

European Court of Human Rights: Case of Wirtschafts-Trend Zeitschriften-Verlags GmbH v. Austria

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*Dirk Voorhoof
Human Rights Centre, Ghent University and Legal Human Academy*

In a judgment of 27 October 2005, the European Court of Human Rights has come to the conclusion that the Austrian authorities violated freedom of expression by convicting Wirtschafts-Trend Zeitschriften-Verlags GmbH, a limited liability company based in Vienna which owns and publishes the weekly magazine Profil. In November 1998, Profil published a review of a book written by a Member of the European Parliament and member of the Austrian Freedom Party. Profil's article criticised the author of the book for his treatment of Jörg Haider, the former leader of the Austrian Freedom Party (FPÖ), in that he pardoned "his belittlement of the concentration camps as 'punishment camps'" (" *Dessen Verharmlosung der Konzentrationslager als 'Straflager'* "). Mr Haider successfully filed a compensation claim against Profil as the Wiener Neustadt Regional Court ordered the applicant company to pay EUR 3,633 in compensation to Mr Haider. It also ordered the forfeiture of that particular issue of the magazine and instructed the company to publish its judgment. In its reasoning, the court said that Mr Haider's words had been taken out of context and that the article gave the impression that he had played down the extent of crimes committed in concentration camps when using the term punishment camps, and that he had thereby infringed the National Socialism Prohibition Act.

In its judgment of 27 October 2005, the European Court reiterates that the limits of acceptable criticism are wider as regards a politician than as regards a private individual. The Court is of the opinion that Haider is a leading politician who has been known for years for his ambiguous statements about the National Socialist Regime and the Second World War and has, thus, exposed himself to fierce criticism inside Austria, but also at the European level. In the Court's view, Haider must therefore display a particularly high degree of tolerance in this context. In essence, the Strasbourg Court is not convinced by the domestic court's argument that the statement of belittling the concentration camps implied a reproach that Mr Haider had played down the extent of the Nazi crimes and therefore came close to a reproach of criminal behaviour under the Prohibition Act. The Court finds this conclusion somewhat far-fetched, as the standards for assessing someone's political opinions are quite different from the standards for assessing an accused person's responsibility under criminal law. According to the Court, the use of the term "punishment camp", which implies that persons are detained there for having committed punishable offences, may reasonably be criticised as a belittlement of the concentration camps all the more so if that term was applied

by someone whose ambiguity towards the Nazi era is well-known. The undisputed fact that Mr Haider had used the term punishment camp instead of concentration camp was a sufficient factual basis for the applicant's statement, which was therefore not excessive in the circumstances. In conclusion, the Court finds that the reasons adduced by the domestic courts were not relevant and sufficient to justify the interference. Moreover, the Court notes that the applicant was not only ordered to pay compensation to Mr Haider and to publish the judgment finding it guilty of defamation, but that the courts also ordered the forfeiture of the issue of Profil which is a severe and intrusive measure. Thus, the interference was not proportionate either. Therefore, the Court unanimously came to the conclusion that the interference complained of was not "necessary in a democratic society" within the meaning of Article 10 § 2 of the Convention. Accordingly there has been a violation of Article 10 of the Convention.

Judgment by the European Court of Human Rights (First Section), case of Wirtschafts-Trend Zeitschriften-Verlags GmbH v. Austria, Application no. 58547/00 of 27 October 2005

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