[AT] Supreme Court Ruling on Relationship Between Freedom of Expression and Copyright and Performance Protection Rights

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In a recently published decision, the Österreichische Oberste Gerichtshof (Austrian Supreme Court - ÖOGH) explained in what circumstances the right to freedom of expression justifies the infringement of copyright and performance protection rights. On the one hand, the economic interests of the author must not be harmed and, on the other, the infringement of copyright and performance protection rights must be essential to the exercise of the right to freedom of expression.

In the relevant legal dispute, a photographer had instigated proceedings against an Austrian national daily newspaper, which had published one of his photographs without his knowledge or consent. The picture was a passport photograph of a murder victim, which had been photographed by the defendant and published on the front page of its Vienna edition and inside a subsequent edition without any reference to the actual photographer. Furthermore, the defendant refused to meet the plaintiff's subsequent claim for full royalties. The resulting lawsuit demanded claims for royalties, for an injunction against further publication of the plaintiff's work and for a public apology. The first instance and appeals courts had already ruled in the plaintiff's favour.

The ÖOGH also dismissed the defendant's appeal as unfounded. It decided that the defendant could not rely on its fundamental right to freedom of expression, as enshrined in Article 10.1 of the ECHR, even though exercise of that right could, under certain conditions, justify an infringement of copyright and performance protection rights, such as if words or pictures were published with the aim of criticising the rightsholder and justifying that criticism. However, in the current case, the defendant's only objective had been to illustrate a crime and to draw the reader's attention to the corresponding article. This was not sufficient to justify an infringement of the photographer's rights.

Urteil des Österreichischen Obersten Gerichtshofes vom 24. Juni 2003, Az.: 4Ob105/03z

Ruling of the Austrian Supreme Court (ÖOGH), 24 June 2003, case no.: 4Ob105/03z

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