



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

FOURTH SECTION

CASE OF AHTINEN v. FINLAND

(Application no. 48907/99)

JUDGMENT

STRASBOURG

23 September 2008

FINAL

23/12/2008

This judgment may be subject to editorial revision.

In the case of Ahtinen v. Finland,

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

Nicolas Bratza, *President*,

Giovanni Bonello,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä,

Ledi Bianku,

Nebojša Vučinić, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 2 September 2008,

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

PROCEDURE

1. The case originated in an application (no. 48907/99) against the Republic of Finland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Finnish national, Mr Seppo Ahtinen (“the applicant”), on 29 April 1999.

2. The applicant was represented by Mr K. Nevala, a lawyer practising in Rovaniemi. The Finnish Government (“the Government”) were represented by their Agent, Mr Arto Kosonen of the Ministry for Foreign Affairs.

3. The applicant complained, under Article 6 of the Convention, that he had been denied a fair hearing as he had not been properly heard on the real reasons for his transfer, and as the Cathedral Chapter had been partial because the vicar of the parish had participated in the decision-making.

4. By a decision of 31 May 2005, the Court declared the application partly admissible. It joined to the merits the question of the applicability of Article 6 of the Convention.

5. The applicant and the Government each filed further written observations (Rule 59 § 1). The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other’s observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1949 and lives in Rovaniemi.

7. He was employed by the Evangelical Lutheran Church as a parish priest in the parish of Rovaniemi from 1 January 1988 until 31 October 1998. On 12 May 1998 the Cathedral Chapter (*tuomiokapituli, domkapitlet*) issued him with a warning, which was upheld by the Supreme Administrative Court on an unspecified date.

8. On 15 September 1998 the Cathedral Chapter decided to transfer the applicant to the parish of Keminmaa, which is situated more than 100 kilometres from his home in Rovaniemi. He did not consent to the transfer. In its decision, the Cathedral Chapter reasoned as follows (translation from Finnish):

“The post of parish priest in the parish of Keminmaa is open ... and therefore it is for the Cathedral Chapter to find a suitable person for the post. It has come to the Cathedral Chapter’s knowledge that the parish priest of the parish of Rovaniemi, Seppo Ahtinen, has stated that he considers himself unable to discharge all his duties. Therefore, the Cathedral Chapter has decided to discontinue Seppo Ahtinen’s assignment to his current post and give him a new assignment as parish priest in the parish of Keminmaa.

The Cathedral Chapter has heard the Keminmaa Church Council (*kirkkoneuvosto, kyrkorådet*) and Seppo Ahtinen. The Church Council has given a positive statement, whereas Seppo Ahtinen has announced that he will not accept a transfer and that he considers that there are no legal grounds for a transfer.

However, considering the need to find a parish priest for the parish of Keminmaa and the difficulties that Seppo Ahtinen has had in discharging all his functions in his current post, there is a justified reason as required by law for transferring him from the parish of Rovaniemi to the parish of Keminmaa.

Therefore, the Cathedral Chapter appoints Seppo Ahtinen to the post of parish priest in the parish of Keminmaa from 1 November 1998 until further notice and terminates his assignment as parish priest in the parish of Rovaniemi on 31 October 1998.

...”

9. The decision indicated that the Cathedral Chapter had applied Chapter 6, section 8a(6), of the Church Act (*kirkkolaki, kyrkolagen*; Act no. 1054/1993), which provides that there has to be a justified reason for making a decision such as the above. It also indicated that, as provided by Chapter 24, section 9(1), as in force at the relevant time, no appeal lay against that decision.

10. According to the applicant, the transfer had been orchestrated by the Vicar of the parish of Rovaniemi, who had not been satisfied with the applicant's contribution to his parish work.

11. The applicant had been consulted in advance in writing about the proposed transfer. On 28 August 1998 the applicant's counsel had informed the Cathedral Chapter as follows (translation from Finnish):

“As the representative of the parish priest Seppo Ahtinen I would like to inform you that he does not intend to change his place of employment. He declares that he enjoys his present post in the service of the parish of Rovaniemi. There are no legal grounds for transferring him without his consent.”

12. On 30 September 1998 the applicant lodged an extraordinary appeal (*kantelu, klagan*) with the Supreme Administrative Court (*korkein hallinto-oikeus, högsta förvaltningsdomstolen*), alleging procedural errors in the decision. He claimed that the Cathedral Chapter had not been impartial as the Vicar of the parish of Rovaniemi, who was also the chairperson of the Church Council of Rovaniemi, had been present when the decision had been taken. However, he did not allege that the vicar had participated in the decision-making. He also argued that he had not been heard prior to the decision and that his opinion had not been taken into account. In particular, no weight had been given to the fact that his entire family lived in Rovaniemi.

13. The Supreme Administrative Court invited the Cathedral Chapter to make observations and communicated them to the applicant. According to the Cathedral Chapter, it was an old tradition that a parish priest could be transferred to another parish with or without his consent if the transfer was considered to be in the interests of the Church. According to this tradition, which was comparable to a similar tradition in the armed forces, there was no appeal against a transfer decision. If an appeal were to be allowed, it would cause an unreasonable delay in the organisation of parish work. The Cathedral Chapter also reiterated that it was known to all parties in question that the applicant had not been able to discharge all his functions in the parish of Rovaniemi and that he had also faced disciplinary proceedings, resulting in a written warning. As the applicant had not denied this, the Cathedral Chapter found it undisputed that he was incapable of fulfilling his duties in the parish of Rovaniemi. The aim of the transfer was to avoid future disciplinary proceedings. Thus, it was also in the interests of the applicant that he be transferred. Moreover, there was a shortage of parish priests in the parish of Keminmaa. The Cathedral Chapter disputed the applicant's contention that he had a right to be heard on the reasons discussed when his transfer was being considered. It also contested that the presence of the Vicar of the parish of Rovaniemi had raised any disqualification issue. The vicar had not taken part in the decision-making.

14. In his observations in reply, the applicant maintained that the Cathedral Chapter had not given him an opportunity to be heard about the

grounds on which it had subsequently based its decision and according to which there was a shortage of priests in the parish of Keminmaa and the applicant allegedly had difficulties in performing his duties in the parish of Rovaniemi. He pointed out that he could be removed only on grounds provided for by law and that the decision certainly concerned his rights. As to his partiality allegation, he submitted that before the meeting there had been no report on the matter, which meant that the decision had thus been based solely on the discussion in which the Vicar of the parish of Rovaniemi had taken part.

15. On 9 March 1999 the Supreme Administrative Court upheld the Cathedral Chapter's decision without examining the merits of the case. It reasoned as follows (translation from Finnish):

“Section 59, subsection 1, paragraph 1, of the Administrative Judicial Procedure Act (*hallintolainkäyttölaki, förvaltningsprocesslagen*; Act no. 586/1996) provides that a final decision may be set aside following a procedural complaint if a person concerned has not been provided with an opportunity to be heard and the decision violates his or her right. Paragraph 2 provides that a decision may be set aside, if there has been another procedural error which may have likewise affected the decision.

Ahtinen has requested that the Cathedral Chapter's decision be set aside on the grounds that he was not properly heard. However, Ahtinen had, as noted in the decision, been heard prior to the decision. Having regard to the fact that the case concerns appointment to a position under Chapter 6, section 33 (1), of the Church Rules of Procedure (*kirkkojärjestys, kyrkoordningen*; Act no. 1055/1993) Ahtinen has been adequately heard.

Ahtinen has also requested that the decision be set aside on the grounds that the Vicar of the parish of Rovaniemi was disqualified from taking part in the examination of the matter before the Cathedral Chapter. As neither the vicar nor the parish of Rovaniemi is a party to the proceedings in issue and as neither can be expected to derive particular benefit or suffer particular loss from the decision, there has not been any procedural error in respect of disqualification in the matter as provided by section 10, subsection 1, paragraph 5, of the Administrative Procedure Act (*hallintomenettelylaki, lagen om förvaltningsförfarande*; Act no. 598/1982), as in force at the relevant time. On these grounds and having regard to Chapter 19, section 6, of the Church Act, the Supreme Administrative Court rejects the application.

...”

16. It appears that the applicant has been an assistant vicar of the parish of Rovaniemi since 1 April 2002.

II. RELEVANT DOMESTIC LAW AND PRACTICE

The position of the Evangelical Lutheran Church

17. Article 11 of the Constitution of 2000 (*Suomen perustuslaki, Finlands grundlag*; Act no. 731/1999) provides:

“Everyone has the freedom of religion and conscience. Freedom of religion and conscience entails the right to profess and practice a religion, the right to express one’s convictions and the right to be a member of or decline to be a member of a religious community. No one is under the obligation, against his or her conscience, to participate in the practice of a religion.”

Article 76 of the Constitution provides:

“Provisions on the organisation and administration of the Evangelical Lutheran Church are laid down in the Church Act. The legislative procedure for enactment of the Church Act and the right to submit legislative proposals relating to the Church Act are governed by the specific provisions in that Code.”

Section 2(1) of the Church Act provides:

“The Church has the exclusive right to make legislative proposals for the enactment of the Church Act in all matters which concern solely its own affairs. It has the same right to propose amendments and repeal of the Church Act. The proposal of the Church is submitted by the Synod. The task to examine and confirm the proposal of the Synod is vested in the President of the Republic and Parliament. The Synod also has the right to submit proposals for the enactment of other legislation which concerns the Church.”

Although the Church Act is an Act of Parliament, no changes other than technical changes can be made to a legislative proposal once it has been submitted. It is for Parliament to either accept or reject the proposal of the Synod (*kirkolliskokous, kyrkomötet*).

The Constitution lays down several guarantees against misuse of public powers, in particular in Chapter 2 on fundamental rights and Chapter 1, section 2(3), pursuant to which the law must be strictly observed in all public activity. At the material time, the relevant Articles were Articles 83, 5-16a and 92(1) of the Constitution of 1919, as amended by Act no. 969/1995.

The Government Bill (HE 23/1993) for the enactment of the Church Act noted that the State is religiously uncommitted. One of the purposes for the enactment of the Church Act was to relieve Parliament from the duty to examine provisions concerning the religious doctrine and spiritual activities of the Church and to strengthen the Church’s autonomous power of decision in its own sphere of authority.

It follows from these provisions that the administration of the Church is autonomous.

The applicant’s duties as a civil servant of the Church

18. The duties of a parish priest are outlined in the Church Rules of Procedure (*kirkkojärjestys, kyrkoordningen*; Act no. 1055/1993) adopted by the Synod. Chapter 5, section 1(1), provides that a priest’s specific duty is to hold public services, give holy sacraments, hold other church ceremonies, provide for the care of souls and take confession.

19. Under the Church Act and the Church Rules of Procedure, parish priests have no independent decision-making powers.

Assignment of a parish priest and termination of the assignment

20. Chapter 6, section 33(1), of the Church Rules of Procedure provides that the Cathedral Chapter may appoint a qualified member of the diocese (*hiippakunta, stiftet*) to perform the functions of a parish priest. Prior to an appointment, the Cathedral Chapter provides the Church Council or the Parish Council with an opportunity to submit its opinion, unless the matter is urgent.

21. Chapter 6, section 8a(6), of the Church Act provides that a parish may not terminate through dismissal the employment of an office holder appointed or a person assigned to the office of a priest. The Cathedral Chapter may suspend or withdraw an assignment given to a person to perform the functions of a parish priest where there is a justified reason to do so. Section 8b(1), paragraph 4, provides that a prior assignment is considered automatically terminated without notice where the priest in question is appointed, assigned or permanently transferred to another position within the Church or a parish.

22. Chapter 6, section 10 of the Church Rules of Procedure provides that a parish priest belongs to the diocese in which he has been consecrated as a priest. According to the Government, this means that parish priests are considered to serve the entire diocese and the Church, without being bound to a particular parish or position. Further, a priest who is assigned to a parish by the Cathedral Chapter is under an obligation to accept any new assignment. It is also an established principle that, having consecrated someone as a priest, the Cathedral Chapter is under an obligation to ensure that the priest also has a valid assignment in the future.

23. Chapter 19, section 5, of the Church Act, as in force at the relevant time, provided that the Cathedral Chapter examined, in the capacity of a judicial authority, appeals in respect of which it had decision-making competence under the law and complaints made by means of extraordinary appeal. In the capacity of an authority of first instance the Cathedral Chapter examined administrative disputes concerning an obligation or a right based on that Act or the Church Act and any such disputes between the Church or a parish and their office holders concerning employment which could not otherwise be resolved by law.

24. Chapter 19, section 6, as in force at the relevant time, provided that subject to other provisions of the Act the Cathedral Chapter, in its consideration of administrative cases, applied the provisions of the Administrative Procedure Act and, in the administration of justice, the provisions of the Administrative Judicial Procedure Act.

Appeal and extraordinary appeal

25. Chapter 24, section 3, of the Church Act, as in force at the relevant time, provided that anyone whose interests had been violated by a decision of the Cathedral Chapter had a right of appeal. Section 8, as in force at the relevant time, provided that the Administrative Judicial Procedure Act applied to appeal and decision-making subject to other provisions of the Church Act. The Administrative Judicial Procedure Act is based on the principle of a general right of appeal and it refers, in section 8, to the Church Act stating that the latter contains provisions governing appeals against a decision of the Evangelical Lutheran Church.

26. Chapter 24, section 9(1), of the Church Act, as in force at the relevant time, provided that without prejudice to other restrictions on the right of appeal, no appeal lay against decisions by the Cathedral Chapter on the appointment of office holders, assignment to a given position or related withdrawal of a prior assignment, decisions on the engagement of an office holder on probation, temporarily or as substitute, and decisions on the termination of employment of probationary, temporary or substitute office holders.

27. Section 59(1) of the Administrative Judicial Procedure Act provides that a final decision may be set aside following a procedural complaint if a person concerned has not been provided with an opportunity to be heard and the decision violates his or her right or if another procedural error has occurred which may have likewise affected the decision.

28. Section 10(1) of the Administrative Procedure Act (repealed) provided that a public official was disqualified if he or she was a member of the board of directors, the supervisory board or a comparable body or was the managing director or held a comparable position in a corporation, foundation, institution of a public-law character or public enterprise which was a concerned party or which could be expected to derive particular benefit or suffer particular loss as a result of a decision in the matter. Section 11 provided that a disqualified person could neither consider the matter nor be present at the proceedings, except where the disqualification could not affect the outcome because of the nature of the matter, or where the proceedings could not be deferred.

29. Section 15 provided that a concerned party had to be given an opportunity to comment on the claims made by others and on any evidence that could affect the decision. However, a matter could be decided without hearing a concerned party if the claim was dismissed without prejudice or immediately rejected, if the claim that was approved did not affect another concerned party, if it was obviously superfluous for some other reason, if the matter concerned entry into a service relationship or voluntary training or the granting of a benefit based on an assessment of the qualities of an applicant, if a hearing could jeopardise the achievement of the purpose of the decision, or if a decision in the matter could not be postponed.

30. According to the Government, the prohibition on appealing against a decision concerning assignment to a given position or withdrawal of an assignment was based on the need to ensure that the duties of parish priests were discharged as appropriate, in accordance with the respective needs of different parishes. The Government noted, however, that this purpose was not indicated in the Government Bill (HE 23/1993 vp) for the enactment of the Church Act.

31. The Church Act was amended with effect from 1 January 2004 as regards the restrictions on the right of appeal concerning posts in the National Ecclesiastical Board (*kirkkohallitus*, *kyrkostyrelsen*) and the Cathedral Chapter. In 2003, the Constitutional Law Committee gave the following consideration in its opinion (translation from Finnish).

“... In the opinion of the Committee, the autonomy of the administration of the Evangelical Lutheran Church, based on Article 11 of the Constitution, must be taken into account in the assessment of the aforementioned proposed provision. ...

Under existing provisions of law, the Synod and the Bishops' Conference do not decide on issues that would, in view of the foregoing, affect the rights or obligations of individuals. Therefore, the proposed prohibitions on an appeal (paragraph 1) have no relevance for the application of Article 21 of the Constitution [according to which everyone has the right to have a decision pertaining to his or her rights or obligations reviewed by a court of law or other independent organ for the administration of justice]. The proposed prohibitions may in this respect be considered to clarify the existing provisions of law. The bishop and the Cathedral Chapter make their decisions on the assignment of a priest on the basis of religious criteria, and decisions made by the bishop alone mainly fall, according to the explanatory report of the Government Bill, within the scope of religious guidance by the bishop. The prohibitions on appealing against such decisions (paragraph 2) do not constitute a problem with regard to Article 21 of the Constitution. The prohibitions on appealing referred to in subsection 1, paragraph 4, relate to such issues concerning the religious workers of the Church and falling within the scope of the autonomy of a religious community as do not directly affect anyone's subjective rights. Nor do the prohibitions on the right to request review and the right of appeal in any other respect cause problems with regard to the Constitution.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

32. The applicant complained, under Article 6 of the Convention, that he had not been properly heard on the real reasons for his transfer and that the Cathedral Chapter had been partial. Article 6, in its relevant part, reads as follows:

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

A. The parties' arguments

33. In his written observations the applicant did not put forward any further arguments in reply to those of the Government.

34. The Government contested the applicability of Article 6. Notwithstanding the fact that the applicant was a civil servant without any independent decision-making competence, the present case did not concern the termination of service but the transfer of a civil servant to another place of duty. Assignment and the related withdrawal of a prior assignment were largely based on the Cathedral Chapter's discretionary powers in an administrative procedure. As a parish priest the applicant was considered to serve the entire diocese and the Church, without being bound to a certain parish or position, and he was under an obligation to accept a new assignment which terminated the prior one. Thus, he had a special bond of trust and loyalty to the Church. Accordingly, the applicant did not have a “civil right”.

35. Should the Court come to another conclusion, the Government argued that the right of access to court was not an absolute one. Indeed, the applicant's right of access to court had been limited as no ordinary appeal lay against such decisions of the Cathedral Chapter. The provisions of the Church Act were based on the principle of a general right of appeal, as anyone whose interests were violated by a decision of the Cathedral Chapter had a right of appeal. The prohibition on appealing against a decision concerning, *inter alia*, assignment to a given position or the related withdrawal of a prior assignment was based on the need to ensure that the duties of parish priests were discharged as appropriate in accordance with the respective needs of different parishes, which was a legitimate aim. The limitation of the right to appeal was not disproportionate to this aim. The limitation concerned withdrawal of a prior assignment only when the withdrawal was connected with a new assignment and had to be seen against the nature of the work of the Church as a whole. The margin of appreciation allowed to States in limiting an individual's access to court had not been exceeded.

36. In the alternative, the Government submitted that the applicant had lodged an extraordinary appeal with the Supreme Administrative Court, alleging that he had not been heard in the proceedings before the Cathedral Chapter, which had allegedly also been partial. However, in its decision of 9 March 1999, the Supreme Administrative Court found that the applicant had been provided with an adequate opportunity to be heard before the decision was made, considering that the case concerned assignment to a position within the meaning of Chapter 6, section 33, of the Church Rules of

Procedure. As to the partiality allegation, the minutes from the Cathedral Chapter's meeting showed that, although the vicar had been present during the session, he had not participated in the decision-making. As neither the vicar nor the parish of Rovaniemi were parties to the proceedings, they could not therefore have expected to derive any benefit or suffer any loss from the decision. The Government concluded that the extraordinary appeal must be considered a remedy since the Supreme Administrative Court had ruled on the complaints subsequently lodged with the Court. They relied on *Alatulkkila and Others v. Finland* (no. 33538/96, § 52, 28 July 2005).

B. The Court's assessment

37. The Court will examine whether Article 6 applies to the proceedings in issue. It recalls that Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal. In this way the Article embodies the "right to a court", of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect only (see *Golder v. the United Kingdom* judgment of 21 February 1975, Series A no.18, p. 18, § 36).

38. This right to a court "extends only to 'contestations' (disputes) over (civil) 'rights and obligations' which can be said, at least on arguable grounds, to be recognised under domestic law; Article 6 § 1 does not in itself guarantee any particular content for (civil) 'rights and obligations' in the substantive law of the Contracting States" (see, *inter alia*, *James and Others v. the United Kingdom* judgment of 21 February 1986, Series A no. 98, pp. 46-47, § 81, and *Powell and Rayner v. the United Kingdom* judgment of 21 February 1990, Series A no. 172, p.16, § 36). Article 6 § 1 will however apply to disputes of a "genuine and serious nature" concerning the actual existence of a right as well as to the scope or manner in which it is exercised (see *Bentham v. the Netherlands* judgment of 23 October 1985, Series A no. 97, p. 15, § 32). In assessing therefore whether there is a civil "right", the starting-point must be the provisions of the relevant domestic law and their interpretation by the domestic courts (see *Masson and Van Zon v. the Netherlands*, judgment of 28 September 1995, Series A no. 327-A, p. 19, § 49; *Roche v. the United Kingdom* [GC], no. 32555/96, § 120, ECHR 2005-...). In carrying out this assessment, it is necessary to look beyond the appearances and the language used and to concentrate on the realities of the situation (see *Van Droogenbroeck v. Belgium*, judgment of 24 June 1982, Series A no. 50, pp. 20-21, § 38; *Roche v. the United Kingdom*, cited above, § 121).

39. In the present case, from 1988 the applicant had worked as a parish priest in the parish of Rovaniemi until his assignment was withdrawn and he was transferred to serve in another parish in 1998. The transfer was based on the unilateral decision of the Cathedral Chapter against which no

ordinary appeal lay. The applicant lodged an extraordinary appeal with the Supreme Administrative Court with a view to having the decision set aside. Chapter 6, section 8a(6), of the Church Act makes the lawfulness of the measure in issue subject to only one condition: there has to be “a justified reason” for making such a decision (see paragraph 9 above). The transfer of parish priests is therefore a matter within the discretion of the Cathedral Chapter, a factor which argues against the existence of a “right” (compare and contrast *De Moor v. Belgium*, judgment of 23 June 1994, Series A no. 292-A, § 43).

40. For the Court, this latter conclusion is confirmed by the following domestic law considerations. Firstly, the transfer of a parish priest’s assignment may take place without his or her consent. Secondly, no appeal lay against a decision like the one in issue and it is clear that the legislator had not intended to provide for any judicial determination of the merits of grievances filed by clergymen wishing to contest the change of their place of service. It is to be noted in this latter connection that in the domestic proceedings, the Cathedral Chapter declared that it was an old tradition that a parish priest could be transferred to another parish with or without his consent, if the transfer was considered to be in the interests of the Church. The Court’s conclusion regarding the non-existence of a substantive right is not affected by the limited review possibility offered by means of an extraordinary appeal. The Court also notes that the legislator has in 2003, albeit in connection with an amendment concerning posts in the National Ecclesiastical Board and the Cathedral Chapter, taken the opportunity to reaffirm that the Constitution does not require the availability of an appeal (see paragraph 31 above).

41. As for the position of the Evangelical Lutheran Church under Finnish law, the Court notes that it has the right to administer its own affairs (see paragraph 17 above). It is independent in matters such as the appointment of its priests and the latter’s service. The relevant legislation leaves it to the Church as employer to determine the period and place of pastoral activity. The Court notes that when accepting ecclesiastical employment, parish priests are aware of the possibility that they may later be transferred to another post. Hence, the applicant, by agreeing to serve as a parish priest within the Church, undertook to abide by the rules of his church incorporated in the Church Act and the Church Rules of Procedure.

42. The Court has already found that Article 6 § 1 was not applicable to proceedings in which priests of the Czechoslovak Hussite Church had challenged the termination, by the authorities of their church, of their clerical service (see *Duda and Dudová v. the Czech Republic* (dec.), no. 40224/98, 30 January 2001). In that case, the Court concurred with the domestic courts’ findings that the judicial determination of issues such as the continuation of a priest’s service within a church would be contrary to the principles of autonomy and independence of churches guaranteed by,

inter alia, the Charter of Fundamental Rights and Freedoms. In the present case, the subject matter is of a less serious nature than in the aforementioned case.

43. Summing up, no basis has therefore emerged in the domestic law or the Court's case-law for holding that the applicant had a "right" within the meaning of Article 6. The Court cannot but conclude that Article 6 does not apply to the present case. There has therefore been no violation of that provision.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Holds that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 23 September 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President