CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF LAUNIKARI v. FINLAND

(Application no. 34120/96)

JUDGMENT

STRASBOURG

5 October 2000

FINAL

05/01/2001

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It is subject to editorial revision.

In the case of Launikari v. Finland,

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

Mr G. RESS, *President*,
Mr A. PASTOR RIDRUEJO,
Mr L. CAFLISCH,
Mr J. MAKARCZYK,
Mr I. CABRAL BARRETO,
Mrs N. VAJIĆ,
Mr M. PELLONPÄÄ, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 14 September 2000,

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

PROCEDURE

1. The case originated in an application (no. 34120/96) against the Republic of Finland lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Finnish national, Jaakko Launikari ("the applicant"), on 3 December 1996.

2. The applicant was represented by Mr Heikki Salo, a lawyer practising in Helsinki (Finland). The Finnish Government ("the Government") were represented by Mr Arto Kosonen, Co-Agent for the Government of Finland before the European Court of Human Rights, Ministry for Foreign Affairs.

3. The applicant alleged that the proceedings concerning disputes relating to his duties and responsibilities as an employee of the Evangelical Lutheran Church of Finland (*Suomen evankelis-luterilainen kirkko, evangelisk-lutherska kyrkan i Finland*) were excessive in length within the meaning of Article 6 of the Convention.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court.

6. By a decision of 4 May 2000 the Chamber declared the application partly admissible.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant is a minister of the Evangelical Lutheran Church of Finland. He held office as head of division in the Centre for Foreign Affairs of the Church (*kirkon ulkomaanasiain keskus, kyrkans utrikescentral*), when the National Church Board (*kirkkohallitus, kyrkostyrelsen*) began disciplinary proceedings and, on 19 February 1987, dismissed him from his office for having acted in breach of his official duties. The applicant appealed to the Supreme Administrative Court (*korkein hallinto-oikeus, högsta förvaltningsdomstolen)* which, on 21 September 1987, rejected the appeal.

9. The applicant was impeached before the Helsinki City Court (*raastuvanoikeus, rådstuvurätt*) for an offence in office concerning the events that had been the grounds for his dismissal. The City Court and the Helsinki Court of Appeal (*hovioikeus, hovrätt*) rejected the charges on 15 December 1988 and 2 October 1990, respectively. None of the parties sought leave to appeal to the Supreme Court (*korkein oikeus, högsta domstolen*).

10. On 17 October 1991, the applicant requested the Supreme Administrative Court to annul its decision of 21 September 1987 and to quash his dismissal from office. On 29 January 1993, the Supreme Court annulled its aforementioned decision, annulled the decision of the National Church Board of 19 February 1987 and returned the matter to the National Church Board.

11. On 1 April 1993 the National Church Board began to reconsider the disciplinary case and, on 11 June 1993, after having received a written statement from the applicant, decided as follows:

> "1. the National Church Board decides that the disciplinary proceedings against [the applicant] will no longer be pursued and, thus, these proceedings expire;
>
> 2. the National Church Board finds that the termination of [the applicant's] service, which became final on 21 September 1987, can no longer be considered as a disciplinary punishment;
>
> 3. the National Church Board finds that the office of head of division in the Centre for Foreign Affairs of the Church has been filled and, therefore, [the applicant] can no longer be reinstated in his former office;
>
> 4. the National Church Board finds that there is no possibility to offer [the applicant] another equivalent office;
>
> 5. the National Church Board finds that when it took its decision on 19 February 1987, there were weighty grounds as regards [the applicant's]

performance of duties for giving him a notice according to Section 14, subsection 2, points 3 and 4, of the Official Regulations Concerning the Officials in Special Duties of the Church (*kirkon erityistehtävissä olevien viranhaltijain virkasääntö, tjänstestadga för anställda i specialuppgifter inom kyrkan* 6.5.1981);

6. the National Church Board decides to pay [the applicant] compensation equivalent to the salary and other benefits of period of notice at the date of the termination of his service, i.e. 19 February 1987, with sixteen per cent annual interest;

7. the National Church Board finds that there is no need to hold an oral hearing, which [the applicant] had requested, nor to receive further observations from [the applicant]."

12. The above decision did not contain any notice of appeal. On 22 June 1993, the applicant's lawyer was sent a separate notice of appeal with the instructions referring to the possibility of lodging an appeal with the Supreme Administrative Court.

13. On 16 July 1993, the applicant appealed against the points 2-7 to the Supreme Administrative Court claiming, *inter alia*, that the continuation of his service as well as his right to be reinstated in his former office or an office equivalent to it be confirmed and that the National Church Board be ordered to indemnify him for his loss of earnings.

14. In its decision of 1 March 1995, the Supreme Administrative Court firstly stated that the National Church Board was not competent to give the applicant notice and, thus, the applicant's service had not been terminated on the basis of a notice. The Supreme Administrative Court also stated that it lacked competence to decide at first instance questions concerning the applicant's status and his right to an indemnity. It added that the Cathedral Chapter (*tuomiokapituli, domkapitalet*) would be the competent body in this respect, dismissing the appeal without considering its merits.

15. On 6 March 1995 the applicant asked the National Church Board for reinstatement in his former office.

16. On 11 April 1995, the applicant filed an application with the Cathedral Chapter of the Helsinki Diocese (*hiippakunta, stift*) claiming that the National Church Board be ordered to pay him the unpaid salary of a head of division from 1 May 1987 onwards with sixteen per cent annual interest. He asked for the decision to be made urgently.

17. On 30 May 1995, the Board sent a letter to the applicant indicating that the Board's answer to the applicant's request for reinstatement in his former office was included in its response to the Cathedral Chapter on the applicant's above-mentioned application.

18. On 1 August 1995, the Cathedral Chapter ordered the National Church Board to pay the applicant the difference between the salary of a head of division and the salary the applicant had earned as a parish minister between 1 May 1987 and 30 April 1995, and from 1 May 1995 onwards a certain amount per month (with interest) until the applicant recommenced his official duties as head of division or his service was terminated. The

Cathedral Chapter also stated that the applicant's service as head of division must be considered to continue.

19. On 30 August 1995, the National Church Board appealed to the Supreme Administrative Court against the decision of the Cathedral Chapter. On 1 September 1995, the applicant appealed against the same decision, as far as the indemnity for loss of earnings and other compensation were concerned. The Supreme Administrative Court gave its decision on 12 June 1996. It upheld the Cathedral Chapter's decision, except for the part concerning interest rates and the obligation to pay interest.

20. On 18 January 1996, the applicant appealed to the Supreme Administrative Court against a decision made by the National Church Board on 7 December 1995 by which the applicant was given notice of the termination of his service as head of division with four months' period of notice. The applicant asked for the decision to be taken urgently. On 12 June 1996 the Supreme Administrative Court gave its decision also in that set of proceedings. The Supreme Administrative Court upheld the national Church Board's decision. Its reasoning read as follows:

> "According to Section 14, subsection 3, point 4, of the Official Regulations Concerning the Officials in Special Duties of the Church, a civil servant may be given notice for … particularly weighty grounds concerning his or her performance of official duties. Such grounds may be based on the civil servant's performance or on other circumstances in relation to performance of official duties. The office of head of division in the Centre for Foreign Affairs of the Church … has been filled while [the applicant] was dismissed. Considering that the National Church Board, at the end of 1995, still was under the impression that [the applicant's] service as head of division had terminated and considering that the National Church Board cannot be obliged to establish a new office equivalent to [the applicant's] former office, the Supreme Administrative Court, in these circumstances, finds no reason to change the conclusion reached by the National Church Board."

II. RELEVANT DOMESTIC LAW

21. The Church Act of Finland (*kirkkolaki, kyrkolag* 635/64, as from 1 January 1994 replaced by Act no. 1054/93) regulates the activities of the Evangelical Lutheran Church of Finland. Regulations concerning the civil servants of the Church are also given in collective agreements on the terms of employment in the civil service (*virkaehtosopimus, tjänstekollektivavtal*) and in official regulations confirmed by the Church (*virkasääntö, tjänstestadga).*

22. According to Section 491 of the 1964 Church Act and Chapter 22, Section 2, of the 1993 Church Act, the National Church Board is the general administrative body of the Church. Under Section 494 of the 1964 Church Act and Chapter 24, Section 6 (2), of the 1993 Church Act, a decision of the National Church Board can be appealed against to the Supreme Administrative Court.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

23. The applicant complained that the length of the various proceedings, concerning the disputes relating to his duties and responsibilities as an employee, was excessive. The applicant 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..."

A. Applicability of Article 6

24. The Court recalls its decision on admissibility, according to which Article 6 applies to the proceedings at issue.

B. Compliance with Article 6

25. The applicant complained that the length of proceedings had been excessive. He submitted that the Convention obligations of the authorities began in May 1990, when the Convention entered into force in respect of Finland. From the moment of the final acquittal of the applicant, in October 1990, the Church authorities were under an obligation to correct the consequences of their erroneous action. The proceedings ended only on 12 June 1996 and had, therefore, lasted over six years from the moment at which the Convention had entered into force in respect of Finland. According to the applicant, all the proceedings concerned the same issue and cannot be divided into several separate sets of proceedings in the way proposed by the Government.

26. The applicant is of the opinion that the substance of the matter was neither complicated nor difficult in so far as the applicant's right to return to serve in his office and to enjoy the benefits arising from such service was concerned. The responsibility for the length of the proceedings rested on the authorities, not on the applicant. The National Church Board's incorrect decision and the related appeal instructions, which both were indicated at the Supreme Administrative Court's decision of 1 March 1995, caused an unnecessary delay of one year and eight months, attributable to the conduct of the authorities alone. The National Church Board further delayed the proceedings by appealing from the Cathedral Chapter's decision of 1 August 1995, even though it knew that the appeal was based on the wrong premise that his service had been terminated already in 1987. The

authorities are under a special duty of due diligence to safeguard a lawful situation. The authorities' failure to obey this duty led the Supreme Administrative Court's to confirm an illegal *de facto* situation. After all, the National Church Board in 1995 still maintained its resistance to follow the final court decisions.

27. The Government argued that there had been no violation of the applicant's right to have a fair hearing within a reasonable time. They began by pointing out that the first set of proceedings, ending with the Supreme Administrative Court's decision of 21 September 1987, and partly also the proceedings ending with the Court of Appeal's decision of 2 October 1990 related to the period prior to May 1990, i.e. before the ratification of the Convention by Finland. They emphasised that the part of the application relating to those proceedings should have been rejected as being incompatible *ratione temporis* with the provisions of the Convention.

28. The Government considered that the proceedings should have been divided into six separate sets of proceedings, of which the first two are mentioned above (see § 27). They argued that the overall period to be taken into consideration had began on 17 October 1991, when the applicant had requested the Supreme Administrative Court to quash its decision of 21 September 1987, and had ended on 12 June 1996 when the Supreme Administrative Court had issued its last two decisions. Accordingly, the proceedings had lasted four years and seven and a half months.

29. The Government were of the opinion that the proceedings included complex questions and pointed out that the written material had been extensive. They also considered that the applicant had made one unnecessary appeal to the Supreme Administrative Court when the matter should have been initiated by an application to the Cathedral Chapter as the first instance. The Government accepted that the applicant's conduct had not otherwise contributed to any particular delay in the proceedings.

30. According to the Government, the proceedings which involved seven authorities during a period of less than five years, could not be regarded as excessive in length.

31. The Court recalls that the proceedings, which took place prior to the ratification of the Convention by Finland on 10 May 1990, fall outside the Court's jurisdiction *ratione temporis*, although they may be taken into account as background to the issue (see the Hokkanen v. Finland judgment of 23 September 1994, Series A no. 299-A, § 53, and the Kerojärvi v. Finland judgment of 19 July 1995, Series A no. 322, §§ 31, 41-42). The Court will accordingly confine its examination to the proceedings which took place after the aforementioned date.

32. The Court notes that the proceedings concerning the applicant's reinstatement and his related compensation claims, following the applicant's acquittal on 2 October 1990, began on 17 October 1991, when the applicant requested the Supreme Administrative Court to annul its decision of

21 September 1987 and to quash his dismissal from office (see § 10 above). They ended on 12 June 1996, when the Supreme Administrative Court gave its final decision in the last set of proceedings (see § 20 above). Thus the length of the proceedings complained of was nearly four years and eight months in total.

33. The Court reiterates that the "reasonableness" of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria; the complexity of the case, the conduct of the applicant and of the relevant authorities, and what was at stake for the applicant in dispute (see, among other authorities, C*omingersoll S.A. v. Portugal* [GC], no. 35382/97, § 19, ECHR 2000).

34. The Court notes that neither the complexity of the case nor the applicant's conduct explains the length of proceedings.

35. As to the conduct of the courts and other authorities, none of the separate sets of proceedings as such appears so excessive as to be in breach of Article 6. The Court notes, however, that a delay in the overall proceedings seems to have been caused by the notice of appeal concerning the National Church Board's decision of 11 June 1993. This notice, which was sent to the applicant some ten days after the decision rather than with the decision, turned out, in the light of the Supreme Administrative Court's subsequent decision, to have given erroneous information on the remedies to be pursued. This must have caused a considerable delay, which is clearly attributable to the State. Although the exact quantification of that delay is difficult, the overall length of some four years and eight months appears, in these circumstances, unreasonable.

36. The Court reiterates that it is for the Contracting States to organise their legal systems in such a way that their courts can guarantee to everyone the right to a final decision within a reasonable time in the determination of his civil rights and obligations (see *Caillot v. France*, no. 36932/97, 4.6.1999, § 27, unreported).

It further reiterates that an employee who considers that he has been wrongly suspended or dismissed by his employer has an important personal interest in promptly securing a judicial decision on the lawfulness of that measure, since employment disputes by their nature call for expeditious decisions, in view of what is at stake for the person concerned, who through dismissal loses his means of subsistence (see the Obermeier v. Austria judgment of 28 June 1990, Series A no. 179, § 72, the Caleffi v. Italy judgment of 24 May 1991, Series A no. 206-B, § 17, and Frydlender v. France [GC], no. 30979/96, § 45, ECHR 2000, unreported).

37. In the light of the criteria laid down in its case-law and having regard to all the circumstances of the case, the Court considers that the length of the proceedings complained of was excessive and failed to satisfy the reasonable-time requirement. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

38. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Non-pecuniary damage

39. The applicant claimed the sum of 30,000 Finnish Marks (FIM) in respect of non-pecuniary damage. The Government did not comment on the applicant's claim.

40. The Court considers that in the present case the prolongation of the proceedings beyond a reasonable time undoubtedly caused the applicant considerable difficulties and a lengthy period of uncertainty which justify the award of compensation. Having regard to the judicial authorities' obligation to determine employment disputes with special diligence (see § 36 above) and making an assessment on an equitable basis, as required by Article 41, the Court awards the applicant the sum of FIM 20,000 in respect of non-pecuniary damage.

B. Costs and expenses

41. The applicant claimed the sum of FIM 46,247 in respect of the costs he had incurred for his representation before the domestic courts and FIM 10,622 in respect of the costs he had incurred for his representation before the Convention institutions, the total sum of his legal expenses thus being FIM 56,869. The Government did not comment on this claim.

42. The Court does not consider that all the costs in the domestic proceedings were incurred in order to prevent or obtain redress for the matter found to constitute a violation of the Convention (see *mutatis mutandis* the above-mentioned Kerojärvi judgment, § 50). The claim made in respect of the domestic proceedings must therefore be partly rejected. Making its assessment on an equitable basis, the Court awards the applicant the sum of FIM 20,000 in respect of the costs he incurred for his representation before the domestic courts.

As regards the applicant's claim in respect of the costs he incurred for his representation before the Convention institutions, and having regard to the work done by the applicant's lawyer, the Court considers that this amount is reasonable and awards it in full.

C. Default interest

43. According to the information available to the Court, the statutory rate of interest applicable in Finland at the date of adoption of the present judgment is 10% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

2. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following sums:
      (i) 20,000 (twenty thousand) Finnish Marks for non-pecuniary damage;
      (ii) 30,622 (thirty thousand six hundred twenty-two) Finnish Marks, plus any value added tax that may be payable, in respect of costs and expenses;
   (b) that simple interest at an annual rate of 10% shall be payable from the expiry of the above-mentioned three months until settlement;

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

Done in English, and notified in writing on 5 October 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER Registrar	Georg RESS President