

EUROPEAN COURT OF HUMAN RIGHTS

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2.11.2006

Press release issued by the Registrar

Three Chamber judgments concerning Austria

The European Court of Human Rights has today notified in writing its Chamber judgments¹ in the cases of: *Kobenter and Standard Verlags GmbH v. Austria* (application no. 60899/00), *Standard Verlags GmbH v. Austria* (no. **13071/03**) and *Standard Verlags GmbH and Krawagna-Pfeifer v. Austria* (no. 19710/02).

In all three cases the Court held unanimously that there had been a **violation of Article 10** (freedom of expression) of the European Convention on Human Rights.

Under Article 41 (just satisfaction), the Court made the following awards:

- to Standard Verlags GmbH, in respect of pecuniary damage and of costs and expenses: 10,324.96 euros (EUR) and EUR 7,971.24 (in *Kobenter and Standard Verlags GmbH*), EUR 8,000 and EUR 8,000 (in *Standard Verlags GmbH v. Austria*) and EUR 16,000 and EUR 16,000 (in *Standard Verlags GmbH and Krawagna-Pfeifer*)
- to the journalist Jakob Kobenter, EUR 152.61 in respect of pecuniary damage and EUR 5,000 for costs and expenses; and,
- to the journalist Katharina Krawagna-Pfeifer, EUR 2,000 in respect of non-pecuniary damage.

(The three judgments are available only in English.)

1. Principal facts

Standard Verlags GmbH is an applicant in all three cases. It is a limited liability company, based in Vienna, which owns and publishes the national daily newspaper *Der Standard*.

The case *Kobenter and Standard Verlags GmbH* also concerns Jakob Kobenter, an Austrian national who was born in 1960 and lives in Vienna. Mr Kobenter is a journalist working for *Der Standard*.

The 2 September 1998 edition of *Der Standard* included articles written by Mr Kobenter about a judgment relating to a magazine article criticising homosexuals. The magazine article in *Der 13 – Zeitung der Katholiken für Glaube und Kirche* (The 13th – Newspaper of Catholics for Faith and Church) had called for homosexuals to be “disciplined with whips” and subjected to “Nazi methods”. It went on that “homosexuals now crawl like rats out of their holes and are fed 'lovingly' by politicians and church officials”.

Following a private prosecution, on 13 July 1998, Linz Regional Court found that certain passages in the magazine article constituted the offence of insult (*Beleidigung*), under Section 115 of the Criminal Code, and ordered the owner and publisher of *Der 13* to pay compensation to four plaintiffs who could be identified in the photographs published with the article.

The judgment also contained a passage which stated that homosexuality included the animal kingdom, giving examples of same-sex practices among different animals.

Subsequently, politicians and representatives of the Austrian Forum of Gays and Lesbians publicly criticised the deciding judge for the text and style of his judgment and the issue was covered by the Austrian Press Agency (APA) and *Der Standard* in September 1998.

In one of Mr Kobenter's articles, he stated that the judgment did not significantly differ from "the traditions of medieval witch trials" and that it lent "support to a homophobe's venomous hate campaign with outrageous examples from the animal kingdom" which cast "doubt on the intellectual and moral integrity of the judge concerned".

Subsequently the judge concerned removed the impugned passage from the judgment. He also received an official warning.

The judge went on to file a prosecution against Mr Kobenter for defamation (*Üble Nachrede*) and a compensation claim against Standard Verlags GmbH.

On 29 June 1999 St. Pölten Regional Court convicted Mr Kobenter of defamation under Section 111 §§ 1 and 2 of the Criminal Code and fined him 13,500 Austrian schillings (ATS) (equivalent to EUR 981), suspended for a probationary period of one year. It also ordered Standard Verlags GmbH to pay ATS 50,000 (EUR 3633) in compensation to the judge, under Section 6 of the Media Act, and to publish the judgment. The applicants appealed unsuccessfully.

The case *Standard Verlags GmbH* concerns the 1 March 2000 issue of *Der Standard*, which included an article about the criminal proceedings on charges of fraud and embezzlement against Peter Rosenstingl, a former Member of Parliament for the Austrian Freedom Party (*Freiheitliche Partei Österreichs*, "the FPÖ"). In particular, the article stated that Ewald Stadler, another FPÖ politician, was alleged to have known about certain fraudulent practices and to have received relevant documents.

The criminal proceedings against Mr Rosenstingl received extensive media coverage and Mr Rosenstingl and a number of co-accused were eventually convicted of large-scale fraud and embezzlement.

On 17 August 2000 Mr Stadler brought private prosecution proceedings for defamation under the Media Act (*Mediengesetz*) concerning the article in question and Standard Verlags GmbH was ordered to pay him compensation of ATS 15,000 (about EUR 1,090) and to publish the judgment. The decision was upheld on appeal.

Separate proceedings were also brought under the Copyright Act (*Urheberrechtsgesetz*) and the Civil Code (*Allgemeines Bürgerliches Gesetzbuch*) requesting Standard Verlags GmbH to refrain from publishing Mr Stadler's photograph accompanied by the incriminated text, to publish the judgment and to pay Mr Stadler EUR 2,000 as compensation for non-pecuniary damage. He further requested a preliminary injunction.

On 22 November 2002 the applicant and Mr Stadler appeared before Vienna Commercial Court and concluded a partial agreement. The applicant undertook to refrain from publishing Mr Stadler's photograph accompanied by any text similar to the impugned statement, and to publish the agreement. The court therefore limited the hearing to the issue of compensation.

On 3 December 2001 Vienna Commercial Court ordered Standard Verlags GmbH to reimburse Mr Stadler's costs as regards the part of his claim covered by the partial agreement, but dismissed the compensation claim.

The case *Standard Verlags GmbH and Krawagna-Pfeifer* concerns Standard Verlags GmbH and Katharina Krawagna-Pfeifer, an Austrian national who at the relevant time was chief editor of the internal politics section of *Der Standard*.

An article about the Austrian Freedom Party (FPÖ), by Ms Krawagna-Pfeifer, appeared in the 9 October 1998 issue of *Der Standard*. The article referred to Jörg Haider, then a leading FPÖ politician, his style of leadership and his previous conviction for attempted defamation of a university professor on 1 October 1998. The article stated: "After all, Haider was convicted in

criminal proceedings at first instance because he had ruined a person's good reputation and prospects for the future".

Mr Haider brought two sets of proceedings against the applicants. A private prosecution under the Media Act resulted in Ms Krawagna-Pfeifer being convicted of defamation and sentenced to an ATS 15,000 fine, suspended on probation, and Standard Verlags GmbH being ordered to pay Mr Haider compensation of 20,000 schillings (ATS) and to publish the judgment.

At the conclusion of separate civil proceedings the applicants were in addition ordered to refrain from repeating the impugned statement, to retract it and to publish the judgment.

2. Summary of the judgments²

Complaints

The applicants all complained about the courts' decisions against them. They all relied on Article 10 of the Convention. In *Standard Verlags GmbH* and *Standard Verlags GmbH and Krawagna-Pfeifer* the applicants also relied on Article 6 § 1 (right to a fair trial).

Decision of the Court

Article 10

In all three cases, the Court found that the reasons adduced by the domestic courts had not been "relevant and sufficient" to justify the interference in the applicants' right to freedom of expression and that the various convictions and fines complained of were not "necessary in a democratic society". In all three cases there had therefore been a violation of Article 10.

In *Kobenter and Standard Verlags GmbH* the Court found that the impugned statements were value judgments based on facts. In addition, the issue concerned a matter of public interest at the time. Further, in the circumstances of the case, the applicants' interest in disseminating information on the subject-matter, admittedly formulated in a provocative and exaggerated tone, outweighed the judge's interest in protecting his reputation and the standing of the judiciary in general. The fact that those passages of the judgment concerned had later on been taken out by the judge himself and that a warning had been imposed on the judge in subsequent disciplinary proceedings proved that he had not discharged his duties in a manner fitting for a judge. The Court found that the applicants complied with their duties and responsibilities as a public "watch-dog" and that the criticism made did not amount to an unjustified or destructive attack against the judge concerned or the judiciary as such.

In *Standard Verlags GmbH* the Court considered that the impugned statement seen in its proper context constituted fair comment on a matter of public interest. It was therefore to be regarded as a value judgment rather than as a statement of fact. It essentially questioned whether Mr Stadler knew or should have known of Rosenstingl's machinations. That value judgment was not excessive since it had a certain factual basis even in Mr Stadler's own admissions.

In *Standard Verlags GmbH and Krawagna-Pfeifer* the Court stressed the fact that the article had been a political commentary which criticised Mr Haider's style of leadership, accusing him of letting party members down when he saw fit while continuing to support others despite their conviction by a criminal court. It was in that context that the impugned statement referring to Mr Haider's conviction by a first instance court had been made.

In the Court's view the impugned phrase contained both a statement of fact and a value judgment. The first part of the phrase, referred to Mr Haider's conviction, a fact; the second part contained a value judgment, namely the journalist's assessment that Mr Haider had ruined a person's reputation and prospects for the future.

Having regard to a previous article published by *Der Standard* a week before about Mr Haider's

conviction for attempted defamation, the Court found that there was a sufficient factual basis for the impugned statement. The Court considered that the public interest in receiving information on the personal credibility of a leading politician outweighed his interest in the protection of his reputation.

As regards the conviction of Ms Krawagna-Pfeifer in the proceedings under the Media Act, the Court reiterated that the safeguard afforded by Article 10 to journalists in relation to reporting on issues of general interest was subject to the proviso that they were acting in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism. Ms Krawagna-Pfeifer had acted in good faith but, as a member of the media, could not plead that defence under Austrian defamation law.

The Court also observed that it was not convinced by the Austrian Government's argument that the sanctions imposed on the applicants were proportionate; in particular, regarding Ms Krawagna-Pfeifer, what mattered was not that she was sentenced to a relatively modest fine suspended on probation, but that she was convicted at all.

Article 6 § 1

The Court considered that it was not necessary to examine the complaints raised under Article 6 in *Standard Verlags GmbH* and *Standard Verlags GmbH and Krawagna-Pfeifer*.

In the case *Standard Verlags GmbH v. Austria*, Judges Rozakis, Tulkens and Spielmann expressed a dissenting opinion (concerning Article 6), which is annexed to the judgment.

In the case *Standard Verlags GmbH and Krawagna-Pfeifer*, Judge Jebens expressed a concurring opinion and Judges Rozakis, Tulkens and Spielmann expressed a partly dissenting opinion (concerning Article 6), which are annexed to the judgment.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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

¹ Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

² This summary by the Registry does not bind the Court.

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