European Court of Human Rights: Application by Österreichischer Rundfunk Declared Inadmissible

IRIS 2004-10:1/2

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The European Court of Human Rights, in a decision of 25 May 2004, has come to the conclusion that Austria has not violated Article 10 of the Convention by prohibiting in 1999 the *Österreichischer Rundfunk* (ORF) from publishing pictures of a person (B.) showing him as an accused during the well known letter-bomb campaign proceedings of some years before. B. had started proceedings in 1998 against the ORF requesting that the broadcasting company be prohibited from publishing without his consent pictures showing him as an accused in the courtroom, referring to the letter-bomb campaign without mentioning his final acquittal or if the impression was created that he was a neo-Nazi, was convicted of offences under the National Socialism Prohibition Act without mentioning that the imposed sentence had already been served or that he had been released on parole in the meanwhile. The Vienna Commercial Court and the Vienna Court of Appeal dismissed B.'s claims, arguing that B's interests were not infringed by the neutral disclosure of his picture, that no impression was given that he had been convicted of participating in the letter-bomb assassinations, and that he had indeed been convicted of a serious crime. Therefore, B. could not enjoy unlimited protection of his identity. On 1 June 1999, the Supreme Court however was of the opinion that the publication of B.'s picture by ORF had obviously interfered with his interests as it reminded the public of B.'s court appearance three years after his trial and his release on parole. The Supreme Court decided that there was no longer a public interest in having B.'s picture published and ordered the ORF to refrain from publishing or disseminating B.'s pictures without his consent showing him in the courtroom in the circumstances mentioned above.

The ORF complained under Article 10 of the Convention that the Supreme Court's judgment violated its right to freedom of expression. Without deciding on the Government's interesting preliminary objection contesting the ORF's *locus standi* within the meaning of Article 34 of the Convention (the applicant as a public broadcasting organisation being a governmental organisation), the Court unanimously reached the conclusion that the imposed measure by the Austrian Supreme Court did not violate Article 10 of the Convention and declared the application by the ORF inadmissible. The Court emphasizes the difference between the present case and the findings in the case of News Verlags GmbH & CoKG v. Austria (ECourtHR 11 January 2000, Appl. 31457/96, see IRIS 2000-2: 2), as the Austrian courts in that case had issued a total prohibition on publication of B.'s picture by News Verlags, whereas in the present case the ORF was only

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prohibited from doing so in a specific context. Furthermore, the report in the News Verlags case was published at a time when the pending criminal proceedings against B. were to be considered as a matter of great public interest. In the present case there was no public interest involved in the publication of the picture of B. and there was no need for another public stigmatisation. The Court is of the opinion that the private interest of B. in seeking to reintegrate himself into society after having been released on parole outweighed the public interest in the disclosure of his picture by the media. The Court also found that the prohibition at issue could not be described as amounting to a general prohibition against publishing B.'s picture and therefore found that the measure was also proportionate to the aim pursued within the meaning of Article 10 of the Convention. The complaint by ORF was considered manifestly ill-founded and hence declared inadmissible.

Decision of 25 May 2004 by the European Court of Human Rights (Fourth Section), as to the admissibility of Application no. 57597/00 by Österreichischer Rundfunk against Austria

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