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

FIRST SECTION

CASE OF ALBERT-ENGELMANN-GESELLSCHAFT MBH v. AUSTRIA

(Application no. 46389/99)

JUDGMENT

STRASBOURG

19 January 2006

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 Albert-Engelmann-Gesellschaft mbH v. Austria,

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

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

Having deliberated in private on 13 December 2005,

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

PROCEDURE

1. The case originated in an application (no. 46389/99) 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 Albert-Engelmann-Gesellschaft mbH ("the applicant company"), the owner and publisher of the magazine "*Der 13. – Zeitung der Katholiken für Glaube und Kirche*" (The 13th – Newspaper of Catholics for Faith and Church) with its seat in Austria, on 25 November 1998.

2. The applicant company was represented by Mr M. Metzler, a lawyer practising in Linz. The Austrian Government ("the Government") were represented by their Agent, Ambassador H. Winkler, former Head of the International Law Department at the Federal Ministry for Foreign Affairs.

3. The applicant alleged that the Austrian courts' order to pay compensation in proceedings under the Media Act was in breach of Article 10 of the Convention.

4. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court).

5. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section (Rule 52 § 1). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. By a decision of 15 September 2003, the Court declared the application admissible.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

8. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case remained in the newly composed First Section (Rule 52 § 1). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant company is the owner and publisher of the magazine "*Der 13. – Zeitung der Katholiken für Glaube und Kirche*" (The 13th – Newspaper of Catholics for Faith and Church).

1. Background

10. On 13 November 1996 the magazine *"Der 13."* published six letters to the editor dealing with the discussion on a "Church Referendum Movement (*Kirchenvolksbegehren*)" organised by catholics to promote "progressive" ideas and to strengthen lay influence within the Catholic Church in Austria. One of these letters at issue in the present case reflected a conservative position towards the Church Referendum Movement and criticised Mr Paarhammer, at the material time Vicar General (*Generalvikar*) of the Archdiocese of Salzburg, member of the Salzburg Cathedral Chapter (*Domkapitel*) and Professor of Canon Law at the Salzburg University, for his behaviour during the election process for the new Salzburg Archbishop in 1988/89.

11. The letter's layout could be distinguished from the remainder of the page in that its text was framed and headed with: "Priests loyal to the Pope should be appointed to influential positions" and read as follows:

> "The Diocesan Forum in Salzburg came to a close on 24 September, the feast day of St Rupert, the patron saint of our diocese and our province.
>
> It is thanks to the prudent leadership, tactical skill and resolute attitude of Suffragan Bishop Laun that the pernicious ideas of the Church Referendum Movement did not find their way into the resolutions adopted at the Diocesan Forum.
>
> For that, our esteemed suffragan bishop deserves our warmest thanks and congratulations.
>
> What will happen now? Will the resolutions be put into effect or will they remain a dead letter?

When will the rebels in the cathedral chapter strike their next blow against Laun?

Paarhammer did not even shrink from publicly criticising and disparaging the Pope in an extremely offensive manner, while Sieberer insulted Laun as soon as he was appointed.

Those who say that the renewal of the Church in Salzburg cannot be effected without changes in its clergy will probably prove right.

With the Diocesan Forum over, the time has come for priests who are critical of the Church to be swiftly removed from all influential positions and for priests who are truly loyal to Pope and Church to be appointed in their place.

That step is bound to be painful for the diocese to begin with, but it will undoubtedly be worthwhile in the long run.

We hope that the bishops have the courage to take it.

Initiative to Restore the Unity of the Church in Salzburg, A-5020 Salzburg (*Initiative zur Wiederherstellung der Einheit der Kirche in Salzburg*)"

12. The letter was anonymous as the "Initiative" turned out to be non-existent.

13. The allegations concerning Mr Paarhammer related to a press release by the Cathedral Chapter of 30 December 1988 stating, *inter alia*, that the Holy See's choice of candidates for the Salzburg archbishop had put the Cathedral Chapter in a situation of moral conflict. Further reference could be made to a radio interview on 10 January 1989, in which Mr Paarhammer, as speaker of the Cathedral Chapter, had expressed discontent about the way the Holy See had dealt with the succession of the Salzburg archbishop and that the Cathedral Chapter, asking to discuss the list of candidates proposed by the Holy See, had not been received in audience by the Pope.

2. Compensation proceedings

14. In March 1997 Mr Paarhammer sought compensation for defamation from the applicant company under Section 6 of the Media Act (*Mediengesetz*).

15. On 11 November 1997 the Salzburg Regional Court (*Landesgericht*), after having taken evidence of the records of the above statements made by Mr Paarhammer during the election process of 1988/89, awarded him ATS 30,000 (EUR 2,180.19) by way of compensation under Section 6 of the Media Act and ordered the applicant company to publish the judgment and to reimburse costs incurred by Mr Paarhammer. The court found that the following passages were defaming him, within the meaning of Section 111 §§ 1 and 2 of the Criminal Code:

a) "When will the rebels in the cathedral chapter strike their next blow against Laun?"

b) "Paarhammer did not even shrink from publicly criticising and disparaging the Pope in an extremely offensive manner"

c) " ... the time has come for priests who are critical of the Church to be swiftly removed from all influential positions and for priests who are truly loyal to Pope and Church to be appointed in their place".

16. It held that an average reader of *"Der 13."*, whose recipients were particularly interested in and sensitive to intra-church-related matters, would not expect a high-ranking church official offensively to criticise and disparage the Pope, and would therefore consider a person doing so to be affected by a serious lack of character (*erheblicher Charaktermangel*). The same considerations applied to the two other statements in the letter calling Mr Paarhammer a "rebel" and a "critic of the church who should be removed". It noted in particular that Mr Paarhammer had criticised the Holy See for its refusal to receive the Cathedral Chapter in audience in the radio interview of 10 January 1989. Thus, this criticism related to concrete behaviour and was not questioning the authority of the highest church officials as such. As regards Mr Paarhammer's statements concerning the succession of the Salzburg archbishop, the court found that criticising the Pope for his decisions on personnel-policy matters was lawful also under the Canon Law, as the doctrine of papal infallibility only applied to matters of belief and morals. Furthermore, the applicant company could not rely on any of the exemptions from liability under Section 6 § 2 lit. 2 (a), (b) or lit. 4 of the Media Act, as the allegations were neither true, nor was their publication in preponderant public interest eight years after the election of the Salzburg archbishop in 1989. The applicant company had also failed to comply with the ethics of journalism, as it had not given Mr Paarhammer an opportunity to comment. Finally, the letter at issue did not constitute a correct statement of a third person (Section 6 § 2 lit. 4 of the Media Act), since the signed "Initiative" was non-existent as a legal person and not represented by any natural person.

17. On 28 May 1998 the Linz Court of Appeal (*Oberlandesgericht*), upon the applicant company's appeal, confirmed the Regional Court's judgment. The court considered that the applicant company could not claim to have uttered permissible criticism under Article 10 § 1 of the Convention, since the imputation of dishonourable behaviour without reference to facts was not justified criticism. Therefore, it fell outside the scope of protection of Article 10 of the Convention. The court found that the applicant company had failed to produce factual evidence that would have supported the incriminated statements. In particular, Mr Paarhammer's critical remarks during the election process of 1988/89 could not be described as "publicly criticising or disparaging the Pope in an extremely offensive manner". Considering the high positions he held as Vicar General, entitling him to represent the archbishop, and also as Judicial Vicar (*Judizialvikar*), any such behaviour as alleged in the incriminated passages would not only be

incompatible with the requirement of orthodoxy under the Codex Iuris Canonici 1983, but also with the profile of a high-ranking church official as expected by the clergy and the interested catholic public. Were any of these allegations true, Mr Paarhammer would not only risk being recalled from his position as Vicar General but also losing his *missio canonica* at the university. The allegation of a "rebel within the Cathedral Chapter" meant in its context that Mr Paarhammer rebelled against the church order – which he ought to represent himself as well – and was therefore capable to lower him in public esteem. All the more so, as the recipients of *"Der 13."* belonged traditionally to the conservative wing of the Catholic Church in Austria. The court confirmed the lower court's finding as regards the applicant company's failure to comply with the ethics of journalism. Finally, as the applicant company had in no way distanced itself from, but rather identified itself with its contents by adding the title and by framing the text, it could be left open whether the publication had been in the preponderant public interest within the meaning of Section 6 § 2 lit. 2 (b) and lit. 4 of the Media Act.

18. On 11 June 1999 the Salzburg archbishop recalled Mr Paarhammer from his function as Vicar General and, on 1 January 2001, appointed him President of the International Centre for Scientific Research (*Internationales Forschungszentrum für Grundfragen der Wissenschaften*).

II. RELEVANT DOMESTIC LAW

19. 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 Section 111 of the Criminal Code (*Strafgesetzbuch*), as follows:

> "1. As it may be perceived by a third party, anyone who makes an accusation against another of having a contemptible character or attitude, or of behaving 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."

20. Section 6 § 2 of the Media Act provides for exceptions to the liability of a publisher under Section 6 § 1. Section 6 § 2 lit. 2 (a) states that no claim for damages can be made in cases of defamation when a true

statement of facts had been published, or (b), when the statement's publication was of preponderant public interest and the publisher, having complied with the ethics of journalism, had sufficient evidence before him to consider the statement as true. Under Section 6 § 2 lit. 4 of the Media Act, no such claim could be made if the publication concerned a correct statement of a third person and receiving that information was of preponderant public interest.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

21. The applicant company complained under Article 10 of the Convention that its conviction violated its right to freedom of expression, which, as far as material, 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, ... for the protection of the reputation or rights of others, (...)"

22. The Government argued that the interference was justified under Article 10 § 2 of the Convention. It was prescribed by law, namely by Section 6 of the Media Act and Section 111 of the Criminal Code. It pursued the legitimate aim of the protection of the reputation or rights of others, protecting in particular Mr Paarhammer's reputation and the rights of the Salzburg Roman Catholic population against attacks on their religious beliefs and institutions. It was also necessary in a democratic society for the following reasons: Eight years after the election of the Salzburg archbishop there was no strong public interest in receiving the information at issue. The Government, referring to the case of *Prager and Oberschlick v. Austria* (judgment of 26 April 1995, Series A no. 313), argued that the margin of appreciation accorded to Contracting States was a wide one and that church-related matters were not part of a general political debate. The domestic courts had correctly found that the applicant company had not submitted facts proving the truth of the allegations at issue. It had failed to comply with the ethics of journalism, had not acted in good faith as it had not verified the origin of that document, nor had it given the person concerned an opportunity to comment. In balancing the conflicting interests, namely the applicant company's interest in the publication of the statements in

question and that of the general public in receiving this information, on the one hand, and Mr Paarhammer's interest and that of the Catholic population in protecting the reputation of a dignitary of the Church, on the other, the Austrian courts had given priority to the interests of the latter. Since the applicant company was ordered to pay a moderate amount of approximately EUR 2,180, the interference was not disproportionate either.

23. The applicant company contested the Government's view and maintained that the interference with the applicant company's right to freedom of expression had been unnecessary in a democratic society. In particular, the Austrian courts had disregarded that the letter to the editor contained value judgments which had a sufficient factual basis: Mr Paarhammer had publicly criticised the Pope in a radio interview in 1989 and in a press release in 1988. In the applicant company's view, church-related matters were of public interest and formed an essential part of public discussion in Austria at the material time. Further, high-ranking church officials exposed themselves to the public as politicians do and had, thus, to display a high degree of tolerance against criticism. The applicant company further argued that Mr Paarhammer had no negative consequences to bear as a result of the letter to the editor at issue. On the contrary, he was considered to be a potential successor of the Salzburg or Innsbruck Archbishop. Since the domestic courts had found that criticism towards the Pope in respect of personnel policy matters was lawful, also critical remarks towards Mr Paarhammer in this respect ought to be admissible.

24. The Court agrees with the parties that the domestic courts' order to pay compensation constituted an interference with the applicant company's right to freedom of expression under Article 10 of the Convention. The interference was prescribed by law, namely by Section 6 of the Media Act, read in conjunction with Section 111 §§ 1 and 2 of the Criminal Code (see *mutatis mutandis*, *Prager and Oberschlick,* cited above, p. 16, § 30). It also accepts the Government's argument that the injunction served the protection of the reputation or rights of others, as under Article 10 § 2 of the Convention.

25. As regards the necessity test, the Court reiterates the basic principles governed by Article 10 as laid down in its case-law (see for instance, *Wille v. Liechtenstein*, judgment of 18 October 1999, *Reports of Judgments and Decisions* 1999-VII, p. 301, § 61):

(i) 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; such are the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic society". Freedom of expression, as enshrined in Article 10, is subject to a

number of exceptions which, however, must be narrowly interpreted, and the necessity for any restrictions must be convincingly established.

(ii) 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 a European supervision, embracing both the law and the decisions applying it, even those given by independent courts. 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.

(iii) The Court's task, in exercising its supervisory jurisdiction, is not to take the place of the competent national authorities but rather to review under Article 10 the decisions they delivered pursuant to 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". In so doing, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they based their decisions on an acceptable assessment of the relevant facts.

26. In assessing whether the measure taken by the Austrian courts in reaction to the letter published by the applicant company corresponded to a "pressing social need" and was "proportionate to the aim pursued", the Court will consider the impugned allegations in the light of the case as a whole. It will attach particular importance to the context of the statements at issue, the reasons given by the national courts and the nature of the interference.

27. The Court notes that the impugned statements in the present case were made in the context of one of the various letters to the editor published in the applicant company's magazine, concerning the Church Referendum Movement. The letter at issue expressed the view that priests who were critical of the Church should be removed from all influential positions and those truly loyal to the Pope and the Church appointed in their place. It mentioned Mr Paarhammer, Vicar General of the Archdiocese of Salzburg, member of the Salzburg Cathedral Chapter and Professor of Canon Law at the Salzburg University, suggested that he was a "rebel" and reproached him to have publicly criticised and disparaged the Pope in an extremely offensive manner. These allegations related to a press release issued by the Cathedral Chapter in December 1988 and a radio interview made with Mr Paarhammer in January 1989 in which he had expressed the opinion that the Holy See's proceedings concerning the succession of the Salzburg

archbishop had put the Cathedral Chapter in a situation of moral conflict and that he had been discontent about the Holy See's refusal to receive him in audience.

28. The domestic courts qualified these statements as statements of fact which lacked sufficient factual basis. They further found that they would endanger not only the plaintiff's *missio canonica* at the university but also cast serious doubt on his reputation as a loyal priest of the Archdiocese Salzburg, in particular because the recipients of *"Der 13."* belonged traditionally to the conservative wing of the Catholic Church in Austria. The courts also pointed out that the applicant company had not complied with the ethics of journalism as it had not given the plaintiff an opportunity to comment nor had it distanced itself from the contents of the letter, but had rather identified itself with it by highlighting the text through its layout.

29. The Court considers that the reasons given by the Austrian courts were "relevant" to justify the interference complained of. It remains to be determined whether they were "sufficient" within the meaning of Article 10 § 2.

30. The Court notes in the first place that the impugned statements were made in a magazine writing on church issues and related to a religious debate which was of considerable interest to the concerned religious community at the time of the events, namely the Church Referendum Movement which opposed catholics with "progressive" ideas to catholics remaining with a "conservative" position. It does not appear that the Austrian courts have taken this context into account.

31. A further factor to be taken into consideration in the present case is 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. 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, for example, *Lingens v. Austria*, judgment of 8 July 1986, Series A no. 103, p. 28, § 46, and *Oberschlick v. Austria (no. 1)*, 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 without any factual basis to support it may be excessive (*Jerusalem v. Austria*, no. 26958/95, § 43, ECHR 2001-II).

32. In the present case, the letter to the editor expressed the opinion on necessary changes within the clergy of the Catholic Church and, in this context, suggested that Mr Paarhammer was a "rebel" and "critical of the Church" and that he had "publicly criticised and disparaged the Pope in an extremely offensive manner". In this respect the Court does not agree with the domestic courts' position that these statements were statements of fact and considers that they have to be understood as value judgments. It further

notes that there existed a factual basis for these statements as the evidence obtained by the Austrian courts proved that Mr Paarhammer had previously publicly uttered criticism against the Holy See. Admittedly, the terms used in the letter to the editor at issue may appear somewhat far fetched. However, the Court recalls its constant case-law according to which freedom of the press covers possible recourse to a degree of exaggeration, or even provocation (see *Prager and Oberschlick v. Austria*, judgment of 26 April 1995, Series A no. 313, p. 19, § 38). Thus, in the view of the facts of the case, the impugned comment has to be regarded as permissible value judgment.

The Court finally disagrees with the national courts that the fact that the author of the impugned statements in the letter to the editor was not identified and that the applicant company did not distant itself from its contents was relevant for the applicant company's conviction under the Media Act. As the Court has stated on previous occasions, a general requirement for the press systematically and formally to distance itself from the content of a statement of a third person that might insult or provoke others or damage their reputation is not reconcilable with its role of providing information on current events, opinions and ideas. (see *mutatis mutandis Thoma v. Luxembourg*, no. 38432/97, § 64, ECHR 2001-III).

33. Consequently, the Court cannot find that the statements in respect of Mr Paarhammer, which were made in the particular context of a church related debate, constituted a gratuitous personal attack on his person. In these circumstances, the reasons adduced by the Austrian courts to justify the interference cannot be regarded as "sufficient".

34. There has therefore been a violation of Article 10 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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."

A. Damage

36. The applicant company claimed EUR 55,000, which amount it based on the title of non- pecuniary damage and pecuniary damage. In the latter regard it referred to damages resulting from loss of subscribers. It also sought interest payable pending the proceedings before the national courts and the Convention institutions at a rate of 6.75 % per annum that should be

added to their claim for costs paid in the domestic proceedings, which it put at EUR 9,278.54.

37. In so far as the claim related to pecuniary damage, the Government contested it as being speculative since there was no proof of a causal link between the courts' order to pay compensation and the alleged loss of earnings. The Government referred to the Court's practice concerning default interest rate. Further, the claim for non-pecuniary damage was excessive and, in any event, the finding of a violation would offer sufficient redress.

38. As regards the claim for non-pecuniary damage, the Court finds that the finding of a violation constitutes in itself sufficient just satisfaction (*Scharsach and News Verlagsgesellschaft mbH & CoKG v. Austria*, no. 39394/98, § 50, ECHR 2003-XI).

39. As regards pecuniary damage, the Court considers that there is no causal link between the alleged loss of subscribers and the violation found. On the other hand, some of the applicant company's claims sought under the head of reimbursement for costs and expenses fall to be examined, and granted, under the head of pecuniary damage, namely EUR 2,180.19 for compensation paid to the plaintiff upon the courts' order, EUR 5,509.92 for reimbursement of the plaintiff's costs and EUR 697.66 for publication costs of the institution of the proceedings and the judgment. These amounts include VAT. The Court also agrees with the applicant that some pecuniary loss must have been occasioned by reason of the period that elapsed from the time when the above costs were incurred until this Court's award (see, for example, *Dichand and Others v. Austria*, no. 29271/95, § 62, 26 February 2002, with further references). Deciding on an equitable basis and having regard to the statutory rate of interest in Austria, it awards the applicants EUR 2,000 with respect to their claim for interest payable pending the proceedings before the national courts and the Convention institutions. Therefore a total of EUR 10,387.77 is awarded in respect of pecuniary damage.

B. Costs and expenses

40. The applicant company sought a total of EUR 36,769.49 including VAT for costs and expenses, consisting of various costs incurred in the domestic proceedings and Convention proceedings, such as EUR 694.97 for court costs and the reimbursement of the expert's costs, but also those incurred in related civil proceedings. The claim also includes EUR 3,927.17 including VAT for costs incurred in the Convention proceedings. In addition, it requested EUR 57,643.67 for future publication costs.

41. As regards the costs for the domestic proceedings, the Government contested that there was a causal link between the proceedings at issue and the civil proceedings. Further, only EUR 5,297.85 including VAT were

incurred for the applicant company's legal representation. The Government submitted that the costs claim for the Convention proceedings was excessive and that no reimbursement of future costs could be claimed.

42. The Court considers in respect of the domestic proceedings that the court costs and the reimbursement of the expert's costs, which the applicant company put at EUR 694.97, as well as EUR 5,297.85 for its legal representation, were actually incurred. Thus, the amount of EUR 5,992.82 including VAT is awarded for domestic costs and expenses.

43. The Court considers the claim in respect of the Convention proceedings to be reasonable and therefore awards the full amount, namely EUR 3,927.17 including VAT. However, it rejects the claim for possible future costs.

In sum, a total of EUR 9,919.99 is granted under this head.

C. Default interest

44. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Holds* by five votes to two that there has been a violation of Article 10 of the Convention;

2. *Holds* unanimously that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant company;

3. *Holds* by five votes to two
   (a) that the respondent State is to pay the applicant company, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 10,387.77 (ten thousand three hundred eighty-seven euros and seventy-seven cents) in respect of pecuniary damage;
      (ii) EUR 9,919.99 (nine thousand nine hundred and nineteen euros and ninety-nine cents) in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a

rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* unanimously the remainder of the applicant company's claim for just satisfaction.

Done in English, and notified in writing on 19 January 2006, 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 the Court, the dissenting opinion of Judge Steiner, joined by Judge Kovler is annexed to this judgment.

S.N.
C.R.

DISSENTING OPINION OF JUDGE STEINER JOINED BY JUDGE KOVLER

I do not agree with the majority that there has been a violation of Article 10 of the Convention for the following reasons.

The domestic courts found that the allegations published by the applicant company were untrue and, thus, lacked a sufficient factual basis. Furthermore, they would endanger not only the plaintiff's *missio canonica* at the university but also cast serious doubt about his reputation as a loyal priest at the Archdiocese Salzburg, in particular because the recipients of *"Der 13."* belonged traditionally to the conservative wing of the Catholic Church in Austria. The courts also pointed out that the applicant company had not complied with the ethics of journalism as it had not given the plaintiff an opportunity to comment nor had it distanced itself from the contents of the letter, but had rather identified itself with it by highlighting the text through its layout.

In balancing the conflicting interests, namely the applicant company's right to freedom of expression, on the one hand, and the plaintiff's interest in respect for his reputation as a high official within the Catholic Church in Austria, the domestic courts gave preference to the interests of the latter. They found that eight years after the election of the Salzburg archbishop, there was no preponderant public interest in receiving such information.

It is the Court's constant case-law that national authorities are better placed than an international judge to assess the importance of a religion and its place in the respective State (see *Otto-Preminger-Institut v. Austria*, judgment of 20 September 1994, Series A no. 295, pp. 20-21, § 56; and *Harlanova v. Latvia* (dec.), no. 57313/00, 3 April 2003). I am, therefore, not persuaded by the applicant company's argument that high-ranking church officials were comparable to politicians in general and that similar standards under Article 10 had to apply to religious figures. While it is true that religious topics may well be of public interest, such as was the failure of the Church Referendum Movement in the present case, this topic was, however, unrelated to the allegations against Mr Paarhammer which concerned his conduct eight years earlier, namely in the election process of the Salzburg archbishop.

In the majority's view the statements at issue have to be understood as value judgments which had a sufficient factual basis, although they might appear somewhat far fetched (§ 32). I cannot agree. In my mind the allegations were quite severe for a high-ranking church official as they put in question Mr Paarhammer's compliance with his professional duties and loyalties. They were positively damaging for Mr. Paarhammer's reputation as he was actually removed from the post he held a short time after (§ 18).

Given the seriousness of the allegations, it seems to me that special diligence on the part of the publisher would have been required (see *mutatis*

mutandis, *Prager and Oberschlick*, cited above, pp. 18-19, § 37) in order to fulfil the "duties and responsibilities" under Article 10 § 2. This is why I attach significant importance the fact that the applicant had not verified the origin of the letter at issue before its publication and do not agree with the majority's critique of the domestic courts' decisions in § 32. To hold otherwise would render the duties and responsibilities of journalists, to which the Court attaches particular importance, theoretical and illusionary. The case of *Thoma v. Luxembourg*, on which the majority relies, relates to circumstances which are quite different from the facts at hand.

Therefore I also endorse the domestic courts' findings that the applicant company had not complied with the ethnics of journalism in that it had not distanced itself from, but rather identified itself with the contents through its layout. Therefore I cannot find that there was sufficient factual basis for the statement at issue

Viewed against this background, I find that the applicant company's statements did not constitute a fair comment but rather amounted to a gratuitous personal attack on the professional reputation of a church official (see, *mutatis mutandis*, *Chernysheva v. Russia* (dec.), no. 77062/01, 10 June 2004; and *e contrario*, *Unabhängige Initiative Informationsvielfalt v. Austria*, no. 28525/95, § 43, ECHR 2002-I). There was, therefore, a pressing social need to prevent the careless use of the allegations at issue.

As regards the nature of the interference, I note that the domestic courts ordered the applicant company to pay EUR 2,180.19 by way of compensation to the plaintiff, to publish the judgment and to reimburse the plaintiff's costs. Thus the imposed measures were neither disproportionate nor did they place a severe burden on the applicant company.

In my mind, the domestic courts struck a fair balance, by finding that the interest in protecting the plaintiff's reputation as a high-ranking church official outweighed the applicant company's right to freedom of expression in the circumstances of the case. I am also satisfied that the domestic decisions were based on reasons which were "relevant and sufficient" as they took due account of Mr Paarhammer's position as church official, taken in the Austrian framework of the place and importance of religion, in general, and the recipients of the readers of the applicant company's magazine, in particular. Thus, the interference with the applicant company's freedom of expression was proportionate to the aim pursued and the Austrian authorities did not overstep the margin of appreciation accorded to them, within the meaning of Article 10 § 2 of the Convention.

Accordingly, I do not find that there was a violation of Article 10 of the Convention.