AS TO THE ADMISSIBILITY OF

Application No. 12387/86
by Fraktion Sozialistischer Gewerkschafter
im ÖGB Vorarlberg and 128 of its
individual members (Kurt KÖPRUNER,
Karl FALSCHLUNGER and Others)
against Austria

The European Commission of Human Rights sitting in private on 13 April 1989, the following members being present:

MM. S. TRECHSEL, Acting President
F. ERMACORA
G. SPERDUTI
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
H. VANDENBERGHE
Mrs. G.H. THUNE
Sir Basil HALL
MM. F. MARTINEZ
C.L. ROZAKIS
Mrs. J. LIDDY
Mr. L. LOUCAIDES

Mr. H.C. KRÜGER, Secretary to the Commission

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 18 June 1986 by Fraktion Sozialistischer Gewerkschafter im ÖGB Vorarlberg and 128 of its individual members (Kurt KÖPRUNER, Karl FALSCHLUNGER and Others, cf. the list in the Appendix) against Austria and registered on 9 September 1986 under file No. 12387/86;

Having regard to the report provided for in Rule 40 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The facts of the case as submitted by the applicants may be summarised as follows:

The applicants are 128 individual members of the group of socialist trade-unionists in the Vorarlberg branch of the Austrian Trade Union Federation (Fraktion sozialistischer Gewerkschafter im Österreichischen Gewerkschaftsbund Vorarlberg) who, in 1984, presented themselves as candidates for the elections to the Workmen's Chamber (Arbeiterkammer) of Vorarlberg. They include the present Chairman (Obmann) of this group, Mr. Kurt Köpruner, and its former Chairman who was still in office at the relevant time, Mr. Karl Falschlunger. All individual applicants are Austrian citizens residing at various places of Vorarlberg. The group of socialist trade-unionists as such, represented through its Chairman, Mr. Köpruner, wishes to figure as a further applicant. All applicants are represented by Rechtsanwalt Dr. W.L. Weh of Bregenz.

In the course of the electoral campaign, the group of socialist trade-unionists published and distributed to the general public a series of pamphlets under the title "Wussten Sie, dass ..." ("Did you know that ..."). One of the pamphlets (No. 19 published in February 1984 with a circulation of 12,000 copies) dealt in a critical way with the medical profession in Vorarlberg. It was claimed, in particular, that the medical profession had a disproportionate income in comparison to other sectors of the population and could lead a life of luxury. Criticism was expressed in this context concerning the system of private patients who, it was claimed, unjustifiably received better treatment than other patients covered by the social security system. Reference was also made to a book in which the authors allegedly had proven "how well-known members of the medical profession abuse[d] innocent patients for experimental purposes, how side-effects of drugs [were] kept secret, how physicians and pharmacists [were] being bribed for purposes of increased sales and how the prices of medicines [were] fixed in an arbitrary manner".

In the centre of this pamphlet was a column entitled "Was Sie über Primarärzte wissen müssen" ("What you should know about head physicians of hospitals"). Under the heading "Was sie mögen" ("What they like") twelve items were listed, including:

- chronically ill private patients;
- nice gifts of the pharmaceutical industry;
- anonymous bank accounts in Switzerland.

Under the heading "Was sie nicht mögen" ("What they do not like") thirteen items figured, including:

- normal patients.

These and a number of further passages of the pamphlet were made the subject of proceedings under the Media Act (Mediengesetz) by twelve (out of a total of some 45) head physicians of various Vorarlberg hospitals, who were supported by the Vorarlberg Chamber of Medical Practitioners (Ärztekammer). They applied for the forfeiture (Einziehung) of the pamphlet in autonomous proceedings (selbständiges Verfahren) under Section 33, publication of the judgment under Section 34, and publication of a notice on the introduction of the proceedings under Section 37 of the Media Act.

Section 33 para. 2 of the Act reads as follows:

(German)

"Auf Antrag des Anklägers ist auf Einziehung in einem selbständigen Verfahren zu erkennen, wenn in einem Medium der objektive Tatbestand einer strafbaren Handlung hergestellt worden ist und die Verfolgung einer bestimmten Person nicht durchführbar oder ihre Verurteilung wegen des Vorhandenseins von Gründen, die eine Bestrafung ausschliessen, nicht möglich ist. Wäre der Täter bei erbrachtem Wahrheits-beweis nicht strafbar, so steht dieser Beweis ... auch dem Medieninhaber (Verleger) als Beteiligtem ... offen."

(Translation)

"Upon the application of the prosecutor the Court shall pronounce the forfeiture in autonomous proceedings if the objective conditions of a criminal offence have been fulfilled in a press publication and if either prosecution of a particular person or, by virtue of reasons which exclude the imposition of a penalty, his conviction is not possible. If no punishment can be imposed in case of the offender having proved the truth, the defence of truth shall also be available to the owner (publisher) of the press

product in question being the interested party ...".

It was claimed that the incriminated passages fulfilled the objective conditions of the criminal offence of defamation in the press (üble Nachrede in einem Druckwerk) within the meaning of Section 111 para. 2 of the Penal Code (Strafgesetzbuch) and that the group of socialist trade-unionists as a whole was responsible for this under the imprint of the publication. However, as the group was not a legal person, the application was directed against its individual members.

The proceedings were conducted before the competent criminal court, i.e. a single judge of the Regional Court (Landesgericht) of Feldkirch.

On 17 April 1984 the Court issued an injunction against the group of socialist trade-unionists ordering it to publish a notice that the proceedings had been brought.

On 26 November 1984 the Court held a trial (Hauptverhandlung) of the case as a consequence of which it severed the proceedings against six individual applicants who might have been involved in the preparation and dissemination of the publication. They included, in particular, Mr. Falschlunger who had declared that he was responsible for the publication. As regards the remaining individual applicants, the Court found it established that they had not participated in the preparation or dissemination. It considered that under the general principles of criminal law they could not be held criminally responsible and therefore had to be acquitted. Accordingly the Court rejected the application insofar as it concerned these applicants.

The head physicians' appeal against this decision was allowed by the Innsbruck Court of Appeal (Oberlandesgericht) on 20 March 1985. It held that, since the group of socialist trade-unionists mentioned

in the imprint was not a legal person, and as no individual person responsible for the publication had been indicated, it was legally justified to hold all persons constituting the group responsible. In autonomous proceedings under Section 33 of the Media Act the plaintiffs could not be required to identify those persons who had actually contributed to the publication as this would be contrary to the ratio legis of the provisions concerning the imprint. It was the purpose of Section 33 to provide a remedy if no case could be brought against an individual person. The general principles of criminal responsibility were not applicable in such a case, and therefore proceedings could be brought against all applicants as the publication was attributable to them under the Media Act. The Court of Appeal accordingly referred the case back to the Regional Court with a view to determining whether or not the contents of the publication fulfilled the objective conditions of a criminal offence.

The Regional Court held a new trial on 24 May 1985. It allowed the application against all 128 individual applicants, finding that the above-cited passages of their publication objectively constituted the offence of defamation under Section 111 paras. 1 and 2 of the Penal Code. Furthermore, it ordered the forfeiture of that publication under Section 33 of the Media Act as well as the publication of the judgment in a local newspaper under Section 34 of the Act.

In the reasons the judgment also referred to the context of the above passages. This included the reproach made to physicians that they accorded better treatment to patients with a supplementary private insurance and the reference to a book. Seen in this context, the Court considered that the central column could be interpreted by "socially integrated and value orientated average readers" as a personal attack on and defamation of head physicians in Vorarlberg,

exposing them to a suspicion of corruption and other criminal offences. The statement that they liked chronically ill private patients, but disliked normal patients involved a reproach of unethical behaviour; the statement that they liked nice gifts of the pharmaceutical industry involved a reproach that they were open to bribery; and the statement that they liked anonymous bank accounts in Switzerland involved a reproach of tax evasion. Finally, the authors of the publication had identified themselves with the statements in the book which they had cited.

The Court did not find it proven that these attitudes (Gesinnungen) insinuated to the head physicians were true. The incriminated statements could not be defended by the applicants as being general statements devoid of any meaning (inhaltsleere Allerweltsaussagen); this would be incompatible with the functions of a publication made in the course of an electoral campaign and which for the average reader could only serve the purpose of attacking political opponents. Also, the applicants' offer to prove the truth of their statements had to be rejected because the proposed evidence was either of an exploratory nature (Erkundungsbeweis) or not specific. The applicants had not indicated any specific facts capable of demonstrating the existence of the alleged attitudes of the head physicians concerned. These had been singled out with sufficient precision to allow their identification, and they were entitled to complain of defamation even if they had not been attacked individually but as a group. In autonomous proceedings an intention to defame was

not required under Section 33 of the Media Act. It was sufficient that the incriminating statements were objectively defamatory and that the defendants had not proven the truth. The applicants' acts could not be justified under the constitutional provisions concerning freedom of expression, including Article 10 of the Convention, as they did not constitute "objective criticism proportionate both as regards its cause and the terms employed" ("anlass- und ausdrucksadäquate sachliche Kritik").

The applicants' appeal (Berufung) in which they alleged the nullity of the above judgment was rejected by the Court of Appeal on 19 December 1985. The Court of Appeal held that the Regional Court, when rejecting their offer to prove the truth of their statements, had not infringed the applicants' rights of defence. The defence of truth was often used to aggravate the interference with the reputation of the injured person, and therefore it was necessary to prevent abuses of this defence, in particular, by a strict control of the alleged facts and the subject matter of the proof offered. While in the case of allegations of despicable or immoral behaviour the scope of evidence of truth could not be restricted within narrow limits, only evidence of concrete facts likely to prove such behaviour should be admitted. In the present case the applicants had failed to specify the facts which they wished to prove and to show their relevance to the defamation issue. In assessing that issue, the Regional Court had considered all relevant elements of the publication. By concentrating on certain passages it had not distorted its objective meaning. It had correctly held that the plaintiffs, being members of a relatively small group of persons attacked by the publication, could complain of defamation. The fact that, apart from head physicians, other members of the medical profession had also been criticised in the publication had not been established by the Regional Court and therefore could not be raised by the applicants on appeal. The applicants could not invoke the possibility of different interpretations of the incriminating passages which did not constitute a reproach against the plaintiffs. The meaning of the incriminating passages as intended by the authors and perceived by the public was based on findings of the trial court by which the Court of Appeal was bound. It could only intervene if it had doubts concerning these findings, but not concerning their assessment by the trial court in the exercise of its free evaluation of evidence. The applicants' interpretation of the

incriminating passages departed from the facts as established by the trial court and therefore could not support the allegation that the law had been wrongly applied. Moreover, the trial court's interpretation of the incriminating passages had been correct and these passages objectively constituted the offence of defamation within the meaning of Section 111 paras. 1 and 2 of the Penal Code.

COMPLAINTS

1. The applicants complain that the restriction of their publication violated Article 10 of the Convention and Articles 1 and 3 of Protocol No. 1 to the Convention.

Under Article 10 they submit that the restriction of their freedom of expression was not necessary in a democratic society as there was no pressing social need. Furthermore, the Austrian courts did not apply the right criteria when judging the case. In particular, they failed to consider the incriminating passages in the context of the publication, which was part of an important electoral campaign

conducted in a heated political atmosphere. The issues discussed - the high incomes of the medical profession from private patients and the better treatment accorded to the latter - had been in dispute between the group of socialist trade-unionists and the Chamber of Medical Practitioners for a long time. Informed readers must have understood the satirical undertone in the exaggerated form of presentation. The aim of the publication was not to attack individual persons, but to pass a critical value judgment on a question of social policy. The applicants challenge the Court of Appeal's statement that the interpretation of the incriminating statements is the task of the trial court, whose findings are binding. This approach is at variance with a pluralistic democratic society. They also criticise that the Regional Court's judgment did not permit them to rely on a book which was on public sale and which had not been the subject of any restrictions.

Under Article 1 of Protocol No. 1 the applicants claim that the forfeiture of their publication constituted an unjustified interference with their property rights.

Under Article 3 of Protocol No. 1 they claim that it interfered with their campaign concerning the elections to the Workmen's Chamber which, in their view, fall within the scope of this provision. They stress that a restriction of this kind may limit the freedom of expression in future electoral campaigns.

2. All individual applicants, except Mr. Falschlunger, also complain of the court proceedings. Mr. Falschlunger accepts his responsibility for the publication at issue and that on this basis criminal proceedings for defamation could be instituted against him.

The other applicants invoke Articles 6, 7 and 11 of the Convention, claiming that they had not been personally involved in the preparation and dissemination of the publication and therefore could not be held responsible for it. The plaintiffs knew that Mr. Falschlunger was responsible and therefore could have brought a private prosecution against him. However, by admitting autonomous proceedings against all applicants, the latter were de facto treated as accused. This impression was given to the general public by the manner in which the proceedings were conducted. The case was dealt with by the criminal courts under the Code of Criminal Procedure and the provisions of the Penal Code concerning defamation. A trial (Hauptverhandlung) was held, and in the record thereof reference was made to a "criminal case" against the applicants and to the reading of the "indictment". The impression was thus created that all 128 individual applicants had been found guilty and had been convicted of

a criminal offence. However, under Articles 6 and 7 of the Convention nobody may be punished for a criminal offence without his personal guilt having been established. This fundamental principle has been disregarded in the present case.

The applicants further invoke Article 11 of the Convention and claim that the fact of holding them individually responsible only because they belonged to the group of persons indicated in the imprint of the publication interferes with trade union freedom or freedom to create political associations. This practice must deter the individuals concerned from becoming members of the trade unions or associations in question. This interference with trade union freedom cannot be justified under Article 11 para. 2 because the person responsible for the publication was known and the rights of others thus could be protected by proceeding against that person.

THE LAW

1. The applicants, i.e. the group of socialist trade-unionists in the Vorarlberg branch of the Austrian Trade Union Federation and 128 of its individual members who had presented themselves as candidates in the 1984 elections to the Vorarlberg Workmen's Chamber, complain of the restriction of a publication issued in the course of their electoral campaign. They allege that this restriction unjustifiedly interfered with their rights under Article 10 (Art. 10) of the Convention and Articles 1 and 3 of Protocol No. 1 (p1-1, P1-3) to the Convention.

The individual applicants, except Mr. Falschlunger, also complain of the relevant court proceedings, claiming that they involved violations of Articles 6, 7 and 11 (Art. 6, 7, 11) of the Convention.

2. The Commission must first examine the applicants' status for the purposes of Article 25 (Art. 25) of the Convention. Under this provision, the Commission may receive petitions "from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in [the] Convention".

The Commission notes that the proceedings complained of were "autonomous proceedings" (selbständiges Verfahren) under Section 33 of the Media Act which originally were brought both against the group of socialist trade-unionists as mentioned in the imprint of the publication at issue, and against the 128 individual members of this group who were candidates for the election to the Workmen's Chamber. However, as a result of the proceedings only the latter were regarded as defendants for the purposes of Section 33 of the Media Act, while the group of socialist trade-unionists as such was not treated as a defendant because it was not a legal person. It now claims to have been a victim of a violation of its Convention rights along with its above 128 individual members.

The Commission notes that this group was not recognised as a legal person by the Austrian courts. It may therefore be doubtful whether it can validly be represented by its Chairman, Mr. Köpruner. In any event, the group as such was not held responsible for the publication, it was not represented in the domestic proceedings, and the sanctions imposed as a result of the proceedings were not pronounced against it. In these circumstances the Commission does not consider the group of socialist trade-unionists as a separate victim for the purposes of Article 25 (Art. 25) of the Convention, in addition to the 128 individuals belonging to this group who were directly affected by the proceedings.

The Commission notes that the imprint of the restricted publication referred to the group of socialist trade-unionists, and that the representatives of the group in the Workmen's Chamber, and prior to their election, its candidates, are commonly referred to

under this name. This apparently was the reason why the individual applicants, who had not been otherwise identified, were treated as defendants in the domestic proceedings. For the purpose of Article 25 (Art. 25) of the Convention they constitute a "group of individuals" under the aggregate name "Fraktion sozialistischer Gewerkschafter im ÖGB Vorarlberg" (cf. mutatis mutandis, No. 6538/74, Times Newspapers Ltd., The Sunday Times, and Harold Evans v. the United Kingdom, Dec. 21.3.75, D.R. 2 p. 90 at p. 95).

3. All members of the group, except Mr. Falschlunger, complain under Article 6 (Art. 6) of the Convention that the proceedings were directed against them individually, although they had not been involved in the preparation and dissemination of the publication, and that this created the impression that they were convicted of a criminal offence, although their guilt had not been established.

Article 6 (Art. 6) provides inter alia that "in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair ... hearing ..." (para. 1), that "everyone charged with a criminal offence" shall "be presumed innocent until proved guilty according to law" (para. 2), and that he shall have certain "minimum rights" of defence (para. 3).

The Commission does not find it necessary to determine to which extent Article 6 (Art. 6) was applicable to the proceedings complained of as the applicants' complaints in this respect must in any event be rejected.

The Commission does not regard it as contrary to the Convention that the Austrian courts established the joint liability of the applicants for the publication issued on their behalf, although not all of them had actually contributed to its preparation and dissemination. The laws of many Convention States provide for cases of objective liability, including objective liability for the content of publications. Moreover, it is not unusual that in cases where such objective liability arises for a group of persons who are not organised as a legal person, the individuals concerned are held to be jointly responsible. This formal criterion does not mean that each and every individual comprised in the group is considered as having committed a reproachable act, but only that he or she must sustain the legal consequences of such an act which has been committed in their common sphere of responsibility. The Commission notes that in the present case the applicants could fully plead their case before the competent Austrian courts, and that in this context they could also submit all arguments speaking against the assumption of their joint liability for the publication. The fact that the courts rejected their arguments in this respect is not a circumstance which would allow the conclusion that the hearing was unfair.

The Austrian courts considered that certain statements contained in the applicants' publication were objectively defamatory and constituted a criminal offence under Section 111 of the Penal Code. The manner in which the courts reached this conclusion cannot be regarded as unfair. The Commission here notes that the meaning of the statements concerned was treated as a fact to be established by the trial court in the free evaluation of the evidence and that this court's finding could not be reviewed on appeal. The trial court referred to a hypothetical well-informed average reader. The different interpretation proposed by the applicants was considered by the courts, but not accepted. The Commission does not find any element of unfairness in this approach.

Nor is there any indication that the presumption of innocence and the applicants' rights of defence were disregarded. It remained the task of the plaintiffs to prove the objectively defamatory nature of the statements in question although in autonomous forfeiture proceedings under the Media Act it was not necessary for them to establish the applicants' intent to defame. The plaintiff head

physicians could show that in the applicants' publication highly reproachable attitudes were imputed to them which involved, or at least came close to involving, unethical or criminal behaviour. In these circumstances the courts could reasonably conclude that the objective conditions of the criminal offence of defamation were fulfilled.

The applicants were not left without any defence, however. The objectively defamatory nature of the publication having been established, they still could avail themselves of the defence of truth as provided for in Section 112 of the Penal Code. In its decision of 19 December 1985 the Court of Appeal indicated that the scope of evidence of truth admissible in this respect could not be restricted within narrow limits. However, the evidence offered by the applicants was apparently not based on any concrete facts which were found to be susceptible of showing that the reproaches made to the head physicians were true. The Commission considers that in these circumstances the trial court did not act unfairly when refusing to accept this evidence.

It follows that the applicants' complaints under Article 6 (Art. 6) of the Convention are manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

4. The applicants, except Mr. Falschlunger, also complain of a violation of Article 7 (Art. 7) of the Convention. Paragraph 1 of this Article provides, inter alia, that "no one shall be held guilty of a criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed".

The Commission recalls that the proceedings complained of were autonomous proceedings under the Media Act aiming at the forfeiture of the applicants' publication. In these proceedings the applicants were neither formally "accused" nor "held guilty" of a criminal offence. Their liability was not engaged by virtue of a criminal responsibility for the offence of defamation, but by virtue of their status as publishers. In these circumstances Article 7 (Art. 7) is not applicable to the proceedings complained of. This part of the application is therefore incompatible with the provisions of the Convention, ratione materiae, and must be rejected under Article 27 para. 2 (Art. 27-2) of the Convention.

5. The applicants, except Mr. Falschlunger, further claim that the fact of holding them jointly responsible for the publication involved a violation of Article 11 (Art. 11) of the Convention which guarantees inter alia everyone's right to freedom of association, including the right to form and join trade unions for the protection of his interests. However, the Commission considers that the proceedings complained of did not in any way interfere with this right. The applicants remained free to become members of any lawful association, including trade unions or branches thereof. The fact that by joining such organisations they could incur a joint liability for publications of these organisations in certain cases was a normal consequence of their membership. In the present case this joint liability arose as a consequence of the formulation of the imprint of the publication in question and the fact that the group of socialist trade-unionists mentioned therein was not a legal person susceptible of incurring a liability of its own. In these circumstances it was justified that the individuals constituting the group were jointly held liable.
The Commission concludes that this part of the application is manifestly ill-founded.

6. All applicants complain that the restriction of their publication violated Article 10 (Art. 10) of the Convention. This provision 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."

The applicants' publication was found to be defamatory and ordered to be forfeited. There has accordingly been an interference with the applicants' right to freedom of expression within the meaning of Article 10 para. 1 (Art. 10-1) which requires to be justified under the second paragraph of this provision.

The interference was based on the provisions of the Media Act in conjunction with Section 111 of the Penal Code. It was therefore "prescribed by law". Furthermore, it served the purpose of "protecting the reputation of others", i.e. of the head physicians of Vorarlberg hospitals who considered themselves defamed by the publication. The only question to be examined is therefore whether or not the interference was "necessary in a democratic society" for this purpose, i.e. whether there was a "pressing social need" for it, whether the means employed were proportionate to the aim pursued and whether the reasons adduced by the Austrian courts to justify it were "relevant and sufficient" (cf. Eur. Court H.R., Lingens judgment of 8 July 1986, Series A no. 103, pp. 25-26, paras. 39-40).

Freedom of expression, as secured in paragraph 1 of Article 10, (Art. 10-1) constitutes one of the essential freedoms of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2, 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 that pluralism, tolerance and broadmindedness without which there is no "democratic society" (Eur. Court H.R., Handyside judgment of 7 December 1976, Series A no. 24, p. 23 para. 49).

These principles are of particular importance as far as electoral campaigns are concerned. In elections to any kind of representative bodies, such as in the present case the Workmen's Chamber, it is important that those presenting themselves as candidates can speak freely about the political, economic and social problems which they consider relevant. This is not limited to the specific functions of the representative body in question. In a democratic society the electorate and the public in general have an interest to know the whole range of attitudes of their future political representatives, even if their tasks concern only a particular section of the population and particular spheres of social activity. Therefore it was legitimate for the applicants to express critical views in the course of their electoral campaign on matters of medical care and possible shortcomings in connection therewith. In this context it was also legitimate for the applicants to attack their political opponents, even those represented by another professional organisation such as in the present case the Chamber of Medical Practitioners.

However, even in an electoral campaign it is justified to require the candidates not to overstep the bounderies set, inter alia, for the "protection of the reputation of others". While in a political debate the limits of acceptable criticism are wider than in a discussion between private individuals (cf. Eur. Court H.R., Lingens judgment, loc. cit., para. 42), it must be noted that in the present case very harsh criticism was levelled against the members of another professional group who were not political opponents of the applicants in the electoral campaign at issue. The courts found that these statements fulfilled the objective conditions of the criminal offence of defamation as defined in Section 111 of the Penal Code, and that the applicants had failed to offer evidence showing the truth of their allegations.

The applicants claim that the courts, basing themselves on only one of several possible interpretations of the text, overlooked the satirical overtone of the publication and the fact that the incriminating allegations made therein against head physicians were recognisable exaggerations. The Commission finds that, even allowing for satirical exaggerations and an aggressive tone justified in a heated political debate, the statements made in the applicants' publication concerning head physicians of Vorarlberg hospitals could reasonably be regarded as defamatory. They could in fact be understood as insinuating that those persons held highly reproachable attitudes involving or at least coming close to unethical and criminal behaviour.

The applicants claim that their allegations were no more than critical value judgments on certain questions of social policy. The Commission accepts that the basic message which the publication sought to convey was criticism of the high income of the medical profession and of allegedly unjustified advantages accorded to private patients. However, the particular passages in the publication which were found to be defamatory were made in the form of factual assertions concerning the attitudes of physicians. Whereas the truth of value judgments is not susceptible of proof (cf. Eur. Court H.R. Lingens judgment, loc. cit., p. 28 para. 46) the existence of facts such as those alleged in the applicants' publication can be demonstrated. As already mentioned, the applicants failed to discharge the proof of truth as they did not offer evidence showing that their allegations concerning the attitudes of head physicians in Vorarlberg were correct.

The applicants finally complain that the trial court referred to quotations from a book critical of the medical profession which was on public sale and had not been the subject of any restriction. The Commission notes, however, that in the operative part of the Regional Court's decision of 24 May 1985 the passages referring to this book were not mentioned. No restriction was thus imposed regarding these quotations. In the reasoning the quotations were used as an additional argument justifying the restriction in respect of the incriminating passages concerning the head physicians.

The Commission concludes that, taking all circumstances into account, the restriction complained of could reasonably be regarded as "necessary in a democratic society" "for the protection of the reputation of others". It was thus covered by Article 10 para. 2 (Art. 10-2) of the Convention. The applicants' complaint of an unjustified interference with their right to freedom of expression is therefore manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

7. The applicants further complain that the declaration of forfeiture regarding their publication amounted to an unjustified interference with their property rights as guaranteed by Article 1 of Protocol No. 1 (P1-1) to the Convention. This Article provides:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The Commission considers that in the given circumstances the forfeiture could be deemed "necessary to control the use of property in accordance with the public interest", as authorised by the second paragraph of this provision (cf. Eur. Court H.R., Handyside judgment, loc. cit., pp. 29-30, paras. 62-63). In this respect, the same arguments apply as under Article 10 (Art. 10) of the Convention. This part of the application is accordingly also manifestly ill-founded.

8. The applicants finally complain that the restriction of their publication violated Article 3 of Protocol No. 1 (P1-3) by which the High Contracting Parties have undertaken to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature. However, the Commission notes that the applicants' publication was made in the course of an electoral campaign for elections to the Workmen's Chamber, a body of professional representation which has no legislative functions. For this reason Article 3 of Protocol No. 1 (P1-3) does not apply to the case, and the applicants' complaint in this respect is therefore incompatible with the provisions of the Convention, ratione materiae, within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission — Acting President of the Commission

(H.C. KRÜGER) — (S. TRECHSEL)

APPENDIX

List of individual applicants' names

Kurt Köpruner
Karl Falschlunger
Fritz Rudiger
Alwin Riedmann
Heinz Starchl
Josef Hassler
Wilfried Mayer
Willibald Elissier
Reinold Mähr
Willi Rohrer
Kurt Martello
Edgar Entlicher
Karl Wutschitz
Herbert Dür
Johanna Striessnig
Alois Triebl
Theresia Dönz
Franz Leikam
Kurt Dapre
Ernst Gabriel
Richard Lueger
Rosalia Leikam
Raimund Hattler

Willibald Perner
Gerhard Hüttenbrenner
Rudolf Bichler
Hermann Rud
Erich Mauracher
Norbert Loacker
Karl-Heinz Wabin
Richard Kroisenbrunner
Erwin Pichler
Alfred Ertl
Bruno Abram
Friedrich Tschofen
Alfred Endrich
Roland Tangl
Margarethe Dörflinger
Hans Oberleitner
Kurt Geiger
Werner Gächter
Norbert Wrisinig
Julius Müller

List of individual applicants' names (continued)

Walter Pratzner
Leopold Untermayer
Herbert Böhler
Josef Konrad
Hubert Reinsberger
Norbert Thoma
Irma Perner
Willibald Moosegger
Sibylle Lechthaler
Erich Hammer
Adolf Veits
Leonhard Bader
Kurt Vent
Franz Burtscher
Klaus Kessler
Karin Auer
Franz Borg
Wolfgang Stadlmayr
Adolf Gaggl
Christine Hehle
Maria Pauritsch
Klaus Hammer
Bernd Behr
Werner Hämmerle
Erich Plattner
Siegfried Poprat
Gertraud Reicht
Ferdinand Lugmayr
Reinhold Gassner
Ewald Wuggenig
Sigmund Mozes
Walter Marchel
Alois Sageder
Irma Rudigier
Walter Klaner
Franz Zechner
Rosmarie Kirschner
Anton Fessler
Flecker Monika
Leonhard Treichl

Albert Helmut Burtscher
Karl Höfer
Erich Feuerstein

List of individual applicants' names (continued)

Rudolf Fischer
Silvia Prirsch
Alfons Masal
Otto Ebenhoch
Johann Fink
Adolf Grubbauer
Max Krank
Eugen Fessler
Karl Dürtscher
Sonja Neyer
Manfred Bitschnau
Josef Ortner
Ingrid Gitterle
Wolfram Jäger
Hermann Pippan
Willi Senn
Adolf Mazagg
Walter Gelbmann
Gabriele Treitinger
Maria-Loise Kottas
Peter Paulitsch
Günther Ill
Karl Schlattinger
Josef Chesani
Günter Kuczynski
Emil Kessler
Maria Malin
Franz Hötzeneder
Hildegard Mair
Anton Pieber
Ernst Stejskal jun.
Manfred Stimpfl
Hedi Meusburger
Johann Nitz
Rudolf Eberle
Margarethe Blacha
Roald Jussel
Anita Auer
Helmut Pech
Theresia Baumann
Otto Bögner
Gernot Ilg