European Court of Human Rights: Case of Österreichischer Rundfunk v. Austria

IRIS 2007-3:1/4

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In a judgment of 7 December 2006, the European Court of Human Rights found that the Austrian authorities had acted in violation of the right to freedom of expression. The case concerned a reaction to a news item on the Austrian public television channel Österreichischer Rundfunk (ORF). In a news programme broadcast by ORF in 1999, a picture was shown of a person, Mr. S, who had been released on parole a few weeks earlier. Mr. S. was convicted to eight years imprisonment in 1995 because he had been found to be a leading member of a neo-Nazi organisation. At the request of Mr. S., the Austrian courts prohibited ORF from showing his picture in connection with any report stating that he had been convicted under the *Verbotsgesetz* (National Socialist Prohibition Act) either once the sentence had been executed or once he had been released on parole. The courts found that the publication of Mr. S.'s picture in that context had violated his legitimate interests within the meaning of both Section 78 of the Copyright Act and Section 7a of the Media Act ("right to one's image").

The ORF complained in Strasbourg that the Austrian courts' decisions violated its right to freedom of expression as provided in Article 10 of the European Convention on Human Rights. Despite its being a public broadcasting organisation, the European Court of Human Rights was of the opinion that ORF does not qualify as a governmental organisation and hence may claim to be a "victim" of an interference by the Austrian authorities in its right to freedom of expression, within the meaning of articles 34 and 35 of the Convention (see IRIS 2004-5: 3). Referring *inter alia* to the guarantee of the ORF' s editorial and journalistic independence and its institutional autonomy as a provider of a public service, the Court was of the opinion that the ORF does not fall under government control. As to the question of the prohibition to show Mr. S.'s picture in the context of his conviction under the Prohibition Act, the Court took into account several elements: the Court referred to the position of the ORF as a public broadcaster with an obligation to cover any major news item in the field of politics, to Mr. S.'s position as a well-known member of the neo-Nazi scene in Austria and to the nature and subject-matter of the news report, the latter being of relevance to the public interest. The Court furthermore underlined the fact that the injunction granted by the domestic courts was phrased in very broad terms and that the news item on ORF referred to persons recently released on parole after having been convicted of crimes with a clear political relevance. Taking into account all these elements the Strasbourg Court found that the reasons adduced

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by the Austrian courts to justify the injunction were not relevant and sufficient to warrant the interference in ORF' s right to freedom of expression. Thus, there had been a violation of Article 10.

Judgment by the European Court of Human Rights (First Section), case of Österreichischer Rundfunk v. Austria, Application no. 35841/02 of 7 December 2006

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