European Court of Human Rights: Case of Stambuk v. Germany

IRIS 2002-10:1/3

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In a judgment of 17 October 2002, the European Court of Human Rights came to the conclusion that a disciplinary action imposed on a doctor for disregarding a ban on advertising by medical practitioners by giving an interview to the press was to be considered a breach of Article 10 of the European Convention on Human Rights.

In 1995, a fine was imposed on the applicant, an ophthalmologist, by a district Disciplinary Court for Medical Practitioners. An article in a newspaper, including an interview with, and a photograph of, Mr. Stambuk was considered as disregarding a ban on advertising by medical practitioners. The interview in which Mr. Stambuk explained the successful treatment with a new laser technique that he applied was seen as a kind of self-promotion, in breach of the [Baden-Württemberg] Rules of Professional Conduct of the Medical Practitioners' Council. According to section 25(2) of this Code, a medical practitioner should not allow pictures or stories which have an advertising character, indicate the name or show a photograph, to be published in respect of his/her professional activities. According to section 27, the cooperation of a medical practitioner in informative publications in the press is only permissible if these publications are limited to objective information, without the practitioner being presented in the form of an advertisement. The Disciplinary Appeals Court for Medical Practitioners upheld the sanction, taking into account that Mr. Stambuk had not only allowed an article which would go beyond objective information on a particular operation technique to be published, but had deliberately acted so as to give prominence to his own person.

The European Court of Human Rights recognised that restrictions on advertising by medical practitioners in the exercise of their liberal profession have a legitimate aim in protecting the rights of others or to protect health. However, the question of whether, in casu, a disciplinary action was necessary in a democratic society, was answered in the negative by the European Court. The Court recalled that, for the citizen, advertising is a means of discovering the characteristics of services and goods offered. The Court recognised that owing to the special circumstances of particular business activities and professions, advertising or commercial speech may be restricted. The Court also accepted that the general professional obligation on medical practitioners to care for the health of each individual and for the community as a whole might indeed explain restrictions on

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their conduct, including rules on their public communications or participation in public communications on professional issues. These rules of conduct in relation to the press are, however, to be balanced against the legitimate interest of the public in information and are limited to preserving the good functioning of the profession as a whole. They should not be interpreted as putting an excessive burden on medical practitioners to control the content of press publications, while also taking into account the essential function fulfilled by the press in a democratic society by imparting information and ideas on all matters of public interest.

According to the Court, the article with the interview and a photo of Mr. Stambuk on the whole presented a balanced explanation of the specific operation technique, inevitably referring to the applicant's own experience. The article may well have had the effect of giving publicity to Mr. Stambuk and his practice, but, having regard to the principal content of the article, this effect proved to be of a secondary nature. According to the Court, the interference complained of by Mr. Stambuk did not achieve a fair balance between the interests at stake, namely the protection of health and the interests of other medical practitioners and Mr. Stambuk's right to freedom of expression and the vital role of the press. In sum, there was a breach of Article 10 of the Convention.

Judgment by the European Court of Human Rights (Third Section), Case of Stambuk v. Germany, Application no. 37928/97 of 17 October 2002

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