



Court rejects Herbert Haupt's complaint concerning a satirical TV programme

In its decision in the case of [Haupt v. Austria](#) (application no. 55537/10) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The applicant, Herbert Haupt, was Chairperson of the Austrian Freedom Party between 2002 and 2004, and Vice Chancellor of the Federal Government between February and October 2003. In an episode of the satirical comedy show *Das Letzte der Woche* (which aired in September 2003), the host suggested that Mr Haupt was “usually surrounded by little brown rats”. This was regarded as an allusion to neo-Nazis. Mr Haupt brought proceedings in Austria against ATV, the television company which had broadcast the programme. Though his claim had been initially successful in 2004-5, his case was ultimately rejected after the Supreme Court re-opened proceedings in 2009.

Mr Haupt complained to the European Court that, by rejecting his claim, the Austrian courts had violated his right to protection of reputation. However, the Court held that his complaint was manifestly ill-founded, because the Austrian courts had struck a fair balance between Mr Haupt's right to protection of reputation and ATV's right to freedom of expression. In particular, the Court noted that the reference to “brown rats” around Mr Haupt had not been a personal criticism of him. Instead, it had been a political criticism of his attitude towards other members of his party. This satirical value judgment had had a sufficient factual basis, given the various problematic statements made by politicians of the Austrian Freedom Party which had been recorded by the Austrian courts.

The Court also held inadmissible Mr Haupt's complaint that the proceedings had exceeded a reasonable length; and Mr Haupt's complaint that the re-opening of the proceedings had violated his right to property.

Principal facts

In October 2003 Mr Haupt claimed compensation for criticism made of him in an episode of the satirical comedy show *Das Letzte der Woche*, which had aired the previous month. Mr Haupt objected to the suggestion by the show's host that, just like a hippopotamus in Vienna Zoo, Mr Haupt was “usually surrounded by little brown rats” (regarded as an allusion to neo-Nazis). Mr Haupt's claim was granted by the Austrian courts in 2004 and 2005. ATV was ordered to retract the statement, and pay Mr Haupt 2,000 euros in compensation.

However, the proceedings were later re-opened by the Supreme Court in 2009, after the television company lodged an application with the European Court of Human Rights complaining of a violation of their right to freedom of expression. After the proceedings were reopened, Mr Haupt's claim was rejected by the Austrian courts, which dismissed his claim for compensation and ordered him to pay ATV's costs. The final ruling was issued by the Vienna Court of Appeal in March 2010.

Complaints, procedure and composition of the Court

Mr Haupt complained that his rights under Article 8 (right to respect for private and family life) were violated, because the Austrian courts had failed to protect him against allegedly lurid and degrading attacks on his reputation. He also relied on Article 6 § 1 (right to a fair hearing within a reasonable time) to complain that his compensation claim had not been concluded within a reasonable period. Finally, he relied on Article 1 of Protocol No. 1 (protection of property) to claim that his property rights had been violated by the dismissal of his compensation claim in the re-opened proceedings, even after the Austrian courts had already granted his claim in a ‘final’ decision.

The application was lodged with the European Court of Human Rights on 20 September 2010.

The decision was given by a Chamber of seven, composed as follows:

Angelika **Nußberger** (Germany), *President*,
Erik **Møse** (Norway),
André **Potocki** (France),
Yonko **Grozev** (Bulgaria),
Síofra **O’Leary** (Ireland),
Gabriele **Kucsko-Stadlmayer** (Austria),
Lətif **Hüseynov** (Azerbaijan), *Judges*,

and also Milan **Blaško**, *Deputy Section Registrar*.

Decision of the Court

Article 8 (right to respect for private and family life)

The Court noted that Article 8 contains a right to the protection of reputation. However, when an alleged interference with that right originates in an expression, the right to protection of reputation (afforded by Article 8) must be balanced against the right to freedom of expression (afforded by Article 10). In such cases, the Court’s task is to review whether the domestic authorities have reached a determination of the case which is consistent with the principles contained in the Court’s case law, concerning the need to strike an appropriate balance between these competing rights.

In this case, the rulings complained of were those made by the Austrian courts in the re-opened proceedings, in which Mr Haupt’s claim against ATV had been dismissed. The European Court noted that Mr Haupt had been a well-known politician, in respect of whom the limits of acceptable criticism are drawn more widely than for a private individual. The reference to “brown rats” around Mr Haupt had been a value judgment which contained satirical criticism of Mr Haupt’s attitude. As such, it had constituted a political criticism of Mr Haupt’s position as a politician, rather than a personal attack. A critical value judgment may be excessive in a case where there is no factual basis to support it. However, having regard to the detailed findings by the Regional Court – in which it quoted various problematic statements made by politicians of the Austrian Freedom Party – the Court was satisfied that there had been a sufficient factual basis for the statement made on ATV.

In light of the above, the Court held that the Austrian courts had struck a fair balance between ATV’s right to freedom of expression and Mr Haupt’s right to the protection of reputation. Consequently, it concluded that there was no appearance of a violation and that the complaint should be ruled manifestly ill-founded and inadmissible.

Article 6 § 1 (right to a fair hearing within a reasonable time)

The Court noted that Mr Haupt first brought proceedings in October 2003 and that his final appeal was dismissed in October 2010. However, between January 2005 (when a final ruling was issued in the first set of proceedings) and June 2009 (when the Supreme Court re-opened the proceedings), there had been no proceedings concerning Mr Haupt’s claim pending before the Austrian courts. Therefore, the overall period to be taken into account was one year and eleven months.

Given that the case was of some complexity and was dealt with at three levels of jurisdiction, over a period of less than two years, there was no appearance of a breach of the reasonable time requirement under Article 6 § 1. The Court therefore found the complaint manifestly ill-founded and ruled it inadmissible.

Article 1 of Protocol No.1 (right to property)

The Court noted that Article 1 of Protocol No.1 applies only to a person's possessions. In this case, Mr Haupt had claimed that the compensation, which had been awarded to him by the Austrian courts in the first set of proceedings, had amounted to a 'possession' under Article 1 of Protocol No.1. The Court disagreed. Following the domestic rulings, ATV had introduced an application to the European Court of Human Rights to claim that their right to freedom of expression had been violated. Mr Haupt should have been aware that this could set in motion a series of proceedings, whereby the judgment in his favour (and the compensation awarded to him) could be reconsidered, in light of the need to uphold ATV's Convention rights. In the event this did indeed happen, and in a manner which was entirely consistent with national law. In these circumstances, Mr Haupt had not shown that he had had a claim that was sufficiently established and therefore cannot argue that he had "possessions" within the meaning of Article 1 of Protocol No.1.

Furthermore, even if the reopening of proceedings had amounted to an interference with Mr Haupt's property rights, any such interference had been compatible with Article 1 of Protocol No.1. This was because there had been a legal basis and sufficient reasons for the reopening of proceedings, and there was no indication that the consequent dismissal of Mr Haupt's claim had been disproportionate.

The Court therefore concluded that this complaint was also manifestly ill-founded and declared it inadmissible.

The decision is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.