

## **In the case of Casado Coca v. Spain\*,**

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of the Rules of Court, as a Chamber composed of the following judges:

Mr R. Ryssdal, President,  
Mr Thór Vilhjálmsson,  
Mr A. Spielmann,  
Mr N. Valticos,  
Mrs E. Palm,  
Mr I. Foighel,  
Mr J.M. Morenilla,  
Sir John Freeland,  
Mr F. Bigi,

and also of Mr M.-A. Eissen, Registrar, and Mr H. Petzold, Deputy Registrar,

Having deliberated in private on 29 October 1993 and 26 January 1994,

Delivers the following judgment, which was adopted on the last-mentioned date:

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\* Note by the Registrar: The case is numbered 8/1993/403/481. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

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### **PROCEDURE**

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 19 February 1993, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 15450/89) against the Kingdom of Spain lodged with the Commission under Article 25 (art. 25) by a Spanish national, Mr Pablo Casado Coca, on 25 May 1989.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Spain recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 10 (art. 10).

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of the Rules of Court, the applicant stated that he wished to take part in the proceedings and to present his own case. On 30 April 1993 the President of the Court granted his request and also gave him leave to use the Spanish language during the proceedings (Rules 27 para. 3 and 30).

3. The Chamber to be constituted included ex officio Mr J.M. Morenilla, the elected judge of Spanish nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 27 February 1993, in the presence of the Registrar, Mr R. Bernhardt, the Vice-President of the Court, drew by lot the names of the other seven members,

namely Mr Thór Vilhjálmsson, Mr A. Spielmann, Mr N. Valticos, Mrs E. Palm, Mr I. Foighel, Sir John Freeland and Mr F. Bigi (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

4. As President of the Chamber (Rule 21 para. 5), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Spanish Government ("the Government"), the applicant and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38). Pursuant to the orders made in consequence, the Registrar received the applicant's memorial on 29 April 1993 and the Government's memorial on 13 July. On 7 September the Secretary to the Commission informed the Registrar that the Delegate would submit his observations at the hearing.

On 24 August and 15 September 1993 the Commission produced various documents which the Registrar had sought on instructions from the President, acting at the Government's request. In October the Government and the applicant likewise filed several documents.

5. In accordance with the decision of the President, who had also given the Agent of the Government leave to use the Spanish language at the hearing (Rule 27 para. 2), the hearing took place in public in the Human Rights Building, Strasbourg, on 26 October 1993. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) for the Government

Mr J. Borrego Borrego, Head of the Human Rights Legal Service, Ministry of Justice, Agent;

(b) for the Commission

Mr L.F. Martínez, Delegate;

(c) the applicant, Mr P. Casado Coca, abogado.

The Court heard addresses by them and also replies to its questions. The Agent of the Government produced certain documents.

## **AS TO THE FACTS**

### **I. The circumstances of the case**

6. Mr Pablo Casado Coca, a Spanish national, lives at Valldoreitx, near Barcelona, and practises as a lawyer (abogado) in Barcelona.

7. After setting up his practice in 1979, he regularly placed notices advertising it in the "miscellaneous advertisements" pages of several Barcelona newspapers and the Revista alemana de España ("German Journal of Spain"). He also wrote to various companies offering his services.

8. The Barcelona Bar Council (Junta de Govern del Col·legi d'Advocats) brought disciplinary proceedings against him four times on this account, and in 1981 and 1982 these led to the imposition of penalties, namely two reprimands and two warnings. The applicant lodged internal appeals against these penalties but did not apply to the competent courts.

A. The Bar Council proceedings

9. From October 1982 notices giving details of the applicant's legal practice were published in the newsletter of the Vallldoreitx Residents' and Property Owners' Association. They took up approximately one-third of a page and gave the applicant's name, with the title "lawyer" (letrado), and his office address and telephone number.

10. The Barcelona Bar Council brought further disciplinary proceedings against Mr Casado Coca on this account. On 6 April 1983 he again received a written warning for disregarding the ban on professional advertising (Article 31 of Royal Decree no. 2090/82 of 24 July 1982, laying down the Statute of the Bar - see paragraph 22 below).

11. On 3 June 1983, following an internal appeal by the applicant, the National Bar Council (Consejo general de la Abogacía) upheld the penalty imposed. Referring to Article 31 of the Statute of the Bar as amplified in the relevant rules of the Barcelona Bar Council (see paragraphs 22, 24 and 27 below), it held that, given their nature, the notices in question went beyond the defined limits. It also pointed out that the applicant had recently incurred other disciplinary penalties for the same reason, and these had to be taken into consideration when ruling on the appeal.

#### B. Proceedings in the competent courts

12. Mr Casado Coca then applied to the Barcelona Audiencia Territorial. He argued in particular that the purpose of his notice was to inform the public and that the warning infringed Article 20 of the Constitution, which guaranteed the right to freedom of expression. He also alleged that the principle that only a statute could define offences and lay down penalties had been contravened because the provisions which prohibited advertising by members of the Bar and attached disciplinary penalties were regulatory in nature.

The court dismissed his application on 11 May 1987, holding that the notice in question was a vehicle for advertising and not simply an announcement of information. It appeared beside similar announcements by a driving school and an old people's home and went beyond the limits laid down in the Bar's rules, which allowed notices only to announce the setting up of a practice or a change of address; this was not the applicant's case.

13. On 23 September 1988 the Supreme Court dismissed an appeal on points of law by Mr Casado Coca and at the same time refused to refer the case to the Constitutional Court on grounds of unconstitutionality.

It rejected the ground of appeal based on disregard of the principle that only a statute could define offences and lay down penalties. It did so by reference to the case-law of the Constitutional Court, according to which Article 36 of the Constitution (see paragraph 18 below) makes it permissible for statute law to provide that the rules governing professional associations and the practice of the professions may be laid down by means of regulations. It held that Article 20 did not protect advertising as a fundamental right, because advertising was not a matter of expressing thoughts, ideas or opinions but of announcing the existence of a profit-making business activity.

Moreover, the ban on professional advertising by members of the Bar had legitimate aims, namely to uphold free competition and to protect clients' interests. In such a case the right in question could be subject to restrictions.

#### C. Proceedings in the Constitutional Court

14. The applicant then lodged an appeal (recurso de amparo) with the Constitutional Court. He again maintained that it was contrary to the principle of statutory definition of offences and

prescription of penalties enshrined in the Constitution to lay down administrative penalties by means of a decree, and that since the notice set out genuine information, i.e. his name, address and telephone number, the penalty imposed contravened Article 20 of the Constitution.

15. On 17 April 1989 the Constitutional Court declared the appeal inadmissible.

It held that the penalty complained of did not infringe the fundamental right to communicate genuine information. The aim of the advertising was connected with the "carrying on of a commercial, industrial, craft or professional activity"; it consisted in "directly or indirectly promoting the conclusion of contracts relating to movable or immovable property, services, rights or obligations", whereas the purpose of the fundamental right defined in Article 20 para. 1 (d) was to enable citizens to "form their beliefs by weighing different or even diametrically opposed opinions and thus taking part in the discussion of public affairs". The ban on advertising professional services did not infringe the fundamental right in question.

## II. Relevant domestic law

### A. General provisions

1. The 1978 Constitution

16. Article 20 of the Constitution guarantees the right to freedom of expression:

"1. The following rights shall be recognised and protected:

(a) the right freely to express and disseminate thoughts, ideas and opinions by word of mouth, in writing or by any other means of reproduction;

...

(d) the right to receive and communicate true information by any means of dissemination. The right to invoke the conscience clause and that of professional confidentiality shall be governed by statute.

2. The exercise of these rights may not be restricted by any prior censorship.

...

4. These freedoms shall be limited by respect for the rights secured in this Part, by the provisions of the implementing Acts and in particular by the right to honour and to a private life and the right to control use of one's likeness and to the protection of youth and children."

17. Article 25 enshrines the principle that only a statute can define offences and lay down penalties:

"1. No one may be convicted or punished for any act or omission which at the time it was committed did not constitute, under the legislation in force at that time, a criminal offence, whether serious or petty, or an administrative offence.

..."

18. Article 36 deals with professional associations:

"The special features of the legal status of professional associations and the practice of

professions requiring a university degree shall be laid down by statute. The internal structure and functioning of associations must be democratic."

According to the case-law of the Constitutional Court, this Article does not preclude a statutory provision that rules governing professional associations and the practice of the professions are to be laid down in administrative regulations (judgments of 20 February and 24 September 1984).

19. The Constitution states that any previous provisions contrary to it are repealed.

2. Law no. 2/1974 on professional associations

20. Law no. 2/1974, which was published in the Spanish Official Gazette of 15 February 1974, governs the functioning and organisation of professional associations. Section 1 provides:

"Professional associations are public-law corporations, protected by law and recognised by the State, enjoying legal personality and having full capacity to act in pursuit of their objectives."

21. Section 5 (i) makes the professional associations responsible for regulating their members' professional activities, for ensuring that professional ethics and dignity are upheld and that the rights of private individuals are respected, and for exercising disciplinary powers in professional and internal matters. To these ends, the relevant national councils adopt statutes, which are approved by the Government. These statutes lay down the rights and duties of the members of each profession and the disciplinary rules applicable to them.

#### B. Special provisions governing Bars

1. The Statute of the Spanish Bar

(a) Regime applicable at the material time

22. Royal Decree 2090/82 laying down the Statute of the Spanish Bar (Estatuto general de la Abogacía Española) was published in the Spanish Official Gazette on 2 September 1982.

#### Article 31

"Members of the Bar are not allowed to

(a) announce or circulate information about their services directly or through advertising media, ... or express opinions free of charge in professional journals or other publications or media without permission from the Bar Council;

..."

Articles 107-112 govern the disciplinary powers of Bar councils. An appeal against penalties lies to the National Bar Council (Article 96 para. 1) and subsequently to the competent courts (Article 99).

(b) Proposed new regime

23. At sessions held on 5-6 March, 21-22 May and 25 June 1993 the Assembly of the Chairmen

of the Spanish Bars adopted the draft of a new national Statute, which has been submitted to the Government for approval. Article 31 of the draft Statute provides:

"1. Members of the Bar may advertise their services and practices in accordance with the legislation in force, this Statute and other rules and decisions of the Bar.

2. Direct or indirect advertising of individual members of the Bar and their services and participation by the former in legal advice programmes in the media shall be subject to certain conditions. Members of the Bar must

(a) comply with the special provisions applicable to practice at the Bar as well as with the current legislation on advertising;

(b) show regard for truth, rigour and exactness without detracting from other members' advertisements by imitating them or inviting confusion with them, without lapsing into self-praise and comparisons with or denigration of their colleagues and without citing their own professional successes, their clientele or the financial terms on which they provide services; and

(c) request the relevant Bar council's prior authorisation for the proposed advertisement, specifying its content and the way in which it will be published.

The Bar council may grant authorisation, make it subject to certain amendments or refuse it. In all cases, it shall give a reasoned decision that can be challenged in accordance with the procedure laid down in Articles 130 et seq. of this Statute and shall be communicated to the member of the Bar making the request within not more than thirty days of that request, failing which the council shall be deemed to have given its tacit consent.

3. Notwithstanding the above, members of the Bar may, without seeking prior authorisation,

(a) use a letterhead stating their name, profession and university degrees, or those of their partners, and the name, telephone number and other particulars of their chambers, in the form customarily used by members of the Bar;

(b) affix to the outside of the building in which they have their chambers or their private residence and to the door of their chambers or nearby, a sign or plate announcing their practice, of the size and kind usual in the area of the Bar;

(c) have their status as a member of the Bar included in telephone, fax, telex and other directories;

(d) announce by letter or in the press any changes of address, telephone number or other particulars of their chambers, likewise in the form customarily used by members of the Bar to which they belong; and

(e) take part in conferences and symposia, mentioning their membership of the Bar, publish articles in the specialist and non-specialist press and make statements on radio or television.

4. Members of the Bar who continuously or occasionally provide services to individuals or companies must require them to refrain from any advertising that does not comply with the provisions of this Statute.

5. The Bar council shall rule on allegedly doubtful or unforeseen cases and violations of provisions governing advertising or any misuse of rights derived from the rules in this Statute. It may expressly prohibit practices it deems contrary to the spirit of this Statute and punish any breaches of such prohibitions."

2. The rules specific to the Barcelona Bar

(a) Regime applicable at the material time

(i) The 1947 Statute of the Barcelona Bar

24. At the time when the penalty was imposed on the applicant, the 1947 Statute of the Barcelona Bar (Estatutos del Colegio de Abogados de Barcelona) was still in force. Article 18 quite simply prohibited members of the Bar from advertising, in the following terms:

Article 18

"Members of the Bar are forbidden to publish notices relating to the practice of their profession as a means of advertising or propaganda."

(ii) The decision of 24 February 1981

25. Being of the view that the ban on advertising was an important rule of professional conduct, the Barcelona Bar Council adopted a decision on 24 February 1981 on "Members of the Bar and advertising" (Acord sobre "Els advocats i la publicitat"), which provided, inter alia:

"1. General principle

It is forbidden for members of the Bar to undertake any direct or indirect personal advertising intended to attract clients.

...

## 2. Authorised notices

Members of the Bar may publish small notices in local daily newspapers in order to announce the setting up of their practices or changes in membership or of address, telephone number or telex number.

The size and content of notices must be approved in advance by the Bar Council. They may not appear more than three times during a maximum period of two months.

...

## 6. Professional directories

Members of the Bar may publish their names, addresses, telephone numbers and telex numbers, with a brief indication of the type of professional services offered, in professional directories, provided that all members of the Bar have the same access to these.

..."

### (b) Subsequent regime

#### (i) The 1985 Statute of the Barcelona Bar

26. A new Statute of the Barcelona Bar (Estatuts del Il.lustre Col.llegi d'Advocats de Barcelona) was published in the Catalonia Official Gazette of 5 June 1985. Article 19 provides:

"1. It is forbidden for members of the Bar to undertake any personal advertising intended to secure clients, whether directly or indirectly.

2. It is also forbidden for members of the Bar to consent either expressly or tacitly to any form of advertising offered to them.

3. The foregoing prohibition shall cover both advertising by word of mouth and written or graphic advertising in any form and of any kind. It shall also apply to advertising by means of radio or television broadcasts.

...

5. The Bar Council may adopt rules to deal in greater detail with the matters covered in this Article."

Failure to comply with the provisions of the Statute constitutes serious or minor misconduct, depending on the circumstances, and may lead to penalties being imposed (Articles 94 to 96 of the



Statute).

(ii) The 1985 decision of the Barcelona Bar Council

27. On 5 February 1985 the Bar Council amended the rules laid down in its 1981 decision (see paragraph 25 above) by forbidding members of the Bar to send press releases involving personal advertising to the media.

(iii) The rules adopted by the Council of the Catalonia Bars in 1991

28. On 4 July 1991 the Council of the Catalonia Bars (Consell dels Col·legis d'Advocats de Catalunya) adopted new rules on advertising. These superseded the earlier rules included in the statutes and decisions of the Catalonia Bars (Rule 6).

The preamble states:

"Advertising by members of the Bar is traditionally considered to be more or less incompatible with professional ethics. However, it is obvious that advertising, provided it does not go beyond certain limits, does not offend the vital principles of the profession's code of ethics, namely probity and independence. Today information is one of the foundations of democratic countries and a right for users of a service.

..."

Rules 2 and 3 make a distinction in this field:

"Rule 2

Authorised advertising

Members of the Bar may

...

(b) publish documents, circulars or articles on legal subjects, even in publications not specialising in law, bearing their signature and indicating the author's status as a member of the Bar;

(c) express their personal opinions in the media on subjects of public interest or on cases in which they are involved professionally, taking care at all times to maintain professional secrecy;

(d) publish brochures giving details of their practices, the members of the Bar who work there and the types of case handled. This publicity material must be approved in advance by the Bar Council. They may also publish information circulars on legal topics. The brochures and circulars referred to in this paragraph may be distributed only to

clients and not to third parties;

... "

### "Rule 3

#### Unauthorised advertising

Members of the Bar may not advertise otherwise than as allowed under the terms of the preceding Rule. In particular, they may not

(a) advertise their services by making known their professional successes, giving the names of their clients or comparing themselves with other members of the Bar or by allowing others so to act without objecting;

(b) send brochures, circulars or other documents or offer their services to persons other than clients;

...

(e) advertise in the press or on radio or television except as allowed under Rule 2."

### **PROCEEDINGS BEFORE THE COMMISSION**

29. Mr Casado Coca applied to the Commission on 25 May 1989. He alleged several breaches of the Convention: (a) Article 7 (art. 7), in that the disciplinary rules of the Spanish Bars were laid down by decree and not by a Law; (b) Article 10 (art. 10), because the Barcelona Bar Council had given him a warning for publishing a notice in a local newsletter; (c) Article 4 para. 2 (art. 4-2), because members of the Spanish Bar could not choose to specialise; (d) Article 14 taken together with Article 10 (art. 14+10), in that the members of other professions had more scope to advertise.

30. On 2 December 1991 the Commission declared the application (no. 15450/89) admissible in respect of the complaint relating to Article 10 (art. 10) but inadmissible as to the remainder. In its report of 1 December 1992 (made under Article 31) (art. 31), the Commission expressed the opinion by nine votes to nine, with the President's casting vote, that there had been a breach of Article 10 (art. 10). The full text of the Commission's opinion and of the two dissenting opinions contained in the report is reproduced as an annex to this judgment\*.

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\* Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 285-A of Series A of the Publications of the Court), but a copy of the Commission's report is available from the registry.

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### **GOVERNMENT'S FINAL SUBMISSIONS TO THE COURT**

31. In their memorial of 13 July 1993 the Government requested the Court to hold

"1. that this case does not come within the scope of

Article 10 (art. 10); and

2. that if Article 10 (art. 10) does apply in this case, the Kingdom of Spain has not failed to fulfil its obligations under the Convention".

## **AS TO THE LAW**

### **ALLEGED VIOLATION OF ARTICLE 10 (art. 10)**

32. Mr Casado Coca complained of the disciplinary sanction imposed on him by the Barcelona Bar Council on 6 April 1983 for having published a notice about his practice in several issues of a local newsletter. He relied on Article 10 (art. 10) of the Convention, which provides:

"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 (art. 10) 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."

#### **A. Applicability of Article 10 (art. 10)**

33. The Government disputed the applicability of Article 10 (art. 10). They contended that the applicant's notices did not in any way constitute information of a commercial nature but were simply advertising. He had paid for them with the sole aim of securing more clients. Advertising as such did not come within the ambit of freedom of expression; an advertisement did not serve the public interest but the private interests of the individuals concerned. Applying the guarantees of Article 10 (art. 10) to advertising would be tantamount to altering the scope of that Article (art. 10).

34. According to the applicant, the information given in his notices had indeed been intended for the general public; assuming it had succeeded in attracting an influx of clients, this would have been because the public had found it useful and necessary. Advertising was, moreover, a general concept comprising several categories according to the political or commercial content of the information or ideas in question. Furthermore, the protection of human rights did not necessarily have to further the public interest; it could serve private interests.

35. The Court would first point out that Article 10 (art. 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 (see, *mutatis mutandis*, the *Autronic AG v. Switzerland* judgment of 22 May 1990, Series A no. 178, p. 23, para. 47) and a difference in treatment in this sphere might fall foul of

Article 14 (art. 14).

In its *Barthold v. Germany* judgment of 25 March 1985 (Series A no. 90, pp. 20-21, para. 42) the Court left open the question whether commercial advertising as such came within the scope of the guarantees under Article 10 (art. 10), but its later case-law provides guidance on this matter. Article 10 (art. 10) does not apply solely to certain types of information or ideas or forms of expression (see the *Markt Intern Verlag GmbH and Klaus Beermann v. Germany* judgment of 20 November 1989, Series A no. 165, p. 17, para. 26), in particular those of a political nature; it also encompasses artistic expression (see the *Müller and Others v. Switzerland* judgment of 24 May 1988, Series A no. 133, p. 19, para. 27), information of a commercial nature (see the *Markt Intern Verlag GmbH and Klaus Beermann* judgment previously cited, *ibid.*) - as the Commission rightly pointed out - and even light music and commercials transmitted by cable (see the *Groppera Radio AG and Others v. Switzerland* judgment of 28 March 1990, Series A no. 173, p. 22, paras. 54-55).

36. In the instant case the impugned notices merely gave the applicant's name, profession, address and telephone number. They were clearly published with the aim of advertising, but they provided persons requiring legal assistance with information that was of definite use and likely to facilitate their access to justice.

37. Article 10 (art. 10) is therefore applicable.

## **B. Compliance with Article 10 (art. 10)**

### **1. Whether there was an interference by a "public authority"**

38. The Government submitted that if there was an interference, it did not come from a "public authority" within the meaning of Article 10 para. 1 (art. 10-1). The Barcelona Bar Council's written warning (see paragraph 10 above) could be regarded as an internal sanction imposed on Mr Casado Coca by his peers. The Spanish State had merely ratified, in the form of a royal decree, the statute drawn up by the members of the Bar themselves, under Article 31 of which professional advertising was banned (see paragraph 22 above).

39. Like the applicant and the Commission, the Court notes, however, that section 1 of the 1974 Law on professional associations states that they are public-law corporations (see paragraph 20 above). In the case of the Bars, this status is further buttressed by their purpose of serving the public interest through the furtherance of free, adequate legal assistance combined with public supervision of the practice of the profession and of compliance with professional ethics (see, in the case of a Bar, the *Van der Musselle v. Belgium* judgment of 23 November 1983, Series A no. 70, p. 15, para. 29 in fine, and the *H. v. Belgium* judgment of 30 November 1987, Series A no. 127-B, pp. 27-28, paras. 24-29; see also, *mutatis mutandis*, in the case of a medical association, the *Le Compte, Van Leuven and De Meyere* judgment of 23 June 1981, Series A no. 43, pp. 26-27, para. 64). Furthermore, the impugned decision was adopted in accordance with the provisions applicable to members of the Barcelona Bar and an appeal against it lay to the competent courts (see paragraph 22 above). These courts and the Constitutional Court, all of which are State institutions, upheld the penalty (see paragraphs 12, 13 and 15 above). That being so, it is reasonable to hold that there was an interference by a "public authority" with Mr Casado Coca's freedom to impart information.

### **2. Whether the interference was justified**

40. Such an interference contravenes Article 10 (art. 10) unless it was "prescribed by law", had an aim that was legitimate under Article 10 para. 2 (art. 10-2) and was "necessary in a democratic society" for the aforementioned aim (see, in particular, the *Thorgeir Thorgeirson v. Iceland*

judgment of 25 June 1992, Series A no. 239, p. 25, para. 56).

**(a) "Prescribed by law"**

41. The applicant contended that the penalty complained of lacked a valid basis in law. The 1974 Law had become null and void after the 1978 Constitution came into force, under which any earlier provisions contrary to it were repealed (see paragraph 19 above). Since the Statute of the Spanish Bar had been adopted pursuant to that Law, it had been affected in the same way.

42. It was common ground between the Government and the Commission that the disciplinary measure was based on the ban on advertising imposed on members of the Bar by Article 31 of the Statute of the Spanish Bar and by the Statute of the Barcelona Bar and its council's decisions (see paragraphs 22, 24 and 25 above).

43. It is primarily for the national authorities, notably the courts, to interpret and apply domestic law (see, *inter alia*, the *Thorgeir Thorgeirson v. Iceland* judgment previously cited, Series A no. 239, p. 25, para. 58). In the instant case, in rejecting the ground of appeal based on violation of the principle that only a statute can define offences and lay down penalties, the Supreme Court took as its authority the Constitutional Court's case-law on the subject (see paragraphs 13 and 18 above). In the light of the wording of the provisions in question (see, *mutatis mutandis*, the *Castells v. Spain* judgment of 23 April 1992, Series A no. 236, p. 21, para. 37) and the state of its own case-law at the time, the Court finds this interpretation to be reasonable and likewise the Constitutional Court's interpretation of Article 20 of the Constitution in its decision of 17 April 1989 (see paragraphs 15 and 16 above). In short, the interference was "prescribed by law".

**(b) Legitimate aim**

44. The Government and the Commission considered on the whole that the main aim of the ban on professional advertising by members of the Bar was the "protection of the rights of others", in particular the rights of the public and other members of the Bar. The Government also pointed out that advertising had always been found to be incompatible with the dignity of the profession, the respect due to fellow members of the Bar and the interests of the public.

45. In the applicant's view, the Commission's opinion could only be held in cases where the advertising was comparative or untruthful, but not where a notice simply gave information about a practice. The impugned ban made it possible to perpetuate discrimination between members of the Bar in independent practice and those practising as employees, civil servants or university teachers. For the former, advertising was the only possible means of reaching potential clients, whereas the positions held by the latter afforded them greater scope for making themselves known. Furthermore, the ban did not apply to the big legal consulting firms active on an international scale or to insurance companies which also offered legal assistance. Far from being a measure protecting the independent practitioner, the ban was a way of safeguarding the interests of certain privileged members of the profession.

46. The Court does not have any reason to doubt that the Bar rules complained of were designed to protect the interests of the public while ensuring respect for members of the Bar. In this connection, the special nature of the profession practised by members of the Bar must be considered; in their capacity as officers of the court they benefit from an exclusive right of audience and immunity from legal process in respect of their oral presentation of cases in court, but their conduct must be discreet, honest and dignified. The restrictions on advertising were traditionally justified by reference to these special features. In the case of the decision in issue, there is nothing to show that the Bar Council's intention at the time did not correspond to the acknowledged aim of

the legislation. Furthermore, the factors alluded to by Mr Casado Coca relate primarily to the way in which the legislation in question was applied and are therefore relevant to assessing the need for the disciplinary measure.

**(c) "Necessary in a democratic society"**

47. The applicant contended that the penalty complained of was not "necessary in a democratic society", because it constituted a disproportionate interference with his right to impart commercial information, a right which members of the Bar, like other citizens, were guaranteed under Article 10 (art. 10). He added that such a restriction was permissible only if it reflected a freely and democratically accepted willingness to exercise self-restraint; that was not so in the instant case.

48. The Government considered that the impugned rules of the Spanish Bar possessed those characteristics. They reflected the conception that members of the Bar themselves had of their profession as officers of the court, which excluded practising the profession on a purely commercial basis. Furthermore, in 1982 they corresponded to the common general practice of European Bars, even if a degree of relaxation of the rules in this area has been noted since.

In any case, the penalty imposed on Mr Casado Coca was almost a token one in nature. It in fact sanctioned repeated advertising by Mr Casado Coca, who had already received warnings and reprimands in respect of the notices he had placed in the "miscellaneous advertisements" sections of several newspapers and the circulars he had sent to companies (see paragraphs 7 and 8 above). That being so and where commercial speech was concerned, the Government claimed a considerable margin of appreciation for the relevant authorities.

49. In the Commission's view, banning practically all advertising by members of the Bar appeared to be excessive and scarcely compatible with the right to freedom of expression, which includes the freedom to impart information and its corollary, the right to receive it. The applicant's notice set out particulars that were wholly neutral (his name, occupation and business address and telephone number) and did not contain information that was untrue or offensive to fellow members of the Bar. He was therefore entitled to impart that information, just as his potential clients were entitled to receive it.

50. Under 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 (see, *inter alia*, the *Markt Intern Verlag GmbH and Klaus Beermann* judgment previously cited, Series A no. 165, p. 20, para. 33). Such a margin of appreciation is particularly essential in the complex and fluctuating area of unfair competition (*ibid.*). The same applies to advertising. 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, *inter alia*, *ibid.* and the *Barthold* judgment previously cited, Series A no. 90, p. 25, para. 55).

51. 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, *mutatis mutandis*, the *Markt Intern Verlag GmbH and Klaus Beermann* judgment previously cited, Series A no. 165, p. 20,

para. 34).

52. In the present case, Mr Casado Coca received a written warning from the Barcelona Bar Council on 6 April 1983 for having contravened the ban on professional advertising (see paragraphs 10 and 22 above). In confirming the penalty, the National Bar Council held that, given their nature, the notices in question went beyond the limits permitted by the relevant rules of the Barcelona Bar; the Barcelona Audiencia Territorial gave the same ground for its judgment (see paragraphs 11, 12, 24 and 25 above). The Court notes that those rules allowed advertising in certain cases - namely when a practice was being set up or when there was a change in its membership, address or telephone number - and under certain conditions (see paragraph 25 above). The ban was therefore not an absolute one.

53. The applicant and the Commission argued that commercial undertakings such as insurance companies are not subject to restrictions on advertising their legal consulting services.

54. In the Court's opinion, however, they cannot be compared to members of the Bar in independent practice, whose special status 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 and also the monitoring and supervisory powers vested in Bar councils.

Nevertheless, the rules governing the profession, particularly in the sphere of advertising, vary from one country to another according to cultural tradition. Moreover, in most of the States parties to the Convention, including Spain, there has for some time been a tendency to relax the rules as a result of the changes in their respective societies and in particular the growing role of the media in them. The Government cited the examples of the Code of Conduct for Lawyers in the European Community (Strasbourg, 28 October 1988) and the conclusions of the Conference of the European Bars (Cracow, 24 May 1991); while upholding the principle of banning advertising, these documents authorise members of the Bar to express their views to the media, to make themselves known and to take part in public debate. In accordance with these guidelines, the new rules on advertising issued by the Council of the Catalonia Bars (4 July 1991) allow the publication of circulars or articles, including in the press (see paragraph 28 above). More recently, the Government have begun to study the draft of the new Statute of the Spanish Bar (see paragraph 23 above), which permits somewhat greater freedom in this sphere.

55. The wide range of regulations and the different rates of change 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 country's 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, namely the requirements of the proper administration of justice, the dignity of the profession, the right of everyone to receive information about legal assistance and affording members of the Bar the possibility of advertising their practices.

56. In view of the above, the Court holds that at the material time - 1982-83 - the relevant authorities' reaction could not be considered disproportionate to the aim pursued.

57. In conclusion, no breach of Article 10 (art. 10) has been made out.

#### **FOR THESE REASONS, THE COURT**

1. Holds unanimously that Article 10 (art. 10) applied in the instant case.
2. Holds by seven votes to two that there has not been a breach of it.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 24 February 1994.

Signed: Rolv RYSSDAL  
President

Signed: Marc-André EISSEN  
Registrar

In accordance with Article 51 para. 2 (art. 51-2) of the Convention and Rule 53 para. 2 of the Rules of Court, the joint dissenting opinion of Mr Thór Vilhjálmsson and Mrs Palm is annexed to this judgment.

Initialled: R.R.

Initialled: M.-A. E.

### **JOINT DISSENTING OPINION OF JUDGES THÓR VILHJÁLMSOON AND PALM**

We agree with the majority of the Chamber that Article 10 (art. 10) of the Convention is applicable in this case and that there has been an interference, which was prescribed by law and had a legitimate aim.

However, with regard to the necessity, we agree with what is said in paragraphs 54-65 of the Commission's report. Accordingly we find that there has been a violation of Article 10 (art. 10) of the Convention.