CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

Application no. 32402/02
by VERLAGSGRUPPE NEWS GMBH
against Austria

The European Court of Human Rights (First Section), sitting on 12 May 2005 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mr P. LORENZEN,
Mrs N. VAJIĆ,
Mrs S. BOTOUCHAROVA,
Mrs E. STEINER,
Mr K. HAJIYEV,
Mr D. SPIELMANN, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having regard to the above application lodged on 16 August 2001,

Having deliberated, decides as follows:

THE FACTS

The applicant, Verlagsgruppe New GmbH, is a limited company with its seat in Vienna. It is represented before the Court by Mr G. Zanger, a lawyer practising in Vienna.

The facts of the case, as submitted by the parties, may be summarised as follows.

On 7 February 2000 the weekly magazine Format published an article in its issue 6/00 in which it criticised Mr. Haider, the leader of the Austrian Freedom Party of having, "in a trivialising manner, referred to the Nazi concentration camps as 'punishment camps'".

On 8 February 2000 Mr Haider filed a compensation claim under the Media Act with the St. Pölten Regional Court against the applicant company.

On 6 June 2000 the Regional Court ordered the applicant company to pay ATS 50,000 as compensation to Mr Haider and to publish its sentence and ordered the forfeiture of the issue concerned, pursuant to the relevant provisions of the Media Act.

On 31 January 2001 the Vienna Court of Appeal, having held a hearing, dismissed the applicant company's appeal and confirmed the Regional Court's judgment. It accepted that the reproach of trivialising the Nazi concentration camps was a value judgment. However, it considered that the applicant company had failed to give complete and correct factual information as to the context in which Mr. Haider had referred to these camps as punishment camps.

COMPLAINT

The applicant complained under Article 10 of the Convention that the courts' decisions ordering the forfeiture of its weekly Format, the publication of the Regional Court's judgment and payment of compensation to Mr. Haider violated its right to freedom of expression.

THE LAW

By letter of 4 April 2005 the applicant company informed the Court that it wished to withdraw the above application as it had reached an agreement at the domestic level with Mr. Haider.

The Court reiterates the terms of Article 37 § 1 of the Convention which, so far as relevant, reads as follows:

> "1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that
>
> (a) the applicant does not intend to pursue his application; ...
>
> However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires."

The Court notes that the applicant does not intend to pursue its application. In accordance with Article 37 § 1 *in fine*, the Court finds no special circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the examination of the application to be continued.

Accordingly, the application should be struck out of the list pursuant to Article 37 § 1 (a) of the Convention.

For these reasons, the Court unanimously

Decides to strike the application out of its list of cases.

Søren NIELSEN
Registrar

Christos ROZAKIS
President