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

FIRST SECTION

CASE OF STANDARD VERLAGSGESELLSCHAFT MBH (no. 2) v. AUSTRIA

(Application no. 37464/02)

JUDGMENT

STRASBOURG

22 February 2007

FINAL

22/05/2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Standard Verlagsgesellschaft mbH (no. 2) v. Austria,

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

Mr C.L. ROZAKIS, *President*,
Mr L. LOUCAIDES,
Mrs N. VAJIĆ,
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV,
Mr D. SPIELMANN, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 1 February 2007,

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

PROCEDURE

1. The case originated in an application (no. 37464/02) 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 Verlagsgesellschaft mbH, a limited liability company with its seat in Austria (“the applicant company”), on 19 July 2002.

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 F. Trauttmansdorff, Head of the International Law Department at the Federal Ministry of Foreign Affairs.

3. The applicant company alleged that it had been violated in its right to freedom of expression under Article 10 of the Convention.

4. By a decision of 29 June 2006, the Court declared the application admissible.

5. Neither the applicant company nor the Government filed further written observations (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant company is the owner of the daily newspaper “Der Standard”.

A. The background of the case

7. The Region of Carinthia (*Land Kärnten*) is the majority shareholder of the Carinthian Electricity Corporation *(Kärntner Elektrizitäts-Aktiengesellschaft* - "the KELAG").

8. On 16 June 1999 the KELAG invited all shareholders to the general meeting on 9 July 1999. One item on the agenda was the dismissal and re-election of the corporation's supervisory board (*Aufsichtsrat*).

9. For the meeting of the Carinthian Regional Government (*Landesregierung*) of 6 July 1999, Mr Pfeifenberger, the official dealing with financial matters at the material time, prepared a motion inviting the Regional Government to nominate specific persons to the corporation's supervisory board.

10. He retracted this motion before the meeting as, at the request of Mr Haider, Regional Governor (*Landeshauptmann*) of Carinthia, he had received a legal expert opinion issued by the expert Mr Q. According to this opinion, the Region of Carinthia had no right to nominate the members of the KELAG supervisory board as the members had to be elected. The representative of the Region of Carinthia could propose candidates and exercise the voting right in the general meeting of the KELAG without a prior decision by the Regional Government.

11. Mr Haider had further informed Mr Pfeifenberger that the Legal Department dealing with constitutional matters at the Carinthian Regional Government Office had approved this way of proceeding. Mr Haider further commissioned an expert opinion by the Legal Department. This opinion, issued on 2 August 1999, stated that an interpretation of the relevant provisions did not lead to an unequivocal result.

12. In the meantime, Mr Pfeifenberger – despite the protest of the socialist members of the Regional Government – gave authority to Mr Haider to represent the Region of Carinthia in the general meeting of the KELAG. Mr Haider subsequently represented the Region of Carinthia at the said general meeting on 9 July 1999 and exercised the voting right without having previously obtained a decision by the Regional Government.

13. On 14 July 1999, at the request of the Austrian Social Democratic Party ("the SPÖ") Mr S, a professor of law of the Graz University, issued a further expert opinion of some seven pages concerning the question of "nomination of members to the KELAG's supervisory board by the Regional Governor of Carinthia".

14. This expert opinion came to the conclusion that the election of the supervisory board of the KELAG by the Regional Governor without a previous decision by the Regional Government was not in accordance with federal constitutional law, regional constitutional law and the Regional Government's Rules of Procedure. The opinion finally mentioned the possibility of impeachment of members of the Regional Government before

the Constitutional Court by majority vote of the Regional Parliament (*Landtag*) under Article 142 of the Federal Constitution (*Bundes-Verfassungsgesetz*) for having culpably breached the law. The Constitutional Court's decision in impeachment proceedings consisted of either the exoneration of the official in question or a finding against him or her which implied dismissal of the person from office. The possibility for the Constitutional Court to limit its judgment in the event of minor infringements to a finding that there has been a breach of the law would not exist in the present case as impeachment had to be filed under Article 142 § 2 lit d which did not provide for this alternative.

B. The article at issue

15. On 16 July 1999 the applicant company published an article on its front page of "Der Standard" which read as follows:

> "Haider has breached the Constitution
>
> According to an expert opinion commissioned by the SPÖ at the Graz University, the Regional Governor Jörg Haider has committed a 'breach of law' when appointing the supervisory board of the KELAG. His handling of the Regional Government's Rules of Procedure would be 'illicit, illegal and unconstitutional'. The ÖVP [Austrian People's Party] nevertheless does not want to support an impeachment. It invites Haider to correct the KELAG decisions concerning the personnel, which the FPÖ [Austrian Freedom Party] categorical refuses: 'We refuse to be blackmailed'."

16. The article continued on page 8 under the same heading with the subtitle: "*Expert opinion of professor in Graz accuses the Regional Governor of deliberate misguidance*". It stated as follows:

> "The Carinthian Regional Governor, Jörg Haider, by acting on his own when appointing the members of the KELAG supervisory board, has clearly committed a 'breach of the laws and the Constitution'. This is the conclusion reached by A.S [name in full], professor at the Graz University, in his expert opinion on constitutional matters which had been commissioned by the Carinthian SPÖ. Haider, by acting on his own authority, has violated the Carinthian Government's Rules of Procedure and has, thus, breached the law and the Constitution. The expert opinion mentions as an aggravating factor that Haider has 'deliberately mislead the Regional Government and ignored the Regional Constitution and the Regional Government's Rules of Procedure'. According to the expert opinion it is therefore possible to institute impeachment proceedings against Haider. If the Constitutional Court convicted Haider, he would be threatened with dismissal from office. The SPÖ leader Helmut Manzenreiter has now given Mr Haider an ultimatum: either the supervisory board should be appointed afresh by the Regional Government as a whole or there should be a tripartite agreement on transforming Kelag into a holding company. Otherwise, the SPÖ would institute impeachment proceedings against Mr Haider before the elections to the National Assembly. Mr Manzenreiter also called on the ÖVP not to 'cover up' Mr Haider's breach of the law. In the Regional Parliament the FPÖ reacted vehemently to the report. The leader of the FPÖ's parliamentary group, Martin Strutz, announced that a second opinion would be commissioned. Mr Haider himself could not hide his anxiety. He leaned back in a relaxed fashion only when the leader of the

ÖVP's parliamentary group, Klaus Wutte, made clear that the ÖVP would not support his impeachment. Although the ÖVP intends to await the findings of an 'independent' expert opinion, Mr Wutte nonetheless hinted at the party's strategy: 'Not punishment but rectification of Haider's breach of the law.' In so doing, he both foiled his colleague Georg Wurmitzer and confirmed the viewpoint that there is a 'tacit coalition' between the ÖVP and the FPÖ.'

17. The article was followed by a further text in a small box headed “[The] Constitution stands above stock corporation law” (*Verfassung steht über Aktienrecht*). This text explained that Mr Pfeifenberger had prepared an act of Government (*Regierungsakt*) which Mr Haider had, however, retracted as being an “error”. The expert opinion had found that this conduct amounted to deliberate misguidance of the Regional Government. The article further stated that the expert A.S. did not accept Mr Haider's reference to stock corporation law.

C. Proceedings under the Media Act

18. On 29 July 1999 Mr Haider instituted proceedings for forfeiture (*Einziehung*) of the article and publication of the judgment under Section 33 of the Media Act (*Mediengesetz*) with the St. Pölten Regional Court (*Landesgericht*).

19. On 12 December 2000 the Regional Court found that the article at issue, by stating that Mr Haider had deliberately mislead the Regional Government and had acted in breach of the Carinthian Government's Rule of Procedure and the Regional Constitution, fulfilled the elements of the offence of defamation (*üble Nachrede*) under Article 111 of the Criminal Code (*Strafgesetzbuch*). It, therefore, ordered the applicant company to black out the impugned statements in the issues still to be disseminated and the publication of the judgment under sections 33 and 34 of the Media Act. It further ordered the applicant company to pay the costs of Mr Haider's counsel.

20. At the trial the court heard the counsel of the applicant company, Mr Haider and Mr Pfeifenberger. It dismissed the applicant company's request to hear all other members of the Regional Government as being irrelevant for the proceedings at issue.

21. The court considered the statements that Mr Haider had breached the Constitution, had deliberately mislead the Regional Government and had acted in breach of the law as statements of fact for which the applicant company had failed to supply sufficient proof. The court noted that there was, in particular, nothing to indicate that Mr Haider had deliberately misled the Regional Government which, in itself, was a sufficient reason for the ordered forfeiture. The fact whether or not Mr Haider had acted in breach of the Constitution was a matter which had to be decided by the Constitutional Court.

22. The applicant company appealed against this judgment. It submitted *inter alia* that the statements at issue were value judgments, based on the facts established by the expert opinion of the professor of the Graz University, and contributed to the discussion of a question of public interest.

23. On 3 December 2001 the Vienna Court of Appeal (*Oberlandesgericht*), having the expert opinion of Mr S. before it as evidence, dismissed the applicant's appeal. It noted that the expert opinion had to be considered as an admissible legal assessment of uncontested facts. The article at issue had, however, not simply reproduced the opinion given by the expert but had used it for an independent attack on Mr Haider's reputation. The court noted in this regard that the article had not placed the expert opinion in its context, namely that of a legal dispute, but had presented it as an irrevocable verdict on Mr Haider. The court referred in particular to the wording of the article's headings. It further noted that the article had not published any comment of Mr Haider and had not mentioned the existence of the opinion issued by the other expert Q. Furthermore, the article contained statements which were not supported by the expert opinion, namely that Mr Haider had deliberately misled the Regional Government and the reference to the possible impeachment of Mr Haider. The court noted in the latter regard that the expert opinion had merely mentioned the abstract possibility of impeachment of a member of the Regional Government who, in the opinion of the majority of the members of the Regional Parliament, had culpably breached the law. The court finally noted that the Regional Court's order to black out the impugned statements did not replace but complemented an order of forfeiture of the relevant issues. This judgment was served on the applicant company's counsel on 21 January 2002.

D. Proceedings under the Civil Code

24. On 4 December 2001 Mr Haider brought injunction proceedings under Article 1330 of the Civil Code (*Bürgerliches Gesetzbuch*) against the applicant company.

25. On 19 June 2002 the Vienna Commercial Court (*Handelsgericht*), referring to the judgments of the courts in the proceedings under the Media Act, granted the injunction and ordered the applicant to revoke the statements that Mr Haider, by appointing the members of the KELAG supervisory board, had deliberately misled the Regional Government and had acted in breach of the Regional Government's rules of procedure and the Regional Constitution. It further ordered the applicant company to pay the costs of Mr Haider's counsel.

26. The court dismissed the applicant company's argument that it could not be held responsible for the shortcomings of the article at issue since that article had been written by a journalist who was not trained in law. The

journalist had relied on press releases prepared by the Socialist Party which summarised the expert opinion incorrectly. The court found that the applicant company had not complied with its obligation of journalistic diligence as it had failed to consult the available expert opinion.

27. On 20 November 2002 the Vienna Court of Appeal (*Oberlandesgericht*) dismissed the applicant company's appeal. This decision was served on the applicant company's counsel on 4 December 2002.

II. RELEVANT DOMESTIC LAW

28. Section 6 of the Media Act provides for the strict liability of the publisher in cases of defamation; the victim can thus claim damages from him. In this context "defamation" has been defined in Article 111 of the Criminal Code (*Strafgesetzbuch*), as follows:

> "1. Anybody who, in such a way that it may be noticed by a third person, attributes to another a contemptible characteristic or sentiment or accuses him of behaviour contrary to honour or morality and such as to make him contemptible or otherwise lower him in public esteem shall be liable to imprisonment not exceeding six months or a fine ...
>
> 2. Anyone who commits this offence in a printed document, by broadcasting or otherwise in such a way as to make the defamation accessible to a broad section of the public, shall be liable to imprisonment not exceeding one year or a fine ...
>
> 3. The person making the statement shall not be punished if it is proved to be true. In the case of the offence defined in paragraph 1 he shall also not be liable if circumstances are established which gave him sufficient reason to believe that the statement was true."

29. Section 33 § 2 of the Media Act reads as follows:

> "Forfeiture shall be ordered in separate proceedings at the request of the public prosecutor or any other person entitled to bring claims if a publication in the media satisfies the objective definition of a criminal offence and if the prosecution of a particular person cannot be secured or if conviction of such person is impossible on grounds precluding punishment, has not been requested or such a request has been withdrawn. If no punishment can be imposed in case of the offender having proved the truth, the defence of truth shall also be available to the owner (publisher) of the media product in question being the interested party ...".

30. Section 34 of the Media Act deals with the publication of a judgment (*Urteilsveröffentlichung*). It states *inter alia* that a criminal judgment concerning a media offence has, at the request of the prosecution, to order the publication of those parts of the judgment which are necessary to inform the public about the offence and the conviction. At the request of the prosecution, the publication of a judgment has to be ordered in separate proceedings, if statements falling within the objective definition of an

offence have been made in the media and the prosecution of a specific person is not possible.

31. Section 1330 of the Civil Code (*Allgemeines Bürgerliches Gesetzbuch*) provides as follows:

> "1. Anybody who, due to defamation, suffered a damage or loss of profit, may claim compensation.
>
> 2. The same applies if anyone is disseminating facts, which jeopardize another person's reputation, gain or livelihood, the untruth of which was known or must have been known to him. In this case there is also a right to claim a revocation and the publication thereof..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

32. The applicant company complained that the Austrian courts' decisions infringed its right to freedom of expression under 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. 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."

33. The Government contested this complaint. While they accepted that the above measures constituted an interference with the applicant company's rights under Article 10 § 1 of the Convention, they argued, however, that the interference was prescribed by law, pursued the legitimate aim of protecting effectively the reputation or rights of others and was proportionate to the aim pursued. The Government referred in this regard to the domestic courts' findings which they considered relevant and sufficient. The Government in particular pointed out that, while the underlying expert opinion in itself basically was a value judgment, the impugned article did not refer to the matter as a legal dispute but built the expert opinion up to an irrevocable verdict on the Carinthian Governor. Thus, the article did not

mention the existence of a counter-expert opinion. Moreover, as regards the distortion of the expert opinion, the applicant company could not prove that it had complied with its obligation to safeguard journalistic diligence as it had relied on a press release prepared by a political party whose views were known to be often contrary to those of the Carinthian Governor without examining the truth behind these statements. The Government finally argued that the interference was also proportionate as the Austrian courts merely ordered the applicant company to black out the impugned passages in the remaining issues of "Der Standard" still to be disseminated and the publication of the judgment.

34. The applicant company disputed these arguments. It contended that the article at issue contributed to a debate of public interest which, in the light of Mr Haider's constant confrontations with the Constitution and its representatives, was all the more important. The article contained true statements of fact and thereupon based value judgments, namely statements concerning the legal classification of Mr Haider's acts. The article correctly reflected the main conclusions of the expert opinion which constituted a permissible value judgment about Mr Haider's acts. The domestic courts falsely found that the question whether there had been a breach of the Constitution was only for the Constitutional Court to decide and had not considered that this legal question finally remained controversial. The domestic courts' and the Government's finding that the article constituted an independent attack on Mr Haider's reputation was not true as the article took account of Mr Haider's position. The article explicitly referred to the announcement of counter-expert opinions by FPÖ and ÖVP politicians. The applicant company finally argued that it had complied with its obligation of journalistic diligence as it had based the article at issue, in addition to the press release, also on the expert opinion. When reporting on issues of public interests, the press should be able to rely on official reports without being obliged to conduct independent research. In the present there had been sufficient reasons to believe that the impugned statements were true.

35. The Court finds that the Austrian courts' decisions interfered with the applicant company's right to freedom of expression under Article 10 of the Convention. The interference was prescribed by law, namely by sections 33 and 34 of the Media Act, read in conjunction with section 111 of the Criminal Code and Article 1330 of the Civil Code, respectively, and pursued the legitimate aim of protecting the reputation and rights of others.

36. The parties' argument concentrated on the necessity of the interference. As regards the general principles relating to the freedom of the press in the context of political criticism and the question of assessing the necessity of an interference with that freedom, the Court refers to the summary of its established case-law in the cases of *Feldek* (*Feldek v. Slovakia*, no. 29032/95, §§ 72-74, ECHR 2001-VIII with further references)

and *Scharsach and News Verlagsgesellschaft v. Austria* (no. 39394/98, § 30, ECHR 2003-XI).

37. In accordance with its case-law, the Court will examine whether the reasons adduced by the domestic courts were "relevant and sufficient" and whether the interference was proportionate to the legitimate aim pursued. In so doing the Court will have regard to the domestic courts' margin of appreciation.

38. Turning to the elements developed by the Court's case-law of particular relevance to the present case, the Court recalls the distinction between statements of fact and value judgments. While the existence of facts can be demonstrated, the truth of value judgments is not susceptible of proof (see, for instance, *Feldek*, cited above, §§ 75-76; *Jerusalem v. Austria*, no. 26958/95, § 43, ECHR 2001-II; *De Haes and Gijsels v. Belgium*, judgment of 24 February 1997, *Reports of Judgments and Decisions* 1997-I, p. 236, § 47; *Oberschlick v. Austria (no. 2)*, judgment of 1 July 1997, *Reports* 1997-IV, p. 1276, § 33). The Court further notes that Article 10 of the Convention does not guarantee a wholly unrestricted freedom of expression even with respect to press coverage of matters of serious public concern. 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 in order to provide accurate and reliable information in accordance with the ethics of journalism. Furthermore, special grounds are required before the media can be dispensed from their ordinary obligation to verify factual statements that are defamatory of private individuals. Whether such grounds exist depends in particular on the nature and degree of defamation in question and the extent to which the media can reasonably regard their sources as reliable with respect to the allegations (see, as a recent authority, *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 78, ECHR 2004-..., with further references).

39. In the present case, the domestic courts when balancing the conflicting interests, i.e. the applicant company's right to freedom of expression on the one hand, and Mr Haider's right to protection of reputation on the other, found in favour of Mr Haider. They pointed out that the applicant company had used Mr S' expert opinion on Mr Haider's acting for its own purposes, namely an independent attack on the latter's reputation. They referred in this regard, firstly, to the wording of the article's headings and to the fact that the article had not published any comment of Mr Haider and had not mentioned the existence of another, more favourable expert opinion. They further noted that the article contained statements which were not supported by the expert opinion.

40. The Court observes that the article at issue dealt with the conduct of Mr Haider, a leading politician, in the context of the re-appointment of the

supervisory board of the KELAG, a partly public owned institution. This subject being of considerable public and political interest, the most careful scrutiny on the part of the Court is called for when, as in the present case, the measures taken by the national authorities are capable of discouraging the participation of a daily newspaper in such a debate. In this context the Court further recalls that freedom of the press affords the public one of the means of discovering and forming an opinion of the ideas and attitudes of their political leaders, and also covers possible recourse to a degree of exaggeration, or even provocation. The Court, therefore, considers the argument that the applicant company's report was one-sided and partial as it had not been placed sufficiently in context in itself not relevant to justify any restrictions on the applicant company's freedom of expression. However, the domestic courts further emphasised that the article wrongly reproduced the quoted expert opinion.

41. The Court notes in this regard that the article repeatedly cited the expert opinion as having stated that Mr Haider had deliberately deceived the Regional Government. It referred to this information in the article's heading ("*Expert opinion of professor in Graz accuses the Regional Governor of deliberate misguidance*"), in the article's text (*"...the expert opinion mentions as an aggravating factor that Haider has 'deliberately mislead the Regional Government and ignored the Regional Constitution and the Regional Government's Rules of Procedure' ")* and in the small box annexed to the article. The Court notes that the expert opinion at issue did not contain any such allegations and, thus, adheres to the domestic courts' findings that the above quotations were defamatory as they amounted to false statements of fact. The Court further finds that these statements, suggesting that Mr Haider had acted illegally against his better knowledge, constituted serious accusations against the latter.

42. The applicant company contended that it could not be held responsible for these shortcomings of the article as it could reasonably rely on a press release prepared by the Socialist Party which summarised the expert opinion incorrectly. It referred in this regard to the Court's finding in a previous case that the press should normally be entitled, when contributing to public debate on matters of legitimate concern, to rely on the contents of official reports without having to undertake independent research. (see *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, § 68, ECHR 1999-III). The Court, like the domestic authorities, is not convinced by this argument. It has serious doubts whether the statements of political opponents of Mr Haider can be compared to the official report drawn up by a Government appointed expert in the *Bladet Tromsø* case. Furthermore, unlike in that case, the applicant company in the present case did not refer to the underlying allegedly incorrect source, namely the press release, but expressly quoted the expert opinion. The Court notes that this opinion of some seven pages was available to the applicant company.

Having regard to the seriousness of the accusation against Mr Haider, the Court finds that the applicant company should have consulted this opinion itself in order to comply with the obligation of journalistic diligence instead of relying without any further research on the Socialist Party's press release.

43. Having regard to these circumstances, the Court finds that the domestic courts' reasoning was “relevant and sufficient”. Considering further that no penalties were imposed on the applicant company, but that the courts ordered, in one set of the proceedings, the forfeiture of the remaining stocks of the relevant issues of “Der Standard” and the publication of the judgment and, in the other set of proceedings, the revocation of the untrue statements of fact and the other statements made in their immediate context, the Court finds that the interference was also proportionate. These measures did not prevent the applicant company from discussing the subject matter in any other way.

44. In sum, the interference complained of can be said to have been “necessary in a democratic society” for the protection of the reputation and rights of others. It follows that there has been no violation of Article 10 of the Convention.

FOR THESE REASONS, THE COURT

Holds by four votes to three that there has been no violation of Article 10 of the Convention.

Done in English, and notified in writing on 22 February 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the joint dissenting opinion of Mr Rozakis, Mrs Vajić and Mr Spielmann is annexed to this judgment.

C.L.R.
S.N.

JOINT DISSENTING OPINION OF JUDGES ROZAKIS, VAJIĆ AND SPIELMANN

1. We regret that we are unable to share the conclusion of the majority that there has been no violation of Article 10 of the Convention.

According to the traditional case-law of the Court, 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). Moreover, the limits of acceptable criticism are wider as regards a politician as such than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his words and deeds by journalists and the public at large, and he must consequently display a greater degree of tolerance (see *Lingens v. Austria*, judgment of 8 July 1986, Series A no. 103, p. 26, § 42, and *Incal v. Turkey*, judgment of 9 June 1998, *Reports* 1998-IV, p. 1567, § 54).

2. In the present case the impugned article dealt with the conduct of Mr Haider, a leading politician, in the context of the re-election of the supervisory board of the KELAG, a partly public owned institution. The article thus clearly concerned a political debate on matters of general interest, an area in which, the Court reiterates, restrictions on the freedom of expression should be interpreted narrowly.

3. The domestic courts found that the applicant company had not simply reproduced the expert opinion but used it for its own purposes, namely an independent attack on Mr Haider's reputation. They referred in this regard, firstly, to the wording of the article's headings and to the fact that the article had not published any comment by Mr Haider and had not mentioned the existence of another, more favourable expert opinion. They further noted that the article contained statements which were not supported by the expert opinion.

4. Having regard to the circumstances described in paragraphs 39 to 41 of the judgment, the majority found that the domestic courts' reasoning was “relevant and sufficient”, that no penalties had been imposed on the applicant company, but that, in one set of the proceedings, the courts had ordered the forfeiture of the remaining stocks of the relevant issues of “*Der Standard*” and the publication of the judgment and, in the other set of proceedings, the revocation of the untrue statements of fact and other statements made in their immediate context. On that basis, the majority found that the interference had also been proportionate and that these measures had not prevented the applicant company from discussing the subject matter in any other way (paragraph 42 of the judgment).

Consequently the majority arrived at the conclusion that the interference complained of could be said to have been "necessary in a democratic society" for the protection of the reputation and rights of others (paragraph 43 of the judgment).

5. We are not convinced by this reasoning. Admittedly, the article was presented in an abridged and one-sided manner, leaving aside details which would have shown Mr Haider's conduct in a more favourable light. However, it should be reiterated that journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation (see, amongst many other authorities, *Prager and Oberschlick v. Austria*, judgment of 26 April 1995, Series A no. 313, p. 19, § 38). In this context, we further consider that articles in the press are naturally shaped by political convictions and should not be subject to requirements of comprehensive scientific essays. Against this background, the article's statement that impeachment of Mr Haider was possible also appears to be within the limit of acceptable interpretation of the expert opinion which had mentioned this option in the abstract.

6. Certainly, we also note that the article's statement that Mr Haider had acted deliberately was not in fact supported by the expert opinion. However, this statement was based on an incorrect press release issued by the Socialist Party. Therefore we are of the opinion that the applicant company was entitled to rely on the contents of that release (see, *mutatis mutandis, Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, § 68, ECHR 1999-III). We note in this regard that press releases constitute an important source of information for the media. Furthermore, in the present case the Socialist Party had commissioned the expert opinion and it thus appears only natural that this party summarised and presented it to the public. We note finally that the applicant company's misunderstanding of the expert opinion could easily have been rectified if Mr Haider had requested the applicant company to publish a counter-statement. We are not convinced that in a case like the present one the immediate recourse to the Media Act and civil proceedings against the journalists constituted a proportionate response. On the contrary, alternative methods for resolving disputes, such as publication of a counter-statement, should be favoured at least as a first step in such a case.

7. Having regard to the foregoing, we consider that the standards applied by the Austrian courts were not compatible with the principles embodied in Article 10 and that the domestic courts did not adduce "relevant and sufficient" reasons to justify the interference at issue. Bearing in mind that there is little scope under Article 10 § 2 of the Convention for restrictions on debate on questions of public interest, we find that the domestic courts overstepped the narrow margin of appreciation accorded to Member States, and that the interference was disproportionate to the aim pursued and was thus not "necessary in a democratic society".

8. We cannot accept that the limited nature of the interference, namely, the order for forfeiture, the publication of the judgment and the order to revoke certain statements in the article, is decisive; what is of greater importance is that the domestic courts restricted the applicant's freedom of expression while relying on reasons which cannot be regarded as sufficient and relevant in view of the public debate that took place. They therefore went beyond what could be considered as a "necessary" restriction on the applicant's freedom of expression.

9. In conclusion, we find that there has been a violation of Article 10 of the Convention.