

Press release issued by the Registrar

CHAMBER JUDGMENT
VEREINIGUNG BILDENDER KÜNSTLER v. AUSTRIA

The European Court of Human Rights has today notified in writing its Chamber judgment¹ in the case of *Vereinigung Bildender Künstler v. Austria* (application no. 68354/01).

The Court held, by four votes to three, that there had been a **violation of Article 10** (freedom of expression) of the European Convention on Human Rights.

Under Article 41 (just satisfaction) of the Convention, the Court held, by four votes to three, that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant association. The Court awarded the applicant association, by four votes to three, 12,286.74 euros (EUR) in respect of pecuniary damage and EUR 15,950.16 for costs and expenses. (The judgment is available only in English.)

1. Principal facts

The applicant association, Vereinigung Bildender Künstler Wiener Secession, is an association of artists based in the Secession building, Vienna. The Secession, an independent gallery, is one of Austria's best-known art galleries and is devoted entirely to exhibitions of contemporary art.

As part of the association's 100th anniversary celebrations, the applicant association held an exhibition entitled "The century of artistic freedom" between 3 April and 21 June 1998. Among the works shown was a painting entitled "Apocalypse", which had been produced for the occasion by the Austrian painter Otto Mühl.

The painting, measuring 450 cm by 360 cm, was a collage of 34 public figures – including Mother Teresa, the Austrian cardinal Hermann Groer and the former head of the Austrian Freedom Party (FPÖ) Jörg Haider - all naked and involved in sexual activities. The bodies of those figures were painted but the heads and faces were depicted using blown-up photos taken from newspapers, the eyes of some of the people portrayed being hidden by black bands. Among those portrayed was Mr Meischberger, a former general secretary of the FPÖ until 1995, who at the time of the events was a member of the National Assembly, a mandate he held until April 1999. Mr Meischberger was shown gripping the ejaculating penis of

¹ Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

Mr Haider while at the same time being touched by two other FPÖ politicians and ejaculating on Mother Teresa.

The painting raised a considerable amount of controversy in the Austrian press and was ultimately vandalised by a visitor to the exhibition, who covered the part which showed Mr Meischberger, among others, with red paint.

On 22 June 1998 Mr Meischberger brought proceedings under section 78 of the Copyright Act against the applicant association, seeking an injunction prohibiting it from exhibiting and publishing the painting and requesting compensation. He argued that the painting debased him and his political activities.

On 6 August 1999 Vienna Commercial Court dismissed Mr Meischberger's action. However, on 24 February 2000, Vienna Court of Appeal found that the painting constituted a debasement of Mr Meischberger's public standing and issued an injunction against the applicant association prohibiting it from displaying the painting at exhibitions and ordering it to pay 20,000 Austrian Schillings (EUR 1,453.46) in compensation and costs to Mr Meischberger. The applicant association appealed unsuccessfully.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 12 March 2001 and declared admissible on 30 June 2005.

Judgment was given by a Chamber of seven judges, composed as follows:

Christos **Rozakis** (Greek), *President*,
Loukis **Loucaides** (Cypriot),
Françoise **Tulkens** (Belgian),
Elisabeth **Steiner** (Austrian),
Khanlar **Hajiyev** (Azerbaijani),
Dean **Spielmann** (Luxemburger),
Sverre Erik **Jebens** (Norwegian), *judges*,

and also Søren **Nielsen**, *Section Registrar*.

3. Summary of the judgment¹

Complaint

Relying on Article 10, the applicant association complained that the Austrian courts' decisions forbidding it to continue exhibiting a painting by Otto Mühl had violated its right to freedom of expression.

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

Decision of the Court

The Court found that forbidding the applicant association from exhibiting the painting did interfere with its right to freedom of expression but that that interference was “prescribed by law” (section 78 of the Copyright Act) and pursued the legitimate aim of “protection of the rights of others”. However, the Court did not accept the Austrian Government’s argument that the interference also pursued the legitimate aim of protecting public morals, as neither the wording of the Copyright Act nor the terms in which the relevant court decisions were phrased, referred to that aim.

Concerning the necessity of the interference, the Court noted that the painting, in its original state, depicted Mr Meischberger in a somewhat outrageous manner. However, the figures in the painting were caricatures and the painting satirical. Satire was a form of artistic expression and social comment which, by exaggerating and distorting reality, was intentionally provocative. Accordingly, any interference with an artist’s right to such expression had to be examined with particular care.

The Court considered that the painting did not concern Mr Meischberger’s private life, but his public standing as a politician. The scene in which he was portrayed could be understood to constitute some sort of counter-attack against the Austrian Freedom Party, whose members had strongly criticised the painter’s work.

The Court recalled that Mr Meischberger, who at the time of the events was an ordinary member of parliament, was certainly one of the less well known of all the people appearing on the painting and, since his retirement from politics, was hardly remembered by the public at all. The Court also observed that, even before Mr Meischberger brought proceedings, the part of the painting showing his body was completely covered by red paint. At the very latest, from that time onwards, Mr Meischberger's portrayal – even assuming that he was still recognisable – was certainly diminished, if not totally eclipsed, by the portrayal of all the other, mostly more prominent, people who were still completely visible.

The Court lastly noted that the Austrian courts’ injunction was not limited either in time or in space. It therefore left the applicant association, which directed one of the best-known Austrian galleries specialising in contemporary art, with no possibility of exhibiting the painting, irrespective of whether Mr Meischberger was known, or was still known, at the place and time of a potential exhibition in the future.

The Court concluded that the Austrian courts’ injunction was disproportionate to the aim pursued and therefore not necessary in a democratic society, in violation of Article 10.

Judge Loucaides expressed a dissenting opinion and Judges Spielmann and Jebens expressed a joint dissenting opinion. These are annexed to the judgment.

The Court’s judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.