CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 32813/96
by Klaus LINDNER
against Germany

The European Court of Human Rights (Fourth Section) sitting on 9 March 1999 as a Chamber composed of

Mr M. Pellonpää, *President*,
Mr G. Ress,
Mr I. Cabral Barreto,
Mr V. Butkevych,
Mrs N. Vajić,
Mr J. Hedigan,
Mrs S. Botoucharova, *Judges*,

with Mr E. Fribergh, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 29 May 1996 by Klaus LINDNER against Germany and registered on 29 August 1996 under file no. 32813/96;

Having regard to the report provided for in Rule 49 of the Rules of Court;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, born in 1945, is a German national and resident in Rosdorf near Göttingen. Since 1976 he has been practising as lawyer. In 1985 he was appointed notary. Before the Court, the applicant is represented by Mr R. Rödel, a lawyer practising in Datteln.

The facts of the case, as submitted by him, may be summarised as follows.

A. Particular circumstances of the case

In 1991 the applicant started co-operating with Mr Lyng in the field of "sample clearing".

On 30 August 1991 they addressed a circular letter to various companies offering their services. The letter read as follows:

<German>

"Spezielles Dienstleistungsangebot
für Musikschaffende Sample Clearing

Sehr geehrte Damen und Herren,

einem ausgewählten Kreis von Tonträgerfirmen, Musikverlagen und sonstigen Musikschaffenden wollen wir auf diesem Wege unser neues Dienstleistungsangebot

SAMPLE CLEARING

vorstellen.

Die Problemlage:

Urheberrechtsverletzungen werden meist teuer bezahlt. Wir haben alle die Situation schon gesehen: Man hat einen Hit in Händen und wird wegen der verwendeten Samples mit einer „einstweiligen Verfügung" bedroht!

Die Qual der Wahl heißt: Eventuell überhöhte Forderungen des Gegners zu akzeptieren und zu bezahlen oder auf den Hiterfolg zu verzichten. Hinzu kommt of noch das Handicap, mit ausländischen Rechtsinhabern schwierige Verhandlungen in einer fremden Sprache führen zu müssen.

Samples werden bekanntlich nicht mehr nur im Dance-Bereich verwendet, sondern sind in fast allen Musikrichtungen zu finden, so daß sich zwangsläufig immer mehr Mitarbeiter der Musikbranche mit dieser Problematik beschäftigen müssen.

Wie kann man die aufgezeichneten Zwangslagen vermeiden?

Unser Angebot:

Die Problematik rechtzeitig zu erkennen und frühzeitig mit den Rechtsinhabern - sofern erforderlich - Verhandlungen aufzunehmen, ist der Weg, den wir beschreiten wollen. Dies kostet naturgemäß Zeit, die Ihre Mitarbeiter nicht haben oder kreativer einsetzen könnten, und setzt urheber- und verlagsrechtlichen Sachverstand voraus.
Der Linksunterzeichnete hat als Mitarbeiter den Ihnen als Verfasser des Buches "Die Praxis im Musikbusiness" sowie zahlreicher Beiträge in der Zeitschrift "Sound-Check" bekannten Branchenspezialisten Robert Lyng gewinnen können. Gemeinsam wollen wir seine Idee des "Sample Clearings" in Form einer professionellen anwaltlichen Dienstleistung in die Tat umsetzen. Bei den durchzuführenden Recherchen werden seine Spezialkenntnisse und Verbindungen sowie Sprachkenntnisse von großem Nutzen sein.

Wenn Sie sich grundsätzlich für unser Angebot interessieren, Sie möglicherweise der Schuh schon drückt, zögern Sie nicht, uns anzurufen, Ihr Problem zu schildern und - last but not least - nach dem Preis unserer Dienstleistung zu fragen."

<Translation>

"Special service offer
for music producers sample clearing

Madam, Sir,

hereby we want to present our new service offer

SAMPLE CLEARING

to a selection of sound carrier companies, music publishers and other music producers.

The problem:

Breach of copyright is usually expensive. We have all already experienced this situation: You have a hit in hand and you are threatened with an "interim injunction" on account of the samples used!

The choice is: Possibly to accept excessive claims of the opponent and to pay, or to renounce a successful pop record. Moreover, there is often the handicap of having to conduct difficult negotiations with the foreign copyright holders in another language. It is known that the use of samples is no longer limited to music for dancing, but has extended to almost all types of music, and consequently more and more employees in the music branch have to deal with this kind of problems.

How can you avoid the said difficult situation?

Our offer:

The solution we have in mind is to identify the problem in good time and - if necessary - start negotiations with the copyright holders early. Of course this takes time, which your employees do not have or which they could employ in a more creative manner, and further it requires legal knowledge of copyright and editing matters.

The undersigned at the left-hand side has gained the cooperation of the experienced Robert Lyng whom you know as author of the book "Practice in Music Business" and of numerous publications in the magazine "Sound-Check". Together we intend to implement his idea of "Sample Clearings" on the basis of a professional legal service. His special knowledge and relations as well as his command of languages will be very useful for inquiries.

In case you are generally interested in our offer, or you are possibly already facing a problem, do not hesitate to call us, tell us your problem and - last but not least - ask for the cost of our services."

The letter was signed at the left-hand side by the applicant and at the right-hand side by Mr Lyng.

Thereupon, disciplinary proceedings were commenced against the applicant. These proceedings further related to his professional conduct in November 1986 which had given rise to his conviction of attempted extortion by the Göttingen District Court (*Amtsgericht*) in 1990, as confirmed in appeal proceedings.

On 19 December 1992 the First Chamber (*Kammer*) of the Celle District Disciplinary Court for Lawyers (*Ehrengericht für den Bezirk der Rechtsanwaltskammer Celle*), sitting with three lawyers, dismissed the applicant's motion to challenge Mr Goeldel, one of its members, for bias. The court noted the applicant's submissions concerning Mr Goeldel's past professional activities, in particular the rupture of their cooperation some years ago. The court, having also regard to his argument that Mr Goeldel was biased on account of his membership in a Celle association of lawyers which was his opponent in proceedings before the Federal Cartel Office, considered that the applicant had failed to substantiate reasons to show bias on the part of Mr Goeldel.

On 8 November 1993 the First Chamber of the District Disciplinary Court for Lawyers, sitting with Mr Dehne, presiding the chamber, and with Mr Goeldel and Mr Mülder, censured the applicant's conduct in 1986 and 1991 as a breach of his professional duties as laid down in section 43 of the Federal Regulations for Lawyers (*Bundesrechtsanwaltsordnung)*. Referring to sections 113(1), 114(1)(2), 114(1)(3) and 114(2) of the said Federal Regulations, it issued a reprimand (Verweis) and imposed a fine of 3,000 German marks (DEM).

As regards the applicant's circular letter of August 1991, the court found that the applicant had prepared two mailing lists of altogether sixty music editors, agencies and production firms. Some of the contacted firms had positively reacted to the offer. Before sending the letter, the applicant had had only contacts with two or three of the firms. The court considered that the circular letter constituted prohibited advertising within the meaning

of section 2 of the Rules for Lawyers' Professional Conduct (*Standesrichtlinien für Rechtsanwälte*). Having regard to the relevant case-law of the Federal Constitutional Court (*Bundesverfassungsgericht*) on prohibited advertising (see below, relevant domestic law and practice), the court found that in drafting and sending the circular letter of 30 August 1991, the applicant and Mr Lyng had not merely intended to publish an information. Rather, he wanted to open up new professional possibilities as counsel in that he offered the service as "professional legal service", asked the addressees to contact him or Mr Lyng and mentioned that the service was liable to fees. Such direct advertising for clients was, however, not permissible. In this respect, the court also took into account the prohibition on competition.

In fixing the disciplinary measures, the court considered that the applicant's disciplinary offences were serious, that disciplinary measures had already repeatedly been imposed and that he had been warned that, in case of further disciplinary offences, heavier fines would be imposed.

On 14 November 1994, sitting with three lawyers and two professional judges, the Lower Saxony Disciplinary Appeals Court (*Anwaltsgerichtshof*), upon the applicant's appeal, partly amended the decision of the first instance, finding him guilty of a breach of professional duties on account of prohibited advertising in August 1991. It issued a reprimand and imposed a fine of DEM 2,000.

As regards the conduct in 1986 the Disciplinary Appeals Court found that, following the applicant's criminal conviction, no further disciplinary measures appeared necessary.

With regard to prohibited advertising, the Disciplinary Appeals Court, having regard to the relevant case-law, considered that lawyers were not prevented from any advertising, but only from misleading advertising, direct advertising for clients and publicity-like advertising and obtrusive advertising showing a mere profit-seeking conduct. In the present case, the applicant and his collaborator had directly approached companies in order to obtain mandates.

On 11 December 1995 the Senate for Lawyers' Matters (*Senat für Anwaltssachen*) of the Federal Court of Justice (*Bundesgerichtshof*), sitting with four professional judges and three lawyers, dismissed the applicant's request for leave to appeal on points of law.

On 21 February 1996 the Federal Constitutional Court refused to entertain the applicant's constitutional appeal. The decision was served on 1 March 1996.

B. Relevant domestic law and practice

According to section 1 of the Federal Regulations for Lawyers, a lawyer is an independent organ in the administration of justice (*unabhängiges Organ der Rechtspflege*). His rights and duties are laid down in the general provision of section 43 of the Federal Regulations.

This provision reads as follows:

<German>

Der Rechtsanwalt hat seinen Beruf gewissenhaft auszuüben. Er hat sich innerhalb und außerhalb des Berufes der Achtung und des Vertrauens, welche die Stellung des Rechtsanwalts erfordert, würdig zu erweisen."

<Translation>

"A lawyer has to practise his profession conscientiously. Whether in the pursuit of his profession or otherwise, he has to prove himself worthy of the respect and trust which the position of a lawyer requires."

In accordance with section 177(2)(2) of the Federal Regulations for Lawyers, the Federal Bar Association (*Bundesrechtsanwaltskammer*), in the Rules for Lawyers' Professional Conduct, laid down the generally recognised rules concerning the conduct of lawyers. Section 2(1), first sentence, of these Rules provides that it is contrary to the ethics of the profession if a lawyer advertises his practice.

In decisions of 14 July 1987, the Federal Constitutional Court, deviating from its previous case-law, found that the Rules for Lawyers' Professional Conduct could no longer be used as a means of interpretation in respect of section 43 of the Federal Regulations for Lawyers. It considered that rules of professional conduct had to be enacted in by-laws. For an interim period, only a minimum of professional duties indispensable for the proper functioning of the administration of justice persisted. Among these duties were the core of the prohibition of advertisement, i.e. advertisement directly aimed at securing practice, or misleading advertisement, which undisputedly formed part of the duties of any liberal profession (1 *BvR* 537/81, 11951/87, *Entscheidungssammlung des Bundesverfassungs-gerichts (BverfGE),* Vol. 76, p. 171; and 12 *BvR* 162/79; *BVerfGE* 76, p. 196).

The Federal Regulations for Lawyers have been amended in 1994 (*Gesetz zur Neuordnung des Berufsrechts der Anwälte und Patentanwälte*). Section 43a of the amended Federal Regulations specifies the duties of lawyers, such as his duty to ensure his independence, his duty to discretion, his duty to refrain from improper conduct, his duty to loyalty. Section 43b provides that lawyers may advertise if they inform generally and objectively about their professional activities and if they do not advertise for a mandate in individual cases.

Section 113(1) of the Federal Regulations provides that disciplinary measures are taken against a lawyer who is liable of a breach of duties laid down in the Regulations or in the rules of professional conduct (*Berufsordnung*). According to section 114(1), disciplinary measures are (1) a warning, (2) a reprimand, (3) a fine not exceeding DEM 50,000, (4) a temporary prohibition on practising as counsel in certain legal fields or (5) definite exclusion from the Bar. The disciplinary measures of reprimand and fine may be imposed simultaneously (section 114(2)).

Under the former version of the Federal Regulations for Lawyers, the disciplinary proceedings were conducted at first instance before a Disciplinary Court, as established under sections 92 to 99. Section 97 provided that the relevant provisions of the Courts Act

(*Gerichtsverfassungsgesetz*) on the internal rules governing the distribution of cases applied *mutatis mutandis*. Following the 1994 reform, appeal proceedings are conducted before the Disciplinary Appeals Court with seat at the Court of Appeal (sections 100 to 105 of the Federal Regulations as amended) and the Federal Court of Justice (sections 106 to 112 of the Federal Regulations as amended).

COMPLAINTS

1. The applicant complains that the disciplinary measures imposed upon him on account of his letter of 30 August 1991 constitute a breach of his right to freedom of expression under Article 10 of the Convention.

2. The applicant further complains under Article 6 that the disciplinary proceedings in question were not fair. He considers that, as the internal rules of the Celle Disciplinary Court were not sufficiently clear regarding the distribution of cases, his case was not, therefore, heard by a tribunal established by law. He further complains that the participation of Mr Goeldel in the proceedings at first instance infringed his right to a hearing by an impartial tribunal. Moreover, in his submission, the disciplinary courts, in fixing the sentence, had regard to previous disciplinary decisions without, however, considering the constitutionality of these decisions.

THE LAW

1. The applicant complains of the disciplinary sanction imposed on him by the Celle Disciplinary Court on 8 November 1993, as amended by the Disciplinary Appeals Court on 4 November 1994. He invokes Article 10 of the Convention, which provides:

> "1. Everyone has the right to freedom of expression. This shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority …
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for 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."

Article 10 guarantees freedom of expression to "everyone". No distinction is made in it according to whether the type of aim pursued is profit making or not. Article 10 does not apply solely to certain types of information or ideas or forms of expression, in particular those of a political nature; it also encompasses artistic expression, information of a commercial nature and even light music and commercials transmitted by cable as well as notices placed by a lawyer in newspapers, advertising his practice (see the Casado Coca v. Spain judgment of 24 February 1994, Series A no. 285-A, pp. 16-17, §§ 35-36; the Jacubowski v. Germany judgment of 23 June 1994, Series 291-A, p. 13, § 25).

The applicant's circular letter gave information to a chosen circle of persons in the music branch on a particular service which he had conceived together with his collaborator. In these circumstances, Article 10 applies to the present case.

Moreover, the disciplinary sanctions imposed upon the applicant on account of his circular letter, as upheld by the Federal Court of Justice and the Federal Constitutional Court, constituted an interference by a "public authority" with the applicant's freedom to impart information (see, *mutatis mutandis*, the above-mentioned Casado Coca judgment, p. 17, § 39).

Such an interference contravenes Article 10 unless it was "prescribed by law", had an aim that was legitimate under Article 10 § 2 and was "necessary in a democratic society" for the aforementioned aim.

The disciplinary measures were based on section 43 of Federal Regulations for Lawyers, in conjunction with section 2 of the Rules for Lawyers' Professional Conduct, as well as sections 113 and 114 of the Federal Regulations for Lawyers. These provisions were applied in the light of the case-law of the Federal Constitutional Court according to which the Rules for Lawyers' Professional Conduct constituted a means of interpretation in respect of section 43 of the Federal Regulations for Lawyers, and the core of the prohibition on advertisement, i.e. the prohibition on advertisement directly aimed at practice, or on misleading advertisement, formed part of the rules of professional conduct. The Court, having regard to the wording of section 43 of the Federal Regulations for Lawyers and the state of the case-law of the Federal Constitutional Court, finds that the interference in question was "prescribed by law" (see, *mutatis mutandis*, the above-mentioned Casado Coca judgment, p. 18, § 43; and, more particularly as to the German legal situation, the Commission's decision of 7 March 1991 on the admissibility of application no. 14622/89, Hempfing v. Germany, D.R. 69, p. 262).

The Court further recalls that the aim of the ban on professional advertising by members of the Bar is designed to protect the interests of the public while ensuring respect for members of the Bar (see the above-mentioned Casado Coca judgment, p. 19, § 46). The Court finds that the restrictions on advertising by lawyers, as applied in the applicant's case, served this general purpose of ensuring an appropriate professional conduct of lawyers.

The Court must next examine the necessity of interfering with the applicant's right to impart information.

According to the Court's case-law, the States parties to the Convention have a certain margin of appreciation in assessing the necessity of an interference, but this margin is subject to European supervision as regards both the relevant rules and the decisions applying them. Such a margin of appreciation is particularly essential in the complex and fluctuating area of unfair competition. The same applies to advertising (see the above-mentioned Casado Coca judgment, p. 20, § 50, with reference to the markt intern Verlag GmbH and Klaus Beermann v. Germany judgment of 20 November 1989, Series A no. 165, p. 20, § 33; the above-mentioned Jacubowski judgment, p. 14, § 26). In the instant case, the Court's task is therefore confined to ascertaining whether the measures taken at national level are justifiable in principle and proportionate (see the Casado Coca judgment previously cited).

The Court has already held that, for the citizen, advertising is a means of discovering the characteristics of services and goods offered to him. Nevertheless, it may sometimes be restricted, especially to prevent unfair competition and untruthful or misleading advertising. In some contexts, the publication of even objective, truthful advertisements might be restricted in order to ensure respect for the rights of others or owing to the special circumstances of particular business activities and professions. Any such restrictions must, however, be closely scrutinised by the Court, which must weigh the requirements of those particular features against the advertising in question; to this end, the Court must look at the impugned penalty in the light of the case as a whole (see the above-mentioned Casado Coca judgment, p. 20, § 51).

In the present case, the applicant received a reprimand and a fine by the disciplinary courts for lawyers for having contravened the ban on professional advertising laid down in the rules of professional conduct, as interpreted by the Federal Constitutional Court. The Celle District Disciplinary Court for Lawyers and the Lower Saxony Disciplinary Appeals Court found that the applicant had gone beyond the limits of permissible advertising. Thus , while not prevented from any advertising, lawyers were not permitted misleading advertising, direct advertising for clients and publicity-like advertising and obtrusive advertising showing a mere profit-seeking conduct. With the circular letter of 30 August 1991, the applicant had, however, directly approached specific companies in order to obtain mandates.

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 as recent authority the Schöpfer v. Switzerland judgment of 20 May 1998, *Reports of Judgments and Decisions* 1998-III, p. 1052, § 29, with reference to the above-mentioned Casado Coca v. Spain judgment, p. 21, § 54).

The Court considers that the wide range of regulations and the changes occurring in the Council of Europe's member States indicate the complexity of the issue. Because of their direct, continuous contact with their members, the bar authorities and the domestic courts are in a better position than an international court to determine how, at a given time, the right balance can be struck between the various interests involved (see the above-mentioned Casado Coca judgment, p. 21, §§ 54-55). It finds that the relevant authorities' reaction to the applicant's direct advertising of his services cannot be considered disproportionate to the legitimate aim pursued. In this respect, the Court also considered that the disciplinary measures consisted of a reprimand and a fine amounting to DEM 2,000 which was fixed in the light of previous disciplinary warnings.

In these circumstances, there is no appearance of a breach of Article 10 of the Convention.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 2 of the Convention.

2. The applicant further complains that he did not have a fair hearing by an impartial tribunal established by law. He relies on Article 6 § 1 of the Convention.

Article 6 § 1, as far as relevant, provides:

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair ... hearing ... by an … impartial tribunal established by law ..."

a. Disciplinary proceedings against medical practitioners may give rise to "contestations (disputes) over civil rights" within the meaning of Article 6 § 1. This is so if the right to continue to practise medicine as a private practitioner is at stake in those proceedings, regard being had to the penalties the professional disciplinary bodies could impose (see, among other authorities, the König v. Germany judgment of 28 June 1978, Series A no. 27, pp. 29–32, §§ 87–95; the Le Compte, Van Leuven and De Meyere v. Belgium judgment of 23 June 1981, Series A no. 43, pp. 19–23, §§ 41–51; the Albert and Le Compte v. Belgium judgment of 10 February 1983, Series A no. 58, pp. 14–16, §§ 25–29; the Diennet v. France judgment of 26 September 1995, Series A no. 325-A, p. 13, § 27; the Gautrin and Others v. France judgment of 20 May 1998, *Reports of Judgments and Decisions* 1998-III, p. 1022, § 33). Similar considerations could apply to disciplinary proceedings against a lawyer, exercising a liberal profession as in the instant case, in which the range of penalties includes temporary prohibition on practising as counsel or permanent exclusion from the Bar. However, it is not necessary to resolve this matter as the applicant's complaints under Article 6 § 1 are in any event inadmissible for the following reasons.

b. According to the applicant, the internal rules of the Celle Disciplinary Court were not sufficiently clear regarding the distribution of cases.

The Court reiterates that it is the purpose of the requirement in Article 6 § 1 that courts shall be "established by law" that the judicial organisation in a democratic society must not depend on the discretion of the Executive, but that it should be regulated by law emanating from Parliament. However, Article 6 § 1 does not require the legislature to regulate every detail in this area by a formal Act of Parliament if the legislature establishes at least the organisational framework for the judicial organisation (see the Piersack v. Belgium judgment of 1 October 1982; Series A no. 53, p. 16, § 33; and also the report of the Commission of 12 October 1978 in the case of Zand v. Austria, D.R. 15, p. 80).

The disciplinary proceedings against the applicant were conducted before the Celle District Disciplinary Court for Lawyers in accordance with the relevant provisions of the Federal Regulations for Lawyers. The assignment of the applicant's case to the First Chamber of the said Court and the composition of that Chamber were based on the court's internal rules on the distribution of cases. The applicant, who challenges the quality and correct application of these rules, does not deny this. However, the internal assignment of a particular case on the basis of existing rules is an administrative matter which does not as such concern the establishment of the court.

In these circumstances, the applicant's submissions do not disclose any appearance of a breach of his right to a hearing by a "tribunal established by law" under Article 6 § 1 of the Convention.

c. The applicant also argues that, on account of the participation of Mr Goeldel in the proceedings before the Celle District Disciplinary Court for Lawyers, he did not have a hearing by an impartial tribunal.

The Court would first recall that, even in instances where Article 6 § 1 of the Convention is applicable, conferring the duty of adjudicating on disciplinary offences on professional disciplinary bodies does not in itself infringe the Convention. Nonetheless, in such circumstances the Convention calls for at least one of the following two systems: either the professional disciplinary bodies themselves comply with the requirements of that Article, or they do not so comply but are subject to subsequent review by a judicial body that has full jurisdiction and does provide the guarantees of Article 6 § 1 (see the above-mentioned Gautrin and Others judgment, p. 1030, § 57, with reference to the Albert and Le Compte judgment cited above, p. 16, § 29).

The Court notes at the outset that subsequent to the proceedings before the District Disciplinary Court for Lawyers, appeal proceedings were conducted before the Lower Saxony Disciplinary Appeals Court as well as the Senate for Lawyers' Matters of the Federal Court of Justice.

The Court would further recall that there are two tests for assessing whether a tribunal is impartial within the meaning of Article 6 § 1: the first - the subjective test - consists in seeking to determine the personal conviction of a particular judge in a given case and the second - the objective test - in ascertaining whether the judge offered guarantees sufficient to exclude any legitimate doubt in this respect (see the above-mentioned Gautrin and Others judgment, p. 1030, § 58, with reference to the Saraiva de Carvalho v. Portugal judgment of 22 April 1994, Series A no. 286-B, p. 38, § 33).

In the applicant's submission, there were reasons to assume bias on the part of one of the members of the Celle District Disciplinary Court for Lawyers. He argued that there had been problems in the past professional relationship with this lawyer who furthermore was a member of a professional association of lawyers against which he had brought cartel proceedings.

As to the subjective test, the Court considers that the personal impartiality of a judge must be presumed until there is proof to the contrary and in the present case there is no such proof.

Under the objective test, it must be determined whether, quite apart from the judge's personal conduct, there are ascertainable facts which may raise doubts as to his impartiality. In the present case, the arguments advanced by the applicant cannot be held as justifying fears as to impartiality of Mr Goeldel. In this respect, the Court notes that, in its decision of 19 December 1992, the Celle District Disciplinary Court for Lawyers dismissed the applicant's motion to challenge Mr Goeldel for bias, finding that his submissions concerning Mr Goeldel's professional past and the cartel proceedings against an association of lawyers of which Mr Goeldel was a member did not show bias. The Court considers that the applicant's suspicions are based on circumstances which are not directly related to the disciplinary proceedings against him, and they further relate to matters dating back several years or only indirectly affecting Mr Goeldel. This being so and in the absence of any further elements casting doubt on the impartiality of the District Disciplinary Court's impartiality, the applicant's fears in this respect cannot be considered objectively justified.

The applicant's complaint about the lack of a hearing by an "impartial tribunal" does not, therefore, disclose any appearance of a breach of Article 6 § 1.

d. Having regard to all circumstances, the Court finds that the arguments presented by the applicant, a practising lawyer, do not indicate any breach of his right to a "fair hearing", as guaranteed by Article 6 § 1.

It follows that this part of the application is likewise manifestly ill-founded within the meaning of Article 35 § 2 of the Convention.

For these reasons, the Court, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Erik Fribergh
Registrar

Matti Pellonpää
President