AS TO THE ADMISSIBILITY OF

Application No. 25761/94
by Toivo KULPAKKO
against Finland

The European Commission of Human Rights (First Chamber) sitting in private on 15 May 1996, the following members being present:

Mr. C.L. ROZAKIS, President
Mrs. J. LIDDY
MM. E. BUSUTTIL
A.S. GÖZÜBÜYÜK
A. WEITZEL
M.P. PELLONPÄÄ
B. MARXER
B. CONFORTI
N. BRATZA
I. BÉKÉS
E. KONSTANTINOV
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL

Mrs. M.F. BUQUICCHIO, Secretary to the Chamber

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

Having regard to the application introduced on 5 October 1994 by Toivo KULPAKKO against Finland and registered on 23 November 1994 under file No. 25761/94;

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

Having deliberated;

Decides as follows:

THE FACTS

A. The particular circumstances of the case

The applicant is a Finnish citizen, born in 1944. He is a minister residing in Kittilä, Finland. Before the Commission he is represented by Mr. Kauko Nevala, a lawyer practising in Rovaniemi.

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

The applicant holds the office of minister in the Evangelic-Lutheran parish of Kittilä. In May 1994 the Disciplinary Agent (kurinpitoasiamies) of the Cathedral Chapter of the Diocese (hiippakunnan tuomiokapituli) of Oulu requested the Cathedral Chapter to impose a disciplinary sanction on the applicant, namely to suspend him from office (virantoimituksesta erottaminen) for six months, by virtue of chapter 23 section 8 of the Church Act (kirkkolaki).

On 10 June 1994 the Cathedral Chapter found that the applicant had acted in breach of his official duties and that he had behaved in a way unbecoming to his office. The Cathedral Chapter decided to suspend him from his office for six months as from 12 June 1994.

The applicant, represented by Mr. Nevala, appealed against the Cathedral Chapter's decision to the Supreme Administrative Court (korkein hallinto-oikeus). He requested, inter alia, that he be granted legal aid (maksuton oikeudenkäynti) pursuant to the Act on Cost-free Proceedings (laki maksuttomasta oikeudenkäynnistä) and that the enforcement of the suspension from office be suspended.

On 31 August 1994 the Supreme Administrative Court ordered the enforcement of the applicant's suspension from office to be suspended. It rejected the applicant's request for legal aid since it found that it was not possible to grant legal aid under the Act on Cost-free Proceedings in disciplinary proceedings. The appeal, as regards its merits, is apparently still pending in the Supreme Administrative Court.

B. Relevant domestic law

Under chapter 23 section 1 of the Church Act, disciplinary proceedings against a person in office may not be started if there is a criminal case pending which is based on the same facts as the disciplinary proceedings. If, during the disciplinary proceedings, a charge is brought against the person in office for the same cause as led to the disciplinary proceedings, the disciplinary proceedings shall not be proceeded with while the criminal case is pending. By virtue of chapter 23 section 8, disciplinary punishments are: reprimand (varoitus), suspension from office for a fixed term and removal from office (viraltapano).

Appeals to the Supreme Administrative Court shall be made in written form. Legal representation is not compulsory (see the Supreme Administrative Court Act and the Act on Appealing in Administrative Matters) (laki korkeimmasta hallinto-oikeudesta, laki muutoksenhausta hallintoasioissa).

Under section 7 of the Act on Cost-free Proceedings, a person who has been granted legal aid under the relevant Act is exempted, inter alia, from court costs and counsel's fees.

Under section 6 of the Act on Costs of Decisions of the Courts and Certain Judicial Authorities (laki tuomioistuinten ja eräiden oikeushallintoviranomaisten suoritteista perittävistä maksuista), judgments of the Supreme Administrative Court concerning employment in public sector are given free of charge.

Under the Act on Legal Aid (laki yleisestä oikeusaputoiminnasta), municipal legal aid offices grant legal aid to residents of the relevant municipality. Legal aid under this system is given totally or partly free of charge depending on the applicant's income. A decision on granting legal aid is made by the Legal Aid Counsel (yleinen oikeusavustaja) and, on appeal, by the Municipal Legal Aid Board (yleinen oikeusapulautakunta). The Board's decision may be appealed against to the County Administrative Court (lääninoikeus).

COMPLAINTS

The applicant maintains that, in the relevant proceedings, it was important for him to be represented by counsel since the opposing party was represented by a legally trained Disciplinary Agent and since considerable financial interests were at stake. He maintains that, under Finnish law, he fulfils the financial requirements for free legal assistance.

The applicant maintains that Article 6 para. 1 of the Convention covers the relevant proceedings. He submits that disciplinary proceedings are comparable to criminal proceedings and that the concept of a fair trial requires that he be granted legal aid for paying

counsel's fees. He complains that his right to free legal assistance, guaranteed by Article 6 para. 3 (c) of the Convention, has been violated.

THE LAW

The applicant complains, under Article 6 para. 3 (c) (Art. 6-3-c), that he was refused free legal assistance.

Article 6 (Art. 6) of the Convention reads, as far as relevant, as follows:

> "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair ... hearing ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
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> ...
>
> c. to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
>
> ..."

1. The Commission recalls that Article 6 para. 3 (c) (Art. 6-3-c) deals only with criminal proceedings. The Commission finds that it must therefore ascertain whether there was any criminal charge against the applicant. In this respect the Commission recalls the established case-law of the Convention organs (cf., Eur. Court H.R., Engel judgment of 8 June 1976, Series A no. 22, pp. 33-36, paras. 78-85 and No. 21283/93, Dec. 5.4.1994, D.R. 77 p. 81) and finds that it must examine whether the provision defining the offence charged belongs, according to the legal system of the respondent State, to criminal law, disciplinary law or both concurrently as well as the nature of the offence and the degree of severity of the penalty that the person concerned risks incurring.

The Commission notes, firstly, that the disciplinary charge against the applicant was based on rules applicable to the employment of public servants employed by the Evangelic-Lutheran Church and not on the general criminal law. Furthermore, the disciplinary charge related specifically to a breach of the rules committed in the course of employment.

As regards the nature of the offence, the Commission notes that the applicant was found to have acted in breach of his official duties and to have behaved in a way unbecoming to his office. Finally, as regards the degree of severity of the potential penalty, the Commission recalls that the severest possible penalty was removal from office and that there was no possibility of deprivation of liberty.

The Commission concludes that the applicant was not the subject of any criminal charge against him.

It follows that this part of the application is incompatible ratione materiae with the Convention within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The Commission recalls, however, that Article 6 para. 1 (Art. 6-1) may sometimes compel the State to provide for the assistance of a lawyer when such assistance proves indispensable for an effective access to court either because legal representation is rendered compulsory or by reason of the complexity of the procedure or of the case (cf., Eur. Court H.R., Airey judgment of 9 October 1979, Series A no. 32, pp. 15-16, para. 26).

The Commission considers that the question whether any "civil right" of the applicant was determined in the relevant disciplinary proceedings (cf., No. 9208/80, Dec. 10.7.81, D.R. 26 p. 262 and No. 9501/81, Dec. 7.12.81, D.R. 27 p. 249) can be left open since it finds that the application is in any event inadmissible for the following reasons.

The Commission notes, firstly, that in the Supreme Administrative Court legal representation was not compulsory. Secondly, the applicant had the opportunity to request legal assistance under the Act on Legal Aid from the Municipal Legal Aid Office if he found that he was in the need of legal assistance because of the complexity of his case. He has not, however, availed himself of this opportunity. Thirdly, the Commission notes that the applicant did indeed appeal to the Supreme Administrative Court, where his appeal is apparently pending. The refusal to grant the applicant legal aid under the Act on Cost-free Proceedings means mainly that the fees for the applicant's counsel will not be paid from public funds.

The Commission concludes that the Supreme Administrative Court's refusal to grant the applicant free legal aid did not deprive him of effective access to court and does not disclose any appearance of a violation of Article 6 (Art. 6) of the Convention.

It follows that the application is in any event manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the First Chamber — President of the First Chamber

(M.F. BUQUICCHIO) — (C.L. ROZAKIS)