



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

FIRST SECTION

**CASE OF KURIER ZEITUNGSVERLAG UND DRUCKEREI GMBH
v. AUSTRIA**

(Application no. 3401/07)

JUDGMENT

STRASBOURG

17 January 2012

FINAL

17/04/2012

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

In the case of Kurier Zeitungsverlag und Druckerei GmbH v. Austria,
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 13 December 2011,

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

PROCEDURE

1. The case originated in an application (no. 3401/07) 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 Kurier Zeitungsverlag und Druckerei GmbH (“the applicant company”) with its registered office in Vienna, on 27 December 2006.

2. The applicant company was represented by Giger, Ruggenthaler & Partner, a partnership of lawyers 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 that the judgment under the Media Act ordering it to pay damages had infringed its right to freedom of expression under Article 10 of the Convention.

4. On 13 May 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, a limited liability company with its registered office in Vienna, is the owner and publisher of the daily newspaper *Kurier*.

1. The background to the case

6. In November 2003 criminal investigations were launched in respect of A and B who were suspected of the repeated and serious ill-treatment and sexual abuse of 10-year-old C, which had caused severe injuries. A is C's father and B is her stepmother. C was taken to hospital and several media reported the case.

7. After C left the hospital in May 2004 she stayed with D, her biological mother. On 9 December 2004 custody of C was transferred to the X Regional Youth Welfare Agency (*Jugendwohlfahrtsträger des Landes X*) for the period of 1 December 2003 to 29 November 2004 and from 30 November 2004 onwards it was transferred to D.

8. The trial of B and A was held in February 2005 and media interest in the case grew again. At the same time C had a relapse and began suffering from severe psychological problems again, making it necessary for her to be re-admitted to hospital.

9. On 21 February 2005 A and B were convicted of aggravated sexual abuse of minors (*schwerer sexueller Missbrauch von Unmündigen*), deliberate aggravated bodily harm (*absichtliche schwere Körperverletzung*) and ill-treatment of minors (*Quälen von Unmündigen*). They were sentenced to fifteen years' imprisonment and ordered to pay compensation for non-pecuniary damage.

10. The applicant company published two articles in *Kurier* on 16 and 22 February 2005, using the first name of C and the full names of A and B, and illustrating them with photographs of A and B

2. The articles which appeared in Kurier

11. On 16 February 2005 an article¹ was published in the applicant company's newspaper, which read as follows:

“Judge: ‘C could easily have been dead’

When 10-year-old C was taken into hospital, nine percent of her body was burnt. She had burn wounds on her upper body and around her genitals, multiple broken ribs, a fractured skull, bruises everywhere and a deep cut in her arm ‘almost as though an

¹ All the names given by initials or letters in the English translation are in full in the original articles.

attempt had been made to amputate it' (one of the trial participants). 'The child could just as easily have been dead' Judge J.J. told the girl's father, one of the accused, in no uncertain terms in the X Regional Court on Tuesday. A [age], and his second wife, B [age], are accused of reducing C to this state.

AT HOME In her parents' flat in the AB district of X, C was beaten, tortured, ill-treated and severely sexually abused between August 2003, when A fetched C from her grandparents' home in Y 'to give her a better life' (the accused's words) and early December 2003, when he took his daughter to hospital with life-threatening injuries. That is beyond doubt. The couple both try to place (the bulk of) the blame on each other. C stated that it was her stepmother who had deprived her of her virginity using a cooking spoon and who had pressed down on her private parts with a soup spoon heated over a candle. She accused her stepmother and her father of kicking her, binding and gagging her, tying her to the bedpost and leaving her kneeling beside the bed like that for hours. This was described as 'corporal punishment' by defence lawyer R.S., meted out because, according to A, 'my wife told me that C was constantly masturbating'. He claimed that he had felt 'out of his depth' as a father.

COOKING SPOON He claims not to have known that his wife sexually assaulted C with a cooking spoon, or that she had pressed a red-hot iron on the girl's breast. He had only noticed the wounds later. 'Why didn't you take your daughter to the doctor?' asked the judge. 'Because my wife said I shouldn't' came the reply. B puts most of the blame on her husband. She claims to have hit C only once, when the girl was being really bad. She regards herself 'as a victim too' (defence lawyer M.B.). The victim of a husband who was 'incredibly' violent, who beat her and the children; a husband who would not allow her to take her children to the doctor when he had beaten them. Because she was afraid of him she had looked away, or looked on, while C was tormented. The trial resumes on 21 February."

12. On 22 February 2005 a further article was published in the applicant company's newspaper, which read as follows:

"Maximum sentence for C's parents

Father and stepmother of 'torture victim' sentenced to fifteen years' imprisonment each at first instance

On the opening day of the trial C's stepmother was not (yet) afraid to look into the cameras: By the end of the trial on Monday B [age] was doing the same as her husband A [age], sitting in the dock with her head bowed. On day two it was the turn of the court experts and C to give evidence. However, the girl was spared the ordeal of appearing before the X Regional Court. Now aged twelve, she gave her evidence on film during the preliminary proceedings. 'How far away are they, those bad people?' C had asked at the time, before describing her ordeal. The video footage shown to the jury lasted one hour. The public was prohibited from watching. C's lawyer, E.P., had requested that they be excluded. 'The girl was so frightened of giving evidence. She made her statements on the understanding that they would be treated with discretion. Her sense of modesty, integrity and trust would be damaged again if her statements were to reach the media.' The request was granted. According to forensic medical expert C.R., a plugged-in iron had been placed on the girl's upper body 'at least six times', 'not just gliding over it, but held in one place'. The 10-year-old had third-degree burns, including burn wounds around her genitals, when she was taken to hospital by her father in December 2003. In addition she had a fractured skull,

multiple broken ribs and a cut which went down almost to the bone. The abuse perpetrated against ‘torture victim C’ (the words of forensic child psychologist A.G.) will have lasting psychosexual effects. A.G. believes that the girl’s experiences will resurface as soon as she begins to have contact with the opposite sex. But ‘even now the child undoubtedly receives daily reminders of what happened, for instance in the form of nightmares. C’s lawyer requested the court to award the girl 100,000 euros in compensation and 25,000 euros for the cost of a transplant. ‘No civil proceedings will be conducted in this case, in order to spare C further examination’. The jury’s verdict was swift: fifteen years’ imprisonment for each of the accused – the maximum sentence. C was awarded the 125,000 euros. ‘You destroyed this child. You deserve the maximum sentence’ said Judge J.J. C’s father lodged an appeal immediately, while his wife asked for time to consider.”

3. *The proceedings under the Media Act*

13. In subsequent proceedings under section 7a of the Media Act, C, represented by the Regional Youth Welfare Agency, sought compensation from the applicant company for the damage caused by the publication of her name, the names and pictures of her parents and further details given in the two articles of 16 and 22 February 2005, which together made her identifiable to the wider public.

14. On 24 November 2005 the X Regional Criminal Court (*Landesgericht für Strafsachen*) rejected C’s request for compensation. It observed that already at an early stage of the criminal proceedings the case had attracted considerable media attention. The case and the identity of the offenders had therefore been known to the public.

15. As regards the articles at issue, the Regional Court found that by mentioning the first name of the victim, her age, the first names and family names of the offenders, indicating their family relationship to the victim and publishing pictures of the father and the stepmother, the victim had become recognisable to a wide number of persons beyond the circle of those directly informed. Therefore, these articles constituted an intrusion into the victim’s strictly private life and injured her legitimate interest in remaining anonymous and she was in principle entitled to compensation.

16. However, the interest protected by Article 8 of the Convention had to be weighed against the interest protected by Article 10 of the Convention. If there existed an overriding public interest in the information about the particular circumstances which allowed for the identification of offender and victim, such interest outweighed the interest of the victim to remain anonymous.

17. Even though the publication of the identity of the persons involved in a criminal offence was normally unnecessary for understanding how the offence was committed, how the investigations progressed or whether the perpetrator had been convicted, there was a public interest in being informed of the identity of persons who had committed a criminal offence against a child, as such information might serve to prevent similar acts in

the future. Despite the interest of the victim in not having her identity disclosed, the disclosure was justified because of the public interest in knowing the identity of the perpetrators and the subsequent wider public discussion on violence against children.

18. On 28 June 2006 the X Court of Appeal, on an appeal by C, quashed the decision of the Regional Court and granted C compensation in the amount of 5,000 euros (EUR) for each of the two articles published.

19. The Court of Appeal agreed with the Regional Court that the articles at issue, which described in detail the severe ill-treatment and sexual abuses of which C was the victim constituted an intrusion into her strictly private life and injured her legitimate interest to remain anonymous. It also agreed with the Regional Court that the identity of the offenders, A and B, was not protected under the Media Act and it was therefore, in principle, allowed to report on them while citing their names and also publishing pictures.

20. However, the permissibility of disclosing the victim's identity had to be examined separately and with due diligence. The mere fact that she had become the victim of a crime which attracted considerable public attention was not sufficient to consider her a person connected with public life. Under section 7a of the Media Act the predominant public interest which outweighs the victim's personal interest in not disclosing his or her identity must relate to the identity of the person, and that particular information should have a genuine news value. A mere general interest in appropriate press reporting on criminal cases was not sufficient to establish such a predominant public interest. In the present case such a genuine interest in the identity of the victim could not be established. There was no predominant public interest in revealing the identity of the offenders as the public could have been informed on the psychological dynamics of violent crimes and sexual abuse committed within the family without revealing the identity of the victim. The reporting also did not serve the purpose of warning and protecting the public (*Warn- und Schutzfunktion*) because the accused had already been taken into detention and there was no indication that they had assaulted other minors.

21. Therefore, the publication of articles disclosing the identity of the offenders and indicating the family relationship between the offenders and the victim in such a way that the identity of the victim is revealed in cases which touch upon a victim's strictly private life was in breach of section 7a of the Media Act.

II. RELEVANT DOMESTIC LAW

22. Section 7a of the Media Act which has the title "protection against divulging a person's identity in special cases" (*"Schutz vor Bekanntgabe der Identität in besonderen Fällen"*), reads 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. The award of damages shall not exceed 20,000 euros; additionally, section 6(1), second sentence, shall apply.

(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 (*Vergehen*) or may disproportionately prejudice the advancement of the person concerned.

(3) No compensation claim under paragraph 1 exists if

1. the publication at issue is based on a truthful report on a public session of the National Council or the Federal Council, the Federal Assembly, a regional diet or a committee of one of these general representative bodies;
2. the publication of the information on the person has been decided officially, in particular for the purposes of criminal justice or public security;
3. the person concerned has agreed to the publication or if the publication is based on information given by that person to the media;
4. it is a direct broadcast on radio or television (live programme) and the employees or contractors of the radio or television station have not neglected the principles of journalistic diligence;
5. the information has been published on a retrievable website and the owner of the media or its employees or contractors have not neglected the principles of journalistic diligence.”

23. Section 6(1) second sentence of the Media Act, to which reference has been made above, reads as follows:

“The amount of compensation shall be fixed according to the extent of the publication, its impact and, in particular, the type of media and how broadly it is disseminated; the compensation must not endanger the economic existence of the media owner.”

III. RELEVANT COUNCIL OF EUROPE CONVENTIONS AND DOCUMENTS

24. Article 31 of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse of 25 October 2007, CETS No. 201, in so far as relevant reads as follows:

“Article 31 – General measures of protection

(1) Each party shall take the necessary legislative or other measures to protect the rights and interests of victims, including their special needs as witnesses, at all stages of investigations and criminal proceedings, in particular by:

...

(e) protecting their privacy, their identity and their image and by taking measures in accordance with international law to prevent the public dissemination of any information that could lead to their identification;”

25. In the Explanatory Report to the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, paragraph 222 gives the following comment on Article 31 of that Convention:

“The article goes on to list a number of procedural rules designed to implement the general principles set out in Article 31: the possibility for victims of being heard, of supplying evidence, of having their privacy, particularly their identity and image protected, and of being protected against any risk of retaliation and repeat victimisation. The negotiators wished to stress that the protection of the victim’s identity, image and privacy extends to the risk of “public” disclosure, and that these requirements should not prevent this information being revealed in the context of the actual proceedings, in order to respect the principles that both parties must be heard and the inherent rights of the defence during a criminal prosecution.”

26. On 28 June 1985 the Committee of Ministers of the Council of Europe adopted Recommendation Rec(85)11 on the position of the victim in the framework of criminal law and procedure. In section F (Protection of privacy) point 15 reads as follows:

“Information and public relations policy in connection with the investigation and trial of offences should give due consideration to the need to protect the victim from any publicity which will unduly affect his private life and dignity. If the type of offence or the particular status or personal situation and safety of the victim make such a special protection necessary, either the trial before the judgment should be held in camera or disclosure or publication of personal information should be restricted to whatever extent is appropriate;”

27. On 31 October 2001 the Committee of Ministers of the Council of Europe adopted Recommendation Rec(2001)16 on the protection of children against sexual exploitation. In Article III (Criminal law, procedure and coercive measures in general) point 32 reads as follows:

“Ensure throughout judicial, mediation or administrative proceedings the confidentiality of records and respect for the privacy of children who have been victims of sexual exploitation.”

28. 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 8 - Protection of privacy in the context of ongoing 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.

An even stronger protection is recommended to parties who are minors, to victims of criminal offences, to witnesses and to the families of suspects, the accused and convicted persons ...”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

29. The applicant company complained under Article 10 of the Convention that the judgment of the Court of Appeal ordering it to pay compensation had violated its right to freedom of expression. Article 10 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. This Article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprises.

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.”

30. The Government contested that argument.

A. Admissibility

31. 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

32. The Court notes that it is common ground between the parties that the X Court of Appeal’s judgment of 28 June 2006 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.

33. An interference contravenes Article 10 of the Convention unless it is “prescribed by law”, pursues one or more of the legitimate aims referred to in paragraph 2 and is “necessary in a democratic society” for achieving such an aim or aims.

34. The Court considers, and this was acknowledged by the parties, that the interference was prescribed by law, namely by section 7a of the Media Act. The Court further finds, and this was likewise not disputed between the parties, that the interference served a legitimate aim, namely “the protection of the reputation or rights of others” within the meaning of Article 10 § 2 of the Convention.

35. The parties’ argument concentrated on the question whether the interference had been “necessary in a democratic society” within the meaning of Article 10 § 2 of the Convention.

1. The parties’ submissions

36. The applicant company maintained that the interference with its right to impart information had not been necessary. It asserted that the articles at issue did not report directly in an identifying manner on C Revealing her identity was merely a result of reporting on the offenders, her father and her stepmother. Even accepting that the identity of C was not, as such, of particular importance to the reporting on the case, the fact that she was the

daughter and stepdaughter of the criminal offenders was. In respect of sexual offences committed within the family, informing the public of such events, of the particular circumstances and the background was of special importance. The fact that the crime had been committed over a prolonged period while nobody in the surrounding environment had taken note of it had to be brought to the public's attention and, in doing so, it was indispensable to reveal the identity of the offenders, thereby also risking the disclosure of the identity of the victim.

37. The applicant company acknowledged that it was normally justified that a victim of a crime remained anonymous, but in exceptional cases the interest in making public his or her identity had to prevail over the victim's interest to remain anonymous. It was the duty of the press to inform the public in detail and raise its awareness of the problem in order to prevent the committing of such crimes in the future.

38. As regards the damages awarded, the applicant company argued that the amount had been disproportionate, as the articles had been minor ones towards the back of the newspaper and that it had published them in the exercise of its duty to inform the public.

39. 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 victim to the protection of her privacy which were equally protected by the Convention, namely the right to respect for her identity, protected by Article 8 as part of a person's private life, as well as Article 31 § 1 (e) of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse and various other instruments of the Council of Europe. The necessity to carry out such a weighing of interests was laid down in section 7a (1) subparagraph (1) of the Media Act.

40. The Austrian courts found that the articles published by the applicant company constituted an intrusion into the strictly private life of C, a minor. In its decision the Court of Appeal explained in detail that even though it was in principle allowed to publish an article identifying the offender, this did not necessarily allow a report in which the victim of the crime could be identified. In the present case, C's interests in her anonymity outweighed in the particular circumstances of the present case the applicant company's interest in the disclosure of the identity of the offenders. The disclosure of the identity of the victim was irrelevant for understanding the details of the crime of which C had been the victim and this specific detail was also not necessary to raise public awareness for crimes of violence and sexual abuse within the family. In situations such as the one in the present case the State

had a positive obligation to ensure effective protection against violations of the personal integrity of children, as a particularly vulnerable group, in particular in the event of sexual abuse.

41. Lastly, the Government argued that the amount of compensation awarded to the claimant, namely EUR 10,000 for two articles had not been disproportionate, as that figure had to be seen against the background of the wide dissemination of the information by the applicant company and its influence on public opinion.

2. *The Court's assessment*

(a) **General principles**

42. 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).

43. 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 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*, judgment of 25 June 1992, § 63, Series A no. 239).

44. The subject matter at issue in this case – disclosure of the identity of a victim of a criminal offence in the press – relates, on the one hand, to the right of the press under Article 10 of the Convention to inform the public on matters of public concern regarding ongoing criminal proceedings and, on the other hand, to the State’s positive obligations under Article 8 of the Convention to protect the privacy of the victim. In such cases the Court has always stressed the contribution made by photos or articles in the press to a debate of general interest (see *Standard Verlags GmbH v. Austria (no. 2)*, no. 21277/05, § 46, 4 June 2009 with further references). While reporting and commenting on court proceedings, provided that they do not overstep the bounds set out above, contributes to their publicity and is thus perfectly consonant with the requirement under Article 6 § 1 of the Convention that hearings be public, it is to be noted that the public nature of court proceedings does not function as a *carte blanche* relieving the media of their duty to show due care in communicating information received in the course of those proceedings (see *Eerikäinen and Others*, cited above, § 63).

45. In the case of *Egeland and Hanseid*, which concerned a fine for breaching the prohibition to photograph a convicted person without her consent on the way from the court hearing in which the conviction was pronounced, the Court found that the portrayal in the press of the applicant had been particularly intrusive and that the interest in restricting publication of the photographs had therefore outweighed those of the press in informing the public on a matter of public concern (see *Egeland and Hanseid v. Norway*, no. 34438/04, §§ 61 and 63, 16 April 2009).

46. The Court therefore considers that the competent authorities in the respondent State should be accorded a wide margin of appreciation in their balancing of the conflicting interests (see *Egeland and Hanseid*, cited above, § 55, and, *mutatis mutandis*, *A. v. Norway*, no. 28070/06, § 66, 9 April 2009).

(b) Application of these principles to the present case

47. In the present case the applicant reported in its newspaper *Kurier* on the case of C, who had been severely ill treated and sexually abused by her father A and her stepmother, B. In February 2005 the trial was held and on 21 February 2005 the Regional Criminal Court convicted A and B of aggravated sexual abuse of minors, deliberate aggravated bodily harm and ill-treatment of minors and sentenced them to fifteen years’ imprisonment. The applicant company published two articles in *Kurier* in February 2005, in which it gave detailed descriptions of the circumstances of the case and revealed C’s identity by mentioning her first name, the full names of her father and stepmother, their family relation and publishing photographs of them. Thereupon C filed a claim for compensation on the ground that the

articles by the applicant company had revealed her identity as the victim of a crime.

48. The Regional Court and the Court of Appeal agreed that the reporting at issue had breached C's right to respect for her strictly private life and to remain anonymous, but disagreed as to whether there existed a predominant public interest in revealing her identity by giving details of the identity of the accused which allowed her to be identified. While the Regional Court found that such a predominant public interest existed, the Court of Appeal found that this was not the case. It held that the applicant company could have informed the public in a sufficiently detailed manner without revealing the identity of the accused and thereby that of the victim, as this particular information had not been essential for understanding the case of C or served any other specific purpose such as warning and protecting the public.

49. In the Court's view the reasons given by the X 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".

50. 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 C's rights to protection of her identity. In such cases one factor the Court 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, *Flinkkilä and Others*, cited above, § 83, and *Eerikäinen and Others*, cited above, § 66). Another important factor is whether articles or photos in the press contributed to a debate of general interest (see *Flinkkilä and Others*, cited above, § 76, and *Eerikäinen and Others*, cited above, § 66).

51. In the present case, C was not a public figure, nor does the Court consider that she has entered the public scene by becoming the victim of a criminal offence which attracted considerable public attention.

52. The Court considers further that the articles at issue dealt with a matter of public concern, a crime involving violence against a child and sexual abuse committed within the family and could well give rise to a public debate on how the commission of similar crimes could be prevented. However, given that neither the offenders nor the victim were public figures or had previously entered the public sphere, it cannot be said that the knowledge of the identity of these persons was material for understanding the particulars of the case (see "*Wirtschafts-Trend*" *Zeitschriften-Verlags-gesellschaft mbH (no. 2) v. Austria* (dec.), no. 6274/00, 14 November 2002). In this connection the Court notes that the applicant company was not prevented from reporting on all the details concerning the case of C, only from revealing her identity.

53. On the other hand there is no doubt that the identity of the victim of a crime deserves particular protection on account of his or her vulnerable position, all the more so in the instant case as C was a child at the time of the events and had become the victim of violence and sexual abuse. In this connection the Court refers to Article 31 of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, which obliges the Contracting States “to take the necessary legislative or other measures to protect the rights and interests of victims, by protecting their ... identity and ... by taking measures in accordance with international law to prevent the public dissemination of any information that could lead to their identification. The same concept of protecting the identity of victims of crime has also been recognised in various recommendations adopted by the Committee of Ministers of the Council of Europe (see Recommendations Rec(85)11, Rec(2001)16 and Rec(2003)13, quoted in §§ 24-26 above) as well as in the Court’s case-law on Articles 8 and 10 of the Convention (see *Egeland and Hanseid*, cited above, §§ 59-61, and *A. v. Norway*, cited above, §§ 71-73).

54. Moreover, the interference with the applicant company’s right to impart information was proportionate. The applicant company was not subject to a fine imposed in criminal proceedings but ordered to pay compensation for the injury caused to the person whose identity had been revealed to the public. The amount of compensation, EUR 10,000 for two articles published, even though substantial, appears reasonable taking into account the length of the articles, their contents which, on account of the details given, constituted a particularly serious interference, and the particular impact it must have had on C, who, following the detailed reports in the press on the trial of A and B, had a relapse and began suffering from severe psychological problems again, making it necessary for her to be re-admitted to hospital.

55. In sum, the Court finds that, by awarding C compensation for the disclosure of her identity as the victim of a crime, the respondent State acted within its margin of appreciation in assessing the need to protect her privacy. It is satisfied that the restriction on the applicant company’s right to freedom of expression resulting from the Court of Appeal’s judgment of 28 June 2006 was supported by reasons that were relevant and sufficient, and was proportionate to the legitimate aims pursued.

56. There has accordingly been no violation of Article 10 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been no violation of Article 10 of the Convention.

Done in English, and notified in writing on 17 January 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President