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

CASE OF WORM v. AUSTRIA

(83/1996/702/894)

JUDGMENT

STRASBOURG

29 August 1997

List of Agents

Belgium: Etablissements Emile Bruylant (rue de la Régence 67, B-1000 Bruxelles)

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SUMMARY[1]

Judgment delivered by a Chamber

Austria – journalist's conviction for publishing an article considered capable of influencing outcome of criminal proceedings (section 23 of the Media Act)

I. GOVERNMENT'S PRELIMINARY OBJECTION (six-month rule)

Applicant entitled to written copy of Court of Appeal's judgment – long delay for service attributable to judicial authorities – judgment ran to over nine pages and contained detailed legal reasoning – in circumstances, object and purpose of Article 26 best served by counting six-month period from date of service of written judgment.

Conclusion: objection dismissed (unanimously).

II. ARTICLE 10 OF THE CONVENTION

Applicant's conviction constituted interference with his right to freedom of expression.

A. Whether interference was "prescribed by law"

Convictions for "prohibited influence on criminal proceedings" have legal basis in domestic law (section 23 of Media Act) – application of that provision to applicant's case not beyond what could be reasonably foreseen in circumstances – impugned conviction was "prescribed by law".

B. Whether interference pursued a legitimate aim

Interference aimed at "maintaining the authority and impartiality of the judiciary" – Contracting States entitled to take account of considerations going to general protection of the fundamental role of courts in a democratic society – various reasons given for conviction fell within that aim – not necessary to examine separately whether interference aimed at protecting right to presumption of innocence.

C. Whether interference was "necessary in a democratic society"

Reasons given for conviction were "relevant" with regard to aim pursued.

Courts cannot operate in vacuum – there is room for discussion of subject matter of criminal trials in specialised journals, in general press or amongst public at large – reporting, including comment, on court proceedings contributes to their publicity in consonance with Article 6 § 1 requirement that hearings be public – particularly where a

1. This summary by the registry does not bind the Court.

public figure is involved – limits of acceptable comment wider as regards a politician than as regards private individuals – public figures nonetheless entitled to enjoyment of fair-trial guarantees on same basis as every other person.

Conviction in issue not directed against applicant's right to inform in an objective manner about public figure's trial but against unfavourable assessment of an element of evidence at the trial – applicant clearly stated opinion on accused's guilt – appellate court took into account impugned article in its entirety – article cannot be said to be incapable of warranting conclusion as to its potential for influencing outcome of trial.

It was primarily for appellate court to evaluate likelihood that article would be read by at least the lay judges and to ascertain applicant's criminal intent – appellate court entitled to punish applicant's attempt to usurp courts' role.

Interests of applicant and public in imparting and receiving ideas concerning matter of general concern not such as to outweigh considerations as to adverse consequences of diffusion of impugned article for the authority and impartiality of the judiciary in Austria – reasons adduced to justify interference also "sufficient".

Given amount of fine and fact that publishing firm was made jointly and severally liable for payment, sanction not disproportionate to aim.

Applicant's conviction and sentence "necessary in a democratic society".

Conclusion: no violation (seven votes to two).

COURT'S CASE-LAW REFERRED TO

26.4.1979, *Sunday Times* v. the United Kingdom (no. 1); 1.10.1982, Piersack v. Belgium; 8.7.1986, Lingens v. Austria; 26.11.1991, *Sunday Times* v. the United Kingdom (no. 2); 24.2.1993, Fey v. Austria; 25.8.1993, Chorherr v. Austria; 23.9.1994, Jersild v. Denmark; 27.3.1996, Goodwin v. the United Kingdom

In the case of Worm v. Austria[1],

The European Court of Human Rights, sitting, in accordance with Article 43 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of Rules of Court B[2], as a Chamber composed of the following judges:

Mr R. BERNHARDT, *President*,
Mr F. GÖLCÜKLÜ,
Mr F. MATSCHER,
Mr B. WALSH,
Mr J.M. MORENILLA,
Mr B. REPIK,
Mr K. JUNGWIERT,
Mr U. LÕHMUS,
Mr J. CASADEVALL,

and also of Mr H. PETZOLD, *Registrar*, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 25 April and 26 June 1997,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 4 July 1996 and by the Government of the Republic of Austria ("the Government") on 11 September 1996, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention. It originated in an application (no. 22714/93) against Austria lodged with the Commission under Article 25 by an Austrian national, Mr Alfred Worm, on 28 July 1993.

The Commission's request referred to Articles 44 and 48 and to the declaration whereby Austria recognised the compulsory jurisdiction of the Court (Article 46); the Government's application referred to Articles 44 and 48. The object of the request and of the application was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 10 of the Convention.

Notes by the Registrar

1. The case is numbered 83/1996/702/894. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

2. Rules of Court B, which came into force on 2 October 1994, apply to all cases concerning States bound by Protocol No. 9.

2. In response to the enquiry made in accordance with Rule 35 § 3 (d) of Rules of Court B, the applicant stated that he wished to take part in the proceedings and designated the lawyer who would represent him (Rule 31). The lawyer was given leave by the President to use the German language (Rule 28 § 3).

3. The Chamber to be constituted included *ex officio* Mr F. Matscher, the elected judge of Austrian nationality (Article 43 of the Convention), and Mr R. Bernhardt, the Vice-President of the Court (Rule 21 § 4 (b)). On 7 August 1996, in the presence of the Registrar, the President of the Court, Mr R. Ryssdal, drew by lot the names of the other seven members, namely Mr F. Gölcüklü, Mr B. Walsh, Mr J.M. Morenilla, Mr B. Repik, Mr K. Jungwiert, Mr U. Lõhmus and Mr J. Casadevall (Article 43 *in fine* of the Convention and Rule 21 § 5).

4. As President of the Chamber (Rule 21 § 6), Mr Bernhardt, acting through the Registrar, consulted the Agent of the Austrian Government, the applicant's lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 39 § 1 and 40). Pursuant to the order made in consequence, the Registrar received the applicant's and the Government's memorials on 21 and 28 February 1997 respectively. The Commission produced the file on the proceedings before it, as requested by the Registrar on the President's instructions.

5. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 22 April 1997. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) *for the Government*
Mr F. CEDE, Ambassador, Legal Adviser,
Head of the International Law Department,
Federal Ministry of Foreign Affairs, *Agent*,
Mr S. BENNER, Public Prosecutor, Criminal Affairs and
Pardons Department, Federal Ministry of Justice,
Ms E. BERTAGNOLI, International Law Department,
Federal Ministry of Foreign Affairs,
Ms I. ERMACORA, Constitutional Department,
Federal Chancellery, *Advisers*;

(b) *for the Commission*
Mr J.-C. GEUS, *Delegate*;

(c) *for the applicant*
Mr W. MASSER, of the Vienna Bar, *Counsel*.

The Court heard addresses by Mr Geus, Mr Masser and Mr Cede and also replies to its questions.

AS TO THE FACTS

I. CIRCUMSTANCES OF THE CASE

6. The applicant, Mr Alfred Worm, is a journalist. He was born in 1945 and lives in Vienna.

7. At the material time the applicant was working for *Profil*, an Austrian periodical dealing mostly with politics. For several years, he investigated into and reported on the case of Mr Hannes Androsch, a former Vice-Chancellor and Minister of Finance, who was involved in certain criminal proceedings.

A. Mr Androsch's criminal record

8. In 1989 Mr Androsch had been convicted by the Vienna Court of Appeal (*Oberlandesgericht*) of having made false statements as a witness on two occasions. The court found that he had, before a parliamentary investigating committee (*Untersuchungsausschuß*), wrongly stated that certain amounts of money had been put at his disposal by a Mr S., whereas in fact they had been transferred from anonymous bank accounts operated by his wife and himself. Furthermore, in the context of criminal proceedings against financial officers charged with abuse of authority, Mr Androsch had stated that several anonymous accounts were held by a Mr S., whereas in fact they were operated by his wife, his mother and himself.

9. In 1991 the Vienna Regional Criminal Court (*Landesgericht für Strafsachen*), sitting as a court of two professional judges and two lay judges (*Schöffengericht*), conducted criminal proceedings against Mr Androsch concerning charges of tax evasion. It held hearings, *inter alia*, on 25 and 26 May 1991.

On 8 October 1991 Mr Androsch was convicted of having evaded taxes between 1973 and 1981. He was sentenced to a fine of 1.8 million Austrian schillings (ATS).

B. The article

10. On 1 July 1991 *Profil* had published a two-page article written by the applicant, relating to the above proceedings. It read as follows:

"ADJOURNED FOR REFLECTION

A criminal court sitting with lay judges spent two days considering Hannes Androsch's tax evasion. The atmosphere during the trial was glacial.

'Above all, there were to be no mistakes during the proceedings. The case was to be handled with common prudence, properly and to the best of our knowledge and belief – but not with kid gloves!' (Mr Heinz Tschernutter, tax investigator and witness, when asked what principles had governed the hearing of the Androsch case.)

On the day before the trial [the Austrian newspaper] *Die Presse* dropped the bombshell that was meant to shake all Austria. Lawyer Herbert Schachter was quoted as saying: 'I'm sure that Dr Androsch will present his case in an impressive manner.'

The horizon was darkened by this impressive presentation and the earth shook as the accused worsened his lousy position by taking refuge in lapses of memory ('I can't remember' – 'I don't have any detailed knowledge') and by attempting to shift the blame onto others ('I was represented by tax advisers in all those years') or by playing the animal that has been maltreated ('There is not a single large-scale business in the whole of Austria that has been subjected for years to as many inspections as I have been').

Hannes Androsch's biggest problem is Hannes Androsch. His second biggest problem is his lawyer, Herbert Schachter. Together, defending counsel and client are invincible. If blatant scorn could change the temperature, the courtroom would be covered by a thick layer of ice.

The patient judge, Friedrich Zeilinger, enquires, 'So, what exactly happened?' The blasé defendant replies, 'I would ask you to infer exactly what happened from the file. You have the documents in front of you – I haven't.'

At another point Androsch said, with a disdainful gesture towards Friedrich Matousek: 'You, my dear Public Prosecutor ...' in a tone as if to say 'You wretched worm!'

Androsch underestimates the judiciary. Once again. Judge Zeilinger knows the file inside out, as was clear from each of his questions. The public prosecutor, Matousek, is able to find his way around in the dark generated by the 'international legal adviser's' murky financial deals, and, after all, the prosecuting authorities have been examining the flow of funds to and from Hannes Androsch for a good decade.

The accused mistook the excessively polite and markedly accommodating manner of the presiding judge for weakness. He has also known the public prosecutor for years and yet still doesn't know him properly. Matousek speaks quietly and slowly so that one can follow what he says, and acts in a spectacularly unspectacular manner. Only the arrogant interpret his lack of grand gestures as cluelessness.

Even the public prosecutor did make one mistake, however, when he cited the judgment of the Court of Appeal in the proceedings against Androsch for giving false evidence (now concluded) and referred to 'long-term, ingenious and sophisticated linking of accounts'. The alleged tax evasion was perhaps 'long-term' but by no means 'ingenious and sophisticated'.

The opposite was true: anyone venturing into the maze of Androsch's accounts containing undeclared money is amazed by the structure's simplicity. It is not only wholly lacking in sophistication but is almost astoundingly crude. Crude not because Androsch lacked intelligence but rather because it was based on the cast-iron foundation of the misplaced loyalty of officials. While Androsch was Finance Minister, until January 1981, he could rely on the zealous but unlawful obedience of a number of powerful officials. As soon as Androsch left, those officials had their hands full concealing their complicity in the cover-up. Admittedly, a whole string of other officials, by no means excessively brave but simply law-abiding, attempted again and again to ensure that the law prevailed. They foundered, however, on practicalities. The team led by the Carinthian tax investigator, Adolf Panzenböck (1982 to 1984) certainly gathered all the relevant details, but the head of one of the Vienna tax offices who had been in charge of the case for only a day and a half issued a clean bill of health. And last week, when they appeared as witnesses, the tax officials Walter Handerek, Heinz Tschernutter and Gerhard Berner, who reopened the file between 1985 and 1988, were treated by defending counsel Herbert Schachter as though they were the accused rather than Androsch.

It has been known since 1980 that Androsch evaded taxes. The legal proceedings which were adjourned on Friday furnished further proof that for years the accused escaped prosecution thanks to the zealous obedience of officials. When this was no longer possible as an independent judge was in charge of the investigations, Androsch's advisers took every opportunity to delay the proceedings. It is both symptomatic and revealing that Androsch told the trial court again and again that ‘seven inspections’ had been carried out and on each occasion had found in his favour, and that it was very unfair that just the eighth inspection should shatter the ideal world of his illusory innocence. Everyone except him is to blame for this. Androsch has in the meantime become so completely immersed in the role of the innocent victim that he cannot subjectively conceive of ever having been the guilty party.

From an objective point of view, it should be pointed out in Androsch's favour that there may be several people in Austria who in nearly two decades (from 1965 to 1983) have evaded more than 6.3 million schillings in tax without, however, being subjected to such intensive publicity. On the other hand, no Austrian Finance Minister has simultaneously operated seven accounts containing undeclared funds. And, as the public prosecutor put it, although the origin of part of the money had been established, approximately five million schillings were left from unknown sources.

It was impious of Androsch to wheel out his ‘adoptive uncle’ again at the trial. Admittedly, he argued eloquently that the ‘adoptive uncle’ was actually an ‘adoptive father’, but nonetheless the name of a dead person had been taken in vain. Androsch alarmingly implicated not only his ‘adoptive father’ Gustav Steiner but also his father-in-law Paul Schärf in these financial proceedings. Both were induced to sacrifice themselves for Androsch and to assume a responsibility for undeclared funds and fiduciary relationships which they had never had. The investigating judge Anton Zelenka and subsequently the tax authorities and other judges (Josef Zehetmayer and later the Court of Appeal) proved long ago that Androsch was lying on this point. The flow of funds into and out of the seven accounts containing money not declared to the tax authorities allows of no other interpretation than that Androsch was evading taxes. His defence in court was disgraceful; after so many years one would at least have expected properly constructed arguments. Each time Judge Zeilinger asked him a specific question he either took refuge in lapses of

memory or blamed his ‘adoptive father’. He even trotted out the late Sir Arthur Stein, the explorer of the Silk Road, from whom he claims to have received a legacy.

No new submissions were made in court – either as regards the accounts containing undeclared money or as regards the funding for his villas. Anyone who had expected Androsch to tell all and, as announced in the newspapers, to reveal new facts and adduce convincing arguments in his defence was bitterly disappointed. Only in respect of the charges of ‘covert distribution of profits’ was there any legal skirmishing.

Mr Schachter told the court that Androsch was a ‘victim of politics’. ‘Crimes had been attempted’ against Androsch and his client had always had ‘opponents who had gone as far as attempting to destroy Androsch psychologically and physically’.

Bruno Kreisky and others were to blame for this.

The court kept trying very gently to bring the defendant back down to earth from his long-winded waffling. And each time he replied ‘I can't say. After all, I do have other things to do’ (i.e. than grapple with such stupid questions).

If necessary, the authorities can always be blamed for everything. In the instant case this cliché clearly did not apply to Judge Zeilinger. For two mornings he demonstrated drawing-room justice at its best. The judge forced himself to be polite even when he was clearly irritated by the defendant's bored self-assurance. On the very first day of the trial an area of psychological tension built up which the former Minister clearly misinterpreted. From time to time the 53-year-old slipped into the role of a public speaker talking politics. He paid less and less attention to the judge's questions and treated the public prosecutor with increasingly provocative contempt. He turned to look more and more often at the public in the gallery, seeking approval, and his gestures increasingly reminded one of the self-satisfied, powerful Vice-Chancellor and Finance Minister accustomed to victory.

In those circumstances serious tactical errors were made. Defence counsel interrupted the judge and Androsch succumbed to his own charm. He talked and talked, a volubility that the *Kronen Zeitung* mistook for ‘brilliant rhetoric’. In reality the defendant was distancing himself as much as possible from his own responsibility.

Others were to blame.

Judge Zeilinger did not lose control of the situation for a second, however. From time to time, as was apparent from his posture, he had a sharp word on the tip of his tongue, but he never actually uttered it.

The defendant sensed weakness and made full use of his own – supposed – strength; he forged a link with the public while severing the one with the court.

Judge Zeilinger had prepared for this trial keenly and diligently. By citing facts he kept forcing Androsch into corners from which he could only escape by taking refuge in memory lapses.

In many major trials the sinner has been given a fair chance to the very end. Androsch too had a fair chance last Friday; of twelve defence motions, ten were dismissed and two allowed. The court admitted evidence as to whether in the tax proceedings against Androsch any unlawful influence had been exerted or instructions issued which adversely affected the taxpayer. In the next stage of trial, in August or September (the court even took account of defence counsel's summer holidays!), officials from the Regional Tax Office and the Ministry of Finance will therefore be heard as witnesses.

There comes, however, a point in every trial after which the court expects some sign of understanding. It hopes for a trace of humility that may be appraised as a mitigating circumstance.

The defendant has shown no humility to date, not even for a second. But he now has a few weeks to consider whether it is consonant with the principles of a State based on the rule of law for a Finance Minister and his family to have at their disposal accounts containing millions in undeclared funds.

It is now for him to display greatness. The judicial system has uncovered serious matters. The court nevertheless was guided wholly by the principles of fairness up to the very last moment of the trial last Friday, when it adjourned the proceedings.

For reflection."

C. Proceedings in the Vienna Regional Criminal Court

11. Mr Worm was charged under section 23 of the Media Act (*Mediengesetz* – see paragraph 23 below) for having exercised prohibited influence on criminal proceedings (*verbotene Einflußnahme auf ein Strafverfahren*).

12. On 12 May 1992 the Vienna Regional Criminal Court, sitting with one judge (*Einzelrichter*), acquitted the applicant. It found that the text in issue was not capable of influencing the outcome of the proceedings against Mr Androsch and that it was not established that the applicant had acted with such an intention.

13. The court recalled that in 1991 Mr Androsch had been convicted of tax evasion (see paragraph 9 above). In establishing whether the impugned article was capable of influencing the result of these proceedings, the court noted that the wording and content of the article as a whole, as well as the development of the proceedings reported upon, the person of the accused, and the person of the applicant had to be taken into account. The article, unlike court reports of the scandal press, analysed the conduct of the presiding judge, the public prosecutor, defence counsel and in particular the accused, Mr Androsch, almost as a psychologist would have done.

Furthermore, the court found that it was clear for every reader, who was vaguely familiar with the issue, that the applicant, who had been working for *Profil* for many years, had intensively dealt with the so-called "Causa Androsch" and had frequently reported on it. It appeared from the article that the applicant assumed that the investigations carried out by the tax authorities were correct. He subjected the statements made by the accused at the trial to a critical psychological analysis. However, his way of writing and the wording used were not capable of influencing these proceedings. Even to a lay judge, the applicant's person and his activities as a journalist in the Androsch case were well known. Thus he would not expect the applicant to give a neutral account of the proceedings.

Moreover, it had not been established that the applicant had acted with the intention of influencing the outcome of the proceedings, in particular as it appeared that he was convinced that Mr Androsch would in any event be convicted.

D. Proceedings in the Vienna Court of Appeal

14. On 19 October 1992 the Vienna Court of Appeal, sitting as a court of three professional judges on an appeal by the public prosecutor, held a hearing in the presence of the applicant and his counsel. Mr Worm was questioned and stated in particular that the first sentence of the incriminated passage, namely that "the flow of funds into and out of the seven accounts containing money not declared to the tax authorities allows of no other interpretation than that Androsch was evading taxes", was a quotation from the public prosecutor's statement during the trial. The latter had also frequently made reference to Mr Androsch's conviction for having made false statements as a witness (see paragraph 8 above).

15. At the end of the hearing, the operative provisions of the judgment as well as the relevant reasons were read out. The court convicted the applicant of having exercised prohibited influence on criminal proceedings and imposed on him forty day-fines of ATS 1,200 each, that is ATS 48,000, or twenty days' imprisonment in default of payment. The publishing firm was made jointly and severally liable for payment of the fine.

16. The full text of the judgment was served on the applicant on 25 March 1993.

17. The court held, *inter alia*:

> "The prosecution appeal is therefore well-founded. It rightly takes as its starting-point that the offence defined in section 23 of the Media Act must be classified as a potentially endangering offence [*abstraktes Gefährdungsdelikt*] …
>
> In general, a potentially endangering offence is defined as conduct typically capable of bringing a dangerous situation into existence, even if in any given case no one is actually exposed to the danger concerned ...

> The law regulates only the offender's conduct – in this case comment on the value of evidence – and links to it the inference that such comment is also capable of influencing the outcome of criminal proceedings. A potentially endangering offence accordingly amounts to conduct which is criminal irrespective of any result it may have [*schlichtes Tätigkeitsdelikt*] ...
>
> The considerations set out in the judgment at first instance as to the extent to which the comment on Mr Androsch's defence was capable of influencing the outcome of the criminal proceedings were therefore pointless ...
>
> The defendant's replies under examination in criminal proceedings constitute evidence ...
>
> [The passage in issue] constitutes (unfavourable) comment on the value of the answers given by Mr Androsch, not just – as the court below held – a critical psychological analysis ..."

18. It observed that "the objective element of the offence defined in section 23 of the Media Act is constituted not only by unfavourable comment on evidence but also by favourable comment".

19. The Court of Appeal also contested the Regional Court's assumption that everybody, including the lay judges, knew the applicant's long-standing commitment in the Androsch case and would therefore not be influenced by his article. It was in no way certain that the lay judges regularly read *Profil*. On the contrary, in spectacular proceedings like the ones in issue, it happened frequently that lay judges would follow the reports in papers they did not usually read. There was no doubt that, at least with regard to the lay judges, the reading of the incriminated article was capable of influencing the outcome of the criminal proceedings.

20. The court added:

> "[The above finding] is all the more true in the present case because it can be inferred from the article that the accused wished to usurp the position of the judges dealing with the case.
>
> The objective element of the offence defined in section 23 of the Media Act is accordingly made out.
>
> As regards the subjective element, it should be observed that it is hard to understand why the court below should have concluded that there was no intention to influence the outcome of the trial when that intention was, on the contrary, quite obvious."

21. The court further found that the applicant's expertise and involvement in the subject matter rather reinforced the impression that he had written the article with the intention of influencing the outcome of the proceedings. He had researched into the case since 1978 and had written more than a hundred articles about it. From the beginning he had been convinced that Mr Androsch had committed tax evasion. In the article in

issue he had not only criticised Mr Androsch's statement but had also anticipated the outcome of the proceedings, namely the conviction of the accused.

22. The judgment ended as follows:

> "Even the quotation of the answer given by Mr Heinz Tschernutter placed at the top of the article – 'Above all, there were to be no mistakes during the proceedings. The case was to be handled with common prudence, properly and to the best of our knowledge and belief – but not with kid gloves!' – gives the average reader the impression that the court was being advised and urged to follow the same approach, in other words not to make any mistakes and not to handle Mr Androsch with kid gloves."

II. RELEVANT DOMESTIC LAW

23. Section 23 of the Media Act (*Mediengesetz*) is entitled "Prohibited influence on criminal proceedings" (*Verbotene Einflußnahme auf ein Strafverfahren*) and reads as follows:

> "Anyone who discusses, subsequent to the indictment ... [and] before the judgment at first instance in criminal proceedings, the probable outcome of those proceedings or the value of evidence in a way capable [*geeignet*] of influencing the outcome of the proceedings shall be punished by the court with up to 180 day-fines."

24. Article 77 of the Code of Criminal Procedure reads:

> "(1) Judicial decisions are made public either by being read out in court or by service of the original or a certified copy thereof.
>
> (2) When read out, judgments must be put on record. Upon request, anyone concerned may receive a copy of the judgment."

In practice, written copies of decisions such as the one at issue in the present case are automatically served on the persons concerned.

25. Under Austrian criminal procedural law, the time allowed for appeals begins to run from the date when the written version of the decision appealed against has been served on the party concerned (Article 79 § 2 of the Code of Criminal Procedure).

PROCEEDINGS BEFORE THE COMMISSION

26. Mr Worm applied to the Commission on 28 July 1993. He relied on Article 10 of the Convention, complaining that his conviction under section 23 of the Media Act violated his right to freedom of expression.

27. The Commission declared the application (no. 22714/93) admissible on 25 November 1995. In its report of 23 May 1996 (Article 31), it expressed the opinion by eighteen votes to eleven that there had been a

violation of Article 10 of the Convention. The full text of the Commission's opinion and of the dissenting opinion contained in the report is reproduced as an annex to this judgment[1].

FINAL SUBMISSIONS TO THE COURT

28. In his memorial the applicant asked the Court to establish that there had been a violation of his right to freedom of expression enshrined in Article 10 of the Convention as a result of the incorrect interpretation by the Vienna Court of Appeal of section 23 of the Media Act.

29. The Government requested the Court to refuse to entertain the application for having been introduced later than six months after the final domestic decision was issued. Alternatively, the Court was asked to declare that the Vienna Court of Appeal's judgment of 19 October 1992 did not violate the applicant's rights under Article 10 of the Convention.

AS TO THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

30. By way of preliminary objection, the Government pleaded, as they had already done before the Commission, that Mr Worm had not complied with the rule, in Article 26 of the Convention, that applications to the Commission must be lodged "within a period of six months from the date on which the final decision was taken".

The Government observed that on 19 October 1992, at the end of the appellate hearing, the Vienna Court of Appeal gave its judgment in the applicant's case (see paragraph 15 above). Since a draft judgment was already available, not only the operative provisions but also all the relevant reasons were read out. The applicant and his counsel were both present. In those circumstances, the Government submitted that the six-month period should be deemed to have started to run from that date. This had moreover been the Commission's practice thus far.

1. *Note by the Registrar*. For practical reasons this annex will appear only with the printed version of the judgment (in *Reports of Judgments and Decisions* 1997), but a copy of the Commission's report is obtainable from the registry.

In the Government's further submission, the fact that a written copy of the decision was not served on the applicant until 25 March 1993 (see paragraph 16 above) was irrelevant since this did not contain any more information than the judgment as delivered in open court.

31. The applicant contended that he had not been in a position to acquaint himself with the court's full reasoning concerning the public prosecutor's appeal until he received a written version of the judgment. In particular, where as in the present case complex legal issues are involved, an applicant cannot be expected to file an application with the Commission on the basis of an oral decision. The starting date for the six-month period should therefore be 25 March 1993, the date when the written version of the judgment was served.

32. The Commission agreed with the applicant while acknowledging that the present case had led it to reconsider its previous approach. In its view, the six-month rule contained in Article 26 not only pursues the aim of ensuring legal certainty, it also affords the prospective applicant time to consider whether to lodge an application with the Commission and, if so, to decide on the specific complaints and arguments to be raised. In that respect, the Commission found that when, in accordance with domestic law, the written text of a final decision has to be served on an applicant, the period of six months should be counted from the date of this service, irrespective of whether the judgment concerned, or part thereof, was previously delivered orally.

33. The Court notes that, under domestic law and practice (see paragraph 24 above), the applicant was entitled to be served *ex officio* a written copy of the Court of Appeal's judgment, and that the long delay for this service was exclusively the responsibility of the judicial authorities. The said judgment, which in its final version ran to over nine pages, contained detailed legal reasoning. In these circumstances, the Court shares the Commission's view (see paragraph 32 above) that the object and purpose of Article 26 are best served by counting the six-month period as running from the date of service of the written judgment. Moreover, this is the solution adopted by Austrian law in respect of time-limits for lodging domestic appeals (see paragraph 25 above).

34. The judgment of the Vienna Court of Appeal was served on the applicant on 25 March 1993 (see paragraph 16 above) and the application to the Commission was introduced less than six months thereafter, namely on 28 July 1993 (see paragraph 1 above). It follows that the Government's preliminary objection must be dismissed.

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

35. The applicant alleged that his conviction and the fine imposed upon him for having published an article commenting on Mr Androsch's trial constituted a violation of Article 10 of the Convention, which reads:

> "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."

36. It was uncontested that the applicant's conviction constituted an interference with his right to freedom of expression as guaranteed by paragraph 1 of Article 10 and the Court sees no reason to hold otherwise. It must therefore be examined whether the interference was justified under the second paragraph of that provision.

A. Whether the interference was "prescribed by law"

37. It was common ground that convictions for "prohibited influence on criminal proceedings" have a legal basis in domestic law, namely section 23 of the Media Act (see paragraph 23 above).

The applicant maintained, however, that the facts in his case did not fall within the ambit of that provision and that the Vienna Court of Appeal had erred in its finding that his article was calculated to influence the criminal proceedings against Mr Androsch.

38. The Court reiterates that the relevant national law must be formulated with sufficient precision to enable the persons concerned – if need be with appropriate legal advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. It is primarily for the national authorities, notably the courts, to interpret and apply domestic legislation (see, *inter alia*, the Chorherr v. Austria judgment of 25 August 1993, Series A no. 266-B, pp. 35–36, §§ 24-25). In the present case, the Court is satisfied that the Vienna Court of Appeal's application of section 23 of the Media Act to the applicant's case did not go beyond what could be reasonably foreseen in the circumstances.

Accordingly, the Court concludes that the impugned conviction was "prescribed by law".

B. Whether the interference pursued a legitimate aim

39. In the present case it was not contested that the applicant's conviction was aimed at "maintaining the authority and impartiality of the judiciary" and that it thus pursued a legitimate aim under the Convention.

40. In this regard, the Court has consistently held that the expression "authority and impartiality of the judiciary" has to be understood "within the meaning of the Convention". For this purpose, account must be taken of the central position occupied in this context by Article 6 which reflects the fundamental principle of the rule of law (see, *inter alia*, the *Sunday Times* v. the United Kingdom (no. 1) judgment of 26 April 1979, Series A no. 30, p. 34, § 55).

The phrase "authority of the judiciary" includes, in particular, the notion that the courts are, and are accepted by the public at large as being, the proper forum for the settlement of legal disputes and for the determination of a person's guilt or innocence on a criminal charge; further, that the public at large have respect for and confidence in the courts' capacity to fulfil that function (ibid., *mutatis mutandis*).

"Impartiality" normally denotes lack of prejudice or bias (see the Piersack v. Belgium judgment of 1 October 1982, Series A no. 53, p. 14, § 30). However, the Court has repeatedly held that what is at stake in maintaining the impartiality of the judiciary is the confidence which the courts in a democratic society must inspire in the accused, as far as criminal proceedings are concerned, and also in the public at large (see, *mutatis mutandis*, among many other authorities, the Fey v. Austria judgment of 24 February 1993, Series A no. 255-A, p. 12, § 30).

It follows that, in seeking to maintain the "authority and impartiality of the judiciary", the Contracting States are entitled to take account of considerations going – beyond the concrete case – to the protection of the fundamental role of courts in a democratic society.

41. In view of the above, the various reasons contained in the judgment of the Vienna Court of Appeal of 19 October 1992 (see paragraphs 17 to 22 above) are to be regarded as falling within the aim of "maintaining the authority and impartiality of the judiciary".

42. The Government submitted that the applicant's conviction also pursued the aim of protecting Mr Androsch's right to the presumption of innocence. Having regard to its analysis in the preceding paragraphs, the Court does not find it necessary to address this question separately.

C. Whether the interference was "necessary in a democratic society"

43. The applicant asserted that his right to freedom of expression had been restricted beyond the limits imposed by the second paragraph of Article 10 of the Convention. He submitted that since the subject matter of his report was the trial of a former Minister of Finance for tax offences committed when in office, indisputably an issue of public concern, the limits of permissible criticism should be wider. As to the risk of influencing the outcome of Mr Androsch's trial, he pointed out that the passage where the latter's responsibility for tax evasion was alluded to referred to activities for which Mr Androsch had already been convicted and which were well known to the court.

44. The Commission expressed the opinion that the Vienna Court of Appeal did not weigh the public interest in preventing undue influence of the media on pending criminal proceedings against the public interest in receiving information relating to the conduct of a former Minister of Finance facing charges of tax evasion. When examining whether the incriminated text was likely to influence the outcome of the proceedings, the appellate court, unlike the first-instance court, had not taken the wording and the content of the two-page article as a whole into account. Having regard to its specific context, the conclusion suggested by the applicant in one passage, namely that Mr Androsch was evading taxes, appeared as merely describing a state of suspicion, which the members of the trial court, including the lay judges, were in a position to evaluate independently. The Commission further observed that the appellate court should have dealt with the applicant's defence that the incriminated passage merely paraphrased a statement the public prosecutor had made at the trial.

The Commission accordingly concluded that the reasons adduced by the Court of Appeal were not sufficient for the purposes of Article 10 § 2. The interference with the applicant's right to freedom of expression could thus not be said to have been "necessary in a democratic society" for maintaining the "authority and impartiality of the judiciary".

45. At the hearing, the Delegate of the Commission submitted that the question of necessity under Article 10 § 2 would have required that the domestic courts ascertain whether any real influence had indeed been exerted on the lay judges.

46. For the Government, the applicant's conduct went beyond the limits of permissible reporting on a pending trial. Even if the entire content of the article were to be taken into account, there was no question that the incriminated statement amounted to a typical predetermination by the media of an accused's guilt. If the statement in issue was indeed a quotation of the public prosecutor, the applicant would have had to indicate it, which he did not.

They further pointed out that although lay judges are likely to read press reports on the cases they try, Austrian law, unlike other legal systems, does not seek to insulate them from exposure to outside influence while they are exercising their functions. There was therefore a high probability that the opinion of Mr Worm, leading expert of the "Causa Androsch", would exert influence on those judges, thereby jeopardising the impartiality of the court.

The Government finally submitted that the fine imposed on the applicant was not disproportionate to the aim pursued.

47. The Court recalls that freedom of expression constitutes one of the essential foundations of a democratic society and that the safeguards to be afforded to the press are of particular importance (see, among other authorities, the Jersild v. Denmark judgment of 23 September 1994, Series A no. 298, p. 23, § 31).

As a matter of general principle, the "necessity" for any restriction on freedom of expression must be convincingly established (see the *Sunday Times* v. the United Kingdom (no. 2) judgment of 26 November 1991, Series A no. 217, pp. 28–29, § 50). Admittedly, it is in the first place for the national authorities to assess whether there is a "pressing social need" for the restriction and, in making their assessment, they enjoy a certain margin of appreciation. In the present context, however, the national margin of appreciation is circumscribed by the interest of democratic society in ensuring and maintaining a free press. Similarly, that interest will weigh heavily in the balance in determining, as must be done under paragraph 2 of Article 10, whether the restriction was proportionate to the legitimate aim pursued.

The Court's task, in exercising its supervisory function, is not to take the place of the national authorities but rather to review under Article 10 the decisions they have taken pursuant to their power of appreciation. In so doing, the Court must look at the "interference" complained of in the light of the case as a whole and determine whether the reasons adduced by the national authorities to justify it are "relevant and sufficient" (see, among many other authorities, the Goodwin v. the United Kingdom judgment of 27 March 1996, *Reports of Judgments and Decisions* 1996-II, pp. 500–01, § 40).

48. In the instant case, the Vienna Court of Appeal, after carefully examining the character of the incriminated article, concluded that it was objectively capable of influencing the outcome of the proceedings. The Court of Appeal also dealt with the question of the applicant's intent in publishing the article, in particular saying that it could be inferred from the article that he wished to usurp the position of the judges dealing with the case (see paragraphs 16–21 above).

The reasons given by the Court of Appeal were therefore "relevant" with regard to the aim pursued. It remains to be ascertained whether they were also "sufficient" for that same purpose.

49. In assessing this question, the Court recalls that the domestic margin of appreciation is not identical as regards each of the aims listed in Article 10 § 2. With respect to the notion of "authority and impartiality of the judiciary", the Court has already noted its objective character and the fact that, in this area, the domestic law and practice of the member States of the Council of Europe reveal a fairly substantial measure of common ground (see, *mutatis mutandis*, the *Sunday Times* (no. 1) judgment cited above, p. 36, § 59). This does not mean that absolute uniformity is required and, indeed, since the Contracting States remain free to choose the measures which they consider appropriate, the Court cannot be oblivious of the substantive or procedural features of their respective domestic laws (ibid., pp. 37–38, § 61). It cannot thus hold that the applicant's conviction was contrary to Article 10 of the Convention simply because it might not have been obtained under a different legal system.

50. Restrictions on freedom of expression permitted by the second paragraph of Article 10 "for maintaining the authority and impartiality of the judiciary" do not entitle States to restrict all forms of public discussion on matters pending before the courts.

There is general recognition of the fact that the courts cannot operate in a vacuum. Whilst the courts are the forum for the determination of a person's guilt or innocence on a criminal charge (see paragraph 40 above), this does not mean that there can be no prior or contemporaneous discussion of the subject matter of criminal trials elsewhere, be it in specialised journals, in the general press or amongst the public at large (see, *mutatis mutandis*, the *Sunday Times* (no. 1) judgment cited above, p. 40, § 65).

Provided that it does not overstep the bounds imposed in the interests of the proper administration of justice, reporting, including comment, on court proceedings contributes to their publicity and is thus perfectly consonant with the requirement under Article 6 § 1 of the Convention that hearings be public. Not only do the media have the task of imparting such information and ideas: the public also has a right to receive them (ibid.). This is all the more so where a public figure is involved, such as, in the present case, a former member of the Government. Such persons inevitably and knowingly lay themselves open to close scrutiny by both journalists and the public at large (see, among other authorities, the Lingens v. Austria judgment of 8 July 1986, Series A no. 103, p. 26, § 42). Accordingly, the limits of acceptable comment are wider as regards a politician as such than as regards a private individual (ibid.).

However, public figures are entitled to the enjoyment of the guarantees of a fair trial set out in Article 6, which in criminal proceedings include the right to an impartial tribunal, on the same basis as every other person. This must be borne in mind by journalists when commenting on pending criminal proceedings since the limits of permissible comment may not extend to statements which are likely to prejudice, whether intentionally or not, the chances of a person receiving a fair trial or to undermine the confidence of the public in the role of the courts in the administration of criminal justice.

51. The applicant was convicted of having attempted to exert prohibited influence on the outcome of the criminal proceedings concerning Mr Androsch. He was sentenced to a fine of ATS 48,000, or twenty days' imprisonment in case of default of payment (see paragraph 15 above).

As summarised above (see paragraphs 17–22) the Vienna Court of Appeal first considered whether the impugned article was objectively capable of influencing the outcome of the proceedings pending at the material time before the Vienna Regional Criminal Court.

It found that the applicant had commented unfavourably on the answers given by Mr Androsch at the trial and not merely carried out a critical psychological analysis, as held by the first-instance court. The court further considered that it could not be excluded that the members of Mr Androsch's trial court, more particularly the lay judges, might read the article. It concluded that the applicant's article fell within the ambit of section 23 of the Media Act.

The appellate court held that Mr Worm's long-standing involvement in the "Causa Androsch" – he had been researching into the case since 1978 and had written more than a hundred articles about it – reinforced the impression gained from the wording of the article that he had written it with the intention of influencing the outcome of the proceedings. From the beginning, the applicant had been convinced that Mr Androsch had committed tax evasion and had stated so. In his article, he had not only criticised Mr Androsch; he had deliberately attempted to lead the reader to conclude that Mr Androsch was guilty of the charges against him and had predicted his conviction.

52. The Court of Appeal's judgment was not directed to restricting the applicant's right to inform the public in an objective manner about the development of Mr Androsch's trial. Its criticism went essentially to the unfavourable assessment the applicant had made of the former minister's replies at trial, an element of evidence for the purposes of section 23 of the Media Act. The Court does not share the Commission's view that the passage where it is implied that Mr Androsch was evading taxes merely described a state of suspicion. In particular, the words "allows of no other

interpretation than that Androsch was evading taxes" point rather to a clearly stated opinion that Mr Androsch was guilty of the charges against him. This view was, moreover, formulated in such absolute terms that the impression was conveyed to the reader that a criminal court could not possibly do otherwise than convict Mr Androsch.

53. The Court considers that it transpires from the Court of Appeal's judgment that it did take into account the incriminated article in its entirety. Further, the content of the article cannot be said to be incapable of warranting the conclusion arrived at by the Vienna Court of Appeal as to the article's potential for influencing the outcome of Mr Androsch's trial.

54. Having regard to the State's margin of appreciation, it was also in principle for the appellate court to evaluate the likelihood that at least the lay judges would read the article as it was to ascertain the applicant's criminal intent in publishing it. As to the latter point, the Court of Appeal pointed out that "it can be inferred from the article that [the applicant] wished to usurp the position of the judges dealing with the case" (see paragraph 20 above). In this respect, to paraphrase the Court's words in its judgment in the *Sunday Times* (no. 1) case (cited above), it cannot be excluded that the public's becoming accustomed to the regular spectacle of pseudo-trials in the news media might in the long run have nefarious consequences for the acceptance of the courts as the proper forum for the determination of a person's guilt or innocence on a criminal charge (p. 39, § 63). For this reason, the fact that domestic law as interpreted by the Vienna Court of Appeal did not require an actual result of influence on the particular proceedings to be proved (see paragraph 18 above) does not detract from the justification for the interference on the ground of protecting the authority of the judiciary.

55. The above findings are not called into question by the assertion – disregarded by the appellate court – that the incriminated passage was a quotation of a statement made by the public prosecutor at the trial. In the first place, even assuming that the public prosecutor actually made such remarks, the applicant ought to have indicated that he was merely quoting them. In any event, it was the public prosecutor's role, and not that of the applicant, to establish Mr Androsch's guilt.

56. Against this background, the Court concludes that the reasons adduced by the Vienna Court of Appeal to justify the interference with the applicant's right to freedom of expression resulting from his conviction were also "sufficient" for the purposes of Article 10 § 2. In particular, the respective interests of the applicant and the public in imparting and receiving his ideas concerning a matter of general concern which was before the courts were not such as to outweigh the considerations relied on by the Vienna Court of Appeal as to the adverse consequences of the diffusion of the impugned article for the authority and impartiality of the judiciary in Austria.

57. Given the amount of the fine and the fact that the publishing firm was ordered to be jointly and severally liable for payment of it (see paragraph 15 above), the sanction imposed cannot be regarded as disproportionate to the legitimate aim pursued.

58. The Court accordingly finds that the national courts were entitled to consider that the applicant's conviction and sentence were "necessary in a democratic society" for maintaining both the authority and the impartiality of the judiciary within the meaning of Article 10 § 2 of the Convention.

59. In sum, there has been no violation of Article 10 of the Convention.

FOR THESE REASONS, THE COURT

1. *Dismisses* unanimously the Government's preliminary objection;
2. *Holds* by seven votes to two that there has been no violation of Article 10 of the Convention.

Done in English and in French, and delivered at a public hearing at the Human Rights Building, Strasbourg, on 29 August 1997.

Signed: Rudolf BERNHARDT
President

Signed: Herbert PETZOLD
Registrar

In accordance with Article 51 § 2 of the Convention and Rule 55 § 2 of Rules of Court B, the partly dissenting opinion of Mr Casadevall, joined by Mr Jungwiert, is annexed to this judgment.

Initialled: R. B.
Initialled: H. P.

PARTLY DISSENTING OPINION OF JUDGE CASADEVALL, JOINED BY JUDGE JUNGWIERT

(*Translation*)

1. I agree that the Government's preliminary objection should be dismissed, but I am unable to concur with the majority as to the merits.

2. The freedom of expression enshrined in Article 10, one of the fundamental pillars of a democratic society, justifies circumscribing the States' margin of appreciation more narrowly. It follows that the exceptions laid down in Article 10, such as "national security" or "maintaining the authority and impartiality of the judiciary", are justified – in my opinion – only in particularly serious situations.

3. I accept that the interference had a legal basis in domestic law and that it pursued a legitimate aim. I do not, on the other hand, see that it was necessary.

4. I even doubt whether section 23 of the Media Act (see paragraph 23 of the judgment) is compatible with the Convention. Not only is it drafted in such broad terms that it would make it possible to restrict any comment on pending criminal cases as "capable of influencing the outcome of criminal proceedings", but in the instant case it was also interpreted in an abstract manner (see paragraph 17 of the judgment) – an approach which was, in my view, open to criticism.

5. While it is possible to understand that in some fields (public health, traffic) public-order requirements dictate that penalties may be imposed without it being necessary to prove that there is a real risk of any kind, this should not be so where the penalty entails restriction of one of the fundamental rights, in this instance the right to freedom of expression.

6. For such restrictions to be justified for the purposes of the Convention, it appears to me essential that it should be shown that the information and ideas in issue might pose a real, substantial risk – not merely a hypothetical one – to "national security", "the disclosure of information received in confidence" or "the authority and impartiality of the judiciary". The Vienna Court of Appeal considered that such an assessment of the risk was not necessary for the offence in section 23 of the Media Act to be made out (see paragraph 17 of the judgment).

7. For want of evidence allowing me to conclude that the statutory provision is invariably applied as it was in the instant case, I prefer to say that the reasons adduced by the Vienna Court of Appeal were not "sufficient" in relation to the legitimate aim pursued.

8. Admittedly, the majority stated – and I concur in their view – that in seeking to maintain "the authority and impartiality of the judiciary, the Contracting States are entitled to take account of considerations going – beyond the concrete case – to the protection of the fundamental role of courts in a democratic society" (see paragraph 40 of the judgment). For this reason, in the opinion of the majority, the fact that domestic law "did not require an actual result of influence on the particular proceedings to be proved does not detract from the justification for the interference".

9. In other words, the interference in issue was justified not on the basis that it was "capable of influencing the outcome of the proceedings" concerning Mr Androsch (a question of impartiality) but rather because it offended the principle that "the courts are the proper forum for the settlement of legal disputes" (a question of authority). I do not find this approach any more convincing.

10. It does not convince me, firstly, because the same requirement of an assessment of the danger at which the interference was directed should apply where the aim is to provide general protection for the authority or impartiality of the judiciary and, secondly, because that approach can only, in my view, be regarded as an *ex post facto* justification for the interference in issue.

11. It is clear from a reading of the Vienna Court of Appeal's judgment that only the question of the impartiality of the court that had tried Mr Androsch was at issue. To claim that by means of a single clause ("it can be inferred from the article that [the applicant] wished to usurp the position of the judges dealing with the case") the Vienna Court of Appeal intended to ensure the "acceptance of the courts as the proper forum for the determination of a person's guilt or innocence on a criminal charge" with the aim of preventing the "spectacle of pseudo-trials in the news media" (see paragraph 54 of the judgment) seems to me to be at the very least artificial.

12. The national authorities have not therefore adduced sufficient reasons to persuade me that the applicant's words in his article were such as to create a need for interference tantamount to a "pressing social need" (see the *Sunday Times* v. the United Kingdom (no. 2) judgment of 26 November 1991, Series A no. 217, pp. 28–29, § 50) when weighed against a journalist's right to freedom of expression and the public's right to information and ideas, even those "that offend, shock or disturb the State" (see the Vereinigung demokratischer Soldaten Österreichs and Gubi v. Austria judgment of 19 December 1994, Series A no. 302, p. 17, § 36).

13. I therefore consider that there has been a violation of Article 10 of the Convention.