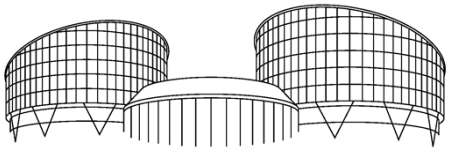

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF BIELAU v. AUSTRIA

(Application no. 20007/22)

JUDGMENT

Art 10 • Freedom of expression • Suspended disciplinary fine imposed on practising doctor for making scientifically untenable statements about ineffectiveness of vaccines • Relevant and sufficient reasons • Fair balance struck between competing interests • Sanction proportionate

Prepared by the Registry. Does not bind the Court.

STRASBOURG

27 August 2024

FINAL

27/11/2024

This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.

In the case of Bielau v. Austria,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Tim Eicke*, President*,
Gabriele Kucsko-Stadlmayer,
Faris Vehabović,
Armen Harutyunyan,
Anja Seibert-Fohr,
Ana Maria Guerra Martins,
Sebastian Răduleţu*, judges*,

and Simeon Petrovski, *Deputy Section Registrar,*

Having regard to:

the application (no. 20007/22) 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 an Austrian national, Mr Klaus Bielau ("the applicant"), on 13 April 2022;

the decision to give notice to the Austrian Government ("the Government") of the applicant's complaint concerning the restriction on the exercise of his right to freedom of expression under Article 10 of the Convention;

the parties' observations;

Having deliberated in private on 11 June 2024,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The application concerns disciplinary proceedings against the applicant, a practising doctor, for certain statements on his "holistic medicine" website concerning the general ineffectiveness of vaccines. He complained under Article 10 of the Convention that the disciplinary sanction imposed on him had violated his right to freedom of expression.

THE FACTS

2. The applicant was born in 1955 and lives in Graz. He was represented by Mr M. Damitner, a lawyer practising in Graz.

3. The Government were represented by their Agent, Mr H. Tichy, Head of the International Law Department at the Federal Ministry for European and International Affairs.

4. The facts of the case may be summarised as follows.

5. The applicant is a general practitioner (*Arzt für Allgemeinmedizin*) in Styria (*Steiermark*). He also has a "holistic medicine" (*Ganzheitsmedizin*) website, on which he describes himself as Dr K. Bielau, practice for self-healing and homeopathy, author, expert on vaccinations and vaccine

damage (*Praxis für Selbstheilung und Homöopathie, Autor, Sachverständiger für Impfungen und Impfschäden*).

6. On this website the applicant posted the following article on vaccination (*Impfen*) (status as of 27 June 2016):

"Vaccination

Death by tick ¿????¿¿¿¿????¿

A heretical essay (*Ein ketzerischer Essay*) – only vaccination really protects!

A few weeks ago, there was a report in this country, a headline, a page 1 lead in all the local newspapers, and it even rippled beyond the borders that a girl had died as a result of a tick bite.

1

The reactions were expected and overwhelming. Even in die-hard non-vaccinating families, fears were running high, people who were otherwise rather neutral about these things ran to the vaccinators (*Impfärzten*); many pharmacies were in danger of running out of vaccines. Satisfied faces were seen on those who were not earning too little from it (or so they say). Vaccination educators and critics (*Impf-Aufklärer und -kritiker*) were disgraced and shamed, they should be feathered and tarred and sent to prison, these irresponsible agitators (*Hetzer*) against science; doctors who do not vaccinate should be banned from practising, the internet and TV and round tables (*Stammtische*) were unanimous ... because only vaccination protects! The tragic death was presented, purely and brightly (*blank und pur*), as a consequence of not vaccinating – and the majority of people fall for it.

So, if you can die from a tick bite, why shouldn't this girl have died from it?

2

... because with a reasonably realistic, that is to say sensible understanding of nature, we cannot die from the bite of a tick. What we call a virus, literally a poison, is a pathogenic agent (*Erreger*) of various diseases, a speculation, an assumption, a supposition that is completely unproven (*durch nichts bewiesen*); a working hypothesis at best. Depending on the circumstances, we can fall ill or die from the bite of a poisonous snake or scorpion; there is no question that we are dealing with a veritable poison. Not so with the non-poisonous tick. This may lead to skin irritation or inflammation as a sign of a physical, healing reaction.

Interlude (*Intermezzo*)

After a conversation with A.S. (head of the science editorial department of the magazine ...), who has since become a friend, I would like to make it quite clear that I am in no way denying the existence of viruses, bacteria and the like – they just, as I said, have a different biological function to that presented in conventional medicine and biology.

And further

So what's the deal with meningitis? Every headache is a more or less mild irritation of the meninges (*Gehirnhäute*). If I get too much sun, especially in early summer, then I get a headache, sometimes even sunstroke. The body tries to neutralise this excess

sun, to get rid of it; there is swelling on the brain, which means there is usually a mild inflammation with heat, pain, weakness, often nausea and vomiting, etc. If this is blocked by our anxious lack of understanding – plus medication or pronounced physical weakness – healing processes in the brain-spinal cord system are hindered, even paralysed. This can possibly lead to the failure of the entire control system, in other words to death. We are therefore familiar with symptoms of meningitis as an attempt to heal. Associating these with a virus as the trigger is completely arbitrary and scientifically untenable (*vollkommene Willkür, wissenschaftlich nicht haltbar*). Lumbar punctures can sometimes detect antibodies associated with viruses that have also been found in ticks. Nothing more.

3

If we do not understand nature, illnesses appear to be evil accidents of nature (*böse Zufälle der Natur*). However, if we see them as the body's efforts to heal which we should not hinder, everything becomes much easier. That's why: Only vaccination protects! And it really does. Vaccination with an understanding of natural connections, education – and courage to listen to our own hearts, which means courage to listen to our intuition. This is never possible if we are paralysed by the habitual fears born out of a collective lack of understanding.

4

Why can chemical vaccinations never protect against disease? The answer, like everything that makes sense, is simple: we do not fall ill through bacteria and viruses; these are helpers or, in the case of viruses, broken cell nuclei (*zerbrochene Zellkerne*), that is, metabolic products that are excreted or reincorporated into the body. As simple as the processes in nature are, as long as we remain complicated and fearful, we will not understand the connections and will remain fearful beings, immature victims. Therefore, those who doubt should not stop doubting until we have found what suits us. Doubt is a possibility, like a healing illness, which will lead to recovery if we inform ourselves and examine the issues in question from all sides. It is not for nothing that we are told to test everything and keep what is good. Despair awaits those who lack the courage to have healthy doubt, which will be resolved by the heart and common sense into clear, joyful and cheerful insight; yes, the one view ... it comes from and leads to the eternal laws of nature ...

Literature:

J. Fridrich, Vaccination seen through the eyes of the heart (*Impfen mit den Augen des Herzens betrachtet*)

K. Bielau, A turning point in medicine, Part 1, Part 2 (*Wendezeit der Medizin, Teil 1, Teil 2*)

A. Zoebel, Read this book before you get vaccinated (*Lesen Sie dieses Buch bevor Sie Impfling*)

Question vaccination at last!

Why vaccinate?

Vaccination – freezing in fear"

I. PROCEEDINGS BEFORE THE DISCIPLINARY COUNCIL

7. On 27 June 2017, following a hearing, the Disciplinary Commission for Styria and Carinthia of the Disciplinary Council (*Disziplinarrat*) of the Austrian Medical Association (*Österreichische Ärztekammer*) found the applicant guilty of disciplinary offences under section 136(1)(1) and (2) of the Medical Practitioners Act (*Ärztegesetz*, see paragraph 16 below). It found that, in the above article on vaccination (see paragraph 6 above), he had made statements (i) denying the existence of pathogenic viruses; (ii) claiming that vaccinations never protected against diseases; (iii) claiming that nature knew no diseases; and (iv) claiming that not a single disease had disappeared through vaccination. The Disciplinary Council based its reasoning on an expert report by Dr G., a university professor and a prominent immunologist, concluding that the statements in question were not in line with the state of science and medical experience. The applicant had presented the risks of health-related preventive measures (*die Risiken gesundheitlicher Vorbeugemaßnahmen*) in a one-sided and negative manner. Objective information would consider advantages and disadvantages and would not rely on "superficial, unspecified references to other sources of information". By providing unobjective information, the statements in the applicant's article on vaccination on his website violated section 53 of the Medical Practitioners Act and paragraph 1 of the Regulation on Medical Practitioners and the Public (see paragraphs 15 and 18 below). Accordingly, the applicant had damaged the reputation of the medical profession under section 136(1)(1) of the Medical Practitioners Act and breached his professional duties under section 136(1)(2) of the same law. Pursuant to section 139(1) and (3) of that law (see paragraph 17 below), the Disciplinary Council fined the applicant 2,000 euros (EUR), suspended pending a probationary period of one year. He was further ordered to pay EUR 1,500 for the costs of the disciplinary proceedings.

II. PROCEEDINGS BEFORE THE DOMESTIC COURTS

A. Before the Regional Administrative Court

8. On 12 December 2017 the applicant lodged a complaint against the decision of the Disciplinary Council (see paragraph 7 above) with the Styria Regional Administrative Court (*Landesverwaltungsgericht*), relying on his right to freedom of expression. He submitted that the statements on his website needed to be read in context and that anyone with any sense would understand what he meant. It was a provocative use of words intended to make people think. In his opinion, his website was not directly related to his professional practice and there was nothing untrue or unobjective on it, just unusual and pointed language. With regard to the expert report, he considered

that, as a conventional doctor (*Schulmediziner*), the expert could not help but judge from his own point of view "without any holistic view". He considered it arbitrary to admit as public opinion only narrow, supposedly scientific findings of academic points of view.

9. On 24 October 2018 the Regional Administrative Court held an oral hearing, in the presence of Dr K., a university professor and a specialist for "medicine, medical and chemical laboratory diagnostics" (*Medizin, medizinische und chemische Labordiagnostik*), who presented a second expert opinion. The court examined the impugned statements made on the applicant's website (see paragraph 6 above). His oral submissions at the hearing, in so far as they were reproduced in the court's subsequent decision, were as follows:

> "Bacteria and viruses are not the cause of diseases, that is 100% certain for me. For me, it is not about faith, but about experience and insight.
>
> Vaccination has not eradicated or made a single disease disappear ...
>
> Nature knows diseases. When I wrote on my homepage that nature knows no illnesses, it was a peppy, provocative formulation to get people thinking. Acute illnesses are cleansing processes, as are chronic ones, of course. But acute ones in particular. The word 'catarrh' comes from the Greek and means 'to flow out'. Our grandparents still referred to coughs and colds as 'catarrh'. All illnesses are cleansing processes of the organism, body and soul, which can become chronic if they are not understood and suppressed.
>
> I do not see myself as primarily called to treat or cure, but to educate in order to enable free choices. Poisoning someone by vaccinating them goes against my ethos. I would not vaccinate anyone, but I would not advise anyone against it either, but would refer them to colleagues who do vaccinate ...
>
> I do not disagree with scientific practice, everyone is right. I just have a different point of view, which can also be scientifically substantiated. The question is: what is science? I assume that viruses are not the cause of various diseases. Viruses exist, but they are not pathogens (*Krankheitserreger*).
>
> There is TBE [tick-borne encephalitis], but not as a result of a tick bite ...
>
> Medication impedes healing processes in the brain and spinal cord system. The acute symptoms are suppressed. You have to read the homepage as a whole, not just sentence by sentence ...
>
> When I am asked why vaccinations are supposed to protect against a disease, I answer: Why should vaccinations protect against disease? I explain that, from a holistic perspective, health and illness are flowing processes that depend on countless factors (psychological, stress, burnout, lack of freedom, coercion, physical resources, nutrition, etc.). Microorganisms in the body are responsible for healing and cleansing processes. Microorganisms are bacteria or fungi, for example pus is always a cleansing process (*pus bonum et laudabile*). If the body is strong enough, it carries out an expulsion by itself, otherwise you have to help (for example cutting open ulcers, etc.) ..."

10. On 12 November 2018 the Regional Administrative Court dismissed the applicant's complaint as unfounded. It quoted extensively from the

statements made on the applicant's website on vaccination and the oral submissions made during the hearing (see paragraphs 6 and 9 above).

In its detailed decision, the Regional Administrative Court referred to medical facts established by the WHO, the concurring opinions of both experts, all the applicable provisions of domestic law and the case-law of the Supreme Administrative Court, according to which the restriction of freedom of expression of doctors served the protection of health, as patients should be able to trust that doctors, in the exercise of their profession, complied with their professional duties. The trustworthiness of doctors could be jeopardised if they unequivocally stated in their publications, lectures and other public statements that they would not administer the vaccinations required according to the state of medical science in a specific treatment or advised their patients against such vaccinations without informing them of different opinions. Furthermore, the authorities had to be able to rely on the trustworthiness of doctors in the exercise of their profession because complete control was not possible. Non-professional behaviour could therefore also indicate that doctors could not be trusted to provide careful patient care.

The Regional Administrative Court further referred to Article 10 of the Convention, the relevant case-law of the Court and to academic literature. It examined the impugned statements (see paragraph 6 above) one by one and found, as the experts had formulated, that they were not in line with the current state of medical science, some of them (for example the claim that nature knew no diseases) not even in line with reason (*entspricht nicht dem heutigen Stand der Wissenschaft oder gar der Vernunft*). The applicant had dealt with the issue of vaccination in a purely one-sided and negative manner. Referring to tick-borne infections, like Lyme disease and tick-borne encephalitis, as well as hepatitis B and C (the latter showing that a disease was not a cleansing process), the court held that, according to the current state of science, a specific vaccination protected against a particular disease to a very high percentage. In any event, information about the risk, frequency and seriousness of the consequences of medical intervention or prevention would always have to be provided in the light of the damage to be prevented.

The Regional Administrative Court emphasised that it was part of the medical duty of care to provide information to persons under one's care in a professional manner, including information about the risk, frequency and severity of the consequences of the medical intervention or precautionary measure, taking into consideration the harm to be prevented. It was a violation of the principles of evidence-based medicine to advise against vaccinations without a contraindication in a personal consultation and could call into question professional trustworthiness. Since a protective vaccination represented an interference with the fundamental right to physical integrity, a patient's consent had to be obtained beforehand. For this very reason, professionally sound medical information from doctors was the basis for a positive or negative decision with regard to protective vaccination, especially

because of possible (contra-)indications, which medical laypersons were usually unable to weigh up for themselves.

The Regional Administrative Court referred to section 53(1) of the Medical Practitioners Act (see paragraph 15 below), which prohibited doctors from providing unobjective and untrue information in connection with the exercise of their profession, and to paragraph 1 of the Regulation on Medical Practitioners and the Public (see paragraph 18 below), which prohibited doctors from providing any information that was unobjective, untrue or detrimental to the reputation of the medical profession. It concluded that the applicant's statements on vaccination on his website had the potential to damage the reputation of doctors practising in Austria and breached the professional duties he had undertaken to observe. The applicant had consequently breached section 136(1)(1) and (2) in conjunction with section 53(1) of the Medical Practitioners Act and paragraph 1 of the Regulation on Medical Practitioners and the Public (see paragraphs 15-16 and 18 below). These provisions provided for a restriction of freedom of expression which was permissible for the protection of health.

As regards the amount of the fine, the Regional Administrative Court noted that, according to the applicant's own statements, he had a monthly income of EUR 1,200, was responsible for the care (*sorgepflichtig*) of two minor children and owned a house and several apartments. The court considered these statements implausible (*unglaubwürdig*), as a doctor with his or her own medical practice was expected to have a monthly income of at least EUR 3,000. It accordingly upheld the fine of EUR 2,000 imposed on the applicant, suspended pending a probationary period of one year.

B. Before the Constitutional Court

11. On 29 January 2019 the applicant lodged a complaint with the Constitutional Court (*Verfassungsgerichtshof*), alleging a violation of his right to freedom of expression.

12. On 18 June 2019 the Constitutional Court declined to deal with the applicant's complaint on the grounds that the legal issues raised did not require specific constitutional consideration. It referred the decision to the Supreme Administrative Court (see paragraph 14 below).

C. Before the Supreme Administrative Court

13. On 7 August 2019 the applicant lodged an extraordinary appeal (*ausserordentliche Revision*) with the Supreme Administrative Court (*Verwaltungsgerichtshof*). He again relied on his right to freedom of expression and submitted, *inter alia*, that the Regional Administrative Court had applied the law in an unconceivable manner (*denkunmöglich*) in its decision (see paragraph 10 above) and that section 53 of the Medical

Practitioners Act in conjunction with paragraph 2 of the Regulation on Medical Practitioners and the Public (see paragraphs 15 and 18 below) was a form of advertising restriction. The statements on his website had however been the expression of his opinion as an author and not as a doctor advertising his services. His statements had not been intended to attract new patients, but rather to give the general public information concerning vaccinations so that they could form their own opinions and make free decisions. They had also not been made in the exercise of his profession, which was required by section 53(1) of the Medical Practitioners Act (see paragraph 15 below). He also denied that he had disseminated unobjective or untrue information or information that was detrimental to the reputation of the medical profession.

14. On 28 October 2021 the Supreme Administrative Court dismissed the applicant's appeal as inadmissible. In its detailed reasoning, the court, referring to its previous case-law (see paragraph 10 above, as well as the decision summarised in paragraph 19 below), essentially stated that a breach, through certain statements, of the duty set out in the Regulation on Medical Practitioners and the Public (see paragraph 18 below) to provide purely objective and true information and information that was not detrimental to the reputation of the medical profession could, in principle, constitute professional misconduct within the meaning of section 136(1) of the Medical Practitioners Act (see paragraph 16 below). It reiterated that section 53(1) of the Medical Practitioners Act (see paragraph 15 below) required that the statements or information in question be made or provided by a doctor "in connection with the exercise of his or her profession". In the case of a practising doctor's website, there was no doubt that a connection with the medical profession existed, as the website was obviously (also) designed to draw attention to his or her medical practice and therefore served advertising purposes. The applicant's statements clearly served the purpose of highlighting his own treatment methods for advertising purposes. According to the expert report by Dr K., the applicant's impugned statements were not in line with the current state of medical science, some not even in line with reason (see paragraph 10 above).

In the light of this, the Supreme Administrative Court had no concerns about the Regional Administrative Court's assessment that the applicant had damaged the reputation of the medical profession by providing unobjective information for advertising purposes in violation of section 53(1) of the Medical Practitioners Act and the Regulation on Medical Practitioners and the Public in conjunction with section 136(1)(1) of the Medical Practitioners Act (see paragraphs 15, 16 and 18 below). In addition, the Supreme Administrative Court upheld the Regional Administrative Court's finding that the applicant had – by one and the same act (*Idealkonkurrenz*) – also committed the offence of breach of professional duties under section 136(1)(2) of the Medical Practitioners Act, since his website had not only been designed for advertising purposes in order to attract new patients,

but had obviously also been a source of information and advertising for existing patients.

As regards the right to freedom of expression under Article 10 of the Convention, the Supreme Administrative Court held that section 53(1) of the Medical Practitioners Act and the Regulation on Medical Practitioners and the Public (see paragraphs 15 and 18 below) regulated restrictions on advertising for the medical profession. The prohibition – by paragraph 1 of that Regulation – of information which was unobjective, untrue or detrimental to the reputation of the medical profession was in the interests of the medical profession and the general public so that they could be guided by objective considerations when using medical services. In this context, the Supreme Administrative Court also referred to the Court's statements on the principle of proportionality in the Grand Chamber judgment *Vavřička and Others v. the Czech Republic* ([GC], nos. 47621/13 and 5 others, 8 April 2021). On the basis of the information on vaccination posted by the applicant on his website, which was at least unobjective, and in view of the relatively low fine, the Supreme Administrative Court concluded that the restriction of the applicant's right to freedom of expression resulting from the disciplinary sanction could not be regarded as disproportionate, in view of the aim set out in Article 10 § 2 of the Convention.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LEGAL PROVISIONS

A. The Medical Practitioners Act (*Ärztegesetz*)

15. Section 53 of the Federal Act on the Exercise of the Medical Profession and the Professional Representation of Medical Practitioners ("the Medical Practitioners Act" – *Bundesgesetz über die Ausübung des ärztlichen Berufes and die Standesvertretung der Ärzte, Ärztegesetz*) relates to restrictions on advertising for the medical profession and reads, in so far as relevant, as follows:

> "(1) A doctor shall refrain from providing any information in connection with the exercise of his or her profession which is unobjective [*unsachlich*], untrue [*unwahr*] or prejudicial to the reputation of his or her profession [*das Standesansehen beeinträchtigend*].
>
> ...
>
> (4) The Austrian Medical Association may issue more detailed regulations on the type and form of the information referred to in paragraph 1."

16. Section 136 concerns disciplinary offences and reads, in so far as relevant, as follows:

> "(1) Doctors are guilty of a disciplinary offence if, in Austria or abroad, they

1. damage the reputation [*Ansehen*] of the medical profession practising in Austria by their conduct towards the community, patients or colleagues, or

2. breach the professional duties [*Berufspflichten*] which they undertook to observe on the occasion of their doctorate as doctor *medicinae universae* or which they are obliged to observe under this Federal Act or under other regulations."

17. Section 139 lists the disciplinary sanctions possible and reads, in so far as relevant, as follows:

"(1) Disciplinary sanctions are

1. a written reprimand,

2. a fine of up to 36,340 euros,

3. a temporary ban on practising,

4. removal from the list of doctors.

...

(3) The disciplinary sanctions may be imposed conditionally, with a probationary period of one to three years, if it can be assumed that the threat of such sanctions will be sufficient to deter the accused from committing further disciplinary offences and that enforcement of the sanction is not necessary to discourage the commission of disciplinary offences by other doctors."

B. The Regulation on Medical Practitioners and the Public (*Verordnung Arzt und Öffentlichkeit*)

18. The Regulation of the Austrian Medical Association on the nature and form of permissible medical information in public ("the Regulation on Medical Practitioners and the Public" – *Verordnung der Österreichischen Ärztekammer über die Art und Form zulässiger ärztlicher Informationen in der Öffentlichkeit*, *Verordnung Arzt und Öffentlichkeit*) was adopted by the plenary of the Medical Association on 27 June 2014 in accordance with section 53(4) of the Medical Practitioners Act (see paragraph 15 above). It reads, in so far as relevant, as follows:

"1. A doctor is prohibited from providing any information that is unobjective, untrue or detrimental to the reputation of the medical profession.

2. (1) Medical information is unobjective if it contradicts scientific knowledge or medical experience.

(2) Information is untrue if it does not correspond to the facts.

(3) Information is deemed to be damaging to the reputation of the medical profession if it consists of

1. disparaging statements about doctors, their activities and their medical methods;

2. portrayal of untruthful medical exclusivity;

3. self-promotion [*Selbstanpreisung*] or services by means of intrusive and/or blatant advertising.

3. Advertising for medicinal products, remedies and other medical products and for their manufacturers and distributors is not permitted. It is permissible to provide factual and truthful information on medicinal products, remedies and other medical products and on their manufacturers and distributors in the exercise of the medical profession that does not damage the reputation of the medical profession."

II. DOMESTIC CASE-LAW OF THE SUPREME ADMINISTRATIVE COURT

19. As submitted by the Government, in a decision of 29 October 2019 (Ra 2019/09/0010), the Supreme Administrative Court annulled a disciplinary sanction imposed on a doctor in relation to a presentation he had made to an audience of mainly young parents. Whereas it was true that the doctor had presented the disadvantages and dangers of vaccination in a unilateral, unobjective and untrue manner, it had however been evident to the audience that the opinion expressed by him had been an unrecognised minority opinion, not shared but rejected by the majority of experts and the health authorities. Besides declaring himself to be a critic of vaccinations at the beginning of his presentation, the doctor had also referred to (other) general practitioners and pharmacies for positive information on vaccination. In the view of the Supreme Administrative Court, the restriction of the freedom of expression of the doctor concerned had not been necessary for the pursuit of one of the legitimate aims under Article 10 § 2 of the Convention in the sense of a pressing social need, in particular the protection of health. The court nevertheless indicated that a doctor's extraprofessional conduct (*außerberufliches Verhalten*) could however also constitute a breach of general professional duties under section 136(1) of the Medical Practitioners Act, as doctors had to ensure that their professional reputation was upheld in all their conduct, including outside the exercise of their profession. Furthermore, statements on medical methods could also fall under the advertising restrictions imposed on doctors. Consequently, the professional duties under section 136 of the Medical Practitioners Act included both doctors' conduct in the exercise of their profession and their extraprofessional conduct. As regards section 53(1) of the Medical Practitioners Act (see paragraph 15 above), the court further held that it only concerned information provided by a doctor "in connection with the exercise of his or her profession" (*im Zusammenhang mit der Ausübung seines Berufes*), and that doctors were only obliged to provide comprehensive advice and information to the patients in their care.

20. In a decision of 22 March 2023 (Ra 2021/09/0269), the Supreme Administrative Court referred to the case-law of the Constitutional Court according to which there were no constitutional objections to the disciplinary law of doctors and it was justified in the public interest to subject advertising by certain professional groups, including lawyers and doctors, to restrictions. The prohibition of information which was unobjective, untrue or detrimental

to the professional reputation of the medical profession, as laid down in section 53 of the Medical Practitioners Act (see paragraph 15 above), was in the interests of the medical profession and the general public so that they could be guided by objective considerations when using medical services. The Supreme Administrative Court further reiterated its case-law according to which interference with freedom of expression in the form of a disciplinary sanction was to be measured against the standard of Article 10 of the Convention. Doctors also had to be able to participate in public debates on health policy issues and to express factual criticism, especially as they had a higher level of expertise. It was to be emphasised, however, that a stricter standard had to be applied when assessing the "proportionality of [a sanction in relation to] statements made by doctors, in particular to protect public trust in the seriousness of professional practice and expertise. Statements which were even devoid of reason were in no way covered by the freedom of expression".

In the case at hand, the statements at issue had been made in the context of a controversial discussion on which preventive measures the State should take in connection with the COVID-19 pandemic and on the introduction of compulsory vaccination against COVID-19. The doctor concerned had clearly wanted to contribute to this public debate, as he had made the statement during a press conference and in a newspaper interview, rather than in the context of educational talks with patients. Furthermore, he had not rejected all government measures to combat the spread of COVID-19, but had propagated a differentiated view, for example on the use of protective masks. He also had not rejected vaccination against COVID-19 as dangerous in general. The focus had not been on the safety of the vaccination. Rather, he was primarily opposed to "forced vaccination" (*Zwangsimpfung*). He had clearly been concerned with critically questioning the COVID-19 vaccination obligation in Austria and the general obligation to wear masks, in particular the use of self-sewn fabric masks envisaged at the time. The court found that restricting his freedom of expression in the form of a disciplinary sanction was disproportionate in view of Article 10 § 2 of the Convention.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

21. The applicant complained of a restriction of his right to freedom of expression on account of the disciplinary sanction imposed on him. He relied on Article 10 of the Convention, which 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 health ..., for the protection of the reputation or rights of others ...”

A. Admissibility

22. The Government did not raise any objection as to the admissibility of the application.

23. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

24. The applicant submitted that the domestic courts had failed to recognise that the legal requirements for a disciplinary offence under section 136(1)(1) and (2) of the Medical Practitioners Act (see paragraph 16 above) had not been met. Furthermore, these provisions, as well as section 53 of the Medical Practitioners Act, read in conjunction with paragraph 2 of the Regulation on Medical Practitioners and the Public were not applicable to the present circumstances because articles and statements posted on a doctor's website could not be regarded as advertising by a doctor. Only a measure capable of attracting new patients for treatment could be regarded as advertising. There had consequently been an unconceivable (*denkunmöglich*) application of the law.

25. The applicant further maintained that the right to freedom of expression also protected stressing a specific aspect related to vaccinations, namely their risks. If every doctor had to remain within the inflexible boundaries of conventional medicine in all of his or her public statements, any diversity of opinion concerning alternative medical treatment options would be lost and a significant part of the population would not consult a doctor. The exercise of his right to freedom of expression therefore served the legitimate interests of the general public, namely the part of the population interested in alternative treatment options. Even if the impugned statements on his website were not in line with conventional medical science, or could have been perceived as offensive, shocking or disturbing by the State or part of the population, there were a number of scientific publications supporting the content. They were therefore justifiable and could not lead to disciplinary measures, at least in so far as they did not damage the reputation of the medical profession and did not breach professional duties if they had not been made in the exercise of his profession.

26. The applicant agreed that within a democratic society, it was reasonable to impose special obligations (and restrictions) on doctors and medical professionals due to their position as medical advisers. Such obligations were suitable for establishing a solid relationship of trust between doctors and their patients. Restrictions of the right to freedom of expression could be proportionate to the legitimate aim of preventing other individuals from being restricted in their own right to freedom of expression. In the present case, however, there had been no such legitimate purpose, nor had the restriction of his right to freedom of expression been proportionate.

(b) The Government

27. The Government admitted that the disciplinary sanction in question had constituted an interference with the applicant's right to freedom of expression which had however been justified under Article 10 § 2 of the Convention. Disciplinary sanctions under section 139(1) of the Medical Practitioners Act (see paragraph 17 above) could only be imposed under strict conditions which, according to the case-law of the Supreme Administrative Court (see paragraphs 19-20 above), had to be interpreted narrowly in view of the Convention guarantees. The relevant provisions referred to in the applicant's case (see paragraphs 15-16 and 18 above) did not restrict doctors from participating in public debates on health policy issues in their professional capacity and from voicing criticism, provided that they declared this to be a minority opinion, where appropriate, and referred to information on contrasting opinions. The applicant's statements on the website of his medical practice were not such objective criticism, but rather the dissemination of unobjective or unfounded information which had, *inter alia*, been provided for advertising purposes. Using section 136(1)(1) and (2) of the Medical Practitioners Act (see paragraph 16 above) as the legal basis for the disciplinary sanction had therefore been in line with domestic case-law.

28. The Government further argued that the disciplinary sanction had pursued a legitimate aim under Article 10 § 2 of the Convention as it had been necessary for the protection of public health and in the interests of the general public so that they could be guided by objective considerations when seeking medical services. There was no doubt that there should be room for critical opinion on the issue of vaccination and for views other than those of conventional medicine. It was however necessary to set limits to purely one-sided and medically clearly refuted allegations for the protection of public health and the reputation of the medical profession, which ensured the trust of the general public in medical practice and expertise.

29. Lastly, the Government insisted that the interference had been proportionate. First, the applicant, in his statements, had challenged, among other things, vaccinations *per se*. The Court had however already held that there was a general consensus among the Contracting Parties, strongly supported by the specialised international bodies, that vaccination was one of

the most successful and cost-effective health interventions and that each State should aim to achieve the highest possible level of vaccination among its population (reference was made to *Vavřička and Others v. the Czech Republic* [GC], nos. 47621/13 and 5 others, § 277, 8 April 2021). The interest in protecting public health clearly outweighed an individual's right to disseminate unobjective or even wrong information, as in the present case, where a doctor, in connection with his professional practice, had disseminated information which had been proven to be untrue, presented in a non-differentiating manner and liable to generally unsettle patients and the general public. Secondly, the disciplinary sanction had not been imposed because of the applicant's statements as such, but because of their presentation on his website, which he had clearly been operating as a medical practitioner and had therefore been subject to the rules of conduct of the medical profession. Thirdly, in view of the prescribed scale of sanctions (see paragraph 17 above), the relatively low fine did not seem unreasonable, not least because the applicant had been granted a conditional suspension.

2. The Court's assessment

(a) General principles established in the Court's case-law

(i) On freedom of expression in general

30. In order to determine whether Article 10 of the Convention was infringed it must first be ascertained whether the disputed measure amounted to an interference with the exercise of freedom of expression, in the form of a "formality, condition, restriction or penalty" (see *Wille v. Liechtenstein* [GC], no. 28396/95, § 43, ECHR 1999-VII). Such interference will breach the Convention if it fails to satisfy the criteria set out in the second paragraph of Article 10. The Court must therefore determine whether it was "prescribed by law", whether it pursued one or more of the legitimate aims listed in that paragraph and whether it was "necessary in a democratic society" in order to achieve that aim or aims (see *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, § 40, ECHR 2007-IV). A norm cannot be regarded as a "law" within the meaning of Article 10 § 2 unless it is formulated with sufficient precision to enable the citizen to regulate his conduct; he must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (ibid., § 41). The list of legitimate aims provided in paragraph 2 of Article 10 is exhaustive (see *OOO Memo v. Russia*, no. 2840/10, § 37, 15 March 2022).

31. The basic principles concerning the necessity in a democratic society of interference with the exercise of freedom of expression are well established in the Court's case-law and have been summarised as follows in, among other authorities, *Hertel v. Switzerland* (25 August 1998, § 46, Reports of

Judgments and Decisions 1998-VI) and *Halet v. Luxembourg* ([GC], no. 21884/18, § 110, 14 February 2023):

> "Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no 'democratic society'. As set forth in Article 10, this freedom is subject to exceptions, which ... must, however, be construed strictly, and the need for any restrictions must be established convincingly ...
>
> The adjective 'necessary', within the meaning of Article 10 § 2, implies the existence of a 'pressing social need'. In general, the 'need' for an interference with the exercise of the freedom of expression must be convincingly established. Admittedly, it is primarily for the national authorities to assess whether there is such a need capable of justifying that interference and, to that end, they enjoy a certain margin of appreciation. However, the margin of appreciation goes hand in hand with European supervision, embracing both the law and the decisions that apply it.
>
> In exercising its supervisory jurisdiction, the Court must examine the interference in the light of the case as a whole, including the content of the impugned statements and the context in which they were made. In particular, it must determine whether the interference in issue was 'proportionate to the legitimate aims pursued' and whether the reasons adduced by the national authorities to justify it were 'relevant and sufficient'. In doing so, the Court has to satisfy itself that these authorities applied standards which were in conformity with the principles embodied in Article 10 and that, moreover, they relied on an acceptable assessment of the relevant facts."

(ii) On debates on public-health issues

32. The Court has had occasion to examine disciplinary proceedings brought against a medical practitioner for alleged unethical conduct for writing an expert report critical of the treatment administered by other doctors. It held that medical practitioners also enjoyed a special relationship with patients based on trust, confidentiality and confidence that the former will use all available knowledge and means for ensuring the well-being of the latter. That could imply a need to preserve solidarity among members of the profession. The Court also held that a strict interpretation by the disciplinary courts of domestic law, as demonstrated in that case, as to ban any critical expression in the medical profession was not consonant with the right to freedom of expression. Such an approach risked discouraging medical practitioners from providing their patients with an objective view of their state of health and treatment received, which in turn could jeopardise the ultimate goal of the doctor's profession, which was to protect the health and life of patients (see *Frankowicz v. Poland*, no. 53025/99, §§ 49 and 51, 16 December 2008).

33. Even without any link to disciplinary proceedings brought against medical professionals, the Court has relied on the protection of health as a

legitimate aim for restrictions of freedom of expression. For example, in the case of *Hertel* (cited above), the applicant had been prohibited, on pain of criminal penalties (imprisonment or a fine), from stating in particular that food prepared in microwave ovens was a danger to health and led to changes in the blood indicating a pathological disorder and presenting a pattern of the beginning of a carcinogenic process. The Court noted that the aim of the prohibition had been the "protection of the ... rights of others" and had concerned a debate affecting the general interest over public health, namely the effects of microwaves on human health). It observed that the applicant's views had been expressed in less categorical terms and with no assertion that the consumption of irradiated food was harmful, but merely a suggestion that it could be. The periodical that had published extracts of the applicant's research paper had a specific readership and therefore limited impact. Noting the disparity between the measure and the contested behaviour, the Court held that it created an imbalance in view of the scope of the injunction, which was partly to censor his work and to reduce his ability to publicly put forward views which had their place in a public debate. It mattered little that his opinion was a minority one and could appear to be devoid of merit since, in a sphere in which it was unlikely that any certainty existed, it would be particularly unreasonable to restrict freedom of expression only to generally accepted ideas. The Court concluded that the injunction could not be considered as "necessary in a democratic society" (see *Hertel*, cited above, §§ 31, 42 and 47-51).

34. The case of *Palusinski v. Poland* ((dec.), no. 62414/00, 3 October 2006), on the other hand, concerned the applicant's criminal conviction and sentence to fifteen months' imprisonment, suspended for two years, and a fine of 2,000 Polish zlotys (PLN) for publishing a book inciting drug use and facilitating drug-taking by young people. The Court held that the book had offered very little if any information on the negative consequences of the use of substances like marijuana, LSD and magic mushrooms or on the possible risk of addiction. The book had also included "instructions on how to obtain ingredients and prepare them" and the "doses to be taken" and contained descriptions of "the states of mind which might be experienced" after taking them. The Court agreed that the book had been "designed to show that the narcotics described [brought] immediate pleasure and unforgettable experiences ... and, more importantly, that taking the doses suggested by the defendant ... [would] not have any negative consequences for life and health". In the light of this, the Court considered that the authorities had given "relevant and sufficient" reasons for their decisions and that the suspended prison sentence and the fine could not be regarded as disproportionate. Given that the applicant had stood to gain financially by publishing the book, it had been reasonable to consider that a purely financial penalty would not have constituted a sufficient punishment or deterrent. The Court concluded that the

interference complained of could be regarded as "necessary in a democratic society".

35. The case of *Vérités Santé Pratique SARL v. France* ((dec.), no. 74766/01, 1 December 2005), in turn, concerned the refusal to renew a registration certificate entitling its holder to tax relief and preferential postal rates. The applicant company had been publishing a health magazine with a critical approach to health matters and information on alternative types of treatment. The domestic authorities and courts based the refusal to renew the registration certification on the fact that the magazine disseminated unverified medical information which discredited the conventional treatment given to patients with serious illnesses such as cancer or hypertension. The Court, noting that the applicant company had been able to continue publishing under a different title and in a different medium, which reduced the scope of the interference complained of, held that the interference had pursued the legitimate aim of "protecting public health", and indeed that of protecting the rights of others. It reiterated that Article 10 of the Convention did not guarantee unrestricted freedom of expression, and that the guarantee afforded journalists in respect of reporting on matters of general interest was subject to the condition that they acted in good faith so as to provide accurate and credible information in accordance with journalistic ethics; the same rule of law had to apply to other persons who engaged in public debate. In the case at hand, however, the domestic courts had found that the information disseminated by the applicant had not been validated by the current state of scientific knowledge. It was therefore of controversial quality. This was sufficient for the Court to consider the public-health grounds submitted by the authorities as pertinent and sufficient, to conclude that there had been a reasonable relationship of proportionality and that the complaint was manifestly ill-founded.

36. Lastly, the two cases of *Hachette Filipacchi Presse Automobile and Dupuy v. France* (no. 13353/05, 5 March 2009) and *Société de conception de presse et d'édition and Ponson v. France* (no. 26935/05, 5 March 2009) concerned the fining of two publishing companies and their two publishing directors (EUR 30,000 and 20,000 respectively) for unlawful advertising of tobacco products. The Court held that the restriction of cigarette and tobacco-related advertising was an essential part of a broader strategy in the fight against the social evil of smoking. Fundamental public-health considerations, on which legislation had been enacted in France and the European Union, could take precedence over economic imperatives, and even over certain fundamental rights such as freedom of expression. There was a European consensus on the need for strict regulation of tobacco advertising and a general trend towards such regulation worldwide. The Court did not have to take into account the actual impact on tobacco consumption of a ban on advertising. The fact that the impugned publications were regarded as capable of inciting people, particularly young people, to consume such

products was a "relevant" and "sufficient" reason to justify the interference. Furthermore, while the amounts of the fines were certainly not negligible, in assessing whether they were harsh, they had to be compared with the revenue of high-circulation magazines such as those at issue. Given the importance of protecting public health, the pressing need to take steps to protect societies from the scourge of smoking and the existence of a consensus at European level on the prohibition of advertising of tobacco products, the restrictions imposed had answered a pressing social need and had not been disproportionate to the legitimate aim pursued (see *Hachette Filipacchi Presse Automobile and Dupuy*, §§ 46-48 and 51-52, and *Société de conception de presse et d'édition and Ponson*, §§ 56-58 and 62-63, both cited above).

(b) Application of the above principles to the present case

37. It is not in dispute between the parties that there has been an interference with the applicant's right to freedom of expression within the meaning of Article 10 § 1 of the Convention. The Court sees no reason to disagree that the disciplinary sanction imposed on the applicant for certain statements made on his website amounted to an interference with his right to freedom of expression (see also *Frankowicz*, cited above, § 44). It remains to be seen whether the interference complained of was prescribed by law, pursued a legitimate aim and was necessary in a democratic society within the meaning of Article 10 § 2 of the Convention.

(i) Lawfulness of the interference

38. In so far as the applicant can be understood to be suggesting that the interference complained of was not lawful (given his argument that there was an unconceivable application of the law in paragraph 24 above), the Court notes that the domestic courts, in upholding the disciplinary sanction issued in respect of the applicant, relied on section 53 of the Medical Practitioners Act, read in conjunction with the Regulation on Medical Practitioners and the Public, and sections 136 and 139 of the Medical Practitioners Act (see paragraphs 10 and 14, as well as 15-18 above). These provisions were sufficiently precise, in view of the definitions contained in the Regulation on Medical Practitioners and the Public (see paragraph 18 above). The case-law of the Supreme Administrative Court that pre- and post-dated the applicant's case confirms the consistent interpretation of these provisions in similar cases (see paragraphs 19-20 above). The Court finds nothing arbitrary or manifestly unreasonable in that interpretation of the relevant provisions and reiterates that it is first and foremost for the national authorities, and notably the courts, to interpret domestic law (see *Cangı v. Turkey*, no. 24973/15, § 42, 29 January 2019). It follows that the interference was "prescribed by law" within the meaning of the Convention.

(ii) Legitimacy of the aim pursued by the interference

39. The Court notes that the aim pursued by the impugned measure, as established by the domestic courts, was the protection of health and that it was in the interests of the general public and the medical profession to be guided by objective considerations when using medical services (see paragraphs 10 and 14 above). The Government also confirmed that in their submissions (see paragraph 28 above). In the Court's view, there is no doubt that the aim of the measure was the "protection of health", as well as "the protection of the rights of others", as provided for in Article 10 § 2 of the Convention. In this context, the Court refers to previous cases in which it has already considered similar aims to be legitimate (see, for example, *Frankowicz*, § 46; *Hertel*, § 42; *Palusinski*; *Vérités Santé Pratique SARL*; *Hachette Filipacchi Presse Automobile and Dupuy*, § 43; and *Société de conception de presse et d'édition and Ponson*, § 53, all cited above). The Court is consequently satisfied that the interference at issue in the present case equally pursued a legitimate aim within the meaning of Article 10 § 2 of the Convention.

(iii) Necessity of the interference in a democratic society

40. The Court will now turn to the question of the proportionality of the interference and whether relevant and sufficient reasons were provided for it. It will begin by examining the nature and content of the statements at issue, together with their impact and audience, and conclude with the assessment of the sanction imposed on the applicant.

41. The Court notes that the domestic courts found that the information on the issues of vaccination posted on the applicant's website was purely one-sided and negative (see paragraphs 10 and 14 above). Indeed, in the impugned article the applicant stated, for example, that "[w]hat we call a virus, literally a poison, is a pathogenic agent of various diseases, a speculation, an assumption, a supposition that is completely unproven; a working hypothesis at best" and that "illnesses appear to be evil accidents of nature", as well as that "chemical vaccinations never protect against diseases" and that "we do not fall ill through bacteria and viruses" (see paragraph 6 above). The Court furthermore notes that the domestic practice does not generally prohibit to be critical of vaccination but rather calls for a more nuanced criticism, in particular if statements are made by doctors (see the domestic case-law cited in paragraphs 19-20 above). In the present case, however, the applicant's negative statements were categorical (contrast with *Hertel*, cited above, § 48).

42. Most importantly, the Court notes that the applicant was a doctor and the information posted on his website was found not to be in line with the current state of medical science, some not even in line with reason by two separate expert reports obtained by the Disciplinary Council of the

Austrian Medical Association and the Regional Administrative Court (see paragraphs 7 and 10 above) (contrast with *Hertel*, cited above, § 50, which concerned a minority opinion in a sphere in which it was unlikely that any certainty existed; and compare *Vérités Santé Pratique SARL*, cited above, in which unverified medical information that discredited the conventional treatment given to patients with serious illnesses such as cancer or hypertension was being disseminated).

43. Furthermore, the Court observes the potentially very wide impact of the applicant's statements by their publication on his website, which were found to be connected to his medical practice (see paragraph 14 above) and therefore very easily accessible to everyone, including, in particular, medical laypersons (contrast with the specific readership and therefore limited impact in *Hertel*, § 49, and *Vérités Santé Pratique SARL*, both cited above). In this connection it reiterates that the internet, in the light of its accessibility and its capacity to store and communicate vast amounts of information, plays an important role in enhancing the public's access to news and facilitating the dissemination of information in general. The Court has however also pointed to the risk of harm posed by content and communications on the internet to the exercise and enjoyment of human rights and freedoms (see *Delfi AS v. Estonia* [GC], no. 64569/09, § 133, ECHR 2015; *Sanchez v. France* [GC], no. 45581/15, § 161, 15 May 2023; and *Hurbain v. Belgium* [GC], no. 57292/16, § 236, 4 July 2023). The Court has already had the occasion to note the special duties by doctors, including the special relationship of medical practitioners with patients based on trust, confidentiality and confidence that the medical practitioners will use all available knowledge and means for ensuring the well-being of their patients, implying also a need to preserve solidarity among members of the profession, and the doctors' obligation to provide their patients with an objective view of their state of health and treatment (see *Frankowicz*, cited above, §§ 49 and 51).

44. In the particular context of purely negative information on vaccination, the Court further emphasises its findings in its Grand Chamber case of *Vavřička and Others* (cited above, §§ 135, 277, 279 and 282), in which it noted both the importance and the positive effects of vaccination in general, referring also to the WHO, according to which overwhelming evidence demonstrated the benefits of immunisation as one of the most successful and cost-effective health interventions known. Over the past several decades, immunisation had achieved many things, including the eradication of smallpox, an accomplishment that had been called one of humanity's greatest triumphs. Vaccines had saved countless lives, lowered the global incidence of polio by 99 percent and reduced illness, disability and death from diphteria, tetanus, whooping cough, measles, *Haemophilus influenzae* type b disease and epidemic meningococcal A meningitis. The Court furthermore discerned a general consensus among the Contracting Parties, strongly supported by the specialised international bodies, that

vaccination was one of the most successful and cost-effective health interventions and that each State should aim to achieve the highest possible level of vaccination among its population. This also encompassed the value of social solidarity, the purpose of the duty being to protect the health of all members of society, particularly those who were especially vulnerable with respect to certain diseases. The Court further reiterated that the Contracting States are under a positive obligation, by virtue of the relevant provisions of the Convention, notably Articles 2 and 8, to take appropriate measures to protect the life and health of those within their jurisdiction.

Against this background, the Court emphasises that practicing doctors enjoy freedom of expression under Article 10 and have the right to participate in debates on public health issues, including expressing critical and minority opinions. The exercise of that right is, however, not without limits, particularly when connected to the exercise of their profession. Because of their expert knowledge in the medical field and the professional services they offer in the interest of public health, they have a key role to play in the context of public health debates. They can be submitted to professional obligations in line with their duties and responsibilities under Article 10 § 2 of the Convention. Restricting the freedom of expression of doctors may be called for in cases of categorical and untrue public information on medical questions, in particular if that information is published on a website, to protect the health and well-being of others (compare with *Hertel*, cited above, § 50, which concerned information that appeared to be "devoid of merit"; see also *Vérités Santé Pratique SARL*, cited in detail in paragraph 35 above). In the present case, the statements were not only categorical, but scientifically untenable. For example, the statement that "chemical vaccinations never protect against diseases" (see paragraph 6 above) is in direct contradiction with information by the WHO (see *Vavřička and Others*, cited above, § 135). In this context, the Court also refers to its established case-law under Article 10 that in so far as statements of facts are concerned, proof of truth may be required (see *Lingens v. Austria*, no. 9815/82, § 46, 8 July 1986, and *Oberschlick v. Austria*, no. 11662/85, § 63, 23 May 1991). Moreover, the Court notes that the applicant made the impugned statements on his website in connection with his medical practice and thereby clearly advertising his services.

45. Lastly, the Court will turn to the question of the nature and severity of the sanction imposed on the applicant. It notes that it concerned a disciplinary rather than a criminal sanction, in the form of a fine of EUR 2,000, an amount which, according to the domestic courts, was less than the estimated average monthly income of a doctor (see paragraph 10 above). This was deemed sufficient by the domestic courts to deter the applicant from committing future disciplinary offences. The Court further notes that the amount of EUR 2,000 was very low in view of the possible scale of the fine – which could amount to up to EUR 36,340 (see paragraph 17 above). It constituted

approximately 5.5% of the maximum amount possible (compare the fines of EUR 30,000 and 20,000 imposed in *Hachette Filipacchi Presse Automobile and Dupuy* and *Société de conception de presse et d'édition and Ponson* (cited above), which, in the specific circumstances of those cases, were not considered disproportionate). Moreover, the fine was also suspended pending a probationary period of one year (see paragraph 7 above), which itself is also at the very lower end of the range of possibilities provided for by law – under section 139(3) of the Medical Practitioners Act, a disciplinary sanction can be imposed conditionally, with a probationary period of one to three years (see paragraph 17 above). Consequently, the Court concludes that the disciplinary sanction at issue in the instant case cannot be considered disproportionate.

(iv) Conclusion

46. The foregoing considerations are sufficient to enable the Court to conclude that the domestic courts gave relevant and sufficient reasons in striking a fair balance between the competing interests of the general public and of the applicant's freedom of expression at issue in the present case. The disciplinary sanction imposed on the applicant in the form of a suspended fine of a relatively low amount for making scientifically untenable statements about the ineffectiveness of vaccines on his website and thus in connection with his medical practice did not exceed the margin of appreciation so that the impugned measure can be regarded as "necessary in a democratic society" in the meaning of Article 10 § 2 of the Convention. The Court furthermore reiterates that where the balancing exercise has been undertaken by the national authorities in conformity with the criteria laid down in the Court's case-law, the Court would require strong reasons to substitute its view for that of the domestic courts (see, for example, *Delfi AS*, § 139, and *Halet*, § 161, both cited above).

47. There has accordingly been no violation of Article 10 of the Convention.

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the complaint concerning the applicant's freedom of expression under Article 10 of the Convention admissible;

2. *Holds*, by six votes to one, that there has been no violation of Article 10 of the Convention.

Done in English, and notified in writing on 27 August 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Simeon Petrovski	Tim Eicke
Deputy Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Vehabović is annexed to this judgment.

DISSENTING OPINION OF JUDGE VEHABOVIĆ

I regret that I am unable to subscribe to the view of the majority that there has been no violation of Article 10.

The views expressed in the published article cannot be characterised as "devoid of reason", as implied in paragraph 44 of the judgment. Although the applicant does in his article invite readers to adopt "healthy doubt" (paragraph 6), which implies questioning the established position of the medical profession, such an invitation should not be interpreted as absolutist or unreasonable.

The above-mentioned paragraph 44 explains why a violation of the right to freedom of expression was not found, stating that it is possible to limit that right if doctors present purely one-sided and negative information on medical issues. In the article the applicant called for a greater understanding of nature and more education. He invited readers to have the courage to trust their intuition and to question conventional medical practice. These messages should not be read in isolation, but in the light of the very nature of the website operated by the applicant. The name of that website clearly indicated that its content was homeopathic and aimed at self-help during treatment, placing it outside the realm of classical medicine and the usual approach to treating patients. It is therefore reasonable to assume that anyone who read the text and took its information on board – while acknowledging the possibility of exceptions – already had an open mind to alternative treatment methods. Contrary to the statements in paragraph 43, the possibility of the applicant's post reaching a wider audience was insignificant; it was addressed to a specific group of readers. This can be illustrated by the following hypothetical scenario: What is the probability that a German-speaking person, unfamiliar with the meaning of the term "homeopathy" and without any prior knowledge of medicine, stumbles upon the website of a local doctor from an Austrian city, reads the content in relation to the name of the website and then begins to doubt the effectiveness of vaccination? I consider this scenario unlikely, and contrary to the applicant's freedom of expression, which was already limited, if not negligible. I believe that previous knowledge of homeopathy or of the applicant as a doctor can be seen as a prerequisite for reading the contentious text on the above-mentioned website. There is extensive content of a homeopathic nature available on the internet, on pages much more popular than the applicant's, and written by people with much greater public influence. In the context of the applicant's individual freedom of expression, I therefore consider the restriction to be disproportionate and not to meet the last criterion for compliance with Article 10 – namely that the interference be "necessary in a democratic society". On the contrary, considering the applicant's limited public influence, as well as the other previously mentioned arguments, the ability to present such a position unimpeded is in fact necessary in a democratic society.

Furthermore, it is inappropriate to assume that the disputed text falls within the scope of "purely one-sided and negative" information, given that it ends with a call to "question vaccination". An open invitation to question something implies respect for other points of view, which may be disseminated alongside one's own; it is the opposite of alleged one-sidedness.

In a case with similar facts, *Stambuk v. Germany* (no. 37928/97, 17 October 2002), a doctor had been fined in disciplinary proceedings for an article published along with his photo in the press, which had been found to constitute advertising by a medical practitioner and thus to be in breach of the applicable regulations at the relevant time. The Court found that the applicant's right to freedom of expression had been violated, considering that the provision prohibiting advertising had been interpreted narrowly and to the detriment of the applicant, without such restriction fulfilling the condition of "necessity in a democratic society".

Crucially, the applicant in the present case did not damage the reputation of the medical profession practising in Austria by his conduct towards the community, patients or colleagues, or breach his professional duties – both essential components of the disciplinary offence provided for in section 136 of the Medical Practitioners Act (see paragraph 16).

Whereas in the *Stambuk* case (cited above) the Court did not find the publication of a photograph in the press sufficient to be considered advertising, in the present case it concluded that an online article expressing an unconventional opinion, without deceiving the public about the website's content, did in fact amount to advertising.

However, in the *Stambuk* case, after finding the violation of Article 10, the Court added (ibid., § 51):

> "... in the context of a liberal profession and having regard to the range of possible penalties, imposing a fine, even if at the lower end of the scale of fines, is not a negligible disciplinary punishment."

While in its earlier judgment the Court concluded that imposing one of the lesser penalties prescribed by law was still not insignificant, in the present case even a conditional punishment represents a form of censorship and deterrence from any future expression of opinions and is therefore a threat to democratic society.