

EGMR Urteil vom 13.12.2005, 66.298/01, 15.653/02 – *Wirtschafts-Trend-Zeitschriften-Verlags GmbH ./. Österreich*



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Leitsatz verfasst von Dr. *Clemens Thiele*, LL.M.

In the case of *Wirtschafts-Trend Zeitschriften-Verlagsgesellschaft m.b.H. (n° 3) v. Austria*, the European Court of Human Rights (Fourth Section), sitting as a Chamber composed of **Sir NICOLAS BRATZA, President, Mr G. BONELLO, Mr M. PELLONPÄÄ, Mr K. TRAJA, Mrs E. STEINER, Mr L. GARLICKI, Mr J. BORRERO BORRERO, judges**, and Mrs **F. ELENS-PASSOS, Deputy Section Registrar**, having deliberated in private on 22 November 2005, delivers the following

Judgement,

which was adopted on that date:

PROCEDURE

1. The case originated in two applications (nos. 66298/01 and 15653/02) against the Republic of Austria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by *Wirtschafts-Trend Zeitschriften-Verlagsgesellschaft m.b.H.* (“the applicant company”), on 9 February 2001 and on 27 March 2002 respectively.

2. The applicant company was first presented by Giger, Ruggenthaler and Simon, a company of lawyers practising in Vienna. It then changed its representation to Mr H. Simon, a lawyer practising in Vienna. The Austrian Government (“the Government”) were represented by their Agent, Ambassador E. Theuermann, Head of the International Law Department at the Federal Ministry for Foreign Affairs.

3. The applicant company alleged that its conviction under the Media Act and the injunction issued against it under the Copyright Act were in violation with its right to freedom of expression under Article 10 of the Convention.

4. The applications were 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 31 August 2004, the Court declared the applications 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 Fourth Section (Rule 52 § 1).

7. Neither the applicant company nor the Government filed observations on the merits (Rule 59 § 1).

8. On 13 December 2005 the Court decided to join the applications (Rule 42 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant is the owner and publisher of the weekly magazine “Profil”.

10. In its issue 25/1998 of 15 June 1998 the applicant company published an article about Mr R., at that time a member of Parliament, and his cohabitee Mrs G. The article, with the title “Diary of an escape” and the subtitle “Report. Several myths are entwined around P. R.’s trip to Brazil. The reconstruction of a banal reality”, described the couple’s flight from Austria in April 1998 as Mr R. was suspected of having committed the offences of aggravated fraud (*Betrug*) and fraudulent conversion (*Untreue*). After an international arrest warrant had been issued, Mr R. was arrested in Brazil on 5 June 1998. At the time of the events, great public interest in the criminal proceedings against Mr R. existed. After Mr R.’s arrest, Mrs G. had given interviews on these events. The article was accompanied by a photo, which appeared on another page, showing Mrs G. standing beside Mr R.

11. The article and its context, namely a short text accompanying photos showing the couple’s hotel and a bar in Brazil, contained the following statements:

“...Thus, the Lower Austrian mutation of ‘Bonnie and Clyde’ started on the last part of their trip, a four hour bus ride... (Also brach die niederösterreichische Mutation von Bonnie and Clyde zur letzten Etappe, einer vierstündigen Busfahrt...auf.)

...The first two weeks, ‘Bonnie and Clyde’ hardly ever left the hotel... (Die ersten beiden Wochen verlassen ‘Bonnie und Clyde’ das Haus praktisch nie.)

...‘Bonnie and Clyde’ from Lower Austria wish to rent the Mayor’s bar... (‘Bonnie und Clyde’ aus Niederösterreich wollen die Bar des Bürgermeisters pachten.)

...‘Bonnie and Clyde’ are dreaming of a decent life as pub owners... (‘Bonnie und Clyde’ träumen von einem bescheidenen Leben als Barbetreiber.)”

The article, when describing the arrest of Mr R., further stated :

“C. G., against whom no suspicion exists, stays behind. (Zurück bleibt C.G., gegen die nichts vorliegt.)”

A. Proceedings under the Media Act

12. On 20 November 1998 Mrs G. brought proceedings against the applicant company claiming compensation for defamation under Section 6 of the Media Act (*Mediengesetz*). Further she requested supplementary measures under the Media Act, such as the publication of the judgment. She stressed that the applicant company, by publishing the article at issue, had committed the offence of defamation under the Criminal Code (*Üble Nachrede*).

13. She argued that the comparison with the famous criminals ‘Bonnie and Clyde’ from the thirties, whose story was the basis of a film produced in the sixties, could have given the impression that she was also involved in the offences of Mr R.

14. On 7 April 1999 the Wiener Neustadt Regional Court (*Landesgericht*) dismissed Mrs G.’s claim. It found that the average reader would have understood “Bonnie and Clyde” as a synonym for a couple on the run and that it had been a pictorial description with a humorous and entertaining message. It considered that the average reader would have connected “Bonnie” with a woman who follows her partner “through thick and thin” and that the characterisation as “Bonnie” did not amount to an accusation of having participated in the offences of Mr R.

15. On 4 November 1999 the Vienna Court of Appeal (*Oberlandesgericht*) quashed this decision and remitted the case to the Regional Court. It observed that “Bonnie and Clyde” had been

violent criminals and found that the established connection between Mrs G. and “Bonnie” created an “inherent statement of having participated in criminal acts” even though “it had been expressly stated in the article that no suspicion had existed against Mrs G.”. It, therefore, concluded that the applicant company had committed the offence of defamation under Section 111 § 1 of the Criminal Code (*Strafgesetzbuch*) by publishing the article at issue and stated that its finding had to be taken into account by the Regional Court in its new decision.

16. On 3 February 2000 the Regional Court sentenced the applicant company to pay compensation of ATS 20,000 (1,453.46 euros) for defamation and to reimburse Ms G.’s costs of the proceedings and ordered it to publish an extract of its judgment in its magazine. Following the Court of Appeal’s line of argument it found, referring to the above mentioned passages of the incriminated article, that:

“... the well-known movie ‘Bonnie and Clyde’ described two ordinary people who make the American dream of liberty and wealth come true by stealing cars, robbing banks and killing people. (...) The reader primarily associates Bonnie with a criminal who had, together with her partner, robbed innumerable banks and had killed 14 persons within two years. (...) Nobody would have connected Bonnie only with a naive angel, who followed her partner devotedly but, rather, with a woman who would kill to assist the common purpose ‘escape’. (...) Beyond doubt the reader is forced to make a connection with capital crime. (...) The allegation of participating in criminal offences constitutes defamation within the meaning of Section 111 § 1 of the Criminal Code.”

17. On 22 March 2000 the applicant company filed an appeal and stressed, *inter alia*, that the incriminating passages had to be considered in connection with the article as a whole. It submitted that the article was written in an ironical style and could not have given the impression that Mrs G. had committed any criminal acts.

18. On 9 August 2000 the Court of Appeal dismissed the appeal and confirmed the Regional Court’s decision as a whole.

A.Proceedings under the Copyright Act

19. On 9 February 1999 Mrs G. applied to the Wiener Neustadt Regional Court for an injunction under Section 78 of the Copyright Act (*Urheberrechtsgesetz*) against the applicant company. She requested that the applicant company be ordered to refrain from publishing her picture without her consent in connection with reporting on the criminal proceedings against Mr R. or, in the alternative, that the applicant company be ordered to refrain from publishing her picture without her consent in connection with referring to her and Mr R. as “Bonnie and Clyde”. Furthermore, she requested an order for the publication of the judgment in the applicant company’s magazine.

20. She argued that the publication of her picture in connection with a report on the criminal proceedings against Mr R. violated her legitimate interests under Section 78 of the Copyright Act and that the comparison with the famous criminals “Bonnie and Clyde” could have given the impression that she had been involved in the offences of which Mr R. was accused.

21. The applicant company, in its observations, argued that the report at issue expressly mentioned that there were no criminal proceedings pending against Mrs G. and that the report was written in an ironical style and could not have given the impression that Mrs G. had committed any criminal acts. Moreover, she had willingly given interviews to the media and had her pictures taken by journalists. As regards the comparison of Mrs G. with “Bonnie”, the applicant company submitted that the reader of its magazine understood “Bonnie and Clyde” as a synonym for a couple on the run and not for violent criminals. Finally, it contended that the great public interest in the events justified the publication of Mrs G.’s picture.

22. On 19 February 1999 the Wiener Neustadt Regional Court granted an interim injunction (*einstweilige Verfügung*). It found the measure justified as the interest in the publication of Mrs G.’s picture violated her legitimate interests.

23. On 27 April 1999 the Court of Appeal allowed the applicant company’s appeal and dismissed Mrs G.’s application.

24. On 13 September 1999 the Supreme Court (*Oberster Gerichtshof*) partly allowed Mrs G.’s

extraordinary appeal on points of law and granted the interim injunction she had requested in the alternative, i.e. it ordered the applicant company to refrain from publishing Mrs G.'s picture without her consent in connection with referring to her and Mr R. as "Bonnie and Clyde".

25. The Supreme Court observed that Section 78 of the Copyright Act prohibited publishing a person's picture if the publication violated that person's legitimate interests and that the publication of her picture had to be considered together with the content of the published report. The court referred further to its case-law in which it had found that the publication of the picture of a spouse of a suspect was not of any informative value and that the concerned spouse's interest in secrecy, therefore, outweighed the interest of information. The court found, however, that in the present case Mrs G. was far more involved in the case of Mr R. than simply being Mr R.'s cohabitee or girlfriend, as she had prepared the escape with him and had finally escaped with Mr R. Therefore, the applicant company's interest in publishing her picture in principle outweighed Mrs G.'s legitimate interests in secrecy.

26. The court then argued that the text of the article at issue, compared Mrs G. with the female partner of the violent criminals "Bonnie and Clyde" and could give the impression to the readers of the magazine that Mrs G. as "Bonnie" had been involved in the criminal offences of her partner. The Supreme Court, thus, concluded that, although it seemed that Mrs G. had consented to the publication of her picture in connection with the criminal proceedings against Mr R., her legitimate interests were violated by the publication of her photo in combination with a comparison with the criminal "Bonnie".

27. On 2 February 2001 the Wiener Neustadt Regional Court granted a permanent injunction prohibiting the applicant company from publishing Mrs G.'s picture while comparing her and Mr R. with "Bonnie and Clyde" or while connecting her with the commission of criminal offences.

28. On 3 May 2001 the Court of Appeal dismissed the applicant company's appeal and ordered the applicant company to pay Mrs G.'s costs of the appeal proceedings.

29. On 12 September 2001 the Supreme Court, referring to its decision of 13 September 1999, rejected the applicant company's extraordinary appeal on points on law. This decision was served on 2 October 2001.

II. RELEVANT DOMESTIC LAW AND PRACTICE

30. Section 6 of the Media Act provides for the strict liability of the publisher in cases of defamation; the victim can thus claim damages from him. In this context "defamation" has been defined in Section 111 of the Criminal Code, 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."

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

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

This provision has been interpreted in the Supreme Court's case-law. In particular the Supreme Court has found that in determining whether the publication of a person's picture violated his or her "legitimate interests" regard is to be had to the accompanying text. Where the publisher of the picture claims that there was a public interest in its publication, the courts have to carry out a

weighing of the respective interests involved. As regards reporting on criminal cases, the Supreme Court has constantly held that there is no predominant public interest in the publication of the suspect's picture if it has no additional independent information value. The only effect is that the intensity of such reporting is increased by attaching the suspect's picture and, thus, making his or her appearance known to the public at large (see *News Verlags GmbH & CoKG v. Austria*, no. 31457/96, § 32, ECHR 2000-I, with reference to MuR 1990, p. 224; SZ 63/75, p. 373; MuR 1995, p. 64; MuR 1996, p. 33).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

32. The applicant company complained that its conviction under the Media Act and the injunction issued on it under the Copyright Act were in violation of its right to freedom of expression under Article 10 of the Convention.

The relevant part of Article 10 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 ...

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society ...for the protection of the reputation or rights of others...”

A. Whether there was an interference

33. The Court notes that it is common ground between the parties that the applicant company's conviction under the Media Act and the injunction issued on it under the Copyright Act constituted an interference with the applicant company's right to freedom of expression, as guaranteed by Article 10 § 1 of the Convention.

B. Whether the interference was justified

34. An interference contravenes Article 10 of the Convention unless it is “prescribed by law”, pursues one or more of the legitimate aims referred to in paragraph 2 and is “necessary in a democratic society” for achieving such an aim or aims.

1. “Prescribed by law”

35. The Court considers, and this was acknowledged by the parties, that the interference was prescribed by law, namely by Section 6 of the Media Act read in conjunction with Article 111 of the Criminal Code, and Section 78 of the Copyright Act respectively.

2. Legitimate aim

36. The Court further finds, and this was likewise not disputed between the parties, that the interference served a legitimate aim, namely “the protection of the reputation or rights of others” within the meaning of Article 10 § 2 of the Convention.

3. “Necessary in a democratic society”

(a) Arguments before the Court

37. As regards the applicant company’s conviction under the Media Act, the Government contended that the legendary criminal couple “Bonnie and Clyde” was well-known in Austria from various movies, and that the name “Bonnie” was primarily associated with a woman who committed crimes together with her partner and then tried in vain to escape criminal prosecution. The repeated characterisation of Mrs G. as “Bonnie” created, therefore, the impression that Mrs G. had participated in the offences of Mr R. The expression “Lower Austrian mutation of Bonnie and Clyde” further ridiculed Mrs G. The Government contended that the sole fact that Mrs G. had escaped with her life-companion, Mr R., was not sufficient to place her in the arena of public debate requiring her to display a higher degree of tolerance of criticism. Finally, the Government contended that in view of the relatively low amount of compensation the applicant company was ordered to pay, the Austrian courts’ decisions could not be regarded as disproportionate either. As to the injunction issued under the Copyright Act, the Government further commented that Mrs G. was pilloried by the publication of her picture as she had not been a ‘person in public life’ before. They argued that the Austrian courts did not prohibit the publication of Mrs G.’s photo in itself but its publication in connection with a comparison with the criminal couple “Bonnie and Clyde”.

38. The applicant company stated that it had nothing to add to the arguments already submitted in its application. There, it had argued that the interference with its right to freedom of expression was not necessary, in particular as the article explicitly stated that no suspicion existed against Mrs G. Further, it had argued that Mrs G. had laid herself open to public scrutiny when escaping together with a Member of Parliament and had given interviews to the media. Moreover, there had been great public interest in the events at issue and Mrs G. had willingly given interviews to the media and had her picture taken.

(b) The Court’s assessment

39. The Court recalls the essential function the press fulfils in a democratic society. Although the press must not overstep certain bounds, particularly as regards the reputation and rights of others, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest. Journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation (see, among many others, *Tammer v. Estonia*, no. 41205/98, § 62, ECHR 2001-I, with further references). Whereas the limits of permissible criticism are narrower in relation to a private citizen than in relation to politicians, private individuals lay themselves open to scrutiny when they enter the arena of public debate and then have to show a higher degree of tolerance (see *Jerusalem v. Austria*, no. 26958/95, §§ 38-39, ECHR 2001-II).

40. In the present case, the Austrian courts convicted the applicant company under the Media Act of defamation and ordered it to pay compensation. They further issued an injunction against the applicant company under the Copyright Act.

41. In proceedings under the Media Act, the courts noted that “Bonnie and Clyde” had been, above all, violent criminals. They, therefore, concluded that the established connection between Mrs G. and “Bonnie” in the applicant company’s article created an implicit statement of Mrs G.’s involvement in criminal acts which constituted the offence of defamation.

42. In the Court’s view, however, the mere fact that the article at issue referred several times to Mrs G. as “Bonnie” was not sufficient to mislead the reader as to her implication in the offences of Mr R. The Court notes in this regard that the criminal proceedings against Mr. R., a Member of Parliament, had created great public interest at that time and that the nature and scope of Mr R.’s offences were well-known to the public. The article at issue did, however, not deal with the pending proceedings against Mr R. but only with his escape and subsequent arrest. It was in this context that the article mentioned Mrs G., the cohabitee of Mr R., who had fled the country with him.

43. The Court notes that Mrs G. and Mr R. had fled Austria in April 1998 and that Mr R. had

been arrested in Brazil on 5 June 1998. The article, published on 15 June 1998, clearly did not intend to inform the reader about these events in itself which it presumed known to the public. Rather, as stated already in its title and subtitle, the article aimed to describe the more recent circumstances of the Mr R.'s escape and arrest. It did so in an ironic way, aiming to convey to the reader that the reality of this escape had been banal, contrary to what was claimed by certain rumours. As regards Mrs G., the article expressly stated that no suspicion existed against her.

44. The Court, therefore, finds that the conclusion that Mrs G.'s comparison with "Bonnie" implied an accusation of her involvement in criminal offences far-fetched. Given the article's content and ironical style and the fact that the term "Bonnie" was always used together with its correlative "Clyde", the Court rather considers that the average reader would have understood "Bonnie and Clyde" as a synonym for a couple on the run. The Court cannot find that by using this allusion the applicant company transgressed the bounds of acceptable journalism. The Court is strengthened in its view by the fact that Mrs G., by fleeing with Mr R. and subsequently giving interviews on the subject, had entered into the public arena and, therefore, had to display a higher degree of tolerance.

45. Thus, in the light of the circumstances of the case as a whole and notwithstanding the national authorities' margin of appreciation, the Court considers that the conviction of the applicant company under the Media Act was not based on sufficient reasons for the purposes of Article 10. This finding makes it unnecessary for the Court to pursue the Government's further argument that, in view of the relatively low amount of compensation which the applicant company was ordered to pay, the Austrian courts' decisions could not be regarded as disproportionate.

46. As regards the injunction issued against the applicant company under the Copyright Act, the Court notes that the Supreme Court, when prohibiting the publication of Mrs G.'s photo, found that in principle the applicant company was entitled to publish the photo, as its interest in publishing it outweighed Mrs G.'s interest in secrecy. It took into account that Mrs G. was not simply Mr R.'s cohabitee but had prepared his flight and actually left with him. The Supreme Court only prohibited the publication of Mrs G.'s picture in connection with reporting on Mrs G. and Mr R. as "Bonny and Clyde" on the ground that this could give the impression to the readers of the magazine that Mrs G. as "Bonnie" had been involved in the criminal offences of Mr R.

47. The Court notes that Mrs G., by accompanying Mr R., a member of parliament whose criminal proceedings were a subject of great public interest, in his escape, had entered the public arena and she, therefore, had to bear the consequences of her decision (see, *mutatis mutandis*, *Krone Verlag GmbH & Co. KG v. Austria*, no. 34315/96, § 37, 26 February 2002). The photo at issue did not disclose any details of Mrs G.'s private life and she had not objected to having it taken. Furthermore, the impugned statements referring to Mrs G. and Mr R. as "Bonnie and Clyde" were not published in the context of a heading or a short text accompanying Mrs G.'s photo, but appeared on another page, namely in the text and context of the above-cited article. The Court, for the reasons given above, does not share the Government's arguments that this article misled the reader as to Mrs G.'s implication in the offences of Mr R. Accordingly, the connection with that text does not provide "relevant" and "sufficient" reasons justifying the contested injunction against publishing Mrs G.'s photo.

48. In conclusion, the Court finds that the Austrian courts when convicting the applicant company under the Media Act and issuing an injunction against the applicant company under the Copyright Act, overstepped their margin of appreciation, and that these measures were not necessary in a democratic society. There has, therefore, been a violation of Article 10 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

49. 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

1. Proceedings under the Media Act

50. The applicant company claimed a total of 10,811.87 euros (EUR) for pecuniary damage. This amount consisted of EUR 1,453.46 in respect of the compensation it was ordered to pay, EUR 3,909.56 in respect of reimbursement of Mrs G.’s costs incurred in the domestic proceedings and EUR 5,448.85 for the loss of advertising income due to the publication of extracts of the judgment in its magazine “Profil”. The applicant company further claimed EUR 5,448.85 in respect of non-pecuniary damage for the loss of reputation suffered from the publication of the judgment.

51. The Government contested that the applicant company could claim any damages for publishing the judgment since the publication was made in a weekly magazine issued by the applicant company itself. They further contended that the amount claimed was, in any event, excessive, in particular as the applicant company had included in its calculation the costs of the announcement of the publication in the magazine’s table of contents and the costs of the publication of its own commentary on the judgment. As regards the claim for non-pecuniary damage, they contended that the finding of a violation provided sufficient just satisfaction. They did not comment on the other claims.

52. Having regard to the direct link between the applicant company’s claim concerning reimbursement of the compensation and the costs of the domestic proceedings it was ordered to pay to Mrs G. in the domestic proceedings and the violation of Article 10 found by the Court, the Court finds that applicant company is entitled to recover the full amount of 5,363.02 EUR in this respect. The Court further considers that there is also a direct link between the applicant company’s claim for loss of advertisement income due to the publications made in its magazine and the violation found (see *mutatis mutandis Scharsach and News Verlagsgesellschaft v. Austria*, no. 39394/98, § 50, ECHR 2003-XI). The Court, however, agrees with the Government that the claim appears excessive insofar as it also includes costs for the announcement of the publication in the magazine’s table of contents. The Court, therefore, having deducted these costs from the sum claimed, awards 4,761.91 EUR in this respect.

53. As regards the applicant company’s claim for non-pecuniary damage, the Court finds, like the Government, that the finding of a violation constitutes in itself sufficient just satisfaction.

2. Proceedings under the Copyright Act

54. The applicant company claimed pecuniary damage in the amount of EUR 1,230.71 in respect of the reimbursement of Mrs G.’s costs incurred in the domestic proceedings.

55. The Government accepted these costs.

56. The Court observes that the applicant company has furnished proof that it actually paid the above sum and that payment of the sum in question was a direct consequence of the court’s decisions in injunction proceedings, which the Court has found to be in breach of Article 10 of the Convention. The Court considers the claim justified and, consequently, awards the full amount, namely 1,230.71 EUR.

3. Total award

57. The Court, thus, awards the total amount of 11,355.64 EUR in respect of pecuniary damage.

B. Costs and expenses

1. Proceedings under the Media Act

58. The applicant company sought 3,866.69 EUR (including VAT) for costs and expenses incurred in the domestic proceedings and 1,693.82 EUR for costs incurred before the Court.

59. The Government did not comment on these claims.

60. The Court finds that the sums claimed by the applicant company appear reasonable and awards the full amount, namely 5,560.51 EUR.

2. Proceedings under the Copyright Act

61. The applicant company sought 16,427.58 EUR for costs and expenses incurred in the domestic proceedings and 4,016.02 EUR for costs incurred before the Court.

62. The Government did not comment on the costs claim for the domestic proceedings. As regards the claim concerning the Convention proceedings, they considered that they were excessive.

63. As to the costs of the domestic proceedings, the Court finds that they were actually and necessarily incurred. It remains to be assessed whether they were reasonable as to quantum. The Court observes in particular that the present case comprised two sets of proceedings, namely proceedings concerning the interim injunction and, subsequently, the main proceedings including several oral hearings. Both sets of proceedings were conducted before three instances. The Court, therefore, accepts that the applicant company's costs in the domestic proceedings were higher than the costs of the applicants in other comparable cases, which varied between 5,684.8 EUR and 10,997.385 EUR according to the circumstances (see *Krone Verlag GmbH & Co. KG v. Austria*, no. 34315/96, 26 February 2002 and *News Verlags GmbH & Co. KG v. Austria*, no. 31457/96, ECHR 2000-I; both concerning injunction proceedings under the Copyright Act). Nevertheless, it considers that the costs claimed are excessive. It therefore awards an amount of 13,000 EUR in this respect.

64. The Court further agrees with the Government that the applicant company's claims as regards the costs of the Convention proceedings are excessive. The Court notes in particular that the applicant company, after communication of the case, did not submit any further arguments as to the merits but referred in this regard to its submissions in its application. Moreover, the application was brought by the same lawyer and resembles the application brought by the applicant company against its conviction under the Media Act. Making an assessment on an overall basis, the Court awards 1,500 EUR under this head.

3. Conclusion

65. The Court, thus, awards the total amount of 20,060.51 EUR in respect of costs and expenses.

C. Default interest

66. 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. *Decides* to join the applications;
2. *Holds* that there has been a violation of Article 10 of the Convention in respect of the conviction of the applicant company under the Media Act and in respect of the injunction issued against the applicant company under the Copyright Act;

3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant company;
4. *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, the following amounts:
 - (i) EUR 11,355.64 (eleven thousand three hundred and fifty five euros sixty four cents) in respect of pecuniary damage;
 - (ii) EUR 20,060.51 (twenty thousand and sixty euros fifty one cents) in respect of costs and expenses;
 - (iii) any tax that may be chargeable on the above amounts;
 - (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;
5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 13 December 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Anmerkung*

I. Das Problem

Die **Bf.** ist Medieninhaberin und Herausgeberin des Wochenmagazins „profil“. Im zugrunde liegenden Ausgangsfall hatte das Nachrichtenmagazin „profil“ 1998 über die Flucht des früheren Abgeordneten *Peter Rosenstingl* (R.) berichtet und dabei ihn und seine *Lebensgefährtin G.* mehrmals als „**Bonnie & Clyde**“ bezeichnet. Unter dem Titel „Tagebuch einer Flucht“ wurde geschildert, wie sich das Paar im April 1998 nach Brasilien abgesetzt hatte, nachdem gegen Herrn R. ein Strafverfahren wegen des Verdachts der Untreue und des Betrugs eingeleitet worden war. In dem Artikel, der mit einem Foto des Paares illustriert war, wurden die beiden wiederholt „Bonnie und Clyde“ genannt. Im Zusammenhang mit der Schilderung der am 5.6.1998 in Brasilien erfolgten Festnahme von Herrn R. enthielt der Artikel folgenden Satz: „*Zurück bleibt C.G., gegen die nichts vorliegt.*“ Frau G. strengte am 20.11.1998 ein medienrechtliches Entschädigungsverfahren nach § 6 MedG an. Sie behauptete, die Bf. habe durch den Artikel den objektiven Tatbestand der üblen Nachrede erfüllt. Der Vergleich mit den Straftätern „Bonnie und Clyde“ hätte den Eindruck erweckt, sie sei an den von Herrn R. begangenen Straftaten beteiligt gewesen. Die österreichischen Gerichte gaben ihr Recht und verurteilten das Nachrichtenmagazin wegen Verleumdung. Außerdem wurde die Veröffentlichung eines Fotos der Klägerin, das neben dem Bericht abgebildet war, untersagt:

Der OGH gab dem auf § 78 UrhG gestützten Revisionsrekurs von Frau R. teilweise Folge und untersagte der Bf. mittels einstweiliger Verfügung, Bildnisse von Frau R. zu veröffentlichen, wenn gleichzeitig sie und Herr R. als „Bonnie und Clyde“ bezeichnet würden. Das österreichische Höchstgericht stellte fest, dass durch die Gleichsetzung von Herrn R. und Frau G. mit dem Verbrecherpaar „Bonnie und Clyde“ der Klägerin unterstellt werde, in die kriminellen Machenschaften von Herrn R. verwickelt zu sein.¹

Im medienrechtlichen Verfahren verurteilte das LG Wiener Neustadt im zweiten Rechtsgang die Bf.

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¹ OGH 13.9.1999, 4 Ob 163/99w – *Bonnie & Clyde*, MR 2000, 84 (*Korn*).

zur Zahlung einer Entschädigung in der Höhe von ATS 20.000,- (€1.453,46) und auferlegte ihr die Urteilsveröffentlichung.

Der beschwerdeführende Zeitschriftenverlag hat sich daraufhin gegen die österreichischen Urteile gewandt. Der EGMR hatte zu klären, ob die Bf in ihrem Recht nach Art 10 EMRK (Freiheit der Meinungsäußerung) durch ihre Verurteilung nach dem MedG und die Untersagung der Veröffentlichung von Bildern von Frau R. Nach § 78 UrhG verletzt wurde; gegebenenfalls, welche Entschädigung ihr zustand?

II. Die Entscheidung des Gerichts

Der EGMR erkannte einstimmig auf Verletzung von Art 10 MRK:

Es war unbestritten, dass die Verurteilung der Bf. nach dem MedG und der auf § 78 UrhG gestützte Unterlassungsauftrag einen Eingriff in das Recht der Bf. auf freie Meinungsäußerung darstellten. Außer Streit stand auch, dass der Eingriff in § 6 MedG iVm. § 111 StGB bzw. in § 78 UrhG gesetzlich vorgesehen war und dem legitimen Ziel des Schutzes des guten Rufes und der Rechte anderer diene. In dem Verfahren nach dem MedG stellten die Gerichte fest, es habe sich bei „Bonnie und Clyde“ um gewalttätige Straftäter gehandelt. Daraus schlossen sie, der zwischen Frau G. und „Bonnie“ hergestellte Zusammenhang beinhalte die Behauptung, sie sei in strafbare Handlungen verwickelt, was den objektiven Tatbestand der üblen Nachrede erfülle.

Nach Ansicht der Straßburger Richter reichte die bloße Tatsache, dass Frau G. in dem Artikel wiederholt als „Bonnie“ bezeichnet wurde, nicht aus, um beim Leser den falschen Eindruck zu erwecken, sie wäre an den von Herrn R. begangenen Straftaten beteiligt gewesen. Das Strafverfahren gegen den Nationalratsabgeordneten R. hatte großes öffentliches Interesse hervorgerufen und die Art und Umstände der ihm vorgeworfenen Straftaten waren allgemein bekannt. Der umstrittene Artikel bezog sich allerdings nicht auf das anhängige Verfahren gegen Herrn R., sondern nur auf seine Flucht und anschließende Festnahme. In diesem Zusammenhang wurde auch seine Lebensgefährtin G. erwähnt, die ihn auf seiner Flucht begleitet hatte.

Die beiden hatten Österreich im April 1998 verlassen und Herr R. wurde am 5.6.1998 in Brasilien verhaftet. Der am 15.6.1998 erschienene Artikel beabsichtigte nicht, die Öffentlichkeit über diese Ereignisse zu informieren, die als bekannt vorausgesetzt wurden. Er zielte vielmehr darauf ab, die jüngeren Umstände der Flucht und der Verhaftung zu beschreiben. Dies geschah in einer ironischen Art, um den Leser davon zu überzeugen, dass die Flucht – entgegen manchen Gerüchten – in Wirklichkeit banal war. Bezüglich Frau G. wurde ausdrücklich festgehalten, dass kein Verdacht gegen sie bestand.

Angesichts des Inhalts des Artikels und seines ironischen Stils war der EGMR der Ansicht, dass der durchschnittliche Leser „Bonnie und Clyde“ als Synonym für ein Pärchen auf der Flucht verstanden hätte. Durch diese Anspielung hat die Bf. die Grenzen des zulässigen Journalismus nicht überschritten. Die Straßburger Richter wurden in dieser Ansicht dadurch bestärkt, dass Frau G. durch ihre Flucht mit Herrn R. und die Interviews, die sie darüber gegeben hatte, die öffentliche Arena betreten hatte und daher einen höheren Grad der Toleranz an den Tag legen musste.

Was den Unterlassungsauftrag nach § 78 UrhG betraf, hielt der EGMR fest, dass durch das umstrittene Foto keine Details über ihr Privatleben preisgegeben wurden und die Abgebildete der Aufnahme auch nicht widersprochen hatte. Überdies fand sich die umstrittene Bezeichnung von Frau G. und Herrn R. als „Bonnie und Clyde“ nicht in einer Überschrift oder einer Bildunterschrift, sondern auf einer anderen Seite im Text des eingangs erwähnten Artikels.

Im Ergebnis stellten die Straßburger Richter fest, dass die Gerichte durch die Verurteilung der Bf. nach dem MedG und den Unterlassungsauftrag nach dem UrhG ihren Ermessensspielraum überschritten haben und diese Maßnahmen nicht in einer demokratischen Gesellschaft notwendig waren.

Daher lag eine Verletzung von Art 10 EMRK vor, die eine **Entschädigung nach Art 41 EMRK** in Höhe von **EUR 11.355,64 für materiellen Schaden** sowie in Höhe von **EUR 20.060,51 für Kosten und Auslagen** nach sich zog.

III. Kritische Würdigung und Ausblick

Die Richter in Straßburg entschieden zu Gunsten der des Verlages. Der ironische Stil, in dem der Artikel gehalten war, hatte es dem durchschnittlichen Leser erkennbar gemacht, dass „Bonnie & Clyde“ bloß als ein Synonym bzw. eine Metapher für ein Paar auf der Flucht verwendet wurde. *Rosenstingls* Lebensgefährtin war zudem selbst an die Öffentlichkeit getreten, indem sie Interviews zu der Flucht gegeben hatte. Darüber hinaus stellte der inkriminierte Artikel ausdrücklich klar, dass keine Vorwürfe gegen sie persönlich bestanden. Auch der Abdruck des Fotos war zulässig, da er einerseits mit der (ausdrücklichen) Zustimmung der Abgebildeten erfolgte und andererseits überhaupt keine privaten Details zeigte. Die Straßburger Richter gingen von dem Grundsatz aus: „Wer die öffentliche Arena betritt, muss sich eine intensivere Berichterstattung gefallen lassen.“

Ein Versuch diese **medienfreundliche und meinungsfreiheitsfördernde Entscheidung** für die **Auslegung des § 78 UrhG** fruchtbar zu machen, muss bei den pathetischen Worten Josef *Kohlers*² ansetzen, die uns durch die „offiziellen“ EB zur Stammfassung des UrhG³ tradiert sind:

„Nun hat aber niemand das Recht zu sagen, 'er wandle mit der Wolkenhülle der Pallas Athene in der Welt herum, und es sei verboten, den gespenstigen Schein zu zerstören, der sich um ihn hülle. Der Mensch lebt nicht in einer Verdeckung und Vermummung; er lebt als Naturwesen offen und ehrlich in der Welt; mithin wird der, den man auf solche Weise wiedergibt, nicht etwa unbefugt in eine neue Welt hinein geschoben, sondern man hält nur das Bild fest, mit welchem er leibhaftig der Öffentlichkeit gegen übertritt.“

In der Tat gehen die Straßburger Gerichte von einem etwas robusteren Persönlichkeitsrecht desjenigen aus, der von sich aus die öffentliche Arena betritt und dessen veröffentlichtes Bildnis nicht erschlichen wurde. Mangels letzterer Voraussetzungen bedeutet das vorliegende Urteil keinen Freibrief für die sog. Paparazzi-Fotografie und steht auch durchaus im Einklang mit der viel diskutierten Entscheidung im Fall „*Caroline*“.⁴

Nach bisheriger österr Rsp zu § 78 UrhG genügte für eine Verletzung der persönlichen Interessen des Abgebildeten durch die Verbreitung die bloße **Möglichkeit zu Missdeutungen**,⁵ wie z.B. bei der Gleichsetzung eines auf der Flucht befindlichen Paares mit dem amerikanischen Verbrecherpaar *Bonnie & Clyde*.⁶ Der Vergleich konnte auch dahingehend verstanden werden, dass die eine der beiden abgebildeten Personen, die unschuldig war, in die Machinationen der zweiten abgebildeten Person verstrickt ist oder unter dem Verdacht sonst begangener strafbarer Handlungen stand.

Nunmehr ist eine verstärkte Interessenabwägung mit der durch Art 10 MRK verbrieften Meinungsäußerungsfreiheit des Verbreiters geboten. Als **Rechtfertigungsgründe**⁷ kann er in concreto nämlich die Zustimmung der Abgebildeten und ein eigenes überwiegendes Veröffentlichungsinteresse einwenden. Die **Wertungen des Medienrechts** sind nach zwischenzeitig

² Kunstwerkrecht (Gesetz vom 9. Januar 1907), Ausgabe im Verlag Enke, Stuttgart (1908), 158 f.

³ EB 1936 zit nach *Dillenz*, Materialien zum österreichischen Urheberrecht (1986), 161.

⁴ EGMR 24.6.2004, von *Hannover/Deutschland*, MR 2004, 246 (*Ennöckl/Windhager*); vgl dazu *Ennöckl*, Public figures im Rundfunkrecht in *Berka/Grabenwarter/Holoubek* (Hrsg), Medienfreiheit versus Inhaltsregulierung (2006), 95 ff; *Holubek*, „*Caroline*“ und die Rechtsprechung des EGMR zu Art 10 EMRK in Österreichische Juristenkommission (Hrsg), *Caroline* und die Folgen: Medienfreiheit am Wendepunkt? (2004), 9; *Ennöckl/Windhager*, Entscheidungsanmerkung, MR 2004, 252; *Beuthien*, Das Recht auf nichtmediale Alltäglichkeit, K&R 2004, 457, 458; *Herrmann*, Anmerkung zum Urteil des EGMR vom 24. 6. 2004, ZUM 2004, 665; ablehnend *Grabenwarter*, Schutz der Privatsphäre versus Pressefreiheit: Europäische Korrektur eines deutschen Sonderweges? AfP 2004, 309; *Scheyli*, Konstitutioneller Anspruch des EGMR und Umgang mit nationalen Argumenten – Kommentar zum Urteil des EGMR vom 24. Juli 2004 im Fall *Caroline von Hannover vs Deutschland*, EuGRZ 2004, 628.

⁵ OGH 15.3.1988, 4 Ob 20/88 – *Lachen ist gesund*, MR 1988, 52 (*Walter*) = ÖBl 1988, 162 = SZ 61/58; 14.3.1989, 4 Ob 5/89 – *Frau des Skandalrichters*, MR 1989, 54; 6.12.1994, 4 Ob 1140/94 – *Kriminalberichterstattung*, MR 1995, 229; 13.9.1999, 4 Ob 163/99w – *Bonnie & Clyde*, MR 2000, 84 (*Korn*); 19.10.1999, 4 Ob 220/99b – *Verhältnis des Peter R.*, MR 2000, 90 = RdW 2000/121, 150.

⁶ OGH 13.9.1999, 4 Ob 163/99w – *Bonnie & Clyde*, MR 2000, 84 (*Korn*):

⁷ Durch die Beseitigung der Rechtswidrigkeit kann dem verschuldensunabhängigen Unterlassungsanspruch wirksam entgegengetreten werden.

gefestigter Rsp⁸ jedenfalls dort, wo der gleiche Sachverhalt geregelt wird, bei der Auslegung des § 78 UrhG zu berücksichtigen, und zwar nicht nur im Rahmen der Kriminalberichterstattung, sondern auch bei der Bildberichterstattung über andere Themen.⁹ Die Einbeziehung der Wertungen des Medienrechts gilt insbesondere für § 7a MedG.¹⁰

Die Interessenabwägung iS von § 78 UrhG zwischen dem Persönlichkeitsschutz des Abgebildeten und dem Veröffentlichungsinteresse des Mediums als Ausfluss der freien Meinungsäußerung führt bei **Berücksichtigung der Wertungen des Mediengesetzes** zu dem Ergebnis, dass eine ehrverletzende, im Tatsachenkern richtige Äußerung auch durch die Veröffentlichung eines Fotos des Angegriffenen illustriert werden darf.¹¹ Wird im Begleittext allerdings der – unrichtige – Eindruck erweckt, auch die abgebildete Person sei verhaftet worden, werden dadurch (auch) deren Bildrechte gemäß § 78 UrhG verletzt.¹²

Die Freiheit der Meinungsäußerung ist eine wesentliche Grundlage einer demokratischen Gesellschaft und gilt auch für *Aussagen*, die als *verletzend, schockierend oder irritierend* empfunden werden.¹³ Das anzuwendende *nationale Gesetz* muss **iS des Art 10 MRK ausreichend präzise formuliert** sein, damit die betroffenen Personen – falls notwendig mit entsprechender juristischer Beratung – die rechtlichen Konsequenzen, die eine bestimmte Handlung auslösen kann, in einem den Umständen entsprechenden Ausmaß vorhersehen können. Diese Voraussetzung ist hinsichtlich der Regelung des Bildnisschutzes gemäß **§ 78 UrhG** auf Grund der ständigen Rsp des OGH dazu gegeben.¹⁴

Der EGMR ist dazu berufen, in letzter Instanz ein Urteil darüber zu fällen, ob eine *einschränkende nationale Maßnahme*, z.B. ein Gerichtsurteil, mit der durch Art 10 MRK geschützten Meinungsäußerungsfreiheit *vereinbar* ist.¹⁵ **Art 10 MRK schützt nicht nur den Inhalt** von Meinungen und Informationen, *sondern auch die Form*, in der sie vermittelt werden.¹⁶ Die Gerichte dürfen deshalb hinsichtlich der Wahl der journalistischen Darstellungsform bzw. der Technik der Berichterstattung nicht ihre eigenen Ansichten an die Stelle derjenigen der Presse setzen.¹⁷

Unter dem Eindruck der Straßburger Judikatur hat sich die Interessenabwägung in Österreich z.T. Erheblich gewandelt. So waren weder die österr Rsp zum **zusätzlicher Nachrichtenwert durch Abbildung** noch die "**Prangerwirkungformel**" mit der daraus resultierenden Ungleichbehandlung zwischen Wort- und Bildberichterstattung länger zu "halten".

Bei nicht allgemein bekannten Personen des öffentlichen Lebens ist bei der gemeinsam mit einem

⁸ OGH 23.9.1997, 4 Ob 184/97f – *Ernestine K.*, ÖB1 1998, 88 = MR 1997, 302 = JBl 1998,55 = SZ 70/183 m Anm Pfersmann, ÖJZ 2000, 89; OGH 26. 5.1998, 4 Ob 96/98s – *Prozeßbericht*, MR 1998, 191 (*Korn*); 3.5.2000, 4 Ob 110/00f – *Chinesen-Koch*, ÖB1 2001, 284 = MR 2000/301 - EvBl 2000/187 = RdW 2000/512, 539; 10.7.2001,4 Ob 162/01d – *Gaston G.*, ÖB1 2002, 151 = ZUM-RD 2002, 337 = MR 2001, 287 (*Korn*) = EvBl 2001/205.

⁹ OGH 1.6.1999, 4 Ob 142/99g – *Miserabler Verleumder*, MR 1999, 215 = SZ 72/97 m Anm Pfersmann, ÖJZ 2002, 669f = ZUM-RD 2000, 1; 13.7.1999, 4 Ob 326/98i – *Wunderheiler*, MR 1999, 275 (*Korn*) = ZUM-RD 2000, 159 m Anm Pfersmann, ÖJZ 2000, 90.

¹⁰ OGH 23.9.1997, 4 Ob 184/97f – *Ernestine K.*, ÖB1 1998, 88 = MR 1997, 302 = JBl 1998, 55 = SZ 70/183; 24.2.1998, 4 Ob 385/97i – *Ing. P.*, MR 1998, 126 (*Korn*) = ZUM-RD 1998, 428; 13.9.2000, 4 Ob 216/00v – *Bedingte Haftentlassung*, MR 2001, 92 (*Korn*).

¹¹ OGH 1.6.1999, 4 Ob 142/99g – *Miserabler Verleumder*, MR 1999, 215 = SZ 72/97 m Anm Pfersmann, ÖJZ 2002, 669, 670 = ZUM-RD 2000, 1; 13.7.1999, 4 Ob 326/98i – *Wunderheiler*, MR 1999, 275 (*Korn*) = ZUM-RD 2000,159 m Anm Pfersmann, ÖJZ 2000, 90.

¹² OGH 19.10.1999,4 Ob 220/99b – *Verhältnis des Peter R.*, MR 2000, 90.

¹³ OGH 8.6.1994, 4 Ob 75/94 – *Marmor, Stein und Eisen*, MR 1994, 163 = SZ 67/114 = ÖB1 1995, 136 = Schulze/124 (*Dittrich*); 17.9.1996 – *Ich werde dafür sorgen*, ÖB1 1997, 138 = MR 1997, 26; 28.1.1997 – *Sozialabbau und Bildungsklausur*, MR 1997, 145.

¹⁴ EGMR 11.1. 2000, Beschwerde Nr 31.457/ 96 - *News Verlags GmbH & CoKG gegen Österreich* - MR 2000, 221 = ÖJZ 2000, 394.

¹⁵ EGMR 11.1. 2000, Beschwerde Nr 31.457/96 - *News Verlags GmbH & CoKG gegen Österreich* - MR 2000, 221 = ÖJZ 2000, 394.

¹⁶ OGH 28.6.1994, 4 Ob 75/94 – *Marmor, Stein und Eisen*, MR 1994, 163 = SZ 67/114 = ÖB1 1995, 136 = Schulze/124 (*Dittrich*); EGMR 11.1.2000, Beschwerde Nr 31.457/96 – *News Verlags GmbH & CoKG gegen Österreich*, MR 2000, 221 = ÖJZ 2000, 394.

¹⁷ EGMR 11.1.2000, Beschwerde Nr 31.457/96 – *News Verlags GmbH & CoKG gegen Österreich*, MR 2000, 221 = ÖJZ 2000, 394.

Text erfolgten Bildveröffentlichung, wodurch die Person des Angegriffenen der Öffentlichkeit erst optisch bekannt gemacht wird, eine Interessenabwägung vorzunehmen. Wenn die **Textberichterstattung** im Licht des § 1330 Abs 2 ABGB zulässig war, weil mit ihr ein zumindest im Kern wahrer Sachverhalt mitgeteilt wurde, kann für eine **Bildberichterstattung** im selben Zusammenhang **nichts anderes gelten**, weil auch dadurch kein unrichtiger Eindruck vermittelt wird. Ein Bildbericht über einen erweislich wahren Sachverhalt ist auch dann zulässig, wenn er für den Betroffenen nachteilig, bloßstellend oder herabsetzend wirkt. Die **Interessenabwägung iS des § 78 UrhG** zwischen dem Persönlichkeitsschutz des Abgebildeten und dem Veröffentlichungsinteresse des Mediums **als Ausfluss der freien Meinungsäußerung** fällt diesfalls zu Gunsten des Mediums aus.¹⁸

IV. Zusammenfassung

Nach Auffassung des Europäischen Menschenrechtsgerichtshofes in Straßburg haben die österreichischen Gerichte bei der Interessenabwägung ihr Ermessen zugunsten der Persönlichkeitsrechte der Betroffenen und zu Lasten der Meinungsäußerungsfreiheit der beschwerdeführenden Zeitschrift überschritten. Die Verurteilungen waren daher in einer demokratischen Gesellschaft nicht notwendig gewesen.

¹⁸ OGH 20.12.2001, 6 Ob 249/01p – *Schönheitschirurgie*, MR 2002, 88 = RdM 2002, 51 = RdW 2002/282.