European Court of Human Rights: Seizure of "blasphemous" film does not violate Article 10 ECHR

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In its judgment of 20 September 1994, the European Court of Human Rights held that the seizure and forfeiture of the film Das Liebeskonzil in May 1985 by the Austrian authorities, was not a violation of Article 10 of the European Convention on Human Rights.

In this case, the applicant - the Otto-Preminger-Institut für audiovisuelle Mediengestaltung (OPI) - had planned to show the film, in which God the Father is presented as old, infirm and ineffective, Jesus Christ as a 'mummy's boy' of low intelligence and the Virgin Mary as an unprincipled wanton. They conspire with the Devil to punish mankind for its immorality.

At the request of the Innsbruck diocese of the Roman Catholic Church, the Public Prosecutor instituted criminal proceedings against OPI's manager on charge of "disparaging religious doctrines" and seized the film under section 36 of the Austrian Media Act. On 10 October 1986 the Austrian Regional Court ruled that, since artistic freedom cannot be unlimited, in view of "the particular gravity in the instant case - which concerned a film primarily intended to be provocative and aimed at the Church - of the multiple and sustained violation of legally protected interests, the basic right of artistic freedom will in the instant case have to come second." The European Court of Human Rights accepted that the impugned measures pursued a legitimate aim under Article 10 par. 2, namely "the protection of the rights of others", i.e., the protection of the right of citizens not to be insulted in their religious feelings by the public expression of views of others. The Court ruled that the Austrian courts, when ordering the seizure and subsequent forfeiture of the film, justfiably held it to be an abusive attack on the Roman Catholic religion according to the conception of the Tyrolean public. Since their judgments show that the Austrian courts had due regard to the freedom of artistic expression and the content of the film can support the conclusions arrived at by the national courts, the Court ruled that the seizure does not constitute a violation of Article 10. In view of all the circumstances in this case, the Court considered that the Austrian authorities had not overstepped their margin of appreciation. This reasoning was also applied to the forfeiture of the film, which is said to be the normal sequel to the seizure.

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European Court of Human Rights, Case of Otto-Preminger-Institut v. Austria (11/1993/406/485), 20 September 1994, Series A vol. 295-A.

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