

The Apprentice in Austria? - How freedom of speech clashes with right to privacy and honor in film and politics

Sebastian Schwarz

At the end of 2024, the movie “The Apprentice”, a biopic about Donald Trump, is all over theaters, which might be a result of the recent political events that emerged around American presidential election. Even though the motion picture was released on 11th of October¹ and thus almost a month before election day, the timing most likely wasn’t picked coincidentally. The plot focuses on a period of Donald Trump’s career as a businessman during the 1970s and 80s, and shares depictions of intimate insights in his way of doing business, his treatment of women and his private life. Having seen this movie, the first question that arose, would a similar movie about an Austrian politician be legal? Do public figures have different protection of their personal rights in Austria?

Firstly, it is important to mention that the Austrian legal system has many differences to the American one, so it may be a good idea, not to shed light on this exact movie rather than the main topics and issues it raises. This involves the question of whether and how the privacy right’s boundaries can be determined by other competing rights especially concerning of public figures. In this regard family relationships are of special concern. Furthermore, the movie includes a memorable scene, which includes very cruel depictions of Donald Trump abusing his former wife, Ivana Trump. While supporters of the production, like actress Maria Bakalova, argue for the freedom of speech,² Trump supporters view it as defamatory.³ While these are both valid points, it is essential to shed light on their legal background.

Is everything covered by artistic freedom?

When discussing this topic, many people argue everything is covered by artistic freedom. Indeed, in Art 17a Staatsgrundgesetz (“StGG”) the production of art is protected. This paragraph is a special form of the freedom of speech and is part of the Austrian constitution, which is why it has special weight. In addition, it includes the dissemination and teaching of art. But, when talking about artistic freedom, one should always consider its limits. A curtail problem arises, when an artist intrudes the private life of a person.

Protection of family and private life

Alongside the artistic freedom in Art 17a StGG, the European Convention of Human Rights (“ECHR”) provides the freedom of expression,⁴ but additionally the protection of private and family life, too.⁵ While filmmakers could benefit from the freedom of speech, it is limited by the right to respect private and family life, which has to be evaluated on a case by case basis. Art 8 EHCR as well as Art 10 EHCR

¹ Cf *Tim Lammers*, Donald Trump Movie ‘The Apprentice’ Gets Digital Streaming Date, <https://www.forbes.com/sites/timlammers/2024/10/22/donald-trump-movie-the-apprentice-gets-digital-streaming-date/> (accessed November 28, 2024).

² Cf *Ethan Shanfeld*, Maria Bakalova on Becoming Ivana Trump, That Controversial ‘Apprentice’ Rape Scene and Donald Trump’s Cease-and-Desist Letter, <https://variety.com/2024/film/news/maria-bakalova-ivana-trump-the-apprentice-donald-rape-scene-1236177249/> (accessed November 22, 2024).

³ Cf *Léonie Chao-Fong*, Trump lawyers seek to block US release of biopic The Apprentice, <https://www.theguardian.com/us-news/article/2024/may/24/trump-apprentice-film-cease-and-desist> (accessed November 22, 2024).

⁴ Cf Art 10 EHCR.

⁵ Cf Art 8 EHCR.

include a second paragraph, which establishes the exceptions of the article. Thus, it is allowed to set limits so long as it is necessary in a democratic society and serves a particular in the paragraph listed interests. When two human rights, such as these two, collide this is the case. By then, a weighing of interests has to be done.⁶ Among academics, it is agreed that politicians and those, who influence the public development, such as entrepreneurs and well-known artists, are qualified as public figures. That goes along with a reduction of their privacy.⁷

Examples from ECHR, Peter Lingns and Bruno Kreisky

This reduction is based on the case *Lingens v. Austria*⁸ decided by the ECHR. Conflicting parties were the “profil” journalist, Peter Lingns and the Federal Chancellor and President of the Austrian Socialist Party at the time, Bruno Kreisky. Lingens wrote two articles, in which he criticized Kreisky harshly. The headline of the second article was called “Reconciliation with the Nazis, but how?” Needless to say, it shed a bad light on the person in question. Nevertheless, the court shared the defendant’s view, that this was a value-judgments, as it is the journalist’s task to emphasize provocative opinions and criticize politicians. This judgement has served as a cornerstone ever since.⁹ Therefore, in Europe, this public figure status might lead to an obstacle for politicians in having intimate relations, because they have to accept a broader spectrum of media coverage.

Nevertheless, the reduction must not be interpreted in a way that results in the complete abolition of privacy.¹⁰ A possible violation is covered by §7 Medien Gesetz “MedienG” (subsidiary §1328a Allgemeines Bürgerliches Gesetzbuch “ABGB”). Thus, in Austria the family of a politician will often be covered by the right for privacy.¹¹ However, the scope of privacy is always defined by the person itself. Everybody decides on their own, which details to share with the public.¹² According to this logic, while politicians like Donald Trump take their children and wife with them on stage at a lot of events, Austrian politicians tend to keep their family and work life in different spheres. So, their cases have to be viewed individually.

To sum up, while something can be private information for one person, at the same time it can be a subject of public interest for somebody else. However, there is a space for one’s most fundamental privacy, which is protected, regardless of their public figure status. As such, the relationship between father, son and sibling can’t be the topic of a film provided the character is based on a real-life person, who explicitly did not agree to the production.¹³ However, one must put into consideration a possible public figure status of the sibling, too. Furthermore, it depends on how public a certain relationship is held. From that point of view, the film could have crossed the line in that regard.

Between defamation and valid coverage

However, the most controversial scene the movie offers probably remains the one, in which Trump rapes his former wife, Ivana Trump. In this regard, I would recommend taking a look at §7b MedienG,

⁶ Cf Masing in Grabenwarter/Holoubek/Leitl-Staudinger, Grundfragen der Medien und Kommunikationsfreiheit (2023) p 34.

⁷ Cf Graf-Wintersberger, Lebensbild und Bereicherung (2018) p 85 f.

⁸ Cf ECHR 8.7.1986, 9815/82, Lingens v Austria.

⁹ Cf Graf-Wintersberger, Lebensbild und Bereicherung (2018) p 85.

¹⁰ Cf Berka in Berka/Heindl/Höhne/Noll, Mediengesetz Praxiskommentar⁴ §7 Rz 9.

¹¹ Cf Reischauer in Rummel, ABGB 3 § 1328a Rz 3 (Stand 1.1.2004, rdb.at).

¹² Cf Berka in Berka/Heindl/Höhne/Noll, Mediengesetz Praxiskommentar⁴ (2019), §7 Rz 29 f.

¹³ Cf Berka in Berka/Heindl/Höhne/Noll, Mediengesetz Praxiskommentar⁴ §7 Rz 9.

which claims with reference to Art 6 ECHR that anybody, who was not sentenced, must not be presented as a criminal. Nevertheless, this law per se is only applicable to governmental bodies, which production companies do not qualify as such. After all, human rights mainly address governmental bodies, not private citizens. However, mass media has a special role, in which it is also applicable, as the following case shows. There was an ECHR case *Shuvalov vs Estonia* concerning this critical role of the media. After accusations of bribery arose and the person in question was released, there was a press release, which was titled “A judge suspected of accepting a bribe”. The court came to the conclusion that this made the prematurely reflection of a guilty man, contradictorily to the principle of innocent until proven guilty.¹⁴

Keeping that in mind, because of their major influence on the public opinion filmmakers should pay very close attention this law. Although, §7b (2) Z 5 MedienG gives another exception. If the accusation is based on a credible quote of a third party, it is within the margin of the law to spread this information under the condition that there is public interest.¹⁵ Having mentioned this, one can assume that there is public interest in how a presidential nominee treats women. In addition, there is a sworn testimony by Ivana Trump saying she was raped by Mr Trump, even if in later developments she deemphasized her statement. In the course of later events Ivana Trump withdrew her testimony to secure a settlement. But regardless of this withdrawal, it would remain a credible quote on the basis of media coverage in terms of §7b (2) Z 5 MedienG.¹⁶

Moreover, there is the argument that showing Mr Trump raping his former wife is an act of defamation. The Austrian equivalent to such an accusation would be §6 MedienG (subsidiary §1330 (2) ABGB). Yet, in order to protect journalists, who research carefully on public figures, §6 (2) Z MedienG provides a similar exception to the one in §7b MedienG, in favor of the journalist. According to this, it requires public interest and accurate research. Considering that there are many statements by Ivana Trump and sworn testimonies, arguing Mr Trump really did violate here sphere by harassing and even raping her, in Austrian law defamation most likely wouldn't be relevant in this case.

Let's balance interests

So in the end, there really is no complete conclusion to this topic, as for the most part it remains a question of arguing interests. While filmmakers in Austria enjoy a wide range of freedom, that is secured by Art 10 ECHR and Art 17a StGG, politicians are protected, too. This is based on Art 8 ECHR, a paragraph in the same constitutional rank and results in the aforementioned weighing of interest. To sum up, it is essential to always consider all the circumstances and the particular situation. One movie can be a violation of privacy, while another one about another person can be covered by law.

VALC Tip

To anyone who is interested in the movie in question I would of course recommend “The Apprentice – The Trump Story” preferably in theaters, but currently also available on Google Play Films and Apple TV. Finally, I am happy to add that Sebastian Stan, the actor who magnificently embodied Donald

¹⁴ Cf ECHR 29.5.2012, 39820/08 and 14942/09, *Shuvalov v Estonia*.

¹⁵ Cf *Berka* in *Berka/Heindl/Höhne/Noll*, *Mediengesetz Praxiskommentar*⁴ §7b Rz 27.

¹⁶ Cf *Jane Mayer*, *Documenting Trump's Abuse of Women*,

<https://www.newyorker.com/magazine/2016/10/24/documenting-trumps-abuse-of-women> (accessed November 29, 2024).

Trump, is nominated for an Academy Award in the category "Actor in a Leading Role". Let's all cross our fingers that his efforts will not stay unrewarded.

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- *Welser, Rudolf/Kletecka, Andreas* Grundriss des bürgerlichen Rechts 1¹⁵ (2018)

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Law

- §1328a ABGB
- §1330 ABGB
- Art 6 EHCR
- Art 8 EHCR
- Art 10 EHCR
- §6 MedienG
- §7 MedienG
- §7b MedienG

Case Law

- ECHR 8.7.1986, 9815/82, *Lingens v Austria*.
- ECHR 29.5.2012, 39820/08 and 14942/09, *Shuvalov v Estonia*.