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

THIRD SECTION

CASE OF VERAART v. THE NETHERLANDS

(Application no. 10807/04)

JUDGMENT

STRASBOURG

30 November 2006

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 Veraart v. the Netherlands,

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

Mr B.M. ZUPANČIČ, *President*,
Mr C. BÎRSAN,
Mr V. ZAGREBELSKY,
Mr DAVID THÓR BJÖRGVINSSON,
Mrs I. ZIEMELE,
Mrs I. BERRO-LEFEVRE, *judges*,
Mr P. VAN DIJK, ad hoc *judge*,
and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 9 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 10807/04) against the Kingdom of the Netherlands lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Netherlands national, Mr Christiaan Joseph Willibrord Veraart (“the applicant”), on 24 March 2004.

2. The applicant was represented by Mr C.J. van Bavel, a lawyer practising in Utrecht. The Netherlands Government (“the Government”) were represented by their Agents, Mr R.A.A. Böcker and Mrs J. Schukking of the Ministry for Foreign Affairs.

3. On 2 February 2006 the Court decided to communicate the application to the Government. Under Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

4. Mr E. Myjer, the judge elected in respect of the Netherlands, withdrew from sitting in the case (Rule 28). The Government accordingly appointed Mr P. van Dijk to sit as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant is a Netherlands national who was born in 1944; he is an advocate practising in Alkmaar (Netherlands).

A. Background to the case

1. The NCRV television documentary

6. On 19 June 2000 the NCRV, a private organisation holding a public broadcasting license, broadcast a television documentary entitled "Secret mothers" (*Verborgen moeders*). It featured a woman, one Ms A.K., who claimed to have been the victim of incest committed by her grandfather, her father and two of her brothers.

7. Ms A.K. alleged that five pregnancies had resulted. One had been terminated. Of the babies born from the other four, three had been ritually murdered and one had been sold.

8. These statements were said to be based on memories which Ms A.K. had repressed but which she had been able to recover with the aid of a therapist, Mr Kieft, who had been treating her for six years.

9. The K. family, who denied the truth of Ms A.K.'s allegations, sought the assistance of the applicant.

2. Criminal proceedings against the NCRV

10. The Amsterdam public prosecutor (*officier van justitie*) opened a prosecution file, charging the NCRV with criminal libel.

11. On 14 June 2002 the public prosecution service published a press release in which it was stated that the NCRV had admitted having libelled the K. family and had settled out of court. The prosecution had been dropped subject to the conditions, which the NCRV had accepted, that the NCRV would pay a sum of money to the public prosecution service, publish a retraction and pay the K. family compensation for pecuniary and non-pecuniary damage and legal costs.

3. The AVRO radio programme

12. On 28 November 2001 another private organisation holding a public broadcasting license, the AVRO, broadcast a radio programme featuring an interview with the applicant about the case of the K. family.

13. The applicant said, among other things:

> "Here we are faced with a dangerous group of individuals who ... [though] unproved, nonetheless present, er, a horrible crime. I mean, we're talking about five infanticides, we're not talking about nothing. ... all right, three murders, one abortion and one child allegedly sold, whatever, it's a terrible accusation and you can't just do that. That should not go unpunished."

The interviewer explained that the reference was to

> "... alternative therapies such as hypnosis and regression therapy ..."

going on to say:

> “The alternative therapist who was treating [Ms A.K.] at the time was Mr Kieft. He actually does believe in recovered memories, and therefore also in the recollection of incest and of quadruple infanticide.”

14. Referring to the intuitive methods used by Mr Kieft, the interviewer stated:

> “So, Mr Kieft can sense and see whether people have been sexually abused.”

The applicant responded, saying, among other things:

> “I can't understand how he, how he can do that! To me, that shows how dangerous these therapists are. Someone like that shouldn't, should not be allowed to be a therapist surely? That man, he lives in North Holland province, he should, er, grow cabbages for the market ... He should go and grow cabbages out there, but he should absolutely not be working with with with patients, or with people who who are in emergency situations. I find this very worrying. I consider this very unprofessional. It's possible of course [that] these people are magi (*magiërs*), that has nothing to do with therapists, nothing to do with doctors. They take people back in regression therapy. Where was that man educated? Where did that man study? I have no idea, and what does he presume to be? That man likens himself to God. There is no medical practitioner, surely, who could say that?”

15. Later in the programme, referring to a conversation which Mr Kieft had had with Ms A.K.'s parents in 1994, the applicant said, among other things:

> “... I just can't imagine how anyone can be so presumptuous as to tell two vulnerable old people, like some sort of guru, and, er, his truth, and then give them an audio tape and tell them: well, go and listen carefully to what I have said. Such arrogance. In my opinion it's quite terrible. Well, if you know that father K. died shortly after that, he went to his grave accused by him, right, accused by a relative ...”

16. The programme also comprised an interview with Mr Kieft, who stated that he was neither a hypnotist nor a regression therapist properly so-called. He believed, however, that the emotions aroused by relaxation exercises and acupressure reflected true events and he was certain that the memories which he had helped Ms A.K. recover were the truth.

B. Disciplinary proceedings against the applicant

1. The Dean of the Bar Association

17. On 9 December 2001 Mr Kieft lodged a complaint against the applicant with the Dean (*deken*) of the local Bar Association (*Orde van Advocaten*).

18. The Dean gave a provisional opinion on 22 March 2002. It mentions that Mr Kieft was asked, on 24 January 2002, to state his medical and scientific qualifications but declined to do so.

19. The Dean noted that Mr Kieft's refusal to state his qualifications did not, at any rate, indicate that the applicant's statements were incorrect.

However, it was understandable that Mr Kieft should feel aggrieved and it was not clear that the interests of the K. family were served by the applicant's statements.

20. The provisional conclusion was that the complaint was well-founded. The Dean forwarded Mr Kieft's complaint to the Amsterdam Disciplinary Council (*Raad van Discipline*) on 5 April 2002.

2. *The Disciplinary Council*

21. The Disciplinary Council held a hearing on 14 October 2002. On 16 December 2002 it gave a decision finding Mr Kieft's complaint unfounded. It recognised that the K. family had a legitimate interest in contesting, in the media and elsewhere, the accusations levelled against them by Ms A.K.; the applicant's expressions, though forceful, had not been disproportionate.

3. *The Disciplinary Appeals Tribunal*

22. Mr Kieft appealed to the Disciplinary Appeals Tribunal (*Hof van Discipline*).

23. That Tribunal held a hearing on 28 April 2003, at which it was stated among other things that Mr Kieft had been practising as a self-employed psychotherapist since 1981. He had been trained at the International Institute of Unitive Psychotherapy, after which he had taken some practical and theoretical courses and a two-year course on multi-method relationship therapy. He was a recognised member, supervisor and trainer of the Association for Unitive Psychotherapy (*Vereniging voor Unitieve Psychotherapie*). He was associated with the private foundation (*stichting*) Institute for Registration, Certification and Development of Nature-Oriented Health Care (*Stichting Registratie-, Certificatie- en Ontwikkelingsinstituut Natuurgerichte Gezondheidszorg*, also known as "Registration Institute for Nature-Oriented Health Care", *Registratie-instituut Natuurgerichte Gezondheidszorg*, or *"RING"*), which had set up a disciplinary system.

24. On 3 October 2003 the Tribunal gave its decision. It considered that a lawyer had not to judge the quality of a particular therapeutic method. Although Ms A.K. had levelled accusations against her family involving five pregnancies, three infanticides, an abortion and the sale of a baby, Mr Kieft had not been present when she did so; the applicant should therefore not have connected Mr Kieft to them.

25. Nor should he have suggested that Ms A.K.'s alleged repressed memories had been caused by Mr Kieft's use of hypnotism or regression therapy, Mr Kieft not having claimed to be a hypnotist or a regression therapist. The applicant had been unclear in explaining what improper therapeutic measures exactly he held against Mr Kieft.

26. The conversation between Mr Kieft and Ms A.K.'s parents in 1994, also criticised by the applicant, had not been part of the therapy. In any case, the applicant's criticism of that conversation was unfounded given that the applicant had not clearly explained why he considered Mr Kieft negligent in his therapeutic methods.

27. The applicant's vagueness might have been defensible if only he had chosen to make the interview a “clarion call” (*klaroenstoot*) preparatory to a civil suit to follow shortly after, but no civil suit had ever been brought.

28. The applicant had not been entitled either to describe Mr Kieft as a “magus” who “likened himself to God”. Mr Kieft had in fact stated, in his 1994 conversation with Ms A.K.'s parents, his reasons for believing the truth of Ms A.K.'s statements, and he had been careful to spare them feelings of guilt for the acts of their sons and to avoid labelling the sons as delinquents.

29. Whether or not the applicant could be said to have used “irony”, as he argued, the way in which he had expressed himself had been unnecessarily wounding (*onnodig grievend*) for Mr Kieft.

30. Mr Kieft's complaint was therefore well-founded. Since the applicant had a clean record, he was given a mere admonition (*enkele waarschuwing*).

C. Civil proceedings

31. On 16 March 2005 Mr Kieft, through his counsel, informed the Court that he had instituted civil proceedings in the competent domestic tribunal, which proceedings had been adjourned pending the Court's decision.

32. The K. family brought an action for damages against Mr Kieft on 13 October 2005, based on what the applicant describes as the escalation of Ms A.K.'s problems and the statements made by Mr Kieft as to the veracity of Ms A.K.s alleged recollections.

II. RELEVANT DOMESTIC LAW

33. Article 7 of the Constitution of the Kingdom of the Netherlands provides as follows:

> “1. No one shall require prior permission to make public thoughts or feelings (*gedachten of gevoelens*) in printed form, the individual responsibility of everyone under the law notwithstanding.
>
> 2. There shall be statutory rules governing radio and television. There shall be no prior control of the content of a radio or television broadcast.
>
> 3. No one shall require prior permission to make public thoughts or feelings in any other way than those mentioned in the preceding paragraphs, the individual responsibility of everyone under the law notwithstanding. ...

4. The preceding paragraphs are not applicable to commercial advertising."

34. Section 46 of the Legal Profession Act (*Advocatenwet*) provides as follows:

"Advocates shall be subject to disciplinary proceedings regarding any act or omission which is in breach of the due care they ought to exercise as advocates vis-à-vis those whose interests they look after, or ought to look after, any breach of the Regulations of the National Bar, and any act or omission not befitting a respectable advocate (*enig handelen of nalaten dat een behoorlijk advocaat niet betaamt*). This disciplinary justice shall be dispensed at first instance by the Disciplinary Councils, and, on appeal, by the Disciplinary Appeals Tribunal, which shall also be the highest instance."

35. Guidance on the nature of an "act or omission not befitting a respectable advocate" is found in the Rules of Conduct for Advocates (*Gedragsregels voor advocaten*), the most recent version of which dates from 1992. The Rules relevant to the present case are the following:

Rule 1

"Advocates should conduct themselves in such a way that confidence in the profession or in their own exercise of the profession is not diminished."

Rule 31

"Advocates should not express themselves, either orally or in writing, in a way that is unnecessarily wounding."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

36. The applicant complained that the disciplinary sanction imposed on him by the Disciplinary Appeals Tribunal constituted a violation of Article 10 of the Convention, which 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. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

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."

37. The Government denied that there had been a violation of that provision.

A. Admissibility

38. The application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Nor is it inadmissible on any other ground. It must therefore be declared admissible.

B. Merits

1. Argument before the Court

a. The Government

39. The Government submitted that the debate regarding "recovered memories" and regression therapy as a therapeutic method was not at the heart of the present case. Nor could it be said that the applicant had raised a matter of public concern. He had simply insulted a specific person by portraying him as incompetent, arrogant and pretentious and could therefore reasonably have expected to be called to account. Therapy methods and the professional qualifications of therapists were not within his field of expertise.

40. Although the Government did not deny that the applicant was in principle entitled to counterbalance the allegations made by Ms A.K. against her family, his impugned statements were first made in November 2001, long after the NCRV television programme, and were unrelated to Ms A.K.'s accusations.

41. The present case fell to be distinguished from that of *Nikula v. Finland*, no. 31611/96, ECHR 2002-II: in that case the Court had held that the limits of acceptable criticism might in some circumstances be wider with regard to civil servants exercising their powers than in relation to private individuals. Mr Kieft had merely been a third party to a conflict between Ms A.K. and her family.

42. The Government shared the view of the Disciplinary Appeals Tribunal that the applicant ought to have moderated the tone of his statements, which in any event had been made outside the courtroom and for which therefore the applicant could not claim the same level of protection as for argument presented before a court of law.

43. As to the actual decisions of the disciplinary authorities, the Government argued that the present case was unlike the case of *Steur v. the Netherlands*, no. 39657/98, ECHR 2003-XI, in which the disciplinary authorities had made no attempt to establish the truth or falsehood of the impugned statement and did not at any time seem to have addressed the question whether it was made in good faith. Finally, the sanction imposed – a mere admonition – did not entail financial or professional penalties and was not disproportionate.

b. The applicant

44. The applicant agreed with the Government that the debate regarding "recovered memories" did not form the core of the present case. Therapeutic techniques, however, did, as indeed did the quality of therapists. The applicant claimed to be well-versed in the subject of unsound therapeutic practices that had been identified as involving the risk of false "recovered memories".

45. Mr Kieft had no formal medical training, he had no officially recognised academic training as a psychologist or a psychiatrist, and so-called "unitive psychotherapy" was not a form of treatment accepted by conventional medicine or psychology. Nor was Mr Kieft registered with an officially recognised supervisory body; the title "psychotherapist" was not protected by law. The memberhip of *RING*, the organisation to which he claimed to belong, included all manner of non-traditional practitioners including paranormal healers, faith healers and aura readers.

46. Mr Kieft had made it clear on several occasions, including in the AVRO radio programme, that he believed the allegations made by Ms A.K. against her family to be factually accurate and considered them confirmed by the results of his therapy. He had never dissociated himself from those allegations.

47. Between the time of the NCRV television broadcast and that of the radio programme the case of Ms A.K. had received much publicity, as indeed had the investigation against the NCRV. This had caused the K. family to be confronted with the allegations made by Ms A.K. on television. The applicant's duty, as legal adviser of the K. family, had included advising them on how to deal with media interest and representing their case in public. The applicant's impugned statements, forceful as they were, had been justified by the egregious accusations made by Ms A.K. and echoed by Mr Kieft.

48. Finally, the content of the applicant's impugned remarks was essentially no more than that any therapist who claimed certain knowledge of past sexual abuse based solely on their therapy was in effect claiming supernatural knowledge, thus overstepping the limits of proper medical practice; this in fact was a matter of legitimate public concern.

2. The Court's assessment

49. It is not in dispute that there has been an interference (in the form of a “penalty”) with the applicant's freedom of expression, that this interference was prescribed by law and that it was intended to protect “the reputation or rights of others”. The parties differ as to whether it could be considered “necessary in a democratic society” for the stated purpose.

50. The Court has stated the principles generally applicable as follows (see, among many other authorities, *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, §§ 88-91, ECHR 2004-XI, case-law references omitted):

> “88. The test of 'necessity in a democratic society' requires the Court to determine whether the interference complained of corresponded to a 'pressing social need'. The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those delivered by an independent court. The Court is therefore empowered to give the final ruling on whether a 'restriction' is reconcilable with freedom of expression as protected by Article 10 (...).
>
> 89. The Court's task in exercising its supervisory function is not to take the place of the competent domestic courts but rather to review under Article 10 the decisions they have taken pursuant to their power of appreciation (...). This does not mean that the supervision is limited to ascertaining whether the respondent State exercised its discretion reasonably, carefully or in good faith; what the Court has to do is to look at the interference complained of in the light of the case as a whole, including the content of the comments held against the applicants and the context in which they made them (...).
>
> 90. In particular, the Court must determine whether the reasons adduced by the national authorities to justify the interference were 'relevant and sufficient' and whether the measure taken was 'proportionate to the legitimate aims pursued' (...). In doing so, the Court has to satisfy itself that the national authorities, basing themselves on an acceptable assessment of the relevant facts, applied standards which were in conformity with the principles embodied in Article 10 (...).
>
> 91. The Court must also ascertain whether the domestic authorities struck a fair balance between, on the one hand, the protection of freedom of expression as enshrined in Article 10, and, on the other hand, the protection of the reputation of those against whom allegations have been made, a right which, as an aspect of private life, is protected by Article 8 of the Convention (...). That provision may require the adoption of positive measures designed to secure effective respect for private life even in the sphere of the relations of individuals between themselves (...).”

51. The Court has had occasion to point out that although advocates too are entitled to freedom of expression, the special nature of the legal profession has a certain impact on their conduct in public, which must be discreet, honest and dignified (see, as a recent authority, *Steur v. the Netherlands*, no. 39657/98, § 38, ECHR 2003-XI).

52. The present case differs from other cases in which the Court has had to consider the use made by members of the legal profession in the course of

their professional activities of their freedom of expression. Here the interest served by the interference complained of is not public confidence in the judiciary or indeed the standing of any public official, but the reputation of a private individual – in this case, a practitioner of alternative psychotherapy.

53. Ms A.K. had publicly accused her family of crimes of a particularly loathsome nature: repeated sexual abuse having caused five pregnancies, the ritual murder of three of the resulting babies, the sale of the fourth and the abortion of the fifth foetus. The K. family retained the applicant to seek redress for the injury caused them and to defend their reputation. It cannot be doubted that the applicant was entitled to make public statements in his clients' interest, even outside the courtroom, subject to the proviso that he was acting in good faith and in accordance with the ethics of the legal profession (compare, *mutatis mutandis*, *Castells v. Spain*, judgment of 23 April 1992, Series A no. 236, p. 24, § 48; more recently, again *mutatis mutandis*, *Colombani and Others v. France*, no. 51279/99, § 65, ECHR 2002-V, and *Steur v. the Netherlands*, cited above, §§ 42-43).

54. In the event, the applicant questioned Mr Kieft's professional qualifications and competence and expressed the opinion that he and his ilk were not fit to administer psychotherapy to patients. It is clear that the applicant's statement, which was given publicity in broadcast and print media, was capable of discrediting Mr Kieft as a practitioner of psychotherapy and thus of affecting his professional standing and income.

55. The Court has in the past distinguished between statements of fact and value judgments. The existence of facts can be demonstrated, whereas the truth of value judgments is not susceptible of proof. Even so, where a statement amounts to a value judgment, the proportionality of an interference may depend on whether there exists a sufficient factual basis for the impugned statement, since even a value judgment without any factual basis to support it may be excessive (see *Jerusalem v. Austria*, no. 26958/95, §§ 42-43, ECHR 2001-II).

56. In the present case, as regards the factual basis of the applicant's statement, it must be accepted that there was a link between Ms A.K.'s accusations and the therapy which she had received from Mr Kieft over a period of several years. In fact Mr Kieft never denied this.

57. What is more, in the same radio programme in which the applicant made his impugned statement, Mr Kieft stated unambiguously not only that his therapy had helped Ms A.K. to recover her recollections but also that his therapy enabled him to accept them as the truth.

58. As far as the Court is aware, there has been no confirmation of the accuracy of Ms A.K.'s statements from any source unrelated to Ms A.K. herself and Mr Kieft.

59. In these circumstances, and especially given the extremely serious accusations levelled against the K. family, there was nothing unreasonable in expecting Mr Kieft at the very least to state his qualifications. Indeed it is

difficult to see how else in this case the existence or absence of any factual basis for the opinion expressed by the applicant could be established.

60. However, Mr Kieft was allowed to withhold all information about his qualifications and training until the very last stage of the disciplinary proceedings, the hearing before the Disciplinary Appeals Tribunal. What is more, it is not apparent from the resulting decision that the Disciplinary Appeals Tribunal sought to determine either whether or not Mr Kieft had the professional competence to establish the truth of Ms A.K.'s accusations by psychotherapy alone or whether the applicant was in a position to substantiate and justify his statements himself.

61. The Court considers that an "acceptable assessment of the relevant facts" required an investigation into at least this important aspect of the case. Only then would it have been possible to give an informed decision as to whether the applicant had overstepped the limits of acceptable professional behaviour. As it is, the decision given by the Disciplinary Appeals Tribunal was based on an inadequate assessment of the facts and the reasons given therefore lacked relevance.

62. The foregoing considerations are sufficient for the Court to conclude that there has been a violation of Article 10 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

63. 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

64. The applicant declined to submit a claim in respect of damage; he would be satisfied with a finding by the Court that he had been a victim of a violation of Article 10 of the Convention.

B. Costs and expenses

65. The applicant incurred no costs in the domestic proceedings. He claimed a total of 7,159.13 euros (EUR) for the costs and expenses incurred before the Court.

66. The Government pointed out that the applicant had only submitted a fee note to an amount of EUR 3,073.77 including value-added tax.

67. Rule 60 § 2 of the Rules of Court requires applicants to submit itemised particulars of all their just satisfaction claims, together with any

relevant supporting documents, failing which the Court may reject the claims in whole or in part (Rule 60 § 3). As the Government correctly point out, the applicant has only submitted documentary evidence of his costs to an amount of EUR 2,583 plus value-added tax. The Court will award that sum and reject the remainder of the applicant's just-satisfaction claims.

C. Default interest

68. 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* by five votes to two that there has been a violation of Article 10 of the Convention;

3. *Holds* unanimously
   (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 2,583 (two thousand five hundred and eighty-three euros) in respect of costs and expenses, plus any tax that may be chargeable;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 30 November 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER	Boštjan M. ZUPANČIČ
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following joint dissenting opinion of Mr Zagrebelsky and Mrs Berro-Lefèvre is annexed to this judgment.

B.M.Z.
V.B.

JOINT DISSENTING OPINION OF JUDGES ZAGREBELSKY AND BERRO-LEFÈVRE

(Translation)

1 To our great regret, we are unable to agree with the Court's conclusion that there has been a violation of Article 10 of the Convention.

2 This case concerns a lawyer's freedom of expression and focuses on statements made by him during a radio interview, and subsequently reported in the press, in the context of a dispute between two private parties.

The Court has concluded that the Disciplinary Appeals Tribunal's decision was based on an inadequate assessment of the relevant facts, and that the applicant could not therefore be blamed for having overstepped the limits of acceptable professional behaviour.

3 The Court has always taken a careful approach to restrictions on lawyers' freedom of expression in judicial proceedings, and has considered that this freedom must remain compatible with the contribution that lawyers are expected to make to maintaining confidence in the public administration of justice (see *Schöpfer v. Switzerland*, judgment of 20 May 1998, *Reports of Judgments and Decisions 1998* III, pp. 1052-53, § 29; and *Kyprianou v. Cyprus* [GC], no. 73797/01, § 173, ECHR 2005-...). In this context, it has considered that lawyers' specific status gives them a central position in the administration of justice as intermediaries between the public and the courts, which explains both the usual restrictions on the conduct of members of the Bar and the monitoring and supervisory powers vested in the various Bar councils (see *Casado Coca v. Spain*, judgment of 24 February 1994, Series A no. 285-A, p. 21, § 54; and *Nikula v. Finland*, no. 31611/96, § 45, ECHR 2002-II).

4 We do not consider these references to lawyers' rights and obligations to be relevant in the case before us, however, since the applicant was speaking on a radio broadcast – and, admittedly, making use of his status as a lawyer – rather than in the context of any judicial proceedings. It would therefore appear that he was bound, not only by the inherent limits on freedom of expression that would apply to any individual, but also, given the professional capacity on which he relied, by the ethical rules imposed on its members by each Bar (cf. the above-cited case-law).

5 In addition, although the Court may be required to show tolerance with regard to the limits of acceptable criticism, which are wider with regard to a politician (see *Oberschlick v. Austria (no. 2)*, judgment of 1 July 1997, *Reports* 1997-IV, p. 1275, § 29), this was not the situation in this case, given that the applicant's comments referred to an ordinary citizen.

6 In the first place, the applicant gave his radio interview on 28 November 2001. His clients, the K. family, who had been accused in 2000 by a third party, Ms A.K., did not bring proceedings for compensation against Mr Kieft until 13 October 2005.

Thus, the applicant first attacked Mr Kieft publicly more than four years before an action was even was brought against him by the applicant's clients.

7 Secondly, and to put it mildly, the applicant did not show moderation in his tone and vocabulary.

In this connection, and referring to Mr Kieft, he stated:

> "Someone like that shouldn't, should not be allowed to be a therapist surely? That man, he lives in North Holland province, he should, er, grow cabbages for the market ... He should go and grow cabbages out there, but he should absolutely not be working with... patients ..."

and

> "... I just can't imagine how anyone can be so presumptuous as to tell two vulnerable old people, like some sort of guru, and, er, his truth ..."

Those remarks, while explicable in the context of the serious and sordid accusations previously made against the K. family, represent, in our opinion, criticisms which amount to a purely personal attack, and were solely intended to discredit Mr Kieft's reputation as a professional practitioner.

Unlike the majority, we do not believe that the particular context of the case enables one to consider that statements such as those made by the applicant may not be grounded in fact, or that the Disciplinary Appeals Tribunal erred in its assessment of the relevant facts. Far from being classifiable as merely the expression of an opinion, the terms used amounted to insults - which, incidentally, were unnecessary to support the applicant's argument - and were used solely for the purpose of publicly denigrating the person concerned.

8 Finally, and thirdly, we note that the sanction imposed on the applicant, namely an admonition, is not at all a heavy one, and merely results in a statement of principle by the disciplinary authority.

9 Everyone is aware that, in the courtroom, a lawyer may occasionally use virulent language and take a totally subjective view; parties to proceedings may thus expect to be subjected to sharp criticism. In this connection, a number of Council of Europe member States grant immunity with regard to statements made by a lawyer when representing his or her client before a court. Such immunity is linked to his or her obligation to defend the client's interests.

In the instant case, however, the criticism in question, part of which is in the nature of abuse, was made outside the courtroom and referred to a private individual.

We consider it particularly problematic, and even dangerous, to permit a lawyer to heap opprobrium on an individual, whoever he or she is, outside the context of judicial proceedings.