European Court of Human Rights: Case of Nikowitz and Verlagsgruppe News GmbH v. Austria

IRIS 2007-4:1/1

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In a judgment of 22 February 2007, the European Court of Human Rights (ECHR) considered the convictions of both a journalist and a publishing company as being violations of the right to freedom of expression as guaranteed by Article 10 of the Convention. The case concerned an article in the magazine Profil about a road accident in which the well-known Austrian skiing champion, Hermann Maier, injured his leg. The article, written by the journalist Rainer Nikowitz, suggested that one of Mr. Maier's competitors, the Austrian skiing champion Stephan Eberharter, was pleased with the accident because he would finally be able to win something, and that he even hoped his competitor would break his other leg too. The article was satirical and was written in response to public hysteria following the accident. It was accompanied by a portrait of Mr. Maier together with the caption: "Hero Hermann's leg is causing millions of Austrians pain".

Subsequently, Mr. Eberharter brought a private prosecution for defamation against Mr. Nikowitz and a compensation claim under the *Mediengesetz* (Media Act) against the publishing company. In 2001, the Vienna *Landesgericht* (Regional Criminal Court) found Mr. Nikowitz and the publishing company guilty of defamation. Apart from the order to pay a suspended fine, costs and compensation for damages, the Court also ordered Verlagsgruppe News to publish extracts of the judgment. Mr. Nikowitz and Verlagsgruppe News appealed unsuccessfully to the Vienna Court of Appeal, which found that the satirical meaning of the article would be lost on the average reader, and that the personal interests of Mr. Eberharter outweighed the right to freedom of artistic expression.

The European Court of Human Rights, however, approached the case from another perspective, emphasising that the article in question dealt with an incident that had already attracted the attention of the Austrian media, and that it was written in an ironic and satirical style and intended as a humorous commentary. The article also sought to make a critical contribution to an issue of general interest, namely the attitude of society towards a sports star. It could, at most, be understood as the author's value judgment of Mr. Eberharter's character, expressed in the form of a joke. According to the ECHR, the article remained within the limits of acceptable satirical comment in a democratic society. The Court was also of the opinion that the Austrian courts showed no moderation in interfering with the applicant's rights by convicting the journalist of defamation and ordering him to pay a fine, and by ordering the publishing

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company to pay compensation and to publish the judgment. It followed that the interference under complaint was not “necessary in a democratic society” and therefore there had been a violation of Article 10.

Judgment by the European Court of Human Rights (First Section), case of Nikowitz and Verlagsgruppe News GmbH v. Austria, Application no. 5266/03 of 22 February 2007

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