



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

COURT (CHAMBER)

CASE OF DEBLED v. BELGIUM

(Application no. 13839/88)

JUDGMENT

STRASBOURG

22 September 1994

In the case of Debled v. Belgium*,

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 R. BERNHARDT,

Mr Thór VILHJÁLMSSON,

Mr F. MATSCHER,

Mr C. RUSSO,

Mr J. DE MEYER,

Mr N. VALTICOS,

Mrs E. PALM,

Sir John FREELAND,

and also of Mr M.-A. EISSEN, *Registrar*, and Mr H. PETZOLD, *Deputy Registrar*,

Having deliberated in private on 23 February and 23 August 1994,

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

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 13 April 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. 13839/88) against the Kingdom of Belgium lodged with the Commission under Article 25 (art. 25) by a Belgian national, Dr Georges Debled, on 17 November 1988.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Belgium 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 6 (art. 6) of the Convention.

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

* Note by the Registrar. The case is numbered 17/1993/412/491. 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.

the proceedings and designated the lawyer who would represent him (Rule 30).

3. The Chamber to be constituted included ex officio Mr J. De Meyer, the elected judge of Belgian nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 23 April 1993, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr R. Bernhardt, Mr Thór Vilhjálmsson, Mr F. Matscher, Mr C. Russo, Mr N. Valticos, Mr F. Bigi and Sir John Freeland (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43). Mrs E. Palm, substitute judge, subsequently replaced Mr Bigi, who was unable to take part in the further consideration of the case (Rules 22 para. 1 and 24 para. 1).

4. As President of the Chamber (Rule 21 para. 5), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Belgian Government ("the Government"), the applicant's lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, the Registrar received the applicant's memorial on 15 November 1993 and the Government's memorial on 16 November. On 24 November the Secretary to the Commission informed the Registrar that the Delegate would submit his observations at the hearing.

5. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 21 February 1994. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

- for the Government

Mr J. LATHOUWERS, Deputy Adviser,
Head of the Human Rights Department, Delegate Ministry
of Justice, *Agent,*

Mr J.-M. NELISSEN-GRADE, avocat
at the Court of Cassation, *Counsel;*

- for the Commission

Mr S. TRECHSEL, *Delegate;*

- for the applicant

Mr M. SPANDRE, avocat,
Mr M. GRAINDORGE, avocat, *Counsel.*

The Court heard addresses by Mr Nelissen-Grade, Mr Trechsel, Mr Spandre and Mr Graindorge.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Proceedings before the Brabant Provincial Council of the Ordre des médecins

6. Dr Georges Debled, a urologist of Belgian nationality, lives and practises in Paris.

7. On 10 September 1982, 5 November 1982, 17 March 1983 and 13 August 1984, at a time when the applicant was still practising in Belgium, patients of his complained to the Brabant Ordre des médecins (medical association) that the fees he charged were excessive. After considering these complaints, the Provincial Council summoned the applicant to appear before it on 5 March 1985. The council's registered letter of 11 February 1985 also informed him that he would be heard on the following counts:

"1° that on numerous occasions in recent years, despite the council's warnings, recommendations and cautions, he charged his patients excessive fees, and persisted in doing so, in breach of the principles of moderation and discretion incumbent on medical practitioners ...

2° that, after various complaints from patients regarding excessive fees, he refused to follow the recommendation of the council's fees disputes committee that the cases be submitted to it;

3° that, through his attitude, he showed total contempt for the council's warnings, demonstrating by his statements that he was guided in his practice of medicine by concerns of a wholly pecuniary nature;

4° that without valid reason he failed to take part in the [council's] elections of March 1982."

8. At the request of the applicant's lawyer, the hearing was postponed to 2 April 1985.

9. In pleadings filed on the day of the hearing, Dr Debled, referring *inter alia* to certain provisions of the Judicial Code and of the Royal Decree of 29 May 1970, challenged, by way of main submission, "the council as a whole" and, in the alternative, five doctors sitting on the council, on the ground that, even before the hearing, they had "individually expressed their opinion concerning Dr Debled's conduct and had described it in negative terms". He also reserved the right to contest both the admissibility of the case brought against him and its merits. In additional submissions made at the hearing he requested that "the proceedings be stayed ... until the appeal [he] intend[ed] to lodge against the council's decision had been heard".

Finally, he refused to present argument on the merits, despite having been invited to do so by the council, and withdrew from the hearing.

10. The council gave its decision on 2 April 1985. It first held that the legislative provisions relied on by the applicant had no bearing on the facts of the case and therefore could not constitute the basis for his application challenging its members. It then noted that none of the members of the Ordre whom he had accused of having a "negative attitude towards him" sat on the council to which it fell to determine the disciplinary proceedings. Lastly, it pointed out that four of the council members whom the applicant had challenged had not heard the case in question and that the fifth had only been present in an advisory capacity and had not taken part in the deliberations. It accordingly dismissed the application challenging the council en bloc and ruled that the application concerning the five medical practitioners was inadmissible and ill-founded.

The council gave its decision on the request for a stay of the proceedings in the following terms:

"... quite apart from the inappropriate references to legislation which has no bearing on the case..., [the additional] submissions state in a curiously implausible and contradictory manner that 'by refusing to give a decision on the challenges, the council dismissed them';

... at no time did the council refuse to give a decision on the challenges; ... it merely informed Dr Debled and his lawyers that it would rule on the challenges and the merits in a single decision; ... during the hearing it did not take any decision whatsoever on the challenges and ... Dr Debled was consequently acting precipitately and in a way which prejudged a decision that had not been taken when he stated that he intended to appeal against that decision and requested that the proceedings be stayed pending the outcome of that hypothetical appeal.

... there is no reason to grant that request."

With regard to the merits of the case, the council, giving its decision in absentia, considered that most of the charges against Dr Debled had been substantiated and imposed "on [him] the penalty of one year's suspension of his right to practise medicine".

B. Proceedings before the Appeals Board of the Ordre des médecins

1. The appeal

11. On 11 April 1985 Dr Debled lodged an appeal against the decision of 2 April 1985 with the French-language Appeals Board of the Ordre des médecins.

12. On 2 October 1986 he was summoned to a hearing to be held on 20 October. On that date he requested a three-month adjournment to enable his

new lawyers to prepare his defence. After deliberating, the Appeals Board apparently allowed him an adjournment until 4 November 1986.

On 21 October 1986 he laid a complaint for falsification and use of falsified documents against the members of the bureau of the council of the Ordre des médecins (Dr Remion, Dr Govaerts, Dr Roose, Dr Farber and Dr Brihaye). He disputed certain entries in the minutes of meetings held on 14 June 1983 and 9 October 1984 to consider the complaints against him. He subsequently also lodged the following complaints:

- on 31 October 1986 against Mrs Beaupain and Mrs Couturier, the judges (magistrats) who had sat on the bureau and council of the Ordre during those meetings;

- on 14 November 1986 against Dr Farber, the vice-president of the Ordre des médecins, concerning statements made to the press on 5 November 1986;

- on 25 November 1986 against the same person for making misleading statements and for breach of confidentiality.

No information has been provided as to what action was taken in response to those complaints.

2. The application for a transfer of jurisdiction on the ground of bias

13. In the meantime, on 3 November 1986 Dr Debled applied to the Court of Cassation for a transfer of jurisdiction, claiming that there were reasonable grounds for suspecting the Appeals Board of bias (suspicion légitime). He called into question the impartiality of two of the five full members, Dr Raickman and Dr Vossen, and three of the five substitute members, Dr Beernaerts, Dr Daxhelet and Dr Gelin, who were or had been officials of the medical unions.

He first alleged "in general terms" that the medical unions had gradually taken control of the various institutions of the Ordre des médecins with the result that the policy pursued by the association in fact simply reflected the unions' policies, which were designed purely to safeguard the interests of union members. Consequently, those who opposed this policy through the way in which they practised and the opinions they expressed had good reason to fear that, when hearing a case that concerned them, the union members would not show the impartiality to which everyone was entitled. He maintained, in addition, that the members of the Appeals Board bore a grudge against him personally because of the views he had expressed. In 1981 he had denounced the collusion between the Ordre des médecins and the unions and he had joined the "call of the 300" medical practitioners angered by the Ordre's backing of a health care strike organised by the unions. Lastly, he pointed out that the capacity of the disciplinary bodies of the Ordre des médecins to conduct proceedings in an objective and impartial manner had been questioned on many occasions by the press, among others,

especially in so far as it was possible to be a member of those bodies and a member of the unions' organs at the same time.

14. In a judgment of 21 May 1987 the Court of Cassation ruled inadmissible the application for a transfer of jurisdiction. It held that Article 12 para. 1 of the Royal Decree of 10 November 1967 on the *Ordre des médecins* (see paragraph 22 below) had set up only one French-language Appeals Board and that therefore, as a matter of law, it would be impossible to transfer jurisdiction to another French-speaking Appeals Board. Removing the case from the board without remitting it to another tribunal would, moreover, be tantamount to a denial of justice.

3. The Appeals Board's decision of 29 September 1987

15. On 29 September 1987 the Appeals Board gave its decision in absentia since Dr Debled had not made any further appearances before it after the hearing of 20 October 1986 (see paragraph 12 above). It annulled the decision of 2 April 1985, on the ground that six doctors who had conducted the preliminary investigation had taken part in the deliberations, and suspended Dr Debled's right to practise medicine for three months. At the same time it dismissed the applications challenging the council members and requesting a deferral of the proceedings, finding that "in his appeal Dr Debled [had] failed to establish that [his] applications were well-founded as to either the law or the facts".

4. The application calling upon the Appeals Board to set aside its decision

16. On 20 October 1987 Dr Debled asked the Appeals Board to set aside its decision of 29 September 1987 pursuant to Article 34 of the Royal Decree of 6 February 1970 (see paragraph 25 below). He alleged, inter alia, that Royal Decree no. 79 on the *Ordre des médecins* (see paragraph 22 below) and Royal Decree no. 78 on the medical profession, the practice of related professions and the medical committees were manifestly unlawful because certain essential procedural requirements had not been complied with prior to their adoption. In his submissions he requested the Appeals Board to rule as follows:

"Primarily

Declare that the Appeals Board does not legally exist or, at least, that it is unlawfully constituted, and that the same applies to the Brabant Provincial Council of the *Ordre des médecins*, and accordingly hold that the measure ordered by the Provincial Council against the applicant was unlawful; discontinue the proceedings brought against the applicant or, at least, stay the proceedings until another joint, French-language Appeals Board has been formed in accordance with the Act of 25 July 1938 and more particularly section 11 of that Act.

In the alternative

Stay its proceedings on account of the various complaints laid by the applicant, together with applications to join the proceedings as a civil party filed by him, until the relevant criminal proceedings are concluded, in accordance with the principle that criminal proceedings take precedence over civil proceedings.

In the further alternative

Find that the Appeals Board, which annulled the decision appealed against, could under no circumstances rely on any of the documents produced before the Provincial Council because those documents were inadmissible.

In the even further alternative

... dismiss all the charges and complaints brought against the applicant."

5. The Appeals Board's decision of 15 March 1988

17. On 12 November 1987 Dr Debled was summoned to appear before the Appeals Board on 19 January 1988. At the hearing he immediately challenged Dr Cattiez, Dr Andri and Dr Raickman. He alleged that they were influential members of the medical unions, which he had consistently opposed - in particular by denouncing the collusion between the Ordre and the unions and by taking part in the "call of the 300". He likewise challenged Judge Thiry on the ground that his son was one of the medical unions' lawyers. After hearing Dr Debled, the Appeals Board withdrew to deliberate. It then decided to adjourn the proceedings until 2 February 1988 in order to enable it to "reconstitute a full board" in the meantime.

18. At the hearing on 2 February 1988 Dr Debled filed a further application challenging Mr Thiry. In addition, he challenged Dr Fagnart and Dr Lange, in the latter's case on the ground that his son was a member of the medical union of the provinces of Liège and Luxembourg. He declared, furthermore, that he intended to persist with the applications he had filed at the hearing on 19 January. After hearing Dr Debled, the Appeals Board decided to join the interlocutory proceedings to the merits, whereupon the applicant asked that the record should state that he reserved his position concerning both the failure to take an immediate decision on the challenges and their joinder to the merits.

19. On 15 March 1988, at a public hearing, the Appeals Board dismissed the objection based on the alleged unlawfulness of Royal Decrees nos. 78 and 79 and ruled that the application of 20 October 1987 requesting it to set aside its earlier decision was ill-founded (see paragraph 16 above). It noted that the Provincial Council's decision of 2 April 1985 (see paragraph 10 above) had been annulled and confirmed the decision of 29 September 1987 (see paragraph 15 above) suspending Dr Debled's right to practise medicine for three months. On the subject of the challenges, it ruled as follows:

"... the president informed each of the challenged members of the existence of a challenge and submitted their individual cases to the board, which in each case took a majority vote on the challenge without the member concerned being present, but after hearing that member;

... with regard to the challenges against Dr Fagnart and Dr Lange, the board notes that the applications are neither dated nor signed; they are thus flawed and hence inadmissible;

... with regard to the challenges against Dr Cattiez, Dr Andri and Dr Raickman and the challenges concerning Judge Thiry, the board notes that they are all based on Article 828, 11°, of the Judicial Code and that the documents produced by Dr Debled do not reveal the slightest trace of any hostility, even less of fundamental hostility; those challenges are accordingly completely unfounded."

C. Proceedings in the Court of Cassation

20. On 18 April 1988 Dr Debled appealed on points of law against the decision of 15 March 1988. Two of his five grounds were based on Article 6 para. 1 (art. 6-1) of the Convention and the general principle of law that a judge must be impartial.

In his first submission he also alleged a breach of Article 43 of the Royal Decree of 6 February 1970 governing the organisation and functioning of the councils of the *Ordre des médecins* and of Articles 2 and 837 of the Judicial Code (see paragraphs 25 and 26 below). Firstly, there was no legal justification for the decision to join the challenges to the merits and, secondly, those members whose impartiality had been called into question could not take part in a decision to postpone a ruling on the applications concerning them without engendering reasonable doubts as to the impartiality of the tribunal required to determine the merits of the challenges and of the charges.

In his second submission Dr Debled complained of the fact that the challenges against Dr Cattiez, Dr Andri, Dr Raickman and Judge Thiry had been considered ill-founded "admittedly without the challenged member being present, but each time in the presence of the other challenged members, whereas the grounds for the challenges [were] identical".

21. In a judgment of 13 April 1989 the Court of Cassation dismissed the appeal. It observed, in particular, that:

" ... since the members of the Board who had been challenged did not take part in the decision on the individual challenges concerning them, the mere fact that they participated in the decisions on the other challenges, made on the basis of the grounds reproduced in the appeal submission, does not constitute a breach of either the legislation or the general principle of law referred to by the appellant."

II. RELEVANT DOMESTIC LAW

A. Royal Decree no. 79 of 10 November 1967 relating to the Ordre des médecins

22. The Ordre des médecins is currently governed by Royal Decree no. 79 of 10 November 1967, issued pursuant to an Act of 31 March 1967 "investing the King with certain powers with a view to ensuring economic revival, acceleration of regional reconversion and a stable, balanced budget".

That decree provides in particular:

Article 12

"1. The French-language Appeals Board and the Dutch-language Appeals Board shall each be composed of:

1° five full members and five substitute members, who are medical practitioners, elected for six years and entitled to stand for re-election. Each Provincial Council shall elect one of the five members of the Appeals Board corresponding to the language it uses. The member shall be elected from among the practitioners of Belgian nationality who have been on the council's register for at least one year when the election is held ...

2° five full members and five substitute members, who are conseillers (judges) at the Court of Appeal, appointed by the King for six years;

...

2. The King shall designate the president and rapporteurs of each board from among the judicial members.

..."

Article 25

"...

4. The Appeals Boards shall take cognisance of all aspects of a case, even where only the medical practitioner has appealed.

The Appeals Board must have a two-thirds majority to impose a penalty where the Provincial Council did not so decide or to impose a more severe penalty than that decided by the council."

B. The Royal Decree of 6 February 1970 governing the organisation and functioning of the councils of the Ordre des médecins

23. In accordance with Royal Decree no. 79, the Royal Decree of 6 February 1970, as amended on 9 August 1971 and 3 December 1979, governs the organisation and functioning of the councils of the Ordre.

24. The councils, which are responsible for "ensuring observance of the rules of medical ethics and upholding the reputation, standards of discretion, probity and dignity of the members of the Ordre", are required to "discipline misconduct by registered members in or in connection with the practice of their profession and serious misconduct committed outside the realm of their professional activity, whenever such misconduct is liable to damage the reputation or dignity of the profession" (Article 6, 2°, of Royal Decree no. 79).

In addition to a warning, censure or reprimand, the councils are empowered to suspend the right to practise medicine for a period not exceeding two years or to strike the practitioner in question off the register of the Ordre (Article 16).

25. The following provisions are relevant to the instant case:

Article 12

"The Appeals Boards' deliberations and decisions shall be valid only if, in addition to the registrar, at least three elected members and three designated members are present.

Without prejudice to the application of the provisions of Article 32 of this decree, the Appeals Boards' decisions shall be taken by a majority vote."

Article 34

"An application to the Appeals Board to set aside its own decision given in absentia shall be filed by registered letter addressed to the president of the Appeals Board concerned."

Article 40

"A medical practitioner may avail himself of his right to challenge the members of the Provincial Council and Appeals Board required to give a decision concerning him."

Article 41

"Any member of the Provincial Council or Appeals Board may be challenged for the reasons laid down in Article 828 of the Judicial Code."

Article 42

"If he is not to forfeit his right to challenge the members of the council or board, the medical practitioner must, at the latest before the case is pleaded at the hearing, submit to the president of the competent council or board an application, which must be dated and signed and which shall set out the names of the challenged members and the grounds for the challenge."

Article 43

"The president of the council or board shall immediately inform the member at whom the challenge is directed; he shall submit the challenge to the council or board, which shall take a majority vote on it, after hearing the challenged member but without that member being present.

The reasoned decision shall be served on the medical practitioner without delay.

An appeal shall lie against a decision by the Provincial Council dismissing a challenge; such an appeal must be lodged within eight days of the notification of the decision."

C. The Judicial Code

26. The relevant provisions of the Judicial Code read as follows:

Article 2

"The rules set out in this Code shall apply to all proceedings except those governed by legislation that has not been expressly repealed or by principles of law whose application is incompatible with that of the provisions of the Code."

Article 828

"Any judge may be challenged for the following reasons:

...

7° if the judge is the guardian (tuteur), auxiliary guardian (subrogé tuteur) or limited guardian (curateur), temporary trustee (administrateur provisoire) or guardian ad litem (conseil judiciaire) ... of one of the parties; if he is an administrator or agent (commissaire) of any establishment, company or association which is a party to the case; ...

...

11° if there is fundamental hostility (inimitié capitale) between him and one of the parties; if he has made attacks, proffered insults or uttered threats, in speech or in writing, since the commencement of the proceedings or in the six months preceding the challenge."

Article 837

"From the day on which the judge is notified, all judgments and proceedings shall be suspended.

Nevertheless, if one of the parties maintains that the proceedings are urgent and that the delay involves a risk, that party may request the president of the relevant court to organise a hearing of the interlocutory application; ...

In allowing that request, the president shall order that another judge should deal with the application."

27. According to Belgian legal theory, "fundamental hostility exists if facts of a sufficiently serious nature clearly reveal that the judge feels real hatred or at least animosity such that his judgment is destroyed or impaired" (Fettweis, *Manuel de procédure civile*, 1987, p. 429, note 1).

PROCEEDINGS BEFORE THE COMMISSION

28. Dr Debled's application (no. 13839/88) was lodged with the Commission on 17 November 1988. He alleged a breach of the right to an impartial tribunal and a fair trial, as guaranteed by Article 6 para. 1 (art. 6-1) of the Convention.

29. On 3 September 1991 the Commission declared admissible the complaint based on the lack of impartiality of the Appeals Board of the *Ordre des médecins* when it examined the challenges. It considered that the other complaints were inadmissible. In its report of 16 February 1993 (Article 31) (art. 31) it expressed the unanimous opinion that there had not been a violation of Article 6 para. 1 (art. 6-1). The full text of the Commission's opinion is reproduced as an annex to this judgment**.

GOVERNMENT'S FINAL SUBMISSIONS TO THE COURT

30. In their memorial the Government requested the Court

"to hold that the facts of the present case disclose no violation by the Belgian State of Article 6 para. 1 (art. 6-1) of the European Convention on Human Rights and consequently rule that there are no grounds for awarding just satisfaction".

** Note by the Registrar. For practical reasons this annex will appear only with the printed version of the judgment (volume 292-B of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

AS TO THE LAW

THE ALLEGED BREACHES OF ARTICLE 6 PARA. 1 (art. 6-1)

31. Dr Debled complained that his case had not been heard by "an independent and impartial tribunal established by law" within the meaning of Article 6 para. 1 (art. 6-1) of the Convention, which provides:

"In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing ... by an independent and impartial tribunal established by law ..."

He criticised especially the way in which the Appeals Board of the *Ordre des médecins* had examined the challenges lodged against four of its members.

A. Tribunal established by law

32. Before the Court the applicant argued that the disciplinary bodies of the *Ordre* did not constitute tribunals "established by law". Royal Decrees nos. 78 and 79, under which provision was made for those bodies, were falsified public documents. They had been adopted under a procedure which had been flawed by numerous defects, in particular as regards the formalities completed between the submission of the draft decrees to the *Conseil d'Etat* for its opinion and their publication in the *Moniteur belge*. Responsibility for this lay with the medical unions; they had brought pressure to bear on ministers with a view to ensuring that the disciplinary bodies set up would be completely won over to their cause.

33. This is a new complaint that was not raised before the Commission, whose decision on admissibility determines the scope of the Court's jurisdiction. The Court therefore has no jurisdiction to entertain it (see, *mutatis mutandis*, the *Olsson v. Sweden* (no. 2) judgment of 27 November 1992, Series A no. 250, pp. 30-31, para. 75).

B. Independent and impartial tribunal

34. As his second submission, Dr Debled maintained that the Appeals Board lacked the independence and impartiality required under Article 6 para. 1 (art. 6-1).

Firstly, the disciplinary bodies of the *Ordre des médecins*, in general, and the Appeals Board, in particular, were mere offshoots of the medical unions. Union members, who accounted for only 15% of the registered voters,

managed to secure the election of their candidates to the Provincial Councils by uniting their votes. This enabled them to take control of the Appeals Board through the application of Article 12 of Royal Decree no. 79. In addition, deliberations and voting were so organised within the Appeals Board (Article 25 para. 4, sub-paragraph 2, of the decree) as to make it very easy for the unions to have disciplinary measures imposed on an "opponent", such as the applicant. Furthermore, the fact that there was no tribunal to which jurisdiction could be transferred in the event of a challenge to the members of the Appeals Board en bloc compounded the lack of independence of the contested system.

Secondly, Judge Thiry together with a number of officials of the medical unions had founded the Société belge d'éthique et de morale médicale (Belgian society for medical ethics and morals) funded by the unions and the Ordre des médecins. Mr Thiry was its Vice-Chairman. In addition, his son was the only lawyer recommended by the unions. The doctors whom the applicant had challenged had all had a personal interest in the outcome of the case because they embraced "the concept of medicine as an industry, which is very costly for the health and invalidity insurance schemes" and showed "complete contempt for the medical practitioner's social role" (see paragraphs 17 and 18 above).

35. The Government and the Delegate of the Commission pointed out that the complaints challenging the independence of the Appeals Board were first raised before the Court and therefore fell outside the scope of its jurisdiction. Those relating to the Board's impartiality were, they considered, wholly unfounded.

36. The Court finds it unnecessary in this case to examine the issues of independence and impartiality separately.

On the question of objective or structural impartiality, the Court has already had occasion to examine some of the complaints made by the applicant in relation to the Appeals Board's independence. In the *Albert and Le Compte v. Belgium* judgment of 10 February 1983 (Series A no. 58, pp. 17-18, para. 32) it held that "the manner of appointment of the medical practitioners sitting on the Appeals [Boards] provides no cause for treating those individuals as biased; although elected by the Provincial Councils ... , they act not as representatives of the Ordre des médecins but - like the judicial members nominated by the Crown - in a personal capacity".

That finding is in no way undermined by the applicant's submissions relating to Article 25 para. 4, sub-paragraph 2, of Royal Decree no. 79 and to the lack of a tribunal to which jurisdiction could be transferred. Firstly, the purpose of the above-mentioned provision is plainly only to make it difficult to impose a more severe disciplinary penalty on appeal, and secondly the fact that there is no tribunal to which jurisdiction could be transferred does not suffice to establish the Appeals Board's lack of impartiality or independence.

37. The only question which remains to be answered is whether the challenges against four members of the Appeals Board of the Ordre des médecins were examined in a manner compatible with Article 6 (art. 6) of the Convention since each of the challenged members took part in the decision concerning his colleagues (see paragraph 19 above). This could affect the personal impartiality of each of the challenged members of the Board, which must, however, be presumed until there is proof to the contrary (see the *Albert and Le Compte* judgment previously cited, pp. 17-18, para. 32).

The participation of judges in a decision concerning challenges against one of their colleagues can pose problems if identical challenges have been directed against them. But the special circumstances of the present case must be taken into account. Dr Debled had challenged several members of the Appeals Board; their exclusion from all the decisions concerning those challenges would have paralysed the whole disciplinary system. He based each of his complaints concerning the challenged members on almost identical grounds, which were general and abstract in nature and were inferred from their membership of the medical unions or their alleged connections with the unions. No reference was made to specific, material facts that could have revealed personal animosity or hostility towards him. Such vague objections cannot be regarded as well-founded (*ibid.*, pp. 17-18, para. 32).

38. Accordingly, there has been no breach of Article 6 para. 1 (art. 6-1).

FOR THESE REASONS, THE COURT UNANIMOUSLY

Holds that there has been no breach of Article 6 para. 1 (art. 6-1).

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 22 September 1994.

Rolv RYSSDAL
President

Herbert PETZOLD
Acting Registrar