

AS TO THE ADMISSIBILITY OF

Application No. 25060/94
by Jörg HAIDER
against Austria

The European Commission of Human Rights (First Chamber) sitting in private on 18 October 1995, the following members being present:

Mr. C.L. ROZAKIS, President
Mrs. J. LIDDY
MM. E. BUSUTTIL
A.S. GÖZÜBÜYÜK
A. WEITZEL
M.P. PELLONPÄÄ
B. MARXER
G.B. REFFI
B. CONFORTI
N. BRATZA
I. BÉKÉS
E. KONSTANTINOV
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL

Mrs. M.F. BUQUICCHIO, Secretary to the Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 20 June 1994 by Jörg HAIDER against Austria and registered on 1 September 1994 under file No. 25060/94;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is an Austrian citizen born in 1950 and residing in Klagenfurt. He is a politician and leader of the Austrian Freedom Party (Freiheitliche Partei Österreichs). Before the Commission he is represented by Messrs. Böhmendorfer and Machold, lawyers practising in Vienna.

The facts of the case, as they have been submitted by the applicant, may be summarised as follows.

A. Particular circumstances of the case

1. The television interview of 10 November 1991

On 10 November 1991 elections for the Vienna Municipal Council (Gemeinderat) took place. In the evening of the same day a special programme on the elections was transmitted in television by the ORF (Österreichischer Rundfunk = Austrian Broadcasting Corporation). In this programme nine representatives of political parties, including the applicant, were interviewed. The interview with the applicant was conducted by Mr. Broukal, a television presentator. The text of the

interview is as follows:

<translation>

BROUKAL: .. We continue our sequence of statements by leading politicians. The next one live from the Vienna City Hall is the chairman of the FPÖ Jörg Haider. Mr. Haider can you hear me?

HAIDER: Yes

BROUKAL: Yes. Good evening Mr. Haider. I have thought for a long time what to ask a glorious victor like you. However, one question must be asked: your party had used in this election campaign the question of foreigners as main argument and for the first time in this city since decades turned foreigners into some sort of non-persons. Can one sincerely approve of such an electoral victory?

HAIDER: This is complete nonsense what you are telling here. And it is in line with the ORF's reporting in recent weeks to achieve a socialist majority in Vienna. We from the Freedom Party have been saying for four years much the same as the Socialist Party and in particular the Mayor Helmut Zilk have been claiming in the last days of the election campaign. We welcome refugees with open arms, also from Croatia, but on the other hand we are against a policy of receiving immigrants without any limitations whilst we have 170,000 jobless Austrians and whilst we have 200,000 Austrians queuing up for housing, and who now fear that foreigners who come here are served first. And this is a clear decision we have taken. We make politics for Austrians. We are not xenophobes but favourable to our inhabitants and this has been appreciated by the voters and we will continue such a policy more strongly in the future.

BROUKAL: Thank you very much Mr. Haider. Maybe you should know one more thing: over the last year I go for a walk in a park in the sixth district. Since your election campaign has started someone has written on every park bench "foreigners out" and on some there is a swastika. Many thanks.

HAIDER: But the question is who is that someone, and I have the impression that it often comes from those who favour a conflict. We want to avoid in Austria a situation like in Germany or France.

BROUKAL: Thank you very much for your statement. I hear from the studio that we have Vice Chancellor Busek now on the phone. Good evening Mr. Vice Chancellor.

<German>

BROUKAL: ... Daher weiter im Reigen der Stellungnahmen der Spitzenpolitiker. Als nächster wieder live im Wiener Rathaus, wo er anwesend ist, FPÖ-Bundesparteiobmann Jörg Haider. Herr Bundesparteiobmann Haider, können Sie mich hören?

HAIDER: Ja.

BROUKAL: Ja. Guten Abend, Herr Dr. Haider! Ich habe mir lange überlegt was fragt man so einen so strahlenden Wahlsieger wie Sie. Aber dennoch, eine Frage muß sein: Ihre Partei

hat in diesem Wahlkampf vor allem mit der Ausländerfrage argumentiert und sie hat Ausländer zum ersten Mal seit vielen Jahrzehnten in dieser Stadt zu so etwas wie Unpersonen gemacht. Kann man sich mit einem solchen Wahlsieg ehrlichen Herzens einverstanden erklären?

HAIDER: Das ist ja absoluter Unsinn, was Sie hier verzapfen. Und das ist auf der Linie der Berichterstattung des ORFs in den letzten Wochen, um die sozialistische Mehrheit in Wien zu garantieren. Denn wir Freiheitlichen sagen seit vier Jahren das, was im Grunde genommen auch die Sozialistische Partei und vor allem Bürgermeister Helmut Zilk in den letzten Wahlkampftagen auch von sich gegeben hat. Wir nehmen jederzeit Flüchtlinge mit offenen Armen auf, auch die kroatischen, wie wir unter Beweis gestellt haben, und auf der anderen Seite sind wir aber dagegen, daß Einwanderer ohne Begrenzung bei uns aufgenommen werden, solange wir 170.000 arbeitslose Österreicher haben und solange 200.000 Österreicher um Wohnungen sich anstellen und jetzt Angst haben müssen, daß Ausländer, die hier hereinkommen, vor ihnen zum Zug kommen. Und das ist eben eine klare Entscheidung, die wir getroffen haben. Wir machen eine Politik für die Österreicher. Wir sind nicht ausländerfeindlich, aber wir sind inländerfreundlich und das hat uns auch der Wähler honoriert und das werden wir auch in Zukunft verstärkt fortsetzen.

BROUKAL: Bedanke mich vielmals, Herr Dr. Haider. Vielleicht sollten Sie noch wissen: ich gehe seit einem Jahr in einem Park im 6. Bezirk spazieren. Seit Ihre Wahlkampagne begonnen hat, steht dort auf jeder Parkbank "Ausländer raus" und auf einigen das Hakenkreuz. Herzlichen Dank.

HAIDER: Aber es ist die Frage er hat also diese Parolen aufgeschmiert und das - habe ich so das Gefühl - kommt oft von jenen, die gerne einen Konflikt hätten. Wir wollen deutsche und französische Verhältnisse in Österreich verhindern.

BROUKAL: Ich bedanke mich für die Stellungnahme. So, ich erfahre von der Regie, daß mittlerweile doch Vizekanzler Busek am Telephon ist. Guten Abend, Herr Vizekanzler!

On the next day Mr. Broukal, in the news programme "Zeit im Bild", added the following statement:

<translation>

Just two more sentences on the talk I had yesterday evening with the chairman of the Austrian Freedom Party in the programme on the Vienna Municipal elections: As a descendant of Czech immigrants, who before 1914 were welcome to Vienna as labour force and citizens, I feel much concern about the increasing rejection of foreigners. However, I did not want to insinuate that Mr. Haider or the FPÖ are deliberately inciting hatred of foreigners.

<German>

Noch zwei Sätze zu meinem Gespräch mit FPÖ-Obmann Dr. Haider gestern abend in der Sendung über die Wiener Landtagswahl: Als Nachkomme tschechischer Einwanderer, die vor 1914 in Wien als Arbeitskräfte und Mitbürger willkommen waren, empfinde ich die zunehmende Ablehnung von Ausländern sehr schmerzlich. Ich wollte

aber weder Dr. Haider noch der FPÖ unterstellen, daß sie absichtlich Ausländerfeindlichkeit fördern wollen.

The applicant lodged a complaint with the Broadcasting Supervisory Board (Kommission zur Wahrung des Rundfunkgesetzes) in which he complained that Mr. Broukal's manner of interviewing him violated the ORF's obligation of objectivity under the Broadcasting Act.

On 3 January 1992 the Broadcasting Supervisory Board, after an oral hearing, dismissed the applicant's complaint. It referred to a decision of the Constitutional Court of 21 June 1989, according to which the principle of objectivity under the Broadcasting Act applied to all kinds of programmes, but not in the same way. Thus, a less rigorous standard applied to interviews consisting of a sequence of speech and counterspeech. In an interview the interviewer was not bound to give merely neutral cues for the statements of the interviewed person but could also express critical and even provocative points of view, as the interviewed person could reply immediately. The principle of objectivity therefore did not compel journalists to suppress their own critical opinion, in particular since according to the relevant case-law of the European Court of Human Rights the boundaries of admissible criticism were wider when politicians were concerned.

The Broadcasting Supervisory Board noted that the programme at issue concerned interviews with several politicians and that the applicant, when interviewed by Mr. Broukal, could and did react to the statements of the latter. Furthermore, the statements of Mr. Broukal were in close relation to the issue of the Municipal Elections as it was common knowledge that the question of foreigners, also raised by the applicant himself, was an important issue in these elections. The Broadcasting Supervisory Board concluded that Mr. Broukal's statements were still within the boundaries of acceptable criticism and therefore did not violate the principle of objectivity under the Broadcasting Act.

At the oral hearing the applicant had also challenged for bias the two members of the Broadcasting Supervisory Board who were not judges because they were members of political parties. The Broadcasting Supervisory Board dismissed the challenge and found that the mere fact that a person was member of a political party or held offices therein could not alone give rise to doubts as to the impartiality of the person concerned.

The applicant lodged a complaint with the Constitutional Court (Verfassungsgerichtshof) against the above decision of the Broadcasting Supervisory Board.

On 27 September 1993 the Constitutional Court dismissed the complaint. As regards the applicant's submission that the two members of the Broadcasting Supervisory Board who were not judges had been biased because of their closeness to or engagement in political parties, the Constitutional Court found that a political activity as such was no sufficient reason for raising doubts as to the impartiality of the members concerned. The Constitutional Court further found that the Broadcasting Supervisory Board had dealt thoroughly with the applicant's complaint and the reasons given by the Board were neither unreasonable nor arbitrary.

This decision was served on the applicant on 23 December 1993.

2. Television reporting in January 1992 on the Decision on Admissibility of the European Commission of Human Rights in the Informationsverein Lentia and others case

The applicant had introduced with the European Commission of Human Rights one of the applications which eventually led to the European Court of Human Rights judgment in the Informationsverein Lentia and others case, which concerned the de facto monopoly of the ORF under the Austrian broadcasting legislation (Eur. Court H.R., judgment of 24 November 1993, Series A no. 276). In the course of these proceedings the European Commission of Human Rights held a hearing on 15 January 1992 and on the same day declared the applications partly admissible.

On 17 January 1992 the applicant filed a complaint with the Broadcasting Supervisory Board, complaining that the ORF had failed to report in television or radio on the Commission's Decision on Admissibility of 15 January 1992 while the written press had done so.

On 21 February 1992 the Broadcasting Supervisory Board, after an oral hearing, dismissed the applicant's complaint. It noted that in the evening of 15 January 1992 the Secretariat of the European Commission of Human Rights had informed by telephone the parties to the proceedings of the decision taken by the Commission. Thereupon the applicant had immediately issued a press release to the Austrian Press Agency. In the evening of 16 January 1992 the ORF had received by telefax the text of a press release issued by the Commission. On 17 January from 14.00 hours onwards the ORF had reported in radio and television news on the Commission's Decision on Admissibility. In this respect the Broadcasting Supervisory Board noted the applicant's submission made at the hearing that the information on the Commission's Decision on Admissibility had not been given proper importance in the radio and television news.

The Broadcasting Supervisory Board left open the question whether the Commission's Decision on Admissibility was an event of such importance that the ORF had been obliged by the principle of objectivity contained in the Broadcasting Act to report thereon. It found that in any event the ORF had reported on this event and that the delay until 17 January 1992 in itself had not infringed the Broadcasting Act. As regards the applicant's complaint about the allegedly improper weight given to the event, the Broadcasting Supervisory Board found that such decisions had to be taken by the responsible journalists who under the provisions of the Broadcasting Act were independent in this respect. The Broadcasting Supervisory Board also dismissed the applicant's challenge for bias of the members of the Board who were not judges, for the same reasons as given in its decision of 3 January 1992.

The applicant lodged a complaint with the Constitutional Court against the above decision of the Broadcasting Supervisory Board.

On 27 September 1993 the Constitutional Court dismissed the applicant's complaint. It found that the Broadcasting Supervisory Board had dealt thoroughly with the applicant's complaint and the reasons given by the Board were neither unreasonable nor arbitrary. Furthermore the Constitutional Court dismissed the applicant's complaint about the alleged bias of members of the Broadcasting Supervisory Board for the same reasons as given in its decision of the same day on the other complaint by the applicant. This decision was served on the applicant on 22 December 1993.

B. Relevant domestic law

The Broadcasting Act of 1974 (Bundesgesetz über die Aufgaben und die Einrichtung des Österreichischen Rundfunks) establishes the Austrian Broadcasting Corporation with the status of an autonomous

public-law corporation.

It is under a duty to provide comprehensive news coverage of major political, economic, cultural and sporting events; to this end, it has to broadcast, in compliance with the requirements of objectivity and diversity of views, in particular current affairs, news reports, commentaries and critical opinions (Section 2 para. 1 (1)). Broadcasting time must be allocated to the political parties represented in the national parliament and to representative associations (Section 5 para. 1).

A Broadcasting Supervisory Board rules on all disputes concerning the application of the Broadcasting Act which fall outside the jurisdiction of an administrative authority or court (Section 25 and 27). It is composed of seventeen independent members, including nine judges, appointed for terms of four years by the President of the Republic on the proposal of the Federal Government. The Board decides in chambers consisting of three judges and two members who are not judges (Section 28).

COMPLAINTS

1. The applicant complains under Article 10 of the Convention that the way in which the ORF reported on news events in general and on himself in particular did not meet the requirements of plurality of information and objectivity as required by Article 10 of the Convention.
2. He further complains about discrimination by the Austrian authorities against him because of his status as politician of the opposition. He invokes Article 14 of the Convention.
3. Lastly he complains that because members of the Broadcasting Supervisory Board were biased, he did not have an effective remedy within the meaning of Article 13 of the Convention for the purpose of complaining about the violation of Article 10 of the Convention.

THE LAW

1. The applicant complains under Article 10 (Art. 10) of the Convention that the way in which the ORF reported on news events in general and on himself in particular did not meet the requirements of plurality of information and objectivity as required by Article 10 (Art. 10) of the Convention.

Article 10 (Art. 10) of the Convention 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. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

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."

2. Insofar the applicant complains that the way in which the ORF reported on news events in general did not meet the requirements of Article 10 (Art.10) of the Convention, the Commission recalls that under Article 25 (Art. 25) of the Convention it may only receive petitions from a "person, non-governmental organisation or group of individuals claiming to be the victim of a violation ...". It follows from this provision that the applicant cannot complain as a representative for people in general, because the Convention does not permit such an "actio popularis". The Commission is only required to examine the applicant's complaints that he was himself a victim of a violation. The Commission finds therefore that the applicant can only claim to be a victim of a violation of Article 10 (Art. 10) of the Convention insofar he complains about the manner in which the ORF reported on news events which had a relation to the applicant himself (see No. 7045/75, Dec. 10.12.76, D.R. 7, p. 87; No. 9297/81, Dec. 1.3.82, D.R. 28, p. 204; No. 10039/82, Dec. 11.5.84, D.R. 38, p. 74).

It follows that this part of the application is incompatible *ratione personae* within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. The Commission has next examined the applicant's complaint that the way in which the ORF reported on news events which had a relation to himself violated Article 10 (Art. 10) of the Convention.

The Commission recalls that Article 10 (Art. 10) of the Convention cannot be taken to include a general and unfettered right for any private citizen or organisation to have access to broadcasting time on radio or television in order to forward his opinion, save under exceptional circumstances, for instance if one political party is excluded from broadcasting facilities at election time while other parties are given broadcasting time (No. 9297/81, Dec. 1.3.82, D.R. 28, p. 204; No. 23550/94, Dec. 24.2.95, unpublished).

a. The Commission finds that the allegedly belated and insufficient reporting by the ORF on the Commission's Decision on Admissibility of 15 January 1992 in the case of Informationsverein Lentia and others did not amount to an interference with the applicant's rights under Article 10 (Art. 10) of the Convention.

In this respect the Commission also notes the Broadcasting Supervisory Board's decision of 21 February 1992 on this issue, confirmed by the Austrian Constitutional Court on 27 September 1993, according to which the information on the Commission's decision in question had not been immediately available to the ORF. The Supervisory Board's decision correctly pointed out that the weight to be given to this information was a matter to be assessed, in principle, by the responsible journalists. Even considering that the news item in question concerned the ORF itself and its status under the Austrian broadcasting legislation, the Commission is satisfied that this element did not improperly influence the manner of reporting. Nor does the Commission find any indication that the manner of reporting was affected by inappropriate considerations relating to the fact that one of the successful applicants was Mr. Haider, being an opposition leader who had himself issued a press release on this matter.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

b. As regards the applicant's submissions concerning the interview Mr. Broukal made with him on 10 November 1991 and the Broadcasting Supervisory Board's decision of 3 January 1992, the Commission observes

that the applicant, as one of several leading Austrian politicians, was interviewed in the course of a special programme on the Vienna Municipal elections. The applicant's complaint therefore does not relate to an alleged refusal of access to the media.

The Commission finds that a right for a politician to be interviewed in a particular manner cannot be derived from Article 10 (Art. 10) of the Convention. In this respect, the Commission recalls that freedom of political debate is at the very core of the concept of a democratic society which prevails throughout the Convention. The limits of acceptable criticism are accordingly wider with regard to a politician acting in his public capacity than in relation to a private individual. The former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he must display a greater degree of tolerance, especially when he himself makes public statements that are susceptible of criticism (see Eur. Court H.R., Lingens judgment of 8 July 1986, Series A no. 103, p. 26, para. 42; Oberschlick judgment of 23 May 1991, Series A no. 204, p. 26, paras. 58-59).

The Commission also finds that with regard to interviews of politicians it is in the interest of freedom of political debate that the interviewing journalist may also express critical and provocative points of view and not merely give neutral cues for the statements of the interviewed person, since the latter can reply immediately.

The Commission therefore finds that in the circumstances of the present case there is no appearance of a violation of the applicant's rights under Article 10 (Art. 10) of the Convention.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

4. The applicant further complains about discrimination by the Austrian authorities against him because of his status as politician of the opposition. He invokes Article 14 (Art. 14) of the Convention.

The Commission finds that this complaint falls to be considered under Article 14 in conjunction with Article 10 (Art. 14+10) of the Convention. However, having regard to the applicant's submissions and all the material before it, the Commission finds that the applicant failed to substantiate his allegation that in the exercise of his rights under Article 10 (Art. 10) of the Convention the Austrian authorities discriminated against him on the ground that he was a politician of the opposition.

It follows that this part of the application is also manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

5. Lastly he complains that because members of the Broadcasting Supervisory Board were biased, he did not have an effective remedy within the meaning of Article 13 (Art. 13) of the Convention for the purpose of complaining about the violation of Article 10 (Art. 10) of the Convention.

The Commission recalls that Article 13 (Art. 13) of the Convention requires a remedy in domestic law only in respect of grievances which can be regarded as "arguable" in terms of the Convention (Eur. Court H.R., Powell and Rayner judgment of 21 February 1990, Series A no. 172, p. 14, para. 31).

The Commission, having regard to the above findings as regards

the alleged violation of Article 10 (Art. 10) of the Convention, considers that the applicant's submissions in this respect cannot be considered as an arguable claim in terms of the Convention. Moreover, the Commission observes that the applicant could, and did, complain about the Broadcasting Supervisory Board's decisions to the Constitutional Court. Consequently, there is no appearance of a violation of Article 13 (Art. 13) of the Convention in this respect.

It follows that this part of the application is also manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the First Chamber

President of the First Chamber

(M.F. BUQUICCHIO)

(C.L. ROZAKIS)