



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

FIRST SECTION

CASE OF VERLAGSGRUPPE NEWS GMBH v. AUSTRIA (No. 2)

(Application no. 10520/02)

JUDGMENT

STRASBOURG

14 December 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 Verlagsgruppe News GmbH v. Austria,

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

Mr C.L. ROZAKIS, *President*,

Mr L. LOUCAIDES,

Mrs N. VAJIĆ,

Mr A. KOVLER,

Mr K. HAJIYEV,

Mr S.E. JEBENS, *judges*,

Mr K. HERNDL, *ad hoc judge*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 23 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 10520/02) 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 Verlagsgruppe News GmbH (“the applicant”), on 27 February 2002.

2. The applicant was represented by Lansky and partners, a company of lawyers practising in Vienna. 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 alleged a violation of its right to freedom of expression as guaranteed by Article 10 of the Convention.

4. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1. Mrs E. Steiner, the judge elected in respect of Austria, withdrew from sitting in the case (Rule 28). The Government appointed Mr K. Herndl to sit as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1).

5. By a decision of 8 September 2005 the Court declared the application admissible.

6. The parties did not file observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant is a limited liability company with its registered seat in Vienna. It is the owner and publisher of the weekly magazine *News*.

8. On 2 November 2000 the applicant published an article in *News* in which it reported about pending investigations on suspicion of large scale tax evasion against Mr G., the managing director of a well-known enterprise producing pistols. The article was accompanied by a picture of Mr G.

9. The report informed the reader that Mr G.'s premises had been searched in the early hours of 31 October. He was suspected of having evaded taxes of up to 500 million Austrian Schillings (more than 36 million euros). The article stated that *News* was in the possession of numerous documents (letters from Mr G.'s lawyers, a court file from Luxembourg, costs calculations and lists of clients of the G. company, etc.) concerning this suspicion which it claimed to have obtained through its own intense research. The most important documents were letters from Mr G.'s lawyers from which it followed that an attempt to murder Mr G. had taken place in Luxembourg in 1999, which had not come to the attention of the Austrian authorities or of the media at the time. The attempt had possibly been made at the instigation of one of Mr G.'s business partners who, according to his lawyer, had acted as a trustee for him. The article then assumed that the attempt was somehow linked to Mr G.'s network of companies which had been scrutinised by the tax authorities. It quoted an anonymous tax official as saying that according to the investigations dubious companies with a seat abroad had issued invoices for "organisational services" to the G. company in order to reduce its gains in Austria. Still according to that tax official the complex structure of interrelated companies had been chosen to dissimulate the fact that Mr G. was their owner and to avoid the legal consequences of that fact. The article finally said that Mr G. also had close links with the Austrian Freedom Party (*Freiheitliche Partei Österreichs*), of which it gave a few examples, and that thus, the case also had a political dimension.

10. Subsequently Mr G. ("the claimant") brought proceedings under Section 78 of the Copyright Act (*Urheberrechtsgesetz*) against the applicant company, requesting that the latter be prohibited from publishing his picture in connection with reports both on the pending tax evasion proceedings against him and on the attempted murder.

11. On 28 December 2000 the Vienna Commercial Court (*Handelsgericht*), granting the request in part, issued a preliminary injunction (*einstweilige Verfügung*) against the applicant company prohibiting it from publishing a picture of the claimant in the context of reports on charges of tax evasion against him, in so far as he was not

described as a suspect, but as having committed the offence, until a final decision would be taken in the main injunction proceedings.

12. The court noted that, when assessing whether a person was entitled to protection of his or her picture under Section 78 of the Copyrights Act in the context of criminal proceedings, the respective interests had to be balanced in the light of the criteria developed in Sections 7a and 7b of the Media Act (*Mediengesetz*). The court noted that the applicant was a business magnate. His enterprise was the market leader in equipping police forces with pistols. Although the claimant was well-known in professional circles he was not known to the public at large and his picture had only been published in arms producers' magazines so far. Nevertheless, the subject-matter, namely tax evasion proceedings pending against an industrial magnate whose enterprise was well-known and prestigious in Austria, was of public interest. Referring to Section 7a § 2 (2) of the Media Act, the court considered that the public interest in receiving such information outweighed the claimant's interest in the protection of his identity. The court concluded that reporting on this topic and publishing the claimant's picture was in principle allowed, as long as it did not violate his right to be presumed innocent (Section 7b of the Media Act) as was the case for the passage of the article quoting the tax official which described the suspicion against Mr G. as if it were already proven.

13. Referring to Section 7a § 2 (1) of the Media Act, the court dismissed the claimant's request that the applicant company be prohibited from publishing his picture in the context of reports on the attempted murder of which he had been the victim. It found that there was a public interest in the reporting which was not outweighed by the claimant's interest in the protection of his identity, since the report did not interfere with his strictly private life or lead to his public exposure.

14. On 26 April 2001 the Vienna Court of Appeal (*Oberlandesgericht*) upheld this decision.

15. On 10 July 2001 the Supreme Court (*Oberster Gerichtshof*), allowing the claimant's appeal in part, widened the scope of the preliminary injunction to the extent that the applicant company was prohibited from publishing any pictures of the claimant in the context of reports on the tax evasion proceedings pending against him, irrespective of the accompanying text.

16. The court found that the lower courts had failed to take into account the nature of the offence which was at stake, when applying the above-mentioned provisions of the Media Act. It noted, in particular, that the claimant was a suspect of tax evasion, which was a lesser indictable offence (*Vergehen*), within the meaning of Section 7a § 2 (2) of the Media Act, in which case the claimant's legitimate interests were injured by a disclosure of his picture. In such cases, the claimant's interest in a protection of his picture prevailed over the public interest in its publication.

17. Even if weighing the respective interests in the circumstances of the case, the claimant's interest not to have his picture published in the context of reports on pending tax evasion proceedings against him outweighed the public interest to receive such information. In that context the court noted in particular that the investigations for tax evasion were not public and the officials of the tax authorities were bound by the fiscal secret. Thus, there was no public interest in receiving such information together with the picture of the suspect, irrespective of the manner in which the applicant had obtained the information. Even if the applicant had managed to obtain information on the tax evasion proceedings without inciting officials to breach the fiscal secret, the information was meant to be secret and there was no legitimate public interest in receiving it.

18. The Supreme Court's decision was served on the applicant on 5 September 2001.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Copyright Act

19. Section 78 of the Copyright Act, in so far as relevant, reads as follows:

“(1) Images of persons shall neither be exhibited publicly, nor in any way made accessible to the public, where injury would be caused to the legitimate interests of the persons concerned or, in the event that they have died without having authorised or ordered publication, those of a close relative.”

20. Starting with its judgment of 23 September 1997 (4 Ob 184/97, MR 1997, 302) the Supreme Court has consistently held that, in the context of reports on criminal proceedings, Section 78 of the Copyright Act has to be interpreted in the light of Section 7a of the Media Act.

B. The Media Act

21. The relevant provisions of the Media Act read as follows:

Section 7a

“(1) Where publication is made, through any medium, of a name, image or other particulars which are likely to lead to the disclosure to a larger not directly informed circle of people of the identity of a person who

1. has been the victim of an offence punishable by the courts, or
2. is suspected of having committed, or has been convicted of, a punishable offence,

and where legitimate interests of that person are thereby injured and there is no predominant public interest in the publication of such details on account of the person's position in society, of some other connection with public life, or of other reasons, the victim shall have a claim against the owner of the medium (publisher) for damages for the injury suffered. The award of damages shall not exceed 14,535 euros; additionally, Section 6 (1), second sentence, shall apply.

(2) Legitimate interests of the victim shall in any event be injured if the publication

1. in the case of subsection (1) 1 is such as to give rise to an interference with the victim's strictly private life or to his or her exposure,

2. in the case of subsection (1) 2 relates to a juvenile or merely to a lesser indictable offence (*Vergehen*) or may disproportionately prejudice the victim's advancement. ...”

Section 7b

“(1) Where a person who is suspected of having committed a punishable offence but has not been finally convicted is portrayed in a medium as guilty, or as the offender and not merely a suspect, the victim shall have a claim in damages against the owner of the medium (publisher) for the injury suffered. The award of damages shall not exceed 14,535 euros; additionally, Section 6 (1), second sentence, shall apply. ...”

22. Pursuant to Article 17 of the Criminal Code (*Strafgesetzbuch*) lesser indictable offences are all offences punishable with less than three years' imprisonment.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

23. The applicant company complained that the preliminary injunction issued by the Supreme Court violated its right to freedom of expression. It relied on Article 10 which, so far as relevant, 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. The parties' submissions

24. The applicant contested the necessity of the interference. It asserted that the scope of the preliminary injunction as formulated by the Supreme Court went beyond what was necessary to protect Mr G.'s rights. The lower instances had only prohibited the publication of Mr G.'s picture in the context of the tax evasion proceedings against him if accompanied by any text violating the presumption of innocence. In contrast, the Supreme Court considered that the duty to respect the fiscal secret excluded any public interest in receiving the information at issue. Consequently, it had failed to weigh the conflicting interests. Moreover, the Supreme Court considered it irrelevant whether or not the applicant had obtained the information without inciting tax officials to breach the fiscal secret. Such an interpretation was contrary to the Court's approach in *Fressoz and Roire v. France* [GC], no. 29183/95, ECHR 1999-I.

25. Further, the applicant maintained that the claimant was a public figure. He was one of the leading business magnates in Austria. Domestic and international media had reported repeatedly on the success of the claimant's enterprise and the pistol carrying his name. Thus, his name and person had become known to the public at large. As the G.-pistol was widely used by police forces, for instance in Austria, Germany and the United States, the claimant had contacts with politicians and police authorities. Moreover, he entertained close links with the Austrian Freedom Party. It followed that the report about the criminal proceedings for tax evasion against him was of public interest. In short, the prohibition to publish his picture in the context of the tax evasion proceedings against him, irrespective of the accompanying text, was disproportionate.

26. The Government's submissions also concentrated on the necessity of the interference. They pointed out that Austrian law required a weighing of the interest of the person concerned in the protection of his or her picture and the public interest in its dissemination. The courts had duly carried out this balancing of interests.

27. In the Government's view, the present case had to be distinguished from *News Verlags GmbH & Co. KG v. Austria* (no. 31457/96, ECHR 2000-I). In that case the person whose picture had been published had entered the public scene by voicing extremist political views. His picture was published in the context of the trial against him relating to a serious, politically motivated crime, namely participation in a series of letter bomb attacks. In contrast, the claimant in the present case was the managing director of a renowned enterprise who was known in business circles but was not a public figure. The offence he was suspected of, namely tax evasion was classified as a lesser indictable offence and the applicant had obtained the information about these proceedings by a breach of the fiscal

secret. In contrast to *Fressoz and Roire* (cited above) the information at issue was not accessible to the public.

28. Finally, the Government contended that the interference was also proportionate as the applicant was only prohibited from publishing Mr G.'s picture in the context of reports on the proceedings for tax evasion against him. It was not prevented from reporting about the proceedings themselves. Nor was it prohibited from publishing Mr G's picture in the context of reporting on the attempted murder aimed at him.

B. The Court's assessment

29. The present case is not concerned with a restriction on the contents of reporting but with the prohibition to accompany a report with a picture of the person concerned. The Court recalls that Article 10 protects not only the substance of ideas and information but also the form in which they are conveyed (see, among other authorities, *News Verlags GmbH & Co. KG*, cited above, § 39 with a reference to *Jersild v. Denmark*, judgment of 23 September 1994, Series A no. 298, pp. 23-24, § 31). Furthermore, the Court has explicitly recognised that freedom of expression extends to the publication of photos (*Von Hannover v. Germany*, no. 59320/00, § 59, ECHR 2004-VI). Consequently, the preliminary injunction at issue constituted an interference with the applicant company's right to freedom of expression. This is not disputed by the parties.

30. It is not in dispute either that the interference had a basis in domestic law, namely Section 78 of the Copyrights Act. It served a legitimate aim, namely the protection of the reputation or rights of others.

31. The parties' arguments concentrated on the necessity of the interference. The Court refers to the general principles relating to the freedom of the press reporting on issues of general interest and the question of assessing the necessity of an interference with that freedom as set out in the summary of its established case-law in *Fressoz and Roire* (cited above, § 45).

32. In accordance with this case-law, the Court will examine whether the reasons adduced by the domestic courts were "relevant and sufficient" and whether the interference was proportionate to the legitimate aim pursued. In so doing the Court will have regard to the domestic courts' margin of appreciation.

33. In the present case, the courts of first and second instance only prohibited the publication of Mr G.'s picture in the context of articles on the criminal investigations concerning tax evasion if the accompanying text violated the presumption of innocence. In contrast, the Supreme Court prohibited the publication of G.'s picture in the context of articles relating to the said investigations in absolute terms.

34. As it did in comparable cases, the Court will have regard to the following elements: the position of the applicant, the position of Mr G. who brought the proceedings and the nature and subject matter of the article at issue.

35. The applicant is the owner and publisher of a widely read weekly. In that connection the Court reiterates its constant case-law according to which the press fulfils an essential function in a democratic society. Although the press must not overstep certain bounds, in particular in respect of the reputation 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 (see *News Verlags GmbH & Co. KG*, cited above, § 55).

36. Mr G. is a business magnate. The domestic courts noted that his picture was not known to the public at large but had only been published in professional journals so far. Even if Mr G. has not sought to appear on the public scene, the Court considers that a business magnate, who owns and manages one of the country's most prestigious enterprises, is by his very position in society a public figure.

37. Furthermore, the Court observes that the article at issue reported on a matter of public interest, namely on pending investigations on suspicion of tax evasion against Mr G., informing on the recent search of his premises and giving some information on the network of his companies and the alleged practices of tax evasion. It also indicated that there could be a link between this business network and an attempt to murder Mr G. which had taken place the year before. Articles of this kind are capable of contributing to a public debate on the integrity of business leaders, on illegal business practices and the functioning of the justice system in respect of economic offences.

38. The courts of first and second instance only prohibited the publication of Mr G.'s picture in the context of articles on the criminal investigations concerning tax evasion if the accompanying text violated the presumption of innocence, while the Supreme Court prohibited the publication of Mr G.'s picture in the context of articles relating to these investigations in absolute terms. The Supreme Court relied mainly on two arguments to support its absolute prohibition to publish Mr G.'s picture. Firstly, that tax evasion was not a crime but a lesser indictable offence and secondly that the tax investigations were covered by the fiscal secret.

39. As to the nature of the offence, Court has already held that there may be good reasons for prohibiting the publication of a suspect's picture in itself depending on the nature of the offence at issue and the particular circumstances of the case (see, *News Verlags GmbH & Co. KG*, cited above, § 58). Nevertheless, the Court is not convinced by the Supreme Court's approach in the present case. It interpreted Section 78 of the Copyright Act in the light of 7a § 2 (2) of the Media Act, concluding that

the legitimate interests of a person whose picture had been published in connection with the suspicion of having committed an offence were in any event violated if the offence at stake was merely a lesser indictable offence. The Court notes that, under Austrian law, lesser indictable offences are all criminal offences punishable with up to three years' imprisonment (see paragraph 22 above). This category therefore includes offences of a serious nature, such as in the present case, tax evasion of a very substantial amount.

40. The Supreme Court's approach excluded any weighing of interests between the public interest to have the information on the proceedings for tax evasion pending against Mr G. accompanied by his picture against the latter's interest to have his identity protected. However, in cases in which the Court has had to balance the protection of a person's picture or other aspects of "private life" within the meaning of Article 8 of the Convention against freedom of expression as guaranteed by Article 10, it has always stressed the contribution made by the photos or articles published in the press to a debate of general interest (*Von Hannover*, cited above, § 60, with further references). The Court considers that there is little scope for an absolute prohibition to publish a public person's picture in an article contributing to a public debate (see *Von Hannover*, cited above, §§ 64-66, where the Court emphasised that the photos at issue and the accompanying text did not contribute to any debate of general interest; see also, *Sciacca v. Italy*, no. 50774/99, §§ 27-28, ECHR 2005..., where the Court noted that the suspect whose picture had been published was not a public figure). The present case, as the Court has already noted above, concerned the publication of a public figure's photo in the context of an article reporting on a matter of public interest, namely the investigations on suspicion of tax evasion against Mr G. which had led to the search of his premises and possible links with a murder attempt committed against him.

41. The Court will now turn to the Supreme Court's argument relating to the secrecy of the investigations for tax evasion. It notes in particular, that the Supreme Court did not consider it of any relevance whether the applicant had obtained the information about the investigations and the details of the suspicion against Mr G. by inciting tax officials to breach their duty of secrecy or – as it had claimed in the article as well as in the proceedings at issue – by its own journalistic research. However, the question whether the information published which was accompanied by Mr G.'s picture was accessible by other means is relevant in such a context (see, *mutatis mutandis*, *Fressoz et Roire*, cited above, § 53 and *Dammann v. Switzerland*, no. 77551/01, § 53, 25 April 2006).

42. The Court is not convinced by the argument relying on the secrecy of the investigations on the suspicion of tax evasion. The Court notes - and this is confirmed by the Government – that the applicant remained free to publish reports on the investigations pending against Mr G. despite their

secret nature. It remained even free to publish Mr G.'s picture in the context of reporting on the attempted murder of which he had been the victim.

43. In sum, the Court finds that the reasons adduced by the Supreme Court, though being “relevant” were not “sufficient”. The absolute prohibition to publish Mr G.'s picture in the context of reporting on the investigations against him on the suspicion of tax evasion was not proportionate to the legitimate aim pursued. It follows that the interference with the applicant company's right to freedom of expression was not “necessary in a democratic society”.

44. Consequently, there has been a violation of Article 10 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. 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

46. The applicant company did not submit any claim for damages. However, under the head of costs and expenses, it claimed 2,063.87 euros (EUR) as reimbursement of the claimant's costs which it was ordered to pay in the domestic proceedings. The amount claimed includes value-added tax (VAT).

47. The Government asserted that the 20% VAT included in the amount did not constitute a financial burden for the applicant company, since it was entitled to prior tax deduction (*Vorsteuerabzug*) in the same amount.

48. The Court finds the Government's argument pertinent. It notes that commercial companies, in contrast to private individuals, are entitled to prior tax deduction. Noting that according to the relevant bill, 20% VAT have been calculated it reduces the amount accordingly. It therefore awards the applicant company EUR 1,719.89 under the head of pecuniary damage.

B. Costs and expenses

49. The applicant claimed EUR 2,063.87, inclusive of VAT, for costs and expenses incurred in the domestic proceedings and EUR 3,172.50, inclusive of VAT, for costs and expenses incurred in the Convention proceedings.

50. The Government again commented that the relevant bills included 20% VAT and that the sums claimed had to be reduced accordingly.

51. Referring to its reasoning set out above (see paragraph 48 above), the Court awards the applicant EUR 1,719.89 in respect of the domestic proceedings and EUR 2,643.75 in respect of the Convention proceedings. Consequently, a total amount of EUR 4,363.64 is awarded under the head of costs and expenses.

C. Default interest

52. 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 six votes to one that there has been a violation of Article 10 of the Convention;
2. *Holds* by six votes to one
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,719.89 (one thousand seven hundred nineteen euros and eighty-nine cents) in respect of pecuniary damage and EUR 4,363.64 (four thousand three hundred sixty-three euros and sixty-four cents) for 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;
3. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 December 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following dissenting opinion of Mr Herndl is annexed to this judgment.

C.L.R.
S.N.

DISSENTING OPINION OF JUDGE HERNDL

1. Introductory remark

The present case is illustrative of the intellectual problems with which the Court is faced when it is called upon to exercise the delicate task of balancing the protection of private life (Article 8 of the Convention) against freedom of expression (Article 10). The actual issue with which the Court was faced in this case was whether it was legitimate or not to publish photos of an Austrian industrialist, Mr G., in the framework of a newspaper article reporting on pending investigations against him concerning suspected tax evasion, as well as on a murder attempt which had taken place earlier. The questions the Court had to answer was exclusively whether the prohibition imposed by the Austrian Supreme Court on the newspaper's use of photos of Mr G (which identified him clearly) to accompany the relevant report (the content of which was uncontested) constituted a violation of Article 10, or whether that prohibition was necessary in order to protect the individual's private life (Article 8).

In the *Von Hannover* case the Court stated that “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 (*Von Hannover v. Germany*, no. 59320/00, § 69, ECHR 2004-VI). On the other hand, the Court has forcefully endorsed, in numerous judgments, the idea that the general public has a right to be properly informed – a right which is indeed essential in a democratic society. That right, covered by Article 10, may extend to aspects of the private life of public figures, particularly where politicians are concerned (see *Editions Plon v. France*, no. 58148/00, ECHR 2004-IV) and may include the publication of photographs of the person concerned (see *Von Hannover*, cited above, § 59). In that connection the decisive factor in balancing the protection of private life against freedom of expression must lie “in the contribution that the published photos ... make to a debate of general interest (see *Von Hannover*, cited above, § 76).

2. Was there a debate of general interest and could the photos make a contribution thereto?

I do not share the majority's view that the publication of several photos of Mr G. made any contribution to the “general debate” which might arise (or have arisen) as a consequence of the newspaper's reporting on the fact that Mr G. was suspected of evading taxes. As the whole issue was in fact a non-issue, the photos could not possibly have “contributed” to any public debate, and could not readily be regarded as furthering the public interest in

the issue of a possible tax evasion as reported in the newspaper. The publication of the photos would rather seem to be a gratuitous intrusion into a person's private life.

A side issue on which the judgment places some emphasis, however, is the confidentiality of the tax evasion investigations (see paragraphs 41 and 42). Unlike the published information at the heart of the *Fressoz and Roire* case (see *Fressoz and Roire v. France* [GC], no. 29183/95, § 53, ECHR 1999-I) the details and facts on which the newspaper reported in the present case, were not in the public domain and could not have been obtained except through a breach of secrecy. This is probably why that argument carried weight in the opinion of the Austrian Supreme Court.

3. *Is Mr G. a “public figure”?*

Admittedly it is not easy to answer that question. The majority accept that Mr G. is a “public figure”. This is indeed one of their principal arguments. In fact, Mr G. is the manager of a rather well-known company producing pistols. Does this profession really make him a “public figure”? He is known to be a rather shy individual, shunning publicity. As a person he is not known to the public at large. His picture (until the publication of the article by NEWS) had only been printed in specialised arms-manufacturing magazines. In the Austrian court files (in all three instances) he was continually described as an “industrialist” (*Industrieller*). The present judgment however has promoted him from “managing director of a well-known enterprise producing pistols” (see paragraph 8) to a “business magnate who owns and manages one of the country's most prestigious enterprises” (see paragraph 36), and for that reason concludes that “by his very position in society [he is] a public figure”. In point of fact however Mr G. seems to be quite the opposite of a “public figure”, as public figures, most of all politicians, must somehow be actively involved in what is commonly called “public affairs”, whereas Mr G. seemingly is not (see also the critique by the Court of attempts to describe a person as such as a “figure of contemporary society *“par excellence”* in *Von Hannover*, cited above, § 72). Finally, it would be fallacious to argue that as a consequence of a reference in a particular newspaper article Mr G. automatically became, and now is, a “public figure”.

4. *Conclusion*

In my view, as far as the publication of his photo is concerned, Mr G. was entitled to the protection of Article 8 of the Convention. The present judgment would seem to extend freedom of expression (Article 10 of the Convention) beyond its natural scope.