CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

AFFAIRE SCHÖPFER c. SUISSE

CASE OF SCHÖPFER v. SWITZERLAND

(56/1997/840/1046)

ARRÊT/JUDGMENT

STRASBOURG

20 mai/20 May 1998

Liste des agents de vente/List of Agents

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SUMMARY[1]

Judgment delivered by a Chamber

Switzerland – disciplinary penalty imposed on lawyer following criticisms of the judiciary made at a press conference (Articles 12 and 13 of the Statute of the Bar of the Canton of Lucerne)

ARTICLE 10 OF THE CONVENTION

Special status of lawyers gives them central position in administration of justice as intermediaries between public and courts – legitimate to expect them to contribute to proper administration of justice, and thus to maintain public confidence therein.

Applicant first publicly criticised administration of justice in Hochdorf and then exercised a legal remedy which proved effective – conduct scarcely compatible with contribution it is legitimate to expect lawyers to make to maintaining public confidence in judicial authorities.

Freedom of expression secured to lawyers too, who are entitled to comment in public on administration of justice, but their criticism must not overstep certain bounds – balance to be struck between various interests involved, which include public's right to receive information about questions arising from judicial decisions, requirements of proper administration of justice and dignity of legal profession.

General nature, seriousness and tone of complaints raised in public – applicant was lawyer – criminal proceedings still pending – competent authorities not first applied to via legal channels – modest amount of fine – margin of appreciation not exceeded.

Conclusion: no violation (seven votes to two).

COURT'S CASE-LAW REFERRED TO

24.2.1994, Casado Coca v. Spain; 24.2.1997, De Haes and Gijsels v. Belgium

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

In the case of Schöpfer v. Switzerland[1],

The European Court of Human Rights, sitting, in accordance with Article 43 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of Rules of Court B[2], as a Chamber composed of the following judges:

Mr THÓR VILHJÁLMSSON, *President*,
Mr J. DE MEYER,
Mr R. PEKKANEN,
Mr A.B. BAKA,
Mr M.A. LOPES ROCHA,
Mr L. WILDHABER,
Mr J. MAKARCZYK,
Mr P. JAMBREK,
Mr M. VOICU,

and also of Mr H. PETZOLD, *Registrar*, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 24 February and 24 April 1998,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court by a Swiss national, Mr Alois Schöpfer ("the applicant"), and by the European Commission of Human Rights ("the Commission") on 28 May and 3 June 1997 respectively, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention. It originated in an application (no. 25405/94) against the Swiss Confederation lodged by the applicant with the Commission under Article 25 on 11 August 1994.

Mr Schöpfer's application to the Court and the Commission's request referred to Article 48 of the Convention as amended by Protocol No. 9 which Switzerland has ratified. The object of the application and of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 10 of the Convention.

Notes by the Registrar

1. The case is numbered 56/1997/840/1046. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

2. Rules of Court B, which came into force on 2 October 1994, apply to all cases concerning States bound by Protocol No. 9.

2. On 3 September 1997 the President of the Court gave the applicant leave to present his own case (Rule 31 of Rules of Court B) and on 30 September he gave him leave to use the German language (Rule 28 § 3).

3. The Chamber to be constituted included *ex officio* Mr L. Wildhaber, the elected judge of Swiss nationality (Article 43 of the Convention), and Mr R. Ryssdal, the President of the Court (Rule 21 § 4 (b)). On 3 July 1997, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr Thór Vilhjálmsson, Mr R. Pekkanen, Mr A.B. Baka, Mr M.A. Lopes Rocha, Mr J. Makarczyk, Mr P. Jambrek and Mr M. Voicu (Article 43 *in fine* of the Convention and Rule 21 § 5). Subsequently, Mr Ryssdal being unable to take part in the further consideration of the case, Mr Thór Vilhjálmsson took his place as President of the Chamber and Mr J. De Meyer, substitute judge, was called upon to sit as a full member (Rules 21 § 6 and 24 § 1).

4. As President of the Chamber, Mr Ryssdal, acting through the Registrar, had consulted Mr P. Boillat, the Agent of the Swiss Government ("the Government"), the applicant and Mr E. Alkema, the Delegate of the Commission, on the organisation of the proceedings (Rules 39 § 1 and 40). Pursuant to the order made in consequence, the Registrar received the Government's and the applicant's memorials on 25 November and 1 December 1997 respectively and their replies on 19 December 1997 and 8 January 1998 respectively. On 2 February 1998 the Secretary to the Commission produced a number of documents requested by the Registrar on the President's instructions.

5. On 24 February 1998 the Chamber decided to dispense with a hearing in the case, having satisfied itself that the condition for this derogation from its usual procedure had been met (Rules 27 and 40).

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant, who is a lawyer and former member of the Cantonal Council (*Großrat*), lives in Root (Canton of Lucerne). At the material time he was an advocate acting as defence counsel for a Mr S., who had been placed in detention pending trial (*Untersuchungshaft*) on suspicion of committing a number of thefts.

7. On 6 November 1992 Mr S.'s wife informed Mr Schöpfer that the two district clerks (*Amtsschreiber*) of the Hochdorf district authority (*Amtsstatthalteramt*) had urged her to instruct a different lawyer to defend her husband if he wished to be released.

A. The applicant's public statements

8. On 9 November 1992 the applicant then held a press conference in his office in Lucerne at which he declared that at the Hochdorf district authority offices both the laws of the Canton of Lucerne and human rights were flagrantly disregarded, and had been for years (*werden sowohl die Luzerner Gesetze als auch die Menschenrechte in höchstem Grade verletzt, und zwar schon seit Jahren*). He pointed out that he was speaking to the press because it was his last resort (*deshalb bleibt mir nur noch der Weg über die Presse*).

9. The following day the daily newspaper *Luzerner Neueste Nachrichten* ("the *LNN*") published the following article (at page 25):

> "Former Christian Democratic Party (CDP) councillor demands investigation into Hochdorf district authority
>
> 'I won't let those gentlemen make a fool of me any longer'
>
> Former CDP councillor Alois Schöpfer makes serious accusations against the Hochdorf district authority.
>
> 'I've had enough of letting those gentlemen at the Hochdorf district authority make a fool of me' thundered Alois Schöpfer. 'So the only recourse left to me is to take the matter to the press.' The former CDP councillor was prompted to take the unusual step of approaching the public during pending proceedings on account of a case entrusted to him as a lawyer in mid-October. At that time his client had already been in pre-trial detention at the Hochdorf district authority prison for a month.
>
> **Detained without an arrest warrant**
>
> The 20 year-old father of a one and a half year-old daughter was arrested on 18 August with his brother for the theft of car radios and clothes, and released after admitting the offences. When, on 15 September, he went to the Lucerne cantonal police to ask how his brother was, he was again immediately arrested.
>
> 'When I enquired at the Hochdorf district authority about the arrest warrant, I was told that the order had been issued to him orally' said Alois Schöpfer, who sees the conduct of the police as a clear breach of the cantonal Code of Criminal Procedure, Article 82 of which provides: 'The arrest shall be carried out by the police, duly authorised by a written warrant of arrest.'

When these accusations were put to him, the Hochdorf prefect [Mr H. B.] was giving nothing away. 'Where I'm in charge nobody is arrested without a written arrest warrant', he said. 'I cannot say any more about a pending case.' On the other hand, Alois Schöpfer, who was asked by the accused's wife to defend her husband, will not remain silent any longer: 'The wife came to me because the lawyer appointed under the legal aid scheme had still not contacted his client even though he had been in pre-trial detention for six weeks.'

Schöpfer immediately contacted the officially appointed counsel who handed the case over to him. However, the Hochdorf district authority did not want Schöpfer to take over as defence counsel under the legal aid scheme and refused his request on 29 October on the ground that there were no reasons to dismiss the lawyer to whom the case had been assigned until then. He was, however, free to represent his client on a private basis.

Schöpfer as the ground for detention?

The last straw for Alois Schöpfer came when the accused's wife informed him last Friday that [T.B.] and [B.B.], the two district clerks, had advised her not to keep him on the case. 'They told me' she confirmed for the *LNN*, 'that my husband would not be released as long as Alois Schöpfer remained his defence counsel.' But [T.B.] denied any involvement: 'That's ridiculous. I never said anything like that. [B.B.] can confirm that. He was present when I spoke with the man's wife.'

Alois Schöpfer will not let the matter drop: 'I demand the immediate resignation of the prefect and the district clerks and a thorough investigation of the case by an impartial commission of inquiry from outside the canton.'"

In a box inside the article was the following text:

"**Accusations**

It is not the first time that serious charges have been levelled against the Hochdorf district authority. Prefect [H.B.] was previously prosecuted in connection with the conviction of [H.S.], the Rothenburg debt collection officer [*Betreibungsbeamter*]. He was fined 400 francs by the Lucerne District Court for disclosure of official secrets. Although the Court of Appeal also found that the objective elements of the offence had been made out, [H.B.] was acquitted on appeal."

The article was illustrated by two photographs, one showing the Hochdorf district authority building and the other Prefect H.B. with the caption: "Where I'm in charge nobody is arrested without a written arrest warrant (*Bei mir wird niemand ohne schriftlichen Haftbefehl festgehalten*)."

10. Another daily newspaper, the *Luzerner Zeitung*, also published, on 10 November 1992, an article on the press conference under the title: "Young man arrested without a warrant? Lucerne lawyer accuses Hochdorf district authority of breaking the law (*Junger Mann ohne Haftbefehl verhaftet? Luzerner Anwalt wirft Amtsstatthalteramt Hochdorf Rechtsverletzungen vor*)."

11. On 10 November 1992 the public prosecutor's office (*Staatsanwaltschaft*) of the Canton of Lucerne issued a reply to the effect that the accused person concerned had been arrested in accordance with the law, and that the applicant had not filed an appeal against the refusal to allow him to take over as the officially appointed defence counsel. This reply was published in the press on 11 November 1992.

12. On 13 November 1992 the *Luzerner Zeitung* published a summary of a press communiqué issued by the applicant in reply to the public prosecutor's statement. According to Mr Schöpfer, S.'s arrest had breached both the Convention and – "in a crude and unacceptable manner (*in absolut grober und nicht mehr zu verantwortender Weise*)" – the cantonal Code of Criminal Procedure. The applicant also quoted the following passage from a letter he had received from another lawyer: "The situation in Hochdorf is far from satisfactory... What makes it even worse is the fact that the judicial authorities know what is going on in Hochdorf and even make indirect allusions to the situation." In conclusion, Mr Schöpfer called on the Court of Appeal and the Cantonal Council to look into the case.

13. On 15 October, 3 November and 13 November 1992 the applicant had lodged applications for the release of Mr S. (*Haftentlassungsgesuch*), which the Hochdorf prefect refused on 19 October, 5 November and 16 November 1992 respectively.

Mr Schöpfer lodged an appeal (*Rekurs*) against the last of these decisions. This was dismissed by the Court of Appeal (*Obergericht*) of the Canton of Lucerne on 30 November 1992, on the ground, among others, that the prefect had subsequently validly extended Mr S.'s pre-trial detention, so that Mr S. no longer had standing to bring an action challenging the conditions of his arrest. It noted, however, that after his arrest Mr S. should have been brought, not before a district clerk, but before the prefect himself, the only person who could be considered a judge or other officer for the purposes of Article 5 § 3 of the Convention. It therefore ordered that its decision should be brought to the attention of the public prosecutor's office, which was the prefect's supervisory authority (*Aufsichtsbehörde*).

B. The disciplinary proceedings against the applicant

14. On 16 November 1992 the Lucerne Bar's Supervisory Board (*Aufsichtsbehörde über die Rechtsanwälte*) informed Mr Schöpfer that his conduct raised certain ethical questions, relating in particular to the need for discretion (*Zurückhaltung*) with regard to pending proceedings and to covert publicity, and asked him what he had to say on the matter.

In a letter of 18 November which he communicated to the press, the applicant replied that he had acted only in the general interest and in that of his client.

15. On 16 November 1992 the Hochdorf prefect had lodged a complaint (*Anzeige*) with the Supervisory Board and asked for disciplinary proceedings to be brought against Mr Schöpfer. He asserted that by his statements the latter had not only slandered the prefect and his two district clerks but had also been guilty of a serious breach of lawyers' professional ethics (*Standesregeln*) by spreading false accusations through the media rather than making use of the available legal remedies.

16. On 21 December 1992 the Supervisory Board brought disciplinary proceedings against the applicant.

On 15 March 1993, pursuant to Article 13 of the Statute of the Bar (*Anwaltsgesetz*) of the Canton of Lucerne (see paragraph 18 below), it fined him 500 Swiss francs (CHF) for a breach of professional ethics (*Verletzung von Berufs- und Standespflichten*).

In its decision the Supervisory Board observed in particular that the applicant had omitted to refer his complaints – which were serious – in the first place to the public prosecutor's office or the Court of Appeal, which were the relevant supervisory bodies for the district authority. He had therefore failed to observe the discretion which lawyers were required to maintain, in public, with regard to pending proceedings. In addition, he had engaged in covert publicity (*versteckte Reklame*) and cheap showmanship (*Effekthascherei*), thus demonstrating that he was more concerned about his own public profile than about the merits of the case. In any event, lawyers' statements to the press always had to be not only of real public interest (*reelles öffentliches Interesse*) but also objective and moderate in tone (*objektiv in der Darstellung und sachlich im Ton*).

But the tone of a number of passages in Mr Schöpfer's statements to the press left something to be desired. For example he had said: "I won't let those gentlemen make a fool of me any longer" and "I demand … a thorough investigation of the case by an impartial commission of inquiry from outside the canton" and also "So the only recourse left to me is to take the matter to the press." This last statement was not even true, since at that time Mr Schöpfer had not even applied to the relevant supervisory bodies for the district authority, nor had he tried exercising the ordinary legal remedies. He had thus disparaged not only the Hochdorf district authority but all the canton's judicial authorities, which was incompatible with a lawyer's professional ethics.

17. The applicant lodged a public-law appeal against the above decision. This was dismissed by the Federal Court on 21 April 1994.

It observed that lawyers enjoyed considerable freedom to criticise the judicial authorities, provided that this was done according to the correct procedures, and in the first place in the course of representing and defending their clients. When, however, a lawyer appealed to public opinion, he was under a duty, like any other person employed in the service of justice, to refrain from any conduct inconducive to the proper administration thereof. Article 10 § 2 of the Convention also enunciated the principle that interference could be justified if its purpose was to maintain the authority and impartiality of the judiciary. Admittedly, there might be circumstances in which the public interest required alleged violations of constitutional or human rights to be made public. In order to determine whether that was the case, it was necessary to ascertain how obvious the alleged violations were, whether pending proceedings were likely to be influenced, whether the available remedies had been exercised and in what form the criticism had been made.

In the instant case Mr Schöpfer had been punished not so much for denouncing human rights violations as for the way in which he had done so. When considering the case the Supervisory Board had indeed taken into account the fact that one of the complaints raised by the applicant, concerning the fact that Mr S. had been brought before a district clerk rather than the prefect, had subsequently been upheld by the Court of Appeal. However, Mr Schöpfer's other criticisms – which were likely to influence pending proceedings – had been found by the Supervisory Board to be unjustified. Furthermore, the Board had ruled that the applicant had not employed the right tone in his criticism and that he had made untrue allegations. It had given sufficient grounds for its decision and the applicant had not adduced any convincing counter-arguments.

II. RELEVANT DOMESTIC LAW

18. Article 10 of the Statute of the Bar (*Anwaltsgesetz*) of the Canton of Lucerne establishes a Lawyers' Supervisory Board (*Aufsichtsbehörde über die Anwälte*) whose members – two judges of the Court of Appeal, one administrative court judge and two lawyers – are appointed by the Court of Appeal for four years. Under Article 12 § 1 of the Statute the Board has jurisdiction to investigate lawyers' breaches of professional ethics (*Berufs- und Standespflichten*) and may impose disciplinary penalties. Under Article 13 these range from a reprimand (*Verweis*) to temporary or permanent disbarment, with fines of up to CHF 5,000 as intermediate penalties.

PROCEEDINGS BEFORE THE COMMISSION

19. Mr Schöpfer applied to the Commission on 11 August 1994, alleging that the disciplinary penalty imposed on him had breached Article 10 of the Convention.

20. The Commission (Second Chamber) declared the application (no. 25405/94) admissible on 4 September 1996. In its report of 9 April 1997 (Article 31), it expressed the opinion by nine votes to six that there had been no violation of that provision. The full text of the Commission's opinion and of the dissenting opinion contained in the report is reproduced as an annex to this judgment[1].

FINAL SUBMISSIONS TO THE COURT

21. In their memorial the Government requested the Court "to declare that there [had] been no violation of Article 10 of the Convention in the present case".

22. In his memorial the applicant asked the Court to hold that there had been a breach of Article 10 and to order Switzerland to pay him compensation for the damage he had sustained.

AS TO THE LAW

ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

23. Mr Schöpfer alleged that the penalty imposed on him by the Lawyers' Supervisory Board had breached Article 10 of the Convention, which provides:

> "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 and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

1. *Note by the Registrar*. For practical reasons this annex will appear only with the printed version of the judgment (in *Reports of Judgments and Decisions* 1998), but a copy of the Commission's report is obtainable from the registry.

> 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, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

24. The penalty in issue incontestably amounted to "interference" with the applicant's exercise of his freedom of expression. The participants in the proceedings agreed that it was "prescribed by law" and pursued a legitimate aim for the purposes of Article 10 § 2, namely maintaining the authority and impartiality of the judiciary. It is apparent from the Supervisory Board's decision of 15 March 1993 that the penalty in question was imposed on the applicant because, *inter alia*, he had disparaged all the canton's judicial authorities (see paragraph 16 above).

The Court, which agrees with the participants on this point, must now determine, therefore, whether the interference was "necessary in a democratic society" in order to achieve that aim.

25. The applicant explained that the reason why he had chosen to make his criticisms through the press was that it was not only his client's case which gave him cause for concern but an intolerable situation that had persisted for years at the Hochdorf district authority. He had already exercised remedies against this state of affairs in connection with previous cases, but to no avail.

Mr Schöpfer asserted that he had deliberately refrained from appealing against the Hochdorf district authority's refusal of his application to take over as his client's officially appointed counsel so as not to make that issue the central theme of the case. In any event, such appeals were usually unsuccessful. It was only when his client's wife had come to tell him that, according to district authority officials, her husband would remain incarcerated for as long as he, Schöpfer, was defending him that he had decided to speak to the press. He could, admittedly, have complained to the public prosecutor's office, which was the district authority's supervisory authority, but the statements the public prosecutor's office had made to the newspapers after the press conference were enough to show that such a step would also have been bound to fail.

Moreover, in his statements he had not criticised the judiciary as such but only the conduct of the Hochdorf prefect and, indirectly, that of the public prosecutor's office, as the supervisory authority. His criticisms had been justified, since they had been aimed not at an isolated case but at a long-standing practice contrary to the Convention. A lawyer who noted that such a practice had been followed to the detriment of a number of his clients

had the right to begin a public debate on the subject. Furthermore, he had expressed his opinion not only as a lawyer but also as a politician.

26. The Government submitted that a distinction had to be drawn in the first place, according to the case-law of the Federal Court, between a lawyer's statements in the context of judicial proceedings and statements made outside the context of such proceedings, inasmuch as there might be stricter requirements for a lawyer who expressed an opinion in public. Only in special circumstances would he be justified in doing so and he should be objective in the way he presented the facts and moderate in tone.

Further, the criticisms of the Hochdorf district authority were not only formulated in totally exaggerated terms, they were also without foundation. The only substantiated complaint, the one concerning the fact that Mr Schöpfer's client had been brought before a district clerk, had been upheld by the Court of Appeal and had then been taken into account during the disciplinary proceedings, by the Lawyers' Supervisory Board and the Federal Court. But even that complaint, which, according to the applicant, concerned an extremely serious violation of human rights, had been formulated in unacceptably exaggerated terms for a lawyer, given the fact that it related to pending judicial proceedings.

Not content with making very serious allegations, Mr Schöpfer had in addition done so in a spiteful and aggressive tone, thus failing to observe the discretion, integrity and dignity that a lawyer should maintain. When seen against all that, the fine of CHF 500 imposed on the applicant appeared moderate in the light of the scale of penalties provided for in the Statute of the Bar of the Canton of Lucerne.

27. In the Commission's view, the applicant had exaggerated his grievances, by asserting for instance that for years the Hochdorf district authority had been flagrantly violating the laws of the Canton of Lucerne and human rights. In addition, he had omitted to exercise first of all the ordinary remedies at his disposal to raise the complaints he had made at the press conference. Moreover, he had made his allegations while the criminal proceedings against his client were still pending, which could be regarded as an attempt to exert pressure on the Hochdorf authorities dealing with the investigation and, more generally, to impair the independence of the judiciary. Lastly, the fine of CHF 500 was at the lower end of the scale of penalties provided for in the Statute of the Bar of the Canton of Lucerne. There had accordingly been no violation of Article 10.

28. The Court notes that at his press conference on 9 November 1992 Mr Schöpfer complained, essentially, of the fact that his client had been arrested at the Hochdorf district authority offices without an arrest warrant and then brought before a district clerk, and that the district authority had refused his application to take over the case as his client's defence counsel under the legal aid scheme (see paragraph 9 above). The Lawyers' Supervisory Board, when it imposed the penalty on the applicant, attached great importance to the fact that he had preferred to speak to the press before exercising the available legal remedies (see paragraph 16 above).

29. The Court reiterates that the special status of lawyers gives them a central position in the administration of justice as intermediaries between the public and the courts. Such a position explains the usual restrictions on the conduct of members of the Bar (see the Casado Coca v. Spain judgment of 24 February 1994, Series A no. 285-A, p. 21, § 54).

Moreover, the Court has already held that the courts – the guarantors of justice, whose role is fundamental in a State based on the rule of law – must enjoy public confidence (see the De Haes and Gijsels v. Belgium judgment of 24 February 1997, *Reports of Judgments and Decisions* 1997-I, p. 234, § 37). Regard being had to the key role of lawyers in this field, it is legitimate to expect them to contribute to the proper administration of justice, and thus to maintain public confidence therein.

30. In the present case Mr Schöpfer held his press conference on 9 November 1992, stating on that occasion, *inter alia*, that the journalists were his last resort (see paragraph 8 above). On 18 November 1992 he appealed to the Lucerne Court of Appeal against the Hochdorf prefect's refusal of the application for his client's release. The Court of Appeal dismissed the appeal for lack of standing, but upheld the complaint that bringing Mr Schöpfer's client before one of the district clerks had been unlawful. It accordingly ordered its decision to be brought to the attention of the public prosecutor's office, as the prefect's supervisory authority (see paragraph 13 above).

31. Thus Mr Schöpfer first publicly criticised the administration of justice in Hochdorf and then exercised a legal remedy which proved effective with regard to the complaint in question. In so doing his conduct was scarcely compatible with the contribution it is legitimate to expect lawyers to make to maintaining public confidence in the judicial authorities.

32. The above finding is reinforced by the seriousness and general nature of the criticisms made by the applicant and the tone in which he chose to make them. For example, he said at the press conference that he was speaking to the journalists because they were his last resort and because at the Hochdorf district authority offices the laws of the Canton of Lucerne

and human rights had for years been flagrantly disregarded (see paragraph 8 above). On 13 November 1992 a daily newspaper published a summary of a press release in which Mr Schöpfer had stated that his client's arrest had breached the Convention and – "in a crude and unacceptable manner" – the cantonal Code of Criminal Procedure (see paragraph 12 above).

33. It is true that Article 10 protects not only the substance of the ideas and information expressed but also the form in which they are conveyed (see the De Haes and Gijsels judgment cited above, p. 236, § 48). It also goes without saying that freedom of expression is secured to lawyers too, who are certainly entitled to comment in public on the administration of justice, but their criticism must not overstep certain bounds. In that connection, account must be taken of the need to strike the right balance between the various interests involved, which include the public's right to receive information about questions arising from judicial decisions, the requirements of the proper administration of justice and the dignity of the legal profession (see the Casado Coca judgment cited above, p. 21, § 55, and the De Haes and Gijsels judgment cited above, pp. 233–34, § 37). Because of their direct, continuous contact with their members, the Bar authorities and a country's courts are in a better position than an international court to determine how, at a given time, the right balance can be struck. That is why they have a certain margin of appreciation in assessing the necessity of an interference in this area, but this margin is subject to European supervision as regards both the relevant rules and the decisions applying them (see the Casado Coca judgment cited above, pp. 20–21, §§ 50 and 55).

34. The Court notes that Mr Schöpfer – who was a lawyer – had raised in public his complaints on the subject of criminal proceedings which were at that time pending before a criminal court. In addition to the general nature, the seriousness and the tone of the applicant's assertions, the Court notes that he first held a press conference, claiming that this was his last resort, and only afterwards lodged an appeal before the Lucerne Court of Appeal, which was partly successful. He also omitted to apply to the other supervisory body for the district authority, the public prosecutor's office, whose ineffectiveness he did not attempt to establish except by means of mere assertions. Having regard also to the modest amount of the fine imposed on the applicant, the Court considers that the authorities did not go beyond their margin of appreciation in punishing Mr Schöpfer. There has accordingly been no breach of Article 10.

FOR THESE REASONS, THE COURT

Holds by seven votes to two that there has been no breach of Article 10 of the Convention.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 20 May 1998.

Signed: THÓR VILHJÁLMSSON
President

Signed: Herbert PETZOLD
Registrar

In accordance with Article 51 § 2 of the Convention and Rule 55 § 2 of Rules of Court B, the following separate opinions are annexed to this judgment:

(a) dissenting opinion of Mr De Meyer;

(b) dissenting opinion of Mr Jambrek.

Initialled: T. V.
Initialled: H. P.

DISSENTING OPINION OF JUDGE DE MEYER

(*Translation*)

The applicant took exception to the arrest of one of his clients, which he considered unlawful. He was annoyed to learn from the man's wife that two district clerks had told her that she would have to instruct a different lawyer if she wanted to obtain her husband's release. In order to express his dissatisfaction he held a press conference at which he apparently stated, among other assertions, that at the Hochdorf district authority offices the laws of the canton and human rights had been flagrantly breached for years. When articles on the case then appeared in two Lucerne newspapers, together with a press release issued by the public prosecutor's office, the applicant also issued a press release, repeating his criticisms and stating in particular that his client's arrest had breached the Convention and the Code of Criminal Procedure in a crude and unacceptable manner[1].

The Lucerne Court of Appeal upheld, at least in part, the applicant's complaints about the lawfulness of the procedure followed at the time of his client's arrest[2].

Was it, in those circumstances, "necessary in a democratic society" to fine him 500 Swiss francs? I have not been convinced that it was.

I find the criticisms made of him – that he had failed to observe discretion, engaged in covert publicity, indulged in cheap showmanship and used an immoderate tone[3] – rather artificial and strained. I do not think they were sufficient to justify the interference in the present case with his freedom of expression on matters of public interest which particularly concerned him as a lawyer[4], namely the administration of justice and respect for human rights[5].

1. See paragraphs 6 to 12 of the judgment.
2. See paragraph 13 of the judgment.
3. See paragraph 16 of the judgment.
4. And no doubt also to some extent as a former member of the Cantonal Council, although that was not necessarily relevant as regards the Bar's code of conduct.
5. See, *mutatis mutandis*, the Ezelin v. France judgment of 26 April 1991, Series A no. 202, pp. 20–23, §§ 48–53, the Barthold v. Germany judgment of 25 March 1985, Series A no. 90, pp. 24–26, §§ 55–59, and the De Haes and Gijsels v. Belgium judgment of 24 February 1997, *Reports of Judgments and Decisions* 1997-I, pp. 233–37, §§ 37–49.

DISSENTING OPINION OF JUDGE JAMBREK

This case concerns a lawyer's freedom of expression. The situation in the Lucerne judicial system as relevant for the present case was exceptional. Both Mr Schöpfer and the authorities engaged in a long-standing polemic. The applicant's role was not that of a politician but a legal expert promoting changes in criminal law, who got involved in conflict with local civil servants. Furthermore, he was involved in a concrete case and on top of that he was influenced by the wife of his client. In such a situation he might have had grounds to believe her although her allegations were denied by civil servants. Thus the applicant found himself in exceptional circumstances and his reaction might have been improper due to such circumstances, which however could also be considered to justify his behaviour. At the same time he was engaged in a legislative fight for his principles. The applicant considered that he could not rely on the remedies available in his efforts to get appointed as an *ex officio* lawyer for his client. Therefore he did not act on purpose in a political way. His statements to the press seem partly right and partly wrong. Furthermore, those originating from the press were authored by the press and the applicant therefore cannot be held responsible for everything that was included in them.

Although the penalty of 500 Swiss francs represents a relatively small sum it nevertheless degraded his personal esteem and professional status in a symbolic way. In this light the penalty may be considered rather harsh and not necessary in a democratic society.

I also wish to refer to the kind of points raised in public by the applicant. It transpires from paragraph 56 of the Worm v. Austria judgment of 29 August 1997 (*Reports of Judgments and Decisions* 1997-V, p. 1554) that matters of general concern relating to a trial may be reported and commented upon without necessarily interfering with the independent judicial process.