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## **ECHR Kurt v. Austria: Case of 8 y.o. boy murdered by abusive father referred to the Grand Chamber of the ECHR**

OHCHR (05.11.2019) - <https://bit.ly/2Xa1tXL> - The applicant, Senay Kurt, is an Austrian national who was born in 1978 and lives in Unterwagram (Austria). She married E. in 2003. They had two children, A., born in 2004, and B., born in 2005.

In July 2010 Ms Kurt called the police because her husband had beaten her. She alleged that he had been beating her for years and that recently the situation had worsened. The police noted that the applicant showed signs of injuries. A barring order (Betretungsverbot und Wegweisung zum Schutz vor Gewalt) was issued against E. This order obliged him to stay away from their common apartment as well as from Ms Kurt's parents' apartment for 14 days. E. complied with the barring order, and no further incidents were reported to the police.

Although Ms Kurt had refused to testify, in January 2011 the Graz Regional Criminal Court convicted E. of bodily harm and dangerous threatening behaviour and sentenced him to three months' imprisonment, suspended for three years with probation. Until May 2012 no further incidents were reported to the police.

In May 2012 Ms Kurt went to the St. Pölten District Court and filed for divorce. On the same day, she reported her husband to the police for rape and making dangerous threats. She added that he had beaten her regularly, sometimes slapping the children as well. She was in great fear of her husband and stated that she wanted to protect herself and her children. A police officer issued a barring order against E., who accompanied the police voluntarily to the police station.

Two days later E. returned to the police to enquire whether it would be possible to contact his children. The police took the opportunity to confront him with his children's statements that he had beaten them. E. confessed that he had beaten them "every now and then", but "only as an educational measure", without being aggressive. He added that his children were everything to him.

On 25 May 2012 E. went to A. and B.'s school. He asked A.'s teacher if he could speak briefly to his son in private. The teacher, who later stated that she had not been informed of the problems in the family, agreed. When A. did not return to class, she started looking for him. She found him in the school's basement, where he had been shot in the head. His sister B., who had witnessed her brother being shot, was not injured. A warrant for E.'s arrest was issued immediately and the police started investigations, but E. was found dead in his car that day, having shot himself.

In February 2014 Ms Kurt instituted official liability proceedings. She argued that the public prosecutor's office should have requested that E. be held in pre-trial detention after she had reported him to the police and that there had been a real and immediate risk that he would reoffend against his family. She claimed 37,000 euros (EUR) in compensation for non-pecuniary damage. She also applied to the court for a declaratory judgment that Austria was liable for any possible future damage caused by the murder of her son, which she assessed at EUR 5,000.

In November 2014 the St. Pölten Regional Court dismissed her claim. It held, in particular, that taking into account the information the authorities had had to hand at the relevant time, it had not been obvious that there was an immediate risk to A.'s life. In January 2015 the Vienna Court of Appeal dismissed her appeal, and in April 2015 the Supreme Court rejected an extraordinary appeal on points of law.

The application was lodged with the European Court of Human Rights on 16 December 2015.

Relying on Articles 2 (right to life), 3 (prohibition of inhuman or degrading treatment) and 8 (right to respect for family life) of the European Convention on Human Rights, Ms Kurt complains that the Austrian authorities failed to protect her and her children from her violent husband, which resulted in him murdering their son.

In its Chamber judgment of 4 July 2019, the European Court of Human Rights dealt with the case under the substantive aspect of Article 2 of the European Convention.

The Chamber held, unanimously, that there had been no violation of Article 2 of the Convention, finding in particular that the domestic authorities had been entitled to conclude that a measure other than the barring order that was issued against the father, such as pre-trial detention, had not been warranted under the circumstances known to them. Accordingly, they had not failed to comply with their duty under Article 2 to protect the applicant's son from his violent father.

On 4 November 2019 the Grand Chamber Panel accepted the applicant's request that the case be referred to the Grand Chamber.

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## **Afghan refugee gets life sentence for so-called 'honor killing' of sister**

RFE/RL (22.08.2018) - <https://bit.ly/2Lim2JT> - A young Afghan refugee in Austria has received a sentence of life in prison for stabbing his sister to death in a so-called "honor killing."

A court in Vienna issued the sentence on August 22 against the Afghan man, who said he stabbed his sister 28 times "because of culture" in order to protect what he said was his family's sense of honor.

Authorities have not released the name of the killer or his sister, who was 14 years old when she was bludgeoned to death on her way to school in September 2017.

The victim had moved into a crisis center in Vienna about a week before she'd been killed, saying that she felt cornered and "pressured" by her family because she was not allowed to go out and meet with her girlfriends.

The court heard that when the killer confessed to police, he told authorities: "It is good that she is dead. She stained our family's honor."

The killer claimed that under Austria law, he should not receive a life sentence because he is now only 19 years old.

But the court rejected that claim after a panel of experts testified that he is 21 years old.