



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

FIRST SECTION

CASE OF SCHMIDT v. AUSTRIA

(Application no. 513/05)

JUDGMENT

STRASBOURG

17 July 2008

FINAL

22/10/2008

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Schmidt v. Austria,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyev,

Dean Spielmann,

Sverre Erik Jebens, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 26 June 2008,

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

PROCEDURE

1. The case originated in an application (no. 513/05) 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 Harald Schmidt (“the applicant”), on 28 December 2004.

2. The applicant was represented by Ms M. Windhager, a lawyer practising in Vienna. The Austrian Government (“the Government”) were represented by their Agent, Ambassador F. Trauttmansdorff, Head of the International Law Department at the Federal Ministry of Foreign Affairs.

3. On 8 January 2007 the Court decided to give notice of the application to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant, who is living in Vienna, is a practising lawyer by profession.

5. The applicant represented a commercial manager in administrative criminal proceedings before the Eisenstadt Municipal Office for alleged violations of the Frozen Food Labelling Decree (*Tiefkühlkostkennzeichnungsverordnung* – “the FFLD”). Referring to charges brought by the Vienna Food Inspection Agency

(*Lebensmitteluntersuchungsanstalt*) concerning two samples of turkey meat, the applicant on 13 March 1996 filed observations, stating that:

“Since the samples taken are not labelled as frozen food (contrary to the attempt to play tricks on my client (*Schummelversuch*) in the expert opinion underlying the criminal charge), they are not covered by Section 1 § 1 (1) of the FFLD.”

6. On 11 June 1996 the Vienna Municipal Office requested the Vienna Bar Association to institute proceedings against the applicant, claiming that his serious and unfounded allegations had tarnished the Vienna Food Inspection Agency’s reputation and were incompatible with a lawyer’s professional duties.

7. Subsequently, on 26 June 1996, the Vienna Bar Association opened disciplinary proceedings against the applicant.

8. On 3 July 1997 he filed observations, submitting that the Vienna Food Inspection Agency had repeatedly applied an extensive interpretation of the provisions in issue. By suggesting that the authority had attempted to play tricks on his client, he had merely sought to express his doubts as to the authority’s legal opinion “with a nod and a wink”, even though there may have been sufficient grounds for instituting proceedings for abuse of authority.

9. By decision of 24 March 1999 the Disciplinary Council (*Disziplinarrat*) of the Vienna Bar Association discontinued the proceedings. It found that, while the applicant’s allegations may have infringed the profession’s honour and reputation, his statements disclosed only a minor degree of culpability, as they had apparently been made in the context of a heated exchange between him and the authority concerned.

10. On 7 September 1999 the Bar Association prosecutor (*Kammeranwalt*) appealed. He asserted that the expression “attempt to play tricks on my client”, used by the applicant, insinuated that the authority had been acting fraudulently.

11. Subsequently, on 16 September 1999, the applicant filed observations in which he repeated his defence, namely that his remarks were not meant to be taken literally. He had resorted to innuendo, alluding to an allegedly unlawful practice on the part of the Vienna Food Inspection Agency. He alleged in particular that the latter used its position to pursue its aims in the field of food inspection policy.

12. On 14 February 2000 the Appeals Board (*Oberste Berufungs- und Disziplinarkommission*) granted the prosecutor’s appeal. It quashed the decision of 24 March 1999 and remitted the case to the Disciplinary Council.

13. Having held an oral hearing, at which the applicant was present, the Disciplinary Council on 6 September 2000 convicted the applicant under Section 9 of the Lawyers Act (*Rechtsanwaltsordnung*) and, relying on Section 16 of the Disciplinary Act (*Disziplinarstatut*), issued a written

reprimand. Moreover, it ordered the applicant to pay the costs of the proceedings.

14. The Disciplinary Council held that the applicant had used a defamatory and disparaging expression. Pursuant to Section 9 of the Lawyers Act a lawyer, when defending the interests of his client, was entitled to address the perceived incorrectness of any official document in an appropriate manner. The applicant's statement had transgressed the limits of acceptable conduct. In the submissions at issue he had failed to indicate any facts or circumstances which would have justified the use of the expression "attempt to play tricks on my client". The applicant would have been free to institute proceedings for abuse of authority (*Amtsmissbrauch*), had there been grounds for such a suspicion. In conclusion, the Disciplinary Council found that the applicant had infringed the profession's honour and reputation.

15. On 15 December 2000 the applicant lodged an appeal against the decision and on 17 January 2001 the Bar Association prosecutor submitted his observations in reply.

16. Following another oral hearing, the Appeals Board dismissed the applicant's appeal on 7 May 2001. It confirmed that the applicant had transgressed the limits laid down in Section 9 of the Lawyers Act. The impugned statement had been defamatory and had disparaged the staff of the Vienna Food Inspection Agency. Since that statement had been made in writing, it had been well-considered. Therefore, it could not be said that the applicant had acted with a minor degree of culpability.

17. On 2 August 2001 the applicant lodged a complaint with the Constitutional Court (*Verfassungsgerichtshof*). He complained, *inter alia*, that there had been a violation of Article 10 of the Convention, submitting that the Food Inspection Agency's charges against his client had been objectively wrong. By using the impugned expression, he had merely sought to emphasise his argument.

18. By decision of 21 June 2004 the Constitutional Court dismissed the applicant's complaint. It found that the interference complained of had served the aim of maintaining the authority and impartiality of the judiciary and that the disciplinary authorities had duly balanced the applicant's rights under the Convention against the profession's interest in safeguarding its standards of professional duties. Hence, they had given ample reasons why there had been no violation of the applicant's right to freedom of expression. The decision was served on the applicant on 23 July 2004.

II. RELEVANT DOMESTIC LAW

19. Section 9 of the Austrian Lawyers Act (*Rechtsanwaltsordnung*) regulates the professional duties incumbent on lawyers. When representing

a client, a lawyer is entitled to make use of any means of defence which are not contrary to his mandate, his conscience or the law.

20. According to section 1 (1) of the Disciplinary Act (*Disziplinarstatut*), a lawyer who acts in breach of his/her professional duties or, through his/her conduct within or outside his/her professional activity, infringes the profession's honour or reputation, is deemed to have committed a disciplinary offence which must be dealt with by the Disciplinary Council.

21. Section 16 (1) of the Disciplinary Act, in the version applicable at the material time, provided for the following disciplinary penalties: a written reprimand, a fine of up to 45,000 euros, a prohibition on practising as a lawyer for a period not exceeding one year and removal from the Bar roll.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

22. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement laid down in Article 6 § 1 of the Convention, which reads as follows:

"In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

23. The Government contested that argument, asserting that the overall duration of the proceedings should be regarded as reasonable, in particular as the Constitutional Court had examined the merits of the case.

24. The period to be taken into consideration began on 26 June 1996 and ended on 23 July 2004. It therefore lasted for eight years and one month for three levels of jurisdiction.

A. Admissibility

25. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

26. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

27. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *W.R. v. Austria*, no. 26602/95, §§ 33-34, 21 December 1999; *Luksch v. Austria*, no. 37075/97, §§ 18-19, 13 December 2001; and *Malek v. Austria*, no. 60553/00, § 49, 2 June 2003).

28. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

29. There has accordingly been a breach of Article 6 § 1.

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

30. The applicant further complained that the reprimand issued against him constituted a violation of his right to freedom of expression as guaranteed by Article 10 of the Convention which, in so far as material, 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 and regardless of frontiers. ...

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.”

31. The Government argued that the interference with the applicant’s right to freedom of expression had been justified in accordance with the second paragraph of Article 10. It had a legal basis in section 1 (1) of the Disciplinary Act taken in conjunction with section 9 of the Lawyers Act and served the legitimate aims of protecting the reputation and rights of others and the authority and impartiality of the judiciary.

32. Regarding the necessity of the interference, the Government asserted that the applicant's right to express criticism of the authority in issue when representing his client had to be weighed against the interest in protecting the reputation of others and the reputation and impartiality of the judiciary. The disciplinary authorities had duly weighed these interests, giving detailed reasons for their decisions. Moreover, it had been open to the applicant to formulate his criticism without having recourse to derogatory remarks, or to bring proceedings for abuse of authority. Finally, the disciplinary authorities had merely issued a written reprimand against the applicant. In sum, the interference had been proportionate to the legitimate aim pursued.

33. For his part, the applicant pointed out that under Austrian law a lawyer's duty was first and foremost to defend the interests of his client. The expression "attempt to play tricks on my client" did not amount to accusing the authority of fraudulent behaviour. He claimed that his statement had been based on fact and did not therefore transgress the limits of permissible criticism.

A. Admissibility

34. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

B. Merits

35. It is not in dispute that the disciplinary proceedings resulting in a written reprimand interfered with the applicant's right to freedom of expression. Nor is it disputed that the interference was "prescribed by law" and served a legitimate aim, namely the protection of the reputation of others. The Court need not decide whether it also served the aim of maintaining the authority and impartiality of the judiciary.

36. The parties' submissions concentrated on the necessity of the interference. The Court reiterates that while lawyers are certainly entitled to comment in public on the administration of justice, 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. The national authorities have a certain margin of appreciation in assessing the

necessity of interference, but this margin is subject to European supervision as regards both the relevant rules and the decisions applying them (see *Nikula v. Finland*, no. 31611/96, § 46, ECHR 2002-II, and *Schöpfer v. Switzerland*, judgment of 20 May 1998, *Reports of Judgments and Decisions* 1998-III, pp. 1053-54, § 33). However, in the field under consideration in the present case there are no particular circumstances – such as a clear lack of common ground among member States regarding the principles at issue or a need to make allowance for the diversity of moral conceptions – which would justify granting the national authorities a wide margin of appreciation (*ibid.*).

37. In exercising its supervisory jurisdiction, the Court must look at the impugned interference in the light of the case as a whole, including the content of the remarks held against the applicant and the context in which he made them. In particular it must determine whether the interference in question was “proportionate to the legitimate aims pursued” and whether the reasons adduced by the national authorities to justify it are “relevant and sufficient” (see *Nikula*, cited above, § 44).

38. In the present case, the applicant was representing a client in administrative criminal proceedings for alleged breaches of the Frozen Food Labelling Decree. In written submissions prepared in those proceedings the applicant accused the Vienna Food Inspection Agency of attempting to play tricks on his client. It follows that in the circumstances of the present case, the requirement of protection of the Vienna Food Inspection Agency’s reputation is not to be weighed against freedom of the press or the interest in the open discussion of matters of public concern (see, *mutatis mutandis*, *Nikula*, cited above, § 48).

39. The Court notes that in administrative criminal proceedings such as those at issue the Vienna Food Inspection Agency has a function comparable to the prosecution in ordinary criminal proceedings. It brings criminal charges on the basis of its expert opinions. In this connection the Court reiterates its case-law according to which increased protection is provided for statements whereby an accused criticises a prosecutor, as opposed to verbally attacking a judge or court as a whole (see *Nikula*, cited above, § 50).

40. The Court notes that the impugned statement did not amount to personal insult (see, by contrast, *W.R. v. Austria*, no. 26602/95, Commission decision of 30 June 1997, and *Mahler v. Germany*, no. 29045/95, Commission decision of 14 January 1998), but rather was directed against the conduct of the Vienna Food Inspection Agency in the proceedings.

41. The domestic authorities attached weight to the fact that the applicant had failed to indicate any facts or circumstances which would have justified the use of the impugned expression (see paragraph 14 above). In the Court's view this is a decisive factor in the present case: the applicant's allegations were indeed not supported by any facts. The statement did not give any details which would have explained why the applicant thought that the Vienna Food Inspection Agency had acted improperly when bringing charges against his client.

42. Finally, the Court notes that in contrast to the case of *Nikula* (cited above, § 55), what was at stake was not a criminal penalty but a disciplinary sanction. The Court reiterates that the special position of lawyers as intermediaries between the public and the courts explains the usual restrictions on the conduct of members of the Bar. Given the key role of lawyers it is legitimate to expect them to contribute to the proper administration of justice, and thus to maintain public confidence therein (see *Nikula*, cited above, § 45, and *Schöpfer*, cited above, pp. 1052-53, §§ 29-30).

43. As regards the proportionality of the penalty at issue, the Court observes that the most lenient sanction provided for in section 16 (1) of the Disciplinary Act was applied, namely a written reprimand.

44. In sum, the Court considers that the domestic authorities gave relevant and sufficient reasons for their decision. They did not go beyond their margin of appreciation when issuing a reprimand against the applicant.

45. It follows that there has been no violation of Article 10 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

47. The applicant asked the Court to award him an appropriate amount for non-pecuniary damage.

48. The Government contested this claim.

49. The Court considers that the applicant must have sustained non-pecuniary damage in respect of the length of the proceedings. Ruling on an equitable basis, it awards him 4,000 euros (EUR) under that head.

B. Costs and expenses

50. The applicant also claimed EUR 2,340, inclusive of value-added tax (VAT), for the costs and expenses incurred before the Constitutional Court and EUR 3,568.32, inclusive of VAT, for costs and expenses incurred before the Court.

51. The Government did not comment.

52. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum.

53. The Court notes firstly that it has found a violation only in respect of the length of the proceedings. Secondly, it observes that none of the costs claimed in respect of the domestic proceedings were incurred in order to prevent or redress that violation. No award is therefore made in respect of the domestic proceedings.

54. In respect of the Convention proceedings, the Court accepts that the costs were necessarily incurred and were reasonable as to quantum. It therefore awards the full amount claimed, namely EUR 3,568.32 inclusive of VAT.

C. Default interest

55. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Declares* the application admissible unanimously;
2. *Holds* unanimously that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* by four votes to three that there has been no violation of Article 10 of the Convention;
4. *Holds* by four votes to three
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 4,000 (four thousand euros) in respect of non-pecuniary damage and EUR 3,568.32 (three thousand

five hundred and sixty-eight euros thirty-two cents) in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 17 July 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the joint dissenting opinion of Judges Rozakis, Vajić and Spielmann is annexed to this judgment.

C.L.R.
S.N.

JOINT DISSENTING OPINION OF JUDGES ROZAKIS,
VAJIĆ AND SPIELMANN

1. We are unable to follow the decision adopted by the majority that there has been no violation of Article 10.

2. The Court relies on what is a decisive factor in the present case, namely that the applicant's allegations were not supported by any facts and that the statement did not give any details which would have explained why the applicant thought that the Vienna Food Inspection Agency had acted improperly when bringing charges against his client. But this is in our view not the problem. In his written observations, the applicant, a practising lawyer, commented as follows on the charges brought by the Vienna Food Inspection Agency:

“Since the samples taken are not labelled as frozen food (contrary to the attempt to play tricks on my client (*Schummelversuch*) in the expert opinion underlying the criminal charge), they are not covered by Section 1 § 1 (1) of the FFLD.”

3. This was an acceptable statement for a practising lawyer, commenting on the expert opinion underlying the criminal charge. The lawyer's statement was made in written observations submitted to the Eisenstadt Municipal Office.

4. As can be seen from its settled case-law, the Court has always been extremely reluctant to accept interference with the freedom of expression of lawyers, although it does accept that, owing to their special status and central position in the administration of justice as intermediaries between the public and the courts, restrictions on the conduct of members of the Bar may be justified. It has also held that Article 10 protects not only the substance of the ideas and information expressed but also the form in which they are conveyed. The combination of these principles means that while lawyers are entitled to comment in public on the administration of justice, 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 *Schöpfer v. Switzerland*, judgment of 20 May 1998, *Reports of Judgments and Decisions* 1998-III, pp. 1053-54, § 33, and *Nikula v. Finland*, no. 31611/96, §§ 45-46, ECHR 2002-II).

5. Even though the Court confirmed in the *Nikula* case that restrictions on lawyers' conduct are more stringent in cases where the judiciary itself is targeted (*Nikula*, cited above, § 50), in many such cases the Strasbourg organs have nevertheless found violations of Article 10 (see *W.R. v. Austria*, no. 26602/95, Commission decision of 30 June 1997, in which

counsel had described the opinion of a judge as “ridiculous”, and *Katrami v. Greece*, no. 19331/05, 6 December 2007, in which a journalist said in an article that an investigating judge had “broken his oath” and had called him “karagiozis” (§§ 41-42)).

In *Amihalachioaie (Amihalachioaie v. Moldova)*, no. 60115/00, ECHR 2004-III), a case concerning the conviction of a lawyer for criticising a judicial decision, the Court noted that the applicant’s comments were made on an issue of general interest in the context of a fierce debate among lawyers and that, even though the remarks could be regarded as showing a certain lack of regard for the Constitutional Court following its decision, they could not be described as grave or as insulting to the judges of the Constitutional Court (§§ 35-36, quoting *mutatis mutandis, Skalka v. Poland*, no. 43425/98, § 34, 27 May 2003; *Perna v. Italy* [GC], no. 48898/99, § 47, ECHR 2003-V; and *Nikula*, cited above, §§ 48 and 52). The Court came to the conclusion that there was no “pressing social need” to restrict the applicant’s freedom of expression and that the national authorities had not furnished “relevant and sufficient” reasons to justify such a restriction. Since the applicant had not gone beyond the bounds of acceptable criticism under Article 10 of the Convention, the interference in issue could not be regarded as having been “necessary in a democratic society” (§ 39).

6. The importance of the role of the advocate was stressed again by the Court in the Grand Chamber case of *Kyprianou (Kyprianou v. Cyprus)* [GC], no. 73797/01, ECHR 2005-..., where the Court held:

“173. 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. 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 (see *Amihalachioaie v. Moldova*, no. 60115/00, § 27, ECHR 2004-III; *Nikula v. Finland*, cited above, § 45; and *Schöpfer v. Switzerland*, cited above, pp. 1052-53, §§ 29-30, with further references).

174. Article 10 protects not only the substance of the ideas and information expressed but also the form in which they are conveyed. While lawyers too are certainly entitled to comment in public on the administration of justice, their criticism must not overstep certain bounds. Moreover, a lawyer’s freedom of expression in the courtroom is not unlimited and certain interests, such as the authority of the judiciary, are important enough to justify restrictions on this right. Nonetheless, even if in principle sentencing is a matter for the national courts, the Court recalls its case-law to the effect that it is only in exceptional circumstances that restriction – even by way of a lenient criminal penalty – of defence counsel’s freedom of expression can be accepted as necessary in a democratic society (see *Nikula v. Finland*, cited above, §§ 54-55).”

7. The limits of acceptable criticism are wider when directed at other parties to the proceedings, as was the case both in *Nikula* and the present case. Moreover, the Court made it clear that it is only in exceptional cases

that restrictions – even by way of a lenient criminal penalty – of defence counsel’s freedom of expression can be accepted as necessary in a democratic society (*Nikula*, cited above, § 55).

In the *Nikula* case, which concerned the defamation of a prosecutor by defence counsel, the Court noted the distinction made in various Contracting States between the role of the prosecutor as the opponent of the accused, and that of the judge and said that generally speaking, that difference should provide increased protection for statements whereby an accused criticised a prosecutor, as opposed to verbally attacking the judge or the court as a whole (§ 50). The criticism was directed at the prosecution strategy which, in the applicant’s view, constituted “role manipulation ... breaching his official duties”. Although some of the terms were inappropriate, her criticism was strictly limited to T.’s performance as the prosecutor in the case against the applicant’s client, as distinct from criticism focusing on T.’s general professional or other qualities. In that procedural context, the Court considered that T. had to tolerate very considerable criticism by the applicant in her capacity as defence counsel. (§ 51). It noted that the applicant’s submissions were confined to the courtroom, as opposed to criticism of a judge or a prosecutor voiced in, for instance, the media, and that the applicant’s criticism of the prosecutor, being of a procedural character, could not amount to a personal insult (§ 52).

In the present case, as in *Nikula*, the impugned expression – “playing tricks on my client” – was used by the lawyer in his observations with reference to the Vienna Food Agency, a party to the proceedings, which in administrative proceedings in Austria has a function comparable to that of the prosecution in ordinary criminal proceedings. However, contrary to the facts of the *Nikula* case, it was made in writing, and was not used at a public hearing in a courtroom or in the media (*Nikula*, cited above, § 52). Thus the negative impact of the remark, if any, was quite limited.

8. We also think that the Court wrongly characterised the written reprimand as a lenient sanction. In the circumstances of the case, this sanction was clearly disproportionate. After all, disciplinary action against a lawyer is to be taken very seriously, as it has a potential chilling effect. With regard to disciplinary proceedings, the Court has already found that the mere threat of an *ex post facto* review of criticism voiced by counsel is difficult to reconcile with his duty to defend the interest of his client and would have a “chilling effect” on the practice of his profession (see *Nikula*, cited above, § 54, and *Steur v. the Netherlands*, no. 39657/98, § 44, ECHR 2003-XI).

9. For the above reasons we are of the opinion that there has been a violation of Article 10 in the present case.