European Court of Human Rights: Standard Verlagsgesellschaft mbH v. Austria (no. 3)

IRIS 2022-2:1/22

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

While the European Court of Human Rights (ECtHR) has, in the last few years, dealt with many aspects of the right to freedom of expression in the digital environment, it has only recently delivered a judgment specifically focusing on the right of anonymity for user generated content on news portals. In *Standard Verlagsgesellschaft mbH v. Austria (no. 3)* the applicant media company complained that court orders that imposed on it an obligation to disclose data revealing the identity of users, who had posted comments on its Internet news portal, had infringed its freedom of expression as guaranteed by Article 10 of the European Convention on Human Rights (ECHR). The ECtHR found a breach of Article 10 ECHR because the Austrian courts had not sufficiently considered the users' right of anonymity and the interest of the media company in protecting the users as the authors of the comments. Whilehe comments expressed on the Internet news platform had been seriously offensive, they had been expressed as part of a political debate and had not amounted to hate speech nor had they been otherwise clearly unlawful.

The applicant multi-media company in this case publishes the daily printed newspaper Der Standard, also available in digital format (as an "e-paper") and in an online version as *derStandard.at.* At the end of each online article on the news platform *derStandard.at,* readers are invited to register as users to post comments. Each user is required to submit his or her name, surname and email address to the media company. Moreover, he or she may, optionally, submit a postal address. Users are informed that their data will not be seen publicly. Under a subheading "forums' rules" the platform reminds users that they are responsible for their own comments and that they may be held liable for them. The forum rules also mention that the media company will only disclose user data if required to do so by law. The media company reserves the right to delete posts that do not comply with the community guidelines and the news platform has installed software so that all user comments are screened for problematic content before they are published on the portal. In the event that the system flags a problematic comment, the publication of that comment becomes subject to a manual ex ante review. User comments are also subject to an editorial review on a regular basis. The news platform has also implemented a "notice and take down" system by which other users can trigger a manual editorial review of published user comments by means of a "report" button.

© European Audiovisual Observatory (Council of Europe) 2026

On two occasions the news platform had been asked by different people to delete comments which they considered defamatory, with a request also to disclose the users' data in order to be able to institute civil and criminal proceedings against the authors of the alleged defamatory content. The news platform in each of these cases deleted the comment, but refused to disclose the relevant user data. The plaintiffs brought civil proceedings against Der Standard news platform, which resulted in court decisions ordering the news platform to disclose the identity of the particular users. The news platform maintained that it was not obliged to disclose the user data because the comments at issue were not defamatory, but rather constituted permissible valued judgments. It also invoked the right to protect journalistic sources. However, the Austrian courts found that the plaintiffs were entitled, under section 18(4) of the E-Commerce Act, to demand the disclosure of the user data.

The ECtHR first agrees with the Austrian courts that the news platform could not rely on the protection of journalistic sources or on editorial confidentiality in the instant case. The comments posted on the forum by readers of the news portal, while constituting opinions and information, were clearly addressed to the public rather than to a journalist. Therefore the comments' authors could not be considered a source to a journalist. The ECtHR is of the opinion, however, that the media company's overall function is to further open discussion and to disseminate ideas with regard to topics of public interest, as protected by freedom of the press. It refers to principle 7 of the Declaration on freedom of communication on the Internet, adopted on 28 May 2003 by the Committee of Ministers of the Council of Europe, which emphasises the principle of anonymity for Internet users in order to enhance the free expression of opinions, information and ideas. Although the right of anonymity is not absolute, there is no doubt that an obligation to disclose the data of authors of online comments could deter them from contributing to debate and therefore lead to a chilling effect among users posting in forums in general. That also affects, indirectly, the media company's right as a media company to freedom of press. It invitees users to comment on its articles in order to further discussion on its journalistic work and to achieve that goal, it allows authors of comments to use usernames. Upon registration, users are informed that their data would not be seen publicly and wouldonly be disclosed if required by law. The media company hence awards its users a certain degree of anonymity not only in order to protect its freedom of the press but also to protect the users' private sphere and freedom of expression, while this anonymity would not be effective if the media company could not defend it by its own means. The ECtHR therefore finds that the domestic courts' orders in the two sets of proceedings to disclose the requested user data constituted an interference with the media company's right to enjoy freedom of the press under Article 10 § 1 ECHR. The ECtHR agreed that such interference was prescribed by law, in order to achieve the legitimate aim of protecting the reputation and rights of others. It finds, however, that the impugned interference was not necessary in a democratic society, because the Austrian courts did not base their assessment on

© European Audiovisual Observatory (Council of Europe) 2026

any balancing between the interests of the authors of the particular comments and of the media company to protect those authors, respectively, on the one side, and the interests of the plaintiffs concerned on the other side. The lack of any balancing between the opposing interests overlooks the function of anonymity as a means of avoiding reprisals or unwanted attention and thus the role of anonymity in promoting the free flow of opinions, ideas and information, in particular when political speech is concerned which is not hate speech or otherwise clearly unlawful. The ECtHR finds that in the absence of any balancing of those interests the disclosure orders by the Austrian courts were not supported by relevant and sufficient reasons to justify the interference. It follows that the interference was not in fact "necessary in a democratic society", within the meaning of Article 10 § 2 ECHR. Therefore the ECtHR finds, unanimously, that there has been a violation of Article 10 ECHR.

European Court of Human Rights, Fourth Section, in the case of Standard Verlagsgesellschaft mbH v. Austria (no. 3), Application no. 39378/15, 7 December 2021

https://hudoc.echr.coe.int/eng?i=001-213914

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026