

European Court of Human Rights: Recent Judgment on the Freedom of Expression and Information and the Publication of Photographs of a Suspect

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On 11 January 2000 the European Court of Human Rights delivered judgment in the case *News Verlags GmbH & CoKG v. Austria*. The case concerns an injunction by the Vienna Court of Appeal prohibiting a magazine to publish photographs of a person (B) in the context of its court reporting. B was suspected of being responsible for a letter-bomb campaign in 1993. According to the Court, the prohibition on publishing such photographs in connection with reports on the criminal proceedings is to be considered as an interference with the applicant's freedom of expression and information. The Court agrees that the interference was prescribed by Austrian law and pursued a legitimate aim, as the injunction had the aim of protecting the reputation or rights of B as well as the authority and impartiality of the judiciary. The Court decided however that the injunction was disproportionate and hence violated article 10 of the Convention.

The Court recalled that "it is not for the Court, or for the national courts for that matter, to substitute their own views for those of the press as to what technique of reporting should be adopted by journalists". Furthermore the media have not only the right, but even the duty, according to the Court to impart - in a manner consistent with their obligations and responsibilities - information and ideas on all matters of public concern, including reporting and commenting on court proceedings. The Court emphasised that the criminal case relating to the letter-bombs was a news item of major public concern at the time and that B was arrested as the main suspect. Although the injunction in no way restricted the applicant company's right to publish comments on the criminal proceedings against B, it was underlined, however, that it restricted the applicant's choice as to the presentation of its report, while undisputedly other media were free to continue to publish B's picture throughout the criminal proceedings against him. An absolute prohibition on publishing pictures of B in the press reports of the magazine "News" was considered by the Court to be a disproportionate measure. As the Court underlines: "The absolute prohibition on the publication of B's picture went further than was necessary to protect B against defamation or against violations of the presumption of innocence". It followed from these conclusions by the Court that the interference with the applicant's right to freedom of expression was not "necessary in a democratic society" and accordingly violated Article 10 of the Convention.

