European Court of Human Rights: The Freedom of Critical Political Journalism - Oberschlick No 2 vs. Austria

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In its judgement of 1 July 1997 the European Court of Human Rights once more confirmed the high level of freedom of political speech guaranteed by Article 10 of the European Convention for the protection of human rights and fundamental freedoms. It is the fourth condemnation of Austria on this issue (see also ECourtHR, 8 July 1986, Lingens, Series A, Vol. 103; ECourtHR, 23 May 1991, Oberschlick Series A, Vol. 204; ECourtHR, 28 August 1992, Schwabe Series A, Vol. 242-B).

In October 1990 Jörg Haider, the leader of the Austrian Liberal Party (FPÖ), held a speech in which he glorified the role of the generation of soldiers in World War II, whatever side they had been on. Some time later this speech was published in Forum, a political magazine printed in Vienna. The speech was commented critically by Gerhard Oberschlick, editor of the magazine. In his commentary, Oberschlick called Haider an `Idiot' (Trottel). On application by Haider, Oberschlick was found guilty for insult (Beleidigung) by the Austrian courts (Art. 115 Austrian Penal Code).

Oberschlick appealed to the European Commission of Human Rights, arguing that the decisions in which he was convicted for having insulted Mr Haider, had infringed his right to freedom of expression as secured by Article 10 of the European Convention on Human Rights. As the Commission in its report of 29 November 1995, the Court in its judgment of 1 July 1997 also comes to the conclusion that the conviction of Oberschlick by the Austrian Courts represented a disproportionate interference with the exercise of his freedom of (political) expression, an interference which is "not necessary in a democratic society".

The Court reiterates that freedom of expression is applicable not only to information and ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also the "those that offend, shock or disturb". The limits of acceptable criticism are wider with regard to a politician acting in his public capacity than in relation to a private individual. The Court takes into account that Mr Haider clearly intended to be provocative and consequently could expect strong reactions on his speech. In the Court's view, the applicant's article may certainly be considered polemical, but it didn't constitute a gratuitous personal attack, as the author provided an objectively understandable

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explanation why he considered Haider as an "Idiot". The Court comes to the conclusion that "it is true that calling a politician a Trottel in public may offend him. In the instant case, however, the word does not seem disproportionate to the indignation knowingly aroused by Mr. Haider". By seven votes to two, the Court decided that there is a breach of Article 10 of the Convention.

European Court of Human Rights, Case Oberschlick v. Austria N°2, 1 July 1997

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