



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

FIRST SECTION

CASE OF KRONE VERLAG GMBH & CO. KG v. AUSTRIA (no. 5)

(Application no. 9605/03)

JUDGMENT

STRASBOURG

14 November 2008

FINAL

14/02/2009

This judgment may be subject to editorial revision.

In the case of Krone Verlag GmbH & Co. KG v. Austria,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyev,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 21 October 2008,

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

PROCEDURE

1. The case originated in an application (no. 9605/03) 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 Krone Verlag GmbH & Co KG, the owner of the daily newspaper *Neue Kronenzeitung* with its registered office in Vienna (“the applicant company”), on 20 January 2003.

2. 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, in particular, that its conviction for defamation under the Media Act had infringed its right to freedom of expression under Article 10 of the Convention.

4. On 8 March 2006 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. Krone Verlag GmbH & Co. KG, a limited liability company with its registered office in Vienna, is the owner of the daily newspaper *Neue Kronenzeitung* published by Mediaprint Zeitungs- und Zeitschriftenverlag GmbH & Co. KG (hereafter “the publisher”).

1. Background

6. In 1996 the T association and another association founded the Techno-Z FH Forschungs- und Entwicklungs-GmbH (hereafter “Techno-Z FH”). This non-profit company was to promote and offer scientific support to the development of the information and communication society by conducting research projects and scientific studies in this field, by offering training, organising public presentations, editing publications and carrying out projects with other similar institutions. Techno-Z FH was sponsored by, *inter alia*, the Region of Salzburg.

7. In May 1999 Mr Dollhäubl, chairman of the T association at the time, was dismissed. The association held a press conference at the same time and praised the development of Techno-Z FH.

8. The applicant company subsequently published a series of articles about Mr Bruck, the managerial director of Techno-Z FH, in its daily newspaper *Neue Kronenzeitung*.

2. The articles at issue

9. On 27 May 1999 the applicant company published an article headlined “Secret report discloses new scandal in Techno-Z!” (*Geheimbericht enthüllt neuen Skandal um Techno-Z!*) The relevant parts read as follows:

(German original)

„[...] Ein streng geheimer Bericht deckt haarklein auf, wie locker es „Medienprofessor“ Peter A- Bruck in seiner Techno-Z-Firma bei Finanzen nahm!

Bruck ist Geschäftsführer einer Techno-Z-Firma, und zwar der „FH Forschungs- und Entwicklungs-GmbH“. Und kassiert dort fürstlich wie ein bisher geheimgehaltener „Statusbericht“ über die Gesellschaft enthüllt. Bei der Kontrolle 1998 fielen die Prüfer fast vom Hocker. Bruck hatte zu der Zeit keinen gültigen Dienstvertrag, laut altem Vertrag hätte er rund 72.000 S brutto verdient. Doch der

„Medienprofessor“ ließ sich 80.000 S im Monat überweisen, dazu noch 10.000 S als „Prämienauszahlung“. Es konnte „nicht nachvollzogen werden“, mit welchem Recht sich Bruck die insgesamt 90.000 S monatlich genehmigte... Doch damit nicht genug: Auch die Reiselust ließ sich der Herr vom Techno -Z finanzieren. Allein für 1997 verrechnete er 392.170,24 S an Dienstreisen. Und für 1998 waren wieder 400.000 S für Brucks Dienstaufträge vorgesehen. Immerhin ein guter Tausender pro Tag... Und selbst damit war die finanzielle Gier noch nicht gestillt: Eine hohe sechsstellige Summe für „Tantiemen“ kam noch dazu, also eine Art Prämie. Bei einer Schulung für das Arbeitsmarktservice (AMS) ließ Bruck sich 142.000 S überweisen. Denn seine Firma hätte 247.090 S Gewinn gemacht. Falsch sagten die Prüfer. Es waren 200.000 S weniger. [...]”

(Translation from German)

„.....a very secret report discloses in great detail how lax the “media professor” Aurelius Bruck was about the finances in his company Techno-Z! ... At the 1998 audit the auditors almost fell off their chair. Bruck had no valid employment contract at that time; according to his old contract, he would have earned a gross salary of approximately ATS 72,000. But the “media-professor” had transferred himself ATS 80,000 per month and a further “premium” of ATS 10,000. It was not possible to ascertain by which right Bruck was helping himself to a total of ATS 90,000 per month... But this was not enough: Bruck had also financed his wanderlust. For 1997 alone he charged ATS 392,170.24 for business trips. And for 1998 another ATS 400,000 were provided for Bruck’s business excursions. That’s a good thousand [schillings] per day...But even with this, [Bruck’s] financial avarice was not satisfied: a high six-figure sum for ‘royalties’, a kind of premium, was added. At a training workshop for the Labour Market Service Bruck had transferred himself ATS 142,000 as his company had made a profit of ATS 247,000. Wrong said the auditors. It was ATS 200,000 less. ...”

10. On 28 May 1999 the applicant company published another article headlined “Techno-Z: Scandal concerning media professor - bank disclosed trick- ... The business dealings of Mr Bruck.” (*Techno-Z: Skandal um „Medienprofessor“ – Bank deckte Trick auf – [...] – Die Geschäfte des Herrn Bruck*). The relevant parts read as follows:

(German original)

„Die Geschäfte des Herrn Bruck

Der Skandal rund um den sogenannten “Medienprofessor” Peter Aurelius Bruck am Salzburger Techno-Z wird immer ärger: Nicht nur bei Gehalt, Prämien und Dienstreisen langte Bruck voll zu. Ohne Genehmigung streckte er beim Firmenkonto den Überziehungsrahmen. Als die Bank das merkte, war die Hölle los! Die „Krone“ hat die seltsamen Geschäfte des Professors aufgedeckt. Ein Geheimbericht zeigt, wie locker es dieser Peter Aurelius Bruck mit Finanzen nahm:

· Für sich selbst 90.000 S im Monat (Gehalt plus Prämien), dafür gab es weder Vertrag noch Beschluss.

- Rund 400.000 S zahlt die Techno-Z-Firma jährlich für „Dienstreisen“ Brucks.
- Dazu kassierte er jährlich eine hohe sechsstellige Summe an „Tantiemen“. Unberechtigt, wie die internen Prüfer nachwiesen.

Doch damit nicht genug: Eigenmächtig ließ er auf Firmenkonten den Überziehungsrahmen von 2 auf weit über 3 Millionen S ausweiten. Ohne Genehmigung! Als die Bank auf die Ungereimtheit kam, holte sie unverzüglich für die letzten Auszahlungen, das ganze Geld zurück. Diese Zahlungen waren ja nicht gedeckt! Leidtragende waren die Mitarbeiter: Wegen Brucks Finanz-Tricks wurde 1998 einmal sogar ihr Gehalt einige Zeit nicht ausbezahlt! Übrigens: Einer der Kontrolleure, die diese unfäßbaren Zustände aufgedeckt haben, bekam aus Rache nicht einmal sein Honorar bezahlt... [...]"

(Translation from German)

„The scandal concerning the so-called ‘media-professor’ Peter Aurelius Bruck at the Salzburg Techno-Z gets worse and worse: not only with his salary, premiums and business trips did Bruck really help himself. Without authorisation he exceeded the credit line of the company’s bank account. When the bank noticed this all hell broke loose! The Krone has disclosed the most dubious business dealings on the part of the professor. A secret report shows how lax Aurelius Bruck was about the finances: he helped himself to ATS 90,000 per month (salary plus premium), there was neither a contract nor a decision authorising this. The Techno-Z company pays approximately ATS 400,000 yearly for B’s ‘business trips’. He also collected a yearly high six-figure for ‘royalties’. By the way, one of the auditors who disclosed this inconceivable state of affairs was not even paid his fees – out of revenge ...”

11. This article was followed by a further text in a small box which stated:

(German original)

„[...]Die Spesenritter und Abkassierer haben tatsächlich dem Ansehen Salzburgs als Zukunftsland schwer geschadet. Schausberger hat die Gefahr klar erkannt: Über der Grenze hat Bayerns Ministerpräsident Edmund Stoiber viele vorbildhafte Technologieparks eingerichtet. Wenn es um Merkwürdigkeiten geht, so taucht in Salzburg immer wieder der Name des sogenannten Medienexperten Peter Aurelius Bruck auf. Der umtriebige Professor hat einen Schutzpatron: Niemand geringeren als Landesvize Arno Gasteiger. Das beweist auch die Teilnehmerliste jenes Geheimtreffens, das Gasteiger im Techno-Z organisieren ließ (siehe Bericht). Da war zunächst das seltsame „Bürgernetz“, eine Bruck-Idee, für die locker Millionen an Steuer- & Stromgeld flott gemacht werden sollten, Kinder hätten damit Zugang zu den Internet-Pornoseiten der Sex-Industrie gehabt. [...]"

(Translation from German)

“... Expense account profiteers and rip-off merchants (*Spesenritter und Abkassierer*) have really damaged Salzburg’s reputation as Region of the Future ... Whenever the discussion turns to dubious affairs, the name of the so-called media expert Peter Aurelius Bruck crops up again and again in Salzburg First, there was the strange “citizen web”, one of Bruck’s ideas, for which millions of tax money was to be made readily available. had [With this idea] children would have had access to the pornographic sites of the internet sex industry ...”

12. On 29 May 1999 a further article entitled “Techno-Z: the second audit also shows shortcomings in Bruck’s company - How he deceived colleagues – The way Mister ‘Media Professor’ cheated” (*Techno-Z: Auch zweite Prüfung zeigt arge Mängel in Brucks Firma – Wie er Mitarbeiter tauschte – So trickste der Herr „Medienprofessor“*) stated:

(German original)

„Kein Ende im Skandal um den sogenannten “Medienprofessor” Peter Aurelius Bruck und seine Firma im Salzburger Techno-Z. Ein fettes Gehalt, satte Tantiemen und jährlich 400.000 S für Dienstreisen lässt sich der Herr Professor bezahlen. Auch ein zweites Prüfer-Team fand schwere Mängel in Brucks Firma! Die Finanzen in Brucks Firma waren abenteuerlich. Das belegt ein streng geheimer „Statusbericht“ in dem zwei Prüfer seine Geschäfte genau untersuchten. [...]”

(Translation from German)

“No end to the scandal concerning the so-called ‘media professor’ Peter Aurelius Bruck and his company in the Salzburg Techno-Z. Mister Professor has paid himself a big salary, big royalties and yearly ATS 400,000 business trips. A second team of auditors has also established serious shortcomings in Bruck’s company! The finances of Bruck’s company were adventurous. This is established by a very secret ‘status report’ in which two auditors examined his affairs thoroughly ...”

13. On 30 May 1999 an article entitled “Concerning ‘media professor’ Bruck - Auditor has been waiting for his money for a year - Techno-Z: Is a request for bankruptcy looming?” (*Es geht um „Medienprofessor” Bruck – Prüfer wartet seit einem Jahr auf Geld – Techno-Z: Droht Konkursantrag?*) stated:

(German original)

“Jetzt wird es eng für den “Medienprofessor” Peter Aurelius Bruck und seine Firma im Salzburger Techno-Z: Zwei Prüfer haben ja in penibler Kleinarbeit die Finanz-

Tricks des Herrn durchleuchtet und arge Mängel entdeckt. Einer der Prüfer bekam noch immer kein Honorar. Er droht nun Konkursantrag gegen Bruck an! [...]"

(Translation from German)

"Now it's getting tight for the 'media professor' Peter Aurelius Bruck and his company in the Salzburg Techno-Z: two auditors have x-rayed in fastidious detail the financial tricks of [this] gentleman and have discovered serious shortcomings. One of the auditors has not yet received his fees. He is now threatening to file a bankruptcy petition against Bruck! ..."

14. A further article of 5 June 1999 entitled "Report about 'media professor' earned 'thanks and consternation'" (*Bericht über „Medienprofessor“* *erntete „Dank und Entsetzen“*) stated *inter alia*:

(German original)

"[...] Die Firma war so arg geführt, daß "umgehend" ein kaufmännischer Chef neben Bruck bestellt werden mußte, um "solides Rechnungswesen und eine entsprechende Finanzgebarung" zu garantieren! [...]"

(Translation from German)

"... The company was so badly managed that a commercial director had to be appointed 'immediately' in addition to Bruck to guarantee a solid accounting system and proper management of public finances ..."

15. Lastly, on 14 June 1999 an article entitled "Further storm about wayward affairs in the Techno-Z company" (*Neuer Wirbel um eigenwillige Geschäfte in Techno-Z-Firma*) stated

(German original)

"[...] In seiner Firma im Salzburger Techno-Z gönnt er sich ein sattes Monatsgehalt, fette Tantiemen und 400.000 S für Dienstreisen. Und jetzt werden eigenwillige Geschäfte ruchbar, weil Bruck in der Firma auch Verwandte beschäftigt. [...] Da verwundert es doch, dass der Herr Professor seine eigene Tochter mitarbeiten ließ. Noch dazu um einen etwas höheren Stundenlohn als andere Mitarbeiter der Firma... [...]"

(Translation from German)

“... In his company in the Salzburg Techno-Z he helps himself to a big salary, big royalties and ATS 400,000 per year for business trips. Wayward affairs are becoming known now as Bruck also employs relatives in the company ... In this context there is still astonishment that Mister Professor gave his own daughter a job. Moreover at a slightly higher salary than other employees in the company ...”

16. On 21 October 1999 Mr Bruck was dismissed from his post as managerial director.

3. *Proceedings under the Media Act*

17. Referring to the above statements, Mr Bruck instituted proceedings in the Vienna Regional Criminal Court (*Landesgericht*) under Sections 8a and 6 of the Media Act (*Mediengesetz*) claiming compensation and publication of the judgment.

18. The case was subsequently delegated to the Salzburg Regional Court, which held a hearing at which evidence was heard from Mr Bruck, the T association's managerial director, its chairman and his deputy at the time of the events, the commercial director of Techno-Z FH at the time of the events, the four auditors in question and the journalist who had written the articles at issue.

19. On 6 April 2001 the Regional Court, sitting as a single judge, dismissed Mr Bruck's claim. It found that the impugned statements consisted partly of value judgments with a sufficient factual basis and partly of true statements of fact. It noted that the auditors Mr Dollhäubl and Mr Kittl had established in a report of March 1998 serious shortcomings in the book-keeping and accounting system of Techno-Z FH. They found that there had been no composite book-keeping for the year 1997 and that this system did not correspond to the principles of proper bookkeeping under the Book-keeping Act (*Rechnungslegungsgesetz*). The management board of the T association had taken note of this report with thanks and consternation. Despite that report the financial status of the company had been unclear at the time because of missing data. The management board had subsequently decided to appoint a commercial director in addition to Mr Bruck in order to guarantee a solid accounting system and management of public finances.

20. A further report, by an external firm of business auditors commissioned by Mr Bruck, although more favourable, had also established shortcomings in the book-keeping and accounting system and had made recommendations for improvements. For instance, contrary to the company agreement, investments over a certain amount had been made without the authorisation of the company owners. Furthermore, a bank account for a certain project had been registered in Mr Bruck's name. Therefore, the

articles' statement that Mr Bruck was lax about the finances of Techno-Z FH was true.

21. The court further noted that Mr Bruck's former contract had expired at the end of December 1997 and, although the main features of a new contract had been discussed, there had been no agreement on its fundamental aspects. Therefore, at the time of the audit in March 1998 Mr Bruck did not actually have a valid employment contract and the payouts, although not considered as arbitrary and tolerated, had taken place without any legal basis. Mr Bruck had not contested the amount of the sums mentioned in relation to his salary and expenses for business trips. The notions "wanderlust" and "business excursions" and "financial avarice", "expense account profiteer", "rip-off merchant" and "so-called media expert" and the statement that the finances in the company were "adventurous" were permissible value judgments. The fact that Mr Bruck had wrongly calculated royalties had been proven by the audit report of Mr Dollhäubl and Mr Kittl. The statement that Mr Bruck had used financial tricks was therefore also true. Mr Bruck had in fact once exceeded the credit line of the company and had acknowledged that Mr Kittl had not been paid his fee. His argument that Mr Kittl had not been commissioned by Techno-Z FH was questionable and, in any event, did not exclude the possibility that another motive for the refusal to pay Mr Kittl had been revenge, which, moreover, appeared obvious in view of the consequences of his report. Mr Kittl had actually requested the opening of bankruptcy proceedings against Techno-Z FH. It was true that Mr Bruck's idea of providing every household in Salzburg with free internet access would have allowed children to access pornographic sites. Mr Bruck had employed his daughter in his company at a slightly higher salary per hour than other employees.

22. The court noted, lastly, that the applicant company could rely on Article 10 of the Convention, particularly as there was substantial public interest in the subject matter because public funds were at stake.

23. On an appeal by Mr Bruck, the Linz Court of Appeal (*Oberlandesgericht*), having held a hearing and sitting as a bench of three judges, quashed that judgment on 25 July 2002. It found that the Regional Court had left essential evidence unconsidered and had given pseudo-reasons for its findings. In addition to the facts established by the Regional Court and referring to the statements of the witnesses made before that court, the Court of Appeal set out the following background to the case:

24. Mr Bruck was a former honorary professor at the Salzburg University and academic director of a technical college. In his function as managerial director of Techno-Z FH he had had responsibility, in particular, for acquiring research and development subsidies from national, European and international bodies in which task he was highly successful. The travel expenses for the corresponding business trips had never been challenged

and appeared reasonable in the light of their development over the years and in relation to the travel expenses of the company's other employees.

25. After Mr Bruck's former contract had expired at the end of December 1997, he was able to base his salary claim on an oral agreement of 23 December 1997 which was recorded in a note for the file and provided for a base amount of 80,000 Austrian Shillings (ATS) and a premium depending on any surplus produced by the company, this to be paid as monthly instalments of ATS 10,000. The taking of a decision on Mr Bruck's contract was repeatedly adjourned because no agreement on the concrete calculation of the company's surplus could be reached.

26. While it was true that Mr Kittl and Mr Dollhäubl's report of March 1998 established shortcomings in the accounting system, criticised the fact that Mr Bruck's salary was paid without any underlying contract or decision and that royalties for the year 1996 had been wrongly calculated, that report appeared partial and subjective: Mr Kittl had previously praised the accountancy and organisation of Techno-Z FH. Furthermore, Mr Kittl and Mr Dollhäubl had been present when the basic agreement on Mr Bruck's further contract had been reached on 23 December 1997. Lastly, Mr Kittl and Mr Dollhäubl had simply noted the lack of vouchers book-keeping in 1998 without questioning the reason for it, namely a computer crash as established by the subsequent audit by an external accounting firm. The report by that firm, commissioned by Mr Bruck, found that the accounting system and management of public finances corresponded to the average standard of a private institution and remarked critically that the company had not adapted its organisation structure to the rise of its business turnover fast enough. It did not confirm the serious shortcomings outlined in Mr Kittl and Mr Dollhäubl's previous report.

27. The commercial director was in fact appointed to relieve Mr Bruck who was busy handling other accountancy matters. It was true that in April 1998 Mr Bruck had exceeded the company's credit line; however, he handed in the corresponding authorisation a few days later and was absolved by the management board as he had demonstrated that the overdraft had been necessary. When drawing up a proposal for a "citizens' web" in 1997, Mr Bruck had wished to create a local educational internet and not provide children with access to pornographic internet pages. Furthermore, there was a possibility of locking certain pages of the internet.

28. Mr Bruck had properly refused to pay Mr Kittl's fees because it was the T association and not Techno-Z FH which had commissioned him. Mr Kittl's subsequent request that bankruptcy proceedings be instituted against the company had been unsuccessful because he had not submitted any proof of the company's insolvency. Mr Bruck had employed several trainees during the holidays, including his daughter, who had been paid between approximately seven and nine Euros (EUR) per hour, while other trainees had been paid EUR seven per hour and some EUR ten per hour.

There was no indication of preferential treatment as the amount paid to Mr Bruck's daughter corresponded to her skills and the activities she had carried out.

29. The court found that in its overall context the series of articles wrongly accused Mr Bruck of fraudulent conversion, unjustified enrichment and commercial ineptitude. The applicant company's reporting did not comply with the standards of journalistic diligence as it had not carried out any fair and objective research and had not questioned Mr Bruck. As the majority of the reported events dated back more than a year the journalist concerned had been under no time pressure to research the true facts behind the case. Having regard to the gravity of the criticism levelled at Mr Bruck, who had meanwhile been dismissed in order to get the company and himself out of the applicant company's firing line, the court ordered the applicant company to pay EUR 14,500 in compensation.

30. The applicant company subsequently filed a request for rectification of the transcript of the hearing before the Court of Appeal. It submitted that the transcript wrongly reported that the full file (including the transcripts of the examination of the evidence conducted before the Regional Court) had been read out. On 9 January 2003 the Court of Appeal granted this request and rectified the transcript to the effect that the full file had not been read out as, according to the statement of all members of the Court's bench, the parties had waived their right to have the full file read out.

II. RELEVANT DOMESTIC LAW

31. Section 6(1) 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. Anyone who in such a way that it may be perceived by a third person accuses another of possessing a contemptible character or attitude or of behaviour contrary to honour or morality and of such a nature 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. As regards the offence defined in paragraph 1, he shall also not be liable if circumstances are established which gave him sufficient reason to assume that the statement was true."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

32. The applicant company complained that its conviction for defamation under the Media Act infringed its right to freedom of expression as provided in 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.”

A. Admissibility

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

B. Merits

34. The Court notes that it is common ground between the parties that the applicant company's conviction and the order to pay compensation constituted an interference with its right to freedom of expression, as guaranteed by Article 10 § 1 of the Convention.

35. 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.

36. The Court considers, and this was acknowledged by the parties, that the interference was prescribed by law, namely by section 6 of the Media Act read in conjunction with Article 111 of the Criminal Code. 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.

37. The Government submitted that the measures were necessary in a democratic society and that the Court of Appeal gave sufficient and convincing reasons for its judgment. In particular it found that accusations of misappropriation and of serious mismanagement were statements of fact which could be proven by examining the accounting system and the book-keeping of a company by means of external audit reports. However, the Government agreed with the finding of the Court of Appeal that it had not been possible to establish that these accusations were in fact true. The Government further argued that the applicant company had failed to apply the necessary diligence in its research because it had not taken into account the negative effect the unproven statements would have on Mr Bruck's reputation. Moreover, the applicant company had not given Mr Bruck a chance to defend himself, which undermined the principle of diligent journalism. Since the information had already been available for a year there had been no particular urgency in this issue that could have justified this lack of investigation.

38. The applicant company contested the submission that the Court of Appeal's judgment had been necessary in a democratic society. It contended that the impugned statements constituted value judgments which had a factual basis. The comment concerning the "citizens' web" was a clear expression of an opinion. The comment concerning the refusal to pay the fee of one of the auditors out of vengeance was also a value judgment based on the fact that the auditor had not been paid. With regard to the articles about the use of public funds by Mr Bruck, the applicant company argued that the public had a right to receive this important information. In conclusion, the applicant company's convictions were disproportionate and not necessary in a democratic society.

39. The Court reiterates the principles established by its case-law under Article 10 of the Convention:

(i) The press plays an essential role in a democratic society. Although it must not overstep certain bounds, in particular in respect of the reputation and rights of others, 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 *De Haes and Gijssels v. Belgium*, judgment of 24 February 1997, *Reports* 1997-I, pp. 233-234, § 37). Not only does it have the task of imparting such information and ideas, the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of "public watchdog" (see *Thorgeir Thorgeirson v. Iceland*, judgment of 25 June 1992, Series A no. 239, p. 28, § 63; *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, § 62, ECHR 1999-III; and *Unabhängige Initiative Informationsvielfalt v. Austria*, no. 28525/95, § 46, 26 February 2002).

(ii) Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and

each individual's self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. As set forth in Article 10 § 2, this freedom is subject to exceptions, which must, however, be construed strictly and the need for any restrictions must be established convincingly (see *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 43, ECHR 1999-VIII).

(iii) 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-IV).

(iv) The notion of necessity implies a "pressing social need". The Contracting States enjoy a margin of appreciation in this respect, but this goes hand in hand with a European supervision which is more or less extensive depending on the circumstances. In reviewing under Article 10 the decisions taken by the national authorities pursuant to their margin of appreciation, the Court must determine, in the light of the case as a whole, whether the interference at issue was "proportionate" to the legitimate aim pursued and whether the reasons adduced by them to justify the interference are "relevant and sufficient" (see *Lingens v. Austria*, judgment of 8 June 1986, Series A no. 103, p. 25, §§ 39-40; and *The Sunday Times v. the United Kingdom* (no. 2), judgment of 26 November 1991, Series A no. 217, p. 28-29, §§ 50).

(v) In its practice, the Court has distinguished 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. The requirement to prove the truth of a value judgment is impossible to fulfil and infringes freedom of opinion itself, which is a fundamental part of the right secured by Article 10 (see *Lingens*, cited above, p. 28, § 46, and *Oberschlick v. Austria*, judgment of 23 May 1991, Series A, no. 204, p. 27, § 63). However, even where a statement amounts to a value judgment, the proportionality of an interference may depend on whether there exists a sufficient factual basis for the impugned statement, since even a value judgment may be excessive where it has no factual basis to support it (see *Jerusalem v. Austria*, no. 26958/95, § 43, 27 February 2001, with further references).

40. Turning to the circumstances of the present case and having regard to the above principles, the Court finds that a matter of public interest undoubtedly includes questions concerning the use of public funding. The press is one of the means by which politicians and public opinion can verify that public money is spent according to the principles of accounting and not used to enrich certain individuals. The Court therefore considers that the applicant company's interest in disseminating information on the subject matter outweighed the interests of Mr Bruck and that the applicant company complied with its duties and responsibilities as a public "watch-dog".

41. Moreover, the Court finds that, contrary to the view of the Court of Appeal, most of the impugned statements, such as “financial wanderlust”, “financial avarice” and “account profiteer” are to be regarded as value judgments rather than statements of fact, reflecting comments on a matter of high public interest and are thus the expression of the author’s opinion and therefore not susceptible to truth.

42. However, the Court finds that there existed a sufficient factual basis for such value judgments, because the applicant company based its articles on the company’s financial report and two audit reports which show the inaccuracy of the book-keeping, very high travel expenses and the payment of high royalties to Mr Bruck. Therefore, these reports constitute a sufficient basis for the impugned statements.

43. The Court further finds that even if the remaining impugned statements are considered statements of fact, the applicant company proved that they were on the whole correct. Mr Bruck did not have a proper written employment contract, since no agreement could be reached concerning the calculation of the company’s surplus. A commercial director was appointed to improve the book-keeping, serious shortcomings had in fact been discovered by two auditors and one of them did in fact threaten to file a bankruptcy claim against Mr Bruck.

44. Although it would have been advisable for the applicant company to have obtained comments from Mr Bruck before publishing the impugned articles, the mere fact that it had not done so is not sufficient to hold that the interference with the applicant company’s right to freedom of expression was justified.

45. The Court therefore considers that the standards applied by the Court of Appeal were not compatible with the principles embodied in Article 10 and that the Court of Appeal did adduce relevant but not sufficient reasons to justify the interference at issue, namely the first applicant company’s conviction and the imposition of a fine for having made the statements in question. Bearing in mind that there is little scope under Article 10 § 2 of the Convention for restrictions on debate on questions of public interest, the Court finds that the domestic court 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”. There has, therefore, been a violation of Article 10 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

46. Lastly, the applicant complained under Article 6 of the Convention of the alleged unfairness of the proceedings, the Court of Appeal's assessment of evidence and of its alleged bias.

47. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. 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.”

49. The applicant company did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award it any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning Article 10 of the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 10 of the Convention.

Done in English, and notified in writing on 14 November 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President