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

FIRST SECTION

CASE OF WIRTSCHAFTS-TREND ZEITSCHRIFTEN-VERLAGS GMBH v. AUSTRIA

(Application no. 58547/00)

JUDGMENT

STRASBOURG

27 October 2005

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 Wirtschafts-Trend Zeitschriften-Verlags Gmbh v. Austria,

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

Mr L. LOUCAIDES, *President*,
Mrs F. TULKENS,
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV,
Mr D. SPIELMANN,
Mr S.E. JEBENS, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 6 October 2005,

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

PROCEDURE

1. The case originated in an application (no. 58547/00) 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 Wirtschafts-Trend Zeitschriften-Verlags GmbH ("the applicant"), on 8 May 2000.

2. The applicant was represented by Giger, Ruggenthaler & Simon, lawyers practising in Perchtoldsdorf (Austria). The Austrian Government ("the Government") were represented by their Agent, Ambassador H. Winkler, Head of the International Law Department at the Federal Ministry for Foreign Affairs.

3. The applicant alleged that its right to freedom of expression had been violated by judgments ordering payment of compensation, publication of judgment and forfeiture of the relevant issue of Profil.

4. The application was allocated to the Fourth 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.

5. By a decision of 22 June 2004 the Court declared the application admissible.

6. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

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

8. In November 1998 Profil published a one-page article with the heading “Antifa-Terror!” and subtitled “A political book. Member of the European Parliament for the Austrian Freedom Party (*Freiheitliche Partei Österreichs*), Mr S., settles his account with anti-fascists in a new book.”

The book at issue with the title “The Antifa-Complex” was described as being not only critical but rather provocative. The book review criticised Mr S. for settling accounts with “post-war leftists” (“*Nachkriegs-Linke*”), while

> “S. did not find similar critical words as regards Jörg Haider. He even pardoned his [Haider's] belittlement of the concentration camps as 'punishment camps'. Haider's opponents had also employed nazi-terminology by using the term 'extermination camp'.
>
> (German)
>
> Über Haider findet S. übrigens an keiner Stelle seines Buches ähnlich kritische Worte. Sogar dessen Verharmlosung der Konzentrationslager als 'Straflager' sieht er ihm nach. Haiders Gegner hätten mit dem Ausdruck 'Vernichtungslager' ebenfalls NS-Begriffe verwendet.”

9. On 29 December 1998 Mr Haider filed a compensation claim under the Media Act (*Mediengesetz)* with the Wiener Neustadt Regional Court (*Landesgericht*) against the applicant company.

10. On 28 July 1999 the Regional Court ordered the applicant company to pay 50,000 Austrian schillings (ATS – approximately 3,633 euros) as compensation to Mr Haider and to publish its judgment. Moreover it ordered the forfeiture of the issue of Profil, pursuant to the relevant provisions of the Media Act. It also ordered the applicant to reimburse Mr Haider's procedural costs.

11. The court noted in its reasoning that the above passage gave the impression to an average reader of Profil that Jörg Haider had played down the extent of crimes committed in concentration camps when using the term punishment camps, and that he had thereby infringed Sections 3g and 3h of the National Socialism Prohibition Act (*Verbotsgesetz*). The reproach of a criminal offence was capable of slurring Mr Haider or of lowering him in public esteem and therefore constituted defamation (*üble Nachrede*) under Section 111 of the Criminal Code (*Strafgesetzbuch*). Therefore Section 6 of the Media Act applied in the applicant company's case. It was unnecessary to determine whether the impugned passage constituted a value judgment or

a statement of fact, as the applicant company had failed to give any factual background for its reproach. While it was true that Mr Haider, in 1995, had used the term at issue in a speech before the Parliament in plenary session and subsequently in an interview with the magazine Profil, he had done so, on both occasions, when also speaking about the near extinction of an ethnic minority in these camps. Therefore the reproach against Mr Haider was not justified.

12. The applicant company appealed, arguing that the term "belittlement" was a value judgment based on sufficient facts. Mr Haider had used the word "punishment camp" in his speech in Parliament. It was not excessive either, since the term at issue implied that persons detained in such camps had committed a crime, for which they were punished. As a politician, Mr Haider exposed himself to close scrutiny by journalists and the public and, thus, had to display a higher degree of tolerance against criticism for his choice of words.

13. On 15 December 1999 the Vienna Court of Appeal (*Oberlandesgericht*) dismissed the appeal, confirming the Regional Court's judgment. It ordered the applicant to reimburse Mr Haider's procedural costs, including those of the appeal proceedings.

The court noted that the article had grossly disregarded the context in which the impugned term had been used by Haider. In particular, he had added that an ethnic minority had almost been made extinct in these camps. The readers, four years after Haider's speech in Parliament and his interview with Profil in 1995, would not remember its contents, and, if at all, would remember only such abbreviated information as was indicated in the article. Correct reporting would have been even more necessary in order to enable readers to form their own opinion.

14. On 20 December 1999 the applicant published the operative part of the Regional Court's judgment of 28 July 1999 together with its essential reasoning in an issue of Profil.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Domestic law

15. Section 6 of the Media Act (*Mediengesetz*) provides for the strict liability of the publisher in cases of defamation; the victim can thus claim damages from him. In this context "defamation" is defined in Section 111 of the Criminal Code (*Strafgesetzbuch*) as follows:

> "1. As it may be perceived by a third party, anyone who accuses 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."

Section 6 of the Media Act, in the version applicable at the relevant time provided for a fine of up to ATS 200,000 (approximately EUR 14,534).

16. Section 3g of the National Socialism Prohibition Act (*Verbotsgesetz*) reads as follows:

"Whoever performs activities inspired by National Socialist ideas in a manner not coming within the scope of Section 3a to 3f shall be liable to punishment by a prison sentence between one and ten years, and if the offender or his activity is particularly dangerous, by a prison sentence of up to twenty years, unless the act is punishable under a different provision stipulating a more serious sanction."

17. Section 3h of the Prohibition Act provides that, anyone who, in particular in mass media, denies, grossly minimises, approves or justifies the "mass murder under the National Socialist regime" (*nationalsozialistischer Völkermord*) or other "National Socialist crimes against humanity" (*nationalsozialistische Verbrechen gegen die Menschlichkeit*), is also punishable pursuant to Section 3g.

B. Relevant domestic practice

18. On 21 March 2001 the Vienna Court of Appeal (*Oberlandesgericht Wien, 24 Bs 244/00*) acquitted the Austrian political scientist, Mr A. Pelinka, of charges of defamation instituted by Mr Haider in a private prosecution for a statement Mr Pelinka had made in an interview with the Italian TV station RAI on 1 May 1999.

“Haider has repeatedly made statements in his career, which are to be assessed as belittlement of National Socialism. He once called the concentration camps 'punishment camps'. On the whole, Haider is responsible for making certain National Socialist opinions and certain National Socialist remarks politically more acceptable.”

(German)

“Haider hat im Laufe seiner Karriere immer wieder bestimmte Aussagen gemacht, die als Verharmlosung des Nationalsozialismus zu werten sind. Er hat einmal die Vernichtungslager 'Straflager' genannt. Insgesamt ist Haider verantwortlich für eine neue Salonfähigkeit bestimmter nationalsozialistischer Positionen und bestimmter nationalsozialistischer Äußerungen.”

The court noted that an average television spectator would understand these comments in the way that Mr Pelinka alleged that Mr Haider had repeatedly made statements, which, in his view, were to be considered as a

belittlement of National Socialism. It further noted that the majority of spectators was not legally skilled and, thus, did not know details of the Prohibition Act and the minimum requirements of a punishable offence thereunder. Those spectators would consider any such remark as trivialising, even if by legal standards the remark concerned did not reach the requirements of Section 3g of the Prohibition Act. Mr Haider, a politician, constantly present in various types of media, who had achieved considerable recognition - though not because of his fair treatment of political opponents - was required therefore to display an even higher degree of tolerance towards criticism. While the brief quotation concerning the "punishment camps" was not a sufficient basis to justify the value judgment at issue, it revealed the ambivalent attitude of Mr Haider towards the National Socialist Regime. This is reflected in his speeches, in which he combines nazi-terminology with attempts to trivialise and render meaningless these ideas. Mr Haider could, thus, be accused of "flirting" with National Socialist ideas and of entering "grey areas", where the actual dimension of the atrocities committed under that regime was not accepted. Therefore the impugned value statement could not be regarded as excessive and remained within the limits of required relevant facts. There was, thus, no room for finding that the offence of defamation had been made out.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

19. The applicant complained that the courts' judgments violated its right to freedom as guaranteed by Article 10 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. ...
>
> 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 arguments submitted by the parties

20. The applicant accepted that the interference complained of had a legal basis and pursued a legitimate aim. It argued that the interference was not necessary in a democratic society.

21. The applicant asserted that the article at issue criticised, among other things, Mr Haider's choice of words, namely that he employed the much more harmless term “punishment camp” instead of “concentration camp”. Thus, Mr Haider was neither reproached with committing an offence under the Prohibition Act nor with trivialising concentration camps as such, but rather with trivialising “concentration camps as punishment camps”. The fact that this value judgment concerned the employment of Nazi-terminology could also be inferred from the subsequent quotation of the book author who claimed that even Mr Haider's opponents used Nazi-terminology.

22. Therefore readers were told exactly what the author of the article considered to be a belittlement, namely the use of the term “punishment camp” instead of “concentration camp”. Judging it to be a belittlement was justified and in no way excessive, as it was published in a political context, namely a book-review which expressed criticism of its author.

23. The applicant referred to the case of *Feldek v. Slovakia* (no. 29032/95, ECHR 2001-VIII) where the Court found that the reproach against a politician of having a “fascist past” constituted a value judgment justified in the circumstances of that case although it had not been supported by accompanying facts. The applicant argued that, in the present case, it had even submitted the relevant facts for its value judgment that the choice of words of “punishment camps” instead of “concentration camps” constituted a belittlement. In the applicant company's view, the passage at issue constituted a moderate value judgment based on facts. As a politician, well-known in but also outside Austria, who had even given rise to Austria's marginalisation within the European Union, Mr Haider should have displayed more tolerance towards criticism of his own choice of words.

24. Further, it shared the Government's view that the present case could be distinguished from the proceedings against Mr Pelinka (see above, paragraph 18), however on different grounds. The allegation in the Pelinka case was that Mr Haider trivialised National Socialism as such, whereas in the present case merely his choice of words was considered to be a trivialisation. Consequently, the allegation at issue in the present case was less drastic and could not be understood as a reproach of an offence under the National Socialism Prohibition Act. Finally, it was irrelevant whether the statement had been made in a television interview or published in the newspaper, since the interview had not been broadcast live but in a shortened version and, thus, Mr Pelinka could have asked to have his statement amended.

25. The Government conceded that the contested decisions constituted an interference with the applicant company's right to impart information under Article 10 § 1 of the Convention. It was, however, justified under Article 10 § 2. The order was prescribed by law, namely by the relevant provisions of the Media Act and Sections 111 §§ 1 and 2 of the Penal Code, it pursued the legitimate aim of protecting the reputation or rights of others, and was necessary in a democratic society for the following reasons.

26. Referring to the domestic courts' findings, the Government argued that the applicant company had failed to furnish the factual background of the statement at issue and, thus, to inform the average reader of the context in which the term “punishment camp” had been used by Mr Haider in 1995. He had done so in a speech in Parliament in which he also spoke about the near extinction of ethnic minorities. Given that he had made this statement four years before the book review was published, the applicant would have been required to provide the background in an objective manner. By depriving the readers of this essential factual information, they had been presented with a defamatory statement, namely that Mr Haider would play down Nazi concentration camps by referring to them as “punishment camps”, which thus inadmissibly distorted the meaning of Mr Haider's statement. The Government stressed that the domestic courts have by no means deprived the applicant company of its right to critically assess statements by politicians. As regards the nature of the interference, the Government submitted that the applicant company was ordered to pay ATS 50,000 (approximately EUR 3,633) as compensation, which remained within the lowest range of possible punishment. In addition, the applicant company had to publish the judgment and the relevant issue of Profil was confiscated. Thus, the interference was not disproportionate either.

27. In the Government's view, the domestic proceedings relating to Mr Pelinka's acquittal needed to be distinguished from the present case. Firstly, because Mr Pelinka availed himself of a less polemic language than the applicant company when he maintained that a number of Mr Haider's statements were to be assessed as “belittlement of National Socialism”, of which the use of the term at issue was one specific example. Secondly, the Vienna Court of Appeal stressed that the impugned value judgment was only justified as it was embedded in a verifiable context. In the present case, however, the applicant company had failed to provide such a verifiable context for its statement. Lastly, since Mr Pelinka gave an interview, he could not have withdrawn his statement, whereas the applicant company, disposing of various editorial safeguards before publishing an article, could have refrained from doing so.

B. The Court's assessment

28. It is undisputed that the contested judgments, ordering payment of compensation to Mr Haider, publication of judgment and forfeiture of the issue of Profil constituted an interference with the applicant's right to freedom of expression.

29. It is not in dispute either that the interference was “prescribed by law” and served a legitimate aim, namely the protection of the rights and reputation of others.

30. The parties' argument concentrated on the necessity of the interference. As regards the general principles relating to the freedom of the press in the context of political criticism and the question of assessing the necessity of an interference with that freedom, the Court refers to the summary of its established case-law in the cases of *Feldek* (cited above, §§ 72-74, with further references) and *Scharsach and News Verlagsgesellschaft v. Austria* (no. 39394/98, § 30, ECHR 2003-XI).

31. In accordance with its 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.

32. One element developed by the Court's case-law is of particular relevance in the present case, namely 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. 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 (see, for instance, *Feldek*, cited above, §§ 75-76; *Jerusalem v. Austria*, no. 26958/95, § 43, ECHR 2001-II; *De Haes and Gijsels v. Belgium*, judgment of 24 February 1997, *Reports of Judgments and Decisions* 1997-I, p. 236, § 47; *Oberschlick v. Austria (no. 2)*, judgment of 1 July 1997, *Reports* 1997-IV, p. 1276, § 33).

33. The Court agrees with the parties that the statement at issue was a value judgment. It notes that the parties' argument turned on one central issue, namely on whether or not the applicant had provided a sufficient factual basis for that value judgment.

34. The applicant maintained that the factual background was clear from the context: Mr Haider was criticised for addressing “concentration camps” as “punishment camps”. The undisputed fact that he had used this terminology was in itself a sufficient basis for accusing him of a belittlement of the concentration camps. However, in the domestic courts' view, with which the Government agreed, the applicant should have provided the specific background in which Mr Haider had used the term

"punishment camps". They laid particular emphasis on the lapse of time since Mr Haider had used this term in a speech in Parliament and on the fact that he had also spoken of the near extinction of ethnic minorities in this context.

35. The Court reiterates in this context that the necessity of a link between a value judgment and its supporting facts may vary from case to case according to the specific circumstances (see, *Feldek*, cited above, § 86). The necessity to provide the facts underlying a value judgment is less stringent where these facts are already known to the general public (ibid.)

36. The article at issue, though in the form of a book review, contributed to an ongoing political debate concerning Austria's past and the attitudes different political camps adopted in relation to it. The author of the book at issue, a member of Mr Haider's party, was criticised for "settling accounts with the left" in particular with the anti-fascists, while being much less critical with Mr Haider.

37. The Court reiterates at this juncture its established case-law that the limits of acceptable criticism are wider as regards a politician than as regards a private individual (*Feldek*, cited above, § 74, with a reference to *Lingens v. Austria*, judgment of 8 July 1986, Series A no. 103, p. 26, § 42 and *Incal v. Turkey*, judgment of 9 June 1998, *Reports* 1998-IV, p. 1567, § 54). Mr Haider is a leading politician who has been known for years for his ambiguous statements about the National Socialist Regime and the Second World War and has, thus, exposed himself to fierce criticism inside Austria (see, for instance, *Oberschlick (no. 2)*, cited above, 1275-76, §§ 31-34) but also at the European level. In the Court's view he must therefore display a particularly high degree of tolerance in this context.

38. The Court notes that the Vienna Court of Appeal took very similar considerations into account in the subsequent case of Mr Pelinka, to which both parties referred (see paragraph 18 above). In that case the court had to assess in a broader context whether the reproach that Mr Haider's statements were a "belittlement of National Socialism" amounted to defamation. It found that the reference to the use of the term "punishment camp" instead of "concentration camp" did not suffice to justify the reproach, but had regard to Mr Haider's general attitude and ambivalence towards the National Socialist regime which was reflected in his speeches. Although none of them was quoted in the interview at issue, the court concluded that the value judgment was not excessive and therefore acquitted Mr Peklinka of defamation.

39. The Court is not convinced by the domestic courts' argument that the statement of belittling the concentration camps implied a reproach that Mr Haider had played down the extent of the Nazi crimes and came therefore close to a reproach of criminal behaviour under the Prohibition Act. The Court finds this conclusion somewhat far-fetched, as the standards for assessing someone's political opinions are quite different from the standards

for assessing an accused's responsibility under criminal law. Moreover, the Court has already held that even the use of the term “Nazi” does not automatically justify a conviction for defamation on the ground of the special stigma attached to it, in particular if applied in the context of the allegation that certain politicians failed to dissociate themselves from the extreme right (*Scharsach and News Verlagsgesellschaft*, cited above, §§ 43-44).

40. Similarly, the use of the term “punishment camp”, which implies that persons are detained there for having committed punishable offences, may reasonably be criticised as a belittlement of the concentration camps all the more so if that term was applied by someone whose ambiguity towards the Nazi era is well-known. The undisputed fact that Mr Haider had used the term punishment camp instead of concentration camp was a sufficient factual basis for the applicant's statement, which was therefore not excessive in the circumstances.

41. In conclusion, the Court finds that the reasons adduced by the domestic courts were not relevant and sufficient to justify the interference. Moreover, the Court notes that the applicant was not only ordered to pay compensation to Mr Haider and to publish the judgment finding it guilty of defamation, but that the courts also ordered the forfeiture of the issue of Profil which is a severe and intrusive measure. Thus, the interference was not proportionate either.

42. Consequently, the interference complained of was not “necessary in a democratic society” within the meaning of Article 10 § 2 of the Convention.

It follows that there has been a violation of Article 10 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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

44. The applicant claimed pecuniary damage of EUR 3,530.90 for costs of the publication of the judgment. It argued that this sum corresponds to its fees for publications in Profil applicable in 1999, of which it joined a copy. Further it claimed reimbursement of EUR 3,633.64 paid to Mr Haider for compensation and of EUR 1,938.48 paid to Mr Haider for his procedural

costs. It also claimed reimbursement of EUR 2,061.22 (excluding VAT), for its own costs of the domestic proceedings.

45. Furthermore, the applicant claimed compensation for costs incurred in subsequent civil proceeding brought by Mr Haider in which the courts, according to the Supreme Court's case-law, were bound by the findings reached in the proceedings under the Media Act. The applicant claimed EUR 1,875.74 paid to Mr Haider for his procedural costs and EUR 6,778.54 for its own costs.

46. The applicant also claimed EUR 14,534.56 for non-pecuniary damage, arguing that the publication of the judgment finding it guilty of defamation was detrimental to the reputation of Profil.

47. The Government commented as regards pecuniary damage, that the applicant had not shown that it had actually incurred the costs for the publication of judgment as the publication was made in its own magazine, Profil. The costs incurred in subsequent civil proceedings were not the subject of the present case and were not to be reimbursed. Finally, the applicant's own costs for the domestic proceedings at issue in the present case had to be considered under the head of costs and expenses.

48. As to non-pecuniary damage, the Government pointed out that the applicant was a legal person and that, in any case, the finding of a violation provided in itself sufficient just satisfaction.

49. As to the costs of publication of the judgment, the Court notes that the applicant published the judgment of 28 July 1999 in Profil on 20 December 1999 (see paragraph 14 above). The Court is not convinced by the Government's argument that the applicant company suffered no actual loss as the publication was made in its own magazine. It has accepted in previous cases that an applicant company which has to publish a judgment in its own newspaper suffers a loss of advertising income and has made awards for pecuniary damages accordingly (see *Scharsach and News Verlagsgesellschaft*, cited above, §§ 48 and 50). The Government have not contested that the fees claimed by the applicant were applicable at the material time. Nor have they argued that these fees were excessive. The Court therefore awards the sum in full, i.e. EUR 3,530.90.

50. Further, the Court notes that the courts ordered the applicant to pay Mr Haider compensation and to reimburse his procedural costs. Since the payment of these sums was a direct consequence of the judgment found to be in violation of Article 10, the Court awards the amounts claimed by the applicant in full, i.e EUR 5,572.12.

51. As to the applicant's claims relating to certain subsequent civil proceedings, the Court notes that the damages and costs claimed by the applicant are the result of a separate set of proceedings and thus not a direct consequence of the violation found in the present case. The applicant could have brought an application in respect of these subsequent proceedings but refrained from doing so. Consequently, the Court agrees with the

Government that no just satisfaction is to be awarded in respect of these proceedings.

52. Having regard to its case-law in comparable cases, the Court considers that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage the applicant company may have sustained (see *Scharsach and News Verlagsgesellschaft*, cited above, § 51).

53. Finally, the Court notes that it will deal with the costs incurred by the applicant in the domestic proceedings under the head of costs and expenses.

54. In conclusion, the Court awards a total amount of EUR 9,103.02 under the head of damages.

B. Costs and expenses

55. The applicant claimed EUR 3,303.38 (excluding VAT) for costs incurred in the Convention proceedings.

56. The Government considered that only an amount of EUR 1.373.76 was justified in respect of the Convention proceedings.

57. The Court reiterates that in order for costs and expenses to be included in an award under Article 41 of the Convention, it must be established that they were actually and necessarily incurred and are reasonable as to quantum (*Feldek*, cited above, § 104).

58. As to the costs incurred in the domestic proceedings, the Court finds that these conditions are fulfilled and, consequently awards them in full, i.e. EUR 2,061.22 (see paragraph 44 above).

59. The same applies as regards the costs incurred in the Convention proceedings. Having regard to the sums awarded in comparable cases, the Court finds that they were necessarily incurred and are also reasonable as to quantum and awards them in full, i.e. EUR 3,303.38.

60. Consequently, a total amount of EUR 5,364.60 is awarded for costs and expenses.

C. Default interest

61. 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 UNANIMOUSLY

1. *Holds* that there has been a violation of Article 10 of the Convention;

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

3. *Holds*
   (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 9,103.02 (nine-thousand one hundred and three euros, two cents) in respect of pecuniary damage and EUR 5,364.60 (five-thousand three hundred and sixty-four euros, sixty cents) in respect of costs and expenses, plus any tax that may be chargeable;
   (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* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 27 October 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN	Loukis LOUCAIDES
Registrar	President