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

CASE OF HUBER v. FRANCE

(160/1996/779/980)

JUDGMENT

STRASBOURG

19 February 1998

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SUMMARY[1]

Judgment delivered by a Chamber

France – length of proceedings brought by a civil servant in the State education service to quash decisions whereby he had been sent on compulsory leave and subsequently reinstated in his post and to secure payment of his salary

ARTICLE 6 § 1 OF THE CONVENTION

Not contested that there had been a "*contestation*" (dispute) over a "right" – only matter in issue was whether that right was a "civil" one.

Disputes relating to recruitment, careers and termination of service of civil servants are as a general rule outside scope of Article 6 § 1.

Applicant's disputes had related essentially to his having been sent on compulsory leave and the consequences of that – they had therefore primarily concerned his career – mere fact that consequences had also been partly pecuniary did not suffice to make proceedings in issue "civil".

Conclusion: Article 6 § 1 inapplicable (five votes to four).

COURT'S CASE-LAW REFERRED TO

26.11.1992, Francesco Lombardo v. Italy; 24.8.1993, Massa v. Italy; 17.3.1997, Neigel v. France; 2.9.1997, De Santa v. Italy; 2.9.1997, Nicodemo v. Italy

1. This summary by the registry does not bind the Court.

In the case of Huber v. France[1],

The European Court of Human Rights, sitting, in accordance with Article 43 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of Rules of Court A[2], as a Chamber composed of the following judges:

Mr R. BERNHARDT, *President*,
Mr F. MATSCHER,
Mr L.-E. PETTITI,
Mr I. FOIGHEL,
Mr R. PEKKANEN,
Mr D. GOTCHEV,
Mr P. KŪRIS,
Mr U. LŌHMUS,
Mr J. CASADEVALL,

and also of Mr H. PETZOLD, *Registrar*, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 25 October 1997 and 26 January 1998,

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 5 December 1996, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention. It originated in an application (no. 26637/95) against the French Republic lodged with the Commission under Article 25 by a French national, Mr François Huber, on 6 January 1995.

The Commission's request referred to Articles 44 and 48 and to the declaration whereby France recognised the compulsory jurisdiction of the Court (Article 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 § 1 of the Convention.

Notes by the Registrar

1. The case is numbered 160/1996/779/980. 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.

2. Rules of Court A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (1 October 1994) and thereafter only to cases concerning States not bound by that Protocol. They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

2. In response to the enquiry made in accordance with Rule 33 § 3 (d) of Rules of Court A, the applicant stated that he wished to take part in the proceedings. He did not designate a lawyer to represent him after the President of the Court, Mr R. Ryssdal, refused him leave to present his own case.

3. The Chamber to be constituted included *ex officio* Mr L.-E Pettiti, the elected judge of French nationality (Article 43 of the Convention), and Mr R. Bernhardt, the Vice-President of the Court (Rule 21 § 4 (b)). On 20 January 1997, in the presence of the Registrar, the President of the Court drew by lot the names of the other seven members, namely Mr F. Matscher, Mr I. Foighel, Mr R. Pekkanen, Mr D. Gotchev, Mr P. Kūris, Mr U. Lõhmus and Mr J. Casadevall (Article 43 *in fine* of the Convention and Rule 21 § 5).

4. As President of the Chamber (Rule 21 § 6), Mr Bernhardt, acting through the Registrar, consulted the Agent of the French Government ("the Government"), the applicant and the Delegate of the Commission on the organisation of the proceedings (Rules 37 § 1 and 38). Pursuant to the order made in consequence, the Registrar received the Government's memorial on 30 May 1997. On 17 September 1997 the applicant filed a claim under Article 50.

5. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 20 October 1997. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) *for the Government*
Mr J.-F. DOBELLE, Deputy Director of Legal Affairs,
Ministry of Foreign Affairs, *Agent*,
Mr D. DOUVENEAU, Assistant Principal,
Legal Affairs Department, Ministry of Foreign Affairs, *Adviser*;

(b) *for the Commission*
Mr I. BÉKÉS, *Delegate*.

The Court heard addresses by Mr Dobelle and Mr Békés, and also Mr Dobelle's replies to its questions.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. As a secondary-school teacher of classics who has passed the *agrégation* (the highest competitive examination for teachers), Mr Huber has been a civil servant in the State education service since 1978.

While working at the Paul Eluard Lower Secondary School at Evry (*département* of Essonne), he was sent on compulsory leave for a month from 7 November 1988 by a decision of the schools inspector for Essonne on 4 November 1988. The decision was based on Article 4 of the decree of 29 July 1921, which provides: "Where the schools inspector … considers, in the light of a medical certificate or a report by a civil servant's superiors, that on account of the civil servant's physical or mental state, the children are exposed to immediate danger, he may send the civil servant concerned on compulsory leave for one month on full salary."

7. On 6 December 1988 the same inspector decided to suspend payment of the applicant's salary from 7 December 1988.

A. The first set of proceedings

1. In the Versailles Administrative Court

8. On 6 February 1989 Mr Huber applied to the Versailles Administrative Court to quash the decisions of 4 November 1988 and 6 December 1988 and sought a stay of execution of the latter decision.

9. By three decisions of 5 October 1989 the applicant was sent on extended sick-leave from 7 November 1988 to 6 May 1989 and then from 7 May 1989 to 6 November 1989 and on extended leave of absence from 7 November 1989 to 6 May 1990. On 8 December 1989 Mr Huber applied to the same court to quash those three decisions.

10. The hearing took place on 18 December 1990. In a judgment of the same date the Versailles Administrative Court joined the three applications, quashed the decision of 4 November 1988 and the one of 6 December 1988 suspending payment of the applicant's salary, decided that there was no longer any need to rule on the application for a stay and dismissed the application to have the decisions of 5 October 1989 quashed. The judgment read as follows:

> "…
>
> *As to the compulsory leave*
>
> ...

Mr Huber maintained that the headmaster's report on which the decision complained of was based had been drawn up on 30 September 1988, whereas the decision whereby he was sent on compulsory leave had not been issued until 4 November 1988. Serious incidents occurred on account of the teacher's lack of authority. While the headmaster said that Mr Huber's behaviour had jeopardised pupils' safety, he did not, however, establish that he had taken the measures, including disciplinary measures, that were within his powers and which would have prevented the situation from becoming critical. Nor does it appear from the report produced that the facts were such as to justify applying Article 4 of the decree [of 29 July 1921], which only applies in very specific circumstances that justify describing the danger to which the children are exposed as immediate…

As to the suspension of payment of salary

Although Article 39 of the decree [no. 86-442] of 14 March 1986 authorises the administrative authorities to stop paying the salary of a civil servant on extended sick-leave or extended leave of absence who refuses to undergo the treatment and examinations his state dictates, it could not be applied to Mr Huber, who at the time when the impugned decision suspending payment of his salary was taken was not on extended sick-leave or extended leave of absence…"

2. In the Conseil d'Etat

11. The applicant appealed to the *Conseil d'Etat* on 31 January 1991. He sought to have the judgment of 18 December 1990 quashed in so far as the Administrative Court had held that it was unnecessary to rule on the application for a stay of execution and had dismissed the application to quash the decisions of 5 October 1989.

According to the Government, the Ministry of Education filed observations on 10 April 1992, to which Mr Huber replied on 23 April 1992. The applicant had produced new documents on 15 and 25 January, 18 February, 4 March and 14 June 1993 and on 17 January 1994. On 1 February 1994 the case had been assigned to the Eighth Section of the Judicial Division of the *Conseil d'Etat*, on 14 October 1994 a reporting judge had been appointed and on 14 November 1994 a preparatory sitting had been held.

12. On 30 November 1994 the *Conseil d'Etat* held a hearing, and on 21 December 1994 it delivered a judgment in which it dismissed the appeal.

B. The second set of proceedings

13. By a decision of 12 July 1990 the applicant was transferred to the Marcel Pagnol Upper Secondary School at Athis-Mons (Essonne) but he could not take up his duties until the appropriate medical board had ruled on his case. In a letter of 9 August 1991 to the Minister of Education he asked the Minister to "rule on his administrative position" in respect of the period after 6 May 1990 and sought payment of an advance on his salary.

1. At first instance

(a) Applications to the Paris Administrative Court

14. On 19 August 1991 the applicant lodged two applications with the Paris Administrative Court. In one of these he sought to have quashed the implicit refusal of his request for a review of his administrative position and for an advance on his salary, submitting that it was not normal for him to be on unpaid leave and that the medical board had not ruled on his case, thereby preventing him from taking up his duties at the Marcel Pagnol Upper Secondary School at Athis-Mons. In the other application he sought a stay of execution of that implicit refusal, relying on his financial difficulties.

15. On 7 October 1991 the President of the Paris Administrative Court, taking the view that, according to Article R. 56 of the Administrative Courts and Administrative Courts of Appeal Code, the Paris Administrative Court had no jurisdiction to hear the foregoing applications, ordered under Article R. 82 of the same code that the files should be sent to the President of the Judicial Division of the *Conseil d'Etat*.

(b) Transfer of the case to the Versailles Administrative Court

16. In an order of 4 December 1991 the President of the Judicial Division of the *Conseil d'Etat* designated the Versailles Administrative Court as the court that would hear the applications in question. The latter were registered in that court's registry on 27 January 1992.

17. On 20 January 1993 the Director of Education for Versailles filed a pleading to which were appended two decisions of 6 January 1993 designed to resolve Mr Huber's position. In the first decision the applicant's extended leave of absence was prolonged from 7 May 1990 to 6 November 1992, and in the second he was reinstated in his post at Paul Eluard Lower Secondary School at Evry.

18. In his pleading in reply registered on 27 January 1993 the applicant said that he had lodged a preliminary administrative appeal against the second of those decisions (he was seeking reinstatement in the post at Marcel Pagnol Upper Secondary School at Athis-Mons, where he had last been posted).

In a further pleading registered on 22 February 1993 the applicant "confirm[ed]" that he was seeking to have both the aforementioned decisions quashed.

19. In a judgment of 14 December 1993 the Versailles Administrative Court joined all the applications, dismissed that seeking to have the decisions of 6 January 1993 quashed and decided that it was unnecessary to rule on those seeking to have quashed the implicit refusal of Mr Huber's request for a review of his position and a stay of execution of that refusal.

2. On appeal

(a) The appeal to the *Conseil d'Etat*

20. On 6 January 1994 the applicant appealed to the *Conseil d'Etat* against the judgment of 14 December 1993.

21. On 21 December 1994 the *Conseil d'Etat* decided to transfer the appeal to the Paris Administrative Court of Appeal. The decision read as follows:

> "By Article 2 of the decree [no. 92-245] of 17 March 1992, 'From 1 January 1994 the Administrative Courts of Appeal shall have jurisdiction to rule on appeals against judgments of the Administrative Courts on applications for judicial review of individual decisions taken in respect of civil and public servants.' Mr Huber's … application, registered on 6 January 1994, whereby he is appealing against a judgment on an application for judicial review of decisions concerning his career as an *agrégation*-qualified secondary-school teacher, therefore falls within the jurisdiction of the Paris Administrative Court of Appeal.
>
> Admittedly, Mr Huber maintained that the *Conseil d'Etat* had jurisdiction to hear his application in view of the link between it and [the] application … made by him on 31 January 1991 [see paragraph 11 above] and Article R. 73 of the Administrative Courts and Administrative Courts of Appeal Code provides: 'Where the *Conseil d'Etat* has before it a submission which it has jurisdiction to hear as the appellate court, it shall also have jurisdiction to entertain related submissions which would normally fall within the jurisdiction of an Administrative Court of Appeal.' There is, however, no link between the present application and the submissions in the application [made on 31 January 1991].
>
> …"

(b) Transfer of the case to the Paris Administrative Court of Appeal

22. The *Conseil d'Etat*'s decision of 21 December 1994 was registered in the Paris Administrative Court of Appeal's registry on 8 June 1995.

23. The hearing took place on 5 November 1996, and in a judgment of 19 November 1996 the Administrative Court of Appeal dismissed the applicant's appeal on the following grounds:

> "… by means of two decisions of 6 January 1993 the Director of Education for Versailles prolonged the applicant's extended leave of absence on full salary from 7 May 1990 to 6 November 1992 and reinstated him in his duties at the Paul Eluard Lower Secondary School at Evry with effect from 7 November 1992. Mr Huber's applications seeking to have quashed and stayed the authorities' implicit refusal to give a ruling on his position thus became devoid of purpose on 14 December 1993, the date of the judgment appealed against. The fact that he had not been assigned to any duties at the beginning of the new school year in 1994 and had not received any salary since May 1994 has no bearing in this connection…"

3. Appeal on points of law

24. On 25 November 1996 Mr Huber appealed on points of law to the *Conseil d'Etat* against the Administrative Court of Appeal's judgment of 19 November 1996. The case is still pending.

II. RELEVANT DOMESTIC LAW

A. The principles governing the grant of extended sick-leave and extended leave of absence to civil servants

25. A civil servant in post is entitled, *inter alia*, to extended sick-leave for a maximum period of three years where it is established that he is suffering from an illness that makes it impossible for him to carry out his duties, requires prolonged treatment and care, is disabling and has been confirmed as serious. The civil servant remains on full salary for one year and on half salary for the next two years. He also retains his entitlement to the full supplementary family allowance and the full residence allowance (section 34(3) of Law no. 84-16 of 11 January 1984 making provisions governing the civil service).

He is also entitled to extended leave of absence for three years on full salary and thereafter for two years on half salary if he is suffering from tuberculosis, mental illness, cancer or poliomyelitis. He retains his entitlement to the full supplementary family allowance and the full residence allowance. If the illness has been contracted in the course of his duties, the aforementioned periods are increased to five years and three years respectively. Extended leave of absence is normally granted only at the end of the full-salary period of extended sick-leave (section 34(4) of the Law).

Extended sick-leave and extended leave of absence are granted after a medical examination and authorisation from the appropriate medical board (Article 35 of Decree no. 86-442 of 14 March 1986 on the appointment of civilian and military medical boards, physical-fitness requirements for admission to posts in the public service and rules on sick-leave for civil servants).

26. Where a departmental head considers, in the light of a medical certificate or a report by a superior, that a civil servant's state of health might justify his being sent on extended sick-leave or extended leave of absence, he may take steps in order to have the person concerned undergo a medical examination (Article 34 of the decree).

27. A person on extended sick-leave or extended leave of absence may not resume his duties at the end of or during that leave unless he is declared fit after a medical examination by an approved specialist and with the agreement of the appropriate medical board (Article 41 of the decree).

B. Extracts from the Administrative Courts and Administrative Courts of Appeal Code

28. Articles R. 56 and R. 82 of the Administrative Courts and Administrative Courts of Appeal Code provide:

Article R. 56

"Jurisdiction to hear all individual disputes, including those over pecuniary matters, which affect civil servants or employees of the State and of other public entities or authorities … shall be vested in the Administrative Court within whose territorial jurisdiction the place of work of the civil servant or employee affected by the impugned decision is situated.

If the decision in question concerns an appointment or entails a change of posting, jurisdiction shall be determined by the location of the new posting.

If the decision in question concerns a dismissal, a retirement or any other measure entailing termination of service, or if it concerns a former civil servant or employee, or a civil servant or employee without a posting on the date when the impugned decision was taken, jurisdiction shall be determined by the location of the civil servant's last posting.

…"

Article R. 82

"Where an Administrative Court of Appeal or Administrative Court is seised of a case which it considers to be within the jurisdiction of an administrative court other than the *Conseil d'Etat*, its president shall without delay forward the file to the President of the Judicial Division of the *Conseil d'Etat*, who shall settle the issue of jurisdiction and assign the case to be tried in whole or in part by the court that he shall declare to have jurisdiction."

PROCEEDINGS BEFORE THE COMMISSION

29. Mr Huber applied to the Commission on 6 January 1995. He alleged a violation of Article 6 § 1 of the Convention on account of the length of the proceedings he had brought in the administrative courts.

30. The Commission declared the application (no. 26637/95) admissible on 15 April 1996. In its report of 15 October 1996 (Article 31), it expressed the opinion that there had been a violation of Article 6 § 1 (by twenty-five votes to four). The full text of the Commission's opinion and of the dissenting opinion contained in the report is reproduced as an annex to this judgment[1].

FINAL SUBMISSIONS TO THE COURT BY THE GOVERNMENT

31. In their memorial the Government submitted that

> "the application should be dismissed as being inadmissible because it is incompatible *ratione materiae* with the provisions of Article 6 § 1 of the Convention;
>
> in the alternative, because it is ill-founded".

AS TO THE LAW

ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

32. Mr Huber complained of the length of the proceedings he had brought in the administrative courts. He relied on Article 6 § 1 of the Convention, which provides:

> "In the determination of his civil rights and obligations …, everyone is entitled to a … hearing within a reasonable time by [a] … tribunal…"

33. It must first be determined whether that provision was applicable to the instant case.

The Court notes that it was not contested that Mr Huber had submitted to the French administrative courts a "*contestation*" (dispute) over a "right" within the meaning of Article 6 § 1. The only matter in issue is whether that right was a "civil" one.

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1. *Note by the Registrar*. For practical reasons this annex will appear only with the printed version of the judgment (in *Reports of Judgments and Decisions* 1998), but a copy of the Commission's report is obtainable from the registry.

34. The Government argued that the proceedings in question had been brought mainly in order to have the decisions whereby the applicant had been sent on sick-leave quashed and that they had therefore raised issues concerning his career in the civil service. Relying on the Neigel v. France judgment of 17 March 1997 (see paragraph 36 below) in which the Court had said that Article 6 § 1 was inapplicable in circumstances they maintained were similar to those of the instant case, the Government said that Mr Huber's application was incompatible *ratione materiae* with that Article. They added that the decisions which the applicant had challenged in the French courts had been based on statutory provisions that were specific to the civil service and, as regards the measures they laid down, had no equivalent in private law. Article 6 § 1 was consequently not applicable.

35. The Commission submitted that in addition to seeking to have the decisions whereby he had been sent on sick-leave quashed, the applicant had sought a stay of execution of the suspension of his salary and had complained of the pecuniary consequences of the failure to resolve his position; in that respect his case was no different from that of an employee under private law. It added that the applicant was not called on to exercise public authority in the course of his duties. In short, the proceedings he had brought had had a purpose that was at least partly pecuniary – payment of salary – and they had therefore related to a dispute over a "civil" right.

36. The Court reiterates that "disputes relating to the recruitment, careers and termination of service of civil servants are as a general rule outside the scope of Article 6 § 1" (see, among other authorities, the Neigel v. France judgment of 17 March 1997, *Reports of Judgments and Decisions* 1997-II, p. 410, § 43). Matters are nevertheless different where the claims in issue relate to a "purely economic" right – such as payment of a salary (see, in particular, the De Santa v. Italy judgment of 2 September 1997, *Reports* 1997-V, p. 1663, § 18) or pension (see the Francesco Lombardo v. Italy judgment of 26 November 1992, Series A no. 249-B, pp. 26–27, § 17, and the Massa v. Italy judgment of 24 August 1993, Series A no. 265-B, p. 20, § 26) – or at least an "essentially economic" one (see the Nicodemo v. Italy judgment of 2 September 1997, *Reports* 1997-V, p. 1703, § 18).

37. Mr Huber was a civil servant in the State education service (see paragraph 6 above). In the first set of proceedings in issue he applied to have quashed a decision of 4 November 1990 whereby he had been sent on compulsory leave for one month on the ground that on account of his "physical or mental state" the children were "exposed to immediate danger" and a decision of 6 December 1988 whereby payment of his salary had been suspended and to have execution of the latter decision stayed; he also sought to have quashed three decisions of 5 October 1989 whereby he had been sent on extended sick-leave and then on extended leave of absence until 6 May 1990 (see paragraphs 8–12 above). In the second set of proceedings in issue he applied to have quashed the Minister of Education's implicit

refusal of his request of 9 August 1991 for a ruling on his administrative position after 6 May 1990 and for payment of an advance on his salary, and also sought a stay of execution of that implicit refusal; he also applied to have quashed two decisions of 6 January 1993 whereby his extended leave of absence was prolonged from 7 May 1990 to 6 November 1992 and he was reinstated in his post at Paul Eluard Lower Secondary School at Evry (see paragraphs 13–24 above).

The applicant's disputes thus related essentially to his having been sent on compulsory leave and the consequences of that; they therefore primarily concerned his "career". The mere fact that the consequences were also partly pecuniary does not suffice to make the proceedings in issue "civil" ones.

Article 6 § 1 therefore does not apply in the instant case.

FOR THESE REASONS, THE COURT

Holds by five votes to four that Article 6 § 1 of the Convention does not apply in the instant case.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 19 February 1998.

Signed: Rudolf BERNHARDT
President

Signed: Herbert PETZOLD
Registrar

In accordance with Article 51 § 2 of the Convention and Rule 53 § 2 of Rules of Court A, the following separate opinions are annexed to this judgment:

(a) dissenting opinion of Mr Foighel;
(b) dissenting opinion of Mr Pekkanen;
(c) dissenting opinion of Mr Casadevall, joined by Mr Lõhmus.

Initialled: R. B.
Initialled: H. P.

DISSENTING OPINION OF JUDGE FOIGHEL

I am in complete agreement with the dissenting opinion of Judge Casadevall. I would, however, add the following reflections.

1. It is my opinion that the complexity of the Court's jurisprudence (e.g. the case of Neigel v. France – judgment of 17 March 1997, *Reports of Judgments and Decisions* 1997-II – and the eighteen Italian cases – judgments of 2 September 1997, *Reports* 1997-V) stems from the fact that the Court in its interpretation of *civil rights* has taken as a basis two different ideas which, taken separately, are sound and reasonable, but taken together are confusing.

2. The first idea accepted by the Court within the framework of its autonomous interpretation of Article 6 concerns *public rights based on public law* and disputes over such rights. The starting-point was that public rights are not civil rights and therefore Article 6 was not applicable. The Court, however, very soon realised that – in relation to procedural guarantees – it was impossible to justify the sharp distinction between public rights and civil rights. It became obvious that many public rights were very similar to private rights – for example, all pecuniary rights which concerned social insurance, pension rights or rights to compensation for damage.

3. So the Court adopted the first idea: *if a dispute over a public right concerns money, it is covered by Article 6*. It was natural for the Court to accept this because in all countries public pecuniary rights are laid down by law. In such situations, governments exercise no discretionary powers which the Court would be interfering with. Pecuniary rights are legally formulated rights and are therefore rights which a court of law can adjudicate. This is the crux of the interpretation of Article 6 in both historical and logical terms.

4. The second idea was developed in connection with *civil servants.*

Here the Court held that the "recruitment", "careers" and "termination of service" of civil servants were outside the scope of Article 6 (cases of Francesco Lombardo v. Italy, judgment of 26 November 1992, Series A no. 249-B, and Massa v. Italy, judgment of 24 August 1993, Series A no. 265-B). This is a generally accepted idea and, taken separately, it is easy to apply. It reflects the fact that governments have a legitimate special interest in avoiding interference by the courts in their relations with their civil servants. Governments use their discretionary powers when determining "recruitment", "careers" and "termination of service", and in these cases disputes concerning civil servants normally fall outside the scope of Article 6.

5. But the Court has had to make exceptions to that rule. And it has done so in an unfortunate way by introducing the "first idea" and holding that if – and only if – the civil servant has a pecuniary interest in the dispute, Article 6 does apply. This made the Court's jurisprudence difficult to understand, as is reflected in the eighteen Italian cases. Because most questions concerning the "recruitment", "careers" and "termination of service" of civil servants can be seen as a claim for money and every pecuniary claim a civil servant may make stems from his status as a civil servant, distinguishing between disputes in which the civil servant has a pecuniary interest and those in which he does not, comes very close to being completely arbitrary.

6. Of course the Court has to accept – rightly – that in some situations a civil or public servant is covered by Article 6. But the criterion should not be the "pecuniary issue", but whether the application of the procedural guarantees in Article 6 does or does not affect the government's discretionary right to determine the "recruitment", "careers" or "termination of service" of civil servants. Only when the application of Article 6 does affect that right should Article 6 not be applicable. The discretionary powers as such are outside the scope of Article 6. Such an approach would make the interpretation of "civil rights" consistent in itself and compatible with the historical reason for the wording of Article 6, as in earlier cases (see the Feldbrugge v. the Netherlands judgment of 29 May 1986, Series A no. 99, p. 15, § 37, and the Deumeland v. Germany judgment of 29 May 1986, Series A no. 100, p. 24, § 71).

7. In the instant case it is easy to see that the issue as presented to the Court has nothing to do with the discretionary element in the Government's power to determine the "recruitment", "careers" or "termination of service" of civil servants. The Court was not being asked to take a stand on whether the authorities had been right or wrong to treat the applicant as they did. The Court had to decide whether there had been a breach of the applicant's right to have his case heard within a reasonable time. The outcome of the case between the applicant and his national authorities was not its concern.

8. I would like to add the following. The Court's narrow interpretation of Article 6, which means that disputes on the "recruitment", "careers" or "termination of service" of civil servants are outside Article 6, is motivated only by the fact that historically governments have sought to avoid interference by courts of law in the sensitive relationship between authorities and their civil servants. The narrow interpretation therefore becomes absolutely meaningless in situations where the national law as in this case *permits* such interference by giving the civil servant access to the national courts.

The Court should at least, within the framework of autonomous interpretation, accept that *where the national law gives civil servants access to a court of law, the procedural guarantees in Article 6 § 1 should apply.* There is no reason whatsoever why civil servants – in such a situation – should be deprived of the procedural guarantees enshrined in Article 6. The same national courts have to afford those guarantees to all other persons.

DISSENTING OPINION OF JUDGE PEKKANEN

1. I regret that I cannot agree with the majority of the Court as regards the applicability of Article 6 of the Convention in the present case. I have previously expressed my view in my dissenting opinions in the cases of Spurio, Gallo, Zilaghe, Laghi, Viero, Orlandi, Ryllo, Soldani, Fusco, Di Luca and Saluzzi, Pizzi, Scarfò, Argento and Trombetta v. Italy (see the Court's judgments of 2 September 1997, *Reports of Judgments and Decisions* 1997-V). Judge Palm had already expressed the same view, based on somewhat different reasoning, in her dissenting opinion in the case of Neigel v. France (see the Court's judgment of 17 March 1997, *Reports* 1997-II). My intention had been to refer to Judge Palm's opinion in the above-mentioned Italian cases, but that reference was by mistake omitted.

2. According to the case-law of the Court, Article 6 § 1 is applicable in disputes where the private-law features predominate over the public-law features (see, for example, the Feldbrugge v. the Netherlands judgment of 29 May 1986, Series A no. 99, p. 16, § 40). In the above-mentioned Italian cases the public-law features were considered by the majority to predominate mainly because in the law of many European States a distinction is drawn between civil servants and employees governed by private law. This difference has led the Court to hold that "disputes relating to the recruitment, careers and termination of service of civil servants are as a general rule outside the scope of Article 6 § 1" (see, for instance, paragraph 18 of the judgment in the Spurio case cited above).

This does not, however, mean that civil servants generally fall outside the scope of the Convention. Indeed, as the Court stated in its judgment of 28 August 1986 in the case of Glasenapp v. Germany (Series A no. 104, p. 26, § 49), "as a general rule the guarantees in the Convention extend to civil servants". On the other hand, when access to the civil service lies at the heart of the issue submitted to the Court, the facts complained of are not covered by the Convention (ibid., p. 27, § 53).

A civil servant is, accordingly, protected by Article 6 § 1 only if the dispute concerns, not his or her recruitment, career or termination of service, but, for instance, a purely economic entitlement. In addition, it is a requisite for the applicability of Article 6 § 1 that the discretionary powers of the administrative authority in question should not be in issue (see paragraph 18 of the judgment in the Spurio case cited above).

The term "civil servant" is used in the present judgment, as in the judgments in the above-mentioned Italian cases, without any definition. Accordingly, it must be deemed to cover all administrative officials in the service of the State or local authorities who are not employed under a private-law contract.

This conclusion entails two problems.

Firstly, the duties of the civil servant in question are not taken into account. The rule covers all civil servants from the lowest office cleaner with only menial duties to the highest officials who have, for instance, the power to exercise public authority. In my opinion there are adequate reasons to exclude from the protection of Article 6 § 1 only those civil servants who belong to the latter group. States have an understandable and acceptable interest in deciding on their recruitment, careers and termination of service without being subject to judicial control.

Secondly, there are States where employees performing public services are covered partly by public-law and partly by private-law contracts, though their duties are the same. According to this Court's case-law, all those employees of the State who are governed by public law would be partly deprived of the safeguards in Article 6 while their colleagues employed under private law would enjoy the benefit of that protection. The civil servants in several European States would thus be unequally protected by the Convention, notwithstanding the similarity of their duties.

3. The Court ought to proceed on the basis of an autonomous interpretation of the notion of "civil service" for the purposes of Article 6 § 1, so that the same standards can be applied to individuals holding equivalent or similar posts, independently of the employment system in each member State. A distinction should be drawn between those civil servants who exercise public authority and those who do not. Such a distinction has been recognised by the Court of Justice of the European Communities (see, for example and *mutatis mutandis*, case no. 473/93, Commission v. Luxembourg, judgment of 2 July 1996).

4. In the present case the duties of the civil servant in question did not involve the exercise of public authority. I therefore find Article 6 § 1 to be applicable.

DISSENTING OPINION OF JUDGE CASADEVALL, JOINED BY JUDGE LŌHMUS

(*Translation*)

1. I do not agree with the majority's conclusion that Article 6 § 1 of the Convention does not apply in this case.

2. My dissent is strengthened by the judgment's thin reasoning, set out in paragraph 37. In order to reach the conclusion that the right in question was not a civil one and that Article 6 § 1 is not applicable, the Court does no more than list the proceedings brought by the applicant (which concerned not only his being sent on leave and his reinstatement at Paul Eluard Lower Secondary School at Evry but also payment of his salary) and state that the disputes related "essentially" to the applicant's having been sent on compulsory leave, thereby implying that the financial consequences were only secondary.

3. I do not contest that it is clear from the Court's case-law that the Convention does not provide for a right of access to the civil service and that issues relating to the "careers" of civil servants – who in most member States of the Council of Europe are subject to public law – are outside the scope of Article 6 § 1, but I do think that this principle should be construed strictly. From the moment that a dispute concerns a person's employment or the remuneration due to him in respect of it, it falls by nature within the "civil" domain and comes within the scope of Article 6 § 1, whether the person concerned is a civil servant or not.

In the case of Francesco Lombardo v. Italy the Court held: "Notwithstanding the public law aspects pointed out by the Government, what is concerned here is essentially an obligation on the State to pay a pension to a public servant in accordance with the legislation in force. In performing this obligation the State is not using discretionary powers and may be compared, in this respect, with an employer who is a party to a contract of employment governed by private law. Consequently, the right of a *carabiniere* to receive an 'enhanced ordinary pension' if he fulfils the necessary conditions of injury and disability is to be regarded as a 'civil right' within the meaning of Article 6 § 1, which is therefore applicable in the present case." (Judgment of 26 November 1992, Series A no. 249-B, pp. 26–27, § 17)

In the instant case Mr Huber's claims were for payment of his salary and were essentially economic in nature; they therefore related to a civil right recognised in domestic law. Article 6 § 1 was therefore applicable.

4. My misgivings are not caused solely by the result of applying the case-law to Mr Huber's case. I observe that the principle leads to discrimination between the employees of the public service both within a given State and at European level, the concept of "civil servant" varying from one Council of Europe member State to another. Depending on the method and conditions of their recruitment and appointment and according as they are subject to public law or private law in the State to which they belong, some employees will possibly be protected by Article 6 § 1 (contract staff and other employees in the public service who do not have the status of civil servant) and others not (civil servants in the strict sense).

To remedy that state of affairs, the Court should at the very least give an autonomous interpretation of the concepts of "civil servant" and "civil service" which underlie the case-law. In that respect I concur in Judge Palm's opinion in the case of Neigel v. France[1].

1. Judgment of 17 March 1997, *Reports of Judgment and Decisions* 1997-II, dissenting opinion, pp. 413–15.