



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF STANDARD VERLAGS GMBH v. AUSTRIA (No. 3)

(Application no. 34702/07)

JUDGMENT

STRASBOURG

10 January 2012

FINAL

10/04/2012

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Standard Verlags GmbH v. Austria (no. 3),

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Nina Vajić, *President*,
Elisabeth Steiner,
Khanlar Hajiyeu,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 6 December 2011,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 34702/07) against the Republic of Austria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by Standard Verlags GmbH (“the applicant company”), on 3 August 2007.

2. The applicant company was represented by Ms M. Windhager, a lawyer practising in Vienna. The Austrian Government (“the Government”) were represented by their Agent, Ambassador H. Tichy, Head of the International Law Department at the Federal Ministry for European and International Affairs.

3. The applicant company alleged a violation of the right to freedom of expression.

4. On 20 March 2009 the President of the First Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant company is a limited liability company based in Vienna.

6. The applicant company is the owner of the daily newspaper *Der Standard*. In its issue of 4 April 2006, in the economics section, the applicant company published an article dealing with the investigation into losses incurred by Hypo Alpe-Adria Bank. The article reads as follows:

“Haider’s Hypo now also facing criminal investigation

After the Financial Market Authority, the prosecution service is now also looking into allegations of embezzlement against Hypo Alpe-Adria Bank. Jörg Haider has accused the judicial authorities of being overzealous and politically motivated.

Klagenfurt – Following the discovery of massive speculative losses from swap deals, the floodgates are threatening to open at Carinthia’s Hypo Alpe-Adria Bank. On Monday the Klagenfurt public prosecutor’s office initiated an investigation in respect of Hypo senior managers. Chief public prosecutor Gottfried Kranz said that the investigation, concerning suspected embezzlement, had been launched by the prosecution service of its own motion and that it would take the findings of the Financial Market Authority audit into account.

Regional governor Jörg Haider criticised the “judicial authorities’ overzealousness” and spoke of a “politically motivated ploy to deflect attention away from the Bawag scandal”. His deputy Martin Strutz described the 328 million euros lost as a result of the speculation as a “molehill that should not be made into a mountain”.

Wolfgang Kulterer, of Hypo Alpe-Adria’s executive board, and Jörg Haider, who represents Hypo’s shareholders and also (through Landesholding) performs a supervisory function at the bank, had previously blamed the speculative losses of 328 million euros on an individual member of the bank’s treasury department, Christian Rauscher, the son of a former SPÖ regional government member with responsibility for finance. In 2004 Rauscher was not dismissed but merely demoted and transferred, being relieved of his duties only after the incident of the losses had become known.

Rauscher had been in charge of the treasury department, together with Andreas Zois, in 2004. The department was, however, under Kulterer’s personal authority as chairman of the executive board. To relieve Kulterer of his responsibilities as regards the treasury department, Josef Kircher was brought in to join Günther Striedinger and Thomas Morge on the Hypo board in 2004. At the same time, the 25% managing shareholder of Confida Holding, Karl-Heinz Moser, was promoted to become chairman of the Hypo supervisory board. Confida’s Klagenfurt subsidiary, Confida Treuhand GmbH, audited Hypo’s accounts. The 2004 financial statements, in which the massive speculative losses were intended to be adjusted, were signed by the Confida auditors Walter Grojer and Robert Zankl, the former of whom frequently crops up in circles close to Haider. As the swap losses were evidently too large-scale for Confida’s Klagenfurt subsidiary to handle, the audit firm Deloitte & Touche was consulted and promptly informed the Financial Market Authority.

Meanwhile, Hypo’s flotation, which surprisingly had recently been brought forward to 2006, is very much up in the air. How matters are to proceed will now probably be on the agenda of Hypo’s shareholder meeting on Wednesday.

Against this background, Hypo Alpe-Adria’s interest in Bank Burgenland also appears in a new light. In 2004 Hypo submitted the last and the best bid, but suddenly

withdrew its offer. Buying Bank Burgenland would have made sense because at the time it had approximately 300 million euros in losses carried forward in its accounts, which would have allowed Hypo to save on capital-gains tax. It is possible that the acquisition failed to materialise because of the substantial losses from the botched swap transaction.”

7. On 16 June 2006 Mr Rauscher brought proceedings against the applicant company for disclosure of his identity in breach of section 7a of the Media Act (*Mediengesetz*). He submitted that he was not a public figure and that his position in the bank had not been such as to justify the disclosure of his name. He asserted that when authorising the transactions at issue he had acted in accordance with his instructions and under the supervision of his superior’s and the bank’s risk management. The publication of his name had had negative repercussions on his professional advancement and had not been justified by any public interest.

8. In its submissions in reply, the applicant company contended that the article had not depicted the claimant as the person responsible for the losses but rather as the “scapegoat”. The public interest in the disclosure of his name outweighed his private interests since he had held a leading position in the bank and there was also a connection with the political sphere on account of his father’s position as a former regional government member responsible for finance (*Finanzlandesrat*). Moreover, the article had reported on the issue in a neutral manner.

9. By judgment of 18 July 2006 the Vienna Regional Criminal Court (*Landesgericht für Strafsachen*) dismissed Mr Rauscher’s action.

10. It noted that the claimant had been head of Hypo Alpe-Adria’s treasury department which had incurred losses of 288 to 328 million euros (EUR) in 2004. It also noted that the article, which reported on the investigation into embezzlement by the public prosecutor’s office and mentioned the claimant’s full name as the person who was being blamed for these losses, contained the information that the claimant was suspected of a criminal offence.

11. The Regional Court observed that section 7a(1) of the Media Act required a weighing of the claimant’s interest in the protection of his identity and the public interest in its disclosure.

12. It noted that the claimant, who had lost his job at Hypo Alpe-Adria, was unemployed. The mentioning of his name in the context of the speculation scandal as being suspected of the criminal offence of embezzlement was certainly detrimental to his professional advancement within the meaning of section 7(2)(2) of the Media Act. However, it had to be assumed that the claimant’s former position and activity at Hypo Alpe-Adria was known in banking and business circles even without the publication of his name in *Der Standard*.

13. It remained to be examined whether there was an overriding public interest in the disclosure of the claimant’s name. The court noted that it had

heard the claimant as a witness and had – on the basis of his submissions – found that the following facts were established. Forty-five per cent of Hypo Alpe-Adria was owned by the *Land* of Carinthia. Between May and November 2004 the bank had incurred losses of 288 to 328 million euros as a result of foreign currency speculations. The claimant had been the head of the bank’s treasury department from 1996 until 2006, when he had terminated his employment on his own initiative. In his capacity as head of the treasury he had had to authorise or refuse foreign currency transactions. The losses had thus been incurred under his responsibility. He had only been answerable to the bank’s executive board, which consisted of three members. The claimant’s father had been a regional government member responsible for finance until 1996. While the claimant was head of the bank’s treasury, his father had been on the bank’s supervisory board.

14. The Regional Court accepted that the claimant, although having been a senior employee of the bank, was not a public figure. Thus, he did not have “a position in society” within the meaning of section 7a(1) of the Media Act, which would justify the publication of his name. Nor did the fact that his father had held such a position justify the disclosure of the claimant’s name.

15. Nevertheless, the Regional Court held that there was a connection between the claimant’s professional activity and public life for the purposes of this provision: as the *Land* owned 45% of the bank, the *Land* and consequently the taxpayer had to carry a considerable share of the losses. The claimant had been in a leading position, being responsible for the very department which had caused the losses. The public, or in other words, the taxpayer thus had an overriding interest in receiving information about the identity of those who were responsible for the enormous losses. Consequently, *Der Standard* had been entitled to mention the claimant’s name.

16. On 14 February 2007 the Vienna Court of Appeal (*Oberlandesgericht*) granted the claimant’s appeal and ordered the applicant company to pay 5,000 euros (EUR) in compensation to the claimant and to reimburse his procedural costs.

17. The Court of Appeal agreed with the Regional Court that the claimant had been presented as someone suspected of embezzling a large sum of money. However, it found that the Regional Court had wrongly weighed the conflicting interests at issue:

“The Regional Court’s finding that the public interest in the publication of the claimant’s name outweighed his interest in the protection of his identity cannot, however, be endorsed. The former must be assessed against an objective standard and, in particular, with reference to the identity of the person concerned; for that reason the mere public interest in the reporting of a crime does not by itself suffice. In accordance with settled case-law, when assessing whether the identity of persons listed in section 7a(1) of the Media Act may be revealed, a strict standard must be

applied, especially as the general public has, in principle, no legal right to know the identity of the persons concerned. ...

At the time the article was published, the investigation into the “Hypo Alpe-Adria affair” was still in the early stages. According to the claimant, no proceedings had yet been brought against him, and the subject matter of the article in question was only the rumours of accusations against him by two senior bank officials. However, at this time there was no independent value in the disclosure of the claimant’s name that would have outweighed the legitimate interest in protecting his anonymity. The claimant’s name was clearly disclosed in order to make a connection with his father, the former regional government member responsible for finance, and by doing so create a “story” which would satisfy the public’s curiosity and appetite for the sensational to a high degree. In practice, the disclosure of the claimant’s name had no informative value whatsoever and so the weighing of interests must operate in favour of the claimant. ...

The Regional Court is right in stating that the public has a very substantial interest in finding out who is responsible for these enormous losses. However, this does not justify the disclosure of the claimant’s identity in a situation where the suspicions are so vague and uncertain. ...

Since the first-instance court found that the publication of the claimant’s name had had considerable negative consequences for him, and taking into account the gravity of the accusation and the wide circulation of *Der Standard*, compensation in the amount of EUR 5,000 seems to be appropriate. ...”

II. RELEVANT DOMESTIC LAW

18. Section 7a of the Media Act, so far as material, provides as follows:

“(1) Where publication is made, through any medium, of a name, image or other particulars which are likely to lead to the disclosure to a larger not directly informed circle of people of the identity of a person who

1. has been the victim of an offence punishable by the courts or

2. is suspected of having committed, or has been convicted of, a punishable offence, and where legitimate interests of that person are thereby injured and there is no predominant public interest in the publication of such details on account of the person’s position in society, of some other connection with public life, or of other reasons, the victim shall have a claim against the owner of the medium (publisher) for damages for the injury suffered.”

(2) Legitimate interests of the victim shall in any event be injured if the publication

1. in the case of subsection (1)1 is such as to give rise to an interference with the victim’s strictly private life or to his or her exposure,

2. in the case of subsection (1)2 relates to a juvenile or merely to a lesser indictable offence or may substantially prejudice the victim’s advancement.

...”

III. RELEVANT COUNCIL OF EUROPE DOCUMENTS

19. On 10 July 2003 the Committee of Ministers of the Council of Europe adopted Recommendation Rec(2003)13 on the provision of information through the media in relation to criminal proceedings. The Appendix to that Recommendation contains the following principles:

“Principle 1 - Information of the public via the media

The public must be able to receive information about the activities of judicial authorities and police services through the media. Therefore, journalists must be able to freely report and comment on the functioning of the criminal justice system, subject only to the limitations provided for under the following principles.

Principle 2 - Presumption of innocence

Respect for the principle of the presumption of innocence is an integral part of the right to a fair trial. Accordingly, opinions and information relating to on-going criminal proceedings should only be communicated or disseminated through the media where this does not prejudice the presumption of innocence of the suspect or accused.

...

Principle 8 - Protection of privacy in the context of on-going criminal proceedings

The provision of information about suspects, accused or convicted persons or other parties to criminal proceedings should respect their right to protection of privacy in accordance with Article 8 of the Convention. Particular protection should be given to parties who are minors or other vulnerable persons, as well as to victims, to witnesses and to the families of suspects, accused and convicted. In all cases, particular consideration should be given to the harmful effect which the disclosure of information enabling their identification may have on the persons referred to in this Principle.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

20. The applicant company complained that the Vienna Court of Appeal’s judgment of 14 February 2007 had violated its right to freedom of expression. It relied on Article 10 of the Convention, which reads as follows:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. ...

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

21. The Government contested that argument.

A. Admissibility

22. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

23. The Court notes at the outset that it is not in dispute that the Vienna Court of Appeal’s judgment of 14 February 2007, which awarded damages to the claimant, constituted an interference with the applicant company’s right to freedom of expression as guaranteed by Article 10 § 1 of the Convention.

24. As to the fulfilment of the conditions set out in Article 10 § 2, it was common ground between the parties that the interference was “prescribed by law”, namely section 7a of the Media Act and served a legitimate aim, namely the protection of the rights and reputation of others. The Court sees no reason to hold otherwise.

25. The parties’ arguments concentrated on the question whether the interference was “necessary in a democratic society” within the meaning of Article 10 § 2 of the Convention.

1. The parties’ submissions

26. The applicant company maintained that the interference with its right to impart information had not been necessary. It asserted that the article had contributed to a public debate, and concerned an issue of considerable public interest, namely how a bank which was part owned by the *Land* had lost enormous amounts of money in foreign currency speculations, thus ultimately causing damage to the taxpayer.

27. Regarding the question whether it had been entitled to mention Mr Rauscher’s name, the applicant company noted that the article, while reporting that the public prosecutor’s office was investigating senior managers of Hypo Alpe-Adria in connection with suspected embezzlement, described Mr Rauscher as a scapegoat rather than a culprit. The applicant

company also disputed that its reporting had damaged Mr Rauscher's career prospects. His position in the bank and the huge losses incurred had been known in banking circles well before the publication of the article at issue. In any case, the article had done no more than to refer correctly to the claimant's position as head of the bank's treasury. Moreover, it was a fact that his father, a former member of the regional government, had been on the bank's supervisory board at the material time. Without being able to mention the names of those responsible it would not have been possible for the press to convey the extent to which politics and banking were intertwined.

28. The Government, while acknowledging the essential role played by the press as a "public watchdog", asserted that in the present case the interference with the applicant company's freedom of expression had been necessary within the meaning of Article 10 § 2 of the Convention. They argued in particular that the domestic courts had had to weigh the applicant company's interest in imparting information on an issue of public interest against the rights of the person concerned which were equally protected by the Convention, namely the presumption of innocence guaranteed by Article 6 § 2 and the right to respect for his or her identity, protected by Article 8 as part of a person's private life. The necessity to carry out such a weighing of interests was laid down in section 7a(1)(2) of the Media Act.

29. While reporting on the massive speculation losses of a bank had clearly been in the public interest, the disclosure of Mr Rauscher's name had not. He was not a politician nor a leading businessman or other public figure. He had just been the treasurer of the bank in issue. The fact that his father was a politician did not make him a public figure either. Even the Regional Court, which had dismissed his claim at first instance, had acknowledged that the article had created the impression that he was suspected of having committed the offence of embezzlement in respect of a huge sum of money. In its judgment of 14 February 2007, the Vienna Court of Appeal set out convincing reasons for its conclusion that Mr Rauscher's interest in the protection of his identity and the presumption of innocence outweighed the applicant company's interest in disclosing his name. The amount of compensation awarded to the claimant, namely EUR 5,000 was not disproportionate either.

2. The Court's assessment

(a) General principles

30. According to the Court's well-established case-law, the test of necessity in a democratic society requires the Court to determine whether the interference complained of corresponded to a "pressing social need", whether it was proportionate to the legitimate aim pursued and whether the reasons given by the national authorities to justify it are relevant and

sufficient (see *The Sunday Times v. the United Kingdom (no. 1)*, 26 April 1979, § 62, Series A no. 30). In assessing whether such a need exists and what measures should be adopted to deal with it, the national authorities are left a certain margin of appreciation. This power of appreciation is not, however, unlimited but goes hand in hand with a European supervision by the Court, whose task it is to give a final ruling on whether a restriction is reconcilable with freedom of expression as protected by Article 10 (see *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, § 58, ECHR 1999-III).

31. An important factor for the Court's determination is the essential function of the press in a democratic society. Although the press must not overstep certain bounds, in particular in respect of the reputation and rights of others or of the proper administration of justice, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest (see *Bladet Tromsø and Stensaas*, cited above, § 59, and, as a recent authority, *Flinkkilä and Others v. Finland*, no. 25576/04, § 73, 6 April 2010). By reason of the “duties and responsibilities” inherent in the exercise of the freedom of expression, the safeguard afforded by Article 10 to journalists in relation to reporting on issues of general interest is subject to the proviso that they are acting in good faith and on an accurate factual basis and provide reliable and precise information in accordance with the ethics of journalism (see *Fressoz and Roire v. France* [GC], no. 29183/95, § 54, ECHR 1999-I, and, as a recent authority, *Eerikäinen and Others v. Finland*, no. 3514/02, § 60, 10 February 2009). Not only do the media have the task of imparting such information and ideas, the public has a right to receive them. Were it otherwise, the press would be unable to play its vital role of “public watchdog” (see, among many authorities, *Thorgeir Thorgeirson v. Iceland*, 25 June 1992, § 63, Series A no. 239).

32. In sum, the Court's task in exercising its supervisory function is not to take the place of the national authorities but rather to review under Article 10, in the light of the case as a whole, the decisions they have taken pursuant to their power of appreciation (*Fressoz and Roire*, cited above, § 45).

(b) Application of these principles to the present case

33. The present case concerns an article published by the applicant company in its daily newspaper *Der Standard*, reporting on the enormous speculation losses incurred by Hypo Alpe-Adria and on the criminal investigation into embezzlement which had been opened by the public prosecutor in respect of the senior management of the bank. It raises the question whether the applicant company was entitled to disclose the name of the claimant, who had been the head of the bank's treasury at the time when the losses were incurred.

34. The domestic courts disagreed on the issue. The Vienna Regional Criminal Court held that although the claimant was not a public figure, there was a link between his professional activity and public life in that the *Land* of Carinthia owned 45% of the bank. As it was ultimately for the taxpayer to bear a considerable share of the losses, there was an overriding public interest in receiving information on the identity of those responsible. The Vienna Court of Appeal also considered that the claimant was not a public figure. While accepting that the public had an interest in being informed of the speculation losses, it considered that this interest could not justify the disclosure of the claimant's name at an early stage of the criminal investigation where the suspicion was still vague.

35. In the Court's view the reasons given by the Vienna Court of Appeal were undoubtedly "relevant" reasons for the purposes of the necessity test to be carried out under Article 10 § 2. It will next examine whether they were also "sufficient".

36. The Court agrees with the domestic courts that the case concerned a balancing of the applicant company's right to freedom of expression under Article 10 against the claimant's right to protection of his identity. In this connection the Court reiterates that the concept of "private life" protected by Article 8 of the Convention includes aspects relating to personal identity, such as a person's name or picture (see *Von Hannover v. Germany*, no. 59320/00, § 50, ECHR 2004-VI with further references).

37. In cases in which the Court has had to balance the protection of private life against freedom of expression, one factor it has taken into account is the position of the person concerned by the publication: whether or not he or she was a "public figure" or had otherwise "entered the public scene" (see, for instance, the following cases in the specific context of criminal proceedings: *News Verlags GmbH & Co.KG v. Austria*, no. 31457/96, § 54, ECHR 2000-I, relating to the publication of pictures of the suspect of a high-profile crime; *Verlagsgruppe News GmbH v. Austria* (no. 2), no. 10520/02, § 36, 14 December 2006, relating to the publication of a picture of a leading business man in the context of proceedings against him for tax evasion; *Egeland and Hanseid v. Norway*, no. 34438/04, § 60, 16 April 2009, relating to the publication of pictures of a person convicted of murder in a high-profile case; *Flinkkilä and Others*, cited above, § 83, relating to the publication of the name and picture of the female friend of a senior public figure, a married man, who had both been involved in a public disturbance which gave rise to their conviction; and *Eerikäinen and Others*, cited above, § 66, concerning the disclosure of the identity and pictures of the suspect of proceedings relating to social security fraud).

38. In the present case, both the Vienna Regional Criminal Court and the Vienna Court of Appeal found that the claimant, as a senior employee of the bank in issue, was not a "public figure", nor did the fact that his father had been a politician make him a public figure. The Court agrees with this

assessment. It does not consider either that the claimant can be considered to have entered the public scene. However, the Court observes that the question 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 (see the case of *Eerikäinen and Others*, cited above, §§ 66-72, in which the publication concerned an ordinary individual but where the court nevertheless found that the order to pay damages for publishing her name and picture in the context of a report on an issue of general interest had not been “necessary” within the meaning of Article 10 § 2 of the Convention).

39. Another important factor which the court has frequently stressed when it comes to weighing conflicting interests under Article 10 on the one hand and Article 8 on the other hand, is the contribution made by articles or photos in the press to a debate of general interest (see, in the context of criminal proceedings, *News Verlags GmbH & Co.KG*, cited above, § 54; *Verlagsgruppe News GmbH (no. 2)*, cited above, § 37; *Flinkkilä and Others*, cited above, § 76; and *Eerikäinen and Others*, cited above, § 66).

40. It is not in dispute in the present case that the article reported on an issue of public interest. It concerned a banking scandal which led to enormous losses by a bank, 45% of which was owned by the *Land* of Carinthia. Against this background, the article dealt with the fact that politics and banking were intertwined on the one hand and reported on the opening of an investigation by the public prosecutor on the other hand. In this connection the Court reiterates that there is little scope under Article 10 § 2 of the Convention for restrictions on political speech or on debate on questions of public interest (see *Sürek v. Turkey (no. 1)* [GC], no. 26682/95, § 61, ECHR 1999-IV).

41. Moreover, it is not in dispute that the facts reported in the article were correct. As head of the bank’s treasury, the claimant held a position in the management of the bank at the material time, in which he was responsible for authorising foreign currency transactions and answerable only to the executive board. The fact that his father was a former member of the regional government was not in dispute either, nor the fact – not mentioned in the article but established by the domestic courts in the course of the proceedings – that he had been a member of the bank’s supervisory board at the time when the losses were incurred and the claimant was head of its treasury.

42. The Vienna Court of Appeal relied heavily on the aspect that the article reported on the opening of criminal proceedings and, by indicating the claimant’s name, presented him as a suspect in the embezzlement of a huge sum of money. The Government, arguing that the impugned judgment had served to protect the claimant’s right to be presumed innocent, appear to rely on a similar line of argument. The Court refers to the particular duties incumbent on the media in relation to providing information on criminal

proceedings (see, in paragraph 19 above, the Council of Ministers Recommendation Rec(2003)13). It accepts 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.

43. However, when assessing the necessity of an interference, the Court must have regard to the article as a whole. It observes that the article at issue is not a typical example of court reporting but focuses mainly on the political dimension of the banking scandal at hand. This is already made clear by its title "Haider's Hypo now also facing criminal investigation", which refers to Mr Haider, the then Regional Governor of Carinthia, and by the introductory text in which Mr Haider is said to have accused the authorities of being "overzealous and politically motivated". Apart from reporting the fact that the public prosecutor had opened an investigation into the bank's senior management on suspicion of embezzlement, the article does not deal with the conduct or contents of the investigation as such.

44. The article's focus is instead on the extent to which politics and banking are intertwined and on the political and economic responsibility for the bank's enormous losses. It mentions that Mr Haider, who himself also represented the *Land* as a shareholder and performed a supervisory function at the bank, and Mr Kulterer from the bank's executive board, were trying to put the blame on the claimant and in this context refers to his father, member of the Socialist Party and former member of the regional government, thus hinting at motives of party politics. Names, persons and personal relationships are clearly of considerable importance in this sphere. It is difficult to see how the applicant company could have reported on these issues in a meaningful manner without mentioning the names of all those involved, including the claimant (see, *mutatis mutandis*, *Flinkkilä and Others*, cited above, § 85, where the Court also considered that the disclosure of the identity of the person concerned had a direct bearing on matters of public interest). That distinguishes the present case from a case in which the Court declared inadmissible the complaint by the publisher of an Austrian news magazine, which had been ordered to pay compensation for having disclosed the name of a police officer at an early stage of criminal proceedings against him. The Court found in that case that the disclosure of the police officer's name did not add anything to the information already given in the article (*Wirtschafts-Trend Zeitschriften-Verlagsgesellschaft mbH v. Austria* (no. 2) (dec.), no. 62746/00, ECHR 2002-X).

45. Furthermore, the Court observes that the Vienna Court of Appeal referred to the Regional Court's finding that the disclosure of Mr Rauscher's identity had been detrimental to him, namely to his professional advancement. However, it did not counter the Regional Court's argument that his name and position at Hypo Alpe-Adria must have been well known in business circles before the publication of the article at issue.

46. In sum, the Court finds that the reasons adduced by the Vienna Court of Appeal, though being “relevant” were not “sufficient”. The Court therefore considers that the domestic courts have overstepped the narrow margin of appreciation afforded to them with regard to restrictions on debates of public interest. It follows that the interference with the applicant company’s right to freedom of expression was not “necessary in a democratic society”.

47. Consequently, there has been a violation of Article 10 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

48. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

49. The applicant company claimed 8,037.14 euros (EUR) in respect of pecuniary damage. This sum is composed of EUR 5,000, which it had to pay to Mr Rauscher as compensation, plus EUR 250 and EUR 2,787.14, which it had to pay him for court fees and legal representation respectively. The latter amount includes value-added tax (VAT).

50. The applicant company did not request an award in respect of non-pecuniary damage.

51. The Government contended that the 20% VAT included in the costs for legal representation did not constitute a financial burden for the applicant company, since it was entitled to input tax deduction (*Vorsteuerabzug*).

52. The Court finds that there is a causal link between the violation of Article 10 and the pecuniary damage claimed by the applicant company. The latter is therefore entitled to claim damages under this head. However, the Court finds that the Government’s argument in respect of VAT is pertinent, as commercial companies, in contrast to private individuals, are entitled to input tax deduction. According to the bill submitted by the applicant company, the amount which it had to pay the claimant as reimbursement for his legal representation contained VAT in the amount of EUR 435.02. The Court reduces the amount claimed by the applicant company accordingly (see, as a similar case, *Verlagsgruppe News GmbH* (no. 2), cited above, § 48). It therefore awards EUR 7,602.12 under the head of pecuniary damage.

B. Costs and expenses

53. The applicant company also claimed EUR 2,378.19 for the costs and expenses incurred before the domestic courts and EUR 3,706.56 for those incurred in the Convention proceedings. These sums include VAT.

54. The Government asserted that the claim was excessive. They submitted in particular that, in respect of the Convention proceedings, the applicant company claimed more than twice the amount that is due according to the relevant domestic law. Moreover, the argument concerning VAT also applied in respect of the applicant company's own costs of legal representation.

55. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, having regard to the documents in its possession and the above criteria and taking into account the Government's argument in respect of VAT, the Court considers it reasonable to award the sum of EUR 4,500 covering costs and expenses under all heads.

C. Default interest

56. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 10 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant company, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 7,602.12 (seven thousand six hundred and two euros twelve cents), plus any tax that may be chargeable, in respect of pecuniary damage;
 - (ii) EUR 4,500 (four thousand five hundred euros), plus any tax that may be chargeable to the applicant company, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant company's claim for just satisfaction.

Done in English, and notified in writing on 10 January 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President