European Court of Human Rights: Recent Judgments on the Freedom of Expression

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In a judgment of 21 September 2000, the Austrian broadcasting legislation is once more being analysed by the Strasbourg Court (Second Section) from the perspective of Article 10 of the European Convention, this time after a complaint by a private organisation that did not obtain a licence to set up and operate a television transmitter in the Vienna area. In its judgment of 24 November 1993 in the Informationsverein Lentia case, the European Court of Human Rights already decided that the monopoly of the Austrian public broadcasting organisation ORF was in breach of Article 10 of the European Convention on Human Rights and Fundamental Freedoms. This point of view was confirmed in a judgment of 20 October 1997 in the case of Radio ABC v. Austria. The Court was of the opinion that at least until 1 May 1997 there was no legal basis whereby an operating licence could be granted to any radio station other than the Austrian Broadcasting Corporation, a situation which violated Article 10 of the European Convention (see IRIS 1997-10: 3). In its judgment of 21 September 2000, the European Court now notes that until 1 August 1996 it was not possible to obtain a licence to operate a television transmitter in Austria. Hence, the situation of Tele 1 was not different from that of the applicants in the Informationsverein Lentia case. Accordingly, there was a breach of Article 10 during that period. The Strasbourg Court notes, however, that as of 1 August 1996 private broadcasters were free to create and transmit their own programmes via cable network without any conditions being attached, while terrestrial television broadcasting was still reserved to the ORF. The Court is of the opinion that cable television broadcasting offered private broadcasters a viable alternative to terrestrial broadcasting as almost all households receiving television in Vienna had the possibility of being connected to the cable net. Thus, the interference with the applicant's right to impart information resulting from the impossibility of obtaining a licence for terrestrial broadcasting can no longer be regarded as a breach of Article 10. The Court did not decide on the question whether or not the Cable and Satellite Broadcasting Act, which came into force on 1 July 1997, is in breach of Article 10 of the Convention. The Court underlines that the applicant has not made notification of any cable broadcasting activities nor had it submitted an application for a satellite broadcasting licence. Consequently, it is not necessary for the Court to rule on this period as it is not its task to rule in abstracto whether legislation is compatible with the Convention. The Court comes to the conclusion that there has been a breach of Article 10 in the first period (from 30 November 1993 to 1

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August 1996), while there has been no violation of this Article in the second period (from 1 August 1996 to 1 July 1997).

In a judgment delivered at Strasbourg on 28 September 2000 the European Court of Human Rights (Fourth Section) has found that by convicting Lopes Gomes da Silva the judicial authorities of Portugal infringed Arti5 5 5 cle 10 of the European Convention on Human Rights. Lopes Gomes da Silva, the manager of the daily newspaper Público, was sentenced by the Lisbon Court of Appeal for criminal libel through the press. The conviction was the result of a criminal complaint by a candidate for the local elections in 1993, Mr. Silva Resende. In an editorial published in Público shortly before the elections, Lopes Gomes da Silva referred to Resende as a "grotesque and clownish candidature" and as an "incredible mixture of reactionary coarseness, fascist bigotry and vulgar anti-Semitism". Lopes Gomes da Silva was ordered to pay PTE 150.0000 as a criminal fine and to pay PTE 250.000 to Silva Resende in damages. In a unanimous decision the Strasbourg Court held that this conviction was a breach of Article 10 of the Convention. The Court once more emphasised the particular importance of the freedom of the press and underlined that the limits of acceptable criticism are wider with regard to a politician acting in his public capacity and that journalists could resort to a degree of exaggeration or even provocation. By reproducing a number of extracts from recent articles by Silva Resende alongside his editorial, Lopes Gomes da Silva had complied with the rules of journalism, a matter to which the Court attached considerable importance. Although the penalty had been minor, the Court decided that the conviction for libel was not a measure that was reasonably proportionate to the legitimate aim pursued. Consequently, the Court concluded that there had been a violation of Article 10 of the Convention.

Judgment by the European Court of Human Rights of 21 September 2000, application no. 00032240/96, Tele 1 Privatfernsehgesellschaft MBH v. Austria

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Arrêt de la Cour européenne des Droits de l'Homme du 28 septembre 2000, affaire n° 00037698/97, Lopes Gomes da Silva c. Portugal

Judgment by the European Court of Human Rights of 28 September 2000, application no. 00037698/97, Lopes Gomes da Silva v. Portugal.

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