



## Disciplinary penalty imposed on lawyer Francis Szpiner for making insulting remarks about a principal prosecutor was not excessive

In its decision in the case of **Szpiner v. France** (application no. 2316/15) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

In a press article published just after the trial in the “gang of barbarians” case, the applicant, who was the lawyer of the victim’s family, referred to the fact that the father of the principal prosecutor B. had been a Nazi collaborator, and described B. as “genetically a traitor”. Disciplinary proceedings were brought against the applicant on that account.

The Court considered that the imposition of a mere disciplinary warning, which moreover had had no repercussions on the applicant’s professional activities, could not be regarded as excessive in the circumstances of the case.

### Principal facts

The applicant, Mr Francis Szpiner, is a French national who was born in 1954 and lives in Paris.

Mr Szpiner is a lawyer who acted at a trial in the Assize Court for the family of I.H., a young man of 23 who was abducted, confined and tortured in 2006 by a group called the “gang of barbarians”, before dying from his injuries. During the trial the prosecution was represented by the principal prosecutor B.

In an article published just after the trial in the magazine *Le Nouvel Observateur*, the applicant, having referred to the fact that the father of principal prosecutor B. had been a Nazi collaborator, described B. as “genetically a traitor” (*traître génétique*). Disciplinary proceedings were brought against him on that account.

### Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 6 January 2015.

Relying on Articles 6 (right to a fair hearing) and 7 (no punishment without law) taken together, and on Article 10 (freedom of expression), the applicant complained about the disciplinary penalty imposed on him.

The decision was given by a Committee of three judges, composed as follows:

Mārtiņš Mits (Latvia), *President*,  
André Potocki (France),  
Lətif Hüseynov (Azerbaijan), *Judges*,

and also Anne-Marie Dougin, *acting Deputy Section Registrar*.

### Decision of the Court

#### Article 10

The Court noted that Mr Szpiner had received a disciplinary warning. Like the domestic courts, it considered that the interference had been “prescribed by law” and had pursued the aim of

protecting the reputation of others. The Court found that the remarks had been made as part of a debate on a matter of general interest, concerning the trial in a highly publicised case. It observed that the remarks had constituted value judgments rather than statements of fact.

Nevertheless, the Court noted the excessive and insulting nature of Mr Szpiner's statements, which had been reported in the press, and the absence of any factual basis. It observed that Mr Szpiner, in the interview giving rise to the article complained of, had referred to the fact that the father of the principal prosecutor B. had been a Nazi collaborator who had been sentenced to forced labour following the liberation of France, before describing B. as "genetically a traitor". The Court considered that the outrage referred to by Mr Szpiner did not warrant such a virulent and disparaging reaction. Moreover, the applicant had refused to apologise despite being requested to do so by the Chair of the Bar; that refusal had triggered the opening of the disciplinary proceedings.

Furthermore, the Court noted, firstly, that the remarks had been made outside the courtroom, namely in the press following the trial, and, secondly, that they had not represented an opportunity to put forward a defence nor had they informed the public about possible dysfunctions.

The Court therefore considered that the imposition of a mere disciplinary warning – which, moreover, had no repercussions on the applicant's professional activities – could not be regarded as excessive. The applicant's complaint under Article 10 of the Convention was thus manifestly ill-founded and had to be rejected.

*The decision is available only in French.*

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