Lehr- und Handbuch für Studium und Praxis,* 3rd edn. (Wien, 1996) 310. Referring to the "essential nature" of the moral person, Rohregger, 'Die Verantwortlichkeit von Verbänden für Straftaten' (2018) *ÖZW* 27 (31). Also pointing to this formula and its narrow interpretation by the VfGH, Kolonovits, *Sprachenrecht* 78.

[86] Heißl, (2016) *ZÖR* 215 (225).

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violation.[87] Understood this way, the formula collapses the boundary between the personal and the substantive scope of the provisions: the former is determined by the latter.

According to one strand of literature, the formula rests on teleological considerations. In this view, the decisive question is whether the protective scope of a given fundamental rights provision can be extended to moral persons.[88]

Other contributors, adopting different wordings of the formula, maintain that moral persons may invoke rights that are not tailored exclusively to physical persons,[89] are not "by their kind" restricted to them,[90] or do not presuppose a human being.[91] Yet others affirm applicability only when the right can be detached from the existence of a physical person.[92] An especially vague phrasing of the formula is provided by Ermacora:[93] Fundamental rights, he writes, are *by their essential nature* inapplicable to moral persons if they are rights that *by their nature* can belong only to a physical person.

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[87] Berka, *Verfassungsrecht* para. 1239; similarly, Müller, 'Art 17a StGG', in Kahl, Khakzadeh and Schmid (eds.), *Kommentar zum Bundesverfassungsrecht – B-VG und Grundrechte* (Wien, 2021) para. 4.

[88] Heißl, (2016) *ZÖR* 215 (226).

[89] Posch, '§ 26 ABGB', in Schwimann and Kodek (eds.), *ABGB Praxiskommentar,* 5th edn. (Wien, 2018) vol. I, para. 29.

[90] Aicher, S.-F. Kraus and Spendel, '§ 61 GmbHG', para. 21; S.-F. Kraus and U. Torggler, '§ 61 GmbHG', para. 15. Similarly, Eckert, Schopper and Reheis, '§ 1 AktG', para. 15; Artmann and Karollus, '§ 1 AktG – Begriff der Aktiengesellschaft', in Artmann and Karollus (eds.), *Kommentar zum Aktiengesetz,* 6th edn. (Wien, 2018) para. 36; Jabornegg, '§ 1 AktG', para. 43.

[91] Oberndorfer, 'Die Berufswahl- und Berufsausbildungsfreiheit in der neueren Grundrechtsjudikatur' (1982) *JBl* 273 (289); Aicher, '§ 26 ABGB', para. 30; (for the AG) Foglar-Deinhardstein, '§ 1 AktG', in Napokoj, Foglar-Deinhardstein and Pelinka (eds.), *AktG Praxiskommentar* (Wien, 2019) para. 30. Similarly, for the GmbH, Pelinka, 'zu § 61 GmbHG', in Foglar-Deinhardstein, Aburumieh and Hoffenscher-Summer (eds.), *GmbHG,* 2nd edn. (Wien, 2024) para. 11. For the FlexCo, Kraus, '§ 1 FlexKapGG', in Schneeweiss and Hule (eds.), *FlexKapGG Praxiskommentar* (Wien, 2024) para. 3.

[92] Strejcek, 'Grundrechtssubjektivität', 139 (para. 37); similarly, arguing on the basis of the close connection between the right in question and the human personality, Wiederin, 'zu Artikel 8 EMRK', in Korinek, Holoubek, Bezemek, Fuchs, Martin and Zellenberg (eds.), *Österreichisches Bundesverfassungsrecht,* 5th edn. (Wien, 2002) para. 38.

[93] Ermacora, *Handbuch der Grundfreiheiten* 51.

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At times, the argument turns on the moral person's "essential nature" or legal character.[94] Occasionally, restrictions are even defended by referencing the "nature of things"[95]. Several authors further suggest that the purpose of the moral person deserves consideration:[96] If one were to consider, for instance, whether an association should be granted minority-language fundamental rights, it would *in any case* have to be an association whose purpose is directed towards the protection of minorities.[97]

Genuinely national fundamental rights provisions deemed by their "essential nature" inapplicable to moral persons include, for example, freedom of conscience and religion (Article 14 StGG), freedom of occupational choice and training (Article 18 StGG), and the right to equality before the law (Article 7 B-VG) insofar as it concerns attributes that can only pertain to physical persons.[98] Such rights are, according to some, clearly confined to physical persons;[99] this confinement is seen as a matter of "legal common sense"[100]. It is held that rights referring to traits such as gender, descent, race, language, life, or bodily integrity are excluded for moral persons,[101] since such traits do not come into question for them[102]. All capacities that presuppose physical individuality cannot be attributed to them.[103] According to this line of reasoning, moral persons would enjoy fundamental rights protection only if they were

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[94] See Ostheim, *Zur Rechtsfähigkeit* 155; Pernthaler, *Bundesstaatsrecht* 634; Pernthaler, *Der Schutz* 53; Rohregger, (2018) *ÖZW* 27 (31); Jellinek, *System* 246.

[95] Zierl, (1984) *ÖJZ* 113; Jellinek, *System* 246.

[96] Heißl, (2016) *ZÖR* 215 (226); Pernthaler, *Bundesstaatsrecht* 634; Pernthaler, *Der Schutz* 56; Bernatzik, (1890) *AöR* 169 (273); Kolonovits, *Sprachenrecht* 80.

[97] Kolonovits, *Sprachenrecht* 80.

[98] See Hengstschläger and Leeb, *Grundrechte* para. 1/45; Antoniolli and Koja, *Allgemeines Verwaltungsrecht* 310 with further references from the VfGH's case law; Ostheim, *Zur Rechtsfähigkeit* 153 ff; Feik, 'Der räumliche und persönliche Geltungsbereich der Grundrechte in der Judikatur des VfGH' (1999) *ZÖR* 19 (28); Zierl, (1984) *ÖJZ* 113. See also Holoubek, 'zu Artikel 7 Abs 1 Sätze 1 und 2 B-VG (und Artikel 20 GRC)', in Korinek, Holoubek, Bezemek, Fuchs, Martin and Zellenberg (eds.), *Österreichisches Bundesverfassungsrecht,* 14th edn. (Wien, 2018) para. 92; Khakzadeh, 'Art 7 B-VG', in Kahl, Khakzadeh and Schmid (eds.), *Kommentar zum Bundesverfassungsrecht – B-VG und Grundrechte* (Wien, 2021) para. 12.

[99] Berka, Binder and Kneihs, *Die Grundrechte* 119; Berka, *Verfassungsrecht* para. 1240.

[100] Heißl, (2016) *ZÖR* 215 (217) '*natürlicher Menschen- bzw Juristenverstand*'.

[101] Loebenstein, 'Die Behandlung' 365 (415).

[102] Kneihs, 'Besondere Diskriminierungsgründe und allgemeine Gleichheit' (2019) *ZÖR* 729 (740, 747).

[103] Jellinek, *System* 245.

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capable of *independently* exercising the protected positions.[104] Illustratively, on the premise that only humans can "research" and "teach", one doctrinal strand considers moral persons not to be protected under Article 17 StGG (freedom of science).[105]

6. The Principle of Equality of Persons

In pertinent civil and corporate law contributions in particular, it is stressed that, pursuant to § 26 sentence 2 ABGB, the legal status of moral persons corresponds to that of physical persons (principle of equality of persons)[106], save where the rights in question, by their purpose[107] or nature,[108] presuppose a human being,[109] or where they are, by their "essential nature", necessarily directed towards humans.[110] From this, it is inferred that the equality established by § 26 sentence 2 ABGB – a legal fiction[111] in technical terms – is not absolute; it applies only *as a rule*,[112] thereby acknowledging

[104] Binder, (1973) *Wissenschaftsrecht, Wissenschaftsverwaltung, Wissenschaftsförderung* 1 (7 f).

[105] Binder, (1973) *Wissenschaftsrecht, Wissenschaftsverwaltung, Wissenschaftsförderung* 1 (8); advancing subjective-historical arguments, Kröll, 'Art 17 Abs 1, 5 StGG', in Kneihs and Lienbacher (eds.), *Rill-Schäffer-Kommentar Bundesverfassungsrecht,* 13th edn. (Wien, 2014) para. 86. But see *Hammer*, 'zu Artikel 17 Abs 1 StGG', in Korinek, Holoubek, Bezemek, Fuchs, Martin and Zellenberg (eds.), *Österreichisches Bundesverfassungsrecht,* 12th edn. (Wien, 2016) para. 40; Ostheim, *Zur Rechtsfähigkeit* 154 f.

[106] U. Torggler, *Gesellschaftsrecht AT und Personengesellschaften* (Wien, 2013) para. 419. See also Ostheim, *Zur Rechtsfähigkeit* 93; Pernthaler, *Bundesstaatsrecht* 634; see also FN 46 with reference to Reichsgericht Hye 844.

[107] Jabornegg, 'Die Aktiengesellschaft als juristische Person (II)' (1989) *GesRZ* 13.

[108] Benke and Steindl, '§§ 26, 27 ABGB', para. 40; Schauer, '§ 26 ABGB', in Kletečka and Schauer (eds.), *ABGB-ON* (Wien, 2017) para. 18; Reich-Rohrwig, *Das österreichische GmbH-Recht* (Wien, 1983) 544. Similarly, Welser and Kletečka, *Bürgerliches Recht – Band 1: Allgemeiner Teil, Sachenrecht, Familienrecht,* 15th edn. (Wien, 2018) 250.

[109] See also Korinek and Rose-Kaan, (1981) *ÖZW* 65.

[110] Posch, '§ 26 ABGB', para. 28; Aicher, '§ 26 ABGB', para. 24. Similarly, Kronthaler, '§ 26 ABGB', in Schwimann and Neumayr (eds.), *ABGB Taschenkommentar,* 6th edn. (Wien, 2023) para. 15; Koch, 'zu § 26 ABGB', in P. Bydlinski, Perner and Spitzer (eds.), *Kommentar zum ABGB,* 7th edn. (Wien, 2023) para. 12; Gall, '§ 1 AktG', in Doralt, Nowotny and Kalss (eds.), *AktG – Kommentar,* 3rd edn. (Wien, 2021) para. 11; Korinek and Rose-Kaan, (1981) ÖZW 65 (66).

[111] U. Torggler, *Gesellschaftsrecht AT* para. 419. See also F. Bydlinski, *System und Prinzipien des Privatrechts* (Wien, 1996) 142.

[112] Schauer, '§ 26 ABGB', para. 17; U. Torggler, *Gesellschaftsrecht AT* para. 419.

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the "natural" differences between physical and moral persons.[113] Exceptions may arise directly from the respective legal norms or from the branch of law at hand.[114]

Some regard § 26 sentence 2 ABGB as confined to private[115] or pecuniary law[116], while others interpret the clause as comprehensive.[117] Furthermore, it is sometimes stressed that the clause establishes a rule-exception relationship, meaning that any departure from the general equality between physical and moral persons requires argumentative justification.[118] Transposed to the fundamental rights context, this would place the doctrinal burden of argument on those who seek to confine protection to physical persons, rather than on those who seek to extend it to moral persons.

Parts of the older literature advanced far-reaching understandings of the principled equality of persons, conceptually not even excluding the application of family law provisions to moral persons:[119] Just as a treasurer may pocket money on their behalf, a representative could – theoretically – be appointed to enter into and consummate marriage, or even "administer punishment to the children"[120]. The argument was that a moral person can, in principle, do whatever a human being can do – only the latter directly and the former through human intermediaries.[121]

Within civil law scholarship, it was above all Ostheim who addressed the problems relevant here. § 26 ABGB, he argues, provides that moral persons possess *innate rights* (§ 16 ABGB; see also FN 9).[122] These correspond in their material content to what modern legal terminology refers to as personality rights and

[113] Koja, 'Die Rechtsfähigkeit der Wahlparteien und der politischen Parteien' (1958) *JBl* 487 (490); see also Antoniolli and Koja, *Allgemeines Verwaltungsrecht* 309.

[114] Schiemer, *Handkommentar zum Aktiengesetz*, 2nd edn. (Wien, 1986) § 1 para. 2.2.

[115] Koja, (1958) *JBl* 487 (490); Antoniolli and Koja, *Allgemeines Verwaltungsrecht* 309. See also Austrian VfGH VfSlg 1430.

[116] Ehrenzweig, *System des österreichischen allgemeinen Privatrechts* (Wien, 1925) vol. I/1, 191.

[117] Confer U. Torggler, *Gesellschaftsrecht AT* para. 420; Zeiller, *Commentar über das allgemeine bürgerliche Gesetzbuch für die gesammten Deutschen Erbländer der Oesterreichischen Monarchie* (Wien, 1813) § 26 para. 2 and 3.

[118] U. Torggler, *Gesellschaftsrecht AT* para. 420. See also Ostheim, *Zur Rechtsfähigkeit* 97 and Zeiller, *Commentar* § 26 para. 2.

[119] Wolff, '§ 26 ABGB', in Klang and Gschnitzer (eds.), *Kommentar zum Allgemeinen Bürgerlichen Gesetzbuch,* 2nd edn. (Wien, 1964) vol. I/1, 198.

[120] Burckhard, 'Zur Lehre von den juristischen Personen' (1891) *GrünhutsZ* 1 (30).

[121] Burckhard, (1891) *GrünhutsZ* 1 (30).

[122] Ostheim, *Zur Rechtsfähigkeit* 152.

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fundamental rights.[123] Before the latter were raised to the level of constitutionally guaranteed rights, they had already been attributed equally to physical and moral persons under § 26 ABGB.[124] A change in their essential material content did not occur through the elevation to constitutional rank, nor was their prior applicability to moral persons thereby excluded.[125] The historical development of fundamental rights in Austria, taken together with §§ 16, 26 ABGB, commands the application of constitutionally guaranteed fundamental rights provisions to moral persons, insofar as these, by their "essential nature" and purpose, do not require the human being as a psycho-physical creature.[126] In this, Ostheim argues, lies the justification for the recognition of fundamental rights to moral persons.[127]

7. Drawing on the Concept of Attribution

The prevailing approach, which treats provisions referring to human attributes and traits as confined from the outset to physical persons,[128] has occasionally been challenged. One author questions the use of human characteristics as the relevant point of comparison, since the outcome depends on the level of abstraction adopted.[129] The use of one's mother tongue, for example, would appear to be a right confined to physical persons, because only they possess the ability to speak and to write.[130] However, he argues, moral persons too must use a particular language in their dealings with public authorities – albeit through their corporate organs.[131] Seen in this way, the right to use a specific language cannot be regarded as a right that is, by its "essential nature", confined to physical persons.[132]

A similar view is advanced by Pernthaler, whose account perhaps offers the most detailed doctrinal treatment of the issue addressed here. He considers it theoretically

[123] Ostheim, *Zur Rechtsfähigkeit* 152.

[124] Ostheim, *Zur Rechtsfähigkeit* 152.

[125] Ostheim, *Zur Rechtsfähigkeit* 152.

[126] Ostheim, *Zur Rechtsfähigkeit* 152.

[127] Ostheim, *Zur Rechtsfähigkeit* 152 with FN 3.

[128] See just Austrian VfGH VfSlg 1408; VfSlg 1430; Dopplinger, *Die Grundrechtssubjektivität* 185.

[129] Kolonovits, *Sprachenrecht* 78.

[130] Kolonovits, *Sprachenrecht* 77 with a reference to Merkl, 'Europäische Volkstumsprobleme' (1944) *ZÖR* 304 (307).

[131] Kolonovits, *Sprachenrecht* 78.

[132] Kolonovits, *Sprachenrecht* 78.

unfounded to argue that moral persons can never have a religion, nationality, or other similar traits and that provisions referring to such traits are, *for that reason* (!), categorically unavailable to them.[133] Just as it is technically possible to normatively link such human qualities to non-human legal entities,[134] he argues, it is conversely also possible to determine the relevant qualities in relation to a specific moral person.[135]

Pernthaler's framework for the *analogous application*[136] of fundamental rights provisions to moral persons is grounded on the state's implicit conferral of such rights.[137] Each individual right, he argues, must be examined to determine whether it was the legislator's intention to also establish rights of moral persons;[138] in the analogous application, one can discern a transformation of individual rights into corporate rights.[139]

The first decisive criterion for this transformation is the type of fundamental right at issue. For Pernthaler, the applicability of subjective public rights to moral persons depends on their capacity for collective exercise. This is the case where, cumulatively, the legal good protected by the right in question implies a communal interest (material criterion), and the protected exercise of the will can be organised on a membership basis (or as a moral person in general; formal criterion).[140]

The second criterion for analogous application is the purpose or "nature" of the moral person concerned.[141] Pernthaler understands the issue at hand as a particular facet of the broader question of moral persons' legal capacity, which, in turn, he regards as inseparably linked to the purpose of the organisation concerned.[142] The

[133] Pernthaler, *Der Schutz* 54; Pernthaler, (1962) *Europa Ethnica* 50 (83).

[134] See the references in Pernthaler, *Der Schutz* 54 (FN 184).

[135] Pernthaler, *Der Schutz* 54; Pernthaler, *Bundesstaatsrecht* 634; Pernthaler, (1962) *Europa Ethnica* 50 (83).

[136] Pernthaler, *Der Schutz* 52; Pernthaler, 'Der Schutz der Gemeinschaften durch individuelle Rechte' (1962) *Europa Ethnica* 50 (80); Pernthaler, *Selbstverwaltung* 105. In his later work, Pernthaler simply speaks of the *applicability* or *transfer* of fundamental rights to moral persons, see Pernthaler, *Bundesstaatsrecht* 631 ff. Against the necessity of analogous application, see Dopplinger, *Die Grundrechtssubjektivität* 185.

[137] Pernthaler, *Der Schutz* 52; Pernthaler, (1962) *Europa Ethnica* 50 (81).

[138] Pernthaler, *Der Schutz* 52; Pernthaler, (1962) *Europa Ethnica* 50 (81).

[139] Pernthaler, *Der Schutz* 52; Pernthaler, (1962) *Europa Ethnica* 50 (82).

[140] Pernthaler, *Der Schutz* 53; Pernthaler, (1962) *Europa Ethnica* 50 (82).

[141] Pernthaler, *Der Schutz* 53; Pernthaler, *Selbstverwaltung* 106; Pernthaler, *Bundesstaatsrecht* 634.

[142] Pernthaler, *Der Schutz* 54; Pernthaler, (1962) *Europa Ethnica* 50 (82).

organisation's purpose, he argues, must therefore correspond to that of the fundamental right in question.[143]

IV. Notes

A. Methodological Considerations

From a methodological perspective, the relevant Austrian discourse spans a spectrum of textual, historical, systematic, teleological, and even comparative arguments. These different categories of arguments are each used both to support and to question the "fundamental-rights-holder status" of moral persons, whether broadly or *in concreto*, with different contributors drawing more heavily on certain categories. Some of the more in-depth analyses also consider whether the issue falls within interpretation in the strict sense or instead belongs to the realm of legal development.[144]

As shown, much of the scholarly literature and a strand of the VfGH's case law approach the topic with pronounced conceptual caution. A closer look reveals that this cautious tenor is rooted predominantly in textual and historical arguments (see III.C.1. and III.C.2.). Considerable importance is placed on the human-centred phrasing of fundamental rights provisions. At the same time, some of the historical arguments advanced reveal traces of a natural-law understanding of constitutional guarantees as *human rights*.[145] This contrasts with the Reichsgericht's broad approach, which placed little importance on the anthropocentric phrasing of the StGG and rarely used textual arguments in a restrictive manner.[146] This is noteworthy because historical considerations are often invoked in support of a more cautious approach (see III.C.1.), whereas the Reichsgericht's formative early case law emerged in much closer temporal proximity to the StGG's enactment and its legislative process.[147]

Overall, the scholarly debate – with a few notable exceptions – is not marked by a high degree of methodological transparency and dogmatic reflection. This can be explained, in part, by its strong orientation towards the VfGH's relevant case law.[148]

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[143] Pernthaler, *Der Schutz* 56.

[144] See in particular FN 136; see also Pernthaler, *Der Schutz* 54, according to whom the question at hand is not who the immediate subject of a specific right is, but whether the right is applicable *mutatis mutandis* to a moral person.

[145] See also, for the German debate, Jung, *Unternehmergesellschafter* 502.

[146] See III.B. with further references.

[147] See also Zußner, 'Art 14 StGG', para. 42.

[148] See also Kolonovits, *Sprachenrecht* 77; Pernthaler, *Der Schutz* 56.

This case law is invoked in most instances without any critical engagement with its conceptual foundations or doctrinal coherence.

B. On the "Essential Nature" Formula in Particular

The prominent use of the "essential nature" formula (see III.C.5.), in particular, warrants closer methodological scrutiny. The formula's main merit lies in its reductive function; it makes evident that the topic admits of no general resolution but instead necessitates delineation.[149] In this respect, it retains a certain didactic value and functions as a convenient catchphrase[150] for the VfGH's case law.

This merit, however, is offset by its methodological opacity and general vagueness, which renders it of little *doctrinal* utility. Most importantly, the formula proves ill-suited as a point of departure for addressing individual questions.[151] At most, it manages to formulate the issue to be tackled.

As is typical of arguments of this kind, the "essential nature" formula functions as a proxy argument[152] – an argumentative façade behind which other premises are concealed. These premises, however, remain obscured by the invocation of the "essential nature" proxy, which weakens the rational integrity of the legal reasoning and makes intersubjective verifiability virtually impossible. By arguing in this manner, one can maintain a degree of ambiguity in the reasoning, while convincing oneself and others of the supposed necessity of a given result.[153]

Furthermore, shifting the focus from the interpretation of concrete provisions to the vague[154] scholarly notion of a supposed "essential nature" makes it harder to conceptualise the issue in a coherent way (see, on that, IV.C.).[155] Moreover, the Austrian constitutional framework provides no relevant normative grounds that could

[149] Pernthaler's label of the formula as *stereotypical* appears to target precisely this reductive, shortcut-like use; see Pernthaler, *Selbstverwaltung* 106.

[150] On the "nature of things" argument and its function as a catchword, see Dreier, *Zum Begriff der Natur der Sache* (Berlin, 1965).

[151] Similarly, concerning "essential nature" references in another context, U. Torggler, *Die Verbandsgründung* 161.

[152] Scheuerle speaks of a *crypto-argument*, see Scheuerle, 'Das Wesen des Wesens' (1964) *AcP* 429 (430).

[153] Röhl and Röhl, *Allgemeine Rechtslehre – ein Lehrbuch*, 3rd edn. (Köln, 2008) 131.

[154] Röhl and Röhl, *Allgemeine Rechtslehre* 131.

[155] See also Laurer, *Wirtschafts- und Steueraufsicht* 136.

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justify recourse to this ambivalent notion. By contrast, Article 19(3) GG expressly employs the term,[156] making engagement with it unavoidable in the German context.

These observations apply equally to sporadic appeals to "legal common sense"[157] or the "nature of things"[158]. As far as the VfGH is concerned, occasional reliance on such vague notions is perhaps not surprising,[159] as the Court's primary task of resolving individual cases calls for a degree of argumentative economy. Scholarship, however, should aim for a higher degree of methodological transparency in its reasoning. Therefore, the widespread recourse to such vague notions in this context merits critical reconsideration.

C. At the Core, a Problem of Norm Application

A point rarely made explicit in the Austrian debate is that, from a structural perspective, the topic at hand, at least at its core, can be understood as a bundle of *norm-application problems* tied to the very concept of the moral person.[160] Seen in this light, the questions discussed here are by no means unique in kind.[161] Similar

[156] See FN 77.

[157] See Heißl, (2016) *ZÖR* 215 (218) '*natürlicher Menschen- bzw Juristenverstand*'.

[158] Zierl, (1984) *ÖJZ* 113.

[159] Notably, the VfGH resorts to such references only selectively in this context (see VfSlg 1408; VfSlg 1430; VfSlg 10.547; VfSlg 15.668). The literature, by contrast, invokes them with striking frequency.

[160] See also Serick, *Rechtsform* 119 f; Jung, *Unternehmergesellschafter* 1 ff. Although such norm-application considerations lie at the core of every subsumptive operation, they are often bypassed in thought and reasoning for the sake of brevity. This also holds true for the debate examined above, which is predominantly conducted within a subjective rights perspective, focusing on whether moral persons can "have" or "hold" fundamental rights – see Hengstschläger and Leeb, *Grundrechte* para. 1/45; Berka, 'Vorbem StGG', para. 55; Koja, (1958) *JBl* 487 (491); Ermacora, *Der Verfassungsgerichtshof* 334 ff. While this shorthand framing may very well be understood as pointing to a problem of norm application, it nonetheless makes a transparent and theoretically sound engagement with the subject more difficult. It also leads to the "objective-law dimensions" of fundamental rights provisions receiving little attention in this context.

[161] See also Laurer, *Wirtschafts- und Steueraufsicht* 136.

questions arise, for example, in areas of tort law[162], in contract law[163], or even in civil procedure law[164].

These norm-application problems are structurally rooted in the *personality deficit*[165] inherent to the moral person.[166] Because the moral person's legal sphere is, as a rule, separate from that of its personal substrate (principle of separation[167]), applicability of any given provision depends on whether the moral person *itself* fulfils the provision's normative elements. At the same time, the fictive moral person is of course not equivalent to a psycho-physical human being.[168] *By itself*, it can neither act[169] nor, for example, hold beliefs, possess a conscience, or adhere to a confession. These "natural differences"[170] become salient whenever provisions contain human-specific normative elements.[171] Fundamental rights provisions often contain elements of this kind.

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[162] For example, when discussing protection of honour for moral persons, see Danzl, '§ 1330 ABGB', in Fenyves, Kerschner and Vonkilch (eds.), *Großkommentar zum ABGB – Klang-Kommentar*, 3rd edn. (Wien, 2022) para. 25 ff. Regarding protection of privacy, see also Danzl, '§ 1328a ABGB', in Fenyves, Kerschner and Vonkilch (eds.), Großkommentar zum ABGB – Klang-Kommentar, 3rd edn. (Wien, 2023) para. 20 ff.

[163] For example, when discussing the revocation of gifts on grounds of gross ingratitude (§ 948 ABGB), see Jabornegg, 'Die Lehre vom Durchgriff im Recht der Kapitalgesellschaften – 2. Teil' (1989) *WBl* 43 (45).

[164] For example, when discussing exemptions from execution against assets, see Mohr, 'Pfändungsschutz des Gesellschafter-Geschäftsführers nach § 250 Abs 1 Z 2 EO' (2020) *ecolex* 196.

[165] Jung, *Unternehmergesellschafter* 1.

[166] "Personality problem", see F. Klein, *Die neueren Entwicklungen in Verfassung und Recht der Aktiengesellschaft* (Wien, 1904) 56.

[167] See Rauter, in Straube, *Fachwörterbuch zum Handels- und Gesellschaftsrecht* (Wien, 2005) 306; Heider, '§ 1 AktG', in Bayer, Goette and Habersack (eds.), *Münchener Kommentar zum Aktiengesetz*, 6th edn. (München, 2024) para. 47; Jabornegg, 'Die Lehre vom Durchgriff im Recht der Kapitalgesellschaften – 1. Teil' (1989) *WBl* 1; S.-F. Kraus and U. Torggler, '§ 61 GmbHG', para. 7 f; U. Torggler, *Die Verbandsgründung* 497.

[168] See also Ostheim, *Zur Rechtsfähigkeit* 152; Zöllner, *Die Schranken mitgliedschaftlicher Stimmrechtsmacht bei den privatrechtlichen Personenverbänden* (München, 1963) 18; Silaghi and Torggler, 'Personalunion und Insichgeschäfte im GmbH-Konzern – eine Skizze', in Auer, Harrer and Steiner (eds.), *Gedenkschrift Hans-Georg Koppensteiner* (Wien, 2026) 367 (370 with FN 26). One could also speak of the unique biological and intellectual position of the human being, see Arnold and Kirchhefer-Lauber, 'Rechtlicher Anthropozentrismus und Künstliche Intelligenz' (2024) *ARSP* 265 (276).

[169] See U. Torggler, *Gesellschaftsrecht AT* para. 484 and 488; Heider, '§ 1 AktG', para. 42.

[170] Antoniolli and Koja, *Allgemeines Verwaltungsrecht* 309.

[171] See Serick, *Rechtsform* 119 f.

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Against this backdrop, the prevailing Austrian view,[172] following a strand of the VfGH's case law,[173] takes fundamental rights provisions with distinctly human normative elements to be inapplicable to moral persons, *because* moral persons lack the traits or abilities those provisions presuppose (see III.C.5.). At its core, this argument rests on an "ontological" distinction.[174] This raises theoretical unease. Furthermore, as some scholars have rightly pointed out, the law can normatively *ascribe* distinctly human attributes to moral persons,[175] the technical mechanism (ultimately) being the use of legal fiction. Accordingly, the outlined understanding is, at the very least, not dictated by any conceptual barrier.

Moreover, if applied consistently, such a strict understanding of the moral person's legal separateness would exclude it from a broad range of norms, merely because of their human-oriented wording[176] – leading to untenable results[177]. Such an approach therefore appears too indeterminate to provide a convincing doctrinal basis for adequate delineation. Categorically excluding the possibility of *attributing* legally relevant traits and actions to the moral person – in whatever form[178] – runs counter to the very mechanism by which it operates. It is therefore not surprising that its principled legal separateness is generally understood as non-absolute.[179] This was already recognised, at least in substance, in the case law of the Reichsgericht[180] and – in other contexts – by the VfGH.[181]

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[172] See III.C.5. with further references.

[173] See, for example, Austrian VfGH VfSlg 1430; VfSlg 5044; VfSlg 8968; VfSlg 13.511.

[174] Similarly, Kolonovits, *Sprachenrecht* 78.

[175] See just Pernthaler, (1962) *Europa Ethnica* 50 (83) with examples.

[176] See just §§ 871(1), 875, 879(2)(4), 1228a, 1330(1) ABGB.

[177] On provisions that refer to a party's own "knowledge", see Grasser, *Wissenszurechnung im österreichischen Kapitalgesellschaftsrecht* (Wien, 2023) 1.

[178] Beyond attribution via corporate bodies, corporate law literature recognises that attribution may, under certain circumstances, occur by looking through to the persons behind the moral person (piercing the corporate veil; *Zurechnungsdurchgriff*) – see U. Torggler, *Gesellschaftsrecht AT* para. 540 f; Kübler and Assmann, *Gesellschaftsrecht*, 6th edn. (Heidelberg, 2006) 366 ff. See also Pernthaler, *Der Schutz* 54 f.

[179] See Jabornegg, (1989) *WBl* 1; Artmann and Karollus, '§ 1 AktG – Begriff der Aktiengesellschaft', para. 48 ff; Schauer, '§ 26 ABGB', para. 24 ff.

[180] See FN 50 and FN 53.

[181] See, for example, Austrian VfGH VfSlg 12.227.

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Seriously tackling the issue outlined above from the perspective of norm application requires determining the precise boundaries of a moral person's status as a fictive, self-standing legal subject, while taking into account its structure[182] and substrate[183] and, crucially, the purpose of the specific provision at issue[184] in order to assess whether its application is legally warranted. Under this approach, attention shifts away from abstract "ontological" reflections and towards whether a sufficient link can be identified between the specific case and the provision at issue. This process necessarily relies on interpretation, both of fundamental rights provisions and of the sub-constitutional law governing the moral person at hand; it also entails engaging with methods of legal development that operate beyond the literal text.[185]

V. Conclusion

The Austrian discourse on moral persons as addressees of genuinely national fundamental rights provisions spans multiple centuries. It comprises both a large number of relevant scholarly contributions and a considerable body of case law. There is broad consensus that moral persons are addressees of *certain* fundamental rights provisions. At the same time, much of the discussion remains dogmatically rather shallow and methodologically opaque, while its overall tenor is generally cautious. Against this backdrop, the issue may usefully be reframed as one of norm application.

VI. Bibliography

A. Primary Sources

Austrian Reichsgericht 24 October 1870, B 134, Hye 6

Austrian Reichsgericht 25 April 1877, B 91, Hye 129

Austrian Reichsgericht 26 April 1877, B 92, Hye 130

Austrian Reichsgericht 26 October 1878, B 220, Hye 176

Austrian Reichsgericht 12 July 1880, B 121, Hye 219

[182] See John, *Die organisierte Rechtsperson* (Berlin, 1977) 228 with FN 41.

[183] See Müller-Freienfels, 'Zur Lehre vom sogenannten "Durchgriff" bei juristischen Personen im Privatrecht' (1958) *AcP* 522 (531).

[184] See Jabornegg, (1989) *WBl* 1 (3); Müller-Freienfels, (1958) *AcP* 522.

[185] Emphasising the relevance of legal development in this context, Bernatzik, (1890) *AöR* 169 (272 f); see also Kolonovits, *Sprachenrecht* 81; Pernthaler, *Der Schutz* 52.

Austrian Reichsgericht 10 July 1882, B 127, Hye 259

Austrian Reichsgericht 18 April 1887, B 51, Hye 393

Austrian Reichsgericht 17 October 1887, B 159, Hye 404

Austrian Reichsgericht 21 April 1890, B 41, Hye 481

Austrian Reichsgericht 10 January 1898, B 427, Hye 844

Austrian Reichsgericht 20 January 1900, B 434, Hye 985

Austrian Reichsgericht 3 July 1906, B 264, Hye 1439

Austrian Reichsgericht 22 October 1910, B 434, Hye 1809

Austrian VfGH 5 May 1919, B 122, VfSlg (old compilation 1919-1920) 5

Austrian VfGH 18 March 1926, B 74/25, VfSlg 552

Austrian VfGH 9 March 1927, B 467/26 and B 6/27, VfSlg 774

Austrian VfGH 7 November 1927, B 29/27, VfSlg 881

Austrian VfGH 27 February 1928, B 36 and B 52/27, VfSlg 949

Austrian VfGH 19 October 1928, B 18/28, VfSlg 1082

Austrian VfGH 21 February 1929, B 38/28, VfSlg 1141

Austrian VfGH 25 June 1929, B 7/29, VfSlg 1226

Austrian VfGH 7 December 1929, B 37/29, VfSlg 1267

Austrian VfGH 9 December 1929, B 41/29, VfSlg 1271

Austrian VfGH 12 December 1929, B 28/29, VfSlg 1279

Austrian VfGH 1 July 1930, B 57/29, VfSlg 1332

Austrian VfGH 9 January 1931, B 38/30, VfSlg 1371

Austrian VfGH 9 January 1931, B 32/30, VfSlg 1372

Austrian VfGH 17 March 1931, B 41/30, VfSlg 1383

Austrian VfGH 23 June 1931, B 41/31, VfSlg 1408

Austrian VfGH 8 February 1932, B 62/31, VfSlg 1430

Austrian VfGH 6 June 1932, B 66/31, VfSlg 1459

Austrian VfGH 24 March 1933, B 42/32, VfSlg 1519

Austrian VfGH 5 March 1951, B 119/50, VfSlg 2088

Austrian VfGH 15 October 1957, B 236/57, VfSlg 3254

Austrian VfGH 9 March 1959, B 175/58, VfSlg 3495

Austrian VfGH 19 December 1959, B 189/59, VfSlg 3668

Austrian VfGH 24 March 1960, B 278/58, VfSlg 3703

Austrian VfGH 16 March 1961, B 177/60 and B 178/60, VfSlg 3930

Austrian VfGH 15 March 1965, B 159/64, VfSlg 4940

Austrian VfGH 27 September 1965, B 41/65, VfSlg 5044

Austrian VfGH 11 December 1965, B 28/65, VfSlg 5161

Austrian VfGH 27 February 1967, B 351/66, VfSlg 5453

Austrian VfGH 29 June 1967, B 14/67, VfSlg 5531

Austrian VfGH 12 December 1969, B 202/69, VfSlg 6095

Austrian VfGH 6 March 1972, B 211/71, VfSlg 6665

Austrian VfGH 7 December 1973, B 176/73, VfSlg 7230

Austrian VfGH 5 October 1974, B 162/73, VfSlg 7380

Austrian VfGH 29 November 1980, B 207/76, VfSlg 8968

Austrian VfGH 27 September 1985, B 643/82, VfSlg 10.547

Austrian VfGH 28 February 1989, B 1710/88, VfSlg 11.981

Austrian VfGH 30 November 1989, G 139/88, VfSlg 12.227

Austrian VfGH 23 March 1993, B 534/92, VfSlg 13.405

Austrian VfGH 27 September 1993, B 1019/92, VfSlg 13.511

Austrian VfGH 27 September 1993, B 1122/92, VfSlg 13.513

Austrian VfGH 1 December 1999, B 2835/96, VfSlg 15.668

Austrian VfGH 3 March 2000, G 172/99, VfSlg 15.739

Austrian VfGH 25 November 2002, B 792/02, VfSlg 16.703

Austrian VfGH 21 June 2004, B 531/02, VfSlg 17.230

Austrian VfGH 5 October 2011, G 26/10 ua, VfSlg 19.522

Austrian VfGH 29 February 2012, B 945/11, VfSlg 19.615

Austrian VfGH 14 March 2012, U 466/11, VfSlg 19.632

Austrian VfGH 29 September 2012, B 54/12 ua, VfSlg 19.673

US Supreme Court Citizens United v. FEC, 558 U.S. 310 (2010)

US Supreme Court Burwell v. Hobby Lobby Stores, Inc., 573 U.S. 682 (2014)

B. Secondary Sources

Adamovich, Ludwig, Funk, Bernd-Christian, Holzinger, Gerhart and Frank, Leo, *Österreichisches Staatsrecht – Band 3: Grundrechte,* 3rd edn. (Wien, 2019)

Aicher, Josef, '§ 26 ABGB', in Peter Rummel and Meinhard Lukas (eds.), *ABGB*, 4th edn. (Wien, 2015)

Aicher, Josef, Kraus, Sixtus-Ferdinand and Spendel, Fabian, '§ 61 GmbHG', in Manfred Straube, Thomas Ratka and Alexander Rauter (eds.), *Wiener Kommentar zum GmbH-Gesetz* (Wien, 2022)

Alexy, Robert, *Theorie der Grundrechte*, 9th edn. (Frankfurt am Main, 2020)

Antoniolli, Walter and Koja, Friedrich, *Allgemeines Verwaltungsrecht – Lehr- und Handbuch für Studium und Praxis,* 3rd edn. (Wien, 1996)

Arnold, Stefan and Kirchhefer-Lauber, Anna, 'Rechtlicher Anthropozentrismus und Künstliche Intelligenz' (2024) *Archiv für Rechts- und Sozialphilosophie (ARSP)* 265

Artmann, Eveline and Karollus, Martin, '§ 1 AktG – Begriff der Aktiengesellschaft', in Eveline Artmann and Martin Karollus (eds.), *Kommentar zum Aktiengesetz,* 6th edn. (Wien, 2018)

Avi-Yonah, Reuven, 'Citizens United and the Corporate Form' (2011) *Accounting, Economics, and Law* 1

Baldegger, Mirjam, *Menschenrechtsschutz für juristische Personen in Deutschland, der Schweiz und den Vereinigten Staaten* (Berlin, 2017)

Bammer, Armin, 'Einleitung', in Peter Doralt, Christian Nowotny and Susanne Kalss (eds.), *Privatstiftungsgesetz* (Wien, 1995)

Benke, Nikolaus and Steindl, Peter, '§§ 26, 27 ABGB', in Attila Fenyves, Ferdinand Kerschner and Andreas Vonkilch (eds.), *Großkommentar zum ABGB – Klang-Kommentar*, 3rd edn. (Wien, 2014)

Berchtold, Klaus, 'Das Recht auf ein Verfahren vor dem gesetzlichen Richter', in Rudolf Machacek, Willibald Pahr and Gerhard Stadler (eds.), *Grund- und Menschenrechte in Österreich – 40 Jahre EMRK – Wesen und Werte* (Kehl am Rhein, 1992) vol. II, 711

Berka, Walter, *Die Grundrechte – Grundfreiheiten und Menschenrechte in Österreich* (Wien, 1999)

Berka, Walter, *Verfassungsrecht – Grundzüge des österreichischen Verfassungsrechts für das juristische Studium,* 8th edn. (Wien, 2021)

Berka, Walter, 'Vorbem StGG', in Benjamin Kneihs and Georg Lienbacher (eds.), *Rill-Schäffer-Kommentar Bundesverfassungsrecht* (Wien, 2001)

Berka, Walter, Binder, Christina and Kneihs, Benjamin, *Die Grundrechte – Grund- und Menschenrechte in Österreich,* 2nd edn. (Wien, 2019)

Berka, Walter, 'Die Kommunikationsfreiheit sowie die Informationsfreiheit, Freiheit der Meinungsäußerung, Pressefreiheit und Zensurverbot', in Rudolf Machacek, Willibald Pahr and Gerhard Stadler (eds.), *Grund- und Menschenrechte in Österreich – 40 Jahre EMRK – Wesen und Werte* (Kehl am Rhein, 1992) vol. II, 393

Bernatzik, Edmund, 'Kritische Studien über den Begriff der juristischen Person und über die juristische Persönlichkeit der Behörden insbesondere' (1890) *Archiv des öffentlichen Rechts (AöR)* 169

Bezemek, Christoph, *Grundrechte in der Rechtsprechung der Höchstgerichte* (Wien, 2016)

Binder, Bruno, 'Die verfassungsrechtliche Sicherung der Wissenschaftsfreiheit in Österreich' (1973) *Wissenschaftsrecht, Wissenschaftsverwaltung, Wissenschaftsförderung* 1

Brauneder, Wilhelm, 'Von der moralischen Person des ABGB zur juristischen Person der Privatrechtswissenschaft' (1982/83) *Quaderni Fiorentini* 263

Buccola, Vincent, 'Corporate Rights and Organizational Neutrality' (2016) *Iowa Law Review* 499

Burckhard, Max Eugen, 'Zur Lehre von den juristischen Personen' (1891) *Zeitschrift für das Privat- und öffentliche Recht der Gegenwart, begründet von Grünhut (GrünhutsZ)* 1

Bydlinski, Franz, *System und Prinzipien des Privatrechts* (Wien, 1996)

Dantscher von Kollesberg, Theodor Ritter, *Die politischen Rechte der Unterthanen* (Wien, 1892) vol. III

Danzl, Karl-Heinz, '§ 1330 ABGB', in Attila Fenyves, Ferdinand Kerschner and Andreas Vonkilch (eds.), *Großkommentar zum ABGB – Klang-Kommentar*, 3rd edn. (Wien, 2022)

Danzl, Karl-Heinz, '§ 1328a ABGB', in Attila Fenyves, Ferdinand Kerschner and Andreas Vonkilch (eds.), *Großkommentar zum ABGB – Klang-Kommentar*, 3rd edn. (Wien, 2023)

Dopplinger, Lorenz, *Die Grundrechtssubjektivität staatlicher Akteure – Eine rechtsvergleichende Analyse des Grundrechtsverhältnisses* (Wien, 2020)

Dopplinger, Lorenz, 'Legal Persons as Bearers of Rights Under the ECHR' (2021) *University of Vienna Law Review (VLR)* 1

Dreier, Ralf, *Zum Begriff der Natur der Sache* (Berlin, 1965)

Eberhard, Gerald Anselm, 'Inländer-Grundrechte im Lichte des Gemeinschaftsrechts' (2001) *Juristische Blätter (JBl)* 294

Eberhard, Harald, 'Der Begründungsstil des österreichischen Verfassungsgerichtshofs' (2024) *Zeitschrift für öffentliches Recht (ZÖR)* 471

Eckert, Georg, Schopper, Alexander and Reheis, Johannes, '§ 1 AktG – Begriff der Aktiengesellschaft', in Georg Eckert and Alexander Schopper (eds.), *AktG-ON – Kommentar zum Aktiengesetz* (Wien, 2021)

Ehrenzweig, Armin, *System des österreichischen allgemeinen Privatrechts* (Wien, 1925) vol. I/1

Ermacora, Felix, *Der Verfassungsgerichtshof – Rechtsgrundlagen und kommentarmäßige Erläuterungen unter besonderer Berücksichtigung der Rechtsprechung der Gerichtshöfe öffentlichen Rechtes* (Graz, 1956)

Ermacora, Felix, *Handbuch der Grundfreiheiten und der Menschenrechte* (Wien, 1963)

Ermacora, Felix, 'Die Grundrechte in Österreich', in Karl August Bettermann, Franz Neumann and Hans Carl Nipperdey (eds.), *Die Grundrechte – Handbuch der Theorie und Praxis der Grundrechte* (Berlin, 1966) vol. I/1, 129

Ermacora, Felix, *Grundriß der Menschenrechte in Österreich* (Wien, 1988)

Feik, Rudolf, 'Der räumliche und persönliche Geltungsbereich der Grundrechte in der Judikatur des VfGH' (1999) *Zeitschrift für öffentliches Recht (ZÖR)* 19

Fellner, Marie-Luise, *Persönlichkeitsschutz juristischer Personen* (Graz, 2007)

Fleischer, Holger, 'Fiktionstheorie versus Theorie der realen Verbandspersönlichkeit im internationalen Diskurs', in Holger Fleischer, Jens Koch and Ulrich Schmolke (eds.), *Gesellschaftsrecht im Spiegel großer Debatten* (Berlin, 2024) 31

Foglar-Deinhardstein, Andreas, '§ 1 AktG', in Elke Napokoj, Heinrich Foglar-Deinhardstein and Michaela Pelinka (eds.), *AktG Praxiskommentar* (Wien, 2019)

Fröhler, Ludwig, 'Der Grundrechtsschutz der interessenvertretenden Körperschaften des öffentlichen Rechts', in Heinz Schäffer, Klaus König and Kurt Ringhofer (eds.), *Im Dienst an Staat und Recht – Internationale Festschrift Erwin Melichar zum 70. Geburtstag* (Wien, 1983) 9

Gall, Mario, '§ 1 AktG', in Peter Doralt, Christian Nowotny and Susanne Kalss (eds.), *AktG – Kommentar,* 3rd edn. (Wien, 2021)

Grabenwarter, Christoph, 'Entwurf eines Grundrechtskataloges für eine neue österreichische Bundesverfassung', in Österreich-Konvent, *Anlage A zum Bericht des Ausschusses 4 – Grundrechtskatalog* (2004) 43

Grasser, Philipp, *Wissenszurechnung im österreichischen Kapitalgesellschaftsrecht* (Wien, 2023)

Hammer, Stefan, 'zu Artikel 17 Abs 1 StGG', in Karl Korinek, Michael Holoubek, Christoph Bezemek, Claudia Fuchs, Andrea Martin and Ulrich E. Zellenberg (eds.), *Österreichisches Bundesverfassungsrecht,* 12th edn. (Wien, 2016)

Heider, Karsten, '§ 1 AktG', in Walter Bayer, Wulf Goette and Mathias Habersack (eds.), *Münchener Kommentar zum Aktiengesetz*, 6th edn. (München, 2024)

Heißl, Gregor, 'Grundrechtsträgerschaft juristischer Personen' (2016) *Zeitschrift für öffentliches Recht (ZÖR)* 215

Hengstschläger, Johannes and Leeb, David, *Grundrechte*, 4th edn. (Wien, 2024)

Hiesel, Martin, 'Der Roberts Court. Geschichte, Gegenwart und Zukunft' (2016) *Zeitschrift für öffentliches Recht (ZÖR)* 623

Himberger, Simon, *Fernmeldegeheimnis und Überwachung – Schutzbereiche und Eingriffe, Durchführung und Kosten* (Wien, 2004)

Holoubek, Michael, 'zu Artikel 7 Abs 1 Sätze 1 und 2 B-VG (und Artikel 20 GRC)', in Karl Korinek, Michael Holoubek, Christoph Bezemek, Claudia Fuchs, Andrea Martin and Ulrich E. Zellenberg (eds.), *Österreichisches Bundesverfassungsrecht,* 14th edn. (Wien, 2018)

Jabornegg, Peter, 'Die Aktiengesellschaft als juristische Person (II)' (1989) *Zeitschrift für Gesellschafts- und Unternehmensrecht (GesRZ)* 13

Jabornegg, Peter, 'Die Lehre vom Durchgriff im Recht der Kapitalgesellschaften – 1. Teil' (1989) *Wirtschaftsrechtliche Blätter (WBl)* 1

Jabornegg, Peter, 'Die Lehre vom Durchgriff im Recht der Kapitalgesellschaften – 2. Teil' (1989) *Wirtschaftsrechtliche Blätter (WBl)* 43

Jabornegg, Peter, '§ 1 AktG', in Peter Jabornegg and Rudolf Strasser (eds.), *Kommentar zum Aktiengesetz,* 4th edn. (Wien, 2006)

Jellinek, Georg, *System der subjektiven öffentlichen Rechte* (Freiburg, 1892)

John, Uwe, *Die organisierte Rechtsperson* (Berlin, 1977)

Jung, Peter, *Der Unternehmergesellschafter als personaler Kern der rechtsfähigen Gesellschaft* (Tübingen, 2002)

Kalss, Susanne, 'Europarechtliche und verfassungsrechtliche Rahmenbedingungen für das Umwandlungsrecht' (1995) *Juristische Blätter (JBl)* 420

Kelsen, Hans, *Reine Rechtslehre* (Wien, 1934)

Khakzadeh, Lamiss, 'Art 4 StGG', in Arno Kahl, Lamiss Khakzadeh and Sebastian Schmid (eds.)*, Kommentar zum Bundesverfassungsrecht – B-VG und Grundrechte* (Wien, 2021)

Khakzadeh, Lamiss, 'Art 7 B-VG', in Arno Kahl, Lamiss Khakzadeh and Sebastian Schmid (eds.)*, Kommentar zum Bundesverfassungsrecht – B-VG und Grundrechte* (Wien, 2021)

Kingreen, Thorsten and Möslein, Florian, 'Die Identität der juristischen Person: Die Hobby Lobby-Entscheidung des U.S. Supreme Court zur Glaubensfreiheit gewinnorientierter Kapitalgesellschaften' (2016) *JuristenZeitung (JZ)* 57

Klaushofer, Reinhard, 'Die menschenrechtliche Dimension Künstlicher Intelligenz' (2019) *Zeitschrift für öffentliches Recht (ZÖR)* 399

Klecatsky, Hans R., 'Die Glaubens- und Gewissensfreiheit und die Rechtsstellung der gesetzlich anerkannten Kirchen und Religionsgesellschaften', in Rudolf Machacek, Willibald Pahr and Gerhard Stadler (eds.), *Grund- und Menschenrechte in Österreich – 40 Jahre EMRK – Wesen und Werte* (Kehl am Rhein, 1992) vol. II, 489

Klein, Franz, *Die neueren Entwicklungen in Verfassung und Recht der Aktiengesellschaft* (Wien, 1904)

Kneihs, Benjamin, 'Besondere Diskriminierungsgründe und allgemeine Gleichheit' (2019) *Zeitschrift für öffentliches Recht (ZÖR)* 729

Koch, Bernhard A., 'zu § 26 ABGB', in Peter Bydlinski, Stefan Perner and Martin Spitzer (eds.), *Kommentar zum ABGB,* 7th edn. (Wien, 2023)

Koja, Friedrich, 'Die Rechtsfähigkeit der Wahlparteien und der politischen Parteien' (1958) *Juristische Blätter (JBl)* 487

Koja, Friedrich, *Allgemeine Staatsrechtslehre* (Wien, 1993)

Kolonovits, Dieter, *Sprachenrecht in Österreich* (Wien, 1999)

Koppensteiner, Hans-Georg and Rüffler, Friedrich, '§ 61 GmbHG', in Hans-Georg Koppensteiner and Friedrich Rüffler (eds.), *GmbH-Gesetz*, 3rd edn. (Wien, 2007)

Korinek, Karl, 'zu Artikel 5 StGG', in Karl Korinek, Michael Holoubek, Christoph Bezemek, Claudia Fuchs, Andrea Martin and Ulrich E. Zellenberg (eds.), *Österreichisches Bundesverfassungsrecht,* 5th edn. (Wien, 2002)

Korinek, Karl and Rose-Kaan, Christine, 'Rechtsprobleme um die ORF-Nachlese' (1981) *Österreichische Zeitschrift für Wirtschaftsrecht (ÖZW)* 65

Kraus, Sixtus-Ferdinand and Torggler, Ulrich, '§ 61 GmbHG', in Ulrich Torggler (ed.), *GmbHG – Kurzkommentar* (Wien, 2014)

Kraus, Sixtus-Ferdinand, '§ 1 FlexKapGG', in Hermann Schneeweiss and Florian Hule (eds.), *FlexKapGG Praxiskommentar* (Wien, 2024)

Kreissl, Christina, *Die Religionsfreiheit juristischer Personen im Sinne des Art. 19 Abs. 3 GG* (Baden-Baden, 2020)

Kröll, Thomas, 'Art 17 Abs 1, 5 StGG', in Benjamin Kneihs and Georg Lienbacher (eds.), *Rill-Schäffer-Kommentar Bundesverfassungsrecht,* 13th edn. (Wien, 2014)

Kronthaler, Christoph, '§ 26 ABGB', in Michael Schwimann and Matthias Neumayr (eds.), *ABGB Taschenkommentar,* 6th edn. (Wien, 2023)

Kübler, Friedrich and Assmann, Heinz-Dieter, *Gesellschaftsrecht*, 6th edn. (Heidelberg, 2006)

Kucsko-Stadlmayer, Gabriele, 'Die allgemeinen Strukturen der Grundrechte', in Detlef Merten and Hans-Jürgen Papier (eds.), *Handbuch der Grundrechte in Deutschland und Europa – Grundrechte in Österreich, der Schweiz und in Liechtenstein – Grundrechte in Österreich,* 2nd edn. (Heidelberg, 2014) vol. VII/1, 95

Kucsko-Stadlmayer, Gabriele, 'zu Artikel 3 StGG', in Karl Korinek, Michael Holoubek, Christoph Bezemek, Claudia Fuchs, Andrea Martin and Ulrich E. Zellenberg (eds.), *Österreichisches Bundesverfassungsrecht,* 4th edn. (Wien, 2001)

Laurer, Hans René, *Wirtschafts- und Steueraufsicht über Kredit- und Versicherungsunternehmungen* (Wien, 1972)

Loebenstein, Edwin, 'Die Behandlung des österreichischen Grundrechtskataloges durch das Expertenkollegium zur Neuordnung der Grund- und Freiheitsrechte', in Rudolf Machacek, Willibald Pahr and Gerhard Stadler (eds.), *Grund- und Menschenrechte in Österreich – 70 Jahre Republik – Grundlagen, Entwicklungen und internationale Verbindungen* (Kehl am Rhein, 1991) vol. I, 365

Marschhäuser, Kevin, *Die Grundrechtsberechtigung juristischer Personen im Europäischen Verfassungsverbund* (Berlin, 2020)

Mayer, Heinz, Kucsko-Stadlmayer, Gabriele and Stöger, Karl, *Grundriss des österreichischen Bundesverfassungsrechts,* 11th edn. (Wien, 2015)

Merkl, Adolf Julius, 'Europäische Volkstumsprobleme' (1944) *Zeitschrift für öffentliches Recht (ZÖR)* 304

Merten, Detlef, 'Mischunternehmer als Grundrechtsträger', in Erwin Bernat, Elisabeth Böhler and Arthur Weilinger (eds.), *Festschrift Heinz Krejci zum 60. Geburtstag: Zum Recht der Wirtschaft* (Wien, 2001) vol. II, 2003

Mertens, Hans-Joachim, 'Die Grundrechtsfähigkeit der juristischen Person und das Gesellschaftsrecht' (1989) *Juristische Schulung (JuS)* 857

Mohr, Franz, 'Pfändungsschutz des Gesellschafter-Geschäftsführers nach § 250 Abs 1 Z 2 EO' (2020) *ecolex* 196

Müller, Andreas, 'Art 17a StGG', in Arno Kahl, Lamiss Khakzadeh and Sebastian Schmid (eds.)*, Kommentar zum Bundesverfassungsrecht – B-VG und Grundrechte* (Wien, 2021)

Müller, Jörg Paul and Baldegger, Mirjam, 'Grundrechte juristischer Personen', in Eugen Bucher, Claus-Wilhelm Canaris, Heinrich Honsell and Thomas Koller (eds.), *Norm und Wirkung – Festschrift für Wolfgang Wiegand zum 65. Geburtstag* (Bern, 2005) 551

Müller-Freienfels, Wolfram, 'Zur Lehre vom sogenannten "Durchgriff" bei juristischen Personen im Privatrecht' (1958) *Archiv für die civilistische Praxis (AcP)* 522

Muzak, Gerhard, 'Art 6 StGG', in Gerhard Muzak (ed.), *B-VG*, 6th edn. (Wien, 2020)

Oberndorfer, Peter, 'Die Berufswahl- und die Berufsausbildungsfreiheit: Art. 18 StGG', in Rudolf Machacek, Willibald Pahr and Gerhard Stadler (eds.), *Grund- und Menschenrechte in Österreich – 40 Jahre EMRK – Wesen und Werte* (Kehl am Rhein, 1992) vol. II, 617

Oberndorfer, Peter, 'Die Berufswahl- und Berufsausbildungsfreiheit in der neueren Grundrechtsjudikatur' (1982) *Juristische Blätter (JBl)* 273

Öhlinger, Theo and Eberhard, Harald, *Verfassungsrecht,* 13th edn. (Wien, 2025)

Ostheim, Rolf, *Zur Rechtsfähigkeit von Verbänden im österreichischen bürgerlichen Recht* (Wien, 1967)

Pelinka, Michaela, 'zu § 61 GmbHG', in Heinrich Foglar-Deinhardstein, Nora Aburumieh and Alexander Hoffenscher-Summer (eds.), *GmbHG,* 2nd edn. (Wien, 2024)

Pernthaler, Peter, 'Der Schutz der Gemeinschaften durch individuelle Rechte' (1962) *Europa Ethnica* 50

Pernthaler, Peter, *Der Schutz der ethnischen Gemeinschaften durch individuelle Rechte – Eine staats- und rechtstheoretische Untersuchung* (Wien, 1964)

Pernthaler, Peter, *Die verfassungsrechtlichen Schranken der Selbstverwaltung in Österreich* (Wien, 1967)

Pernthaler, Peter, *Österreichisches Bundesstaatsrecht* (Wien, 2004)

Pernthaler, Peter, 'Braucht ein positivrechtlicher Grundrechtskatalog das Rechtsprinzip der Menschenwürde?', in Metin Akyürek, Gerhard Baumgartner, Dietmar Jahnel, Georg Lienbacher and Harald Stolzlechner (eds.), *Staat und Recht in europäischer Perspektive – Festschrift Heinz Schäffer* (Wien, 2006) 613

Posch, Willibald, '§ 26 ABGB', in Michael Schwimann and Georg Kodek (eds.), *ABGB Praxiskommentar,* 5th edn. (Wien, 2018) vol. I

Pöschl, Magdalena, 'zu Artikel 6 Abs 1 1. Tatbestand StGG', in Karl Korinek, Michael Holoubek, Christoph Bezemek, Claudia Fuchs, Andrea Martin and Ulrich E. Zellenberg (eds.), *Österreichisches Bundesverfassungsrecht,* 5th edn. (Wien, 2002)

Rauter, Roman Alexander, in Manfred Straube, *Fachwörterbuch zum Handels- und Gesellschaftsrecht* (Wien, 2005) 306

Reich-Rohrwig, Johannes, *Das österreichische GmbH-Recht* (Wien, 1983)

Röhl, Klaus and Röhl, Hans Christian, *Allgemeine Rechtslehre – ein Lehrbuch*, 3rd edn. (Köln, 2008)

Rohregger, Michael, 'Die Verantwortlichkeit von Verbänden für Straftaten' (2018) *Österreichische Zeitschrift für Wirtschaftsrecht (ÖZW)* 27

Rüthers, Bernd, Fischer, Christian and Birk, Axel, *Rechtstheorie und Juristische Methodenlehre,* 12th edn. (München, 2022)

Schauer, Martin, '§ 26 ABGB', in Andreas Kletečka and Martin Schauer (eds.), *ABGB-ON* (Wien, 2017)

Scheuerle, Wilhelm A., 'Das Wesen des Wesens' (1964) *Archiv für civilistische Praxis (AcP)* 429

Schiemer, Karl, *Handkommentar zum Aktiengesetz*, 2nd edn. (Wien, 1986)

Schoditsch, Thomas, *Grundrechte und Privatrecht* (Wien, 2019)

Serick, Rolf, *Rechtsform und Realität juristischer Personen – ein rechtsvergleichender Beitrag zur Frage des Durchgriffs auf die Personen oder Gegenstände hinter der juristischen Person*, 2nd edn. (Tübingen, 1980)

Silaghi, Alexandru and Torggler, Ulrich, 'Personalunion und Insichgeschäfte im GmbH-Konzern – eine Skizze', in Martin Auer, Friedrich Harrer and Manuel Steiner (eds.), *Gedenkschrift Hans-Georg Koppensteiner* (Wien, 2026) 367

Stolzlechner, Harald, 'Der Schutz des Hausrechts', in Rudolf Machacek, Willibald Pahr and Gerhard Stadler (eds.), *Grund- und Menschenrechte in Österreich – 40 Jahre EMRK – Wesen und Werte* (Kehl am Rhein, 1992) vol. II, 303

Strejcek, Gerhard, 'Grundrechtssubjektivität', in Detlef Merten and Hans-Jürgen Papier (eds.), *Handbuch der Grundrechte in Deutschland und Europa – Grundrechte in Österreich, der Schweiz und in Liechtenstein – Grundrechte in Österreich,* 2nd edn. (Heidelberg, 2014) vol. VII/1, 139

Strine, Leo and Walter, Nicholas, 'Conservative Collision Course: The Tension between Conservative Corporate Law Theory and Citizens United' (2015) *Cornell Law Review* 335

Techet, Péter, '"Entpolitisierung" der Verfassungsgerichtsbarkeit als erster Schritt zum Autoritarismus' (2023) *Zeitschrift für öffentliches Recht (ZÖR)* 685

Torggler, Ulrich, *Die Verbandsgründung – de lege lata betrachtet* (Wien, 2009)

Torggler, Ulrich, *Gesellschaftsrecht AT und Personengesellschaften* (Wien, 2013)

Weitensteiner, Julia, *Person und Korporation* (Tübingen, 2023)

Welser, Rudolf and Kletečka, Andreas, *Bürgerliches Recht – Band 1: Allgemeiner Teil, Sachenrecht, Familienrecht,* 15th edn. (Wien, 2018)

Wiedemann, Herbert, *Gesellschaftsrecht – Grundlagen* (München, 1980) vol. I

Wiederin, Ewald, 'zu Artikel 8 EMRK', in Karl Korinek, Michael Holoubek, Christoph Bezemek, Claudia Fuchs, Andrea Martin and Ulrich E. Zellenberg (eds.), *Österreichisches Bundesverfassungsrecht,* 5th edn. (Wien, 2002)

Winkler, Alexandra and Gruber, Michael, '§ 61 GmbHG', in Michael Gruber and Friedrich Harrer (eds.), *GmbHG,* 2nd edn. (Wien, 2018)

Wolff, Karl, '§ 26 ABGB', in Heinrich Klang and Franz Gschnitzer (eds.), *Kommentar zum Allgemeinen Bürgerlichen Gesetzbuch,* 2nd edn. (Wien, 1964) vol. I/1

Zeiller, Franz von, *Commentar über das allgemeine bürgerliche Gesetzbuch für die gesammten Deutschen Erbländer der Oesterreichischen Monarchie* (Wien, 1813)

Zierl, Hans Peter, 'Zur Rechts- und Parteifähigkeit im allgemeinen Verwaltungsverfahren' (1984) *Österreichische Juristenzeitung (ÖJZ)* 113

Zöllner, Wolfgang, *Die Schranken mitgliedschaftlicher Stimmrechtsmacht bei den privatrechtlichen Personenverbänden* (München, 1963)

Zußner, Matthias, 'Art 14 StGG', in Benjamin Kneihs and Georg Lienbacher (eds.), *Rill-Schäffer-Kommentar Bundesverfassungsrecht,* 30th edn. (Wien, 2023)