

# AUT-2024-1-001

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## Keywords of the Systematic Thesaurus

- 3.16 · General Principles - Proportionality
- 3.17 · General Principles - Weighing of interests
- 3.18 · General Principles - General interest
- 5.3.12 · Fundamental Rights - Civil and political rights - Security of the person
- 5.3.21 · Fundamental Rights - Civil and political rights - Freedom of expression
- 5.3.23 · Fundamental Rights - Civil and political rights - Rights in respect of the audiovisual media and other means of mass communication
- 5.3.24 · Fundamental Rights - Civil and political rights - Right to information
- 5.3.32 · Fundamental Rights - Civil and political rights - Right to private life
- 5.3.32.1 · Fundamental Rights - Civil and political rights - Right to private life - Protection of personal data

## Keywords of the alphabetical index

Media, Audiovisual / Attack, Terrorist / Picture, Victim, Terrorist  
attack, Unidentifiable / Picture, Dead body, Assassin, Unidentifiable / Terrorist attack, Social  
media posts, Photos, Videos / Terrorist attack, Emergency services

## Headnotes

Article 30.1 of the Federal Act on Audiovisual Media Services implements the constitutional obligation to respect human dignity and the fundamental rights of others with regard to media service providers by making them responsible for their activities accordingly. Whether specific broadcast content meets these requirements must be determined by weighing up the freedom of expression and broadcasting and the objectives for the sake of which these freedoms are constitutionally guaranteed in [Article 10 ECHR](#) against the human dignity and personal sphere of those affected by the reporting, which are also guaranteed by fundamental rights, such as the principle of equality and [Article 8 ECHR](#).

The fact that a terrorist attack is an event of particular public interest and that subsequent journalistic reporting entails a special editorial responsibility in the design of this reporting is recognised by [Article 10 ECHR](#).

Reporting about an ongoing terrorist attack entails a complex responsibility on the side of audiovisual media. On the one hand, such reporting should, as far as possible, avoid furthering the aims of terrorists by spreading fear or fanaticising their own supporters. On the other hand, [Article 10 ECHR](#) also protects and recognises the interest in raising public awareness of the

effects of inhuman violence through shocking, hurtful and disturbing images in connection with terrorist attacks. Furthermore, reporting responsibilities include taking into account the protection of the privacy of the victims of a terrorist attack and the public interest in the management of the situation by the emergency services in order to restore the security of the population when reporting. As a result, reporting on a terrorist attack not only verbally, but also by depicting victims in an unidentifiable manner, is within the journalistic freedom of audiovisual media.

## Summary

I. On the evening of 2 November 2020, the applicant, the broadcaster of a TV programme, reported spontaneously and simultaneously with the course of events on a terrorist attack that took place in Vienna that evening. The applicant also showed videos and photos of the events recorded by third parties that were made available to the applicant. Specifically, the videos and photos showed a gunfight between the assassin and police officers, in which one of the police officers was hit, the medical treatment of passers-by, some of whom were seriously injured, and the body of the assassin. These images (videos and photos) were broadcasted contrary to the call by the Vienna Police Department not to post any images or videos of the events on social media.

In December 2021, the Communications Authority found that the applicant had violated Article 30.1 of the Federal Act on Audiovisual Media Services (hereinafter, the "AMD-G") by broadcasting that programme because parts of the reporting that evening had not respected the human dignity of the persons concerned. Furthermore, it found that the reporting also violated Article 41.5 AMD-G because it did not comply with the required journalistic diligence with regard to the call of the Vienna Police Department, in particular not to post any videos on social media.

After the Federal Administrative Court had confirmed that decision, the applicant referred that case to the Constitutional Court, claiming that the administrative court's judgment violated the right to freedom of expression.

II. The Constitutional Court observed that Article 30.1 AMD-G implements the constitutional obligation to respect human dignity and the fundamental rights of others with regard to media service providers by making them responsible for their activities accordingly. Whether specific broadcast content meets these requirements must be determined by weighing up the freedom of expression and broadcasting and the objectives for the sake of which these freedoms are constitutionally guaranteed in [Article 10 ECHR](#) against the human dignity and personal sphere of those affected by the reporting, which are also guaranteed by fundamental rights, in this context in particular by the principle of equality and [Article 8 ECHR](#).

The Constitutional Court held, however, that in the case at hand, the Federal Administrative Court had disregarded the specific meaning of [Article 10 ECHR](#) when it assumed that the video and image reporting of the applicant was primarily "serving sensationalism" and considered the applicant to be obliged to dispense with such image material in the specific situation of reporting on a terrorist attack and to essentially make do with verbal reporting.

The Constitutional Court stated that, first of all, the Federal Administrative Court attached too little importance to the interest in information protected by [Article 10 ECHR](#) in journalistic reporting in an audiovisual media service about a terrorist attack (even one that is still ongoing). The fact that a terrorist attack, such as the one that took place in Vienna on the evening of 2 November 2020, was an event of particular public interest is recognized by [Article 10 ECHR](#), as is the fact that this journalistic reporting – all the more so about an ongoing terrorist attack – entails a special editorial responsibility in the design of this reporting.

It stated that this responsibility includes, on the one hand, taking into account the protection of the privacy of the victims of a terrorist attack and the public interest in the management of the situation by the emergency services in order to restore the security of the population when reporting. It held that this also means that reporting should, as far as possible, avoid furthering the aims of terrorists by spreading fear or fanaticising their own supporters.

On the other hand, the Constitutional Court noted that the public interest in information about a terrorist attack also includes the task of reporting to make the public aware of the cruelty and senselessness of the violence and the suffering inflicted on innocent people who are not involved in the conflicts that form the background to a terrorist attack. In this context, it noted that image reporting is of particular importance because images are more powerful than words in conveying the suffering of people and sensitising the public to this suffering. It stated that [Article 10 ECHR](#) also protects and recognizes the interest in raising public awareness of the effects of inhuman violence through shocking, hurtful and disturbing images in connection with terrorist attacks.

The Constitutional Court acknowledged that the media service provider is faced with a complex task when it comes to fulfilling its responsibility both towards the legal positions protected by Article 30.1 AMD-G (and the underlying constitutional law) and towards its role in the public opinion-forming process protected by [Article 10 ECHR](#) as the basis of a pluralistic democracy. This is all the more the case when they have to react unexpectedly to a terrorist event and report on it. It is precisely in such constellations that timely journalistic reporting in audiovisual media services for the purpose of informing the public is of particular importance and that [Article 10 ECHR](#) protects their freedom of reporting precisely in order not to leave the field of public communication in such situations exclusively to social media under their specific communication conditions.

The Constitutional Court stated that, in the light of [Article 10 ECHR](#), the balance between the interest in reporting and the protection of human dignity and personality of the persons concerned cannot depend on the fact that – even if this protection of human dignity and personality also protects the closer social environment of the persons depicted from suffering and grief – in the course of the subsequent expected processing of the first terrorist attack in Austria after decades, the person depicted in an unidentifiable manner of the police officer who became the victim of the terrorist attack will in any case be recognisable for his social environment in retrospect.

It noted that the same applies if the Federal Administrative Court, disregarding the importance of the public interest in information, assumes that the image of the dead assassin presents him

to the public in a helpless state, so that the applicant should have chosen another, less severe means of reporting than broadcasting the image in question. In this context, it found that reporting on the assassin's death not only verbally or in text form, but also depicting the dead body in a way that makes it unidentifiable as a person, is in any case within the journalistic freedom of the complainant, which is protected by [Article 10 ECHR](#), also with regard to the fundamental rights of the assassin.

The Constitutional Court held that it is reasonable for the public and thus for people to be confronted with the truth about the effects of terrorist attacks in a shocking, disturbing and offensive manner if the appropriate and not excessive use of relevant image reporting is intended to create the public concern that is a prerequisite for people who are informed about such events in the media to be able to participate and assess the effects of the violence.

It further recalled that Article 41.5 AMD-G provides that reporting and information broadcasts in all television programmes must comply with recognised journalistic principles. The Constitutional Court noted that the Federal Administrative Court had considered these requirements to have been violated by the image reporting in question because the applicant broadcasted the video and image material even though the security authorities had expressly called on people not to post videos and photos on social media during the terrorist attack because this could endanger both the emergency services and the civilian population.

The Constitutional Court analysed the Federal Administrative Court's reasoning which assumed, firstly, that the call by the Vienna Police Department not to disseminate videos and images on social media also applied to their dissemination on television programmes. Secondly, it recalled that the Federal Administrative Court considered Article 41.5 AMD-G to have been violated because the video and image reporting of the complainant was suitable to obstruct the police operation and, in particular, to provide the perpetrators with information that gave them significant advantages.

In this respect, the Constitutional Court found that the appeal of the Vienna Police Department in question cannot be understood as a request to refrain from journalistic image reporting on the terrorist attack and its effects, including the police operation. It held, however, that its significance, which must undoubtedly be taken into account in the context of journalistic diligence, must be assessed in a differentiated manner for the dissemination of video and image material in social media and in the course of journalistic reporting in television programmes.

The Constitutional Court found that, in the light of [Article 10 ECHR](#), the Federal Administrative Court would therefore have had to explain in detail the reasons why it considered which specific video and image reporting to be suitable for jeopardising the security and civil protection concerns behind the Vienna Police Department's appeal. A generalised view, such as that taken by the Federal Administrative Court, that journalistic diligence would have required a complete ban on video and image reporting, restricts the applicant's freedom of reporting in a way that is not necessary in a democratic society. In particular, in the context of journalistic reporting, the Constitutional Court stated that it is the task and responsibility of the persons creating the television programme to weigh the public interest in information against the security and

personal protection interests that support the appeal of the Vienna Police Department (a responsibility that cannot be expected in the case of postings on social media).

As a result, the Constitutional Court repealed the challenged judgment for violation of the applicant company's right to freedom of expression.

### **Cross-references**

European Court of Human Rights:

- *Animal Defenders International v. The United Kingdom* (GC), no. 48876/08, 22.04.2013;
- *De Haes and Gijssels v. Belgium*, no. 19983/92, 24.02.1997;
- *Handyside v. The United Kingdom* (GC), no. 5493/72, 07.12.1976;
- *Jersild v. Denmark* (GC), no. 15890/89, 23.09.1994;
- *Lingens v. Austria* (GC), no. 9815/82, 08.07.1986;
- *Oberschlick v. Austria* (GC), no. 11662/85, 23.05.1991;
- *Sunday Times v. The United Kingdom* (GC), no. 6538/74, 26.04.1979;
- *Schweizerische Radio- und Fernsehgesellschaft SRG v. Switzerland*, no. 34124/06, 21.06.2012.