AS TO THE ADMISSIBILITY OF

Application No. 20772/92
by Pekka HELLE
against Finland

The European Commission of Human Rights sitting in private on 7 March 1996, the following members being present:

MM. S. TRECHSEL, President
C.L. ROZAKIS
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
J.-C. SOYER
H.G. SCHERMERS
F. MARTINEZ
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
B. MARXER
I. CABRAL BARRETO
I. BÉKÉS
D. SVÁBY
G. RESS
A. PERENIC
C. BÎRSAN
P. LORENZEN

Mr. H.C. KRÜGER, Secretary to the Commission

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 28 September 1992 by Pekka Helle against Finland and registered on 6 October 1992 under file No. 20772/92;

Having regard to the reports provided for in Rule 47 of the Rules of Procedure of the Commission;

Having regard to the observations submitted by the respondent Government on 16 February 1995, the observations in reply submitted by the applicant on 12 April 1995, the Government's additional observations of 25 June 1995 and the applicant's additional observations of 10 October 1995;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a retired verger, born in 1931 and resident at Mäntsälä. Before the Commission he is represented by Mr. Heikki Salo, a lawyer practising in Helsinki.

The facts of the case, as submitted by the parties, may be summarised as follows.

Particular circumstances of the case

Up to 1 October 1989 the applicant held a post as a verger in the

Evangelical-Lutheran parish of Mäntsälä. This post had been created in 1966 in the absence of a decision in writing. It had been the applicant's understanding that the post was of a full-time nature. When investigating his pension rights in December 1988, he discovered that the Parish Board (kirkkoneuvosto, kyrkorådet) had, on 16 November 1977, considered the post to be of a part-time nature, this affecting his salary and pension rights (hereinafter "the 1977 decision").

On 9 January 1989 the applicant lodged an appeal with the Parish Council (kirkkovaltuusto, kyrkofullmäktige) against the 1977 decision. On 25 January 1989 he lodged a further appeal with the Cathedral Chapter (tuomiokapituli, domkapitlet) of the Diocese (hiippakunta, stiftet) of Helsinki.

By decision of 13 September 1989 the National Ecclesiastical Board (kirkkohallitus, kyrkostyrelsen) granted the applicant early retirement pension as from 1 October 1989.

In its decision of 10 October 1989 the Parish Council considered itself not legally obliged to grant the applicant any pecuniary benefits in addition to those which he had already received on the basis of the 1977 decision. It nevertheless decided to pay him the difference between the salary for his part-time post and the salary for a full-time post as from 1987 and also increased his pension benefits. He was also awarded a compensatory lump sum.

On 15 November 1989 the applicant lodged a supplementary appeal with the Cathedral Chapter, arguing that the pecuniary benefits granted to him by the Parish Council were insufficient and, inter alia, claiming compensation.

Having joined the two appeals, the Cathedral Chapter on 1 June 1990 considered that the applicant had locus standi as appellant, having regard to his allegation that a private right of his had been violated, and to the sufficiently close link between the dispute and his private interests. Moreover, since he had not been lawfully notified of the 1977 decision, his appeal was not time-barred. The Cathedral Chapter rejected the appeal in so far as it concerned certain effects of the 1977 decision. It further considered itself to lack competence to examine what it regarded as the applicant's claims for damages and therefore dismissed this part of his appeal without examining its merits.

On the applicant's further appeal of 28 June 1990 the Supreme Administrative Court (korkein hallinto-oikeus, högsta förvaltnings-domstolen) on 8 March 1991 upheld the Cathedral Chapter's decision in so far as the applicant's appeal had been rejected. In so far as his appeal to the Cathedral Chapter had been dismissed for lack of competence, the Supreme Administrative Court considered that the Cathedral Chapter would have been competent to examine the dispute regarding his claims for compensation and referred the case back for new examination. The Cathedral Chapter was instructed to "again" provide the applicant with an opportunity to "be heard".

In an opinion requested by the Supreme Administrative Court the Cathedral Chapter had, on 5 September 1990, submitted that the applicant's appeal should be rejected. The applicant had commented on the opinion on 16 October 1990. There is no mention, however, of the opinion and the applicant's comments in the Supreme Administrative Court's decision.

In his submissions to the Cathedral Chapter dated 31 May 1991 the applicant maintained his claims. Should the Cathedral Chapter not find it established that his post had always been of a full-time character, he requested an oral hearing, where witnesses could be heard regarding the decisions concerning the character of his post and his working-hours.

On 29 August 1991 the Cathedral Chapter rejected the applicant's appeal and upheld the decision of the Parish Council of 10 October 1989. The Cathedral Chapter found, inter alia, that it had not been established whether or not the applicant's post had been of a full-time or part-time nature as from 1966. His request for an oral hearing was not mentioned in the decision.

In his further appeal to the Supreme Administrative Court the applicant requested the Court to quash the Cathedral Chapter's decision and possibly to refer part of the matter back to the Cathedral Chapter or the Parish Council, should further investigations concerning part of his alleged financial entitlements be considered necessary.

On 31 March 1992 the Supreme Administrative Court upheld the Cathedral Chapter's decision of 29 August 1991 without holding an oral hearing.

In a further opinion requested by the Supreme Administrative Court the Cathedral Chapter had, on 11 December 1991, maintained that the applicant's appeal should be rejected. The applicant had commented on the opinion on 16 January 1992. There is no mention, however, of the opinion and the applicant's comments in the Supreme Administrative Court's decision.

Relevant domestic law

According to the 1964 Church Act (kirkkolaki 635/64, kyrkolag 635/64), as in force at the material time, a decision of a Church Council is appealable by anyone who considers that a private right of his or hers has been violated (section 323, subsection 1, as amended by Act no. 614/79).

The Cathedral Chapter is the administrative and judicial body of the Diocese (section 432). It is chaired by the Bishop and further consists of three church assessors and one legal assessor, the last-mentioned assessor being elected by the Chapter itself (sections 433 and 435). The rules governing bias of a member of the Cathedral Chapter are the same as those laid down in the Code on Judicial Procedure (Oikeudenkäymiskaari, Rättegångs Balk) which are generally applicable to professional and lay judges (section 436, subsection 3, and chapter 13, section 1). The members of the Chapter shall swear a judicial oath before taking up their office (section 437).

The Cathedral Chapter shall, as the court of the first instance, deal with disputes pertaining to, for instance, wage claims by parish officials (section 443 of the Church Act).

According to section 455, the Cathedral Chapter shall, if it considers it necessary to hear witnesses, see to it that these are heard before an ordinary court of first instance. This possibility afforded by the 1964 Act is also referred to in the Government Bill concerning the 1993 Church Act (no. 1054/93; Bill no. 23/93, p. 29).

On 1 January 1994 the 1993 Church Act entered into force, thus replacing the 1964 Act. The new Act expressly provides for a possibility to hold an oral hearing before the Cathedral Chapter itself (chapter 19, sections 6 and 7).

According to the 1918 Act on the Supreme Administrative Court, this court may hold oral hearings and carry out inspections (section 15, as amended by Act no. 12/79). In practice oral hearings are rare and in matters of the present kind the proceedings are, as a rule, in writing.

COMPLAINTS

1. The applicant complains that he was denied a fair trial in several respects.

Firstly, the decisions of the Cathedral Chapter and the Supreme Administrative Court were insufficiently reasoned. These judicial bodies failed to examine whether or not the 1977 decision was in breach of domestic law. They further disregarded evidence presented by the applicant according to which, starting from 1966, his post as a verger had been of a full-time nature. Instead they based their decisions on an unreasoned presumption that it had been of a part-time nature.

Secondly, the applicant was denied an oral hearing before the Cathedral Chapter after the Supreme Administrative Court had referred part of his appeal back for new examination.

Thirdly, in examining the applicant's appeal of 28 June 1990 the Supreme Administrative Court requested an opinion from the Cathedral Chapter. Since it thereby invited the Cathedral Chapter to appear as a party to the appeal proceedings, it could no longer be considered as an independent and impartial tribunal.

Fourthly, having submitted its opinion on the applicant's appeal of 28 June 1990, the Cathedral Chapter became a party to the appeal proceedings before the Supreme Administrative Court. In the subsequent proceedings before the Cathedral Chapter itself this body could no longer be considered as an independent and impartial tribunal either, account also being taken of its composition.

The applicant invokes Article 6 para. 1 of the Convention.

2. The applicant furthermore complains that the refusal fully to award him the requested pecuniary benefits to which he is allegedly entitled, on the presumption that his post was of a full-time nature as from 1966, violates his property rights. He invokes Article 1 of Protocol No. 1.

3. In his submissions of 12 April 1995 the applicant also complains that the denial of a fair hearing discriminated against him, contrary to Article 14 of the Convention read in conjunction with Article 6 para. 1.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 28 September 1992 and registered on 6 October 1992.

On 30 November 1994 the Commission (First Chamber) decided to communicate the complaint under Article 6 para. 1 of the Convention to the respondent Government, pursuant to Rule 48 para. 2 (b) of the Rules of Procedure.

The Government's written observations were submitted on 16 February 1995. The applicant replied on 12 April 1995. Additional observations were submitted by the Government on 25 June 1995 and by the applicant on 10 October 1995.

On 28 February 1995 the Commission granted the applicant legal aid.

On 27 February 1996 the plenary Commission ordered the transfer of the application to itself pursuant to Article 20 para. 4 of the Convention.

THE LAW

1. The applicant complains under Article 6 para. 1 (Art. 6-1) of the Convention that he was denied a fair trial in several respects. This

provision reads, in so far as it is relevant:

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

The Government submit that Article 6 para. 1 (Art. 6-1) has not been violated on any of the points raised by the applicant. They recall that the Commission is not competent to review the national authorities' assessment of the evidence adduced in his case, unless this assessment were to be manifestly arbitrary.

The Government furthermore submit that the Cathedral Chapter was an "independent and impartial tribunal" within the meaning of Article 6 para. 1 (Art. 6-1). It is a permanent body established by law, its jurisdiction is compulsory and its decisions are binding and enforceable. Although it also carries out administrative tasks, it was, when performing its judicial functions in the applicant's case, independent of both parties and objectively impartial.

The Government consider that the applicant unequivocally waived his possibility to obtain an oral hearing before a "tribunal" within the meaning of Article 6 para. 1 (Art. 6-1). They maintain that under the law in force at the material time the Cathedral Chapter could not have held an oral hearing in public in the applicant's case. The applicant did not expressly request the Supreme Administrative Court to hold an oral hearing nor otherwise bring to its attention that a failure to hold an oral hearing at that stage would result in a total lack of an oral hearing. Considering that the Supreme Administrative Court does not, as a rule, hold oral hearings in matters of the present kind, the applicant could have been expected to request a hearing in express terms, if he attached importance thereto.

The Government furthermore consider that the dispute at issue did not raise any questions of public interest which would have rendered an oral hearing necessary. It was better dealt with in writing, since the material before the courts was sufficient and the applicant had made use of his possibility of lodging written comments. An oral hearing would also have contributed to the length and costs of the proceedings. Should the Commission find that the Supreme Administrative Court ought to have held an oral hearing, the Government refer to its reservation concerning Article 6 para. 1 (Art. 6-1).

The Government finally recall that the Supreme Administrative Court obtained the Cathedral Chapter's opinion on the applicant's appeal only after the Cathedral Chapter had reached its final decision in the matter. In any case the opinion was neutrally worded. The Cathedral Chapter merely reiterated the main reasons for its decision, noted that the applicant had not presented any essentially new arguments in his appeal to the Supreme Administrative Court and concluded that his appeal was unfounded. Nothing in the opinion made the Cathedral Chapter join ranks with the Parish Council as the applicant's opposite party in the proceedings before the Supreme Administrative Court.

The applicant maintains that the Cathedral Chapter was not prevented by domestic law from holding an oral hearing. The Parish Council had, without hearing him, unilaterally and retrospectively considered his full-time post to be of a part-time nature. By wishing to hear various witnesses he sought to prove that his post had been created as a full-time post. A weighty public interest thus warranted the holding of an oral hearing before at least one "tribunal". Even assuming that domestic law would have prevented the Cathedral Chapter from holding an oral hearing, the Supreme Administrative Court could, of its own motion, have ordered an oral hearing to be held. In his last appeal to the Supreme Administrative Court he requested, in substance, that an oral hearing be held, should that court find it necessary to

obtain further evidence. At any rate he did not unequivocally waive his right to request an oral hearing. He recalls, moreover, that in its reservation to Article 6 (Art. 6) the respondent State has declared that it cannot guarantee a right to an oral hearing before the Supreme Administrative Court in cases of the present kind. Already for this reason he cannot be required to have requested, in express terms, an oral hearing before that court.

The applicant further submits that he was placed at a substantial disadvantage vis-à-vis the Parish Council, in particular as regards the presentation of evidence. Despite the weighty evidence adduced by him the Cathedral Chapter and the Supreme Administrative Court based their decisions on an unreasoned presumption that his post had from the outset been of a part-time character. Moreover, after having rejected his claims in August 1991 the Cathedral Chapter submitted a negative opinion on his further appeal to the Supreme Administrative Court. The wording of the opinion clearly showed that the Cathedral Chapter was acting as the applicant's opposite party together with the Parish Council. Since the Cathedral Chapter's opinion formed the basis for the Supreme Administrative Court's decision, the applicant was, in any event, denied a fair hearing before an "independent" and objectively "impartial" tribunal.

The applicant finally submits that neither the Cathedral Chapter nor the Supreme Administrative Court pronounced itself on the gist of the dispute between him and the Parish Council, i.e. whether his employment conditions could legally be amended in the manner resorted to in his case. Nor did they explain why the evidence presented by him was ignored.

The Commission has carried out a preliminary examination of the various aspects of the complaint under Article 6 para. 1 (Art. 6-1) of the Convention. It considers that the complaint as a whole raises questions of fact and law, including questions concerning the Finnish reservation to Article 6 (Art. 6), of such a complex nature that their determination requires an examination of the merits. This complaint cannot therefore be declared inadmissible as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention. No other reason for declaring the complaint inadmissible has been established.

2. The applicant furthermore complains that the refusal fully to award him the requested pecuniary benefits to which he is allegedly entitled, on the presumption that his post was of a full-time nature as from 1966, violates his property rights. He invokes Article 1 of Protocol No. 1 (P1-1) which reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The Commission recalls that neither the Convention nor any of its Protocols protects a right to obtain possessions. Article 1 of Protocol No. 1 (P1-1) is limited to enshrining the right of everyone to the peaceful enjoyment of "his" possessions and thus applies only to existing possessions (see Eur. Court H.R., Marckx judgment of 13 June 1979, Series A no. 31, p. 23, para. 50 and Eur. Court. H.R., Van der Mussele judgment of 29 September 1983, Series A no. 70, p. 23, para. 48). The requested pecuniary benefits to which the applicant

considers himself entitled cannot therefore be considered "possessions" within the meaning of the above-mentioned provision. Accordingly, the Commission finds no appearance of any violation of Article 1 of Protocol No. 1 (P1-1).

It follows that this complaint must be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. In his submissions of 12 April 1995 the applicant also complains that the denial of a fair hearing discriminated against him, contrary to Article 14 of the Convention read in conjunction with Article 6 para. 1 (Art. 14+6-1).

The question arises whether the applicant has thereby expanded his application on a point which cannot be considered as a particular aspect of any of his initial complaints (cf. No. 10857/84, Dec. 15.7.86, D.R. 48, pp. 106 et seq., at p. 152). If so, the six months' period under Article 26 (Art. 26) of the Convention would not have been respected, since this additional complaint was lodged more than six months after the final decision within the meaning of that provision, i.e. the Supreme Administrative Court's decision of 31 March 1992.

Even assuming that the applicant's present complaint can be considered as a particular aspect of his initial application, the Commission finds this complaint unsubstantiated. Accordingly, there is no appearance of any violation of Article 14 of the Convention read in conjunction with Article 6 para. 1 (Art. 14+6-1).

It follows that this complaint must in any event be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, unanimously,

DECLARES ADMISSIBLE, without prejudging the merits, the applicant's complaint that he was denied a fair hearing before an independent and impartial tribunal; and

DECLARES INADMISSIBLE the remainder of the application.

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) — (S. TRECHSEL)