European Court of Human Rights: Standard Verlags GmbH v Austria

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In its first judgment of 2012 related to (journalistic) freedom of expression, the European Court of Human Rights dealt with an interesting application of the right of the media to report on criminal cases in an early stage of investigation. The judgment also focuses in a peculiar way on the notion of a “public figure”. The case concerns an article published by the Austrian newspaper Der Standard, reporting on the enormous speculation losses incurred by a regional bank, Hypo Alpe-Adria. The article reported on the criminal investigation into embezzlement that had been opened by the public prosecutor in respect of the senior management of the bank. It identified some of the persons involved, including Mr Rauscher, the head of the bank’s treasury. Mr Rauscher brought proceedings against the newspaper’s company for disclosing his identity in that article and, as a result, he was awarded EUR 5,000 in compensation. In its judgment the Vienna Court of Appeal found that Mr Rauscher’s interest in the protection of his identity and the presumption of innocence outweighed the newspaper’s interest in disclosing his name.

The Strasbourg Court however, after being requested to evaluate the interference in Der Standard’s freedom of expression under the scope of Article 10 of the Convention, came to another conclusion in balancing the newspaper’s right to freedom of expression against Mr Rauscher’s right to protection of his identity. The European Court agreed with the finding by the Austrian courts that Mr Rauscher, as a senior employee of the bank in issue, was not a “public figure” and that the fact that his father had been a politician did not make him a public figure. The Strasbourg Court also agreed with the assessment that Mr Rauscher had not entered the public arena. However, the Court observed that the question of whether or not a person, whose interests have been violated by reporting in the media, is a public figure is only one element among others to be taken into account in answering the question whether the newspaper was entitled to disclose the name of that person. Another important factor that the Court has frequently stressed when it comes to weighing conflicting interests under Article 10 (freedom of expression) on the one hand and Article 8 (right to privacy) on the other hand is the contribution made by articles or photos in the press to a debate of general interest. The European Court emphasised that the article in Der Standard dealt with the fact that politics and banking are intertwined and reported on the opening of an investigation by the public prosecutor. In this connection the Court reiterated that there is little scope under Article 10 §2 of the

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Convention for restrictions on political speech or on debates on questions of public interest. It accepted the Vienna Court of Appeal's finding that the disclosure of a suspect's identity may be particularly problematic at the early stage of criminal proceedings. However, as the article at issue was not a typical example of court reporting, but focused mainly on the political dimension of the banking scandal at hand, revealing the names of some persons involved, including senior managers of the bank, it was legitimate. The Court considered that, apart from reporting the fact that the public prosecutor had opened an investigation into the bank's senior management on suspicion of embezzlement, the impugned litigious article did not deal with the conduct or contents of the investigation as such. Instead the focus was on the extent to which politics and banking are intertwined and on the political and economic responsibility for the bank's enormous losses. In such a context, names, persons and personal relationships are clearly of considerable importance and it is difficult to see how the newspaper could have reported on these issues in a meaningful manner without mentioning the names of all those involved, including Mr Rauscher. The Court therefore considered that the domestic courts had overstepped the narrow margin of appreciation afforded to them with regard to restrictions on debates on subjects of public interest. It follows that the interference with the newspaper's right to freedom of expression was not "necessary in a democratic society". Consequently, the Court concluded that there had been a violation of Article 10 of the Convention. The Court awarded Standard Verlags GmbH EUR 7,600 for pecuniary damages and EUR 4,500 for costs and expenses.

Judgment by the European Court of Human Rights (First Section), case of Standard Verlags GmbH v Austria (no. 3), No. 34702/07 of 10 January 2012

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