

June 2005

Vereinigung Bildender Künstler v. Austria (dec.) - 68354/01

Decision 30.6.2005 [Section I]

Article 10

Article 10-1

Freedom of expression

Injunction prohibiting exhibition of a painting showing public persons in sexual positions: *admissible*

The applicant, an association of artists, organised an exhibition which among other works included a painting depicting a number of people from public life nude and in sexual positions (the faces were blown up photos from newspapers). One of the persons who appeared in the painting, M., was at the time an Austrian politician and member of the National Assembly. M. brought proceedings against the applicant, which were dismissed by the Commercial Court on the ground that the painting, which resembled a comic strip, obviously did not represent reality. However, the court acknowledged that the painting could have produced a debasing effect on M., but that the applicant association's freedom of artistic expression outweighed M.'s personal interests. Moreover, as the painting had been subsequently damaged by a visitor who had covered it in red paint, M. was no longer recognisable and there was therefore no danger of recurrence. However, in appeal proceedings, the Court of Appeal found that the painting constituted a "debasing of M.'s public standing" and issued an injunction prohibiting the applicant association from showing the painting at exhibitions or publishing photos of it, and ordered the payment of compensation.

Admissible under Article 10.