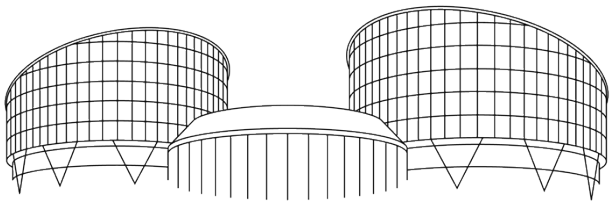

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

1959 · 50 · 2009

FIRST SECTION

CASE OF STANDARD VERLAGS GMBH v. AUSTRIA (No. 2)

(Application no. 21277/05)

JUDGMENT

STRASBOURG

4 June 2009

FINAL

04/09/2009

This judgment may be subject to editorial revision.

In the case of Standard Verlags GmbH 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,
Dean Spielmann,
Sverre Erik Jebens, *judges,*

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 14 May 2009,

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

PROCEDURE

1. The case originated in an application (no. 21277/05) against the Republic of Austria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Standard Verlags GmbH ("the applicant company"), on 3 June 2005.

2. The applicant 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 Law Department at the Federal Ministry of European and International Affairs.

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

4. On 3 May 2007 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant, a limited liability company with its seat in Vienna, is the owner of the daily newspaper *Der Standard*.

6. In its issue of 14 May 2004 *Der Standard* published an article in the domestic politics section under the heading "Gossip mongering" ("*Kolportiert"*). The article, which was entitled "A society rumour" *("Ein bürgerliches Gerücht*") commented on certain rumours relating to the marriage of Mr Klestil, the then Federal President. The article also appeared on the website of *Der Standard*. It read as follows:

> "If the stories circulating between the outlying district of Döbling and the city centre are to be believed, there is only one topic of conversation at the moment among the so-called upper crust of Viennese society: the marriage of the departing presidential couple **Thomas Klestil and Margot Klestil-Löffler** [bold print in the original]. Rumour has it that not only is he about to leave office, but she is about to leave him. The latter claim has of course set tongues wagging furiously in bourgeois – and not-so-bourgeois – circles. People here like nothing better than to be able to express outrage about one of their own.
>
> In addition to the allegedly less-than-blissful domestic situation on the Hohe Warte [the Federal President's residence], there has been persistent gossip recently about the supposedly close ties between the First Lady, who is her husband's junior by 22 years, and other political figures. Head of the FPÖ parliamentary group **Herbert Scheibner** [bold print in the original], for instance, is reported to be close to her (Scheibner has accompanied the presidential couple on a number of foreign trips). Ms Löffler is also said to be well acquainted with the husband of the Canadian ambassador (unsurprisingly, given her post as head of the American department of the Foreign Affairs Ministry).
>
> The fact that the President's wife took a few days off recently to organise the move from the official residence to the couple's newly renovated home in Hietzing fuelled further speculation. So much so, in fact, that Klestil – never squeamish about putting his emotions on display – had the following pre-emptive statement published in his information bulletin, *News* [an Austrian weekly]: 'Rumours of a separation are nothing but idle gossip' he said. He added: As of 8 July we will be embarking on a new phase of our life together. Any assertions to the contrary are untrue.
>
> Be that as it may, the people are concerned for the well-being of their President. Apparently, the public information desk of the President's Office has recently had more callers than ever before enquiring about the state of the President's marriage. And more than a few of the callers made their enquiries in the ultra-refined tones of Schönbrunn."

7. The article was accompanied by a picture of Mr Klestil and Mrs Klestil-Löffler, looking in different directions.

A. The proceedings brought by Mr Klestil and Mrs Klestil-Löffler

8. On 18 May 2004 Mr Klestil and Mrs Klestil-Löffler brought proceedings under sections 6 and 7 of the Media Act (*Mediengesetz*) against the applicant company, claiming that the article published in *Der Standard* of 14 May 2004 reported on their marriage and family life and thus interfered with the strictly personal sphere of their lives.

9. By judgment of 15 June 2004 the Vienna Regional Criminal Court (*Landesgericht für Strafsachen*) ordered the applicant company to pay compensation of 5,000 euros (EUR) to the first claimant, Mr Klestil, and EUR 7,000 to the second claimant, Mrs Klestil-Löffler. Furthermore, the court ordered the applicant company to publish its judgment and to reimburse the claimants' costs.

10. The Regional Court, referring to section 7 of the Media Act, held that the applicant company had reported on the strictly personal sphere of the claimants' lives in a manner that was likely to undermine them in public. It analysed the contents of the impugned article as alleging, on the one hand, that Mrs Klestil-Löffler intended to divorce and, on the other hand, that she had close contacts with two men, thus describing her as a double adulteress and Mr Klestil as a deceived husband. In reply to the applicant company's defence that the article merely reported on a rumour, the Regional Court noted that even the dissemination of a rumour could breach section 7 of the Media Act, if it conveyed the impression that there was some truth in it.

11. As to the applicant company's request to take evidence in order to show that the rumour had actually been spread at the time, the court noted that in cases concerning an infringement of the strictly personal sphere of a person's life, section 7 § 2 of the Media Act excluded the proof of truth (*Wahrheitsbeweis*), unless the statement at issue was directly related to public life. Such a direct link would exist, for instance, where a publication reported on the state of health of the Federal President which might prevent him from exercising his functions. However, the state of his marriage did not have any bearing on his capacity to exercise his functions nor did it have any other link with public life.

12. In assessing the amount of compensation, the Regional Court had regard to the fact that *Der Standard* was a widely read newspaper and to the considerable degree of insult suffered by the claimants. In addition it noted that it was highly uncommon in Austria to report on (true or untrue) details of the private lives of politicians. Having regard to the above considerations and the need to deter other media from making similar publications, a relatively large amount of compensation appeared justified. The difference in the sums awarded was to the fact that the second claimant was described as a double adulteress, while the first claimant was "merely" depicted as a deceived husband.

13. The applicant company appealed. As a point of law it submitted that the Regional Court had wrongly refused its request for the taking of evidence. In its view the publication was directly related to public life within the meaning of section 7 § 2 of the Media Act. The claimants, being public figures, had made their private life part of their "marketing strategy". Like no other presidential couple before, they had kept the public informed about their marriage, starting with the first claimant's divorce from his

former wife and his remarriage, to the second claimant. Moreover, the first claimant had relied heavily on family values during his first electoral campaign. He therefore had to accept that the public had an interest in being informed about his private life.

14. As regards points of fact, the applicant company argued that the Regional Court had wrongly assessed the contents of the article at issue. Read in its proper context, the article did not state that Mrs Klestil-Löffler actually intended to divorce and even less that she was an adulteress. On the contrary the article rather aimed at exposing the idle gossip propagated in certain upper-class circles. It clearly pointed to the absurdity of the rumour by explaining that the allegedly close ties of the second claimant with Mr Scheibner and with the husband of the Canadian ambassador had perfectly unsuspicious reasons. Seen in that light, the article did not even relate to the strictly personal sphere of the presidential couple but made fun of the gossip in bourgeois society.

15. As regards the sentence the applicant company claimed that the compensation awards were excessive.

16. While the appeal proceedings were pending, Mr Klestil died. By decision of 2 September 2004 the Vienna Regional Criminal Court discontinued the proceedings as regards Mr Klestil. On 9 December 2004 the Vienna Court of Appeal (*Oberlandesgericht*), on an appeal brought by Mr Klestil's estate, quashed the Regional Court's decision.

17. By a judgment of 20 January 2005 the Vienna Court of Appeal upheld the Regional Court's judgment of 15 June 2004.

18. It confirmed that in the present case, the proof of truth was excluded by section 7 § 2 of the Media Act. The applicant company's argument that the claimants were public figures and had exposed their private and marital life to the public eye like no other presidential couple before was not convincing. While the first claimant had relied on his family life and on his then marriage in his first campaign some twelve years ago, his marriage with Mrs Klestil-Löffler had not played a role in his second campaign nor otherwise during his second period in office. Moreover, his second and last period in office had been drawing to a close at the time of the publication. In sum, the Regional Court had rightly found that the publication at issue was not directly related to public life. Consequently, it had rightly refused to take the evidence proposed by the applicant company.

19. There was no basis for the applicant company's assertion that the article was aimed at unveiling the hypocrisy of the so called upper crust of Viennese society or that it described the rumours about the claimants' marriage as absurd. The Regional Court had rightly understood the article's contents as conveying rumours about the Federal President's marriage as if there was some truth in them.

20. Finally, as regards the amounts granted in compensation, the Court of Appeal found that deterring other media from similar publications was

not a relevant criterion. Nevertheless the other considerations relied on by the Regional Court justified the compensation awards.

B. The proceedings brought by Mr Scheibner

1. Proceedings under the Media Act

21. On 11 June 2004 Mr Scheibner brought proceedings under sections 6 and 7 of the Media Act against the applicant company in respect of the electronic version of the article, which had been published on the website of *Der Standard* and in respect of the print version. He alleged that the passage referring to him contained an untrue statement amounting to defamation.

22. By judgment of 20 July 2004 the Vienna Regional Criminal Court ordered the applicant company to pay EUR 4,000 to Mr Scheibner as compensation for the publication in the printed version of *Der Standard* and EUR 2,000 as compensation for the publication on the website. Furthermore, the court ordered the applicant company to publish its judgment and to reimburse the claimant's costs.

23. The court, arguing along the same lines as in its judgment of 15 June 2004 (see paragraphs 10-11 above), held that the applicant company had reported on the strictly personal sphere of the claimant's life in a manner that was likely to undermine him in public. It analysed the contents of the impugned article as alleging that the claimant, Mr Scheibner, who was a married man, had a close relationship with Mrs Klestil-Löffler and therefore described him as an adulterer. Thus, his strictly personal sphere was affected. However, it found that the publication did not amount to defamation within the meaning of Article 111 of the Criminal Code (*Strafgesetzbuch*).

24. As to the amount of compensation it considered that the insult as regards Mr Scheibner weighed less heavily than as regards the claimants in the first set of proceedings. In sum, compensation awards of EUR 4,000 as regards the publication in the paper version of *Der Standard* and EUR 2,000 for the publication on the website, which was less widely read, appeared appropriate.

25. The applicant company and Mr Scheibner appealed, whereby the applicant company relied on the same grounds as in its appeal in the previous set of proceedings.

26. On 22 December 2004 the Vienna Court of Appeal dismissed the applicant company's appeal but partly granted Mr Scheibner's appeal. It held that the impugned statement also breached Article 6 of the Media Act, since it fulfilled the objective elements of defamation as defined in Article 111 of the Criminal Code. The claimant was accused of adultery, which even in a liberal society was still considered an unlawful and

dishonourable act. It considered however, that this had no influence on the amount of compensation to be paid, which was therefore upheld.

27. As to the applicant company's appeal, the Court of Appeal again confirmed the Regional Court's reading of the contents of the article. It added that the placement of the article in the domestic politics section and its presentation including the picture of the presidential couple supported this assessment. Furthermore, the appellate court noted that the applicant company had not argued before the Regional Court that the publication was directly related to public life within the meaning of Article 7 § 2 of the Media Act.

28. In any case, Mr Scheibner, though a public figure, had a right to respect for the strictly personal sphere of his life. Rumours about an alleged relationship between him and the wife of the Federal President had no link with his public functions and responsibilities and did therefore not justify the reporting at issue.

2. Proceedings under the Civil Code

29. Once the judgment of the Court of Appeal had become final, Mr Scheibner brought proceedings under the Civil Code (*Allgemeines Bürgerliches Gesetzbuch*) requesting an injunction ordering the applicant company to refrain from publishing any statement alleging that he had a relationship with Mrs Klestil-Löffler.

30. At the hearing of 22 April 2005 before the Vienna Commercial Court (*Handelsgericht*), the applicant company entered into a settlement with Mr Scheibner undertaking to refrain from publishing any such statement. The Commercial Court noted that according to constant case-law, a judgment under section 6 of the Media Act had binding effect in subsequent civil proceedings relating to the same facts. It ordered the applicant company to pay Mr Scheibner's procedural costs.

31. The Commercial Court's judgment was served on the applicant company's counsel on 25 May 2005. The applicant company did not appeal.

II. RELEVANT DOMESTIC LAW

32. 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."

33. Section 7 of the Media Act provides a claim for damages in cases of interference with the strictly personal sphere of an individual's life. In the version in force at the material time, it read as follows:

"(1) If the strictly personal sphere of an individual's life is discussed or portrayed in the media in a way liable to publicly undermine the individual concerned, he or she shall have the right to claim compensation for the damage sustained from the media proprietor (publisher). The amount of compensation may not exceed 14,535 euros; ...

(2) The right referred to in paragraph 1 above shall not apply where:

(i) the statements comprise an accurate account of a debate held during a public sitting of the National Council, the Federal Council, the Federal Assembly, a regional parliament or a committee of one of these general representative bodies;

(ii) the statements published are true and are directly related to public life;

(iii) it can be assumed from the circumstances that the person concerned had agreed to publication, or

(iv) the statements were made during a live broadcast, and no employee or representative of the broadcaster failed to exercise proper journalistic care."

THE LAW

ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

34. The applicant company complained that the courts' decision in the proceedings under the Media Act and under the Civil Code violated 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. 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."

35. The Government contested that argument.

A. Admissibility

1. The proceedings under the Civil Code

36. The Court observes that in the proceedings brought by Mr Scheibner under the Civil Code the applicant company entered into a settlement undertaking to refrain from repeating the impugned statement. In a recent case with a similar situation the Court has found that an applicant who entered into such a settlement had accepted the limitation of its right to freedom of expression and renounced the use of available remedies in respect of the complaint. Therefore the applicant company could not claim to be a victim within the meaning of Article 34 of the alleged violation (see *Standard Verlags GmbH v. Austria*, no. 13071/03, §§ 33-34, 2 November 2006). The Court sees no reason to come to another conclusion in the present case. Therefore the complaint has to be rejected as being incompatible *ratione personae*, pursuant to Article 35 §§ 3 and 4 of the Convention.

2. The proceedings under the Media Act

37. As far as the complaint relates to the two sets of proceedings under the Media Act, one brought by Mr Klestil and Ms Klestil-Löffler and the other by Mr Scheibner, the Court notes that it 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

1. The parties' submissions

38. The applicant company maintained that the courts had transgressed their margin of appreciation. It contended in particular that all three claimants were public figures. Mr Klestil and Mrs Klestil-Löffler had exposed their private life to the media like no presidential couple before. Mr Scheibner was a leading politician of the Freedom Party. The section

"Gossip mongering" in which the article at issue had been published provided readers with a look behind the scenes of politics and often contained humorous or satirical contributions. In the applicant company's view the courts had disregarded the satirical nature of the article and its main aim, namely to criticise the attitudes of the so called upper crust of Viennese society which had nothing else to do than to disseminate an absurd rumour about the Federal President's private life. Finally the applicant company claimed that the sanctions imposed on it were disproportionate.

39. Moreover, the applicant company complained that the courts had refused to take evidence on the existence of a rumour about the presidential couple's divorce proposed by it on the ground that the proof of truth was not available where the strictly personal sphere of a person's private life was concerned.

40. The Government asserted that in a case like the present one the State had an obligation to strike a fair balance between the right to private and family life, as guaranteed by Article 8, on the one hand and the right to freedom of expression, provided for in Article 10, on the other. A decisive element in striking that balance was to what extent the incriminated text contributed to a debate of public interest. In the present case, the Austrian courts correctly assessed the impugned article as alleging that Ms Klestil-Löffler intended to divorce and as depicting her and Mr Scheibner as adulterers and Mr Klestil as a deceived husband. As all three of them were well-known public figures the limits of acceptable reporting were wider than for private individuals. However, the allegation of adulterous conduct transgressed these limits. There was no public interest in the rumours reported by the article, which had no connection with the public life or political function of any of the persons concerned. This was all the more so, as Mr Klestil's second and last term as Federal President was coming to an end at the time when the article was published.

41. Furthermore the Government argued that the courts had rightly dismissed the applicant company's defence that the article was of a satirical nature and had merely intended to criticise a certain "upper crust of society" for spreading rumours. Even if one accepted this aim, the actual victims were those whose private life was exposed. In addition the article was counter-productive as it contributed itself to spreading the rumour at issue, while pretending to criticise those who had first launched it.

2. The Court's assessment

42. The Court finds that the domestic courts' judgments given in the two sets of proceedings under the Media Act constituted an interference with the applicant's right to freedom of expression.

43. It was not in dispute that that interference was "prescribed by law", namely by sections 6 and 7 of the Media Act, nor that it served a legitimate

aim, namely the protection of the rights and reputation of others. The parties' submissions concentrated on whether the interference had been "necessary in a democratic society".

44. The Court reiterates the fundamental principles established by its case-law on Article 10 (see, among many others, *Éditions Plon v. France*, no. 58184/00, §§ 42 and 43, ECHR 2004-IV).

> "42. ... Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2, 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. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no 'democratic society'. As set forth in Article 10, this freedom is subject to exceptions, which must, however, be construed strictly, and the need for any restrictions must be established convincingly.
>
> The adjective 'necessary', within the meaning of Article 10 § 2, implies the existence of a 'pressing social need'. The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court. The Court is therefore empowered to give the final ruling on whether a 'restriction' is reconcilable with freedom of expression as protected by Article 10.
>
> The Court's task, in exercising its supervisory jurisdiction, is not to take the place of the competent national courts but rather to review under Article 10 the decisions they delivered in the exercise of their power of appreciation. This does not mean that the supervision is limited to ascertaining whether the respondent State exercised its discretion reasonably, carefully or in good faith; what the Court has to do is to look at the interference complained of in the light of the case as a whole and determine whether it was 'proportionate to the legitimate aim pursued' and whether the reasons adduced by the national authorities to justify it are 'relevant and sufficient'.
>
> ...
>
> 43. The Court has also repeatedly emphasised the essential role played by the press in a democratic society. In particular, it has held that although the press must not overstep certain bounds, for example in respect of the 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. Not only does it have the task of imparting such information and ideas: the public also has a right to receive them (see, among many other authorities, *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, §§ 59 and 62, ECHR 1999-III, and *Colombani and Others v. France*, no. 51279/99, § 55, ECHR 2002-V). The national margin of appreciation is circumscribed by the interests of a democratic society in enabling the press to exercise its vital role of "public watchdog" (see, for example, *Bladet Tromsø and Stensaas*, cited above, § 59). ..."

45. The Court observes that the impugned article dealt with rumours about the claimants' private life and, in the case of Mr Klestil and Ms Klestil-Löffler, also their family life.

46. In this context the Court reiterates that in cases like the present one, in which the Court has had to balance the protection of private life against freedom of expression, it has always stressed the contribution made by photos or articles in the press to a debate of general interest (see, in particular, *Von Hannover v. Germany*, no. 59320/00, § 60, ECHR 2004-VI; see also *Tammer v. Estonia*, no. 41205/98, § 68, ECHR 2001-I).

47. Another important factor to be taken into account is whether the person concerned exercised any official functions. The Court has underlined that a fundamental distinction needs to be made between reporting facts – even controversial ones – capable of contributing to a debate in a democratic society relating to politicians in the exercise of their functions and reporting details of the private life of an individual who does not exercise official functions (see *Von Hannover*, cited above, §§ 62-63).

48. The Court has accepted that the right of the public to be informed can in certain special circumstances even extend to aspects of the private life of public figures, particularly where politicians are concerned (see *Von Hannover*, cited above, § 64, with reference to *Editions Plon,* cited above, § 53). However, anyone, even if they are known to the general public, must be able to enjoy a "legitimate expectation" of protection of and respect for their private life (see *Von Hannover*, cited above, § 69).

49. In the present case, it is not in dispute that all three claimants in the proceedings under the Media Act were public figures. At the time of publication of the impugned article, Mr Klestil was the Federal President of Austria, Mrs Klestil-Loeffler, his wife, was herself a high-ranking official at the Foreign Ministry and Mr Scheibner was a leading politician of the Freedom Party. The parties' opinions differ in particular as to whether the article made any contribution to a debate of general interest.

50. The Court observes in this context that section 7 of the Media Act protects the strictly personal sphere of any person's life against being discussed or portrayed in a way liable to undermine him or her in public, except where the statements published are true and directly related to public life.

51. In applying section 7 of the Media Act in the present case, the domestic courts ordered the applicant company to pay compensation to the claimants for violating their strictly personal sphere. They found that the impugned article had spread rumours about the presidential couple's private life, alleging that Ms Klestil-Loeffler intended to divorce and insinuating that Mr Scheibner possibly had an adulterous relationship with Ms Klestil-Löffler. They dismissed the applicant company's argument that the article was related to public life. In that respect, they distinguished a politician's alleged marital problems from his or her state of health which, though belonging to the personal sphere, can have a bearing on the exercise of his or her functions. They added that the presidential couple's private life had not played a role during his second term in office. In respect of

Mr Scheibner they found that rumours about an alleged relationship between him and the First Lady did not have any link with his public functions and responsibilities. Consequently, since Article 7 of the Media Act prohibits reporting on a person's strictly personal sphere in absolute terms if there is no direct link with public life, the courts refused to take evidence on whether the rumours at issue actually existed at the time.

52. The Court finds that the reasons given by the Austrian courts were "relevant" and "sufficient" to justify the interference. It observes that the courts fully recognised that the present case involved a conflict between the right to impart ideas and the right of others to protection of their private life. It cannot find that they failed properly to balance the various interests concerned. In particular the courts duly considered the claimants' status as public figures but found that the article at issue failed to contribute to any debate of general interest. They made a convincing distinction between information concerning the health of a politician which may in certain circumstances be a issue of public concern (see, in particular, *Editions Plon*, cited above, § 53) and idle gossip about the state of his or her marriage or alleged extra-marital relationships. The Court agrees that the latter does not contribute to any public debate in respect of which the press has to fulfil its role of "public watchdog", but merely serves to satisfy the curiosity of a certain readership (see, *mutatis mutandis*, *Von Hannover*, cited above, § 65).

53. As far as the applicant company complains that it was not allowed to prove that such rumours as reported by the article were circulating at the time, the Court observes that while reporting on true facts about a politician's or other public person's private life may be admissible in certain circumstances, even persons known to the public have a legitimate expectation of protection of and respect for their private life. The Court notes that at no time did the applicant company allege that the rumours were true. However, even public figures may legitimately expect to be protected against the propagation of unfounded rumours relating to intimate aspects of their private life.

54. Having regard to these considerations, the Court finds the domestic courts did not transgress their margin of appreciation when interfering with the applicant company's right to freedom of expression.

55. Furthermore the Court considers that the measures imposed on the applicant company, namely the order to pay compensation to the claimants and to publish the judgments were not disproportionate to the legitimate aim. In sum, the interference with the applicant company's right to freedom of expression could thus reasonably be considered necessary in a democratic society for the protection of the reputation and rights of others within the meaning of Article 10 § 2 of the Convention.

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

FOR THESE REASONS, THE COURT

1. *Declares* unanimously the complaint that the courts' decisions in the proceedings under the Media Act violated the applicant company's right to freedom of expression admissible and the remainder of the application inadmissible;

2. *Holds* by five votes to two that there has been no violation of Article 10 of the Convention.

Done in English, and notified in writing on 4 June 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Christos Rozakis
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the dissenting opinion of Judge Jebens, joined by Judge Spielmann is annexed to this judgment.

C.L.R.
S.N.

DISSENTING OPINION OF JUDGE JEBENS, JOINED BY JUDGE SPIELMANN

1. I respectfully disagree with the majority's reasoning and conclusion in this case. In my opinion, the domestic courts' decision to order the applicant company to pay compensation to the claimants was not supported by "relevant and sufficient reasons". Therefore, in my view, the interference with the applicant company's right to freedom of expression was not "necessary in a democratic society", as required by Article 10 para 2.

2. The domestic courts' decisions were based on section 7 of the Media Act, in that the courts held that *Der Standard* had reported on the strictly personal sphere of the claimants' lives in a manner which was likely to undermine them in the public. The impugned article was interpreted as alleging that Mrs Klestil-Löffler intended to divorce, and that she had close contacts with two men. The latter implied, according to the courts' expressed opinion, that Mrs Klestil-Löffler had committed no less than double adultery and that Mr Klestil was put in the position of a deceived husband. In dismissing the applicant company's argument that the article was related to public life, the courts distinguished between a politician's alleged marital problems and his state of health, because in their view only the latter could have a bearing on his public functions.

3. I am not convinced by the argument that the article in question did not contribute to any issue of public interest. There is in my opinion some strength in the applicant company's assertion that the article: "A society rumour" ("Ein bürgerliches Gerücht") intended in the first place to criticise the attitude of the so-called upper crust of Viennese society, which had nothing better to do than spread rumours about the Federal President's marriage. While the article did not concern a political debate, it can nevertheless be said to have contributed to an issue of general interest, namely certain attitudes of society towards the presidential couple (see, *mutatis mutandis, Nikowitz and Verlagsgruppe News GmbH v. Austria,* no. 6266/03, § 25, 22 February 2007, which concerned a satirical article on society's attitudes towards a sports star). Thus, it is questionable whether at all the impugned article related to the personal sphere of the presidential couple.

4. However, even if one accepts the domestic courts' analysis, that the article spread rumours about the presidential couple's private life, the state of the marriage of the Federal President can in my view not be regarded as a topic of no public interest. Being in the position of head of state, it is a matter of fact that many people are interested in the president's private life, though admittedly for various reasons, spanning from concern about the president's well-being to mere curiosity. Moreover, the fact that the presidential couple had kept the public informed about the first applicant's divorce and his remarriage to the second applicant indicates that the

claimants themselves were aware of the public interest in such matters. In these circumstances it is important that the Court does not take a paternalistic view, and try to decide for people what the true meaning of public interest is. In my view, there can be no doubt that the impugned article concerned a matter which was of legitimate interest among many people, and notably not the everyday life of a person who has not sought publicity (see, *a contrario, Von Hannover*, cited above, §§ 62 and 64).

5. In that context the question whether in fact rumours concerning the presidential couple's marriage were circulated at the time was of some relevance (see, *mutatis mutandis*, *Tammer*, cited above, § 68). It appears from the article that Mr Klestil himself had made a statement in the periodical News, in which he apparently commented on the rumours of a possible divorce, calling them completely unfounded. However, because the domestic courts had found that there was no direct link with the public life within the meaning of section 7 of the Media Act, the proof of truth in respect of the existence of the rumours reported was not available to the applicant company.

6. Furthermore, although the impugned article was placed in the domestic politics section, the heading "Gossip mongering" and the title "A society rumour" already made it clear that it was not to be taken at face value. The text itself did not pretend to relate to any established facts. It reported, in a somewhat humorous way, on rumours about the Federal President's marriage, and without using any insulting or abusive language (see, *a contrario, Tammer*, cited above, § 67). While it did not take a stance on the rumours concerning a possible break-up of the Federal President's marriage, it distanced itself from allegations that Ms Klestil-Löffler had "close relationships" with two other men, by explaining that there were professional reasons for her being well acquainted with the two men concerned which should arouse no suspicion whatever.

7. Bearing in mind the Court's supervisory function, I find it rather far-fetched to read the passage above as meaning that Ms Klestil-Löffler had adulterous relationships with two other men. At least, though it appears that the text is open to different interpretations, the domestic courts failed to give convincing reasons why they judged the applicant company on the basis of the most offensive one.

8. In sum, I consider that the impugned text remained within the limits of acceptable comment in a democratic society and that the domestic courts transgressed their margin of appreciation when interfering with the applicant company's right of freedom of expression. I therefore conclude that there has been a violation of Article 10.